

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Criminal Appeal (D.B.) No. 186 of 1996 (R)

1. Pandu Munda, S/o Ram Munda;
2. Juran Singh Munda, S/o Chamu Singh Mundal;
3. Singrai Munda, S/o Chamu Munda;
4. Madan Pahan, S/o Soma Munda;
5. Rana Singh Munda @ Raransi Munda, S/o Uday Munda;
6. Madan Singh Munda, S/o Surjan Munda;
All residents of village Sarigaon, P.S. Murhu, District-Ranchi.

.....Appellants

Versus

The State of Bihar now JharkhandRespondent
With

Criminal Appeal (D.B.) No. 191 of 1996 (R)

1. Man Singh Munda, S/o Chamar Singh Munda;
2. Bir Singh Munda, S/o Karam Singh Munda @ Soma Munda;
All residents of Village Sarigaon, P.S.-Murhu, district-Ranchi.

.....Appellants

Versus

The State of Bihar now JharkhandRespondent

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

For the Appellants : Mr. Manish Kumar, Adv. (in both cases)

For the Respondent : Mr. Saket Kumar, A.P.P

(in Criminal Appeal (D.B.) No. 186 of 1996)

Mr. Pankaj Kumar, P.P.

(in Criminal Appeal (D.B.) No. 191 of 1996)

C.A.V. ON:-24.06.2024

PRONOUNCED ON:-31/08/2024

Per Deepak Roshan, J.

Since both these appeals arise out of a common judgment; as such both were heard together and are being disposed of by this common judgment.

2. These appeals are directed against the judgement of conviction dated 09.10.1996 and order of sentence dated 10.10.1996, passed by the learned Additional Judicial Commissioner, Khunti in Sessions Trial no.322/1989/T.R.

No.158/93; whereby appellants have been convicted under Section 302/34 and 201/34 of the I.P.C. and sentenced to undergo R.I. for life imprisonment under Section 302/34 of the I.P.C., and R.I. for five (5) years for the offence under Section 201/34 of the I.P.C.

3. The prosecution case is on the basis of a fardbeyan lodged by one Soma (P.W.-1). As per the F.I.R., P.W.-1 (Soma), P.W.-2 Saimish Purti and P.W.-4 Mangal Singh, Chaukidar came to Murhu P.S. and gave the beyan that on 22.05.1988, at about 7:00 P.M., he came to learn from P.W.-2 that his brother Dasrath (deceased) Lukas Purti (deceased), Dura Naik and Jagarnath Singh (P.W.-3) had gone to take *Haria* (rice liquor) near the house of late Dasa Pahan and Chita Kumar. All persons took *Haria* and payment was made. It is alleged that when the said 4 persons started returning, they were assaulted by lathies. Durga and P.W.-3 did not go near them in order to save their lives and they fled away and informed P.W.-2, who is the father of Lukas Purti (deceased). It is said that thereafter P.W.-2 and other villagers went to the house of Soma (P.W.-1), the informant, who is also the brother of deceased Dasrath and informed him about the incidents. The cause of the assault is said to be felling down of Chana (gram) and eatables at the instance of deceased Dasrath. It is also the case of the prosecution that P.W.-1 and P.W.-2 alongwith the villagers searched for the dead body, but could not find on 22.05.1988 and only on 23.05.1988, body was found at the border of village Ludamkel in the bushes.

4. Learned Counsel for the appellants submits that the appellants have been convicted on the testimony of the sole so-called eye-witness P.W.-3 Jagarnath Singh whose depositions are full of contradictions and even the P.W.-3, in his deposition has deposed that he did not know the names of the accused

persons and as a matter of fact at Paragraph-4 of his cross-examination he has said that he knows only Uday by name.

Learned counsel further submits that the learned trial court ignored the deposition of the P.W.-3 who at Paragraph-7 of his cross-examination has deposed that accused Man Singh had himself called him to the village and told him about the names of the accused persons and accordingly he was able to spell the names of the accused persons.

As a matter of fact, from this portion of his deposition, it would be evident that P.W.-3 was not knowing the names of any of the accused persons except Uday and therefore he could not have given the names to either P.W.-1, P.W.-2 or P.W.-4 before lodging of the F.I.R. and therefore, the names of the accused persons included in the F.I.R. is without any basis.

