

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Criminal Appeal (D.B.) No.814 of 2017

(Against the judgment of conviction dated 25.02.2017 and order of sentence dated 27.02.2017 passed by learned Additional Sessions Judge-III, West Singhbhum at Chaibasa in Sessions Trial No. 173 of 2016)

Dharmendra Samad, son of late Besra Samad, resident of Jenasai Tola, Sadhudhipa, PO and PS Toklo, District West Singhbhum
... Appellant(s).

Versus

The State of Jharkhand ... Respondent(s).

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

For the Appellant(s) : Md. Zaid Ahmed, *Amicus Curiae*
For the Respondent(s) : Mr. Bhola Nath Ojha, Spl. PP

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J U D G M E N T

17th October 2024

By Court: We have heard the learned counsel appearing for the appellant and the learned counsel for the State at length.

2. This Criminal Appeal arises out of the judgment of conviction dated 25.02.2017 and order of sentence dated 27.02.2017 passed in Sessions Trial No.173 of 2016 whereby and whereunder learned Additional Sessions Judge-III, West Singhbhum at Chaibasa convicted the appellant under section 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life with a fine of Rs. 10,000/-.

3. The learned counsel for the appellant submits that all the witnesses are interested witnesses and not a single independent witness has been examined in this case to prove the prosecution case. Further no motive has been assigned as to why the appellant have committed murder of the deceased. As per the

informant and PW3 there were other witnesses also who had seen the occurrence but they have been withheld by the prosecution for the reasons best known. Thus as per him the prosecution has not brought true facts before the Court for which benefit of doubt should be given to the appellant and he be acquitted.

4. The learned counsel appearing on behalf of the State opposes the prayer of the appellant and submits that the eye witnesses version clearly suggests that this appellant has committed murder of the deceased. When there is eye witness to the occurrence of murder, the motive loses its relevance. He further submits that the medical evidence corroborates the ocular evidence and the FSL report also corroborates that the axe which was carried by this appellant was used for commission of murder. On these grounds he prays for dismissal of this appeal.

5. The prosecution story is based upon the statement of the informant who is PW1. In the written report which is Exhibit-1 he has stated that he was in his paddy field, next to the primary school. Upon hearing hue and cry from the school, he reached at the school and saw his mother lying in a pool of blood and this appellant was fleeing from the school with an axe in his hand. When he and others chased this appellant, he fled towards the paddy field.

6. On the basis of his statement, Chakradharpur (Toklo) PS Case No. 139 of 2015 was registered under section 302 of the Indian Penal Code against the appellant.

7. After investigation, the Investigating Officer submitted chargesheet against the appellant for the offence punishable under Section 302 of the Indian Penal. On the basis of chargesheet and materials on record cognizance was taken and

the case was committed to the Court of Sessions where the charge was framed and the trial proceeded.

8. To prove the prosecution case seven witnesses were examined, who are :-

- i. PW1 :- Shyam Samad (informant)*
- ii. PW2 :- Sukura Samad*
- iii. PW3 :- Sandhya Rani Pradhan*
- iv. PW4 :- Dr. Shivlal Kunkal*
- v. PW5 :- Kunwar Singh Soren*
- vi. PW6 :- Mukund Samad*
- vii. PW7 :- S.I. Bandhana Oraon, I.O.*

9. PW4 is the doctor who conducted the postmortem of the dead body of the deceased and found the followings injuries:

External Injuries :

- (i) lacerated wound left side on forehead 1"x½" cranial cavity.
- (ii) lacerated wound on left side of neck 3"x2"x muscle deep.
- (iii) Bruise on left side above clavicle.
- (iv) lacerated wound 2"x1"x deep to cranial cavity in occipital area.
- (v) bruise in left thigh

Internal Injuries :

- (i) head meninges lacerated and pale.
- (ii) Thorax – heart left chamber empty. Right chamber contained blood lungs – empty and intact.
- (iii) Abdomen – Stomach – undigested food present.
- (iv) Other viscera – NAD

As per the opinion of the doctor the cause of death is head injury caused by sharp and heavy cutting substance.

From the postmortem report which is Exhibit-2 and also from the evidence of the doctor, we are satisfied that the prosecution has been able to prove that this is a case of homicidal death.

10. So far as the involvement of this appellant is concerned, we find that PW3 is none but a teacher of the school, where the incident had occurred. She had stated that this appellant entered

the school with an axe and asked the deceased about his daughter to which the deceased replied that she has left and then this appellant with the axe, which he was carrying assaulted the deceased on her neck and head and committed murder. There is nothing in his cross examination to disbelieve this witness. Further PW1 the informant, who was in the field next to the school, on hearing hue and cry from the school, rushed to the school and saw his mother lying in a pool of blood and this appellant leaving the school with an axe in his hand. The credibility of PW1 has not been shaken in the cross examination. PW5 was also in his field and on hearing hue and cry, went to the school and saw this appellant leaving with the axe. Similar is the statement of PW6. Thus the prosecution has been able to substantiate beyond reasonable doubt that it is this appellant who assaulted the deceased and committed the murder. Be it noted that the medical evidence also corroborated the ocular evidence, so far as the part of the body where the assault has been made is concerned.

11. Several documentary evidences were also exhibited which are as follows:

- i. Ext. 1 – written application*
- ii. Ext.1/1 – forwarding for registration*
- iii. Ext. 1/2 – registration of this case*
- iv. Ext.2 – postmortem report*
- v. Ext.3 – signature of Kunwar Singh Soren in arrest memo*
- vi. Ext.3/1 – signature of Bandhan Oraon on the arrest memo*
- vii. Ext.4 – signature of Kunwar Singh Soren in seizure list*
- viii. Ext.4/1 – signature of Bandhan Oraon on seizure list of axe*
- ix. Ext. 5 – inquest report*
- x. Ext.5/1 – signature of Bandhan Oraon on the inquest report*
- xi. Ext.6 – formal FIR*
- xii. Ext.7 &7/1 – FSL Reports*

12. The prosecution has also exhibited the Forensic Science Laboratory (FSL) Report. As per the FSL Report, blood was

found in the iron blade of the axe and also on the soil which was collected where the deceased was lying dead. As per the FSL report (Exhibit-7 and 7/1) both the blood are of human origin of the same group. This also suggests that the axe which the appellant was carrying was used for committing the murder.

13. All the aforesaid facts have been duly considered by the trial Court and thereafter the trial Court arrived at the conclusion that it is only this appellant who had committed the murder. We don't find any material to disagree with the aforesaid finding of the trial Court.

14. Thus, this criminal appeal is dismissed.

15. Accordingly, the judgment of conviction dated 25.02.2017 and the order of sentence dated 27.02.2017 passed by learned Additional Sessions Judge-III, West Singhbhum at Chaibasa in Sessions Trial No.173 of 2016 are affirmed.

16. We had requested Md. Zaid Ahmed, the learned counsel to assist this Court and appointed him as learned *Amicus Curiae*. Considering his proper assistance, we direct the Jharkhand High Court Legal Services Committee to pay a remuneration of Rs. 7,500/- to Md. Zaid Ahmed, the learned *Amicus Curiae*.

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

(ANANDA SEN, J.)

(GAUTAM KUMAR CHOUDHARY, J.)

High Court of Jharkhand, Ranchi

Dated : 17/10/2024

Tanuj/

N.A.F.R.