
(2007) 04 PAT CK 0118
In the Patna High Court

Raju Gupta

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 03-04-2007

Acts Referred:

Evidence Act, 1872 — Section 106

Penal Code, 1860 (IPC) — Section 201, 302, 304, 304B, 306

Citation : (2008) 1 DMC 497

Hon'ble Judges : Subash Chandra Jha, J; Shiva Kirti Singh, J

Bench : Division Bench

Judgement

Shiva Kirti Singh, J.—Both the appeals arise out of same judgment, therefore, they have been heard together and shall be governed by this common judgment.

2. Originally there were two appellants in Criminal Appeal No. 245 of 2002 but on account of death of appellant No. 1. Saraswati Devi, during the pendency of this appeal, her appeal has already abetted as recorded in the order dated 14.3.2007. Now the sole appellant in this appeal is Raju Gupta who is younger brother of sole appellant in the other appeal. Uma Shankar Gupta. By the impugned judgment and order dated 22.4.2002 passed by learned 7th Addl. Sessions Judge, Gaya in Sessions Trial No. 9/2000/52/ 2000 both the appellants have been convicted for the charge u/s 302/34 of the Indian Penal Code (IPC) for which they have been awarded rigorous imprisonment for life and a fine of Rs. 5000 each and in default further rigorous imprisonment for one year. They have been further convicted u/s 498A/34 of the IPC and sentenced to rigorous imprisonment for four years. They have also been convicted under Sections 201 /34 of the IPC and sentenced to rigorous imprisonment for two years. All the sentences are to run concurrently. However, the accused persons were acquitted of charge u/s 304B of the IPC.

3. PW 4 Jagarnath Prasad Gupta is father of the deceased Manju Kumari Gupta who was wife of appellant Uma Shankar Gupta. He lodged Gaya Civil Lines P.S. Case No. 108 of 1999 on 11.5.1999 through a written complaint against the

appellants and their mother Saraswati Devi alleging that he had married Manju Kumari Gupta to Uma Shankar Gupta in April, 1993. After marriage the girl went to her matrimonial house and stayed there but she used to come to her parents house also. She had a three years old daughter. Soon after the marriage there was a demand for colour T.V. although earlier gold ornaments and household articles had been given in dowry. In April, 1999 Manju Kumari Gupta had gone from her parents house to her matrimonial home. One Sanjay Kumar Gupta (PW 7) son of brother-in-law (sala) of the informant had gone to his mousi Kari Devi's house situated in the same Mohalla Bishnupad in the town of Gaya where the house of the appellant is situated. On returning from Kari Devi's house to Daud Nagar, Sanjay Kumar Gupta informed Manoj Kumar Gupta (PW 5) son of the informant that Manju Kumari Gupta and her daughter Reshma Gupta had been murdered while Manju Kumari Gupta was in her sasural (matrimonial house). On this Manoj Kumar Gupta (PW 5) came to Orissa where the informant resides and works and informed him on 8.5.1999. The informant with his nephew Yugal Prasad Gupta (PW 6) came to Gaya and went to her daughter's house and found the same locked. He then went to shop of his son-in-law and there he met one Jagarnath Prasad Gupta, brother-in-law of appellant Uma Shankar Gupta who on interrogation stated that Uma Shankar Gupta the appellant and his family members had gone away after locking the house without disclosing anything. The informant made inquiry from neighbours and came to know that the appellants and their mother Saraswati Devi had killed informant's daughter Manju Kumari Gupta and her three years old daughter and to hide the offence they had burnt the dead bodies on 3.5.1999. He alleged that the murder was committed on account of dowry.

4. After completing investigation police submitted charge-sheet against the accused persons. After cognizance and commitment to the Court of Session charges were framed against the accused persons under Sections 302/34, 498A/34, 304B and 201/34 of the IPC against all the accused persons. They pleaded not guilty and were put on trial leading to their conviction as noticed above.

