

Uma Devi, Vs. the State of Bihar

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Court : Patna

Decided On : Mar-26-2007

Judge : Shiva Kirti Singh and Subash Chandra Jha, JJ.

Acts : Indian Penal Code (IPC) - Sections 120B, 201 and 304B

Appeal No. : Criminal Appeal Nos. 24 and 55 of 2002 (DB)

Appellant : Uma Devi, Dhup Narayan Giri Alias Dhurb Narayan Giri and Shravan Giri

Respondent : The State of Bihar

Advocate for Def. : Ashwini Kr. Sinha, A.P.P.

Advocate for Pet/Ap. : Ranbir Singh, A.C.

Disposition : Appeal dismissed

Judgement :

Shiva Kirti Singh and Subash Chadra Jha, JJ.

1. Both the appeals arise out of the same judgment dated 13th December, 2001 passed in Sessions Trial No. 291/99 by learned 4th Additional District and Sessions Judge, Samastipur, whereby the two appellants of Cr.Appeal No. 24/2002, who are mother-in-law and father-in-law respectively of the deceased,

and sole appellant of the other appeal, who is husband of the deceased, have been convicted under Sections 304B, 201 and 120B of the Indian Penal Code. For the offence under Section 304B I.P.C. the appellants have been awarded R.I. for life, for offence under Section 201 I.P.C. three years R.I. and fine of Rs. 5000/- and in default R.I. for one year and for Section 120B I.P.C. R.I. for three years.

2. The informant of this case, Kailash Giri (P.W.11) is father of the deceased Sanjoo Devi. The prosecution case, in brief, is that on 8.8.1998 at about 12 noon the informant went to matrimonial house of his daughter Sanjoo Devi to bring her to his own house as per programme fixed in advance. He found father-in-law of his daughter wearing traditional dress which is worn by the person who cremates a dead relation. On enquiry, father-in-law disclosed that in the previous night informant's daughter had consumed aldrin poison and died due to the same. When the informant left that place crying, in the way he heard some ladies in front of darwaja of Bholi Giri stating that his daughter had been administered poison and the dead body was thrown in river Gandak. The informant could not know the identity of those ladies. He made enquiries and went to police station where his fardbeyan was recorded by Sub Inspector of Police R.N. Chaudhary, Officer-in-Charge of Bibhutipur P.S. on 8.8.1998 at 17.00 hours at Bibhutipur P.S. In the fardbeyan the informant gave out details how he had paid dowry of Rs. 21,000/- for the marriage of his deceased daughter which had taken place on 18.5.1997. According to his statement, in April, 1998 the deceased was brought to her matrimonial house by her husband behind the back of the informant and at that time Rs. 10,000/- of the agreed dowry was still due. Later the informant made arrangement and paid Rs. 10,000/- to the father-in-law of the deceased but the in-laws and the husband of the deceased were not happy because demand for some furniture and bedding had not been made. It was also disclosed in the fardbeyan that about 15 days earlier his co-villager Mansilal Thakur, who runs a hair-cutting saloon at Sindhiya Ghat Chak, had come to his house and informed him that deceased had given birth to a boy who died within two days. On that issue he had sent his son Babulal Giri (P.W.4) to bring his daughter to his house but the accused persons did not agree and as such a programme was fixed for Shrawani Poonima (the day on which informant went to bring the deceased and learnt about her death). It was also disclosed in the fardbeyan that on coming back from

matrimonial house of the deceased, the son of the informant disclosed that Sanjoo was crying and had complained that for the articles and bedding of second marriage (dwiragaman) she was being tortured by her mother-in-law, father-in-law and the husband and they were asking her to sleep on the floor. The informant alleged that because the articles and bedding etc. were not given for dwiragaman, the deceased had been poisoned to death and her body was thrown in the river Gandak.

3. After institution of Bibhutipur P.S. case No. 126/98 on the basis of aforesaid fardbeyan, the police conducted investigation by going to the place of occurrence and recording statements of witnesses. The major part of the investigation was conducted by S.I. Pradip Kr. Shahi (P.W.13) and the other police officer, S.I. P.K. Mahto (P.W.12) only submitted the chargesheet against the accused persons. They were charged for the offence noticed earlier and pleaded not guilty of the charges. After trial they have been convicted and sentenced as noticed earlier.

4. The defence of the accused which appears from cross examination of material witnesses is that deceased died due to illness, probably tetanus. Thus, the defence is that deceased died natural death and entire prosecution case is false.

5. The prosecution, in order to prove the charges, has examined altogether 13 P.Ws. P.W.1 Sita Devi is mother of the deceased. P.W.2 Munsu Thakur is the saloon owner who only gave message regarding birth and death of child of the deceased, as claimed in the fardbeyan. P.W.3 Maksudan Giri is brother of the informant. P.W.4 Babulal Giri is son of the informant. P.W.5 Md. Hafiz is a witness who supported the informant's claim that the informant asked him to inform about death of the deceased to his family members and he acted accordingly. P.W.4 has supported such claim of P.W.5. P.W.6 Sita Ram Giri, P.W.7 Kapil Giri and P.W.8 Bindeshwari Giri have corroborated the prosecution case only on the basis of hearsay version of the facts narrated to them by the informant P.W.11. P.W.9 Bhuneshwar Rai is a formal witness who has proved fardbeyan as Ext.1. P.W.10 Sita Devi is not material as she has been declared hostile. As noticed earlier, P.W.11 Kailash Giri is the informant and father of the deceased. P.W.12 P.K. Mahto is the second I.O. who submitted chargesheet and P.W.13 S.I. Pradip

Kumar Shahi is the main Investigating Officer who visited place of occurrence and examined the witnesses during investigation.

