
(2013) 10 UK CK 0005

In the Uttarakhand High Court

Case No : Criminal Appeal No. 63 of 2009

Smt. Santoshi Devi and Another

APPELLANT

Vs

State of Uttarakhand

RESPONDENT

Date of Decision : 04-10-2013

Acts Referred:

Citation : (2013) 2 NCC 892

Hon'ble Judges : Barin Ghosh, C.J; Umesh Chandra Dhyani, J

Bench : Division Bench

Advocate : D.C.S. Rawat, for the Appellant; Amit Bhatt, Dy. Advocate General, for the Respondent

Final Decision : Allowed

Judgement

Umesh Chandra Dhyani, J.—Accused-appellant Santoshi Devi, wife of deceased Samarpal set the criminal law into motion by writing a complaint (Ex. Ka-5) to Patti Patwari, Patti Langoor Walla, District Pauri Garhwal on 14.08.2006 at 2:00 P.M. She wrote that she came to her parental home at Village Odal Bara, Patti Langoor Walla on 03.07.2006. Her matrimonial home was at Village Jasala, District Muzaffarnagar. She wrote that she came to her parental home with her brother-in-law (devar). Her husband Samarpal (since deceased) came to her maternal home on 12.08.2006. On 14.08.2006, at around 7:00-8:00 A.M., when she went to serve her husband with tea, she found that her husband was beheaded and she did not know as to who killed her husband. After registration of FIR, the crime was investigated by the Investigating Officer. I.O. submitted charge-sheet against Smt. Santoshi Devi, wife of deceased and Dinesh Chand, brother-in-law of deceased for the offences punishable under Sections 302 & 201 I.P.C. The case was committed to the Court of Sessions. When the trial commenced and prosecution opened it's case, charge(s) for the offence punishable u/s 302 I.P.C. read with Section 34 I.P.C. were framed against the accused persons, to which they pleaded not guilty and claimed trial.

2. P.W. 1 Kapotri Devi, P.W. 2 Vishveshwar Prasad, P.W. 3 Ganesh Chandra, P.W. 4

Birendra and P.W. 5 Chandi Prasad Juyal (kanoongo) were examined on behalf of the prosecution. Incriminating evidence was put to the accused persons u/s 313 of Cr.P.C., in reply to which they said that the case against them was false. Thereafter, CW 1 Harish Chandra and CW 2 Vijay Singh were examined as court-witnesses. Statements of the accused persons were again taken u/s 313 Cr.P.C., in which they affirmed their earlier statements. No evidence was given in defence.

3. After considering the evidence on record, accused persons Santoshi Devi and Dinesh Chand were convicted u/s 302 I.P.C. read with Section 34 I.P.C. and were directed to undergo imprisonment for life alongwith a fine of Rs. 10,000/- each, vide judgment and order dated 06.04.2009. Aggrieved against the impugned judgment and order, present criminal appeal was preferred by the convicts.

4. PW 1 was the mother of appellants. She said that her daughter Santoshi Devi was married to Samarpal some 14-15 years ago. Her daughter came to her parental home on 12.08.2006. Her husband (Samarpal) came there to take her back alongwith him. On 13.08.2006, P.W. 1 went to her parental home alongwith other family members, including the appellants. Only Samarpal remained there on 13.08.2006. She denied that she saw Santoshi Devi and Dinesh Chand talking to each other on 13.08.2006 at around 2-2:30 in the night. She explained that Santoshi Devi and Dinesh were alongwith her in her parental home. She also denied that she found beheaded dead body of Samarpal. P.W. 1 was declared hostile by the prosecution and was permitted to be cross-examined by the learned D.G.C. (Criminal). In the cross-examination, she admitted that Samarpal came on 12.08.2006 to take back his wife. Samarpal was present at her residence on 12.08.2006. She denied the suggestion of learned D.G.C. (Criminal) that she did not take Santoshi Devi and Dinesh Chand to her parental home on 13.08.2006. Her parental home was situated at a distance of 14 kilometres from her matrimonial home. Although she admitted her signatures on recovery memo (paper No. 16 ka), but denied recovery of incriminating articles from the possession of the appellants. The testimony rendered by P.W. 1 is of no help to the prosecution.

