
(2006) 12 JH CK 0011

In the Jharkhand High Court

Case No : Criminal Appeal No's. 130, 157, 158, 177 and 183 of 1997 (R)

Sona Ram Mahli and Others

APPELLANT

Vs

The State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 18-12-2006

Acts Referred:

Penal Code, 1860 (IPC) — Section 201, 302, 34, 364

Citation : (2007) 1 BLJR 658

Hon'ble Judges : Rakesh Ranjan Prasad, J; Dabbiru Ganeshrao Patnaik, J

Bench : Division Bench

Advocate : M.K. Habib, in Cr. Appeal Nos. 130/98 and 177/97, A.S. Dayal, in Cr. Appeal No. 157/97, B.M. Tripathy and K.S. Nanda, in Cr. Appeal No. 158/97 and J.P. Pandey, in Cr. Appeal No. 183/97, for the Appellant; Anwar Aziz, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

D.G.R. Patnaik, J.—Appellants namely, Sona Ram Mahli (Cr. Appeal No. 130 of 1998), Manki Munda, Thakur Munda, Harinath Singh Munda, Behru Munda, Fulari Munda, Ram Charan Kumhar, Gholtu Kumhar and Feklu Munda (Cr. Appeal No. 157 of 1997), Inderdeo Mahto (Cr. Appeal No. 158 of 1997, Budhu Mahli (Cr. Appeal No. 177 of 1997) and Behra Munda, Lulari Munda, Thakur Munda and Hari Nath Munda @ Hari Nath Singh Munda were convicted by the 5th Additional Judicial Commissioner, Ranchi for the offences under Sections 364, 302, 201 and 34 of the Indian Penal Code and was sentenced to undergo imprisonment for life for the offence under Sections 364 and 302 IPC and three years for the offence u/s 201 IPC vide sessions trial No. 216 of 1991/T.R. No. 24 of 1991. It appears however that Cr. Appeal No. 183 of 1997 (R) has been preferred by four appellants namely, Behru Munda, Fulari Munda, Thakur Munda and Hari Nath Munda @ Hari Nath Singh Munda, white memorandum of appeal of Cr. Appeal No. 157 of 1997 (R) contains also the names of the aforesaid four appellants along with others. Considering the above, names of the above named appellants, namely, Behru Munda, Fulari Munda, Thakur Munda and Hari Nath Munda @ Hari

Nath Singh Munda are deleted from Cr. Appeal No. 157 of 1997 (R)

2. Facts of the case in brief are that Jawahar Mian (deceased) was found missing from his house situated at village Hesadih within the P.S. Silli. District Ranchi, from the late evening of 5.11.1990. Six days later i.e. on 11.11.1990 in the afternoon at about 1.30 PM, Noor Mohammad (PW7) the son of Jawahar Mian lodged information at the police station stating that on the previous day i.e. on 10.11.1990 he was informed that his father was missing since the evening of 5.11.1990. On this information, the informant along with his cousin Md. Azim Mian went to the house of his father at village Hesadih where his father's tenant Sagri Majhian @ Bangalin revealed on enquiry that her land lord Jawahar Mian left the house to sleep at Kokar Mahalli Tola carrying cash of Rs. 250/-besides documents pertaining to his lands. A few moments later, she heard alarms from the side of the house of co-villager Teju Gohrai. She went there and saw that Inder Mahto, Guddu Munda, Ram Charan Kumhar, Manki Munda, Thakur Munda, three sons of Gofula Mahto, Sona Ram Mahli, Budhu Mahali, Phulari Munda, Nand Lal Mahato, Gholtu Kumhar and Kalwari Munda were assaulting Jawahar Mian and dragging him away towards the forest. Accusing the appellants of having kidnapped his father and expressing apprehension of danger to the life of the victim, the informant has claimed land dispute to be the motive for the occurrence.

In course of investigation, a headless skeletal remains of human origin was found within the nearby Purnapani Jungle. The informant (PW7) has claimed to have identified the skeletal remains as being the dead body of his father on the basis of the clothes found by the side of the dead body and also on the basis of tattoo marks seen on the leg of the dead body.

Altogether 16 accused persons who were named and against whom, investigating officer had submitted charge sheet, were put on trial. Out of them, 5 persons namely, Prem Nath Mahto, Guddu Munda, Nand Lal Mahto, Sai Nath Mahto and Gokul Mahto were acquitted from the charges, While rest being the present appellants, were convicted and sentenced for the aforementioned offences.

