IN THE HIGH COURT OF JHARKHAND AT RANCHI

Criminal Appeal (D.B.) No.299 of 2002

WITH

Criminal Appeal (D.B.) No.241 of 2002

WITH

Criminal Appeal (D.B.) No.273 of 2002

(Arising out of judgment of conviction dated 24.04.2002 and order of sentence dated 14.05.2002 passed by Learned Additional Judicial Commissioner-cum-Spl Judge-II, Ranchi, in S.T. No.386 of 1996)

Criminal Appeal (D.B.) No.299 of 2002

Panchu Mahato, son of late Shudhu Mahato, resident of Village Tipudana, P.O. & P.S. Hatia, District Ranchi.

... ... Appellant

Versus

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

WITH

Criminal Appeal (D.B.) No.241 of 2002

Baldeo Mahato, son of late Banu Mahato, resident of Village Tipudana, P.O. Hatia, P.S. Hatia, District Ranchi.

... ... Appellant

Versus

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

WITH

Criminal Appeal (D.B.) No.273 of 2002

Dharmu Mahto, son of late Sudhu Mahto, resident of Village Tipudana, P.O. & P.S. Hatia, District Ranchi.

... ... Appellant

Versus

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

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

For the Appellants : Mr. Rohan Mazumdar, Advocate
For the State : Ms. Nehala Sharmin, Spl. P.P.
Mr. Tarun Kumar, A.P.P.
Mr. Saket Kumar, P.P.

J U D G M E N T

By Court, :

11th December, 2024

These Criminal Appeals are preferred on behalf of the appellants being aggrieved by the impugned judgment of conviction dated 24.04.2002 and order of sentence dated 14.05.2002 passed by Learned Additional Judicial Commissioner-

cum-Spl Judge-II, Ranchi, in S.T. No.386 of 1996, whereby and wherein the appellants have been convicted for offences under Sections 302/34 and 120-B I.P.C. They were sentenced to undergo rigorous imprisonment for life with fine of Rs.10,000/- each under Sections 302/34 and 120 B IPC. No fine under Section 120B IPC.

2. Heard learned counsel representing the appellants and learned counsel representing the State at length. Perused the material available on record.

3. The F.I.R. is at the instance of Chandra Oraon. It is the prosecution case that on 05.11.1995 at about 10:00 P.M., Poli Kerketta came to the residence of the informant for taking hen. While she was returning to her house, his brother namely Jabru Oraon and cousin Guna Oraon (both deceased) went to her house to escort her. These two male members did not return at night. The informant thought that they might have stayed in their shop at Jhari More. On 06.11.1995 at 06:00 A.M., one Ram Subhag Singh came and informed him that the dead body of Jabru Oraon and Guna Oraon were lying in front of the house of Baldeo Mahto at the *kacchi* road. On receiving this information, the informant along with Etwa, reached the place of occurrence and saw the dead body of his brother lying on the road in front of the house of the appellant – Baldeo Mahto and some blood stains were also seen on the wall of the house of Baldeo Mahto. The informant stated that there was some altercation from the house of Panchu Mahato and the dead body of Guna Oraon and Jabru Oraon was dragged from the house of Panchu Mahato and thrown in the northern road in front of the house of Baldeo Mahto. The cause of the murder is that 32 to 35 years ago, father of the informant had taken Rs.600/- (Rupees six hundred), from father of the accused and the land of the father of the informant was kept as a mortgage. The brother of the informant requested Panchu Mahato and Dharmu Mahto several times to return the land but they did not care to return the land, thus, they have committed the murder.

4. On the basis of aforesaid statement, F.I.R. being Hatia P.S. Case No.205/1995 was registered under Section 302/34 IPC. After

investigation, the charge-sheet was submitted under Sections 302/34 and 120B IPC. Thereafter, cognizance was taken against the appellants and the case was committed to the Court of Sessions. The appellants pleaded not guilty and were put on trial.

5. To prove the prosecution case, altogether 10 prosecution witnesses were examined in this case.

6. P.W.-10 is the Doctor namely Dr. Ram Sewak Sahu, who conducted the post-mortem on the dead body of Guna Oraon and Jabru Oraon, and found following injuries.

