IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Appeal (D.B.) No. 1666 of 2017

[Against the judgment and order of conviction and sentence dated 02.08.2017 & 08.08.2017 respectively, passed by learned District & Additional Sessions Judge-III, Godda in S.T. No. 140 of 2007]

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1. Md. Mustafa @ Gulam Mustafa, son of Anwar Ali, resident of Village-Rajoun, P.O.-Madhura, P.S.-Belbadda, District-Godda, Jharkhand
2. Md. Salim, son of Late Mahabulla, resident of Village-Amdiha, P.O.-Madhura, P.S.-Belbadda, District-Godda, Jharkhand

... ... **Appellants**

Versus

The State of Jharkhand … … **Respondent**

P R E S E N T

SRI ANANDA SEN, J.

SRI PRADEEP KUMAR SRIVASTAVA, J.

For the Appellants : Mr. Venkatesh Kumar, Advocate
Mr. Jai Shankar Tripathi, Advocate

For the State : Mr. Sanjay Kumar Srivastava, A.P.P.

JUDGMENT

C.A.V. on 05.10.2026 **Pronounced on 06/11/2026**

Per- Pradeep Kumar Srivastava, J:

1. We have heard the arguments of Mr. Venkatesh Kumar, learned counsel for the appellants and Mr. Sanjay Kumar Srivastava, learned A.P.P. for the State.

2. The instant criminal appeal is directed against the judgment and order of conviction and sentence dated 02.08.2017 & 08.08.2017 respectively, passed by learned District & Additional Sessions Judge-III, Godda in S.T. No. 140 of 2007, whereby and whereunder the appellants have been held guilty for the offence under Section

302/34 of the I.P.C. and sentenced to undergo imprisonment for life along with fine of Rs.10,000/- each with default stipulation.

Factual Matrix: -

3. The factual matrix giving rise to this appeal, as per the *fardbeyan* of the informant, Md. Anwar Ali, recorded by S.I. Ramchandar Mahato, is that on 22.04.2007, at about 5:00 a.m., he had gone to Khaira Matukia *bahiyar* to plough his field. He was accompanied by his second wife, Sadika Khatoon, who helped him drive the oxen there. He further stated that at around 6:00 a.m., his son Mustafa, aged about 27 years (from his first wife), accompanied by his father-in-law Salim and brother-in-law Minsar arrived at the place of occurrence. They demanded that a half share of the land be given to Mustafa and that the land be ploughed only after the share was given. Sadika Khatoon replied that her children were very young and the land would be partitioned only when they shall attain age of majority. At this, the accused persons left, threatening them with dire consequences. At about 7:20 a.m., when Sadika Khatoon was returning to her house and had reached west of village Rajoun and east of the *Peepal Bam Kali Sthan*, near the field of the late Ali Mohammad, the above-named three accused persons killed her by shooting her and slitting her throat. The informant further stated that upon hearing the gunshot, he rushed toward the place of occurrence and saw the accused persons fleeing. They were chased by villagers and Md. Mustafa was caught, while the other accused persons managed to escape. A country-made pistol was recovered from

Mustafa and a dagger lying near the body of the deceased was seized by the police.

On the basis of above *fardbeyan*, Belbadda P.S. Case No. 53 of 2007, dated 22.04.2007 was registered against the accused persons for the offence under Sections 302/34 of the I.P.C. and Section 27 of the Arms Act.

A separate case, being Meharma (Belbadda) P.S. Case No. 54 of 2007 was also instituted against the accused Mustafa under Arms Act, which was tried separately.

4. After completion of investigation, charge-sheet was submitted vide charge-sheet No.21 of 2007, dated 19.07.2007, showing no evidence against Minsar but finding sufficient evidence against Md. Mustafa @ Gulam Mustafa and Md. Salim for the offence under Sections 302/34/120(B) of the I.P.C. and 27 of the Arms Act. Accordingly, cognizance was taken by learned C.J.M. and subsequently, the case was committed to the Court of Sessions, where S.T. No. 140 of 2007 was registered. Accused persons pleaded not guilty and claimed to be tried.

