Neutral Citation No. (2026:JHHC:20814-DB)

Criminal Appeal (DB) No. 1579 of 2003

[Against the judgment and order of conviction and sentence dated 29.09.2003 (sentence passed on 30.09.2008) passed by Sri. Rajesh Kumar Pandey, learned 5th Addl. Sessions Judge, Fast Track Court No. 2, Godda in Sessions Case No. 66 of 2003**]**

Kanti Singh, S/o Bugan Brame, R/o Village Barabandhe, P.S.- Pathargama, Sub-Division & District- Godda (Jharkhand) . ... **Appellant**

Versus

The State of Jharkhand .... **Respondent**

P R E S E N T

HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY

HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

For the Appellant : Mrs. Snehlika Bhagat, *Amicus Curiae*

For the State : Mr. Shailesh Kr. Sinha, A.P.P.

C.A.V. on 10/07/2026 **Pronounced on 14/07/2026**

Per Rongon Mukhopadhyay, J.

Heard Mrs. Snehlika Bhagat, learned *Amicus Curiae* for the appellant and learned A.P.P. for the State.

2. This appeal is directed against the judgment of conviction and order of sentence dated 29.09.2003 (sentence passed on 30.09.2008) passed by Sri. Rajesh Kumar Pandey, learned 5th Addl. Sessions Judge, Fast Track Court No. 2, Godda in Sessions Case No. 66 of 2003, whereby and whereunder, the appellant has been convicted for the offences punishable u/s 302/201 of the IPC and has been sentenced to undergo R.I. for life along with a fine of Rs. 1000/- for the offence u/s 302 of the IPC and R.I. for three years along with a fine of Rs. 500/- for the offence u/s 201 IPC. On default in payment of fine he was directed to undergo S.I. for three months for both the offences and the sentences were directed to run concurrently.

3. The prosecution case arises out of the fardbeyan of Baski Mahto recorded on 17.02.1999, in which, it has been stated that he does the work of farming by staying

in the village with his family. The informant has six bighas of land and he resides separate from his brother Jagannath Mahto @ Rasik Mahto. It has been stated that the brother of the informant on 12.02.1999 at about 3:00 P.M. had left for Gandhigram Hatia. On the same day at 5:00 P.M the niece of the informant namely, Tetri Kumari had send half Kg. of fish for preparation. At 6:00 P.M. Tetri Kumari had come to the house with fish and disclosed that her father after handing over the fish had left for the Hatia to have Toddy. The brother of the informant did not return at night and the informant thought that he might have gone to the house of some relative. When on the next morning he did not return the informant starting searching for him in his relations place but no trace could be found of him. It has been alleged that today i.e. on 17.02.1999 when the nephew of the informant had gone to graze cattle in the jungle, he had found the dead body of Jagannath Mahto inside a well. On such information, the villagers and the informant had gone to the well and had seen the dead body of Jagannath Mahto floating in the well. It was suspected that some unknown persons had committed the murder of the brother of the informant and to hide the dead body had dumped it in the well.

Based on the aforesaid allegations Pathargama P.S. Case No. 20/1999 was instituted for the offences u/s 302/201 of the IPC. On completion of investigation charge sheet was submitted and after cognizance was taken the case was committed to the Court of Sessions where it was registered as Sessions Case No. 66 of 2003. Charge was framed against the accused u/s 302 IPC which was read over and explained to the accused in Hindi to which he pleaded not guilty and claimed to be tried.

4. The prosecution has examined as many as twelve witnesses in support of its case.

5. P.W.1 (Deenbandhu Mishra) has proved the handwriting and signature of the then Officer-in-Charge of Pathargama P.S. on the First Information Report which has been marked as Exhibit-1.

6. P.W.2 (Surendra Pandey) has stated that when he had come back home the Police had asked him to sign on a piece of paper. He had signed due to the pressure of the Police.

In cross-examination, he has deposed that he had not seen the dead body.

7. P.W.3 (Rawan Kisku) has been declared hostile by the prosecution.

8. P.W.4 (Ram Kisun Das) has proved his signature on the inquest report which has been marked as Exhibit- 2. The Police had not recorded his statement. He is acquainted with Kanti Singh and not the other accused.

In cross-examination, he has deposed that he does not remember whether he had signed on a blank paper or not.

