

Criminal Appeal (DB) No. 147 of 1993(R)

Against the judgment and order of conviction and sentence dated 31.07.1993 passed by Smt. Shakuntala Sinha, learned 7th Additional Judicial Commissioner, Ranchi in Sessions Trial No. 231 of 1988

1. Bidhku Mahto
2. Dinesh Mahto
3. Balku Mahto
4. Bhunuwa Mahto

... Appellants

Versus

The State of Bihar (now Jharkhand)

... Respondent

PRESENT

HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY

HON'BLE MR. JUSTICE DEEPAK ROSHAN

For the Appellants : Mr. A. K. Kashyap, Sr. Advocate

For the Respondent : Mr. Vishwanath Roy, Special P.P.

Dated 10th June, 2024

Rongon Mukhopadhyay, J. : 1. Heard Mr. A. K. Kashyap, learned senior counsel for the appellants and Mr. Vishwanath Roy, learned Special P.P.

2. This appeal is directed against the judgment and order of conviction and sentence dated 31.07.1993 passed by Smt. Shakuntala Sinha, learned 7th Additional Judicial Commissioner, Ranchi in Sessions Trial No. 231 of 1988, whereby and whereunder, the appellants have been convicted for the offence punishable u/s 302/34 of the Indian Penal Code and have been sentenced to undergo rigorous imprisonment for life.

3. The prosecution case arises out of the fardbeyan of Balkahi Ganjhuain (P.W. 4), wherein it has been stated that on 16.04.1988 at about 8 p.m. her husband Manbodh Ganjhu had gone out to urinate and as soon as he sat down, Bidhku Mahto, Dinesh Mahto, Balku Mahto and Bhunuwa Mahto and another person in a concerted fashion had committed assault upon her husband with Bhujali, Tangi and

Bhala which resulted in her husband falling down. When she tried to save her husband Bidhku Mahto had assaulted her with a Tangi and forcibly removed her. Manbodh Ganjhu in an injured state tried to flee, but fell down in the field of Karma Mahto. It has been stated that the accused persons had fled away and when the informant went to her husband, she found him dead. When she raised a cry of alarm, several persons assembled after which information was given to the Police Station and her fardbeyan was recorded.

Based on the aforesaid allegations, Burhmu P.S. Case No. 15/1988 was instituted for the offence punishable u/s 302 of the I.P.C. On conclusion of investigation charge-sheet was submitted against the accused persons. After cognizance was taken, the case was committed to the Court of Sessions, where it was registered as Sessions Trial No. 233 of 1988. Charge was framed for the offences punishable u/s 302 of the I.P.C. against all the accused persons which was read over and explained to them in Hindi to which they pleaded not guilty and claimed to be tried.

4. The prosecution has examined as many as eleven (11) witnesses in support of its case.

P.W. 1 Dr. Ajeet Kumar Choudary was posted as a Medical Officer in the Department of Forensic Medicine, RMCH, Ranchi and on 17.04.1988 he had conducted autopsy on the dead body of Manbodh Ganjhu and had found the following injuries:

“(I) Incised wound:

- (a) 7 x 1½ cm x soft tissue deep situated on the transversely region placed brains vessels with 3½ cm long tailing on the right end of the wound.
- (b) 1 X 1/4 cm X soft tissue deep on the left mastoid region.
- (c) 6 X 1/4 X 1/4 cm deep below the proceeding injury.
- (d) 2 X 1/2 X 1 ½ cm on the outer side of right arm lower part.
- (e) 2X 1/2 X 1/2 cm on the upper part of back forearm.

- (f) 3 X 1 cm x bone deep on the back of right forearm middle part with fracture of right ulna bone.
- (g) 3X 3/4X 1/2 cm on the front part of left palm near the root of thumb.

(II) Abrasion wound:

- (a) 1 X 1/2 cm on the back of left side of chest.
- (b) 2 X 1 cm on the left gluteal region.
- (c) 3 X 1 1/2 cm on the back of left knee.

(III) Lacerated wound:

- (a) 4 X 1 cm x scalp deep on the right parietal region of head posterior part.

