

State Vs. Jethu

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Court : Uttaranchal

Decided On : Feb-15-2008

Reported in : 2008CriLJ3113

Judge : Prafulla C. Pant and; Dharam Veer, JJ.

Appellant : State

Respondent : Jethu

Disposition : Appeal allowed

Judgement :

Prafulla C. Pant, J.

1. The appeal preferred under Section 378 of Code of Criminal Procedure, 1973 (hereinafter referred as Cr.P.C.), is directed against the judgment and order dated 7-1-1991, passed by learned Sessions Judge, Uttarkashi, in Sessions Trial No. 2 of 1990, whereby respondent Jethu has been acquitted of charge of offences punishable under Section 354 and one punishable under Section 302 of Indian Penal Code, 1860 (hereinafter referred as I.P.C.)

2. Heard learned Counsel for the parties and perused the entire lower Court record.

3. Prosecution story in brief is that on 9-1-1990, P.W. 2 Deepa was cutting grass in the jungle within the limits of village Malli, Patwari Circle Badhangaon, District Uttarkashi. At some distance P.W. 1 Smt. Sauna Devi (mother of Deepa) and deceased Darshan Singh (father of Deepa) were also cutting grass. At about 6 p.m. accused Jethu came near Deepa (P.W. 2) and with intention to outrage her modesty dragged her towards a bush. She raised an alarm on which the parents of Deepa rushed towards her. They objected to the conduct of accused (present respondent Jethu), on which after running 250 paces away the accused hurled stone at Darshan Singh, which hit on his head. Accused after throwing stone at Darshan Singh ran away from the place of incident. Darshan Singh, who received injuries succumbed to the same on next morning at about 6 a.m. On this P.W. 2 Deepa went to P.W. 4 Shishpal Singh and one Makar Singh and informed them about the incident. P.W. 4 Shishpal Singh scribed report (Ext. A-2) and gave it to Patwari Chauki of the area (In Uttarakhand hills in certain areas Patwaries, revenue Officials, are given police powers). Meanwhile, eye-witness Sauna Devi (P.W. 1) had already lodged a First Information Report orally with Patwari at 7.30 a.m. on 10-1-1990, on the basis of which check report (Ext. A-6) was prepared. P.W. 7 R.S. Panwar, Patwari (Investigating Officer) proceeded to the house of Darshan Singh and took his dead body in his possession and prepared the inquest report (Ext. A-1), sketch of body (Ext. A-8), Police Form No. 13 (Ext. A-9) and site plan (Ext. A-10). He also recovered blood stained clothes and prepared memorandum (Ext. A-11). The body of Darshan Singh was sent for post-mortem examination. P.W. 6 Dr. A. Gairola, Medical Officer of District Hospital, Uttarkashi conducted the autopsy on the dead body on 12-1-1990 at about 10.30 a.m., and prepared the post-mortem report (Ext. A-5). On the next day i.e. 13-1-1990, P.W. 5, Dr. S.K. Pant, medically examined P.W. 2 Deepa and prepared injury report (Ext. A-4). Stone by which the injury is caused was also recovered and memorandum (Ext. A-3) was prepared by the Investigating Officer. On completion of the investigation the Investigating Officer submitted charge sheet (Ext. A-12) before the Chief Judicial Magistrate, Uttarkashi, against accused (present respondent Jethu) for his trial relating to offence punishable under Section 302 of I.P.C.

