

Criminal Appeal No. 884 of 2002

***Against the judgment of conviction and order of sentence
dated 26.11.2002 passed by the 2nd Additional District and Sessions
Judge, Dumka in S.T. Case No.304/2000)***

Sukhdeo Dagri Appellant
--Versus--
The State of Jharkhand Respondent

For the Appellant: Mr. Priyadarshi, Advocates.

For the Respondent: Mrs. Sadhna Kumar A.P.P.

PRESENT
HON'BLE MRS. JUSTICE JAYA ROY

JUDGMENT

Jaya Roy, J The appellant has filed this appeal for setting aside the Judgment of conviction and sentence 26.11.2002 passed by 2nd Additional District and Sessions Judge Dumka whereby the appellant has been convicted for the offence under Sections 307 Indian Penal Code and sentenced to R.I. for three and half years and to pay a fine of Rs.500/- and in default of payment of fine, the appellant is further directed to undergo imprisonment for one month.

2. The prosecution case in brief is that the fact alleged by informant Sakuni Devi in her fardbeyan recorded on 29.06.2000 at about 8.30 P.M. that on 29.6.2000 at about 1.00 P.M. her husband Patan Dagri of village Bogali P.S. Jarmundi went to take bath at "Kashmir' K Chahbacha" when Patan did not return till 2.30 P.M., she (Shakuni Devi) went with her seven years daughter to search him. It is further alleged that she did not find her husband at Kashmir Ka Chahavbacha" and Mantu's Well. Thereafter, she requested Pramila Devi (P.W.3) to search her husband. According to them, Paltan Dagri was found by the villagers hanging inside the well by holding a branch of palm tree. Paltan Dagri came out from the well with the help of the villagers and after walking some distance, he fell down in the field. The informant immediately rushed to her husband and found a sharp cut injury on his neck and blood was oozing from the said injury and also from his mouth. On being asked who has assaulted him, the injured asked for a pen and paper. The mother of Dilip went to the informant's house and brought a

chit of paper and pen on which the husband of the informant wrote the name of his assailant. The villagers read out the said paper and informant came to know that Sukhdeo Dagri assaulted her husband. She has further alleged that earlier also the said Sukhdeo Dagri assaulted her husband and long enmity is going on between them. On the basis of the fardbeyan, the police registered Jarmundi P.S. Case No. 92/2000 under Section 307, 324 and 341 I.P.C. and after investigation, submitted the charge sheet against the appellant under sections 341/324/326/307 I.P.C.

3. The prosecution has examined altogether 13 witnesses to prove its case. P.Ws. 1,2,3,6, 9, 10 and 11 are hearsay witnesses. They have seen the victim lying in the field. They have stated in their evidence that the victim having sharp cutting injury in his neck and was unable to speak any thing. P.W.5 is the informant, P.W.7 is the formal witness who is lawyer's clerk and proved the F.I.R. P.W.8 is Doctor who examined the victim and his report is marked as Exhibit-3. P.W.12 has been declared hostile and P.W.13 is the I.O. of this case. P.W.4 is the witness who has claimed to be eye witness of the alleged occurrence.

4. Counsel of the appellant has submitted that the evidence of 1,2,3,6, 9, 10 and 11 clearly shows that they have not seen the alleged occurrence they reached the place of occurrence when the victim lying in injured condition in the the field and he was not able to speak any thing. P.W. 5 and P.W.6 have further stated that the victim asked some papers and he wrote the name of his assailant as Sukhdeo Dangri. It is contended that though they have stated the victim has written the name of the appellant but the said paper has not been taken by the I.O. and it was produced before the court after expiry of a long time by the informant and marked as Ext-1. It is also contended that the said chit of paper does not contain the signature of the victim. Therefore, it is very difficult to accept that it is the same paper which was written by the victim even assuming but not admitting, that the victim has written the name of the appellant as his assailant in certain chit of paper.

5. Counsel of the appellant has further pointed out that the P.W.4 who has claimed as himself as an eye witness of the alleged occurrence and stated in his evidence that he was with the victim and he and the victim

went to take bath in "Kashmir Ka Chahavbacha" and the appellant came to them and asked them to leave the place and thereafter assaulted the victim with knife in his neck and thereafter threw him in the well. But utter surprise though this witness (P.W.4) was present at the place of occurrence when the villagers reached there but he has not stated anything about the appellant neither he narrated the alleged occurrence before the villagers. This creates a doubt about his presence at the time of the alleged occurrence.

6. The counsel of the appellant has further submitted that the P.W. 8, the Doctor has very specifically stated in his evidence that he has examined the victim at about 8.00 P.M. and he did not remember who brought the victim to him for his treatment. Counsel of the appellant has pointed out that the fardbeyan of the informant was recorded at 8.30 P.M. on that very date and the F.I.R. was registered at 9.30 P.M. therefore, the examination of the victim before lodging the F.I.R. casts a great doubt on the prosecution story.

7. The counsel of the appellant has further pointed out that admittedly there is a long standing enmity between the parties for their land properties. Thus, there is every chance of false implication.

8. Counsel of the appellant has pointed out that the I.O.(P.W.13) in his evidence has stated that he has not seized the said chit of paper in which the victim wrote the name of his assailant nor he put his signature on the said paper. He simply tagged the same with the F.I.R. Therefore, on the basis of the said chit paper only which has no sanctity, a person cannot be convicted. The I.O. has further stated in his evidence that there is no eye witness of the alleged occurrence. Therefore, as there is no eye witness, a person cannot be convicted only on the basis of the chit of paper which does not bear any signature either of the author or who tagged the same with the F.I.R. Furthermore, there is serious contradiction regarding the time of the examination of the victim by the Doctor as stated earlier. Thus, the prosecution has failed to prove the aforesaid charge against the appellant beyond all reasonable doubts.

9. The learned counsel of the State though opposed but could not point out any material against the appellant regarding his involvement in the

commission of the offence except the aforesaid chit of paper.

10. Considering all these aspect and in the absence of the cogent evidence as discussed above, in my opinion, the appellant is definitely entitled for the benefit of doubt. Accordingly giving benefit of doubt to the appellant, I allow this appeal and the impugned judgment of conviction and the order of the sentence are set aside. As the appellant is on bail, he is discharged from the liability of the bail bonds.

(Jaya Roy, J)

***Jharkhand High Court, Ranchi,
Dated 9th December, 2010,
N.A.F.R./SI***