6. On behalf of defence a formal witness Ram Saran Singh has been examined as D.W.1. He has proved two medical prescriptions in relation to the deceased by one M.B.B.S. Dr. Surendra Mandal. The prescription purporting to be dated 16.7.98 has been marked as Ext.A and the other dated 6.8.98 has been marked as Ext.A/1, Although the doctor has not been examined but the purpose of defence exhibits appears to support the defence plea that the deceased was unwell and died a natural death due to illness.

7. On going through the evidence of prosecution witnesses, particularly that of Sita Devi (P.W.1), mother of the deceased, P.W.4 Babulal Giri, brother of the deceased, and P.W.11 Kailash Giri, the informant and father of the deceased, it is clear that they have fully supported the prosecution case and have succeeded in proving that there was demand of certain articles by way of dowry which could not be given and for that deceased was being tortured. From their evidence it also appears that although both the families are residents of villages which are within the same police station and, therefore, sufficiently closed, even the birth of only child of the deceased was communicated after considerable delay when the child had died for undisclosed reasons. It is also established that the deceased died while in her matrimonial house in the company of the accused appellants within fifteen months of her marriage. It is also proved by these witnesses and also from the statement of P.W.5 that the information regarding death of the deceased was not given to the family members of the deceased, such as her parents and brother and such information came to the knowledge of the information when he visited matrimonial house of his daughter one day after her death, on the day fixed for her going back to her parents house and thereafter he gave information to his family members, such as a son, P.W.4 through Md. Hafiz (P.W.5) whom he met on way to police station in Singhia Bazar.

8. From the trend of cross examination of witnesses it appears that the defence has not disputed the material allegation relating to demand for certain articles by way of dowry, communication of information regarding birth of child after more

than two days when the child had already died and no information regarding death of the deceased being sent to her parents house. It is also not disputed that deceased died within less than one and half years of her marriage in the house of the accused persons and the dead body was disposed of, clearly in unceremonious way in a hurry without giving information to the parents of the deceased.

9. In view of aforesaid proven facts the only defence of the accused persons that the deceased died natural death on account of illness remains to be examined in the light of the two prescriptions, Ext.A and A/1, otherwise the prosecution has successfully established its allegation that the deceased met unnatural death within seven years of her marriage and she was being tortured for failure to provide her in-laws with certain articles by way of dowry. D.W.1 Ram Saran Singh is an Advocate's clerk who has proved the prescriptions of Dr. Surendra Mandal, as Ext.A series. He has admitted that the doctor is alive and he has no knowledge regarding ailment of Sanjoo Devi. A perusal of Ext.A, the prescription purporting to be dated 16.7.98 discloses overwriting on the date at the appropriate place provided for date. A minute perusal discloses that the month has been cut and changed to seven from some other figure and the year 97 has been overwritten to make it looked like 98. At the end of the prescription also the date has been similarly overwritten. Clearly this prescription has no relation with the cause of death of the deceased as no serious ailment like tetanus is mentioned therein and it appears to be a prescription of the year 1997 in connection with ordinary ailment. So far as Ext. A/1 is concerned, that also appears to be prescription of Dr. Surendra Mandal dated 6.8.98 but it bears no signature of the doctor nor the doctor has been examined to prove that the prescription was prepared by him. It further appears from this exhibit that no ailment has been noted by the doctor and only few ordinary medicines for indigestion etc. has been prescribed. This exhibit is also neither reliable nor helps the defence in establishing that deceased died in natural course due to illness. In this regard it is relevant to notice that the I.O. (P.W.13), P.K. Shahi has deposed that he visited the place of occurrence on 8.8.98 and did not find any medicines in the room where the deceased was said to have resided before her death. Thus, it is found that defence raised by the accused persons that the deceased died a natural death has not been established

by any cogent and reliable materials. No villager has come forward to support the defence that the deceased was ill prior to her death or that she was under treatment of any doctor. No evidence has been led to show that information of her death was given to her parents or she was cremated in usual manner, contrary to the prosecution case that her body was thrown in the river Gandak unceremoniously.

10. In view of aforesaid discussions and findings we are of the view that the trial court has rightly convicted three accused persons, the appellants of the various charges under Sections 304B, 201 and 120B I.P.C.

11. Learned Counsel for the appellants has submitted that appellant Uma Devi is a lady aged about 43 years and appellant Dhup Narayan Giri alias Dhurb Narayan Giri, her husband, is aged about 48 years as per the impugned judgment which was rendered in the year 2001. It is further submitted that no material is available, on record to show any specific role played by these persons in the offence and the responsibility of taking care, of the deceased was primarily upon her husband, the appellant Sharvan Giri. Learned Counsel for the appellants has also placed reliance on a judgment of the Supreme Court in the case of Shanti v. State of Haryana, reported in : 1991 CriLJ1713 to show that two lady convicts under Section 304B and some other sections of the Indian Penal Code were awarded minimum sentence of seven years for the offence under Section 304B I.P.C. in view of age, gender and lack of particulars of any specific cruelty on their part in bringing about the death. On careful consideration of above plea in respect of sentence to appellants Uma Devi and Dhup Narayan Giri alias Dhurb Narayan Giri we find ourselves inclined to accept the submission that ends of justice would be met if sentence awarded to these two appellants for the offence under Section 304B I.P.C. is reduced from R.I. for life to R.I. of seven years, As already ordered by the trial court, all the sentences shall run concurrently.

12. With the aforesaid modification in the sentence of appellant Uma Devi and Dhup Narayan Giri alias Dhurb Narayan Giri, both the appeals are dismissed.