

[Against the judgment and order of conviction and sentence dated 31.01.1997 (sentence passed on 03.02.1997) passed by Smt. Shakuntala Sinha, learned 1st Additional Judicial Commissioner, Khunti (Ranchi) in S.T. No. 510/1994]

Criminal Appeal (DB) No. 51 of 1997 (R)

Madhu Mahto **Appellant**
Versus
The State of Bihar (now Jharkhand) **Respondent**

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

For the Petitioner : Mr. P.S. Dayal, Advocate
For the State : Mr. Pankaj Kr. Mishra, A.P.P.

C.A.V. on 13/06/2024

Pronounced on 19/06/2024

Per Rongon Mukhopadhyay, J.

Heard Mr. P.S. Dayal, learned counsel for the appellant and Mr. Pankaj Kr. Mishra, learned A.P.P. for the State.

2. This appeal is directed against the judgment and order of conviction and sentence dated 31.01.1997 (sentence passed on 03.02.1997) passed by Smt. Shakuntala Sinha, learned 1st Additional Judicial Commissioner, Khunti (Ranchi) in S.T. No. 510/1994, whereby and whereunder the appellant has been convicted for the offence punishable u/s 302/34 of the Indian Penal Code and Section 201/34 of the Indian Penal Code and has been sentenced to imprisonment for life u/s 302/34 of the Indian Penal Code and R.I. for five years for the offence u/s 201/34 of the Indian Penal Code.

3. The fardbeyan of Sakhi Devi was recorded on 12.12.1993, wherein she has stated that her husband had solemnized two marriages and both the wives are alive. The informant had six daughters while her sautan has a son and a daughter. On 11.12.1993, her husband had left the house at 3:30 P.M. for Chandandih for purchasing vegetables. When in the evening he did not return back she started searching for him and asked the villagers who disclosed that they had seen her husband in the market. Since night had fallen she could not gather any

information. In the morning at 8:00 A.M., she along with her younger daughter left her house for Chandandih market and near Chirudih at Jaragora tand she found the cap and a slipper of her husband and some tomatoes and brinjals were found scattered. She had a suspicion that her husband has been murdered and his body kept somewhere. The informant started searching the bushes nearby and she could locate the body of her husband who was lying dead and his throat was slit. There was a pool of blood on the ground. There was no enmity with anyone except Poya Mahto and Jhagru Mahto over a piece of land in which her husband had won the case and these persons were suspected to have committed the murder.

Based on the aforesaid allegations Sonahatu P.S. Case No. 77 of 1993 was instituted for the offences u/s 302/201 of the I.P.C., against unknown persons. On completion of investigation charge sheet was submitted against Madhu Mahto (appellant) and Triloki Mahto and after cognizance was taken the case was committed to the Court of Sessions where it was registered as S.T. No. 510/1994. Charge was framed against the accused u/s 302/34 of the IPC and Section 201/34 of the IPC which was read over and explained to them in Hindi to which they pleaded not guilty and claimed to be tried.

4. The prosecution has examined as many as twelve witnesses in support of its case.

5. P.W.1 (Doman Mahto) has stated that he had seen the dead body of Budhram Mahto. He has identified his signature in the inquest report which has been marked as Exhibit-1/1. He has identified his signature and that of Triloki Mahto in the seizure list of seized blood stained slipper, a cap and a wrapper which have been marked as Exhibit-1/2 and 1/3 respectively.

In cross-examination, he has deposed that the accused Triloki Mahto had signed with him on the inquest report and seizure list.

6. P.W.2 (Udaynath Mahto) has stated that the deceased is his son-in-law who was married to his daughter Chaiti Devi. The accused Madhu Mahto and Triloki Mahto are sons-in-law of the deceased who stays in the house of the deceased as *Gharjamai*. Both the wives of the deceased used to stay separate in the same house. There used to be regular quarrel between the deceased and his son-in-law. At the time of the marriage of his daughter with the deceased Madhu had created a scene and had brought the Surpanch and others in order to stall the marriage. His daughter had disclosed to him that the deceased had gone to Chandandih along with Madhu and Triloki and none had returned and on such disclosure he had gone to Chirudih and had found the dead body of his son-in-law lying on a ditch.

