
(2003) 03 JH CK 0093

In the Jharkhand High Court

Case No : Criminal Appeal No. 248 of 2000

Nandu Hembram and Others

APPELLANT

Vs

State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 28-03-2003

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 201, 302

Citation : (2003) 3 JCR 122

Hon'ble Judges : Vishnudeo Narayan, J;Lakshman Uraon, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Vishnudeo Narayan, J.—This appeal has been preferred by the appellants named above against the impugned judgment and order dated 26.5.2000 passed by Shri S.H. Kazmi, 3rd Additional Sessions Judge. East Singhbhum Jamshedpur in S.T. No. 373 of 1997 whereby and where under they were found guilty for the offence punishable under 302, 201 and 120B of the Indian Penal Code and they were convicted and sentenced to undergo RI for life for the offence punishable u/s 302 of the Indian Penal Code. However, no separate sentence was awarded to them for the offence punishable under Sections 201 and 120B of the Indian Penal Code.

2. The prosecution case has arisen on the basis of the fardbeyan (Ext. 8) of PW 14, Kundi Hembram widow of Kanhai Lal Hembram, the deceased of this case recorded by PW 16 ASI, G.M. Ansari of Shyam Sun-darpur PS in the paddy field of Zamadar Hansda in village Bartaulia, PS Chakulia (Shyam Sundarpur), Ghatshila, East Singhbhum at 10.15 hours on 14.10.1996 regarding the occurrence which is said to have taken place in the night between 13th and 14th of October, 1996. The case was instituted on the basis of the formal FIR (Ext. 10) on 14.10.1996 at 16.00 hours and the formal FIR and the fardbeyan aforesaid though alleged to have been despatched from the PS on 14.10.1996 has been received in the Court empowered to take cognizance on 17.10.1996.

3. The prosecution case, in brief, is that Kanhai Lal Hembram, the husband of the informant left his house at 17.30 hours on his Rajdoot motorcycle bearing registration No. BR-16A-2741 on 13.10.1996 telling the informant that he will come back to his house by 21.00 hours after making a stroll but he did not return as stated and there was an uproar in the village at about 10.00 o'clock in the day on 14.10.1996 that the dead body of Kanhai Lal Hembram aforesaid is lying in the water in the paddy field of Jamadar Hansda and on this information, the informant along with her family members and the co-villagers went there and found the dead body of her deceased husband there having sharp cut injuries on his head and forehead and blood was oozing also from his mouth and his clothes were also found to be torn and it appears that some unknown persons might have committed his murder by sharp cutting weapon and have thrown his dead body in the said field. It is also alleged that the said Rajdoot motorcycle has not been found as yet. The prosecution case further is that the deceased had told the informant about six days ago that he has advanced Rs. 20,000/- to the appellant Kundi Murmu widow of Lapsa Murmu about two years ago for purchasing a 407 Maxi-Taxi and the appellant Kundu Murmu had delivered the said amount to her brother appellant Nandu Hembram @ Bhatar Hembram and a second hand 407 Maxi-Taxi was purchased by them. It is alleged that the deceased was pressing upon them to refund the said amount for the last few days but they were evading the repayment. It is also alleged that the deceased had not told her earlier about the said advancement out of her fear. The prosecution case further is that the informant was always preventing him not to go to the house of the appellant Kundi Murmu and, thereafter, he had disclosed to her that he goes to the house of the aforesaid appellant only with a view to get the aforesaid money back and the deceased had also informed in respect of the demand of the said money to PW 7, Karan Hansda. It is also alleged that the deceased used to take liquor and he used to visit the house of the appellant Kundi Murmu for taking wine and Haria and sometimes he used to stay and sleep in the house of the appellant Kundi Murmu for the night and he had also developed illicit relationship with the appellant Kundu Murmu and he was on visiting terms with the appellant Kundu Murmu for the last three years. It is also alleged that the informant thought that the deceased might have stayed in the house of the appellant Kundu Murmu when he did not return to his house as stated. It is also alleged that she learnt from the villagers that the deceased had gone to the house of the appellant Kundu Murmu at about 10.00 o'clock in the night and she has absolute reasons to believe that the appellant Kundu Murmu and her brother Nandu Hembram have committed the murder of the deceased with the help of other person by causing his death by sharp cutting weapon with a view to grab the said amount and they have thrown the dead body in the paddy field with a view to screen themselves from legal punishment.

4. Appellant Nandu Hembram was arrested on 17.10.1996 in course of investigation and he made his confessional statement before PW 15, the IO regarding His participation in the commission of the murder of the deceased

along with other two appellants who were also apprehended on that very day from their house in village Pitajori and they have also made their respective confessional statement before PW 15, the IO and in pursuance of the confessional statement of the appellant Madhav Chandra Tudu, the tangi which is the weapon of assault without wooden handle was recovered from a place near Bhalikhal Dam by the side of the river concealed under the earth and seizure list (Ext. 7/2) in respect thereof was prepared in presence of PWs 10 and 11 and the witnesses aforesaid of the seizure put their signatures (Ext. 5 and 5/1) on the seizure list and the appellant Madhav Chandra Tudu also put his signature on the said seizure list and his signature thereon is (Ext. 5/2). The inquest report (Ext. 9) of the dead body of the deceased found in the water filled paddy field of Jamadar Hansda was prepared by PW 16, the IO and PWs 5 and 3 have witnessed the said inquest report and their signatures thereon are Ext. 1 and 1/1. In course of investigation the motorcycle bearing registration No. BR-16A-2741 was recovered. 300 yards south from the house of PW 1 Haru Naik on 14.10.1996 and seizure list (Ext. 7) was prepared in respect thereof which was witnessed by PW 6, Basia and his signature thereon is Ext. 2. Blood stained earth was also recovered and seized as per Ext. 7/1 from the house of appellant Kundu Murmu as well as from the corner of north western outer wall of her house besides that blood stains were also found on a leaf of a plant 15 yards west from her house in presence of PWs 10 and 11 and their signatures on the said seizure list are Ext. 4 and 4/1 respectively. The deceased of this case is the resident of village Baragarias and all the three appellants are resident of village Pitajori which is 3-4 kilometers away from the house of the deceased. The dead body of the deceased has been recovered from the paddy field of Jamadar Hansda which is in village Bartaulia situated south west from the house of the appellant in village Pitajori.

