

**Anil Chhetri Vs. State of Uttrakhand**

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**Court :** Uttaranchal

**Decided On :** Apr-03-2013

**Judge :** Prafulla C. Pant & Servesh Kumar Gupta

**Appeal No. :** Criminal Appeal No. 306 of 2008

**Appellant :** Anil Chhetri

**Respondent :** State of Uttrakhand

**Judgement :**

Prafulla C. Pant, J. (Oral)

This appeal, preferred under section 374 of the Code of Criminal Procedure, 1973 (for short Cr PC), is directed against the judgment and order dated 3.10.2008/6.10.2008, passed by the Additional Sessions Judge/1st FTC, Dehradun in Sessions Trial No. 126/2006, whereby the said Court has convicted the accused Anil Chhetri under Section 302 IPC and sentenced him to imprisonment for life and directed to pay fine of Rs. 5,000/-. In default of payment of fine, the trial court has directed that the convict would undergo further three months rigorous imprisonment.

2. Heard learned Amicus Curiae for the accused/appellant and learned Government Advocate for the State, and also perused the lower court record.

3. Prosecution story, in brief, is that Bhagirathi (deceased) was wife of accused Anil Chhetri (appellant). Relations between the two were strained, and the deceased was living in a rented accommodation in the neighbourhood of her parental house. The couple had an infant child. In the intervening night of 14/15.7.2006, PW2 Roop Singh (servant of the landlord of the house in which the deceased was living) heard noise of quarrel between the husband and wife (accused and deceased). He (PW2) saw the accused Anil Chhetri leaving the house after bolting the door from outside. In the next morning, PW3 Sita Devi (mother of the deceased) heard cries of the child from the room where the deceased used to live. She opened the door and went inside the house, where Bhagirathi was found lying dead.

4. PW1 Jeet Bahadur gave FIR (Ex. A-1), at Police Station Rishikesh on 15.7.2006 at 10.30 am, relating to the above incident, on the basis of which Crime No. 305/2006 relating to offence punishable under Section 302 IPC was registered against the accused Anil Chhetri. Investigation was taken up by PW10 Sub Inspector Deevan Singh. Dead body of Bhagirathi was taken into possession by the police on 15.7.2006 and inquest report (Ex. A-6) was prepared in the presence of the witnesses. The police further prepared other necessary papers like Police Form No. 13 (Ex. A-9), sketch of the dead body (Ex. A-8) and letter (Ex. A-10) to the Chief Medical Officer requesting for post-mortem of the dead body.

5. Autopsy was conducted by PW5 Dr. Alok Jain on the very date (15.7.2006) at about 4.30 pm, who prepared autopsy report (Ex. A-2) and opined that the deceased had died of asphyxia due to throttling.

6. Investigating Officer interrogated the witnesses, inspected the spot and arrested the accused. On completion of investigation, chargesheet (Ex. A-15) was filed by the Investigating Officer for trial of accused Anil Chhetri in respect of offence punishable under Section 302 IPC. Chief Judicial Magistrate, Dehradun, on receipt of the chargesheet and after giving the necessary copies to the accused, as required under Section 207 Cr PC, appears to have committed the case to the Court of Sessions for trial. The trial court on 12.9.2006, after hearing both sides, framed the charge of offence punishable under Section 302 IPC against the

accused Anil Chhetri, who pleaded not guilty and claimed to be tried.

7. The prosecution got examined PW1 Jeet Bahadur (informant), PW2 Roop Singh, PW3 Sita Devi (mother of the deceased), PW4 Shakuntala (neighbour), PW5 Dr. Alok Jain, who conducted the post-mortem examination, PW6 Head Constable Rakesh Khanduri, who made the necessary entry in the general diary, PW7 Malkit Singh (witness of inquest report), PW8 Constable Sher Singh, PW9 Raj Bahadur (brother of the deceased) and PW10 Sub Inspector Deevan Singh, who investigated the crime, before the trial court.

8. Oral and documentary evidence was put to the accused under Section 313 Cr PC, in reply to which the accused pleaded that the evidence adduced against him was false. He further pleaded that he was a driver with Ex-Fauji Motor Movers and used to earn Rs.4,000/- per month, which he used to give to his wife. However, no oral evidence in defence was adduced. In the documentary evidence, only a copy of driving license was filed.

9. Trial court after hearing the parties found that prosecution has successfully proved charge of offence punishable under Section 302 IPC against the accused Anil Chhetri and convicted him accordingly on 3.10.2008. After hearing on sentence on 6.10.2008, the convict was sentenced to imprisonment for life and directed to pay fine of Rs.5,000/-. In default of payment of fine, trial court directed that the convict would undergo further three months rigorous imprisonment.

10. Aggrieved by the said judgment and order dated 3.10.2008/6.10.2008, passed by the Additional Sessions Judge/FTC I, Dehradun in Sessions Trial No. 126/2006, this appeal has been preferred by the convict (who is in jail).

