

Tulsi Devi and ors. Vs. State of U.P.

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Court : Allahabad

Decided On : Jan-12-1995

Reported in : 1996CriLJ940

Judge : G.S.N. Tripathi, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 147, 149, 313 and 323; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Criminal Appeal No. 2979 of 1979

Appellant : Tulsi Devi and ors.

Respondent : State of U.P.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : Y.K. Sukla, ;Apul Misra and ;Lokendra Dobhal, Advs.

Judgement :

G.S.N. Tripathi, J.

1. The impugned judgment and order was passed by Additional Sessions Judge, Chamoli (Garhwal) convicting the appellants in Session Trial No. A-46 of 1974, State v. Chandra Prakash and Ors. as below:

'Accused Smt. Tulsi is convicted under Section 147, I.P.C. and is hereby sentenced to 1 (one) year's R.I. She is further convicted under Section 313, I.P.C. and is hereby sentenced to 4 (four) years' R.I.

Accused Chandra Prakash alias Chandra Ram, Ganga Ram alias Gangi Ram, Alam Ram and Gopal Ram are convicted under Section 147, I.P.C. and are hereby sentenced to a fine of Rs. 250/- (two hundred fifty) each and in default of payment of fine to 3 (three) months R.I. each. They are further convicted under Section 323/149, I.P.C. and are hereby sentenced to a fine of Rs. 250/- (two hundred fifty) each and in default of payment of fine to 3 (three) months R.I. each.'

2. The prosecution case started on the basis of a first information report dated 8th February, 1973, lodged by Budhi Ram (now traceless) at the Police Station (Patwari Station) on 8th February, 1973, at 2.00 p.m. The distance of the police station is of 5 kms. from the place of occurrence. The incident is alleged to have taken place on 7th February, 1973, at about 4.00 p.m.

3. It has been alleged that the complainant resides with his wife Smt. Harma Devi, PW 1 at the house of her father. The accused did not relish the residence of the complainant and his wife at the house of her father. They were bent upon forcing him out of the village and for that they had created several troubles and false litigations etc. had been launched by them. On 7th February, 1973, at about 4.00 p.m. the accused assaulted Smt. Harma Devi with an intention to murder her. They kicked her causing abortion to her, as she was carrying for about 4-5 months. Her condition was serious. The incident had been witnessed by Dharam Ram, PW2 Sowan Ram, PW4 Kanak Ram and others. The accused have been arrayed as follows:

(i) Chandra Prakash

(ii) Ganga Ram

(iii) Gopal Ram

(iv) Alam Ram and

(v) Smt. Tulsi Devi.

4. On the basis of the written report, the investigation started. Smt. Harna Devi was referred to the Public Health Centre, Tharali, where she was medically examined by Dr. Jag Mohan Singh Rawat, PW 8. The condition of her injuries thereon have been noted in paragraphs 12, 13 and 14 of the judgment of the lower Court, hence, they are not being repeated. The lady had refused to be examined intensively by Dr. Jagmohan Singh Rawat, a male doctor, hence, she was referred for internal examination to a lady doctor in District Hospital, Chamoli. Dr. P. Singh prepared the report as under:

'Ex.Ka.II P. V. Examination-

Blood discharge from vagina present. Vagina is relaxed.

Ext. os. of the cervix patulous tip of index finger. Int. os. closed. Blood discharge present on examining finger, uterus size enlarged, about 12 week size.

Breasts-milk secretion present but they are not engorged. In my opinion she had a miscarriage within a week's time.

The foetus in a duly sealed condition was sent to the Civil Surgeon, Chamoli for post-mortem examination where the doctor prepared the following report:

The foetus was brought in a sealed bottle.

The foetus is stated to be the product of an abortion by Smt. Harna Devi, W/o Buddhi Ram, Kasbi Nagar, district Chamoli, on 7th February, 1993.

On opening the bottle a decomposing mass wt. 2 oz. was found. This is a piece of placenta.

The questions asked in the enclosed sheet are not relevant.'

5. The injury reports Ex.ka.11 and Ex.ka.12 had been formally admitted by the learned counsel for the accused, hence these witnesses were not examined.

