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**(2006) 05 JH CK 0110**

**In the Jharkhand High Court**

**Case No : Criminal Appeal No. 296 of 1998R**

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|----------------------------------------------|------------|
| Binda Thakur, Umesh Thakur and Naresh Thakur | APPELLANT  |
| Vs                                           |            |
| The State of Bihar (Now Jharkhand)           | RESPONDENT |

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**Date of Decision : 02-05-2006**

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 201, 302, 323, 34

**Citation : (2006) 3 JCR 395**

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

**Bench : Division Bench**

**Advocate : Sadhana Kumar, for the Appellant; C. Prabha, APP, for the Respondent**

**Final Decision : Allowed**

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## Judgement

1. The appellants, Binda Thakur, Umesh Thakur and Naresh Thakur, were arrayed as A1 to A3 and were tried and convicted u/s 302 read with Section 34 I.P.C. On being found guilty under the said sections, they were sentenced to imprisonment for life. They were also sentenced to imprisonment for three years u/s 201 I.P.C. On being found guilty u/s 323 I.P.C for causing simple injury, each of them was sentenced to imprisonment for six months. The present appeal is against the said conviction and sentence.

2. A1 Binda Thakur is the father of A2 Umesh Thakur and A3 Naresh Thakur. On 9.7.1995 at about 4.00 p.m., the deceased Bhupat Thakur returned home with mutton. His wife Sanjho Devi, P.W.8, was in the house. At that time, the deceased saw the wife of the first appellant allowing goats to graze in his field. He questioned the wife of the first appellant and a quarrel ensued between them. At that time, A1 to A3 went there armed with cycle chain and sabbal. On seeing them the deceased ran towards Koshilwa Pahari. At about 7.00 or 8.00 p.m., A1 to A3 once again went to the house of the deceased and questioned P.W.8 as to where her husband is. They searched for her husband and thereafter assaulted P.W.8. The accused left the house and went towards a pond where her husband

had gone earlier. P.W.8 was in the house waiting for her husband to return home. Her husband did not return. In the meantime, the accused, who were passing by the side of the house of P.W.8, informed her that they have murdered her husband. P.W.8 went in search of her husband and searched for him for about two days. While she was searching for her husband, she saw a crowd at a pond, she went there and found the body of her husband floating. She identified the body and went thereafter to the Police Station and gave fardbeyan, Ext.4, which was registered as a crime under Ext. 3. Investigation in the crime was taken up by the Police Officer (investigation conducted by the said Officer was spoken by P.W.15, his successor). During the investigation, inquest was conducted and the body was sent to the hospital for post mortem.

3. On receipt of the requisition and the dead body, Dr. R. Choudhary, P.W.14, conducted autopsy and found no external injury as the body was in highly decomposed stage. He issued Ext.2, the post mortem certificate, with his opinion that he could not give the cause of death.

4. After the completion of investigation, final report was filed against A1 to A3, who denied all the incriminating circumstances.

5. Learned Counsel, appearing for the appellants, in the above appeal, submits that the prosecution having relied upon circumstantial evidence to prove against the accused, failed to prove any of the links in the chain of circumstances. She submits that the evidence of P.W.8 is highly artificial since, even according to her, though she was informed by the accused that her husband has been murdered, she did not go to the police station to lay a complaint on the date of incident or at least on the next day. She, therefore, submits that the appellants are entitled to an acquittal. On the above submission, we have heard Mrs. C. Prabha, learned Counsel appearing for the State.

6. The Doctor, P.W.14, was examined to, establish the cause of death; but he could not give any opinion as to the cause of death of the deceased. It is, no doubt, true that the Doctor has stated that the death is not on account of drowning. It is to be remembered that the body was found floating in a pond and therefore, in the above background of the evidence of the Doctor, this Court can easily presume that death is not on account of drowning and hence, he must have died on account of other causes - probably on account of homicidal violence.

7. The prosecution, in order to establish that A1 to A3 committed the murder of the deceased, relied upon circumstantial evidence. The evidence of P.W.8, who is the wife of the deceased, is that at 4.00 p.m., on the date of incident, a quarrel ensued between her husband and the wife of the first appellant, when the deceased found the goats belonging to the wife of the first appellant grazing his field. It is the further evidence of P.W.8 that the accused wanted to assault the deceased but he escaped. According to her, at about 7.00 or 8.00 p.m., when she was in the house, A1 to A3 came in search of her husband and finding her husband not available, beat her and thereafter went towards a pond where her

husband had earlier gone. She has further stated that after sometime the accused, while passing through her house, informed her that they have murdered her husband, She has stated that she went in search of her husband but could not trace him and that the body was found by her on 11.7.1995. According to her, she thereafter went to the police station and gave a complaint. On going through the evidence of P.W.8, we find that her evidence is highly artificial, If really the accused informed her that they have murdered the deceased, then P.W.8, being the wife of the deceased, would have gone to the police station on the same night or at least on 10.7.1995 to give a complaint against the accused or she would have gone to the pond where her husband had gone earlier. She did not go to the police station, nor did she try to inform any authority about her getting information about her husband being murdered by the accused. Her evidence is to the effect that she has searched for her husband but could not trace him and later, on finding the body, she went to the police station and gave a complaint on 11.7.1995. This evidence of P.W.8, therefore, shows that though, according to her evidence, she was informed about the murder on the night of 9.7.1995 by the accused, she did not take any step to give complaint to any authority till 11.7.1995. We, in the above circumstances, find it difficult to accept the evidence of P.W.8 that the accused gave a statement implicating themselves with the crime. Apart from the above evidence, there is absolutely no other evidence connecting the accused appellant with the crime. In the absence of any legal evidence and the prosecution having failed to prove all the links in the chain of circumstances, we cannot but acquit the appellants. Accordingly, the appellants are acquitted. It is reported that the appellants are in jail. The appellants are directed to be released from the jail custody forthwith, if not wanted in any other case(s).

This appeal is allowed.