

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Criminal Appeal (D.B.) No.781 of 2002

WITH

Criminal Appeal (D.B.) No.777 of 2004

(Arising out of judgment of conviction and order of sentence dated 28.09.2002 passed by Learned IIInd Additional Judicial Commissioner, Khunti, Ranchi, in S.T. No.82 of 2000)

Criminal Appeal (D.B.) No. 781 of 2002

Madan Mahto, son of Late Kandan Mahto, resident of Village Karamtand, P.S. Sonahatu, District Ranchi, Jharkhand.

... **Appellant**

Versus

The State of Jharkhand.

... **Respondent**

WITH

Criminal Appeal (D.B.) No. 777 of 2004

Rajeshwar Mahto, son of Late Kandar Mahto, resident of Village Karam Tand, P.O. Sonahatu, District Ranchi, Jharkhand.

... **Appellant**

Versus

The State of Jharkhand.

... **Respondent**

PRESENT : SRI ANANDA SEN, J.

: SRI GAUTAM KUMAR CHOUDHARY, J.

For the Appellants : Ms. Jyotsna Mahato, Advocate
Mr. Harendra Kumar Mahato,
Advocate
Mrs. Ahalya Mahato, Advocate

For the State : Mr. Shiv Shankar Kumar, A.P.P.

JUDGMENT

By Court :

14th November, 2024

These Criminal Appeals are preferred on behalf of the appellants being aggrieved by the impugned judgment of conviction and order of sentence dated 28.09.2002 passed by Learned IIInd Additional Judicial Commissioner, Khunti, Ranchi, in S.T. No.82 of 2000, whereby and wherein the appellants have been convicted for offences under Sections 307/34 and 302/34 I.P.C. They were sentenced to undergo rigorous imprisonment for 10 years for offence under Section 307/34 I.P.C. and further to undergo imprisonment for life for offence under Section

2. The instant case is based on the *fardbeyan* of P.W.-7. She is the wife of the deceased. She stated that they were washing their hands and feet near their well when these appellants came and started assaulting her husband. She stated that she was there but after her husband was assaulted on the back and hand, was thrown into the well. She further states that though she was not assaulted but she was also thrown in her well. As she screamed and raised alarm, her brother-in-law and son of brother in law i.e. P.W.-1 and P.W.-4 came and rescued them from the well. Her husband was still then alive but died on the way to the hospital.

3. Based on the aforesaid *fardbeyan* F.I.R. being Sonahatu P.S. Case No.48/99 was registered against the appellants under Sections 302, 307/34 I.P.C. and charge-sheet was filed against the appellants under Sections 307, 302/34 I.P.C. Thereafter cognizance was taken by learned A.C.J.M. and then the case was committed to the Court of Sessions. As the appellants pleaded not guilty, charges were framed.

4. Heard learned counsel representing the appellants and learned A.P.P. representing the State and perused the material available on record.

5. Ms. Jyotsna Mahato, learned counsel representing the appellants submits that the prosecution has not come up with the correct version and has suppressed the material facts. Even the place of occurrence has not been proved by the prosecution. As per her, there was no intention to commit murder of the deceased. There was land dispute and in fact it is the informant and her husband who had come to the house of these appellants whereas the prosecution has tried to project the story that it is these appellants who had gone to the house of the deceased, assaulted them and threw them in the well. There is contradictory evidence of P.W.-7 and if her statement is read with the evidence of P.W.-1, it will be clear that the deceased had come to the house of these appellants and there is serious doubt about the place of occurrence and the identity

of the well where the deceased and the informant were found. Further, sole eye witness has not stated that any of the appellants had assaulted the deceased on the neck. Further, non-examination of independent witness i.e. the villagers who admittedly were present at the place of occurrence creates a doubt about the prosecution case. Even P.W.-1 and P.W.-4 are not the eye witnesses to the said occurrence. It has also been argued that it has come in evidence that there was sludge by the side of the well and there is high probability that both of them slept and fell in the well as the well was not fenced.

6. Learned A.P.P. representing the State submits that it is the case of the prosecution that the informant and her husband was assaulted and thrown in the well. P.W.-1 and P.W.-4 had categorically stated that both of them were rescued from the well. Thus, the prosecution has able to prove the case beyond all reasonable doubt.

7. In this case, we find that 10 witnesses have been examined in this case.

8. P.W.-9 is the Doctor, who conducted the post-mortem of the deceased. He found the following injuries:-

- (i) *Abrasions :- 3 x 1 cm, 2 cm x 1 cm on right chest front lower part.*
- (ii) *Bruise (rail track) 7cm x 2 cm right thigh front middle part situated transversely.*
- (iii) *Bruise 4 cm x 2 cm right arm lateral side middle part.*
- (iv) *Lacerated wounds 3 cm x 2 cm x bone deep on left parietal region of head.*

2. On internal examination there is diffuse contusion of left perito tempro frontal scalp with mosaic fracture of left perito temporal bone measuring 11 cm x 9 cm area and crack fracture of right perito temporal and occipital bone. There is contusion of brain and presence of subdural blood and blood clot over both sides of brain.

As per the opinion of the Doctor, all the injuries were ante-mortem and caused by hard and blunt substance i.e. *lathi* and the death is head injury which is sufficient to cause death. The post-mortem report was marked as Ext.-2.

