IN THE HIGH COURT OF JHARKHAND AT RANCHI
(Criminal Appellate Jurisdiction)
Cr. Appeal (DB) No. 618 of 2018
……..

[Against the judgment of conviction dated 25.04.2018 and order of sentence dated 27.04.2018, passed by Sri Uttam Anand, learned Additional Sessions Judge-I, Bermo at Tenughat (Bokaro) in connection with Sessions Trial Case No.115 of 2011, arising out Bermo at Tenughat P.S. Case No.89 of 2010, corresponding to G.R. No.1131 of 2010]

Mahru Mahto ... … **Appellant**

Versus

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

PRESENT

CORAM : HON'BLE MR. JUSTICE RATNAKER BHENGRA
HON'BLE MR. JUSTICE AMBUJ NATH

For the Appellant : Mr. Arwind Kumar, Advocate
For the State : Mr. Vishwanath Roy, Spl.P.P.

C.A.V. on 17.01.2024 **Pronounced on 7.05.2024**

Heard the parties.

2. The appellant Mahru Mahto has filed this criminal appeal against the judgment of conviction dated 25.04.2018 and order of sentence dated 27.04.2018, passed by Sri Uttam Anand, learned Additional Sessions Judge-I, Bermo at Tenughat (Bokaro) in connection with Sessions Trial Case No.115 of 2011, arising out Bermo at Tenughat P.S. Case No.89 of 2010, corresponding to G.R. No.1131 of 2010, holding the appellant Mahru Mahto guilty of offences under Sections 302/201 of the Indian Penal Code and thereby sentencing him to undergo R.I. for life alongwith fine of Rs.5,000/- for the offence under Section 302 of the Indian Penal Code and R.I. for 4 years alongwith fine of Rs.5,000/- for offence under Section 201 of the Indian Penal Code and in default of payment of fine under both these Sections, the appellant was further directed to undergo R.I. for six months. Both the sentence are directed to run-concurrently and the period of detention already under gone shall be set off against the sentences imposed.

3. The prosecution case was instituted on the basis of fardbeyan of the informant namely Mathura Prasad Mahto alleging therein that his sister Jamanti Devi was married to the appellant 17-18 years ago. They had a 10 years differently abled girl from the wedlock. In the meantime, the appellant married again with one Tulia Devi. On 15.12.2010, he

came to know that the appellant had committed murder of Jamanti Devi by drowning her. Accordingly, this case was instituted.

4. After investigation police found the occurrence to be true and submitted charge sheet against the appellant under Sections 302/201 of the Indian Penal Code and cognizance was taken of this case by learned A.C.J.M., Bermo at Tenughat on 15.02.2011.

5. This case was committed to Court of Session on 16.03.2011 as it was exclusively triable by the Sessions Court. Charge was framed against the appellant on 21.04.2011 by Session Judge, Bokaro under Sections 302/201 of the Indian Penal Code. The contents of the charge was read over and explained to the appellant in Hindi to which he pleaded not guilty and claimed to be tried.

6. In order to prove its case prosecution has adduced both oral and documentary evidence.

7. Koleshwar Mahto P.W.1 is brother of the deceased. He is hearsay witness. Ratilal Mahto P.W.2, Motilal Mahto P.W.3 and Baijnath Mahto P.W.4 all have supported the prosecution case.

Sanju Kumari P.W.5 has also supported the prosecution case and she has claimed to be eye witness.

Gurudayal Mahto P.W.6 has supported the prosecution case. He is hearsay witness.

Mathura Prasad Mahto P.W.7 is the informant of this case. He has supported the prosecution case and he has proved fardbeyan, which was marked as Exhibit-1.

Dr. Ajit Kumar Singh P.W.8 had performed postmortem on the dead body of the deceased. He has proved the postmortem report, which has been marked as Exhibit-3.

Subodh Ekka P.W.9, who is the investigating officer of this case. He has proved the formal F.I.R. which was earlier marked Exhibit-4.

8. Statement of the appellant was recorded under Section 313 Cr.P.C. The defence is general and denial of the occurrence and false implication.

9. On the basis of the evidence both oral and documentary available on the record, the learned trial court held the appellant guilty and sentenced him accordingly.

10. Mr. Arwind Kumar, learned counsel appearing on behalf of the appellant has submitted that the sole eye witness who is the daughter of the appellant and the deceased has not been examined. It was further submitted that the entire prosecution case is based on hearsay evidence. On these ground, it was prayed that this appeal may be allowed and the appellant may be acquitted of the charge.

