

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**  
**Criminal Appeal (D.B.) No. 112 of 1995 (P)**

[Against the Judgment of conviction dated 22.04.1995 and Order of sentence dated 25.04.1995, passed by learned 1<sup>st</sup> Additional Sessions Judge, Dumka, in Sessions Case No.116 of 1993]

Bodar Marandi, S/o Durga Marandi, resident of Jhilimili, P.S.- Kathikund, District - Dumka.

Versus

## The State of Bihar (Now Jharkhand)

...      ...      **Respondent**

## P R E S E N T

**HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD  
HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA**

For the Appellant : Mr. Aditya Raman, Amicus Curiae  
For the Respondent : Mrs. Vandana Bharti, Spl. P.P.

... . . . .

C.A.V. on 23.01.2024 Pronounced on 21.02.2024

***Per Pradeep Kumar Srivastava, J.***

1. The above-named sole appellant has preferred this instant appeal under Section 374 (2) of the Code of Criminal Procedure against the Judgment of conviction dated 22.04.1995 and Order of sentence dated 25.04.1995, passed by learned 1<sup>st</sup> Additional Sessions Judge, Dumka, in Sessions Case No. 116 of 1993, arising out of Kathikund P.S. Case No.29 of 1992 (G.R. Case No.681 of 1992) registered under Section 302/34 of the Indian Penal Code for committing murder of Muni Murmu by which the appellant has been convicted under section 302 of the Indian Penal Code and has been directed to undergo rigorous imprisonment for life.

2. The prosecution story as depicted in the F.I.R. (Exhibit-2) lodged by one Prabit Marandi (P.W.-6) stating inter alia that on 16.07.1992 in the morning, informant's mother (since deceased) and his wife namely, Bahamuni Hansda (P.W.-5) had gone to their field for disposing cow dung. The informant was in his house and after some time, he heard the screaming of his wife that his mother has been assaulted then, he rushed towards the place of occurrence and arrived near the ridge of his field, then there he saw accused Hilar Marandi armed with tangi, Bodar Marandi (appellant) armed with Sabal, Bowa Marandi and Dhena Marandi were assaulting the mother of the informant with tangi and sabal lying down her on field. The informant also raised alarm then several villagers assembled and accused persons fled away from the place of occurrence. The witness and wife of the informant brought out the injured mother of the informant from the field covered with mud and water and put her on the ridge of the field, but she died instantaneously. It is alleged that prior to one month of the occurrence accused persons were calling the mother of informant as 'diaan' and extended threatening to kill her, for which a panchayati

was also convened in the village and matter was resolved, but the accused persons were not fully satisfied and used to threaten to kill the mother of the informant.

3. On the basis of fardbeyan of the informant, Kathikund P.S. Case No. 29/1992 was registered for the offence under Section 302 read with 34 I.P.C. corresponding to G.R. No. 681/1992 and Sessions Case No. 116 of 1995.
4. After completion of investigation, charge-sheet was submitted against all the accused persons for the offence under Section 302 read with 34 of the I.P.C. The accused persons denied the charges and claimed to be tried. Out of four accused persons, who were tried jointly in this case, only the appellant has been convicted and sentenced and other three accused persons have been acquitted after facing trial.
5. The impugned judgment of conviction and sentence of the appellant has been assailed on following grounds:-
  - (i) It is vehemently argued that the learned trial court has based its decision only on extraneous consideration and travelled beyond the weight of evidence available on record, as such, arrived at wrong

conclusion.

- (ii) Elucidating his argument, learned counsel for the appellant has further submitted that admittedly P.W.-5 Bahamuni Hansda is the sole eye-witness of the occurrence, but in her cross-examination, she has given serious jolt to the prosecution story. She has stated that her mother-in-law has alone gone to field for disposing the cow dung. Thereafter, about half an hour, she also went to the field and saw accused persons were fleeing armed with lethal weapon.
- (iii) It is also admitted fact that there was single blow injury on the head of the deceased caused by hard and blunt substance, which was found fatal and may also be caused due to fall of the said old lady on the ridge of the field.
- (iv) All other witnesses of facts are hearsay from P.W.-5, including the informant.
- (v) The prosecution story as projected by witnesses during trial is almost improbable inasmuch as if four persons variously armed with lethal weapons surrounded and indiscriminately

- 5 -

assaulted a lady, there would be multifarious injuries on several part of the body and not only on one side.

