

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No. 645 of 2009

Arising Out of PS.Case No. – 24 Year- 2002 Thana -Giriyak District- NALANDA
(BIHARSHARIF)

Tanik Manjhi, Son of Brahamdeo Manjhi, Resident of Village- Katauna, P.S.
Giriyak (Katrisarai), District- Nalanda.

.... Appellant

Versus

The State of Bihar

.... Respondent

Appearance :

For the Appellant : Shri Ajay Kumar Thakur, Advocate.

For the State : Shri Dilip Kumar Sinha, A.P.P.

CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)

Date: 08-05-2015

The solitary appellant Tanik Manjhi was tried by the learned 3rd Additional Sessions Judge, Nalanda at Biharsharif in Sessions Trial No. 246 of 2003 for committing murders of four innocent small children on the 21st day of February, 2002 and by judgment dated 12th of June, 2009 was held guilty of committing offence under Section 302 of the Indian Penal Code. The learned judge heard the appellant on sentence on 17.06.2009 and directed the appellant to suffer rigorous imprisonment for life as also to pay a fine of Rs. 10,000/- else to suffer rigorous imprisonment for three years. The appellant challenges the judgment of conviction and

order of sentence passed upon him through the present appeal.

2. The prosecution case was contained in Ext.2 the fardbeyan of Sajo Devi who happened to be the mother of one of the deceased Srikant Manjhi aged about 16 years. She stated that the appellant had called the deceased Srikant Manjhi for brining Daalmot (pulse based snack) for rupee one. The appellant did not give money to the deceased Srikant Manjhi and rather asked him to bring him the snack when he would be paying up the money at his residence. Srikant Manjhi went to the house of the present appellant, when he was taken inside his house by the appellant and as appears from the fardbeyan of his mother Sajo Devi, the sister of Srikant Manjhi informed Sajo Devi about Srikant Manjhi being captivated inside the room or house by the appellant. Sajo Devi was labouring for a farmer and was engaged in thrashing of paddy. She rushed towards the house of the appellant to find that her son was crying and shouting inside the house which had also attracted many persons of Manjhi community, both male and female and they were imploring upon the present appellant to open the door who was stating that at no cost he will open the doors and when the father of the deceased Srikant Manjhi, namely, Ganour Manjhi with the help of other villagers opened the door, this appellant rushed out of his house with a Garasa in his hand and it was found that Srikant Manjhi



had been assaulted with a spade and, as such, he was lying unconscious in a pool of blood. Seeing the appellant in such a belligerent and hostile mood, persons of both sexes assembled there started running away from there. The appellant is said to have entered into the house of the informant to pick up Sobha Kumari the daughter of Sajo Devi and sister of Srikant Manjhi and he further picked up two little girls, namely, Lalita Kumari, aged three years who was the daughter of one Yugal Manjhi (P.W.5) and Mintu Kumari aged 12 years who was the daughter of Kushi Manjhi (P.W.3). The three girls were again taken by the appellant into his house and as may appear from the fardbeyan when the villagers again implored him to release them, he stated that they were destined to be dispatched to the other world. Lastly, the police came on which the appellant came out of the house and ran away when the villagers could find that the three little girls had also been murdered.

3. As appears from the fardbeyan itself Srikant Manjhi was rushed to the hospital by his father but he died on way to it.

4. It appears from the evidence of P.W.12 S.I. Achhelal Singh Yadav, the investigating officer of the case, that he had gone to Giriyak police station in connection with some official work where he learnt about the incident and he rushed to the village of occurrence, i.e., village Katauna where he recorded the statement



of Sajo Devi and then took the recorded statement again to Giriyak police station for institution of a case and on that basis First Information Report of the case (Ext.1) was drawn up. P.W. 12 again came back to the village of occurrence where he held inquest upon the dead body of Sobha Kumari, Mintu Kumari and Lalita Kumari besides holding inquest upon the dead body of Srikant Manjhi. He sent the dead bodies for post mortem examination. He also inspected the place of occurrence which was the house of the present appellant. It was the one room thatched house. He found blood stains at the place of occurrence besides finding a blood stained spade therein. He recorded the statements of witnesses and after completing the investigation sent up the appellant for his trial.

