

Criminal Appeal (DB) No. 589 of 1996(P)

Against the judgment and order of conviction and sentence dated 24.09.1996 (sentence passed on 30.09.1996) passed by Shri Mahesh Prasad Tiwari, Additional Sessions Judge-V, Dumka in Sessions Case No. 21 of 1995/32 of 1995 .

Nazir Marandi, S/o Late Babu Lal Marandi
R/o Amjhari, P.S. Gopi Kandar, Dist. Dumka ... Appellant

Versus

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

PRESENT

HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY
HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

For the Appellants : Mrs. Alpana Verma, Amicus
For the Respondent : Mr. Manoj Kr. Mishra, A.P.P.

CAV on: 19th August, 2024

Pronounced on: / / 2024

Rongon Mukhopadhyay, J. : 1. Heard Mrs. Alpana Verma, learned amicus curiae for the appellant and Mr. Manoj Kr. Mishra, learned A.P.P.

2. This appeal is directed against the judgment and order of conviction and sentence dated 24-09-1996 (sentence passed on 30-09-1996) passed by Shri Mahesh Prasad Tiwari, learned 5th Additional Sessions Judge, Dumka in Sessions Case No. 21 of 1995/32 of 1995, whereby and whereunder the appellant has been convicted for the offence punishable under Section 302 IPC and has been sentenced to rigorous imprisonment for life.

3. The prosecution case, arises out of the fardbeyan of Jitan Kisku, is that on 27-08-1994 at about 3:30 PM, his mother-in-law Deola Soren was going to throw cow dung in the northern side of the village, when in an unmetalled road, the accused Nazir Marandi came from behind and by stopping his mother-in-law assaulted her with a stone as a result of which she fell down and the accused had once again assaulted her on the right side of her head with the stone. On hearing the cry of alarm, his other relatives came running and found his mother-in-law lying on the ground while the accused Nazir Marandi was seen fleeing away towards his house with a stone in his hand. The reason for the occurrence is that the accused used to call his mother-in-

law a 'witch'.

Based on the aforesaid allegations, Gopikandar P.S. Case No. 15/1994 was instituted against Nazir Marandi for the offences punishable under Section 341, 323, 307 IPC. On account of the death of the mother-in-law of the informant, Section 302 IPC was added. 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 Sessions Case No. 21 of 1995/32 of 1995. Charge was framed against the accused for the offence punishable under Section 302 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 ten (10) witnesses in support of its case.

P.W.1 Kalidas Murmu was posted as a Medical Officer at Primary Health Centre, Gopikandar and on 28-08-1994, he had examined Deola Soren and had found the following injuries:

- (i) A lacerated injury behind the right ear 3" x 2½" x bone deep.
- (ii) ½ " x ¼ " pinna (right) lacerated.
- (iii) Multiple small echymosis over right cheek.

Before the patient could be referred to Sadar Hospital, Ranchi, she died. He has stated that injury nos. 1 and 2 were possible with stone. He has proved the injury report which has been marked as Exbt.- 1.

P.W.2 Matal Marandi has stated that the incident is of 11-12 months back. It was an afternoon on a Saturday and he had gone to the market. When he returned from the market, his daughter Sonmati had disclosed that Nazir Marandi had assaulted his sister-in-law with a stone and that she was taken to the hospital. When he had seen her, she was unconscious.

In cross-examination he has deposed that Mithi Marandi and Raju Marandi had reached after him. When he had reached, Nazir had already left for the Police Station.

P.W.3 Mithi Marandi has stated that at the time of the incident he was in his house and his niece Sonmati had disclosed that his mother was being

assaulted by Nazir Marandi. She had disclosed that Nazir Marandi had assaulted his mother with a big stone on her neck and near her ear. He had gone to the place of occurrence and had carried her back on a cot. He cannot say as to the reason for such assault committed by Nazir Marandi. He had seen Nazir Marandi committing assault upon his mother.

