

**(2009) 02 JH CK 0126**  
**In the Jharkhand High Court**  
**Case No : Criminal Appeal No. 181 of 1997**

Sundra Paharia

APPELLANT

Vs

The State of Bihar (now Jharkhand)

RESPONDENT

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**Date of Decision :** 03-02-2009

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 313  
Penal Code, 1860 (IPC) — Section 201, 302

**Citation :** (2012) 1 JLJR 22

**Hon'ble Judges :** Pradeep Kumar, J; Narendra Nath Tiwari, J

**Bench :** Division Bench

**Final Decision :** Allowed

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## Judgement

1. This appeal is against the judgment of conviction dated 5.3.1997 and order of sentence dated 12.3.1997 passed by Shri Swaroop Lal, 1st Additional Sessions Judge, Godda in Sessions Case No. 81/1996/12/1996 whereby the appellant has been found guilty of committing murder of Madhu Singh Paharia and has been convicted u/sub section 302 and 201 of Indian Penal Code and sentenced to undergo life imprisonment u/s 302 I.P.C. and seven years rigorous imprisonment u/s 201 I.P.C.-both the sentences are to run concurrently.

2. The case was initiated on the basis of the fardbeyan of the deceased's wife Gangi Paharin. The prosecution case, in brief, is that on 11.12.1995, Madhu Singh Paharia (deceased) had gone to hat (market) alongwith the appellant. The appellant, Sundra Paharia returned home in the evening but Madhu Singh Paharia did not reach home. When the informant inquired about her husband, the appellant showed his ignorance about his whereabouts. The informant, thereafter, searched her husband here and there, but she did not find him. After two days, on 13.12.1995 the dead body of Madhu Singh Paharia was found lying in Daharlangi Bahiyar. The informant suspected that her husband must have been killed by the appellant due to enmity and land dispute.

3. The defence of the appellant was total denial of his involvement and false

implication by the informant due to enmity.

4. The prosecution in order to bring home the charges against the appellant altogether examined eight witnesses. Dr. Ajay Kumar Jha, P.W. 1, who conducted the post mortem of the dead body of the deceased opined that the death was caused by the injuries inflicted by hard and blunt substance P.W. 2, Deva Paharia stated that he came to know about the death of the deceased, Madhu Singh Paharia from the informant. There was enmity between the appellant and the deceased. He, however, did not remember the date on which he had seen the dead body P.W. 3, Hariya Paharia also came to know about the occurrence from the informant and he is hearsay witness P.W. 4, Jabra Paharia stated that he went to see the dead body when he got the information from the informant. He clearly stated in para 4 of his deposition that he had no personal knowledge about the incident. P.W. 5, Sundra Paharia in para 1 stated that the appellant was the Pradhan of the village and that P.Ws. 2, 3 and 4 are related to the deceased. In para 5, he stated that there was enmity between the appellant and the deceased. P.W. 6, the informant, in her deposition contradicted the statement of P.Ws. 2, 3 and 4. In para 1 she also developed story which was not in the fardbeyan. P.W. 7, Dekha Paharia was declared hostile. P.W. 8, Nasirudin Khan is a formal witness. He proved the signature of the investigating officer, F. Milwar, who is said to be dead and formally proved the case diary which was in his handwriting as Ext.-3. The prosecution has also proved the post mortem report, marked as Ext.-1 and fardbeyan (Ext.-2).

5. Learned court below concluded that the prosecution was able to prove the case, beyond all reasonable doubts, that the appellant committed murder of Madhu Singh Paharia on 11.2.1995 and threw his dead body with the intention of screening himself from legal consequences. He, accordingly, convicted and sentenced the appellant as aforesaid.

6. When this appeal was taken up for hearing earlier, counsel for the appellant did not appear. The Court appointed Mr. P.A.S. Pati, as amicus curiae. Mr. Pati (amicus curiae) argued this appeal and assailed the conviction and sentence on the following grounds:--

(i) The case is based on the circumstantial evidence but the chain of the circumstances is not complete to come to any conclusion and prove the charges against the appellant.

(ii) There are vital contradictions in the oral testimony of the witnesses.

(iii) The informant has developed story in her statement which raises doubt in her veracity, as her evidence on vital points are self-contradictory.

(iv) The medical evidence does not support the ocular evidence.

(v) There is admitted enmity and the possibility of false implication of the appellant is strong.