- (vi) The learned trial court after evaluating the evidence of oral witnesses in the light of injuries sustained by the deceased as proved by the Post-Mortem Report (Exhibit-5) has arrived at conclusion that "it is clear that the blow had been caused by any one of the accused and that blow had been caused with a heavy impact with some hard blunt substance. Since from the evidence of P.W.-5 and P.W.-6 read with the fardbeyan Exhibit-4, it transpires that Hilar Marandi was armed with a tangi, a heavy sharp-edged weapon and no injury with any sharp cutting weapon was found on the body of the deceased, it cannot be strengthfully concluded that the injury which was found on the person of the deceased had been caused by the accused Hilar Marandi, who was allegedly armed with tanga or tangi."

It is proved by P.W.-5 and P.W.-6 that Bodar Marandi (appellant) was armed with a sabal which is a heavy hard blunt

substance and the injury found on the person of the deceased was probable with such weapon. Since P.W.-5 has said that accused Bodar Marandi also assaulted the deceased and it finds corroboration from the fardbeyan (Exhibit-4) that Bodar Marandi had assaulted the deceased with a Sabal, it is reliably established that Bodar Marandi had caused that injury on the person of the deceased and as that the injury had directly or indirectly caused the death of the deceased as is evident from the evidence of Doctor (P.W.-7) and Post-Mortem Report (Exhibit-5), I find and hold that Bodar Marandi had caused the death of a deceased by assaulting her by sabal with the intention to cause her death."

- (vii) On the strength of above finding, other three accused persons, who were allegedly armed with tanga and lathi were extended the benefit of doubt and acquitted.
- (viii) It is further argued that the Judgment of conviction and Order of sentence of sole appellant is based on conjecture and surmises. It is a case of murder, for which high quality of evidence is required to

establish the charges for extreme penalty of capital sentence or imprisonment for life, as such, there is no place of may be or might be about the commission of offence by the accused, rather it must be proved beyond all reasonable doubt. There must be no room for any logic beyond the weight of evidence while arriving at conclusion of guilt.

- (ix) In the instant case, there is no evidence at all to establish that it was the sole act of appellant in inflicting injury to the deceased and such was never the case of prosecution. On the basis of same evidence, other three accused persons have been acquitted and present appellant has been convicted simply on the basis of assumptions and presumptions drawn by learned trial court.
6. Therefore, the impugned Judgment of conviction and Order of sentence is not legally sustainable and fit to be set aside and appellant deserves to be acquitted from the charges levelled against him.
7. Per contra, Mrs. Vandana Bharti, learned Special Public Prosecutor appearing for the State refuting

the aforesaid contentions advanced on behalf of the appellant has submitted that the learned trial court has very wisely and aptly apprised, scanned and evaluated the oral as well as documentary evidence available on record, the nature of injury sustained by the deceased and the manner of assault and use of weapon, has rightly recorded the findings of guilt of the appellant and sentenced him, which suffers from no illegality or infirmity calling for any interference by way of this appeal, which has no merit and is fit to be dismissed.

8. The only point for consideration in this appeal is that whether the impugned Judgment of conviction and Order of sentence of the appellant is legally sustainable or not?

#### **Analysis, Reasons and Decisions**

9. At the very outset, it is desirable to mention that the trial of the case was initiated by framing charge against four accused persons namely, Hilar Marandi, Bodar Marandi, Bowa Marandi and Dhena Marandi for the offence under Section 302 read with 34 I.P.C. No separate charge for murder has exclusively been framed against the present appellant. All the accused persons were jointly tried, but only present appellant has been

convicted and sentenced by the learned trial court extending the benefit of doubt to other three co-accused persons.