6. The investigation was taken in hands by Sri Kunwar Singh, PW7. He took the help of Ratan Singh, PW 5. After reaching the spot he collected the blood samples, blood stained earth and after keeping them in separate containers prepared memos for the same. The torn chaddar Ex.ka.2 containing blood marks and belonging to the victim Smt. Harma Devi was taken in possession: The Investigating Officer after receiving the order for investigation investigated the spot and prepared a site-plan. He interrogated the witnesses including Smt. Harma Devi and after concluding the investigation laid charge-sheet.

7. The prosecution examined Smt. Harma Devi, PW 1. She has stated that her father Dharam Ram, PW 2, has only three daughters including herself. He has no male issue. Her two other sisters are married off. She along with her husband Buddhi Ram was residing at her father's place (now Buddhi Ram is traceless for the last 7 years and she had remarried with another person namely Har Dayal Singh, Sardar). The accused Smt. Tulsi Devi and Chandra Prakash are mother and son. The accused Ganga Ram, Alam Ram and Gopal Ram are sons of Bhagwan Ram. Ganga Ram accused is married to her younger sister. There was some dispute regarding the land between the families of Smt. Harma Devi and the accused. The accused did not relish the fact that she was residing with her parents and husband in the house of her parents. On the date of the incident, when she was inside her house in the Chauk, the accused came there, Smt. Tulsi Devi started abusing her. The accused Gopal Ram had a lathi in his hands, accused Alam Ram had simply exhorted, other accused had no weapons but Smt. Tulsi Devi kicked her twice at the lower part of abdomen. At that time she was carrying a pregnancy of 4-months. After receiving the injuries on her abdomen, she became unconscious. About two hours after the assault, she aborted. Thereafter she was taken to the hospital and was medically examined. PW 2 Dharam Ram is the father of Smt. Harma Devi. He had also deposed that he had only three daughters and no male issue. The complainant and Smt. Harma Devi were residing at his house. Diwan Ram is the brother of this witness Dharam Ram. Smt. Harma Devi is his wife and Chandra Prakash is the son of Diwan Ram, other accused also belong to his village. The accused Ganga Ram is another son-in-law of this witness. The fact of Buddhi Ram and Harma Devi residing with this witness was not relished by the accused. On the date of occurrence, he was in the upper

room along with his wife whereas Smt. Harma Devi was in the lower part of the house in the Chauk. Her husband Buddhi Ram was not present at the house. He heard the cries raised by Smt. Harma Devi and came down. He saw that Chandra Prakash and Smt. Tulsi Devi were struggling with Smt. Harma Devi. Gopal Ram and Ganga Ram were standing there. Smt. Harma Devi was complaining of pain in her abdomen. She was pregnant, she immediately told him that Smt. Tulsi Devi had kicked her in her abdomen. Whereafter, the witness's wife took Dharam Ram inside the house and within an hour thereafter Smt. Harma Devi aborted. She was unconscious thereafter. Buddhi Ram returned at about 8.00 p.m. Then the entire episode was stated to him and Smt. Harma Devi was taken to hospital, police Station etc.

8. PW 3 Man Singh says that while he was sitting at the house of Sowam Singh, PW 4, he heard the cries coming from Chauk of Dharam Ram. He along with Sowam Singh went there and saw all the five accused quarrelling with Smt. Harma Devi. One of the accused had a Danda, Smt. Tulsi Devi was catching hold of Smt. Harma Devi and struggling her along with Ganga Ram, other three accused were standing there. Exchanges of abuses were also going on. Smt. Harma Devi was lying on the ground. Thereafter, accused retreated. Smt. Harma Devi had complained that she had been kicked in her abdomen by Smt. Tulsi.

9. PW 4 Sowam Ram has given a similar version that after about an hour of the incident Smt. Harma Devi aborted.

10. Other witnesses are formal in nature P.W. 5 Ratan Singh and P.W. 7 Kunwar Singh have proved the investigation process from the beginning till end. P.W. 6 Alam Singh has proved the recovery of foetus, blood stained clothes etc. of Smt. Harma Devi P.W. 8 Dr. Jagmohan Singh Rawat had initially only externally examined Smt. Harma Devi and prepared the report Ex. Ka 10 referred to above. Since Smt. Harma Devi had refused the examination of her private parts by him, he advised her to go to a female doctor which was actually done on 12th Feb. 1973, by Dr. P. Singh, who prepared the memo Ex. Ka 10 as noted above.

11. The accused in their statements Section 313, Cr.P.C. have denied the allegations against them and have alleged that on account of enmity they have

been falsely implicated. The accused have led no evidence in their defence.