5. In the course of trial altogether 11 witnesses were examined by the prosecution: -

(i) P.W.-1-Abdul Gani

(ii) P.W.-2-Md. Faruque

(iii) P.W.-3-Karim

(iv) P.W.-4-Rahim

(v) P.W.-5-Md. Anwar Ali (informant of this case)

(vi) P.W.-6-Nazir Ansari

(vii) P.W.-7-Md. Aftab Alam

(viii) P.W.-8-Rayeesh Alam

(ix) P.W.-9-Dr. Dilip Kumar Choudhary

(x) P.W.-10-A.S.I., Hariram Pandey

(xi) P.W.-11-Md. Jahangir

6. Apart from oral testimony, following documentary evidence have also been adduced by prosecution: -

(i) Exhibit-1-Signature of witness Md. Faruque on inquest report

(ii) Exhibit-2-Signature of witness Anwar Ali on fardbeyan

(iii) Exhibit-3-post-mortem report

(iv) Exhibit-4-Signature of Md. Jahangir on seizure list

(v) Material Exhibit-1-Knife

7. On the other hand, no oral evidence has been adduced on behalf of defence. However, the defence has adduced following documentary evidence: -

(i) Exhibit-A-Signature of witness Md. Anwar Ali (informant P.W.5) on the application dated 06.06.2007

(ii) Exhibit-B, Certified copy of judgment dated 13.03.2012, passed by learned Judicial Magistrate, 1st Class, Godda

8. The learned Trial Court after considering the evidence of prosecution arrived at definite conclusion about guilt of the appellants for the offences charged against them and convicted and sentenced them as stated above, which has been assailed in this appeal.

Submissions on behalf of the appellants: -

9. The learned counsel for the appellants assailing the impugned judgment challenge the same on following main grounds: -

(i) Out of 11 witnesses examined by prosecution, P.W.s-1, 2, 3, 4, 6, 7 and 8 have been declared hostile by the prosecution and have not supported the prosecution story as depicted in the F.I.R.

(ii) P.W.-11 is the witness of seizure list, who simply admits his signature got by police on a blank paper and nothing was recovered in his presence.

(iii) P.W.-5, Md. Anwar Ali, who happens to be informant-cum-father of the appellant No.1, has also admitted in his evidence that his son, Md. Mustafa, was apprehended by villagers on the basis of suspicion and no firearm was recovered from his possession. He also admitted in his cross-examination that he has not disclosed the name of appellant No.1, in his *fardbeyan.* At that time, the informant had become unconscious and someone else had filed written report to the police station and later on managed to take signature of the informant on *fardbeyan*.

(iv) The appellant No.2 has also been implicated only on the basis of suspicion and he was not apprehended from the place of occurrence, although he happens to be father-in-law of the appellant No.1 and was aged around 65 years on the date of occurrence. In the factual scenario as depicted in the F.I.R. there was every likelihood that the appellant No.2 might have been apprehended due to his old age and incapacity to run fast. Therefore, appellant No.2 has only

been dragged in this case falsely merely because he was also supporting the claim for partition of the landed property raised by his son-in-law.

(v) The appellant No.1 has been acquitted from the charge under Section 25(1-B)(a)/26 of the Arms Act for which G.R. Case No.394/2007 was separately instituted.

(vi) The learned Trial Court has failed to take into consideration the documentary evidence Exhibit-A and Exhibit-B adduced by defence showing innocence of appellant No.1 and appellant No.2 and has convicted without any evidence against them and without showing any overt act.

(vii) The seized knife in this case has not been connected to be used in commission of murder of the deceased. There is no F.S.L. report about origin and source of any blood or any fingerprint of any of the accused person.

Therefore, impugned judgment of conviction and sentence of the appellants suffers from serious error of law and liable to be set aside, allowing this appeal.

Submissions on behalf of the State: -

10. On the other hand, Mr. Sanjay Kumar Srivastava, learned A.P.P. for the State opposing the aforesaid contentions raised on behalf of the appellants has contended that the learned Trial Court has very wisely appreciated the evidence available on record. The earliest version of the informant as depicted in his *fardbeyan* cannot be disbelieved merely because some improvement and discrepancies during trial

due to natural inclination towards his son arrayed as an accused for killing his own stepmother. The police officer, who has recorded the *fardbeyan* of the informant (P.W.-5), has clearly proved the same to be recorded as per dictation of the informant and was read over and explained to him then he put his signature. The informant, Md. Anwar Ali (P.W.-5), was examined on 01.09.2012 and categorically supported the entire prosecution story. His partial cross-examination was deferred for further date and he was cross-examined on 13.06.2014. Thereafter, Exhibit-A, purported to be an application filed by him before the Court was marked exhibit and the discrepancies and contradictions were elicited by defence, which put an impression of some pressure exerted by his son appellant No.1. The prosecution story further finds corroboration from the evidence of P.W.-9 Dr. Dilip Kumar Choudhary, who has conducted autopsy on the dead body of deceased, wherein injury Nos. 1 and 2 were opined to be caused by firearm bullet and injury No.3 was caused by sharp cutting weapon. The injuries were found sufficient to cause death in ordinary course of nature. The learned Trial Court has considered all the aspects of the case and the evidence of witnesses in right perspective and arrived at right conclusion about guilt of the appellants for the offence charged against them. Therefore, there is no illegality or infirmity in the impugned judgment calling for any interference in this appeal, which is devoid of merits and fit to be dismissed.

