

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Criminal Revision No. 980 of 2013

1. Bisheshwar Majhi, son of late Subit Majhi (**Deleted vide order dated 18.08.2021**)
2. Rabindra Nath Majhi, son of Bisheshwar Majhi,
3. Abhijeet Majhi, son of Bisheshwar Majhi

... ... Petitioners

-Versus-

CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Petitioners : Ms. Ruchi Rampuria, Advocate
For Opp. Party-State : Ms. Vandana Bharti, A.P.P.

Through Video Conferencing

14/29 10.2021

Heard Ms. Ruchi Rampuria, learned counsel appearing on behalf of the petitioners.

2. Heard Ms. Vandana Bharti, learned A.P.P. appearing on behalf of the Opposite Party-State.

3. This criminal revision petition is directed against the Judgment dated 24.07.2013 passed in Criminal Appeal No. 151 of 2010 by the learned court of Principal Session Judge, East Singhbhum, Jamshedpur whereby the learned appellate court has dismissed the criminal appeal filed by petitioners. The learned trial court has convicted the accused vide judgment dated 4th May 2010 passed in G.R. Case No.227 of 2006 by the learned court of Judicial Magistrate, 1st Class, East Singhbhum, Jamshedpur and had convicted the accused for offence under Sections 341/34, 323/34, 325/34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for 15 days, 6 months and 3 years respectively with fine of Rs.500/- each. In default of payment of fine, they were directed to undergo rigorous imprisonment for the term of 07 days.

4. It is found from the records that petitioner nos.2 and 3 namely Rabindra Nath Majhi and Abhijeet Majhi are sons of Bisheshwar Majhi, who was the petitioner no.1 in the present case and has expired during the pendency of this case and his name has been deleted from the cause title vide order dated 18.08.2021. The legal heirs of petitioner no.1 are already on record. Fine of Rs.500/- has been imposed by the learned court below on each of the convicts and accordingly, fine of Rs.500/- imposed upon the petitioner no.-1 (since deceased) is also required to be taken into consideration.

Arguments on behalf of the Petitioners

5. Learned counsel appearing on behalf of the petitioners has submitted that the incident had taken place on 29.01.2006, when the victims were growing tomato crop in their field and the accused persons had come to the field and assaulted them. She submits that there is specific allegation against Bisheshwar Majhi (since deceased) that he had started beating the mother of Ravindra Manjhi and hit her with stone as a result of which she sustained injury upon her shoulder and left hand and thereafter he also hit her with bamboo stick as a result of which her hand got fractured. She submits that the grievous injury was suffered only by the mother of P.W.1 (Ravindra Manjhi). She further submits that so far as present petitioners namely Rabindra Nath Majhi and Abhijeet Majhi are concerned, they had assaulted the informant with iron rod as a result of which he sustained injuries upon his head besides his ear and they had also assaulted P.W.1 upon his shoulder with *sabal*. She submits that the chowkidar had immediately come to the place of occurrence, but none of the weapons used in the occurrence were seized. The learned counsel submits that non-seizure of weapons creates a doubt in the prosecution case and this aspect of the matter has not been properly considered by the learned

courts below. She has also submitted that specific allegation has been levelled against Bisheshwar Majhi (since deceased) which resulted in conviction under Section 325 of Indian Penal Code as it resulted in fracture injury which was a grievous injury. She submitted that the case was instituted in the year 2006 and more than 15 years have expired and there is no previous conviction of the petitioners and accordingly, some sympathetic view may be taken and sentence be modified.

Arguments on behalf of the Opposite Party-State

6. Learned counsel appearing on behalf of the opposite party - State while opposing the prayer has submitted that there are concurrent findings recorded by the learned court below after examining the victims of the case supported by the injury report and examination of the doctor and also examination of the investigating officer of the case. She has also submitted that the petitioners were convicted also with the aid of Section 34 of the Indian Penal Code and accordingly, it cannot be said that the remaining two petitioners apart from Bisheshwar Majhi, who has died, had no role. She has submitted that the present petitioners had also assaulted the father and son although it is not in dispute that allegation of specific assault so far as mother is concerned, was against Bisheshwar Majhi. It is further not in dispute that the present conviction of the petitioners is their first offence and 15 years have elapsed from the date of the incident. She submits that there is no scope for interference so far as conviction of the petitioners is concerned. So far as sentence is concerned, she submits that it is for the court to pass an appropriate order. However, if any lenient view is taken in connection with the sentence, then appropriate fine be imposed, which may be remitted to the 3 victims of the case upon identification. She submits that fine amount may not be less than Rs.25,000/- each.

