
(2006) 04 JH CK 0028
In the Jharkhand High Court

Balo Mahto and Others

APPELLANT

Vs

State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 26-04-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 201, 304B, 34

Citation : (2007) CriLJ 659 : (2006) 4 EastCriC 333 : (2006) 3 AIRJharR 706

Hon'ble Judges : N. Dhinakar, C.J.; Rakesh Ranjan Prasad, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Balo Mahato, Daso Mahato and Khari Mahtwain, who are the appellants in the above appeal, were arrayed as A3, A1 and A2, in that order, before, the Addl. Sessions Judge II, Deoghar. They were charged and tried under Sections 304-B and 201, I.P.C with the aid of Section 34, I.P.C. The allegation against the appellants, who, in the judgment, will be referred as A1 to A3 in the same order as they were arrayed before the Sessions Judge, is that they, in furtherance of the common intention of each other and sharing the common intention of Chandrika Devi and Biranchi Mahton, who were arrayed as A4 and A5, subjected Murli Devi to cruelty, as a result of which she died otherwise than under normal circumstances and later threw the dead body at a crematorium ground in order to screen the offence. Learned Trial Judge, while acquitting Chandrika Devi and Biranchi Mahto of the charges, found the appellants guilty and sentenced each of them to imprisonment for life u/s 304-B read with section 34, I.P.C and also sentenced them to suffer rigorous imprisonment for a period of two years u/s 201 read with Section 34, I.P.C with a direction that the sentences of imprisonment will run concurrently. The present appeal is against the aforesaid conviction and sentence.

2. Murli Devi is the daughter of P.W. 9, Anup Mahto. She was given in marriage to A3 Balo Mahto about five years before the date of occurrence. Daso Mahto and

Khari Mah twain are the parents of A3. After the marriage, the deceased Murli Devi was living with her husband and in-laws in village Jara and a daughter was born. On the date of incident, according to the prosecution, the child was 10 to 11 days old. The further case of the prosecution is that while the deceased was living with her husband and in-laws, she was not properly treated as she was not provided with clothes and other essential requirements. The further allegation is that A1 to A3 were asking the deceased to bring Cycle and Ox as dowry from her parents and when she did not bring those materials, she was badly beaten by the accused. On 18-5-1988, Mahru Mahto, P.W. 6, brother of P.W. 9 Anup Mahto, was proceeding to village - Bhari. On way to village - Bhari, he visited the house of Murli Devi, the deceased in the case. Murli Devi informed P.W. 6 that she is being ill-treated by her husband and in-laws for not bringing the articles required by him and his parents. She requested P.W. 6 to ask her father to meet her. On 19-5-1988, P.W. 9 Anup Mahto, on getting information about the ill-treatment of the deceased by her in-law, went to the house of the deceased and questioned Balo Mahto A3 and Daso Mahto A1 as to the whereabouts of his daughter Murli Devi as she was not in the house. Thereupon, it is further case of the prosecution, that both of them told P.W. 9 that she has left the house on the previous evening and could not be traced. A Panchayati was convened and at the Panchayat, it was decided that the accused should produce her within ten days and that if the girl is not produced, P.W. 9 can take any legal steps against the accused. P.W. 9 started searching for his daughter but could not succeed in tracing her. On 24-5-1988, he received an information that an unclaimed body is found at a Burning Ghat. He went there along with the villagers where he found the dead body and he identified the dead body to be the body of his daughter from the Tato mark and from the other articles lying near it. He went to the police station and gave fardbeyan, Ext. 2, on 25-5-1988, on the basis of which a crime was registered and investigation was taken up by P.W. 11 Shiv Kumar Ratan. Inquest was conducted and later the dead body was sent to the hospital for post mortem.

3. On receipt of the requisition, P.W. 10 Dr. Kameshwar Prasad conducted autopsy on the dead body of Murli Devi and found the following injuries:

- (1) Abrasion on the back of right elbow 2" ? 1"
- (2) Bruise on the front and middle of left side of chest 3" ? 1"
- (3) Bruise on the back of left forearm 2 1/2" ? 1"
- (4) Bruise on the front of neck horizontal about middle 3" ? 1 1/2".

On internal examination, the Doctor found fracture of seventh rib and on opening skull and neck, the Doctor noticed bruise with white margins. The dead body was found congested. He did not notice any fracture of thyroid or hyoid bone. Trachea was found to be soft and decomposed. The Doctor issued Ext. 1, the post mortem certificate, with his opinion that death is on account of asphyxia due to throttling.

