

Criminal Appeal (DB) No. 81 of 1995(P)

Against the judgment and order of conviction and sentence dated 04.07.1995 (sentence passed on 05.07.1995) passed by Shri Rameshwar Prasad Verma, learned Additional Sessions Judge, Gumla in Sessions Trial No. 101 of 1991.

Nijamuddin @ Lamboo	...	Appellant
Versus		
The State of Bihar (now Jharkhand)	...	Respondent

PRESENT

HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY
HON'BLE MR. JUSTICE DEEPAK ROSHAN

For the Appellant	: Mr. Peeyush Krishna Choudhary, Amicus
For the Respondent	: Mr. Pankaj Kumar, A.P.P.

Dated 10th June, 2024

Rongon Mukhopadhyay, J. :

1. Heard Mr. Peeyush Krishna Choudhary, learned amicus curiae appearing for the appellant and Mr. Pankaj Kumar, learned A.P.P.
2. This appeal is directed against the judgment and order of conviction and sentence dated 04.07.1995 (sentence passed on 05.07.1995) passed by Shri Rameshwar Prasad Verma, learned Additional Sessions Judge, Gumla in S.T. No. 101 of 1991, whereby and whereunder, the appellant has been convicted for the offence punishable u/s 302 of the Indian Penal Code and has been sentenced to imprisonment for life.
3. The prosecution case arises out of the fardbeyan of Sunil Kumar Sinha recorded on 19.12.1990 wherein it has been stated that on 18.12.1990 at about 7:00PM, his father Hemant Kumar Sinha had gone to purchase clothes at Khadi Gram Udyog situated at Shankh More. When the father of the informant did not return till 08:30PM, the informant and his younger brother Anil Kumar Sinha and their servant Birsu Munda went in search of his father towards Shankh More and when they reached near the turning at Mission More, they heard some commotion near the field and in the torchlight he saw 3-4 persons pinning down another person with one of the persons identified as Lamboo (appellant) assaulting the person lying on the ground with a

bhujali with the aunt of the informant standing nearby exhorting the other persons to do away with the life of the person lying in the field. The informant could understand that it was his father who was being assaulted at which he immediately returned back to his village and informed about the matter to Manmohan Prasad, Surendra Prasad, Madhu Korva, Chotan Munda, Kishore Beck and others and all of them went to the place of occurrence where none of the miscreants could be found but the person who was lying was identified as the father of the informant in a pool of blood with several injuries on his person and Khadi clothes, a torch and a plastic cap lying beside him. The reason for the occurrence is that about fifteen days back, there was an altercation between his father and Lamboo and Kusum Lata on account of illicit relationship between Lamboo and Kusum Lata, for which threats were extended to the father of the informant.

Based on the aforesaid allegations, Raidih P.S. Case No. 71/90 was instituted for the offences punishable under Sections 302/3109/120B IPC against Kusum Lata, Lamboo and 3-4 unknown persons. On completion of investigation, charge sheet was submitted against Kusum Lata, Lamboo and Md. Kalam and after cognizance was taken, the case was committed to the Court of Sessions where it was registered as Sessions Trial No. 101 of 1991. Charge was framed against the accused persons under Section 302/34 IPC and the accused Kusum Lata was further charged under Section 302/109 IPC which was read over and explained to the accused in Hindi to which they pleaded not guilty and claimed to be tried.

4. The prosecution has examined as many as nineteen (19) witnesses in support of its case.

P.W.1 Dr. Hemant Kumar was posted as a Civil Assistant Surgeon at Sadar Hospital, Gumla and on 20.12.1990 he had conducted autopsy on the dead body of Hemant Kumar Sinha and had found following injuries: -

- (i) Incised wound chin and the face 5" x 1" x 1½" with cutting of mandible bone.
- (ii) Incised wound chin of the face 5" x 1" x 1½" below injury no. 1

- (iii) Incised wound on the vertex of head 4" x 3" x bone deep in the fracture of parietal bone brain matter congested blood clot present.
- (iv) Incised wound vertex the head by the left side of injury no. 3 3" x ¾" x bone deep with fracture of parietal bone. Brain matter congested blood clot present.
- (v) Incised wound occipital region of the head 4" x ¾" x bone deep with fracture of the occipital bone brain matter congested blood clot present.
- (vi) Incised wound occipital region of the head below injury no. 5, 4" x ¾" x 3" brain matter lacerated with fracture of bone and blood clot present.
- (vii) Incised wound lower part of the occipital region of the lacerated 4" x ¾" x 3" with fracture of occipital bone brain matter congested and lacerated, blood clot present.

