
(2014) 12 UK CK 0002

Uttarakhand High Court

Case No: Criminal Appeal No. 241 of 2014

Narayan

APPELLANT

Vs

State of Uttarakhand

RESPONDENT

Date of Decision: Dec. 10, 2014

Acts Referred:

- Penal Code, 1860 (IPC) - Section 201 302

Citation: (2015) 2 NCC 162 : (2015) 2 UC 1494

Hon'ble Judges: Alok Singh, J ; S.K. Gupta, J

Bench: Division Bench

Advocate: Pankaj Miglani, Amicus Curiae, Advocate for the Appellant; A.S. Gill, Dy. Adv.

General assisted by G.S. Negi, Brief Holder, Advocate for the Respondent;

Final Decision: Allowed

Judgement

Alok Singh, J.

1. Present appeal is preferred by the accused/appellant assailing the judgment and order dated 18.04.2013 passed by the Additional Sessions Judge, Nainital in Sessions Trial No. 64 of 2011 whereby sole accused/appellant was held guilty for the offences punishable under Section 302 and 201 IPC and was sentenced to undergo life imprisonment and to pay fine of Rs. 20,000/- and in default in making payment of fine, to undergo additional simple imprisonment for one year under Section 302 IPC; to undergo rigorous imprisonment for a period of three years and to pay fine of Rs. 5000/- and in default in making payment of fine, to undergo simple imprisonment of three months under Section 201 IPC. Brief facts of the present case, inter alia, are that on 21.03.2011 an FIR was got registered with the Police Station - Mukteshwar, District Nainital by the PW 2 Smt. Deepa stating therein that in the evening of 26.02.2011, her husband Shri Narayan Singh, accused/appellant, herein, started beating his father Dhan Singh with shoes; her father-in-law Dhan Singh thereafter died; dead body of Dhan Singh was kept in bathroom for one day and on the next

day, it was thrown in the soak pit by the appellant; accused/appellant extended threat to the informant that if she dare to disclose the incident to anyone, she would be set on fire and thereafter, would be thrown in the same soak pit; due to fear of her husband, she did not disclose the incident to anybody; on 18.03.2011, accused/appellant has gone out of the house, therefore, on the next day i.e. 19.03.2011 she came to her parental house and disclosed the entire story to her father PW 3 and thereafter, same story was narrated to Deewan Singh (PW 6) on his mobile phone and thereafter, she along with other villagers came to the police station to lodge the FIR.

2. Dead body of Dhan Singh was recovered from the soak pit on 23.03.2011 and thereafter, post-mortem was conducted on the dead body of Dhan Singh. Having investigated the matter, charge sheet was submitted against the accused/appellant.

3. During the trial, from the side of prosecution, Gopal Singh PW 1, informant Smt. Deepa PW 2, Doongar Singh - father of Deepa PW 3, Pan Singh PW 4, Dr. Vipin Pant PW 5, Diwan Singh PW 6, Narayan Prakash, Head Constable PW 7, Bheem Bhaskar Sub Inspector PW 8, Narayan Singh SHO PW 9 and Harish Singh Head Constable PW 10 were examined.

4. As reproduced hereinbefore, it is stated, in so many words in the FIR, that accused/appellant has murdered his own father Dhan Singh in the evening of 26.02.2011 and he kept dead body of his father (Dhan Singh) for one day in bathroom and on the next day, he threw the dead body in the soak pit; thereafter, on 18.03.2011, accused/appellant left the house, therefore, informant (PW 2) could return to her parental house on 3 19.03.2011 and narrated the entire story to her father - Doongar Singh PW 3 and Diwan Singh PW 6.

5. PW 2 Deepa, in her statement on oath stated that in the same night, after murdering Dhan Singh, his dead body was thrown in soak pit by the accused appellant. She has further stated in her examination-in-chief that her husband i.e. accused/appellant, herein, on the next morning left the house and did not come back in the evening and on the next day, she went to her parental house and thereafter, narrated entire story to her father Doongar Singh PW3 and Diwan Singh PW 6.

6. There seems to be major contradictions in both the statements. In the FIR, she stated that she remained in her matrimonial home till 18.03.2011. Meaning thereby, she remained in her matrimonial home for more than 23 days after murder of Dhan Singh while as per the statement made on oath, she left her matrimonial house, after two days of murder. As per the FIR, she narrated entire story to her father and Diwan Singh PW 6, soon after coming to her parental house while as per the FIR, she narrated the entire story to Diwan Singh PW 6 on 19.03.2011.

7. Even if it is taken to be true that Diwan Singh was informed about the murder of Dhan Singh by PW2 Deepa on 19.03.2011, as to why matter was not reported by

Diwan Singh to the Police soon after receiving the information telephonically. It creates reasonable doubt on the prosecution story. PW 6 Diwan Singh while appearing in the witness box, has stated that although, he received the information on 19.03.2011 telephonically from PW 2 Smt. Deepa, however, instead of informing the police, he went to the house of Deepa's father Doongar Singh (PW 3) on 21.03.2011 and thereafter, all of them came together to lodge the FIR on 21.03.2011.

8. In ordinary course, a person, having received the information about murder of any known person, would have reported the matter to the police immediately and would have not waited for two days to meet with the informant at her parental house and to take her to report the matter to the police.

9. There is another aspect of the case i.e. if Smt. Deep (PW 2) under fear of her husband did not disclose the matter to anyone till 18.03.2011 as to how all of sudden she could gather courage to narrate the incident to Shri Diwan Singh (PW 6) telephonically. Diwan Singh is neither surpanch nor pradhan of the village nor he is said to be related with the accused or informant, therefore, narration of the story to unknown person seems to be doubtful.

10. It has come on record that Deepa (PW 2) is third wife of accused/appellant, herein and accused/appellant, herein, is double of her age. A suggestion was made to PW 2 Deepa that since she was half of the age of accused/appellant, herein, therefore, she was not happy with the appellant and she wanted to get rid of him. This suggestion cannot be ruled out completely.

11. There is another aspect of the matter. In the postmortem report, cause of death has been opined due to head injury. It has come in the statement of all the material witnesses that deceased Dhan Singh was alcoholic. PW 2 Smt. Deepa could not deny the suggestion that Dhan Singh, having consumed the liquor and under the influence of liquor, might have fallen into ditch i.e. soak pit and would have died.

12. In our considered opinion, accused should always be presumed as innocent unless guilt of the accused is proved beyond reasonable doubt and if reasonable doubt has not been explained by the prosecution, benefit of doubt should be extended in favour of the accused.

13. For the reasons and discussion made, hereinbefore, we are of the considered opinion that prosecution could not prove the guilt of accused/appellant, herein, beyond reasonable doubt, therefore, it would not be safe to convict the accused/appellant, herein and to uphold the conviction of the appellant.

14. In the result, the appeal succeeds and is hereby allowed. Impugned judgment and order is hereby set aside. Accused/appellant, herein, stands acquitted of the charges leveled against him. Let accused/appellant, herein, be released forthwith, if not wanted in any other case. Before parting with the judgment, we would like to appreciate the proper assistance extended by Mr. Pankaj Miglani, learned amicus

curiae appointed by SLSA, Uttarakhand.