

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Rev. No.719 of 2013

1. Chandra Mohan Mahto @ Sukna S/o Bugul Chandra Mahto, represented through his father namely, Bugul Chandra Mahto
2. Raju Tadu, S/o Badal Tudu, represented through his father namely, Badal Tudu,
Resident of Saldih, P.O.& P.S.- Chandil, District- Seraikella Kharswan Petitioners

-Versus-

The State of Jharkhand Opp. Party

CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Petitioners : Ms. Renu Bala, Amicus Curiae
For the Opp. Party : Mr. Sanjay Kumar Srivastava, A.P.P.

Through Video Conferencing

15/26.03.2021 Heard Ms. Renu Bala, the learned amicus curiae appearing on behalf of the petitioners.

2. Heard Mr. Sanjay Kumar Srivastava, learned A.P.P. appearing on behalf of the Opposite Party- State.

3. This criminal revision application is directed against the order dated 29.04.2013 passed by the learned Addl. Sessions Judge, Seraikella Kharswan in Criminal Appeal No. 40 of 2009 whereby the appeal preferred by the petitioners against the order dated 28.08.2009 passed by the learned Juvenile Justice Board, Seraikella in G.R. Case No. 212 of 2007 (Trial No. 14 of 2009) has been dismissed. The learned Juvenile Justice Board, Seraikella had found the petitioners juveniles in conflict with law and had held them guilty for the offences under Sections 364, 302, 201/34 of Indian Penal Code and had directed to send the petitioners to Special Home, Chirugora, Dhanbad or other designated place by the Government for a period of three years under Section 15(1)(g) of Juvenile Justice (Care and Protection of Children) Amendment Act, 2006. The learned Juvenile Justice

Board had further ordered that the period undergone by the petitioners in jail custody and Observation Home shall be set-off.

Arguments on behalf of the Petitioners

4. Learned amicus curiae, while advancing her arguments, submitted that the Investigating officer of the case has not been examined and there is no eye-witness to the occurrence. She further submitted that as per the First Information Report, there were altogether three accused persons i.e. the present petitioners who were declared juvenile and another namely, Mantu Mahato. However, so far as Mantu Mahato is concerned, the learned amicus curiae submitted that she has no idea as to what ultimately happened in his case.

5. Learned amicus curiae further submitted that as per the prosecution story, dead body of the deceased was recovered on the basis of the confessional statement of the present petitioners, but no evidence was led before the learned Juvenile Justice Board to establish the confession of the petitioners, if at all, leading to recovery. She further submitted that although it has come in evidence that the police were enquiring from these two petitioners, but there is no evidence that these two petitioners had confessed their guilt before the investigating officer of the case or before any police officer and accordingly, there is no evidence that the dead body was recovered on the basis of the confessional statement of these two petitioners. She further submitted that it has come in the evidence that these two petitioners were not even present on the spot when the dead-body was recovered.

6. The learned amicus curiae further submitted that there has been recovery of certain articles of the deceased i.e. footwear and a few clothes from the house of the Petitioner No.2 namely, Raju Tudu, but it has come in the evidence that the deceased had bought a new footwear and a few new clothes and it was only the new footwear and the new clothes which

were recovered from the house of the Petitioner No.2. The learned amicus curiae submitted that merely because these articles were recovered from the house of the Petitioner No.2, the same does not complete the chain of events and the prosecution has not been able to prove the case beyond all reasonable doubt, so far as the petitioners are concerned.

7. The learned amicus curiae further submitted that non-examination of the investigating officer of the case before the learned Juvenile Justice Board, Seraikella has caused serious prejudice to the petitioners and in fact, due to non-examination of the investigating officer of the case, the confession of the petitioners, if any, before the police leading to recovery, has not been proved.

8. While advancing her arguments, the learned amicus curiae submitted that no T.I.P. of the articles recovered was conducted, although they were exhibited before the learned Juvenile Justice Board, Seraikella. She also submitted that the petitioners do not have any criminal antecedent.

9. The learned amicus curiae also submitted that without prejudice to the aforesaid submissions, the Petitioner No.1 has remained in jail custody/Observation Home for the period from 22.03.2007 to 10.07.2007 and Petitioner No. 2 has remained in jail custody/Observation Home for the period from 22.03.2007 to 13.09.2007.

