

Criminal Appeal (DB) No. 238 of 1997(R)

(Against the judgment and order of conviction and sentence dated 10.09.1997 passed by Sri Abhaya Shankar Prasad, learned Addl. Sessions Judge, Bokaro in S.T. No. 187/1995.)

Rajendra Mahto, S/o Ramdhan Mahto, R/o Vill- Ramdih Basti, P.S.- Harla, Dist.- Bokaro.

... **Appellant**

Versus

The State of Bihar (now Jharkhand) ... **Respondent**

PRESENT

HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY
HON'BLE MR. JUSTICE ARUN KUMAR RAI

For the Appellant : Mr. Jitendra Shankar Singh, Adv.
For the Respondent : Mr. Pankaj Kumar, P.P.

CAV on : 12/12/2024 Pronounced on : 12/06/2025
Per Rongon Mukhopadhyay, J. :

1. Heard Mr. Jitendra S. Singh, learned counsel for the appellant and Mr. Pankaj Kumar, learned P.P.
2. This appeal is directed against the judgment and order of conviction and sentence dated 10.09.1997 passed by Sri Abhaya Shankar Prasad, Additional Sessions Judge, Bokaro in S.T. No. 187/1995 whereby and whereunder, the appellant has been convicted for the offence punishable under section 302 IPC and has been sentenced to undergo imprisonment for life.
3. The prosecution case arises out of the fardbeyan of Niwaran Mahto recorded on 07.02.1994, in which it has been stated that on 26.01.1994, the nephew of the informant, namely, Punit Kumar Mahto, aged 11 years, had come back home from school after the flag hoisting ceremony. At about 5:00PM, Rajendra Mahto (appellant) had come on a bicycle and had taken the nephew of the informant towards the pond. When the child did

not return, even at 8:00PM, he and the others went in search of him. On 27.01.1994, an information about the missing child was also given to the Police. When Rajendra Mahto was asked, he had denied to have any knowledge about the whereabouts of the child. On persistent queries, Rajendra Mahto relented and disclosed that he had left the child near the pond. Even on throwing a net in the well and the pond, nothing could be found. It has been stated that Rajendra Mahto had called his relations about two days back, which created a suspicion in the mind of the informant. Today, i.e., 07.02.1994, some females were discussing that some family members of the accused were frequenting the hut at which, a search was made of the hut and on the western side, on digging the ground, the dead body of Punit Kumar Mahto was found.

Based on the aforesaid allegations, Harla P.S. Case No. 16/94 was instituted under Section 364, 302, 201/34 IPC. On completion of investigation, charge sheet was submitted and after cognizance was taken, the case was committed to the Court of Sessions where it was registered as S.T. No. 187/1995. Charge was framed against the accused under Section 302, 364, 201/34 IPC, which was read over and explained to him in Hindi to which he pleaded not guilty and claimed to be tried.

4. The prosecution has examined as many as **nine** witnesses in support of its case:

P.W.1 Shobha Kant Mahto has stated that Punit Kumar Mahto was his nephew. On 26.01.1994, a Flag hoisting ceremony was held at the office of Janta Dal and he had attended being the Secretary of the Northern area of Bokaro. His nephew and other students had gone to the school to participate in the flag hoisting ceremony and they had returned at 9:30AM. His nephew was also with them. He was not at home, the entire day. When he returned home in the evening, he came to know that his nephew

Punit had gone out in the morning and has not returned back. They had searched for Punit in the house of their relatives, but he could not be found. His brother Niwaran had disclosed that he had come to know that Rajendra Mahto had taken Punit on a bicycle to the house of Ramdhan Mahto situated in front of a pond. Rajendra had stated that he had left Punit near the pond. He has stated that from 27.01.1994 in the evening, Manohar Mahto, who is the uncle of Rajendra Mahto started frequenting the house of Ramdhan Mahto and they also started keeping a distance which raised a suspicion in his mind and of the others. They started keeping a watch over Ramdhan Mahto and others. One day in the evening, the wife of Ramdhan along with the children had gone to the house of Manohar at which he asked Ramdhan Mahto about the whereabouts of his nephew at which, Ramdhan Mahto feigned ignorance. He has stated that in the meantime, an elderly person of the village had died and he was busy in the same when a boy came and disclosed that a dead body has been recovered in the house of Ramdhan Mahto. When he had gone to the house of Ramdhan Mahto which is situated in front of a pond, he had seen the presence of the Police, who had taken away the wife, mother and children of Ramdhan Mahto. Ramdhan and Rajendra had fled away. He had not seen the dead body. He was sent letters from jail by Ramdhan Mahto and Rajendra Mahto in which they had accepted their guilt and had made a request to assist them in getting bail. He has proved the letters written by Rajendra Mahto addressed to Guljar Mahto which have been marked as Exhibits-1, 1/1, 1/2, 1/3, 1/4 and 1/5. One letter was addressed to Jageshwar Mahto.