5. The appellants have pleaded not guilty to the charges levelled against them and they claim themselves to be innocent and to have committed no offence and that they have been falsely implicated in this case.

6. The prosecution has examined in all 16 witnesses to substantiate the charges levelled against the appellants PW 14, Pungi Hembram is the informant and widow of Kanhai Lal Hembram, the deceased of this case PW 5, Meghnath Hembram, PW 7, Karan Hansda, PW 8, Lakshmi Rani Mardi are the son, maternal son-in-law and sister respectively of the deceased aforesaid. PW 10, Shyam Charan Mardi is the husband of PW 8. PW 1. Haru Naik, PW 2, Deola Marmu; PW 3, Lili Murmu @ Hikim Murmu and PW 13, Madhav Chandra Tudu all residents of village Pitajori, PW 4, Rajendra Tudu, PW 6, Pasia Mandal, PW 12, Charu Charan Mardi have taken oath in support of the prosecution cases besides PW 14, PW 5, PW 7, PW 8 and PW 10, PW 11, Dadu Ram Mardi is the witness of the seizure regarding the seizure list (Ext. 7/1) and his signature thereon is Ext. 4/1. PW 9, Dr. Nawal Kishore Sinha has conducted the post mortem examination on the dead body of the deceased and the post mortem report in respect of her his pen is Ext. 3. PW 16, Gul Mohammad An-sari and PW 15, Ram Awadesh Singh are

the Investigation Officers of this case. James Peter Lakra, Assistant in the District Transport Office, Jamshedpur has figured as a defence witness and has proved the entries regarding the vehicle Tata 407 being registration No. BR-16-0599 in the Register of motor vehicle which is Ext. A in this case.

7. The learned Court below after considering the oral and documentary evidence on the record has found and held that though there is no eye witness of the alleged occurrence but the circumstances emanating from the evidence on the record unerringly and conclusively substantiates the guilt of the appellant and all the circumstances in this case are quite inconsistent with the innocence of the appellants and they clearly indicate the involvement of all the accused persons in the commission of murder of the deceased and has convicted all the appellant and sentenced them as stated above.

8. Assailing the impugned judgment it has been submitted by the learned counsel for the appellants that there is no ocular witness of the occurrence in question in support of the prosecution case and the alleged circumstances emanating from the evidence as stated in the impugned judgment do not at all lead unerringly and conclusively to the hypothesis of the guilt of the appellant and the learned Court below did not meticulously scrutinize the evidence on the record and has gravely erred in coming to the finding of the guilt of the appellant. It has been submitted that the prosecution case regarding an advancement of loan of Rs. 20,000/- to the appellant Kundi Murmu for the purchase of 407 Maxi-Taxi to totally false and fabricated and there is total absence of any legal evidence on the record evidencing the fact of advancement of loan aforesaid by the deceased to the said appellant and Ext. A clearly substantiates the fact that the appellant Kundu Murmu or Nandu Hembram have not purchased the Maxi-Taxi bearing registration No. BR-16-0599 as the said vehicle stands registered in the name of Shri Ghajali Khan and, thereafter, transferred to Md. Saud Khan on 23.10.1997 and lastly it stands transferred in favour of Smt. Rani Devi on 16.4.1998 and the aforesaid appellants are not the owner of the said Maxi-Taxi and in view of Ext. A, the prosecution case regarding the deceased going to the house of the appellant Kundu Murmu for making the demand of repayment of loan as alleged is totally false. It has further been contended that it is totally false to say that the appellant Kundu Murmu has illicit relationship with the deceased and he was on visiting terms with her where he used to take liquor and also used to stay in the night there. It has also been submitted that the evidence of PW 1, Haru Naik is fit to be discarded in this case and the same is not acceptable in view of the fact that his statement u/s 161 of the Cr PC has been recorded after one month of the occurrence and his conduct after the alleged occurrence is suspicious because he himself has not reported the matter to the police, threw the motorcycle far away and fled away to village Debra in West Bengal and from there as a result of conspiracy he was brought back to the village Pitajori at the instance of Md. Jan who has not taken oath in this case for the reasons best known to the prosecution and furthermore it is equally surprisingly as to how Md. Jan has the information about PW 1, Haru

