
(2010) 11 UK CK 0023

In the Uttarakhand High Court

Case No : Criminal Appeal No. 132 of 2001 (Old No. 3247 of 1999)

Dinesh Chandra

APPELLANT

Vs

State of U.P (now State of Uttarakhand)

RESPONDENT

Date of Decision : 15-11-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 207, 313, 374
Penal Code, 1860 (IPC) — Section 201, 302, 304B

Citation : (2010) 11 UK CK 0023

Hon'ble Judges : Sudhanshu Dhulia, J; Prafulla C. Pant, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Prafulla C. Pant, J.—This appeal, preferred u/s 374 of Code of Criminal Procedure, 1973, (for short Cr.P.C), is directed against the judgment and order dated 03.12.1999, passed by Sessions Judge, Pithoragarh, in Sessions Trial No. 36 of 1996, whereby said court has convicted the Appellant Dinesh Chandra u/s 302 and 201 of Indian Penal Code, 1860, (for short I.P.C.), and sentenced him to imprisonment for life.

2. Heard learned Counsel for the parties and perused the lower court record.

3. Prosecution story, in brief, is that accused/Appellant Dinesh Chandra got married to Hema Devi (deceased), and they used to live in village Khatigaon, within the limits of Patwari area Totanaula in District Pithoragarh. On 29.07.1995, dead body of Hema Devi was found hanging from a tree. PW8 Laxmi Dutt Kapri, father in law of the deceased gave a report on 29.07.1995, to Patti Patwari Totanaula informing that his daughter in law Hema Devi has committed suicide by hanging herself from a tree. (In the interior hills of Uttarakhand, certain Revenue Officials are given police powers, under U.P. Government Notification No. 494 / VIII-418-16 dated 7th March 1916). Patwari Totanaula, on said information went to the spot and prepared inquest report (Ex-A5) on the very day (i.e.29.07.1995), he further prepared police form No. 13 (Ex-A6), sketch of

the dead body (Ex-A7), sample seal (Ex-A8), letter to the Chief Medical Superintendent (Ex-A9), requesting for post mortem examination. The dead body was sent in a sealed condition for post mortem examination. PW7 Dr. G.K. Sharma, conducted post mortem examination on 30th of September 1995 at about 10.25 am, and prepared autopsy report (Ex-A1) . He recorded as many as 17 ante mortem injuries most of them were abrasions and contusions. He also recorded a post mortem ligature mark of 15 cm x 3cm. As to the cause of death, he opined that the deceased had died of asphyxia due to suffocation. Considering the injuries mentioned in the post mortem report Patwari registered Crime No. 4 of 1995, relating to offence punishable u/s 302 and 201 I.P.C against unknown persons and prepared a check report (Ex-A3). He started investigation and interrogated the witnesses. He went to the spot and prepared site plan (Ex-A10). The Investigating Officer, on completion of the investigation, submitted charge sheet (Ex A13) against accused/Appellant Dinesh Chandra (husband of the deceased), for his trial in respect of offence punishable u/s 302 and 201 I.P.C.

4. The Judicial Magistrate, Pithoragarh, on receipt of the charge sheet, after giving necessary copies to the accused, as required u/s 207 of Cr.P.C, appears to have committed the case to the court of Sessions for trial. On 30th of October 1996, learned Sessions Judge, Pithoragarh, after hearing the parties, framed charge of offences punishable u/s 302 and 201 I.P.C., against accused/Appellant Dinesh Chandra who pleaded not guilty, and claimed to be tried. On this prosecution got examined PW1 Chinta Mani Bhatt (father of the deceased), PW2 Kaushalya Devi {mother of the deceased (declared hostile)}, PW3 Damodar (declared hostile), PW4 Shankar Dutt (declared hostile), PW5 Prayag Dutt (declared hostile), PW6 Amba Dutt (declared hostile), PW7 Dr. G.K. Sharma (who conducted post mortem examination), PW8 Laxmi Dutt Kapri (declared hostile) and PW9 Lalit Mohan (declared hostile). The oral and documentary evidence was put to the accused u/s 313 Cr.P.C., in reply to which, he only admitted that the deceased was his wife, and she died but rest of the prosecution evidence incriminating to him is denied as false. However, no evidence in defence was adduced. The trial court, after hearing the parties, found that the charge of offence punishable u/s 302 and 201 I.P.C., is proved against accused/Appellant Dinesh Chandra. After hearing on sentence, the convict was sentenced to imprisonment for life. Aggrieved by said judgment and order dated 03.12.1999, passed by Sessions Judge, Pithoragarh, in Sessions Trial No. 36 of 1996, this appeal was filed by the convict before Allahabad High Court on 07.12.1999, where it was admitted on 08.12.1999. The appeal is received by this Court u/s 35 of U.P. Reorganization Act, 2000 (central Act No. 29 of 2000), for its disposal.

