

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.435 of 1993

Against the judgment of conviction and the order of sentence, dated 25.08.1993, passed by Sri Gopal Prasad, Xth Additional Sessions Judge, Gaya, in Sessions Trial No. 650 of 1990/144 of 1991, arising out of Tekari Police Station Case No. 35 of 1990.

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1. Munarik Manjhi son of Dhanu Manjhi
 2. Chanarik Manjhi son of late Dhanu Manjhi
 3. Kara Manjhi son of late Dhanu Manjhi
 4. Feku Manjhi son of late Tanu Manjhi
 5. Charitar Manjhi son of late Dashain Manjhi
 6. Siri Manjhi son of late Dukhan Manjhi
 7. Barhan Manjhi son of late Dhanu Manjhi

All residents of village Jola Bigha, P.S.-Tekari, District-Gaya.

.... Appellants

Versus

The State of Bihar

.... Respondent

With

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Criminal Appeal (DB) No. 476 of 1993

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Bikoo Manjhi, son of late Ranu Manjhi, resident of village Jola Bigha, P.S.-Tekari, District-Gaya.

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

(In CR. APP (DB) No. 435 of 1993)

For the Appellants : Mr. Shravan Kumar, Senior Advocate
Mr. Satish Kumar Singh, Advocate

For the Respondent : Mr. Ajay Mishra, A.P.P.

Mr. Ravindra Kumar, Advocate, as Amicus Curiae

(In CR. APP (DB) No. 476 of 1993)

For the Appellants : Mr. Shravan Kumar, Senior Advocate
Mr. Satish Kumar Singh, Advocate

For the Respondent : Mr. Ajay Mishra, A.P.P.

Mr. Amish Kumar, Advocate, as Amicus Curiae

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI

and

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE I. A. ANSARI)

Date: 22-05-2015

By the judgment of conviction and the order of sentence, dated 25.08.1993, passed, in Sessions Trial No. 650 of 1990/144 of 1991, by learned 10th Additional Sessions Judge, Gaya, while all the accused-appellants stand acquitted of the charges under Sections 3 and 4 of the Explosive Substance Act, 1908, and also of the charge under Section 307 read with Section 34 of the Indian Penal Code, accused-appellant, Biku Manjhi, stands convicted of the offence under Section 302 of the Indian Penal Code and the remaining accused-appellants, namely, Munarik Manjhi, Kara Manjhi, Charitar Manjhi, Siri Manjhi, Barhan Manjhi, Feku Manjhi and Chanarik Manjhi stand convicted of the offence under Section 302 read with Section 149 of the Indian Penal Code.

2. For his conviction under Section 302 of the Indian Penal Code, accused-appellant, Biku Manjhi, has been sentenced to suffer imprisonment for life. For their conviction under Section 302 read with Section 149 of the Indian Penal Code, the remaining accused-appellants, namely, Munarik Manjhi, Kara Manjhi, Charitar Manjhi, Siri Manjhi, Barhan Manjhi, Feku Manjhi and Chanarik Manjhi, too, stand sentenced to suffer imprisonment for life.

3. The case of the prosecution, as unfolded by the First Information Report, may, in brief, be described as under:



(i) On 13.03.1990, at about 6.30 PM, while the informant, Kuleshwari Devi (PW 4), was sitting outside her house and talking to Rajkalia Devi, Damyanti Devi and Suggi Devi, their co-villagers, accused Biku Manjhi and accused Chanarik Manjhi, came and started hurling bombs causing thereby injuries to Rajkalia Devi, Suggi Devi and also the informant, Kuleshwari Devi (PW 4). In the meanwhile, the remaining accused persons, namely, Kara Manjhi, Feku Manjhi, Charitar Manjhi, Siri Manjhi, Badhan Manjhi and Munarik Manjhi, came armed with *lathis* and started assaulting Shiv Narayan Manjhi (PW 2), who sustained injuries. As Suggi Devi had suffered injuries on her abdomen, because of the bomb hurled by accused Feku Manjhi and accused Chanarik Manjhi, when the informant's family members were carrying Suggi Devi and other injured to Tekari hospital for their treatment, Suggi Devi died on the way.

(ii) The informant, Kuleshwari Devi (PW 4), orally, reported the occurrence to Officer-in-Charge, Tekari Police Station, on 13.03.1990 itself, at 8.15 PM, at Tekari hospital, and the oral information, so given, with regard to the occurrence, by Kuleshwari Devi (PW 4), was reduced in writing in the form of her *fardbeyan* and, treating the same as First Information Report, Tekari Police Station Case No.35 of 1990, under Sections 148/149/323/307/302 of the Indian Penal Code, and 3/4 of the Explosive Substances Act, 1908, was

registered against the accused persons, namely, Munarik Manjhi, Chanarik Manjhi, Biku Manjhi, Kara Manjhi, Feku Manjhi, Charitar Manjhi, Siri Manjhi and Barhan Manjhi.

