
(2010) 09 UK CK 0122
In the Uttarakhand High Court

Lokendra

APPELLANT

Vs

State of U.P. (Now State of Uttarakhand)

RESPONDENT

Date of Decision : 20-09-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 313, 374
Penal Code, 1860 (IPC) — Section 207, 302, 498A

Citation : (2010) 09 UK CK 0122

Hon'ble Judges : Prafulla C. Pant, J;Nirmal Yadav, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Prafulla C. Pant, J.—This appeal, preferred u/s 374 of the Code of Criminal Procedure, 1973 (for short Cr.P.C.), is directed against the judgment and order dated 16th of December 1998, passed by learned Sessions Judge, Tehri Garhwal, in Sessions Trial No. 09 of 1997, whereby said court has convicted accused/appellant Lokendra u/s 302 of the 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 P.W. 1 Vishal Mani lodged first information report (Ext. A -1) with Patwari Chamiala on 05.11.1996, stating that his sister Beena (deceased), who was married to accused/appellant Lokendra, used to complain that she was subjected to cruelty by the accused. On 30th of October 1996, she came to her parental house and took her child to a hospital in Pilkhi for vaccination. She left along with her child in the evening for her in-laws' house. On 01.11.1996, accused/appellant Lokendra came to the complainant (P.W. 1) and told him that Beena is not traceable. Thereafter, according to the complainant, he made search with his relatives for Beena, who could not be found for 3-4 days, and only thereafter on 05.11.1996, report (Ext. A -1) was lodged with the Patwari (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). On 06.11.1996, the complainant along with his relatives could find body of Beena lying in river Mandakini, near Tilwara. Another report (Ext. A -3) was given to Patwari of Tunaitha Bhardar (within the limits of said patwari circle the body was found). In said report, P.W. 1 Vishal Mani stated that on 01.11.1996, accused Lokendra told him about the fact that his wife was missing. On search it was found that on 31.10.1996, Beena had left with her husband Lokendra for Ghansali to a flourmill, where after she was not seen. The complainant further informed that the dead body has been found in the river Mandakini. On this, P.W. 9 Suresh Kumar, the then Patwari, went to the river, took the dead body in his possession and prepared inquest report (Ext. A -6). The dead body was sent for postmortem examination in a sealed cover. P.W. 5 Dr. Lalit Kishor Gusain conducted the postmortem examination on dead body of the deceased on 07.11.1996, at 11:00 A.M. However, he did not find any ante mortem injuries on the dead body. He opined in the autopsy report (Ext. A -2) that cause of death could not be ascertained, and viscera was preserved for chemical analysis. A report (Ext. A -19) was received from the Forensic Science Laboratory, after chemical analysis of the viscera, in which it was reported that the contents of viscera contained organochloro insecticide. Meanwhile, on the basis of report (Ext. A -1), Crime No. 13 of 1996, was registered at Patwari Circle Chamiala against accused Lokendra (initially in respect of offence punishable u/s 498A of I.P.C., but later converted to one punishable u/s 302 of I.P.C.). P.W. 10 Dhani Ram Patwari investigated the crime. After interrogating the witnesses, inspecting the spot, and collecting the evidence, he submitted charge sheet (Ext. A -17) against the accused Lokendra for his trial, in respect of offences punishable u/s 302 and 498A of I.P.C.