Naik living at" Debra in West Bengal when PW 1 had surreptitiously gone there with a view to conceal himself. In support of his contention reliance has been placed upon the case of Dinanath Singh and Ors Vs. State of Bihar, . It has also been submitted that PW 13, Madhav Chandra Tudu had deposed that in the night of the occurrence there was a Mansa Mangal Puja going on at the house of the appellant in which 50-60 persons had participated and this Mansa Mangal Puja had committed for the whole night and in this view of the matter the commission of the murder in the house of the appellant as alleged by the prosecution is highly improbable. It has also been submitted that PW 1 had deposed that the house of the appellant Kundu Murmu is situated after two houses of his house and Shyamsundarpur PS is located in his village Pitajori and there are 6-7 house in between Shyamsundarpur PS and his house. It is very surprisingly as to why PW 1 did not inform the PS regarding the occurrence when he came to know about the murder of the deceased and this aspect of the matter gives an inkling of the fact that this PW 1 Haru Naik has himself committed the murder of the deceased and has thrown the dead body of the deceased in the field and his motor cycle in the jungle and PW 1, Haru Naik has his key role in falsely implicating the appellant in this case as he has voluntarily gone before the police to make his statement to falsely implicate the appellants. The further contention of the learned counsel for the appellant is that there are material contradictions and inherent inconsistencies in the evidence of the prosecution witnesses regarding the deceased going to the house of the appellant Kundu Murmu and according to PW 1, Haru Naik he had gone to the house of the deceased Kundu Murmu which was not at all noticed by any person but it is surprisingly enough that a large number of persons have deposed falsely to have seen the deceased going to the house of the appellant Kundu Murmu and all these witnesses are chance witnesses purposely set up to falsely implicate the appellant in this got up case. Lastly it has been submitted that the recovered tangi has not been produced before the Court and there is no report of the serologist to establish the fact that the aforesaid tangi having blood stains thereon and the alleged earth containing blood have human blood thereon. Lastly it has been submitted that fardbeyan of the informant was recorded on 14.10.1996 at 10.15 hours and the case was instituted on that very day at 16.00 hours by drawing a formal FIR but it is surprisingly enough that the said fardbeyan and the formal FIR was received in the Court empowered to take cognizance on 17.10.1996 after inordinate and unexplained delay. Elucidating further it has been submitted that the FIR in a criminal case and particularly in the murder case is vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed including the names of the actual culprits and the parts played by them, the weapons, if any, used as also the names of the eye-witnesses, if any, and delay in lodging the FIR often results in embellishment which is a creature of an after thought and on account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or

exaggerated story. It has also been submitted that the FIR received after inordinate unexplained delay in the Court gives rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded and the facts and circumstances are indicative of the fact that the FIR came to be recorded later on after due deliberation and consultation and it was anti-timed unless, of course, the prosecution can offer a satisfactory explanation for the delay in dispatching or receipt of the FIR by the local Magistrate. It has also been submitted that the IO has categorically deposed that the Court empowered to take cognizance is situated at a distance of 50 kms. from the said PS and it takes one and half hours for going to the Court from the said PS on motor cycle and furthermore Section 157 of the Cr PC casts a duty upon the IO to forthwith send the report of the cognizable offence to the concerned Magistrate and the receipt of the fardbeyan and FIR in the Court empowered to take cognizance on the fourth day of the occurrence makes the very fardbeyan as a suspicious document as a result of after thought and deliberation and, therefore, the impugned judgment suffers with legal infirmities as well as material contradictions and is equally unsustainable in law.

9. The learned APP has submitted that though there is no ocular witness of the occurrence but the circumstances emanating from the materials on the record conclusively and unerringly lead to the hypothesis of the guilt of the appellants and there is no infirmity at all in the impugned judgment and the learned Court below has meticulously considered the circumstances of the case and has rightly held the appellants guilty. Elucidating further it has been submitted that there was intimate relationship between the deceased and the appellant Kundu Murmu, an issueless young widow aged about 32 years living alone in the house and the said intimacy has developed into illicit relationship between them and due to that special relationship the deceased has advanced Rs. 20,000/- to her on her request for the purchase Maxi-Taxi and PWs 5, 7, 8 and 10 besides other witnesses have testified the aforesaid fact in their evidence on oath and for the said demand the deceased had gone to the house of the appellant in the fateful night of the occurrence. It has further been submitted that there cannot be any paper of advancement of loan aforesaid due to such intimate relationship between them. There is evidence on the record that on 13.10.1996 the deceased had left his house for going to the house of appellant Kundu Murmu for making demand for repayment of the said loan and PW 1 has accompanied him up to the house of appellant Kundu Murmu where he has seen the deceased along with all the appellants inside the house through the gap of the door in the light of the dhibri and the deceased did not come back to the house of the appellants alive, thereafter, and in the following morning his dead body was found in the paddy field and PW 1 out of fear when he came to know about the murder of the deceased threw the motor cycle in the jungle and fled away to village Debra in West Bengal and the conduct of PW 1 cannot be said to be an unnatural conduct in the facts and circumstances of this case. Thereafter, appellant Kundu Murmu and Nandu Hembram have absconded and on their apprehension from the house

of appellant Madhav Chand Tudu, their confessional statement was recorded and in pursuance thereof the tangi which is the weapon of assault was seized in presence of the witnesses and blood stained earth was recovered from the house of the appellant Kundu Murmu and also from the place outside of her house. The materials on the record further establish the fact that the murder of the deceased has taken place only with a view to grab the said Rs. 20,000/- which the deceased has advanced to the appellant Kundu Murmu and the motive for the commission of the murder stands well established in view of the evidence on the record. The aforesaid circumstances, therefore, form a complete chain which unerringly leads to the only hypothesis of the guilt of he appellant.

10. It will admit of no doubt that Kanhai Lal Hembram, the husband of PW 14, Pungi Hembram, the informant has been done to death and his dead body was thrown in the water filled paddy field of Jamadar Hansda in village Bartaulia and there was an uproar in respect thereof in the morning of 14.10.1996 and the informant along with others rushed to that place from her village Baragarias. PW Gul Mohammad Ansari, ASI, Shyamsundarpur PS had reached the said place on rumour regarding the existence of the dead body of a person in the said field where the fardbeyan (Ext. 8) of PW 14 was recorded in presence of PWs 6, 12 and 13. PW 16 has deposed to have prepared the inquest report (Ext 9) of the dead body in the said field at 10.30 hours on that day which was witnessed by PW 5 and PW 13 and their signatures thereon are Ext. 1 and 1/1 respectively and there were incised bleeding wounds of different dimensions on the right cheek, right temple, forehead and near left ear said to have been caused by sharp cutting weapon and his clothes were found torn. The dead body was forwarded to the hospital for autopsy which was conducted by PW 9 Dr. Bimal Kishore Sinha. The medical witness has conducted the post mortem examination on the dead body of the deceased on 15.10.1996 at 9.00 a.m. though the dead body was received in the Ghatshila hospital at 7.00 p.m. on 14.10.1996 which is borne by post mortem report (Ext. 3) per pen of the medical witness. The medical witness has deposed to have found the following ante mortem injuries on the dead body of the deceased :

(i) Bleeding from left ear

(ii) Sharp cutting wound on right side of cheek 2" x 1/2" x 1/2"

(iii) Sharp cutting wound on left side of frontal bone 3" x 1/2" x 1/2"

(iv) Sharp cutting wound on middle of left side of parietal bone 3" x 1" x brain deep.