Learned counsel further submits that when Man Singh was already an accused, there was no occasion for him to call the so-called sole eye-witness P.W.-3 to his village and ask him to name all the persons of the village. He adds that only on account of previous enmity, P.W.-1, the informant has named the accused persons including Man Singh. In Paragraph-7, P.W.-3 has deposed that there is serious dispute existing between accused Man Singh and P.W.-1 and still a case relating to and is pending in the court.

Learned counsel further submits that in the deposition of P.W.-4, the Chaukidar has stated that P.W.-3 and Durga had come to him and informed that Harun and Uday were assaulting the deceased persons and they were not able to see other persons as they had fled away to save their lives. This P.W.-4 alongwith P.W.-3 had gone to inform about the incident to P.W.-1 and P.W.-2. Learned counsel further adds that if P.W.-3 was not knowing the names of the accused persons, he

could not have named the accused persons to P.W.-1 and therefore, the naming of the appellants by P.W.-1 in his deposition is developing a new case by introduction of the names of these appellants.

P.W.-3 in his deposition has stated that he knew the name of Uday only and the names of other accused persons were told to him by accused Man Singh later on and certainly not at the time of lodging the F.I.R. Learned counsel submits that the I.O. has also not been examined due to which the defence has suffered. He further submits that the injuries sustained by the deceased persons do not match with the depositions of either the eye-witness or the other hearsay witnesses and also the doctor who has conducted the post mortem report has not given a true picture and accepting the inquest report.

He has further submitted that the main witnesses namely P.W.-1, P.W.-2, P.W.-3 and P.W.-4 are all interested witnesses who are either closely related to the deceased persons or with the P.W.-3, the sole eye-witness. Other independent witnesses namely Chita Kumari or any other independent witness, resident of the village where the occurrence took place has not been examined.

Learned counsel further submits that although the occurrence took place in the morning on 22.05.1988, the F.I.R. was lodged after considerable delay at about 7 PM; although the Chaukidar, P.W.-4 was informed immediately after the occurrence took place and Murhu Police Station is well connected by road being by the side of Ranchi-Chaibasa road.

5. Learned A.P.P. defended the findings of the learned trial court and submits that there is no error in the impugned judgment and the learned trial court has rightly convicted the

appellant for the offence under Section 302/34 and 201/34 of the I.P.C

6. Having heard learned counsel for the parties and after going the LCR and the impugned judgment; it appears that the appellants are convicted under section 302/34 and 201/34 of the Indian Penal Code, 1860. To bring home the charges, prosecution has examined altogether 8 witnesses whereby P.W.-1, 2, 4 are hearsay witnesses, P.W.-5 and 8 are formal witnesses, P.W.-6 did not depose anything, P.W.-7 is the doctor who conducted autopsy and P.W. 3 is the sole eye-witness.

7. For proper appreciation of the case it is imperative to go through the deposition of the sole eye-witness that is P.W.-3, placing reliance on which learned trial court has convicted the appellants. From the deposition of the sole eye-witness it appears that there are major contradictions in his deposition and that the learned trial court has failed to take into consideration the contradictory statements of P.W.-3; as such he is not a reliable witness.

In para 3 of his cross-examination, he has deposed that Uday, Haroon ,Gopal ,Veer Singh and Man Singh came to the place of occurrence armed with lathi; however in para 4 of his cross-examination, he has deposed that these people were sitting under the mango tree without any lathi.

Further, in para 4 of his cross examination he has deposed that he only knows Uday by his name; however in para 3 of his cross-examination he has deposed that he knows Uday, Haroon, Gopal, Veer Singh and Man Singh since childhood.

In para 6 of his cross-examination, he has further deposed that earlier he was not aware of the names of the accused persons and could only identify them. It was Man

Singh (one of the accused) who himself called him and told him the name of accused persons.

P.W.4 in para 2 of his examination-in-chief has deposed that P.W.3 and Durga had come to him and informed him that Haroon and Uday were assaulting the deceased persons and they were not able to see the other persons as they fled from the place of occurrence to save their lives.

