IN THE HIGH COURT OF JHARKHAND AT RANCHI

Criminal Appeal (D.B.) No.611 of 2002

(Arising out of judgment of conviction dated 02.09.2002 and order of sentence dated 03.09.2002 passed by Learned Additional District & Sessions Judge, Fast Track Court, Gumla, in Sessions Trial No.146 of 2001)

Koyna Munda, son of Late Lohra Munda, resident of Village Amalia, Baghia Toli, Police Station Sisai, District Gumla.

... ... Appellant

Versus

The State of Jharkhand. **... ... ... Respondent**

PRESENT : SRI ANANDA SEN, J.

: SRI PRADEEP KUMAR SRIVASTAVA, J.

For the Appellant : Mr. Chandan Kumar, Advocate, for Mr. A.K. Chaturvedi, Advocate.

For the State : Mrs. Lily Sahay, A.P.P.

J U D G M E N T

By Court, :

16th December, 2024

This Criminal Appeal is preferred on behalf of the appellant being aggrieved by the judgment of conviction dated 02.09.2002 and order of sentence dated 03.09.2002 passed by Learned Additional District & Sessions Judge, Fast Track Court, Gumla, in Sessions Trial No.146 of 2001, whereby and wherein the appellant has been convicted for offence under Sections 302 IPC and was sentenced to undergo rigorous imprisonment for life under Section 302 IPC.

2. Heard learned counsel Mr. Chandan Kumar, Associate to Mr. A.K. Chaturvedi, Advocate, and learned A.P.P. Mrs. Lily Sahay, at length. Perused the material available on record.

3. The F.I.R. is at the instance of the informant – Shanichar Munda (P.W.-8), who is the son of the deceased. In his *fardbeyan,* he stated that his sister was married with this appellant. After the birth of a son, the appellant has left his sister, as a result of which they got his sister married to someone else. Because of this marriage, it is alleged by the informant that this appellant was having some grudge with the

family of the informant. On the date of occurrence, it is alleged that this appellant came and on the pretext of some party, had taken the deceased along with him from his house. He further stated that in the evening, some person came and informed him that his father was murdered by this appellant. The informant went to the place of occurrence and had seen his father dead.

On the basis of the aforesaid *fardbeyan* F.I.R. being Sissai (Barno) P.S. Case No.20/2001 was registered under Section 302 IPC and charge sheet was also submitted against the appellant. Thereafter, the case was committed to the Court of Sessions. The appellant pleaded not guilty, thus charge was framed against him and he was put on trial.

4. From the material on record, we find that altogether 09 prosecution witnesses have been examined in this case.

5. The most important witness in this case is P.W.4 namely Birsa Munda. He stated that while he was returning from the market, he had seen this appellant assaulting the deceased with a *basula* on his head, as a result of which, the deceased died. He further stated that he had gone and informed the sons of the deceased about the aforesaid occurrence and he had also stated that he had seen this appellant committing the murder of the deceased. He stated that the motive behind the murder is that few years ago, after this appellant had left the daughter of the deceased, to whom he was married, the daughter was remarried. Thus, there was enmity between this appellant and the family of the informant.

This witness also stated that while giving statement under Section 161 Cr.P.C., he had disclosed before the police that he had seen the occurrence of assault.

6. P.W.-2 namely Etwa Munda is one of the brothers of the informant. He stated that this appellant was having a grudge against his father and others as after this appellant had left his wife (daughter of the deceased), her family members including this witness and informant had got her daughter married with someone else. This witness has stated that it is Birsa Munda (P.W.-4), who came and informed that he had seen

the appellant assaulting the deceased.

7. To check the veracity of the statement of P.W.-4, and whether he has narrated the fact which he had stated in evidence, during investigation, one has to fall back to the statement of the Investigating Officer.

In this case, the Investigating Officer has not been examined. It is the case of the appellant that P.W.-4 has not stated before the police that he had seen the assault. This fact could have been easily verified from the statement of the Investigating Officer, but as stated earlier, the Investigating Officer has not been examined. Be it noted that they had also tried to take the contradictions from this witness also. Appellant stated that due to non-examination of Investigating Officer, prejudice has been caused to him.

8. To do concrete justice, we had gone through the case diary, though we are not supposed to, but had to do this in absence of examination of the Investigating Officer.

While going through the case diary, we find that this P.W.-4 in his statement under Section 161 Cr.P.C. had never stated before the Investigating Officer that he had seen this appellant assaulting the deceased. He had only stated that he had seen the deceased lying in an injured condition. Thus, on the point of assault by this appellant upon the deceased, P.W.-4 is not an eye witness nor is a reliable witness.

