

Daulat Singh Vs. State

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Court : Uttaranchal

Decided On : Dec-14-2006

Reported in : 2007CriLJ1854

Judge : Rajeev Gupta, C.J. and; J.C.S. Rawat, J.

Appellant : Daulat Singh

Respondent : State

Advocate for Pet/Ap. : Sri. Raman Kumar Shah

Disposition : Appeal dismissed

Judgement :

J.C.S. Rawat, J.

1. Since both the appeals are arising out of the same judgment and order dated 19-3-1990 passed by Shri S. K. Misra, the then Sessions Judge, Pauri Garhwal in S.T. No. 35/1987, State v. Daulat Singh, convicting the accused-appellant Under Section 302/201, IPC and sentencing for life imprisonment, as such, they are being decided by the common judgment. Criminal Appeal No. 1289 of 2001 has been preferred by the accused-appellant, Daulat Singh by engaging his counsel whereas Jail Appeal No. 2063 of 2001 has been preferred by the same accused-appellant from Jail.

2. The facts, in a nutshell, are that the marriage of Lajjawati Devi-deceased was solemnized with the accused-appellant, Daulat Singh. After six months of the marriage, they started living separately from the father of the accused-appellant. Whenever the deceased-Lajjawati Devi used to come to her parental house she used to demand money from her parents for giving it to her husband. Her parents gave money several times to the deceased to pay to her husband. It is also alleged that the deceased had not given birth to any child, therefore, she was being treated cruelly in her matrimonial house. It is further alleged that before the death of the deceased, she came to her parental house and asked her parents to give her Rs. 5,000/- as her husband demanding the same and if she would not take the said money, her husband, the accused-appellant would kill her. The father of the deceased told her that he will arrange the money within a day or two and asked her to stay at his house till the arrangement of money is made. But the deceased did not accede to the request of her father and she went away to her matrimonial house. It was further alleged that a report was lodged by the accused-appellant himself to the patti patwari on 11 -10-1988 alleging therein that his wife, Lajjawati Devi had committed suicide by getting herself hanged from a rope. After receiving the report, the panchayatnama was prepared and the dead body of the deceased was sent for the post-mortem. Meanwhile, a report was lodged on 16-10-1986 by Rajendra Singh, father of the deceased with the patti patwari alleging therein that his daughter-Lajjawati Devi had not given birth to any child so the accused-appellant used to treat her cruelly. It was further alleged that the accused-appellant used to demand dowry and had also committed murder of the deceased in the night of 10-10-1986. A case was registered against the accused-appellant. The post-mortem of the deceased was conducted on 13-10-1986 at District Hospital, Pauri by Dr. Rajeev Hatwal and he found the following ante-mortem injuries on the person of the deceased:

- i. Ligature mark present below the thyroid cartilage is round the neck horizontally.
- ii. On section there is extravasation of blood into the S.C. connective tissue under the ligature mark as well as the adjacent muscles of the neck.
- iii. There is fracture of cricoid cartilage.

3. After completing the investigation, the I.O. had submitted the charge-sheet (Ext. Ka-12) against the appellant.

4. The accused-appellant was charged Under Sections 302, 201 and 498-A, IPC. The accused-appellant denied the charges and claimed trial.

5. The prosecution in support of its case examined Rajendra Singh P.W. 1, father of the deceased-Lajjawati Devi. He had stated that after six months of the marriage of his daughter and son-in-law, accused-appellant, they started living separately from the father of the accused-appellant. He had also stated that whenever his daughter came to her matrimonial house, she used to demand money for giving her husband, accused-appellant. He had also stated that since his daughter had not given birth to any child, therefore, the accused-appellant, her mother-in-law and father-in-law used to treat her cruelly. Jagmohan Singh P.W. 2 is the Pradhan of the village where the death of the deceased occurred. When he got information about the death of the deceased, he went to the place of occurrence and he was informed by the accused-appellant that his wife had committed suicide by hanging herself. He had informed this fact to the patwari who along with panchas went to the place of occurrence and conducted the panchayatnama and prepared site plan in which his signature has been obtained. Ganesh Singh P.W. 3, younger brother of the accused-appellant. He had not supported the prosecution version and he was declared hostile by the prosecution. Mahabir Singh P.W. 4, is the peon of the Patwari and he was living adjoining to the room of the accused-appellant. He had stated that he used to listen frequent, quarrel between the deceased and the Anil Singh Negi-P.W. 5 is the Investigating Officer of this case and he has proved the necessary papers prepared by him during the investigation like FIR (Ext. Ka-2), site plan (Ext. Ka-3), photo lash (Ext. Ka-4), inquest report (Ext. Ka-5), Form 13 (Ext. Ka-6), Fard (Ext. Ka-8) and charge-sheet (Ext. Ka-12). Dr. Rajeev Hatwal-P.W. 6 had conducted the autopsy of the person of the deceased on 13-10-1986 and he proved his report Ext. Ka-14.