4. The Magistrate on receipt of the charge sheet, after giving necessary copies to the accused as required under Section 207 of Cr.P.C. committed the case to the Court of Sessions for trial. Learned Sessions Judge, Uttarkashi after hearing the prosecution framed charge of two heads i.e. first relating to offence punishable under Section 354 of I.P.C. and the second relating to offence punishable under Section 302 of I.P.C. on 22-5-1990. The accused Jethu pleaded not guilty and claimed to be tried. On this prosecution got examined P.W. 1 Smt. Sauna Devi, complainant and eye-witness, P.W. 2 Deepa, eye-witness, P.W. 3 Pyar Chand, a villager to whom the incident is narrated by Deepa, P.W. 4 Shishpal Singh, the reporter of Ext. A-2, P.W. 5 Dr. S.K. Pant, who medically examined Deepa, P.W. 6 Dr. A. Gairola, who conducted the post-mortem on dead body of Darshan Singh and P.W. 7 R.S. Panwar, Patwari (Investigating Officer). Oral and documentary evidence was put to the accused Jethu under Section 313 of Cr.P.C. to which he alleged that the evidence adduced against him is false and he has been implicated due to enmity. However, no evidence in defence is adduced. After hearing the parties the trial Court found accused Jethu not guilty of the charge of offences punishable under Sections 354 and 302 of I.P.C. and acquitted him. Aggrieved by said judgment and order dated 7-1-1991, passed by learned Sessions Judge, Uttarkashi, in Sessions Trial No. 2 of 1990, this appeal under Section 378 of Cr.P.C. was preferred by the State before Allahabad High Court on 8-4-1991. Allahabad High Court granted the leave to appeal on 16-7-1992 and admitted it. This appeal is received by this Court by transfer under Section 35 of U.P. Reorganisation Act, 2000, for its disposal.

5. Before further discussions, it is pertinent to mention here the injuries found on the person of Km. Deepa (P.W. 2), who was medically examined on 13-1-1990 by P.W. 5 (Dr. S.K. Pant), who prepared injury report (Ext. A-4. The injuries recorded are being quoted below-

(1) Contusion 4 cm. x 2 cm. over the outer aspect of right upper arm. Colour bluish.

(2) Contusion 2.5 cm. x 2 cm. over the outer aspect of right forearm lower 1/3. Colour bluish.

(3) Traumatic swelling 4 cm. x 2 cm. over the outer surface of right hand at the 5th metacarpophalangeal junction.

(4) Traumatic swelling over the outer aspect of left elbow joint measuring 3 cm. x 2.5 cm.

(5) Linear abrasion 2 cm. over the outer surface of left forearm above the wrist. Scab formed.

The Medical Officer found injuries simple in nature and opined that injury Nos. 1 to 4 were caused by blunt object. He also gave the opinion that the injuries were three days' old.

6. We also think it just and proper to reproduce the anti-mortem injuries recorded by P.W. 6 (Dr. A. Gairola), who conducted post-mortem examination on the dead body of Darshan Singh (father of Deepa) on 12-1-1990 at 10.30 a.m. and prepared autopsy report (Ext. A-5). There is only one anti-mortem injury, which is being quoted below-

Lacerated wound size 4 cm. x 1 cm., 1.5 cm. deep extending up to bone with depressed fracture. 7.5 cm. above nose. Blood clot present.

The Medical Officer (Dr. A. Gairola) opined that the death of the deceased was caused on account of shock and haemorrhage due to head injury.

7. P.W. 1 Sauna Devi, complainant and eye-witness, narrating the prosecution story, stated that on the day of incident, she along with her husband Darshan Singh (deceased) was cutting grass in village Malli, Gopali Tok. Her daughter Km. Deepa (P.W. 2) also cutting grass at some distance. At about 6 p.m. the witness (Sauna Devi) and her husband heard cries of their daughter Deepa, who complained that accused Jethu (present respondent) was beating her. On this Sauna Devi and her husband Darshan Singh rushed towards Deepa. Meanwhile, Jethu ran away leaving Deepa there. Deepa told her parents that with intention to outrage her modesty accused Jethu had dragged her. Soon thereafter when the three started cutting grass again accused Jethu was seen across the canal. Darshan Singh asked Jethu why he assaulted his daughter (Deepa) on this Jethu

picked up a stone and threw at Darshan Singh. The stone hit on the head of Darshan Singh who fell down and became unconscious. Blood also started oozing out from the injury. Thereafter, according to the witnesses, Jethu (present respondent) ran away from the scene of incident. Sauna Devi (P.W. 1) and Deepa (P.W. 2) took injured Darshan Singh to their house. However, next morning at about 6 a.m. Darshan Singh succumbed to the injuries and died. P.W. 1 Sauna Devi further stated that she sent Deepa to inform the villagers on which Shishpal Singh (P.W. 4) along with one Makar Singh and others came and they were asked to inform Patwari. She further states that she orally told the story to Patwari.

