
(2013) 04 UK CK 0034

In the Uttarakhand High Court

Case No : Government Appeal No. 116 of 2008

State of Uttarakhand

APPELLANT

Vs

Bhagwati Singh Alias Bhagat Singh

RESPONDENT

Date of Decision : 05-04-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 207, 378
Penal Code, 1860 (IPC) — Section 323, 376, 376(2)(g), 452
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)(x)

Citation : (2013) CriLJ 3073

Hon'ble Judges : Servesh Kumar Gupta, J; Prafulla C. Pant, J

Bench : Division Bench

Advocate : A.S. Gill, Government Advocate and V.P. Bahuguna, Brief Holder, for the Appellant; Pushpa Joshi, Amicus Curiae, for the Respondent

Final Decision : Dismissed

Judgement

Prafulla C. Pant, J.—This appeal, preferred u/S. 378 of Code of Criminal Procedure, 1973, is directed against the judgment and order dated 15.02.2008 passed by learned Sessions Judge, Rudraprayag in Sessions Trial No. 16 of 2006, whereby the said Court has acquitted the accused/respondent, Bhagwati Singh alias Bhagat Singh (present respondent), from the charge of offence punishable u/Ss. 376(2)(g), 323, 452 IPC and one punishable u/Ss. 3(1)(x) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter will be referred as "the SC & ST (PA) Act"). Heard learned counsel for the parties and perused the record.

2. Prosecution story, in brief, is that P.W. 1 Dhagi Devi used to live with her two children in village Chirpi, within the limits of village Panchayat Pipli, District Rudraprayag. Her age on the date of incident was 55 years. In the intervening night of 4/5.9.2004, accused Bhagwati Singh and one Surendra Singh (since absconding) entered in her house after breaking the doors, they committed rape on the said woman after brandishing a knife. Age of the two children of victim

was 15 years (PW 2 Kamla) and 12 years (PW 3 Prakash). Victim was the member of scheduled caste community. On the next day, children of victim went to village pradhan, and thereafter the FIR (Ex. A-1) was got scribed by her and the same was given to the Patwari, Pipli. (In certain hilly areas of State of Uttarakhand, revenue officials are given police powers). On the basis of said report, chik FIR (Ex. A-4) was prepared on 5.9.2004 and crime No. 1 of 2004 was registered in respect of the offences punishable u/Ss. 376, 323, 452 IPC and one relating to offence punishable u/S. 3(1)(x) of the SC & ST (PA) Act against the accused Bhagwati Singh and Surendra Singh. Investigation was taken up by Naib Tehsildar Shiv Raj Lal (since deceased), and from him in July, 2006, PW 9 Narendra Dutt Chamola took up the investigation. Victim was medically examined by PW 4 Dr. Bhawani Pal on 8.9.2004, who did not find any scratch or swelling on the private parts but her pathological slides were sent for the purpose of pathological examination. PW 1 Dhagi Devi was again medically examined by PW 7 Dr. G.S. Joshi on 8.9.2004 who observed abrasions and one contusion on her right thigh. Strangely, pathological examination appears to have been done after 27 years on 9.4.2007 by PW 6 Dr. Satish Kumar, who gave the negative report for spermatozoa. After interrogation of witnesses and on completion of investigation, Narendra Dutt Chamola, Investigating Officer (PW 9) submitted the charge-sheet (Ex. A-11) against the accused Bhagwati Singh (present respondent) whereas co-accused Surendra Singh was shown as absconder.

3. Learned Chief Judicial Magistrate, Rudraprayag, on receipt of charge-sheet, after giving necessary copies to the accused, as required u/S. 207 Cr.P.C., appears to have committed the case to the Court of Sessions for trial.

4. On 12.10.2006, learned Sessions Judge, Rudraprayag, after hearing the parties, framed charge for the offences punishable under S. 452, 323, 376 IPC and one punishable u/S. 3(1)(x) of the SC & ST (PA) Act, to which the accused Bhagwati Singh who pleaded not guilty and claimed to be tried. Amended charge was also framed on 28-11-2007 by the trial court.

