

Criminal Appeal (D.B.) No. 855 of 2017

[Arising out of judgment of conviction dated 19.07.2016 and order of sentence dated 20.07.2016 passed by learned Additional Sessions Judge-I, Sahibganj in Sessions Trial No. 229 of 2013]

Gumid Murmu son of Late Sufal Murmu, resident of Village Kushma,
Chhapartoli, P.O. & P.S. Barhait, District Shahibganj

.... .. **Appellant**

--Versus--

The State of Jharkhand **Respondent**

For the Appellant : Mr. Prashant Pallav, Advocate

For the State : Ms. Lily Sahay, A.P.P.

PRESENT: SRI ANANDA SEN, J.

SRI GAUTAM KUMAR CHOUDHARY, J.

JUDGMENT

Reserved on: 18.09.2024

Pronounced On: 25.09.2024

Per Gautam Kumar Choudhary, J. The sole appellant is before this Court against the judgment of conviction and sentence under Section 302 of the IPC and Section 3/4 of Prevention of Witch (Daain) Practices Act, 1999.

2. Informant- Sanat Murmu is the son of the deceased. As per the FIR, he was not at home at the time of the incidence and had gone out of village. He received information on 22.05.2013 at around 6 O' clock in the evening, that his mother had been killed by his uncle Gumid Murmu by a sharp-edged weapon. On this information when he came there, he found her dead body to be lying on the ridge of the homestead (*bari*) of the appellant. She had sustained bleeding injury over her head. Appellant used to identify and brand the deceased as witch, which was the proximate cause for committing the offence. After the incidence, deceased fled away with his entire family after locking the door. Incidence was seen by Sonamuni Tudu, who happened to be the wife of the informant's brother.

3. On the basis of the written report, Barhait P.S. Case No.88/13 was registered under Section 302 of the IPC against the appellant on the very same day of the incidence. Police on investigation, found the case true and submitted charge sheet and he was put on trial under Section 302 of the IPC and Section 3/4 of Prevention of Witch (Daain) Practices Act, 1999.

4. Altogether seven witnesses have been examined in this case and

relevant documents including post mortem examination report has been adduced into evidence and marked as exhibit.

5. It is submitted by the learned counsel on behalf of the appellant that there is no direct eye witness to the incidence except P.W. 1 in whose account there are material contradictions.

6. Learned A.P.P. has defended the judgment of conviction and sentence.

FINDINGS

7. Homicidal death has been proved by the Doctor (**P.W. 7**), who has proved the post mortem examination report. The following ante mortem injuries were found on the body: -

- i. Incised wound 8" x 1" x upto bone deep behind the middle of head starting from above the right ear transversally placed
- ii. Lacerated wound size 5" x 1" x upto bone deep over middle of head longitudinally placed.
- iii. Abrasion measuring 2" x 2" over left palm.
- iv. Lacerated wound size 1" x 1¼" x skin deep over back of right hand in the middle.

Death was due to hemorrhage and shock due to injury nos. i and ii.

8. **P.W. 1** is the daughter-in-law of the deceased. She has deposed that her mother-in-law had gone in the evening at 5 O'clock to bring wood from the forest area and she had gone to take water from the hand-pump. While she was returning after taking wood, on the ridge of the land of the Gunit Murmu (appellant) and Rana Murmu, appellant gave a blow by Dabiya (sharp cutting weapon) over her head, as a result she sustained fatal injury and died on spot. In her cross examination at para 4, she has stated that after returning home when she did not find anyone, she went to look for towards the place of occurrence where she saw the accused giving the deceased a blow with a sharp-edged weapon. On hulla, villagers gathered there. Admittedly, there is no other eye witness to the incidence. Matter for consideration is if her evidence can be regarded as reliable and trustworthy so as to act upon to return a judgment of conviction on the basis of her solitary account?

9. To rely or not to rely on the evidence of a witness, is the question which every Court is confronted with while appreciating evidence. Evidence Act is not a pedantic, but a pragmatic document which does not mandate any number

of witness required for proof of any fact (Section 134). The very definition of 'proved' under Section 3 is couched in widest expression as word 'matter' has been used in its definition and not 'evidence'. Test laid down is that of a 'prudent man'. It is not the number of witnesses but the quality of the evidence which is important. In an appropriate case, conviction can be founded on the solitary testimony of a witness if the witness is cogent reliable and trustworthy. In case of *Lallu Manjhi Vs. State of Jharkhand*, (2003) 2 SCC 401 Hon'ble the Supreme Court held,

"10. The law of evidence does not require any particular number of witnesses to be examined in proof of a given fact. However, faced with the testimony of a single witness, the court may classify the oral testimony into three categories, namely, (i) wholly reliable, (ii) wholly unreliable, and (iii) neither wholly reliable nor wholly unreliable. In the first two categories there may be no difficulty in accepting or discarding the testimony of the single witness. The difficulty arises in the third category of cases. The court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial, before acting upon the testimony of a single witness. [See: Vadivelu Thevar v. State of Madras, AIR 1957 SC 614]"

10. Oral evidence in any case is to be appreciated in the background of attending circumstance. P.W. 1 is a triable rustic lady and was incapable of speaking and understanding Hindi and therefore, her testimony was recorded by engaging one who was conversant with the interpretation. She is the only witness named in the FIR to have seen the occurrence. She is a natural witness as she is the daughter-in-law of the deceased and the place of occurrence was close to their house on the rear side. There is no past enmity which would have impelled her to falsely implicate the appellant. She has not been confronted with her earlier statement to elicit any contradiction in her account. Other witnesses are not direct eye witness to the incidence, but they are witnesses who arrived the place of occurrence immediately after the incidence. Defence has failed to impeach her credit and there is no tangible reason to disbelieve her account.

P.W. 4 is the informant of the case who is not an eye witness to the incidence. He has deposed that since before the incidence, appellant use to identify and brand his parents as witch.

P.W. 3 has deposed that when she arrived at the place of occurrence, he found P.W. 1 near the dead body and she stated to him that it was the appellant who committed the offence.

P.W. 5 has deposed that while he was grazing his cattle, he had seen the

appellant fleeing and when he returned home, he found the dead body of his mother lying in the *Bari* of the appellant.

P.W. 6 is the Investigating Officer, who has deposed that the appellant was arrested from his house and the weapon of offence i.e. Dabiya was recovered from there. The description of place of occurrence as given by him in para 1 corroborates the testimony of P.W. 1.

11. On the basis of above evidence, it can be safely inferred that appellant had been identifying the deceased as witch since long, and on the date of incidence he caused her death by inflicting injuries with a sharp cutting weapon. There is no infirmity in the Judgment of conviction and sentence, which is accordingly affirmed.

Criminal Appeal stands dismissed.

Pending Interlocutory Application, if any, is disposed of.

Let the Trial Court Records be transmitted to the Court concerned along with a copy of this judgment.

(Gautam Kumar Choudhary, J.)

Ananda Sen, J. I agree.

(Ananda Sen, J.)

High Court of Jharkhand, Ranchi

Dated, 25th September, 2024

AFR/Anit