

PETITIONER:
MAHESH MAHTO & ANR.

Vs.

RESPONDENT:
STATE OF BIHAR

DATE OF JUDGMENT: 21/08/1997

BENCH:
M.M. PUNCHI, S.P. KURDUKAR

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

S.P. KURDUKAR, J.

This Criminal Appeal by Special Leave is filed by Mahesh Mahto (A-2) challenging the conviction and sentence passed under Section 302, 201/34 IPC. Originally Umesh Mahto (A-1), Mahesh Mahto (A-2) and Ramdulari Devi (a-3) were tried for an offence punishable under Sections 302, 201/34 IPC for committing the murder of Meera Devi, the wife of Umesh Mahto (A-1). Meera Devi was married to A-1 in the year 1982 and Duragam (second marriage) took place in month of Baishakh, 1983. It is alleged by the prosecution that at the time of Duragman A-1 demanded a scooter but the said demand could not be fulfilled because of financial difficulties of the brother of Meera Devi who however, assured that he will give a bi-cycle. Accordingly a bi-cycle was given to A-1. Despite this A-1 and other accused were not satisfied and they made a further demand of some furniture articles. The brother of Meera Devi was unable to meet these demands at that time but, however these furniture items were supplied to them at a later stage. It is alleged by the prosecution that A-1, A-2 and A-3 were not fully satisfied and were causing harassment to Meera Devi. The brother of Meera Devi sought to patch up the differences through a mediator even then things could not be sorted out and harassment continued. It is further alleged by the prosecution that on 12.9.1984 Ram Vinod Prasad went to Ramdeo Mahto (Mama) to pay him the cost of furniture items and thereafter both of them went to the house of A-1 to request him and his family members not to harass and assault Meera Devi. When they enquired about Meera Devi. Bisheshar Mahto told him that she is not in the house since last three days. When this information was given to Ramdeo Mahto he came to the village of Umesh Mahto (a-1) and made enquiries about Meera Devi. None of the inmates was able to give any information about her. When enquiries were made in the village, an old lady who was picking up cow dung told in that on Sunday last all the three accused persons committed murder of Meera Devi and threw her dead body in the river Gandak. Ram Vinod Prasad thereafter went to Khanpur Police Station and lodged the report (Ext.2). The FIR (Ext.5) was

drawn up and investigation commenced. The Investigating agency could not trace the dead body of Meera Devi despite its search, however, Ram Vinod Prasad and his brother continued the search and ultimately the dead body of Meera Devi was found at the bank of river Gandak on 15.9.1984. The information in that behalf was sent to the police who arrived there and prepared the inquest report. The dead body was sent to Sadar Hospital Samastipur for post mortem examination. After completing the investigation the three accused persons were put up for trial for an offence punishable under Sections 302, 201/34 IPC.

(2) The prosecution case entirely rests on circumstantial evidence and to prove the same it examined various witnesses and also placed on record the documentary evidence. Dr. Jamaluddin (P.W.9), Dr. B.N. Prasad (P.W.10) and Dr. K.C. Sinha (P.W.11) who jointly held the post mortem examination were examined at the trial.

(3) At the outset it may be stated that there is no challenge to the fact that Meera Devi died homicidal death. It is, therefore, not necessary to refer to the evidence of these three doctors in details. Suffice it to say that the team of doctors noticed fracture of 3rd, 4th and 5th thoracic ribs on front of the left side of the chest and found blood clots on the corresponding inner surface of the chest wall. Thoracic cavity was full of blood clots. On further dissection middle portion of the left lung was found ruptured. Stomach was not containing water. There was no foreign body in trachea. Lungs alveoli was not distended in water. Two nails of six 1"x2 1/2" respectively were found pierced through & through on Rt. dorsum of foot & Rt. hand respectively. Injuries caused by nails were post mortem in nature. Nails had been preserved and sealed & were handed over to constables. The antemortem injuries in the chest were caused by hard and blunt substance which were sufficient to cause death in ordinary course of nature, we, therefore, see no hesitation in holding that Meera Bai met with a homicidal death.