5. Before further discussion, we think it just and proper to mention here that the ante mortem injuries found on the body of the deceased (Hema Devi) by PW7 Dr. G.K. Sharma at the time of post mortem examination. The same are being reproduced below from the autopsy report (Ex -A1):

1. Contusion over nose maxillary prominence skin infraorbital area of the shape

of butterfly fashion in patches. Over left side contusion over maxillary prominence multiple dotted abrasions. Color reddish brown.

2. Abrasion over sub diabolical region 3cm below chin 0.5cm x 0.1cm and 0.6cm x 0.1cm marginally placed. Reddish brown.

3. Semi circular concavity facing down words measuring 0.9cm x 0.3cm x 0.5cm above left sternoclavicular joint over left side neck on stern mastoid muscle area.

4. Horizontally placed abrasions of different dot shape 1cm above injury No. 1 measuring 0.1 cm x 0.5cm x area of 3cm extending from middle of neck on left side.

5. Obliquely placed abrasion 0.6cm x 15cm over right collar bone 2.5cm literal to aternoclacicular joint.

6. Abrasion semi circular over right side neck concavely lateral 0.4cm x 0.1cm, 5cm above midclevical, reddish brown.

7. Abrasion multiple measuring 0.5cm x 0.1cm over the area of 5cm x 2.5cm in front of chest below 3cm suprasternal notch.

8. Linear abrasion over left upper arm vertical surface 1cm vertically x 0.1cm width 4cm above the elbow.

9. Reddish blue color contusion around the left forearm meddle in the area of 9.5cm vertically. Groove of bangle worn obliquely placed over the contused area 10 cm above the wrist joint left.

10. Abrasion over right lower 1/3 upper arm 4.5 cm linear vertically x 0.1 cm reddish brown color and 1cm above right elbow vertical surface.

11. Abrasion semi circular 1cm x 0.1cm obliquely concavely liberally 5.5 cm from right medial condyl.

12. Multiple contusion bluish color over right elbow and upper arm dorsal surface in the area of 12 cm x6cm covered with thin layer of mud.

13. Star shaped abrasion over right upper 1/3 fore arm vertical surface 3cm below medial condyl measuring 1.5 cm x 0.5cm surrounded by multiple abrasions of 1cm x 0.5cm to 0.5cm x 0.2cm reddish brown color.

14. Obliquely placed contusion around the middle 1/3 fore arm right measuring 2cm in width blueish brown color. Groove bangle size contusions over the area obliquely placed 0.3cm width.

15. Multiple contusions blueish color over left side knee and upper 1/3 leg measuring 3cm x 2cm to 0.5cm x with area of 10cm x 6cm.

16. Multiple abrasion over right side of neck lateral surface of upper 1/3 right leg in the area of 12cm x 6cm measuring 3cm x 3cm to 1cm x 0.5cm.

17. Abrasion 1cm x 0.2cm area right ankle joint over medial malleolus.

PW7 Dr. G.K. Sharma has also recorded post mortem injuries as under:

1. Ligature mark 15 cm horizontally x 3cm vertically corrugated patlora horizontally placed 3cm below left and 3cm below right ankle of mandible back of neck non grooved light brownish pale coloured. On cutting no ecchymoses seen no haematoma. Subcutaneous tissue/NAD pale yellow muscle NAD.