Arguments of the Opposite Party-State

10. Learned A.P.P. appearing on behalf of the Opposite Party-State opposed the prayer and submitted that there is no scope for re-appreciation of evidence in revisional jurisdiction and accordingly, the present criminal revision petition is fit to be dismissed. However, the learned A.P.P. did not dispute the facts that the investigating officer of the case has not been examined and the petitioners do not have any criminal antecedent.

Findings of this Court

11. After hearing the learned counsel for the parties and going through the impugned judgments and the lower court records of the case, this Court finds that as per the prosecution story, the informant namely, Shrawan Hembrom (P.W.-5) is a farmer. On 19.03.2007 in the evening, his son namely, Jiten went to Chandil market alongwith his co-villager Mantu Mahato and when his son did not return in the night from market, then on 20.03.2007, he enquired Mantu Mahto about his son and Mantu told him that he left his son in the market and went to his house and as the son of the informant had to purchase some articles, so he did not come alongwith him. The informant further searched for his son, but he was not found. Thereafter, at about 2 P.M., Raju Mahato son of Bugul Chandra Mahato approached him and said that his Nana Datu is calling the informant and then the informant went there where Nagen Mahato told him that his son had come from market towards home alongwith the petitioners. When they approached the bridge, five persons armed with rifles and guns were dressed in black colour clothes and kidnapped his son. When the informant enquired from the petitioners, they said that they alongwith Jiten Hembrom were going towards home and in the meantime, over the bridge, five persons armed with weapons kidnapped his son. They told the informant not to disclose this fact and told that they disclosed this fact to Nagen Mahato. In the course of enquiry, the informant felt that the petitioners were speaking false and then he again asked Mantu Mahato, then he also changed his earlier statement and said that he and Jiten were going and he left Jiten near river where Raju was present. In this background, the informant believed that the petitioners Raju Tadu and Chandra Mohan Mahto as well as Mantu Mahato with intent to kill his son kidnapped or killed the son of the informant.

12. After completion of investigation, charge-sheet was submitted and cognizance of offence under Sections 364, 302,

201/34 of the Indian Penal Code was taken on 16.06.2007 against the petitioners and Mantu Mahto by the learned Chief Judicial Magistrate Seraikella. The two petitioners were declared juvenile by the Juvenile Justice Board, Seraikella on 12.06.2007 and 13.09.2007 respectively.

13. On 04.07.2007, the substance of accusation under Sections 364, 302, 201/34 of the Indian Penal Code was explained to the petitioners to which they denied and claimed for enquiry.

14. After recording of evidence, the statements of both the petitioners were recorded under Section 313 Cr.P.C. on 20.05.2009 wherein they denied the incriminating evidences put to them and said that they are innocent.

15. This Court finds that the prosecution examined altogether six witnesses to prove its case. P.W.-1 is Doctor Yogendra Nath, P.W.-2 is Chutu Murmu, P.W.-3 is Datu Murmu, P.W.-4 is Doman Hansda, P.W.-5 is Sharawan Hembram who is the informant of the case and P.W.-6 is Antu Soren. The prosecution exhibited the Post Mortem Report as Exhibit-1 and the signature of Datu Murmu on seizure list as Exhibit-2.

16. The Doctor P.W.-1 in his examination-in-chief deposed that on 21.03.2007 at about 11:30 A.M., another Doctor had conducted post mortem and had submitted his report. He identified the same and post-mortem report was marked as Exhibit-1. In cross examination, he deposed that post mortem was not conducted in his presence, nor was signed before him and the doctor who had conducted the post mortem was working with him. From the perusal of the judgment of the learned Juvenile Justice Board, it appears that bruise injury was found around the neck in different sizes and death was caused due to pressure on neck and head injury was also found which was sufficient to cause death.

P.W.-2 deposed that he came to know about the occurrence and then he along with 15-20 villagers approached the place of occurrence near Brahmani River Bridge where dead

body was kept. The evidence of P.W.-2 indicates that the dead body was recovered from the river Brahmani near the bridge.

