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HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No. 53 of 2015

Sunil Singh PanwarAppellant

Versus

State of UttarakhandRespondent

Present:-

Mr. Ashok Drall, Advocate with Ms. Aashi Drall, Advocate for the appellant.

Mr. B.N. Molakhi, Deputy Advocate General for the State.

JUDGMENT

Coram: Hon'ble Ravindra Maithani, J.
Hon'ble Alok Mahra, J.

Per: Hon'ble Ravindra Maithani, J.

Present appeal is preferred against the judgment and order dated 10.02.2015 passed in Sessions Trial No. 02 of 2014, State of Uttarakhand v. Sunil Singh Panwar, by the court of District and Sessions Judge, Uttarkashi. By it, the appellant has been convicted under Section 302 IPC and sentenced to imprisonment for life and a fine of Rs. 25,000/- and in default of payment of fine, to undergo further imprisonment for a period of two years.

2. Briefly stated, the prosecution case is as follows. The deceased Sunita Devi was married to one Balbir Singh Chauhan in the year 2005. They were blessed with a baby boy. But, after two and a half years of marriage, Balbir Singh Chauhan died. The deceased was working in an *Ashram* after the death of her husband. In the year 2010, she was transferred to Bhatwari Branch of the *Ashram*, where she was staying in a rented accommodation, The family members of the deceased Sunita had persuaded her to remarry after the death of

her first husband, but, she was reluctant to it. Finally, on 03.06.2013, the deceased Sunita married to the appellant without informing her family members. At that time, her son was 7-8 years of age. For about two months, the relationship between the deceased and the appellant was cordial, but thereafter, the appellant started beating her and pressurizing her to leave her son. The appellant had also taken the ATM card of the deceased. According to the prosecution, in the late evening of 30.11.2013, the appellant killed his wife, the deceased Sunita in his house by strangulation. A report of the incident, Ex. A1, was lodged by the father of the deceased PW 1 Chait Singh, based on which chik FIR was recorded at Police Station Maneri Bhatwari, Uttarkashi on 01.12.2013 at 05:05 p.m. and Case Crime No. 17 of 2013 under Section 302 IPC was lodged against the appellant. Extract of general diary is Ex. A-11. The postmortem of the deceased was conducted by PW 9 Dr. Amit Gairola on 01.12.2013 at 04:00 p.m. He found the following injuries on the person of the deceased:-

“1. Ligature mark, 7 x 0.5 c.m. present on left side neck starting from mid of neck till left angle of mandible.

2. Ligature mark 4 x 0.5 c.m., two c.m. below left ear lobule extending laterally backward.

3. 5 c.m. gap between above ligature.”

3. According to the doctor, the cause of death is asphyxia due to strangulation.

4. Before postmortem, the inquest of the deceased was conducted on 01.12.2013 in the morning. The inquest report is Ex. A-5. The Investigating Officer conducted the investigation. He prepared a site plan, Ex. A-14. He also took into custody the *Chunni*, which according to the appellant, the deceased had used for hanging. Its memo Ex. A-17 was prepared. After investigation, the charge sheet, Ex. A-20 was submitted against the appellant.

5. On 01.03.2014, charge under Section 302 IPC was framed against the appellant, to which he denied and claimed trial.

6. In order to prove its case, the prosecution examined as many as 15 witnesses, namely, PW 1 Chait Singh, PW 2 Smt. Kung Dei, PW 3 Pravendra Rana, PW 4 Mst. Dhruv Chauhan, PW 5 Smt. Vineeta Rana, PW 6 Smt. Manjeeta *alias* Manju, PW 7 Ambika Prasad Kuriyal, PW 8 Mohan Singh Dobra, PW 9 Dr. Amit Gairola, PW 10 Jagmohan Singh Rawat, PW 11 SI Gajendra Singh Kunwar, PW 12 Savita Das, PW 13 constable Sunil Kumar Jain, PW 14 SI Vijay Bharti and PW 15 SI Manohar Singh.