The medical witness has further deposed that on dissection he has found the fracture of bone with hematoma on brain under injury No. 4 aforesaid. He has also deposed that in his opinion the death has occurred due to shock and hemorrhage because of head injury and all the aforesaid injuries have been caused by sharp cutting weapon and the time elapsed since death is 36 hours. The evidence of medical witness stands corroborated by post mortem report

(Ext. 3) aforesaid.

11. It is relevant to mention at the very outset that there is no ocular witness regarding the commission of the murder of the deceased by the appellants and the case of the prosecution rests squarely regarding the involvement of the appellants in the commission of the murder on the circumstantial evidence emanating as per the testimony of the prosecution witness. It is well settled that when a case rests on circumstantial evidence, such evidence must satisfy that the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established and those circumstances should be of a definite tendency unerringly and unmistakably pointing towards the guilt of the accused and 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 has been committed by the accused and none-else.

12. Let us now advert to the evidence on the record in respect thereof. According to the prosecution case as averred in the fardbeyan (Ext. 8), the deceased had illicit relationship with the appellant Kundu Murmu, an issueless widow aged about 32 years who used to deal in illicit sale of liquor and also of haria, living alone in her house at village Pitajori and the deceased was on visiting terms with her in her house where he used to take liquor and haria and also used to Stay in her house with her invariably in the night. PW 14, the informant, PWs 1, 2, 3, 4, 5, 6, 7, 8, 10, 12 and 13 have deposed in their evidence on oath regarding the existence of the illicit relationship between the deceased and the appellant Kundu Murmu. PW 14, the, informant has very categorically deposed in para 2 of her evidence that the appellant Kundu Murmu used to sale liquor and the deceased used to go there frequently for taking liquor there and the deceased had developed illicit relationship with the appellant Kundu Murmu and he often used to stay there for the whole night. PW 1, Haru Naik a resident of village Pitajori has also deposed that the deceased had illicit relationship with the appellant Kundu Murmu and he used to remain in her house for the whole night. PWs 2, 3, 4 and 13 are also the residents of village Pitajori, the village of appellant Kundu Murmu. PW 2 has also deposed that the deceased used to go to the house of the appellant Kundu Murmu frequently as he had love affairs with her and sometimes he used to stay in the night with her in her house. Similar is the evidence of PW 3 and he has categorically deposed that he is seeing the deceased for the last three years prior to the occurrence visiting the house of the appellant Kundu Murmu and sometimes he used to stay there for the whole night. PW 4 is a homeopathic doctor having his clinic in village Pitajori. He has deposed that the deceased used to go to the house of Kundu Murmu for having wine and the deceased had developed illicit relationship with her and at times he used to stay in the night in the house of Kundu Murmu after taking liquor and sometimes he also used to return from there at late in the night. PW 13 has also corroborated the evidence in respect thereof in his testimony. The other set of witness i.e. PWs 5, 6, 7, 8, 10 and 12 some of them are resident of village Baragarias and others of different villages have also testified in their evidence on oath regarding the

fact of the deceased going to the house of the appellant Kundu Murmu for taking liquor and Haria and also staying there with her in the night as the deceased had developed illicit relationship with her. It is, therefore, established conclusively in view of the evidence of the witness referred to above that the deceased had illicit relationship with appellant Kundu Murmu and he used to visit her house for taking wine and he also used to stay there in the night with her.

13. According to the prosecution case as averred in the fardbeyan (Ext. 8), the deceased was going to the house of Kundu Murmu and on protest by the informant he told the informant that he goes to the house of the appellant Kundu Murmu only with a view to get back Rs. 20,000/- which he had advanced to appellant Kundu Murmu about two years ago for purchase of a 407 Taxi-Maxi and the appellant Kundu Murmu had delivered that amount to her brother, appellant Nandu Hembram and the second hand 407 Maxi-Taxi was purchased by them. According to the averment in the fardbeyan the deceased had told the informant that he will return by 9.00 o'clock in the night from the house of the appellant Kundu Murmu. It is also alleged that the deceased was pressing the appellant Kundu Murmu to refund the said amount for the last few days but she was evading the repayment. It is relevant to mention at the very outset that there is no document to evidence the payment of Rs. 20,000/- as loan to appellant Kundu Murmu by the deceased for the purchase of 407 Maxi-Taxi. However, PWs 14, 1, 2, 3, 4, 5, 6, 7, 8, 10, 12 and 13 have testified in their evidence the fact that the deceased had advanced Rs. 20,000/- to appellant Kundu Murmu for the purchase of 407 Maxi-Taxi and the deceased had gone to the house of the appellant Kundu Murmu on the day of the occurrence for demanding the said amount back. She has also deposed that PW 10, PW 8 and PW 7 besides other members of her family were present in her house when the deceased had left his house for going to appellant Kundu Murmu for demand of the said money. PW 10 is the husband of the sister of the deceased. He has deposed that he had come to the house of the deceased on 13.10.1996 along with his wife PW 8 and in the evening at about 5.00 o'clock, the deceased was going on his motor cycle towards Pitajori and on his query the deceased told him that he is going to the house of appellant Kundu Murmu for demanding his money back and by 9.00 o'clock in the night he will return to his house. His evidence is further to the effect that he had learnt from the informant regarding the advancement of Rs. 20,000/- by the deceased to the appellant Kundu Murmu and Nandu Hembram and in spite of persistent demand by the deceased the aforesaid appellants were evading the repayment. PW 8, the sister of the deceased has corroborated the testimony aforesaid of PW 10 in her evidence on oath. PW 7, Karan Munda the maternal son-in-law of the deceased in his evidence on oath has also testified the said fact. PW 5, the son of the deceased has deposed that the deceased used to go to the house of the appellant Kundu Murmu for demanding Rs. 20,000/- advanced to her for purchase of a 407 Maxi-Taxi and the appellant Kundu Murmu, and her brother appellant Nandu Hembram had purchased the 407 Maxi-Taxi, He has also deposed that the deceased had advanced the said amount as