4. After the completion of investigation, final report was filed against the appellants as well as other two accused, who denied all the incriminating circumstances, when questioned u/s 313, Cr.P.C. On their side, D.W. 1 to D.W. 5 were examined. D.W. 5 Kali Charan Tiwary, Mukhiya of the village, was examined to prove Ext. C a complaint dated 15-5-1988 given to him by A1 Daso Mahto. D.W. 3 Amin Mahto was examined to prove that after the complaint, Ext. C was forwarded to him by D.W. 5 Kali Charan Tiwary, he made enquiry and submitted his report, Ext. C/1, dated 17-5-1988. D.W. 1 Nageshwar Choudhary was examined to prove that the deceased Murli Devi left the house on the night of 14-5-1988 and also to prove Ext. B, a letter of the Officer-in-charge of Police Station calling for Exts. C, the complaint, and C/1, report of Sarpanch D.W. 3, as they were not found in the police station.

5. Learned Counsel appearing for the accused-appellants contends that in view of the Ext. C, which is in tune with Ext. D, which was a private complaint filed by P.W. 9 before the Chief Judicial Magistrate, Deoghar, the case of the defence that Murli Devi left the house without informing any one even on 14-5-1988 is true and the trial Court, without considering the real import of Ext. D, misdirected itself on a question of fact by not adverting to the version found in the private complaint, Ext. D, but by going by a petition filed later to amend the date of occurrence from 14-5-1988 and 18-5-1988, vide Ext. 5. On the above contention, we have heard Mr.M.B. Lal, learned Counsel appearing for the State.

6. Murli Devi died on account of homicidal violence. P.W. 10, the Doctor, conducted autopsy on the dead body and found the injuries which he noted in the post mortem certificate, Ext. 1. He in his evidence in Court stated that death is on account of asphyxia due to throttling. P.W. 9 Anup Mahto.gave evidence and stated that the dead body which was found is the body of his daughter Murli Devi. A faint attempt has been made at this stage before this Court that the dead body that was found by P.W. 9 is not the body of the daughter of P.W. 9, we are unable to accept the said submission since the evidence of P.W. 9 about the identity of the deceased was not challenged when the witnesses were in the box before the trial Court. In fact, P.W. 9 stated in his evidence that he was able to identify the dead body as that of the body of his daughter on the basis of not only the materials which were lying around the dead body but also on account of finding Tato marks on the right forearm. We, therefore, hold that Murli Devi died and died on account of homicidal violence.

7. The case of the prosecution is that after the deceased was given in marriage to A3 Balo Mahto, she was not treated properly either by her husband or by his parents, Daso Mahto and Khari Mahatwain, A1 and A2, and that they were ill-treating her, when she did not bring cycle, cow or ox from her parents. P.W. 6 Mahru Mahto, brother of P.W. 9, in his evidence, stated that he went to the village of Murli Devi on 18-5-1988 and that the deceased complained to him about the ill-treatment being meted out to her by her husband and her in-laws. He further deposed that she wanted to meet her father and therefore requested

P.W. 6 to send him to meet her. It is the evidence of P.W. 9 that on being informed by his brother that the deceased wanted to meet him, he went to the village, where his daughter was residing, on 19-5-1988 and finding his daughter missing, questioned A1 Daso Mahto and A3 Khari Mahatwain. According to him, both of them have informed him that the deceased left the house on the previous day, namely on 18-5-1988, without informing any one. According to P.W. 9, a Panchayati was convened and it was decided at the Panchayat that the accused should produce the deceased within ten days, failing which P.W. 9 can take all legal steps against the accused. Further evidence of P.W. 9 is that when he was searching for his daughter, on 24-5-1988 on getting information that an unclaimed dead body is found at a Burning Ghat, went there and finding the body identified it to be the body of his daughter. According to him, he gave Ext. 2, fardbeyan, at the police station on 25-5-1988.

8. Now we have to consider whether the evidence of P.Ws. 6 and 9 that the deceased was seen In the house of her in-laws on 18-5-1988 is true and whether on 19-5-1988 she was found missing and the complaint, Ext. 2, was given at the police station for the first time by P.W. 9 on 25-5-1988. We may even at the outset say that neither P.W. 6, nor P.W. 9 came out with true version before this Court. The accused on their side examined D.W. 5 Kali Charan Tiwary, the village Mukhiya. According to him, on 15-5-1988, A1 Daso Mahto gave a complaint to him. The said complaint was marked as Ext. C by D.W.5. We have perused the said complaint. In the said complaint, A1 Daso Mahto stated that one Chaitu Mahto of village Durjani within the jurisdiction of police station Sarwan used to visit his house and that he did not like his manner of talking and behaviour with his daughter-in-law. It is further alleged in the said complaint that the behaviour of the said Chaitu Mahto was found to be objectionable and wrong and therefore, he asked him not to visit his house and also asked his brothers, Jattan Mahto and Puran Mahto, not to visit his house. He has further stated that Puran Mahto is the son of P.W. 9 Anup Mahto and the daughter of Punam Mahto was given in marriage to the son of Anup Mahto. He has further alleged that since he has asked Chaitu Mahto not to visit his house, the above persons namely Chaitu Mahto, Jattan Mahto and Puran Mahto enticed his daughter-in-law Murli Devi on the night of 14-5-1988, which fact is known to the villagers. According to D.W. 5 Kali Charan Tiwary, after the complaint, Ext. C, was given to him, he forwarded the same to his Sarpanch, Amin Mahto, who was examined as D.W. 3. D.W. 3 in his evidence stated that on receiving the complaint, Ext. 3, from D.W. 5, he made enquiries but could not find the whereabouts of Murli Devi and therefore, he filed his report dated 17-5-1988 before D.W. 5. The defence by examining D.W. 5 and D.W. 3 and by marking Exts. C and C/1 wanted to establish before the trial Court that the deceased Murli Devi left the house of her in-laws on the night of 14-5-1988 and that she must have been enticed by the persons mentioned in the complaint, Ext. C. The defence, therefore, wanted to show that the case of the prosecution that the deceased was found by P.W. 6 in her in-laws' house on 18-5-1988 cannot be true and that the case of the prosecution

