

Criminal Appeal (D.B.) No. 793 of 2002

[Against the Judgment of conviction and Order of sentence dated 09.11.2002, passed by learned Additional Judicial Commissioner, Fast Track Court, Ranchi, in Sessions Trial No.369 of 1999]

Pradeep Yadav @ Pradeep Kumar Yadav Son of Sheo Bilas Yadav
Resident of Ranisati Mandir Road, near Pahari Mandir, P.S.
Sukhdeo Nagar, Dist. Ranchi.

.... **Appellant**

Versus

The State of Jharkhand

.... **Respondent**

.....

For the Appellant	: Mr. B.M. Tripathy, Sr. Advocate Mrs. Nutan Sharma, Advocate Mr. Naveen Kumar Jaiswal, Advocate
For the State	: Mr. Abhay Kr. Tiwari, Addl. P.P.
For the Informant	: Mr. Nilesh Kumar, Advocate

.....

P R E S E N T

SRI ANANDA SEN, J.
SRI PRADEEP KUMAR SRIVASTAVA, J.

.....

JUDGMENT

Dated- 12.12.2024

By Court:- We have heard Mr. B.M. Tripathy, learned Senior counsel appearing on behalf of the appellant, Mr. Abhay Kr. Tiwari, learned Addl. P.P. appearing for the State assisted by Mr. Nilesh Kumar, learned counsel appearing on behalf of the informant.

2. This criminal appeal is preferred on behalf of the appellant being aggrieved by the judgment of conviction and order of sentence

dated 09.11.2002 passed by learned Additional Judicial Commissioner, Fast Track Court, Ranchi in Sessions Trial No.369 of 1999, whereby and whereunder the appellant has been convicted for committing offences punishable under Section 302 of the Indian Penal Code and Section 27 of the Arms Act and sentenced to undergo rigorous imprisonment for life under Section 302 of the Indian Penal Code and further sentenced to undergo rigorous imprisonment for seven years under Section 27 of the Arms Act.

3. The prosecution case as mentioned in the impugned judgment at paragraph 2, is not the correct version as mentioned in the fardbeyan. As per the fardbeyan, the informant alleged that on 10.02.1999, he was in his house when a boy came and informed that Ranjeet has been shot and he has been sent to R.M.C.H. On receiving the said information, he rushed to R.M.C.H. and found his nephew viz. Ranjeet dead. He has further alleged that in R.M.C.H., he got information that friends of Ranjeet have left him to R.M.C.H. and went away. Informant has further alleged that two unknown motorcycle riders shot dead his nephew at Khadgarha. Informant has further alleged that along with his nephew Ranjeet, this appellant and one Sanjay Yadav were seen

together as they were roaming around in one scooter and if those two persons are questioned, the entire fact will come to light. He has raised suspicion against two boys having involvement in commission of the murder.

On the basis of the fardbeyan of the informant, Kotwali Police Station Case No.56 of 1999 was instituted for offences under Section 302/34 of the Indian Penal Code and Section 27 of the Arms Act.

4. In the impugned judgment in paragraph 2, the learned Trial Judge has given a different version of the fardbeyan which is not there. From perusal of the evidence of P.W.1, informant, we can understand that what has been narrated in paragraph 2 of the judgment as the prosecution story, the fardbeyan, is actually the statement of the informant as P.W.1.
5. Police, after completion of investigation, submitted charge sheet against this appellant on 30.04.1999 for offences under Section 304/34 of the Indian Penal Code and Section 27 of the Arms Act. Cognizance of the offence was taken and the case was committed for trial. Charges with two heads were initially framed against the appellant for offence under Section 304/34 of the Indian Penal Code but later on amended and altered to Section 302/34 of the

Indian Penal Code and Section 27 of the Arms Act, which was read over and explained to the appellant. Since the appellant pleaded not guilty, he was put on trial.

6. In order to substantiate the charge against the appellant, the prosecution has examined 12 witnesses, viz. P.W.1 Raghunath Yadav (informant), P.W.2 Shrawan Kumar Agarwal, P.W.3 Dr. Saroj Kumar, P.W.4 Rabinder Kumar Saha, P.W.5 Chhedi Ram, P.W.6 Mahabir Yadav, P.W.7 Sitaram Yadav, P.W.8 Havildar Ram Kishan Pandey, P.W.9 Deo Nandan Prasad, P.W.10 Viki Yadav @ Vikas Yadav, P.W.11 Shakuntala Devi and P.W.12 Mahendra Nath Tiwary (I.O.).

