

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No. 68 of 2002

Prem Singh

..... Appellant.

Versus

State of Uttarakhand

..... Respondent

Mr. Rajendra Kotiyal, Advocate with Ms. Meena Bohara, *Amicus Curiae* for the appellant.

Mr. Amit Bhatt, Addl. Government Advocate for the State / respondent.

Date of Judgment: 30.11.2011

JUDGMENT

Coram: Hon'ble Barin Ghosh, C.J.

Hon'ble U.C. Dhyani, J.

BARIN GHOSH, C.J. (ORAL)

By the judgment and order under appeal, appellant has been convicted for having had committed offence punishable under Section 302 of the Indian Penal Code. Appellant is on bail since 21st March, 2002. In as much as the appellant is on bail, there was no effort made by the appellant to have his appeal heard at an early date. Appellant engaged a number of counsel to argue the case. None of them appeared when the appeal was taken up for consideration. In the circumstances, the Court was constrained to appoint Ms. Meena Bohara as *Amicus Curiae* to argue the case on behalf of the appellant. Ms. Meena Bohara duly discharged her obligations as such *Amicus Curiae*, considered the matter in its true perspective and brought to our notice most relevant factors. In addition to that, Mr. Rajendra Kotiyal, one of the learned counsel engaged by the appellant, also appeared and argue the case. In addition to them, we have also heard learned Additional Government Advocate for the State.

2. It is a case of death of a young married lady, having a child, at the parental home of the lady concerned by administration of poison. The question, that fell for consideration in course of investigation, at the time of framing of charge and at the trial, was, who administered poison?

3. In the First Information Report, which was lodged by the father of the victim, it was alleged that the victim was alone in the parental home of the

victim at the relevant time; husband of the victim came, administered poison to the victim and thereby, killed her and subsequent thereto left the parental home of the victim. The inquest report suggested that in the vicinity of the dead body of the victim, a glass was lying together with a Can containing poison (pesticide). It was also indicated in the inquest report that in addition to those, amongst others, a torn sheet of paper was found, where it was scribbled that, “I have killed the victim by administering poison to her, let me see what you can do.”

4. After investigation was over, a charge sheet was filed, where it was not indicated that the person, accused in the charge sheet, had any motive or *mens rea* to commit murder of the victim by administering poison. The Sessions Judge framed charge under Section 302 of the Indian Penal Code on the basis of the Police report that while the victim was alone in her parental home, the accused – appellant entered the same, administered poison to the victim and killed her. This charge, having been denied by the appellant, trial commenced.

5. As would be evident from the First Information Report as well as the charge sheet, it was nobody’s case that the appellant was an ordinary resident of the house from where the dead body of the victim was recovered. In the circumstances, it was the first and foremost duty of the prosecution, in absence of an eyewitness, to establish presence of the appellant at the parental home of the deceased at the relevant time, in order to start the chain of circumstances to implicate him in the gruesome murder of his wife to the hilt. In that regard, there is evidence of only one prosecution witness. At the time the said witness deposed, she was 11 years old. She deposed having had seen the appellant in and around the parental home of the victim from the roof of the house of the witness. In addition to that, she had said that she had come to depose in Court for three times at the request of her uncle and whatever her uncle told her to say, she had said so. This evidence establishes presence of the appellant outside the parental home of the deceased at the relevant time, but does not establish entry of the appellant in

the parental home of the deceased at the relevant time. The prosecution, therefore, failed even to start the chain of circumstances.

6. The torn sheet of paper, referred to in the inquest report, was tendered in evidence by the Investigating Officer. He, however, did not make any endeavour, in course of his deposition, that he had knowledge of the handwriting of the appellant. Surprisingly, this evidence was not shown to the appellant when he was examined under Section 313 of the Code of Criminal Procedure.

7. The doctor, who conducted the *post mortem*, did not indicate that the victim suffered any external injury. In the autopsy report, he did not indicate the cause of death. In course of evidence, tendered by him to prove autopsy report, he also did not say the cause of death. He stated that the viscera was preserved. It came on evidence that the viscera was sent for chemical analysis and it was reported that the viscera contained poison (pesticide). Therefore, though there may be conclusion that the death was caused by administering poison, but there is no evidence that such poison was administered by the appellant.

8. We, accordingly, conclude the matter and set aside the judgment and order under appeal and acquit the appellant of the charge punishable under Section 302 of the Indian Penal Code. The appellant is on bail; his bail bond is cancelled and the sureties are discharged. He is henceforth a free person.

(U.C. Dhyani, J.)
30.11.2011

(Barin Ghosh, C.J.)
30.11.2011

Amit