P.W.-8 is the Doctor who had examined the injured - informant. He only stated that the informant had complaints of

body ache and the injury was simple in nature. Her injury report was marked as Ext.-1.

The main witness in this case are P.W.-7 namely Sailo Devi (informant), P.W.-1 namely Laxmi Narayan Mahto (brother-in-law of the informant) and P.W.-4 namely Pradip Kr. Mahto (son of the brother-in-law of the informant).

P.W.-7 namely Sailo Devi, in her evidence stated that while she and her husband were washing their hand and feet near their well, these appellants came and assaulted her husband with *lathi*. She admitted that she was not assaulted. Her husband was thrown into the well of the said witness and thereafter the said witness was also thrown. This witness raised alarm when P.W.-4 and P.W.-1 reached near the well and rescued them. P.W.-7 further in para-6 also admitted that the well belongs to Madan Mahto and she stated that all of them have separate wells.

P.W.-1 namely Laxmi Narayan Mahto, stated that he and his son rescued the informant and her husband. He stated that after hearing alarm and commotion, he reached the well and found the informant and her husband in the well. He stated that the well was not fenced. The same was an unlined well or percolation well and the sides were not protected by any artificial steining. In para-7, this P.W.-1 stated that the well belongs to Madan (appellant in Criminal Appeal (D.B.) No. 781 of 2002). She also stated that several other village force mostly who are women had gathered at the place of occurrence.

P.W.-4 namely Pradip Kr. Mahto, had also stated in the similar lines that he along with his father (P.W.-1), went to rescue the informant and her husband.

These two witnesses further stated that the deceased was alive but he died while he was being taken to the hospital.

9. In this case, we find that the Investigating Officer has not been examined. In each and every case, non-examination of the Investigating Officer is not fatal for the prosecution. If the defence brings out any strong any cogent

reason that due to non-examination of the Investigation Officer, they are prejudiced, then such non-examination can be fatal. The same depends on facts of each and every case. There is no straightjacket formula.

10. In this case, P.W.-7 had stated that they were in front of their well and they were washing their hands and feet when these appellants came, assaulted her husband, threw him and herself in the well. This gives an impression that they were thrown into their own well but P.W.-1 in para-7 categorically stated that they were thrown into the well of Madan Mahto who is appellant in Criminal Appeal (D.B.) No. 781 of 2002. If that be so, there is a doubt about the place of occurrence. This doubt could have been cleared by the Investigating Officer but the Investigating Officer has not been examined in this case.

11. Further, we find that there were several independent witnesses present at the place of occurrence who reached at the place before P.W.-1 and P.W.-4 reached to rescue the informant and her husband but none of them have been examined by the prosecution. Admittedly, P.W.-1 and P.W.-4 have not seen the occurrence. They reached the place of occurrence i.e. the well, only on hearing the alarm and scream of P.W.-7 when she and her husband were already in the well. Thus, save and except P.W.-7, no one has seen as to who was the person who had assaulted and thrown them in the well. P.W.-1 and P.W.-4 also admitted that they have not seen the assault or they had not seen that the appellants had thrown the informant and her husband into the well.

12. The post-mortem report, evidence of P.W.-7 (para-3) and also of P.W.-1 clearly suggest that the deceased did not die of drowning as they stated that when the deceased was rescued from the well, he was breathing and was alive and he died on the way to hospital.

13. From the evidence, it appears that the informant and her husband went near the house or the well of this appellant - Madan and Madan had not gone near the well of this informant, which in fact was the prosecution case. This also is a major

discrepancy which remained unanswered due to non-examination of the Investigating Officer.

14. So far as the assault is concerned, P.W.-1 stated that these two appellants came and assaulted the husband of the informant but has not stated as to on which part of the body, the assault was made.

15. The defence has come up with a plausible argument that since the earth near the well was slippery and there was sludge and it was rainy season and the well was not fenced, the informant and her husband got slipped and fell into the well and the injury was as a result of fall into the well. This proposition put forward by learned counsel representing the appellants cannot be brushed aside, as if there was any intention to commit murder by these two appellants, informant would not have been spared, as P.W.-1 has stated that she was not at all assaulted by the appellants.

16. Thus, from what has been discussed above, we find that there is vital contradiction regarding place of occurrence. Non-examination of the Investigating Officer has caused great prejudice to the defence. Further, non-examination of the independent witness in this particular case can be said to be fatal. Thus, by giving benefit of doubt, we are inclined to acquit these appellants.

17. Accordingly, both these Criminal Appeals are **allowed**. The impugned judgment of conviction and order of sentence dated 28.09.2002 passed by Learned IIInd Additional Judicial Commissioner, Khunti, Ranchi, in S.T. No.82 of 2000, are hereby set aside. As the appellants are on bail, they are discharged from the liability of bail bonds, so are the bailers.

18. We appreciate the efforts put in by Ms. Jyotsna Mahato, learned counsel representing the appellants, who addressed the Court at great length in this case, as she is fully ready and has assisted us in a proper manner considering that she has only put in one and half years in practice.

19. Pending interlocutory application, if any, stands disposed of.

20. Trial Court Record be transmitted back to the Court concerned.

(ANANDA SEN, J.)

(GAUTAM KUMAR CHOUDHARY, J.)

HIGH COURT OF JHARKHAND, RANCHI

Dated:- 14/11/2024
NAFR / Prashant