

State of Uttaranchal Vs. Devendra and Others

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Court : Uttaranchal

Decided On : Dec-19-2012

Judge : The Honourable Chief Justice Mr. Barin Ghosh & U.C. Dhyani

Appeal No. : Government Appeal No. 1265 of 2001

Appellant : State of Uttaranchal

Respondent : Devendra and Others

Judgement :

Oral:

Barin Ghosh, C.J.

1. In the instant case, the lady died of hanging. She was married to respondent Devendra Singh. The marriage took place 10 years before the date of the death. The brother of the deceased Dalbeer Singh (PW1) filed the First Information Report. In that, it was alleged that cruelty, as mentioned in Section 498A of IPC, was meted out to the victim before her death. It was also alleged that such cruelty was meted out by the husband of the victim. It was alleged that because of non-fulfillment of the demands made by respondent Devendra Singh, she was done away with by Devendra Singh. Investigation, pursuant to the First Information Report, resulted in filing of a charge sheet against the respondents, namely, the husband Devendra, father-in-law Vijendra Singh and brother-in-law Dilbagh Singh for offences punishable under Section 498A and Section 302 read with Section 34

of IPC. It was also alleged that the respondents are guilty of offence punishable under Section 201 of IPC. In course of evidence, it was revealed that the deceased had two children. One was born soon after her marriage and the other about five months before her death. PW1, in course of evidence, held out about demand and alleged cruelty, allegedly meted out to the victim, which PW1 did not witness himself, but was allegedly told by the victim. Similar evidence was given by Vimla Devi (PW2), who happened to be the sister of the victim. Their evidence did not help the prosecution to establish either a charge under Section 498A of IPC or a charge under Section 302 of IPC. The prosecution failed to bring on record anything pertaining to an offence punishable under Section 201 of IPC, inasmuch as, nothing was brought on record as to what concealment pertaining to evidence of defence was made. At the same time, there was no evidence that the accused persons purported to mislead the investigation or the prosecution. The fact, however, remains that the death in question, an unnatural death, took place within the residence of the respondents. Accordingly, law enjoined an obligation upon them to explain. This explanation was given while answering questions under Section 313 of Cr PC and also by defence witnesses. Accordingly, the Court below was called upon to ascertain, whether the explanations, thus given, were or were not acceptable. The Court below, according to us, correctly held that those explanations are acceptable. There were variations as to the time when hanging was detected. There appears to be no dispute that the five months old child was with the victim at the time of the incident. It is the cry of the child, which brought the incident to the notice of respondent father-in-law and respondent brother-in-law, who were inside the selfsame residence. That cry also brought to the notice of the mother-in-law of the victim the incident in question. It is the mother-in-law of the victim, who reacted first and, then, at her call, others reacted. Immediately, a nearby Doctor was called. Doctor Ramesh Bhatt (DW1) deposed to that effect. He stated that when he had seen the victim, a bit of life was still present in her, but, soon thereafter, she died. It is being contended that from the evidence of the defence witnesses, it would be evidenced that the incident came to notice some time at around 11:30 in the night and the Doctor found the victim alive even at 3O Clock in the morning. It was submitted that if the Doctor had been called little earlier, the victim could be saved. The fact remains that the incident was reported

by the husband of the victim, namely, respondent Devendra first, where he stated that, after having had encountered an incident of that nature, he became perplexed and, later, called the Doctor and the Doctor pronounced her dead. It is possible that if the respondents and other family members had reacted in a more positive manner, the victim could be saved. Such action on their part would not make them guilty of offence punishable under Section 302 of IPC. No evidence, far less any cogent evidence, was brought on record of the Court below suggesting involvement of any of the respondents with the incident in question.

2. Learned Government Advocate submitted that, from the evidence of the defence witnesses, it would be evident that the victim, at the relevant time, was incapable of moving because she was suffering from severe arthritis. It was contended that in the circumstances, it was not possible for the victim to do what transpired later. It was submitted that, in that background, the explanation given by the respondents would not absolve them of their obligation as cast upon them for the death had taken place in the same house, where they were residing. PW1 and PW2, who are alleged close relatives of the victim, did not utter a single word pertaining to arthritis ailment of the victim. It was the husband, who stated that she was suffering from severe arthritis and the severity was such that during winter months, the victim was unable to move requiring her to be carried for discharge of her daily rituals. The said state of affair clearly demonstrates the relationship the husband and his other family members had with the victim, how caring they were towards the victim. At the same time, it was stated that, at the time of incident, the victim was much better. This fact, coupled with the fact that the victim had a five months old child, suggests that at least five months before her death, she had not only capacity to have successful intercourse, but also, capacity to bear a child. The said state of affair clearly demonstrates the improvement that was made of the arthritis, that the victim suffered immediately after birth of her first child. In that background, the Court below has not been able to convince itself that the prosecution made any attempt successfully to put home the charges as were levelled against the respondents. For those reasons, the respondents have been exonerated by the Court below by the judgment and order under appeal. We have not been persuaded to take a different view.

3. The appeal fails and the same is dismissed.
4. How harassing the prosecution can be, is an example highlighted in this matter.
5. Let a copy of this judgment be sent to the Court below along with the lower court records.

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