
(2018) 01 JH CK 0094

In the Jharkhand High Court

Case No : Criminal Appeal (S.J.) No. 76 Of 2002

Bono Manjhi and Ors

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 04-01-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 304, 323, 324, 336 , 341, 448, 452

Citation : (2018) 01 JH CK 0094

Hon'ble Judges : Rajesh Shankar, J

Bench : Single Bench

Advocate : Anil Kumar Ganjhu, S.K. Deo

Judgement

Ratnaker Bhengra, J.

1. Heard both the counsels.

2. This appeal is directed against the judgment of conviction and order of sentence dated 1.2.2002, passed by the learned Additional Judicial Commissioner III, Khunti in Sessions Trial No. 39/97 arising out of Sonahatu P.S. Case No. 37/96 convicting the appellants under Sections 452 and 304 read with Section 34 of the Indian Penal Code and further sentencing them to undergo seven years rigorous imprisonment under Section 452 of the Indian Penal Code and to undergo rigorous imprisonment for seven years under Sections 304/34 of the Indian Penal Code. Both the sentences were directed to run concurrently.

Case of the prosecution:

3. The prosecution case as per written report of the informant Bipin Manjhi (now deceased) dated 15.06.1996 is that 3 to 4 days prior to the incident, the informant was putting soil in the small piece of barren land between the house of the informant and the accused. The accused objected and restrained the informant from doing so. This resulted in a dispute between the two sides. With regard to this matter, the informant was having re-conciliation talks with the

accused at around 4:00 p.m. on 14.6.1996. During this conciliation talks, all the accused said filthy words to the informant. When the informant stopped the accused from abusing him, all the accused brought lathi from their house and chased him to assault. Out of fear, the informant ran away in his house. It is further alleged that the accused entered the house of the informant, pulled him out and Appellant Nos. 2 and 3 hit the informant on the left eye brows and the right portion of the forehead. When the informant fell down, Bono Manjhi, Appellant No. 1 crushed the stomach of the informant with his foot. When Lakhi Devi wife of the informant came to rescue him, the accused Kantu Manjhi hit her with lathi that caused injury on her head. After the incident, the accused persons ran away in their house. The incident was witnessed by the daughter of the informant, Savitri Devi and other persons of the village.

4. On the written report of the informant, FIR was registered under Sections 448/341/323/34 of the Indian Penal Code, investigation was carried out and chargesheet was submitted. Cognizance of the offence against all the accused-appellants were taken and the case being exclusively sessions triable, was committed to the Sessions Court for trial. Charges were framed under Section 452 and 304/34 of the Indian Penal Code and on conclusion of the trial, the appellants were convicted and sentenced as aforesaid. Hence, this appeal.

5. Prosecution examined altogether nine witnesses in support of its case. Defence also produced one witness DW-1 Rajkumar Manjhi and exhibited certain documents.

6. P.W.-1, Lakhi Devi is the wife of the informant (deceased). In her testimony, she states that the incident is of 14.6.1996. On that day, she along with her daughter and her husband were in the house. At about 3:00-4:00 p.m. conciliation regarding barren land was going on with accused persons. She further stated that Bono Manjhi, Kartik Manjhi and Kantu Manjhi came abusing armed with stick. As soon as the three accused came, her husband rushed inside the house. All the three accused entered her house and pulled her husband out and assaulted him with the danda, which caused injury above the left eye and head of her husband. Her husband fell down and thereafter Bono Manjhi climbed on the stomach of her husband and crushed his stomach. When she went to rescue her husband, Kantu Manjhi hit her with danda on the head which caused injury on her head and blood oozed out. She further said that her husband died on 25.06.1996 during course of treatment in RMCH, Ranchi.

7. P.W.-2 Savitri Devi is the daughter of the informant-deceased. In her deposition, she said that on the day of occurrence, she was in the courtyard of her house along with her mother and father. 3-4 days prior to day of occurrence, her father was putting soil over the barren land in front of their house then accused namely Kartik Manjhi, Bono Manjhi and Kantu Manjhi asked him to stop putting soil. Her father stopped putting soil. On the day of occurrence at 4:00 p.m. talk regarding the settlement was scheduled then all the three accused persons armed with lathi entered her house. All the three accused pulled her

father out and firstly Kartik Manjhi assaulted her father with stick above the left eye. Thereafter Kantu assaulted her father on the forehead with stick. Her father sustained injury and fell down and then Bono Manjhi crushed the stomach of the informant-deceased. P.W.-2 further said that when her mother went to rescue her father, Kantu assaulted her mother on the head, which caused bleeding wound on her head.

8. P.W.-3, Bisheshwar Mahto appears to be a co-villager of the informant. He has stated that he reduced into writing the statement of the informant-deceased at the Rahe Out Post. Statement was read over to informant and finding it correct he signed over it in his presence. The written report was marked as Ext. 1.