9. P.W.5 (Tala Soren) has been declared hostile by the prosecution.

10. P.W.6 (Tetri Kumari) has stated that she had accompanied her father Rasik Mahto to Gandhigram Hatia at 4:00 P.M. Her father had purchased fish and gave it to her along with Rs. 10/- and Kanti Singh as well as Yogendra Singh were also present who had asked her to go home with an assurance that they will ensure that her father returned soon. Both the accused persons had taken their father towards the Toddy shop. She returned back home and when her father did not return a search was conducted and after 4-5 days the dead body of her father was recovered from a well situated near Chatra Chota Tanr Hat. The case was lodged on the fardbeyan of her uncle Baski Mahto.

In cross-examination, she has deposed that the well from where the dead body of her father was recovered was not a lined well. The cycle of her father was also retrieved from the same well. She had not informed either the village Chowkidar or the Police Station about the disappearance of her father.

11. P.W.7 (Savitri Devi) is the wife of the deceased who has stated that her daughter had accompanied her husband to the market and her daughter returned home with fish. On being asked about her father her daughter had disclosed that Kanti Singh and Yogendra Singh were with her father who had assured to leave her father to his house. The dead body of her husband was recovered after five days from a well. The cycle of her husband was also retrieved from inside the well.

In cross-examination, she has deposed that the well is situated at a distance of hundred hands from her house. The well did not have any brick lining. She had not informed the Police or the Chowkidar about the disappearance of her husband. Baski Mahto is her brother-in-law. She has stated that her statement was recorded by the Police after thirteen days from the recovery of the dead body of her husband.

12. P.W.8 (Ajit Kumar Mahto) and P.W.9 (Angad Mahto) did not support the case of the prosecution and were declared hostile by the prosecution.

13. P.W.10 (Baski Mahto) is the informant who has stated that about three years back his brother Jagannath Mahto was murdered. His brother had gone to the market at Gandhigram along with his daughter Tetri and Tetri had returned and disclosed that her father will come later on. His brother did not return either in the evening or in the next morning and despite search he could not be found. On the

fifth day the dead body of his brother along with his bicycle were found in a well near Chota Tanr Hat. The information about the discovery of the dead body was given to him by his nephew Durjan Mahto. He had gone to the place of occurrence and several villagers had also assembled. After the dead body was taken out from the well the Police was informed. His fardbeyan was recorded by the Police.

In cross-examination, he has deposed that he and the deceased are brothers who share a common courtyard. The distance between his house and the well from where the dead body of his brother was recovered is about one Kilometre. The dead body was taken out from the well after the Police had come. The water lying inside the well was about 1- 1½ feet. The head and chest of the deceased was pointed towards the bottom of the well while the legs were pointing upwards. The well was not lined with bricks. The well was about ten feet deep having a circumference of four feet. He has deposed that the well was surrounded on all sides by farm land. The people travel on the road situated at a distance of ten feet from the well. The well was dug about ten years back by the local Government authority. He had not informed the Chowkidar of the village about his brother not being traced out.

14. P.W.11 (Dr. Ajay Kumar Jha) was posted at Sadar Hospital, Godda and on 17.02.1999 he had conducted autopsy on the dead body of Jagannath Mahto @ Rasik Mahto and had found the following:

i) Bruise on forehead 3" x 2" one a swelling.

ii) Abrasion on lateral side of left eye 2" x 1" in size.

iii) Nasal bridge was swollen with crepitus.

iv) Fluctuant swelling around both eyes.

v) Bruise 3"x2" over left temporal region.

The cause of death was opined to be due to shock and haemorrhage caused by head injury. The postmortem report has been proved and marked as Exhibit-3.

In cross-examination, he has deposed that the injuries were possible by fall from a higher place. All the injuries were antemortem in nature.

15. P.W.12 (Gupteshwar Singh) was posted as Officer-in-Charge of Pathargama P.S. and on 17.02.1999 he had heard a rumour that a dead body is floating in the well at Piprahat. After making a Station Diary entry he had left for Piprahat along with other Police personnel and on reaching the said place he had found the dead body of a person inside a well and several persons had gathered by then. The onlookers had disclosed that the dead body is of Jagannath Mahto @ Rasik Mahto. He had recorded the fardbeyan of Baski Mahto near the well itself. He has proved the fardbeyan which has been marked as Exhibit-4. He had recorded the restatement of the informant and had also recorded the statements of Savitri Devi and Tetri Kumari. He has proved the inquest report which has been marked as Exhibit-5. He had inspected the place of occurrence which is an under constructed Government well under the Jawahar Rojgar Yojana and the well is fifteen feet deep and it was holding water of about four and a half feet. The lining of the well was three feet in height. He had prepared a dead body challan and had send the body for autopsy. He had recorded the statement of other witnesses. On account of his transfer to Sundarpahari P.S. he had handed over the investigation to Sub-Inspector Shiv Bacchan Singh. The charge-sheet was submitted by Sub-Inspector Shrinivas. The witness Tala Soren had stated that around 6:30 P.M. he and Rawan Soren were returning home and they had seen Kanti Singh going along with Rasik. When they reached Singhaldih tanr they

