

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1169 OF 2007

DIWANI RAM & ANR.

.. APPELLANT(S)

vs.

STATE OF UTTARAKHAND

.. RESPONDENT(S)

O R D E R



This appeal by way of special leave arises out of the following facts:

Sati Devi-deceased, daughter of Bachhu Das PW.1 was married with Diwani Ram son of Gaphloo Das and Rukmani Devi. At about 2.00 on 13th June, 1999, Gaphloo Das came to Bachhu Das's house and told him that Sati Devi had gone to the jungle to collect grass but had not returned home thereafter and he had suspected that she may have gone to his

home. Bachhu Das replied that Sati Devi had not come to his house. At about 10-11 a.m. the very next day Gaphloo Das again came to Bachhu Das's house and accused him of having hidden Sati Devi on which the latter again denied that she had come to his home and on the contrary expressed his surprise to know that she had been missing from her matrimonial home. Bachhu Das and others thereafter made a search for Sati Devi but without success. As he suspected that something amiss had happened to Sati Devi, he reported the matter to the Sub-Divisional



Magistrate, Chamoli, and also filed an application on 20th June, 1989 before the Gram

Sabhapati, Ustoli. When the Revenue police still did not proceed with the investigation despite the two applications aforesaid Bachhu Das filed yet

another application on 28th June, 1989 before the District Magistrate, Chamoli in which he alleged that the dead body of Sati Devi, his daughter, had been recovered on 24th June, 1989 from the Nandakani river but in spite of this information having been conveyed to the local Patwari no action had been taken by him. The District Magistrate then ordered the necessary investigation which was made by the Supervisor Kanoongo, who was the Investigating Officer, and who in due course filed a charge-sheet before the Court arraying Sati Devi's husband Diwani Ram and her



in-laws Gaphloo Ram aand Rukmani Devi as the accused. The matter was, thereafter, remitted to the Sessions Court in respect of offences punishable under Section 302/34 IPC and Section 498-A and 201 of the IPC, and as the accused appellants denied their involvement, the matter was brought for trial.

The trial Court relying on the evidence of PW.1 Bachhu Das, the father of the deceased, PW-5 Budi Das who had allegedly seen the dead body being thrown into the Nandakani river by the three appellants on the

13th June, 1989 and Jalmi Das PW.6 grand-father of the deceased who

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had given an application with regard to her having disappeared and duly



corroborated by the evidence of PW.4, Dr. Vinod Kumar who had conducted the post mortem and opined that the death had been caused by a blunt weapon injury on the head and not by drowning convicted the appellants for the offences for which they had been charged. The matter was, thereafter, taken in appeal before the High Court of Uttarakhand at Nainital. The High Court in its judgment dated 25th April, 2007 allowed the appeal qua the offence under Sec.498A of the IPC holding that no demand for dowry had been made but relying on the evidence

affirmed the conviction and sentence with respect to the other offences. It appears that before an SLP could be filed in this Court, Rukmani Devi passed away and the present appeal is thus at the instance of Gaphloo Das, the father-in-law of the deceased, Diwani Ram, her husband.

Mr. Vishwajit Singh, the learned counsel for the appellants has raised three arguments during the course of hearing. He has first pointed out that as per the prosecution story the factum of the improper pregnancy of Sati Devi which was said to be the motive for the murder had



statedly been the subject matter of discussion in the Panchayat, but as no member of the Panchayat had been produced as a witness, some doubt had been caused on the

story. It has further been pointed out that as the appellants had been acquitted for the offence under Sec.498A of IPC a doubt had been caused as to this part of the motive as well. It has finally been submitted that Budhi Das PW.5 who had seen the accused throwing the body into the Nandakini River on 13th June, 1989 was a person with weak eye-sight and, therefore, unable to see properly in the dark and as his statement under Sec.161 of the Cr.P.C. had been recorded some two months after the



alleged murder, no credence could be attached thereto.

Mr. Sunil Kumar Singh, the learned counsel for the respondent-State has, however, supported the judgment of the Courts below.

We have heard the learned counsel for the parties. We find from the record, and it is so admitted, that Sati Devi was pregnant at the time of her death. Bachhu Das PW.1 deposed that suspicion had been raised in Sati Devi's in-laws family that the child had not been conceived from Diwani Ram, her husband, and the pregnancy was, therefore, unwarranted.

The fact that Sati Devi was indeed pregnant has been borne out by the evidence of PW.4 Dr. Vinod Kumar who had conducted the post mortem and had found a 32 weeks old dead foetus in Sati Devi's body. It is true, that no member of the Panchayat had come forward to support the prosecution story, but we have no reason to doubt Bachhu



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Das's statement about the suspicion that the appellants bore with respect to the conception. We are, therefore, of the opinion that notwithstanding the fact that there appears to be no evidence to make out a case of demand of dowry as being one of the motives for the incident, the motive which has infact come on record and has been duly proved, is the factum

of the illicit pregnancy of Sati Devi or the suspicion thereof. We have also gone through the evidence of PW.5 Budhi Das. Admittedly, this witness did say that he has weak eye-sight, but his cross-examination however could not bring out any material to create a doubt about his credibility. He stated that he had seen the entire occurrence while near the river. We have seen the site plan which shows that the river itself had narrows considerably at the spot where the body had been thrown and witnessed by Budhi Das. Budhi Das further deposed that as he belonged to village



Narangi right opposite village Ustoli, which was the place of residence of the appellants, he was well aware as to the identity of the two male members but he could not immediately identify Rukmani Devi. Rukmani Devi is, however, not before us, having died in the meanwhile. Moreover, it is indeed the duty of the prosecution to prove its own case, but a matter such as the present one, where the accused are the husband and in-laws, all living together of the victim some duty is cast on the defence as a whole to explain as to the circumstances leading to her disappearance if

not her murder.

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Mr. Vishwajit Singh has finally submitted that Gaphloo Das-appellant, the father in law of the deceased was in any case entitled to some indulgence as the factum of the pregnancy of Sati Devi would have caused concern primarily to her husband and not to the father in law. We find that this argument is unsustainable as the pregnancy would have



been a matter of concern not only to her husband but to his parents as well as the entire family which was living together. Moreover, Gaphloo Das's conduct subsequent to Sati Devi's disappearance from the matrimonial home also creates suspicion with respect to his involvement. We have perused the evidence of Bachhu Das. It has come in his evidence PW.1 that Gaphloo Das had come to him at about 2.00 p.m. on 13 June, 1989 and had told him that Sati Devi had gone to collect grass in the jungle but as she had not returned he had come to find out as to whether she had

returned to him, which story was repeated again by Gaphloo Das on 14th June, 1989 at about 10-11 a.m. It is after suspicions had been raised by this unusual conduct that Bachhu Das and his family made attempts to find Satidevi and having failed to do so made a written report to the Gram Sabhapati, village Ustoli on 20th June, 1989. As already mentioned above, this application initially, did not have any result and it was after a great deal of effort on the part of Bachhu Dass including an approach to the District Magistrate, that the



investigation was set in motion ultimately leading to the unravelling of the prosecution story. We are, therefore, of the opinion that Gaphloo Das was equally involved in the murder and that no special consideration can

be shown to him by any process of reasoning. We are, therefore, of the opinion that there is no merit in the appeal.

Gaphloo Das was granted bail by this Court on 8/2/2008. The same shall stand cancelled forthwith and he shall be taken into custody to serve out the remaining part of the sentence.

The appeal is dismissed.

.....J.
(HARJIT SINGH BEDI)



.....J.
(J.M. PANCHAL)

New Delhi,
July 29, 2009.