

Criminal Appeal (DB) No. 128 of 1995(P)

Against the judgment and order of conviction and sentence dated 21.08.1995 passed by Shri Bishwanath Prasad Singh, learned Additional Sessions Judge-I, Palamau at Daltonganj in Sessions Case No. 04 of 1989.

Bhagwat Prajapati, S/o Late Tulsi Prajapati, R/o Vill-Birbal, P.S.-
Dhurki, Dist.-Garhwa ... 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. A.K. Kashyap, Sr. Advocate
For the Respondent : Mrs. Nehela Sharmin, Special P.P.

Datedth June, 2024

Rongon Mukhopadhyay, J. : 1. Heard Mr. A.K. Kashyap, learned senior counsel for the appellant and Mrs. Nehela Sharmin, learned Special P.P.

2. This appeal is directed against the judgment and order of conviction and sentence dated 21.08.1995 passed by Shri Bishwanath Prasad Singh, learned Additional Sessions Judge-I, Palamau at Daltonganj in S.T. No. 04 of 1989, whereby and whereunder, the appellant has been convicted for the offence punishable u/s 302/34 of the Indian Penal Code and has been sentenced to undergo life imprisonment.

3. The prosecution case arises out of the fardbeyan of Nanhwa Devi, on 08.07.1988, wherein it has been stated that in the previous night she was sleeping in the veranda with her daughter when at about 09:00-10:00 PM, her husband woke her up and disclosed his apprehension that his buffalo had escaped the cow shed and was grazing maize. They have heard the bell tied to the neck of the buffalo. When her husband opened the door, she saw Bhagwat Prajapati (appellant) and three unknown persons standing. In the light of the torch, she saw Bhagwat Prajapati assaulting her husband on the chest with a Barchha as a result of which her husband fell on the ground. When the informant tried to save her husband, one of the unknown

miscreants assaulted her with the pointed end of a lathi on her left eyebrow. The miscreants thereafter fled away. She raised an alarm at which villagers assembled, but by that time her husband Tulsi Mahto had breathed his last. The reason for the occurrence is that for a few days, her son Bhagwat Prajapati was pressurizing the deceased for partition of landed property which was objected by the deceased and her younger son and for which several Panchayatis were held but Bhagwat Prajapati refused to adhere to the decision of the Panchayat.

Based on the aforesaid allegations, Dhurki P.S. Case No. 47/1988 was instituted for the offence under Section 302/34 IPC against Bhagwat Prajapati and three unknown persons. On conclusion of investigation, charge sheet was submitted against the appellant under Section 302/34 IPC and Section 27 Arms Act after which cognizance was taken and the case was committed to the Court of Sessions where it was registered as S.T. No. 04 of 1989. Charge was framed under Section 302/34 IPC which was explained to the accused in Hindi to which he pleaded not guilty and claimed to be tried.

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

P.W.1 Deoraj Prajapati has stated that about 8-9 months back, he was in his house when he came to know that his father has been murdered by his brother Bhagwat Prajapati. He went to the place of occurrence and found the dead body of his father with a wound on his chest. His mother and sister had disclosed that on hearing the sound of a buffalo, when his father went outside, his brother Bhagwat Prajapati had assaulted his father with a Barchha. His father was also shot at by one of the persons accompanying Bhagwat while the other person had assaulted him with a lathi.

In cross-examination, he has deposed that his father had not given him any extra land in comparison to Bhagwat.

P.W.2 Nanhwa Devi is the informant and wife of the deceased who has stated that about four months back, she was in the "Bhandar" along with her husband and daughter Jamwanti. At 09:00PM they were sleeping when at the sound of the bell tied to the buffalo, her husband went out with a lathi and

her son Bhagwat Prajapati assaulted him on his chest with a Barchha. There were three other persons with Bhagwat and one of them fired at her husband who fell down. Another accomplice of her son assaulted her husband with a lathi. The accomplices of her son had put on a torch and in the light of the torch she could identify her son and his three companions. By the time she raised an alarm all the four miscreants had fled away. Her husband died because of the assault committed upon him. When the Police came to the Bhandar, her fardbeyan was recorded.

In cross-examination she has deposed that the accused persons had put on a torch. None of the miscreants had covered their faces. They had committed the assault for half an hour and thereafter fled away. At the time of the incident, she was standing near her husband at a distance of 1-1.5 yards.