7. After the prosecution evidence, the appellant was examined under Section 313 of the Code of Criminal Procedure, 1973 (“the Code”). According to him, on the date of incident, the deceased had returned home at 06:13 in the evening and in the meanwhile, the appellant received a phone call from his sister-in-law Manju. While he was still on telephone, the deceased committed suicide in the inner room by hanging herself by using a *Chunni*. The appellant immediately told his sister-in-law Manju that the deceased had committed suicide. He brought the deceased down from the hook, gave her water,

informed police, called a vehicle and took the deceased to hospital, where she was declared brought dead.

8. After having heard the learned counsel for the parties, the court convicted the appellant under Section 302 IPC and sentenced as stated hereinbefore.

9. Heard learned counsel for the parties and perused the record.

10. Learned counsel for the appellant submits that it is not a case under Section 302 IPC. The deceased had committed suicide by hanging. At the time, when the deceased committed suicide, the appellant was talking to PW 6 Smt. Manjita *alias* Manju, his sister-in-law and when he noticed that the deceased had committed suicide, he immediately told PW 6 Manjita *alias* Manju that the deceased had committed suicide; since beginning, the appellant is claiming that the deceased had committed suicide; it is a case of partial hanging; the post mortem report also suggests that it is a case of hanging. He would refer to the statements of the witnesses and the postmortem report to substantiate his arguments. In fact, reference has been made to medical jurisprudence, as well.

11. On the other hand, learned State Counsel submits that it is a case of death by strangulation, which has been stated by the doctor conducting the postmortem and it is so specifically recorded in the postmortem report as well.

12. One of the arguments that has been made on behalf of the appellant is that the appellant was not put all the incriminating

circumstances under Section 313 of the Code so as to give an opportunity to explain the incriminating circumstances against him in the evidence. But, the learned counsel for the appellant submits that at this stage, no purpose would be served if the matter is remanded back for trial at the stage of 313 of the Code because the appellant has been in custody for a long and keeping in view the prejudice, which has been caused to the appellant by not examining him under Section 313 of the Code as per law, in view of the available circumstances, the appellant deserves acquittal.

13. Before the arguments are appreciated, it would be apt to examine what the witnesses have stated.

14. PW 1 Chait Singh is the informant. He is the father of the deceased. He has narrated the entire story. According to him, the deceased was married to one Balbir Singh Chauhan in the year 2005 and they were blessed with a baby boy, who was 7-8 years of age on the date of examination of this witness. Balbir Singh Chauhan died two and a half years of the marriage. The deceased started working in *Bhuwneshwari Mahila Ashram*. In the year 2010, she was transferred to Bhatwari Branch of the *Ashram*, but she was staying in a rented accommodation. According to this witness, the deceased was persuaded by her family members to remarry, but she was not agreeable to it, in view of the future of her son. But, subsequently on 03.06.2013, she married the appellant. Initially, they were fine but two and a half months of their marriage, the deceased started complaining against him. She would submit that the appellant would beat her and would ask her to leave her son Dhruv. This witness also tells that the appellant would come in a drunken state every day. He had also taken

the ATM card of the deceased. On 30.11.2013, at 05:00 in the morning, the deceased had telephoned the wife of this witness. Again, she called in the morning at about 06:00-06:30. She was crying and told that the appellant did *maarpeet* with her. The appellant had blamed that she had stolen his money. The appellant demanded the money from her. The wife of this witness told the deceased that she should come to Uttarkashi but the deceased expressed helplessness saying that she did not have money. The same day, PW 5 Smt. Vineeta Rana, who was sister-in-law of the deceased talked to the deceased and the appellant. The appellant was drunk. He was advised not to do *maarpeet* with the deceased. The deceased had then told that she had already taken another room on rent in Bhatwari and she had left her son with one Asha Didi and in the morning she would shift and would be separate from the appellant. On the same day, at about 9:00-9:30 p.m., PW 6 Smt. Manjita *alias* Manju, sister of the deceased, made a call to her sister-in-law PW 5 Smt. Vineeta Rana and told her that there was a lot of noise in the house of the deceased; she was crying and while PW 6 Smt. Manjita *alias* Manju was talking to the appellant, he suddenly disconnected the phone. Thereafter, the phone did not get through and then the appellant told that the deceased has committed suicide. Thereafter, the brother of the deceased PW 3 Pravendra Rana telephoned the deceased that she should not do anything in the night. Next day morning, they visited the hospital and saw the deceased lying in the hospital, blood was coming out from her mouth and the next day, he lodged a report.

