
(2023) 04 JH CK 0014

In the Jharkhand High Court

Case No : Acquittal Appeal No. 8 Of 2014, Criminal Appeal (DB) No. 767 Of 2013

State Of Jharkhand And Others

APPELLANT

Vs

Mashilal Hembrom And Others

RESPONDENT

Date of Decision : 05-04-2023

Acts Referred:

Indian Penal Code, 1860 — Section 34, 201, 302
Code Of Criminal Procedure, 1973 — Section 313
Evidence Act, 1872 — Section 106

Citation : (2023) 04 JH CK 0014

Hon'ble Judges : Shree Chandrashekhar, J; Ratnaker Bhengra, J

Bench : Division Bench

Advocate : Pankaj Kumar, Vani Kumari, Akhouri Awinash Kumar

Final Decision : Dismissed

Judgement

Shree Chandrashekhar, J

1. Mariyam Kisku who is the maternal aunt of Ilyas Murmu is aggrieved of the judgment dated 30th August 2013 passed by the Additional Sessions Judge-III, Dumka in Sessions Trial No. 60 of 2008. The State of Jharkhand has also challenged the aforesaid judgment passed in Sessions Trial No. 60 of 2008 by which Mashilal Hembrom and Isha Hembrom have been acquitted of the charge of murder of Ilyas Murmu aged about 19 years and causing disappearance of his dead body.

2. On the basis of the fardbeyan of Mariyam Kisku which was recorded by Amarnath Surin on 17th May 2006 at around 12:10 AM, Ramgarh PS Case No. 47 of 2006 was lodged against Mashilal Hembrom and his brother, namely, Isha Hembrom. After the investigation the accused persons were sent up for trial. During the trial, the prosecution has examined 10 witnesses out of whom PW2 Muchil Murmu (Moharil) is the husband of the informant, PW7 Bonifas Murmu is the father of deceased, PW1 and PW3 are the close friends of the deceased and PW4, PW5 and PW6 are the co-villagers of PW7.

3. Dr. Chandeshwar Prasad Sinha who conducted the postmortem examination over the dead body of Ilyas Murmu has tendered evidence as PW9 to the effect that the dead body was partially decomposed, maggots were crawling over the dead body and skin was peeling off at multiple places. PW9 has observed a defused swelling over right side of the chest and on dissection 4th, 5th and 6th ribs on the right side of the chest were found fractured.

4. According to PW9, the cause of death was shock and hemorrhage resulting from the chest injury caused by hard and blunt substance and the time elapsed since death was 4 to 5 days from the postmortem examination.

5. The trial Judge has held that except the last seen evidence produced through PW1 and PW3 no other incriminating circumstance has been proved by the prosecution so as to establish complicity of Mashilal Hembrom and Isha Hembrom in the murder of Ilyas Murmu.

6. The trial Judge has referred to the incriminating circumstances such as last-seen-together, suspicious movement of the accused persons after they came back and joined the Baraat Party, Mashilal Hembrom leaving the village immediately after the occurrence and motive for the crime. However, on an appreciation of the materials on record came to a conclusion that the prosecution has failed to establish the charge under section 302 read with section 34 of the Indian Penal Code and section 201 of the Indian Penal Code (in short, IPC).

7. While recording the judgment of acquittal the trial Judge has held as under:

"20. In view of discussion made here in above as well as in the ratio of law laid down by our Hon'ble Apex Court, this Court find that the prosecution palpably failed to prove the charges against any of the accused persons. The manner in which the information given to the police on 14.05.2006 and 15.05.2006 not brought on the record and the present first information report Exhibit: 5 also remain suspicious lodged after delay of four days creates serious doubt over the case of prosecution. The conduct of accused Mashilal Hembrom regarding his flee or perplexed condition after occurrence is neither established to be incriminating nor relevant in view of law laid down by the Apex Court in case of Sohail Mahaboob Seikh (Supra) and case of Mohibur Rahman (Supra) and in view of the fact that first information report (Exhibit: 5) says that actually the accused did not flee or absconded, rather he went on duty of Military Service on 14.05.2006. Manner in which the dead body recovered also creates doubt, identifying material exhibits i.e wearing clothes, cap and other articles and burnt leather purse containing photographs as well as burnt identity card of deceased not placed and proved on the record. The investigating officer PW10 not visited the actual place of the occurrence at Kobam village nor describe the same in his evidence where from the deceased allegedly accompanied with the accused Mashilal Hembrom after leaving the Baraat Party. None of the witnesses from the house marriage of either side examined or interrogated by the investigating officer. Apart from the above after discovery of the dead body also there is contradictions that who had

informed the police first and when. The conduct of star witnesses PW1 & 3 proves themselves as unreliable and their version cannot be trusted.

21. In composing those facts and circumstances together this Court finds that the prosecution completely fail to connect any of the present two accused Mashilal Hembrom and Isha Hembrom with crime beyond all shadow of reasonable doubts and benefit of all such doubts and latches given to the accused persons. In conclusion this Court finds and hold that present both accused persons namely Mashilal Hembrom and Isha Hembrom are not guilty for any of the charges U/s 302 read with Sec. 34 Indian Penal Code or U/s 201 of the Indian Penal Code or for any other offenses. Accordingly both the accused Mashilal Hembrom and Isha Hembrom are hereby found and held not guilty, thus acquitted from the charges U/s 302 read with Sec. 34 Indian Penal Code U/s 201 of the Indian Penal Code leveled against them.