5. PW 2 was a signatory to the inquest report (Ex. Ka-1) of deceased. P.W. 2 was also a signatory to the recovery memo of hammer and axe/hatchet (kulhari) at the instance of appellant Dinesh Chand. In the cross examination, P.W. 2 said that he did not go to the place from where hammer and axe were recovered. Only appellant Dinesh Chand and Patwari went there. In this way, the statement of P.W. 2 lost it's evidentiary value. P.W. 3 Ganesh Chandra was also a signatory to the inquest report (Ex. Ka-1). Patwari prepared site-plan Ex. Ka-12. Appellant Dinesh Chand gave a hammer and axe (kulhari) to Patwari. P.W. 3 did not know from where appellant Dinesh Chand brought those incriminating articles. The testimony of P.W. 3 thus lost it's evidentiary value in terms of Section 27 of the Indian Evidence Act.

6. P.W. 4 also did not support the, prosecution story. He was the real brother of deceased. He said that the marital life of deceased and appellant Santoshi went

off well for 8 years. Deceased never threatened P.W. 4's bhabhi (i.e. appellant Santoshi Devi). In the cross-examination, he said that his brother had no enmity with anybody in Odal Bara, Patti Langoor Walla. He also denied the suggestion that he was telling a lie in order to save his sister-in-law (bhabhi). P.W. 4 also said that three children were begotten out of the wedlock of Samarpal (since deceased) and appellant Santoshi Devi.

7. P.W. 5 Chandi Prasad Juyal was the kanoongo posted at Langoor Walla, Tehsil Satpuli on 14.08.2006. He registered chick FIR (Ex. Ka-6) on the basis of complaint (Ex. Ka-5) of accused-appellant Santoshi Devi. He also proved G.D. (Ex. Ka-7), inquest report (Ex. Ka-1), site-plan (Ex. Ka-12) and charge-sheet (Ex. Ka-14).

8. CW 1 Harish Chandra was the father of the appellants. He admitted that the deceased came to his house to take back his wife. CW 1 was present at his home. Appellants, CW 1 and CW 1's wife (PW 1) went to some other village in connection with "pooja". Samarpal was unwell and therefore he declined to accompany them. CW 2 was the neighbour of CW 1. CW 2 said that Samarpal died in the intervening night of 13/14.08.2006. CW 2 himself was away at Lansdowne. When he came back, he came to know that Samarpal was dead.

9. None of the prosecution witnesses, not even court-witnesses supported the prosecution story. The only evidence tendered against the appellants was that Samarpal came to their house on 12.08.2006 to take back his wife, i.e., appellant Santoshi Devi and was thereafter killed. When Samarpal was killed, the appellants were away to some other village in connection with "pooja". The other piece of evidence against appellant Santoshi Devi was that she went to serve tea to her husband in the morning and found beheaded dead body of her husband. The distance between her parental home and the place where the appellants went in connection with pooja was 14 kilometres. The appellants took a plea of alibi. The doctor's report was not under challenge.

10. Assuming that in the previous night, the appellants and deceased were together, it was not proved by the prosecution that the appellants alone and none else killed the deceased. At least, the same could not be gathered from the circumstances thus brought on record. The blood was found disintegrated in the report of Forensic Science Laboratory. It was said that some blood-stained clothes were recovered at the instance of the appellants. The question is - why the appellants will keep the clothes since the time of alleged murder? The chain of circumstances was not complete. No motive was assigned for the killing of the victim. The relationship between the husband (deceased) and wife (appellant Santoshi Devi) was not strained. They were married some 14 years ago and had three children. None of the children came to depose in favour of the prosecution. None of the children said that there were differences between their father and mother. Where were the children when the incident took place? Whether the children were at the parental home of their mother? Whether the children were at their home (at their father's place) or whether they went alongwith the

appellants to a place where "pooja" was to be performed? The same was not highlighted by the prosecution. The chain of circumstantial evidence was thus not complete. It cannot, therefore, be inferred that the appellants and appellants alone committed murder of Samarpal. The appellants, therefore, deserve to be given the benefit of doubt in such a situation.

11. The criminal appeal preferred by the appellants is, therefore, allowed. The impugned judgment and order, as also the conviction and sentence awarded to the appellants, is set aside. The appellants are on bail. Their bail bonds are cancelled and sureties are discharged. They need not surrender. Let the lower court record alongwith a copy of the judgment be sent back to the Court below.