15. PW 2 Smt. Kung Dei is the wife of PW 1 Chait Singh and PW 3 Pravendra Rana, the son of PW 1 Chait Singh, have corroborated the statement of PW 1 Chait Singh.

16. PW 4 Mst. Dhruv Chauhan is the son of the deceased. He has stated that the appellant would misbehave with the deceased; he would beat them. He also tells that before marriage of the deceased, the appellant would love him.

17. PW 6 Smt. Manjita *alias* Manju is the sister of the deceased. She has also corroborated the statement of her father, PW 1 Chait Singh. She has narrated as to what happened on 30.11.2013. According to her, on 30.11.2013, at 06:30 in the morning, the deceased telephoned her and while crying, she told that she has taken a room on rent and she would shift the room; she had already shifted her son. Again, at 08:30 in the evening, the deceased had called her. She responded at about 09:00 p.m. and called at the phone of the appellant. She tried to make the appellant understand that he should not drink. But, the appellant told that the deceased was lying. At the same time, the deceased took the phone from the appellant and told that she was not lying, instead the appellant was lying. In the meanwhile, the deceased and the appellant snatched the phone from each other. The appellant then told this witness to wait for a minute. This witness heard someone crying on the telephone. This witness asked the appellant as to what had happened, but the appellant switched off both his phone and the phone of the deceased. This witness repeatedly called the appellant. After 7-8 minutes, she could get through at the phone of the appellant and questioned him as to why did he switch off the phone and at that time the appellant told

that the deceased has committed suicide. This witness questioned the appellant that no one can commit suicide by hanging in such circumstances. According to PW 6 Smt. Manjita *alias* Manju, the appellant killed the deceased by strangulation. Thereafter, this witness telephoned PW 5 Smt. Vineeta Rana, her sister-in-law. PW 5 Smt. Vineeta Rana has also stated about it.

18. PW 7 Ambika Prasad Kurial was a co-worker of the deceased. He has stated about the remarriage of the deceased and the appellant and the strained relations of the deceased and the appellant.

19. PW 8 Dr. Mohan Singh Dobra is the incharge Medical Officer at PHC Bhatwari. According to him, on 30.11.2013 at 09L15 in the evening, the appellant brought the deceased dead in the hospital, of which the entry was made in the register, Ex. A-2.

20. PW 9 Dr. Amit Gairola had conducted postmortem of the deceased. The injuries detected by him on the person of the deceased have already been noted hereinbefore. This witness has proved the post mortem report. According to him, the cause of death was asphyxia due to strangulation.

21. PW 10 Jagmohan Singh Rawat has simply stated that the deceased wanted to shift in his house. She had inquired from him on 30.11.2013.

22. PW 11 SI Gajendra Singh Kunwar was the Sub Inspector at Police Chowki Bhatwari. After the incident, he had visited the house of the appellant. He has stated that in the two rooms, there were beds and some articles were tied; in the inner room, the articles were

scattered. This witness has proved certain general diary entries about inquest, etc.

23. PW 12 Savita Das has stated about the inquest and forwarding of the dead body for post mortem.

24. PW 13 constable Sunil Kumar Jain has proved the chik FIR and the extract of the general diary entries.

25. PW 14 SI Vijay Bharti had conducted the investigation in the matter. He has stated about the steps taken by him.

26. PW 15 SI Manohar Singh finally conducted the investigation and submitted the charge sheet. He has stated about the steps taken by him during investigation.

