

Koshal Vs. State of Uttarakhand

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Court : Uttaranchal

Decided On : Apr-08-2010

Judge : B.C. Kandpal and; Nirmal Yadav, JJ.

Appellant : Koshal

Respondent : State of Uttarakhand

Disposition : Appeal dismissed

Judgement :

Nirmal Yadav, J.

1. The above two appeals, arising out of judgment and order dated 07.06.2004 passed by Additional Sessions Judge/ 1st FTC, Hardwar were taken up together for hearing and are being disposed of by this common judgment.
2. The appellant stood trial for the offence punishable under Section 302 IPC for causing death of 5 year old child (Arun) son of her husband's brother Pappu.
3. Hari Chand, grand father of Arun (deceased) submitted an application (exhibit Ka 1) before SHO, Police Station - Mangalore on 26.06.1998 stating that his grand son Arun was playing in the courtyard on 22.06.1998 at about 8.00 a.m. At that time accused Koshal, wife of Vinod Kumar, sprinkled kerosene oil on him and set him on fire. According to him, occurrence was witnessed by Ramesho, wife of

Mahendra Singh, brother of the complainant and his nephew Kanwar Pal Singh. They extinguished the fire. Arun was removed to the hospital, however, he died in Lok Priya Hospital, Meerut on 24.06.1998. The motive for setting Arun on fire was that accused Koshal suspected him to be child born out of the loins of her husband Vinod Kumar. She had strong belief that Somti, mother of Arun, was having illicit relations with her husband Vinod and therefore, Arun had typical facial resemblance with his uncle Vinod.

4. Arun was initially admitted in Government Hospital, Roorkee, from where he was referred to Meerut. He was admitted in Lok Priya Hospital, Meerut, where he remained under treatment upto 24.06.1998. Meanwhile, inquiries were made by Hari Chand and Somti, on which Arun disclosed that Koshal Chachi had set him on fire after pouring kerosene oil on him. PW 4 Ramesh, who had reached the house of the complainant in the morning on 22.06.1998, was also informed by Arun about the said incident. PW 6 Dr. M.R. Malik, Medical Officer, medically examined Arun in Civil Hospital, Roorkee at about 8.40 a.m. and found the following:

i. Superficial to deep injuries on the back of head, both ears, all around the neck, chin, lower part of face, whole of back, whole of chest and abdomen both upper arms except left palm, both buttocks and back of left thigh.

5. General condition of the patient was poor and serious. Injuries were fresh and caused by fire. Medical examination report is exhibit Ka 2. Dr. M.R. Malik referred the patient to Meerut.

6. PW11 Dr. Adesh Dhankad examined Arun in Lok Priya Hospital, Meerut. He admitted Arun in the hospital on 22.06.1998 in ICU. Arun remained in the hospital till his death i.e. 24.06.1998. Medical papers are exhibit Ka 5. PW 8 Dr. B.K. Bajpai, Sr. Medical Officer in P.L. Sharma Hospital, Meerut, conducted autopsy on the dead body of Arun at about 3.00 p.m. on 25.06.1998. He found deep burns on the whole body of the deceased. Cause of death was septicemia due to deep burn. Postmortem report is exhibit Ka 4.

7. On the completion of the investigation, challan was presented and accused was charged should under Section 302 of Indian Penal Code to which, she pleaded not guilty and claimed trial.

8. Accused, when examined under Section 313 Cr.P.C., denied the incriminating evidence put to her and pleaded false implication.

9. According to her, divorce petition bearing No. 169 of 2002 dated 10.08.1998, under Section 13 of Hindu Marriage Act, was filed by her husband Vinod for dissolution of their marriage. She produced on record, the certified copy of the petition.

10. The trial court after taking into consideration the evidence on record, convicted the accused under Section 302 IPC and sentenced her to undergo rigorous life imprisonment and fine of Rs. 2000/-. In default of payment of fine, he has been ordered to undergo three months simple imprisonment.

11. We have learned Counsel for the parties and scrutinized the entire evidence and documents on record. The case of the prosecution mainly rests on the testimony of PW2 Ramesho (eye witness), PW 1 Hari Chand the complainant, grand father of Arun and PW 3 Somti, mother of Arun. Admittedly, accused as well as witnesses are closely related. PW 1 Hari Chand is father-in-law of accused, PW 2 Ramesho is wife of her (accused Koshal) father-in-law's brother Mahendra Singh while PW 3 Somti is the wife of her husband's brother. Admittedly, at the time of occurrence, none of the witnesses had any animus against the accused. Divorce petition placed on record by the accused had been filed in the month of August, 1998 whereas, the present occurrence relates to the month of June, 1998. Thus, husband or other relatives of the accused had no reason to falsely implicate the accused. On the contrary, accused had strong motive to commit the murder of innocent child because she believed that Somti (mother of Arun) was having illicit relations with Vinod (husband of the accused) and therefore, Arun had typical facial resemblance with his uncle Vinod.

12. PW2 Ramesho was at her shop, which is adjacent to the house of the accused at the time of occurrence. She categorically deposed that Arun was playing in front

of her shop along with Deepak, Ranjeet and other children, when Koshal accused caught Arun from his hand and took him to her house. She poured kerosene oil on his head and set him on fire. She further deposed that she along with Kanwar Pal Singh, who was also present at the time of occurrence, tried to extinguish the fire by throwing sand. In the meanwhile, Hari Chand, Somti and Ramesh also reached there. Injured Arun disclosed to them that Koshal Chachi had set him ablaze after pouring kerosene oil on him.