5. In order to prove the charges, prosecution examined altogether 7 PWs, out of which PW1 Krishna Prasad, PW2 Kanhai Sao and PW3 Laxmi Sao turned hostile and did not support the prosecution case. The remaining four PWs i.e. PW 4 Jagarnath Prasad Gupta, informant, his son Manoj Kumar Gupta (PW 5), his nephew Yugal Prasad Gupta (PW 6) and his sola's son Sanjay Kumar Gupta (PW 7) have supported the prosecution case and on that basis the Trial Court convicted the accused persons including the two appellants. The prosecution has also proved the Fardbeyan, the formal FIR and case diary-as Exhibits 1, 2 and 3 respectively.

6. Besides claiming to be innocent, the accused persons took specific defence that marriage was solemnized in the year 1991 i.e. more than 7 years earlier to the alleged date of occurrence, hence no offence could be made out u/s 304B of

the Indian Penal Code. They also examined three defence witnesses and brought on record some documents which have been marked as Exhibits A-A/1, B, C and D, DW1 Dr. Chitranjan Sharma claims to have issued death certificates Exhibits A and A/1 in respect of deceased Manju Kumari Gupta and her daughter Reshma Gupta to support the defence plea that the deceased persons died on account of sun stroke. DW 2, Kishore Prasad Gupta and DW 3 Raja Ram Pandey have been examined to support the defence plea that deceased was married to Uma Shankar Gupta prior to 1993 because in a deposit scheme of a private company her name had been given as a nominee and the account had been opened in the year 1992. DW 3 is a formal witness who has proved a postal receipt as Ext. D to show that after four days of the occurrence, on 7.5.1999 Uma Shankar Gupta gave information of the occurrence to his in-laws through a registered letter.

7. The learned Trial Court has accepted the defence case that the marriage was solemnised more than 7 years prior to the alleged occurrence and on that basis it has acquitted the accused persons of the charge u/s 304B of the Indian Penal Code. That part of the impugned judgment has not been challenged in any appeal or revision by the State or the informant and, therefore, now the evidence on record has to be examined only in the light of submissions advanced on behalf of the appellants that the prosecution has not been able to substantiate the allegation of torture so as to prove charge u/s 498A of the IPC and there being no eyewitness of the alleged occurrence and motive not established, the charge under Sections 302/34 of the IPC should not have been accepted as proved. On this basis, it has been submitted that since here was no sufficient material for proving the charge u/s 302, IPC, the charge u/s 201, IPC, for destroying evidence of the crime by disposal of the dead bodies should also be held as not proved. On the other hand, learned Counsel for the State has submitted that circumstances proved by the prosecution witnesses are sufficient to sustain the conviction of the appellants as held by the learned Trial Court and hence no interference is required with the impugned judgment and order. On behalf of State reliance has been placed upon a judgment of the Supreme Court in the case of Trimukh Maroti Kirkan v. State of Maharashtra reported in II (2006) DMC 757 (SC) : IV (2006) CCR 169 (SC) : (2007) 1 SCC (Cri.) 80.

8. PWs 1, 2 and 3 are neighbours of the appellants. They have been declared hostile because in Court they deposed in favour of the accused persons by claiming that wife and daughter of Uma Shankar Gupta died due to sun stroke. No reliance can be placed on their deposition as they appear to have been gained over.

9. The evidence of the informant, PW 4 Jagarnath Prasad Gupta is to the effect that his daughter Manju Kumari Gupta was married with Uma Shankar Gupta, the accused in 1993. She has a three years old daughter Reshma. After marriage the accused persons made a demand for colour T.V. and started torturing his daughter. He had given sufficient dowry at the time of marriage. Manju had come to his house in September, 1998 but returned to her sasural. On 25.4.1999 his