5. When the appeal was taken up for hearing for the first time on 20th of April, 2015, we found that in spite of there being murders of four little children, the court below had passed the sentence of rigorous imprisonment for life and we, as such, issued notice on enhancement of sentence to the appellant and we find that the notices were duly served upon him. By the said order dated 20.04.2015, considering the seriousness of the case we had requested Shri Ajay Kumar Thakur, advocate to assist us in hearing of the present appeal.

6. Shri Thakur took us through the evidence of the



witnesses and submitted that there is no eye witness of the real part of the occurrence, that is to say, as to how Srikant Manjhi, Sobha Kumari, Mintu Kumari and Lalita Kumar were killed because the incident had taken place behind the closed doors of the house. However, the witnesses had stated that they had seen either the injured Srikant Manjhi or the dead bodies of three little girls and this is the evidence upon which the culpability of the appellant has been established. By taking through the evidence of the witnesses, Shri Thakur attempted to impress upon us that none of them could be present at the scene of occurrence and it is out of their hypothesis or imagination that they were implicating the appellant in commission of the four murders. Shri Thakur was further contending that might be that there were four deaths, but this Court should not count the number of dead bodies rather consider the settled principle of law right from *Bachan Singh Vs. State of Punjab* reported in (1980) 2 SCC 684 to *Machhi Singh & Ors. Vs. State of Punjab* reported in (1983) 3 SCC 470 to *Ramnaresh & Ors. Vs. State of Chhattisgarh* reported in (2012) 4 SCC 257 and if the evidence was considered in the light of those decisions, this Court may come to a conclusion that in spite of killing of four children, it may not be falling in the rarest of the rare categories of cases. Submission was that no apparent reason appears from the evidence as to why the appellant would

have killed the four little children and this lack of motive further appears relevant for not awarding the death sentence.

7. The prosecution had examined 13 witnesses out of whom P.W.12 as noted above was the Investigating Officer of the case and Dr. Vimal Prasad Singh (P.W.13) had held post mortem examination on the four dead bodies. While Srikant Manjhi had been killed by being assaulted with some sharp cutting weapon, the three girls Sobha Kumari, Mintu Kumari and Lalita Kumari appears dashed against the earthen hard surface of the house so as to be hit in their respective heads as a result of which they died. Thus, what appears from the evidence of Dr. Bimal Prasad Singh (P.W.13) is that the death could not have occurred otherwise than being subjected to such an assault as could cause death and that could never be self inflicted because the bodies of the three girl children were seen in the very house of this appellant when he had emerged from there after opening the door. The inquest reports of course indicate that the inquest upon the dead bodies of Sobha Kumari, Mintu Kumari and Lalita Kumari, the three girl children, were held at the house of Manna Lal Manjhi the husband of the informant while Srikant Manjhi's dead body was found at place, namely, Mushahari Tola at village Katauna. At any rate, this could not be disputed that the four children were subjected to violence and were



killed. The evidence of witnesses, like, Ganaur Manjhi (P.W.2), Kushi Manjhi (P.W.3), Kabita Devi (P.W.4) the mother of deceased Lalita Kumari, Yugal Manjhi (P.W.5) the father of deceased Lalita Kumari, Uma Devi (P.W.6) the mother of deceased Mintu Kumari, Muneshari Devi (P.W.10) and Kamodhaba Devi (P.W.11) indicate that when Srikant Manjhi was taken captive in the house of the appellant by him, persons from different corners of the village who were daily wage earners and were labouring for different farmers converged at the place of occurrence to request the appellant to firstly, spare Srikant Manjhi. When the doors were opened by the appellant, seeing the belligerent and hostile mood of the appellant, they ran away from there giving an opportunity to the appellant to pick up the three girl children to take them into his house to close the doors and when the villagers requested the appellant again to open the doors, he first held out a threat that the children will be annihilated and at the same time stated that they had already been dispatched to the other world. Thus, what appears established from the evidence of the above noted witnesses is that even if they had not seen as to how the four children were assaulted by the appellant, they had stated that the appellant was the person who had taken the four children captive in his house, the three girl children in the second installment of the occurrence and when the doors were