(iii) During investigation, inquest was held over Suggi Devi's dead body, which was also subjected to *post mortem* examination, and, on completion of investigation, *charge sheet* was laid, under Sections 302/307/324/323 of the Indian Penal Code and 3/4 of the Explosive Substances Act, 1908, against the accused persons aforementioned.

4. At the trial, charges, under Section 307 read with Section 34 of the Indian Penal Code and also under Section 3 and 4 of the Explosive Substances Act, 1908, were framed against accused, namely, Chanarik Manjhi, Biku Manjhi, Munarik Manjhi, Kara Manjhi, Feku Manjhi, Charitar Manjhi, Siri Manjhi, and Barhan Manjhi. While a charge, under Section 302 read with Section 149 of the Indian Penal Code, was also framed against accused, namely, Munarik Manjhi, Kara Manjhi, Charitar Manjhi, Siri Manjhi, Barhan Manjhi and Feku Manjhi, a substantive charge was further framed, under Section 302 of the Indian Penal Code, against accused Chanarik Manjhi and accused Biku Manjhi. The accused pleaded not guilty to their respective charges.

5. In support of their case, prosecution examined altogether 6 (six) witnesses including Dr. Arjun Singh (PW 5), who had, admittedly, conducted *post mortem*

examination on the dead body of Suggi Devi. The accused were, then, examined under Section 313 (1)(b) of the Code of Criminal Procedure, wherein the accused denied that they had committed the offences, which were alleged to have been committed by them, the case of the defence being that of denial. In support of their case, the defence has also adduced by examining two witnesses.

6. Having found the accused, namely, Munarik Manjhi, Chanarik Manjhi, Kara Manjhi, Feku Manjhi, Charitar Manjhi, Siri Manjhi, Biku Manjhi and Barhan Manjhi, guilty of the offence under Section 302 read with Section 149 of the Indian Penal Code and having also found accused Biku Manjhi guilty under Section 302 of the Indian Penal Code, the learned trial Court convicted them accordingly and passed sentences against them as mentioned above. All the accused-appellants have, however, been acquitted of the charge under Section 34 of the Explosive Substances Act, 1908, and Section 307 read with Section 34 of the Indian Penal Code.

7. Aggrieved by their conviction and the sentences, which have been passed against them, all the convicted persons have preferred these appeals.

8. Both these appeals having, thus, arisen out of the judgment of conviction and the order of sentence, dated 25.08.1993, aforementioned, both these appeals were taken up for hearing together and are being disposed of by this

common judgment and order.

9. We have heard Mr. Shrawan Kumar, learned Senior Counsel, appearing on behalf of the appellants, in both the appeals, and Mr. Ajay Mishra and Mr. Sujit Kumar Singh, learned Additional Public Prosecutors, appearing on behalf of the State, in these two appeals. We have also heard Mr. Ravindra Kumar, learned Counsel, appearing as *Amicus Curiae* in Criminal Appeal (DB) No.435 of 1993, and Mr. Amish Kumar, learned Counsel, appearing as *Amicus Curiae* in Cr. Appeal (DB) No.476 of 1993.

10. While considering the present appeal, what needs to be noted is that according to the evidence of Dr. Arjun Singh (PW 5), who had, admittedly, performed, on 14.03.1990, at about 12.15 PM, at Magadh Medical College and Hospital, Ara, *post mortem* examination on the dead body of Suggi Devi, he found following injuries:

"Lacerated wound 6" x 5" x abdominal cavity deep over front of abdominal wall cut of intestine were protruding out through the wound which has lacerated places foreign body were found over the wound site glass pieces and binding materials) which was removed and sealed in glass container. Liver, right kidney abdominal aorta and peritoneum were badly lacerated. Abdominal cavity

contained blood and blood clots skin around the wound over abdominal wall was blackened."

11. In the opinion of the doctor (PW 5), the injury was *ante mortem* in nature and caused by some explosive substance, such as, bomb. The doctor (PW 5) has opined that the cause of death was shock and haemorrhage as a result of the injury sustained by the said deceased on her abdomen, the injury being dangerous to life.

12. The findings of the doctor and/or his opinion with regard to the nature of the injury, which had been found on the said dead body, the nature of weapon used and the cause of death have not been disputed by the prosecution or by the defence. We, too, do not notice anything inherently incorrect or improbable in the *post mortem* report.

13. From the above unshaken evidence of the doctor (PW 5), what clearly transpires is that Suggi Devi had met with *homicidal death*.

