

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Appeal (DB) No.474 of 2017

(Against the judgment of conviction dated 28.11.2016 and the order of sentence dated 30.11.2016 passed by the learned Additional Sessions Judge-III, West Singhbhum at Chaibasa in Sessions Trial No.200 of 2012)

Sur Singh Sidhu, son of Paragana Sidhu, R/o Village Baihatu, P.O. & P.S.
Tonto, District West Singhbhum at Chaibasa **Appellant**

Versus

The State of Jharkhand **Respondent**

CORAM: SRI ANANDA SEN, J.
SRI SUBHASH CHAND, J.

For the Appellant : Ms. Varsha Ramsisaria, Advocate
For the State : Mrs. Priya Shreshtha, Spl.PP

C.A.V. on: 05/03/2024

Pronounced on:18/03/2024

J U D G M E N T

Per: Subhash Chand, J.

1. This Criminal Appeal has been preferred against the judgment of conviction dated 28.11.2016 and the order of sentence dated 30.11.2016 passed by the learned Additional Sessions Judge-III, West Singhbhum at Chaibasa, whereby the learned trial Court has convicted the appellant under Sections 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life along with fine of Rs.10,000/- for the offence under Section 302 of the Indian Penal Code. In case of default in payment of fine, the appellant was further directed to undergo SI for six months.

2. The brief facts of the prosecution case leading to this Criminal Appeal are that the informant Jug Singh Sidhu had given the written information with the police station concerned with these allegations that on 09.07.2012 at 04:00 O'clock in the evening his mother was at house, at the same time, the appellant, namely, Sur Singh Sidhu told that her bull died and, on this

pretext, he took his mother from the house and, thereafter, he committed her murder by throttling her. Hearing the screaming of the mother, the informant also reached to the place of occurrence and saw the appellant fleeing away after committing murder of his mother. In the meantime, the persons of the village also attracted there and dead body of the mother was brought to the house. There being no means of transport, the information was not given at the police station. In the morning, informant went to the Munda Jee and informed him in regard to the occurrence, who gave information to the police station concerned. There was land dispute between the appellant and his mother, on account of the same, the murder was committed. On this written information, Tonto P.S. Case No.15 of 2012 under Section 302 of the Indian Penal Code was registered against the appellant, namely, Sur Singh Sidhu.

3. The Investigating Officer after having concluded the investigation, filed charge-sheet against the accused under Section 302 of the Indian Penal Code and the cognizance was taken by the Magistrate concerned, who committed the case for trial to the Court of Sessions Judge, West Singhbhum at Chaibasa, subsequently, transferred the same to the learned Additional Sessions Judge-III, West Singhbhum at Chaibasa.

4. The Court of learned Additional Sessions Judge-III, West Singhbhum at Chaibasa framed the charge against the accused under Section 302 of the Indian Penal Code and the same was explained to him, he denied the charge and claimed to face the trial.

5. On behalf of the prosecution to prove the charge against the accused in **oral evidence** examined altogether eight witnesses i.e. **P.W.-1, Jug Singh Sidhu (informant); P.W.-2, Rabindra Nath Laguri; P.W.-3, Kerse Aalda;**

P.W.-4, Shandi Sidhu; P.W.-5, Harish Laguri, P.W.-6, Budhan Singh Laguri; P.W.-7, S.I., Ashok Ram and; P.W.-8, Dr. Devi Prasad Hansda and in documentary evidence the prosecution has adduced Exhibit-1, signature on the fardbeyan; Exhibit-1/1, signature of Rabindra Nath Laguri on fardbeyan; Exhibit-2, signature of Rabindra Nath Laguri on inquest report; Exhibit 1/3, signature of Ashok Ram on fardbeyan; Exhibit 1/4, endorsement of police office on the fardbeyan and; Exhibit-2/1, signature of Ashok Ram on post mortem report.