All the injuries were caused by sharp cutting weapon, that is, bhujali and all the injuries except injury no. 5 were grievous in nature. Injury nos. 3, 4, 5, 6 and 7 were sufficient to cause death in ordinary course of nature either singly or in combination. The cause of death was shock and haemorrhage due to the above noted injury. He has proved the post mortem report which has been marked as Ext.-1. The death would be instantaneous after receiving the above noted injuries.

P.W.2 Sunil Kumar Sinha is the informant who has stated that on 18.12.1990 at 07:00PM, his father Hemant had gone to Shankh More to bring clothes from the tailor and to purchase clothes from Khadi Bhandar. When he did not return till 08:30PM, he and his brother Anil Kumar Sinha as well as his servant Birsu Munda had gone in search of his father with a torch. When they reached Mission More, they heard some sounds from the northern side and in the flashlight of the torch it was found that 4-5 persons were assaulting a person lying on the ground. He could identify Nijamuddin alias Lamboo who was having a bhujali with him and was giving repeated blows of bhujali on the person lying on the ground. In the same place, Kusum Lata was

standing who was exhorting the accused to kill that person as he has always been a thorn in their relationship. At this he could make out that it was his father who was being subjected to assault. All three of them returned back to the village and informed about the incident to Madhu Korva, Chotan Munda and Kishore Beck. All of them thereafter returned back to the place of occurrence where no one was found except the dead body of the person. The dead body was that of his father. A bhujali, a cap, a torch, a piece of pyjama were seen lying besides the dead body. He has stated that fifteen days prior to the murder, there was a quarrel between his father and Kusum Lata and Nijamuddin and her father was threatened by the accused persons. He has stated that there is an illicit relationship between Kusum Lata and Nijamuddin for which a litigation is also going on. Due to this enmity, his father has been murdered by the accused persons. When the Police had come, his fardbeyan was recorded. He has identified his signature as well as the signature of Manmohan Prasad and Kishore Beck in the fardbeyan which has been marked as Ext.-2, Ext.-2/a and Ext.-2/b respectively. The Police had prepared the inquest report in his presence and had also send the body for post mortem examination.

In cross-examination he has deposed that at the time of the incident his father was the mukhiya of the village. He had seen Lamboo committing assault. They had heard the sound of assault but had not heard what they were speaking. He had seen the assault from a distance of 10 yards. The incident was witnessed by flashing a torchlight which was switched off after seeing the incident. The persons who were committing the assault did not react on seeing the torchlight. After returning from the place of occurrence, he had called Manmohan, Surendra and Kishor Beck. The entire duration of witnessing the assault and returning back to the place of occurrence was 10 minutes. When they had reached the place of occurrence, some blood was oozing out from the dead body. There is a land related case pending between his mother and Kusum Lata. He has deposed that a Panchayat was also held in the village regarding the illicit relationship between Kusum Lata and

Nijamuddin. He cannot say as to the clothes worn by the accused or with what arms they were equipped with.

P.W. 3 Anil Kumar Sinha has stated that on 18.12.1990 his father had gone to purchase clothes at Khadi Bhandar and to take delivery of some clothes, he had gone to the tailor. When even at 8.30 PM his father did not return back, he along with his elder brother Sunil Kumar Sinha and their servant Birsu Munda went in search of his father towards Shankh More. When they reached Mission More they had heard the sound of 4-5 persons. There is an unmetalled road nearby and when his brother flashed the torchlight, they saw 4-5 persons and one person was lying on the floor. He has identified Nijamuddin alias Lamboo as the person who was assaulting the person lying down with a bhujali. Kusum Lata was standing on a rock who was exhorting the others to commit the murder as that person was a thorn in their relationship. On hearing this, it dawned on them that the victim must be their father. They retreated back to the village where the incident was disclosed to Manmohan Prasad, Surendra Prasad, Chotan Munda, Madhu Korwa and Kishore Beck. He had once again gone back to the place of occurrence along with these persons where they found the person lying dead who was identified by him as his father in the torch light. His father was having a dispute with Kusum Lata and Nijamuddin and about fifteen days prior to the incident, these persons have threatened his father that they will take revenge against him. Due to the illicit relationship of his aunt Kusum Lata and Nijamuddin a litigation is pending.