8. In the background of aforesaid factual scenario, it would be profitable to refer the judgment rendered by the Hon'ble Apex Court in ***Sunil Kumar Sambhudayal Gupta (Dr.) & Ors. v. State of Maharashtra***, reported in **(2010) 13 SCC 657**, wherein it has been categorically held that discrepancies in the evidence of eye-witnesses, if found to be not minor in nature, may be a ground for disbelieving and discrediting their evidence. If their evidence is found to be in conflict and contradiction with other evidence; in such a case, it cannot be held that the prosecution proved its case beyond reasonable doubt. The relevant paragraph is quoted herein below:

"32. The discrepancies in the evidence of eye-witnesses, if found to be not minor in nature, may be a ground for disbelieving and discrediting their evidence. In such circumstances, witnesses may not inspire confidence and if their evidence is found to be in conflict and contradiction with other evidence or with the statement already recorded, in such a case it cannot be held that the prosecution proved its case beyond reasonable doubt."

9. It further appears that the investigating officer has not examined the sole eye-witness which resulted in non-conduct of Test Identification Parade as, had the I.O. examined P.W.-3, it would have come to his knowledge that the accused persons were not known to P.W.-3 and to conduct Test Identification Parade was necessary. This coupled with the fact that Man Singh, who according to P.W.-3 told the names of accused persons to him, has also not been examined by the prosecution casts a doubt on the identity of the accused itself

and prosecution has failed to bring on record any evidence to prove the identity of the appellants.

10. The legal position is now no more res integra on the point prior test identification parade. The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. Thus, test identification parade (T.I.P.) is considered as a safe rule of prudence generally to look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence, however, is subject to exceptions when, for example, the court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration.

At the same time, much evidentiary value cannot be attached to the identification of the accused in court where identifying witness, who is a total stranger and who had just a fleeting glimpse of the person identified or who had no reason to remember the person concerned, if the identification is made for the first time in court.

11. No doubt, failure to hold a test identification parade would not make inadmissible the evidence of identification in court, if such identification is wholly reliable. Indubitably, identification parades as a rule of prudence to be resorted to at the stage of investigation, and there is no provision in the Cr.P.C which obliges the investigating agency to hold, or confers a right upon the accused to claim a test identification parade. Test identification parades do not constitute substantive evidence. The substantive evidence is the evidence of identification in court and the test identification parade provides corroboration to the identification of the witness in court, if required.

12. Further, while identifying the accused in court, if the witness says that he had occasion to identify the accused at the time of occurrence with certainty, without giving such a statement to police, the same is a serious omission to be read as contradiction to disbelieve the identification of the accused at the dock. The same is to be read as a vital and material improvement made by the witness/witnesses in Court, which would attract less probative value. In such cases, non-conduct of test identification parade (T.I.P.), to be held as fatal and the conviction based solely on identification of the accused by the occurrence witness/witnesses for the first time in court is not sufficient.

13. Reverting back to the case at hand, P.W.3 in his examination in chief has deposed that he knows the accused persons present in the dock; however, in his cross-examination he has deposed that he only knew Uday and the name of other accused were told to him by Man Singh who has also not been examined as such the identity of the present appellants is disputed and learned trial court has failed to take this point into consideration.

14. Taking into consideration the contradictory deposition of the sole eye-witness coupled with his non-examination by the IO coupled with the non-examination of Man Singh; failure of prosecution to bring on record any evidence to prove the identity of the appellants and the law laid down by the Hon'ble Apex Court; we set aside the conviction under section 302/34 and 201/34 of the Indian Penal Code, 1860.

15. With the aforesaid observations and discussions, these instant criminal appeals stand allowed and the judgement of conviction dated 09.10.1996 and order of sentence dated 10.10.1996, passed by the learned Additional Judicial

Commissioner, Khunti in Sessions Trial No. 322/1989/T.R.
No.158/93, is hereby quashed and set aside.

16. Since the appellants are on bail, they shall be discharged from the liability of their bail bonds.

17. Let a copy of this order and the lower court record be sent to the court concerned forthwith.

(Rongon Mukhopadhyay, J.)

(Deepak Roshan, J.)

Jharkhand High Court at Ranchi

Dated:-31/08/2024

Vikas/
AFR