Since, it is a case of murder and appellant has been sentenced to imprisonment for life, hence, greater degree of care and caution is required for evaluation of the credibility of eye-witness testimony and other material evidence available on record.

- 10.** In the instant case, altogether eight witnesses were examined by the prosecution, out of them only P.W.-5 Bahamuni Hansda, who happens to be the wife of informant and daughter-in-law of the deceased, is alleged to be sole eye-witness of the occurrence. The trial court has convicted the accused on the basis of testimony of P.W.-5, which finds corroboration from the testimony of her husband Prabit Marandi (P.W.-6), in the light of inquest and Post-mortem report of the deceased proved in this case.
- 11.** For better appreciation of the case, it is pertinent to appraise the oral testimony of the witnesses examined by prosecution.
- 12.** P.W.-5 – Bahamuni Hansda has deposed that on the date of occurrence at about 5:00 A.M., she along with her mother-in-law Muni Murmu (since

deceased) was going to dispose of cow dung at their field Dedi Bahiyar. Meanwhile, Hilar Marandi, Bodar Marandi, Bowa Marandi and Dhena Marandi started assaulting to mother-in-law of this witness just near the field Dedi Bahiyar. She has further described that Bodar Marandi (appellant) was armed with Sabal, Hilar was armed with tanga, Dhena and Bowa have Thenga (Sticks). It is alleged that all the accused persons assaulted to her mother-in-law, due to which, her mother-in-law has sustained injuries on her head and mouth. She raised alarm then Bulai Marandi (P.W.-4), Mangal Tudu (P.W.-3) and Prabit Marandi (P.W.-6) arrived at the place of occurrence. The accused persons fled away seeing the arrival of the witnesses. Her mother-in-law died on the spot and her dead body was brought at the ridge of field by this witness along with one Bulai Marandi (P.W.-4).

In her cross-examination, this witness categorically admits that previous scuffle and dispute was going on with the accused persons, they were calling “diaan” to the deceased.

She has given serious jolt to her previous version and admits that her mother-in-law went to the field along with cow dung and after half an

hour she also went to the field for disposing cow dung, then she saw that the accused persons were assaulting to her mother-in-law in the field, which was covered with mud and water. She also admits that her mother-in-law has sustained injuries only on right portion of the body.

She also states that Bulai Marandi (P.W.-4) arrived at the place of occurrence after half an hour.

In her cross-examination she also clearly states that she can't tell how many blows of sabal, tanga or thenga (stick) were given to her mother-in-law by the accused persons, but her mother-in-law was assaulted several blows of sabal, tanga or thenga (stick). The occurrence of assault continued about half an hour. Several villagers arrived at the place of occurrence, but she can't disclose their names. The deceased was assaulted first from behind at a distance of 1 to  $1\frac{1}{2}$  ft (एक हाथ). The stick was not thick and length was about  $1\frac{1}{2}$  ft (एक हाथ). This witness was suggested for giving false evidence due to previous enmity with the accused persons, which she has denied.

13. P.W.-6 Prabit Marandi, who is the informant of the case, has deposed that on the date of occurrence at about 5:00 A.M. his mother and

wife had gone to dispose of cow dung at Dedi Bahiyar field, meanwhile, he heard alarm of his wife and went towards his field then saw that accused persons Hilar, Bodar and Dhena were fleeing away after assaulting his mother. He has further described that Hilar was armed with tanga, Bodar was armed with sabal and Dhena and Bowa have lathi. His mother was lying dead in the field and her dead body was brought to ridge of the field by his wife and witness Bulai Marandi (P.W.-4). She has sustained injuries on her head, forehead and ears. He has lodged F.I.R. in this case and proved his signature on fardbeyan (Exhibit-1/2).

He also admits that accused persons were calling her mother as “diaan” but on earlier occasions no scuffle has ever taken place with the accused persons.

In his cross-examination, this witness fairly admits that prior to his arrival at the place of occurrence his mother has died. He can't tell after how much time of death his mother was brought out from the field, which was covered with mud and water, but when he reached at the place of occurrence, dead body of his mother was kept at ridge of the field.