loan without the knowledge of the informant but later on the deceased had disclosed regarding the advancement of loan of Rs. 20,000/- before the informant and PW 7, Karan Hansda. PW 6 has deposed that he has learnt from the informant regarding the advancement of Rs. 20,000/- as loan by the deceased to appellant Kundu Murmu about two years ago for buying a 407 Maxi-Taxi. PW 12 has also deposed that he had knowledge about the advancement of Rs. 20,000/- by the deceased to the appellant Kundu Murmu. However, this witness does not disclose the source from which he has acquired the knowledge of the said fact. PWs 1, 2, 3, 4 and 13 are the resident of village Pitajori and their evidence is equally relevant on this score. PW 1, Haru Naik has deposed that the deceased had come to his house on his motor cycle at about 9.00 o'clock in the night on the alleged date of occurrence and he kept his motor cycle at his house and he called him and prevailed upon him to accompany him to Kundu Murmu's house as he has to go there to make demand for the repayment of Rs. 20,000/-. He has also deposed that he accompanied the deceased to the house of the appellant Kundu Murmu and the deceased went inside her house. PW 2 has deposed that in the night of the occurrence, appellant Kundu Murmu had asked for a loan of Rs. 1,000/- from him coming to his house as her brother had to make payment towards the purchase of the vehicle to the owner but he expressed his inability and Kundu Murmu returned from there to her house. He has further deposed that the appellant Nandu Hembram had taken Rs. 20,000/- from the deceased for the purchase of the said vehicle. The evidence of PW 3 is that he is aware of the fact that the deceased has advanced Rs. 20,000/- to the appellant Kundu Murmu and her brother Nandu Hembram for the purchase of the vehicle. He has also deposed that the appellant Nandu Hembram plies the vehicle of the appellant Kundu Murmu which was purchased and appellant Nandu Hembram gives the earning of the said vehicle to appellant Kundu Murmu.

PW 4 in his testimony has categorically deposed that the deceased had advanced Rs. 20,000/- to the appellant Kundu Murmu for buying a vehicle and she along with the appellant Nandu Hembram had purchased 407 Maxi-Taxi and the deceased was pressing her for the refund of the said amount. PW 13 has also deposed that he is aware of the fact that the deceased had given Rs. 20,000/- to the appellant Kundu Murmu and Nandu Hembram for the purchase of a vehicle about 2-3 years ago with the help of which they had purchased a Maxi-Taxi and inspite of repeated demands they were not refunding the said amount to the deceased. PW 10 in para 8 and also PW 7 in para 8 have further deposed that the appellant Nandu Hembram had purchased a 407 Maxi-Taxi bearing registration No. BR-16-0599. PWs 3, 4 and 13 in their evidence on oath have also deposed regarding the purchase of 407 Maxi-Taxi by the appellant Nandu Hembram and Kundu Murmu. From the evidence of the witnesses referred to above it is established beyond doubts that the deceased who had very intimate and promiscuous relationship with appellant Kundu Murmu had advanced Rs. 20,000/- for the purchase of 407 Maxi-Taxi prior to the occurrence and the

absence of any document evidencing the said fact in view of his intimate promiscuous relationship with appellant Kundu Murmu does not cast a cloud of suspicion to the warp and woof of the prosecution case in respect thereof. It is also established by the evidence referred to above that Nandu Hembram had purchased a Maxi-Taxi bearing registration BR-16-0599 which he used to ply and he used to deliver the income of the said vehicle to appellant Kundu Murmu. It also appears from the evidence referred to above that the deceased was pressing appellant Kundu Murmu hard for the refund of the said amount. DW 1, James Peter Lakra, an Assistant of the District Transport Office, Jamshedpur has proved Motor Vehicle Registration Register regarding the registration of BR-16-0599 which is a Tata 407 vehicle and the entry in respect thereof is Ext. A in this case. It appears from the perusal of Ext. A that the said vehicle was registered in the name of Gajli Khan on 5.9.1989 under H.P.A. with United Bank of India, Jamshedpur. Thereafter, it was transferred on 23.10.1997 in favour of Md. Saud Khan and finally it stands transferred in favour of Smt. Rani Devi on 4.6.1998. Ext A does not disclose that the said vehicle stands registered either in the name of appellant Kundu Murmu or Nandu Hembram at any point of time. The non-registration of the name of either Kundu Murmu or the appellant Nandu Hembram in the Motor Vehicle Registration Register in respect of vehicle bearing registration No. BR-16-0599 is ipso facto not suggestive of the fact that the sale of the said vehicle has not been effected in favour of either of the aforesaid appellants. It is evident from the evidence referred to above that the appellant Nandu Hembram used to ply the said vehicle and he used to deliver the income of the said vehicle to appellant Kundu Murmu. PW 2 has categorically deposed that in the night of the occurrence, appellant Kundu Murmu had asked for a loan of Rs. 1,000/- from him as her brother, appellant Nandu Hembram had to make payment towards the purchase of the vehicle to the owner. The evidence of PWs 2 and 3, the independent witnesses having no relation with the deceased clearly suggests the fact that the aforesaid two appellants were in possession of the said vehicle and appellant Nandu Hembram used to ply that vehicle. It also appears from their evidence that the entire consideration money of the vehicle has not been paid to the owner and for that appellant Kundu Murmu had made a demand of Rs. 1,000/-, from DW 2 and that probably appears to be the reason of the non-registration of the name either of the appellant aforesaid in the said Motor Vehicle Registration Register regarding the said vehicle. Therefore, Ext. A does not at all belie the prosecution case of the purchase of the said vehicle by the appellant Kundu Murmu and her brother Nandu Hembram. Even DW 1 has admitted that it is not necessary that the vehicle should be driven only by that person who stands registered in the said Motor Vehicle Registration Register in respect of the said vehicle. Therefore, Ext A has no relevancy in this case in view of the overwhelming evidence laid by the prosecution regarding appellant Kundu Murmu and Nandu Hembram having purchased the said vehicle. In view of the evidence aforesaid the prosecution has proved the genesis and motive of the occurrence by legal and reliable evidence. The contention of the learned counsel in respect thereof has no substance.