27. On behalf of the appellant mainly post mortem report and the sequence of the events have been highlighted. It is argued that the opinion of PW 9 Dr. Amit Gairola is not in accordance with the medical jurisprudence. The post mortem report does not establish that it is a case of strangulation. It is argued that there was blood dribbling out from the mouth, which is a sign of suicide; larynx was not fractured, therefore, it is argued that it rules out strangulation. Eyes were closed, which, it is argued, happens in the case of suicide. It is argued that in order to conclude that the death was due to strangulation, the ligature ought to have been examined, which is not done; the ligature is not complete circle; two ligature marks are possible in case of partial hanging. Learned counsel submits that Ex. A-14, the site plan, proves that it is not a case of strangulation. According to him, the height of the roof is 8 feet 4 inches; the hook on

the roof is 4 inches in length; the height from the bed to the hook is 6 feet three inches and the bed is 1 foot 7 inches in height. It is argued that in such a scenario, when ligature was a *Chunni*, an acrylic material, two ligature marks are possible; there have been no marks of struggle on the place of incident, which also rules out strangulation.

28. The examination of the appellant under Section 313 of the Code has been challenged on the ground that all the incriminating circumstances have not been placed to the appellant. But, as stated, it has also been argued on behalf of the appellant that now this Court may decide the appeal keeping in view the prejudice that has been caused to the appellant by not giving an opportunity to explain all the incriminating circumstances appearing against him in the evidence.

29. Section 313 of the Code is as follows:

“313. Power to examine the accused.—(1) In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court—

- (a) may at any stage, without previously warning the accused put such questions to him as the Court considers necessary;
- (b) shall, after the witnesses for the prosecution have been examined and before he is called on for his defence, question him generally on the case:

Provided that in a summons-case, where the Court has dispensed with the personal attendance of the accused, it may also dispense with his examination under clause (b).

(2) No oath shall be administered to the accused when he is examined under sub-section (1).

(3) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them.

(4) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

(5) The Court may take help of Prosecutor and Defence Counsel in preparing relevant questions which are to be put to the accused and the Court may permit filing of written statement by the accused as sufficient compliance of this section."

30. A bare perusal of it makes it abundantly clear that the accused should be personally given an opportunity to explain the circumstances appearing against him in the evidence.

31. In the instant case, multiple witnesses have stated against the appellant. PW 6 Smt. Manjita *alias* Manju is categorical as to what had happened on the date of incident. She has stated that while she was still talking to the appellant, she heard the cries. She has also stated about snatching of the mobile phone, switching off the mobile phone by the appellant, not only his phone but also the phone of the deceased, and after 7-8 minutes, when he was contacted, he revealed that the deceased had died. This was not put to the appellant.

32. It has been stated by the witnesses that the deceased could not have committed suicide. She was in advanced stage of pregnancy. She wanted to separate from the appellant. She had already taken a room on rent. She had packed her articles. She had already left her son at Asha Didi's house. PW 4 Mst. Dhruv Chauhan, the son of the deceased has also stated that the appellant would quite often beat the deceased and this witness and the deceased had told this witness that she would be coming after taking her articles. It is stated by the witnesses that the deceased was drunk on the date of

incident. These and all other incriminating circumstances were not put to the appellant.

33. In Question 11, the appellant has simply been asked as to whether he has heard the statements of PW 1 Chait Singh, PW 2 Smt. Kung Dei, PW 3 Pravendra Rana, PW 4 Mst. Dhruv Chauhan, PW 5 Smt. Vineeta Rana, PW 6 Smt. Manjita *alias* Manju, PW 7 Ambika Prasad Kuriyal, PW 8 Dr. Mohan Singh Dobra, PW 9 Dr. Amit Gairola, PW 10 Jagmohan Singh Rawat, PW 11 SI Gajendra Singh Kunwar, PW 12 Savita Das, PW 13 constable Sunil Kumar Jain, PW 14 SI Vijay Bharti and PW 15 SI Manohar Singh? What he has to say about it?

34. This question is most complex and vague. The appellant has not been asked to explain the incriminating circumstances that have been stated against him by the witnesses. This is not an examination under Section 313 of the Code of the appellant, in accordance with law.

35. What would be its effect? Should this Court by keeping in mind the prejudice caused to the appellant by not placing to him all the incriminating circumstances that had appeared against him in the evidence, decide the case or should the Court remand the case?

