IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Appeal (DB) No.1021 of 2015

(Against the Judgment of conviction dated 09.10.2015 and Order of sentence dated 15.10.2015, passed by Learned Judicial Commissioner 6th, Ranchi, in S.T. No.469 of 2013.

1.Birsa Oraon, S/o Durga Oraon
2.Lachu Oraon, S/o Khaita Oraon
Both residents of Pachpada, P.O. & P.S. Narkopi, Ranchi.
…. Appellants

Versus

The State of Jharkhand. ….. Respondent

P R E S E N T

HON'BLE MR. JUSTICE ANANDA SEN

HON'BLE MR. JUSTICE GAUTAM KUMAR CHOUDHARY

…..

For the Appellants : Mr. Naresh Pd. Thakur, Advocate
For the State : Mr. Shailendra Kr. Tiwari, DPP

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JUDGMENT

By Court:- Heard learned counsel for the appellants and learned counsel for the State.

1. The instant Criminal appeal is directed against the Judgment of conviction dated 09.10.2015 and order of sentence dated 15.10.2015, passed by Learned Judicial Commissioner 6th, Ranchi, in S.T. No.469 of 2013 (arising out of Narkopi P.S. Case No.07 of 2013 and G.R. No.434 of 2013), whereby the appellants have been convicted and sentenced to undergo RI for six months under Sections 448/34 IPC an fine of Rs.500/- each and further sentenced RI for life for the offence under Sections 302/34 IPC and fine of Rs.5,000/- each and in default, to further undergo SI for one year.

2. Informant is the wife of the deceased. As per the FIR appellants Birsa Oraon and Lachu Oraon entered the house of the informant and started assaulting her husband, causing to him critical injuries and in the said assault, she was also sustained injury on her head. It is further stated that she has two sons, one Jaokin Bhagat who lives in Ranchi with his family and working as daily wages labour and second son Panchu Oraon lives at Dhanbad with his family and he also working as daily wages labour and the informant and her husband (deceased) used to live in their village and did cultivation thereon.

3. On the basis of fardbeyan of the informant, an FIR being Narkopi P.S. Case No.07 of 2013 was registered under Sections 448/307/34 IPC. During course

of treatment her husband died and consequently Section 302 IPC vide order dated 02.05.2013 was added.

4. On investigation Police submitted charge-sheet against the accused persons under Sections 302/448/ 324 / 34 IPC. The learned trial court below framed charge and the accused persons were put on trial.

5. Judgment of conviction and sentence is assailed on the ground that it was a case of sudden fight for which the offence under Section 302 IPC will not be made out. Learned counsel for the appellants submits that there is only one injury on the person of the deceased. He further submits that considering the relationship who are agnates, it is clear that there was no intention to commit murder of the deceased.

6. It is further submitted that the informant, claims to be injured in the incidence and to remained in the Hospital for one month, but surprisingly the prosecution neither produced the Doctor nor produced any document to suggest that the informant/ injured was treated in the Hospital. In absence of any injury report, the prosecution has failed to prove that informant P.W.-3 was injured in the incidence. Thus her presence as an eye witness at the place of occurrence comes under a cloud.

7. On the point of sentence it is submitted that both appellant no.1 and appellant no.2 are in custody since 15.03.2013. Appellant No.2 has been released on bail by suspending after serving about 10 years of sentence on 10.10.2022.

8. The learned counsel for the State has defended the Judgment of conviction and sentence. It is submitted that P.W.3 being the wife of the deceased and as the incidence took place in her house, therefore she was a natural witness to the incidence. Since P.W.3 is an injured witness, her statement carries much weight and a higher degree of credence. It is further contended that she was injured in the incidence. This part of her testimony has remained undemolished in the cross-examination. Merely because her injury report was not produced cannot be a ground to brush aside her entire testimony.

9. Homicidal death is not disputed and is objectively established by the post-mortem examination report. There is no suggestion on behalf of the defence to dispute the homicidal nature of death.

10. After hearing the parties and going through the entire evidence on record, we find that nine witnesses were examined, yet the most important witness is P.W.3. Law is settled that uncorroborated testimony of solitary witness can be the basis for conviction if it is cogent, reliable and trustworthy. Principle of

appreciation of evidence has been reiterated in **Rajesh Yadav Vs State of U.P. 2022 SCC On Line 150** which is as under:

> ***18.*** *The word "prudent" has not been defined under the Act. When the court wants to consider the second part of the definition clause instead of believing the existence of a fact by itself, it is expected to take the role of a prudent man. Such a prudent man has to be understood from the point of view of a common man. Therefore, a judge has to transform into a prudent man and assess the existence of a fact after considering the matters through that lens instead of a judge. It is only after undertaking the said exercise can he resume his role as a judge to proceed further in the case.*
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> *While appreciating the evidence as aforesaid along with the matters attached to it, evidence can be divided into three categories broadly namely, (i) wholly reliable, (ii) wholly unreliable and (iii) neither wholly reliable nor wholly unreliable. If evidence, along with matters surrounding it, makes the court believe it is wholly reliable qua an issue, it can decide its existence on a degree of probability. Similar is the case where evidence is not believable. When evidence produced is neither wholly reliable nor wholly unreliable, it might require corroboration, and in such a case, court can also take note of the contradictions available in other matters. The aforesaid principle of law has been enunciated in the celebrated decision of this Court in Vadivelu Thevar v. State of Madras, 1957 SCR 981:*
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> > *"In view of these considerations, we have no hesitation in holding that the contention that in a murder case, the court should insist upon plurality of witnesses, is much too broadly stated. Section 134 of the Indian Evidence Act has categorically laid it down that "no particular number of witnesses shall in any case, be required for the proof of any fact". The legislature determined, as long ago as 1872, presumably after due consideration of the pros and cons, that it shall not be necessary for proof or disproof of a fact to call any particular number of witnesses. In England, both before and after the passing of the Indian Evidence Act, 1872, there have been a number of statutes as set out in Sarkar's Law of Evidence — 9th Edn., at pp. 1100 and*

