

CASE NO.:
Appeal (crl.) 360 of 2004

PETITIONER:
Anjlus Dungdung

RESPONDENT:
State of Jharkhand

DATE OF JUDGMENT: 04/10/2004

BENCH:
B.N.AGRAWAL & A.K.MATHUR

JUDGMENT:
J U D G M E N T

B.N.AGRAWAL, J.

The appellant-Anjlus Dungdung along with his brother Jowakim Dungdung, accused Silbestor Dungdung and Rajesh Yadav @ Raju Gowala was chargesheeted by the police. Before the commencement of trial as Jowakim Dungdung died, the other three accused persons, including the appellant, were tried and by judgment rendered by the trial court, all of them were convicted under Section 302/120B of the Penal Code. So far the appellant is concerned, he was awarded death penalty whereas other two accused persons were sentenced to imprisonment for life. All the three accused persons were further sentenced to pay a fine of Rs. 2,500/- each, in default to undergo rigorous imprisonment for a period of six months. On appeal being preferred before the High Court of Jharkhand, their conviction and sentence have been upheld.

The short facts are that on the basis of fardbayan of one Kajmir Kerketta \026 informant (PW 19) recorded on 24th November, 1998 at 5.30 p.m., a First Information Report was drawn up at Simdega police station on the same day at 10.30 p.m. against unknown persons in which it was stated that the informant was next door neighbour of Benedik Dungdung and on 23rd November, 1998 at about 7.00 p.m., he had seen Benedik Dungdung and his family members in their house. On 24th November, 1998, as nobody came out from the house of Benedik Dungdung till 7.30 in the morning, the informant went to the courtyard and found that Benedik Dungdung along with his wife and four children was lying dead in the house, whereafter he informed about the same to the other villagers. It was further stated that a land dispute was going on between Benedik Dungdung (one of the deceased) and the appellant, who was nobody else than his nephew, for which panchayati was also held in the village sometime before the date of the alleged occurrence which was never attended by the appellant and his brother rather they had given out threats to kill the deceased. In the month of September, 1998, a letter was received by Jowakim Dungdung stating therein that the appellant had died. It was also stated that there was rumour in the village that the appellant with the help of accused Jowakim Dungdung and others murdered Benedik Dungdung, his wife and four children.

The police after registering the case took up investigation, during the course of which, it is said to have recovered the aforesaid letter as well as bloodstained balwa and tangi on the disclosure statement made by accused Rajesh Yadav @ Raju Gowala apart from the recovery of one torch cell, knife and a railway ticket from the pocket of the appellant. Upon the conclusion of investigation, the police submitted chargesheet against the aforesaid accused persons, including the appellant, but as accused Jowakim Dungdung died, only three accused persons were tried.

Defence of the accused persons was that they were innocent, had no complicity with the crime but falsely implicated in the present case because of animosity.

During trial, the prosecution examined several witnesses and got

various documents exhibited. Defence, however, did not examine any witness. Upon the conclusion of trial, the learned Additional Sessions Judge convicted the three accused persons, including the appellant, as stated above, and the same was confirmed in appeal by the High Court. Against the order of conviction, accused Rajesh Yadav @ Raju Gowala and Silbestor Dungdung did not move this Court whereas the present appeal by the appellant on leave to appeal having been granted.

Undisputedly, in the present case, there is no direct evidence but it is a case of circumstantial evidence. In order to prove its case, the prosecution has relied upon following circumstances against the accused persons: -

I) The appellant had a motive to murder the deceased-Benedik Dungdung and his family members as a land dispute was going on from before the date of the alleged occurrence between him and the deceased - Benedik Dungdung, who was his uncle, leading to the murder of the deceased by him in conspiracy with his brother Jowakim Dungdung besides accused Rajesh Yadav @ Raju Gowala and Silbestor Dungdung, who were nobody else than his labourers.

II) In the month of August, 1998, the appellant had gone to Punjab in search of a job and only after a month, i.e., in the month of September, 1998, he sent a letter to his brother Jowakim Dungdung, purported to have been written and signed by one Jiwan Tirkey, although the same was written and signed by him, informing thereunder that the appellant had died.

III) Four to five days before the date of the alleged occurrence, the appellant came to the village of occurrence, as would appear from a railway ticket recovered from his pocket, and was seen in the village by Vinsent Toppo (PW 18).

IV) Recovery of one torch cell and knife from the pocket of the appellant.

V) Upon disclosure statement made by accused Rajesh Yadav @ Raju Gowala, the bloodstained balwa and tangi were recovered by the police.

So far as the first circumstance, i.e., the motive is concerned, the prosecution has examined Silas Kerketta (PW 1), Fransis Kerketta (PW 2), Albinus Kerketta (PW 3), Patrik Kerketta (PW 4), Bhimsent Kerketta (PW 5), Abhinash Topno (PW 7), Walter Kerketta (PW 11), Mariyanus Dungdung (PW 12), Vinsent Toppo (PW 18) and informant \026 Kajmir Kerketta (PW 19) who have consistently stated in their statements that a land dispute was going on between the deceased - Benedik Dungdung and the appellant & his brother Jowakim Dungdung. They further stated that a panchayati was also held in the village which was not attended by the appellant and his brother rather they had given out threats to kill the deceased. Neither any infirmity could be pointed out in the evidence nor we find any ground to disbelieve the same on this count. Thus, we hold that the prosecution has proved motive for commission of the offence.

