

(2019) 06 UK CK 0017

In the Uttarakhand High Court

Case No : Government Appeal No. 17 Of 2012

State Of Uttarakhand

APPELLANT

Vs

Maresh Singh & Another

RESPONDENT

Date of Decision : 12-06-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 201, 302, 306, 314
Code Of Criminal Procedure, 1973 — Section 313

Citation : (2019) 06 UK CK 0017

Hon'ble Judges : Ramesh Ranganathan, CJ; Ravindra Maithani, J

Bench : Division Bench

Advocate : V. K. Gemini, Pankaj Joshi, B. S. Adhikari

Final Decision : Dismissed

Judgement

Ravindra Maithani, J

1. The present Government Appeal is preferred against the judgment and order dated 27.02.2012 passed by the Sessions Judge, Pithoragarh in Sessions Trial No. 17 of 2010, State vs. Mahesh Singh & another, whereby the respondents have been acquitted of the charges under Section 302 read with Section 34 & 314 IPC.

2. Briefly stated, according to the prosecution, the daughter of the first informant was missing from her house since 23.06.2009. She was aged about 19 years. A search was made. On 25.06.2009 at 6:00 in the morning, her dead body was found in the river Saryu. Respondents had illicit relationship with her, due to which, she was pregnant. It compelled her to commit suicide. The deceased had, three days prior to missing, told it to her brother Bhagat Singh that the respondents had spoiled her life and that they were harassing her. With this and some other averments, an FIR was lodged at Patti Patwari Chamdungra, Tehsil Gangolihat on 25.06.2009 at 12 noon under Section 306 IPC. On the same day, an inquest was prepared. The postmortem of the dead body of the deceased was

conducted on the next day on 26.06.2009. After investigation of the case, chargesheet was submitted against the respondents for the offences punishable under Sections 302, 201, 314 IPC. Cognizance was taken and the case was committed to the Court of sessions. Charges under Section 302 read with Section 34 & 314 IPC were framed against the respondents, to which, they denied and claimed trial.

3. In order to prove its case, the prosecution examined as many as ten prosecution witnesses. The respondents were examined under Section 313 Cr.P.C and according to them, they have been falsely implicated in the case. Learned trial court acquitted the respondents of the charges under Section 302 read with Section 34 & 314 IPC. Aggrieved, the State preferred the instant Appeal.

4. Heard Mr. V. K. Gemini, Deputy Advocate General with Mr. Pankaj Joshi, Brief Holder for the appellant-State & Mr. B. S. Adhikari, Advocate for the respondents and perused the record.

5. Learned Deputy Advocate General for the State-appellant took the Court through the statements of the witnesses, who had deposed about the relationship of respondents with the deceased Bhaguli. It is argued that the deceased was pregnant due to her relationship with the respondents, which the deceased had disclosed to her mother, brother and others.

6. On the other hand, learned counsel for the respondents would argue that it is a no evidence case; there is no circumstance, which appears against the respondents; the foetus, which was discovered from the womb of the deceased, was not matched with the DNA profile and the learned trial court had rightly acquitted the respondents from the charges levelled against them.

7. Before the arguments are appreciated, it would be appropriate to have a look on the statements of the witnesses. PW1 Ummed Singh, who is the first informant, has stated that his daughter Kumari Bhaguli was missing from her house since 23.06.2009 at 4:00 p.m and her dead body was recovered on 25.06.2009 at 6:00 a.m. from the river Saryu. This witness also states that deceased had disclosed it to her brother Bhagat Singh that the respondents had spoiled her life and she became pregnant due to her relationship with the respondents. P.W.1 Ummed Singh is the first informant, who lodged the report.

8. PW2 Saruli Devi is the mother of the deceased. She also states that the deceased had disclosed it to her that she is pregnant due to her relationship with the respondents and the respondents had spoiled her life. According to her, the deceased had also told her that she would die only because of respondents.

9. PW3 Hema Devi simply states about the pregnancy of the deceased. She has not stated anything against the respondents.

10. PW4 Bhagat Singh is the brother of the deceased. According to him, on 23.06.2009, the deceased had disclosed it to the mother of this witness and PW3 Hema Devi that the respondents had spoiled her life. This witness has also stated

that from the evening of 23.06.2009 the deceased was missing from her house.

