

Criminal Appeal (DB) No. 660 of 2013

Against the judgment of conviction dated 31.03.2010 and order of sentence dated 08.04.2010 passed by the learned Additional Sessions Judge, Fast Track Court, Simdega in Sessions Trial No. 93 of 2007.

Baisakhu Manjhi ----- Appellant
Versus -----
The State of Jharkhand --- --- Respondent

For the Appellant: Ms. Leena Mukherjee, Amicus Curiae
For the Respondent: Mr. Pankaj Kumar, Additional Public Prosecutor

PRESENT
HON'BLE MR. JUSTICE APARESH KUMAR SINGH
HON'BLE MR. JUSTICE KAILASH PRASAD DEO

Per Kailash Prasad Deo, J:

Heard learned Amicus Curiae Ms. Leena Mukherjee and learned counsel for the State Mr. Pankaj Kumar, learned Additional Public Prosecutor.

2. The instant criminal appeal has been preferred against the judgment of conviction dated 31.03.3010 and order of sentence dated 08.04.2010 passed in Sessions Trial No. 93 of 2007 passed by the learned Additional Sessions Judge, Fast Track Court, Simdega whereby the sole appellant Baisakhu Manjhi has been held guilty and convicted for the offence committed and punishable under Section 302 of the Indian Penal Code for killing Chowkidar Jageshwar Manjhi, and awarded imprisonment for life with a fine of Rs. 10,000/- and in case of default in payment of fine, appellant has to further undergo simple imprisonment for three months.

3. Prosecution case is based on the fardbeyan of Jantari Devi (PW-4) recorded by the S.I. T. Das, Office-in-Charge, Kurdeg P.S. at 11.00 P.M. in the night on 27.04.2007 in the house of Chaukidar Jageshwar Manjhi (deceased). The informant has stated that at around 6.00 P.M., the elder brother-in-law of the informant (Bhainsur) and his son Baisakhu Manjhi (appellant) was quarrelling which was pacified by the husband of the informant being a Choukidar and thereafter, husband of the informant slept on the ground. The elder brother-in-law of the informant was threatened by his son / appellant Baisakhu Manjhi for return of his money, otherwise he has to face dire consequences. After hearing all these, the elder brother-in-law of the informant hid himself in the house. The appellant Baisakhu Manjhi entered into the room at around 8.00 P.M. having been armed with a 'tangi' and from the sharp edge, assaulted 2-3 times on the husband of the informant, causing grievous / serious injuries. Occurrence has been witnessed by the informant and her two daughters

namely, Mamta (PW-1) and Sanjana Kumari (PW-3) who were sitting adjacent to that. On brawl, co-villagers Surendra Manjhi, Rambriksh Bhoye and others came and they have seen the occurrence. After sometime, husband of the informant died on the spot.

4. On the basis of the fardbeyan of the Informant, police has registered Kurdeg P.S. Case No. 16/2007 dated 27.04.2007 under section 302 of the Indian Penal Code against named accused Baisakhu Manjhi. After completion of the investigation, police has submitted charge sheet vide Charge Sheet No. 15/2007 dated 10.05.2007 against the named accused under section 302 of the Indian Penal Code. Cognizance of the offence under section 302 of the Indian Penal Code has been taken vide order dated 04.06.2007 and the case has been committed to the Court of Sessions vide order dated 11.07.2007. The charge has been framed against the sole accused Baisakhu Manjhi under Section 302 of the Indian Penal Code vide order dated 28.11.2007. Charge has been explained to the accused in Hindi, to which he has denied the charge and pleaded not guilty and claimed to be tried.

5. In order to prove the case, the prosecution has examined altogether seven prosecution witnesses and also exhibited number of documents up to exhibit-10.