11. We have gone through the record of the case along with the impugned judgment and order in the light of contentions raised on behalf of the both side.

12. The only point for determination in this appeal is that "**as to whether the impugned judgment and order of conviction and sentence of the appellants passed by learned trial court suffers from any error of law calling for any interference in this appeal?"**

Analysis, discussions and reasons: -

13. Before delving upon to adjudicate the above point, it appears pertinent to take brief resume of evidence available on record.

14. From perusal of record, it is quite obvious that out of 11 witnesses examined by prosecution **P.W.-1-Abdul Gani, P.W.-3-Karim, P.W.-4-Rahim, P.W.-6-Nazir Ansari, P.W.-7-Md. Aftab Alam and P.W.-8-Rayeesh Alam** have been declared hostile by the prosecution and expressed their no knowledge about the occurrence. The attention towards statement recorded under Section 161 Cr.P.C. of these witnesses have been drawn by prosecution, but due to non-examination of Investigating Officer in this case, the contradictions have not been get explained, therefore, the testimony of these witnesses is fit to be discarded.

The star witness of this case is the informant **Md. Anwar Ali (P.W.-5)**. According to his evidence, on 22.04.2007 at about 05:00 A.M., he along with his second wife Sadika Khatoon was ploughing his field. It is further stated that Md. Mustafa @ Gulam Mustafa is his

son from first wife and there is dispute about partition of land in between informant and his son Md. Salim, who was claiming half share in the landed property. Father-in-law and brother-in-law of Md. Mustafa were also supporting him in claiming half share in the property. He has further deposed that on the date of occurrence when he was ploughing field, Md. Mustafa along with Md. Salim and Minsar came to the field and said this witness "until you will not give half share in the land, you will not be allowed to plough the field and there would be dire consequence" and went away. He has further stated that about 06:00 – 07:00 A.M., his wife was returning to home from the field and in the way Salim and Minsar shot her by firearm and also slitted her neck near village Rajoun in the field of Ali Mohammad. Hearing the sound of firing, this witness rushed towards the place of occurrence and saw Salim and Minsar were fleeing away and villagers were chasing the accused persons and caught hold of Mustafa along with a firearm. His statement was recorded by police and he has also proved his signature as **Exhibit-2**. This witness further states that all the three accused persons are still threatening him to kill.

In his cross-examination also (para-7), this witness reiterates that at first all the three accused persons came and threatened him on his field, thereafter returned and when his wife was returning then all the three accused persons came and committed this occurrence of murder. He rushed towards the place of occurrence immediately after hearing the sound of fire. The distance between place of occurrence

and his field is hardly about 50 yards. He saw all the three accused persons were fleeing and villagers were chasing them. Mustafa was caught by villagers with pistol and a knife was also lying at the place of occurrence, which was seized by police.

Further, cross-examination of this witness was deferred for next date which concluded on 13.06.2014. On this occasion, the defence got proved that application of this witness dated 06.06.2007 filed before the Court of learned C.J.M., Godda, wherein it was mentioned that Md. Mustafa was not named in the F.I.R. and nothing was recovered from his possession by the villager rather firearm and knife were lying at the place of occurrence. This witness has proved his signature on the above application as **Exhibit-A**. But, in the same breath, this witness states that he does not know about the contents of the said application, but again admits that it was written in the typed written application that there is no hand of Mustafa in the alleged occurrence. He has further denied the suggestion of defence that Salim and Minsar did not came to his house on the date of occurrence and have been falsely implicated in this case. He also admits that Salim and Minsar were not apprehended by villagers at the time of fleeing away. He has also denied the suggestion of defence that due to previous enmity he has falsely implicated Md. Salim and no such occurrence took place.

P.W.-2-Md. Faruque is a witness of inquest report of the deceased and identifies his signature as **Exhibit-1**. He has also stated that the wife of Anwar Ali was murdered, but he does not know who

have murdered her. On this point he has been declared hostile by prosecution.