Second circumstance has been proved by PW 1 and PW 7 in whose presence, investigating officer \026 Subodh Kumar Jaiswal (PW 20) recovered the letter from the house of the appellant. The statement of these witnesses is corroborated by the evidence of PWs 2,3,11, 12 and 19 who also stated that they had learnt that appellant had written a letter to accused Jowakim Dungdung informing him that the appellant had died. Though the appellant has denied his handwriting on the letter but the same tallied with his specimen writing taken in Court. Thus, the prosecution has proved that the appellant had written a letter to accused Jowakim Dungdung informing him that the appellant was dead.

Third circumstance is that four to five days before the date of the alleged occurrence the appellant had come to his village and seen in village

Simdega by Vinsent Toppo (PW 18). The fact that the appellant came to the village of occurrence, four to five days before the date of occurrence from Punjab is proved by the railway ticket which was recovered from his pocket by the investigating officer PW 20 in presence of Govind Sao (PW 13) and Benjamin Kullu (PW 14), who have consistently supported the factum of recovery. As regards the fact that the appellant was seen in village Simdega four to five days before the date of the alleged occurrence by PW 18, the best evidence in this regard is that of PW 18 who has categorically stated in court that he had seen the appellant in village Simdega four to five days prior to the date of the alleged occurrence and the same is consistent with his statement before the police. That apart, evidence of PW 18 is corroborated by PWs 1, 7 and 12 who stated that PW 18 disclosed before them that he had seen the appellant in village Simdega four to five days before the date of the alleged occurrence. Thus, the prosecution has successfully proved this circumstance as well.

Fourth circumstance is recovery of one torch cell as well as a knife from the pocket of the appellant after the alleged occurrence which has been proved by PWs 13 and 14 in whose presence, the said articles were recovered by the investigating officer \026 PW 20. No infirmity could be pointed out in the evidence of these witnesses.

Last circumstance is recovery of bloodstained balwa and tangi upon the disclosure statement made by accused Rajesh Yadav @ Raju Gowala. In order to prove this circumstance, prosecution examined Radha Prasad Sao (PW 8) in whose presence the same are said to have been recovered, but this witness has categorically stated that nothing was recovered in his presence. He has further stated that seizure memo was prepared near his house which was signed by him and the same shows that it was not prepared at the alleged place of recovery. Thus, the solitary seizure witness has not supported the factum of recovery and in view of his statement, it is not possible to place reliance upon the evidence of the investigating officer \026 PW 20 who stated that he recovered balwa and tangi in the presence of PW 8 on disclosure statement made by accused Rajesh Yadav @ Raju Gowala.

Thus, from the aforesaid discussion, it would be clear that out of the five circumstances, the prosecution has failed to prove the recovery of blood stained balwa and tangi upon the disclosure statement of accused Rajesh Yadav @ Raju Gowala by credible evidence. The circumstance that the appellant came to his village from Punjab four to five days before the date of the alleged occurrence and was seen by PW 18 in village Simdega cannot be said to be an unnatural conduct on the part of the appellant, as such the same cannot be taken as a circumstance against him. Recovery of one torch cell and knife from the pocket of appellant after the date of alleged occurrence cannot be used as a circumstance against him, especially when neither there is any case nor evidence that the knife recovered was stained with blood. The other circumstances which remain are motive and letter written by the appellant giving false information to his brother that he was dead. These two circumstances raise strong suspicion against the appellant, but it is well settled that suspicion howsoever strong it may be cannot take the place of proof. In any view of the matter, on the basis of these circumstances, it is not possible to draw an irresistible conclusion which is incompatible with innocence of the appellant so as to complete the chain. It is well settled that in a case of circumstantial evidence, the chain of circumstances must be complete and in case there is any missing link therein, the same cannot form the basis of conviction. For the foregoing reasons, we are of the opinion that prosecution has failed to prove its case beyond reasonable doubt against all the accused persons, much less the appellant.

We find cases of accused Rajesh Yadav @ Raju Gowala and Silbestor Dungdung stand on the same footing as that of the appellant, though their conviction was upheld by the High Court and no appeal has been preferred to this Court. It is well settled that in such circumstances, this Court, in the exercise of powers under Article 136 of the Constitution, can set aside their conviction as well in spite of the fact that they did not prefer any

appeal to this Court if, in its opinion, their case also stands on the same footing. Reference in this connection may be made to the decision of this Court in the case of Pawan Kumar Vs. State of Haryana, (2003) 11 SCC 241, in which case even though no appeal was preferred by one of the accused, but while hearing appeal of another accused, this Court having doubted veracity of the prosecution case in its entirety, interfered with the conviction of that accused also who did not prefer any appeal to this Court. Thus, we are of the view that accused Rajesh Yadav @ Raju Gowala and Silbestor Dungdung are also entitled to acquittal along with the appellant.

Accordingly, the appeal is allowed, the conviction and sentence of appellant, accused Rajesh Yadav @ Raju Gowala and Silbestor Dungdung are set aside and all of them are acquitted of the charge. The appellant, accused Rajesh Yadav @ Raju Gowala and Silbestor Dungdung are directed to be released forthwith if not required in connection with any other case.

JUDIS