3 The trial court had recorded its finding of guilt against the present appellants by placing reliance upon the testimony of Sagri Majhian @ Bangalin (PW10) and that of the informant (PW7) and his cousin, Md: Azim Mian (PW6) besides the evidence of the investigating officer (PW12) and that of the doctor (PW8) who had examined the skeletal remains.

4. Assailing the impugned judgment of conviction and sentence, learned Counsel appearing for the appellants have commonly advanced several grounds, laying emphasis on the ground that the learned trial court has committed serious error leading to miscarriage of justice by placing implicit reliance upon the testimony of PW10 and has failed to appreciate the evidences on record in proper perspective. Elaborating the statement, learned Counsel explains that before relying on the testimony of PW10 who claims herself to be the eye witness, the

trial court should have ensured as to whether PW10 is the same lady whom the informant (PW7) in his F.I.R. and in his deposition and PW6 in his evidence has referred to. To demonstrate, learned Counsel advert to the F.I.R. and the charge sheet where the lady named as Sagri Majhian has been described by the informant as being the wife of Masudan Choudhary, a tenant living in the house of the informant's father Jawahar Mian, and proceed to contrast the same with the evidence of PW10 who claims herself to be the wife of Konua Munda and the evidence of PW 11 Masudan Choudhary who denies to have any wife by the name of Sagri Majhian or even of his living as a tenant in the house of Jawahar Mian. Learned Counsel advert next to the evidence of PW10 and by comparing the same with the evidence of the informant (PW7) and that of PW6, point out certain inconsistencies which purportedly suggest that PW10 is not the lady from whom the informant claims to have obtained the information on which his F.I.R. is based and neither are PW7 and PW6 the persons to whom PW10 claims to have narrated the occurrence. Learned Counsel further point out from the evidence of PW10 that her narration of the occurrence wherein she insists that she had seen that the accused persons had assaulted and killed Jawahar Mian in front of the house of co-villager Teju Gohrai, and dragged the dead body of the victim from there towards the forest, the narration appearing in the F.I.R. is in total contradiction to her claim and neither does the description of the place of occurrence as given by the investigating officer (PW12) tally with the description given by her. Learned Counsel raise serious doubt regarding the veracity of the lady's evidence by adverting to the fact that she has not explained as to why she did not promptly inform about the occurrence either to the son's of Jawahar Mian or to the police on 5.11.1990 or even on the next day and under what circumstances she had voluntarily surfaced before the investigating officer after over eight days on 13.11.1990. Learned Counsel contend that the unexplained delay leads to the inference that the entire story of the prosecution is cooked up and PW10 is a fictitious person planted as an eye witness by members of the community to which the informant and his father belong.

The next ground on which equal emphasis has been placed by the appellants is that there is no clear and cogent evidence adduced by the prosecution to confirm that the skeletal bones recovered and seized in this case, are the skeletal remains of Jawahar Mian. Referring in this context to the evidence of PW7 read with the evidence of the investigating officer (PW 12) and that of the inquest witnesses (PW5 and PW6) as also that of the doctor (PW8), learned Counsel point out that according to the inquest and seizure witnesses, the skeletal bones without skull was recovered from within the Jungle. PW7 claims to have identified the headless dead body to be that of his father. His identification was on the basis of the clothes, which was purportedly recovered by the side of the dead body and also on the basis of tattoo marks which he claims to have seen on one of the legs of the dead body. Learned Counsel submit further that this claim of identification made by the informant cannot be relied upon, firstly because he was not expected to have seen the clothes which his father had worn prior to his

disappearance, for the simple reason that he was living at a far off distance from the house of his father and secondly, because neither the inquest witnesses nor the police officer who had prepared the inquest report, have affirmed that they had seen any tattoo marks on any of the legs of the dead body. Further more, even the doctor who had examined the skeletal bones, does not affirm that" he had observed any tattoo mark on any of the legs.

5. Learned Counsel for the State, on the other hand, while placing reliance upon the testimonies of PW10 and that of PW7, has tried to defend the impugned judgment of conviction of the appellants. Learned Counsel argues that from the evidence of PW7, it transpires that on being informed regarding missing of his father, he had gone to the house of Sagri Majhian, from whom he learnt about the entire details of occurrence and also the fact that she was the eyewitness of the kidnapping of his father by the accused persons who had carried away the victim towards the jungle. Learned Counsel adds that this fact has been confirmed by PW6, who is the cousin of the informant and subsequently, by the recovery of the dead body of the deceased from the jungle along with the clothes of the deceased, which was found by the side of the dead body and identified by the informant as belonging to his father. Learned Counsel argues further that though, much hue and cry was raised by the defence regarding the identity of PW10, but no such circumstance has been elicited from PW10 in her cross-examination by the defence to suggest that her identity is doubtful and that she is not the person referred to by the informant in his F.I.R. and to whom, PW6 had also made reference in his deposition.