(vi) All the private witnesses are closely related and they are highly interested. Their testimony is not free from doubts.

(vii) The appellant's conviction is based on the circumstances question regarding which was not put to the appellant under his examination u/s 313 Cr.P.C. and he could not get the opportunity to explain the same.

7. Learned counsel further submitted that from the evidence it is clear that there was enmity between the appellant and deceased and there was no talking term and the story of going to hat (market) together and taking liquor is highly improbable and unbelievable.

8. Learned counsel for the appellant referred to and relied upon the following decisions of the Supreme Court in support of his contentions:--

(i) Venkatesan Vs. State of Tamil Nadu,

(ii) Keshav Vs. State of Maharashtra,

(iii) Ajay Singh vs. State of Maharashtra, 2007 12 SCC 341.

(iv) Malleshappa Vs. State of Karnataka,

9. Learned A.P.P., on the other hand, supported the impugned judgment/order and submitted that though there are some contradictions in the oral testimonies but the contradictions are not that vital to discard the same in toto. If the evidences are read in totality, they form a complete chain of the circumstantial evidence to prove the charge against the appellant. The witnesses are illiterate persons. Some contradiction in their statements does not nullify the entire ocular evidence. Only because the witnesses are closely related, their testimonies cannot be rejected on that ground as well.

10. He further submitted that learned Court below has come to the conclusion after due consideration, discussion and consideration of overall evidences and has rightly found the appellant guilty of the charge. There is no illegality or error in the impugned judgment.

11. We have heard the learned amicus curiae and the learned A.P.P. and meticulously appraised and considered the evidences on record. We find that, except the informant, the other material witnesses are hearsay. Their statements are based on the information given by the informant. The informant has also resiled from her statement made in her fardbeyan. There she had stated that when she enquired about her husband from the appellant he expressed his ignorance. But in her deposition in paragraph-1, she has stated that the appellant told that he killed her husband. P.W. 6 has also made other contradictory statements. In the evidences of the witnesses it has consistently come that there was enmity between the deceased and the appellant and they were not even on talking term.

12. It is also unbelievable and improbable that the deceased would accompany

the appellant to hat (market) and eat and drink together. Even if it is accepted that the appellant had gone to hat (market) with the deceased, there is no sufficient evidence and material on record to conclude that he, and none other, committed murder of Madhu Singh Paharia.

13. Nobody had seen the deceased coming with the appellant from the hat (market). The appellant returned home and stayed there as usually. The person, who would commit such crime, is not expected to return home and live peacefully only to wait for the police to take him in custody.

14. In view of the above, there is no cogent evidence on record to come to the conclusion that the appellant is guilty of committing murder of Madhu Singh Paharia.

15. In the case of Keshav vs. State of Maharashtra (supra), the Supreme Court held that "the circumstances-seen together, becomes relevant only when death takes places shortly after accused and deceased were last seen together". In the instant case, the dead body was recovered on the third day and there was a long gap of period.

16. In Malleshappa vs. State of Karnataka (supra), it has been held by the Apex Court that "the conviction, on the basis of the circumstantial evidence, in order to sustain the conviction, must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused".

17. In Ajay Singh vs. State of Maharashtra (supra), the Supreme Court interpreted the provision of Section 313 Cr.P.C. It has been held that "on the circumstance which is to be relied on for conviction, must be known to the accused so that he can have an opportunity to explain the matter at the time of his examination u/s 313 Cr.P.C". In Venkatesan vs. State of Tamil Nadu (supra), the Supreme Court set aside the conviction in absence of any positive evidence for establishing that the accused and the deceased were last seen together and there were other circumstances to lead to an inevitable conclusion to hold the accused guilty.

18. It is well settled that the circumstances from which the conclusion is drawn have to be well proved and such circumstances must be conclusive in nature. There should not be any gap left in the chain of the evidences.

19. We do not find any positive evidence to hold the appellant guilty. We are thus unable to uphold the conviction and sentence of the appellant.

20. In the result, we allow this appeal and set aside the impugned judgment of conviction dated 5.3.1997 and order of sentence dated 12.3.1997 passed by the 1st Additional Sessions Judge, Godda in Sessions Case No. 81/1996/12/ 1996. Since the appellant is in jail custody, he shall be set free forthwith, if not wanted in any other case.

21. Before we part, we appreciate Mr. P.A.S. Pati, Advocate (amicus curiae) for

rendering valuable assistance.