2. Depressed 2cm x 2cm pale irregularly oval margins not abraded below left mandible 1cm from the chin on cutting injury No. 2 no ecchymoses no haematoma seen. Yellow color subcutaneous and fatty tissue seen.

From the above medical evidence it is proved on the record that Hema Devi has died a homicidal death in the intervening night on 29-30 July 1995. Now, we have to see whether the prosecution has sufficiently proved that accused/Appellant Dinesh Chandra (husband of the deceased) committed murder of his wife or not.

6. PW1 Chinta Mani Bhatt is father of the deceased Hema Devi. He states that his daughter Hema Devi got married to accused/Appellant Dinesh Chandra about one and half year before the date of incident. He further states that she (Hema Devi) used to tell him that her father in law and mother in law used to harass her, but this witness has clearly stated that she never complained against her husband. As against the accused/Appellant Dinesh Chandra nothing has come in the statement of this witness to connect the accused /Appellant Dinesh Chandra with the charge framed against him.

7. PW2 Kaushalya Devi is mother of the deceased. She too has made similar statement that her daughter Hema Devi used to tell that her father in law and mother in law used to beat her but this witness has also stated that she never complained about her husband (accused Dinesh Chandra) nor ever told anything relating to his character. This witness was got declared hostile. We do not find that anything has come in her statement to connect the accused/Appellant Dinesh Chandra, in connection with death of his wife.

8. PW3 Damodar also did not support the prosecution story, and he too was declared hostile. PW4 Shankar Dutt also did not support the prosecution story and got declared hostile. PW5 Prayag Dutt also did not support the prosecution story and declared hostile. PW6 Amba Dutt also did not support the prosecution story and declared hostile.

9. PW8 Laxmi Dutt is a formal witness who has simply proved report (Ex-A2), PW9 Lalit Mohan also did not support the prosecution story, and was declared hostile.

10. After going through the oral testimony of the witnesses, we do not find anything on the basis of which it can be said that the charge of offence punishable u/s 302 I.P.C is proved against the accused/Appellant Dinesh

Chandra. The only incriminating evidence on record is the injuries found on the body of the deceased by PW7 Dr. G.K. Sharma on the basis of which it can be said that the injuries might have been caused to her by her husband (Dinesh Chandra, but merely on the basis of suspicion we can not hold him guilty. It is not a case of offence punishable u/s 304B I.P.C, nor is there any allegation of demand of dowry or that of harassment for non-fulfillment of demand of dowry. Had it been a case of dowry death, after the unnatural death shown by the prosecution and the fact that the deceased were subjected to cruelty for non-fulfillment of demand of dowry, burden to proof would have shifted to the side of the defence. But in the present case, neither there is any allegation of demand of dowry, nor any allegation of harassment for non-fulfillment of demand of dowry. In the circumstance, the burden to proof clearly rests on the prosecution to prove beyond reasonable doubt that the accused Dinesh Chandra has committed murder of his wife. On going through the impugned judgment and order passed by the trial court, we find that the circumstances No. 3 to 9 mentioned by said court are entirely based on presumptions and conjectures and are against the evidence on record. In our opinion the trial court has committed error of law in holding the accused/Appellant Dinesh Chandra guilty of charge of offences punishable u/s 302 of the I.P.C. Since the prosecution has not proved the charge beyond reasonable doubts as against accused/Appellant Dinesh Chandra, we are of the view that the accused/Appellant Dinesh Chandra is entitled to the benefit of reasonable doubt.

11. For the reasons as discussed above, the appeal deserves to be allowed. The appeal is allowed. The impugned judgment and order dated 03.12.1999, passed by Sessions Judge, Pithoragarh, in Sessions Trial No. 36 of 1996, is set aside. The conviction and sentence recorded by said court against accused/Appellant Dinesh Chandra stands set aside. The accused/Appellant Dinesh Chandra is acquitted of the charge of offence punishable u/s 302 and 201 I.P.C giving him benefit of reasonable doubt. He is on bail. He need not surrender. His bail is cancelled and sureties are discharged. Lower court record be sent back.