11. PW5 Naruli Devi is a witness, who states that since her house is situated in an isolated place in the village, she used to call the deceased to sleep with her at night. But, according to this witness, the deceased had never disclosed it to her that she was pregnant.

12. PW6 Mohan Singh is a witness, who simply states that the brother of the deceased (i.e. PW4 Bhagat Singh) had told him that deceased was pregnant due to her relationship with the respondents and the respondents had spoiled her life.

13. PW7 Dr. Jai Raj Singh had conducted the postmortem of the dead body of the deceased. According to him, the cause of death of the deceased was shock and hemorrhage, due to ante-mortem injuries. According to him, the following injuries were found on the body of the deceased:-

"1. Deep L.W. at left side upper forehead, size 2.5 cm X 4 cm X 1.5 cm. Bone is depressed of crepitation and blood clot on the scalp is found.

2. Whole body is swollen.

3. Peeling out of skin is found.

4. Foul smell is found.

5. Decomposition of body is found.

6. Bluish-greenish colour of body skin is found."

14. PW 7 Dr. Jai Raj Singh has also stated about the conditions of the other organs of the deceased. According to him, a female foetus was also found at the time of post mortem, which was 50c.m. in length and circumference of the head was 28c.m.

15. PW8 Smt. Basanti Devi is the sister of the deceased. According to her, the deceased had disclosed it to her that she (deceased) was in relationship with the respondents. When this witness suggested that the matter should be disclosed to her father, the deceased stopped her by saying that the respondents would kill them.

16. PW8 Smt. Basanti Devi has also stated that on 26.06.2009 at 4:00 p.m., when she along with the deceased was in the forest to cut and collect the grass, PW5 Naruli Devi came there and told the deceased that Mahesh Singh had called her. On this, the deceased went with Naruli Devi to meet Mahesh Singh and did not return thereafter.

17. PW9 Madan Singh Vidoria is the Investigating Officer, who proved certain documents. PW10 S.I. Umesh Ram Arya had completed the investigation and submitted the chargesheet.

18. The respondents have been charged under Section 302 read with Section 34

& 314 of the IPC It is a criminal trial. The prosecution has to prove its' case beyond reasonable doubt. In the instant case, what the prosecution has tried to prove is that the respondents had illicit relationship with the deceased and the deceased became pregnant due to this relationship. According to the prosecution, perhaps, it is the respondents, who killed her or because of her relationship, the deceased had committed suicide. This has been stated in the FIR

19. PW8 Smt. Basanti Devi in para 3 of her statement tried to further connect the link that on 23.06.2009 the deceased disclosed her that she had a baby of Mahesh Singh in her womb; when this witness along with the deceased was in the forest to cut and collect the grass, PW5 Naruli Devi came there and told the deceased that Mahesh Singh was calling her; thereafter, the deceased went along with Naruli Devi and did not return. This is an isolated statement. Naruli Devi has been examined as PW5, who has not stated anything about it. The Investigating Officer PW9 Madan Singh Vidoriya in his cross-examination has disclosed that during the investigation PW5 Smt. Naruli Devi did not tell it to him that on 23.06.2009, she called the deceased from the forest.

20. Was the deceased pregnant due to the relationship with the respondents? Apart from some statements, there is no clinching evidence to that effect as well. PW7 Dr. Jai Raj Singh in his statement states that the foetus was found in the womb of the deceased; no DNA test was conducted to connect it to any of the respondents.

21. Even if it is assumed for the sake of arguments that the deceased had a relationship with any of the respondents, how could the respondents be held responsible for killing of the deceased. There is no evidence, which may connect the respondents that they killed the deceased. It is practically a case of no evidence. The prosecution has utterly failed to prove the charges levelled against the respondents. This Court is of the view that the learned trial Court has committed no mistake in acquitting the respondents. Hence, there is no force in the Government Appeal and the same deserves to be dismissed.

22. The appeal is dismissed.