

Arbind Singh And Krishna Nandan Singh ... vs State Of Bihar on 3 November, 1992

Equivalent citations: AIR1994SC1068, 1994CRILJ1227, 1995SUPP(4)SCC416, AIR 1994 SUPREME COURT 1068, 1994 AIR SCW 1041, 1995 (4) SCC(SUPP) 416, 1995 SCC (SUPP) 4 416, 1994 SCC(CRI) 1418, (1994) 1 EASTCRIC 525, (1994) 2 BLJ 332

Bench: A.M. Ahmadi, M.M. Punchhi, K. Ramaswamy

JUDGMENT

1. These two appeals arise out of the conviction recorded by both the courts below whereby appellant No. 1, Arbind Singh, was convicted under Section 302 and Section 201 of the Penal Code for causing the death of his wife and destroying her dead body and was sentenced to imprisonment for life on the first count and imprisonment for two years on the second count. The other appellants of the cognate appeal have been convicted under Section 201, I.P.C., and have been sentenced to rigorous imprisonment for two years. Since both the appeals arise out. of the same judgment we dispose them of by this common judgment. The facts are as follows:

The appellant Arbind Singh was married to the deceased Mridula Devi. The marriage took place sometime in 1974 and the deceased gave birth to a daughter and a son out of this wedlock. The incident in question occurred on the night between 23rd and 24th February, 1984. The prosecution case is that the appellant Arbind Singh hanged the deceased by the neck and caused her death. The defence of the appellant Arbind Singh was that she was suffering from diarrhea and had died a natural death. In support reliance was placed on the prescription issued by Dr. Mithilesh Singh. Early in the morning by about 8 O' Clock the dead body of the Mridula Devi was taken to the bank of a river and was cremated. It is further the case that the half cremated body of the deceased was pushed into the river but the investigating officer was unsuccessful in finding it out. The case is that the other appellants accompanied the appellant Arbind Singh with the dead body and thereby participated in the disposal of the dead body. That is why they were charged for the commission of an offence under Section 201, I.P.C., and were convicted and sentenced as stated above.

2. The entire case hinges on the evidence of the child witness PW 2 Roopam Kumari, the daughter of the deceased and appellant Arbind Singh. The incident occurred late in the night and she claims she was awakened by the noise of quarrelling. She further claims to have seen her father tying and nailing her mother before hanging her. At the date of the incident she was aged about 5 years. When her evidence was recorded she was aged about 9 years. The learned trial Judge did not undertake a 'voir dire' before recording her evidence on oath although he notes that she was capable of understanding and answering the questions. Be that as it may, the fact remains that there was a gap

of 4 years between the incident and the date on which her evidence was recorded. Immediately after the incident she was interrogated but as she was weeping her statement was not recorded. Thereafter her statements were recorded on 25th October, 1984, 28th October, 1984 and 5th November, 1984, the last being under Section 164 of the Criminal P. C. In her first statement she did not say that her mother was hanged. Subsequently she said she was hanged by electric wire. She later said she was hanged with the help of a jute string. In her statement recorded under Section 164 of the Criminal P. C. on 5th November, 1984, she stated that her father had thrown a jute string around the neck of her mother and killed her. It will, therefore, appear from these statements that she has not been consistent in her version. That apart, we have carefully perused the evidence of this witness and we find traces of tutoring on certain aspects of the case. It appears from her evidence that she was very close to her maternal uncle with whom she was living when her mother had gone to Deoghar for training. Immediately after the incident she was taken away by her maternal uncle who happens to be a fairly important figure. In her evidence she stated that there used to be quarrels between her father and mother and the former used to ill-treat the latter without any rhyme or reason. Then she adds that her father wanted to remarry and, therefore, he was ill treating her mother. Now the case put up was that the husband was ill treating the wife as he wanted to sell her jewellery to purchase a scooter. Therefore, the statement made by PW 2 that her father was ill-treating her mother because he wanted to remarry could only be the result of tutoring. She also tried to involve all the other family members including her uncle Shambhoo whom she could not even recognize in the dock. This she could have done only at the behest of someone else. She also stated that neither her father nor her grandfather met her mother's expense at Deoghar, a fact of which ordinarily a child under five years of age would not be aware. She even tried to involve her father's sister whose name she had not mentioned earlier. There are also certain other statements made in the course of her deposition which would suggest that possibility of tutoring could not be ruled out. Having taken a careful look at the evidence of this child witness we are of the opinion that implicit faith and reliance cannot be placed on her testimony since it is not corroborated by any independent and reliable evidence. It is well settled that a child witness is prone to tutoring and hence the court should look for corroboration particularly when the evidence betrays traces of tutoring. We, therefore, think that the appellant No. 1 was entitled to benefit of doubt.

3. So far as the other three appellants are concerned, there is hardly any evidence on record to show that they had a mens rea to commit an offence punishable under Section 201, I.P.C. in the sense that they knew that the death of the deceased was not a natural one and that the appellant Arbind Singh was out to destroy evidence which would otherwise incriminate him. In the absence of reliable evidence which would show that they had such knowledge and they knowingly became privy to the destruction of evidence, a conviction under Section 201 cannot be based. We are, therefore, of the opinion that the other appellants are also entitled to be acquitted of the charge levelled against them.

4. In the result both the appeals are allowed. The order of conviction and sentence passed against them is set aside. They will be set at liberty at once unless required in any other case.