In cross-examination he has deposed that the distance between Mission More and his house is about 200 ft. The miscreants had surrounded his father and were assaulting him. The torch light was put on only once. They had not tried to prevent the assault. The police had not recorded his statement.

P.W. 4 Nageshwar Prasad has stated that he was sleeping in his house when he heard some commotion coming from the house of mukhiya Hemant Kumar and when he came out, he saw several persons creating a ruckus going towards Mission Chowk. He had taken a torch and followed them and when he reached Mission Chowk, he found a gathering of 5-10 persons. The

dead body of Hemant Kumar was lying near the unmetalled road. Manmohan Prasad had disclosed that Nijamuddin @ Lamboo had committed the murder of mukhiya and Kusum Lata was standing nearby. There was a dispute between mukhiya and Kusum Lata over distribution of landed property. Lamboo used to take Kusum Lata for rides on his motorcycle for which the mukhiya always used to admonish Kusum Lata. He has proved his signature in inquest report which has been marked as Exbt-3.

In cross-examination, he has deposed that for the last 12 years he is the Sarpanch. The police had come at 10:00 AM and in the capacity of being a Sarpanch, he had narrated the incident to the police. A crowd of 1000-1500 had gathered which was enraged with the incident and this was the reason why it took so long for police to take custody of the dead body.

P.W. 5 Manmohan Prasad has stated that on 18.12.1990, at 08.30 PM he was in his house when Sunil Kumar Sinha along with his younger brother Anil Kumar Sinha and their servant Birsu Munda came running from Mission Road and disclosed that when they had gone to Mission Chowk in search of their father, they had seen in the flash of torch, Lamboo assaulting a person lying on the ground with a bhujali and Kusum Lata who was standing nearby exhorting him. The brothers had a doubt that the victim was their father. On hearing about such incident, he, Anil, Sunil, Birsu Munda, Surendra Prasad, Madhu Korva, Chotan Munda and Kishore Beck had gone towards Mission Chowk when in the light of the truck he had found the dead body of Hemant Kumar lying. At that point of time, neither Kusum Lata nor Lamboo were present at the place of occurrence. He has proved his signature in the Fardbeyan which has been marked as Exbt-2/a. He has also proved his signature upon the inquest report which has been marked as Exbt-3/a.

In cross-examination, he has deposed that the incident was disclosed to him by Sunil. There were several persons who were going towards the place of occurrence and they had not raised any commotion that someone has been murdered. After they reached the place of occurrence, the wife and daughter of the deceased as well as his wife had come crying and slowly there was a deluge in the presence of villagers which numbered about 1500.

P.W. 6 Chotan Munda has been tendered by the prosecution.

P.W. 7 Kishore Beck, P.W. 8 Surendra Prasad Sahu, P.W. 9 Punai Oraon and P.W. 10 Johanus Minj have not supported the case of the prosecution and were accordingly declared hostile by the prosecution.

P.W. 11 Akshai Rani is the wife of the deceased who has stated that on 18.12.1990 in the evening, after having tea he told her that he is going to the tailor and Khadi Bhandar for buying some clothes and thereafter he left. When he did not return till 08.30 PM, she had asked her sons Sunil Kumar Sinha and Anil Kumar Sinha to bring their father back. At this, her two sons and servant Birsu went towards Shankh More in search of her husband and her sons returned back and disclosed that their father had been murdered. This information was given at 09.00 PM and it was also disclosed that Nijamuddin alias Lamboo was assaulting her husband with bhujali and Kusum Lata was standing nearby. Her sons disclosed this fact to Manmohan and others after which they went to the place of occurrence where they found her husband dead. She had gone with her sons to the place of occurrence where she found her husband lying dead. Kusum Lata is her sister with whom Nijamuddin alias Lamboo was having an illicit affair. Kusum Lata was working as a teacher in Raidih where she used to go with Lamboo. Her husband had written an application for getting Kusum Lata transferred from Raidih and about 10-15 days back, a Panchayati was called which her husband attended, and who had disclosed to her that Lamboo had threatened him. There was already a land dispute existing between Kusum Lata and her husband.

