
(2013) 01 UK CK 0036

In the Uttarakhand High Court

Case No : Government Appeal No. 403 of 2007

State of Uttarakhand

APPELLANT

Vs

Shoorbeer Lal

RESPONDENT

Date of Decision : 02-01-2013

Acts Referred:

Citation : (2014) 2 UC 906

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

Bench : Division Bench

Judgement

Umesh Chandra Dhyani, J.—Criminal law was set into motion at the instance of Sitabu Lal. The first information report of the complainant Sitabu Lal was lodged regarding the offences punishable under Sections 302/201 IPC. Case Crime No. 487 of 2005 was registered in PS Srinagar on 19.06.2005 at 7:30 p.m. Upon the investigation of the case, a charge-sheet against Shoorbeer Lal was filed as regards offence punishable under Sections 302/201 IPC in the Court of Magistrate having jurisdiction. Case was then committed to the Court of Sessions.

2. When the trial began and prosecution opened it's case, charge for the offences punishable under Sections 302 and 201 IPC were framed against the accused-respondent, to which he pleaded not guilty and claimed trial. 09 prosecution witnesses, namely, PW 1 Brij Lal, PW 2 Sitabu Lal, PW 3 Guddi Devi, PW 4 Hariom R. Chauhan, PW 5 Sohan Lal @ Sonu, PW 6 Sanjay, PW 7 Dr. T.P. Dimri, PW 8 Bhaskar L. Shah and PW 9 Madan S. Bisht were examined on behalf of prosecution. Incriminating evidence was put to the accused u/s 313 Cr.P.C., in which he denied the allegations and said that he was falsely implicated in the case. After considering the evidence on record, learned trial court acquitted accused-respondent of the charge levelled against him for the offences punishable under Sections 302 and 201 IPC. Aggrieved against the judgment and order of acquittal of the accused-respondent, present Government Appeal was preferred.

3. PW 1 Brij Lal son of Sitabu Lal, in his examination-in-chief, said that his sister

Vijaya Devi was married to Shoorbeer Lal about seven years ago. Two children were begotten by Vijaya Devi. Shoorbeer Lal was having illicit relations with his bhabi (sister-in-law) Beena. Therefore, Shoorbeer Lal ignored Vijaya Devi. Shoorbeer Lal used to threaten Vijaya Devi of dire consequences if she dared to disclose his relations with Beena Devi. On 9th May, 2005, the marriage of younger brother of PW 1 took place. Vijaya Devi also attended that marriage. She disclosed the fact of Shoorbeer Lal's illicit relations with Beena to Guddi Devi, PW 1's sister. On 19.06.2005, at 4:00 a.m., a person came from Vijaya's matrimonial village and informed PW 1 that Vijaya was not there in her matrimonial home. A missing report was lodged by Shoorbeer Lal in PS Srinagar. Later on, it was found that Vijaya was dead. On 19.05.2005, a dead body was found by Srinagar Police. The dead body was of Vijaya Devi. PW 1 apprehended that Vijaya Devi was done away with by Shoorbeer Lal and Beena Devi by throwing her in river Ganges.

4. PW 2 Sitabu Lal was the father of Vijaya Devi, who (Vijaya) was married to Shoorbeer Lal about seven years ago. On 09.05.2005, when the marriage of younger son of PW 2 took place, Vijaya also came to attend the marriage. Vijaya Devi did not wear her ornaments. When PW 2's daughter Guddi enquired from Vijaya as to why she was not wearing ornaments, Vijaya said that Shoorbeer Lal has taken all the ornaments. Vijaya Devi also told Guddi that Shoorbeer Lal was having illicit relations with Beena Devi. Shoorbeer Lal used to beat Vijaya. Later on Vijaya Devi was killed by Shoorbeer Lal. A dead body was found in the jurisdiction of PS Srinagar. The dead body was not identifiable. When the photograph of the dead body was shown to PW 2, he identified the same as the dead body of Vijaya.

5. PW 3 Guddi Devi said that on 09.05.2005, when the marriage of her younger brother Mahendra took place, Vijaya Devi also came to her parental home and she (Vijaya) disclosed that Shoorbeer Lal had taken her ornaments. Vijaya Devi also complained that Shoorbeer Lal assaulted her. PW 3 came to know thorough newspaper dated 20.05.2005 that a dead body was found. PW 3 along with her father went to see the dead body in the Base Hospital, Srinagar. Police showed a photograph of the dead body, whereupon they found that the dead body was of Vijaya. PW 3 identified some of the ornaments which Guddi Devi gave to Vijaya. PW 3 also identified the petticoat of Vijaya.