8. Statement of P.W. 1 Sauna Devi is fully corroborated by P.W. 2 Deepa, who has also narrated the story as mentioned above. This witness is an injured witness, who had the injuries suffered by her in getting dragged which are already reproduced above. The statement of P.W. 1 Sauna Devi and P.W. 2 Deepa are natural and trustworthy. No exaggeration has been found in their statements. They have given their statements with all simplicity as the incident had happened before them. Death of Darshan Singh due to the injury suffered by him on the head gets corroboration from the post-mortem report (Ext. A-5) proved by P.W. 6 Dr. A Gairola. The oral testimony given by the two eye-witnesses P.W. 1 Sauna Devi and P.W.2 Deepa are further corroborated by statements of P.W. 3 Pyar Chand and P.W. 4 Shishpal Singh to whom the eye-witnesses have disclosed the story soon after death of Darshan Singh.

9. The trial Court has acquitted the accused mainly on the ground that name of Jethu (present respondent) was not mentioned in report (Ext. A-2). But in our opinion the trial Court has not properly appreciated the evidence on record and wrongly ignored the fact that report (Ext. A-2) was not lodged either by Sauna Devi (P.W. 1) or by Deepa (P.W. 2), rather it was a report written by Shishpal Singh, who was not an eyewitness. P.W. 4 Shishpal Singh in his examination on oath stated that Deepa told him that Jethu had thrown a stone at Darshan Singh, which hit on his head. Merely for the reason that Shishpal Singh did not mention the said fact in his report, the prosecution story cannot be doubted, as he was not an eye-witness. The trial Court has erred in law by ignoring the medical report dated 13-1-1990 (Ext. A-4) of Deepa on the ground that she should have been examined on

11th or 12th January, 1990. The trial Court has not considered the fact that the crime was committed in the interior hills of interior District of Uttarkashi. Apart from this the medical report prepared on 13-1-1990, itself discloses that the injuries were found three days' old. As such, it does corroborate the fact that the incident had taken place as narrated by the witness P.W. 2 Deepa. Learned trial Court has wrongly taken Ext. A-2, scribed by P.W. 4 Shishpal Singh as First Information Report, as the crime is registered on the oral story narrated by P.W. 1 Sauna Devi, who is an eyewitness of the incident and had named Jethu (present respondent), P.W. 4 Shishpal Singh has only informed the Patwari about the fact that Darshan Singh's daughter has told him that Darshan Singh had been murdered.

For the reasons as discussed above, the finding recorded by the trial Court that charge of offence of assaulting Deepa with intention to outrage her modesty and the charge of offence of culpable homicide, causing death of Darshan Singh is not proved against the accused (present respondent), is erroneous in law and liable to be set aside. However, having gone through the entire evidence on record, we are of the opinion that since the accused Jethu was not armed with any deadly weapon and not assaulted Darshan Singh in the manner as to necessarily cause his death, rather he has hurled stone which hit the head of Darshan Singh, the act on the part of accused cannot be said to be 'murder' but a culpable homicide not amounting to murder. The act on the part of accused Jethu hurling a stone at Darshan Singh is an act with the knowledge that it is likely to cause death of the person at whom the stone was thrown as such on the record what the prosecution has actually proved is that the accused Jethu has not only assaulted Deepa with intention to outrage her modesty but also committed culpable homicide not amounting to murder of her father Darshan Singh, thereby he is liable to be convicted under Sections 354 and 304 (Para II), I.P.C.

10. Therefore, the appeal deserves to be allowed. Accordingly the same is allowed. Judgment and order dated 7-1-1991, passed by learned Sessions Judge, Uttarkashi, in Sessions Trial No. 2 of 1990, is hereby set aside. The acquittal of the respondent Jethu recorded by the trial Court stands set aside. Accused/present respondent is convicted under Sections 354 and 304 (Para II), I.P.C. Having considered the submissions of learned Counsel for the respondent

and that of the appellant, accused respondent Jethu is sentenced to undergo rigorous imprisonment for a period of six months under Section 354 of I.P.C. and rigorous imprisonment for a period of five years under Section 304 (Para II) of I.P.C. Both the sentences shall run concurrently. The period already undergone by the accused/respondent Jethu during investigation/trial shall be commuted from the sentence awarded by this Court. Let a copy of this judgment be sent to the Court concerned for making the present respondent Jethu to serve out the sentence awarded by this Court.

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