P.W.-3 deposed that the police had apprehended the petitioners and enquired about the son of the informant. He also stated that he alongwith others approached the place of occurrence where the dead body of the son of the informant was lying and he was examined by the police. He also approached the police station and took the footwear of the deceased with two C/D disc, Jeans pant and T-shirt from the house of the Petitioner No.2 and submitted in the police station. He had also put his signature on the seizure list which was marked as Exhibit-2. He also deposed that when he went to the house of Petitioner No.2 to bring the articles of the deceased, Shadeo Kisku was also with him and the articles were recovered from the house of the Petitioner No. 2. The articles which were recovered from the house of the Petitioner No. 2 were new.

P.W.-5 is the informant of the case. In his evidence, he deposed that on 19th March, 2007, his son alongwith two boys of the village namely, Mantu Mahato and Hemant Soren went to Chandil market and they both returned back, but his son did not come. On the next day, in spite of search, his son could not be traced out and in course of search, he approached village Bholakutchha and was standing near a shop and enquired with people and returned and approached Mantu Mahato who said that he has left his son in the market. When the informant approached village Bholakutchha and asked the shopkeeper boy Raju, he told him that his son had purchased footwear from his shop when he was sitting in the house. The Petitioner No. 2 approached the informant and said that his nana was calling the informant and when he approached, the nana of Petitioner No. 2 said that the son of the informant was coming from market alongwith Mantu, Chandra Mohan Mahto and Raju Tudu i.e. Petitioner Nos. 1 and 2 and one Mantu. He also said

that in the meantime, M.C.C. took his son and castigated to these persons. Subsequently, the informant went to police station alongwith one Sukhan and gave the information of the occurrence. He deposed that officer-in-charge of the police station recorded his fard-beyan on which he had put his signature and the officer-in-charge took the aforesaid boys into the police station alongwith him, but in his presence, the boys did not speak anything. However, in the next morning, the informant came to know that they have given their statements before the police that they had committed murder of his son and had thrown the dead body in Brahmani river and in their presence, the dead body of his son was recovered from the river. The informant has stated that the occurrence has taken place, as his son was a good student and the offenders have killed him. This witness was thoroughly cross-examined from the side of the defence and in his cross-examination, he said that he has disclosed the name of Raju to the police and also told that Raju had told him that his son had purchased footwear and clothes from his shop.

P.W.-6 also supported the prosecution case and stated that the occurrence took place in the year 2007 and the dead body of the deceased was recovered from Brahmi River under the bridge and he had seen the dead body and that he had heard that the son of the informant was killed by Chandra Mahato, Mantu and Raju Tudu.

17. This Court finds that admittedly there is no eye witness to the occurrence and as per the evidences on record, the deceased was last seen with the petitioners and one Mantu. The articles i.e. footwear and clothes which were said to have been purchased by the son of the informant from the shop of Petitioner No.2 were recovered from the house of the Petitioner No. 2 and these facts have not been disputed by the learned amicus curiae who assisted this Court in the matter on behalf of the petitioners.

18. This Court finds that the learned Juvenile Justice Board, Seraikella scrutinized the prosecution evidences, exhibited the documents and heard the arguments advanced by the prosecution and defence and recorded that the doctor i.e. P.W.-1 has proved the post mortem report marked as exhibit-1 and his evidence is credible. The cause of death has been proved to be head injury and pressure on neck which was sufficient to cause death. P.W.-2 deposed that the dead body was recovered under the bridge from the Brahmani River. The learned Juvenile Justice Board found that the evidence of P.W.-2 is credible on the point of fact that he had seen the recovery of the dead body of the deceased. P.W.-3 has deposed that due to murder of son of the informant, the petitioners were apprehended from whom the police had made enquiry and thereafter, he came to know about the occurrence and when they had approached the place of occurrence, they had seen the dead body of the deceased. He had approached the police station and with the police, he recovered the footwear, two C/D and jeans pant and T-shirt from the house of the Petitioner No. 2 and had put his signature on the seizure list marked as Exhibit-2. However, in the cross examination, he said that the articles recovered from the house of Petitioner No. 2 were new. The Juvenile Justice Board found that there were no major contradictions or exaggerations in the testimony and found the evidence of P.W.-3 reliable. P.W.-4 also supported the recovery of the dead body from the place of occurrence. Thus, P.Ws. 2 to 4 have fully supported the recovery of the dead body from the place of occurrence i.e. under the bridge of River Brahmani. They have also supported the prosecution case that the petitioners alongwith Mantu were enquired by the police and thereafter, the dead body was recovered. P.W.-3 supported the recovery from the house of Petitioner No. 2.