6. The statement of the accused was recorded under Section 313 of Code of Criminal Procedure, in which, he denied the incriminating circumstances in evidence against him and stated himself to be innocent and no defence evidence was adduced.

7. The learned trial Court after hearing the rival submissions of the learned counsel for the accused and learned counsel for the State, passed the impugned judgment of conviction dated 28.11.2016 and the order of sentence dated 30.11.2016 holding the accused guilty for the offence under Section 302 of the Indian Penal Code and sentenced as stated hereinabove.

8. Aggrieved from the impugned judgment of conviction dated 28.11.2016 and the order of sentence dated 30.11.2016, this Criminal Appeal has been preferred on behalf of the appellant.

9. Heard the rival submissions of the learned counsel for the appellant and learned Spl.PP for the State and perused the materials available on record.

10. In order to decide the legality and propriety of the impugned judgment of conviction and the order of sentence passed by the learned Trial Court, we scrutinize the evidence oral as well as documentary adduced on behalf of the

parties on record, which are reproduced hereinbelow:

10.1 P.W.-1, Jug Singh Sidhu (informant), in his examination-in-chief, says that the occurrence was of about one year ago. It was 04:00 O'clock in the evening. His mother Mani Sidhu was called by Sur Singh Sidhu on the pretext that their cow had died and having taken his mother with him he throttled her to death. His mother cried, then he reached there, thereafter, went to the police station concerned and his fardbeyan was recorded, which bears his signature and marked Exhibit-1. In cross-examination, this witness says that **the place of occurrence from his house is at the distance of half kilometer. Around the place of occurrence, there were bushes.**

10.2 P.W.-2, Rabindra Nath Laguri, in his examination-in-chief, says that the occurrence was of two years ago, at that time, he was present at his house. **He came to know in regard to the occurrence from Jug Singh Sidhu, who told that his mother was throttled to death by Sur Singh Sidhu.** He identified his signature on the carbon copy of inquest report marked as Exhibit-2. In cross-examination, this witness says that **he did not see the occurrence.** Who committed the murder, he is not aware. He had also put his signature on the fardbeyan.

10.3 P.W.-3, Kerse Aalda, in his examination-in-chief, says that the occurrence was of two years ago. Sur Singh Sidhu killed Mani Sidhu. He had heard in regard to the occurrence in the village and reached to the place of occurrence. In cross-examination, this witness says that **he did not see the occurrence and also, by whom, the murder was committed.**

10.4 P.W.-4, Shanti Sidhu, in her examination-in-chief, says that Mani Sidhu was throttled to death by Sur Singh Sidhu nearby her agricultural field, at that time, she was at her agricultural field. In cross-examination, this

witness says that **the place occurrence was of 30 yards from her agricultural field. In between the place of occurrence and her agricultural field, there were dense bushes, of which, height was 10-12 ft. and there was also a vast teak tree.**

10.5 P.W.-5, Harish Laguri, in his examination-in-chief, says that Sur Singh Sidhu had throttled to death to Mani Sidhu. She cried and her nose and mouth were closed, whereby she died. Police had not interrogated him. In cross-examination, this witness says that **he did not see the occurrence.**

10.6 P.W.-6, Budhan Singh Laguri, in his examination-in-chief, says that Sur Singh Sidhu was throttling to death to Mani Sidhu, on hearing her cry, he reached to the place of occurrence. In cross-examination, this witness says that **at the time of occurrence, he was at the distance of 50 ft. from the place of occurrence. There were dense bushes around the place of occurrence.**

10.7 P.W.-7, S.I. Ashok Ram, who is the Investigating Officer, in his examination-in-chief, says that he had recorded the fardbeyan of the informant in presence of village Munda and put his signature marked as Exhibit 1/3. It was registered by the Officer-in-charge, Tonto P.S., S.I. Edward Toppo. He identified his signature marked Exhibit 1/4. The formal FIR was prepared by Surendra Singh, his handwriting and signature he identified. He prepared the inquest report of deceased, which is in his handwriting and signature marked Exhibit 2/1. He inspected the place of occurrence. In the east of the place of occurrence, at the distance of half kilometer, there was house of Chandan Das; in the west, there was agricultural field of Mora Alda; in the south, there was agricultural field of Raut Sidhu and; in the north, there was agricultural field of Chamra Laguri.

