

Bhuwan Singh Vs. State of Uttarakhand

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Court : Uttaranchal

Decided On : Jun-21-2012

Reported in : 2012CrLJ3406

Judge : The Honourable Chief Justice Mr. Barin Ghosh & U.C. Dhyani

Appeal No. : Criminal Appeal No. 277 of 2006

Appellant : Bhuwan Singh

Respondent : State of Uttarakhand

Judgement :

U.C. Dhyani, J.

1. A First Information Report (Ext. Ka-1) was lodged by the informant Lakshman Singh on 12.11.2004 at 9:30 am at Police Station Gadarpur District Udham Singh Nagar alleging that while his daughter Km. Vandana, aged about three years, was playing along with other children of the village at kharanja in front of his house at 6:30 pm, Bhuwan Singh son of Pancham Singh r/o of village Sethwala carried her towards the river. While carrying the girl child in his lap, he was seen by the villagers Preetam Singh, Radholi Devi and Smt. Premwati. Informant Lakshman Singh had gone somewhere for some work at that time. When he came back at home his wife Shimlo Devi told him about the incident and also said that Vandana (victim) had not come at home by then. The informant with the help his family members and villagers searched his daughter Vandana in night but she could not

be traced. On 12.11.2004 again the informant with the help of his family and villagers started searching his daughter. At around 8:00 am the dead body of his daughter was found in half naked condition on the grass on the bank of river Nakatiya near the field of Krishna Singh. Bhuwan Singh killed his daughter after committing rape with her.

2. On the basis of complaint (Ext. Ka-1) of Lakshman Singh, chik FIR (Ext. Ka-10) was lodged at PS Gadarpur district Udham Singh Nagar on 12.11.2004 at 9:30 pm. The distance between the place of occurrence and the police station was 4 kilometers and hence, there appeared to be no delay in lodging the First Information Report, registered in connection with the offences punishable under Sections 363, 366, 376, 302 and 201 IPC.

3. After the investigation, charge-sheet was submitted against the accused appellant Bhuwan Singh as regards offences punishable under Sections 363, 366, 376, 302 and 201 IPC. Trial began. Charges were framed against the accused-appellant Bhuwan Singh for the offences punishable under Sections 363, 366, 376, 302 and 201 IPC, to which he pleaded not guilty and claimed trial. As many as 14 prosecution witnesses were examined. Statement of accused appellant Bhuwan Singh under Section 313 Cr.P.C. was taken in which he stated that complainant lodged a false report in connivance with one Preetam Singh. He had a scuffle with Preetam Singh in which he (Preetam Singh) had threatened that he will involve accused-appellant in a false case. Accused appellant did not adduce any evidence in defence.

4. After conclusion of the trial, learned Sessions Judge, Udham Singh Nagar held accused-appellant Bhuwan Singh guilty of the offences punishable under Sections 363, 366, 376 and 302 IPC. He was awarded rigorous imprisonment for life as regards the offence punishable under Section 302 IPC, ten years' rigorous imprisonment for the offence punishable under Section 376 IPC, three years' rigorous imprisonment for the offence punishable under Section 363 IPC and five years' rigorous imprisonment for the offence punishable under Section 366 IPC. All the sentences were directed to run concurrently. Aggrieved against the aforesaid order, present appeal was preferred by the accused appellant Bhuwan

Singh.

5. PW 3 Preetam Singh, PW 6 Radholi Devi and PW 11 Smt. Premwati were three witnesses who saw victim last in the company of accused-appellant. They are the most important witnesses, if the prosecution case is to succeed. Let us have a detailed look at the evidence of these witnesses one by one.

6. PW 3 Preetam Singh said in his examination-in-chief that on 11.11.2004 when he was coming from his residence at 6:30 pm, he saw accused-appellant Bhuwan Singh standing outside the house of Lakshman Singh. Bhuwan Singh used to come to his village quite often. Accused-appellant was having victim, aged about 3-4 years, in his lap. Thereafter he was seen taking the victim towards Nakatia river. PW 6 Radholi Devi and PW 11 Premwati also saw the same. Later on he came to know that victim Vandana was missing. Villagers went to the house of accused-appellant Bhuwan Singh who was not found in the village. Lakshman Singh along with PW 3 Preetam Singh made a frantic search for victim but she was not found till night. Next day when they were again searching for victim, they found dead body of victim Vandana in semi-naked condition on the bank of river Nakatia on 12.11.2004 around 8:00 am. Underwear and pajama of her was also found nearby. There was a wound on the cheek of victim. Accused-appellant committed rape with victim and killed her. Informant submitted a report in PS Gadarpur. Police reached on the spot and sealed the dead body of victim. Inquest report was prepared and dead body was sent for post-mortem.