son had gone to Gaya. He had gone in connection with marriage of his sala (brother-in-law). His daughter was quiet and did not say anything. The accused persons assured that she and her husband would come by 30th to attend the marriage but they did not come. PW 7 Sanjay Kumar Gupta informed that Manju Kumari Gupta and her daughter had been killed and their dead bodies had been burnt. On getting information he left Orissa on 9.5.1999. He went to the house of the accused persons with his nephew, Yugal Prasad Gupta (PW 6) but found the house locked. Then he lodged report with the police at Civil Lines Police Station, Gaya. When the police went to the shop of Uma Shankar Gupta, there one Jagarnath Gupta informed that as requested he was at the shop and the accused persons had gone away somewhere. He went with the police to the house of the accused persons which was found to be locked. The police brought Jagarnath Gupta to police station and recorded informant's further statement. People in the neighbourhood disclosed that Manju Kumari Gupta and her daughter Reshma had been strangled and thereafter burnt in the morning hours of 3.5.1999. He proved his report as Exhibit 1. He failed to give the date of marriage. He disclosed that demand for T.V. was disclosed by her daughter 3 years prior to the occurrence. He has stated that Manju's child was born at his place and after that she went back and did not come to his house. According to him accused persons had another house also. He disclosed that with family he lives at Orissa where he has a kirana shop. He has a kirana shop at his home also. There was a marriage on 6th and Tilak had been performed on 30th. He denied that his daughter and grand-daughter were ill or had suffered from sun stroke. He denied to have received any information either of death or of illness from the accused persons.

10. PW 5, Manoj Kumar Gupta has supported the prosecution case and has disclosed that on 7.5.1999 he has gone to Daudnagar in connection with marriage of his sola and there he was informed by his cousin, Sanjay Kumar Gupta (PW 7) that accused persons had killed his sister and her daughter by strangulation and had burnt the dead bodies. He rushed to Orissa and informed his father thereupon his father (PW 4) and Yugal Prasad Gupta (PW 6) went to Gaya and lodged the case. He has also admitted that accused persons have two houses at Gaya. He had invited his sister and brother-in-law for the marriage and was surprised that they did not come nor inform him by telephone. He deposed that nobody had informed that his sister had died due to illness. He asserted that the accused persons had been demanding a colour T.V.

11. PW 6, Yugal Prasad Gupta is a nephew of the informant and has supported the prosecution case that Manoj Kumar Gupta (PW 5) came to Orissa and informed about the occurrence whereupon he accompanied the informant to Gaya. On reaching Gaya, on 11.5.1999 they went to house of the accused persons and found it locked. Her neighbours disclosed that Manju Kumari Gupta and her daughter have been killed by her in-laws and burnt on 3.5.1999. He proved his signature on the FIR and stated that the written report is in his hand-writing. He has stated that he had never heard about illness of the deceased.

12. PW 7 Sanjay Kumar Gupta is son of sala (brother-in-law) of the informant. He has not claimed any personal knowledge of the case except that he received information of death of Manju and her daughter from Karvi Devi on telephone and then he went to Daudnagar where Manoj had come for marriage. After informing him he went back to his house.

13. As noticed earlier three witnesses have been examined on behalf of the defence. These witnesses or the documents proved by them were not produced before the police during investigation. On going through the evidence of Dr. Chitranjan Sharma DW 1 and death certificates issued by him contained in Exhibits A and A/1 it is found that the Trial Court has rightly disbelieved this witness and the death certificates appear to have been procured for some consideration and do not inspire confidence. There is no medical prescription or other evidence to show that the two deceased became ill due to sun stroke and were treated by any doctor. This DW1 has mentioned in the death certificate that he found Manju Kumari Gupta dead on 3.5.1999 at 2 p.m. in her residence and on medical and clinical finding he found the cause of death to be sun stroke, diarrhoea, vomiting, shock and dehydration. Without any basis he has mentioned in the certificate that medicines and transfusion was given to her at the time of illness when there is no certification of treatment or any prescription. Similar is the position in respect of death certificate of Reshma aged 3 years. He claims to have found her dead in her residence on 3.5.1999 at 4 p.m. The defence case death of Manju as well as her daughter on the same day by some illness and without hospitalisation or proper treatment available in the developed town of Gaya, in the facts of this case, does not merit acceptance.

