
(2005) 08 PAT CK 0104

In the Patna High Court

Case No : Criminal Appeal (DB) No. 68 of 2002

Bangali Choudhary and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 03-08-2005

Acts Referred:

Penal Code, 1860 (IPC) — Section 201, 302, 34

Citation : (2005) 4 PLJR 520

Hon'ble Judges : Rekha Kumari, J;Aftab Alam, J

Bench : Division Bench

Advocate : Dharendra Kumar Sinha and Yashpal Yadav, for the Appellant;
Ganesh Prasad Jayaswal, for the Respondent

Final Decision : Allowed

Judgement

Rekha Kumari, J.—All the seven appellants stand convicted under sections 302 and 201/34 of the Indian Penal Code for committing murder of Basanti Devi, daughter of the informant and causing disappearance of the evidence of the said murder and each has been sentenced to undergo imprisonment for life thereunder. Appellants Munki Devi and Umesh Choudhary are wife and son respectively of appellant Bengali Choudhary and rest of the four appellants are their co-villagers. Deceased Basanti Devi was the wife of appellant Umesh Choudhary. The prosecution version which led to the trial of the appellants is that Basanti Devi, daughter of the informant Jethu Choudhary, village Pathri, P.S. Atri in the district of Gaya was married to appellant Umesh Choudhary in village Khukhari, P.S. Atri District Gaya about eight years before the occurrence when she was a child. About two years prior to the occurrence the Duragaman was performed when she went to her matrimonial house. She stayed at her matrimonial house for one month. The informant then went and brought her back. After staying at the informant's place the girl again went to her matrimonial house where she stayed for two months and then the informant again brought her back. Thereafter appellant Bengali Choudhary came to the

place of the informant for Rukhsati of Basanti Devi but as she was ill, the informant did not send her. Then the informant learnt that appellant Bengali Choudhary was getting his son married again. His daughter also came to know of it and so she without any formal invitation from her in-laws side went on her own to her matrimonial house. In the night she stayed in her matrimonial house, but in the morning appellants Bengali Chaudhary, Umesh Chaudhary and Munki Devi beat her and drove her out of the house threatening that they would not keep her and Bengali Chaudhary further threatened that he would get his son married again. On this the informant and his caste men got a Panchaiti convened which took place at village Khukhari at the door of Birju Paswan. In the Panchaiti a bond was got executed that if the informant failed to send the girl to her matrimonial house, he would be liable to pay Rs. 5000/- and if the groom's side did not keep the girl in their house properly they would be liable to pay Rs. 5000/-. The bond was kept with one Rajeshwar Singh of village Khukhari. After the Panchaiti, Basanti Devi started living at her matrimonial house but she was not being treated there properly. On 4.10.1989 in the morning at 9.00 A.M. one Rajdeo Chaudhary of village Khukhari came to the informant and informed him that his daughter had been strangled to death by appellant Bengali Chaudhary and his family members in the preceding night. On this information the informant alongwith others went to village Khukhari and learnt that the dead body of her daughter was being cremated in the burning ghat. They then reached the burning ghat and saw appellants Umesh Chaudhary, Ramjee Chaudhary, Etwar Choudhary, Ramadhar Prasad Mahto, Lala Choudhary, Dhananjay Prasad and Kapil Prasad cremating the dead body alongwith 5-6 persons; and seeing the informant and others, they fled away. They also learnt from the villagers that appellants Bengali Chaudhary, Umesh Chaudhary and Munki Devi had murdered his daughter by throttling in the previous night.

2. Soon after arrival of the informant and others, the police also reached the burning ghat and seized half burnt body of Basanti Devi. On the same day at 12 hours at the burning ghat, the Fardbeyan of the informant was recorded, on the basis of which the case was registered. The police investigated the case and after completing investigation submitted chargesheet against the appellants.

3. All the appellants were charged under sections 302 and 201 of the Indian Penal Code. They pleaded not guilty to the charges. Their defence as gathered from the suggestions given to the PWs. is that Basanti Devi used to remain ill and she died of illness.

