
(2017) 06 JH CK 0054
In the Jharkhand High Court
Case No : 558 of 2009

Sudhir Kumar Singh

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 19-06-2017

Acts Referred:

[Indian Penal Code, 1860](#), [Section 302](#),
[Section 201](#), [Section 34](#) -
Punishment for murder - Causing disappearance of evidence of offence or giving false information to screen o

Citation : (2017) 06 JH CK 0054

Hon'ble Judges : H.C. Mishra, Ratnaker Bhengra

Bench : DIVISION BENCH

Advocate : Rakesh Kumar, Nehru Mahto

Judgement

1. Criminal Appeal No. 558 of 2009 and Criminal Appeal No. 633 of 2009 arise out of the common judgment of conviction dated 29.05.2009 and Order of sentence dated 30.05.2009 passed in Sessions Trial No. 45 of 2002, by the learned 1st Additional Sessions Judge, Garhwa, whereas Criminal Appeal No. 332 of 2012 arises out of the judgment of conviction dated 20.01.2012 and Order of sentence dated 01.02.2012 passed by the learned Addl. Sessions Judge-1, Garhwa, in Sessions Trial No. 45 (A) of 2002, and since all these appeal arise out of the same occurrence, they are heard together and are being disposed of by this common judgment.

2. Heard learned counsel for the appellants and the learned counsel for the State.

3. The appellants in all these appeals have been found guilty and convicted for the offence under Sections 302 and 201 read with Section 34 of the Indian Penal Code, and upon hearing on the point of sentence they have been sentenced to imprisonment for life and fine of Rs.2,000/- for the offence under Section 302 of the Indian Penal Code and to rigorous imprisonment for two years for the sentence under Section 201 of the Indian Penal Code and both the sentences

were directed to run concurrently.

4. The prosecution case was instituted on the basis of the fardbeyan of one Sunita Devi, who is the wife of the deceased Ramlal Ram, wherein it is alleged that on the day of occurrence which was Thursday, all these three appellants had gone to the house of the informant at about 3:00 p.m. and had taken away the husband of the informant along with them on some pretext. After about a week the skeleton of the deceased was found in Makri forest (plantation) and the clothes of the deceased were also found nearby, containing the purse of the deceased, in which his photo was also available. The informant alleged that all these three appellants had committed the murder of the deceased. On the basis of the fardbeyan of the informant, Dhurki P.S. Case No. 29 of 2001, corresponding to G.R. No. 531 of 2001, was instituted and investigation was taken up. After investigation the police submitted the charge-sheet against these appellants and two other co-accused who have since been acquitted by the Trial Court below.

5. Upon commitment of the case to the Court of Session, charge was framed against the accused persons for the offence under Sections 302/ 34 and 201 of the Indian Penal Code and upon the accused persons" pleading not guilty and claiming to be tried, they were put to trial. In course of trial 11 witnesses have been examined by the prosecution, out of whom, P.W.-3 Gullu Ram, P.W.-8 Bihari Thakur, P.W.-9 Ramjee Thakur, P.W.-10 Arbind Thakur and P.W.-11 Santosh Thakur, have turned hostile. P.W.-11 Santosh Thakur is also a witness to the seizure list and fardbeyan and he has identified his signatures on the same which were marked exhibits.

6. P.W.-6 Sunita Devi is the informant in the case who has supported the prosecution case to the extent that all these appellants had gone to her house and had taken away her husband along with them. Her husband thereafter, did not return back who was murdered and thrown away in the plantation. She also went to the plantation where his skeleton was found after six days and the deceased could be identified on the basis of his clothes and photograph. She had also identified the clothes, purse and photograph of the deceased. She has identified the accused persons in the Court. She has also stated that she had not seen these accused persons in the village after they had taken away her husband.

7. P.W.-1 Murli Ram and P.W.-5 Munna Ram have stated that they had seen the accused persons taking away the deceased along with them and after 5-6 days the skeleton of the deceased was found in the forest. His clothes were also found there along with his photograph. It may be stated that P.W.-1 Murli Ram is the uncle of the deceased, whereas P.W.-5 Munna Ram is the brother of the deceased.

8. P.W.-2 Ram Swaroop Ram has also stated that he had seen the skeleton of the deceased in the forest. The clothes of the deceased were also there and his photograph was there in his purse. This witness has stated that he had heard that the accused appellants had taken away the deceased along with them. He is

witness to the seizure list also and he has identified his signature on the seizure list which was marked Exhibit-1.

9. P.W.-4 Dwarika Ram is the uncle of the deceased, who has stated that the occurrence had taken place about four years ago on a Thursday when he was informed by the wife of the deceased that the accused appellants had taken away the deceased along with them. Thereafter the deceased did not return back and after 5-6 days his skeleton was found in the forest, which could be identified by the clothes and the photograph of the deceased.

10. P.W.-7 Mundrika Ram has also come to depose that on a Wednesday he had gone to the jungle when he had seen the skeleton, clothes and photograph which were identified to be of the deceased. This witness has also stated that he had seen the accused appellants taking away the deceased along with them.

11. The I.O. and the Doctor have not been examined in the case.

12. Learned counsel for the appellants has submitted that the appellants have been falsely implicated in this case only on the basis of the circumstantial evidence which is also to the extent only that about 5-6 days prior to the occurrence the deceased was taken away by these appellants, thereafter the skeleton of the deceased was found. Learned counsel submitted that the circumstantial evidence against the appellants are very weak and in any event the appellants were entitled at least to the benefits of doubt.

13. Learned counsel for the State on the other hand has opposed the prayer and has submitted that the prosecution have been able to prove the charge against the appellants beyond all reasonable doubts, in as much as, the witnesses have stated that they had seen the appellants taking away the deceased along with them and thereafter the skeleton of the deceased was found. Learned counsel submitted that there is no illegality in the impugned judgments of conviction and Orders of sentence.

14. Having heard learned counsels for both the sides and upon going through the record, we find that there is no eye witness to the occurrence, so far as the occurrence of murder is concerned. Even the I.O. and the Doctor have not been examined in the case. The only evidence against the appellants is that the appellants had taken away the deceased along with them, and after 5-6 days the skeleton of the deceased could be recovered. We are of the considered view that the circumstantial evidence against the appellants is too weak to secure the conviction of the appellants, and in any event the appellants were entitled to the benefits of doubt.

15. For the foregoing reasons the impugned judgment of conviction dated 29.05.2009 and Order of sentence dated 30.05.2009, passed in Sessions Trial No. 45 of 2002, as also the impugned judgment of conviction dated 20.01.2012 and Order of sentence dated 01.02.2012, passed in Sessions Trial No. 45 (A) of 2002, by the learned 1st Additional Sessions Judge, Garhwa, are hereby, set

aside. The appellants Mithilesh Thakur, Sharwan Thakur and Akhilesh Thakur are given the benefits of doubt and they are acquitted of the charge. All the appellants are in custody. Let them be released and set at liberty forthwith, if their detention is not required in any other case.

16. All these three appeals are accordingly, allowed. Consequently, I.A. No. 5582 of 2016 and I.A. No. 7483 of 2016, also stand disposed of. Let the Lower Court Records be sent back forthwith to the Court concerned, along with the copy of this judgment. Appeals allowed.