Mamta Kumari, daughter of the informant and the deceased being the eye witness, has been examined as PW-1; Rambriksh Bhoye, signatory to the fardbeyan has been examined as PW-2. He has also proved his signature on the inquest report which has been marked as Ext.-1 and the seizure list which has been marked as Ext.2, though this witness has been declared hostile by the prosecution; Sanjana Kumari, another daughter of the informant and the deceased being the eye witness to the occurrence, has been examined as PW-3. Jantari Devi, informant and wife of the deceased, has been examined as PW-4. This witness has proved her fardbeyan recorded by the Sub Inspector T. Das on which she has put her thumb impression and other witnesses Rambriksh Bhoye and Prasann Manjhi have also put their signatures. The entire fardbeyan including the thumb impression of the informant and signatures of the witnesses have been proved and marked as Ext.3. Tauli Das, Sub Inspector of Police who has recorded the fardbeyan of the informant and investigated the case, has been examined as PW-5. This witness has proved the endorsement regarding R.O. and A.C on the fardbeyan in his handwriting and has been marked as Ext.3/1. The handwriting of Shridhar Hazra on the FIR has been proved and marked as Ex.3/2 and formal FIR has been proved and marked as Ext.4. Carbon copy of the Inquest Report has been proved and marked as Ext.5. Carbon copy of the

challan of the dead body has been proved and marked as Ext.6. Arrest memo of accused and signature of the witnesses Rambriksh and Lagan Manjhi (father of the deceased) dated 28.04.2007 at 7.15. A.M. has been proved and marked as Ex.7. Seizure list having signature of the witness Surendra Manjhi and Rambriksh Bhoye has been proved and marked as Ext.8. Charge sheet in the handwriting and signature of the I.O. has been proved and marked as Ext.9. Dr. Anil Kumar being the Medical Officer, has been examined as PW-6 has conducted postmortem on the dead body of the deceased Jageshwar Manjhi on 28.04.2007 at 4.05 P.M. and has found two injuries on the person of the deceased. Injury no. 1 incised wound on the right side of neck 3"x1"x2". Injury No. 2, incised wound on left elbow joint, posterior aspect 3"x2"x 1/2 ". Doctor has opined that the injuries are ante mortem in nature. Time elapsed since death is within 24 hours. Injuries has been caused by sharp cutting heavy object such as 'tangi'. Death occurred due to injury no. 1 caused by heavy bleeding and syncope. Postmortem report has been prepared by the doctor in his own handwriting, which has been proved and marked as Ext.10. Nanmati Devi, grandmother of the accused Baisakhu Manjhi, has been examined as PW-7, has been declared hostile by the prosecution.

6. After closure of the prosecution evidence, accused was examined under Section 313 Cr. P.C. on 12.01.2010 where he has denied about the occurrence and claimed himself to be innocent. No defence witness or exhibit has been brought on record on behalf of the defence to prove his innocence.

7. After hearing the learned counsel for the parties and on the basis of the materials available on record, learned Trial Court has passed the judgment of conviction dated 31.03.2010 and order of sentence dated 08.04.2010 in Sessions Trial No. 93//2007.

8. Being aggrieved at and dissatisfied with the impugned judgment of conviction and order of sentence, appellant has preferred the present criminal appeal before this Court which was admitted vide order dated 19.12.2013 and is being listed for final hearing.

9. Heard learned Amicus Curiae Ms. Leena Mukherjee and learned counsel for the State Mr. Pankaj Kumar, Additional Public Prosecutor.

10. Learned Amicus Curiae Ms. Leena Mukherjee has submitted that the impugned judgment of conviction and order of sentence is bad in law and cannot sustain in the eyes of law. Learned Amicus Curiae has submitted that the entire case revolves around the evidence of PW-1 Mamta Kumari, PW-3 Sanjana Kumari, both daughters of the deceased and PW-4 Jantari Devi, informant of the case who is wife of the deceased. They being the close relative, their