6. The accused-appellant was examined Under Section 313, Cr. P.C. and he had pleaded not guilty of the offence. He had stated that he had been living separately from his father alter the six months of the marriage with the deceased. He had

further stated that he never took any money from his father-in-law at any point of time. He had also stated that he had sent the information to his father-in-law about the death of his wife. He had also denied that he had not sent any information to his father-in-law about the death of his wife-Lajjawati Devi. He also stated that he had been falsely implicated in this case due to enmity. He did not adduced any evidence in support of his defence.

7. The trial Court had summoned the Accountant of Punjab National Bank and he had proved the cheque of Rs. 1,000/- dated 9-1-1985 which is said to have been given by the father of the deceased to the accused-appellant. The said cheque had been proved as Ext. Ka-15.

8. The learned trial Court on its appreciation of the evidence in the case held that accused-appellant guilty and convicted and sentenced him under Section 302/201, IPC as mentioned above and the accused-appellant was acquitted Under Section 498-A. IPC.

9. We have heard Sri Raman Kumar Shah, learned Counsel for the appellant; learned Addl. G.A. for the State and perused the record carefully.

10. At the outset, it needs to be mentioned that it is not disputed that the deceased died on account of injuries sustained by her on the date of occurrence. Dr. Rajeev Hatwal-P.W. 6 had also deposed before the Court that he conducted the postmortem of dead body of the deceased and found that death occurred about two days ago and the death was caused due to asphyxia as a result of strangulation.

11. Now, we have to consider whether the accused-appellant was responsible for the injuries sustained by the deceased-Lajjawati Devi. There was no eye-witness of the occurrence. It needs to be mentioned here that the prosecution case rests upon the circumstantial evidence. The law which is fairly settled about circumstantial evidence is that it would be such as to point out only to the guilt of the accused and the evidence should exclude all other hypothesis except the guilt of the accused. It is often said that though witnesses may lie, circumstances will not but at the same time it must cautiously be scrutinized to see that the

incriminating circumstances are such as to lead only to a hypothesis of guilt and reasonably exclude every possibility of innocence of the accused. In order to sustain conviction on circumstantial evidence, each of the incriminating piece of circumstantial evidence should be proved by cogent and reliable evidence and the Court should be satisfied that the piece of evidence taken together forge such a chain where from no inference other than the guilt can be drawn.

12. Keeping in view that above principle of law, we will consider the circumstances projected by the prosecution against the accused-appellant. The main question for determination arises in this case whether the death of the deceased was caused due to suicidal hanging by rope as alleged by the accused-appellant or due to the asphyxia as a result of strangulation as has been projected by the prosecution. If it is proved that it was due to strangulation, then the question arises as to whether it was the accused-appellant who strangled the deceased. In the case of hanging, the position of ligature mark would be different from that of the strangulation. In the case of hanging, mark goes upward towards the jaw and it also passes above the thyroid cartilage. The ligature mark pass obliquely from the front side of the neck. In the case of hanging, the mark of knot of the rope would be visible on front of the neck. In the case of hanging, there must be a little stretch on the neck due to the weight of the body. In the case of hanging, there would be no horizontal ante-mortem injuries around the neck. In the case of strangulation, it may be caused by any rope or by any cloth or it may be caused by gripping and pressing the throat by hand. In case where strangulation is caused by pressing the throat by hand, small bruises and contusion on the sides of the neck would be visible. If the strangulation may have been caused by pressing the neck by rope or anything alike, the ligature mark would be present on the neck in circle all around the neck. Dr. Rajeev Hatwal P. W. 6 has categorically stated in his evidence that there was no stretch of the neck. He had further stated in his cross-examination that there was no sign of knot of rope on the neck. He had further stated that there were injuries on the horizontal marks around the neck which indicate that it was a case of strangulation. The post-mortem report clearly reveals that it does not support the accused-appellant case and it only supports the prosecution case that the death of the deceased was caused due to the strangulation. The injuries found on the neck of the deceased clearly establishes that it was not a case of hanging

