

Mata Divri Add and Ors Vs. State of Bihar

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Court : Jharkhand

Decided On : Aug-12-2016

Appellant : Mata Divri Add and Ors

Respondent : State of Bihar

Judgement :

1. IN THE HIGH COURT OF JHARKHAND AT RANCHI Cr. Appeal No. 195 of 1992(R) .. 1.Mata Divri Alda, S/o Satua Alda, 2.Bar Kuwar Alda, S/o Gomda Alda, 3.Hargua Sharda Alda, S/o Dilka Alda. All are resident of Village Baihatu, P.S. Tonto, District: Singhbhum (West) .. . Appellants -Versus- The State of Bihar . . Respondent . CORAM: HONBLE MR. JUSTICE VIRENDER SINGH, CHIEF JUSTICE HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR ----- For the Appellants : Mrs. Supriya Dayal, Advocate For the State : Mr. Krishna Shankar, A.P.P ----- th 5/ 12 August, 2016 Per Shree Chandrashekhar, J.: The sole surviving accused namely, Mata Divri Alda along with other two accused namely, Bar Kuwar Alda and Hargua Sharda Alda faced trial for offence punishable u/s 364/34 I.P.C and u/s 302/34 I.P.C for abduction and murder of Chokro Alda, in Sessions Trial No.119/1991. All three accused persons were convicted for committing the aforesaid offences and they were sentenced to undergo imprisonment for life for offence u/s 302/34 I.P.C. No separate sentence for offence u/s 364/34 I.P.C. was awarded to the convicts.

2. As noticed on the previous date of hearing, appellant nos.2 and 3 namely, Bar Kuwar Alda and Hargua Sharda Alda died during the pendency of the appeal and

consequently, the appeal qua them abated. Since counsel for the appellants was absent on the previous date of hearing, Mrs. Supriya Dayal, Advocate was appointed counsel for appellant no.1.

3. The prosecution case unfolded in the fardbeyan of Ghanshyam Laguri @ Ghanshyam Munda reveals that on 16.09.1990, wife of the deceased namely, Jema Kui informed him about 12.30 p.m. that last evening her husband had gone to the house of Podne Balmuchu at Village-Romra, 2. from where accused namely, Mata Divri Alda, Bar Kuwar Alda and Hargua Sharda Alda, after assaulting him, forcibly took him towards jungle with an intention to kill him. The motive for the occurrence was a quarrel between the deceased-Chokro Alda and the other villagers as well as the accused persons and murder of one Mamu Ramdas on 14.09.1990 which was witnessed by the brother-in-law of the deceased and others. On the basis of fardbeyan of the informant, Tonto P.S. Case No.29/1990 u/s 364/34 I.P.C was registered against the accused persons, and after the dead body was recovered Section 302/34 I.P.C was added to the First Information Report. After the investigation, charge sheet was submitted against all the three accused persons for the aforesaid offences and the learned Magistrate took cognizance of the offence. On 12.02.1992, charges u/s 364/34 I.P.C and u/s 302/34 I.P.C were framed against the accused persons, who pleaded not guilty and claimed trial.

4. During the trial, the prosecution examined eight witnesses. The doctor, who conducted postmortem examination over the dead body of Chokro Alda on 20.09.1990 at 5.00 p.m. opined that injury on the neck of the deceased was caused by sharp cutting weapon and it was sufficient in the ordinary course to cause death. He observed the following injuries on the dead body : i) Neck was cut of from front involving great vessels and neck muscles. ii) Left Maxilla was fractured. iii) Incised wound 4x3x muscle deep on the medial side of right thigh.

5. The trial court found evidence of P.W.-4 and P.W.-6, who are the witnesses on the point of last seen together reliable and trustworthy. P.W.-2, P.W.-3 and P.W.5 are not the eye witnesses and the trial court held them hearsay witnesses. P.W.-1 and P.W.-8 are formal witnesses and P.W.-2 3. is the informant. P.W. -3, namely

Satua Alda is the brother of the deceased who claimed that he received information from one Gatai Sidu that the accused persons had forcibly taken away his brother to the jungle and on the following day when he went searching to the jungle he saw the dead body of his brother there. The trial court recorded a finding that it is established beyond doubt that on the date of occurrence, the accused persons abducted the deceased Chokro Alda with an intention to murder and thereafter, in furtherance of their common intention committed murder of the deceased.