In cross-examination he has deposed that on hearing a commotion he had come out of the house and he had seen Nazir Marandi entering into the corn field. He had disclosed to the Police that he had witnessed the occurrence.

P.W.4 Dukhu Kisku is the Pradhan of Amjhari village, who has stated that it was a Saturday and he had come to know from Jitan Kisku that his mother-in-law has been murdered. He had not disclosed as to who had committed the murder. He has stated that Nazir Marandi had two sons; the first died three years back while the second died three months back.

In cross-examination he has deposed that he had not stated before the Police that the informant and the daughter of Deola had disclosed about the incident to him.

P.W.5 Mandal Marandi had gone to his in-laws place and on return, he came to know that his mother has died. Jitan had disclosed to him that his mother has been murdered by Nazir Marandi. He has stated that Nazir used to call his mother a witch.

In cross-examination he has deposed that Nazir had gone to the Police Station and had informed about the murder.

P.W.6 Sonmati Marandi has stated that it was a Saturday and her grandmother was going to throw cow dung. She was going behind her grandmother with goats. Nazir had assaulted her grandmother with a lathi and when she fell down, she was assaulted with a stone near her ear three times.

In cross-examination she has deposed that it was afternoon. The place where she had gone to graze goats was a lonely place and no one else was present. She had heard a cry of alarm and somebody was shouting and taking the name 'witch'. She remained at her place till sunset and thereafter she

returned home and found her grandmother lying dead and there were number of injuries on her body.

P.W.7 Dr. S. Murmu was posted as a Civil Assistant Surgeon in Sadar Hospital, Dumka and on 29-08-1994, he had conducted autopsy on the dead body of Deola Soren and had found the following:

- (i) Diffuse swelling over the right mastoid region.
- (ii) Diffuse swelling with lacerated 3" x 2½" x bone deep over the left mastoid region behind the ear. On dissection there was fracture of left temporal bone as well as parietal bone. On fracture dissection connecting brain and meninges were found lacerated and blood was found within cranial cavity.

Death was due to hemorrhage and shock as a result of scalp injury no.2. The weapon used was hard and blunt. He has proved the post-mortem report which has been marked as Exbt.-2.

In cross-examination he has deposed that the injuries were possible by fall against some stone.

P.W.8 Jitan Kisku is the informant who has stated that the incident is of a year back, on a Saturday and he had gone to bring paddy. His mother-in-law had stated that she will give the paddy when she returns after disposing of the cow dung. He sat there waiting for his mother-in-law to return. His mother-in-law was being followed by Nazir Marandi. His mother-in-law did not return and when he heard a cry of alarm, he rushed to its source and found Nazir Marandi assaulting his mother-in-law with a stone. Nazir Marandi was also assaulting her with a stick. When he had reached, Nazir had already fled away and had gone to the Police Station. Nazir had a lathi as well as a stone with him. On hearing the commotion, Raja Hembrom had arrived. He had seen the assault from a distance of 100 paces.

In cross-examination he has deposed that Nazir Marandi had a lathi in one hand and a stone in the other. At the time of the incident, he was in the western side of the cluster of bamboo trees. The body of his mother-in-law was lying in the cluster of bamboo trees.

P.W.9 Raja Murmu has stated that on the date of the incident, he

had gone from Lukhibagh to his maternal uncle's place at Amjhari village. His maternal aunt Deola had gone to dispose of cow dung with Sonmati. On alarm, he had gone to the place of occurrence where he had seen his maternal aunt Deola Soren lying on the ground. There were no one present at the place where Deola Soren was lying. He has thereafter stated that he had seen Jitan Kisku and Sonmati Marandi at the said place, who disclosed that Nazir Marandi had committed the assault upon Deola Soren.

In cross examination he has deposed that Jitan did not disclose anything by himself, but on being asked, he had stated about Nazir Marandi.