5. The prosecution got examined PW 1 Smt. Dhagi Devi (victim), PW 2 Ms. Kamla (daughter of victim), PW 3 Prakash (son of victim), PW 4 Dr. Bhawani Pal (who primarily medically examined the victim), PW 5 Durga Prasad Sari (Patwari of the area), PW 6 Dr. Satish Kumar (Pathologist), PW 7 Dr. G.S. Joshi (Radiologist), PW 8 Ram Singh Gusain (Patwari, who arrested the accused) and PW 9 Narendra Dutt Chamola (Investigating Officer, who concluded the investigation).

6. Oral and documentary evidence was put to the accused, in reply to which the accused pleaded that the same was false. He further pleaded that on the instigation of one Guddu, he has been falsely implicated by Dhagi Devi. However, no evidence, in defence, was adduced.

7. PW 1 Smt. Dhagi Devi has stated that on 4.9.2004, she was sleeping in the

courtyard of her house with her daughter and son. She woke up after the doors were knocked. Soon thereafter, her doors were broken and accused Bhagwati Singh along with co-accused Surendra Singh entered in the house. She further stated that she was dragged out on the "chowk" and subjected to rape by the two accused. She also proved the FIR (Ex. A-1) lodged by her. Her daughter PW 2 Kamla and son PW 3 Prakash have also corroborated the story narrated by her.

8. On behalf of the appellant/State, it is argued that the trial court has erred in law in disbelieving the prosecution story even though the same was corroborated, not only by the victim, but also by her children.

9. On the other hand, learned amicus curiae submitted that the circumstances of the case and the careful reading of the evidence, on record, disclose that the allegations made by PW 1 Dhagi Devi against the accused are not correct. In this connection, attention of this Court is drawn to the fact that PW 1 Dhagi Devi is a woman aged about 55 years, who was living with her grown up children. It is further contended that it is unnatural that the rape was committed by the accused/respondent in the manner suggested by the prosecution.

10. It is further pointed out that had the rape been committed, PW 4 Dr. Bhawani Pal, senior gynecologist, who examined the victim on 8.9.2004, would not have mentioned in her report that there was no scratch or swelling on examination of the private parts of victim. It is strange that the gynecologist (PW 4) has observed in her report (Ex. A-3) that there was no mark of injury on the private parts of the victim, but she referred the victim for external examination of thighs to another medical officer i.e. PW 7 Dr. G.S. Joshi (a male doctor), who, in his report (Ex. A-8), observed abrasions and contusion on the right thigh of the victim. More strange fact is that PW 6 Dr. Satish Kumar, pathologist, states that he examined the slides of vaginal smear on 9.4.2007 which were taken by gynecologist way back in the year 2004 (pathological examination has taken place after 2? years).

11. Furthermore, no statement u/S. 164 Cr.P.C. appears to have been recorded of the victim by any Magistrate as no such statement was found on the record.

12. Learned amicus curiae also drew attention of this Court towards the document (paper No. 6B/4 and 6B/5, re-numbered as 3B/11 and 3B/12 in lower court record) which is the copy of affidavit filed by PW 1 Dhagi Devi on 27.1.2006 (during investigation) before the District Magistrate stating that she has falsely named the accused Bhagwati Singh in the case on the instigation of some local people. PW 1 Dhagi Devi has admitted in her cross-examination that she did give an affidavit to the District Magistrate. She has also admitted that FIR (Ex. A. 1) was lodged by her on the advice of Guddu and Tejvar. Accused Bhagwati Singh has also taken the defence that due to enmity, Guddu got him implicated in the case through PW 1 Dhagi Devi.

13. In the above circumstances, we are of the opinion that the view taken by the trial court cannot be said to be perverse or against the evidence on record. In

the present case, it can be said that two views were possible. In a matter of acquittal, when a view has been adopted by the trial court, which is based on the evidence, on record, it is not desirable on the part of the Appellate Court to interfere with the same.

14. Therefore, this appeal preferred by the State is liable to be dismissed. Accordingly, the appeal is dismissed. Impugned judgment and order dated 15.02.2008 passed by the Sessions Judge, Rudraprayag in S.T. No. 16 of 2006, State v. Bhagwati Singh alias Bhagat Singh, is hereby affirmed. Let a copy of this judgment along with the lower court record be sent back.