4. In order to prove its version, the prosecution examined altogether 13 witnesses. Among them P.W. 1 is Raj Kishore Singh, a formal witness who has proved the formal F.I.R. (Ext. 1), P.W. 2 is Indu Lal, a neighbour of appellant Bengali Chaudhary, P.W. 3 Lal Bahadur Sao, P.W. 4 Ganesh Sao, both of Khukhari, were tendered for cross-examination. There is nothing in their evidence worth consideration. P.W. 5 Sukhdeo Chaudhary is elder brother of the informant, P.W. 6 Basudeo Chaudhary is the younger brother of the informant,

P.W. 7 Jethu Chaudhary is the informant, P.W. 8 is Dr. Mithilesh Kumar Sinha, who had conducted the post mortem examination on the dead body of the deceased, P.W. 8-A Gangia Devi is the mother of the deceased, P.W. 9 Rajendra Lal and P.W. 10 Sheo Kumar Prasad of village Khukhari have been tendered for cross-examination, PW. 11 is Rajendra Chaudhary, who has been deposed hostile, P.W. 12 Sachidanand Singh is a formal witness and has proved the Fardbeyan (Ext. 3), seizure lists (Exts. 4 & 4/1), inquest report (Ext. 5) and body challan (Ext. 6). The appellants did not examine any witness in their defence.

5. The learned trial court after considering the evidence of the prosecution witnesses convicted the appellants and sentenced them as mentioned above.

6. Learned counsel appearing for the appellants submitted that there is no eye witness to the occurrence and the circumstances relied upon by the prosecution are not sufficient to hold any of the appellants guilty in this case.

7. The first question that arises for consideration in this appeal is whether it is a case of murder.

8. The evidence of P.W. 6 is that the police had seized half burnt dead body of the deceased and sent it for post mortem examination. From the evidence of the doctor P.W. 8, coupled with his post mortem report, it appears that the doctor had conducted the post mortem examination on the dead body of Basanti Devi and found the following injuries:

(i) The body was partially charred mostly at the back including vertebral area, back of chest, back of neck, back of upper and lower extremities. At places bone portion was found exposed, i.e. on hands, forearm, vertebral area, feet, legs due to extreme heat. Large charcoal small particles were attached with surface. Whole scalp hairs were found burnt. The brain and meninges, liver, spleen and kidney were found shrunken and contracted into dark small mass due to extreme heat. Abdomen cavity was found open and coil of intestine was found protruding through opening as a result of bursting of abdominal cavity wall due to extreme heat.

(ii) Front of neck and face was found bluish.

On dissection of front of neck underlying tissues were found grossly congested. There was a fracture of Laryngeal cartilages with gross congestion of mucus membrane of wind pipe. Both the lungs were grossly congested. Heart chambers were found empty.

9. According to the doctor, injury No. (i) was post mortem in nature and injury No. (ii) grievous and dangerous to life caused by pressure over front of neck by hard and blunt object. In his opinion, the death was due to asphyxia (strangulation) and time elapsed since death was about 24-30 hours. He has further stated that injury No. (ii) was possible by any hard and blunt substance on the neck or by forceful pressing of the neck by hand.

10. The evidence of the doctor hence shows that the death of the deceased was homicidal caused by strangulation and was caused at or about the time of the alleged occurrence.

11. Learned counsel for the appellants submitted that as the evidence of the doctor does not show that he had found any ligature mark on the neck and fracture of hyoid bone, it cannot be said to be a case of death by strangulation. He further submitted that as the body was burnt it was not possible for the doctor to properly examine the body and give his opinion regarding the cause of death.

12. In Modi's Medical Jurisprudence & Toxicology, 22nd Edition at page 263 while describing appearance of strangulation it is mentioned "In some cases, the mark on the neck may not be present at all, or may be very slight, if the ligature used is soft and yielding like a stocking or scarf, and if it is removed soon after death." It would also appear from that book that though every case of fracture of hyoid bone is a case of strangulation, the reverse is not true. Therefore, the argument of the learned counsel that it was not a case of strangulation is not tenable. The evidence of the doctor also shows that mainly the back portion of the body was burnt. So there was no difficulty for the doctor to conduct post mortem examination and give his opinion.