14. DW 2, Kishore Prasad Gupta has proved Ex. B, a receipt in respect of a claim that since 1992 accused Uma Shankar Gupta had opened an account of deposit in a Private Finance Company namely Parrot Finance Investment Company Ltd. and Manju Kumari Gupta was a nominee. He has claimed that he is neighbour and the two deceased died due to illness. DW 3, Rajaram Pandey has proved a postal receipt as Ext. D in support of the plea that by a registered post Uma Shankar Gupta informed his in-laws about death of his wife and child on 7.5.1999, DW 2 is no longer relevant on account of acquittal of the accused u/s 304B of the IPC on a finding that marriage was solemnised more than 7 years prior to the occurrence. So far as sending of information of death four days after the occurrence by registered post is concerned, it does not help accused persons rather it shows that they had kept the information of death concealed for at least four days after the occurrence. When somehow the matter leaked through a relation of the informant, Kari Devi and Sanjay Kumar Gupta (PW 7) then a registered letter might have been sent with a view to create defence. But Ext. D in fact supports the prosecution claim that occurrence was suppressed and evidence was destroyed before sending information through registered post when undisputedly the home of the informant is situated in the neighbouring district of Aurangabad where also he has a kirana shop.

15. On careful consideration of the entire evidence discussed earlier the following facts and circumstances appear to have been established and proved:

(1) Manju Kumari Gupta and her daughter Reshma aged about 3 years died together under mysterious circumstances while living inside the house of the accused/appellants.

(2) No information of such death was given to parents and close relations of the deceased and particularly to the parents and family members of Manju Kumari Gupta.

(3) When the informant along with his nephew went to the residence of accused persons on 11.5.1999 immediately on coming from Orissa, the house of the accused persons was locked and they had run away without giving any information even to their relations.

(4) After lodging the case on the same date i.e. 11.5.1999 the informant again went to the house of the accused persons along with police and house was found locked.

(5) The special facts in the knowledge of the accused persons regarding two deaths inside the house was not disclosed by them to the informant or to the police during investigation.

(6) The defence of the accused during trial regarding death of the two deceased being natural due to sun stroke and illness is unreliable and not worth acceptance.

16. On the basis of aforesaid facts and circumstances it can safely be held that the two deceased met with unnatural death on 3.5.1999 while they were residing with the accused persons. The accused persons destroyed the evidence of unnatural death by disposing of the dead bodies hurriedly without information to close relations of the deceased and the police. They were keen to suppress the truth and in that process they locked their house and fled away to undisclosed destination. In these facts and circumstances, the principles governing conviction on the basis of circumstantial evidence, particularly when defence taken by the accused regarding natural death due to heat-stroke has failed, as laid down in the case of Trimukh Maroti Kirkan (*supra*) are applicable. The State Counsel has rightly relied on that judgment of the Supreme Court.

17. Now it has to be seen whether in absence of any eye-witness account as to how and in what manner the two deceased suffered unnatural death and in absence of any motive for murder, particularly in respect of a 3 years old daughter of appellant, Uma Shankar Gupta, the appellants deserve to be convicted for the offence under Sections 302/34 of the IPC, i.e. for murder or they deserve to be convicted for being responsible for causing or abetting unnatural death not amounting to culpable homicide punishable under Sections 304/34 or for abetting suicide punishable u/s 306 of the IPC.

18. In respect of aforesaid important issue any decision must rest only on broad circumstances and probabilities, of course, based upon materials on record. Had the death been only of Manju Kumari Gupta, wife of appellant Uma Shankar Gupta, in view of evidence on record conviction under Sections 302/34, IPC could have been confirmed in view of allegation by father and brother of the deceased that since long there was a demand for colour T.V. and Manju was being harassed for fulfilling such dowry demand. But the death of an innocent 3 years old daughter of appellant Uma Shankar Gupta in absence of any material that he was having any affair and design of marrying some other lady, raises a serious doubt whether the unnatural death of the two deceased was homicidal or suicidal. A circumstance appearing from evidence of PWs 4, 5 and 6 is that there was Tilak and marriage ceremony of brother-in-law of Manoj Kumar Gupta (PW 5) and in connection with the same the deceased Manju Kumari Gupta and her husband had assured PW 5 that they would attend the marriage and reach at the required place by 30th April, 1999, PW 5 has stated that he was surprised when they did not come on 30th or even for the marriage on 6th May, nor there was any explanation or information through telephone. This incident assumes significance because apparently Manju Kumari Gupta must be keen to participate in the marriage of brother-in-law of her own brother and apparently she could not go on 30th April due to some reason such as wishes of her husband and/or other relations of the husband which could not be communicated to PW 5. In such circumstances in 3 days between 30th April till 3rd May when the occurrence took place, there is distinct possibility of such immense torture to the deceased Manju Kumari Gupta that she took the extreme step of ending her own life along with life of her 3 years daughter. The possibility of homicidal death also cannot be totally ruled out but as indicated above no account of death of innocent daughter of appellant Uma Shankar Gupta in the same occurrence, that probability appears to be doubtful and benefit of doubt must go to the accused persons. Hence out of the two possibilities available on the basis of materials on record it is proper to take a view which is more probable, reasonable and which ensures that as per established norms of criminal jurisprudence benefit of doubt, if available, should go to the accused persons.

