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Cr1.A.No. 1223 OF 1998

ITEM NO. 106

COURT NO. 5

SECTION IIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G

CRIMINAL APPEAL No. 1223 of 1998@@
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Nirmla Devi ..Appellant

Vs.

State of Bihar ..Respondent
(With Office Report)

WITH

CRIMINAL APPEAL No. 978 of 1998@@
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(With Office Report)

Date : 01/08/2001 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE K.T. THOMAS
HON'BLE MR. JUSTICE S.N. VARIAVA

For Appellant Mr. P.P. Singh,Adv.(A.C.)

For Respondent Mr. B.B. Singh,Adv.

UPON being mentioned the Court made the following

O R D E R

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.SP2

Appeals are disposed of in terms of the signed order.

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(N.K. Goel)
Court Master

(H.K. Bhatia)
Court Master

(Signed order is placed on the file)

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IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

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Dwarka Mehto

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Mr. P.P. Singh, learned amicus curiae for the appellants takes notice for the proposal for enhancement of sentence under Section 201 IPC in respect of accused No. 2 - Mahendra Mahto.

We heard arguments on that also.

A little child of 15 months was killed by thrashing its head on some blunt object and thereafter the dead body was stuffed in a latrine. All the members of the family who lived in the house wherein the latrine was situated were arraigned for the murder of the child as well as for the offence of causing disappearance of evidence of murder. The ..2

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trial court convicted all of them under Section 302 and Section 201 read with Section 34 of the Indian Penal Code and sentenced each of them to imprisonment for life on the first count and RI for 3 years on the second count.

There were altogether six accused arrayed in the trial court. They all filed appeal before the High Court. When the appeal was pending, two of them died (A5 Sushila Devi and A6 Kamla Devi). The High Court confirmed the conviction and sentence in respect of the remaining four persons. All of them filed appeals in this Court by way of special leave. But in the meanwhile A1 Dwarika Mahto and A3 Yogendra Mahto died. Ultimately these appeals relate to A2 Mahendra Mahto and A4 Nirmal Devi.

All the members of the family of the accused were living in one house. The deceased is the grand child of PW2 and PW3. The prosecution case, in short, is that PW3 grand mother took the child to her shop and supplied some sweets to the child and carried it upto the neighbourhood of the house and left him there thinking that for the remaining distance the little child will totter forward. PW4 who came by that way found the child crying and therefore he lifted up the child and took him to a place very close to the house of the accused. Thereafter the child was not seen alive by anyone. When PW12 father of the child came to understand that the child was missing he and rest of the members of his family made all hectic searches for the child. The matter was

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reported to the police. All efforts were made to find out the child but failed. During the searches made the police came to know that there was blood mark on a pillar in the house of the accused. Therefore the police remained in the house making searches for the missing child. Finally the police decided to open the latrine. When the lid of the latrine was opened the corpse of the child was found therein in a decomposed stage.

PW14-Doctor who conducted the post-mortem examination noted ante mortem fractures of the jaw, of the nose and other parts of the head. We did not find any evidence of any faecal substance inside his stomach and therefore he ruled out the child having died after he was put in the latrine.

The evidence of the doctor conclusively show that child was killed before the dead body was stuffed inside the latrine.

We have also examined the possibility of the child accidentally falling into the latrine. The mouth opening of the latrine is a square having a dimension of 6" x 7". We satisfied ourselves that it is impossible for a child of any age to make an accidental fall into that opening. The result of the above exercise is our conclusion that the child could have been killed and after the killing the dead body would have been stuffed into the latrine.

PW3 grand father of the child said that all the members of the family of the accused were present in the house during the day when the incident took place. It is true that all the six members of the family need not be associated in

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the killing of the child. One of them can do it, if it was done by one of them. There is absolutely no evidence suggesting that A4 Nirmal Devi the appellant could have any part in the killing or in the destroying of the evidence of murder. We, therefore, persuade ourselves to set aside the conviction and sentence passed on Nirmal Devi. We acquit her. We direct her to be set at liberty forthwith unless she is required in any other case.

One circumstance which creates strong suspicion against A2 Mahendra Mahto and A3 Yogendra Mahto is that when the police finally decided to open the latrine those two youngsters had run away from the house. This circumstance indicates that one of them at least would have been responsible for the murder of the child. But our difficulty is to choose who among the two would have done it. As A3 Yogendra Mahto is not alive it is an unnecessary exercise on our part to decide whether he would have done it. The consequence is that we have to give the benefit of doubt regarding the murder to the appellant A2 Mahendra Mahto.

But that will not and cannot help to absolve A2 Mahendra Mahto from the offence under Section 201 of the IPC. We have absolutely no doubt that he had a hand in stuffing the dead body of the child into the latrine. We are not satisfied with the short term of sentence of imprisonment passed on him for the offence under Section 201 IPC. The fact of this case requires the maximum sentence provided under that Section to

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be imposed on him. As we gave notice to the counsel for the accused (A2 Mahendra Mahto) regarding the role of the accused in destroying the evidence and heard him on that score we are enhancing the sentence in respect of the offence under Section 201 IPC from RI of 3 years to RI for 7 years in respect of A2 Mahendra Mahto.

In the result, we acquit A4 Nirmal Devi and direct her to be set at liberty forthwith unless she is required in any

other case. We acquit A2 Mahendra Mahto of the offence under Section 302 read with Section 34 of the Indian Penal Code. We confirm conviction under Section 201 IPC in respect of A2 Mahendra Mahto and impose a sentence of RI for 7 years on him. On completion of the sentence alone he can be released from jail.

These appeals are disposed of in the above terms.

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(K.T. THOMAS)@@
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(S.N. VARIAVA)@@
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NEW DELHI@@
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AUGUST 1, 2001@@
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