

State of H.P. Vs. Rita Devi

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Court : Himachal Pradesh

Decided On : Dec-26-2008

Reported in : 2009(1)ShimLC378

Judge : Surjit Singh, J.

Appellant : State of H.P.

Respondent : Rita Devi

Disposition : Appeal allowed

Judgement :

Surjit Singh, J.

1.State has appealed against the judgment dated 14th December 2001, passed by the trial Magistrate, whereby respondent Rita Devi, who was charged with and tried for offences punishable, under Sections 451, 323, 324 and 506 IPC, has been acquitted.

2. Prosecution story, upon which the respondent was charged and tried, may be noticed. PW2 Kanta Devi is mother-in-law of respondent/accused Rita Devi. Rita Devi's husband, Dev Parkash is serving in Indian Army. She lives at her in laws' place, but separately. There is a double storeyed house. In the upper storey of the house, PW2 Kanta Devi lives with her husband PW5 Jeewan Ram and her

married daughter. Lower storey of that very structure is in occupation of the respondent, as her residence. On 5th November 2000, when Kanta Devi PW2 was all alone in the house, respondent went there and started giving beatings to her. She dealt fist and kick blows and also tried to cause her burn injuries forcing her left foot into the hearth, which was lighted. Kanta Devi cried for help. Hearing her cries, Som Devi PW1, another daughter-in-law reached. She saw the respondent giving beating to Kanta Devi with one of her legs in the hearth. PW1 Som Devi went running to the temple, to call her father-in-law. Within a few minutes, her father-in-law also reached the spot. Both, Som Devi and her father-in-law Jeewan Ram rescued Kanta Devi from the respondent. Thereafter, Som Devi gave a ring to her husband's elder brother Mohan Dutt. Late in the evening, Mohan Dutt arrived and next morning Kanta Devi was taken to Sarahan, where there is a hospital. Police station is also situated at Sarahan. Matter was reported to the police by Som Devi as Kanta Devi, according to the opinion of doctor, was unfit to make statement because of the impact of the injuries. Case was formally registered. Kanta Devi was got medically examined. She was found to be having multiple abrasions, swelling of left eyelid and left foot sole was medial aspect had scald and adjoining skin was dark red. On completion of investigation, respondent was challaned.

3. Trial Court has disbelieved the prosecution version for the reasons that there was delay in reporting the matter to the police and also that PW1 Som Devi was not on good terms with the respondent. Other reasons recorded by the trial Court are that while according to Som Devi, matter was reported to the police, when Kanta Devi was being taken to the hospital, the police officials stated that they went to the hospital on being informed by the doctor/and it was there that Som Devi made the statement Ext. PW1/A, under Section 154 Cr.P.C, on the basis of which, case was formally registered. Yet another reason given by the trial Court is that while according to Kanta Devi herself and other witnesses she remained unconscious only for a few minutes after the occurrence, the doctor testified that she was unconscious and unfit to make the statement when she was taken to the hospital and police wanted to record her statement. Trial Court has also observed that one of the sons of the injured, named Om Dutt also heard the cries, but he was not associated as a witness during investigation nor were the neighbors of the

injured examined by the police.

4. I have heard the learned Deputy Advocate General as also the learned Counsel representing the respondent and gone through the record. Prosecution mainly relied upon the testimony of Kanta Devi PW2, her daughter-in-law Som Devi PW1, her husband Jeewan Ram PW5 and Doctor Shashi Pal Singh PW8, who conducted the medico legal examination of Kanta Devi. Kanta Devi testified while appearing as PW2 that the respondent came to her house around 11.00 on the fateful day and caught hold of her by her neck and threw her near the hearth, which was lighted and tried to force her legs into the hearth. She also stated that she was beaten up with kicks and fist blows and also an attempt was made to pull her tongue out. She stated that when she raised cries, her daughter-in-law Som Devi came and that after some time, her husband also came and they rescued her.

5. Som Devi PW1 fully corroborated testimony of PW2 Kanta Devi. PW5 Jeewan Ram stated that when he reached the spot, he saw his wife bleeding from nose and she (Kanta Devi) told him that respondent had beaten her up and had forcibly put her feet in the hearth. He stated that respondent was also there when he reached the spot.