He recorded the re-statement of Jug Singh Sidhu, thereafter, recorded the statement of witnesses, Ravindra Nath Laguri, Gramin Munda, Kerse Aalda, Budhan Singh Laguri, Harish Laguri and Shandi Sidhu, who told that the mother of the informant was throttled to death. He also got the postmortem of the deceased and filed charge-sheet. In cross-examination, this witness says that **from the house of the informant, there was no other house but was the utter jungle, dense bushes and trees. He could not measure the distance between the house of the informant and the place of occurrence.**

10.8 P.W.-8, Devi Prasad Hansda, in his examination-in-chief, says that he was posted in Sadar Hospital, Chaibasa. On 10.07.2012, postmortem of dead body of Mani Sidhu was conducted by him. He found following injuries:

- “(a) External injury-2 ecchymosed finger impression one on either side of trachea.*
- (b) Internal injury- i) multiple tracheal rings broken, on tracheal petechial haemorrhage found, tracheal mucosa swollen and congested. ii) Heart-all chamber full. iii) Lung-congested. iv) stomach- undigested food particle.*
- (c) Cause of death- death due to asphyxia caused by throttling and antemortem in nature.*
- (d) Time since death- within 24 hours.”*

11. Learned counsel for the appellant has submitted that the conviction of the appellant, which was held by the learned Trial Court is based on the testimony of the informant P.W.1, Jug Singh Sidhu, P.W.-4, Shanti Sidhu and P.W.-6, Budhan Singh Laguri while the testimony of all these witnesses cannot be relied upon because the place of occurrence was surrounded by the bush and they were far away from the place of occurrence, it was not possible to see the occurrence by these witnesses. In view of the above, contended to allow this Criminal Appeal and set aside the impugned judgment of conviction and the order of sentence.

12. Learned Spl.PP for the State opposed the contentions made by the learned counsel for the appellant and contended that the impugned judgment passed by the learned Trial Court is well proved from the testimony of P.W.-1, Jug Singh Sidhu P.W.-4, Shanti Sidhu and P.W.-6, Budhan Singh Laguri and their testimony is also corroborated with the medical evidence wherein the cause of death is shown throttling, as such, the impugned judgment and conviction and the order of sentence passed by the learned Trial Court needs no interference.

13. As per the prosecution case, the appellant-accused-convict Sur Singh Sidhu had come to the house of the informant P.W.-1, Jug Singh Sidhu, who took the mother of the informant with him on the pretext that her cow had died and, thereafter, he throttled the mother of the informant, who ultimately died. **The informant Jug Singh Sidhu was also examined as P.W.-1 though in his examination-in-chief he reiterated all the averments, which were made in the written information Exhibit-1; yet in cross-examination, this witness says that the place of occurrence is at the distance of half kilometer from his house. This witness also says that around the place of occurrence there were bush.**

14.1 From the testimony of P.W.-1, **Jug Singh Sidhu**, who had posed himself to be an eyewitness of the occurrence, it is found that **he is not an eyewitness of occurrence rather is the witness of the last seen of the deceased with the appellant-convict because the house of P.W.-1 being at the distance of half kilometer away and the same was also surrounded by thick dense bushes, it was not possible to see the occurrence from his house.** As such, the testimony of this witness can be read as last seen evidence of the deceased with the appellant-convict.