6. On going through the statements of the prosecution's witnesses, it appears that PW10 is the only person who is claimed to be the eyewitness to the alleged occurrence. The evidence of the informant (PW7) and that of his cousin (PW5) are hear say and based upon the information which they claim to have received from the lady lamed Sagri Majhian @ Bangalin. The appellants have seriously challenged the very identity of PW10 and have disputed her claim to be the person referred to by the informant in his F.I.R. and by PW6 in his evidence. The controversy, as raised by the appellants, is not without basis. The lady, from whom the informant has claimed to have received details of the information regarding the alleged occurrence, has been referred to by the informant as Sagri Majhian @ Bangalin, wife of Masudan Prasad Choudhary. Same description with reference to her identity appears in the charge sheet also. Yet PW10 does not acknowledge that the name of her husband is Masudan Prasad Choudhary or that she is the wife of Masudan Prasad Choudhary. Rather, she claims herself to be the wife of one Konua Munda. Significantly, Masudan Prasad Choudhary who has been examined as PW11, categorically denies to be the husband of any lady by the name of Sagri Majhian or even to be the tenant residing in the, house of Jawahar Mian. The controversy regarding the husband's name assumes importance on account of the fact that both the informant (PW7) as well his cousin (PW6) state emphatically that the information regarding the alleged occurrence was conveyed to them by the lady namely, Sagri Majhian, the wife of

Masudan Prasad Choudhary, but the lady who was produced by the prosecution as PW10 does not acknowledge her identity as stated by PW7 and PW6. Furthermore, from the evidence of the investigating officer (PW12), it appears that PW10 had voluntarily appeared before him on 13.11.1990 i.e. two days after the registration of the F.I.R. The investigating officer accepted her own declaration regarding her name and identity without making any further inquiry.

Referring to the evidence of PW10, it is her contention that she had voluntarily visited the house of the sons of Jawahar Mian namely, Gutum and Wajim and had told them about the occurrence and what she had purportedly seen on the alleged date of occurrence. This is apparently inconsistent to the evidence of PW7 who has claimed that he along with his cousin Md. Azim went to the house of Sagri Majhian @ Bangalin, wife of Masudan Prasad Choudhary and collected the information from her. The logical question which the learned Counsel for the appellants have rightly asked in this context is, if the contention of PW10 is that she had reported the incident to two persons namely, Gutum and Wajim and if the categorical statement of the investigating officer is that there, is no witness examined by him by the name of Gutum and Wajim, then claim of PW7 that it was he who had learnt about the details from the lady, becomes doubtful. If the statement of PW10 is to be believed, then the prosecution will have to answer as to why it has suppressed those persons namely Gutum and Wajim from being produced at the trial. It is significant to note here that though PW7 claims to have obtained information regarding the details, of occurrence from the lady named as Sagri Majhian @ Bangalin, that too in the presence of PW6, yet PW6 does not confirm the above statement of PW7, nor does he state details of information received by him or in his presence from Sagri Majhian. The prosecution has examined PW6 only as a witness to the seizure of the skeletal bones.

Reading the evidence of PW10 further, it is her contention that she had seen her landlord leaving his house in the late evening of 5.11.1990 carrying some documents and cash. In absence of any qualifying statement that the landlord had told her about the nature of documents or the amount of cash he was carrying, it is not understood as to how this witness could specify both, the amount of cash and the nature of documents.

As regards the place of occurrence, PW10 claims that the incident had occurred by the side of the house of her co-villager Teju Gohrai. She also claims to have seen that all the assailants together, dealt several blows on the victim with sharp cutting weapons causing thereby instant death of the victim at the spot and thereafter, assailants dragged away the victim's dead body from there towards the forest. She also claims that at the aforesaid place of occurrence, there was marks of violence and the earth was stained with blood. The investigating officer, on the contrary, does not confirm that at the time of inspecting the place of occurrence, he had found either any mark of violence or any stains of blood. The prosecution has explained this by reminding that the place of occurrence was

