

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Criminal Appeal No. 970 of 2001

Bhupendra Ram
S/o Gopal RamAppellant

Versus

StateRespondent

Shri Arvind Vashisth, learned Counsel for the Appellant (Amicus Curiae).
Shri Amit Bhatt, learned A.G.A. for the State.

Date of decision: 28 April, 2005

For the approval of:-

Hon'ble Mr. Justice Irshad Hussain
Hon'ble Mr. Justice Prafulla C. Pant

- Whether the order/judgment should be sent to the
reporters for reporting? (Yes)

- Whether the reporters be allowed to
see the judgment? (Yes)

Reserved

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Criminal Jail Appeal No. 970 of 2001

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S/o Gopal Ram

.....Appellant

Versus

State

.....Respondent

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Corum: Hon Mr. Justice Irshad Hussain
Hon. Mr. Justice Prafulla C. Pant

Per: Hon'ble Prafulla C. Pant, J.

This Criminal Appeal, preferred under Section 374 read with Section 383 of Code of Criminal Procedure, 1973 (herein after for brevity Cr.P.C.), is directed against judgment and order dated 27.09.2000, passed in Sessions Trial No. 61 of 1997, by learned Sessions Judge, Pithoragarh, whereby appellant Bhupendra Ram has been convicted under Section 302 and under Section 201 of Indian Penal Code, 1860 (herein after for brevity I.P.C.) and sentenced to undergo life imprisonment and two years rigorous imprisonment, respectively.

2. I brief, prosecution story is that Smt. Dorpadi Devi (deceased), sister of the complainant Sunder Ram (P.W. 1), was married to appellant Bhupendra Ram of village Dauntha in the year 1991. She was living in her husband's house with her in-laws. During the six years of her matrimonial life, it is alleged by the complainant that she (deceased) used to be harassed for non-

fulfillment of dowry by her husband and mother-in-law. On 02.06.1997, complainant Sunder Ram accompanied his sister Smt. Dorpadi Devi, from house of her parents to the house of her in-laws and when she reached there, her mother-in-law, Saruli Devi (accused acquitted by the trial court), in the presence of the complainant, told the deceased, either she will live or Dropadi alone. After about a month on 01.07.1997, at about 3:00 A.M., Lachhi Ram (P.W. 3) and Jagdeesh Prasad both relatives from the side of husband of deceased, came to complainant and told that a day before at about 8:00 P.M., his sister has hanged herself. On the every day, i.e. on 01.07.1997, complained rushed to the place of in-laws of his sister and saw the body of Dropadi Devi (deceased), lying on the floor. The complainant suspected that husband and mother-in-law of the deceased had committed murder of his sister (present appellant is husband of the deceased). Complainant Sunder Ram, lodged First Information Report (Exh. A-1) on 01.07.1997 itself with Naib Tehsildar, Didihat. Simultaneously, Lachham Ram (P.W. 3) made a report (Exh. A-2) on 01.07.1997 with Patti Patwari, Sandev that Dorpadi Devi, W/o Bhupendra Ram, R/o village Dauntha has committed suicide by hanging herself on 30.06.1997. [In Uttaranchal hills, Patwaris / certain Revenue Officers are empowered with police powers]. Patwari, Sandev, prepared check report (Exh. A-9) on the basis of the F.I.R., lodged by Sunder Ram (brother of the deceased) and registered a crime No. 1 of 1997 against Bhupendra Ram (appellant) and Saruli Devi, mother-in-law of the deceased, under Section 304-B and 498-A of I.P.C. Patwari Diwan Singh (P.W. 4) of Patti Sandev, along with Patwari Shri Ram Prasad (P.W. 6) Patwari Dunakot, proceeded to village Dauntha, where

they prepared inquest report (Exh. A-3) on the very day i.e. on 01.07.1997 and sealed the dead body of Dropadi Devi. They also prepared necessary papers namely, diagram of the dead body (Exh. A-5) and police form No. 13 (Exh. A-7). When Patti Patwari, visited village Dauntha on 01.07.1997, he also prepared a site plan, (Exh. A-10).

