

(2025) 01 JH CK 0090

Jharkhand High Court

Case No: Criminal Appeal (D.B.) No. 501, 513 Of 2002

Ghuto Rana

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision: Jan. 23, 2025

Acts Referred:

- Indian Penal Code, 1860 - Section 149, 201, 302, 436

Hon'ble Judges: Ananda Sen, J; Gautam Kumar Choudhary, J

Bench: Division Bench

Advocate: Nilendu Kumar, Vani Kumari, Pankaj Kumar Mishra, Sanjay Kumar Srivastava

Final Decision: Allowed

Judgement

Gautam Kumar Choudhary, J

1. Appellants in both these appeals are aggrieved by the common judgment of conviction and sentence passed in Sessions Trial No. 135 of 1994 under

Sections 149, 302 and 201 of the IPC. Further, Balo Mandal was convicted and sentenced under Section 436 of the IPC.

2. Informant is the father of the deceased and as per his fardbeyan recorded on 09.06.1992, altogether eleven named accused persons came to his

house on 07.06.1992 at around 10:00 Oâ€™clock and set it on fire. Informant, his wife and children including the deceased- Naresh Mandal fled away

to save their life. After the incidence, Naresh Mandal could not be traced out despite frantic search and finally on 09.06.1992, he came to know that

he had been killed and the dead body was thrown on the railway track. He and his family members went there and identified the dead body. It has

been claimed that it was the accused persons who had killed his son.

3. On the basis of the fardbeyan, FIR was instituted against altogether twelve accused persons against all these appellants, except the appellants

Ghuto Rana and Duryodhan Rana. Police on investigation, found the case true and submitted charge sheet against all these appellants who were put

on trial for charge under Sections 149, 302 and 201 of the IPC. Appellant- Balo Mandal was further charged under Section 436 of the IPC. Appellants

have been convicted for the offences charged.

4. It is argued by the learned counsel on behalf of the appellants that as per the FIR, the informant party including the deceased had fled away at the

time of the said incidence of arson. Therefore, as per the FIR, no one from the family of the informant witnessed the deceased being taken away by

the appellants. There is also no eye witness of last seen of the deceased in the company of the appellants. Despite the absence of any legal evidence,

the learned trial Court has drawn inference of complicity of the appellants in the murder of the deceased for the land dispute with the informant party.

5. Learned A.P.P. has defended the judgment of conviction and sentence.

FINDING

6. Prosecution in support of the case has examined fifteen witnesses, out of which P.W. 6, P.W. 9, P.W. 14 and P.W. 15 were tendered on behalf of

the prosecution.

7. There is no direct eye witness to the incidence and the charge of murder and causing disappearance of dead body rests on circumstantial evidence.

P.W. 1 is the daughter of the informant. She deposed that when her father and brother were raising wall, Kishore, Paro, Kishun, Pagal and Banshi

had asked them not to raise the boundary wall. They had come armed with lathi, danda and sword. They sprinkled oil at their house and then Kishun

and Balo set the house on fire. She has deposed that the deceased was caught and taken away by the accused persons.

Testimony of P.W. 2, who is also daughter of the informant, is on the same line. She has also deposed that her father and mother fled away whereas

deceased- Naresh Mandal was caught and taken away by the accused persons. She has named Balo, Indu, Banshi, Pagal, Mathura, Shibu and

Shankar to have come, caused arson and caught her brother and took him away.

P.W. 3- Phulwati Devi is the mother of the deceased. She specifically states about Kishun and Balo to have set her house on fire. Her son and two daughters were left behind. In her cross-examination, she deposed that the accused persons were their agnates, but she had no land dispute with them.

P.W. 4 is the son of the informant. He has also deposed that Ganpat Mandal, Kishun, Balu, Mathura, Shibu, Balo, Banshi, Mahadeo and Shankar came and started pelting stone on his house and then set it on fire. His brother was caught and taken by the accused persons.

Deposition of P.W. 5 (informant of the case) is also on the same line. He has deposed that Balo had set the house on fire and thereafter, the accused persons resorted to stone pelting. Informant fled away from there. His daughter informed that the accused persons had caught hold of his son and taken him away. His dead body was recovered after two days.