13. It is thus proved that the deceased Basanti Devi was murdered and she died of strangulation. It is not disputed that deceased Basanti Devi was daughter of the informant.

14. The next question is whether the appellants were responsible for the death of the deceased.

15. In this regard it appears that there is no eye witness to the actual murder. The whole case rests on circumstantial evidence. The circumstances on which the prosecution has relied may be summarised as follows:-

(i) There was no cordial relationship between the deceased and the members of her matrimonial house.

(ii) During the night of occurrence sound of Ghargarahat (gagging) was heard by the neighbours and on enquiry appellant Bengali Choudhary gave an evasive reply.

(iii) In the morning the deceased was found dead and appellant Bengali Choudhary informed the villagers that she died of cholera.

(iv) The deceased was being cremated without giving any information of the death to the parents of the deceased.

(v) The appellants fled away leaving partially burnt body of the deceased on seeing the informant and others.

16. It is well settled that in a case based on circumstantial evidence the evidence

on record must satisfy three tests, namely, (i) firstly the circumstance from which an inference of guilt is sought to be drawn must be cogently and firmly established, (ii) those circumstances should be of a definite tendency, unerringly pointing towards the guilt of the accused and (iii) the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probabilities the crime was committed by the accused and none else.

17. Now I shall discuss how far the prosecution has proved the above circumstances.

18. As regards circumstance No. 1 the evidence of P.W. 7 (informant) and his two brothers, P.Ws. 5 and 6, is relevant. The prosecution has also examined the mother of the deceased, but she has simply stated that her daughter was married to appellant Umesh Chaudhary and she was murdered at village Khukhari.

19. P.W. 7, the informant, has deposed that his daughter Basanti Devi was married to Umesh Chaudhary and after marriage his daughter stayed in her matrimonial house for one and a half months and then returned to his house and after Gauna she again went to her matrimonial house and after some time returned to his house. He has further stated that when she returned for the second time, appellant Bengali Chaudhary came for Rukhsati of the girl but as he told him that his daughter was ill he returned and then he got an information that appellant Bengali Chaudhary was getting his son married again and hearing this his daughter went to her matrimonial house but they did not keep her, rather they drove her out after beating her. His evidence then is that there was caste Panchaiti on account of this, in which it was decided that if the informant did not send the girl to her Sasurai, he would have to pay Rs. 5000/- and if the groom side did not keep her properly they would pay Rs. 5000/- and a document to that effect was executed which was kept with Rameshwar Chaudhary who was a Panch. He has also stated that as the in-laws of his daughter wanted to get his son-in-law married for dowry, they killed his daughter. In cross-examination he has stated that the Panchaiti had taken place about one month prior to the occurrence in village Khukhari. He has admitted that he had to execute the bond as he wanted that his daughter should remain with him.

20. P.W. 5 has stated that Basanti Devi, daughter of his elder brother was married to appellant Umesh Chaudhary about eight years before the occurrence and the Rukhsati was performed about one year prior to the occurrence. After one month of the Rukhsati the girl returned to her father's house and then Bengali Chaudhary came for the Rukhsati of the girl when his brother told him that she was un-well and she would be sent when she becomes well and after one month when the girl became well she was sent to her Sasurai. He has further stated that when the girl had come to her father's place, she used to say that the in-laws were giving her threats that they would kill her and get her husband married again. His evidence also is that there was a caste Panchaiti in

which bonds were executed and after Panchaiti, deceased Basanti Devi went to her Sasurai where after 15-20 days she was killed. In cross-examination he has stated that he is separate from his brother and that his brother had told the appellant to perform Rukhsati in the month of Phalgun as he had no money with him at that time and the appellant Bengali Chaudhary insisted to get it performed in the month of Paush giving threats that if that was not done, the girl would be deserted and that this was the reason for the delay in the Rukhsati. His evidence further is that on the insistence of appellant Bengali Chaudhary, the girl was sent and for that the informant had to take a loan of Rs. 500/-.