36. In the case of Nar Singh v. State of Haryana, (2015) 1 SCC 496, in a case of offence under Section 302 IPC, the forensic science laboratory report was not put to the appellant. The arguments that were made in the case have been noted in para 6 of the judgment, which are as follows:-

“**6.** contended that none of the circumstances relied upon by the courts below had been established beyond reasonable doubt and those circumstances, either cumulatively or individually, were insufficient to establish the guilt of the accused. The learned Senior Counsel mainly contended that the only incriminating circumstantial evidence against the appellant was Ext. P-12 FSL report and the same was not put to the appellant while he was being questioned under Section 313 of the Criminal Procedure Code. It was submitted that Section 313 CrPC makes it mandatory to put all the incriminating evidence and circumstances to the accused and Ext. P-12 FSL report, which is the basis for conviction of the appellant, has not been put to the accused and non-questioning of the accused as to the vital piece of evidence is fatal to the prosecution case and vitiates the conviction. Reliance was placed upon *State of Punjab v. Hari Singh* [(2009) 4 SCC 200 : (2009) 2 SCC (Cri) 243]”

37. After discussing the law on this point, the Hon’ble Supreme Court summed up the law on this point in para 30 as below:-

“**30.** Whenever a plea of omission to put a question to the accused on vital piece of evidence is raised in the appellate court, courses available to the appellate court can be briefly summarised as under:

30.1. Whenever a plea of non-compliance with Section 313 CrPC is raised, it is within the powers of the appellate court to examine and further examine the convict or the counsel appearing for the accused and the said answers shall be taken into consideration for deciding the matter. If the accused is unable to offer the appellate court any reasonable explanation of such circumstance, the court may assume that the accused has no acceptable explanation to offer.

30.2. In the facts and circumstances of the case, if the appellate court comes to the conclusion that no prejudice was caused or no failure of justice was occasioned, the appellate court will hear and decide the matter upon merits.

30.3. If the appellate court is of the opinion that non-compliance with the provisions of Section 313 CrPC has occasioned or is likely to have occasioned prejudice to the accused, the appellate court may direct retrial from the stage of recording the statements of the accused from the point where the irregularity occurred, that is, from the stage of questioning the accused under Section 313 CrPC and

the trial Judge may be directed to examine the accused afresh and defence witness, if any, and dispose of the matter afresh.

30.4. The appellate court may decline to remit the matter to the trial court for retrial on account of long time already spent in the trial of the case and the period of sentence already undergone by the convict and in the facts and circumstances of the case, may decide the appeal on its own merits, keeping in view the prejudice caused to the accused.”

38. In the instant case, it has been argued that the appellant is in custody for a long, therefore, the matter may not be remanded back to the trial court. Similar argument was raised in the case of Nar Singh (*supra*). The Hon’ble Supreme Court in para 31 and 32 of the judgment observed as follows:-

“**31.** On the question of remitting the matter back to the trial court on the ground of non-compliance with mandatory provisions of Section 313 CrPC, the learned counsel for the appellant contended that in the present case, the accused is in custody for more than eight years and the accused person cannot be kept under trial indefinitely and that the accused has a right to speedy trial. The learned counsel placed reliance upon the judgment of this Court in *Abdul Rehman Antulay v. R.S. Nayak* [(1992) 1 SCC 225 : 1992 SCC (Cri) 93] . In paras 63 and 64 of the said judgment it was held as under : (SCC p. 259)

“63. In *Machander v. State of Hyderabad* [AIR 1955 SC 792 : 1955 Cri LJ 1644] this Court observed that while it is incumbent on the Court to see that no guilty person escapes, it is still more its duty to see that justice is not delayed and accused persons are not indefinitely harassed. The scales, the Court observed, must be held even between the prosecution and the accused. In the facts of that case, the Court refused to order trial on account of the time already spent and other relevant circumstances of that case.

64. In *S. Veerabadran Chettiar v. E.V. Ramaswami Naicker* [AIR 1958 SC 1032 : 1958 Cri LJ 1565] this Court refused to send back proceedings on the ground that already a period of five years has elapsed and it would not be just and proper in the circumstances of the case to continue the

proceedings after such a lapse of time. Similarly, in *Chajoo Ram v. Radhey Shyam* [(1971) 1 SCC 774 : 1971 SCC (Cri) 331] the Court refused to direct a retrial after a period of 10 years having regard to the facts and circumstances of the case. In *State of U.P. v. Kapil Deo Shukla* [(1972) 3 SCC 504 : 1972 SCC (Cri) 597], though the Court found the acquittal of the accused unsustainable, it refused to order a remand or direct a trial after a lapse of 20 years.”

