

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.421 of 1993

(AGAINST THE JUDGMENT OF CONVICTION, DATED 23.09.1993, AND THE ORDER OF SENTENCE, DATED, 24.09.1993,, PASSED BY SHRI NAGENDRA NARAYAN SINGH, 2ND ADDITIONAL SESSIONS JUDGE, JAMUI, IN SESSIONS CASE NO. 354 OF 1989, ARISING OUT OF CHAKAI POLICE STATION CASE NO. 28 OF 1988, CORRESPONDING TO G.R.NO.622 OF 1988).

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1. Sukar Mahto
 2. Bhairo Mahto
 3. Dhalo Mahto
 4. Mangal Mahto
 5. Bhagirath Mahto
 - All sons of Mala Mahto
 6. Dhanu Mahto
 7. Dagan Mahto
 8. Hakim Mahto
 - All sons of Bhairo Mahto
 9. Puran Mahto, son of Bandhu Mahto
 10. Wakil Mahto
 11. Munsu Mahto
 12. Jamuna Mahto
 - All sons of Puran Mahto
 13. Lalo Mahto, son of Thothi Mahto
 14. Naro Mahto, son of Mangar Mahto
 15. Kartik Mahto, son of Huro Mahto
 16. Mahadeo Singh, son of Dawarka Singh
 17. Kunwar Singh, son of Darshal Singh
 - All resident of Village- Harsingha, P.S.-Chakai,
 District-Jamui

.... Appellants

Versus

The State of Bihar Respondent

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Appearance :

For the Appellants : None

For the Respondent : Mr. Ajay Mishra, A.P.P.

Mr. Neeraj Kumar @ Sanidh, Advocate, Amicus Curiae

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI
and

HONOURABLE MR. JUSTICE GOPAL PRASAD
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE I. A. ANSARI)
Date: 10-04-2015

By the judgment, dated 23.09.1993, passed, in Sessions Case No. 354 of 1989, by learned 2nd Additional Sessions Judge, Jamui, while the accused-appellant, Sukar Mahto, has been convicted under Sections 302 and 201 of the Indian Penal Code, the remaining accused, namely, Bhairo Mahto, Dhalo Mahto, Mangal Mahto, Bhagirath Mahto, Dhanu Mahto, Dagan Mahto, Hakim Mahto, Puran Mahto, Wakil Mahto, Munsu Mahto, Jamuna Mahto, Lalo Mahto, Naro Mahto, Kartik Mahto, Mahadeo Singh and Kunwar Singh along with accused Sukar Mahto have been convicted under Section 201 of the Indian Penal Code only.

2. By the order, dated 24.09.1993, while the convict, Sukar Mahto has been sentenced, for his conviction under Section 302 of the Indian Penal Code, to undergo imprisonment for life, the remaining convicted persons, namely, Bhairo Mahto, Dhalo Mahto, Mangal Mahto, Bhagirath Mahto, Dhanu Mahto, Dagan Mahto, Hakim Mahto, Puran Mahto, Wakil Mahto, Munsu Mahto, Jamuna Mahto, Lalo Mahto, Naro Mahto, Kartik Mahto, Mahadeo Singh and Kunwar Singh, along with convict, Sukar Mahto, have been sentenced to suffer rigorous imprisonment for a period of seven years each.

3. The case of the prosecution, as unfolded by the First Information Report, may, in brief, be described as under:

(i) Deceased Chandwa Devi, who died, on 14.06.1988, at night, at her matrimonial house, was wife of accused Sukar Mahto, their marriage having been solemnized about eight years before the death of Chandwa Devi. Six months before her death, Chandwa Devi, having conceived and in pregnant state, came to her parental house and, while she was living there, accused Sukar Mahto came and took her to her matrimonial home.

(ii) On 15.06.1988, Masudan Mahto, father of the deceased, came to learn that about eight days after Chandwa Devi had returned to her matrimonial home, when she served food to her husband, her husband found less salt in the food and this lapse, on the part of the said deceased, infuriated her husband (i.e., Sukar Mahto) and he gave a blow, by means of a *lathi*, on her head. On sustaining injury on her head, Chandwa Devi died and, then, her dead body was thrown by her husband into a well and, on the following day, the dead body was taken out from the well and, with the help of his co-villagers, namely, Bhairo Mahto, Dhalo Mahto, Mangal Mahto, Bhagirath Mahto, Dhanu Mahto, Dagan Mahto, Hakim Mahto, Puran Mahto, Wakil Mahto, Munsu Mahto, Jamuna Mahto, Lalo

Mahto, Naro Mahto, Kartik Mahto, Kunwar Singh and Mahadeo Singh, the accused Sukar Mahto performed the funeral rites over the said dead body and threw the same into a canal.

(iii) On receiving information from his son, Mahendra Mahto (PW 2), with regard to the occurrence leading to his said daughter's death, Masudan Mahto (PW 3) sent Amrit Mahto (PW 4) and Akil Mahto, a co-villagers of PW 3, to Harsingha village to ascertain the facts and, on receiving the information from them that what he (informant) had been reported was correct, PW 3 lodged a *fardbeyan* and treating the same as First Information Report, Chakai Police Station Case No.28 of 1988, under Sections 302/201/34 of the Indian Penal Code, was registered against the accused aforementioned.

