

**IN THE HIGH COURT OF JHARKHAND AT RANCHI
Criminal Appeal (D.B.) No.680 of 2002**

(Arising out of judgment of conviction and order of sentence dated 25.09.2002 passed by Learned Additional Judicial Commissioner, Fast Track Court, Ranchi, in S.T. Case No.132 of 2002)

Etwa Oraon, son of Hira Oraon, resident of Murchu, P.S. Ratu,
District Ranchi.

... **Appellant**
Versus
The State of Jharkhand. **Respondent**

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

For the Appellant : Md. Mokhtar Khan, Advocate
For the State : Mr. Vishwanath Roy, A.P.P.

JUDGMENT

By Court, :

28th October, 2024

This Criminal Appeal is preferred on behalf of the appellant being aggrieved by the judgment of conviction and order of sentence dated 25.09.2002 passed by Learned Additional Judicial Commissioner, Fast Track Court, Ranchi, in S.T. Case No.132 of 2002, whereby and wherein the appellant has been convicted for offences under Sections 302 and 201 IPC. He was sentenced to undergo rigorous imprisonment for life under Section 302 IPC and further to undergo rigorous imprisonment for 05 years for offence under Section 201 IPC. Both the sentences were ordered to run concurrently.

2. Heard learned counsel for the appellant and learned A.P.P. for the State and perused the material available on record.

3. Learned counsel representing the appellant submits that the prosecution has not been able to prove the involvement of the appellant in the aforesaid offences, as there is no eye witness to the said incident and all witnesses are hearsay witnesses. He contended that the conviction of the appellant only on the basis of recovery of shawl is absolutely bad as there is no proof that the said shawl belongs to the appellant. He further

submits that the fact of giving loan to the deceased by the appellant has not been established and remains a mere allegation. He lastly submits that the Trial Court has failed to appreciate the fact that the appellant mostly lives in Kolkata and is working there in a Brick Kiln and rarely comes to his native village and the appellant does not have any criminal antecedent. On these grounds, he implored this Court to acquit the appellant.

4. Per contra, learned A.P.P. representing the State opposes this Criminal Appeal and submits that the conviction of the appellant is based on strong circumstantial evidence against the appellant. He states that all the prosecution witnesses have stated in their evidence that they had seen injury of *tangi* on the dead body of the deceased. Further the shawl of the appellant was recovered. Thus, he submits that the appellant do not deserve to be acquitted.

5. The F.I.R. is at the instance of P.W.-5 who is the wife of the deceased. She stated that her husband had gone for fishing and thereafter did not return. On the aforesaid information, a missing report was lodged. Thereafter, P.W.-2 namely Shiva Oraon saw the dead body of the deceased near the well which resulted in lodging of the instant F.I.R. being Ratu P.S. Case No.123 of 2001 under Section 302/ 201 IPC. Be it noted that the F.I.R. is against unknown.

6. After investigation, charge-sheet has been submitted against the appellant and one other co-accused person under Section 302 / 201 / 34 IPC. The case was committed to the Court of Sessions. They were suspected to be the author of the crime as during investigation, the prosecution has come up with a motive that Rs.1,400/- was taken as loan from the appellant by the deceased and the appellant was pressurizing him to return the same. As the deceased was not returning the same, this appellant has committed murder of the deceased. After charge was framed under Section 302/ 34 and 201/34 IPC against this appellant and another co-accused, the appellant and co-accused put on trial.

7. Altogether following 09 witnesses have been examined in this case:-

- i. P.W.-1 :- *Lilku Oraon*
- ii. P.W.-2 :- *Shiva Oraon*
- iii. P.W.-3 :- *Manoj Mahto*
- iv. P.W.-4 :- *Ganpat Mahto*
- v. P.W.-5 :- *Rupani Orain*
- vi. P.W.-6 :- *Dr. Ram Sewak Saha*
- vii. P.W.-7 :- *Ashok Ram*
- viii. P.W.-8 :- *Ram Naresh Kunwar*
- ix. P.W.-9 :- *Peeyush Kumar*

8. Several documentary evidences have also been proved, which are as follows:-

- i. Ext.1 :- *Seizure list*
- ii. Ext.1/1 :- *seizure list*
- iii. Ext/1/2 :- *Signature on seizure list*
- iv. Ext.2 :- *Post-mortem report*
- v. Ext.3 :- *Fardbeyan*
- vi. Ext.4 :- *Statement under Section 164 Cr.P.C.*
- vii. Ext.4/1 :- *Statement under Section 164 Cr.P.C.*

9. The Trial Court after closure of evidence recorded the statement of the accused under Section 313 Cr.P.C.

10. The defence also examined one witness as D.W.-1 namely Anil Oraon.

11. The Trial Court thereafter convicted this appellant for committing murder under Sections 302 and 201 IPC and acquitted the another accused.

12. From the evidence, we find that there is no eye witness to the said occurrence. The entire case is based on the circumstantial evidence. The circumstance is that the appellant had a motive to commit murder of the deceased as the deceased had taken Rs.1,400/- as a loan but was not refunding the same. The other circumstance is that a shawl of the appellant was found in the field next to the towel of the deceased. Further, it is alleged that the axe which is alleged to be the murder weapon was recovered from a bush on the confessional statement of co-accused. Save and except these materials, there is no other material against this appellant.

13. It has been mentioned in the impugned judgment that this appellant has been convicted as his shawl was found lying

next to the towel of the deceased in the field. This circumstance has been relied upon by the Trial Court while convicting this appellant. Further, the Trial Court had also relied upon the circumstance as narrated by the informant that the deceased had taken a loan of Rs.1,400/- from the appellant. These two circumstances which surfaced in evidence, were not even put to this appellant while his statement was recorded under Section 313 Cr.P.C. Neither the fact of recovery of the shawl nor lending of money and demanding refund of the same was put to him. The circumstances which surfaced against the accused during trial from the mouth of the witnesses, if not put to the accused while recording his statement under Section 313 Cr.P.C., cannot be used against him. In this case, without putting the circumstances before him and without seeking any explanation, those circumstances were used against this appellant by the Trial court. Further, even if these circumstances are taken into consideration, we find that those are very weak piece of circumstance which cannot lead to conviction of this appellant under Section 302 IPC. The chain of circumstances is neither complete nor the prosecution has proved each of the circumstances as there is nothing to suggest that the shawl which was recovered belongs to this appellant and further admittedly there is no one to suggest that the appellant was last seen in the company of the deceased.

14. Considering what has been held above, since the prosecution has not been able to prove the involvement of this appellant beyond reasonable shadow of doubt, we cannot hold the appellant guilty for committing offences under Sections 302 and 201 IPC.

15. Considering what has been held above, we find that the appellant has made out a good case for acquittal. The impugned judgment of conviction and order of sentence dated 25.09.2002 passed by Learned Additional Judicial Commissioner, Fast Track Court, Ranchi, in S.T. Case No.132 of 2002, is 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.

- 16.** Accordingly, this Criminal Appeal stands **allowed**.
- 17.** Trial Court Record be transmitted back to the Court concerned.
- 18.** Pending I.A. if any, stands disposed of.

(ANANDA SEN, J.)

(GAUTAM KUMAR CHOUDHARY, J.)

HIGH COURT OF JHARKHAND, RANCHI

Dated:- 28/10/2024

NAFR / Prashant