

Himachal Pradesh High Court

Urmila Devi Alias Lata Devi vs State Of Himachal Pradesh on 24 May, 2018

Bench: Honourable Mr. Thakur

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA Cr. Appeal No. 352 of 2008 Date of Decision: 24.5.2018 .

Urmila Devi alias Lata Devi.

...Appellan

Versus

State of Himachal Pradesh.

...Responden

Coram

The Hon'ble Mr. Justice Vivek Singh Thakur, Judge. Whether approved for reporting?1 For the Appellant: Mr.Rajesh Mandhotra, Advocate. For the Respondent: Mr.Shiv Pal Manhans & Ms.Rameeta Kumari, Additional Advocate Generals with Mr.Raju Ram Rahi, Deputy Advocate General.

Vivek Singh Thakur Judge (oral) This appeal has been preferred by appellant Urmila Devi against her conviction vide judgment dated 14.5.2008 passed by learned Sessions Judge, Hamirpur in Sessions Trial No. 14 of 2007, titled State of H.P. Vs. Urmila Devi in case FIR No. 182 of 2006, dated 14.10.2006, registered in Police Station Bhoranj, Tehsil Hamirpur, District Hamirpur, H.P., whereby appellant has been acquitted for charge under Section 302 IPC, but has been convicted under Section 323 IPC.

2. Against acquittal of appellant under Section 302 IPC, State has not preferred any appeal.

3. I have heard learned counsel for the appellant and learned Deputy Advocate General, for the State and also gone through the records.

4. Prosecution case in brief is that on 14.10.2006 at about 1:55 P.M. appellant Urmila Devi had inflicted injuries upon 62 years Vyasa Devi (now deceased), resulting into her death on the spot, during Whether the reporters of the local papers may be allowed to see the Judgment? Yes a quarrel taken place between them. Before death deceased Vyasa Devi had told PW-4 Premi Devi that appellant Urmila had broken her arm.

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5. The incident was informed to the police telephonically by one Sh.Purshotam Singh, son of deceased, stating that his mother has been beaten by appellant Urmila Devi, resulting into her death. The said information was reduced into writing in DDR No. 11 dated 14.10.2006 in Police Station Bhoranj and thereafter police party headed by PW-17 SI Amar Singh rushed to the spot, where statement of PW-3 Sunita Devi, Ex. PW-3/A, was recorded under Section 154 Cr.P.C. and was

sent to the Police Station as a rucka, resulting into registration of FIR Ex. PW-14/B. Thereafter investigation was carried out. During investigation PW-6 Kiran Kumari and PW-10 Anita Devi were medically examined by PW-2 Dr.Lalit Kalia, who issued their MLCs Ex. PW-2/B and Ex. PW-2/C. Appellant Urmila Devi was also medically examined by Dr.Sanjay Ranot, who had issued MLC Ex. DA in this regard. Post mortem of the body of deceased Vyasa Devi was conducted by PW-1 Dr.C.R. Verma, who had opined that Vyasa Devi had expired due to cardiac arrest on account of impact of injury No. 4. Injury No. 4 was contusion 6X4 CM on abdomen in the epigastric region. On completion of investigation, challan was presented in the Court and the case was committed to Sessions Court, where appellant was charged under Section 302 IPC.

6. As per FIR the quarrel started on the date of incident at 12:30 P.M. when appellant Urmila Devi starting abusing PW-3 Sunita Devi and her sister-in-law (Devrani) Tripta, who were whitewashing their new house. Appellant Urmila was asked to desist from abusing, whereupon appellant Urmila started pelting stones from her courtyard targeting them, thereupon both of them went inside the house and on .

hearing their cries their mother-in-law Vyasa Devi (deceased) came out of old house and reached in the gali (narrow passage between the houses) of new house and asked appellant for the reasons to abuse her daughter-in-laws, but Urmila had pelted stones upon her and also beat her with bamboo stick, causing injuries to her. In the meanwhile, PW- 10 Anita came on the spot and tried to save deceased Vyasa Devi, but she also received injuries on her right side of eye and nose. After hearing noise, PW-11 Parkash Chand husband of deceased Vyasa Devi also came on the spot. Thereafter PW-3 Sunita, PW-10 Antia and PW- 11 Parkash Chand picked up injured Vyasa, who had fallen on the ground due to beatings, and brought her to courtyard and lie her on the cot. In the meanwhile, PW-4 Premi Devi also reached on the spot and advised to massage the injured Vyasa Devi, whereupon Urmila Devi came there and said that Vyasa Devi will regain consciousness only on shoe slapping. In the meanwhile Vyasa Devi had expired.