In cross-examination, he has deposed that three sons-in-law of the deceased namely Rampado, Madhu and Triloki used to stay with the first wife of the deceased, Sakhi Devi. He had not reported about the quarrel between the deceased and the accused persons anywhere.

7. P.W.3 (Chaiti Devi) is the second wife of the deceased Budhram Mahto who has stated that she and Sakhi Devi used to reside separately and her husband used to stay with him. The daughter of Sakhi Devi and her son-in-law Madhu used to stay with Sakhi Devi. About one year back on a Saturday her husband had gone to Chandandih market with Madhu but neither her husband returned nor Madhu. When on the next day till afternoon her husband did not return she went in search of him along with her small children when on the way an old woman disclosed that a cap and tomatoes and brinjals are lying on the road. When she went to the said place in a ditch she could discover the dead body of her husband. She went to her parents place and disclosed about the incident to her parents. She had gone with Sakhi Devi to Rahe P.S. but Sakhi Devi did not allow her to give her statement. When the Police had come to the village her statement was recorded. She

has stated that from the time of the marriage she had witnessed quarrels between her husband and his sons-in-law Madhu, Rampado and Triloki.

In cross-examination, she has deposed that she had gone to Rahe O.P. along with Sakhi Devi and accused Triloki had also accompanied her. Sakhi Devi had not allowed her to give her statement. She had not asked the Police to record her statement. After two days when the Police came to the village her statement was recorded. After the death of her husband she had submitted a written report to the Police Station after 4-5 days from the incident on the advice of the villagers.

8. P.W.4 (Noohi Devi) is the mother of Chaiti Devi who has stated that the son-in-law of Budhram Mahto had committed the murder. About one year back her daughter had come weeping and disclosed that her husband had gone to the market and he was murdered by the son-in-law of her husband. Her son-in-law did not have any previous enmity with anyone.

In cross-examination, she has deposed that when they had seen the dead body the Police were yet to reach.

9. P.W.5 (Sakhi Devi) is the informant and the first wife of the deceased who has stated that she was earlier married to Brij Mahto, the elder brother of Budhram Mahto and she had a daughter out of the said wedlock. After the death of Brij Mahto the villagers had solemnized her marriage with Budhram Mahto with whom she had five daughters. She has stated that five of her daughters have been married off. Her husband had solemnized another marriage with Chaiti Devi at her insistence. After marriage, Budhram started residing with Chaiti Devi. Madhu and Triloki are her sons-in-law. They do not stay with her. She had given her fardbeyan in Rahe P.S.

In cross-examination, she has deposed that she had not prevented Chaiti Devi from giving her statement to the

Police. Chaiti Devi had herself stated that since she is elder she should give her statement.

10. P.W.6 (Babi Kumari) has been declared hostile by the prosecution.

11. P.W.7 (Dr. Ramsewak Sahu) was posted as a Medical Officer in the Department of Forensic Medicine, R.M.C.H. and on 13.12.1993 he had conducted autopsy on the dead body of Budhram Mahto and had found the following injuries:

Abrasions

- (i) *3 x ½ cm on the left forehead.*
- (ii) *2 x 1 cm on left cheek*
- (iii) *1 x ½ cm over bridge of nose*

Incised wound

- (i) *9 x 3 cm x bone deep on right fronto lateral neck upper part situated transversely cutting the soft tissues, blood vessels of right side of neck. It cuts the trachea, oesophagus and fourth cervical vertebrae including spinal cord.*
- (ii) *5 x 1 cm x soft tissues right fronto lateral neck middle part situated transversely.*

Opinion

- (i) *All the injuries are antemortem*
- (ii) *Abrasions are caused by hard & blunt substance and incised wounds by heavy sharp cutting weapon.*

The cause of death was opined to be on account of the above noted incised wounds. The post-mortem report has been proved and marked as Exhibit-2.

