

Criminal Appeal (D.B.) No. 122 of 2018
[arising out of Judgment of conviction dated 6th
December, 2017 and order of sentence dated 8th
December, 2017 passed by the Additional
Session Judge-IX, Palamau in Sessions Trial
No.189 of 2004]

Punit Yadav S/o Basudeo Yadav, R/o Village Dattuta, PO PS
Chhatarpur, Dist Palamau.

... **Appellant**

-versus-

The State of Jharkhand ... **Respondent**

For the Appellant : Mr. Soumitra Baroi, Advocate
Mr. Kabir, Advocate

For the Respondent : Mr. Abhay Kumar Tiwari, A.P.P.

PRESENT: SRI ANANDA SEN, J.
SRI SUBHASH CHAND, J.

J U D G M E N T

Per Ananda Sen, J. The appellant has preferred this appeal against the Judgment of Conviction dated 6th December, 2017 and Order of Sentence dated 8th December, 2017 passed by the Additional Session Judge-IX, Palamau in Sessions Trial No.189 of 2004, whereby the appellant has been convicted for offence punishable under Sections 302/201 of the Indian Penal Code and has been sentenced to undergo rigorous imprisonment for life and fine of Rs.20,000/- and in default of payment of fine to undergo further simple imprisonment of 06 (six) months for the offence under Section 302 of the Indian Penal Code and has been further sentenced to undergo rigorous imprisonment for seven years and a fine of Rs.20,000/- and in default of payment of fine to further undergo simple imprisonment of six months for the offence under Section 201 of the Indian Penal Code.

2. Learned counsel for the appellant submits that the prosecution has not been able to prove the charges against the appellant beyond all reasonable doubts. He submits that in all 9 witnesses were examined by the prosecution to prove the charges against the appellant, out of whom P.W.1, P.W.2 and P.W.3 were declared hostile, P.W.8 is a doctor who has identified the signature and handwriting of the doctor who had conducted and had prepared the postmortem report and P.W.9 is the investigating officer. He submits that rest of the witnesses are all interested witnesses being the relatives of the deceased. He submits that the investigating officer had not seized any blood stained earth nor had recovered the murder weapon. He submits that the deceased went missing since 22.09.2003 and the dead body

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was recovered on 01.10.2003 and from 22.09.2003 till 01.10.2003 no complaint whatsoever was lodged about missing of the deceased. He submits that there is no eye witness to the occurrence and the chain of circumstances is also not complete in this case to convict the appellant. Thus, he submits that it is a fit case for acquittal of the appellant.

3. Learned A.P.P. for the State submits that though out of total nine prosecution witnesses, three turned hostile, yet through the evidence of remaining witnesses the prosecution has been able to bring home the charges against the appellant beyond all reasonable doubts, thus, the Trial Court has rightly convicted and sentenced the appellant. He submits that on being pointed out by the appellant, the dead body of the deceased was recovered from a nala (drain) at Mangra Pahaar and the clothes and slippers of the deceased too were recovered from nearby. He submits that the doctor in the postmortem report has opined that the deceased died due to strangulation. Thus, the Trial Court has rightly convicted the appellant and sentenced him.

4. We have gone through the records and have gone through the entire evidence.

5 Kailash Yadav (P.W.5), in his fardbeyan, as informant, has stated that he was informed by co-villager Lalu Yadav over phone on 27.09.2023 that his son Naresh Yadav (deceased) went to Chhatarpur Market on 22.09.2023 at about 08.00 a.m., but he did not return. On receiving such information, the informant rushed to his village in the next morning on 28.09.2003 and reached his village at about 08.00 a.m.. He started searching his son at Chhatarpur Market, but did not get any clue. In the evening, the informant could come to know through his family members that on 22.09.2003, his son Naresh Yadav was seen moving in Chatarpur Market along with co-villager Bigan Yadav and Bigan Yadav too was missing since that very day. Thereafter, the informant along with his other son, co-villager Dasarath Yadav, his brother, Vilash Yadav (a relative) and others went to village Dishka, PS Dumariya, Distt. Gaya where they caught Bigan Yadav, who informed them that Punit Yadav, who is staying at his sister's house at Village Tandwa can throw light on this issue. Then the informant and his companions took Bigan Yadav to village Tandwa and caught Punit Yadav (appellant). The appellant told them that on 22.09.2003, after committing murder of the deceased, they have concealed the dead body beneath a stone in a drain in Mangra Pahar Forest. Thereafter the appellant was brought to the Chhatarpur Police Station.

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6. On the basis of the aforesaid written information, Chhatarpur Police Station Case No.89 of 2003 was registered for offences under Sections 302/201/34 of the Indian Penal Code against the appellant and Bigan Yadav.