9. The informant has stated that this appellant had come and had taken away his father (deceased) on the pretext of some party and thereafter a person came and informed him that his father has been assaulted by this appellant. In the F.I.R., he has not stated the name of the said person who had informed him but while deposing as P.W.-.8, he had stated that it is this P.W.-4 who had come and informed him about the incident.

If at all on the basis of the information received by P.W.-4, the informant had lodged the F.I.R., then why he had not disclosed the name of this witness (P.W.-4) in the F.I.R., is not understood by us. This is a vital information. Further, P.W.-8

as an informant stated that after receiving the information, he rushed to the place of occurrence and had seen his father lying there and this appellant was sitting beside the dead body. This fact that this appellant was present there had not been narrated by anyone, rather, P.W.-2 had stated that it is the brother of this appellant who was present there. Thus, there is a contradictory statement about the presence of the appellant at the place of occurrence. In view of the said contradictory statement of P.W.-8 and P.W.-2, we cannot conclude that this appellant was present at the place of occurrence along with the dead body.

10. The Doctor is P.W.-1, who conducted the post-mortem upon the body of the deceased. The post-mortem report was marked as Ext.1. He stated that he has found only one blow on the head of the deceased, that too by a hard and blunt substance. He stated that the said injury can be caused by the backside of the *basula. Basula* is a sharp cutting weapon with a handle. The Doctor had found lacerated wound and had stated that it can be caused by backside. Thus, it is clear that the sharp side of the weapon was not used in this assault.

From the evidence of the Doctor, we find that the death is homicidal.

11. Since we have disbelieved P.W.-4 as an eye witness to the occurrence, then the materials which remains against the appellant is the previous enmity due to the marriage of his wife at the behest of the informant and his father (deceased) and the deceased was last seen with the appellant. It is P.W.-2 and P.W.-3 who had stated that he had seen the appellant with the deceased going together. This is the only evidence on the point of last seen.

12. So far as enmity is concerned, it appears from the evidence of P.W.-2, P.W.-3, P.W.-4 and P.W.-8 that the daughter of the deceased was married to this appellant and after one year, he left her. Thereafter, the daughter of the deceased was married to someone else, as a result of which this appellant had some grudge upon the deceased and the informant.

13. P.W.-2 had stated that this incident of remarriage

and leaving the daughter of the deceased by the appellant had happened 17 to 18 years ago. From the evidence, we could not find any material to suggest that the appellant had done any overt act which can lead to the conclusion that this appellant was having a grudge and a motive to commit any act which can be said inimical to the deceased or the informant or their brothers. It is unknown as to why suddenly after 18 years, this appellant will come and take the deceased along with him.

14. The Hon'ble Supreme Court in the case of ***Nizam v. State of Rajasthan*** reported in ***(2016) 1 SCC 550,*** has held that solely on the basis of "last seen evidence", the accused cannot be convicted. There has to be some corroborative evidence. Para-14 of the judgment passed in the case of Nizam (supra) reads as hereunder:-

> ***"14.*** *The courts below convicted the appellants on the evidence of PWs 1 and 2 that the deceased was last seen alive with the appellants on 23-1-2001. Undoubtedly, the "last seen theory" is an important link in the chain of circumstances that would point towards the guilt of the accused with some certainty. The "last seen theory" holds the courts to shift the burden of proof to the accused and the accused to offer a reasonable explanation as to the cause of death of the deceased. It is well settled by this Court that it is not prudent to base the conviction solely on "last seen theory". "Last seen theory" should be applied taking into consideration the case of the prosecution in its entirety and keeping in mind the circumstances that precede and follow the point of being so last seen."*

15. In this case, we find that there is no corroborative evidence which could remotely suggest that this appellant had any hand in commission of the murder. P.W.-4 who is alleged to be an eye witness has been disbelieved by us for the facts stated above. Further, presence of this appellant at the place of occurrence is also doubtful based on the contradictory statement given by the two witnesses. Thus, it will not be proper for this Court to convict this appellant solely on the basis of last seen theory. Thus, by giving benefit of doubt to the appellant, this appellant is acquitted.

16. Accordingly, this Criminal Appeal stands **allowed.**

The impugned judgment of conviction dated 02.09.2002 and order of sentence dated 03.09.2002 passed by Learned Additional District & Sessions Judge, Fast Track Court, Gumla, in Sessions Trial No.146 of 2001, are hereby set aside. The appellant is acquitted of the charges. As the appellant is on bail, he is discharged from the liability of bail bonds, so are the bailers.

17. Trial Court Record be transmitted back to the Court concerned.

18. Pending I.A. if any, stands disposed of.

(ANANDA SEN, J.)

(PRADEEP KUMAR SRIVASTAVA, J.)

HIGH COURT OF JHARKHAND, RANCHI
Dated:- 16/12/2024
AFR / Prashant