evidence cannot be relied upon for holding the appellant guilty of the offence committed and punishable under section 302 of the Indian Penal Code. Learned Amicus Curiae has submitted that the deceased is the own uncle of the accused / appellant and there was no motive for him to kill the deceased as the dispute was between the accused Baisakhu Manjhi and his father Lagan Manjhi. Learned Amicus Curiae has submitted that witnesses have not disclosed that the injury has been caused upon which part of the body, nor the seized axe has been examined by the forensic science laboratory to ascertain that the blood stains found on the axe is the blood group of the deceased. The axe is also not produced before the court. As such, conviction of the appellant under section 302 of the Indian Penal Code is not sustainable in the eyes of law as no other independent witnesses have supported the case of the prosecution. Rambriksh Bhoye (PW-2), signatory on the first information report, has been declared hostile along with Nanmati Devi (PW-7), grandmother of the accused Baisakhu Manjhi. Learned Amicus Curiae has further submitted that another signatory to the first information report Prasann Manjhi has not been examined in this case. Learned Amicus Curiae has further submitted that the case is based on the evidence of interested witnesses and as such, this court may take note of the same while considering the case of the appellant. Learned Amicus Curiae has further submitted that to establish the place of occurrence, police ought to have seized the blood stained soil to ascertain that the place of occurrence is the courtyard of the informant and the accused, which has not been done in this case. Learned Amicus Curiae has submitted that the conduct of the accused shows that he has not fled away from the place of occurrence after committing the crime as the police has arrested him from his house, whereas in ordinary course and natural conduct of an accused, expected to flee away from the place after commission of crime. In this case, the accused did not flee away from the place and was arrested by the police from the house in the morning. As such, appellant deserves to be acquitted of the charge and conviction under section 302 of the Indian Penal Code by extending the benefit of doubt as the prosecution has not been able to prove the case beyond shadow of all reasonable doubt against the accused Baisakhu Manjhi.

11. Learned counsel for the State Mr. Pankaj Kumar, Additional Public Prosecutor, has submitted that the impugned judgment of conviction and order of sentence has been passed by the learned Trial Court on the basis of materials available on record. Learned counsel for the State has submitted that from perusal of the first information report lodged on the basis of the fardbeyan of the informant Jantari Devi (PW-4), it appears that the accused Baisakhu Manjhi

had some dispute with his father Lagan Manjhi and the accused was threatening him with dire consequences for return of the money. Under threat, Lagan Manjhi (father of accused), who was sleeping on the ground of the courtyard, went away and hid himself. At around 8 P.M. in the night, the accused Baisakhu Manjhi brought an axe in his hand and assaulted Jageshwar Manjhi causing serious injury as he (deceased) had intervened in the dispute between father Lagan Manjhi and son Baisakhu Manjhi (appellant). At that time, the informant (PW-4) Jantari Devi, Mamta Kumari (PW-1) and Sanjana Kumari (PW-3) were present in the house. Rambriksh Bhoye has been examined as PW-2 and proved his signature on the carbon copy of the inquest report and seizure list of the blood stained tangi, though has been declared hostile by the prosecution. Learned State Counsel further submitted that corresponding injuries, as alleged by the Informant Jantari Devi (PW-4), Sanjana Kumari (PW-3) and Mamta Kumari (PW-1), have been found by the Medical Officer Dr. Anil Kumar (PW-6), which has been mentioned in the Post Mortem report (Ext.10). Learned State Counsel has submitted that Tauli Das (PW-5), Investigating Officer of the case, has investigated the matter and arrested the accused. Arrest memo signed by PW-2 Rambriksh Bhoye and Lagan Manjhi (father of the accused) has been proved and marked as Ext.7. Learned State Counsel has further submitted that PW-7 Nanmati Devi, grandmother of the deceased, has been declared hostile by the prosecution, but the Court has recorded demeanor of the witness in para-3 of her deposition that the witness went near dock of the accused and identified the accused and then tears came out of her eyes. Such demeanor shows that this witness is mentally disturbed as, on the one hand, her son has been killed and on the other hand, her grandson is the accused. As such, instead of supporting the prosecution case, she has been declared hostile by the prosecution, but her demeanor speaks about her conduct. Learned State Counsel has further submitted that during examination of the accused under section 313 Cr.P.C, he has not stated a single word regarding his false implication nor his father Lagan Manjhi has been examined on behalf of the defence to dispel the prosecution case regarding false implication of his son Baisakhu Manjhi. From the materials brought on record, learned State Counsel has submitted that there is nothing on record which cast any doubt about the prosecution case. As such, this Court may not interfere with the impugned judgment of conviction and order of sentence as the same does not warrant any interference of this Court on the facts and evidence brought on record.