7. Thereafter, on being pointed out by the appellant, dead body of the deceased and his clothes and slippers were recovered, for which seizure lists were prepared. Police took up the investigation and after investigation submitted chargesheet against the appellant on 28.12.2003 for offences under Sections 302/201/34 of the Indian Penal Code. Later on chargesheets were also submitted against the other accused viz. Krishna Yadav, Harihar Yadav, Brahmdeo Yadav, Lalu Yadav on various subsequent dates, viz. 22.03.2004 and 31.03.2004 where the accused Bigan Yadav was shown as absconder. On 12.08.2004, case was committed to the Court of Sessions. On 13.10.2004, after splitting up the case record of Bigan Yadav, charge was framed against the rest of the accused including the appellant, which he pleaded not guilty and claimed to be tried.

8. In order to prove the charges against the accused including the appellant, the prosecution had examined 9 (nine) witnesses before the Trial Court, namely, P.W.1 Lallu Yadav, P.W.2 Yugal Yadav, P.W.3 Nagdeo Yadav, P.W.4 Pudina Yadav, P.W.5 Kailash Yadav (informant), P.W.6 Belash Yadav, P.W.7 Mahesh Yadav, P.W.8 Dr. Anil Kumar Srivastava and P.W.9 Hari Narayan Singh.

The prosecution had also produced the following documents, which were marked exhibits: -

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|-------------|--------------------|
| Ext.1 | Formal FIR |
| Ext.2 | Fardbeyan |
| Ext.3 & 3/1 | Seizure Lists |
| Ext. 4 | Postmortem Report. |

9. P.W.1 Lallu Yadav, P.W. Yugal Yadav and P.W.3 Nagdeo Yadav were declared hostile.

P.W.4 Pudina Yadav stated that the occurrence took place two years ago. It was a Monday. This witness was at home. The deceased left home at about 10.00 a.m. saying that he is going to Chhatarpur and after getting cement and rods loaded, he will return on Tuesday. When he did not return on Tuesday, he searched for the deceased at his in-law's place at Mananpur, where also the deceased was not found. Thereafter when he went to his cousin Lallu, he disclosed that he had seen the deceased with Bigan.

Thereafter he searched for Bigan. Bigan told that Punit will tell about the deceased. Thereafter he went to Punit (appellant) along with Bigan where the appellant on much enquiry told that he along with Bigan had killed Naresh and has concealed his dead body in a drain at Mangra Pahar beneath a stone. He stated that when he went to Punit, Kailash, Mahesh, Nandeo, Vilash Yadav had accompanied him. This witness further stated that Bigan had escaped on the plea of nature's call. He stated that the appellant was brought to Chhatarpur Police Station where in front of the Sub Inspector the appellant had confessed his guilt. He further stated that in the morning the Sub Inspector of Police took the appellant to Mangra Pahar where the appellant had identified the stone under which the dead body was concealed. The dead body was recovered from the said place and the clothes of the deceased were recovered from a place at a distance of 10 steps. This witness identified the appellant in Court.

In cross examination he stated that he was informed by father of the deceased only that deceased had left his house with Rs.10,000/- for purchasing cement and rods from Chhatarpur. He had left his house alone. The deceased had left his house saying that he will stay at Mananpur at night and next day he will return with cement and rods from Chhatarpur. He stated that deceased's father was not in village. He further stated that deceased's father was working in colliery, where Lalu had informed him through phone that the deceased is untraceable. Lalu had informed deceased's father after five days. For five days he was searching for the deceased at Chhatarpur Market and other places. It is incorrect to say that relationship of deceased with his wife was not cordial. He further stated that Punit was found in Village Tandwa and Bigan was found in his in-laws' village Dibhua. Punit was brought from village Tandwa to village Julmadih where many villagers had assembled. The statement of Punit was written by Bandhu Yadav of village Tilaiya, which was signed by 10-12 persons. He further stated that it is incorrect to say that Mahesh Yadav had only disclosed that the dead body is near Mangra Pahari. He has stated that the dead body was only having a black underwear. He stated that all the clothes were of deceased. The clothes were in five sets. He stated that the appellant or Bigan had no enmity with the deceased.

P.W.5 Kailash Yadav is the informant. He has stated that the incident took place 2 ½ years ago. It was 8.00 a.m. in the morning. His son (deceased) went to Chhatarpur and did not return. In course of search for him,

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Lalu Yadav disclosed that deceased was seen with the appellant and Bigan, hence they could tell about the deceased. In search of Bigan, this witness went to village Dibhua, Police Station Umaria. Bigan was found there, who on query, told that appellant will tell about the deceased. Appellant disclosed that he after killing the deceased has thrown the dead body in Mangra Pahar. This witness stated that he was accompanied by Vilash and four others. He stated that they were taking the appellant and Bigan to the Chhatarpur Police Station, on way, Bigan escaped on the plea of nature's call. Appellant was taken to Mangra Pahar where on his pointing the dead body of the deceased was recovered. Clothes and slippers were also recovered. He stated that the police had recorded his statement and after finding the same to be correct, he had put his thumb impression over it. He stated that Punit and Bigan had also disclosed names of Brahmdeo Yadav, Harihar Yadav, Brahmdeo Yadav of Village Chokda, Lalu Yadav and Krishna Yadav, who were involved in killing. This witness had identified Punit and Harihar, who were present in Court and stated that he can identify others also.

