

(2018) 02 JH CK 0030
In the Jharkhand High Court
Case No : 135 of 2008

Nageshwar Mahto

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 10-02-2018

Acts Referred:

[Indian Penal Code, 1860](#), [Section 302](#),
[Section 201](#), [Section 34](#), [Section 304-B](#) - Punishment for murder - Causing
disappearance of evidence of offence o

Citation : (2018) 02 JH CK 0030

Hon'ble Judges : H. C. Mishra, Dr. S.N. Pathak

Bench : Division Bench

Advocate : Mahesh Kumar Sinha, Laxmi Murmu

Judgement

1. Heard learned counsel for the appellant and learned counsel for the State.

2. The appellant is aggrieved by the Judgment of conviction and Order of sentence dated 04.12.2007, passed by the learned 1st Addl. Sessions Judge, Bermo at Tenughat, in S.T. No. 378 of 2006, whereby the appellant and the co-accused Pachchu @ Pachua @ Jainarayan Mahto @ Nrarayan @ Pachu Kumar Mahto, have been found guilty and convicted for the offences under Sections 302, 201 / 34 of the Indian Penal Code.

Both the accused were acquitted of the charge for the offence under Sections 304-B / 34 of the Indian Penal Code. Upon hearing on the point of sentence, they have been sentenced to undergo R.I. for life for the offence under Sections 302 / 34 of the Indian Penal Code and further sentenced to undergo R.I. for 7 years for the offence under Sections 201 / 34 of the Indian Penal Code, and both the sentences were directed to run concurrently.

3. It may be stated that the co-accused, Pachchu @ Pachua @ Jainarayan Mahto @ Nrarayan @ Pachu Kumar Mahto, who had been convicted

and sentenced along with appellant, had filed another appeal, being Criminal Appeal (DB) No.10 of 2008, which was allowed vide order dated

02.04.2008, as the said appellant claimed to be a juvenile.

4. The prosecution case was instituted on the basis of written report given to the Officer-Incharge, Gomia Police Station, by Rewat Lal Mahto, the

informant, wherein it is stated that his daughter, the deceased Yashoda Devi, aged about 22 years, was married to the accused Nageshwar Mahto,

about 3 1/2 years ago and thereafter she was living at her in-laws" place. It is stated that the couple had no issue and subsequently she was being

subjected to cruelty and torture for demand of motorcycle, which demand could not be met by the informant. On 07.05.2006, the parents-in-law

of the deceased came to the house of the informant, asking whether his daughter had come to his house, and informed that she was missing from

the house since 06.05.2006. Thereafter, the informant along with other persons searched his daughter, but she could not be found. On

08.05.2006, the informant along with his brother Churaman Mahto and other persons again went to search his daughter, when the dead body of

his daughter was found in a forest with injuries. Thereafter, he came to the in-laws" house of the deceased, but no one was found in the house. In

the evening, the mother-in-law of the deceased was trying to flee away, when she was apprehended by the informant and other persons, and she

disclosed to them that the deceased was murdered by Nageshwar Mahto and co-accused Pachchu @ Pachua, and they had thrown the dead

body in the forest. As it was night, the police could not be informed. On 09.05.2006, the written report about information was given to the police

by Rewat Lal Mahto, the informant, on the basis of which Gomia P.S. Case No. 40 of 2006, corresponding to G.R. No. 359 of 2006, was

instituted for the offence under Sections 304-B, 201 / 34 of the Indian Penal Code, against the accused Nageshwar Mahto, his parents and

Pachchu @ Pachua, and investigation was taken up. After investigation, the police submitted charge-sheet against the accused Nageshwar Mahto

and co-accused Pachchu only.

5. After commitment of the case to the Court of Session, charge was framed

against both the accused persons for the offences under Sections 302

/ 34, 304-B / 34 and 201 / 34 of the Indian Penal Code, and upon the accused persons" pleading not guilty and claiming to be tried, they were put

to trial.

6. In course of trial, 11 witnesses were examined on behalf of the prosecution, out of whom P.W.-3 Hemia Devi, P.W.-4 Kosilya Devi and P.W.-

8 Dropadi Devi have turned hostile, and have not supported the prosecution case at all. P.W.-1 Shukar Mahto has only stated that the dead body

of the deceased was found in the forest, but he has not stated anything against the accused. P.W.-2 Chetlal Mahto was only tendered by the

prosecution.

7. P.W.-9 Rewat Lal Mahto, the informant and father of the deceased, P.W.-5 Churaman Mahto and P.W.-6 Badri Mahto, the uncles of the

deceased and P.W.-7 Damodar Mahto, the maternal uncle of the deceased have stated about the marriage between the deceased and the accused

Nageshwar Mahto as also about the demand of motorcycle, and subjecting her to cruelty for the said demand. They have also stated that upon

search, the dead body of the deceased was found in the forest. The written report was proved by P.W.-9 Rewat Lal Mahto, which was marked

as Ext.-2, and his signature thereon was marked as Ext.-1/1, whereas the signature of P.W.-5 Churaman Mahto on the written report was marked

Ext.-1.