3. On 02.07.1997 at about 10:30 A.M. Dr. H.S. Kharayat (P.W. 5), conducted autopsy in District Hospital, Pithoragarh. He, in post-mortem examination report (Exh. A-11), observed that dead body of Dorpadi Devi was brought to him by Pushkar Singh (peon to Patti Patwari Sandev). He further observed that the deceased was aged 22 years. Her whole body was swollen. Blisters present all over the body with peeling of skin. Foul smell present. Scalp hair loosen. Eye-ball shofthen and bulged out. Breast swollen. Mouth open. The Medical Officer observed following ante-mortem injuries on the person of the deceased:-

1. Contusion left side of head (parietal temporal) 10cm x 6cm dark coloured. Cutting shows clotted blood.
2. Contusion right side of the head and face (parietal temporal frontal side) 12cm x 8cm. On cutting clotted blood present around right eye.
3. Ligature mark around neck 32cm x 2cm size. No echymosis and no abrasion around ligature mark. On cutting no blood clots seen.

4. Contusion over both chest ill defined. No blood clot on cutting. Slightly congested.
5. Contusion back of chest midline to both sides of chest 15cm x 10cm. on cutting dark red coloured clotted blood seen.
6. Contusion over pubic symphysis and vulva size 10cm x 6cm. On cutting clotted blood seen.
7. Contusion lateral aspect of left thigh mid part 4cm x 3cm. on cutting blood clot seen.
8. Contusion anterior aspect of right thigh (mid part) 6cm x 4cm. On cutting blood clot seen.
9. Contusion lateral aspect of left leg 5cm x 3cm. On cutting blood clot seen.
10. Contusion lateral aspect right leg 6cm x 4cm. On cutting blood clot seen.

Vulva congested and swollen.

On internal examination, following injuries found in the skull.

1. Horizontal fracture from frontal bone left side to left parietal bone 5cm.
2. V-shaped fracture on frontal bone right side 4cm x 3cm.

Membranes, congested both sides. Both lungs collapsed, dark coloured. Both chambers of heart empty. In the small intestine, small amount of semi-digested food and

gases present. In large intestine, faecal matter and gases present . Cause of the death according to team of doctors was ante-mortem head injury, leading to coma. Doctors also observed that the dead body was about 1 ½ or 2 days old.

4. The investigation was further conducted by Shri sailendra Bhardwaj (P.W. 8), S.H.O., Didihat who after recording the statements of the witnesses, found that instead of offences punishable under Section 304 B and 498 A of I.P.C., offences punishable under Section 302 and under Section 201 of I.P.C. were made out against Smt. Saruli Devi (mother-in-law of the deceased) and Bhupendra Ram (husband of the deceased) and submitted chargesheet against them, before the concerned Magistrate, who after giving necessary copies to the accused, committed the case to the court of Sessions. Learned Sessions Judge, Pithoragarh on 24.02.1998, framed charges under Section 302 and under Section 201 of I.P.C. against both the accused persons. He simultaneously framed alternative/additional charges under Section 304 B and 498 A of I.P.C. against both the accused. The accused persons, including appellant, denied the charges and claimed to be tried. The prosecution got examined P.W. 1 Sunder Ram, complainant (brother of the deceased), P.W. 2 Daulat Ram (father of the deceased), P.W. 3 Lachham Ram, P.W. 4 Deewan Singh (Patwari-Sandev), P.W. 5 Dr. H.S. kharayat (who performed the autopsy with another Dr. H.C. Joshi), P.W. 6 Ram Prasad (Patwari), P.W. 7 Suresh Ram and P.W. 8 Shailesh Bharadwaj (Investigating Officer). The entire oral and documentary evidence was put to the accused persons who alleged the same to be