P.W.10 Chandeshwar Mahto was posted at Gopikandar P.S. and on 28-08-1994, he had recorded the fardbeyan of Jitan Kisku. He has proved the fardbeyan which has been marked as Exbt.-3. He had taken over the investigation and had recorded the restatement of the informant. He had prepared a requisition and had sent Deola Soren to the hospital. He had recorded the statement of the witnesses who were present at the Police Station. He had inspected the place of occurrence which is in an unmetalled road at Mutkatoli in Amjhari village. On information that Deola Soren had succumbed to her injuries, he had gone to the hospital and had prepared the inquest report. He has proved the inquest report which has been marked as Exbt.-4. He had obtained the injury report which has been proved and marked as Exbt.-5.

In cross-examination he has deposed that lathi, sabal e.t.c. were not recovered from the accused. The accused was in his house and did not flee away on seeing them.

5. The statement of the accused was recorded under Section 313 Cr.P.C. in which he has denied his complicity in the commission of the offence.

6. It has been submitted by Mrs. Alpana Varma, learned amicus representing the appellant that there are no eyewitnesses to the occurrence and only on the basis of suspicion, the appellant has been implicated. It has been submitted that P.W.8 is the informant who has developed the story of assault with lathi as well by the appellant in his evidence. P.W.6 had gone for grazing goats and the deceased was in front of her, but her cross-examination

reveals that she was not an eyewitness and the incident had taken place in lonely surroundings where no one else was present which itself discards the evidence of P.W.8 of being an eyewitness.

7. Mr. Manoj Kumar Mishra, learned APP has submitted that the evidence of P.W.8 proves beyond any reasonable doubt about the appellant being the assailant and the manner of assault has been corroborated in the autopsy report.

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

9. The informant in his fardbeyan has stated about witnessing the assault, committed by the appellant, upon his mother-in-law with stone. The informant, who has been examined as P.W.8 has given a different version in his evidence as he was waiting for his mother-in-law who had gone to dispose of cow dung and when he heard a cry of alarm, he went and saw the appellant assaulting her with stone and lathi. The incident drew the attention of Raja Hembrom, who had arrived at the place of occurrence. This witness has been examined as P.W.9 and though he is not an eye-witness but he has noted the presence of P.W.6 and P.W.8 at the place of occurrence. The presence of P.W.6 has not been mentioned by P.W.8 though P.W.6 seems to be the nearest person to the deceased at the time of the incident as projected by the prosecution. However, the evidence of P.W.6 seems to reveal that she is not an eye witness and she had remained at the place where she was grazing goats which is a lonely place till sunset. She has not noted the presence of P.W.8 at the place of occurrence. P.W.3 also claims to be an eye witness as he had gone to the place of occurrence on the disclosure made by P.W.6, but his presence has not been stated by P.W.6, P.W.8 and P.W.9. The contradictions in the evidence of the eye witnesses dissipates their claim to be eye witnesses as the presence of each other at the place of occurrence has been completely demolished. It also appears that some of the witnesses have stated that the appellant, after committing the assault, had left for the Police Station but the evidence of P.W. 10 (I.O.) reveals that the appellant was apprehended from his house and no incriminating material was recovered from him. It would

therefore transpire that there are no eye witnesses to the occurrence and only on the basis of suspicion relating to the appellant addressing the deceased as a witch has led to the implication of the appellant. The learned trial court has overtly relied upon the evidence of P.W.6 and P.W.8 without delving deep into the essential features of their evidence while convicting the appellant.

10. We, therefore, on the basis of the discussions made hereinabove set aside the judgment and order of conviction and sentence dated 24-09-1996 (sentence passed on 30-09-1996) passed by Shri Mahesh Prasad Tiwari, learned 5th Additional Sessions, Dumka in Sessions Case No. 21 of 1995/32 of 1995.

11. This appeal is allowed.

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

(RONGON MUKHOPADHYAY, J.)

(PRADEEP KUMAR SRIVASTAVA, J.)

Jharkhand High Court, Ranchi

Dated the 9th September, 2024

Preet/N.A.F.R.