had seen Rasik Mahto being taken away by Kanti Singh towards the Singhaldih road. On the next day he had come to learn that the dead body of Rasik Mahto was found in the village at Piprahat. He had expressed suspicion that Kanti Singh had administered poison to Rasik Mahto and had thrown the dead body in the well. The witness Ajit Kumar Mahto had stated that on 12.04.1999 at 6:30 P.M. he had seen Jagannath Mahto and Kanti Singh conversing. The witness Angad Mahto had stated that about 2-3 years back Rasik Mahto had abused and assaulted the accused persons and chased them away. Along with the dead body an old bicycle was also taken out.

In cross-examination, he has deposed that that in his fardbeyan and restatement Baski Mahto had stated that Tetri Kumari had disclosed that the appellant had gone alone to the market to consume Toddy. The witness Savitri Devi had not stated that Tetri had disclosed that Kanti Singh had assured her that he will drop her father home. He had returned the bicycle to Baski Mahto. The wall of the well was not secured.

16. The statement of the accused was recorded u/s 313 Cr.P.C., in which, he has denied his complicity in the offence.

17. It has been submitted by Mrs. Snehlika Bhagat, learned *Amicus Curiae* for the appellant that the First Information Report was lodged only after the dead body of Rasik Mahto was discovered lying inside a well. The appellant has been implicated only on the basis of suspicion of being last seen with the deceased but absence of any proximity with the missing of Rasik Mahto and the recovery of his dead body would dilute the theory of last seen as promulgated by the prosecution. Mrs. Bhagat has submitted that most of witness had not supported the case of prosecution. The evidence of

P.W.6 assumes significance since she is the sole eye-witness who had seen the deceased going with the appellant and Yogendra Singh but neither in the fardbeyan of P.W.10 the name of the appellant finds place nor as per P.W.12, P.W.10 had disclosed about the appellant and Yogendra Singh accompanying her father to have Toddy. Mrs. Bhagat, learned *Amicus Curiae* has submitted that the learned trial court has applied a different yardstick in the case of the present appellant from the case of Yogendra Singh whose presence with the deceased was also disclosed by P.W.6 and who has been acquitted by the learned trial court. The autopsy report as well as the description of the place of occurrence has also been highlighted by the learned counsel for the appellant while submitting that the deceased was found inside the well and his bicycle was also recovered from the well which would be suggestive of the fact that the deceased in a drunken condition had fallen down in the well which was under constructed and the injury sustained by the deceased does support the theory of accidental death. It has been submitted that the well was not elevated and was cushioned in the ground which would enhance the probability that the deceased had fallen down accidently and died. No motive has been assigned to the appellant for committing the murder and the totality of the case would reveal that it is a case of no evidence.

18. Learned A.P.P. for the State has submitted that the death was homicidal and there are strong circumstances projected by the prosecution primarily emanating from the evidence of P.W.6 and P.W.12. Several of the witnesses have consistently stated before the Police about the deceased having been last seen with the appellant. The deceased had died on account of head injury which can be attributed to the appellant.

