

**(2009) 04 JH CK 0020**

**Jharkhand High Court**

**Case No:** Criminal Appeal (D.B.) No. 41 of 1998 (P)

Bharat Mahtha

APPELLANT

Vs

The State of Bihar (now  
Jharkhand)

RESPONDENT

**Date of Decision:** April 21, 2009

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 302, 307, 324, 342

**Citation:** (2009) 57 BLJR 2118

**Hon'ble Judges:** Rakesh Ranjan Prasad, J; Amareshwar Sahay, J

**Bench:** Division Bench

**Advocate:** Ranjan Kumar Singh, for the Appellant; Assistant Public Prosecutor, for the Respondent

**Final Decision:** Dismissed

**Judgement**

1. The appellant has filed this appeal against the judgment dated 03.12.1997, passed by the 3<sup>rd</sup> Addl. Sessions Judge, Deoghar, in Sessions Trial No. 10 of 1997 whereby learned Addl. Sessions Judge, Deoghar convicted the appellant, for committing the offence u/s 302 of the Indian Penal Code and thereby, sentenced him to undergo rigorous imprisonment for life.

2. The prosecution case, in short, is that on 23.08.1996, at about 10.00 P.M., the appellant, that is the husband of the deceased (Babita Devi), pulled her in his room, situated at Barmashia within Deoghar Police Station and sprinkled kerosene oil on her body and thereafter lighted matchstick on her cloth and bolted the room from outside living his wife inside the room. When Babita Devi, appellant's wife started burning, she raised Hulla of "Bachao Bachao". On hearing her cries, her father-in-law i.e. father of the appellant, namely, Moti Mahtha opened the door and tried to remove the saree from the body of the deceased Babita Devi and in that process; he also received severe burn injuries. It is stated that after sometimes,

when the appellant and his brother Anil (P.W.-1) saw that their father Moti Mahtha also caught fire then they came and tried to extinguish the fire and in the process, they also sustained some burn injuries. Thereafter, Anil Mahtha, brother of the appellant brought Babita Devi and his father-Moti Mahtha to Deoghar Hospital on a Rickshaw for treatment. In course of the treatment, Babita Devi as well as Moti Mahtha both succumbed to death due to burn injuries.

3. The police registered the case, on the basis of the statement of Babita Devi-deceased, which was initially registered under Sections 324/307/342 of the Indian Penal Code, by A.S.I., Haricharan Singh Yadav at Sadar Hospital, Deoghar at 1.45 hours on 24.08.1996. Since Babita Devi died subsequently and, therefore, her statement was treated as dying declaration and was marked as Ext.4 in evidence. The Police took up the investigation and thereafter, charge sheet was submitted against the appellant u/s 302 of the Indian Penal Code.

4. Subsequently, the case was committed to the court of Sessions and the charge was framed, which the appellant pleaded not guilty and was put on trial.

5. In order to establish its case, all together 10 witnesses were examined by the prosecution. Out of whom, P.W.-1, Anil Mahtha, P.W.2, Kishore Mahtha, P.W.-3, Sigheshwar Mahtha, P.W.-8, Sajani Devi were declared hostile, since they did not support the prosecution case. P.W.-4 Dr. Yugal Kishore Choudhary is the formal witness. Ext.1 is the information given to the police station, regarding dead body of two persons i.e. deceased-Babita Devi and Moti Mahtha. P.W.-5, Baiju Choudhary, P.W.-6, Sapan Kumar Ghosh are the witness on the point of inquest. P.W.-7, M.S. Sattar, is the Doctor, who held postmortem examination of the dead body of the deceased and P.W.9, Ajit Kumar Rout, who is a teacher and neighbour of the appellant, has deposed that he heard, when he was in his house, at that point of time, he heard Hulla coming from the house of the appellant and then, he saw the deceased, Babita Devi, her father-in-law Moti Mahtha and her husband, were burning. P.W.-10, is the Investigating Officer.

6. On behalf of the defence also one witness was examined, namely, Sabu Devi, who has come to depose that the relationship between the appellant and his wife-Babita Devi was cordial.

7. The whole case is leased on the dying declaration of the deceased Ext-4, since there is no eye witness to the occurrence. P.W.-1 and P.W.-2 though had witnessed the occurrence, but in Court they did not support the prosecution and as such were declared hostile. Therefore, we have to consider as to whether on the basis of dying declaration, made by the deceased Ext.3, the conviction made by the trial court is sustainable in law or not?

8. The defence has raised the same point as raised in the trial court that the dying declaration is not admissible in evidence, since it was not voluntary and free from doubts. From the impugned judgment, we find that the learned trial court has

discussed in detail this point, raised by the defence.

9. Learned Counsel for the appellant submitted that since Babita Devi had received 90% burn injuries and, therefore, it was not possible for her to make any such statement. It is submitted that her so called statement has wrongly been treated, as dying declaration.

10. Learned trial court, after considering the decision of the Hon"ble Supreme Court in the case reported in 1995 Criminal Law Journal page 312 and on consideration of the evidence and material on record, convicted and sentenced the appellant, as already stated above, holding the dying declaration of the deceased to be voluntary and trustworthy.

11. Learned Counsel appearing for the appellant has taken us to the evidence of the prosecution in detail.

12. It is settled law that the dying declaration is an important piece of evidence and can be made sole basis for conviction, if it is found to be true and voluntary.

13. We find from the evidence that the deceased-Babita Devi has categorically stated in her fardbeyan, which was recorded by A.S.I. that her husband, i.e. appellant used to torture and quarrel with her as because she gave birth to five female children and she could not deliver a son. She further alleged that on the date of occurrence also, he had quarreled with her and thereafter, sprinkled kerosene oil and set her on fire. She also stated in her dying declaration that she raised Hulla and on hearing her cries, her father-in-law came to extinguish the fire. She also alleged that when her husband i.e. appellant saw his father in the midst of fire, then he tried to rescue his father and in that course, he received some burn injuries.

14. From the evidence, we find that the appellant did not try to save his wife rather he only wanted to save his father. We have also noticed that when the deceased was being taken to the hospital, this appellant did not accompany her and this conduct of the appellant clearly goes against him.

15. We are unable to accept the argument on behalf of the appellant that the deceased could not have made any statement since she had 90% burn injuries, in view of the fact that the doctor (P.W.-7) did not make any such statements nor any question was put to him as to whether Babita Devi was senseless or was not in condition to make any statement. Therefore, argument made on behalf of the appellant cannot be accepted.

16. In view of the discussions and findings above, we hold that the trial court has rightly convicted and sentenced the appellant for the charge u/s 302 of the Indian Penal Code, for committing murder of his wife- Babita Devi.

17. Accordingly, we find no merit in this appeal and the same is hereby dismissed. The judgment of conviction dated 03.12.1997 and the order of sentence dated

05.12.1997, passed by the trial court/3<sup>rd</sup> Addl. Sessions Judge, Deoghar, in Sessions Trial No. 10 of 1997, is hereby affirmed.