In cross examination on recall, she has deposed that the quarrel had taken place outside the house and she had come out on hearing a commotion. Her husband had suffered only one injury. She had not seen the assault.

P.W.3 Jamwanti Devi is the daughter of the deceased who has stated that about ten months back on a Thursday, she was in the Bhandar along with her parents when at 09:00PM, on hearing the sound of bell of a buffalo, her father went out and her brother Bhagwat had assaulted her father with Barchha. There were three other unknown persons along with her brother. Somebody had fired a shot. She had seen all the four miscreants in the light of a torch. Her mother who was also present had suffered an injury from a knife.

In cross-examination she has deposed that the assailants had not covered their faces. Her father had partitioned the property by giving equal shares to her brothers.

On recall, she was cross-examined and she has stated that the place of occurrence is at a distance of 200 yards from her house and her house is not visible from the place of occurrence. She cannot say as to how the incident had occurred.

P.W.4 Deomati Devi has stated that about 10 months back, her father-in-law was murdered and at the time of incident she was at Birbal. Bhagwat used to threaten the deceased for not giving him his share of property.

In cross-examination she has deposed that no case was instituted relating to such threat.

P.W.5 Jata Mahto has stated that he had reached the place of occurrence on hearing the cry of alarm. The wife of the deceased had disclosed that Bhagwat had committed the murder of her husband. He had signed on the inquest report.

In cross-examination he has deposed that when the wife of the deceased was disclosing about the incident, there were 25-30 villagers present.

P.W.6 Ramdeni Ram has stated about having acquaintance with the deceased and his family members.

P.W.7 Balram Tiwari was the Officer-in-Charge of Dhurki P.S. and on 09.10.1988, he had submitted the charge sheet. He has proved the handwriting of S.I Bijnandan Rai upon the inquest report which has been marked as Ext.-1/3. He has identified the handwriting and signature of A.S.I Rangrez Ram on the formal F.I.R which has been marked as Ext.-2. He has proved the handwriting of S.I Ramadin Rai in the fardbeyan which has been marked as Ext.-3. He has also identified the handwriting of S.I Krishnanand Rai upon the seizure list which has been marked as Ext.-4.

In cross-examination he has deposed that he had not conducted the investigation and had merely submitted the charge sheet.

P.W.8 Dr. Jwala Prasad Singh, was posted as a Civil Assistant Surgeon in Garhwa Government Hospital and on 09.07.1988, he had conducted autopsy on the dead body of Tulsi Mahto and had found the following injuries:

- (i) External appearance- Body swollen, foul smelling, eye closed, mouth open rigor mortis absent.
- (ii) A lacerated wound 2.1/2" x 2" x 6" mid of anterior part of chest with blackening around the wound.

(iii) A sharp cut wound $1.1/2'' \times \frac{1}{2}'' \times 3''$ just right side of injury no. (a).

(iv) Three abrasions:-

(a) $1'' \times 1/2''$

(b) $1.1/2'' \times 1''$

(c) $1'' \times 1/2''$ on back at limbs, regions from above downwards.

(v) On dissection:-

(a) massive lacerated wound found in heart.

(b) massive lacerated wound found in left lung.

(c) A sharp cut $2'' \times 1''$ on right lung.

(d) Two holes on sternum (middle bone of chest).

(e) Blood and blood clot present in chest cavity.

The cause of death was opined to be on account of shock and hemorrhage due to the injuries suffered. Injury No. 1 was caused by fire arm, Injury No. 2 was caused by sharp penetrating weapon such as Barchha and Injury No. 3 was by hard and blunt object. He has proved the post mortem report which has been marked as Ext.-5.

In cross-examination he has deposed that the fire arm injury was caused from a distance of 2ft.

P.W.9 Lageshwari Prajapati has stated that he had come to know about the occurrence on the next date and thereafter he had gone to the village of the deceased where he had seen the dead body of Tulsi Mahto lying on the ground. The elder son of the deceased, namely, Bhagwat had a dispute with the deceased regarding partition and several times Panchayatis were held. The deceased used to favor his younger son Deoraj Prajapati. He has stated that Bhagwat Prajapati had, on several occasions, issued threats to the deceased and out of fear, the deceased used to sleep at night at other persons' houses.

In cross-examination he has deposed that the wife and daughter of Tulsi Mahto used to favor Deoraj Bhagwat and Deoraj had received their

share of the property but the dispute was with respect to the land in the share of the deceased. Bhagwat had a suspicion that Tulsi Mahto will give the property in his share to Deoraj.