14. According to the prosecution case the deceased had left his house for going to appellant Kundu Murmu's house for making demand for the repayment of loan of Rs. 20.000/-. PWs 14, 5, 7, 8 and 10 have testified the fact of the deceased going to the house of the appellant Kundu Murmu for that purpose. PW 1, Haru Naik has deposed that the deceased came to his house on motorcycle and he asked him to accompany him to the Kundu Murmu's house at 9.00 o'clock in the night of the occurrence and PW 1 has deposed to have accompanied the deceased to the house of appellant Kundu Murmu and while reaching there the deceased asked him to stay outside the house and the deceased went inside the house of appellant Kundu Murmu. His evidence is further to the effect that the door of the house was partly open from which he noticed all the three appellants along with one Sangram sitting inside the house of the appellant Kundu Murmu and there was a light of dhibri in the said house and after waiting for sometime he returned from there. The house of PW 1 is situated in the close proximity of the house of appellant Kundu Murmu only intervened by two houses. However, in para 4 of the cross-examination he has deposed that no person in the village has seen him going to the house of the appellant Kundu Murmu along with the deceased. He has also deposed that he has also not seen anybody at that point of time. His evidence is further to the effect that when the deceased did not come out of her house he returned to his house and slept there and in the morning when he got the information regarding the recovery of the dead body of the deceased he threw the motorcycle of the deceased which was lying at his house in the jungle and fled away from his house to village Debra in West Bengal out of fear of the police being implicated in this case. In the concluding portion of para 7 of his evidence he has categorically deposed that he had stated to the villagers and Lili Murmu in the morning of the following day of the occurrence regarding his going in the company of the deceased to the house of appellant Kundu Murmu and presence of all the appellants along with Sangram in the said house. It, therefore, appears from the evidence of PW 1 that in his presence the deceased had gone inside the house of appellant Kundu Murmu where other two appellants were present along with Sangram. PW 3 Lili Murmu resident of Pitajoria has deposed that he had gone to the house of PW 1 Haru Naik at about 7-8 o'clock in the following morning of the occurrence where he found the motorcycle of the deceased kept at the house of Haru Naik and on query as to whether he has purchased the motorcycle and at this PW 1 Haru Naik told him that the deceased had kept his motorcycle at his house about 9.00 or 10.00 o'clock in the previous night and he had gone to the house of appellant Kundu Murmu for taking wine and he was also standing outside the house of Kundu Murmu and when the deceased did not come out of the said house he returned to his own house. PW 4, the Homeopathic Doctor having his clinic in the village Pitajoria has deposed that he was returning from his clinic to his village at about 9.00 o'clock in the night of the occurrence and he had seen the deceased in the company of PW 1, Haru Naik going towards the house of the appellant Kundu Murmu. PW 6 in para 1 of his evidence has deposed that at about 10.00 o'clock in the night on 13.10.1996 he was coming from the village Pitajoria to his village

and he met the deceased in the company of Hari Naik in village Pitajoria two or three houses away from the house of the appellant arid on his query the deceased told him that he was going to the house of the appellant Kundu Murmu for taking wine. In para 4 of his cross-examination he has deposed that he had gone to village Pitajoria for taking wine and he was returning to his house at about 10.00 o'clock after taking wine when he had met the deceased. PW 12 in para 2 of his evidence has deposed that he was at Pitajoria chowk at about 10.00 o'clock in the night on 13.10.1996 and while he was returning from there he saw the deceased in the company of PW 1 Haru Naik going towards the house of appellant Kundu Murmu. In para 6 of his cross- examination he has deposed that on that day he had gone to Tharagora and while returning he had seen the deceased in the company of Haru Naik in village Pitajbria going towards the house of the appellant and he had also a talk with the deceased and at that time PW 1 Haru Naik was 4 or 5 "Haath" standing behind him. PW 13, the resident of village Pitajoria has deposed to have seen the deceased in the company of PW 1 Haru Naik and they were going towards the house of appellant Kundu Murmu. In para 6 of his cross-examination he has deposed that his house is situated at the distance of 100 yards from the house of appellant Kundu Murmu intervened by only one house. It, therefore, appears from the evidence of PWs 3, 4, 6, 12 and 13 that they have seen the deceased in the company of PW 1 Haru Naik going towards the house of Kundu Murmu. PW 1 has specifically deposed that the deceased went inside the house of the appellant Kundu Murmu and he remained waiting outside the said house and when the deceased did not come back from the said house he had returned to his house and slept in the night. It, therefore, becomes an established fact that at 10.00 o'clock in the night the deceased had gone in the house of appellant Kundu Murmu and on the following morning his dead body was recovered in the water filled paddy field of Jamadar Hansda in village Bartolia.