19. We have heard the learned counsel for the respective sides and have also perused the Trial Court Records.

20. The brother of the informant had gone to the market on 12.02.1999 but he did not return and a search made by the family members did not yield any result and after five days i.e. on 17.02.1999 the dead body of Rasik Mahto was found in a semi constructed well with his chest and head below the water and the legs jutting out pointing upwards. Admittedly, from the evidence of the witnesses the disappearance of Rasik Mahto was not informed to the village Chowkidar or to the Police and even the villagers seem to be not aware about such happening. The FIR was lodged after the dead body of Rasik Mahto was recovered. The contents of the fardbeyan merely reveal suspicion against some unknown persons. Subsequently, however the prosecution has developed its case regarding the appellant being last seen with the deceased and this version has led to the conviction of the appellant. The evidence of the witnesses more particularly P.W.6 also reveals the culpability of Yogendra Singh but the learned trial court has failed to appropriately notice that there is no distinguishing feature in the acts attributed to the appellant and acquitting Yogendra Singh while convicting the appellant unerringly points to the apparent contradiction in the impugned judgment of conviction. When we consider the evidence of P.W.12 it transpires that the informant (P.W.10) has stated before the Police that P.W.6 had disclosed that the deceased had gone alone to have toddy and there is no whisper about the presence of the appellant with the deceased. P.W.12 has stated about the disclosure regarding the last seen theory by P.W.5, P.W.8 and P.W.9 but all these three witnesses have been declared hostile by the prosecution. Even if we assume

that P.W.6 had seen the deceased with the appellant but any such suspicion in that respect would be nullified by the considerable gap of the deceased missing and recovery of his dead body. In the context of the same reference be made to the case of "*Dinesh Kumar vs. State of Haryana*" reported in *(2023) 20 SCC 49*, wherein it has been held as follows:

> ***"27.*** *The evidence of last seen becomes an extremely important piece of evidence in a case of circumstantial evidence, particularly when there is a close proximity of time between when the accused was last seen with the deceased and the discovery of the body of the deceased, or in this case the time of the death of the deceased. This does not mean that in cases where there is a long gap between the time of last seen and the death of the deceased the last seen evidence loses its value. It would not, but then a very heavy burden is placed upon the prosecution to prove that during this period of last seen and discovery of the body of the deceased or the time of the death of the deceased, no other person but the accused could have had an access to the deceased. The circumstances of last seen together in the present case by itself cannot form the basis of guilt. (See Anjan Kumar Sarma v. State of Assam.)*
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> ***28.*** *The circumstance of last seen together does not by itself lead to an irrevocable conclusion that it is the accused who had committed the crime. The prosecution must come out with something more to establish this connectivity with the accused and the crime committed. Particularly, in the present case when there is no close proximity between circumstances of last seen together and the approximate time of death, the evidence of last seen becomes weak. (See Malleshappa v. State of Karnataka.)****"***

21. P.W. 12 has given a vivid description of the place of occurrence which is an under constructed wall existing for ten years and was conceptualized under the Jawahar Rojgar Yojana. There was no brick lining in the well and it was surrounded by farmland with a road existing at a

distance of 10 feet from the well frequented by passersby. It was virtually a "well of death" as neither it had sufficient elevation from the ground nor it was lined with bricks and on account of the bicycle of deceased and the deceased having been pulled out from the well and from the injuries suffered by the deceased as per the autopsy report it can clearly be inferred that the deceased in a drunken condition had fallen down on the well along with his bicycle causing his death. In his cross-examination, P.W.11 has opined that such injuries are possible by fall from a high place. Even otherwise there is no iota of evidence projected by the prosecution which can be said to be of a sterling quality thus strengthening the case of the prosecution. The contradictions, infirmities, ambiguities and the apparent lack of circumstantial evidence of any sort against the appellant is palpable and it was erroneous on the part of the learned trial court to have convicted the appellant more so when on the same set of evidence Yogendra Singh has been acquitted.

22. Thus, on a consideration of the entire aspects of the case as discussed above, we hereby set aside the impugned judgment and order of conviction and sentence dated 29.09.2003 (sentence passed on 30.09.2008) passed by Sri. Rajesh Kumar Pandey, learned 5th Addl. Sessions Judge, Fast Track Court No. 2, Godda in Sessions Case No. 66 of 2003.

23. Since the appellant is on bail he is discharged from the liability of his bail bond.

24. Pending I.As., if any, stands closed.

25. We take this opportunity to appreciate the efforts rendered by Mrs. Snehlika Bhagat, learned *Amicus Curiae* in assisting the Court and we hereby direct the Member Secretary, Jharkhand High Court Legal Services Committee to extend an amount of Rs. 10,000/- to Mrs.

Snehlika Bhagat towards her professional fees within a period of three weeks from the date of receipt/production of a copy of this order.

(Rongon Mukhopadhyay, J.)

(Pradeep Kumar Srivastava, J.)

High Court of Jharkhand at Ranchi
Dated, the 14th day of July, 2026.
A. Sanga /-
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