12. After the appraisal of the entire evidence and circumstances on the record the learned lower court believed the prosecution version, convicted the accused and sentenced them as noted above.

13. Feeling aggrieved the accused have filed this appeal. I have heard the learned counsel for the parties at stretch and persued the record. From the medical reports Ex. Kal0, Ex. Kal 1 and Ex. Kal2, noted above, it is established that Smt. Harma Devi at the time of the occurrence was carrying a pregnancy of about 3-4 months and she aborted. The injury reports Ex. Ka-11 and Ex. Kal 2 have been admitted by the learned counsel for the accused in the lower court. Therefore, these doctors were not examined. Dr. Jagmohan Singh Rawat, P.W. 8 has preved the injury report Ex. Ka10. He has not been cross examined at the point of abortion, so it is apparently admitted and also proved that Smt. Harma Devi aborted soon after the incident.

14. Not only this, when Smt. Harma Devi was in the witness box and deposed that she aborted as a result of injuries she was not cross examined on this point. In the suggestion it was not put her that she was not pregnant or she did not abort if at all she aborted. There were some causes other than what she has spoken of similarly, to Dharam Ram P.W. 2, Man Singh P.W. 3 and Sowan Singh P.W. 4 it was not suggested that she in fact did not abort, hence it is clearly established that on the date of occurrence Smt. Harma Devi was pregnant and soon after the injury, she aborted.

15. We have the categorical statement of Dr. Jagmohan Singh Rawat, P.W. 8, that as a result of kicks in the lower abdomen abortion of three months' pregnancy was quite probable. It was put to him that if the lady fell on a hard object whether the injury found by Dr. Singh could be probable. He has answered in affirmative with a rider that if she fell on the right side at a hard and pointed object then the injury found by him could be received. But unfortunately this question was not put to Smt. Harma Devi that she fell on some hard object, resulting in her abortion. Similarly, other witnesses of fact examined by the prosecution were not given this suggestion. Therefore, I reject the suggestion that Smt. Harma Devi aborted on

account of a fall on some hard object. Impliedly it is admitted that Smt. Harma Devi aborted as a result of injuries received by her on the date of occurrence namely 7-2-1973 at about 4.00 p.m.

16. Once this fact is established that an abortion took place to Smt. Harma Devi as a result of injury received by her the short question remains for determination as to whether any body else, other than the accused was responsible for the same. It is a broad day light incident. The victim could easily identify the culprits so the question of her implicating the accused as a result of - darkness does not arise nor any such attempt has been made in the cross examination that somebody else caused injuries to her. Not only this, Smt. Harma Devi has clearly stated that it was Smt. Tulsi alone who kicked her at her abdomen. She alone abused her after and before kicking twice. The accused Gopal Ram although had a lathi but he did not wield it, other accused Were also standing nearby without doing any overt act. This shows the degree of truth, she wants to stick to, otherwise, she could have easily implicated the remaining four accused also by alleging some kicks of minor nature by them. But she has not done that. Such a witness is veritable asset to the prosecution. As seen earlier, on the point of abortion and injury, she had not been cross examined in fact. The result is that her statement that Smt. Tulsi Devi caused two kicks to her resulting in abortion virtually goes unchallenged.

17. I have carefully scrutinized the statement of Smt. Harma Devi. I find that there is no reason to disbelieve what she has said. Her solitary statement is sufficient for recording conviction in this case. Her evidence does not require any other corroboration. She does not allege any serious enmity between her and the accused. There is no reason why she will implicate the accused falsely. The learned lower court after scrutinising her evidence has drawn a correct conclusion. I endorse the same.

18. The evidence of P.W. 2 Dharam Ram is relevant only to this extent that immediately after the incident, Smt. Harma Devi disclosed to him that Smt. Tulsi Devi had kicked her and she was having pain in her abdomen and within an hour thereafter she aborted. To the same effect there is evidence of P.W. 3 Man Singh and P.W. 4 Sowan Singh. As the statement was made by Smt. Harma Devi

immediately after the incident even in the presence of the accused, these statements are very relevant in corroborating the statement of Smt. Harma Devi herself. None of these witnesses has said that the lady Smt. Harma Devi was kicked in his presence. This action showed that these witnesses are telling only solid truth and nothing more. They have not tried to exaggerate the version of the prosecution.

