

Vijendra Singh Vs. State of U.P.

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Court : Uttaranchal

Decided On : Apr-20-2010

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

Appellant : Vijendra Singh

Respondent : State of U.P.

Disposition : Appeal dismissed

Judgement :

Nirmal Yadav, J.

1. Appellant Vijendra Singh along with his father Gyan Chand, mother Gaurdei and Rajendra Singh stood trial for the offence punishable under Section 302 read with 34 of Indian Penal Code (hereinafter referred to as IPC). The trial court convicted appellant Vijendra Singh for the offence punishable under Section 302 IPC and sentenced him to undergo life imprisonment. However, Gyan Chand, Gaurdei and Rajendra Singh were acquitted for the offence punishable under Section 302 read with 34 IPC.

2. Madan Singh father of deceased submitted an application (exhibit ka 1) to SO, Police Station - Kotwali Uttarkashi, on 02.08.1994 stating that accused Vijendra Singh had taken away his daughter Mandei in the month of November, 1993 and thereafter, performed court marriage with her. It is submitted that marriage could

not be performed as both Vijendra Singh and Mandei belong to the same community. However, after the marriage Vijendra Singh and family members of Vijendra Singh started harassing and torturing Mandei, of which she had made complaint to her mother and the complainant. On 14.05.1994, accused administered some poisonous substance to his daughter which resulted into her death. It is further stated that after Vijendra Singh performed marriage with his daughter, entire village fraternity socially boycotted his family and therefore, they started living outside the village in a hut. Being ostracized, they were feeling aggrieved and they tried to get rid of Mandei. Complainant was informed about the death of Mandei by one Kirti Singh. The complainant stated in his application that on 16.05.1994 he had submitted one application in the police station under pressure of co-villagers but the said application has not been brought on record.

3. On receipt of the information, initially investigation was conducted by SI Shyam Singh, which was later on handed over to SI Alok Kumar. He recorded the statements of the witnesses, prepared the panchayatnama (exhibit Ka 6), site plan (exhibit ka 8). Sketch of dead body (exhibit Ka 7) was prepared by earlier Investigating Officer. Dead body was sent to the District Hospital for conducting autopsy.

4. On completion of the investigation, challan was presented and accused were charged as referred in paragraph 1 of the judgment to which they pleaded not guilty and claimed trial.

5. In order to prove its case prosecution produced as many as six witnesses. PW1 Madan Singh and PW2 Awwal Dei, are father and mother of the deceased. PW3 Dr. Y.S. Rana conducted autopsy on the dead body of the deceased. PW4 Chaitu, resident of Juguladi was declared hostile. PW5 SI Alok Kumar is the Investigating Officer. PW6 Constable Ramesh Singh recorded the First Information Report on the basis of report dated 02.08.1994 submitted by Madan Singh father of the deceased. PW3 Dr. Y.S. Rana conducted autopsy on the dead body of Mandei. On external examination, no injury was found, however, rigor mortis was present on all the four limbs. White froth was oozing out from nostrils and mouth. On internal examination, some white frothy substance was found in larynx and

trachea. Right side two ventricles of heart were found full with dark coloured blood whereas left side of heart was found to be empty. The vessels were found to be full of dark coloured blood. Uterus was found to be gravid having contained dead and fully developed female foetus about 28-30 week old. The death took place about one day prior to conducting of postmortem. Viscera was preserved and sent for chemical examination. Organo phosphorous insecticide was detected in the parts of the viscera i.e. stomach, intestine, liver, kidney and spleen.

6. Accused, when examined under Section 313 Cr.P.C. denied the allegations, oral and documentary evidence produced by the prosecution and pleaded false implication. No evidence was led in defence.

7. Accused Gyan Chand stated that on 14.05.1994 Vijendra Singh had come to him and informed about the death of Mandei. However, Vijendra Singh could not disclose about cause of death to him, thereafter, he reported the matter to the police.

8. Accused Vijendra Singh stated that Mandei deceased had accompanied him out of her own sweet will and had performed court marriage. Both of them came back to the village in the month of December 1993, however, the village fraternity had socially boycotted them, therefore, they started living outside the village in a hut. According to him, he had gone to fetch water on the date of occurrence at about 6.00 a.m. - 7.00 a.m. and when he came back at about 10 - 11 a.m., he found that some froth was oozing out of his wife's mouth. He, thus, informed his father, who intimated about the incident to police station - Uttarkashi.

9. The trial court after taking into consideration the entire evidence on record convicted the accused Vijendra Singh and acquitted other three accused.