9. P.W.-4, Dhona Manjhi is also a co-villager of the informant-deceased. He is a hearsay witness. He stated that on the date of occurrence, he did not see the incident.

10. P.W.-5, Dr. Ram Sewak Sahu is the Medical Officer. He conducted the post-mortem examination of informant-deceased Bipin Manjhi. He stated that the abdomen was bandaged all over. He found abrasion of 1 x 1 cm on left elbow lateral side. He also found 3 stitched wound-

- (1) 2 cm long on left eye brow which is non united;
- (2) 5 cm long right frontal region of the head; and
- (3) surgical stitched wound 9 cm long on the front part of abdomen.

He opined above mentioned injuries were ante-mortem and caused by hard-blunt substance, may be lathi. In his opinion, death was caused due to septicemia as a result of defused peritoneas. He proved the post-mortem report which was marked as Ext. 2.

11. P.W.-6, Budhram Manjhi is also a co-villager of the informant-deceased. He is a hearsay witness. But he stated that on the day of occurrence he heard hullah from near the house of Bipin Manjhi and Bono Manjhi. When he reached the place of occurrence, he found Bipin Manjhi fallen in an injured state and injury on the head of Lakhi Devi (P.W.-1).

12. P.W.-7, Dr. Gopal Srivastava examined the injured-informant Bipin Manjhi. He found following injuries on the informant:

- (i) one lacerated wound on the left eye brow of the informant-deceased measuring $\frac{3}{4}$ " x $\frac{1}{5}$ " x $\frac{1}{5}$ ";
- (ii) one lacerated wound on right side of scalp anterior measuring about $1\frac{1}{2}$ " x $\frac{1}{4}$ " x $\frac{1}{5}$ ";
- (iii) one bruise anterolateral abdominal wall (epigastrium and right hypochondrium) with swelling of about 3" x 1 $\frac{1}{2}$ ". P.W.-7 has categorically stated that all the injuries were simple in nature and appeared to have been caused by hard and blunt substance. It also stated that injury No. 3 could have

been caused by crushing of the abdomen by heel. However, in the cross-examination, he has stated that injury Nos. 1 and 2 may be caused by fall but not by a single fall. He has proved the injury report of the informant-deceased marked as Ext. 4.

13. P.W.-8, Dr. Yugal Kishore Choudhary was the Registrar in the Department of Surgery, RMCH, Ranchi. On the basis of bed slip ticket of Bipin Manjhi, he has given the operative findings of the abdominal injuries on the body of Bipin Manjhi, which were as follows:

(1) (i) There was single rent of about 1.25 cm in the ileum 4" proximal to ilaocaecam junction;

(ii) One cerosal tear over the lesser curvature of stomach;

(iii) Peritoneal cavity was filled with bile or a staining faecal matter.

(2) Peritoneal toileting were done, ileal rent repaired in two layers and cerosal tear of stomach was repaired.

He has proved the abdominal injury report which was marked as Ext. 4.

14. P.W.-9, Shaligram Choudhary is Constable No. 1138 and a formal witness. He proved the formal FIR and inquest report which was marked as Ext. 6 and Ext. 7 respectively.

15. Defence produced DW-1, Raj Kumar Manjhi. He stated that the written report was written by munshi Ram Dayal Singh of Rahe police post at the instance of Kartik Manjhi in front of him on 14.06.1996 The said written report was marked as Ext. B The formal FIR of Sonahatu P.S. Case No. 36/96 was registered under Sections 448, 336 and 323/34 IPC was written by munshi Bishnu Dev Singh of Sonahatu Police Station. The said FIR has been exhibited as Ext. C. Defence side also produced injury report of Bono Manjhi and Kartik Manjhi which was proved by P.W.-7 Dr. Gopal Srivastava and was marked as Ext. A and Ext. A/1 respectively.

Arguments advanced by the learned counsel for the appellants:

16. Learned counsel for the appellants argued the case and in the initial stage of argument learned counsel has taken this Court to the written report as well as deposition of various witnesses and tried to highlight some of the lacuna in the case.

17. Referring to the written report, learned counsel submitted that written report was lodged on the date of incident itself i.e. 14.6.96. However, only after 10 days Section 304 of the Indian Penal Code was added on 27.6.96. Learned counsel submitted that there is long time gap between death and it was only because of the developments that had occurred in between, therefore, the appellants should not be held guilty. Learned counsel pointed out from the written report that during conciliation talk, when the informant stopped the accused from abusing

him, only then all the accused brought lathi from their house and wanted to beat the informant. There was no intention to cause any injury or to commit murder.