11. Mr. Vishwanath Roy, learned Spl.P.P. submitted that all the prosecution witnesses and also eye witnesses have supported the prosecution case. The ocular account of these witnesses are corroborated with finding in the postmortem report and as such, there is no doubt towards guilt of the appellant in committing murder of his wife Jamanti Devi. It was prayed that this appeal may not be allowed**.**

12. Now it has to be ascertained whether the prosecution has been able to prove its case against the appellant beyond all reasonable doubt.

In order to come to the aforesaid finding it has been further ascertained:-

(i) Whether the deceased Jamanti Devi had died homicidal death?

(ii) If so, whether the appellant has caused homicidal death of Jamanti Devi?

It is case of the prosecution that on 15.12.2010 at about 12 noon the appellant has submerged Jamanti Devi in a Nala (rivulet) due to which she died.

Dr. Ajit Kumar Singh P.W.8 had performed the postmortem of dead body of the deceased and found the following injuries on her person:-

> *Externally – abrasion left side of neck about 1/2"x 1/3", Swelling left side of neck about 1/2"x 1/2", Abrasion, left elbow 1/2"x 1/3", Abrasion back of left shoulder on Scapula about*
>
> *1 ½"x 1/3" white persistent fine froth coming out of mouth.*

13. Accordingly to this witness, the cause of death of the deceased was asphyxia as a result of drowning. He has proved the postmortem report which is Exhibit-3.

14. From the perusal of the postmortem report Exhibit-3, it appears that the finding of Dr. Ajit Kumar Singh recording the injuries sustained by the deceased and cause of her death fully corroborates with

his oral testimony made by him in the court as P.W.8.

15. The cause of death of the deceased was asphyxia as a result of drowning. However, several abrasions were found on the person of the deceased.

(i) Abrasion on the left side of the neck 1/2 x 1/3",

(ii) Swelling on left side of neck about 1/2 x 1/2",

(iii) Abrasion on the left elbow 1/2 x 1/3",

(iv) Abrasion on the back of left shoulder on scapula about 1 ½" x 1/3" white persistent fine froth coming out of mouth. Nature of these injuries confirms the facts that death of the deceased was not accidental but she was forced to drown due to which she died of asphyxia.

16. Accordingly, we come to finding that deceased Jamanti Devi died a homicidal death.

17. It is case of the prosecution that the appellant Mahru Mahto had murdered of his wife.

Mathura Prasad Mahto P.W.7 is the informant of this case has supported that Manju Kumari and Champa Devi had seen the occurrence. He has further stated that these two witnesses tried to intervene the appellant but he threatened them of dire consequence and thereafter, carried the body of the deceased to dispose it off. However, he was chased by 10-12 persons, on seeing them the appellant fled away leaving the body behind.

In his cross-examination, he has stated that while the appellant was committing murder of the deceased, Champa Devi and Manju Kumari had told him not to do so on which appellant had threatened them of dire consequence.

Champa Devi and Manju Kumari have not been examined.

Baij Nath Mahto P.W.4 has stated that on 15.12.2010 at about 12:30 noon, the appellant had committed murder of his wife Jamanti Devi by submerging her in a Nala (rivulet) due to which she died.

Sanju Kumari P.W.5 has claimed to be eye witness, she has stated that on 15.12.2010 at about 12:00 noon, Jamanti Devi had gone to take bath when Mahru Mahto forced her head inside the water and sat on her body due to which she died. She has not been cross-examined on the point of manner of occurrence. She had denied that Jamanti Devi had

died due to drowning.

18. From the statement of Sanju Kumari P.W.5, it is apparent that she had seen the appellant forcing the head of the deceased forcibly inside the water due to which she died. It is the case of the defence that Sanju Kumari P.W.5 is not an eye witness. No suggestion has been given to Sanju Kumari P.W.5 to this effect. The prosecution has examined the Investigating Officer namely Subodh Ekka P.W.9. This witness has not been confronted with the fact that Sanju Kumari P.W.5 was not an eye witness to this case. The statement of Sanju Kumari P.W.5 is consistent and cannot be discarded just because the defence claims that she is not an eye witness. The prosecution has also been able to show that the appellant was trying to dispose of the dead body of Jamanti Devi.

19. In view of the aforesaid facts, we come to a finding that the deceased Jamanti Devi died a homicidal death and the appellant Mahru Mahto, who is her husband had caused her homicidal death by forcibly submerging her head in the river while she was taking bath due to which she died.

20. We do not find any discrepancy in the judgment of the learned trial court holding the appellant guilty of offences under Sections 302/201 of the Indian Penal Code.

21. Accordingly, this appeal is dismissed.

22. Pending I.A., if any, also disposed of.

(Ratnaker Bhengra, J.)

(Ambuj Nath, J.)

Jharkhand High Court, Ranchi
Dated: 7/05/2024

Jay/-