4. The Magistrate, on receipt of the charge sheet, after giving necessary copies to the accused as required u/s 207 of Cr.P.C., committed the case to the court of Sessions, for trial. Learned Sessions Judge, Tehri Garhwal, on 21.04.1997, after hearing the parties, framed charge only in respect of offence punishable u/s 302 of I.P.C. against accused Lokendra, to which he pleaded not guilty and claimed to be tried. On this, prosecution got examined P.W. 1 Vishal Mani (complainant and brother of the deceased); P.W. 2 Kanti Devi (sister-in-law of the deceased); P.W. 3 Dhanna Ram; P.W. 4 Dharma Nand (uncle of the deceased); P.W. 5 Dr. Lalit Kishor Gusain (who conducted the postmortem examination); P.W. 6 Chairanji Lal (uncle of the deceased); P.W. 7 Sattu Devi (mother-in-law of the deceased); P.W. 8 Jawahari Lal; P.W. 9 Suresh Kumar (Supervisory Kanongo); P.W. 10 Dhani Ram (Investigating Officer) and P.W. 11 Jagdish Prasad Semwal (who proved the statement recorded u/s 164 of Cr.P.C.). The oral and documentary evidence was put to the accused u/s 313 of Cr.P.C., in reply to which he alleged the same to be false. However, no evidence in defence was adduced. The trial court, after hearing the parties, found accused Lokendra guilty of charge of offence punishable u/s 302 of I.P.C., and after hearing on sentence, sentenced him to imprisonment for life. Aggrieved by said judgment and order dated 16th of December 1998, passed by Sessions Judge, Tehri Garhwal, in Sessions Trial No.

09 of 1997, this appeal was filed by the convict before the Allahabad High Court on 12 of February 1999, where it was admitted on 16th of February 1999. The appeal is received by this Court u/s 35 of the U.P. Re-organization Act, 2000 (Central Act No. 29 of 2000), for its disposal.

5. It is a case of circumstantial evidence. First information report (Ext. A -1) lodged by P.W. 1 Vishal Mani with Patwari Chamiala shows that the complainant has alleged that his sister Beena (deceased) was subjected to cruelty by her husband Lokendra (accused). It is also mentioned in the report and proved by P.W. 1 Vishal Mani that the couple had a son, aged four months. It is also stated by P.W. 1 in his statement, and also mentioned in the first information report, that deceased used to tell him, whenever she visited her parental house, that she was subjected to cruelty by her husband. It is also stated that on 30th of October 1996, deceased came with her son for his vaccination at Pilkhi, and she left in the evening her parental house to go back to her in-laws house. P.W. 1 Vishal Mani further states that on 01.11.1996, accused Lokendra came to him and told that Beena had not reached village Rausal (the village where she used to live with her in-laws). According to P.W. 1 Vishal Mani, he started making search for Beena, but she could not be traced. Ultimately, he lodged first information report (Ext. A -1) on 05.11.1996 against accused Lokendra (husband). It is pertinent to mention here that in the first information report there is no allegation that accused ever made demand of dowry, or that he subjected his wife to cruelty for non-fulfillment of demand of dowry. In his statement also P.W. 1 Vishal Mani does not speak of demand of dowry or regarding harassment due to non-fulfillment of demand of dowry. He has simply suspected that this sister was murdered by his brother-in-law (Lokendra). P.W. 1 Vishal Mani has further stated that after lodging of the first information report, on the next day (06.11.1996), dead body of Beena was found in a river near Tilwara, regarding which report was made to the concerned Patwari of that area, who took the dead body in his possession and prepared the inquest report.

6. We have already mentioned above that P.W. 5 Dr. Lalit Kishor Gusain, who conducted the postmortem on the dead body, could not ascertain cause of death, and viscera was preserved for chemical analysis. The postmortem examination report (Ext. A -2) shows that the dead body was about a week old. The body was decomposed. Face was disfigured. Hairs were getting easily detached. No ante mortem injuries are mentioned in the autopsy report. According to the Medical Officer stomach, pieces of spleen, kidney, liver with gall bladder were preserved as viscera. The report received from the Forensic Science Laboratory, which is (Ext. A -19) on the record, shows that the contents of viscera contained alcohol and organochloro insecticide. As such, the medical evidence on record suggests unnatural death of the deceased by poisoning. However, it is not clear whether the deceased took the poison herself, or she was administered the same.

7. P.W. 2 Kanti Devi is wife of complainant and sister-in-law of the deceased, who corroborated the statement of P.W. 1 Vishal Mani. However, she appears to have

improved the prosecution story by saying that the accused had demanded ` 5,000/- as dowry, and due to its non-fulfillment she was killed. But this part of the prosecution story neither finds mention in the first information report (Ext. A -1), nor in the statement of P.W. 1 Vishal Mani (brother of the deceased).

