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**(2006) 11 PAT CK 0083**  
**In the Patna High Court**

Bangali Mian and Mahanth Mian

APPELLANT

Vs

The State of Bihar

RESPONDENT

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**Date of Decision :** 08-11-2006

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 201, 291, 302, 306, 34

**Citation :** (2006) 11 PAT CK 0083

**Hon'ble Judges :** Anwar Ahmad, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## **Judgement**

Anwar Ahmad, J.—This appeal is directed against the judgment of conviction dated 14.6.2002 and order of sentence dated 17.6.2002 passed by Shri Lakshman Sinha, Additional Sessions Judge, Fast Track Court No. III, Gopalgani, in Sessions Trial No. 67 of 1989/36 of 2002. The learned Additional Sessions Judge has convicted both the appellants for the offence under Sections 306 and 201 of the Indian Penal Code (in short, IPC). He has sentenced the appellant Mahanth Mian to R.I. for 10 years for the offence u/s 306 IPC and R.I. for 3 years for the offence u/s 201 IPC with the order to run both the sentences concurrently. He has sentenced the appellant Bangali Mian to R.I. for 5 years for the offence u/s 306 IPC and R.I. for 2 years for the offence u/s 201 IPC with the order to run both the sentences concurrently.

2. Ainul Mian son of Sukhari Mian of Village Nirialha, P.S. Gopalpur, District-Gopalgani submitted written report dated 9.1.1988 to the Officer Incharge, Bhore Police Station, alleging therein that he married his daughter Mobina Khatoon to Mahanth Mian son of Bangali Mian of Village Kharpakwa. P.S. Bhore, District - Gopalganj about 15 years ago. His daughter has got a son aged about 8 years. It is alleged that yesterday on 8.1.88 at about 10 AM he came to know from a person of village Kharpakwa that on 7.1.88 at about 4 PM quarrel took place between the ladies for household matter for which his son in law Mahanth Mian and his father Bangali Mian assaulted his daughter brutally and in

consequence thereof his daughter out of annoyance and out of fear of further assault jumped into the well in the southern side of the house. When she was taken out from the well, she was found dead. His daughter was buried in the graveyard by her husband and father in law. A case under Sections 306 and 201 IPC was registered against both the appellants. After investigation chargesheet was submitted u/s 302 and 201 IPC. Cognizance of the offence was taken and the case was committed to the court of sessions.

3. The defence case is that quarrel took place between the deceased and her Gotani and for that the deceased jumped into the well and died.

4. After trial for the offence under Sections 302/34 and 201/34 IPC the appellants were found guilty under Sections 306 and 291 IPC and they were convicted and sentenced as stated above.

5. Being aggrieved by and dissatisfied with the judgment of conviction and order of sentence the present appeal has been filed by the appellants from jail.

6. To prove the case prosecution has examined altogether six witnesses in this case. Defence has also examined two witnesses. One witness has been examined as court witness.

7. PW-1 is. Ainul Mian, the informant and father of the deceased. He stated that the appellants assaulted his daughter Mobina Khatoon and threw her in the well resulting in her death.

8. PW-2 is Hasmullah Ansari, brother of the deceased. He stated that he came to know from the villager that his sister was assaulted and thrown in the well by the appellants resulting in her death.

9. PW-3 is Rajendra Bait. PW-4 is Radha Krishna Prasad. PW-5 is Sadhu Mian. These three witnesses belonged to the village of the Sasural of the deceased. They stated that there was quarrel between the deceased and her Gotani and for that the deceased jumped into the well resulting in her death.

10. PW-6 is Dr Krishna Nand Singh who did autopsy on the dead body of the deceased Mobina Khatoon. In his opinion, death was caused due to shock and brain haemorrhage and injury to the skull and face. His postmortem report, has been marked as Ext. 1.

11. The defence has examined two witnesses in support of its case. DW-1 is Isha Mian. DW-2 is Subhash Prasad. Both the witnesses stated that quarrel took place between the deceased and her Gotani and for that the deceased jumped into the well resulting in her death. They further stated that appellants were not the present in the house and they had gone to another village Barauns for working as labourers.

12. Nasaru son of the deceased has been examined as a court witness. He stated that at the time of occurrence he was aged about 10 years and did not state anything about the occurrence.

13. The learned APP submitted that there is no eye witness to the occurrence and the case is based on circumstantial evidence.

14. The learned defence lawyer submitted that PWs 1 and 2 are father and brother of the deceased. They are not eye witnesses to the occurrence. He submitted that after the occurrence and after the dead body was buried in the graveyard, they came there and got knowledge of the occurrence. He submitted that he did not state as to the person from whom they got the knowledge of the occurrence. So, he submitted that their evidence is of no avail. He further submitted that the informant in his written report stated that appellants assaulted the deceased and for that, out of annoyance and out of fear of further assault she jumped into the well and died but he in his evidence in court stated that appellants assaulted her and threw her in the well. He submitted that this is a vital and material contradiction in the statement of the informant.

15. The Learned defence lawyer further submitted that as per the evidence of three independent witnesses namely. PW's .3, 4 and 5 who belonged to the Sasural of the deceased stated that there was quarrel between the deceased and her Gotani and for that, the deceased jumped into the well and died. As such he submitted that there is no involvement of the appellants in the occurrence. He has further submitted that as per the evidence of two defence witnesses the appellants were not present in the house and they had gone to another village for working as labourers and in their absence there was quarrel between the deceased and her Gotani and for that the deceased jumped into the well and died. As such learned defence lawyer submitted that there is no evidence worth the name to prove the case that the appellants committed the offence so he prayed for acquittal.

16. Considered the, evidence of the witnesses and the argument advanced by the learned defence lawyer and the learned State counsel. I am of the view that the prosecution has failed to prove its case against the appellants to have committed the offence.

17. In the result, this appeal is allowed and the impugned judgment of conviction and order of sentence is set aside. Both the appellants are directed to be released forthwith.