12. P.W.8 (Sistidhar Mahto), P.W.9 (Pushkar Mahto) and P.W.10 (Lekhindar Mahto) have not supported the case of the prosecution and have been accordingly declared hostile by the prosecution.

13. P.W.11 (Mukta Ram Mahto) has been tendered by the prosecution.

14. P.W.12 (Saligram Choudhary) has stated that in 1993 in Rahe O.P. Nawal Kishor Sharma was posted. He has

proved the fardbeyan which is in the handwriting of Nawal Kishor Sharma and bears his signature which has been marked as Exhibit-3. He has proved the formal First Information Report which has been marked as Exhibit-4. He has also proved the inquest report and seizure list which have been marked as Exhibits- 5 and 6 respectively.

15. The statements of the accused were recorded u/s 313 Cr.P.C. in which they have denied their complicity in the commission of the offence.

16. It has been submitted by Mr. P.S. Dayal, learned counsel for the appellant that there is no evidence worthy of consideration to amplify the role of the appellant in committing the murder of Budhram Mahto. It has been submitted that the evidence of P.W.3 is the basis for conviction of the appellant but such evidence suffers from major infirmities and contradictions. In fact P.W.3 though had accompanied the informant to Rahe O.P. but she had kept silent and after two days of the occurrence had disclosed about the appellant having been last seen with the deceased to the Police. Her silence speaks volumes of her intention of falsely implicating the sons-in-law of Sakhi Devi.

17. Mr. Pankaj Kr. Mishra, learned A.P.P. has submitted that there are strong circumstances of the appellant being instrumental in the murder of Budhram Mahto and a motive is also attracted as the appellant used to regularly quarrel with the deceased thus indicating animosity of the appellant towards the deceased.

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

19. The husband of the informant was murdered while he had gone to purchase vegetables at Chandandih market. The informant claims that she had while searching discovered the dead body of her husband while the second wife of the deceased, P.W.3 has stated that she had detected the dead body in the afternoon.

There appears to be some variations with respect to timing of the detection of the dead body on account of dearth of evidence to conclusively prove the timing. That however would not have much bearing in the prosecution case. What would be glaring is the institution of the First Information Report against unknown and the implication of the appellant due to the subsequent statement of Chaiti Devi (P.W.3). It is an admitted fact that at the time of recording of the fardbeyan of the informant (P.W.5), P.W.3 had accompanied her but she refrained from divulging the fact that on the date of occurrence the deceased was accompanied by the appellant to Chandandih market. There was no apparent reason for her not to disclose such fact. Moreover though the learned trial court has placed reliance upon the evidence of P.W.3 propagating the last seen theory but absence of corroboration would render such evidence redundant. The parents of P.W.3 though have stated about the disclosure made by P.W.3 but such evidence cannot be relied upon as they are interested witnesses. The ditch where the dead body of Budhram Mahto was found was not far from a road which appears to be frequented by travelers but not a single witness has come forward to testify having seen the occurrence. P.W.6, P.W.8, P.W.9 and P.W.10 are independent witnesses but all have been declared hostile by the prosecution. The allegations of frequent quarrels between the accused persons and the deceased have also not been supported by any other independent witness. P.W.3 in her evidence has stated about submitting a written report to the Police after 4-5 days from the date of the incident but the said report has also not been brought on record. On an overall conspectus of the case it would clearly transpire that the prosecution case is bereft of any substantive evidence, even circumstantial in nature to name the appellant as the perpetrator of the murder. The impugned judgment and order of conviction and sentence dated 31.01.1997 (sentence passed on 03.02.1997) passed by Smt. Shakuntala Sinha, learned 1st Additional Judicial

Commissioner, Khunti (Ranchi) in S.T. No. 510/1994 having not considered the case in its proper perspective is liable to be set aside and we accordingly set aside the same.

20. This appeal is allowed.

21. Since the appellant is on bail he is discharged from the liability of his bail bond.

(Rongon Mukhopadhyay, J.)

(Deepak Roshan, J.)

High Court of Jharkhand at Ranchi

Dated, the 19th day of June, 2024.

A. Sanga / NAFR