19. Hence, it appears necessary to modify the conviction of the appellant Uma Shankar Gupta from one under Sections 302/34 of the IPC to that under Sections 306/34 of the IPC. Being the husband of Manju Kumari Gupta the deceased, Uma Shankar Gupta was in a special relationship and in a position to know the relevant facts which led to the two unnatural deaths and also reasons for the same. He having failed to discharge such burden enjoined upon him by virtue of Section 106 of the Evidence Act, has to suffer the consequences of adverse inference against him. But special knowledge in respect of a woman married for more than 7 years cannot be presumed in respect of other relations of the husband and hence the charge under Sections 302/34, IPC must fail in respect of appellant Raju Gupta, a brother of Uma Shankar Gupta. For the same reasons he cannot be safely convicted even for offence u/s 306 of the IPC.

20. In view of the aforesaid discussions the conviction of appellant Uma Shankar Gupta u/s 498A requires no interference because Manju Kumari Gupta could not have taken the extreme step of ending not only her life but that of her 3 years old daughter unless she was subjected to cruelty and torture by her husband who has, as noticed above, failed in discharging the burden of proving facts within his special knowledge. But the other appellant Raju Gupta deserves to be acquitted of this charge also because of the reasons indicated earlier. So far as conviction under Sections 201/34 of the IPC is concerned, the materials on record clearly suggest that the dead bodies of the two deceased Manju Kumari Gupta and her daughter Reshma who had met with unnatural death, were disposed of by the accused persons without any information to the parents and other close relations of the deceased and to the police. This was clearly with a view to destroy the evidence of offence leading to unnatural death of the two deceased. We find no good reason to interfere with the conviction of both the accused/appellants under Sections 201/34 of the IPC.

21. As a result of aforesaid discussions and findings conviction of both the appellants under Sections 201/34 of the IPC and the sentence of two years rigorous imprisonment for that offence is confirmed. Appellant Raju Gupta is acquitted of charges under Sections 302/34, IPC, as well as Section 498A, IPC. Conviction of appellant Uma Shankar Gupta under Sections 302/34, IPC is converted to conviction u/s 306, IPC. He is also found guilty of offence u/s 498A, IPC and is convicted accordingly. For that the sentence of four years R.I. as awarded by the Trial Court is maintained. For deciding appropriate sentence for the offence u/s 306, IPC to appellant Uma Shankar Gupta it is noticed that he has remained in jail custody in total for about 5 years. Considering all the facts and circumstances he is sentenced to undergo R.I. for 8 years for the offence u/s 306, IPC. His sentences shall run concurrently.

22. From the records it appears that appellant Raju Gupta has remained in custody for more than two years whereas he has been sentenced only to 2 years R.I. for the offence under Sections 201/34, IPC. In that view of the matter and since he is on bail he is discharged from the liabilities of the bail bonds. Appellant Uma Shankar Gupta is also on bail. His bail bonds are cancelled. He is directed to be taken into custody forthwith to serve out the remaining sentence in accordance with law. As a result both the appeals succeed in part as indicated above.

Subash Chandra Jha, J.

23. I agree. Appeals allowed in part.