but it establish that the deceased was strangled. This aspect has been considered thoroughly by the learned trial Court. We are completely in agreement with the findings recorded by the learned trial Court in this aspect.

13. The second circumstance projected by the prosecution is that the accused-appellant and deceased were residing in the same room at the time of the death of the deceased. Learned Counsel for the accused-appellant pointed out that the death occurred in the intervening night of 9/10-10-1986. It was also contended that the accused-appellant had left his house in the morning and after sometime when he came in his room, he found the doors of the room were closed and his wife was hanging on the ceiling of the room. He entered into the room and he cut the rope and found his wife-Lajjawati Devi dead. He informed the Pradhan and patti patwari by a report Ext. Ka. 2. Thereafter, panchayatnama was executed and the accused-appellant had pointed out this fact to the patwari at the time of the inquest report. The learned Addl. G.A. refuted the contention. Perusal of the record reveals that during trial the accused-appellant had not taken this plea in his statement recorded Under Section 313, Cr.P.C. He had an opportunity to state this fact immediately to the patwari in his report (Ext. Ka-2) but the report reveals that this fact has not been narrated in the report (Ext. Ka-2) itself. The statement which has been said to have been recorded by the patwari has not been put to the patwari during cross-examination by the accused-appellant when the patwari was examined before the Court. Thus these facts lead to take an inference that the accused-appellant had developed this theory afterwards. It is also in the prosecution evidence that the accused-appellant and deceased were living in the night in the same house where the death of the deceased was committed. It had not been disputed that they lived night together. It is amply proved that it was only the accused-appellant who was alone in the room of the deceased in the night and he alone had the knowledge about the death of the deceased. The accused-appellant had not given any plausible explanation of the death of his wife occurred in the night. Thus it is amply proved that it was alone the accused-appellant who had strangled his wife.

14. The third circumstance relied upon by the prosecution is that there had been frequent quarrel in between the accused-appellant and the deceased. The prosecution had adduced the evidence of Mahabir Singh-PW 4, peon of the

Patwari who is the neighbour of the accused-appellant. He had been living in the adjoining quarter of the accused-appellant. He has been living in the village for the last four years. He had stated in his evidence that he had seen the frequent quarrels between the deceased and the accused-appellant. The evidence of Mahabir Singh-PW 4 is credible and cogent. He was cross-examined at length but nothing could be elicited from his evidence. The learned Counsel for the accused-appellant could not demonstrate us as to how the evidence of Mahabir Singh-PW 4 is not trustworthy. The evidence of Mahabir Singh-PW 4 is consistent and cogent. Rajender Singh-PW 1, father of the deceased had further stated in his evidence that whenever the deceased used to come to her matrimonial house she used to state about the ill-treatment committed by her husband. It is also in the evidence of Rajendra Singh-PW 1 that the deceased had not given birth to any child, therefore, she was subjected to cruelty by her husband, accused-appellant. Whenever the deceased used to visit her matrimonial house, she revealed to her parents about the frequent quarrels with her husband. It is not disputed that she had not given birth to any child. These circumstances also leads to take an inference that the accused-appellant committed the murder of the deceased.