6. PW8 Dr. Shashi Pal Singh stated that he noticed the following injuries on the version of Kanta Devi PW2, when he conducted her medical examination at 11.35 A.M. on 6.11.2000:

(1) There was a scald of left foot sole and medial aspect of left foot. The adjoining area of skin was dark red.

(2) There were multiple abrasions dark red clotted blood was present on them at right and left cheek being in size 1/2 cm x 4 mm to 1 cm x 5 mm about six in number at left angle of eye two in number 4 mm x 4 mm each.

(3) There was swelling over left eyelid upper the conjunctiva was dark red.

7. Respondent took the plea that she had been falsely implicated by Kanta Devi, her husband and Som Devi PW1 because her husband has been given a piece of

land by her father-in-law, which all other members of her in laws' family opposed.

8. The plea taken by the respondent is not borne out from the evidence on record. It has come in evidence that the respondent is not having good relations even with her husband and that some cases regarding grant of maintenance etc., instituted by the respondent against her husband, are still pending.

9. Respondent took another plea that Kanta Devi had a fit and because of that she fell and sustained injuries including the burns on the foot. To prove this plea, she examined a witness, namely DW1 Gurdayal Singh. The witness is shown to be a liar by his own testimony. According to him, he went to the house of Kanta Devi on 5.11.2000 on hearing her cries and on inquiry he was told by Kanta Devi that she had a fit and fell near the hearth, due to which her feet got burnt. When asked as to how many storeyed the house of the complainant is, he stated that it is single storeyed. In fact, the house is double storeyed, the lower storey being occupied by respondent and the upper by Kanta Devi and her husband Jeewan Ram. This fact is admitted even by the respondent in her statement under Section 313 Cr.P.C.

10. Reasons given by the trial Court for the acquittal of respondent are not real ones. Mere delay of less than 24 hours in lodging the report is not a ground for disbelieving the version of Kanta Devi PW2, Som Devi PW1 and Jeewan Ram PW5, particularly when it is corroborated by medico legal evidence comprising of the statement of PW8 Dr. Shashi Pal Singh and medico legal report Ext.PW8/C.

11. The alleged contradiction as to the place and time of the lodging the report with the police is also not very material. Admittedly, the matter was reported to the police on the next following day. While Som Devi says that report was lodged with the police when Kanta Devi was being taken to the hospital, the police official say that it was lodging in the hospital. The fact remains that the report was lodged on 6.11.2000 after Kanta Devi had been taken to Sarahan for the purpose of lodging report and getting her treated. This alleged contradiction in no way affects the veracity of the testimony of Kanta Devi PW2 or Som Devi PW1 and Jeewan Ram PW5.

12. No doubt, it has come in the evidence that though Om Dutt, one of the sons of the injured was present near the place of occurrence, but at the same time the evidence shows that he was on the top of a tree and, therefore, instead of himself going to the house of Kanta Devi on hearing her cries, he deputed his wife, who was nearby to find out why his mother was crying.

13. It is true that there are some houses near the house of Kanta Devi but no suggestion was thrown to any of the prosecution witnesses that at the relevant time the occupants of those houses were present and could have witness the occurrence.

14. In view of the above stated position, I am of the considered view that learned trial Court has not appreciated the evidence correctly and the finding arrived at by it is not only contrary to the evidence on record but also perverse. Consequently, the appeal is allowed, judgment of the trial Magistrate is set aside and the respondent is convicted of offences, under Sections 451 and 324 IPC. She is ordered to be produced in person on 25.2.2009, so that she is heard on the point of the quantum of sentence.

15. Respondent-convict has been heard on the question of the quantum of sentence. She says that now there has been a conciliation between her and her mother-in-law Kanta Devi and that her mother-in-law lives with her and her husband. She has produced a writing 'Mark-CF purported to have been executed by her mother-in-law, per which, now her mother-in-law does not seek any punitive action against her.

16. Looking into the facts and the circumstances of the case, as also the fact that the incident had taken place about eight years back, I take a lenient view and sentence the respondent-convict to undergo imprisonment till the rising of the Court, in respect of both the offences of which she has been convicted and to pay a fine of Rs. 1000/- in respect of offence, under Section 324 IPC and another sum of Rs. 1000/- for the offence, under Section 451 IPC. The amount of fine, in full, shall be paid to Kanta Devi, the injured by way of compensation.

17. A copy of this order alongwith a copy of judgment dated December 26.. 2008 be given to the respondent-convict, free of cost.

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