14. The question, which, however, falls for consideration, is: whether the accused-appellants were, or any of them was, involved in causing death of Suggi Devi and committed thereby the offence of *murder*?

15. While considering the present appeals, what attracts our attention, most prominently, is that the Investigating Officer was not examined at the trial and no explanation has been offered or is discernible from the evidence



on record in this regard. This apart, as the informant, Kuleshwari Devi (PW 4), is illiterate, the First Information Report, which is said to have been lodged by PW 4, was proved not by its scribe, but by an advocate's clerk (PW 6), who was not present at the time, when the said First Information Report was written. The advocate's clerk (PW 6) has proved the First Information Report on the basis of the fact that he is acquainted with the handwriting and signature of the said Officer-in-Charge, Tekari Police Station. This First Information Report has been proved as Exhibit-2.

16. While considering the First Information Report, it needs to be noted that there is, admittedly, interpolation in writing the name of accused Biku Manjhi, who is the appellant in Cr. Appeal (DB) No. 476 of 1993, and this interpolation has great significance, because of the fact that word *Feku Manjhi*, who is an accused, has been corrected, in the First Information Report, and substituted by the word '*Biku Manjhi*', who, too, is an accused.

17. Because of the fact that Feku Manjhi and Biku Manjhi were both accused in the case and the First Information Report initially mentioned the name of *Feku Manjhi* as the person, who had hurled the bomb, but the said name was corrected to show the name of Biku Manjhi, it was incumbent, on the part of the prosecution, to examine the Investigating Officer so as to explain the act of correction of the name of accused-

appellant in the First Information Report and substitution thereof by the name of another accused. However, the interpolation, so made, has not been explained by the prosecution and no explanation is, in this regard, provided by the materials on record.

18. Constrained, therefore, we are to hold that as far as the First Information Report is concerned, one cannot confidently infer, far less hold, in the absence of any explanation (as indicated above), if it was really accused *Biku Manjhi*, who had hurled the bomb or it was accused *Feku Manjhi*, who had hurled the bomb.

19. Coupled with the above, what is impossible to ignore is that according to the evidence of PW 3 (Deoki Manjhi), father of Suggi Manjhi, Suggi was taken to police station and, at that point of time, Suggi was talking. It is baffling that though Suggi was talking, when she was taken to police station, her statement was not recorded and, therefore, the best evidence, which could have been obtained by the prosecution, has been allowed to die down.

20. With the help of the First Information Report, however, prosecution has sought to convey that injured Suggi was not taken to police station; rather, she died, while she was being taken to hospital.

21. Moreover, the First Information Report was recorded at Tekari hospital. On whose '*information*', the



police arrived at the hospital, has not been revealed to the Court. Further-more, in the light of the evidence of Shiv Narain Manjhi (PW 2), father of deceased Suggi Devi, that Suggi Devi was admitted to hospital, it clearly follows that some 'information' must have been given to the police, but what 'information' had been given to the police and in the 'information', so given, whether the names of the accused-appellants had or had not been mentioned remain still a mystery.

22. Situated thus, it becomes clear that the prosecution's case *ex facie* suffers from suppression of relevant materials, withholding of material witnesses and presenting before the Court mutually contradictory and destructive evidence.

23. Why we have reached such a conclusion, as indicated above, gets strengthened, when we proceed with the evidence on record, for, we notice that according to the First Information Report, the occurrence took place, when Kuleshwari Devi (PW 4) was sitting outside her house; whereas Kuleshwari Devi (PW 4) has deposed, in her evidence, that at the time, when the occurrence took place, she (PW 4) was sitting in front of the house of one Kabutri Devi, who has not been examined at the trial. Belying, however, the evidence of PW 4 so given, PW 1 (Lalti Devi) has deposed that the informant (PW 4) and others were sitting in front of the house

of Suggi Devi, i.e., the daughter of Deoki Manjhi (PW 3), when the occurrence took place.

24. Belying the evidence of both PW 4 and PW 1 — as regards the place of occurrence — PW 2 (Shivnarayan Manjhi), who is also claimed to be an injured, has deposed that he and others, including the informant, Kuleshwari Devi (PW 4), were sitting in front of the house of one Munshi Manjhi (not examined) and belying not only the evidence of PW 1 and PW 4, but even the evidence of PW 2, Deoki Manjhi (PW 3), father, of Suggi Devi, has deposed that his daughter, Suggi Devi, and others were sitting, at the time of occurrence, in front of the house of Tulsi Manjhi, who has also not been examined by the prosecution.

25. Because of what have been pointed out above, we find considerable force in the submissions made on behalf of the appellants that the prosecution has utterly failed to establish the very place, where the occurrence had allegedly taken place.