In cross-examination, she has deposed that she works in the Anganwadi. She, her daughter and wife of Manmohan had followed Sunil to the place of occurrence. Her statement was recorded by the Police on 21.12.1990.

P.W.12 Birsu Munda works as a labour in the house of mukhiya, Hemant Kumar. He has stated that the mukhiya had gone to Shankh More at 07.00 PM to bring his clothes and when he did not return even at 8.30 PM, the wife of the mukhiya had asked him and his sons to bring him back. When

they reached Mission Chowk, they heard some sounds coming from the unmetalled road and when Sunil flashed the torch light, he found four persons pinning down a person on the ground and one person was assaulting him with the bhujali. Kusum Lata was exhorting the others to finish him off. When the torch light was flashed once again, he recognised Lamboo as the person who was committing the assault. On seeing the incident, they returned back and informed Manmohan, Surendra, Madhu Korva and Chotan and returned back to the place of occurrence and where the miscreants could not be found and the mukhiya was lying dead. Lamboo had an illicit relationship with Kusum Lata which was objected to by the mukhiya, Hemant Kumar.

In cross-examination, he has deposed that while searching for his master they had not carried any arms. They had seen the assault from a distance of 50 yards and stopped out of fear. They had stayed there for about 20 minutes. The torch light was kept on for 5 minutes by Sunil. The presence of Kusum Lata at the place of occurrence solidified their belief that it was the mukhiya who was being assaulted. The miscreants did not retaliate even when flashlight from the torch was pointed towards them. He had stayed near the dead body the entire night. He has deposed that the police had come in the next day at 10.00 PM.

P.W. 13 Dwarika Prasad is a seizure list witness who has identified his signature and the signature of Gunjeshwar Jha upon the seizure list which have been marked as Ext.-4/1, Ext.-4/2, Ext.-5/1 and Ext.-5/2.

P.W.14 Madhu Korva has stated that on the date of the incident he was in front of his house after having dinner when he heard some sound coming from the hotel of Manmohan and when he went to the hotel, he found Manmohan, Anil, Sunil, Birsu and others. They were having barchas in their possession and he was asked to arm himself with a lathi. He had taken the lathi and all went towards the Mission Chowk, where in the torchlight, the dead body of mukhiya Hemant Kumar was seen lying.

In cross-examination he has deposed that there were 10-12 persons in the hotel of Manmohan and Manmohan had disclosed to him that someone

had committed the murder of the mukhiya. He had stated before the Police that Birsu had disclosed that Lamboo, Kusum Lata and 3-4 other persons had committed the murder of the mukhiya.

P.W.15 Gunjeshwar Jha has stated that about 2 and half years back on a Sunday at 01:00PM, Nehru had come and threatened that since he has been implicated in a false rape case, he would commit his murder as well as the murder of Dwarika Prasad, Manmohan Prasad and Hemant Kumar Sinha. He had stated before the Police that Lamboo alias Nijamuddin had come with a motorcycle and had taken away Nehru with him. After 3-4 days of the incident, the mukhiya was murdered.

P.W.16 Ramesh Prasad Gupta has been declared hostile by the prosecution.

P.W.17 Traigan Oraon is the Chowkidar who had taken the dead body along with Vijay Ram to Sadar Hospital, Gumla for post mortem examination.