15. PW 15, Ram Awadesh Kumar Singh is the IO of this case and he has searched the house of the appellant Kundu Murmu on 15.10.1996 and he has deposed to have found dry blood stains on the earth and on the western wall in the room of appellant Kundu Murmu. He has also deposed that he has also found dry blood stains on the north western corner of the wall outside her house and further blood stains on green grass 15 feet west from her house which he has seized as per Ext. 7/1 in presence of PW 11 Dadu Ram Mardi and PW 10 Shyam Charan Mardi and both these witnesses in their evidence on oath have testified about the recovery and seizure in respect thereof from the house of the appellant Kundu Murmu as deposed by the IO PW 15 has further deposed that all the three appellants were apprehended by him and their confessional statement was recorded. In pursuance of the confessional statement of appellant Madhav Chandra Tudu, the tangi without its handle which is the weapon of assault having blood stains thereon was recovered in presence of appellant Madhav Chandra Tudu near Balikhal Dam by the side of the river concealed under the earth in presence of the witnesses and Ext. 7/2 is the seizure list in respect thereof and

PWs 10 and 11 also figured as seizure witnesses thereon who in their evidence has testified the fact of recovery of the said tangi without its handle at the instance of appellant Madhav Chandra Tudu. If further appears from Ext. 7/2 that appellant Madhav Chandra Tudu has put his signature thereon. In course of investigation the motorcycle of the deceased was also recovered 300 yards south from the house of PW 1 in the jungle as per Ext. 7.

16. The following circumstances emerged from the evidence referred to above which may be summarized hereunder :

(i) The deceased was on visiting terms with appellant Kundu Murmu for the last three years prior to the occurrence.

(ii) There was illicit relationship between the deceased and appellant Kundu Murmu an issueless 32 years old widow.

(iii) Appellant Kundu Murmu used to deal in liquor and the deceased used to visit her house also for taking liquor and he used to stay in the night with her in the said house.

(iv) The deceased has made an advance of Rs. 20,000/- to appellant Kundu Murmu for the purchase of 407 Maxi-Taxi.

(v) Appellant Nandu Hembram, the brother of appellant Kundu Murmu, used to ply the said Maxi-Taxi and he used to hand over the income of the said Maxi-Taxi to the appellant Kundu Murmu.

(vi) On the fateful night the deceased had gone to the house of Kundu Murmu to make demand for the repayment of Rs. 20,000/- advanced to her.

(vii) The deceased had gone inside the house of appellant Kundu Murmu in presence of PW 1 Hari Naik.

(viii) The deceased did not come out of the said house alive rather his dead body was found thrown in the paddy field of Jamadar Hansda in village Bartolia which is south-west of the house of appellant Kundu Murmu as a distance of 1-1/2 kilometer.

(ix) Blood stains were found on the floor in the room and its wall of the house of Kundu Murmu and also on the north western corner of the outer wall of her house as well as on the grass 15 feet west of her house.

(x) Appellant Kundu Murmu had absconded from her house soon after the occurrence as she was not present in her house when her house was searched by PW 15.

(xi) In pursuance of the confessional statement of Madhav Chandra Tudu the tangi having blood stains thereon without handle was recovered in presence of appellant Madhav Chandra Tudu from a place near Balikhal Dam by the side of the river concealed under the ground as pointed by appellant Madhav Chandra Tudu.

(xii) There is apparent motive for the appellant to commit the murder of the deceased as the deceased was pressing Kundu Murmu for the refund of the said amount.

17. Let us now advert to the evidence on the record which appears to be relevant regarding some of the circumstances referred to above to be viewed with suspicion. For this I will first refer the evidence of PW 13, Madhav Chandra Tudu who has deposed in his evidence on oath that in the night of occurrence there was Mansa Mangal Puja going on in the house of appellant Kundu Murmu which had continued for the whole night attended by 50-60 persons and the said Mansa Mangal Puja had began at 9.00 o'clock in the night. This fact has emerged in para 6 of the cross-examination of PW 13. PW 16 the other IO in para 11 of his evidence has deposed that he has not mentioned in the case diary whether there was any gana bajana in appellant Kundu Murmu's house or not from the evening of 13.10.1996 till the morning of 14.10.1996 though he has learnt about the same. The evidence of PW 16 in para 11 of his deposition referred to above has no bearing in this case to substantiate the fact that there was Mansa Mangal Puja in the house of appellant Kundu Murmu in the fateful night for the reason that the IO cannot go beyond the facts recorded by him in the case diary and his personal knowledge, if any, is not at all admissible in evidence. None of the witness of village Pitajori has stated in their evidence on oath regarding any Mansa Mangal Puja having been taken place in the fateful night in the house of Kundu Murmu. Therefore the evidence regarding Mansa Mangal Puja as stated by PW 13 in his cross-examination in respect of which he has not stated in his statement u/s 161. Cr PC before the IO cannot be taken into consideration to cast a cloud of suspicion regarding the prosecution case of the commission of the murder of the deceased in the house of appellant Kundu Murmu, Therefore, the contention of the learned counsel for the appellant that it is highly improbable that the murder of the deceased shall be committed in the house of appellant Kundu Murmu when Mansa Mangal Puja is going on there attended by 50-60 persons has no substance in the facts and circumstances of this case. Secondly, the recovered tangi without handle in pursuance of the confessional statement of Madhav Chandra Tudu as per seizure list Ext. 7/2 in presence of PWs 10 and 11 has not been brought before the learned Court below as material exhibit and there is also absence of Serologist report regarding the blood stains found on the said tangi as well as the blood stained earth recovered and seized from the house of appellant Kundu Murmu. Definitely it is a latch on the part of the IO but on his score alone the prosecution case cannot be thrown when there is sufficient legal evidence on the record in support of the prosecution case. It is wellnigh settled that even if the investigation is either faulty, illegal or even suspicious, the rest of the evidence must be scrutinized independent of the impact of it, otherwise the criminal trial will plumate to the level of the Investigating Officers ruling the roost. The Court must have predominance and preeminence in criminal trials over the action taken by the Investigating Officers. Criminal justice should not be made a casualty for the wrongs committed by the Investigation Officers in

the case. In other words if the Court is convinced with the testimony of the witnesses that the occurrence is true the Court is free to act on it, albeit to the Investigating Officers' suspicious role in the case or latch on his part. Therefore, the non-production of the tangi as material exhibit and the absence of the Serologist report in the case cannot be viewed as a suspicious circumstances to throw the prosecution case in the facts and circumstances of this case. Viewed thus, I see no substance in the contention of the learned counsel for the appellant in respect thereof.

