

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Criminal Appeal (DB) No. 583 of 2002

[Against the Judgment of conviction dated 05.09.2002 and order of sentence dated 06.09.2002 passed by the learned Sessions Judge, Sahibganj, Camp at Rajmahal in Sessions Case No. 324 of 1986/100 of 1993].

Hussain Sheikh son of late Imtiyaz Ali, resident of village Piyarpur, P.S. Radhanagar, District- Sahibganj.APPELLANT

Versus

The State of JharkhandRESPONDENT

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For the Appellant : Mr. Rupesh Singh, Amicus Curiae.
Mr. Jagdeesh, A.C to Mr. Rupesh Singh, Advocate.
For the State : Mrs. Priya Shrestha, A.P.P.

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P R E S E N T

SRI ANANDA SEN, J.
SRI GAUTAM KUMAR CHOUDHARY, J.

J U D G M E N T

C.A.V. On:11/11/2024

Pronounced On: 28/11/2024

Per, Ananda Sen, J:- This criminal appeal is directed against the Judgment of conviction dated 05.09.2002 and order of sentence dated 06.09.2002 passed by the learned Sessions Judge, Sahibganj, Camp at Rajmahal in Sessions Case No. 324 of 1986/100 of 1993, whereby and whereunder, the appellant having been found guilty of charge under Sections 364 and 302/34 of Indian Penal Code and has been convicted and sentenced to undergo imprisonment for life for the offence under Section 302/34 IPC and R.I. for ten years under Section 364 IPC and fine of Rs.1,000/-.

2. The learned *amicus* submitted that beyond the weight of the evidence, the Trial Court has convicted the appellant. He further submitted that there is no direct evidence against the appellant, thus the involvement of the appellant is easily doubted. He also submitted that even after recovery of the dead body on 19.10.1984, the police was not informed about disappearance of the deceased and recovery of the body. The informant if at all knew that the deceased left with the appellant, then why he did not lodge the missing report, creates a

doubt about the prosecution case. He also submitted that there is no evidence on record to show that the deceased had been seen in the company of the appellant at the time of occurrence, therefore no inference of guilt of the appellant can be drawn on the basis of this circumstance. As per the appellant, the prosecution has failed to prove the guilt of this appellant beyond all reasonable doubt. The defence had further taken a plea that there was delay in lodging the FIR, which is unexplained and is also fatal for the prosecution. He lastly submitted that on the basis of the aforesaid grounds, the appellant cannot be convicted.

3. Counsel for the State submitted that the prosecution has proved the guilt of the appellant beyond all reasonable doubt. She submitted that the deceased on the fateful night was called by this appellant and one Sahadat Seikh and this fact was established from the evidence of Sairabano and Jakir Hussain. She argued that appellant was having illicit relation with the deceased due to which, the deceased became pregnant, and he refused to marry the deceased rather wanted to get rid of her, which also stand proved from the evidence of Mamina Khatoon. She submitted that there is strong motive and circumstances against this appellant as well as one Sahadat Seikh. She lastly submitted that the prosecution has been able to prove its case beyond shadow of all reasonable doubt thus, this appellant has been correctly convicted.

4. The prosecution case is based on the *fardbeyan* of Md. Suleman, the cousin of the deceased. He stated that on last Tuesday 16.10.1984, the deceased had gone to see the fair but she did not return home. It was informed by Sairabano that Hussain Ali had called the deceased from the house and took her to the fair. It is also disclosed that parents of the deceased were not alive as such, she had been living in the house of the informant. On Friday, the dead body of Noorbano was recovered from a drain. It is also alleged in the written report that when the informant wanted to give information to the police, the accused persons asked him not to lodge case because the deceased died due to epilepsy. Thereafter the accused persons

took the dead body and buried the same in the field of Pirali Seikh. The matter was reported to the police later on 23.10.1984, thereafter, Rajmahal P.S. Case No. 207 of 1984 under Sections 364/302/201/34 IPC was registered against this appellant as well as other persons.

5 After investigation, the police submitted chargesheet against this appellant along with other thirteen persons and accordingly, cognizance of the offence was taken and the case was committed to the Court of Sessions for trial. As the appellant pleaded not guilty, charges were framed against him for the aforesaid sections.