7. In cross-examination, PW 3 Preetam Singh said that two children were playing when he came from market. One of the child was victim Vandana and other was nephew of this witness. He went to the market around 4:00 pm and came back from there at about 5:00 pm. Thereafter he remained in his house. It was a Deepawali day. The night was dark being amawasya. The door of Lakshman Singh opened in the east. His courtyard was also on the eastern side. This witness was asked about the location of the house of Lakshman Singh and he replied the details in his cross-examination. He also said that the children were playing in the kharanja situate in the east of the house of Lakshman Singh. When he was making a search for missing child Lakshman Singh met him around 8:00 pm.

Lakshman Singh was informed about the incident for the first time by Shimlo Devi, his wife. When Lakshman Singh reached his house at 8:00 pm, his wife disclosed about the missing child. When this witness reached Lakshman Singh's house, almost all the villagers had assembled there. Then they again went to make a search for Vandana. When they went to house of Bhuwan Singh to search missing child, accused-appellant was not found at his home. Bhuwan Singh , PW 3 Preetam Singh, PW 6 Radholi Devi, PW 11 Premwati and Jai Singh - all of them belonged to the same caste. This witness saw that victim was in the lap of accused-appellant. This witness did not know what happened thereafter. When they failed to find victim Vandana in the night, they again went to make a search for her in the morning. The dead body was seen for the first time by Lakshman Singh, her father. Then all the villagers reached near the dead body. Lakshman Singh went to police station alone. He proceeded to the police station from the place where the dead body was found. Police Station was situated at a distance of 5-6 kms from this place. When Police came to the spot, this witness along with villagers were there. Police came around 12:00 noon the same day. Police prepared inquest report and then the dead body was sent for post-mortem. The statement of this witness was taken by Police in his house. The other child who was playing with Vandana was Pawan. River Nakatia was situated at a distance of half a km from Lakshman Singh's residence. He had seen Bhuwan Singh taking Vandana. It was natural on his part not to stop accused-appellant from taking victim because he did not apprehend that the accused appellant will commit such a gruesome crime. The victim did not cry when accused-appellant was taking her along with him. He was an independent witness and he said that he had no dispute with Bhuwan Singh before this incident. Accused-appellant was 10 years older than this witness. Accused-appellant was married. This witness denied that he had not seen Vandana last in the company of accused-appellant Bhuwan Singh.

8. Thus nothing has come out in the cross-examination of this witness which may cast any shadow of doubt on his testimony. He did not harbour any grudge against the accused-appellant and hence there was no question of falsely implicating the wrongdoer.

9. PW 6 Radholi Devi said in her examination-in-chief that she knew accused-appellant. While narrating the incident she said that she was in her courtyard around 6:30 pm on the fateful day. Lakshman Singh's daughter Vandana, aged about four years, was playing with other children in front of her house. Accused - appellant Bhuwan Singh came, took Vandana in his lap and proceeded to river Nakatia. A search was made for Vandana in the night but she was not found. Bhuwan Singh was also not found present in the village. The next day dead body of Vandana was found on the bank of river Nakatia. Vandana was in semi-naked position. Her pajama and underwear were lying near the dead body. This witness did not see Bhuwan Singh taking Vandana back.

10. In her cross-examination, she said that Vandana was her neighbour. The house of Lakshman Singh and her house was in front of each other. The children were playing in front of house in kharanja. There was no light when the children were playing. It was dusk. She did not know when Lakshman Singh returned to his house. She knew Bhuwan Singh before this incident took place. He used to visit in the village before this incident also. He took Vandana towards the south of kharanja. There were houses of other persons near kharanja. Lakshman Singh's house is adjoining kharanja. The house of this witness was in front of Lakshman Singh's house. Many a villagers, men and women, approximately 50-100 in number went to search out Vandana in the night and subsequently in the morning. This witness did not go to search Vandana in the morning. She denied that she was telling a lie.

11. The testimony of PW 3 Preetam Singh was corroborated by PW 6 Radholi Devi. Her cross-examination has been reproduced as above. There is not a single sentence which may tend to favour accused-appellant. The witness corroborates that victim was last seen in the company of accused-appellant. There is no reason to disbelieve the testimony of this witness. She had no enmity with accused-appellant. Prosecution case marches ahead. Once the testimony of PW 3 Preetam Singh and PW 6 Radholi Devi was appreciated by this Court, the fate of accused-appellant appears to have been doomed.