false. Appellant Bhupendra Ram, at the end of his reply, under Section 313 of Cr.P.C., has stated that he was in the field at the time when he got the information from Suresh Ram (his brother-in-law) that his wife has hanged herself. But no evidence in defence has been given. Learned Sessions Judge after going through the evidence on record and hearing the parties, did not find accused Saruli Devi (mother-in-law of the deceased), guilty of the offence and acquitted her of the charge framed against her. The learned Sessions Judge, relied on the evidence that Saruli Devi lived in a separate house and gave her benefit of doubt. But found Bhupendra Ram guilty of the offence, punishable under Section 302 and under Section 201 I.P.C. and convicted him under the same and sentenced him to life imprisonment under Section 302 and rigorous imprisonment of two years under Section 201 of I.P.C. Aggrieved by the same, Bhupendra Ram has preferred this appeal. However, Bhupendra Ram, was also acquitted from the charge under Section 304 B and 498 A of I.P.C.

5. We heard learned Counsel for the parties and perused the entire evidence on record.

6. P.W. 1 Sunder Ram complainant has stated on oath that his sister Dorpadi Devi (deceased) was married to Bhupendra Ram (appellant) in May, 1991. He further states that after 1 ½ years of marriage, the husband and in-laws of the deceased started beating and harassing her. This witness further states that the husband and in-laws of the deceased were annoyed with her for non-fulfillment of dowry as well as for the reason that she gave birth of two female children but no male child was born to her. However, P.W. 1 Sunder Ram did not clarify

what was the demand of dowry which remained un-fulfilled. As such to that extent, learned Sessions Judge has rightly not found proved the charges under Section 304-B and under Section 498 A of I.P.C. The aforesaid witness further states that on 02.06.1997, when he took his sister (deceased) to her in-laws place, Saruli Devi (mother-in-law of the deceased) asked him to make arrangement for her (sister) else either she (Saruli Devi) will remain alive or Dorpadi Devi (deceased). P.W. 1 Sundar Ram further states that on 01.07.1997, at about 3:00 A.M., Lachhi Ram (P.W. 3) along with Jagdeesh Prasad came to him and told that one day before his sister has hanged herself in a room. This witness has also proved the F.I.R. (Exh. A-1) which he lodged with Naib Tehsildar. P.W. 2 Daulat Ram is father of the deceased, who had corroborated the fact that after he got married his daughter Dropadi to appellant Bhupendra Ram, and whenever she used to come to her parents house, she complained that her husband and in-laws used to beat her, for she could not deliver a male child. This witness has also stated that his daughter used to show injury marks on her person. In the cross examination, this witness says that after 4 years of marriage, Dropadi delivered first female child.

7. P.W. 3 Lachham Ram is the formal witness who has informed the complainant about the death of Smt. Dorpadi Devi (W/o appellant). He has proved inquest report (Exh. A-3) which was prepared before him. P.W. 4 Deewan Singh is Patwari of Sandev who on receiving report of death of Dorpadi Devi, went to the village on 01.07.1997 at 7:00 A.M. This witness has proved the fact that inquest report (Exh. A-3) was prepared by him.

He further says that he also prepared memo (Exh. A-4) of the recovery of pieces of plastic rope from the place of occurrence. This witness further states that he prepared documents (Exh. A 5 to Exh. A 8) necessary for sending the dead body for post-mortem. P.W. 4 Deewan Singh, Patwari, says that the report lodged by Sunder Ram with Naib Tehsildar, reached to him at 3:00 P.M. On its basis, he prepared check report (Exh. A-9) and registered the crime against Saruli Devi and Bupendra Ram. P.W. 5 Dr. H.S. Kharayat who conducted the post-mortem examination along with Dr. H.C. Joshi, has proved the post-mortem report (Exh. A-11). He has narrated the ante-mortem injuries, he found on the dead body. This witness has stated that the injuries received by the deceased could have been caused on her 30.06.1997 at about 8:00 P.M. with the help of 'DANDA' (Rod). In the cross examination, P.W. 5 Dr. H.S. Kharayat has stated that a ligature mark appears to have been caused after the death of the deceased. P.W. 6 Ram Prasad, Patwari who also went to the village Dauntha alias Dungethi has corroborated the evidence adduced by P.W. 4 Deewan Singh, particularly regarding preparation of inquest report (Exh. A-3) and F.I.R. (Exh. A-9). This witness further corroborated the fact of preparation of documents- Exhibits A-5, A-7 and A-10, papers relating to sending the body for post-mortem report by P.W. 4 Deewan Singh.

