

(1992) 11 PAT CK 0026

Patna High Court

Case No: Criminal Appeal No. 295 of 1989 (R)

Piyaso Mundain and Others

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision: Nov. 3, 1992**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 201, 302, 34

Citation: (1994) 2 BLJR 815**Hon'ble Judges:** Nagendra Rai, J; Amir Dass, J**Bench:** Division Bench**Final Decision:** Allowed

Judgement

Nagendra Rai, J.

These three ladies appellants have been convicted u/s 302/34 of the Indian Penal Code and each of them have been sentenced to undergo rigorous imprisonment for life by the Sessions Judge, Hazaribagh, in Sessions Trial No. 81/88. They have been also charged u/s 201/34, I.P.C. but have been acquitted of the aforesaid charge.

2. The deceased in this case is Santosh Munda, husband of the appellant, Piyaso Mundain and son-in-law of appellant Subashiya Mundain. According to the prosecution allegation Piyaso Mundain after having quarreled with her husband Santosh Munda had gone to her mother's house in village Chito Tola Sildag on the preceding Wednesday. The deceased also went on Thursday to his Sasural for bringing his Piyaso Mundain back. On the next day, i. e. on Friday, at about 12 a.m. the appellant Piyaso Mundain, the maternal aunt of his aunt came at his house and informed that the deadbody of Santosh Munda was lying in the well of Charka Ganju in village Chito Tola Sildag. The said information was given by Bilaso Mundain to the wife of the informant Mangru Munda. The informant Mangru Munda, who was in service, came in the evening of 5-6-87 at his house and then he was informed about the statement made by Bilaso Mundain to his wife. As it was late in night, the

informant did not go to the village Chito Tola Sildag. In the next morning he went there and found the deadbody of his uncle thrown in the well of Chark Ganju. He remained there for watching the deadbody and sent the Chawkidar to the Police Station. With the help of the villagers the deadbody was taken out from the well and it was found that the neck and legs of his uncle were tied with Gamchha and he was dead. According to the prosecution case, Bigia Mundain wife of Kajru Manda, who is elder brother's wife of the aunt of the informant, told the informant that on the preceding Thursday at about 10 p.m. appellant Piyaso Mundain, her mother Subashiya Mundain and her Mausi appellant Bilaso Mundain after committing the murder of Santosh Munda tied his legs and neck with Gamchha and threw the deadbody in the well. On getting the information from Chawkidar, P.W. 10 Devendra Prasad Singh, S.I., proceeded to the place of occurrence and recorded the Fardbeyon of the informant (Ext. 2) and on the basis of the said Fardbeyan a formal F.I.R. (Ext. 5) was drawn up held inquest over the dead body and after completion of investigation submitted charge-sheet and thereafter the appellants after cognizance committed to the Court of Session for trial which ended in their conviction.

3. The motive for the occurrence, according to the prosecution is that the deceased was an employee in the C.C.L. and the appellants wanted to grab his employment which was only possible after the death of Santosh Munda. The appellants have denied the accusation against them and asserted that they have been falsely implicated in this case. There is no evidence to connect them with the alleged crime.

4. The prosecution has examined 10 witnesses in this case, out of them P.W. 1 Mangru Munda is the nephew of the deceased and is the informant in this case. He is on the point that he heard about the murder committed by these appellants by Bigia Mundain wife of P.W. 4 Kajru Munda. He is on the point that he found the deadbody floating in the well and with the help of the villagers the deadbody was taken out from the well. P.W. 2 Budhan Munda is a witness on the point of proving the inquest report and P.W. 3 Dema Munda and P.W. 4 Kajru Munda have been tendered. P.W.5 Bigia Mundain P.W. 7 Kitki Mundain and P.W. 8 Bandhu Munda have been declared hostile by the prosecution. They are witnesses on the point that on the alleged day of occurrence the deceased was insisting lot taking his wife Piyaso Mundain with him which was not acceded to by the appellants and as a result of which there was a quarrel between the three ladies on one hand and the deceased on the other and they all assaulted the deceased. However, they did not support the aforesaid version in Court, they only stated that the deceased had come and stayed at his Sasural, P.W. 6 P. K. Verma is a doctor who held the autopsy over the deadbody of the deceased on 7-6-81 and has proved the post-mortem report (Ext. 1) P.W. 9 Santosh Munda is a son-in-law of the deceased and he is a necessary witness and P.W. 10 Devendra Pd. Singh who at the relevant time was the Sub-Inspector of Police at Bhurkunda is the investigating Officer in this case.

