

Cr. Appeal (S.J.) No.1016 of 2006

[Against the Judgment of conviction and Order of sentence dated 15.07.2006 passed by Additional Sessions Judge, Fast Tract Court No.I, Civil Court, Ghatsila in S.T. No.60 of 2005]

1. Lodo Munda, son of late Pagla Munda

2. Arati Munda wife of Lodo Munda

3. Kunja Munda son of late Chamtu Munda

Appellant Nos.1 and 2 are resident of village : Ektal, Police Station : Dhalbhumgarh, District: East Singhbhum, Jharkhand and appellant No.3 is resident of village: Jorshol, P.S. Dhalbhumgarh, District: East Singhbhum, Jharkhand

.... Appellants

Versus

The State of Jharkhand Respondent

With

Cr. Appeal (S.J.) No.1112 of 2006

Panchanan Munda @ Pradip @ Pagla Munda, son of Makra Munda, resident of village Ektal, P.O.Nutangarh, P.S.- Dhalbhumgarhy, Dist.-Singhbhum East

.... Appellant

Versus

The State of Jharkhand Respondent

PRESENT

HON'BLE MR. JUSTICE PRADIP KUMAR SRIVASTAVA

For the Appellants : Mr. Soumitra Baroi, Advocate

Mr. Kabir, Advocate

[In Cr. A (SJ) No.1016 of 2006]

Mrs. Vani Kumari, Advocate

Mr. Aniket Ranjan, Advocate

[In Cr. A (SJ) No.1112 of 2006]

For the State : Mr. P.K. Chatterjee, S.P.P.

[In Cr. A (SJ) No.1016 of 2006]

Mr. Manoj Kumar Mishra, Advocate

[In Cr. A (SJ) No.1112 of 2006]

JUDGEMENT

21/11/2024

By court:

1. Both the appeals are directed against the judgment of conviction and order of sentence dated 15.07.2006 passed by learned Additional Sessions Judge, Fast Track Court No. I, Civil Court, Ghatsila in S.T. No.60 of 2005, whereby and whereunder, the appellants in Cr. Appeal (S.J.) No.1016 of 2006 have been held guilty and convicted for the offences under Sections 328/ 34/109 and also under Sections 307/34/109 of Indian Penal Code and sentenced to undergo rigors imprisonment of 5 years for each of the offence whereas the appellant in Cr. Appeal (S.J.) No.1112 of 2006 has been held guilty and convicted for the offences under sections 328 and 307 of Indian Penal Code and sentenced to

undergo R.I. for 5 years each for each of the offences and all the sentences have been directed to be run concurrently.

FACTUAL MATRIX

2. Factual matrix giving rise to this appeal in nutshell is that the fardbayan of the informant has been recorded by A.S.I. Silvanus Toppo stating *inter alia* that the informant's father has three brothers, out of whom his father was oldest one and Lodo Munda and Makar Munda respectively are younger than his father. It is further alleged that the informant's father and his two elder brothers have already died and the informant is living with his bhabhi Most. Puiya Munda along with nephew Rabindra Munda in his ancestral house at village-Amda whereas the informant's two uncles are living separately with their family members at village Ektal under Dhalbhumgarh police station. On 25.09.2004 at about 21:50 hour, his cousin Padeep Munda @ Pagla came to his residence and started talking to him. After sometime, his cousin Pradip Munda @ Pagla asked for drinking water, then the informant went to take water, in the meantime, his cousin entered into the kitchen of the informant but after a while, the accused Pradip Munda @ Pagla came back and they again started talking each other. After sometime, the appellant Pradeep Munda @ Pagla asked for to go to his home and

accordingly, his cousin and the informant proceeded therefrom. It is further alleged that the accused Padip Munda set off his house and the informant went to take bath. After taking bath, the informant went to kitchen to have his meal and in that course, he saw that the color of cooked rice is changed in Kattha, as a result of which, he scattered some cooked rice on floor and observed that the flies are dying as soon as they sit on the cooked rice. In the meantime, his co-villager Lehra Munda reached there to whom the informant showed the colour changed cooked rice and Lehra Munda got seen everything and thereafter, he preserved some cooked rice in a katori for sample and threw the rest but the informant started feeling nausea and sickness. Thereafter, the informant along with other co-villagers went to the doctor at Mahulisol, where he was treated and he vomited there. It is further alleged that all the villagers known that the accused Pradip Munda @ Pagla has administered poison in the food of the informant thereafter, the accused was brought to him and on query, Pradip Munda @ Pagla confessed his guilt about administration of poison in cooked rice at the instigation of the co-accused Lodo Munda, his wife and Tunjo Munda with intention to usurp the property of the informant.

