

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Criminal Appeal (D.B.) No.114 of 2016

(Against the judgment of conviction dated 01.10.2015 and order of sentence dated 03.10.2015 passed by the learned Additional Sessions Judge I, West Singhbhum at Chaibasa in Sessions Trial No. 19(S) of 2007)

Rote Bodra, son of Poglo Bodra, resident village Barjo, PO and PS Bandgaon, District West Singhbhum ... Appellant(s).

Versus

The State of Jharkhand ... Respondent(s).

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

For the Appellant(s) : Mrs. Shruti Shrestha, Advocate
For the Respondent(s) : Mrs. Vandana Bharti, APP

JUDGMENT

19th November 2024

By Court: I.A. No. 9779 of 2024

Since this criminal appeal has been taken up for final hearing, I.A. No. 9779 of 2024 filed for suspending the sentence and to release the appellant on bail, is dismissed.

Criminal Appeal (D.B.) No.114 of 2016

2. We have heard the learned counsel appearing for the appellant and the learned counsel for the State at length.
3. This Criminal Appeal arises out of the judgment of conviction dated 01.10.2015 and order of sentence dated 03.10.2015 passed in Sessions Trial No. 19(S) of 2007 whereby and whereunder learned Additional Sessions Judge-I, West Singhbhum at Chaibasa convicted the appellant under Section 302/34 of the Indian Penal Code and sentenced him to undergo RI for life with a fine of Rs. 2,000/-.

4. The learned counsel appearing on behalf of the appellant submits that PW2 and PW4 cannot be said to be eye witnesses which is evident from the FIR itself. The informant PW4 in the FIR had stated that he had seen the dead body after his son (PW2) screamed discovering the same, he thus suspects that it is this appellant who had committed murder of the deceased. Whereas improving the story he himself becomes an eye witness while deposing as PW4. This improvement destroys his credibility. So far as PW2 is concerned in paragraph no. 4 he says that he had seen this appellant committing the murder which fact is contrary to the statement made in the FIR. She argues that if at all PW2 had seen this appellant committing the murder, then the FIR could not have been lodged on the basis of suspicion. There would have been a definite statement in the FIR that this appellant had committed murder of the deceased. Further in this case the improvement made by these witnesses in their evidence, could not be contradicted as the investigating officer has not been examined, which caused great prejudice to this appellant.

5. The learned counsel for the State submits that PW2 and PW4 had stated that they have seen this appellant committing murder of the deceased. There was enough motive to commit the murder of the deceased as there was admittedly land dispute between the parties.

6. After hearing the parties, we have gone through the entire case records. The FIR is at the instance of PW4. He says that his son (deceased) had left his house after consuming *haria* (local liquor). He did not return at night. The informant and other family members went to sleep after waiting for him. Before sunrise, PW2 woke up and screamed and then it was discovered that the dead body of the deceased was lying in the courtyard of the

house. The informant stated that he being the elder son had received more share in the ancestral property due to which Poglo Bodra (brother of informant) got enraged and thus the informant suspects that Poglo Bodra and this appellant being the son of Poglo Bodra had committed murder of the deceased. Based on the aforesaid *fardbeyan*, FIR being Bandgaon PS Case No. 69 of 2006 was instituted under section 302/34 IPC.

7. After investigation, the Investigating Officer submitted chargesheet against the appellant for the offence punishable under Section 302/32 of the Indian Penal and the appellant was put on trial.

8. On the basis of chargesheet and materials available on record, cognizance was taken and the case was committed to Court of Sessions where charges were framed under Section 302/34 of the Indian Penal Code and trial proceeded.

9. To prove the prosecution case, altogether 5 witnesses were examined by the prosecution, who are as under:-

- i. PW1 :- *Jhonson Bodra*
- ii. PW2 :- *Rusu Bodra*
- iii. PW3 :- *Mangri Bodra*
- iv. PW4 :- *Ramu Bodra*
- v. PW5 :- *Dr. Birendra Kumar Singh*

10. Following documents have been exhibited :

- i. *Ext.1 – Signature of PW1 Jonson Bodra on fardbeyan*
- ii. *Ext. 2- Postmortem Report of Biru Bodra by Dr. B.K. Singh*

11. The Doctor who conducted the postmortem is PW5. He found the following injuries on the dead body of the deceased:-

External:

- (i) *Dried up blood stained present over neck, face and clothes.*

(ii) Incised wound behind left ear $1\frac{1}{2}'' \times \frac{1}{2}'' \times 1''$. Temporal bone was fractured.