11. Before further discussion, this Court thinks it just and proper to mention the relevant observations made by PW5 Dr. Alok Jain after he along with another Doctor BC Ramola conducted the post-mortem examination on dead body of Bhagirathi on 15.7.2006 at 4.30 pm. Three ante mortem injuries are mentioned in the autopsy report (Ex. A-2), which are being produced below:-

(i) Abrasion 2 cm x 1 cm just below the submentum.

(ii) Bruise 2 cm x 1/2 cm on lateral side of left neck, 5 cm below mastoid tip.

(iii) Bruise 2 cm x 1/2 cm on lateral side of left neck, 7 cm below mastoid tip.

On internal examination, it was found that there was fracture on left lamina of thyroid cartilage, and left carotid artery was ruptured. The team of doctors opined in the autopsy report that deceased died of asphyxia due to throttling.

12. Evidence adduced by PW5 Dr. Alok Jain read with the autopsy report, clearly establishes that Bhagirathi died a homicidal death. Now, this Court has to see whether the accused Anil Chhetri committed the murder of his wife Bhagirathi, as suggested by the prosecution, or not.

13. It is a case of circumstantial evidence. PW1 Jeet Bahadur (brother of the deceased, who gave the FIR), PW3 Sita Devi (mother of the deceased) and PW9 Raj Bahadur (brother of the deceased) have proved the fact on the record that the relations between the accused Anil Chhetri and his wife Bhagirathi were strained. They further stated that the accused used to beat his wife. It has also come on the record that due to cruel behaviour of the accused towards his wife, PW1 Jeet Bahadur (one of the brothers of deceased) got a rented accommodation provided to her in his neighbourhood in Rusa Farm. The evidence of these witnesses is natural and trustworthy as PW1 Jeet Bahadur and PW9 Raj Bahadur are brothers of the deceased and PW3 Sita Devi is the mother of the deceased, and it is natural that they had knowledge of strained relationship between the accused and the deceased.

14. PW2 Roop Singh has proved the fact that in the fateful night, he heard noise of quarrel between the accused and the deceased. This witness used to live in the same house where the incident took place. He was servant of the landlord of the said house. As such, his presence in that house on the day of incident cannot be disbelieved lightly. This witness (PW2) Roop Singh has further stated that subsequent to the quarrel, the accused left the house after bolting the door of room from outside. This witness has further narrated that he inquired from the accused as to where he was going in the midnight, on which the accused told him that he was feeling hot and was going for a stroll.

15. PW3 Shakuntala, another neighbour of the deceased, has corroborated the fact that in the fateful night, the accused Anil Chhetri was going hurriedly on the road, due to which the street dogs started barking. This witness has also stated that on the next day morning, she came to know that Bhagirathi had died. The defence chose not to cross-examine this witness for the reasons best known to it. The defence did not prefer to cross-examine PW3 Sita Devi, who had given evidence of strained relations between the accused and his wife. PW3 Sita Devi is one of those witnesses, who entered in the house in the next morning of the incident, when she heard cries of her grandson.

16. PW7 Malkit Singh is witness of inquest report. PW8 Constable Sher Singh has also stated that the inquest report (Ex. A-6) was prepared in his presence and he took the dead body, in sealed condition, for post-mortem examination.

17. Having re-assessed the entire evidence on record, this Court finds that the chain of circumstances is complete as against the accused Anil Chhetri alias Anil Thapa and it is proved on the record that he committed murder of his wife in the intervening night of 14<sup>th</sup> and 15<sup>th</sup> July, 2006.

18. On behalf of the appellant, it is argued by learned Amicus Curiae that presence of PW2 Roop Singh in the house on the day of incident is doubtful, as he has admitted that he came to know about the death of deceased only in the next morning. We have scrutinized the evidence of PW2 Roop Singh and we do not find his statement unnatural. All the witnesses of fact have come to know about the death of deceased only in the morning of 15<sup>th</sup> July, 2006 as nobody had suspected that the accused had committed the murder. It is only after Bhagirathi was found lying dead in her rented house in the next morning, the fact relating to commission of her murder came to light.

19. It is also contended on behalf of the accused/appellant that the accused was a driver, and he had no reason to kill his wife. We are unable to accept the contention of learned Amicus Curiae for the reason that if that was the case, the accused should have stayed in his house and, after death of his wife, he should have reported the matter to the police or to his relatives. In fact, what has come on the record is this that the accused ran away from his house and could be arrested

only on 20th July, 2006.

20. For the reasons as discussed above, we find that the trial court has rightly held the accused Anil Chhetri guilty of charge punishable under Section 302 IPC. Therefore, this appeal is liable to be dismissed. Accordingly, the appeal is dismissed. Conviction and sentence, recorded by the Additional Sessions Judge/Ist FTC, Dehradun in Sessions Trial No. 126/2006, under Section 302 IPC against the accused Anil Chhetri are hereby affirmed. Convict Anil Chhetri is already in jail. Let a copy of this judgment and order be sent to Superintendent of Jail, where the convict Anil Chhetri is serving out the sentence, for information. Lower court record be sent back.

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