8. P.W. 3 Dhanna Ram, a cousin of the deceased, has stated that he had last seen accused Lokendra and his wife Beena (deceased) in a bus on 31st of October 1996. But this evidence, by itself leads us nowhere, for the reason that there is nothing unnatural with a husband accompanying his wife. This witness also appears to have made some improvement in the prosecution story to a different direction. He states that on being told by Lokendra (accused) that his wife has got drowned at the time taking bath in a river, her dead body was found. Had it been a true account of the story, there should have been mention of this fact in the report (Ext. A -3) submitted by P.W. 1 Vishal Mani to Patwari Tunaitha, who prepared the inquest report, thereafter.

9. P.W. 4 Dharma Nand is uncle of the deceased, who has stated that the deceased whenever came to her parental house used to say that she was subjected to harassment by her sister-in-law (JETHANI) and other in-laws. When we read the evidence of this witness with the statement of other witnesses, we find that there is nothing in the first information report or in the statement of P.W. 1 Vishal Mani or P.W. 2 Kanti Devi that "JETHANI" and other in-laws used to harass the deceased. This witness has further stated that on 01.11.1996, Lokendra (accused) came to him and told that his wife Beena is not traceable. The witness further states that when on 3rd of November, he along with others went to house of in-laws of the deceased, they were told that deceased and her husband had gone to a flour mill to get the wheat grinded, and they did not return since then.

10. P.W. 7 Sattu Devi is mother-in-law of the deceased, who has not supported the prosecution story, and she was declared hostile.

11. P.W. 8 Jawahari Lal, a shopkeeper, has stated that on 01.11.1996, accused Lokendra came to his shop and left a bag in his shop which contained clothes of the deceased. The statement of this witness on scrutiny appears to be doubtful as it is highly unnatural conduct on the part of a person who would kill his wife and then leave her clothes in a shop, so that the Investigating Officer may collect it from there.

12. P.W. 11 Jagdish Prasad Semwal, a Senior Assistant of Tehsil Pratap Nagar, has proved statement of accused Lokendra, recorded u/s 164 of Cr.P.C. (Ext. A -20) by the then Sub Divisional Magistrate, Pratap Nagar. It is not clear why the prosecution did not produce the concerned Magistrate, who recorded the statement of the accused. It is nowhere mentioned in the statement recorded u/s 164 of Cr.P.C. (Ext. A -20) that the accused was given caution by the Magistrate that if the accused makes any confessional statement, it could be used against him. Otherwise also, on reading the statement given by the accused in Ext. A

-20, it leads us to a third direction in which the accused has stated that his wife while taking bath in the river got drowned. It does not explain as to how the poison organochloro insecticide was found in the dead body of the deceased.

13. We would be failing in our duty if we don't mention that suggestion has been given to the witnesses of fact by the defence counsel that the dead body recovered was not that of Beena. Also, the witnesses of fact have stated that they were told that three-four women committed suicide at Tilwara. It has come on the record (Ext. A -2) that dead body was one week old and the face was not identifiable.

14. In the above circumstances, having re-assessed the entire evidence on record, we are of the view that chain of circumstances is not complete encircling the accused, that it was only he who could have committed this crime. Different stories have come from the different sets of witnesses, as discussed above, and one theory of commission of crime is not ruling out the possibility of commission of crime in a different manner. Therefore, in the facts and circumstances of the case, we are of the opinion that from the evidence on record, it cannot be said that the prosecution has successfully proved charge of offence punishable u/s 302 of I.P.C., against accused Lokendra. He appears to be entitled to the benefit of reasonable doubt.

15. For the reasons as discussed above, this appeal deserves to be allowed. Accordingly, the same is allowed. The impugned judgment and order dated 16.12.1998, passed by Sessions Judge, Tehri Garhwal, in Sessions Trial No. 09 of 1997, is hereby set aside. Conviction and sentence recorded by the trial court against accused/appellant Lokendra u/s 302 of I.P.C. is set aside, giving him benefit of reasonable doubt. He is in jail. He shall be set at liberty forthwith, provided he is not wanted in connection with any other crime. Registry is directed to send copy of this judgment to the Superintendent of jail where the appellant Lokendra is lodged. Lower court record be sent back.