P.W.-9, Dr. Dilip Kumar Choudhary has conducted autopsy on the dead body of Sadika Khatoon (deceased) and found following injuries: -

Rigour mortis present in all four limbs.

Anti-mortem injuries: -

(i) Oval lacerated wound on the right side of the middle of chin, 1½" x 1 ¼" in size. Mark of black powder was present all around the wound. The margin of wound was found inverted and rugged. The right half of body of mandible was broken and the blood vessels were lacerated.

(ii) Oval wound in the supra clavicular area in the right-side just lateral to the mid-line and of the size 1 ¼" x 1". Powder mark was found all around the wound in an area of diameter of 5". The margin of the wound found inverted and rugged.

Both the wounds mentioned above was the wound of entry of a firearm bullet. The path of bullet traced further the right lung posterior part of mediastinum and the left dome of diaphragm found pierced. There was an oval wound on the left side of back of the chest 1" left to the middle line in the level of inferior angle of scapula. This was the wound of exit of the firearms bullet and of the size 1 ½ c.m. x 1 c.m. with everted margin.

(iii) A sharp cut wound on the back of the neck at the level of 3rd and 4th cervical vertebral junction of the size 5" x 1" x 1 ½". The

muscles of the back of neck found partially cut and the vertebrae were intact.

(iv) A sharp cut wound 1" below the injury No.(iii) of the size 2" x ¼" x ¼".

Injury Nos. (i) & (ii) were caused by firearm bullet and were dangerous to life. The injury No.(iii) was also dangerous to life caused by sharp cutting weapon.

On dissection: -

The skull and vertebrae were normal. Membrane with brain with spinal cord is normal. On dissection of chest the pleura in the right side was torn. Right lung lacerated and huge amount of blood was present in the right chest cavity. All chambers of heart were empty.

Dissection of abdomen navel intact mouth cavity with some amount of blood in mouth cavity. The stomach was contained fluid only and no grain. Intestine was containing faecal matter and gases. Abdominal viscera were pale. Approx. 30 ml. of urine was there in the urinary bladder. Genitalia were intact and uterus was empty.

The cause of death in his opinion is above mentioned injuries leading to shock and haemorrhage and death. The time since death was about 12 hours.

He has identified the post-mortem report, which is marked as **Exhibit-3**.

P.W.-10-A.S.I., Hariram Pandey has produced the seized knife in connection with this case, which was found sealed and

opened before the Court. This knife is fitted with wooden handle bearing Maalkhana No. 04/07, P.S. Case No. 53/07 and marked as **Material Exhibit-1**.

P.W.-11-Md. Jahangir has admitted his signature on seizure list, which is marked as **Exhibit-4**, but expressed no knowledge about the occurrence.

15. After closure of prosecution evidence, the statements of accused persons were recorded under Section 313 of the Cr.P.C., wherein both the accused persons have denied allegations of committing murder of the deceased and pleaded their innocence. On the Exhibit-A application dated 06.06.2007 filed before the Court of C.J.M., Godda in connection with Meharma P.S. Case No. 53 of 2007 by the informant, Md. Anwar Ali, but he has only proved his signature marked as Exhibit-A and Exhibit-B is the certified copy of judgment passed by learned Judicial Magistrate, 1st Class, Godda in G.R. Case No. 394 of 2007 dated 13th March, 2012 (arising out of Meharma (Belbadda) P.S. Case No. 54 of 2007, dated 22.04.2007 under Section 25 (1-B)(a)/26 of the Arms Act, State versus Md. Mustafa), wherein the accused has been acquitted extending benefit of doubt from the aforesaid charges.

16. From the aforesaid discussion of oral testimony of witnesses, particularly the informant (P.W.-5) and other materials brought on record. The undisputed fact is that on the date of occurrence at about 05:00 A.M., the deceased along with her husband (P.W.-5) went for ploughing their field, the appellants along with one Minsar arrived at

the field at around 6:00 A.M. and forbade the informant from ploughing the field until he gives half share in the landed property to the appellant, Md. Mustafa. The deceased (second wife of the informant) intervened and said that she has three minor children until they attained the age of majority, property shall not be partitioned, thereafter, threatening the informant, accused persons returned.

