
(2011) 07 SC CK 0168
In the Supreme Court Of India
Case No : Criminal Appeal No. 211 of 2009

Surendra Mahto

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 26-07-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 302, 34, 376

Citation : (2011) 07 SC CK 0168

Hon'ble Judges : Harjit Singh Bedi, J;Gyan Sudha Misra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This appeal arises out of the following facts: Ranjo Devi the deceased left her husband's village to meet her parents on the 13th of December, 2001 along with her husband the Appellant herein. As the two reached the market place in village Sakmohan at about 2:00p.m., her husband stopped to rest for a while. Ranjo Devi also met her mother in the market place and they were soon joined by her husband. The two then decided to return home and while they were on their way, they met Manoj Kumar Pandit a friend of her husband in village Karak Pethia. Manoj Kumar Pandit bought some kachari and he along with her husband ate the same and then went to the village nearby to have some liquor. At about 5:00 a.m. Ranjo Devi asked her husband to move along as home was some distance away but he replied that he would stay at the house of his friend Manoj Kumar. Manoj Kumar, however, left for his residence followed by Ranjo Devi and her husband. As the two reached near the railway crossing in the south of village Karaka the Appellant asked her to have intercourse with him and despite her objections that they should not indulge in any such activity in the open he forced himself upon her. The two thereafter preceded towards village Aka Bishanpur i.e. the village of Manoj Kumar Pandit who also met them just outside the village. The three, accordingly, went on together. After sometime the Appellant expressed the necessity of attending to the call of nature. Ranjo Devi told the

Appellant that she would sit on the embankment with Manoj but the Appellant told her to come to the river bank. She was thereafter forcibly undressed by the Appellant and after he had shut her mouth he called out to Manoj Kumar Pandit to come running towards him. She was thereafter sexually assaulted by the Appellant followed by Manoj Kumar Pandit. Manoj Kumar Pandit thereafter tied her hands with a plastic rope whereas the Appellant took out a knife and gave three blows on her neck with the intention of killing her. She was thereafter thrown into the river so that she might drown. The Appellant as well as Manoj Kumar Pandit thereafter moved away where after Ranjo Devi who was still alive, managed to get out of the water to reach the toddy shop close by. The toddy shop owner P.W. 2 and her husband P.W. 3 there after gave her some clothes and also took her to a local doctor and informed the police station as well. Ranjo Devi's statement was recorded in village Desai Chowk at about 9:30 p.m. on the 13th of December, 2001 in which she gave the details mentioned above and further stated that the Appellant had sought to get rid of her as he was having an affair with a girl in Delhi. Ranjo Devi was first taken to the Primary Health Centre and thereafter to the Samastipur District Hospital for treatment. She then returned to the Primary Health Centre and then moved on to her parents' home where she died on the 18th of December, 1991. The inquest proceedings with respect to the death were subsequently held and the dead body was sent for its post mortem examination. The doctor found that she had died due to Scepticemia as a result of the injuries suffered by her. The two accused i.e. the Appellant before us and Manoj Kumar Pandit were also arrested and ultimately were charged for offences punishable u/s 302/34 Indian Penal Code whereas Manoj Kumar Pandit was charged for the offence punishable u/s 376 Indian Penal Code as well.

2. The prosecution in support of its case relied primarily on the dying declaration of the deceased Ranjo Devi which formed the basis of the FIR as also the evidence of P. Ws. 2 and 3 who supported the prosecution case insofar as the injury suffered by her at the hands of the two accused was concerned but disowned their statements u/s 161 of the Code of Criminal Procedure with respect to the allegations of rape. P. Ws. 7 and 9, the parents of the deceased, also proved the dying declaration that had been made to them by their daughter and which was in the same terms as the FIR. Some of the other witnesses who had been identified by the prosecution were also declared hostile. The trial court relying on the dying declarations, partly on the statements of P. Ws 2 and 3 as also on the statements of P. Ws. 7 and 9 convicted both the accused for the offences u/s 302/34 and Manoj Kumar Panda for the offence u/s 376 of the Indian Penal Code as well. Manoj Kumar Panda was awarded two sentences of life imprisonment for the two offences. The trial court however, relying on a string of cases and in particular on Bachan Singh's case held that the balance sheet with respect to the nature of the incident was heavily weighted against the accused Appellant Surender Mahto inasmuch that he had been instrumental in killing his wife in a particularly inhuman and gruesome manner and had, accordingly,

betrayed the trust between a husband and wife and that he had also been instrumental in exposing her to rape by his co-accused and that the motive was also reprehensible as he had wanted to get rid of her in order to marry his friend in Delhi. The trial court finally held that the murder fell in the rarest of rare category. A sentence of death was, accordingly, awarded to the Appellant. The matter was referred to the High Court for the confirmation of the death sentence and an appeal was also filed by the Appellant. The High Court has confirmed the conviction and sentence awarded by the trial court. It appears to be the conceded position that Manoj Kumar Panda, the co-accused, filed no appeal in the High Court. The present appeal has been filed by Surender Mahto alone.

3. We have gone through the evidence with the help of the Learned Counsel. We see that no fault can be founding the conviction of the Appellant in the light of the dying declarations, the evidence of P. Ws. 2, 3, 7 and 9 as supported by the medical evidence. The deceased had made two dying declarations the first one to the police which led to the registration of the First Information Report and the second to her parents.

4. Much argument has been raised by the learned Counsel for the parties as to whether the death sentence in such a matter should be maintained or not. It is true that the incident is a truly reprehensible one. The facts have been set out above and need not be reiterated, but we notice that as the Appellant was a young man 30 years of age at the time of the incident, there is a possibility that he may at some stage of his life have a reformation in his character. We are also told that the Appellant has a young daughter from his late wife and that the child is presently being looked after by her maternal grand mother. We are cognizant of the fact that each of these factors taken up individually would not perhaps be sufficient to call for a commutation of the sentence awarded but, if cumulatively taken, some extenuation in the sentence is called for. At the same time, keeping in view the gravity of the offence we think that the award of a life sentence simpliciter would not meet the ends of justice. We, accordingly, feel that the death sentence should be commuted to life but the sentence of imprisonment for life would extend to the full life of the Appellant subject to the statutory and constitutional powers of the State Government and the Governor insofar as remission and commutation etc. are concerned. We make an order in the above terms.

The appeal is disposed of.