14.2 So far as the testimony of **P.W.2, Rabindra Nath Laguri** and **P.W.-3, Kerse Aalda** are concerned, the testimony of both these witnesses are **based on hearsay evidence, which are not admissible.**

14.3 So far as the testimony of **P.W.4, Shanti Sidhu** is concerned, who is also posed as an eyewitness. **This witness, in her examination-in-chief, says that Mani Sidhu was throttled to death by Sur Singh Sidhu near the putus bush, at that time, she was at her agricultural field.** In cross examination, this witness has stated that **the place of occurrence was at the distance of 30 yards from her agricultural field and in between the place of occurrence and her agricultural field, there were dense and putus bushes of the height of 10-12 ft. and there was also a vast teak tree.** Therefore, as per testimony of this witness, **she was also in her agricultural field and she could not have seen the evidence because the place of occurrence, which was at the distance of 30 yards from her agricultural field and in between the place of occurrence and the agricultural field where she was present, there being 10-12 ft. high bushes and a vast teak tree, therefore, it was not possible to see the occurrence by her.**

14.4 So far as the testimony of **P.W.5, Harish Laguri** is concerned, this witness says that **he did not see the occurrence.**

14.5 So far as the testimony of **P.W.-6, Budhan Singh Laguri** is concerned, he has also posed as an eyewitness of the occurrence. **He also says that Sur Singh Sidhu had throttled to death to Mani Sidhu, hearing her cry, he reached the place of occurrence and came to know in regard to the same.** In cross-examination, this witness says that the **place of occurrence was at a distance of 50 yards from the place, where he was present and around the place of occurrence, there were dense bushes. As such,**

taking into consideration the location of this witness, it was also not possible to him to see the occurrence at the distance of 50 ft. More so, the place of occurrence was surrounded by the dense bushes.

14.6 P.W.-7, S.I. Ashok Ram, who is the Investigating Officer of this case, has stated that **there was no house between the house of the informant and the place of occurrence except jungle, bush and tree.** He did not measure the distance between the house of the informant and the place of occurrence. He also stated that **if one goes on foot from the house of the informant to the place of occurrence, it takes 15-20 minutes.** As such, in view of the testimony of P.W.-7, Ashok Ram, the Investigating Officer, **it was not possible for any one to hear the screaming from the house of the informant, which was away from the house of the informant among the dense bushes and 15-20 minutes was to be taken in reaching there, if any one goes on foot.** As per the testimony of informant, the place of occurrence was half kilometer away from his house

14. The case in hand is based on last seen evidence only and the same is not corroborated with any other evidence, therefore, solely on the basis of last seen evidence being not corroborated with any evidence, the conviction cannot be said to be just and proper.

15.1 The Hon'ble Supreme Court in the case of *Jabir & Ors. Vs. The State of Uttarakhand* reported in *2023 LiveLaw (SC) 41* held that the Court should not convict any accused only on the basis of the last seen circumstances. Paragraph No.21 reads as under:

“23. This court is also of the opinion that apart from the above serious infirmities, there is no evidence, oral or any material object, which connects the appellant accused with the crime. It has been repeatedly emphasized by this court, that the “last seen” doctrine has limited application, where the time lag between the time the deceased was seen last with the accused, and the time of murder, is narrow; furthermore, the court should not convict an accused only on the

basis of the "last seen" circumstance. In Jaswant Gir vs. State of Punjab, this court explained the soundness of such a rule:

"Without probing further into the correctness of the "last-seen" version emanating from P.W. 14's evidence, even assuming that the deceased did accompany the accused in their vehicle, this circumstance by itself does not lead to the irresistible conclusion that the Appellant and his companion had killed him and thrown the dead body in the culvert. It cannot be presumed that the Appellant and his companions were responsible for the murder, though grave suspicion arises against the accused. There is considerable time-gap between the deceased boarding the vehicle of the Appellant and the time when P.W. 11 found the dead body. In the absence of any other links in the chain of circumstantial evidence it is not possible to convict the Appellant solely on the basis of the "last-seen" evidence, even if the version of P.W. 14 in this regard is believed. In view of this, the evidence of P.W. 9 as regards the alleged confession made to him by the Appellant assumes importance."