12. Heard learned Amicus Curiae Mrs. Leena Mukherjee and Mr. Pankaj Kumar, Additional Public Prosecutor; perused the materials brought on record

including the first information report; framing of charge; evidence of seven prosecution witnesses, particularly the evidence of eye witnesses Jantari Devi (PW-4) informant, Sanjana Kumari (PW-3) and Mamta Kumari (PW-1) both daughters of the informant and the deceased. All these three witnesses are eye witness to the occurrence and from perusal of the evidence of these three witnesses, this court has not found any contradiction in their evidence, rather from perusal of the evidence brought on record and comparing the same with the post mortem report, which has been proved and marked as Ext.10 by the Doctor Anil Kumar (PW-6), the prosecution case is consistent. This Court has taken note of the evidence of the Investigating Officer, according to which, occurrence took place on 27.04.2007 at around 6.00 P.M. The fardbeyan of the informant was recorded at 23.00 hrs. The accused was arrested from his house and witnesses have supported the case. Nothing has been brought on record to suggest the benefit derived by the informant side by falsely implicating the accused / appellant, who is the nephew of the informant and the deceased. The blood stained axe (weapon of assault) has been recovered from the place of occurrence and seizure list of the same has been proved and marked as Ext. 8. Arrest memo has been proved and marked as Ext.7. From perusal of the evidence brought on record, particularly the statement of the accused recorded under Section 313 Cr.P.C, no explanation has been given by the accused regarding his false implication or motive for false implication by the informant to get any benefit, rather the evidence of the Informant (PW-4) Jantari Devi shows otherwise. The informant has stated in para-5 in reply to the Court question that previously Baisakhu Manjhi used to quarrel with them as they have no son. If they would have been killed, the entire property would have been vested to Baisakhu Manjhi coupled with the fact that when Baisakhu Manjhi was quarreling with his father Lagan Manjhi, husband of the Informant Chowkidar Jageshwar Manjhi (deceased) has intervened in the matter. Thus, sufficient explanation given by the informant for committing such heinous crime by the accused / appellant Baisakhu Manjhi. This Court has re-appreciated the entire evidence brought on record. Nothing has been found to dispel the prosecution case or to point out any dent in the prosecution case.

13. Under the aforesaid circumstances, considering the evidence of the eye witnesses Jantari Devi (PW-4), Sanjana Kumari (PW-3) and Mamta Kumari (PW-1) coupled with the medical evidence i.e. Post Mortem report (Ext.10) and the evidence of the Investigating Officer Tauli Das (PW-5), this Court is of the view that the judgment of conviction and order of sentence passed by the learned Trial Court does not warrant any interference by this Court. Accordingly, the

same is hereby upheld and affirmed. The Criminal appeal preferred by the accused / appellant is thus dismissed being devoid of any merit. Let the Lower Court Records be returned to the Court below forthwith.

14. Before parting with the judgment, we appreciate the valuable assistance provided by the learned Amicus Curiae Ms. Leena Mukherjee in assisting the Court during the course of hearing. The Secretary, Jharkhand High Court Legal Services Committee is directed to release the legally admissible remuneration of learned Amicus Curiae within a period of four weeks from the date of filing of an application together with a certified copy of this judgment.

(Aparesh Kumar Singh, J.)

(Kailash Prasad Deo, J.)

Jharkhand High Court, Ranchi
Date 31st January, 2019
Ranjeet/