(iv) On completion of investigation, a *charge sheet* was laid, under Sections 302/201/34 of the Indian Penal Code, against the accused-appellants, namely, Sukar Mahto, Bhairo Mahto, Dhalo Mahto, Mangal Mahto, Bhagirath Mahto, Dhanu Mahto, Dagan Mahto, Hakim Mahto, Puran Mahto, Wakil Mahto, Munsi Mahto, Jamuna Mahto, Lalo Mahto, Naro Mahto, Kartik Mahto, Mahadeo Singh and Kunwar Singh.

3. At the trial, while a substantive charge, under Section 302 of the Indian Penal Code, was framed against accused, Sukar Mahto, accused, namely, Bhairo Mahto, Dhalo Mahto, Mangal Mahto, Bhagirath Mahto, Dhanu Mahto, Dagan

Mahto, Hakim Mahto, Puran Mahto, Wakil Mahto, Munsii Mahto, Jamuna Mahto, Lalo Mahto, Naro Mahto, Kartik Mahto, Mahadeo Singh and Kunwar Singh along with accused Sukar Mahto was charged under Section 201 of the Indian Penal Code. To the charges so framed, all the accused pleaded not guilty.

4. In support of its case, prosecution examined altogether 08 (eight) witnesses. The accused were, then, examined under Section 313 (1) (b) of the Code of Criminal Procedure, 1973, wherein the accused denied that they had committed the offences, which were alleged to have been committed by them, the case of the defence being that of denial. No evidence was adduced by the defence.

5. Having, however, found the accused guilty of the offences, which they stood charged with, the learned trial Court convicted them accordingly and passed sentences against them as mentioned above.

6. Aggrieved by their conviction and the sentences, which have been passed against them, all the convicted persons have preferred this appeal.

7. We have heard Mr. Neeraj Kumar @ Sanidh, learned Counsel, appearing as *Amicus Curiae*, and Mr. Ajay Mishra, learned Additional Public Prosecutor, appearing on behalf of the State.

8. While considering the present appeal, what needs to be noted is that there is, admittedly, no eyewitness to the alleged occurrence of assault on, and killing of, Chandwa Devi.

9. The prosecution sought to prove its case with the help of PW 2 and PW 4 by endeavoring to bring on record the fact that PW 2 had been reported by Dhoru Singh, a co-villager of the accused-appellants, that it was accused Sukar Mahto, who had put to death his wife, Chandwa Devi.

10. At the trial, PW 4 (Amrit Mahto) turned hostile and nothing could be elicited by the prosecution to support their case that the accused-appellant, Sukar Mahto, was the one, who had put to death his wife and/or that any of the accused-appellants had caused disappearance of the dead body of Chandwa Dei with intend to screen the offender(s).

11. PW 2 has deposed that he learnt about the occurrence of assault on, and killing of, his sister (Chandwa Devi) from Dhoru Singh, co-villager of accused-appellants. Dhoru Singh was, however, not examined at trial and, hence, the information, claimed to have been given by Dhrou Singh to PW 2, cannot, but be regarded as *hearsay* witness.

12. From the evidence PW 2 and PW 4, prosecution, thus, derived no strength for its case that the accused-appellant, Sukar Mahto, was the one, who had put to

death his wife.

13. Coupled with the above, PW 4 has claimed that he came to know about the occurrence of killing of Chandwa Devi from PW 3, but when PW 3 himself was not an eyewitness to the occurrence, the evidence of PW 4 does not advance the case of prosecution.

14. So far as PW 1, PW 5 and PW 8 are concerned, they have merely proved the signatures of the Police Officer on the First Information Report, which was lodged by PW 3.

15. We are, thus, left with the evidence of the informant (PW 3). A bare reading of the evidence of PW 3 shows that though he has alleged that it was his son-in-law, i.e., accused-appellant, Sukar Mahto, has put to death Chandwa Devi, he (PW 3) does not have any personal knowledge with regard to the fact that Chandwa Devi was put to death by her husband.

16. Learned trial Court appears to have been influenced by the fact that about eight days before her death, Chandwa Devi had been taken back to her matrimonial house by the accused-appellant, Sukar Mahto. This circumstance, in itself, cannot make a Court hold the accused-appellant guilty of having caused the death of his wife. In fact, there is no evidence on record to show that the accused-appellant was



present at his house at the time when his wife died. To be fair, there is not even an iota of legally admissible evidence on record to show that Chandwa Devi died an unnatural death, far less that her death was *homicidal* in nature. Even if one were to assume that she died, it cannot be held, in absence of any evidence on record, that her death was unnatural. This apart, there is no evidence to show that prior to her death, Chandwa Devi was subjected to cruelty by the accused-appellants, raising any demand for dowry or other valuable security.

17. Situated thus, we do not find that there was even a particle of evidence on record, which can sustain the conviction of the accused-appellant for an offence as serious as *murder* nor is there any evidence to show that any of the accused-appellants had caused disappearance of dead body of Chandwa Devi with the intention to screen the offender(s).

18. Because of what has been discussed and pointed out above, this appeal succeeds.

19. In the result and for the foregoing reasons, we allow this appeal. The impugned conviction of the accused-appellants and the sentence passed against them by the judgment and order, under appeal, are hereby set aside. The accused-appellants are held not guilty of the offence, which they stand convicted of, and they are hereby acquitted of the

same.

20. Since the accused-appellants are on bail, their bail bonds are hereby cancelled and their sureties shall remain discharged.

21. Let the *Amicus Curiae* be paid a fee of Rs.5,000/-.

22. Registry shall, forthwith, send a copy of this judgment and order to the learned trial Court along with the Lower Court Records.

(I. A. Ansari, J)

(Gopal Prasad, J)

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