In cross-examination he has deposed that Ramdhan is his nephew. On 27.01.1994, he had submitted a written report to the Police regarding his missing nephew. The Police had made an enquiry on the basis of the said report. He was present when the

dead body of Punit Mahto was recovered. The distance of the pond from where the dead body was recovered was 400-500 yards. At a distance of 20-35 yards from the said place, there was a number of hutments. He does not have any proof regarding the letters which were sent by Rajendra Mahto from the jail. His statement was recorded by the Police. He had not seen Rajendra going with Punit. As per his knowledge, nobody had seen Rajendra committing the murder of Punit.

On recall, this witness has proved his signature in the fardbeyan which has been marked as Exhibit-2/2.

P.W.2 Raghu Rai has stated that on 07.02.1994 at 2:00PM, he was in the school when Ramdhan Mahto and Manohar Mahto came to him and Ramdhan Mahto begged him to save him as he had committed the murder of the son of Jageshwar Mahto. He went to Raidih, where Guljar Mahto and Niwaran Mahto had disclosed about the child being buried. When he was coming out of the school gate, he met Rajendra Mahto who put his head down when he was asked as to why he had done such a heinous act.

In cross-examination, he has deposed that he is a social worker. When Ramdhan had come to the school, it was running. Ramdhan Mahto had asked to save him. He did not have any conversation with Rajendra Mahto. He did not disclose in the school about the subject of his encounter with Ramdhan Mahto. He was aware that the son of Jageshwar Mahto was traceless.

P.W.3 Guljar Mahto has stated that on 26.01.1994 at 8:30PM, when he was in his house Shobha Kant Mahto and Niwaran Mahto had come and disclosed that Punit Mahto has been taken on his bicycle by Rajendra Mahto towards the pond and he has not yet come back. He had gone to the house of Ramdhan Mahto who deterred in giving a proper answer and later on said that he had left Punit Mahto near the pond. The

pond as well as a well were searched with nets, but nothing could be found. The search in the house of the relatives also did not yield any result. He had gone to the Police Station where a station diary entry was recorded. He had a land dispute with Ramdhan Mahto. Rajendra Mahto, Sushila Devi and Manohar Mahto had committed the murder and had buried the dead body in the hut of Ramdhan Mahto. Radhu Rai had disclosed that Punit Mahto has been found buried in the hut of Ramdhan Mahto. The body was exhumed. He had become unconscious.

In cross-examination, he has deposed that he had not seen Punit going with Rajendra Mahto. The distance between the pond and the place where the dead body was recovered was 100 yards. Ramdhan Mahto was staying in the house adjacent to his house.

P.W.4 Jageshwar Mahto has stated that on 26.01.1994 at 8:00PM on his returning to his home, his wife had disclosed that his son Punit Kumar is missing since 5:00PM. She had disclosed that Rajendra Mahto had taken away his son on a bicycle. He had gone to his brother and thereafter, they went to Rajendra Mahto, who initially hesitated but later on said that he had left Punit Kumar Mahto near the pond. The pond as well as a well in the village were searched, but Punit Kumar Mahto could not be traced out. On the next day, his brother had reported the incident to the Police. He has stated that on 07.02.1994, Radhu Rai had come to his house at 2:30-3:00PM and disclosed that his son has been murdered by Ramdhan Mahto and buried in the hut. Radhu Rai had stated to him that this information was given to him by Rajendra Mahto, Ramdhan Mahto and Manohar Mahto. Radhu Rai had also stated that the involvement of the wife of Ramdhan Mahto is also apparent. He had reached the hut from where the dead body was recovered. By the time he had reached, the dead body was already recovered.

In cross-examination, he has deposed that the Police had

recorded his statement. There was animosity between his brother and the family members of Ramdhan Mahto, the same was because of a land. Except his wife, there is no witness, who had seen Rajendra Mahto and Punit going together. In Raidih More, nobody had seen Rajendra and Punit together. The hutment in which the dead body was found was not used by Ramdhan and his family members. About 8-10 huts from the hut where the dead body was found, is the hut of Ramdhan Mahto where the tenant of Ramdhan resides and besides the same is a place where cattles are kept.