In cross examination he has stated that Lalu had told him to ask from the appellant and Bigan about the deceased. He stated that it was the appellant who had pointed out the place where dead body was concealed. Dead body was recovered after eight days since the day of missing. He has stated that he had stated before the police that it was Lalu who had told that he had seen the deceased with the appellant and Bigan. Bigan was in his in-laws' place at Dibhua. He stated that the villagers first took the appellant to the police station. He stated that the Sub Inspector had recorded his statement twice.

P.W.6 Belas Yadav has stated that the incidence took place about 2 $\frac{3}{4}$ years ago. He along with Kailash and others were going to Ribhika Village – Bigan's in-laws' place. When they asked Bigan, he told that the appellant knows about him. Thereafter they went to the appellant at Village Tarba. Appellant told them that after killing the deceased along with Bigan, they have thrown the dead body at Mangra Pahar in water. He stated that they were taking the appellant and Bigan to the Police Station, on way, Bigan escaped on the plea of nature's call. Appellant was brought to the Police Station where Kailash had narrated the story which was recorded by the Sub Inspector and on finding the same to be true, Kailash had put his thumb impression. Thereafter the Sub Inspector took the appellant to Mangra Pahar, where the

appellant pointed the place where he had concealed the dead body in water beneath a stone. The dead body was recovered on his pointing. Again at some distance the clothes of the deceased were also recovered on being pointed by the appellant. This witness identified the appellant and Harihar who were present in Court.

In cross examination, this witness has stated that his Samdhi (brother-in-law) had given statement in the police station in his presence whereafter this witness also had given his statement before the Sub Inspector. At Mangra Pharad the deceased was killed, as was told by the appellant. He stated that on Monday he was informed about missing of the deceased. He does not remember the date. He had gone to village Danttuta where Lalu had told that he had seen the deceased with appellant and Bigan. Again he says that he came to know about the same through his Samdhi (brother-in-law) Kailash. He further stated that Bigan was at his in-laws' place. He stated that the appellant was found at Village Tarban, which is his sister's in-laws' place. He stated that Bigan and the appellant were not brought to the police station along with Chowkidar. He stated that they had called the police vehicle and were taking them to the police station. He stated that there was no dispute with regard to land.

P.W.7 Mahesh Yadav has stated that the occurrence took place 2 – 2 ½ years ago. He was at his house when Naresh Yadav (deceased) had gone to Chhatarpur for purchasing cement and rods. He told him that he will go to his in-laws' house also. When he did not return, P.W.7 went there and came to know that the deceased did not go there. Then he started searching for him. Lalu Yadav told him that deceased was seen along with Bigan. Thereafter he along with some persons started searching for Bigan and went to his in-laws' house and caught him there. Bigan told them that the appellant who was in village Tandwa can tell them about the deceased. Then they went to village Tandwa along with Bigan where they found the appellant, who told them that he along with Bigan Yadav, Brahmdeo Yadav, Krishna Yadav, Harihar Yadav, and Lalu Yadav had killed the deceased and thrown his body in Mangra Pahar. Thereafter this witness and other witnesses were taking the appellant and Bigan to the police station, but on the way, Bigan fled. Thereafter police took the appellant to Mangra Pahar where on his pointing out, dead body was recovered in presence of this witness and others. Clothes of the deceased were also recovered. Police recorded his statement on the

next day. He further deposed that he did not inform the police about missing of his brother earlier.

P.W.8 is Dr. Anil Kumar Shrivastava. He is a Medical Officer at Sadar Hospital, Daltonganj. He identified the handwriting and signature of Dr. Kundan Prasad, who had conducted the postmortem of the dead body of the deceased Naresh Yadav on 02.10.2003. The postmortem report was marked Exhibit 4. In the postmortem, the doctor had observed the following: -

- I. Tongue was protruding
- II. Fracture of neck was present.
- III. Whole skin was whiteous and sloughed.
- IV The stomach was empty
- V. The body was highly decomposed.

Doctor had opined that the cause of death was due to fracture of neck bone and spinal cord caused by violent impact and tortion at the neck due to sudden manipulation. The time elapsed since death was 1 to 2 weeks.