6. Heard learned counsel for both the sides and once again appreciated the entire evidence, in details.

7. It is a case based on circumstantial evidence insofar as, murder of the deceased namely, Chokro Alda is concerned. On the point of abduction with intention to murder, the prosecution has produced two witnesses viz. P.W.-4 and P.W.-6. Lado Laguri, who was examined as P.W.-4 has deposed in the court that at about 4.00 p.m. in the evening he saw the accused persons taking away the deceased towards jungle and he gave information of this to the wife of the deceased, who has been examined as P.W.-5. The wife of the deceased has also confirmed in the court that P.W.-4 informed her about taking away of her husband by the accused persons. P.W.-6 is wife of Kodna Balmuchu who stated in the court that from her house the accused persons took away the deceased towards jungle and thereafter, he did not come back alive. In their examination-in-chief, none of these witnesses have attributed any overt act by the accused persons; there was no threat or assault by the accused persons. The story of assault in the F.I.R by the accused persons is not corroborated by the evidence of prosecution witnesses in the court. P.W.-4 has admitted that at about 4.00 p.m. in the evening he had gone for search of his father when he saw the accused 4. persons taking away the deceased towards jungle, however, P.W.-4 has not offered an explanation for not lodging a complaint in the same evening to the police. Undoubtedly, the ocular evidence on the point of abduction with intention to murder is absolutely absent. There is not a whisper in the evidence of the prosecution witnesses pointing towards the accused persons having the intention to murder. All that has been proved by the prosecution is abduction of the deceased by the accused persons.

In State of W.B. v. Mir Mohammad Omar (2000) 8 SCC382 a hypothetical situation in which it is found that the abductors later on murdered the victim, has been answered by the Supreme Court in paragraph nos. 12, 13 and 14 of the reported decision, thus;

12. Abduction takes place when a person is compelled by force (or such person is induced by any deceitful means) to go from any place. In this case Mahesh was dragged away by the accused from two places, first at Chittaranjan Avenue and when he escaped from the grip of the abductors and perched himself in a hideout selected by him at Giri Babu Lane, from there also he was hauled out.

13. Section 364 IPC says, whoever abducts any person in order that such person may be murdered or may be so disposed of as to be put in danger of being murdered he commits the offence punishable under the section. So the important task of the prosecution was to demonstrate that abduction of Mahesh was for murdering him. Even if the murder did not take place, the offence would be complete if the abduction was completed with the said objective. Conversely, if there was no such objective when the abduction was perpetrated, but later the abductors murdered the victim, Section 364 IPC would not be attracted, though 5. in such a case the court may have to consider whether the offence of culpable homicide (amounting to or not amounting to murder) was committed.

14. If the words attributed to the abductors can be believed we have no doubt that the abduction was done for the purpose of finishing him off. Knowing this position well, Shri P.S. Misra, learned Senior Counsel made a frontal criticism on the aforesaid evidence and contended that it is easy for interested witnesses to put such words in the mouth of the accused in order to aggravate the dimension of the offence. No doubt, witnesses can do so. But the question here is whether the aforesaid version of those witnesses was a concoction to embroil the abductors into the cobweb of a serious offence like Section 364 IPC. The reliability of that part of the evidence can be tested from different angles.

8. In the present case, as noticed above, the witnesses have not even attributed any word in the mouth of the accused leading to an inference of intention to murder. Thus, it must be held that the trial court committed serious error in law in

recording a finding that the evidence of P.W.-4 and P.W.-6 establishes the offence u/s 364/34 I.P.C. The evidences led by the prosecution to prove charges against the accused persons do not reflect a case in which two views are possible. Evidence of P.W.-4, P.W.-5 and P.W.-6 lead to one and only one conclusion, that offence u/s 363 I.P.C only is proved by the prosecution. In absence of express offending words and/or assault by the accused persons, intention to murder Chokro Alda cannot be inferred in the present case.

9. On the question of presumption u/s 106 r/w 114 & 101 of Evidence Act, in view of registration of First Information Report only u/s 364/34 I.P.C. and the fact that the dead body was not recovered soon 6. after the death, burden to rebut the inference that they might have killed the deceased does not lie on the accused persons. Admittedly, there is no eye witness to the murder of the deceased, and the circumstances proved by the prosecution do not lead to guilt of the accused persons.

10. On re-appreciation of the prosecution evidence, we find compelling reasons to disturb the judgment of conviction and order of sentence passed in Sessions Trial No.119/1991. The trial court has erroneously raised a presumption of murder of the deceased namely, Chokro Alda by the accused persons, on the basis of unproved circumstances. Resultantly, the conviction of the sole surviving accused namely, Mata Divri Alda is set-aside. The appellant no.1, namely, Mata Divri Alda who is on bail is discharged of liability of bail bonds furnished during the pendency of the appeal.

11. The instant Criminal Appeal being (DB) No.195/ 1992 (R) stands allowed.

12. Fee of Mrs. Supriya Dayal, the leaned counsel is fixed at Rs.3,300/-, which shall be paid by the State Government. (Virender Singh, C.J.) (Shree Chandrashekhar, J.) Sudhir/SI,

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