P.W.5 Niwaran Mahto has stated that in the morning of 26.01.1994, he was in his house. His nephew Punit Kumar Mahto had returned from school at 12 noon. At 5:00PM, he was standing in front of his house when Rajendra Mahto took Punit on a bicycle towards the pond. He went to Raidih More and when he returned at 8:00PM, he came to know that Punit has not yet returned home. Rajendra Mahto was questioned, who initially did not say anything, but on pressure being put upon him he had stated that he had dropped Punit near the pond. A net was thrown in the pond, but the boy could not be located. The matter was reported to the Police on 27.01.1994 by Shobha Kant Mahto and Guljar Mahto. They had searched for Punit for one week. During this period, the wife of Ramdhan, Sushila Devi used to come to her hut and used to smear it with earth. On 07.02.1994, he came to know from Radhu Rai that Ramdhan Mahto and his brother-in-law Manohar Mahto had gone to his house and pleaded with him to save them. They had concealed the dead body of Punit in the hut. At about 2:00-2.30PM, the Police had reached the hut and recovered the body from inside the hut. The Police had recorded his fardbeyan. He has proved his signature as well as the signature of Shobha Kant Mahto upon the fardbeyan which have been marked as Exhibit-2 and 2/1

respectively. The dead body was thereafter taken to the hospital for autopsy. The incident had occurred because of a land dispute between both the sides.

In cross-examination, he has deposed that his fardbeyan was recorded by the Police besides the hut of Ramdhan Mahto. The dead body was not recovered from the coal depot. The hut of Ramdhan Mahto from where the dead body was recovered was at a lonely place. In the report which he had given to the Police Station on 27.01.1994, he had not mentioned that Punit had gone with Rajendra. He had not seen any marks of injury on the body of Punit.

P.W.6 Putli Bala Devi is the mother of the deceased, who has stated that at 5:00PM, Rajendra Mahto had taken away his son Punit Kumar on a bicycle. She had seen both of them going. Punit Kumar did not return and she had disclosed this fact to her husband, who in turn spread the information to his family and relatives. After 12 days, it came to her knowledge that Rajendra Mahto had murdered her son and buried the dead body in his house.

In cross-examination, she has deposed that there was a strained relationship between the father of Rajendra Mahto and her brother-in-law Guljar Mahto. When Rajendra had gone with her son, there were no one present in her house. In her statement before Police, she had disclosed that Rajendra had taken away Punit on his bicycle.

P.W.7 Indradeo Singh was posted as an Officer-in-charge of Harla P.S. and on 07.02.1994 at 3:00PM, he had heard a rumour that a body is lying in the hutment of Ramdhan Mahto. After making a station diary entry, he had proceeded to the place of occurrence with all other police personnel. At 3:30PM, he had reached Thakur Bandh and in presence of the witnesses, he had conducted a search in the hut. On one side of the hut, some earth

was found smeared and on digging, the dead body of a boy was recovered. Shobha Kant had identified the body to be that of his nephew Punit. He had recorded the fardbeyan of Niwaran Mahto at the place of occurrence. He has proved the fardbeyan which has been marked as Exhibit-3. He had prepared the inquest report which has been proved and marked as Exhibit-4. He had recorded the restatement of Niwaran Mahto and the statements of Shobha Kant and Guljar Mahto. He had inspected the place of occurrence which is a hut in the barn of Ramdhan Mahto at Raidih. On the western side of the room, the dead body of Punit Kumar was buried. The place is lonely, situated away from the main village. He has stated that Raidih locality is at a distance of 500 yards from the place of occurrence and 200 yards from the coal depot. He had prepared a sketch map of the place of occurrence which has been proved and marked as Exhibit-5. He had seized a shaft and a spade for which a seizure list was prepared. The seizure list has been proved and marked as Exhibit-6. The spade was produced from the Malkhana which has been marked as Material Exhibit-I. The spade has been marked as Material Exhibit-II. The blood-stained earth produced in a polythene bag has been marked as Material Exhibit-III. He had recorded the statement of the seizure list witness Chandradeo Mahto. He had instituted the case and had taken over investigation. He had recorded the statement of Radhu Rai. Ramdhan Mahto and his wife were arrested by him from their house. On 08.02.1994, the body of Punit Kumar was sent to the hospital for conducting autopsy. He had recorded the statement of the mother of Punit Kumar Mahto. On his transfer, he had handed over the investigation on 08.02.1994 to Rajendra Bhagat. He has proved the formal FIR which has been marked as Exhibit-7.