21. P.W. 6 has deposed that Basanti Devi was married to Umesh Chaudhary (appellant) and after Gauna she went to her Sasurai and then again returned to her father's house. After return Appellant Bengali Chaudhary often used to come and insist for Rukhsati on which the informant used to reply that she was unwell and when she would recover, she would be sent. He has also stated that appellant Bengali Chaudhary then gave the informant a threatening that if the girl was not sent, he would get his son married again and that when Basanti Devi recovered, she went to her Sasurai and stayed there for some time but as there used to be quarrel she again returned and when she got an information that her husband was getting married again, she went to her Sasurai and then there was caste Panchaiti and it was decided that if the informant did not send the girl, he would have to pay Rs. 5000/- and if the appellant Bengali Chaudhary did not keep the girl properly, he would have to pay Rs. 5000/- and after the Panchaiti, Basanti Devi went to her Sasurai. In cross-examination he has stated that after Gauna Basanti Devi went to her Sasurai 6-7 times.

22. Thus from the evidence of the above witnesses it appears that Basanti Devi was married to appellant Umesh Chaudhary about eight years prior to the occurrence and about one year prior to the occurrence Gauna was performed and after Gauna she stayed in her matrimonial house for some time and then returned to her father's place. Though there are some discrepancies in the evidence of the witnesses about the reason for not sending the girl again, the evidence of the above witness is clear that appellant Bengali Chaudhary insisted on sending the girl to his house but the girl was not being sent. The evidence of P.Ws. 6 and 7 also shows that Bengali Chaudhary used to give threats that if the girl was not sent, he would get his son re-married. The evidence of P.W. 7 also is clear that on hearing that Umesh was being re-married his daughter went to her Sasurai and she was beaten and driven out.

23. The above evidence hence clearly shows that on the question of Bidai there was bad feeling between the parties and that the informant was not willing to send his daughter to her Sasurai and when she went, she was treated with cruelty. The evidence of all the above witnesses also is clear that there was Panchaiti in this connection. Though, no Panch has been examined in this case, but the factum of Panchaiti has not been challenged by the appellants as there is no suggestion that no such Panchaiti was held. Then, though the bond has not

been brought on record, the evidence of the above witnesses is consistent that it was decided in the Panchayati that if the informant did not send the girl, he would have to pay Rs. 5000/- and if the groom side did not keep the girl properly, they would have to pay Rs. 5000/- and a bond to this effect was executed. The term of the bond hence also clearly suggests that the informant was reluctant to send the girl to the appellants and that the appellants were not keeping the girl properly.

24. In view of the discussions made above, it is proved that prior to the death of the deceased, the relationship between the deceased and the members of her matrimonial family was not cordial.

25. As regards the second and third circumstances, P.W. 2 has stated that appellant Bengali Chaudhary is his neighbour and the house of Bengali Choudhary is adjacent west-south of his house at a distance of one "Bans". He has further stated that in the fateful night he was sleeping on the roof of his house when at about 3.00 A.M. he heard the sound of Ghargharahat coming from the house of Bengali Choudhary and on this he enquired from the appellant as to what was the matter whereupon he replied "nothing" and then there was silence in the appellants' house. He has further stated that in the morning appellant Bengali Chaudhary brought the dead body at his door when they enquired as to how she died on which the appellant replied that she died of Cholera.

26. This witness is the neighbour of the appellant and appears to be an independent witness and there is nothing in his evidence to show that he is either interested in the prosecution or inimically disposed towards the appellants. So, there is absolutely no reason to disbelieve his testimony. He has, of course, admitted that he did not state before the police that he was sleeping on the roof but he has explained that as the police did not ask him as to where he was sleeping, he did not make the above statement. So, on this ground the credibility of the witness cannot be doubted.

