

Criminal Appeal (DB) No. 84 of 1997(R)

Against the judgment and order of conviction and sentence dated 21.03.1997 (sentenced passed on 31.03.1997) passed by Shri Mahesh Prasad Tiwari, learned Additional Judicial Commissioner, Lohardaga in Sessions Trial No. 296 of 1994/ Sessions Trial No. 22 of 1996

1. Mangleshwar Bhagat
2. Budhdeo Bhagat (since deceased)
3. Budhman Bhagat
4. Laldeo Bhagat
5. Birsa Bhagat (since deceased)

... 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. D. K. Chakraverty, Advocate

For the Respondent : Mr. Tarun Kumar, A.P.P.

Dated 10thJune, 2024

Rongon Mukhopadhyay, J. : 1. Heard Mr. D. K. Chakraverty, learned counsel for the appellants and Mr. Tarun Kumar, learned A.P.P.

2. This appeal is directed against the judgment and order of conviction and sentence dated 21.03.1997 (sentenced passed on 31.03.1997) passed by Shri Mahesh Prasad Tiwari, learned Additional Judicial Commissioner, Lohardaga in Sessions Trial No. 296 of 1994/ Sessions Trial No. 22 of 1996, whereby and whereunder, the appellants No. 1, 2, 4 and 5 have been convicted for the offences punishable u/s 148 and 302/149 of the Indian Penal Code while the appellant No. 3 has been convicted for the offences punishable u/s 147 and 302/149 of the Indian Penal Code and all the appellants have been sentenced to imprisonment for life for the offence u/s 302/149 IPC and the appellants No. 1, 2, 4 and 5 have further been sentenced to undergo rigorous imprisonment for two years for the offence u/s 148 IPC while the appellant No. 3 has been additionally sentenced to undergo

rigorous imprisonment for one year for the offence u/s 147 IPC. All the sentences were directed to run concurrently.

3. The appellants No. 2 and 5, namely, Budhdeo Bhagat and Birsa Bhagat have died during the pendency of this appeal and hence this appeal stood abated so far as the appellants No. 2 and 5 are concerned.

4. The prosecution case arises out of the fardbeyan of Bisu Bhagat (P.W. 8) recorded on 15.08.1993 at 11.30 a.m. at Village Rocho, Barwa Toli in which it has been stated that in the morning of the same day he had gone to the field to till his land along with Debiya Oraon, Deodhan Oraon, Sukhdeo Oraon, Chame Oraon and Sani Oraon and some other persons were also present who were sprinkling seeds on the land. The son of the informant, namely, Mangal Bhagat was also working in the field. It has been alleged that at about 8.30 a.m. Birsa Bhagat with a Kari, Budhdeo Bhagat with a Balua, Mangleshwar Bhagat with a Barchha, Budhman Bhagat with a Lathi, Laldeo Bhagat with a Bhala, Fulua Devi and Sumi Devi all of village Rocho, Barwa Toli came to his field and attempted to assault him, but he managed to get away. Thereafter they started chasing the son of the informant Mangal Bhagat and all the accused persons surrounded his son. Even when his son pleaded for his life, the accused persons did not listen and Budhdeo Oraon assaulted him twice on his head with a Balua and the son of the informant fell down and the accused persons started raining blows upon him, as a result of which he died at the spot. The reason for the occurrence is a long standing land dispute between both the sides.

Based on the aforesaid allegations, Kuru P.S. Case No. 78/1993 was instituted against the accused persons for the offences punishable u/s 147, 148, 149 and 302 of the I.P.C. On conclusion 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 Sessions Trial No. 296 of 1994. Charge was framed against the accused persons for the offences punishable u/s 302/149 of the I.P.C.; Budhman Bhagat, Phulwa Devi and Sumi Devi were additionally charged u/s 147 I.P.C. which the rest four accused persons

were further charged u/s 148 I.P.C. which was read over and explained to the accused in Hindi to which they pleaded not guilty and claimed to be tried.

5. The prosecution has examined as many as twelve (12) witnesses in support of its case.

P.W. 1 Dr. M. M. Sengupta was posted at Sadar Hospital, Lohardaga and on 16.08.1993 he had conducted autopsy on the body of the Mangal Bhagat and had found the following injuries:

External Injury:

(i) One incised wound in the front of neck cutting across the lower part of neck cutting the trachea, aesophagus, major blood vessels of the neck & soft tissues of neck & cutting the third cervical vertebra.

Coagulated blood along the edges of the wound of since 8" x 4" x 3" only 3" skin of the neck was intact.