This witness again reiterates when he reached at the place of occurrence, the accused persons had fled away.

This witness has denied the suggestion of defence that due to old age his mother fell down with the heavy load of cow dung and died due to injury sustained by falling in mud and water field and accused persons have been falsely implicated due to previous enmity and suspicion.

- 14.** P.W.-1 Charan Kole has simply stated in his examination-in-chief that on the date of occurrence in the morning, he was going to his field then he saw Muni Murmu was lying dead in the field. There was injury on her head and ear. At the place of occurrence, Emmanuel, Bulai, Prabit and village Pradhan Mangal Tudu were present. He does not know how the deceased died and he had also not seen any one assaulting the deceased.
- 15.** P.W.-2 Emmanuel Marandi came to know from the Prabit (informant) at about 7 to 7:30 A.M. that someone has killed his mother, then he along with Prabit went to the field and saw the dead body of Muni Murmu lying on the ridge of the field. He can't tell how and under what circumstances, the deceased sustained injuries and died.

**16.** P.W.-3 Mangal Tudu is the Village Pradhan. He is simply a witness of inquest report of deceased and proved his signature on the inquest report as Exhibit-1/1.

In his cross-examination, this witness clearly admits that Muni Marandi was very old lady and suffering from epilepsy and on the date of occurrence there was heavy rain. He also admits that no Panchyati regarding calling her "diaan" ever took place in the village. Prabit (informant) has also never complaint him about calling "diaan" to his mother.

**17.** P.W.-4, Bulai Marandi has deposed that on the date of occurrence at the morning at about 8:00 A.M., he was going to discharge natures call, then Bahamuni (P.W.-5) called him, then he went to field of Bahamuni and saw that Muni Marandi was lying dead in the field, then he along with Bahamuni brought out the dead body and kept it on the ridge of the field. He has not seen any injury on the body. He also admits that Bahamuni did not disclose him about the cause of death of Muni Marandi. He does not know about cause of death of Muni Marandi. He also admits that he had not seen any person while assaulting to the deceased.

**18.** P.W.-7, Mahendra Prasad Gupta, the then Officer-in-Charge of Kathikund Police Station is the Investigating Officer of this case. According to his evidence, on 16.07.1992, Village Choukidar Hafiz Mian informed him about the murder of a woman by some unknown persons. In this connection, he made Sanha entry (S.D.E.) and proceeded to place of occurrence at Village – Jhilimili where he recorded fardbeyan (Exhibit-4) of informant Prabit Marandi. Accordingly, F.I.R. was registered for the offence under Section 302 / 34 of I.P.C. He inspected the place of occurrence, which is situated at Village – Jhilimili at Dedi Bahiyar, which is ploughed field of the informant covered with water. The dead body of Muni Marandi was lying on ridge of the said field towards North-East.

It was disclosed that the dead body was brought to the ridge from the field by the witnesses. It was also disclosed by the witnesses that the accused persons have murdered the deceased inflicting injuries by tanga, sabal and lathi etc.

Adjacent to the place of occurrence, there was land of accused persons also. He has prepared the inquest report (Exhibit-3) of

deceased in presence of witnesses.

In course of investigation, he recorded the statement of witness Bahamuni Hansda, Bulai Marandi, Charan Kole, Emmanuel Marandi, Mangal Tudu, Dhena Marandi etc.

After completion of investigation, he found sufficient evidence against the accused persons for the commission of offence under Section 302 read with 34 of I.P.C. and submitted charge sheet.

In his cross-examination, he has fairly admitted that except informant and his wife, no other witnesses have claimed in their statement recorded by him that they have seen the accused persons while assaulting the deceased. He also admits that none of the witnesses have stated before him as to which of the accused gave first blow by means of which weapon. He also admits that the place of occurrence i.e. field was surrounded by ridge from four corners, height of which was  $1\frac{1}{2}$ " or more. This witness also admits that prior to this occurrence no case was registered between the parties for any incident. He raided the house of the accused persons, but did not find any of the weapon.