1101, forbidding convictions on the testimony of a single witness. The Indian Legislature has not insisted on laying down any such exceptions to the general rule recognized in s.134 quoted above. The section enshrines the well-recognized maxim that "Evidence has to be weighed and not counted". Our Legislature has given statutory recognition to the fact that administration of justice may be hampered if a particular number of witnesses were to be insisted upon. It is not seldom that a crime has been committed in the presence of only one witness, leaving aside those cases which are not of uncommon occurrence, where determination of guilt depends entirely on circumstantial evidence. If the Legislature were to insist upon plurality of witnesses, cases where the testimony of a single witness only could be available in proof of the crime, would go unpunished. It is here that the discretion of the presiding judge comes into play. The matter thus must depend upon the circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of the case for the prosecution. Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:

(1) Wholly reliable.

(2) Wholly unreliable.

(3) Neither wholly reliable nor wholly unreliable.

In the first category of proof, the court should have no difficulty in coming to its conclusion either way — it may convict or may acquit on the testimony of a single witness, if

it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court, equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon such testimony. The law reports contain many precedents where the court had to depend and act upon the testimony of a single witness in support of the prosecution. There are exceptions to this rule, for example, in cases of sexual offences or of the testimony of an approver; both these are cases in which the oral testimony is, by its very nature, suspect, being that of a participator in crime. But, where there are no such exceptional reasons operating, it becomes the duty of the court to convict, if it is satisfied that the testimony of a single witness is entirely reliable. We have, therefore, no reasons to refuse to act upon the testimony of the first witness, which is the only reliable evidence in support of the prosecution."

11. In the present Case we find the testimony of the wife of the deceased (P.W.3) to be fully reliable, as she was natural witness because the incidence took place in the house, and her testimony is fully corroborated by her statement given to the police (FIR) only after one day of the incidence under Section 157 of the Evidence Act. She has stood the test of cross-examination and defence has failed to elicit any contradiction to impeach her credit. She is a

rustic tribal lady and there is no ground to disbelieve her account and can be relied upon.

12. So far as assault upon husband of the informant is concerned, we find that the husband died homicidal death which is evident from the post-mortem report. From the post-mortem report, we find that there is only one injury on the scalp on tempro-parietal frontal bone resulting in fracture. It was a case of single blow and the death was due to head injury caused by hard and blunt substance. It is the case of the informant that the deceased was assaulted by the tangi. Tangi is a sharp-cutting weapon, but if from the back side of the tangi, an assault is made, it will cause bruise or lacerated injury. From the post-mortem report, we could not find any injury which was caused due to any sharp edged side of weapon.

13. Further the Doctor who has conducted the post-mortem has not been examined, neither there is any opinion in the post-mortem report which would suggest that the injury was sufficient to cause death in ordinary course of nature. We can presume that there was no intention to commit murder.

14. Considering the nature of injury which is fracture of scalp, appellants can be credited with knowledge that injuries were sufficient to cause death. There is also evidence that it was a Case of sudden fight on trivial incident of cutting of bamboos and therefore the Case will come squarely under exception 4 to Section 300 of IPC within the definition of murder. We find the appellants to be guilty for offence of causing culpable homicide not amounting to murder.

15. Thus, in view of the discussion held above, we hold that the prosecution has not been able to prove the guilt of the appellants for committing offence under Section 302 IPC. Judgment of conviction and sentence passed under Section 302 of the IPC is set aside.

16. **Impugned judgment of conviction and order of sentence is modified to that extent under Section 304 Part II/34 of the IPC. Conviction under Section 324/34 and Section 448 of IPC for committing house trespass and causing simple hurt is also upheld.**

17. On the point of sentence considering the overall facts and circumstance of the case, age and antecedent of the appellants, appellants are sentenced to the period already undergone for the offences under Sections 304 II, 324 and 448 of the IPC. Appellant no.2 [Lachu Oraon] is directed to be released forthwith if not wanted in any other case. So far appellant no.2 is concerned, his sureties are discharged from the liability of his bail bonds.

Criminal Appeal (DB) is partly allowed with modification of finding and sentence.

Let L.C.R. along with a copy of this judgment be sent to the court concerned at once.

(Ananda Sen, J.)

(Gautam Kumar Choudhary, J.)

Jharkhand High Court, Ranchi
Dated. 30.07.2024.
Sandeep/Pawan