This witness has stated that if he had been in the position of Dr. Kundan Prasad and would have found the same injuries on the person of the deceased, he would have also been of the same opinion. In cross examination, he stated that postmortem was not conducted in his presence.

P.W.9 Hari Narayan Singh stated that he got the charge of investigation of this case on 25.11.2003 from the then Officer-in-Charge, Chhattarpur Police Station. He perused the case diary and found that the case was pending for arrest of some accused and for getting the supervision note. He got the supervision note from the Sub Divisional Police Officer, Chhattarpur on 28.12.2003.

10. After closure of the evidence, the statement of this appellant was recorded under Section 313 of the Code of Criminal Procedure. The appellant did not chose to adduce any evidence in his defence.

11. The Trial Court, after hearing the arguments of the parties and after going through the evidence, by Judgment of Conviction dated 6th December, 2017 and Order of Sentence dated 8th December, 2017 passed in Sessions Trial No.189 of 2004, has convicted and sentenced the appellant for offence punishable under Sections 302/201 of the Indian Penal Code.

12. Challenging the aforesaid conviction and sentence, the appellant has preferred this appeal.

13. We have gone through the evidence and the entire records.

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14. From the record we find that P.W.1, 2 and 3 have turned hostile. P.W.4 to 7 are interested witnesses being the relatives of the deceased. As per the prosecution case, the deceased went missing from 22.09.2003 and his dead body was recovered on 01.10.2003 whereafter on the same day the First Information Report was lodged. Prior to that no First Information Report or missing report was lodged about missing of the deceased and there is no explanation about the same either by the informant (P.W.5) or any of the prosecution witnesses.

15. The Investigating Officer, who had recorded the fardbeyan of the informant, recovered the dead body of the deceased and had recorded the confessional statement of the appellant, has not been examined in this case. Thus, neither the recovery nor the confessional statement has been proved in this case in course of trial. Failure to examine the said police officer in course of trial is a serious lacuna on the part of the prosecution.

16. In this case, P.W.5 is the informant. In his deposition in Court he has stated that his son (deceased) went to Chhatarpur and did not return. In course of search for him, Lalu Yadav disclosed that deceased was seen with the appellant and Bigan, hence they could tell about the deceased. Further, when he went to Bigan, he told that appellant will tell about his son. Thereafter when enquired from the appellant, he disclosed that after killing the deceased he has thrown the dead body in Mangra Pahar. The other three witnesses, i.e., P.W.4, P.W.6 and P.W.7 have deposed more or less in the same line as P.W.5 has deposed. Thus, there is nothing in their evidence to suggest completion of the chain of circumstances leading to the occurrence nor they have stated about the motive of the accused in committing the crime.

17. In a case involving offence under Section 302 of the Indian Penal Code, when there is only circumstantial evidence and there is no eye witness to the occurrence, motive is relevant and is necessarily required to be proved by the prosecution. In this case we find that the witnesses have stated that there was no dispute or enmity between the accused persons and the deceased. The prosecution has failed to prove any motive behind the occurrence. As there is no direct evidence, prosecution case is completely based on circumstantial evidence. In such situation, prosecution should have come up with some motive behind the occurrence.

18. Further, from the record, we gather that surprisingly, the apparels and other belongings of the deceased, which were allegedly recovered and

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seized by the police were not even exhibited, neither the police has brought anything to prove that the said materials belong to the deceased. The prosecution through evidence of the witnesses gave description of the dead body, which they had seen, which was lying in a proximate distance of the other recovered materials, i.e., apparels etc., but surprisingly, there is no inquest report prepared by the investigating officer to show that the dead body was recovered.

19. We further find from the records that the doctor who had conducted the postmortem has not been examined by the prosecution.

20. Thus, we find that the prosecution has miserably failed to complete the chain of circumstances so as to prove the guilt of the appellant. The only material is the confessional statement of the appellant before the police, which led to recovery of the body, but even that Officer was not examined.

21. Thus, we are inclined to hold that the prosecution has not been able to prove the guilt of the appellant by completing the chain of circumstances. There has been numerous latches and lacunas on the part of the prosecution, for which benefit of doubt should go in favour of the appellant. Thus, giving benefit of doubt, we are inclined to allow this appeal. The impugned Judgment of Conviction dated 6th December, 2017 and Order of Sentence dated 8th December, 2017 passed in Sessions Trial No.189 of 2004 are hereby set aside. The appellant is acquitted of the charges against him. He is directed to be released from custody forthwith if not wanted in any other case.

22. This appeal is, accordingly, allowed. Pending interlocutory applications, if any, stand disposed of.

23. Let the Trial Court Records be transmitted to the Court concerned along with a copy of this judgment.

(Ananda Sen, J.)

(Subhash Chand, J.)

High Court of Jharkhand, Ranchi
Dated, the 9th April, 2024
Kumar/Cp-03