The second phase of occurrence took place at about 07:00 A.M., when the deceased was returning to her home from the field and reached just at a distance of 50 yards from her field, she was shot and knife blow was also given on her neck and she fell down on the ground. It is also proved fact that the appellant No.1, Md. Mustafa @ Gulam Mustafa was caught by villagers, while fleeing with a pistol. All the three accused persons were seen fleeing from the place of occurrence just after extending threatening to the informant at his field for partition of property otherwise be ready to face dire consequences. The pistol seized from the appellant No.1 was handed over to police and for which a separate case was lodged under Section 25(1-B) (a)/26 of the Arms Act against Md. Mustafa. The seizure list of blood stained soil, blood stained shirt of the accused and knife lying on the spot was prepared. It is also clear from Exhibit-B that due to lacuna in the prosecution evidence like non-production of seized material, non-examination of I.O. and hostility of witnesses, the accused Md. Mustafa was given the benefit of doubt and acquitted.

17. In the instant case, P.W.-5, who happens to be informant, is not a hostile witness rather he has fully corroborated his earlier version as

contained in his *fardbeyan* recorded by police just after the occurrence. The factum of enmity is also admitted by the defence and it is suggested to the witness that due to enmity he has falsely implicated the accused persons. P.W.-5 is a very natural witness and cannot be branded as an interested, inimical or partisan witness. His evidence regarding involvement of appellants in the alleged occurrence is unrebutted and can't be doubted about the first phase of occurrence when accused persons arrived at the field when informant was ploughing his field along with his second wife (deceased) and threatening extended by the accused persons and the second phase also when his wife was returning to home at about 07:00 A.M. and just after 50 yards from the field, she was shot and sound of firing was heard by the P.W.-5, who immediately rushed towards the place of occurrence. The villagers were also chasing the accused persons and the appellant No.1 was caught red handed with a country made pistol with empty cartridge. These facts are also relevant under Section 8 of the Indian Evidence Act as conduct of the accused influenced by the facts in issue. The knife used in the occurrence was also recovered from the place of occurrence itself, which finds corroboration from the P.M. report of the deceased, wherein sharp cut injury on neck has been found. It is also revealed that both the appellants have acted in concerted manner under a pre-planned way arriving at the place of occurrence together and return after extending threat to the informant and also the second phase of occurrence when deceased was returning to home, she was killed. There is no other way to conclude about the

happening of the occurrence caused by any other persons than the present appellants. We further find that the sole eye-witness of prosecution, P.W.-5, although, deviated from his earliest version to some extent, but there is nothing in his evidence to take a different inference favouring the accused.

18. In our considered view, the cumulative effect of prosecution evidence in the light of evidence of P.W.-5 finds corroboration from the evidence of P.W.-9 and leaves no room for doubt to conclude that it is the appellants, who have committed murder of the deceased and none-else in the manner as alleged by P.W.-5.

The prosecution has pointed out the defence documentary evidence Exhibit-A and Exhibit-B, which has no relevancy in the facts and circumstance of this case inasmuch as the contents of Exhibit-A has not been proved and fully admitted by the informant (P.W.-5) except his signature. Exhibit-B is the certified copy of judgment of acquittal passed in the case under Arms Act against the appellant No.1, which is not facts in issue in this case or otherwise relevant. The hostility of most of the witnesses is not within the control of prosecution. Similarly, non-examination of I.O. in this case cannot be said to have caused prejudice in any manner to the defence rather it has seriously prejudiced the prosecution because the earliest version of most of the hostile witnesses recorded under Section 161 of the Cr.P.C. has not been got explained by the I.O. due to his non-examination. Moreover, any lacuna in the prosecution case or lapses in the investigation cannot furnish any premium to the defence.

19. In view of above discussion and reasons, we are of the definite view that the prosecution has been able to prove the charge of murder against the appellants beyond all reasonable doubt as such, we do not find any illegality or infirmity in the impugned judgment of conviction and sentence of the appellants passed by learned Trial Court and no merits in this appeal, which is fit to be dismissed.

20. Accordingly, this appeal is **dismissed**.

21. Appellants are in custody. Let a copy of this judgment be furnished forthwith to the appellants through learned A.P.P.

22. Pending I.A., if any, stands disposed of, accordingly.

23. Let a copy of this judgment along with the Trial Court record be sent back to the concerned court for information and needful.

(Pradeep Kumar Srivastava, J.)

I Agree

Ananda Sen, J.

(Ananda Sen, J.)

Jharkhand High Court
Dated 06/11/2026
*Arpit/**N. A. F. R.***
Uploaded on 06/11/2026