inspected by the investigating officer after seven days of the alleged date of occurrence and therefore, it was not likely that the evidence of violence at the said place of occurrence would still remain at the time of its inspection by the investigating officer. Yet, what is significant is two different versions relating to the occurrence appears. One which is narrated in the F.I.R. and the other by this witness. As per the narration in the F.I.R., the victim was merely assaulted by the side of the house of Teju Gohrai but not killed, whereas PW10 insists that the death of the victim had occurred at the same place almost instantaneously and that it was his dead body which was dragged away towards the forest. If the identity of PW10 is accepted as the same person as referred to in the F.I.R., then there appears marked and definite improvement in her deposition at the trial over her earlier statements given to the informant and perhaps also to the investigating officer. Furthermore, whereas the investigating officer as well as the witnesses including PW3 and PW4 claim that the clothes on the basis of which, the dead body was identified, was found lying, in the ditch by the side of the dead body, PW10 on the other hand insists that the blood stained clothes were recovered from the house of her landlord (Jawahar Mian). Furthermore, if the contention of PW10 that the deceased was attacked by all the accused simultaneously with sharp cutting weapons, then how is it that the clothes found by the side of the skeletal bones and identified as the clothes of the victim, does not bear any mark of violence since it is not the prosecution's case that the victim was first undressed (sic) failed to report the incident promptly to the sons of her landlord (Jawahar Mian) immediately either on the date of occurrence i.e. on 5.11.1990 or on the very next day. Considering the above glaring inconsistency which appears to be vital to the prosecution's case, it would be hazardous to rely entirely on the evidences of PW10.

It is also significant to note that there is a total divergence amounting to inconsistency in the statement of the witnesses namely, the informant (PW7), PW5 and PW6 who claim that the dead body of Jawahar Mian was recovered in their presence. From the evidence of these witnesses, it appears that it was the headless skeletal remains which were recovered from the jungle on 27.11.1990. Inquest report prepared by PW12 indicates that he had found the dead body, cut into several pieces, lying scattered in a ditch within the jungle. It appears from the pieces of the dead body that it was dismembered by some sharp cutting weapons. The inquest report also indicates that pieces of clothes were found sticking to the corpse and a green coloured lungi and a green coloured full shirt was also found lying nearby. In his deposition, the investigating officer (PW12) affirms that he had collected bones of the various parts of the dead body, tied in a gunny bag and had forwarded them for postmortem examination. The doctor (PW 8) affirms that on 28.11.1990 he had received a gunny bag containing skeletal bones and he had examined them on 30.11.1990. He found considerable amount of soft tissue in the form of skin, muscle ligament covering the bones and attached with the bones. Describing various parts of the bones, he informs that he had found and examined femur (both right and left), tibia (right and left).

Febula (right and left), Humerous (right, and left), Alna (right and left, Radius (right and left), scapula (right and left). He had found the lateral half of right clavicle was attached with right scapula while medial half of left clavicle was attached with the sternum. He had found only left half of sternum. Vertebra containing lumber 1 to 5 and thoracic vertebra 7 to 12 were also found. Though left hip bone was available, but the right hip bone was missing. Significantly, the doctor has not confirmed that the pelvic bone was available for examination. He has opined that tire cut injury on the sternum was ante mortem in origin and that the bones were of human origin belonging to a male aged about 55 years + 7 years. He has however not explained as to the basis of his opinion regarding the sex of the dead body even in absence of the complete portion of the pelvic bones and even without X-ray examination of the various bones, which are essential to determine the sex. Significantly, neither the doctor nor the investigating officer has confirmed the presence of any tattoo marks on any of the legs of the dead body. The claim of the informant (PW7) that he had identified the dead body as being that of his father (Jawahar Mian) by seeing tattoo marks, is doubtful since the presence of tattoo marks as being the basis of any identification, does not find mention in the inquest report or in the evidence of the investigating officer. The informant's claim that the clothes which were found by the side of the dead body was also the basis of his identification, cannot be relied upon, since admittedly, his lather was living far away and he had no occasion to see the clothes which his father was wearing at the time when he had left his house. Thus, the prosecution's evidences relating to the identity of the dead body which was seized in this case, appears to be insufficient.

In absence of any other corroborative evidence-to the testimony of PW10, it has to be observed that the prosecution has failed to offer any cogent and reliable evidence to connect the present appellants with the alleged kidnapping and murder of the informant's father Jawahar Mian.

7. For the reasons mentioned above, we find merit in these appeals. Accordingly, these appeals are allowed. The judgment of conviction and sentence, as passed by the trial court against the appellants, is hereby set aside. Appellants are acquitted of the charges for the offence under Sections 364, 302 and 201 of the Indian Penal Code. Since all the appellants except Sona Rani Mahli are on bail, they are absolved from the liability of their respective bail bonds. Appellant Sona Ram Mahli (Cr. Appeal No. 130 of 1998 (R)) is in custody, he is directed to be released forthwith; if not wanted in connection with any other case.