Findings of this Court

7. After hearing the learned counsel for the parties and after going through the materials on record, this Court finds that the prosecution story is based on written story of one Sukhdeo Manjhi regarding the occurrence to the police station on 29.01.2006. It has been alleged that when he was cultivating his tomato crop on 29.01.2006 at about 11 a.m. Bisheshwar Majhi, Rabindra Nath Majhi and Abhijeet Majhi came their and beat him up. The informant further stated that he sustained injury inflicted by *sabal*. The informant also stated that his wife and his son also sustained injury upon their head and shoulder.

8. Pursuant to the F.I.R, the case was registered as Patamda P.S. Case No.7/2006 dated 29.01.2006 for offence under Sections 341/ 323/34. Cognizance was also taken under the said Sections against the accused persons on 27.03.2006. After investigation, they were charged for the offence under Sections 341/34, 323/34 and 325/34 of Indian Penal Code on 24.08.2006 and when the charge was read over and explained to them, they pleaded not guilty and claimed to be tried.

9. The prosecution examined altogether eight witnesses of the case. P.W. 1 Ravindra Manjhi (victim), P.W. 2 Sonaka Majhi (victim), P.W.3 Mono Manjhi, P.W.4 Budhu Singh, P.W.5 Sukhdeo Singh (informant victim), P.W. 6 Paras Nath Ram (Doctor), P.W.7 Chakkardhar Jha (Investigating officer) and P.W.8 Dr. Mukesh Kumar (Doctor). After conclusion of the trial, statements of the accused were recorded under Section 313 of Cr.P.C in which they denied the occurrence and claimed to be innocent. However, no defence evidence was adduced on their behalf.

10. This Court finds that the three victims of the case have been examined and they have fully supported the prosecution case and further the evidence of the victims is corroborated by

the evidence of the Doctor who had medically examined the victims and found grievous injury on the body of wife of the informant, who suffered fracture. The Investigating Officer of the case has also been examined, who has also fully supported the prosecution case. So far as the argument of the petitioners that the weapons used have not been recovered from the place of occurrence is concerned, this Court finds that as per the F.I.R itself, the accused persons had fled away after the occurrence and thereafter, the chowkidar went to the place of occurrence. Accordingly, non-recovery of the weapons from the place of occurrence has no bearing in the matter particularly when the evidence of the victim is corroborated by the medical evidence including the nature of the weapons used for commission of the offence.

11. Considering the totality of facts and circumstances of this case, this Court finds that learned courts below have passed well-reasoned judgments considering each and every aspect of the matter. This Court finds that no material as such has been pointed out by the learned counsel for the petitioners which have been ignored or which are extraneous to the records of the case. This Court is also of the considered view that merely because specific allegation has been levelled against Bisheshwar Majhi while assaulting the wife of the informant, the present petitioners cannot be said to have no role in assaulting the wife of the informant, in as much as, Section 34 of Indian Penal Code is also involved in the present case. Further the petitioners had also assaulted the other two victims i.e., informant and his son. In view of the findings recorded by both the courts below, which have been arrived after scrutinizing the material on record, there is no scope for re-appreciating the evidences and coming to a different finding in revisional jurisdiction in absence of any perversity or material

irregularity in the impugned judgements and therefore the conviction of the petitioners under Section 341/34, 323/34 and 325/34 is upheld.

12. So far as the sentence is concerned, this Court finds that 15 years have elapsed from the date of occurrence and admittedly, there is no previous conviction of the petitioners, therefore, ends of justice would be served if the sentence is modified and reduced to some extent and fine amount is imposed upon the petitioners. Accordingly, the sentence of the petitioners for offence under Section 325/34 is reduced to one year with a fine of Rs.24,750/- each to be deposited by the petitioners before the learned court below within a period of three months from the date of communication of this judgment to the learned court below. Further, the petitioners are also required to deposit additional fine amount of Rs.250/- each on account of fine imposed upon their deceased father (original petitioner no. 1) who has expired during the pendency of the present case, within the aforesaid time frame. In case of non - deposit of the fine amount (total Rs. 25,000/- each) within the aforesaid stipulated time frame, the petitioners would serve the sentence as awarded upon them by the learned court below. The fine amount so deposited, is directed to be remitted to the 3 victims of the case i.e., P.W.1, P.W.2 and P.W.5, in equal proportion, upon due identification.

This revision is disposed of with aforesaid modification of sentence.

13. The bail bonds furnished by the petitioners are hereby cancelled.

14. Pending interlocutory application, if any, is closed.

15. Let the lower court records be sent back immediately to the court concerned.

16. Let a copy of this order be communicated to the learned court below through 'e-mail/FAX'.

(Anubha Rawat Choudhary, J.)

Saurav/