6. PW 4 Hariom Raj Chauhan, Sub Inspector was second officer posted in PS Srinagar on 19.06.2005. On the selfsame day, constable Sanjay Kumar, Police Chowki Kaliasaud, informed PW 4 that a dead body of a woman was found near Dhari Devi temple. PW 4 went to the place, where the dead body was found and obtained the photographs of the dead body through photographer. PW 4 also found a rope, which was tied around the dead body. A petticoat was also found near the dead body and thereafter, the inquest proceedings were conducted. In the cross-examination, PW 4 said that the dead body was unidentifiable. Only this much could be ascertained that the dead body belonged to a woman.

7. PW 5 did not support the prosecution story and said that he was not aware whether Vijaya Devi was alive or dead. PW 6 Sanjay was the signatory to the inquest report (Ext. Ka-8) and was also a signatory to the memo of recovery of rope (Ext. Ka-9).

8. PW 7 Dr. T.P. Dimri conducted postmortem on the dead body on 20.06.2005 and found (i) stab wound on the left side of chest (ii) stab wound on the neck on right side (iii) a stab wound on the right chest (iv) another stab wound on the right side chest near injury No. (iii) and (v) incised wound on the right forearm. According to the Medical Officer, the cause of death of victim was shock and hemorrhage as a result of injuries on her chest and on the neck.

9. PW 8 Bhaskar Lal Sah was the Investigating Officer, who among other things, said that Brij Lal identified the dead body only on the basis of photographs on the premise that red bangles of plastic, bangles of brass and earrings were of Vijaya Devi. PW 9 SI Madan Singh Bisht took over the investigation from PW 8 Bhaskar Lal Sah on 22.08.2005. PW 9 recorded the statements of PW 1 Brij Lal and PW 2 Sitabu Lal, affected arrest of Shoorbeer Lal on 11.01.2006, inspected the place of occurrence, prepared site plan, took the statement of the accused-respondent and submitted charge-sheet (Ext. Ka-28) against Shoorbeer Lal for the offences punishable under Sections 302 and 201 IPC.

10. PW 1 Brij Lal, PW 2 Sitabu Lal and PW 3 Guddi Devi - all of them identified the victim only on the basis of photographs of dead body. PW 1 admitted in his cross-examination that he recognized the victim on the basis of her face in the photograph. PW 2 said in his cross-examination that it was difficult to identify the victim on the basis of photographs of the dead body. PW 3 Guddi Devi did not see the dead body but identified the victim only on the basis of bangles. PW 4 Hariom Raj Chauhan said in his cross-examination that the dead body was not identifiable. PW 7 Dr. T.P. Dimri, who conducted postmortem on the dead body, said that the dead body was in decomposed state. PW 2 Sitabu Lal also admitted in his cross-examination that the photographs of victim (material Exts. 1 to 5) were not identifiable. Learned court below found that it was not possible to connect that the dead body was of Vijaya. No effort was made by the Investigating Officer to ascertain the identity of the dead body. Opinion of any expert was not taken to ascertain whether the dead body belonged to Vijaya Devi or not. No DNA test was conducted. There was no evidence, what to talk of cogent evidence on record, to establish the fact that the dead body found by the police of PS Srinagar was of Vijaya d/o PW 2 Sitabu Lal. No conviction could take place on the basis of oral testimony of PW 1, PW 2 and PW 3, who among other things, said that when Vijaya attended the marriage of Mahendra, she did not wear any ornament and therefore, PW 3 Guddi provided Vijaya with plastic and brass bangles. If those plastic and brass bangles were found from or near the dead body, that could not be the conclusive proof of the fact that the dead body was of Vijaya. Even otherwise, apart from failure to establish the identity of dead body, no evidence was offered to show that it was the accused-respondent who

killed Vijaya Devi.

11. In a nutshell, there was hardly any evidence to show that it was accused-respondent Shoorbeer Lal, who committed the murder of his wife Vijaya. The chain of circumstances was broken at many a places. Missing links were in complete disarray. Learned court below did not attach any credence to the prosecution story. There is hardly any scope for interference in the judgment rendered by the learned court below State appeal fails.

12. Government Appeal preferred against the judgment dated 13.07.2007 is liable to be dismissed and is accordingly dismissed.