opened while Srikant Manjhi was found bearing sharp cutting injuries, the little girl children were found bearing either the strangulation mark or marks of being dashed against the earthen hard surface of the house. There was none, as appears from the evidence, inside the house than the appellant. It was the appellant who was there and who refused to let them go rather had stated to the witnesses that the children were to be dispatched to the other world. Thus, on the basis of these lines of evidence, this court does not have any hesitation in raising an inference that it was this appellant who had caused those injuries to the four children which had ultimately proved sufficient in the ordinary course of nature to cause their individual death. An eye witness account could not have been available to the Court. In fact Shri Thakur was very fair in considering that the facts of the case could not permit of any eye witness coming to depose on the manner of killing the children. The culpability of the appellant could be inferred only on the basis of the evidence and the presumptions which could be drawn on them. We do not have any difficulty in holding that it was this appellant who had killed the four children.

Moreover, it is established to the hilt that the appellant had captivated Srikant Manjhi and after that had picked up the three girl children. They all were taken inside his house by him and they

were found killed by one manner or the other. There is none made than the appellant. And, the case appears one fully coursed by Section 106 of the Indian Evidence Act. The appellant does not appear offering any explanation as to how the four children happen to be inside his house with him and were killed by whom.

8. While taking us through the evidence of Kushi Manjhi (P.W.3), Shri Thakur attempted to convince us that he may not be an eye witness to the occurrence as the cross-examination part of his evidence in paragraph-2 makes it possible that he was not present there at the scene of occurrence. We have considered the contention of Shri Thakur with all seriousness and we find that the evidence of P.W.3 is on two parts. The first part of his evidence relates taking to the four children as captive by the appellant into his house and the other details, like, the appellant having come out of the house, either the injured Srikant Manjhi or the deceased three girl children were found lying there. This witness P.W.3 was also a witness to the search of the house of the appellant and seizure of the blood stained spade and while being cross-examined, the learned counsel who was conducting the defence of the appellant had not put any question to the witness on the main part of the occurrence regarding taking the four children at ransom and then killing them, rather four questions were put to him only on the search of the house

and recovery of the spade. This witness was not cross-examined on the main evidence of the witness regarding the manner in which the four children were killed. As such, we could not find ourselves in agreement with Shri Thakur that P.W.3 could not be an eye witness.

9. However, while being taken through the evidence of Kabita Devi (P.W.4), same argument was advanced so as to criticizing her evidence with yet another argument that the witness had not been questioned by the police or she had not even given any statement to the police. We may point out that the witnesses were daily wage earners and hailed from the poor stratum of the society. They were migratory persons also as appears recorded by the learned trial judge while answering the argument that the informant or her husband did not come to support the prosecution case which also related to the killing of their son. The trial judge has recorded that warrant of arrest and processes under Sections 82 and 83 were issued and the report of those processes indicated to the Court that the informant along with her family had migrated from that place to another place the address of which was not known. Such humble souls of the society, who live on daily wages and who move from one place to another, we all know, have little intelligence as to what happens in the court room and they are always unequal as regards a competent and artful advocate who puts questions to them in dock.



The line of evidence upon which Shri Thakur was submitting that the police had not recorded the statement of P.W.4 could be interpreted otherwise also and that we are more inclined to do. The witness probably was understanding the answer and, as such, she stated that she had not given her *Gawahi* before the police. If we take out this line from the evidence of P.W.4, there is no reason for us not to rely upon the evidence of P.W.4.

10. The other part of the evidence had no reason to be discarded or disbelieved. They appear honestly coming forward to the court to depose and they further appear to have given out whatever they had perceived from their senses while the incident of murder of four children was taking place. We did not find any reason as to why they could be implicating the appellant falsely in the case if he had not committed the murder of four children including his own nephew Srikant Manjhi. Thus, on consideration of the witnesses, we are convinced that the verdict of guilt which was recorded by the learned trial judge was appropriately passed and there is no need of interfering with that part of the judgment.

