

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Appeal (DB) No. 348 of 1996 (P)

(Against the judgment and order of conviction and sentence dated 28.6.1996 passed by Shri Pashan Xaxa, learned Sessions Judge, Sahebganj in Sessions Case No. 69 of 1996).

Dharmendra Yadav. **Appellant**
Versus
The State of Bihar (Now Jharkhand). **Respondent**

**CORAM: HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY
: HON'BLE MR. JUSTICE DEEPAK ROSHAN**

For the Appellant : Mr. Rajeeva Sharma, Sr. Advocate
For the State : Mrs. Nehala Sharmin, Special P.P.

By Court Heard Mr. Rajeeva Sharma, learned senior counsel for the appellant and Mrs. Nehala Sharmin, learned Special P.P.

2. This appeal is directed against the judgement and order of conviction and sentence dated 28.6.1996 passed by Shri Pashan Xaxa, learned Sessions Judge, Sahebganj in Sessions Case No. 69 of 1996 whereby and whereunder the appellant has been convicted for the offence punishable under sections 302/34 IPC and has been sentenced to undergo rigorous imprisonment for life.

3. The prosecution case arising out of the Fardbeyan instituted by Bishwanath Prasad Sah is to the effect that on 28.9.1994 he along with the other members of his family were sleeping on the roof of his house and one of his sons namely Ranjit Kumar was sleeping in the verandah. In the night, the informant had heard a sound of alarm from his son at which he came down and found his son in an injured condition and he was also in an unconscious state. On raising an alarm, people had arrived and a rickshaw was arranged and the injured was being taken to the hospital but on the way he breathed his last. It has also been alleged that when he had heard the cry of alarm from his son he had seen in the light of the torch, 3-4 persons running away.

4. Based on the aforesaid allegations, S.B.G.T. P.S. Case No. 158/94 was instituted for the offence punishable under section 302/34 against unknown persons. On completion of investigation, chargesheet was submitted against the appellant as well as against Ghuna @ Ajay Kumar Yadav and Suresh Yadav. After cognizance was taken, the case was committed to the court of Sessions where it was registered as Sessions

Case No. 69/96. Charge was framed against the accused persons for the offence punishable under sections 302/34 IPC which was read over and explained to the accused in Hindi to which they pleaded not guilty and claimed to be tried.

5. The prosecution has examined as many as ten witnesses in support of its case.

P.W-1-Deep Narayan Modi has identified the handwriting and signature of Shashi Kumar Shashi in the formal F.I.R. which has been marked as Ext-1.

P.W-2-Dhiren Mandal has been tendered by the prosecution.

P.W-3-Bhagwan Sah @ Das has stated that at the time of the incident he was sleeping in his house and on hearing the cry of alarm he had gone to the place of occurrence where he had seen Ranjit Sah in an injured condition. He had not seen the assault committed upon Ranjit Sah and neither Ranjit Sah nor his family members had disclosed the name of the assailant. The deceased Ranjit Sah was his cousin brother.

P.W-4-Suresh Singh has identified the signature and handwriting of R Ram in the Fardbeyan which has been marked as Ext-2.

P.W-5-Mina Kumari is the sister of the deceased who has stated about she having been stopped by the appellant when she was going on a cycle and when her brother Ranjit had come he had questioned the appellant with respect to his act at which the appellant and another person had threatened Ranjit with dire consequences.

P.W-6-Kamla Kant Sah has stated that Ranjit Sah was lying in the terrace in an injured condition. Ranjit Sah was unconscious and he had died subsequently. He had neither seen anyone committing the assault nor had he seen anyone fleeing away.

P.W-7-Vishwanath Prasad Sah is the informant and the father of the deceased who has stated that on the date of occurrence he was sleeping in the terrace while his son Ranjit Sah was sleeping in the verandah when at about 11.30 P.M. there was a cry of alarm from his son at which he rushed towards his son and saw him lying in a pool of blood. A rickshaw was called and his son was taken on a rickshaw to the hospital but on the way he had died. When he had returned from the hospital, his wife had disclosed that it was the present appellant who had committed the murder of his son. He has proved the Fardbeyan which has been marked as Ext-3.

In cross-examination, he has deposed that there are several houses

adjacent to his house. He has also stated that on the date of occurrence, he as well as his wife, two daughters and a son were sleeping in the terrace of his house while the other son who is the deceased was sleeping outside. He has further deposed that when his son was being taken to the hospital, his wife had not disclosed the name of the assailant and later on his wife had disclosed the name of the appellant.

P.W-8-Jina Devi was sleeping in her house on the date of occurrence and Ranjit Saw was sleeping in the verandah and when on hearing the cry of alarm at night he had seen Ranjit in an injured condition and on seeing her son in such a condition she fainted. When her husband had returned from the hospital, she had disclosed the name of the appellant who has committed the murder of her son.