32. While we are of the view that the matter has to be remitted to the trial court for proceeding afresh from the stage of Section 313 CrPC questioning, we are not oblivious of the right of the accused to speedy trial and that the courts are to ensure speedy justice to the accused. While it is incumbent upon the court to see that persons accused of crime must be given a fair trial and get speedy justice, in our view, every reasonable latitude must be given to those who are entrusted with administration of justice. In the facts and circumstances of each case, the court should examine whether remand of the matter to the trial court would amount to indefinite harassment of the accused. When there is omission to put material evidence to the accused in the course of examination under Section 313 CrPC, the prosecution is not guilty of not adducing or suppressing such evidence; it is only the failure on the part of the learned trial court. The victim of the offence or the accused should not suffer for laches or omission of the court. Criminal justice is not one-sided. It has many facets and we have to draw a balance between conflicting rights and duties.”

39. In para 34, in the case of *Nar Singh (supra)*, the Hon’ble Supreme Court further observed as follows:-

“34. In our view, the accused is not entitled to acquittal on the ground of non-compliance with the mandatory provisions of Section 313 CrPC. We agree to some extent that the appellant is prejudiced on account of omission to put the question as to the opinion of the ballistic expert (Ext. P-12) which was relied upon by the trial court as well as by the High Court. The trial court should have been more careful in framing the questions and in ensuring that all material evidence and incriminating circumstances were put to the accused. However, omission on the part of the Court to put questions under Section 313 CrPC cannot enure to the benefit of the accused.”

40. In the instant case, the examination of the appellant under Section 313 of the Code is not in accordance with law. In one question, the appellant was asked as to whether he has heard the statements of all the 15 witnesses and what he has to say? This is most defective examination under Section 313 of the Code. The statements of the prosecution witnesses cannot be read against the appellant. If it is so, and the Court proceeds to decide the case, there remains nothing for decision. Therefore, after considering all the aspects of the matter, we are of the considered opinion that non-compliance of the provisions of Section 313 of the Code may occasion prejudice to the accused. Therefore, the matter should be remanded for retrial from the stage of recording the statement of the appellant from the point where the irregularity occurred i.e. from the stage of questioning the appellant under Section 313 of the Code and the Trial Judge may be directed to examine the appellant afresh and the defence witness, if any, and dispose of the matter afresh.

41. It is true that there is a lot of delay in disposal of this appeal and it infringes upon the right of the appellant to speedy trial. But, in fact, it is an error of the court. It is a failure on the part of the trial court. The victim of the offence or the appellant should not suffer for the latches or omission of the court. As held in the case of Nar Singh (*supra*), "**Criminal justice is not one-sided. It has many facets and we have to draw a balance between conflicting rights and duties**".

42. Accordingly, the matter needs to be remanded back.

43. The conviction of the appellant under Section 302 IPC is set aside. The matter is remanded back to the trial court for proceeding the matter afresh from the stage of recording the statement of the appellant under Section 313 of the Code. The trial court shall examine the appellant afresh under Section 313 of the Code in the light of the observations made in the judgment and in accordance with law. Each incriminating circumstance should be specifically put to the accused and in a separate question, so as to afford him an opportunity to explain. The appellant shall also be given an opportunity to adduce his defence witness, if any. The trial court shall thereafter, accordingly, decide the matter.

44. We request the trial court to expedite the matter and decide the matter, preferably within a period of three months from the date of receipt of this judgment along with the lower court record.

45. Since, we are setting aside the conviction imposed upon the appellant, the appellant is at liberty to move for bail, if he is so advised. If such a bail application is moved, it shall definitely be decided in accordance with law. It is also made clear that we have not expressed any opinion on the merits of the case.

46. The appeal is disposed of as above.

47. Let a copy of this judgment along with lower court record be forwarded to the court concerned for onward compliance.

(Alok Mahra, J.)
07.01.2026

(Ravindra Maithani, J)
07.01.2026