The prosecution also produced following documents to substantiate its case, which were marked exhibits:-

Exhibit 1 & 1/2	Fardbeyan
Exhibit 1/1	Signature of the informant
Exhibit 1/3 & 1/4	Endorsement
Exhibit 1/5 & 4/1	Signature of Dinesh Rajak
Exhibit 2	Inquest report
Exhibit 2/1	Signature of Raghunath Yadav on Inquest Report
Exhibit 2/2	Signature of Mahabir Yadav
Exhibit 2/3	Signature of Witness
Exhibit 3	Postmortem Report
Exhibit 3/1	Signature of witness doctor on Postmortem Report
Exhibit 4	Formal F.I.R.

7. After closure of prosecution evidence, the statement of the appellant was recorded under Section 313 Cr.P.C. wherein he denied the charges. Appellant had neither stated anything in his

defence nor any evidence has been adduced by him.

8. The learned Trial Court, after hearing the arguments and appreciating the evidences available on record, has convicted and sentenced the appellant for committing offences punishable under Section 302 of the Indian Penal Code and Section 27 of the Arms Act as stated above.
9. Learned counsel for the appellant assailing the impugned judgment of conviction and sentence of the appellant has vehemently argued that there are material contradictions, exaggerations and improvement in the evidence of informant and other witnesses. There is long gap between date of commission of murder and the inspection to the place of occurrences of this case. There is no consistency about the place where the deceased was murdered by shooting. There is no eye witness at all, rather the relative of the deceased, who were admittedly never claimed to be eye witnesses have been projected to be eye witnesses of the occurrence, as such absolutely unreliable. It is further submitted that there is no iota of circumstantial evidence also against the appellant showing his involvement in this case. The prosecution story was stretched to the culmination of prosecution of present appellant only on the basis of confessional statement of owner-

cum-driver of the tempo Shrawan Kumar Agarwal (P.W.2) recorded by the police officer. Later on, the said owner of the tempo who has dropped the deceased at R.M.C.H. hospital has stated in cross-examination on behalf of Raja Verma that he does not know the names and address of persons, who were seated on his tempo. Not only this, the original place of occurrence, which is allegedly rented house of the appellant was inspected after two months of the occurrence and surprisingly, the same was found freshly washed and also some blood stain hither and thither. It is further contended that the learned Trial Court has ignored the vital contradictions appearing in the evidence of witnesses and held the appellant guilty only on the basis of conjecture and surmises. Therefore, the impugned judgment and order is liable to be set aside. The appellant deserves acquittal from the charges levelled against him.

10. On the other hand, learned A.P.P. appearing for the State has opposed the aforesaid contentions raised on behalf of the appellant and submitted that the learned Trial Court has very wisely and aptly apprised all the materials available on record and properly appreciated the evidence of the witnesses and arrived at right conclusion of guilt of the appellant. The impugned judgment

and order of conviction and sentence of appellant does not deserve any interference in this appeal which is devoid of merit and fit to be dismissed.

- 11.* After hearing the parties, to see the involvement of this appellant and veracity of the prosecution case, we have gone through the evidence and material available on record.
- 12.* In this case, we find that most important witness as per the prosecution is P.W.1, P.W.10 and P.W.11.

P.W.1 is the informant. On reading his statement as P.W.1, we find that he has improved his version by few folds not only on facts but also, he has introduced some person as witnesses to some of the events, which was absolutely not there in his fardbeyan. He stated that his nephew was murdered on 10.02.1999 and the aforesaid information was given to him by Prince and Vikas. He stated that Prince and Vikas told him that someone has shot the deceased and Ranjeet (deceased) was being taken in a tempo. The fact that he got the information from Prince and Vikas is not there in the fardbeyan. Be it be noted that P.W.10 Vikas is none else but the son of this informant. If, at all he had received the information about commission of murder of his nephew from Vikas, as he stated as P.W.1, what prevented him to disclose the aforesaid fact

in the fardbeyan, is beyond comprehension. Be it noted in the fardbeyan, he stated that one 'boy' (without naming anyone) had informed him. In para 4, as P.W.1, he narrated the incident that in the morning when this appellant came to his house to call Ranjeet (deceased) while the deceased was sleeping, the appellant went away and again came back to call Ranjeet (deceased); while the son of the informant and mother of the deceased tried to forbade him to go with this appellant, this fact is surprisingly missing in the fardbeyan. In the paragraph 4, this P.W.1 introduced presence of his son and his sister who are none but produced as P.W.10 and P.W.11 in this trial. Further, he in his evidence has stated that he has seen the deceased along with this appellant in a scooter. This fact has also not been mentioned in the fardbeyan. This major improvement and introduction of the person as witnesses by this P.W.1 creates doubt about his credibility. This major exaggeration and development of the prosecution story makes P.W.1 an absolutely unreliable witness. Thus, his count as P.W.1 is discarded.