18. Attempt has been made by the defence to impeach the testimony of PW 1, Haru Naik the most important witness of the prosecution who has deposed to have accompanied the deceased to the house of appellant Kundu Murmu in the fateful night on three fold grounds that he has been set up by the prosecution and his conduct after alleged occurrence is suspicious as he himself has not reported the matter to the police and threw the motor cycle far away and fled away to village Debra in West Bengal without any information to any person and he has been brought by Md. Jan from village Debra to support the prosecution case and his statement was recorded u/s 161 of the Cr PC after one month of the occurrence. PW 1 has deposed that when he came to know about the murder of the deceased he threw the motorcycle of the deceased kept at his house far away from his house and fled away to village Debra out of fear of being implicated in this case. The fear psychosis of PW 1 is but natural in the facts and circumstances of this case. He has further deposed that at the instance of Md. Jan when the mist was clear he came back to his village and, thereafter, his statement was recorded by the Investigating Officer. Therefore, it cannot be said in the facts and circumstances of this case that PW 1 Haru Naik has been set up as a witness for the prosecution regarding the most vital aspect of the prosecution case and his conduct can never be termed as suspicious. Therefore, the delay of one month in recording his statement stands explained, therefore, the ratio of the case of Dinanath Singh (supra) has no bearing in this case. There is no cogent material at all on the record to view his testimony with suspicion. Therefore, there is no substance also in the contention of the learned counsel for the appellant in respect thereof. The fardbeyan of the informant in this case was recorded on 14.10.1996 at 10.15 hours when the dead body of the deceased was found in the paddy field in village Bartolia regarding the occurrence which is said to have taken place in the night between 13th/14th of October, 1996 and case was instituted at 16.00 hours on 14.10.1996 by drawing a formal FIR but the fardbeyan alongwith the formal FIR was received in the Court empowered to take cognizance on 17.10.1996. It is true that Section 157 of the Code of Criminal Procedure casts a duty upon the IO to forthwith send the report of the cognizable offence to the concerned Magistrate and unexplained delay makes the very fardbeyan as a suspicious document as a result of afterthought and deliberation. It is pertinent to mention here that there is consistent evidence of the informant as well as other witnesses of the prosecution that the fardbeyan of the informant was recorded at the paddy field where the dead body was found at about 10.00

o'clock on 14.10.1996. The inquest report (Ext. 9) was prepared at 10.30 hours on that very day in the said paddy field in respect of the dead body of the deceased. The postmortem report Ext. 3 shows that the dead body has been despatched for the post mortem examination on 14.10.1996 which was received for post mortem at 7 p.m. on that very day. The post mortem report further shows that autopsy was conducted on the dead body of the deceased on 15.10.1996 at 9.00 hours. Investigation has started in the case immediately soon after the recovery of the dead body of the deceased. It has been observed in the case of *Pala Singh and Another Vs. State of Punjab*, that Section 157, Cr PC requires report contemplated by that section to be sent forthwith by the police officer concerned to a Magistrate empowered to take cognizance of such offence. This is really designed to keep the magistrate informed of the investigation of such cognizable offence so as to be able to control the investigation and if necessary to give appropriate direction u/s 159. But where the FIR was actually recorded without delay and the investigation started on the basis of that FIR and there is no other infirmity brought to the notice of the Court, then, however improper or objectionable the delayed receipt of the report by the magistrate concerned, in the absence of any prejudice to the accused, it cannot by itself justify the conclusion that the investigation was tainted and the prosecution insupportable. It is pertinent to mention here that delay in the receipt of the fardbeyan and the FIR by the Court empowered to take cognizance only shows carelessness on the part of the investigating agency in the facts and circumstances of this case specially when the foundation of the case stood laid down well before the postmortem examination completed in this case. Therefore, it cannot be said in the facts of this case that the fardbeyan of PW 14 recorded by PW 16 is anti-dated and anti timed and bereft of the advantage of spontaneity and any embellishment or coloured version or exaggerated story in the fardbeyan is totally ruled out in the facts and circumstances of this case. Therefore, on this score also the prosecution case does not suffer with any legal infirmity and I also find no substance in the contention of the learned counsel of the appellant. And last but not the least, there is no material contradictions or inconsistencies or inherent improbabilities in the evidence of the prosecution witnesses of such a magnitude to cast a cloud of suspicion to the very credibility of the wrap and woof of the prosecution case.

19. To sum up the circumstances emanating from the evidence referred to above make a complete chain and are cogently and firmly established having a definite tendency which unerringly and unmistakably lead to the only hypothesis of the guilt of the appellants regarding the commission of the murder of the deceased by them and all the circumstances referred to above in this case considered cumulatively are quite inconsistent with the innocence of the appellants. The learned Court below has meticulously considered the facts, circumstances and materials on the record in proper perspective and has rightly come to the finding of the guilt of the appellant in the commission of the murder of the deceased and I see no infirmity at all in the impugned judgment requiring an interference

therein.

20. There is no merit in this appeal and it fails. The impugned judgment of the learned Court below is hereby affirmed. The appeal is hereby dismissed.

Lakshman Uraon, J.

I agree.