
(2006) 02 JH CK 0060

In the Jharkhand High Court

Case No : Criminal Appeal No. 31 of 1990

Debilal Mahto and Another

APPELLANT

Vs

State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 15-02-2006

Acts Referred:

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

Citation : (2006) 2 Crimes 499 : (2006) CriminalCC 315 : (2007) 5 RCR(Criminal) 594

Hon'ble Judges : N. Dhinakar, C.J; M.Y. Eqbal, J

Bench : Division Bench

Advocate : A.S. Dayal, for the Appellant; R. Mukhopadhaya, for the Respondent

Final Decision : Allowed

Judgement

1. The appellants 1 and 2 were arrayed as A1 and A2 before the Sessions Judge, Dhanbad. They were tried along with three other accused who were acquitted by the trial Court. The case of Rathu Mahto, who was found to be a juvenile, was separated and his case was tried by the Juvenile Court. The trial Judge after the trial while acquitting Rama Mahto, Bhukhal Mahto and Sanichar Mahto who were arrayed as A3, A4 and A5 respectively, found the appellants Debilal Mahto and Baijnath Mahato guilty under Sections 302 and 201 read with Section 34 of the IPC. The allegation against the two appellants in the above two charges is that they, in furtherance of their common intention, caused the death of the deceased, Parvati Devi, wife of juvenile accused, Rathu Mahto and thereafter, they burnt her dead body.

2. The appellants were sentenced to imprisonment for life u/s 302 read with Section 34 of the IPC and were further directed to suffer RI for four years u/s 201 read with Section 34 of the IPC. The present appeal is against the said conviction and sentence.

3. The facts necessary to dispose of the appeal are as follows. The deceased,

Parvati Devi was given in marriage to Rathu Mahto, the juvenile accused which was solemnized in the year 1979. She is the daughter of PW1, Raghu Mahto and sister of PW2, Chetlal Mahto. After the marriage in the year 1979, the deceased was residing with her husband, Rathu Mahto in the village Bahaldih within Barora PS. In the year 1984, the first appellant, Debilal Mahto, who is the father of the juvenile accused, Rathu Mahto and father-in-law of the deceased, Parvati Devi, demanded gold chain from PW1 complaining that at the time of marriage no proper dowry was given. The first appellant, Debilal Mahto also threatened that if the gold chain is not gifted he will not allow the deceased to visit her parents. On account of this, there used to be quarrels. The deceased used to complain to her father, PW1 and her brother, PW2 about the torture meted out to her by her in-laws as well as by her husband. On 12.4.1984, PW2, on the direction of his father, PW1, went to the village where his sister was residing with a view to take her to his house in connection with some function. The 1st appellant informed PW2 that the deceased, Parvati Devi had gone to Chirka Mela at west Bengal. The appellants told the informant to come back on 16.4.1984 and accordingly, on 16.4.1984 the informant went to the village Bahaldih to take his sister, Parvati Devi to his house. The 1st appellant, Debilal Mahto informed PW2 that Parvati Devi had gone to take bath in a river and PW2 waited for about 30 minutes Debilal Mahto thereafter told him that on the previous night his sister vomited and was also having upset stomach. He informed PW2 that she was treated by a person who had spiritual power but, inspite of treatment, she died. PW2 was further informed that the deceased was cremated on the same day. The villagers also informed PW2 that after the death of the deceased Parvati Devi, she was cremated at the cremation ground. On 17.4.1984, PW2 went to Barora PS and gave Ext.3, fardbeyan to the police officer, which was registered as a crime and investigation was taken up and the witnesses were examined. After the completion of investigation, final report was filed against the appellants.

4. Learned Counsel appearing for the appellants submits that the prosecution miserably failed to establish that the deceased, Parvati Devi died on account of homicidal violence and that the appellants are responsible for the death of Parvati Devi, as the prosecution did not establish any of the links in the chain of circumstances. On the above contention, we have heard Mr. R. Mukhopadhaya, Learned Counsel appearing for the State.

5. The case, of the prosecution is that the deceased was not happy in the house of her in-laws, as according to the prosecution, she was subjected to ill treatment by her husband, Rathu Mahato and by the 1st appellant, Debilal Mahto who is the father of Rathu Mahto. It is the case of the prosecution that the 1st appellant was demanding a gold chain from PW1, father of the deceased saying that at the time of marriage, which took place in the year 1979, proper dowry was not given and that if no gold chain is gifted she will not be allowed to visit her parents. The further case of the prosecution is that PW2, brother of the deceased went to the village where his sister was living with a view to bring her to parental home and that he was informed on that day (12.4.1984) that his

sister had gone to a Mela at West Bengal. According to PW2 when he returned to village on 16.4.1984 he was informed that the deceased died on account of vomiting and upset stomach and that her body was cremated. Apart from the evidence of PW2 that the 1st appellant informed him that the deceased died and that her body was cremated in the village, there is absolutely no other evidence to show that the deceased actually died on account of homicidal violence and that the appellants, with a view to screen the offence, cremated the dead body of the village who claimed to PW2 that his sister was "cremated in the village after her death. Admittedly, the informant did not even whisper that the villagers told him that the deceased was murdered and that her body was cremated by the appellants with a view to screen the offence. In fact, the trial Judge itself observed that it is difficult to prove the case and that it is more difficult because the positive evidence is within the knowledge of the accused and that it is also not possible for the prosecution to prove the case against the appellants on any positive evidence. The trial Judge having held, as stated above, was not justified in finding the appellants guilty under Sections 302 as well 201 read with Section 34, IPC. This is not a case, where the prosecution has established a few links in the chain of circumstances but, this is a case where the prosecution has not established even one link in the chain of circumstances. It is also worthwhile to remember at this stage that the prosecution did not also examine the Investigating Officer, who conducted investigation in the crime. If he had been examined, then he would have thrown some light as to the investigation conducted by him for him to come to a conclusion that the death was on account of homicidal violence and that the appellants are responsible for the same. In the absence of any acceptable legal evidence and in view of the non-examination of the Investigating Officer, we cannot but, acquit the appellants and accordingly they are acquitted.

6. The appeal is allowed. It is reported that the appellants are on bail. They are discharged from their bail bonds.