13. The next important witness as per the prosecution is P.W.10 and P.W.11. As mentioned above their reference and what they had seen in the morning, in the house of the appellant, was not

mentioned in the fardbeyan by the informant. They had introduced themselves as witnesses. Surprisingly, these two persons i.e. P.W.10 and P.W.11 were not the charge-sheeted witnesses. Their names did not figure in the charge-sheet. Further, when we go through the evidence of P.W.12, the Investigating Officer, we find that he has made surprising revelations about these P.W.10 and P.W.11. In paragraph 23, the I.O. has stated that he had entered the name of the witnesses whose statement has been recorded under Section 161 Cr.P.C., as charge-sheet witness. This fact suggests that he had not recorded the statement of P.W.10 and P.W.11 under Section 161 Cr.P.C. because P.W.10 and P.W.11 names were not mentioned in the charge-sheet as witnesses. He further, in paragraph 26, stated that charge-sheet was submitted on 30.04.1999 and the occurrence is dated 10.02.1999. In para 27, he stated that from 10.02.1999 to 30.04.1999, this Shakuntala Devi and Viki Yadav who are P.W.11 and P.W.10 have not given any application to get their statements recorded. He further, in paragraph 28 and 29, has stated that there is no written report or application of Shakuntala Devi (P.W.11) and Viki Yadav (P.W.10) to get their statements recorded till submission of charge-sheet. In paragraph 32, he categorically stated that he tried with the parents

of the deceased to secure the attendance of Vikky but he could not locate him and they did not produce him. Further, in this connection, the statement of P.W.1 is very important wherein in his last sentence of his cross-examination, he stated that he had not got the statement of his mother, sister and wife recorded under Section 161 Cr.P.C. during investigation, whatever statement was recorded was of his. Be it noted that the reference of the sister which has been made, is none but P.W.11 Shakuntala Devi.

- 14.* Aforesaid facts clearly suggests that for the first time these two persons have appeared before the Court to record their statement. Thus, considering what has been discussed above in the following paragraphs, there are high probability that after much deliberation, the versions have been changed and the persons have been incorporated and introduced as witness who actually were not. Thus, P.W.10 and P.W.11 is also not reliable witnesses. If the statement of P.W.1, P.W.10 and P.W.11 is discarded, there remains nothing in this case. Even the place of occurrence has been changed by the prosecution As per the fardbeyan, the occurrence had taken place at Khadgarha but surprisingly P.W.9 states that the murder had been committed in the house of this appellant as when he had gone there along with the I.O., he found that the room was

freshly cleaned and all the chauki, sofa cover and the bedsheets were changed and there were some blood like spots found on the floor. Surprisingly, the I.O. (P.W.12), in paragraph 6, stated that he went to the house of this appellant on 21.04.1999 which is in fact after two months of the occurrence as the occurrence had taken place on 10.02.1999.

- 15.** The tempo driver i.e. P.W.2 could not even identify this appellant. He stated that the deceased was taken by him to the R.M.C.H. along with two boys. If that be so, then we fail to understand as to how this house of the appellant becomes the place of occurrence where murder has taken place from Khadgarha. He never whispers about the house of this appellant. Thus, there is doubt about the place of occurrence also which according to us could not be established properly by the prosecution.
- 16.** Considering all this, we find that the prosecution has not been able to prove the guilt of this appellant beyond all reasonable doubt. Thus, we are inclined to allow this appeal. Accordingly, the judgment of conviction and order of sentence dated 09.11.2002 passed by learned Additional Judicial Commissioner, Fast Track Court, Ranchi in Sessions Trial No.369 of 1999, is set aside and this criminal appeal is **allowed**. The appellant is on bail. He is

discharged from the liabilities of his bail bond and sureties are also discharged.

- 17.** Pending interlocutory applications, if any, stand disposed of.
- 18.** Let the Trial Court record be transmitted to the Court concerned along with a copy of this judgment.

(ANANDA SEN, J.)

(PRADEEP KUMAR SRIVASTAVA, J.)

Jharkhand High Court, Ranchi

Dated: 12/12/2024

Sachin / **NAFR**