27. Hence though, P.W. 2 is the solitary witness on these points, his evidence proves firmly that in the night of occurrence at about 3.00 A.M. he heard the sound of Ghargharahat coming from the house of appellant Bengali Chaudhary and in the morning he gave a wrong information to the villagers that the deceased died of cholera.

28. Regarding circumstance Nos. 4 and 5, the evidence of P.W. 7 is that Rajdeo Chaudhary of village Khukhari informed him that appellant Bengali Chaudhary, Umesh Chaudhary and Munki Devi had killed his daughter by strangulating her and on this he alongwith his brother Sukhdeo Chaudhary (P.W. 5) and Basudeo Chaudhary (P.W. 6) went to village Khukhari at the Sasurai of his daughter and on reaching there they learnt that the dead body of his daughter was being cremated at Goshibag ghat and they then went there and saw all the appellants there and on seeing them the appellants fled away and that in the meantime, the

police came and seized the half burnt body.

29. P.Ws. 5 and 6 have corroborated the evidence of P.W. 7. They have also stated that they had gone with his brother (P.W. 7) to Khukhari and from there to Goshibag burning ghat. They have further stated that on seeing them the persons who were cremating the dead body fled away. P.W. 6 has further named those persons as Bengali Chaudhary, Umesh Chaudhary, Etwar Chaudhary, Ramjee Chaudhary, Lala Choudhary and Ramavtar Choudhary. They have also stated that in the meantime the police came and seized the dead body. P.W. 6 has stated that he had sent his cousin Suresh Chaudhary to the police station for giving information. Both the witnesses have also stated that from Rajendra Chaudhary they had learnt about the murder of the deceased.

30. P.W. 8-A, the mother of the deceased, has also stated that Rajendra Chaudhary had informed them about the murder of her daughter and that Rajendra Chaudhary belongs to village Khukhari and is her Bhagina.

31. There is nothing material in the evidence of the above witnesses to disbelieve them. The abovenamed Rajendra Chaudhary, of course, has been examined as P.W. 11 and he has denied that he is related to the informant or had given information of the murder to the informant but he has been declared hostile. The consistent evidence of the above witness is that this witness had given the above information. So, only on the evidence of this witness it cannot be said that he did not give the information. He also belongs to the village of the appellants. Therefore, it is natural that he is not ready to depose against the appellants.

32. The deposition of P.W. 6 also shows that his attention has been drawn towards his statement made before the I.O. to show that before the I.O. he had stated that he learnt the names of the persons cremating the dead body from his brother (informant). The I.O. has not been examined and hence it could not be known what this witness had stated before him. But even if it be assumed that he did not give the names of the appellants before the I.O., his evidence is consistent that on seeing them those who were cremating the dead body fled away and the evidence of P.W. 7 is sufficient to show that the appellants were cremating the dead body.

33. It has also been shown that Rajendra Chaudhary had given information of death of the deceased to the informant and there is no suggestion that this Rajendra Chaudhary or any other person was sent by the appellants to the informant to give information about the death of the deceased prior to the cremation. The evidence of P.W. 6 also is that village Pathari of the informant is at a distance of 2/3 Kms. from village Khukhari of the appellants. So, it is also clear that no information was given by the appellants to the informant about the death of the deceased though the village of the informant was near his village.

34. It is thus also established that the appellants were cremating the dead body of the deceased without giving information to the informant when the village of the informant was so close to the village of the appellants and that on seeing the

informant and others the appellants fled away leaving the partially burnt body.

35. It thus appears that the prosecution has been able to fully establish the circumstances mentioned above. The circumstances also unerringly point to the guilt of the family members of the matrimonial house of the deceased. The circumstances taken together further prove with reasonable certainty that the appellants who are family members of the matrimonial house of the deceased were responsible for the death of the deceased.