15. The learned Counsel for the accused-appellant further contended that the learned Sessions Judge had erred in holding that it was difficult for the deceased to get herself hanged unless she has taken the help of a stool and by throwing away the stool by her leg. It was pointed out by the learned Counsel for the accused-appellant that Jagmohan Singh-PW 2 had stated that there was a table in the room. The Investigating Officer in his evidence had stated that there was no stool, table and chair in the said room. He had further stated that there was only one bed in the room. There is no evidence on record that the table had been thrown away with the help of leg. If the table was there and there was height of 7-8 feet from the roof and if the deceased had tried to hang herself, naturally if she would not have thrown the table by her leg, she could not hang herself, The learned Sessions Judge had rightly held that the roof of the room in which the dead body of the deceased was found was about 7-8 feet high from the ground and it was difficult for the deceased to get herself hanged unless she has taken the assistance of any stool or table. She could not be successful to get herself hanged in the room. There is no such evidence on record that the body of the

deceased was taken out by the Investigating Officer or any other person from the ceiling. The body was found lying on the ground of the room. No piece of rope was hanging on the ceiling of the room. The contention of the learned Counsel for the accused-appellant is not tenable.

16. Learned Counsel for the accused-appellant further contended that the postmortem report (Ext. Ka-14) reveals that there were no contents of food in the stomach and the large intestine of the deceased. Learned Addl. G.A. refuted the contention. Perusal of the evidence of the Investigating Officer reveals that latrine and urine was found on the ground and on the clothes of the deceased. This fact also reveals that at the time of the strangulation it happened so. In case, the deceased had committed the suicide by hanging, her body could not have been found lying on the ground. This fact also leads to take inference that the death was committed by strangulation. We do not find any substance in the arguments raised by the learned Counsel for the accused-appellant.

17. Learned Counsel for the accused-appellant contended that there are ante-mortem injuries on the neck of the deceased. If she was strangulated, there would have been the post-mortem injuries on the person of the deceased. The learned Addl. G.A. refuted the contention. Perusal of the record reveals that nobody had seen the dead body hanging in the ceiling of room. It was pointed out by the learned Counsel for the accused-appellant that the appellant went out of his room in the morning of 11-10-1986 and when he returned to his room he found the doors were closed. He entered into the room and found that his wife was hanging by rope and he cut the rope and found his wife-deceased dead. Neither the Investigating Officer nor the Gram Pradhan found the deceased hanging in the ceiling of the room. It is proved by the medical report that the ante mortem injuries were found round the neck of the deceased. As we have pointed out in the preceding paragraph that the accused-appellant had not stated this fact Under Section 313, Cr.P.C, The said argument was not found tenable in the preceding paragraphs. This leads to take inference that the accused-appellant caused the death by strangulation and it is obvious that the ante-mortem injuries would come on the body when the deceased had been strangulated by the accused-appellant. The Investigating Officer or any of the witnesses had not found any part of the

rope on the ceiling of the room. It is also found that there were 3-4 pieces of rope lying on the ground. It is not understandable why it was cut into pieces.

18. Perusal of the evidence reveals that there is a complete chain against the accused-appellant. The circumstantial evidence of the prosecution is credible and cogent to the effect and it leads to take an inference only that the accused-appellant strangled the deceased-Lajjawati Devi. We are completely in agreement with the findings recorded by the learned Sessions Judge.

19. In view of the aforesaid reasons, we are of the view that the prosecution has established the guilt beyond reasonable doubt against the accused-appellant. We find that the learned trial Court has rightly convicted and sentenced the appellant Under Section 302/201, I.P.C. to undergo life imprisonment and there is no infirmity in the judgment passed by the trial Court. Hence, the appeal is liable to be dismissed and the conviction is liable to be maintained. The sentence awarded by the trial Court vide judgment and order dated 19-3-1990 passed in S.T. No. 35/1987 convicting the accused-appellant Under Section 302/201, I.P.C. is liable to be confirmed.

20. In view of the above, the appeals are dismissed accordingly. The accused-appellant is on bail. His bail is cancelled. He shall be taken into custody forthwith by the Court concerned to make him serve out the sentence of imprisonment for life, as awarded against him.

21. Let the lower Court record be sent back to the Court concerned for compliance, Compliance report be submitted within three months from the date of receipt of order.