6. In order to prove the charges against this appellant, the prosecution had examined altogether ten witnesses, who are as follows:-

*P.W.1- Mamina Khatoon.
P.W.2- Bhikhu
P.W.3- Sairabano
P.W.4- Jakir Hussain
P.W.5- Samsuddin Seikh
P.W.6- Suleman Sheikh (the informant)
P.W.7- Radhayshyam Sah
P.W.8- Dr. Anand Pd. Sah.
P.W.9- Momammad Norul Islam
P.W.10- Haru Seikh*

7. Some documents were also exhibited, which are as follows:-

*Ext.-1: Signature of Bhikhu Ahmad on inquest report.
Ext.-1/1: Signature of Bhikhu Ahmad on fardbeyan.
Ext.-1/2: Signature of Suleman on Fardbeyan.
Ext.-2: Carbon copy of Inquest Report.
Ext.-3: Postmortem Report.
Ext.-4: Signature of Narul Islam on inquest report.
Ext.-4/1: Signature of N.K. Mishra on inquest report.
Ext.-5: F.I.R.
Ext.6: Fardbeyan.*

8. After completion of prosecution evidence, the statement of the appellant was recorded under Section 313 Cr.P.C.

9. The Trial Court thereafter considering the evidences had convicted the appellant for committing the offence under Sections 364 and 302/34 of the Indian Penal Code.

10. From evidences of the witnesses, we find that Samsuddin Seikh (P.W.5) has not supported the case of the prosecution and has

been declared hostile. Haru Seikh (P.W. 10) has been tendered whereas, Mohammad Nurul Islam (P.W.9) is a formal witness, who has only proved his signature appearing on the inquest report as Ext.4 and the signature of Nawal Kishore Mishra as Ext.4/1. Bhikhu (P.W.2) is also a witness to the inquest and he has proved his signature appearing on the inquest report as Ext.1. He is also an attesting witness to the *fardbeyan* and he has proved his signature on the *fardbeyan* as Ext.1/1.

11. It has come in evidence that Radheshyam Sah (P.W.7) who is the B.D.O, in whose presence dead body of the deceased was exhumed on 25.10.1984 and at that time Mr. Nawal Kishore Mishra, Officer-in-Charge of Rajmahal Police Station and Dr. Anand Prasad Sah were present. The inquest report was prepared by Mr. Nawal Kishore Mishra and he has proved the carbon copy of inquest report as Ext.-2.

12. Dr. Anand Prasad Sah (P.W.8) conducted the postmortem examination on the dead body of the deceased on 25.10.1984 and found the following injuries on the person of the deceased:-

The muscle of scalp of face, lips, tongue, ear, nose, eyes were excised after death. Teeth four upper four lower incisor were broken. Upper jaw two incisor four collar to six premolar, lower jaw two incisor, four molar, six premolar present.

Right upper arm index and thumb excised after death, in the middle of the soft of the humorous fracture.

Left upper arm radius Ulna excised at the elbow. Left humerus all along necked without muscle multiple injuries on the breast back to right hand. Vagina labia majora to vaginal wall had been excised, uterus, pregnancy approximately five months, the placenta, code to fetus became stony hard and matted with uterus.

Neck, thyroid cartilage and tracheal drain were distorted.

The doctor opined that the deceased was murdered by throttling and she died due to respiratory obstruction. The time elapsed since death till postmortem examination has been opined between 8 to 10 days. The doctor has proved the postmortem report as Ext.3. From the medical evidence and from the evidence of the

doctor the prosecution has proved that the deceased died a homicidal death.

13. Suleman Seikh (P.W.6) is the informant of this case. He stated that the occurrence took place four years ago when a fair was organized in the village. He stated that parents of the deceased were not alive as such, the deceased was living with him and he was looking after her. On Wednesday, when he did not find Noorbano, he asked whereabouts of Noorbano from her sisters, then it was replied by Sairabano that Sahadat Seikh and Hussain Seikh took Noorbano with them to enjoy fair on the previous night. On Friday, while his wife had gone to have bath towards the river side, she was informed that a dead body of a female is lying in a drain. She returned home and informed the same to him as well as family members. Thereafter they found the dead body is of the deceased, having injury on her person. When he wanted to lodge information he was restrained by the accused persons and the dead body was buried in the field of Pirali Seikh under compulsion. He proved the signature appearing on the *fardbeyan* as Ext.1/2. The re-statement of the informant was taken in which too, he had repeated his version. He has claimed to identify the accused persons.

14. Mamina Khatoon (P.W.1) has supported the prosecution case. She also stated that accused Sahadat and Hussain Seikh were having good relation with her *nanad* i.e. the deceased and they used to visit her house. On the date of incident, accused Sahadat and Hussain Seikh took the deceased with them to the fair. She stated that on Friday, while she was going to have bath towards the river, she was informed that a dead body is lying in a drain. Receiving this information, she returned home and disclosed the matter to her husband. Thereafter they went to the place of occurrence and found the dead body of the deceased.

In cross-examination, in para- 5, she deposed that the deceased used to say that she was impregnated by Hussain Seikh so he should marry her, but the accused was not ready to marry her, thus this witness believed that she was murdered. This is the motive

behind the occurrence. In cross-examination, she has accepted that she did not disclose to any one that the deceased was pregnant.