13. Statement of PW 2 Ramesho is fully supported by the statement of Hari Chand, Somti and Ramesh, before whom Arun had made oral dying declaration. Hari Chand and Ramesh removed Arun to the Government Hospital, Roorkee, wherefrom, he was referred to Meerut. Arun was admitted in Lok Priya Hospital, where he died after two days.

14. Learned Counsel for the appellant argued that First Information Report was lodged after the delay of four days, after due deliberations and consultation. She pointed out that occurrence took place on 22.06.1998 in the morning and application was submitted by Hari Chand on 26.06.1998 at 11.15 a.m. in police station - Mangalore. She further submitted that parents of the deceased along with her in-laws had sufficient time to concoct a false story. She further pointed out that husband of the accused was having illicit relation with his brother's wife, therefore, he also joined other relatives to falsely implicate the accused.

15. The argument of the learned Counsel is not at all acceptable. Admittedly, the child was in a critical condition. He was referred from Government Hospital, Roorkee to Meerut for treatment. In such circumstance, the parents of the child would not think to report the matter to the police station, as their first priority was to get the child treated. Even otherwise, accused as well as victim belong to the same family. In case, child would have survived, it might be possible that no report would have been lodged by the parents of the child. Arun died on 24.06.1998 in the evening and postmortem was conducted on 25.06.1998, and thereafter, the grandfather reported the matter to the police.

16. Learned Amicus Curiae Smt. Seema Sirohi, further submitted that prosecution has intentionally not produced Kanwar Pal Singh, who, as per the First Information

Report, had also witnessed the occurrence. It is further argued that conviction of the accused is based on the solitary statement of PW2 Ramesho, who is an interested witness.

17. It is not disputed that Kanwar Pal Singh is the close relative of both the parties. He appears to be won over by the accused. Therefore, accused cannot be given benefit for not producing Kanwar Pal Singh. The arguments of the learned Counsel are without any force. Presence of Ramesho at the place of occurrence was natural, as her shop was adjacent to the house of the accused and she was present at her shop. She had no animus against the accused. There is not even a suggestion given to her in this respect.

18. Moreover, the solitary statement of Ramesho gets corroboration with oral dying declaration of deceased Arun made before Hari Chand, Somti and Ramesh. PW1 Hari Chand and Somti categorically stated that on their inquiry, deceased told them that Koshal Chachi (accused / appellant) had set him on fire after pouring kerosene oil on him. His statement relates to injuries caused to him which resulted into his death. Statement was made by Arun immediately after the occurrence and therefore, his statement becomes relevant after his death and thus, is admissible under Section 32 of Indian Evidence Act, being oral dying declaration.

19. It was also argued by the learned Counsel for the appellant that from the medical evidence, it is not proved that Arun received burn injuries by sprinkling kerosene oil on him and he could have received burn injuries by accident or by some other combustible substance. She referred to the statements of PW6 Dr. Mange Ram Malik, PW8 Dr. B.K. Bajpai and PW11 Dr. Adesh Dhankad. According to her, Dr. Mange Ram Malik did not mention that injured might have received burn injuries after kerosene oil was poured on him. Similarly, Dr. B.K. Bajpai stated that in case fire was caused by sprinkling kerosene, there would be smell of kerosene but he could not distinguish if he received burn injuries from kerosene oil or by some other combustible material. Even Dr. Adesh Dhankad did not mention on the paper that there was smell of kerosene oil on the patient.

20. This argument of the learned Counsel for the appellant is itself contradicted by the defence as suggestion was given to PW1 Hari Chand that children were burning beehive of yellow bees with the help of small box, containing kerosene oil and that box might have fallen on Arun and he received burn injuries. Similar is the suggestion given to PW2 Ramesho. Suggestion given to PW 3 Somti is that Arun might have received injuries while playing with some other combustible material. The suggestion given by the defence counsel shows that accused herself admitted that Arun received burn injuries on his person either by sprinkling kerosene oil or by some combustible material. There is nothing on record to prove that deceased received accidental burn injuries.

21. From the perusal of the postmortem report and medical examination report, it is evident that except lower legs of the deceased, entire body had received burn injuries. If Arun received burn injuries as a result of sprinkling of small quantity of kerosene from the box which he might be using for burning beehive of yellow bees; injuries would not be as severe as received by him. Simply because doctor did not mention about smell of kerosene on the body of the injured or on the dead body, prosecution case cannot be doubted.

22. From the above discussion, we find that statement of PW2 Ramesho is worthy of credence which is fully supported by oral dying declaration made by Arun before Hari Chand, Somti and Ramesh. There is nothing on record to prove that Arun was playing with fire or with some other combustible substance early in the morning in the month of June.

23. It is well established that even if prosecution case hinges on the evidence of solitary witness, it is enough to sustain conviction of the accused on the basis of sterling testimony of truthful, cogent and trustworthy witness. The court has to consider that the quality of the witness and not the quantity of the witnesses. However, prudence requires that solitary witness get corroboration from other supporting evidence. The testimony of Ramesho is fully corroborated by oral dying declaration made by Arun before his grandfather Hari Chand, his mother Somti and Ramesh. For the sake of repetition, it may be mentioned that none of the witnesses referred to above have any animus against the accused, and therefore,

there is absolutely no reason to disbelieve their testimony.

24. In view of the evidence discussed above, we do not find any merit in the appeals, hence, are dismissed.

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