P.W. 8 has deposed that two minor daughters had come running to her house on the day of incidence and informed that her house was on fire and parents had fled away. It was also told by them that Naresh Mandal had been caught by the villagers.

P.W. 10 is the Investigating Officer.

8. Autopsy Surgeon (P.W. 12) has deposed that on 08.06.1992, he conducted post-mortem on the dead body of unknown Hindu Male aged about 20 years brought by the Constable. He noted eight injuries over the dead body which were as follows: -

I. His dead body was divided in two pieces by enough injury extending from below umbilicus to the pubis symphysis, anteriorly and about 2" 4 lumber vertebra behind intestine, urinary bladder, aorta, inf vena cava, vertebral column, all around blood clot present.

II. Lacerated wound 1" x 1½" x scalp deep on back of scalp.

III. Bruise 4" x 1½" on left side of forehead extending from cheek bone to temporal region with fracture of temporal bone and maxilla.

V. Compound fracture of right leg below knee.

VI. Ecchymosis on left side of chest.

VII. Minor bruise on left side of chest.

VIII. Bruises 8 " 10 in numbers present on the back varying from 1x 1 and 2x 2 in size.

He opined that the death of the deceased was due to hemorrhage and shock due to the aforesaid injuries. Injury Nos.II- VIII were caused by hard

and blunt substance and injury No.1 was caused by running over by heavy substance by rail traffic accident.

Post mortem examination report objectively establishes that death was homicidal in nature and then it was thrown over rail track as a result of which it

was run over by train leading to injury no.I.

9. As far as incidence of arson is concerned, there is consistent eye witness account that it was Balo Mahto who set the house on fire with Kishun

Mahto and other accused persons, but surprisingly none of the appellants except Balo Mahto has been charged under Section 436 of the IPC. Be that

as it may, there is no infirmity in the judgment of conviction and sentence under Section 436 of the IPC against Balo Mahto which is accordingly

affirmed.

10. As far as the other appellants are concerned, there is a vital contradiction between the earliest version of the incidence as it appears in the

fardbeyan and that as deposed by P.W. 1, P.W. 2 (who are the sisters of the deceased) and P.W. 4 (brother of the deceased). It has emphatically

been stated in the fardbeyan that when the house was put on fire, the informant and all his family members including the children and the deceased

fled away from the house, whereas these witnesses have stated that they remained at house and saw the appellants forcibly taking away the

deceased. Both these versions are irreconcilable. The testimony of these witnesses that the appellants had caught and abducted the deceased, cannot

therefore be accepted. Be it noted that after the alleged abduction, the deceased remained traceless for almost two days when his dead body was

found, but no report regarding it was lodged, and the post-mortem examination of the unknown dead body was conducted. Neither FIR was lodged for

the offence of abduction, nor the accused persons were put on trial for it. Claim of witnessing the abduction appears to be therefore a product of

afterthought and therefore, cannot be accepted.

11. Except for the evidence of the witnesses that accused persons had taken away the deceased, which has been discarded for the reasons discussed

above, there is no other circumstantial evidence from which an inference can be drawn that appellants had abducted and killed the deceased- Naresh

Mahto. There is no evidence of last seen, nothing has been recovered on the disclosure statement made by the accused persons. Therefore, the

appellants are entitled to benefit of doubt for the offence of committing murder and causing disappearance of the dead body.

12. In the result,

I. Judgment of conviction and sentence under Section 436 of the IPC of Balo Mandal (son of Late Chihuti Mandal) is affirmed and his appeal stands

dismissed. His bail is cancelled and he is directed to surrender before the learned trial Court within two weeks from the date of receipt of copy of

judgment to serve the remaining part of the sentence.

II. Judgment of conviction and sentence passed under Sections 149, 302 and 201 of the IPC against all the appellants is set aside. Remaining

appellants are on bail. Their sureties stand discharged from the liabilities of their bail bonds.

Criminal Appeal (D.B.) No.501 of 2002 is allowed and Criminal Appeal (D.B.) No.513 of 2002 is accordingly partly allowed.

Pending Interlocutory Application, if any, is disposed of.

Let the Trial Court Records be transmitted to the Court concerned along with a copy of this judgment.