12. PW 11 Smt. Premwati in her examination-in-chief further corroborated the testimony of PW 3 Preetam Singh and PW 6 Radholi Devi. She said that about two years' ago (from the date of recording of evidence by the trial court) at 6:00 pm, she saw that Lakshman Singh's daughter Vandana was playing with other children in front of kharanja of her house. Accused-appellant Bhuwan Singh was standing there. She had talks with Bhuwan Singh as he used to come to her house before this incident also. Bhuwan Singh's village was the next village i.e. neighbouring village. Accused-appellant took Vandana in his lap and proceeded towards river Nakatia. When he did that, this witness never thought that such an incident will occur. PW 3 Preetam Singh and PW 6 Radholi Devi also saw victim last in the company of accused-appellant. A search was made for the missing child in the night, but to no avail. She was searched out in the next morning also. Her dead body was found on the bank of river Nakatia in partially naked condition. Bhuwan Singh committed rape with her and also committed gruesome murder of girl child.

13. In cross-examination, PW 11 Premwati said that Vandana was the daughter of her brother-in-law (dewar). A kharanja was situated in front of her house. Kharanja led to river Nakatia. It was the festive occasion of Deepawali. This witness was present in her courtyard when she saw that the children were playing there. PW 3 Preetam Singh and PW 6 Radholi Devi were her neighbours. Vandana did not recognize accused-appellant. Innocent girl child used to accept the lap of all and sundry . The villagers did not go to river Nakatia in the night. The next day they found dead body of Vandana around 8:00 am. This witness denied that she was telling a lie. She also denied the suggestion that underwear and pajama of victim were not recovered by the Police.

14. Thus there is nothing in the cross-examination of this witness which may suggest that her testimony should be ignored or should not be relied upon.

15. P.W.4 Dr. Sanjay Kumar Tripathi, Medical Officer of Jawahar Lal Nehru District Hospital, who was posted on 12.11.2004 in the said hospital in the same capacity at Rudra Pur, conducted autopsy on the dead body of victim Vandana and found the following ante mortem injuries:

- i. Contusion 3 cm x 2 cm present on (right)side of neck 1 cm lateral to larynx box.
- ii. Multiple small abraded contusion 1 x 1 cm to 1 x 1.5 cm on (west) side of neck 2 cm above and lateral to midline. Intramuscular haemorrhage also present.
- iii. Lacerated wound 2 cm x 1.5 cm x 1 cm on (left side of cheek.
 - a. Contusion 5 cm x 5 cm present on labia minora.
 - b. Lacerated wound 2.5 cm x 5 cm x 5 cm present on right lower side of vagina at 7 O' clock position perineal region starting from vagina, where labia minora is also lacerated and extending downward in vaginal canal. Vaginal canal is filled with blood.
 - c. Lacerated wound 1.5 cm x .5 cm x .5 cm present on 4 O' clock position of vagina extending down to anal region also in vaginal canal.
- iv. Lacerated wound upper eyelid 1 cm x .25 cm clotted blood present.

P.W.4 Sanjay Kumar Tripathi proved autopsy report (Ext. Ka-2) and attributed the cause of death to asphyxia and throttling (strangulation). Prosecution story in the form of circumstantial evidence found support from the medical evidence.

16. PW 1 Lakshman Singh was the unfortunate father of the deceased who moved the complaint (Ext. Ka-1) on the basis of which chik FIR (Ext. Ka-10) was lodged on 12.11.2004 at 9:30 am as soon as the dead body of the girl child was recovered. The First Information Report was registered as case crime no. 421 of 2004 for the offences punishable under sections 363, 366, 376, 302 and 201 IPC. The occurrence took place on 11.11.2004 after 6:30 pm, dead body of girl child was found on 12.11.2004 at 9:30 pm, the distance between the place of occurrence and police station was four kms. Thus there was hardly any delay in lodging FIR, rather the FIR was promptly lodged. PW 1 Lakshman Singh proved the contents of the FIR in his examination-in-chief. There appears to be no need to reproduce the same, for that will amount to repetition of the prosecution story. PW 1 Lakshman Singh got the complaint (Ext. Ka-1) scribbled by one Inder Singh. He also said that accused Bhuwan Singh was present before the court and the

underwear and pajama of deceased was recovered near her dead body. In the cross-examination, he said that the incident occurred on Deepawali night when he came back to his home around 7:00 pm. It was dark. His wife told him that Vandana was missing. She was playing near kharanja with other children. He went out with the villagers to search out Vandana but his daughter was not found till night. They returned at 1:00 am. They again proceeded to search out Vandana at 7:00 am. They found the dead body of Vandana on the bank of river Nakatia at 8:00 am. There was injury on her left eye and cheeks. Inder Singh who scribbled complaint was a graduate. Police came to the spot in jeep. PW 6 Radholi Devi had informed him in the night itself that she had seen Bhuwan Singh taking the victim in his lap. The villagers went to search out Bhuwan Singh also. He himself did not go to Bhuwan Singh's house. PW 6 Radholi Devi did not interrupt accused as she never thought that such an incident will occur with her. No inquiry was made from little children because they were too young (hardly capable of fully understanding the things). PW 6 Radholi Devi saw the victim being carried by accused from her residence. Victim did not know the accused. Accused was regular visitor to victim's village. No quarrel took place between Preetam Singh and accused (before this incident). He denied that the accused -appellant was falsely implicated in this case because of quarrel between Preetam Singh and accused.