He denied the suggestion of defence that the ridge of the field was covered with stone. The old lady while carrying heavy load of cow dung slipped in the field sustained injuries on one side of her body. She died and no one assaulted to her. He has failed to properly investigate the case and submitted charge-sheet in connivance with the informant.

**19.** P.W.-8 Dr. Dilip Singh, who has conducted the autopsy on the dead body of Muni Murmu on 17.07.1992 at 12:00 noon and found following ante mortem injuries:-

Lacerated wound 3" x 1" upto bone deep over the right side of fore head extending up to right ear.

On dissection, it was found that there was depressed fracture of the right frontal bone, due to which brain and meninges were lacerated and huge collection of blood was noticed in the cranium.

As per opinion of P.W.-8, the aforesaid injury was caused by hard blunt substance. The cause of death was due to hemorrhage and shock as a result of scalp injury within 48 hours.

**20.** From the aforesaid discussion of ocular testimony of witnesses, it is crystal clear that only P.W.-5 Bahamuni Marandi has claimed to be eye-witness of the occurrence. She was all along with the deceased. All the accused persons assaulted the deceased by their respective weapons, when she raised alarm then accused persons fled away.

P.W.-6, informant-cum-son of the deceased has also claimed to have seen the accused persons while fleeing from the place of occurrence along with their respective weapons.

**21.** The law is well settled that conviction can be based on the testimony of sole eye-witness if his / her evidence is found to be trustworthy, of sterling quality, unblemished and absolutely reliable.

**22.** In the case of **Amar Singh Vs. State (NCT of Delhi)** passed in **Criminal Appeal No. 335 of 2015**, reported in **(2020) 19 SCC 165**, the Hon'ble Apex Court giving benefit of doubt to the accused persons convicted under Section 302 of I.P.C. has reiterated as under:-

"As a general rule the Court can and may act on the testimony of single eye witness provided he is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of

the Evidence Act, 1872. But if there are doubts about the testimony Courts will insist on corroboration. It is not the number, the quantity but quality that is material. The time honoured principle is that evidence has to be weighed and not counted. On this principle stands the edifice of Section 134 of the Evidence Act. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise.”

- 23.** From the above citation, the general principle of law is that the testimony of the sole eye witness is sufficient to hold the accused guilty if it inspires confidence.
- 24.** The conviction and sentence awarded in the instant case against the appellant is to be tested on the basis of above established parameter.
- 25.** Now the question falls for consideration as to whether the testimony of P.W.-5 Bahamuni Marandi (sole eye-witness) is clear, cogent, unblemished and trustworthy or it suffers from material contradictions and inherent improbability, which is fit be bruised aside.
- 26.** From the testimony of ocular witness examined in the instant case including the sole eye-witness, Bahamuni Hansda (P.W.-5) following material contradictions, discrepancies and deliberate falsehood may be deduced:-

(i) P.W.-5 Bahamuni Hansda in her

examination-in-Chief has categorically admitted that on the date of occurrence at about 5:00 A.M. she accompanied with her mother-in-law and were going to dispose of cow dung in their field. Both reached at the field then all the accused persons namely, Hilar Marandi, Bodar Marandi, Bowa Marandi and Dhena Marandi started assaulting to her mother-in-law. She has also described respective weapon of the accused persons. On her alarm P.W.-3, 4 & 6 arrived there, then accused persons fled away. She along with P.W.-4 Bulai Marandi brought the dead body near the ridge of the field, but in her cross-examination, she fairly admits that her mother-in-law went earlier along with cow dung and she proceeded from the house after half an hour.

**(ii)** P.W.-5 has also claimed to have seen the accused persons while assaulting her mother-in-law by their respective weapons, but the Post-mortem Report of the deceased (Exhibit-5) shows single injury on forehead caused by hard blunt substance, although she claims several blows by sabal, tanga and stick were inflicted to her mother-in-law and the occurrence continued about half an hour.