18. Learned counsel for the appellants referring to the deposition of P.W.-2, who is the daughter of the informant-deceased submitted that this witness states that at the time of incident, shop of the appellants was closed, at which, counsel has said that in the FIR lodged by the appellants' side, there is reference about the shop being open and the altercation had taken place in the shop.

19. Referring to the evidence of P.W.-3, Bisheshwar Mahto, learned counsel submitted that P.W.-3 has not put his signature on the written report of the informant-deceased, though in his deposition, he has stated that he had reduced into writing the statement of the informant-deceased.

20. Referring to the evidence of P.W.-4, Dhona Manjhi and P.W.-6 Budhram Manjhi learned counsel submitted that P.W.-4 and P.W.-6 are the hearsay witnesses and their evidences cannot be considered relevant and important.

21. Learned counsel for the appellants, referring to the evidence of P.W.-5, Dr. Ram Sewak Sahu, submitted that evidence of P.W.-5 is crucial because he has given opinion that death was due to septicemia, which, according to the learned counsel, is not attributed to the appellants.

22. Referring to the evidence of P.W.-7, Dr. Gopal Srivastava, learned counsel said that P.W.-7 examined injured persons from the informant side as well as appellant side and by the evidence of P.W.-7, it is clear that both the sides were injured, but, the trial judge was not able to explain the injuries incurred by the appellants.

23. Learned counsel for the appellants, referring to the evidence of P.W.-9, Shaligram Choudhary, who is a Constable and only a formal witness, who has deposed that the entire investigation was done by Bishundeo Singh, Assistant Sub-Inspector of Police. Learned counsel submitted that Investigating Officer of this case has not been examined and therefore, it has prejudiced the case of the appellants.

24. In conclusion of his argument, learned counsel argued that no independent witness came forward from the entire village to testify in favour of the prosecution case and the witnesses P.W.-1 and P.W.-2, who have testified in favour of the prosecution case, are the wife and daughter of informant and hence close relatives of the deceased. Counsel then also argued that apart from these witnesses, being close relatives, it ought to be taken into account that there was a land dispute between the parties and the case is to be considered in this background. Therefore, because of this dispute, injuries on both the parties can be explained. Learned counsel argued that death according to P.W.-5 was due to septicemia and hence, he submitted that death was also due to lack of proper treatment. Learned counsel argued that deceased Bipin Manjhi signed in the written report and his thumb impression is in the injury report. It is argued that

his signature should have been in both places or his thumb impression should have been in both places. If he has signed in the written report and not in the injury report, then there is discrepancy. Therefore, the entire case is concocted and manufactured and cannot be believed. Learned counsel further argued that it was necessary to have the person, who conducted the investigation to be examined, but, the person has not been examined. Therefore, appellants have been grossly prejudiced. Learned counsel also argued that entire male members have been implicated, just to disturb the entire family of the appellants. One of the appellants Bono Manjhi, at the time of judgment was aged about 60 years i.e. in 2002 and he is now more than 75 years and he is not well and bed-ridden. Learned counsel also submitted that he had already spent about 3½ years out of imposed 7 years sentence. Learned counsel also said that even appellant No. 2 has spent about 1 year 3 months and appellant No. 3 has spent about 1 year 6 months in custody and therefore, their cases may be considered in this light while passing the judgment.

25. Learned counsel has referred to and relied upon the judgment of Punjab & Haryana High Court, in the case of "Dev Singh and others v. State of Punjab", reported in 2000 CRI. L.J. 347 wherein conviction was under Section 304, part-II and benefit was given to an 80 years old person, sentencing him to period already undergone for meeting the ends of justice. Learned counsel has also cited the judgment in the case of "Asu and another v. State of Rajasthan", reported in 2000 CRI.L.J. 207 and pointed out that in this case conviction of one of the accused under Section 304, part-I, IPC was converted into Section 304 part-II, IPC and the conviction of other accused under Section 324, IPC was maintained but his sentence was reduced. Lastly, learned counsel submitted that in the light of the aforesaid judgments, the case of appellants may also be considered.

Arguments advanced by the learned counsel for the State:

26. Learned counsel for the State has submitted that his main argument is based on the evidence of three witnesses i.e. P.W.-1, Lakhi Devi, who is the wife of the informant (deceased); P.W.-2, Savitri Devi, who is the daughter of the informant-deceased and P.W.-5, Dr. Ram Sewak Sahu, who was the Medical Officer and had conducted the post-mortem examination of informant-deceased. Learned counsel has also submitted that P.W.-1 and P.W.-2 are wife and daughter, who were present at the place of occurrence. They have witnessed the incident and their evidence fully corroborates the prosecution case. Regarding the evidence of P.W.-5, learned counsel for the State has said that out of three injuries, major injury is injury No. (3), which has been observed by P.W.-5 and P.W.-8. Counsel for the State has said that the written report regarding the assault and the injuries, particularly, in stomach have been fully corroborated and supported by P.W.-1, P.W.-2, P.W.-5 & P.W.-8. Therefore, the ocular evidence is consistent and fully corroborated by medical evidence and therefore, on this ground itself, conviction is fully proper and should be upheld.