(iii) Incised wound over neck $1'' \times \frac{1}{2}'' \times 2''$ vessels were damaged.

(iv) Incised wound over neck $1'' \times \frac{1}{2}'' \times 2''$

(v) Incised wound over right side of chest $3''$ away from neck $1\frac{1}{2}'' \times 1'' \times 2''$ - clavicle was fractured.

(vi) Incised wound of right sterno clavico mastoid junction $2'' \times \frac{1}{2}'' \times 3''$. Clavicle was fractured.

On dissection : Head and Neck:

Blood clot present in left temporal area in sub-cutaneous tissue.

Left temporal bone was fractured. Blood clot present in cranial cavity.

Brain matter was contused. Great vessel in neck damaged.

Thorax :

Blood clot present in sub-cutaneous tissue under the incised wound. Blood present in pleural cavity. Right lung incised wound $\frac{3}{4}'' \times \frac{1}{2}'' \times \frac{3}{4}''$. Incised wound over neck of aorta $1'' \times \frac{1}{2}'' \times \frac{1}{2}''$.

Right chamber contains blood, left chamber empty. In the abdomen stomach contains Hariya. Liver spleen, kidney - NAD Urinary bladder-empty.

In the opinion of the doctor the cause of death was hemorrhage caused by sharp cutting object. Postmortem is marked as Ext 2. This proves that the death is homicide.

12. We have gone through the evidence led by the prosecution. PW1 has been declared hostile. The main witness in this case, based on whose testimony the Trial Court had convicted the appellant, is PW2 and PW4. PW4 is the informant. He stated that there was land dispute between the informant, Poglo Bodra and the appellant. In paragraph no. 4 he stated that he had seen this appellant along with Poglo Bodra committing murder of the deceased. PW2 is another son of the informant. He stated that they were sleeping and just before sun rise when he woke up and went to the courtyard, he saw the dead body of the

deceased, though in paragraph no. 4 he stated that he had seen this appellant committing murder of the deceased.

13. If we scrutinize the statement of PW2 and PW4 with the statement in the FIR, we arrive at the conclusion that PW2 and PW4 had exaggerated their version while deposing as prosecution witness. From the FIR which is the first version, it is clear that there was no one who had seen the murder. It is only after discovery of the dead body PW2 screamed and raised alarm when others came and saw the dead body. In the FIR there is no whisper that anyone had seen the commission of murder rather the FIR is based on suspicion. While deposing, PW2 and PW4 converts themselves to be the eye witness and improves their version. Thus these PW2 and PW4 loses credibility. This contradiction and exaggeration could not be ascertained as the investigating officer had not been examined in this case. Thus we hold that prejudice had been caused to the appellant due to non-examination of the investigation officer. If we disbelieve PW2 and PW4 to be the eye witness, there is no other material to convict the appellant, save and except suspicion. Suspicion cannot be a ground to convict any person.

14. Considering what has been held above, we are inclined to allow this Criminal Appeal and acquit the appellant.

15. The conviction of the appellant under Section 302/34 IPC vide judgment of conviction dated 01.10.2015 passed by learned Additional Sessions Judge-I, West Singhbhum at Chaibasa in Sessions Trial No. 19(S) of 2007, is hereby set aside and, accordingly, the sentence awarded by the learned Trial Court vide order of sentence dated 03.10.2015 is also set aside.

16. This Court directs the above named appellant to be released forthwith from custody, if not required in any other case.

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

(ANANDA SEN, J.)

(GAUTAM KUMAR CHOUDHARY, J.)

High Court of Jharkhand, Ranchi

Dated : 19/11/2024

Tanuj/

N.A.F.R.