(4) The Sessions court on appraisal of oral and documentary evidence on record found the appellant and his brother Umesh Mahto (A-1) guilty for an offence punishable under Sections 302, 201/34 IPC and accordingly sentenced both of them to suffer life imprisonment and RI for 7 years respectively, However, Ramdulariddevi (A-3) was given the benefit of doubt and came to be acquitted.

(5) The convicted accused preferred an appeal to the High Court which was dismissed on November 16, 1987. Both the convicted accused thereafter filed Special Leave Petition through jail and this Court vide its order dated 24.4.1989 granted Special Leave to Mahesh Mahto (A-2), but refused to grant leave to Umesh Mahto (A-1) and dismissed his Special Leave Petition.

(6) Meera Devi (now dead) was the wife of Umesh Mahto (A-1) and Mahesh Mahto (A-2) is his younger brother. It is the prosecution case that A-1, A-2, and A-3 were demanding dowry and other articles from the brother of Meera Devi and for that reason they were harassing and assaulting her. To prove this story the prosecution relied upon the evidence of Ramdeo Prasad (P.W.7) who are brothers of Meera Devi. We have gone through their evidence and we find that there is a general allegation against three accused that they demanded a scooter and some other furniture articles. They further stated that only once the appellant made such demand. There is no evidence on the record to substantiate the prosecution case that the appellant was causing any harassment or assaulting Meera Devi. The Courts below have totally

overlooked this fact and has erroneously held the appellant guilty for committing the murder of Meera Devi with the aid of Section 34 IPC. Ware of the considered view that the prosecution has failed to prove beyond reasonable about the complicity of the appellant in committing the murder of Meera DEVI.

(7) What remains to be considered is as to whether conviction of the appellant under Section 201/34 IPC is sustainable? To prove this charge against the appellant the prosecution mainly relied upon the evidence of Chintaman Mahto (P.W.15). He is the resident of another village and has stated that he was posted as an operator in the Irrigation Department from 1982 to 1984 at Village Bhore Jairam. He was knowing A-1 as he used to go to his house very often. On 9.9.1984 during night when he had gone for answering the nature's call near the bound of the river Gandak he saw four persons carrying the dead body on the cot. It was a moonlit night and when he flashed his torch he identified the appellant and his brother Umesh Mahto (A-1), when he asked them whose dead body it was, they told him that it was of some woman and they proceeded towards the river Gandak. They then threw the dead body into the river. Admittedly the Investigating Officer has not recorded his statement under Section 161 Cr.P.C. and for that purpose the protest petition was filed by the informant against the Investigating agency. Several objections were raised to the credibility of the evidence of this witness but the courts below for the good reasons accepted the evidence of Chintaman Mahto (P.W.15) as trustworthy, We have gone through the judgments of the courts below as well as his evidence and we are satisfied that his evidence can be accepted as far as the incident of carrying the dead body towards the river Gandak and thereafter throwing the same into the river. The conviction of the appellant, therefore, under Section 201/34 IPC must be confirmed.

(8) Coming to the sentence awarded to the appellant for the offence punishable under Section 201/34 IPC it was urged on behalf of the appellant that at the time of incident he was 18 years old and was staying with his elder brother Umesh Mahto (A-1). The possibility that he having been pressed by his brother A-1 to carry the dead body of Meera Devi cannot be ruled out. He may not have been able to disobey his brother, younger in age as he was. After hearing learned counsel for the parties we are of the considered view that in the facts and circumstances of the case sentence of seven years awarded to the appellant was not justified. We, therefore, reduce the sentence of the appellant for an offence punishable under Section 201/34 IPC to the period already undergone.

(9) In the result the appeal succeeds in part. The conviction and sentence of the appellant under Section 302/34 IPC is set aside and he is acquitted of the said charge. His conviction under Section 201/34 IPC is confirmed but, however, the substantive sentence awarded to him by the courts below is reduced to the period already undergone. Ordered accordingly.