REASONS

27. Having gone through the records of the case, having seen the evidences, having heard both the counsels and in the facts and circumstances, I find that in this case injured informant Bipin Manjhi lodged written report against the appellants but he died after ten days of the incident due to the injury. As per evidences of the prosecution witnesses, on the day of occurrence, all the appellants armed with stick entered into the house of the informant Bipin Manjhi (deceased) and pulled out the informant out of the house. Appellant No. 2 and Appellant No. 3 assaulted the informant with stick on his left eyebrow and right portion of forehead. When the informant fell down as a result of such assault, then Appellant No. 1 Bono Manjhi climbed on the informant's stomach and crushed the stomach of the informant. Later on, after ten days of the incident, informant died in the hospital during course of his treatment.

28. So far as evidences of prosecution witnesses are concerned, there are two eye witnesses P.W.-1 Lakhi Devi and P.W.-2 Savitri Devi, who are the wife and daughter respectively of the deceased-informant. Both wife and daughter of the deceased-informant witnessed the assault by the appellants on the informant. They deposed categorically and said specifically about the role played by each of the appellants in assaulting the informant. The ocular evidences of P.W.-1 and P.W.-2 are fully supported by medical evidences. There are three medical report of three doctors i.e. (i) P.W.-7 Dr. Gopal Srivastava, who examined the injured informant when informant was alive, (ii) P.W.-5 Dr. Ram Sewak Sahu, who conducted post mortem on the dead body of the informant and (iii) P.W.-8 Dr. Yugal Kishore Choudhary, who gave the operative findings of the abdominal injuries sustained by the deceased-informant Bipin Manjhi. P.W.-7 had found one lacerated wound on left eyebrow measuring $\frac{3}{4}$ " x $\frac{1}{5}$ " x $\frac{1}{5}$ " on the left eyebrow, one lacerated wound on right side of scalp measuring $1\frac{1}{2}$ " x $\frac{1}{4}$ " x $\frac{1}{5}$ " and one bruise over anterolateral abdominal wall measuring about 3" x $\frac{1}{2}$ " on the body of the informant. P.W.-5 who conducted the post mortem examination reiterated almost the same injury as P.W.-7. Further P.W.-8 supported the abdominal injuries on the body of the deceased. So, the ocular evidences of P.W.-1 and P.W.-2 is fully corroborated by the medical evidences of Doctors P.W.-7, P.W.-5 and P.W.-8.

29. There are aspects in the arguments which are significant and that is P.W.-5, who is a Doctor, opined that death was due to septicemia and there was a ten days gap before Section 304 IPC was added as an offence against the appellants. But, in view of evidences of two eye witnesses P.W.-1 and P.W.-2 led by the prosecution and supported by the medical evidences of three Doctors P.W.-5, P.W.-7 and P.W.-8, the argument of the learned counsel for the appellants that informant died due to septicemia cannot be relied upon. Further the argument of the appellants' counsel that appellants were prejudiced due to non-examination of the Investigating Officer is also nullified in view of ocular evidences of P.W.-1 and P.W.-2 corroborated by medical evidences of aforesaid three Doctors.

30. I have also noted the judgments cited by the counsel for the appellants, namely, Dev Singh and others (supra) and Asu and another (supra) and considered both. Therefore, accordingly on my aforesaid reasonings though the counsel for the appellants has argued to the best of his ability to mitigate the offence, I consider it proper to sustain the convictions of all the appellants under Sections 452 and 304 IPC read with Section 34 IPC. It is noted that one of the appellants Bono Manjhi is very old and the period already undergone by him which is about three years and six months can be considered sufficient sentence; however, regarding the other two appellants since conviction has been decided or upheld in the aforesaid sections, the sentence is modified to three months simple imprisonment from the date they are taken into custody.

31. Accordingly, appellant No. 1, Bono Manjhi has his sentence restricted to the period already undergone. He is discharged from the liability of his bail bonds. Appellant No. 2, Kartik Manjhi and Appellant No. 3, Kantu Manjhi are directed to undergo a modified sentence of further period of 3 months SI only and any period already undergone by the appellant No. 2 and appellant No. 3 shall not be subtracted from the modified sentence of three months SI passed by this Court. Their bail bonds are cancelled. Learned concerned or successor Court will take steps to procure their arrest.

32. This criminal appeal is dismissed with modification in sentence.