Both persons Mashilal Hembrom and Isha Hembrom are on bail and being acquitted they along with their respective sureties are hereby discharged from the liabilities of their bail bonds. The Office is directed to record the result in the Sessions Trial Register and deposit the record in the Record Room after transmitting a copy of the judgment to Deputy Commissioner, Dumka for information and needful."

8. The case of the prosecution is based on circumstantial evidence and according to the prosecution the circumstance of last-seen-together if considered together with motive for the crime would conclusively establish the guilt of the respondents.

9. In a case based on circumstantial evidence the prosecution is required to prove the circumstances by producing cogent and credible evidence. Not only that the circumstances sought to be established by the prosecution must be of definite character and all the circumstances taken together must lead to an inescapable conclusion that the accused has committed the crime. The circumstance of last-seen-together is sufficient to raise a strong suspicion but certainly not sufficient enough to prove the guilt of the accused. When the deceased was found alive last in the company of the accused and immediately thereafter his dead body is recovered a strong presumption would arise in law that the accused is the person who has committed the murder unless he offers some plausible and acceptable explanation. Mr. Pankaj Kumar, the learned Public Prosecutor and Mrs. Vani Kumari, the learned counsel for the informant have contended that there is no explanation offered by the accused persons when they were examined under section 313 of the Code of Criminal Procedure.

10. In a long line of judgments the Hon'ble Supreme Court has held that howsoever strong suspicion may be it is not sufficient to prove the guilt of the accused. The circumstance of last-seen-together sought to be relied upon against the respondents is not of definite character. PW1 and PW2 who tendered evidence in the Court are contradicting each other. Mr. Akhouri Awinash Kumar,

the learned counsel for the respondents would submit that a Baraat Party in which more than 200 to 500 persons were drinking and dancing, except PW3 no other witness has seen Mashilal Hembrom taking away Ilyas Murmu on a motorcycle. This is also the prosecution evidence that Mashilal Hembrom was nurturing suspicion about illicit relationship of his wife with Ilyas Murmu. The case set-up by the respondents is that on account of such suspicion they have been implicated in the case. We further find that the proximity test which was evolved in "Bodhraj v. State of J & K" (2002) 8 SCC 45 is not satisfied in the present case inasmuch as 4 days after Ilyas Murmu had gone missing his dead body was recovered about 15 KM away from Ramgarh PS.

11. In "Rajender v. State (NCT of Delhi)" (2019) 10 SCC 623 the Hon'ble Supreme Court has observed as under:

"12.2.4. Having observed so, it is crucial to note that the reasonableness of the explanation offered by the accused as to how and when he/she parted company with the deceased has a bearing on the effect of the last seen in a case. Section 106 of the Evidence Act, 1872 provides that the burden of proof for any fact that is especially within the knowledge of a person lies upon such person. Thus, if a person is last seen with the deceased, he must offer an explanation as to how and when he parted company with the deceased. In other words, he must furnish an explanation that appears to the court to be probable and satisfactory, and if he fails to offer such an explanation on the basis of facts within his special knowledge, the burden cast upon him under Section 106 is not discharged. Particularly in cases resting on circumstantial evidence, if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, such failure by itself can provide an additional link in the chain of circumstances proved against him. This, however, does not mean that Section 106 shifts the burden of proof of a criminal trial on the accused. Such burden always rests on the prosecution. Section 106 only lays down the rule that when the accused does not throw any light upon facts which are specially within his/her knowledge and which cannot support any theory or hypothesis compatible with his innocence, the court can consider his failure to adduce an explanation as an additional link which completes the chain of incriminating circumstances."

12. Mrs. Vani Kumari, the learned counsel for the informant has referred to the judgment in "Ram Gopal v. The State of Madhya Pradesh" [Special Leave Petition (Crl.) No. 9221 of 2018] wherein the Hon'ble Supreme Court has observed as under:

"9. In view of the afore-stated legal position, it is discernible that though the last seen theory as propounded by the prosecution in a case based on circumstantial evidence may be a weak kind of evidence by itself to base conviction solely on such theory, when the said theory is proved coupled with other circumstances such as the time when the deceased was last seen with the accused, and the recovery of the corpse being in very close proximity of time, the accused does owe an explanation under Section 106 of the Evidence Act with regard to the

circumstances under which death might have taken place. If the accused offers no explanation or furnishes a wrong explanation, absconds, motive is established and some other corroborative evidence in the form of recovery of weapon etc. forming a chain of circumstances is established, the conviction could be based on such evidence.”

13. Having regard to the aforesaid facts and circumstances in the case, we find no compelling reason to interfere with the judgment of acquittal of the respondents recorded in Sessions Trial No. 60 of 2008 and, accordingly, Acquittal Appeal No. 8 of 2014 and Criminal Appeal (DB) No. 767 of 2013 are dismissed.

14. Let the lower Court records be transmitted to the Court concerned, forthwith.

15. Let a copy of the Judgment be transmitted to the Court concerned through FAX.