Criminal Appeal (D.B.) No. 321 of 2011

(Arising out of Judgment of Conviction dated 10.02.2011 and Order of Sentence dated 14.02.2011 passed by the Additional Sessions Judge, FTC-V, West Singhbhum in Sessions Trial No.44 of 2009)

Madhusudan Birua, S/o Late Balbhadra Birua, R/o Kheria Ghar, PO & PS Manjhari, Distt. West Singhbhum, Chaibasa

… **Appellant**

-Versus-

The State of Jharkhand … **Respondent**

For the Appellant : M/s A.K. Das & Arbind Kumar, Advocates
For the Respondent : Mr. V.S. Sahay, A. P.P.

PRESENT: SRI ANANDA SEN, J.
SRI GAUTAM KUMAR CHOUDHARY, J.

J U D G M E N T

By Court:

Heard the parties.

1. Appellant has preferred this appeal against the Judgment of Conviction dated 10.02.2011 and Order of Sentence dated 14.02.2011 passed by the Additional Sessions Judge, FTC-V, West Singhbhum in Sessions Trial No.44 of 2009, whereby the appellant has been held guilty and convicted for the offence punishable under Section 302 of Indian Penal Code and he has been sentenced to undergo rigorous imprisonment for life and a fine of Rs.5,000/- for the offence under Section 302 of Indian Penal Code failing which the appellant has been directed to undergo simple imprisonment for three months.
2. Learned counsel for the appellant submits that this is a case of no evidence and the Judgment of conviction has been delivered on the basis of finding in the Post Mortem Examination Report that death was due to throttling.
3. Neither the First Information Report has been exhibited in this case nor the document of the U.D. case has been exhibited or produced before the Trial Court. F.I.R was lodged on **05.06.2002** though the incident had occurred on **27.08.1999**. There were several other persons living in the said house but this appellant without any evidence has been convicted. Only ground of conviction is the post-mortem report which suggests that the deceased died because of throttling whereas this appellant had reported about unnatural death by consuming poison. Further in absence of any motive, the case being circumstantial in nature, the appellant could not have been convicted.

4. Learned counsel for the State has defended the impugned judgment of conviction and order of sentence and stated that the appellant had deliberately misled the Investigating Officer and he had given a false information about the cause of death of the deceased. He further submits that the deceased is none other but the second wife of the appellant, who also happened to be the sister of his first wife and the appellant was living with her. Further, death had occurred in the house of the appellant but the appellant has failed to come up with any plausible explanation about the cause of death. Thus the conviction of the appellant is justified.
5. After hearing the parties, we have gone through the judgment. The F.I.R has not been exhibited in this case. Report of U.D. Case No. 2 of 1999 has also not been exhibited. Thus, what was the information which was divulged at the first instance is not before us.
6. When we go through the evidence of all the material witnesses, we find that P.W.5 has stated that he had not given any statement before the police during investigation and was declared hostile. P.W. 2 has been declared hostile. From his cross-examination nothing important could be extracted. P.W. 3 was also declared hostile. P.W.4 is a hearsay witness and stated that he does not know as to how the deceased had died.

   P.W.6 is the doctor who conducted postmortem on the dead body of the deceased. He found :

   1. Head and Neck: Subcutaneous haematoma present. Tracheal rings - broken.

   Thorax – Intact and full, while Lungs – intact and congested.

   Abdomen : Stomach contains watery substances, black in colour.

   Opinion: the time elapsed since postmortem examination was within 24 hours of her death.
7. From the opinion of the doctor, we find that against the column of cause of death though he writes “asphyxia due to throttling” but he had put a question mark against the same. This reflects a lingering doubt even in the mind of the autopsy surgeon regarding cause of death. Further, from the report, we find that the part of heart, lungs, kidney, spleen and intestine and stomach was preserved for forensic analysis but the report of the forensic science laboratory has not been produced. Thus from the evidence it is quite clear that the only material against the appellant is that as per the postmortem report, the deceased died an unnatural death in the house of this appellant.
8. The appellant had taken plea that the deceased was suffering from diarrhea and she consumed poison and died. The prosecution has not verified the aforesaid fact. As

from the evidence, it is clear that the part of heart, lungs, kidney was preserved for forensic analysis but the report has not been produced before the Court. The report could have suggested the cause of death or could have negated the defence version. The doctor is also not sure as to whether the death was due to throttling or not.

9. The witnesses had stated that the deceased was residing with the appellant and the death had taken place in the house of the appellant but the appellant was not the only resident of his house. There were others, like his mother and the first wife, i.e., the sister of the deceased. When the others are residing in the same house along with this appellant, the prosecution should have brought for more cogent and reliable evidence to suggest that it is only this appellant who had committed the murder.

10. Further, the prosecution has not established the motive. None of the witnesses came forward to say about any bitter relationship of the deceased and this appellant. There is no evidence to show that their relationship was sour or this appellant ever misbehaved or tortured the deceased. In absence of motive, especially in this case, it is very difficult to arrive at conclusion that this appellant has committed murder of the deceased. As mentioned earlier the defence version of the appellant has not been investigated also.

11. These circumstances create doubts in our mind about the involvement of this appellant. There appears to be a reasonable doubt. The prosecution thus has not proved the guilt of the appellant beyond all reasonable doubts.

Judgment of conviction and sentence passed by the learned Trial Court is, accordingly, set aside.

The appellant, who is already on bail, is discharged from the liabilities of the bail bonds and so are the bailors.

Appeal is allowed.

Let the Trial Court Records be sent back to the Court concerned forthwith along with a copy of this judgment.

(Ananda Sen, J.)

(Gautam Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated, the 31th July, 2024
AKT/Satendra