(ii) One incised wound on the left knee-1" x 1/2 "x 1/2 "

(iii) One incised wound on the right knee-1 1/2 " x 1/2 "x 1/2 "

(iv) One incised wound on the left elbow 3" x 1/4" x 1"

(v) One incised wound on the upper lip 3" x 1" x 1"

(vi) One incised wound on the right shoulder - 5" x 2" x 1"

(vii) One bruise on the left arm 4" x 2"

The cause of death has been opined to be on account of injury No. 1 caused by sharp cutting weapon such as Kudal or Balua. He has proved the postmortem report which has been marked as Ext.-1.

P.W. 2 Saraswati Devi has stated that the incident is of 15.08.1993 at 8 a.m. She had gone to the field with breakfast as her husband was tilling the land. She had seen that seven persons which included five males and two females chasing her husband and when her husband could not run any more, he was assaulted by Budhdeo with a Balua and Birsa had assaulted with a Kari. When her husband fell down others had assaulted him. Mangaleshwar had a Lathi, Budhman had a Barchha and Laldeo was equipped with a Bhala. Fulua Devi and Sumi Devi were instigating the others to finish off her husband. The miscreants left after assaulting her husband. She on seeing the

assault returned back home and never came back to the place of occurrence. She has stated that there were several persons present at the place where her husband was tilling the land.

In cross examination she has deposed that Bikhu Orain is her mother-in-law and there was a pending litigation for long between Bikhu Orain and Birsa Oraon. The dispute is with respect to 17 acres of land. Her husband had left for the field at 6 a.m. When she had witnessed the quarrel, she had returned back to her house. She has stated that her father-in-law was also present in the field.

P.W. 3 Dipti Kumari, P.W. 4 Laxman Sahu, P.W. 5 Magan Kumari, P.W. 6 Butan Lohar and P.W. 7 Sukhdeo Oraon did not support the case of the prosecution and were declared hostile by the prosecution.

P.W. 8 Bisu Bhagat is the informant and the father of the deceased who has stated that it was 8.30 a.m. and he was in his field where seeds were being sowed and there were labours present. At that point of time five males and two females variously armed had arrived. His son was assaulted by Budhwa with a Balua while Birsa had assaulted him with Kari. Mangaleshwar had committed assault with Lathi while Laldeo had used a Bhala. Due to the assault, his son died. He had informed the police after which his fardbeyan was recorded.

In cross examination he has deposed that in his fardbeyan, he has stated that Budhwa with Balua, Birsa with Kari, Mangaleshwar with Lathi and Laldeo with Bhala had assaulted his son. His daughter-in-law had brought breakfast to the field. The accused persons are his Gotiyas. There was a dispute between him and Birsa over a piece of land. The decision had come from the Court 14-15 years back and after the decision and before the incident, the accused persons had never come to his field. He has stated that at the time of incident there was no one else present nearby. However, some persons, namely, Chame, Deodhan, Dibiya, Sani and Sukhdeo were ploughing the field.

P.W. 9 Sani Oraon has been tendered by the prosecution.

P.W. 10 Chame Bhagat has identified his signature in the seizure list of seized blood stained earth and which has been marked as Ext. 1/2.

P.W. 11 Deodhan Oraon has identified his signature in the inquest report which has been marked as Ext. 2.

P.W. 12 Yadunandan Singh was the Officer-in-Charge of Kuru P.S. and on 15.08.1993 he had received an information that a murder has been committed in village Rocho Barwatoli. On such information he along with other police personnel had gone to Rocho Barwatoli and had recorded the fardbeyan of Bisu Bhagat. He had taken over the investigation of the case. He had prepared the inquest report and had sent the body for postmortem. He had inspected the place of occurrence which is a disputed land and which is situated at a distance of 500 yards in the south-west corner from the house of the informant. The house of the accused is at a distance of 600 yards from the house of the informant in the north-west side. The murder had taken place in the field of Jito Bhagat. He has proved the fardbeyan which has been marked as Ext. 3. The inquest report and the formal F.I.R. have been marked as Ext. 4 and 5 respectively. The seizure list has been marked as Ext. 6. He had recorded the statement of the informant and other witnesses and after obtaining the postmortem report, he had submitted charge sheet. The witnesses Dipti Kumari, Laxman Sao, Magan Kumari, Butan Lohar and Sukhdeo Lohar have all stated about the assault committed by the accused persons upon the son of the informant.

In cross examination he has stated that he had recorded the statement of Saraswati Devi at the place of occurrence. The place where the dead body was found was the disputed land.

6. The statements of the accused persons were recorded under Section 313 Cr.P.C. in which they denied their complicity in the offence.