15. Sairabano (P.W.3) and Jakir Hussain (P.W.4) have also supported the case of the prosecution. P.W.3 had deposed that on the date of incident she along with Noorbano, Putti and Jakir Hussain were sleeping in a room. At night, accused Hussain Seikh and Sahadat reached there and took Noorbano with them to the fair. When Noorbano did not return home, she went to the house of accused Hussain Seikh but no proper reply was given and on Friday the dead body of the deceased (Noorbano) was found from a drain. P.W. 4 has also deposed in the same line.

16. From the evidence, I find that the entire case is based on circumstance. The circumstance which have been put forth is that the deceased was taken by this appellant and another to the village fair at night, but thereafter the deceased did not return. The motive of the occurrence is the pregnancy of the deceased allegedly by the appellant. This is the only circumstance against the accused.

17. Be it noted that the FIR was registered on 23.10.1984. From the evidence, it is clear that the deceased went missing at least 7-8 days prior to 23.10.1984, but it is surprising that during 7-8 days, no report was lodged against any person. Further as per the FIR, the dead body was recovered on Friday prior to 23.10.1984 i.e. on 19th October, 1984, even then no FIR was lodged. From the evidence, I also find that the witnesses have stated that there was cordial relationship between this appellant and the deceased, though the deceased was pregnant. The reason behind the murder as put forth by the prosecution is that she was impregnated by this appellant and this appellant was not ready to marry her.

18. From the evidence of P.W.6, I find that this witness had given an explanation for the delay in lodging the FIR that when the body was recovered, they wanted to inform about the murder to the police, but it is this appellant as well as others who restrained them not to inform about the incident, and the informant was forced to bury the body in the field of Pirali Seikh.

19. Thus from the evidence, the circumstance, which has been put forth by the prosecution is that the deceased was having some affair with this appellant and she was impregnated by this appellant. The fact that the deceased was pregnant has been proved by the evidence of P.W. 1 and said pregnancy was corroborated by the Doctor (P.W.8), who conducted the postmortem examination. They only prove the pregnancy, but there is no material to prove whether the pregnancy was through this appellant or not. There is no proof on this point.

20. P.W. 3 has deposed that they were sleeping along with the deceased when this appellant and one Sahdab came and took the deceased along with them to go to the village fair but she did not return. This statement proves that the deceased left in the company of this appellant and another. Thus this appellant was not alone when he was last seen with the deceased rather one Sahadab was there also.

21. Now on the question of motive, I find from the evidence that the prosecution has built up a story that this appellant was in love with the deceased and she was pregnant through him. This fact has come from the evidence of P.W.5 only. Surprisingly, this P.W.5 though has accepted that the deceased had disclosed the aforesaid fact to her but she had not narrated the same to anyone not even to her husband. She only stated that fact after the death of the deceased and after the body was recovered. There are no other witness nor any evidence in support of the love affair between the appellant and the deceased. Thus there is nothing concrete to arrive at the conclusion that the deceased was having a love affair with this appellant and was impregnated by him. Thus, I hold that the prosecution has failed to prove the motive.

22. Now once the motive is failed to be proved, then the only material against the appellant is that he along with Sahadab had come to the house of the deceased and took her along with them to go to the village fair. Thus the material against this appellant is of 'last seen'.

23. Only on the basis of last seen an accused cannot be convicted. The Hon'ble Supreme Court in the case of **Satpal Vs. State of Haryana** reported in **(2018) 6 SCC 610** held that last seen theory is a weak kind of evidence by itself to convict the appellant singularly. Further the circumstances that the dead body was recovered after three days of the occurrence and the F.I.R was also not instituted creates doubt about involvement of the appellant. The dead body was buried and the FIR was instituted after that, which also creates a doubt in the mind of the Court about the prosecution case.

24. Considering what has been held above, I am of the opinion that the appellant deserves benefit of doubt in this case. Thus I have no other alternative than to acquit the appellant from the charges. The Judgment of conviction dated 05.09.2002 and order of sentence dated 06.09.2002 passed by the learned Sessions Judge, Sahibganj, Camp at Rajmahal in Sessions Case No. 324 of 1986/100 of 1993 is **set aside**. Accordingly, this appeal is **allowed**.

25. Since the appellant is on bail, he is discharged from the liability of his bail bond, so are the bailors.

26. Let the Trial Court Records be sent back to the Court concerned forthwith, along with a copy of this judgment.

27. Pending interlocutory application, if any, is also disposed of.

28. I appreciate the effort of the learned *Amicus*. Thus, I direct the Jharkhand High Court Legal Authority to pay Rs.7,500/-(rupees seven thousand five hundred) to the learned *amicus* as his remuneration.

29. Let a copy of this judgment be sent to the High Court Legal Services Committee for doing the needful.

(ANANDA SEN, J.)

GAUTAM KUMAR CHOUDHARY, J. - I agree.

(GAUTAM KUMAR CHOUDHARY, J.)

High Court of Jharkhand at Ranchi.

Dated: 28/11/2024

NAFR-Anu/- Cp3.