(IV) Internal injuries: There was diffused contusion of left occipital scalp and soft tissue of mastoid region. There were presence of subdural blood & blood clot over both hemispheres of brain. There was contusion soft tissue of back of right head. Rest of the organs were pale. Stomach, urinary bladder & heart were empty.”

The cause of death has been opined to be on account of head injury. He has proved the postmortem report which has been marked as Ext.-1.

P.W. 2 Jageshwar Mahto has stated that incident is of two years back at about 8 p.m. when he was in his house at which point of time he had heard the sound of alarm from Balkahi Ganjuain and he rushed to her house. Several villagers had also come. He found the dead body of Manbodh Ganjhu lying in the back side of the house. Balkahi Ganjhuain had disclosed that there were 5/6 persons whom she could not identify who had committed the murder of her husband. On the next date, the police had come and recorded the statement of the witnesses. He has identified his signature in the inquest report which has been marked as Ext. 2. He has also identified the signature of

Ganesh Mahto in the inquest report which has been marked as Ext. 2/1.

In cross examination he has deposed that Balkahi Ganjhuain did not disclose to him the name of a single assailant.

P.W. 3 Sahdeo Ganjhu has been tendered for cross examination.

P.W. 4 Balkahi Ganjhuain is the informant who has stated that the incident is of 4 years back and it was 8 p.m. when she and her husband had gone out of the house to urinate. Bidhku Mahto, Dinesh Mahto, Balku Mahto and Bhunuwa Mahto had assaulted her husband with Tangi and Balua. When she tried to save her husband she was assaulted by Bidhku with knife and Balua and she had suffered an injury on her forehead. Her husband fell down and died in the field of Karma. She has stated that Bidhku had assaulted her husband with Tangi and Balua, Dinesh with Tangi, Balku with Farsa and Bhunuwa with Barchha, as a result of which her husband died. When she raised an alarm, several villagers had assembled and amongst them were Jageshwar, Jagtu and Chowkidar Bigal. The accused persons had called for a meeting regarding her farm land and since her husband did not attend the meeting, he was done to death. Her fardbeyan was recorded by the police.

In cross examination she has deposed that she had witnessed the assault and had identified all the four assailants. It was a moon lit night which enabled her to identify the assailants. When she had come out of the house she found her husband lying in the field of Karma.

P.W. 5 Kolha Ganjhu is the son of the informant who was in the old house of his parents when on alarm he rushed to the new house where he had seen his father dead. Her mother had disclosed the name of the assailants who had committed the murder of his father.

In cross examination he has stated that the distance from his house to the place of occurrence is about 300-400 yards. On hearing the cry of alarm, he rushed to the place of occurrence and several villagers had also come. The Chowkidar had already reached the place of

occurrence, but he had not disclosed the name of the assailants. None of the persons who had assembled had disclosed the name of the assailants. He came to know about the name of the assailants from his mother who had disclosed about the same on the next date at about 9-10 a.m.

P.W. 6 Ramkishor Mahto has proved the seizure list which has been marked as Ext. 3.

In cross examination he has deposed that police got his signature on a blank paper. The blood stained earth was not seized by the police in his presence.

P.W. 7 Jagarnath Ram has proved the formal F.I.R. which has been marked as Ext. 4.

P.W. 8 Ganesh Mahto has been declared hostile by the prosecution.

P.W. 9 Baiju Nayak has stated that it was a dark night when the incident had occurred.

P.W. 10 Md. Inayat Khan has proved the injury report which has been marked as Ext. 5.

In cross examination he has deposed that the injury report was not prepared in his presence.

P.W. 11 Jagarnath Ram has identified the hand writing and signature of K. N. Singh in the inquest report which has been marked as Ext. 7. He has proved the requisition by which the injured was sent to the hospital which has been marked as Ext. 6.

5. The statements of the appellants were recorded under Section 313 Cr.P.C. in which they denied their involvement in the incident of murder.