7. Prosecution has examined 17 witnesses to prove its case. PW-3 Sunita, PW-4 Premi Devi, PW-6 Kiran Kumari, PW-10 Anita and PW-11 Parkash Chand have been examined as spot witnesses, who had witnessed either the whole incident or part thereof or had reached on the spot immediately after the incident. All of them, except minor variations regarding arrival on spot, have corroborated the prosecution story by and large and during their cross-examination, nothing material could be elucidated so as to raise doubt about the veracity of testimony of these witnesses. Minor variations are not touching the root of genesis of prosecution story. On the other hand, trend of cross-examination indicates that quarrel between the parties had been admitted by the .

appellant.

8. Though the initial opinion of the doctor, as also reiterated in the Court in his examination-in-chief, was that the deceased has died due to cardiac arrest on account of impact of injury No. 4. However, in cross-examination he had not substantiated the same, but had opined contrary to that by saying that after conducting autopsy on the body of deceased and on seeing the FSL report, I could not form a definite opinion about the cause of death in this case and he also

admitted that it is correct that cardiac arrest can be resulted due to fear and fight and in case of death due to shock, it is not always necessary that there should physical impact. Further injury No. 4 was contusion on the abdomen. Be that it may be. The appellant stands acquitted for the charge under Section 302 IPC and neither State nor anybody else has assailed the said findings.

9. So far as question of causing injuries to deceased Vyasa Devi, attracting the provisions of Section 323 IPC is concerned, the same stands established on record beyond reasonable doubt. As discussed above and hereinafter, the prosecution witnesses have duly corroborated the contents of FIR and also presence of appellant Urmila Devi on the spot and quarrel on the date and time, as alleged by the prosecution, has also been admitted and participation of appellant Urmila in the said quarrel, has also been established on record by the statements of prosecution witnesses as well as by DW-1, Dr. Sanjay Ranaut, who had medically examined Urmila Devi on the date of incident after her arrest and had found superficial injuries on her body.

10. In statement under Section 154 Cr.P.C. Ex. PW-3/A, it is .

case of the complainant party that there was enmity between the family of deceased and the appellant and son of appellant used to blow whistles in the courtyard of complainant party, which had resulted into verbal altercations between the parties, but no suggestion has been put to either of prosecution witnesses in present case that the appellant was implicated falsely on account of previous enmity. In answer to question No. 24 of Section 313 Cr.P.C, appellant had taken plea that they were not in speaking terms with the witnesses for the last 14-15 years and on the date of incident PW-3 Sunita, PW-10 Anita and Tripta were beating her and later on deceased Vyasa Devi also joined them and started giving beatings to her as a result of which deceased fell down and sustained injuries. But sufficient material evidence to substantiate the said plea or to establish probability thereof, has not been brought on record.

11. It is settled law that accused has not to establish his defence beyond reasonable doubt, but the defence of the accused must be probablized from the material on record. In case three women were beating appellant and fourth had also joined them to beat her, then definitely appellant would have received serious injuries on her body, whereas as per her MLC Ex. DA, proved by herself on record, injuries on her body were found to be superficial in nature and in cross- examination of Dr.Sanjay Ranaut, has admitted that it was difficult to rule out the self inflection of those injuries. As per Ex. DA, she was examined at 7:30 P.M. in the evening. Deceased Vyasa Devi had expired on the spot after the incident at about 1:55 P.M. Appellant had not reported to the police or anybody else with regard to beatings .

administered to her by PW-3 Sunita, PW-10 Anita and Tripta or anybody else. Therefore, plea of appellant is not satisfying the preponderance of probability.

12. In view of aforesaid discussion, no ground for interference is made out and therefore, the conviction of the appellant under Section 323 IPC is upheld.

13. At this stage, learned counsel for the appellant submits that the incident is about 12 years old and as evident from the material on record, quarrel had taken place suddenly which was more or less like free fight and the appellant is facing trauma of being convict since 2008 i.e. about 10 years and the appellant, who is simple house wife is also under treatment for her psychiatric problem at Fortis Hospital, Chandigarh placing on record photocopies of treatment thereof, thus lenient view deserves to be taken before relegating her for serving substantial sentence whereas learned Sessions Judge has awarded maximum sentence provided for the offence. It is further submitted that appellant has already remained in custody since 14.10.2006 to 10.11.2006 for about one month and has also deposited the amount of fine imposed upon her before the trial Court at the time of filing the present appeal. 14. Keeping in view the entire facts and circumstances of the case and submissions of learned counsel for the appellant and also incident appeared to have taken place as a result of instant quarrel between the ladies, it would be suffice to impose the sentence for imprisonment upon the appellant for the period she has already undergone during the trial along with fine of `1,000/- which she had already deposited.

15. The appeal is dismissed with modification of sentence awarded to the appellant in the aforesaid terms. Bail bonds discharged. Records of the Court below be immediately sent back.

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24 May, 2018
(KRS)

(Vivek Singh Thakur),
Judge.