P.W.18 Braj Mohan Prasad was posted as a S.I at Raidih P.S. and on 19.12.1990, in the morning, he received an information that the mukhiya of Village Manjhatoli, Hemant Kumar Sinha was murdered by unknown persons. After making a general diary entry, he along with other Police personnel proceeded towards Manjhatoli. When he reached Mission More, he found a crowd had gathered and the dead body of the mukhiya was lying on the ground. He asked about who the offender was and the persons who had assembled had stated that the sons and servant of the mukhiya are aware of it. He had prepared the inquest report and send the body for the post mortem examination to Sadar Hospital, Gumla. He had seized the articles found near the dead body and seizure list were prepared. He had recorded the fardbeyan of Sunil Kumar Sinha which has been marked as Ext.-6. He had thereafter recorded the re-statement of the informant and inspected the place of occurrence which is an open place of P.wD in the northern side of Gumla-Jaspur metalled road. He had recorded the statement of the witnesses. After the officer-in-charge came at 04:30 PM, he had handed over the investigation to him.

In cross-examination he has deposed that the crowd had resorted to stone pelting as a result which he and Lucas Lakra had suffered injuries.

P.W.19 Orian James Paradhia was posted as the Officer-in-charge of Raidih P.S. who had returned back from leave on 19.12.1990 and went in the evening to Manjhatoli. On 20.12.1990, he had arrested Nijamuddin alias Lamboo from his house and a search was conducted in his house. He had recorded the statement of the witnesses and on completion of investigation, had submitted charge sheet. The witness Kishore Beck had stated before him about the disclosure made by Sunil Kumar Sinha regarding the involvement of Lamboo and Kusum Lata in the murder. The witnesses Surenda Prasad Sahu, Punai Oraon, Johanus Minj, Ramesh Prasad all have supported the case of the prosecution. The witness Akshai Rani had not disclosed the involvement of Lamboo and Kusum Lata. The witness Madhu Korva had also not stated before him about accused Lamboo and Kusum Lata committing the murder of the mukhiya.

5. The statements of the accused was recorded under Section 313 Cr.P.C. in which they have denied their complicity in the offence.

6. It has been submitted by Mr. Peeyush Krishna Choudhary, learned counsel appearing for the appellant that the appellant has been implicated on the basis of previous enmity. It has been submitted that none of the witnesses can be said to be eye witnesses as they have revealed an unnatural conduct on their part as P.W.2, P.W.3 and P.W.12 had all returned back to their house inspite of knowing the fact that it was the father of P.W.2 and P.W.3 who was being assaulted repeatedly with a bhujali by the appellant. It has also been submitted that no incriminating articles were recovered from the possession of the appellant.

7. Mr. Pankaj Kumar, learned P.P. has submitted that seeing such brutal assault and the presence of other persons assaulting the appellant in the assault had forced P.W.2, P.W.3 and P.W.12 to scramble back home out of fear and they had returned back to the place of occurrence with several other villagers, though the accused persons had by that time fled away. The recovery of a bhujali from near the dead body and the findings in the post

mortem report further leads credence to the fardbeyan of the informant (P.W.2).

8. We have heard the learned counsel for the respective parties and have also perused the lower court records.

9. The implication of the appellant is based upon the eye witness account of P.W.2, P.W.3 and P.W.12. The father of P.W.2 and P.W.3 did not return home by 8:30PM and getting worried, P.W.2 and P.W.3 along with their servant P.W.12 had gone in search of him and near Mission More, on hearing some sounds, the torch was put on and it was seen that 3-4 persons were pinning down another person who was being assaulted with a bhujali by the appellant and Kusum Lata was exhorting the accused persons to finish off the victim. These witnesses returned back home and after disclosing the matter to the other villagers, went back to the place of occurrence where they saw the dead body of the mukhiya Hemant Kumar lying on the ground. The assailants had already left by then.

10. The evidence of these eye witnesses leaves no room for doubt that they had identified the victim as the mukhiya. The wife of the deceased who has been examined as P.W.11, has stated that when her sons had returned back, they had disclosed that their father has been murdered after which they had once again left for the place of occurrence along with other villagers with P.W.11, her daughter and the wife of P.W.5 following them. The place of occurrence appears to be in a lonely spot with no source of light visible nearby. P.W.2 and P.W.3 have stated that the torch light was put on only once and thereafter it was switched off. P.W.12 seems to have exaggerated his eye witness account as he has stated that they had witnessed the incident for twenty minutes and P.W.2 had put on the torch light for five minutes. What could be culled out from the evidence of the eye witnesses is that the assault was seen fleetingly but the appellant was identified in that light as the person who was giving bhujali blows upon his father, who had been pinned down to the ground by some persons with Kusum Lata exhorting them to kill the mukhiya. The other interesting aspect seems to be the nonchalant conduct of the miscreants as though they were aware about the presence of these