19. The first information report in this case was lodged without unreasonable delay. At the time of the incident, Buddhi, Ram, the husband of Smt. Harma Devi was not present at the house. He returned to house at about 8.00 p.m. on that day. It is an incident of hills. The aged parents of Smt. Harma Devi could not venture to go to the police station in the hill areas. They waited for Buddhi Ram to come and soon after Buddhi Ram came the entire episode was stated to him and thereafter, he moved the machinery of law by lodging the report at the police station. The first information report contains in it every thing upon which the prosecution case has been built namely the names of the accused, the roles played by them, names of witnesses of the date, time, place of occurrence and even the factum of motive. So it cannot be said that the prosecution has made any improvement in its case at a later stage as a result of legal advice. Therefore, this first information report can be utilised usefully for the purposes of corroboration of the prosecution case.

20. The factum of motive is also not disputed. Unfortunately Dharam Ram had only three daughters and no male issue. Buddhi Ram was residing with his wife Harma Devi in the house of Dharam Ram, so this couple was an eye-sore, firstly to Ganga Ram another son-in-law of Dharam Ram whose brothers other co-accused Alam Ram and Ganga Ram and secondly Diwan Chand, the husband of Smt. Tulsi Devi and father of accused. Chandra Prakash was the brother of Dharam Ram, therefore, he too had an eye on the property of Dharam Ram. In India, the co-laterals do not relish the residence of the son-in-law in the same family. The fact that the property may go to daughters is also very well accepted. Since Buddhi Ram and Smt. Harma Devi were residing with Dharam Ram, these accused were bound to feel bad about them. Of course, there was no Mar-pit or any quarrel apparently but it has been deposed by Smt. Harma Devi that there

were litigations with regard to land. Ganga Ram was aggrieved with his father-in-law that he had Buddhi Ram and Smt. Harma Devi in his house and was feeding from his property. So was the case of the statement of Smt. Tulsi. Taking all these factors into two consideration a cloud of suspicion in the shape of enmity was developing against this couple of Buddhi Ram and Smt. Harma Devi. By that time Dharam Ram has not made any alienation of his property in favour of his daughters and sons-in-law. So there was a motive with the accused to commit the crime.

21. This way after analysis of the entire evidence and circumstances I agree with the learned lower court that the prosecution has proved its case against the accused.

22. Of course there is some room for extending benefit of doubt to the accused Chandra Prakash, Ganga Ram, Alam Ram and Gopal Ram. Smt. Harma Devi and other witnesses of fact, noted above, have not assigned any overt act to these persons. They did not participate even in abusing Smt. Harma Devi what to talk of assaulting her. Of course their presence on the spot emboldened Smt. Tulsi Devi to commit the crime but it cannot be said that they co-shared her intention to commit this offence. Therefore, to urge on the safest side, I find that although, these accused were present on the spot, but they did not have the common intention to commit this crime. They did not do any overt act, therefore, by extending of benefit of doubt these accused should be acquitted.

23. Now the question of sentence awarded to Smt. Tulsi Devi comes up for consideration. According to the learned counsel she is a lady. The occurrence took place about two decades earlier. Further it is not proved that Smt. Tulsi Devi knew from before that Smt. Harma Devi was pregnant or she might not have assaulted her with an intention to abort. Taking all these factors into consideration, I think that two years R.I. will meet the ends of justice, coupled with a fine of Rs. 2000/-. On failure to pay the fine three months Additional R.I. shall be undergone by her.

24. The appeal of Chandra Prakash, Ganga Ram, Alam Ram, Gopal Ram is allowed. The judgment and order passed by the learned lower court convicting them is set aside. They are on bail. Their bail bonds and surety bonds are

discharged.

25. The appeal of Smt. Tulsi Devi is dismissed with this modification in her sentence that under Section 313, I.P.C. she will undergo two years R.I. and also pay a fine of Rs. 2000/ -. On failure to pay the fine, she shall undergo additional three months' R.I. She is further convicted on a charge under Section 147 and ordered to undergo six months' R.I. Both the sentences shall run concurrently. She is on bail. Her bail bonds and surety bonds are cancelled. She shall be taken into custody at once by C.J.M., Chamoli, who shall submit compliance report soon thereafter. Out of the fine of Rs. 2000/- deposited by Smt. Tulsi Devi, a sum of Rs. 1500/- shall be paid to Smt. Harma Devi by way of compensation.

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