P.W.10 Kashi Lal was tended up by the prosecution.

P.W.11 Balram Tiwari was already examined as P.W.7 who has stated in his cross-examination that he had not recorded the statement of any witness.

P.W.12 Hanif Khan has proved the inquest report which has been marked as Ext.-6. He has proved his signature in the seizure list which has been marked as Ext.6/1. He has stated that a Panchayati was held for partition of the property of the deceased between his two sons and due to the same there always used to be tension between the sons of the deceased Tulsi Mahto.

In cross-examination he has deposed that no incident of quarrel had taken place in his presence.

5. The statement of the accused was recorded under Section 313 Cr.P.C. in which he has denied the allegations levelled against him.

6. It has been submitted by Mr. A.K. Kashyap, learned senior counsel appearing for the appellant that there are major contradictions in the evidence of the witnesses. He has submitted that as per the fardbeyan of the informant, the appellant had assaulted Tulsi Mahto with a Barchha on chest and there is no whisper that either the appellant or any of his accomplices had fired at the deceased but such story was deliberated upon and developed in the evidence of the informant who has been examined as P.W.2. Learned senior counsel has submitted that even the identification of the appellant is doubtful in absence of any enhanced source of light. P.W.2 and P.W.3 named themselves to be the eye witnesses but, in their cross-examination on recall, they have given an altogether different version which emphatically diminishes the case of the prosecution.

7. Mrs. Nehela Sharmin, learned Special P.P. has submitted that the evidence P.W.2 and P.W.3 is consistent and is corroborated by the post mortem report. The appellant was identified by P.W.2 from a distance of 1-

1.5 yards in a torch light with an added feature about the appellant being the son of the informant and therefore, such identification cannot be doubted.

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

9. The fardbeyan of the informant(P.W.2) narrates about the appellant assaulting Tulsi Mahto, who happens to be his father, on the chest with a Barchha which resulted in his death. This version seems to have been magnified by P.W.2 by alleging gunshot having been fired at her husband by an accomplice of the appellant. It is no doubt true that a fire arm injury was found on the person of the deceased as per the post mortem report and though the First Information Report cannot be an encyclopedia incorporating in details all the facts but at the same time, such a vital piece of evidence being not mentioned in the fardbeyan cannot lead to a definitive conclusion about the inception of the incident.

10. The prosecution case hinges upon the eye witness account of P.W.2 and P.W.3. P.W.2 has stated about the assault committed by the appellant with a Barchha on the chest of her husband and a firing done by one of his accomplices. She has though stated that her daughter was with her inside the room but her presence at the time of the incident in the place of occurrence has not been denoted by her. However, P.W.3 claims that she had seen the assault and had identified her brother and there were three other persons but none had covered their faces. The source of identification seems to be the torch light in possession of the accused persons. No other source of light has been stated by either of the two witnesses. These aspects render the participation of the appellant in committing the murder of his father doubtful. The witnesses have stated about a dispute between the appellant and his younger brother (P.W.1) as well as the deceased regarding partition of the landed property in possession of the deceased and for which Panchayati was convened on numerous occasions. P.W.9 has stated that the wife and daughter of the deceased used to take sides with P.W.1 and this can be a plausible reason for implicating the appellant. Even the purported assault upon P.W.3, as stated by P.W.2, has also not been proved by the

prosecution. The Investigating Officer of the case has not been examined and the Investigating Officer who has been examined had merely submitted the charge sheet. The doubt created over the prosecution case regarding the participation of the appellant in commission of the murder is further strengthened by the cross-examination on recall of P.W.2 and P.W.3, wherein both have admitted to have not witnessed the occurrence. This volte face by P.W.2 and P.W.3 by whatever reasons, would have a definite bearing on the prosecution case but even without such evidence what has been stated by P.W.2 and P.W.3 does not prove the case of the prosecution beyond all reasonable doubt. These facts have not been properly appreciated by the learned trial court and we therefore, on the basis of the discussions made hereinabove, set aside the judgment and order of conviction and sentence dated 21.08.1995 passed by Sri Bishwanath Prasad Singh, learned Additional Sessions Judge-I, Palamau at Daltonganj in S.T. No. 04/1989.

This appeal is allowed. Since the appellant is on bail, he is discharged from the liability of his bail bond.

(RONGON MUKHOPADHYAY, J.)

(DEEPAK ROSHAN, J.)

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