3. On the basis of above information, the FIR being Dhalbhumgarh P.S. Case No.37 of 2004 was registered against the appellants for the offences under sections 328, 307, 109/34 of Indian Penal Code and charge of investigation was taken to S.I. Silvanus Toppo, who during the investigation, collected the sample of food and sent the same for FSL examination and on the basis of evidence of witnesses and anticipation of obtaining the report of FSL, the charge-sheet was submitted against the appellants for the offences under sections 109, 328, 307 r/w 34 of Indian Penal Code. After taking cognizance, the case was committed to the court of Sessions and S.T. No.60 of 2005 was registered and charges were framed. The accused persons denied the charges and claimed to be tried. After conclusion of the trial, the impugned judgment and order of conviction and sentence of the appellants was passed, which has been assailed in this appeal.
4. Learned counsel for the appellants has submitted that admittedly there was an inimical term between the informant and the appellant Lodo Munda who happens to be his uncle, which is the basis of false implication of other appellants also. There is no iota of evidence to prove that at any point of time, the accused Pradip Munda @ Pagla had any occasion to go into the kitchen of the informant for administering poison in the cooked

rice. It is admitted by the informant in the FIR itself that he along with Pradip Munda @ Pagla went out his house for taking bath. There is no iota of evidence at all that in the meantime, the appellant Pradip Munda @ Pagla returned to his home for the purpose of mixing poison in the rice. It is further submitted that the very genesis of the occurrence is administration of poison substance in the cooked rice has not been conclusively proved in this case inasmuch as no FSL report was obtained either before the submission of charge-sheet or during the course of trial. Therefore, the alleged extra-judicial confession of the accused Pradip Munda @ Pagla is not corroborated from any reliable evidence. There is bald assertion about administration of poison in the cooked rice, which was never substantiated by means of any cogent and reliable evidence of the prosecution. It is trite principle of law that extra-judicial confession is very a weak type of evidence and cannot be acted upon without any independent corroboration from other reliable source. In the instance case, no offence under section 328 of IPC is constituted at all, therefore, no question of attracting the offence under section 307 of IPC arise. Similarly, the appellants Lodo Munda, Aarti Munda and Kunja Munda have been involved in this case only on the basis of extra-judicial confession of main accused Pradip Munda @

Pagla without any evidence proving ingredients of abatement of commission of any offence as defined under section 107 of IPC. Therefore, the learned trial court has miserably failed to properly appreciate the evidence available on record and swayed itself towards extra-judicial confession of the accused/appellant Pradip Munda @ Pagla in arriving at the conclusion of the guilt of the appellants, which is not justified under law and fit to be set aside allowing this appeal.

5. On the other hand, learned counsel appearing for the State had defended the impugned judgment and order on the basis of extra-judicial confession of the appellant Pradip Munda. Therefore, there is no illegality or infirmity in the impugned judgment of conviction and sentence of the appellants calling for any interference. There is no merit in this appeal, which is fit to be dismissed.
6. I have gone through the entire evidence available on record along with impugned judgment and order in the light of contentions raised on behalf of both sides, it is crystal clear that the sole basis of conviction of the appellants is extra-judicial confession of the appellant Pradip Munda @ Panchanan @ Pagla. There is no corroborative evidence was given that the cooked rice of the informant was ever mixed with poison substance,

therefore, in this case in absence of any cogent and reliable legal evidence against the appellants, none of the offences for which the appellants have faced trial or constituted. Hence, I am constant to set aside the impugned judgment and order of the trial court. Accordingly, the impugned judgment and order passed by the learned Additional Sessions Judge, Fast Track Court No. I, Civil Court, Ghatsila in S.T. No.60 of 2005 is hereby set aside and both the appeals are allowed.

7. The appellants are on bail, hence, they are discharged from bail bonds. Sureties shall also be discharged.
8. Pending I.A(s), if any, is also disposed of accordingly.
9. Let the copy of this judgment along with record of trial court be sent back to the court concerned for information and needful.

(Pradip Kumar Srivastava, J.)

High Court Of Jharkhand, Ranchi

21/11/2024

Pappu/- N.A.F.R.