10. We have heard learned Counsel for the parties. Learned Counsel for the appellant argued that there is no iota of evidence against the accused appellant Vijendra Singh. Initially father of the deceased Mandei had categorically stated in his application dated 16.05.1994 submitted to SHO, Police Station - Uttarkashi that his daughter had died a natural death and the information in this respect had already been given to the police station. Last rites of the deceased had also been

performed but he did not have any suspicion with regard to the death of his daughter and he does not want to take any action in the matter. It is further stated that his daughter had consumed some insecticide inadvertently and resultantly died. He had made all the inquiries in this respect. But after almost about two and a half months from the date of occurrence, he submitted the application (exhibit Ka 1) and implicated the accused as well as his family members on the false pretext. The First Information Report has been lodged after due deliberation and consultation in order to falsely implicate the accused.

11. Learned Counsel further submitted that accused appellant had no motive to cause death of his own wife as they had performed court marriage against the wishes of parents of deceased and other villagers and there is no evidence that deceased was unhappy with the appellant. He further argued that father of the appellant had informed the police as well as information had been sent to the parents of the deceased.

12. As per the medical report, no ante-mortem injury was found on the body of the deceased and there is no iota of evidence that insecticide was administered to the deceased forcibly. Learned Counsel for the appellant further submitted that it is quite possible that deceased might have consumed insecticide inadvertently.

13. On the other hand learned AGA submitted that PW 1 Madan Singh, father of the deceased as well as PW 2 Awwal Dei mother of the deceased have categorically stated that deceased had informed them about the harassment and beatings given to her by appellant accused Vijendra Singh. He further stated that Gyan Chand had told Ganga Singh that he will arrange second marriage of his son and will not keep Mandei.

14. It was further argued that since accused and the deceased were nephew and aunt in relation and as per custom of the village, marriage could not be performed between them. Therefore, they were socially boycotted by the entire fraternity. In these circumstances out of frustration appellant might have committed murder of the deceased.

15. On the consideration of rival submissions of the learned Counsel for the parties and the evidence on record, we do not find any ground to interfere with the findings of the trial court. There is no direct evidence with regard to the death of deceased Mandei. However, the circumstance on record clearly indicates that accused appellant Vijendra Singh was upset on account of his and his family members social boycott by co-villagers. Both deceased as well as the appellant belong to the same village and they were nephew and aunt in relation. As per the custom of the village, both of them could not enter into marriage being within the prohibited degrees. Even mother and father of the deceased were perturbed, rather they condemned the action of marriage being performed by the accused and deceased with each other. Accused appellant Vijendra Singh was living with deceased on the outskirts of village in a thatched roof hut. Consequently, accused appellant was totally disturbed and out of frustration he decided to get rid of his wife Mandei.

16. As per statement of PW1 Madan Singh, father of the deceased, he was told by Ganga Singh that Gyan Chand, father of the accused disclosed to him that appellant Vijendra Singh did not want to keep Mandei in his house and wanted to perform second marriage of his son. Both Madan Singh and Awwal Dei, father and mother of the deceased deposed that Mandei had disclosed to them that she was being harassed by her husband after her marriage. However, Madan Singh could not take his daughter back to his house out of fear of being disgraced by co-villagers.

17. It has also come in the evidence that accused appellant Vijendra Singh got married within 3 - 4 months after the death of Mandei, which clearly shows that accused appellant Vijendra Singh wanted to get rid of his wife Mandei and that is why he performed his second marriage immediately after death of Mandei. A suggestion was given to PW2 Awwal Dei, mother of deceased, that it had become difficult for both accused appellant Vijendra Singh and Mandei to live in the village on account of being socially boycotted by the villagers. This suggestion attains importance and indicates that accused appellant Vijendra Singh was perturbed and feeling condemned on account of being ostracized by his community. A suggestion has also been put to Awwal Dei and Madan Singh that deceased might

have consumed some insecticide lying in the house inadvertently. However, the accused has not been able to give any explanation as to how deceased could procure the insecticide and why she will commit suicide.

18. To negative the possibility of committing suicide, there is a very important circumstance on record that the deceased was having 28 - 30 week old pregnancy and it is highly impossible that she would commit suicide at such a juncture when she was about to deliver a child and was going to attain motherhood just after 2 or 3 week. A lady may kill herself but would never have courage to kill one's own child in the womb.

19. Learned Counsel for the appellant argued that appellant would not kill his wife to whom he had married against wishes of all. This argument appears to be counter productive in view of the circumstances in which appellant was put after the marriage, rather he wanted to get rid of his wife, as he and his family were socially boycotted by the village fraternity and he had to live as outcaste amongst his own fraternity. Mandei died an unnatural death in the house of the accused appellant. Accused appellant was the only person who had ample opportunity to administer the poison to his wife, on whose account he had to face opposition and boycott of entire community.

20. In view of the above discussion, we are not inclined to upset the findings recorded by the learned trial court. There is no merit in appeal and is dismissed accordingly.

21. Accused Vijendra Singh, who is on bail vide order dated 07.08.1997, be taken into custody forthwith in order to serve the sentence as awarded by the trial court. The trial court is directed to ensure the compliance of the order. Let the lower court record be sent back.