26. The infirmity with regard to the place of occurrence is not the only infirmity in the evidence adduced by the prosecution inasmuch as it would appear, as we would proceed further with the evidence on record, that the prosecution has even failed, and failed miserably, to prove a consistent sequence of the occurrence inasmuch as we notice that the First Information Report claims that Biku Manjhi and



Chanarik Manjhi came first, they hurled bombs and, thereafter, the remaining accused, armed with *lathis*, came and assaulted Shivnarayan Manjhi (PW 2). In fact, the First Information Report shows that more than one bomb was hurled by accused Biku Manjhi and accused Chanarik Manjhi, and, then, the remaining accused came, armed with *lathis*, and started assaulting all those, who were with Suggi Devi.

27. It may, thus, be pointed out, with regard to the sequence of the occurrence, that according to the First Information Report, Biku Manjhi and Chanarik were the ones, who had come and hurled bombs, and, thereafter, other accused, who came armed with *lathis*, assaulted Shivnarain Manjhi (P.W.2), whereas, P.W. 4, who is the informant, has deposed, at the trial, that while she was sitting in front of the house of Kabutri Devi, all the appellants came, armed with *lathi, bhala, garasa*, etc., and assaulted Shivnarain Manjhi (P.W.2) and it was thereafter that accused Biku Manjhi hurled bomb. Contrary to the fact that the First Information Report alleged that more than one bomb were hurled by accused Biku Manjhi and accused Chanarik Manjhi, accused Biku Manjhi is the lone person, who had, according to the evidence of PW 4, hurled bomb. This apart, while the First Information Report shows that Biku Manjhi and Chanarik Manjhi are the ones, who came first and started hurling bombs, the evidence of PW 4, at the trial, is that Chanarik Manjhi came armed with *garasa* and

others came with *lathis*. Curiously enough, PW 4, in a protest petition, filed in the court of the learned Chief Judicial Magistrate, had alleged that it was accused Dinanath Yadav, who had hurled bomb on Suggi Devi.

28. Turning to the evidence of Lalti Devi (PW 1), we notice that while, according to her evidence, there was, first, scuffle between the parties and, thereafter, accused Biku Manjhi went running, came back with bomb and hurled the bomb, PW 2 claims, in her evidence, that all the accused came together including Biku Manjhi, who had bombs with him. However, he has, later on, deposed that Biku Manjhi came, first, with *lathi*, assaulted him (PW 2) and, then, ran away and it was about half-an-hour thereafter that Biku Manjhi came once again and threw bomb on him. In his evidence, P.W. 2 has also added that on the day of occurrence at 4 P.M., Biku Manjhi had assaulted him (PW 2) and the bomb was exploded at 6.00 P.M.

29. As far as P.W.3 is concerned, his evidence is that he is the father of Suggi Devi, all the appellants came together armed with *lathi* and *bhala* (spear) and they assaulted PW 2 (Shivnarain Manjhi) and, as a result thereof, Shivnarain Manjhi fell down and, thereafter, when he tried to pacify, Biku Manjhi threatened to hurl bomb and, then, hurled bomb.

30. From a bare reading of the description of

the occurrence as given by the prosecution witnesses, it becomes more than transparent that they have given wholly inconsistent and mutually destructive evidence describing the occurrence.

31. Situated thus, one has no escape from the conclusion, and we do conclude, that the prosecution had failed to adduce evidence reflecting a consistent sequence of occurrence.

32. What crystallizes from the above discussion is that the prosecution did not only fail to convincingly prove the place of occurrence, but also failed, utterly and miserably, in establishing consistent sequence of occurrence. Consequently, one has to hold, and we do hold, that the evidence, adduced by the prosecution, is nothing, but an admixture of half-truth and untruth and the truth, if any, is so inextricably mixed with half-truth and untruth that it has become impossible to disengage the truth from the falsehood. When the truth has not been revealed to the Court, it would be too dangerous to uphold the conviction of the appellants for the offence, which they have been convicted of.

33. At any rate, therefore, in the light of the evidence on record and the law relevant thereto, the accused-appellants deserve to be accorded, at least, benefit of doubt.

34. In the result and for the forgoing reasons, we allow these two appeals. The impugned conviction

of the accused-appellants and the sentences passed against them by the judgment and order, under appeal, are hereby set aside. The accused-appellants are held not guilty of the offences, which they stand convicted of, and they are hereby acquitted of the same under benefit of doubt.

35. Since all the accused-appellants are on bail, their bail bonds are hereby cancelled and their sureties shall accordingly stand discharged.

36. Registry shall, forthwith, send a copy of this judgment and order to the learned trial Court along with the Lower Court Records.

(I. A. Ansari, J.)

(Vikash Jain, J.)

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