5. Mr. S.K. Shrivastava, learned Counsel appearing in this case as amicus curie contended that in this case the prosecution has not proved the accusation against the appellants. There is no direct evidence on the point of occurrence and the case is based on the circumstantial evidence and the circumstances which has been relied upon by the prosecution are not sufficient to warrant conviction in this case. In other words, he contended that the chain of circumstances relied upon by the prosecution are not complete as to lead to one inference that is in all human probabilities the offence has been committed by these appellants alone.

6. Learned Counsel for the State tried to justify the conviction on the ground that there was a strong motive for these appellants to commit the crime and before the deadbody of the deceased was found in the well he was seen to the company of the three ladies.

7. In the present case from the narration of the statements of the witnesses, as mentioned above, it is evident that there is no eye-witness to the occurrence. The prosecution case hinges on the circumstantial evidence. For maintaining the conviction on the basis of the circumstantial evidence, the prosecution has first to prove each of the circumstances by reliable evidence. If such circumstances are proved then the prosecution has also to prove that those circumstances complete the chain in the sense that they lead to only one inference which is consistent with the guilt of the accused. In other words it was the appellants who alone have committed the crime and nobody else.

8. The prosecution has relied upon the following circumstances in this case for maintaining the conviction (a) motive, and (b) the deceased was seen in the company of the appellants before his deadbody was found floating in the well. No doubt, during the investigation the prosecution relied upon the evidences of P.Ws. 5, 7 and 8 on the point that on the day of occurrence there was a quarrel between the deceased and the three ladies, but the three ladies have been declared hostile, as no such statement has been made before the Court by them.

9. To prove the motive the prosecution examined the informant who has stated that the murder was committed by these three ladies to grab the service of the deceased. From his evidence it appears that the deceased has two wives, namely, Piyaso Mundain and Maricho Mundain. Maricho Mundain is alive. It has also come in the evidence that from his first wife the deceased has three daughters, who are all married. It also appears from the evidence of the informant that the deceased was aged about 60 years. In view of the said statement that the deceased was on the verge of retirement and his first wife was also alive, the prosecution version with regard to motive does not appear to be convincing. So far as other circumstance is concerned, even according to the prosecution case, appellant Piyaso Mundain had gone to her Naihar after having quarrel with the deceased and the deceased had gone to bring her back and if the deceased was seen in the company of the three ladies on the alleged day of occurrence that is not the incriminating circumstance

against these three appellants.

10. This apart, the prosecution version is not proved by the reliable evidence that the deceased was assaulted by these three appellants and he was thrown in the well after committing his murder. It is also not supported by the medical evidence inasmuch as the doctor (P.W. 6) who held the postmortem opined that the deceased died due to asphyxia caused by drowning and there was no injury on his person. In our opinion, even if these two circumstances are accepted to have been proved by the prosecution, even then they will not complete the chain of the circumstances to prove the guilt against the appellants. These two circumstances may, at best, lead to suspicion which in no case take the place of proof in this case. In our opinion, there is no legal evidence on the record to connect these appellants with the alleged crime. The circumstances relied upon by the prosecution are not such which lead to an inference that in all human probabilities the offence was committed by these three ladies-appellants alone. In that view of the matter, we have no option but to hold that the prosecution has failed to prove its case beyond all reasonable doubt.

11. In the result, the appeal is allowed, the conviction of the appellants under Sections 302/34, I.P.C. and the sentence awarded to them is set aside. As they are in jail they should be set at liberty forthwith unless they are not required in any other case.