
(2003) 04 JH CK 0091

Jharkhand High Court

Case No: Criminal Appeal No. 61 of 1996 (R)

Madhu Munda and Others

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision: April 24, 2003

Acts Referred:

- Penal Code, 1860 (IPC) - Section 364

Citation: (2003) 3 JCR 156

Hon'ble Judges: Hari Shankar Prasad, J

Bench: Single Bench

Advocate: A.K. Chaturvedi, for the Appellant; Shiv Kumar Sharma, for the Respondent

Final Decision: Allowed

Judgement

Hari Shankar Prasad, J.

1 This criminal appeal is directed against the judgment dated 3.7.1996 and order of conviction dated 5.7.1996 passed by the learned Additional Judicial Commissioner, Khunti in Sessions Trial No. 276/1986 corresponding to TR No. 159/1993, in which appellants were held guilty u/s 364, IPC and were accordingly convicted and sentenced to undergo R.I. for three years and to pay a fine of Rs. 2000/- each and in default of payment of fine to further undergo R.I. for three months.

2. Prosecution case in brief is that Sagar Munda lodged a case with Khunti Police Station, on the basis of which Khunti P.S. Case No. 26/87 dated 5.4.1987 u/s 364, IPC was registered. On 5.4.1987 at about 8 p.m. Masih Munda, Hari Singh Munda, Bundu Munda, Madhu Munda, Champay Munda and Digwa Lohar came to the house of the informant and abused the mother of the informant and Madhu Munda, Bundu Munda, Masih Munda and Hari Singh Munda entered into the house of (sic) and dragged her out. The informant and his sister were present at the time of occurrence. They protested and raised alarm and several persons of the village came but nobody intervened. Since then the informant and his sister were in search

of their mother but they could not get trace of their mother and as a result of which delay has taken place in lodging of the FIR I.O. after investigation submitted charge-sheet against four persons, who are appellants here. Charges were framed and the learned Additional Judicial Commissioner, after recording evidence of both sides, came to a finding and held the appellants guilty and convicted and sentenced them as aforesaid.

3. Learned counsel appearing on behalf of the appellants, assailed the judgment on the following grounds:

"(i) The learned Court below did not appreciate the evidence of the witnesses in correct perspective and considered their evidences on conjectures and surmises.

(ii) There is no explanation for delay in lodging of the FIR

(iii) The doctor has not been examined.

(iv) I.O. has also not been examined.

(v) Six persons have been named in the FIR but only four persons, who are appellants here, have been charge-sheeted."

4. The prosecution has examined four witnesses to prove its case. PW 1 is the informant himself. He has stated that Masih Munda Bundu Munda, Madhu Munda, Hari Singh Munda, Champay Munda, Lagot Munda and Digwa Lohar came to his house and assaulted his mother, called her witch and catching her hair, dragged her away. He and his elder sister Foolmani saw the occurrence and searched for their mother. He further says" that 8 days after he found her mother in Sarjan Din, Bundu Thana and he informed the Police Station and gave his statement before the police. In cross-examination he has stated that when appellants and others were dragging his mother and taking her then he had raised alarm but no one turned, up. He further says that he did not inform the Police Station next day and next day of occurrence he informed Jalia Munda of Sarajan Din, who is his mausa in relation. Sarjan Dih is half kilometer south from his village.

5. PW 2 is Chandmani, who is said to have been kidnapped. She named four persons, who are appellants here, that they came to her house, called her as witch and they pressed her neck, assaulted her, dragged her out and threw her in a ditch, where she fell unconscious. She further says that when she regained consciousness, she went to her brother"s house at Margandi, whose name is Jalia and from there she went to Sarjandih. She further says that from that ditch she went to Jalia alone.

She remained in the night at jalia"s house and next day she went to Sarjandih.

6. PW 3 is Fulmani. She has also named four persons, who are appellants here, that they came to her house and Masih Munda dragged her mother out and called her mother as witch and they took her away. She further says that after 8 days Jalia searched out her and brought her.

7. Learned counsel for the appellants submitted that there is no plausible explanation for delay in lodging of the FIR. From the FIR, it appears that the informant lodged the FIR on 14.4.1987 for the occurrence dated 5.4.1987. Thus, FIR was lodged after 9 days. But from the evidence of PW 2, who is the victim lady, it appears that she was dragged out and thrown in the ditch and from there she went to her brother's house but for 8 days informant remained searching for his mother and till the time of lodging FIR she has not been traced out, but fact is that PW 2 was never traceless and to make out a case like this, due to some sort of enmity, the informant hatched up a conspiracy and filed case like this, which is false and baseless. The learned counsel further submitted that evidences of witnesses have not been correctly appreciated and there are a number of discrepancies in the evidence of witnesses.

8. Another point of argument of the learned counsel for the appellant is that she was assaulted, dragged out and thrown in the ditch but she was not medically examined whether she sustained any injury or not and, therefore, no doctor was examined because no such occurrence ever took place nor she was assaulted, dragged and thrown in the ditch.

9. Another point of argument is that I.O. has not been examined by the prosecution and that has caused prejudice to the appellants as no objective finding could be brought on record.

10. According to FIR, names of six persons have been given but only four of them have been charge-sheeted and two of them were left out and this goes to show that case made out by the prosecution was not correct one and, therefore, this discrepancy occurred.

11. Learned counsel for the appellant further pointed out that PW 1 has named six persons as the persons, who had come to his house, whereas PW 2 names only four persons. Similarly PW 3, who is daughter of PW 2, has also named four persons. Learned counsel further pointed out that all the witnesses are related to one another such as PWs 1 and 3 are son and daughter respectively of PW 2 and PW 2 is mother of PWs 1 and 3 and, therefore, all are interested witnesses besides no independent witness has been examined in this case, although in the FIR it has been alleged that on hullah several persons of the village came but no body intervened. PW 1, in cross examination, has stated that accused persons were assaulting his mother and he had raised alarm but no body from the neighbourhood came. Learned counsel further pointed out that PW 1 has stated that next day he informed Jalia Munda, who happens to be mausa of this witness. On the other hand, PW 2 says that she was dragged out of the house and thrown in the ditch and when she regained consciousness she went to her elder brother's house and her elder brother's name is Jalia. Learned counsel further pointed out that on the same day or next day PW 2, according to her evidence, went to Sarjandih but she did not come back to her residence, although when she was alone, she could have come to her

house so that this fact points out that a conspiracy was hatched up to implicate the appellants falsely. The learned counsel further pointed out that it has nowhere come either in the deposition or in the prosecution case that due to this PW 2 playing witchcraft some harm has been caused to the appellants and, therefore, without any cause or harm to these appellants why will they commit such offence.

12. After hearing the submissions of the learned counsel for the parties. It appears that a case lodged after 8 days when in fact PW 2, on the very next day, had gone to her relation's house and when PWs 1 and 3 were searching for their mother, it is very peculiar to note that they could not know about the whereabouts of their mother. This goes to show that PW 1 lodged FIR after suppressing the material fact of trace-lessness of his mother for the reasons best known to him. There are a number of discrepancies in the evidence of witnesses and all the witnesses are closely related to one another and they are not telling the truth. It has nowhere come either in the FIR that by playing witchcraft by PW 2 any harm was caused to the appellants or their family members.

13. Taking into consideration all facts and circumstances, I am of the view, this is a fit case, in which appeal should be allowed.

14. In the result, this appeal is allowed and judgment dated 3.7.1996 and order of conviction dated 5.7.1996 are hereby set aside. Since the appellants are on bail, they are discharged from the liability of bail bonds.