7. It has been submitted that by Mr. D. K. Chakravery, learned counsel for the appellants that P.W. 8 is the only eye witness to the occurrence and his evidence suffers from infirmities and contradictions. Though the prosecution has cited P.W. 2 as an eye witness, but her evidence appears to suggest that she has been tutored as even after witnessing the assault upon

her husband, she had nonchalantly gone back to her house. The other witnesses purportedly present at the place of occurrence were either declared hostile or were tendered by the prosecution.

8. Mr. Tarun Kumar, learned APP has stated that the evidence of P.W. 2 and P.W. 8 clearly indicates beyond any reasonable doubts that all the appellants in a concerted fashion and in the pre-planned manner had committed the murder of the son of the informant. The learned trial court had discussed the evidence on record and had rightly come to a conclusion about the involvement of the appellants in committing the murder.

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

10. The appellants have been convicted u/s 302 I.P.C. taking the aid of Section 149 of I.P.C. for committing the murder of Mangal Bhagat, the son of the informant. The prosecution has projected P.W. 2 and P.W. 8 as the eye witnesses. On perusal of the evidence of P.W. 2 who happens to be the wife of the deceased it seems that she had gone to the field and had taken with her food for her husband and father-in-law who were working in the field since early morning. She has stated about seeing the indiscriminate assault committed by the accused persons upon her husband. Her conduct thereafter appears to be unusual as she calmly returned back to her house and never went back to the place of occurrence which once again appears to have been contradicted by the evidence of P.W. 12 who has stated that he had recorded the statement of P.W. 2 at the place of occurrence. In either of the circumstances, she does not seem to be an eye witness to the assault specifically with respect to what she has stated in her cross-examination. A fleeting reference has been given by P.W. 8 regarding the presence of his daughter-in-law (P.W. 2) in the field, but it has not been whispered as to whether she had witnessed the occurrence or not.

11. So far as P.W. 8 is concerned, there seems to be some deviation with his fardbeyan revealing that initially he was chased and when he went out of bounds, his son was surrounded and subjected to brutal assault. However, in his evidence he has conveniently ignored about such chase and spelt out a

story as if Mangal Bhagat was the prime target of the assailants. As per his evidence there were other persons present who were ploughing the land, but neither P.W. 8 nor any other person had come to the rescue of the deceased. The witnesses whose names have been mentioned by P.W. 8 either have turned hostile or have been tendered by the prosecution or have merely identified their signature in the inquest report and the seizure list. The main allegation of assault seems to have been levelled against Budhwa and Birsa, as they had assaulted Mangal Bhagat with Balua and Kari respectively. The incised wounds received by the deceased is a testimony to such assault. The evidence of P.W. 8 does not whisper about any participation in the assault by Budhman and so far as Mangaleshwar and Laldeo are concerned, they had assaulted the deceased with Lathi and Bhala, but neither any injury by a hard and blunt substance nor any piercing wound were found on the person of the deceased. It has come to light that the informant and the appellants were on inimical terms with respect to 17 acres of land and if at all, a common object is to be established, the same would be against the informant and the version in fardbeyan does reveal so though on the informant escaping, the attention of the accused persons seems to have veered towards the son of the informant. Another essential feature of Section 149 I.P.C. is that the prosecution has to prove that the accused were aware of the offence likely to be committed so as to achieve the common object. Such awareness might have been present amongst the accused persons when they had come to the place of occurrence, but the same evaporated with the escape of the informant.

12. The evidence of P.W. 8 suffers from contradictions and in absence of any other witness to corroborate such version, it would be unsafe to convict the accused persons solely based upon the evidence of P.W. 8. It is no doubt true that the evidence of a solitary witness can lead to a conviction provided the same is consistent and does not suffer from any major contradictions. However, as we have noticed above, the participation in the assault by the appellants is itself a doubt and such circumstances will lead to giving benefit of doubt to the appellants. Fulwa Devi and Sumi Devi have also come to the field along with the other accused persons, but they have been acquitted by

the learned trial court as it was concluded that they were not the members of an unlawful assembly.

13. Thus on an overall conspectus of the case, we come to a conclusion that the learned trial court has not properly appreciated the evidence on record and consequently, we set aside the judgment and order of conviction and sentence dated 21.03.1997 (sentenced passed on 31.03.1997) passed by Shri Mahesh Prasad Tiwari, learned Additional Judicial Commissioner, Lohardaga in Sessions Trial No. 296 of 1994/ Sessions Trial No. 22 of 1996. This appeal is allowed.

14. 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 10thJune, 2024
MK/N.A.F.R.