In cross-examination, he has deposed that he had not

mentioned in the diary that on 27.01.1994 Shobha Kant and Guljar Mahto had got registered a sanha, though in their statements, both had stated about the sanha. Save and except the family members of Punit Kumar Mahto, there is no witness on the episode of 26.01.1994 when Punit had gone with Rajendra. He had not mentioned about any injury on the body of Punit Kumar Mahto in the inquest report. The entire body was decomposed. He had not recorded the statements of the persons near the house of Niwaran Mahto. He had not recorded the statement of the father of the deceased. Neither the informant, nor any witness had given him any letter written by Rajendra Mahto. The witness Shobha Kant had not stated before him that when he returned home, he had come to know that Punit had gone with Rajendra and had not returned back. He had not seen any documents relating to the ownership of the concerned hut. Radhu Rai as well as the family members of the deceased had disclosed that the hut belongs to Ramdhan Mahto.

P.W.8 Rajendra Prasad Bhagat had taken over the investigation from the earlier investigating Officer and had submitted the charge sheet. He had received the post-mortem report on 19.02.1994 and on 26.02.1994, he had recorded the statement of Jageshwar Mahto. On 30.03.1994, the viscera was sent to the forensic Science Laboratory, Patna.

In cross-examination, he has deposed that he had not sent the blood-stained earth for examination.

P.W.9 Dr. Murli Manohar Sharma was posted as an Additional Sub-divisional Medical Officer, Sub-Divisional Hospital, Chas and on 08.02.1994, he had conducted autopsy on the dead body of Punit Kumar Mahto and had found the following:

- (i) *Body was putrefied. Maggots were crawling over body. Skin was*

discoloured in patches. Mouth was open. Both eyes were swollen and open.

- (ii) Internal examination- it was found that scalp sutures were separated. No external injury over scalp and skull bone present. Scalp hair were easily pulled out. In vertebrae, nothing abnormal detected. Membranes were intact and pale. Brain matter was liquified.*
- (iii) On examination of walls, ribs and cartilage, nothing abnormal was detected.*
- (iv) Pleura was intact and greenish discoloured.*
- (v) Mucosa membrane of larynx and trachea were congested and soften. Cartilages were intact. Pericardium was greenish in colour. Cavity were dialated and empty. Large vessels were soften and intact. Walls of abdomen were discoloured in patches greenish to purple colour. Peritoneum was soften. Teeth were loose in its shocket. Mouth was congested. Mucous membrane of stomach was congested and inflated with gases. Semi-digested food material present. Mucosa of small-intestine was congested and inflated with gas. Digested food material was present. No*

fluid was present in the large intestine. Only gases present. Liver was soft and discoloured. Spleen was soft and pulpy. Both kidneys were brown. In bladder, nothing abnormal was detected. In case of external and internal genital nothing abnormal was detected.

(vi) There was no injury, dislocation or fracture on the body. No external or internal injury in the body. No mark of ligature on neck.

No definite opinion of cause of death could be ascertained as the body was in the stage of putrefaction. The viscera was kept for biochemical examination. He has proved the post-mortem report which has been marked as Exhibit-8.

In cross-examination, he has deposed that there was no external injury.

5. The statement of the accused was recorded under Section 313 Cr.P.C. in which he has denied his complicity in the murder of Punit Kumar Mahto.

6. The defence has examined one witness in support of its case:

D.W.1 Parsadi Yadav has produced the station diary of Harla P.S. of the year 1994. He has proved Sanha No. 845 dated 27.01.1994 which has been marked as Exhibit-A. The station diary entry No. 161 dated 07.02.1994 has been proved and marked as Exhibit-A/1.

7. It has been submitted by Mr. Jitendra S. Singh, learned counsel for the appellant that the appellant has been convicted on the vague and flimsy charge of being last seen with the deceased. It has been submitted that no independent witness has

stated about seeing the appellant and the deceased. The evidence of P.W.2 reveals that it was Ramdhan Mahto, who had begged him to save him as he had committed the murder of Punit Kumar Mahto, but his disclosure to the other witnesses seems to be at variance regarding the involvement of the appellant. The hutment from where the dead body was exhumed belonged to Ramdhan Mahto. The letters purportedly written by the appellant confessing to his guilt cannot be taken note of as the same had emerged when the appellant was in custody and more so, when in his 313 Cr.P.C. statement he has categorically denied of being the author of those letters. In fact, the learned trial court has also not considered the letters to be of any importance for the reasons mentioned in the said judgement. Ramdhan Mahto, who is the father of the appellant and against whom the arrow of suspicion is primarily pointed, has been acquitted by the learned trial court.