persons and the flashlight from the torch was pointed at them but neither there was any reaction from those persons nor were they warned or threatened. This conduct of the miscreants seems too much to digest. When we have touched upon the conduct of the miscreants, we must also have a glimpse about the conduct of P.W.2, P.W.3 and P.W.12. P.W.2 and P.W.3 are the sons of the deceased, who were in the early 20s and so was their servant P.W.12, but it seems that inspite of knowing the victim to be their father, no attempts were made by P.W.2 or P.W.3 to prevent the assault or cause attack upon the miscreants. As per P.W.12, neither he nor P.W.2 and P.W.3 had any arms with them but save and except the bhujali, the other miscreants having arms have not been disclosed by them. P.W.2 and P.W.3 had not stated that they, out of fear, had fled away from the place of occurrence. The evidence of P.W.2 and P.W.3 are sans any emotion and are matter of fact statements which does not help the cause of the prosecution. The identification of the appellant as the assailant is shrouded with doubt which further gets intensified with the conduct of P.W.2, P.W.3 and P.W.12. In this context, we may refer to the case of *Narendrasinh Keshubhai Zala Vs. State of Gujarat Reported in 2023 Livelaw (SC227)*, wherein it has been held as follows:

“8. It is a settled principle of law that doubt cannot replace proof. Suspicion, howsoever great it may be, is no substitute of proof in criminal jurisprudence [Jagga Singh v. State of Punjab, 1994 Supp (3) SCC 463]. Only such evidence is admissible and acceptable as is permissible in accordance with law. In the case of a sole eye witness, the witness has to be reliable, trustworthy, his testimony worthy of credence and the case proven beyond reasonable doubt. Unnatural conduct and unexplained circumstances can be a ground for disbelieving the witness. This Court in the case of Anil Phukan v. State of Assam, (1993) 3 SCC 282 has held that: “3. ... So long as the single eyewitness is a wholly reliable witness the courts have no difficulty in basing conviction on his testimony alone. However, where the single eyewitness is not found to be a wholly reliable witness, in the sense that there are some circumstances which may show that he could have an interest in the prosecution, then the courts generally insist upon some independent corroboration of his testimony, in material particulars, before recording conviction. It is only when the courts find that the single

eyewitness is a wholly unreliable witness that his testimony is discarded in toto and no amount of corroboration can cure that defect..." The same principle has been enunciated in: Amar Singh v. State (NCT of Delhi), (2020) 19 SCC 165."

11. The identification of the appellant by P.W.2, P.W.3 and P.W.12 having been doubted by us, the reason for such false implication of the appellant is not hard to gather. It is the consistent case of the prosecution that the appellant was having an illicit relationship with Kusum Lata who happens to be the sister-in-law of the deceased which was objected to by the deceased and which resulted in a Panchayati being held and the deceased was given a threat by the appellant as per P.W.11. Another aspect of the enmity is with respect to the landed property between the deceased and Kusum Lata and it was the deceased who had written an application for transfer of Kusum Lata from Raidih where she was working in a school. As such, there was a two-pronged enmity between the deceased and the appellant as well as Kusum Lata and both were thereby made accused in the murder of mukhiya Hemant Kumar.

12. The learned trial court having not properly appreciated the evidence on record and on a conspectus of the discussions made by us which makes the case of the prosecution totally doubtful, we have no hesitation but to set aside the judgment and order of conviction and sentence dated 04.07.1995 (sentence passed on 05.07.1995) passed by Shri Rameshwar Prasad Verma, learned Additional Sessions Judge, Gumla in S.T. No. 101 of 1991.

13. This appeal is allowed.

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

(RONGON MUKHOPADHYAY, J.)

(DEEPAK ROSHAN, J.)

Jharkhand High Court, Ranchi

Dated the 10th June, 2024

Preet/N.A.F.R.