**(iii)** P.W.-4 Bulai Marandi also arrived after half an hour at the place of occurrence, on call of P.W.-5. P.W.-4 is the first witness, who arrived at place of occurrence hearing alarm of P.W.-5. He has claimed that he had brought out the dead body of Muni Marandi with the help of Bahamuni Marandi (P.W.-5) and kept it on the ridge of the field. However, P.W.-5 has not disclosed to this witness about cause of death of Muni Marandi or about any assault given by any person to the deceased. He has not seen the accused while assaulting or fleeing away from the spot.

**(iv)** P.W.-6, Prabit Marandi, who is informant-cum-son of the deceased was admittedly not present at the place of occurrence, rather he went there after hearing alarm of his wife, but has claimed to see accused persons fleeing away including the appellant with their respective arms.

He also admits that dead body was brought out from the field at the ridge of the field by his wife and P.W.-4 Bulai Marandi.

The falsity of claim of this witness about seeing the accused persons fleeing from the place of occurrence is explicit from his cross-examination, wherein he admits that prior to his arrival at place of occurrence, his mother died. The dead body was

covered with mud and when he reached the place of occurrence, the dead body of the mother was kept at ridge of the field. Therefore, the first person, who arrived at the place of occurrence was the Bulai Marandi, who has claimed that he has not seen any of the accused persons even while fleeing away from the place of occurrence. Bulai Marandi (P.W.-4) along with P.W.-5 brought the dead body on the ridge of the field. Under such circumstances, the claim of the P.W.-6 about seeing the accused persons with their respective arm cannot be believed.

**(v)** Admittedly, P.W.-5 went from her house after half an hour of her mother-in-law to the place of occurrence, where she found her dead body and raised alarm. The manner of assault given to her mother-in-law does not correspond with the injury sustained by the deceased.

**(vi)** None of the witness have corroborated the motive behind the occurrence i.e. calling "*diaan*" to the deceased by accused persons, since one month prior to the occurrence. This fact was neither supported by Village Pradhan Mangal Tudu(P.W.-3) or by the Investigating Officer (P.W.-7).

**(vii)** P.W.-5, Bahamuni Marandi and P.W.-6 Prabit Marandi have admitted about previous

dispute with the appellant and other accused persons and there was no talk with each other.

- 27.** It is settled law that the enmity is double edged weapon and cuts from both ends. It furnishes motive for commission of crime and also a ground for false implication.
- 28.** The close scrutiny of the sole eye-witness P.W.-5 clearly goes to show that her testimony suffers from material contradictions and infirmities, which cannot be relied upon. Therefore, basing conviction of the appellant only on the evidence of P.W.-5 and P.W.-6 appears to be absolutely not justifiable under law.
- 29.** The learned trial court has failed to properly appreciate the material infirmities in the testimony of eye-witnesses rendering themselves to be unreliable and committed serious error of law while holding the sole appellant as author of the alleged crime, although there is no iota of evidence against the present appellant showing that he alone has given saba blow to the deceased causing her death.
- 30.** The learned trial court has also failed to take into account the time-tested principle of criminal jurisprudence that where two views are possible, one which goes in favour of accused must be accepted.

- 24 -

**31.** In view of the aforesaid discussions and reasons, we find merit in this appeal. Accordingly, the impugned judgment of conviction dated 22.04.1995 and order of sentence dated 25.04.1995 passed by learned 1<sup>st</sup> Additional Sessions Judge, Dumka in Sessions Case No. 116 of 1993 is hereby set aside.

**32.** In the result, the appeal is allowed.

**33.** The appellant is on bail. He is also discharged from the liability of bail bond and sureties are also discharged.

**34.** Let the Trial Court Records be sent back to the Court concerned forthwith, along with the copy of this Judgment.

**(Sujit Narayan Prasad, J.)**

**I agree**

**(Sujit Narayan Prasad, J.)**

**(Pradeep Kumar Srivastava, J.)**

Jharkhand High Court, Ranchi  
Dated, the 21<sup>st</sup> February, 2024.

Sunil /**A.F.R.**