8. Mr. Pankaj Kumar, learned P.P. has submitted that the prosecution has been successful in proving that the deceased was last seen with the appellant and that the dead body of Punit Kumar Mahto was recovered from the hutment of the father of the appellant.

9. We have heard the learned counsel for the respective sides and have also perused the trial court records.

10. It would transpire that admittedly, there are no eyewitnesses to the murder of Punit Kumar Mahto. The case of the prosecution is based on circumstantial evidence. The learned trial court has discarded all other circumstantial evidence, except: (a.) the deceased was last seen with the appellant and (b.) the dead body was recovered from the house of the father of the appellant.

11. As per P.W.1, he had come to know from the informant (P.W.5) that the deceased had gone with the appellant on a

bicycle to the house of Ramdhan Mahto situated in front of a pond. Admittedly, P.W.1 had not seen the appellant and the deceased together. P.W.3 in his cross examination has denied seeing the appellant going with the deceased. P.W.4, who is the father of the deceased had come to know from his wife (P.W.6) that the appellant had taken away his son on a bicycle. So far as P.W.5 is concerned, he is also not an eye witness to the incident of the deceased being last seen with the appellant, though the appellant had admitted before him that he had left the deceased near the pond which would indicate about the acceptance of the appellant that he had taken away the deceased. However, such admission would not be of any consequence, as the same was stated under coercion and duress which is apparent from the evidence of P.W.5. He has also stated about the disclosure made by P.W.2 regarding the confession made by the accused persons of concealing the dead body of Punit Kumar Mahto, but such disclosure does not include the name of the appellant. P.W.6, however, is the only witness who had seen her son going with the appellant on a bicycle. There were several houses near the house of P.W.6 and the distance between her house and the place of occurrence is 500 yards. It was 5:00PM, when the incident of the appellant taking away the son of P.W.6 occurred and it indeed appears to be strange that the locality, though had a substantial populace, but none had seen the said occurrence. Moreover, it seems that though the other accused persons were frequenting the said hut, not much has been said about the appellant. In fact, the needle of suspicion has been consistently pointed towards Ramdhan Mahto, the owner of the hutment but he has been acquitted by the learned trial court. There does not appear to be any circumstance through which the appellant can be held guilty for the offence of murder. Mr. Singh, learned counsel for the appellant has submitted that Section 106 of the Evidence Act

would not be applicable to the case of the appellant and in such context, reference has been made to the case of **M. Vijayakumar v. State of Tamil Nadu** reported in **(2024) 4 SCC 633**, in which the following has been noted:

“25. We are at a loss to understand as to how Section 106 of the Evidence Act could be applied in the case on hand against the appellant in view with facts narrated above. This section is an exception to the general rule laid down in Section 101 which casts burden of proving a fact on the party who substantially asserts the affirmative of the issue. Section 106 is not intended to relieve any person of that duty or burden. On the contrary, it says that when a fact to be proved, either affirmatively or negatively, is especially within the knowledge of a person, it is for him to prove it. This section, in its application to criminal cases, applies where the defence of the accused depends on his proving a fact especially within his knowledge and of nobody else.

26. In short, Section 106 of the Evidence Act cannot be used to shift the burden of proving the offence from the prosecution to the accused. It can only when the prosecution led evidence, which, if believed, will sustain a conviction or which makes out a prima facie case, that the question of shifting the onus to prove such fact(s) on the accused would arise. (See the decision in Sawal Das v. State of Bihar [Sawal Das v. State of Bihar, (1974) 4 SCC 193 : 1974 SCC (Cri) 362 : AIR 1974 SC 778] .)”

12. Since we have already come to a conclusion that the prosecution has failed to sustain the allegations levelled against

the appellant, the question of shifting the onus upon the appellant in terms of Section 106 Evidence Act evaporates.

13. We, therefore, on the basis of what has been discussed above, set aside the judgment and order of conviction and sentence dated 10.09.1997 passed by Sri Abhaya Shankar Prasad, learned Additional Sessions Judge, Bokaro in S.T. No. 187/95.

14. This appeal is **allowed**.

15. Since the appellant is on bail, he is discharged from the liability of his bail bonds.

16. Pending I.A.s, if any, stands closed.

(RONGON MUKHOPADHYAY, J.)

(ARUN KUMAR RAI, J.)

Jharkhand High Court, Ranchi
Dated the 12th Day of June, 2025
Preet/N.A.F.R.