

IN THE HIGH COURT OF JHARKHAND, RANCHI
(Criminal Appellate Jurisdiction)

Criminal Appeal (D.B.) No. 138 of 2001

[Against the judgment of conviction and order of sentence both dated 19.02.2001 passed by the 1st Additional Sessions Judge, Jamshedpur in Sessions Trial No.176/216/84 of 1996-96-98.]

1.Haladhar Singh, son of late Mahkam Singh,
2.Langar Singh, son of late Satish Singh,
Both resident of village-Gobarghusi, P.S.-Patamda, District-
Singhbhum East.Appellants

-Versus-

The State of Jharkhand

..... Respondent

PRESENT

HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR
HON'BLE MR. JUSTICE RATNAKER BHENGRA

For the Appellants : Mr. H.K. Mahato, Advocate
For the State : Mr. Arun Kumar Pandey, A.P.P.

J U D G E M E N T

Per, Shree Chandrashekhar, J.

Dated : 31st July, 2019
Oral Order

Two persons were put on trial in Sessions Trial No.176/216/84 of 1996-96-98 on the charge of committing murder of Juda Majhi in furtherance of their common intention and for causing disappearance of his dead-body.

2. Informant of this case is the wife of Juda Majhi namely, Savitri Majhiain. On the basis of her *fardbeyan* recorded at about 15:15 hrs. on 08.01.1996, Patamda P.S.Case No.1 of 1996 was lodged under section 302/201 I.P.C against Haladhar Singh and Langar Singh.

3. Both the accused persons have been convicted under section 302 and 201 read with section 34 I.P.C and they have been sentenced

to R.I for life under section 302 I.P.C and R.I for 5 years under section 201 I.P.C.

4. During pendency of this criminal appeal the appellant no.1, namely, Haladhar Singh has died.

5. Accordingly, the criminal appeal *qua* appellant no.1, namely, Haladhar Singh stands abated.

6. In her *fardbeyan*, the informant has stated that her husband, namely, Juda Majhi who was working as cook with Shramjivi Unnayan Ashram for the last 11 years did not return home the last night, that is, on 08.01.1996. Next morning, she received information that dead-body of her husband is lying in Dungri forest. On enquiry, she found that last evening her husband had left Ashram at about 07:00 p.m. with another chowkidar, namely, Haladhar Singh. When she asked Haladhar Singh about her husband he told her that her husband is sleeping in the house of Madan Singh. Now the informant goes to the house of Madan Singh where she meets his mother namely, Bhabhi Manjhian who told her that last evening Haladhar Singh and Langar Singh had drinks (*Hadia*) together with Juda Majhi at her place. She informs her that the accused persons, namely, Haladhar Singh and Langar Singh had forcibly taken away her husband and at that time her husband was crying for help. On such information, the informant gives her *fardbeyan* and on that basis a First Information Report was lodged.

7. During the trial, the prosecution has examined altogether 10 witnesses; the informant is P.W.1 and Bhabhi Manjhian is P.W.5.

8. Dr. Y. Nath who has conducted autopsy has found the following injuries on Juda Majhi:

“A.Abrasion-

(i)3 x ½ cm left forearm back upper part

(ii)3 x 1 cm left inner scapular area

(iii)2 x 2 cm right chest back lower part

(iv)2 x ½ cm axillary line

(v)1 x 1 cm sacral area

(vi)2 x 2 cm, 1 x 1 cm, 2 x ½ cm over left forehead

B.Lacerated wound-

(i)2 cm x ½ cm x soft tissue right forehead above eye brow with contusion of the margin

(ii)4 ½ cm x ½ cm x soft tissue left side of nose

(iii)3 cm x ½ cm x soft tissue over nose inverted U shaped

C.Incised wound-

*(i) 3 cm x 1 ½ cm x soft tissue right upper lip
With fracture, dislocation of underlying upper jaw.
Dislocation of right inciser and canin tooth.*

(ii) 5 cm x ½ cm x soft tissue obliquely over chin

(iii) 3 cm x ½ cm x soft tissue over left mandibular boarder

(iv) 2.5 cm x ½ cm x scalp deep over occipital scalp

D.Internal

There was contusion over forehead 4 x 4 cm right side and 2 x 2 cm left side. Contusion of right chest wall with fracture of right 3 to 8 ribs. Contusion of right lung and brain. Blood and blood clots were present in the cranial cavity. Dislocation of lower inciser and contusion of gums were also found.”

9. According to the doctor, all the injuries were anti-mortem in nature and death has been caused due to the injuries to brain and lungs suffered by Juda Majhi. The doctor has found abrasion and lacerated wounds which were caused by hard and blunt substance and as many as four incised wounds were caused by sharp-cutting weapon.

10. Admittedly, there is no eye-witness to the actual occurrence. The only circumstance which has been found incriminating against the surviving appellant is based on last-seen-together evidence. Bhabhi Manjhian-P.W.5 has informed the informant that Haladhar Singh and Langar Singh along with her husband came to the house of Madan Singh and they had lot of drinks together. P.W.5 says that she is staying separately from her son Madan Singh. Her son Madan Singh has not been examined as a witness during the trial. P.W.5 according to the informant has told her that Haladhar Singh and Langar Singh had forcibly taken away her husband and at that time her husband was crying for help. When an accused is seen lastly in the company of a person and immediately thereafter dead-body of that person is recovered the law requires the accused to put-forth some explanation what has happened thereafter. It is well-settled that the evidence of last-seen-together is a strong circumstance against an accused, however, this cannot be the only circumstance on the basis of which conviction of an accused for the offence like murder can be recorded. There are several factors and there may be numerous circumstances which would decide whether the evidence of last-seen-together can be relied upon as an incriminating circumstance. It has come in the prosecution's evidence that husband of the informant was heavily drunk. How his dead-body has been

found has remained a mystery. The Investigating Officer of the case has not been examined and while so, the accused persons were handicapped to question the Investigating Officer on this point. May be from the evidence of P.W.5, a strong suspicion arises against the appellant, but then, the suspicion howsoever strong cannot take the place of legal evidence.

11. From the materials brought on record of Sessions Trial No.176/216/84 of 1996-96-98, we find that the prosecution has failed to establish the charge under section 302 and section 201/34 I.P.C against the appellant.

12. Accordingly, the judgment of conviction under section 302, 201 read with section 34 I.P.C and the order of sentence inflicted upon him for the aforesaid offences in Sessions Trial No.176/216/84 of 1996-96-98 are set-aside. The appellant is discharged of the charges framed against him.

13. The appellant namely, Langar Singh who is on bail is discharged of his liability of the bail-bonds furnished by him.

14. Criminal Appeal (D.B.) No.138 of 2001 is allowed.

15. Let the lower court records be transmitted to the court concerned forthwith.

(Shree Chandrashekhar, J.)

(Ratnaker Bhengra, J.)

Jharkhand High Court, Ranchi,

Dated : 31st July, 2019

S.I/ N.A.F.R.