17. PW 2 Shimlo Devi was the unfortunate mother of deceased. She supported prosecution version. She saw Vandana in the lap of accused. She thought that accused was giving elderly affection to the girl child. She went inside the kitchen but when she came out of the kitchen she found that Vandana was not there. Thereafter PW 3 Preetam Singh, PW 6 Radholi Devi told her that Vandana was being taken by accused in his lap and was going towards Nakatia river. When her husband came back to residence, PW 2 Shimlo Devi told her husband about the same. They made a search for the victim in the night, but to no avail. The next day her dead body was found on the bank of river Nakatia.

18. PW 5 Dr. Anil Chand, pathologist, J.L.N. Hospital was a formal witness who proved his report Ext. Ka-7. PW 7 Lakshman Singh was the witness who proved Ext. Ka-3 whereby the dead body of Vandana was taken by the Police in their possession. PW 8 SI Jagat Singh was the author and signatory to inquest report

(Ext.Ka-40) and was also author of memo (Ext. Ka-3) whereby the dead body of Vandana was taken over and sealed by the police. PW 9 SI Gopal Singh was again a formal witness who proved chik FIR (Ext. Ka-10) and copies of G.D. (Ext. Ka-11 and Ext. Ka-12). PW 10 Jai Singh was also a witness of recovery memo (Ext. Ka-3) whereby the underwear (Ext-1) and pajama (Ext. -2) of the deceased were taken by the Police. PW 12 Gopal Singh Bisht was the witness of recovery memo (Ext. Ka-13) whereby the underwear (Ext. 3) of accused - appellant having spots of semen was taken into their possession by the police and an entry in G.D. (Ext. Ka-14) was made thereof. PW 13 Constable Ashish Sharma was also a signatory to such recovery memo (Ext. Ka-13). PW 14 Inspector Harpal Singh was Investigating Officer of the case who proved site plan (Ext. Ka-15), Report of FSL (Ext. Ka-16) and charge-sheet (Ext. Ka-17) apart from other things.

19. Thus prosecution has adduced three independent witnesses who said that they saw victim last in the company of accused-appellant. The mother of deceased PW 2 Shimlo Devi also saw victim and accused together. The witnesses did not stop accused as they never had in their dreams that such a gruesome murder would take place after committing rape with innocent girl child. When the witnesses saw victim and accused together, they were thinking, as any other sensible, normal and reasonable person would have thought, that accused was giving elderly affection to a child who was playing in his lap. They never thought that there was a demon and a monster would take recourse to such a dirty and foul step in order to satisfy his sexual lust and desire. He was having his own family and children but his sexual lust carried him that far. This event shocked the conscience of this Court. The most unfortunate part was that it was not found to be one of the rarest of the rare case, perhaps because it was a case of circumstantial evidence. Definition of 'rape' as given under Section 375 IPC suggests that the consent, if any, of a girl who is under 16 years was immaterial and penetration was sufficient to constitute the sexual intercourse necessary to the offence of rape. The offences punishable under Sections 302, 376, 363 and 366 IPC are therefore, established against the accused-appellant beyond reasonable doubt. Any prudent man will believe the facts thus brought on record to exist or will consider their existence so probable as to act upon the supposition that they exist. The accused failed to discharge his obligation under section 114 of the Evidence Act. He could

have taken a plea that the girl child jumped to his lap and after few moments she walked down and went to her home. No such plea was taken by the accused-appellant. He simply said that he was falsely implicated because of quarrel with Preetam Singh. This fact of quarrel did not come to the fore on the basis of evidence on record. Learned Amicus Curiae also failed to convince us that accused was 'framed' at the instance of PW 3 Preetam Singh. A prudent person will not be able to countenance as to why last seen evidence should be ignored? There is no reason to fathom that the accused-appellant was falsely trapped on account of non-existing enmity with anybody.

20. Thus, there is no escape for the appellant in as much as prosecution has been able to bring home the guilt of kidnapping, rape and murder against the accused appellant to the hilt.

21. Impugned judgment therefore, does not warrant any interference. The appeal of the appellant Bhuwan Singh is thus dismissed. The judgment and order passed by learned Sessions Judge, Udham Singh Nagar on 02.12.2006 is accordingly affirmed. The conviction and sentence awarded by learned trial court is also affirmed. Accused appellant Bhuwan Singh is in jail. He shall serve out the remaining part of sentence awarded to him by the trial court and thus affirmed by this Court. An information to this effect be given to Superintendent of Jail where appellant Bhuwan Singh is currently serving out the sentence.

Let a copy of this judgment along with lower court record be sent back to the Court concerned for compliance.

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