Guna Oraon :-

(1) Abrasion 2 cm x 1 cm left elbow back

(2) Incised wounds

(a) 18 cm x 4 cm bone deep left head starting from left forehead to occipital region of head across the left temporal bone cutting the frontal temporal and occipital bone including brain matter. The cut portion is attached with head with a flap of scalp.

(b) 17 cm x 3 cm x bone deep, 15 cm x 2 cm x bone deep, 14 cm x 2 cm x bone deep, 7 cm x 2 cm x bone deep over left cheek situated transversely cutting the underlying bone and brain matter. There is blood and blood clot in the soft tissue and bony tissue at the sight of the cut injury.

Jabru Oraon :-

(1) Abrasion 3 cm x 2 cm left shoulder top.

(2) Incised wounds:-

(a) 27 cm x 3 cm x bone deep on left face upper part starting from the centre of forehead to occipital region across the left cheek, pinna, left mastoid region and occipital bone cuts of the soft tissue bone and brain metal. The wound is situated transversely.

(b) 23 cm x 2 cm x bone deep, 11 cm x 2 cm x bone deep, 13 cm x 2 cm x bone deep over left cheek situated transversely cutting the soft tissue and underlying bone. It is below the injury No.(a). There is infiltration of blood and blood clots at the side of cut injury.

The post-mortem reports of both the deceased were marked

as Ext.2 and Ext.2/1 respectively.

From the nature of the injuries found on the body of the deceased and the evidence of the Doctor, it is clear that the death is homicidal.

7. Now, the most important question is as to what are the materials to implicate these appellants in this case. Admittedly, there are no eye witness to the occurrence of murder or any assault. The sister of the deceased whom the deceased had escorted to her house has also not been examined in this case. The entire case is based on circumstantial evidence.

8. P.W.-1 namely Ram Subhag Singh, stated that he had seen the dead body in the morning lying in front of the door of Baldeo Mahto on road. This witness did not utter any word about the involvement of these appellants save and except the fact that some blood stains were found in the house of Baldeo Mahto and the body was found in front of his house.

9. The informant namely Chanda Oraon is P.W.-9. He also stated that when he had gone to the place of occurrence where the dead body was lying, he saw the dead body was lying in front of the house of Baldeo Mahto and there were blood stains. Save and except this statement, there is nothing important in his evidence.

10. P.W.-4 namely Ashok Nayak is the seizure witness who stated that a *balua* (a sharp cutting weapon) was seized by the police and the same was blood stained. As per him, the said material was seized from the house of Panchu Mahato.

Even if we accept his statement, then it is clear that there is no recovery from the house of Baldeo Mahto and Dharmu Mahto. The recovery of a weapon from the house of Panchu Mahato is not a conclusive proof of his involvement in the occurrence as neither the weapon was sent to the forensic expert nor the blood stains which were found on the said weapon has been established and proved to be blood stains and that too, blood of a human being. From the entire evidence led by the prosecution save and except the fact that the two bodies were recovered in front of the house of Baldeo Mahto and there were some blood

stains, there is no other material to relate these appellants.

11. The circumstance that the dead body was found in front of the house of Baldeo Mahto is too weak a circumstance to implicate the appellants in this case. No matter even if the motive i.e. the mortgage of the land is proved, then also, it cannot be conclusively proved that these appellants had committed murder of the deceased. We find that there is no legal evidence to implicate these appellants in this case, considering the nature of evidence which has been led.

12. Further, it is important to note that the Investigating Officer has not been examined in this case. Thus, the place of occurrence and whether the stains were blood stains or not, could not be proved also. In absence of any legal evidence, it is not proper to sustain the conviction as the chain of circumstances is not complete nor each chain has been proved by the prosecution in this case. Thus, we are inclined to acquit these appellants.

13. Accordingly, these Criminal Appeals are **allowed.** The impugned judgment of conviction dated 24.04.2002 and order of sentence dated 14.05.2002 passed by Learned Additional Judicial Commissioner-cum-Spl Judge-II, Ranchi, in S.T. No.386 of 1996, are hereby set aside. As the appellants are on bail, they are discharged from the liability of bail bonds, so are the bailers.

14. Pending interlocutory application, if any, stands disposed of.

15. Trial Court Record be transmitted back to the Court concerned.

(ANANDA SEN, J.)

(PRADEEP KUMAR SRIVASTAVA, J.)

HIGH COURT OF JHARKHAND, RANCHI
Dated:- 11/12/2024
NAFR / Prashant