15. The prosecution case, which is based on circumstantial evidence, the motive of occurrence is neither shown in the FIR nor it came in the evidence adduced on behalf of the prosecution. In case of circumstantial evidence, the evidence of motive becomes relevant and important, for lack of the same, prosecution case becomes doubtful.

16.1 The Hon'ble Supreme Court in the case of ***Nandu Singh Vs. State of Madhya Pradesh (Now Chhattisgarh)*** reported in ***2022 LiveLaw (SC) 229*** held that the absence of motive in case of circumstantial evidence weighs in favour of accused. Paragraph No. 10 reads as under:

"10. In a case based on substantial evidence, motive assumes great significance. It is not as if motive alone becomes the crucial link in the case to be established by the prosecution and in its absence the case of Prosecution must be discarded. But, at the same time, complete absence of motive assumes a different complexion and such absence definitely weighs in favour of the accused."

16. The prosecution case being based on circumstantial evidence and the chain of circumstantial evidence is not complete from the evidence adduced on behalf of the prosecution. In chain of the circumstantial evidence, no one link should be missing. From the chain of the circumstantial evidence, there should be only one conclusion in regard to commission of crime by the

accused person. The circumstantial evidence should be conclusive in nature excluding every possibility of the hypothesis except the one to be proved.

17.1 The Hon'ble Supreme Court in the case of ***Sharad Birdhichand Sarda Vs. State of Maharashtra*** reported in (1984) 4 SCC 116 laid down five golden principles, which constitute the panchsheel of proof of case based on circumstantial evidence. Paragraph No. 153 reads as under:

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be” established. There is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved” as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra¹⁹ where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

“Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.”

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

17.2 The Hon'ble Supreme Court also followed the said five principles as laid down in the case of ***Sharad Birdhichand Sarda Vs. State of Maharashtra (supra)*** in the case of ***Indrajit Das Vs. The State of Tripura*** reported in 2023 LiveLaw (SC) 152. Paragraph No.10 reads asunder:

*“10. The present one is a case of circumstantial evidence as no one has seen the commission of crime. The law in the case of circumstantial evidence is well settled. The leading case being ***Sharad Birdhichand Sarda vs. State of Maharashtra***. According to it, the circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; the circumstances taken cumulatively*

should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with his innocence. The said principle set out in the case of Sharad Birdhichand Sarda (supra) has been consistently followed by this Court. In a recent case – Sailendra Rajdev Pasvan and Others vs. State of Gujarat Etc., this Court observed that in a case of circumstantial evidence, law postulates two-fold requirements. Firstly, that every link in the chain of circumstances necessary to establish the guilt of the accused must be established by the prosecution beyond reasonable doubt and secondly, all the circumstances must be consistent pointing out only towards the guilt of the accused. We need not burden this judgment by referring to other judgments as the above principles have been consistently followed and approved by this Court time and again.”

17. In view of the above analysis of the evidence, the prosecution has failed to prove its case beyond all shadow of reasonable doubt and the judgment of conviction and the order of sentence passed by the learned Trial Court needs interference and this Criminal Appeal deserves to be allowed.

18. Accordingly, this Criminal Appeal is **allowed** and the impugned judgment of conviction dated 28.11.2016 and the order of sentence dated 30.11.2016 passed by the learned Additional Sessions Judge-III, West Singhbhum at Chaibasa in Sessions Trial No. 200 of 2012 are **set aside**.

19. The appellant is acquitted from the charge levelled against him and he is directed to be released, if not wanted in any other case.

20. Let a copy of this judgment be communicated to the learned Trial Court.

(Subhash Chand, J.)

Per Ananda Sen, J. : I agree

(Ananda Sen, J.)

*Jharkhand High Court, Ranchi
Dated: the 18th March 2024,
Madhav/- A.F.R.*