8. P.W. 8 Shailendra Bharadwaj to whom the investigation was entrusted, states that he recorded the statements of witnesses, before submitting the chargesheet against both the accused. This witness further states that he got recorded the statement under

Section 164 of Cr.P.C. of Suresh Ram (complainant) by the Magistrate.

9. Learned Counsel for appellant argued that the appellant was not in the house when his wife hanged herself as stated by P.W. 7 Suresh Ram. It is pertinent to mention here that P.W. 7 Suresh Ram is brother-in-law of the appellant Bhupendra Ram. This witness has stated that on 30.06.1997 at about 6:30 P.M., appellant Bhupendra Ram called him from his house for his assistance in planting the paddy. On this, both of them went for planting paddy. However, he says that he returned to Bhupendra Ram's house, leaving him in the field. He further says that he went in the second floor of the house, he saw that Dorpadi Devi is hanging from a wooden beam. This witness says that he cut the rope, on which Dorpadi Devi fell down on the earthen floor. The statement of this witness is not reliable and it appears that he is trying to shield his brother-in-law Bhupendra Ram (appellant) by stating that he left Bhupendra Ram in the field. It is hard to believe that at 8:00 P.M. in the night he will leave his brother-in-law in the field and would go all alone to the second floor of the house of appellant without specific reason. It is a matter of common knowledge that planting of paddy cannot start in the evening that too by two persons, as it takes time to prepare field by watering it and then plantation is done. Infact this witness should have been declared hostile by the prosecution as from no corner this witness, supports it. In the cross examination, P.W. 7 Suresh Ram states that after he cut the rope and when Dorpadi Devi fell down on the floor, there was no mark of injury on her person. This statement of the witness is bundle of lies in

view of the post-mortem report (Exh. A-11) in which as many as 10 ante-mortem injuries on external examination were found.

10. Shri Arvind Vashistha, amicus curiae for appellant contended that the appellant is innocent. But the statement of P.W. 1 Sundar Ram and P.W. 2 Daulat Ram cannot be said to be un-trustworthy. Appellant Bhupendra Ram has admitted in reply to the question No. 1 and 2 put to him under Section 313 of Cr.P.C. that he was married to the deceased. In reply to the question No. 6 put to him under said Section, the appellant has accepted that he used to live with the deceased in his house. The evidence adduced by the prosecution, needs to be read in the light of the aforesaid reply given by the appellant. Once it is found established that deceased was wife of the appellant who used to live with him and her dead body was found in his house, the defence should have explained the ante-mortem injuries found in the body of the deceased which was the cause of her death. Appellant Bhupendra Ram at the end of his statement under Section 313 of the Cr.P.C. stated that he along with his mother was in the field at the time when he received the information that his wife has died by hanging herself. It is hard to believe that at 8:00 P.M. the appellant was in his field. It is matter of common knowledge that plantation of paddy cannot be done in darkness that too all alone.

11. In view of the above discussion, we see no error in the findings of the learned trial court in coming to the conclusion that from the evidence on record, the charges under Section 302 and under Section 201 of the I.P.C.

were found to be established against the appellant Bhupendra Ram. The husband is the most natural person who is supposed to be with his wife in the odd hours in his house. It is also established on the record that appellant caused disappearance of evidence of commission of murder, by giving it a twist of hanging after causing death of Dorpadi Devi. We are in agreement with the conviction and order of sentence passed by the learned trial court.

12. In the circumstances, we see no reason to interfere with the impugned judgment and order dated 27.09.2000, passed by learned Sessions Judge, Pithoragarh. In our opinion the appeal is liable to be dismissed. The appeal is dismissed.

(Prafulla C. Pant, J.)

(Irshad Hussain, J.)

Dt: 28 April, 2005

Sweta