8. P.W.-10 Dr. Ajoy Kumar Sinha had conducted the post-mortem examination on the dead body of the deceased on 09.05.2006, and the only

external injury, which he found on the dead body, was that the ring and index fingers of the left hand were not present, which were cut injuries and

ante-mortem in nature. The dead body was putrified with foul smell of stomach, and the opinion about the cause of death was reserved for forensic

examination, for which viscera was preserved. He has identified his post-mortem report to be in his pen and signature, which was marked Ext.-3.

In his cross-examination, this witness stated that no viscera report had been received and as such, no definite opinion could be given about the

cause of death.

9. P.W.-11 Satya Narayan Choudhary is the Investigating Officer of the case. He is an important witness examined by the prosecution, in view of

the fact that there is no eye-witness to the occurrence and there is only circumstantial evidence against the accused. This witness has proved the

formal FIR which was marked Ext.-3. He has also proved the inquest report of the dead body and the dead body challan, which were marked

Exts.-4 & 5 and he has given the description of the place of occurrence, which is the forest where the dead body was found. He has stated that on

11.05.2006, he arrested the accused Nageshwar Mahto and had recorded his confessional statement, which he has proved and the same was

marked as Ext.-6. He has stated that on the basis of the confessional statement of the accused, one sari of the deceased was recovered upon

pointing out by the accused, from another forest, and he had seized the said sari, and he has also proved the seizure list, which was marked Ext.-7.

This witness has also produced the said sari in the Court, which was marked material Ext.-I. In his cross-examination, this witness has admitted

that he did not get the recovered sari identified by any witness and he has also admitted that he had not taken the signature of the accused on the

seizure list. He has denied the suggestion of making faulty investigation.

10. Learned counsel for appellant has submitted that the appellant was also charged for the offence under Sections 304-B / 34 of the Indian Penal

Code, but he has been acquitted of the said charge by the Trial Court below. The accused has been convicted only for the offences under Sections

302 / 34 and 201 / 34 of the Indian Penal Code. It is submitted by the learned counsel that there is no eye-witness to the occurrence and the only

material against the accused is that, on the basis of the confessional statement of this accused, there was recovery of a sari, which is claimed to be

of the deceased. Learned counsel submitted that the I.O. has admitted in his cross-examination that he did not get said sari identified by any

witness and had not taken the signature of the accused on the seizure list. The seizure list, which is marked Ext.-7 is also present in the Lower

Court Record, and it does not bear the signature of the accused. Learned counsel accordingly, submitted that story of this recovery cannot be

believed, and it is a fit case in which the appellant ought to have been given benefit of doubt.

11. Learned counsel for the State, on the other hand, has opposed the prayer and has submitted that the witnesses P.W.-5 Churaman Mahto,

P.W.-6 Badri Mahto, P.W.-7 Damodar Mahto and P.W.-9 Rewat Lal Mahto have fully supported the prosecution case, stating that the deceased was the wife of the present accused and she was being subjected to cruelty and torture for demand of motorcycle, which could not be met, due to which, she was done to death, and the dead body was found in the forest. The confessional statement of the accused appellant had led to the recovery of sari of the deceased. Learned counsel accordingly, submitted that the appellant has been rightly convicted and sentenced for the offences under Sections 302 / 34 and 201 / 34 of the Indian Penal Code, and there is no illegality in the impugned Judgment of conviction and Order of sentence.

12. Having heard learned counsels for both the sides and upon going through the record, we find that the appellant has already been acquitted for the offence under Section 304-B of the Indian Penal Code. For the conviction of the appellant under Sections 302, 201 / 34 of the Indian Penal Code, there is no eye-witness to the occurrence, and the conviction of the appellant for these offences is based on the confessional statement of the appellant, which had led to the recovery of the sari of the deceased. Evidence of the I.O., P.W.-11 Satya Narayan Choudhary, clearly shows that the said sari was not put for identification by any of the witness, nor the signature of the accused was taken on the seizure list. The seizure list is also available on the record marked as Ext.-7. We have gone through this seizure list, which shows that there is no signature of the accused on the said seizure list. In that view of the matter, we are of the considered view that the story of recovery of sari from the forest, on the basis of the confessional statement of the accused Nageshwar Mahto, and upon pointing out by him, just cannot be believed. There is no valid evidence on the record to suggest that the said sari belonged to the deceased. We are of the considered view, that in the facts of this case, the appellant ought to have been given the benefits of doubt, and the impugned Judgment of conviction and Order of sentence are not sustainable in the eyes of law.

13. For the foregoing reasons, the impugned Judgment of conviction and Order of sentence dated 04.12.2007, passed by the learned 1st Addl.

Sessions Judge, Bermo at Tenughat, in S.T. No. 378 of 2006, are hereby, set aside. The appellant Nageshwar Mahto is given the benefits of

doubt and he is acquitted of the charge. The appellant is already in custody, undergoing the sentence. Let him be released and set at liberty

forthwith, if his detention is not required in any other case.

14. This appeal is accordingly, allowed. Let the Lower Court Records be sent back to the Court concerned forthwith, along with a copy of this

Judgment.