that P.W. 9 went to the village to see his daughter on 19-5-1988 cannot also be true. We will now consider the evidence of D.W. 5 Kali Charan Tiwary and D.W. 3 Amin Mahto and the two documents Exts.C and C/1, which were marked through them, to find out whether the said complaint, Ext.C, was actually given by A1 Daso Mahto on 15-5-1988. At this juncture, we have to refer Ext. D, a private complaint filed by P.W. 9 before the Chief Judicial Magistrate, Deoghar, on 23-5-1988. Ext. D was filed by P.W. 9 before the Chief Judicial Magistrate, Deoghar, on 23-5-1988 wherein he has made an allegation that on 15-5-1988, he along with Chetlal Mahto went to see his daughter and that he was informed that his daughter fled away from the house after quarrelling with her in-laws. The allegation in Ext. D, which is a private complaint filed before the Chief Judicial Magistrate, therefore, is that the deceased was found missing on 15-5-1988, when he went to her in-laws' house. The allegation in the complaint is, therefore, to the effect that the occurrence took place in the night of 14-5-1988 and that on 15-5-1988, when the complainant (P.W.9) went to meet his daughter, she was found missing. A letter, Ext. 5, was filed on 16-6-1988 with a prayer to amend the date of occurrence from 14-5-1988 to 18-5-1988 it is to be remembered that the fardbeyan is dated 25-5-1988 and Ext.5, filed on 16-6-1988, to amend the date of occurrence in the private complaint was nearly after twenty days after Ext. 2 was given at the police station. In the fardbeyan, Ext. 2, P.W. 9 did not even mention that he had given a private complaint before the Chief Judicial Magistrate on 23-5-1988 mentioning the date of occurrence as 14-5-1988. On the contrary, he had given Ext. 2, the fardbeyan, with the allegation that Murli Devi is found missing from the house of her in-laws from the date of 18-5-1988, suppressing his earlier complaint dated 23-5-1988, Ext. D, given before the Chief Judicial Magistrate, Deoghar. Ext. D, the private complaint filed before the Chief Judicial Magistrate, Deoghar, is actually in tune with the defence version that the deceased was found missing from the night of 14-5-1988. We, therefore, find it difficult to digest the evidence of P.Ws. 6 and 9 that on 18-5-1988, the deceased was seen in her in-laws' house by P.W. 6 and that she made a complaint about the ill-treatment meted out to her by her in-laws and later on 19-5-1988, P.W. 9 went to the village to be informed by A1 and A3 that the deceased has left the house without informing any one on the previous night, namely, on 18-5-1988. The Trial Judge did not consider the allegations made in the complaint since if any one looks at the allegations, made particularly in paras 2 and 3, it could be seen that allegation is that the deceased is found missing from the night of 14-5-1988. In the background of Ext. D, the petition filed by P.W. 9 to amend the date of occurrence from 14-5-1988 to 18-5-1988 can only be considered as an afterthought, and was filed with a view to make it appear that the deceased was actually found missing only from 18-5-1988 and not from 14-5-1988, more so when he totally suppressed the fact of giving his private complaint to the Chief Judicial Magistrate, when he gave fardbeyan, Ext. 2. We are, therefore, of the view that Ext. C given by A1 on 15-5-1988 is a true document, wherein he has made an allegation that the deceased has left the house on the night of 14-5-1988. The said document is

supported by the allegations found in the private complaint, Ext. D. It is worthwhile to remember at this stage that the document, Ext. B, a letter written by the Officer-in-charge informing that the documents Exts. C and C/1 are found missing from the file at the police station and wanted those document to be produced shows that Ext. C and Ext. C/1 were not prepared for the purpose of the case.

9. In view of the discussions made above, we are unable to accept the prosecution case that P.W. 6 met the deceased on 18-5-1988 and later P.W. 9, came to know about the ill-treatment of his daughter and went to meet his daughter on 19-5-1988 to find her missing. We do not attach any importance to the evidence of P.Ws. 6 and 9. There is no other evidence which will show the complicity of the accused appellants in the crime. The appeal is allowed. The conviction and sentence imposed upon the appellants are set aside. It is reported that the appellants are on bail. They are discharged from their bail bonds.