

State of Uttarakhand Vs. Deepu Das and Another

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Court : Uttaranchal

Decided On : Dec-20-2012

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

Appeal No. : Government Appeal No. 321 of 2007

Appellant : State of Uttarakhand

Respondent : Deepu Das and Another

Judgement :

U.C. Dhyani, J.

1. Present Government Appeal was preferred by the State of Uttarakhand against the Judgment and Order dated 31.05.2007 passed by learned Sessions Judge, Pauri Garhwal in Sessions Trial No. 50 of 2003, whereby accused-respondent Deepu Das was acquitted of the charge of offences punishable under Sections 363, 366 and 376 IPC and accused-respondent Sona Das was acquitted of the charge of the offence punishable under Section 120-B IPC.

2. A missing report (Ext. Ka-1) was written by Matwar Lal to Patti Patwari Siton Suin, District Pauri Garhwal on 16.08.2003. In the missing report, it was written by the informant that his daughter Seeta, aged 17 years, went to purchase household goods in local market along with Veena Devi and Deepu Das on 31.07. 2003, at 11:00 a.m. While Veena Devi returned to her house but Seeta and Deepu Das did not return. Informant Matwar Lal expressed apprehension that Deepu Das eloped

Seeta.

3. On the basis of said first information report, which was registered as case crime no. 01/2003, under Sections 376, 366 and 363 IPC in Patti Siton Suin, the investigation began. PW 5 Vikram Singh Gagwari, Patwari of the Patti concerned, prepared site plan (Ext. Ka-9) and started making a search for the victim. The investigation was thereafter transferred to PW 6 Ganesh Chandra Dhoundiyal, who recovered the victim and prepared recovery memo (Ext. Ka-10) of the same. PW 6 took the statements of victim and accused-respondents viz., Deepu Das and Sona Das, referred the victim for medical examination and finally on being satisfied with the fact that the accused-respondents viz., Deepu Das and Sona Das committed the offences, submitted charge-sheet (Ext. Ka-11) against them.

4. When the trial began and prosecution opened its case, charge for the offences punishable under Sections 376, 363 and 366 IPC was framed against the accused-respondent Deepu Das and charge for the offence punishable under Section 120-B IPC was framed against the accused-respondent Sona Das, to which they pleaded not guilty and claimed trial. Six prosecution witnesses, namely, PW 1 Matwar Lal, PW 2 Km. Seeta, PW 3 Dr. Neeta Jain, PW 4 Sanju Dass, PW 5 Vikram Singh Gangwari (Patwari) and PW 6 Ganesh Chandra Dhoundiyal (Patwari) were examined on behalf of prosecution. Incriminating evidence was put to the accused-respondents under Section 313 Cr.P.C., in which they denied the allegations and said that they were falsely implicated in the case. One witness DW 1 Kishori Lal was examined in defence. After considering the evidence on record, learned trial court acquitted accused- respondents Deepu Das and Sona Das of the charges levelled against them. Aggrieved against the judgment and order of acquittal of the accused-respondents, present Government Appeal was preferred.

5. PW 1 Matwar Lal, in his examination-in-chief, proved missing report (Ext. Ka-1). When his daughter was recovered, she was given in supurdagi (custody) of PW 1, a supurdaginama (Ext. Ka-2) whereof was prepared. PW 4 Sanju Das did not support the prosecution story. PW 5 (first I.O.) Vikram Singh was a formal witness, who proved chik FIR (Ext. Ka-7), entry of the same in G.D. (Ext. Ka-8) and site plan (Ext. Ka-9). PW 6 (second I.O.) proved recovery memo (Ext. Ka-10) of the

victim and charge-sheet (Ext. Ka-11).

6. PW 2 Km. Seeta (victim), although tried to support the prosecution story in her examination-in-chief, but admitted in cross-examination that she stayed with Deepu Das, Sanju Das, Veena Devi and Laxmi in Rishikesh for 10-15 days. There, PW 2 used to roam around in the market along with Deepu Das, Veena Devi, Sanju Das and Laxmi. PW 2 also travelled with these people from Rishikesh to Dehradun in auto-rickshaw. They used to alight in bus-stand, where many a passengers gathered. She stayed with accused-respondents in Dehradun for a day. They returned to Rishikesh the next day. She also admitted that she performed saptpadi in a temple in Rishikesh. Thus, it is established on the basis of evidence of PW 2 that she roamed around freely in the company of accused on her own volition. PW 2 Km. Seeta (victim) said in her August, 2003. After the marriage, (Deepu Das) brought me to the room of Sona Das at Srinagar. Deepu Das forced upon me after the marriage. Although PW 2 said that the respondent no. 1 forced upon her, but what? The same was not explained. She said nowhere in her statement that respondent no. 1 had sexual intercourse with her. examination-in-chief, (my) marriage (with Deepu Das) took place on 17th

7. Now, the question remains- was she major or a minor on the date of incident PW 3 Dr. Neeta Jain examined the victim on 26.08.2003 at 5:45 p.m. On internal examination, the Medical Officer found no local injury on her private part, hymen torn, vagina admits two fingers. She reported vide Ext. Ka-3 that no opinion regarding sexual intercourse can be given. For confirmation of spermatozoa, two slides were taken, for age verification x-ray of wrist and elbow joint was conducted. Supplementary report (Ext. Ka-5) of the same was given by Dr. Arun Kumar, Radiologist, District Hospital, Pauri Garhwal. The Radiologist found all centers fused to their bones in x-ray of right elbow. The centers of lower ends of both parts were found fused to their shaft in x-ray of chest. In pathology report (Ext. Ka-6), no spermatozoa was found in vaginal smear. The report was in the negative.

8. PW 2 nowhere alleged sexual intercourse with her by the respondent no. 1 in her statement. Although she said that the respondent no. 1 forced upon her after the marriage, but the same was not explained by PW 2. In other words, it was not

alleged by PW 2 that the respondent no. 1 had sexual intercourse with her. After having had ossification test, the Medical Officer opined that she was between 17-18 years of age. In such view of the matter, neither the offence of rape nor of deemed rape was made out against the respondent no. 1. The allegation of conspiracy was also not proved against the respondent no. 2. Hence, it is held that the prosecution was unable to prove the offences punishable under Sections 363, 366, 376 IPC against the respondent no. 1 and Section 120-B IPC against the respondent no. 2.

9. There is no scope of interference with the judgment rendered by learned court below. Government Appeal preferred against the judgment dated 31.05.2007 is liable to be dismissed and is accordingly dismissed.

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