19. While scrutinizing the evidence of P.W.-5 who is the most important witness in the present case, the learned Juvenile Justice Board, Seraikella held as under:

“P.W.-5 deceased father/informant had deposed that on 19/03/07, he saw his son namely Jiten Hembram @ Putchru was going alongwith Mantu Mahato and Hemant Soren to Chandil market, but his son did not returned to home and he searched here and there, but he could not traced his son. In course of search, he approached to village Bholakotcha and was standing near a shop and conduct enquiry about missing of his son and he returned back and further direct to Mantu who told that he left his son in market. Again he approached village Bholakotcha and meet with shop keeper Raju who told that yesterday your son had purchased foot wear from his shop alongwith Mantu. Thus, circumstance of last seen has been established by P.W.-5.

P.W.-5 also established post conduct of accused Raju and Mantu he deposed that when he enquired with Mantu he told that, he left his son in the market and other accused Raju approached to his house and told his Nana namely Nagen Mahato calling him and when he approached there, then in presence of Raju, Nagen told that, his son was returning from market alongwith Mantu, Chandra Mohan @ Sukna and Raju. Meantime, M.C.C. extremist apprehended & took his son and castigated to these persons so they remain mum and told the fact today. The post conduct of all accused and his relative (Nana) after the occurrence is dubious and diverting mind of father of deceased to think in direction of kidnapping by the M.C.C. extremists. The accused persons remained mum after the occurrence evening and they created false story of kidnapping of Jiten by M.C.C. on next day of occurrence i.e. 20/03/03. The post conduct of the accused persons is relevant and comes under the purview of res-gestae and relevant to the occurrence.

On basis of confession by the juvenile before police after lodging of case on 20/03/09, police recovered the dead body of the deceased Jiten @ Putchru from Brahamni river under the bridge and police also recovered footwear (chapel), Jeans, T. shirt, two C/D from house of Raju Tudu. P.W.-3 has proved the recovery of alleged articles from the house of Raju Tudu which was purchased prior to occurrence from the shop of Raju resident of Bholakotcha.

P.W.-5 also stated motive and established by his oral evidence that due to jealousy as his son was very studious and good student, the accused persons killed him in furtherance of common intention and the elder brother of Chandra Mohan @ Sukna namely, Mantu took his son to Chandil market and in return process, he purchased foot wear and other articles and Mantu left his son near bridge and younger brother Sukna @ Chandra Mohan and Raju Tudu killed Jiten by pressing neck and buried in the Brahamni river under the bridge. Thus P.W. 3, 5, 6, 1, 2 have proved the circumstance of last seen, motive recovery of foot wear (Chappel), T.shirt, Jeans two C/D from the house of Raju Tudu. On basis of confessional statement before police both juveniles accepted their guilt and on their information dead body of deceased Putchru Hembram was recovered under the bridge in Brahamni river also deceased foot wear, Jeans, two C/D recovered from house of Raju Tudu."

20. Learned Juvenile Justice Board further closely scrutinized the evidence considering the fact that the case was of the circumstantial evidence and was of the view that there was incriminating circumstantial evidence forming a chain to conclude that the petitioners have committed the offence of murder of the son of the informant and threw the dead body in the river which was recovered from the river under the bridge at the instance of the petitioners and they also concealed the footwear and other articles of the deceased. The offence was committed by the two petitioners and other co-accused Mantu

Mahato. The learned Juvenile Justice Board also considered that the non-examination of the Investigating Officer has not prejudiced the case of the defence and the non-examination of the Doctor who had conducted the post mortem has also not prejudiced the case of the defence and rejected the arguments of the defence on the point. Learned Juvenile Justice Board was also of the view that there was no reasonable ground for the conclusion of the innocence of the petitioners.