6. It has been submitted by Mr. A. K. Kashyap, learned senior counsel for the appellant that the appellants have been implicated on account of a previous dispute with the deceased. It has been submitted that save and except the informant, there are no eye witnesses to the occurrence and the evidence of the informant (P.W. 4) is full of

infirmities and contradictions. It is indeed strange that the informant had never disclosed the name of the assailants to the villagers who had immediately rushed to the place of occurrence and as per her son (P.W. 5), the names were disclosed to him by his mother on the next day. The evidence of P.W. 4 therefore seems to indicate vengeance on her part as it is quite an unnatural conduct on the part of P.W. 4 to have kept silent even though a large number of villagers had assembled immediately after the occurrence had taken place.

7. Mr. Vishwanath Roy, learned Spl.PP has submitted that conviction can be based on the evidence of a solitary eye witness. It has been stated that apart from P.W. 4, being an eye witness, she is also an injured witness which further enhances the quality of her evidence. The fardbeyan was recorded at 2 a.m. in which P.W. 4 has named the appellants and therefore there is no question of insertion of the name of the appellants in the fardbeyan as an afterthought.

8. We have heard the rival submissions and have also perused the lower court records.

9. The appellants as per the fardbeyan had unifiedly committed assault upon the husband of the informant when he had come out of the house to urinate. The reason for the occurrence is that there was a dispute with respect to the farm land of the deceased for which appellants had called for a meeting which the deceased did not attend and resultantly the assault committed upon him by the appellants. The informant had also sustained injuries in an effort to save her husband.

10. The incident had occurred at 8 p.m. on 16.04.1988 and on 17.04.1988 at 2 a.m., the fardbeyan of the informant was recorded at the Police Station itself. She has specifically stated about the appellants committing the assault upon her husband with various weapons like Bhujali, Tangi and Bhala. On hearing her cry of alarm several villagers had assembled and the fardbeyan names Jageshwar Mahto and Jagtu Mahto as the persons who had rushed to the place of occurrence. Jageshwar Mahto has been examined as P.W. 2 and he has stated that

P.W. 4 (Informant) had disclosed to him that there were 5/6 persons who had committed the murder and who could not be identified. He has reiterated his version in his cross examination that P.W. 4 had not disclosed the name of any of the assailants. The Village Chowkidar who had taken P.W. 4 to the Police Station has not been examined by the prosecution. The son of P.W. 4 has been examined as P.W. 5 who in his cross examination has deposed that the Chowkidar was already present when he had reached the place of occurrence, but the Chowkidar had also not disclosed the name of the assailants. It would thus seem that the Chowkidar was one of the first persons to have reached the place of occurrence and it was he who had taken P.W. 4 to the Police Station and therefore he was a prime witness, but his non-examination and the non-disclosure of the name of the appellants by him to P.W. 5 raises a serious doubt over the identification of the appellants as the assailants. As per P.W. 5 in the next morning at around 9-10 a.m. his mother had disclosed about the name of the assailants to him. It is no doubt true that the evidence of a solitary eye witness can form the basis of conviction, but the same has to be trustworthy and reliable as well as free from any distortion. The evidence of P.W. 4 is consistent with her fardbeyan, but the identification of the appellants as the assailants in view of the surrounding circumstances makes such evidence vulnerable and the insertion of the name of the appellants in the fardbeyan appears to be premeditated and an afterthought. There cannot be any doubt that the incident had occurred as P.W. 4 had also sustained injuries, but the identification of the appellants as the assailants clearly appears to be tainted and cannot form the basis for conviction of the appellants. The other notable feature is the non-examination of the Investigating Officer who could have proved the place of occurrence and his non-examination has caused prejudice to the defence.

11. We, therefore, on the basis of basis of discussions made hereinabove come to a conclusion that the learned trial court has erred

in putting undue reliance upon the evidence of P.W. 4 without considering the other circumstances emerging from the evidence of the witnesses and consequently we set aside the judgment and order of conviction and sentence dated 31.07.1993 passed by Smt. Shakuntala Sinha, learned 7th Additional Judicial Commissioner, Ranchi in Sessions Trial No. 231 of 1988. This appeal is allowed.

12. Since the appellants are on bail, they are discharged from the liability of their bail bonds.

(RONGON MUKHOPADHYAY,J.)

(DEEPAK ROSHAN, J.)

Jharkhand High Court, Ranchi
Dated the 10th June, 2024
MK/N.A.F.R.