P.W-9-Dr. A.K.Mandal was posted as a Civil Assistant Surgeon and on 29.9.94 he had conducted autopsy on the dead body of Ranjit Kumar Sah and had found the following injuries:-

- (i) Incised wound 3"x1" cutting first, 2nd, 3rd metacarpal bone and surrounding structure of right hand 1" distal to the wrist joint.
- (ii) Incised wound 4"x2" x upto bone deep anterior aspect middle of the left thigh.
- (iii) Incised wound 1"11/2" x skin deep on the left sterno claricular joint.
- (iv) Incised wound 4"x2" right side of the chest. On dissection 8th, 9th ribs were cut at the level of custocendral junction and lower lobe of right lung was damaged, liver was also badly damaged. There was collection of dark blood inside the peritemal cavity.
- (v) Incised wound 4"x1/2" pigastric region. On explanation peritenum fundu of stomach mentum and loop of small intestine were damaged. Semi digested food was present in the stomach in small amount.
- (vi) Two paralls abrasion 1"1/4"x2" left of chin.

The cause of death was opined to be on account of injury no.(iv). He has further stated that a patient can be unconscious if injury no. (iv) is received by him. He has proved the postmortem report which has been marked as Ext-4.

P.W-10-Rameshwar Ram was posted at Muffasil Thana Sahebganj and on 29.3.1994 he had recorded the Fardbeyan of Vishwanath Pratap Sah. He had taken over the investigation and had prepared the inquest

report and had sent the body for postmortem. After obtaining the postmortem report and after recording the statements of the witnesses, he had submitted chargesheet against the accused persons. He had also inspected the place of occurrence and he had found several houses adjacent to the house of the informant.

6. The statements of the accused were recorded under section 313 Cr.P.C.in which they have denied their complicity in the commission of the murder.

7. It has been submitted by Mr. Rajeeva Sharma, learned senior counsel appearing for the appellant, that the appellant has falsely been implicated in the present case without there being any evidence which could link the appellant with the commission of murder of the son of the informant. It has been submitted that the appellant has been implicated primarily on account of the evidence of the mother of the deceased who has been examined as P.W-8 and the name of the assailant was disclosed to the informant which fact has also been admitted by the informant who has been examined as P.W-7 but surprisingly the name of the assailants do not figure in the Fardbeyan which has been recorded by the informant. Mr. Sharma has further referred to the evidence of P.W-6 while submitting that when P.W-6 had gone to the place of occurrence he had found the deceased-Ranjit Kumar Sah in an unconscious condition. Learned senior counsel has also drawn the attention of the Court to the evidence of the doctor who has been examined as P.W-9 and infact the findings of the postmortem report would clearly reveal that it was impossible for a victim suffering such type of injuries to be in a conscious state of mind to disclose the name of the assailant. Learned senior counsel therefore submits that the learned trial court has erred in relying upon the evidence of P.W-7 and P.W-8 without considering the apparent frailties and inadequacies in their evidence.

8. Mrs. Nehala Sharmin, learned Special P.P., has primarily referred to the evidence of P.W-7 and P.W-8 and has stated that the evidence of P.W-8 categorizes the appellant as the assailant and therefore the learned trial court has rightly convicted the appellant for the offence under section 302/34 IPC and has sentenced him accordingly.

9. We have heard the learned counsel for the respective sides and have also perused the Lower Court Records.

10. Admittedly, the F.I.R. instituted by the informant (P.W-7) is against unknown persons. The same reveals that while the informant and his family

members were sleeping in the terrace of the house and one of his sons namely Ranjit Kumar Sah was sleeping in the verandah and on hearing a cry of alarm the informant had reached the place where his son was sleeping and had found him in an injured condition. He was subsequently taken to the hospital in a rickshaw but on the way he had died. The implication of the appellant seems primarily on account of the evidence of P.W-8 who happens to be the mother of the deceased and who has merely stated that it was the appellant who had committed the murder of her son. The prosecution has also tried to project previous enmity as the reason for the commission of the murder which can be deciphered from the evidence of the sister of the deceased who has been examined as P.W-6. If at all P.W-8 after returning from the hospital has disclosed the name of the appellant as the assailant to P.W-7(informant) there was no occasion for P.W-7 not to have named the appellant as the person who had committed the murder of his son. However, as we have noted above, the Fardbeyan does not specify any name against whom there is a suspicion of committing the murder. Moreover, if we take into consideration the postmortem report and the evidence of P.W-6 it would clearly transpire that on account of the injury which was suffered by the deceased, it is an impossibility that he would have been in a conscious state of mind to reveal the name of his assailants. Such contradictions in the evidence of witnesses have not been appropriately appreciated by the learned trial court which has primarily relied upon the evidence of P.W-7 and P.W-8 in convicting the appellant.

11. The impugned judgement dated 28.6.1996 passed by Shri Pasan Xaxa, learned Sessions Judge, Sahebganj in Sessions Case No. 69 of 1996 in view of the aforesaid discussions therefore cannot be sustained in law and consequently we allow this appeal and set aside the judgement and order of conviction and sentence dated 28.6.1996 passed by Shri Pasan Xaxa, learned Sessions Judge, Sahebganj in Sessions Case No. 69 of 1996. This appeal stands allowed.

12. Since the appellant is on bail, he is discharged from the liability of his bail bonds.

(Rongon Mukhopadhyay,J)

(Deepak Roshan, J)

**Jharkhand High Court, Ranchi,
Dated the 2nd July, 2024
Rakesh/-**