21. The Juvenile Justice Board held the petitioners guilty for the offences under Sections 364, 302, 201/34 of the Indian Penal Code and was of the view that the offence committed by the petitioners are heinous and serious in nature. Accordingly, the learned Juvenile Justice Board directed that the petitioners be sent to Special Home and refused to release the petitioners on probation of good conduct and keep in supervision of the Probation Officer and they were directed to be sent to Special Home for a period of three years. The period in connection with jail custody and Observation Home were directed to be set off by the learned Juvenile Justice Board.

22. The appellate court also scrutinized the evidences on record and returned concurrent finding and was also of the view that the prosecution has been able to prove the case against the petitioners beyond all reasonable doubts.

23. This Court finds that the both the learned courts below have closely scrutinized the evidences on record and have also considered the impact of non-examination of the Investigating Officer as well as non-examination of the doctor who had actually conducted the post mortem. Both the learned courts below have found that the case is of circumstantial evidence and the petitioners alongwith Mantu Mahto were apprehended and taken into custody by the police on the basis of last seen with the deceased and thereafter, the body was recovered from the river under the bridge where the petitioners were lastly seen with the deceased. The dead body was concealed by

throwing in water and it was recovered on the basis of statements of the petitioners recorded by the police as the dead body was recovered after they were taken into custody for recording their statements. Merely because there is no eye witness to their confession before police and the investigating officer of the case has not been examined, the same by itself does not create a doubt in the case of the prosecution.

24. It has been held by the Hon'ble Supreme Court that the prosecution is required to prove the case beyond all reasonable doubt and not beyond all doubts. In the case of "*Yogesh Singh - versus- Mahabeer Singh*" reported in (2017) 11 SCC 195, it has been held in Para-15 that it is a cardinal principle of criminal jurisprudence that the guilt of the accused must be proved beyond all reasonable doubts, however, the burden on the prosecution is only to establish its case beyond all reasonable doubt and not all doubts. Para-15 of the said judgment is quoted as under:-

"15. It is a cardinal principle of criminal jurisprudence that the guilt of the accused must be proved beyond all reasonable doubts. However, the burden on the prosecution is only to establish its case beyond all reasonable doubt and not all doubts. Here, it is worthwhile to reproduce the observations made by Venkatachaliah, J. in State of U.P. v. Krishna Gopal: (SCC pp. 313-14, paras 25-26)

"25. ... Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth. To constitute reasonable doubt, it must be free from an overemotional response. Doubts must be actual and substantial doubts as to the guilt of the accused person arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case.

26. The concept of probability, and the degrees of it, cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an unmistakable subjective

element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust common sense and, ultimately on the trained intuitions of the Judge. While the protection given by the criminal process to the accused persons is not to be eroded, at the same time, uninformed legitimisation of trivialities would make a mockery of administration of criminal justice."

[See also Krishnan v. State; Valson v. State of Kerala and Bhaskar Ramappa Madar v. State of Karnataka.]"

25. This Court finds that the learned Juvenile Justice Board, Seraikella as well as the learned appellate court have scrutinized the evidences and materials on record and have found the petitioners guilty though based on circumstantial evidence. Both the learned courts below were conscious of the fact that the case against the petitioners is of circumstantial evidence and accordingly, they were careful enough to scrutinize the evidences as well as the conduct of the petitioners and this Court finds that the chain of circumstances leading to conviction of the petitioners was sufficiently proved against the petitioners beyond all reasonable doubts. This Court does not find any illegality or perversity in the impugned judgments and there is no scope in revisional jurisdiction to re-appreciate the materials on record and come to a different conclusion. So far as the punishment imposed upon the petitioners is concerned, considering the nature of offence, this Court is not inclined to take any lenient view in the matter. Accordingly, the present criminal revision petition is hereby **dismissed**.

26. The bail bonds furnished by the petitioners are hereby cancelled.

27. Pending interlocutory application, if any, is dismissed as not pressed.

28. Let the lower court records be sent back to the learned court below.

29. Let a copy of this order be communicated to the learned court below through “email/FAX”.

(Anubha Rawat Choudhary, J.)

Binit/Panka/Saurav