36. The death of the deceased was caused in her matrimonial house and that too during night. Therefore, the family members alone had knowledge as to how the death was caused. They were, hence, required to explain it but no evidence has been given by them to explain it. It has been suggested to P.Ws. 6 and 7 that the deceased died of illness but they have denied the suggestion. The evidence of P.W. 2 also shows that appellant Bengali Chaudhary had told them that the deceased died of Cholera. It has already been shown that the doctor had found the death to have been caused by strangulation. So, the deceased died neither of Cholera nor of any illness. The appellants, hence, have given a false explanation of the cause of death of the deceased. This false explanation provides an additional link to the chain of circumstances and proves beyond reasonable doubt that the family members of the matrimonial house of the deceased and none else committed the murder.

37. In this case, appellant Bengali Chaudhary is the father-in-law of the deceased. Appellant Umesh Chaudhary is the husband and appellant Munki Devi is the mother-in-law of the deceased. The other appellants did not belong to that family. The question is whether all the three family members should be held guilty for the above murder.

38. In this connection the evidence of P.W. 2 shows that in the night of occurrence, when he enquired from appellant Bengali Chaudhary regarding the Ghargharahat he gave an evasive reply and in the morning he gave a false explanation that the deceased died of cholera. So, there can be no doubt that he had hand in the murder. As regards appellant Umesh Chaudhary, as he is a member of the family and there is no plea of alibi raised by him and the evidence shows that he was present in the cremation, it can safely be said that he was present in the house at the time of murder. He being the husband, it was his duty to protect the deceased but there is nothing to show that he tried to save his wife. Therefore, it can safely be concluded that he connived with his father and shared common intention with him to commit the murder.

39. As regards appellant Munki Devi, however, there is no specific evidence against her. Ordinarily, woman do not take part in such violent act. Therefore, at least benefit of doubt should be given to her.

40. So far the other appellants, they are not family members of the matrimonial house of the deceased. There is also no direct or indirect evidence of murder against them. So they cannot be convicted for the murder of the deceased.

41. As regards the offence u/s 201 of the Indian Penal Code, the evidence of P.W. 7 shows that all the appellants had taken part in the cremation of the deceased. But there is no evidence that the appellants, who are outsiders, had knowledge when they went to cremate the dead body that the deceased was murdered. So, only on the evidence of the P.Ws. that they also fled away seeing them, it cannot be said that they knowingly wanted to cause disappearance of the evidence of murder. As regards appellant Munki Devi, it is a common experience that ladies do not go to cremate the dead body. So, these appellants cannot be held guilty for the offence u/s 201 of the Indian Penal Code.

42. So far appellants Umesh Chaudhary and Bengali Chaudhary are concerned, the evidence of P.W. 7 is clear that they were cremating the dead body and seeing them they fled away. There is also no evidence that any information of death was given to the informant. So, it is evident that they were hurriedly cremating the death body to cause disappearance of the evidence of murder and were guilty for the offence u/s 201 of the Indian Penal Code.

43. Hence, the learned trial court was justified in convicting appellants Bengali Chaudhary and Umesh Chaudhary under sections 302/34 and 201 of the Indian Penal Code. But, so far the other appellants are concerned, the learned trial court should have acquitted them.

44. As regards sentence, the learned trial court has rightly sentenced the appellants Bengali Chaudhary and Umesh Chaudhary to undergo rigorous imprisonment for life u/s 302/34 of the Indian Penal Code. But so far the sentence of the offence u/s 201 of the Indian Penal Code, justice will be met if these appellants are sentenced to undergo rigorous imprisonment for five years which would run concurrently with the sentence u/s 302/34 of the Indian Penal Code. In the result, the appeal of appellants Bengali Chaudhary and Umesh Chaudhary is dismissed with the above modification in sentence. As regards the appeal of other appellants, namely, Ramjee Choudhary, Lala Choudhary, Etabar Choudhary, Ramadhar Prasad Mahto and Munki Devi the same is allowed and the order of conviction and sentence passed against them by the learned trial court is hereby set aside and they are acquitted of the charges levelled against them. They are also discharged from the liabilities of their bail bonds.

Aftab Alam, J.

I agree.