11. This brings us to consider the notice which we had served upon the appellant calling upon him to show cause as to why we should not set aside the sentence of rigorous imprisonment for life passed upon him and should direct him to be hanged by his neck

till he was dead. If not in *Bachan Singh (supra)* it was in *Machhi Singh (supra)* the criteria was pointed out by the Supreme Court upon which any trial court or the appellate court could consider the nature of offence as regards the same being one among the rarest of rare cases. There were many propositions set down in *Machhi Singh (supra)* which was only explaining the observations of the Supreme Court in *Bachan Singh (supra)* which had laid down that only in rarest of rare cases the extreme penalty could be inflicted. Thus, it was from *Machhi Singh (supra)* that about five criteria were laid down by the Supreme Court which run as under:-

(1) *When the murder is committed in an extremely brutal, grotesque, diabolical, revolting, or dastardly manner so as to arouse intense and extreme indignation of the community.*

(2) *When the murder is committed for a motive which evinces total depravity and meanness ; e.g. murder by hired assassin for money or reward ; or cold-blooded murder for gains of a person vis-a-vis whom the murderer is in a dominating position or in a position of trust ; or murder is committed in the course for betrayal of the motherland.*

(3) *When murder of a member of a Scheduled Caste or minority community etc., is committed not for personal reasons but in circumstances which arouse social wrath ; or in cases of 'bride burning' or 'dowry deaths' or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.*

(4) *When the crime is enormous in proportion. For instance when multiple murders, say of all or almost all the members of a family or a large number of persons of a particular caste, community, or locality, are committed.*

(5) *When the victim of murder is an innocent child, or a helpless woman or old or infirm person or a person vis-a-vis whom the murderer is in a dominating position, or a public figure generally loved and respected by the community.*

12. The same decision has been followed by the



Supreme Court in subsequent judgments, like, *Surendra Koli Vs. State of Uttar Pradesh & Ors.* reported in (2011) 4 SCC 80, *Haresh Mohandas Rajput Vs. State of Maharashtra* reported in (2011) 12 SCC 56, *Rajendra Pralhadrao Wasnik Vs. State of Maharashtra* reported in (2012) 4 SCC 37, *Amit Vs. State of Uttar Pradesh* reported in (2012) 4 SCC 107 and *Ramnaresh & Ors. Vs. State of Chhattisgarh* reported in (2012) 4 SCC 257 and in many other cases. It was truly argued by Shri Thakur that the judges have never to be blood thirsty nor they have to count the number of deaths so as to weighing the circumstances aggravating in nature so as to inflicting sentence. While proceeding to pass the sentencing order, a judge is required to create a balance sheet of aggravating circumstances and then that balance sheet had to be viewed against the other balance sheet of extenuating or mitigating circumstances. Mitigating circumstances could be coming from the circumstances of the life of an appellant or from the circumstance which was attending upon the commission of the offence, say for example, if a murder was committed in order to repel a trespass from his land by the accused, it may not be falling in the category of rarest of the rare cases. The mitigating circumstance could be circumstances such as the accused being married recently to a young girl or he had a child who was being nursed by his wife. May be that the appellant could have his



parents in quite advanced age of 75-80 years who could be ailing and inflicting the extreme penalty may ultimately tell upon their lives and well being. In these class of cases also the Court may not choose to inflict extreme penalty. This is the reason that the Supreme Court was putting a expansive interpretation to the word 'hear' appearing in Section 235(2) Cr.P.C. and pointed out that it will be patently appropriate for the court to take evidence while hearing on sentence on the circumstances in the life of a convict and then choose to consider those circumstances for inflicting appropriate sentence.

13. Here in the present case, the appellant was aged about 54 years of age and we do not have any evidence to point out as to whether he had a wife or any child. In fact the description of the place of occurrence or the evidence of witnesses do not point out that the appellant was married or he had any child. The other circumstance which was pointed out by Shri Thakur was that indeed we do not have any evidence to know as to for what reason the appellant was infuriated as extremely or to pick up one child after the other so as to annihilate him or her to death. But in spite of these extenuating circumstances what we find is that the three children who were either strangulated or dashed against the surface of the house could never have been killed by the appellant simultaneously.



Imagination the situation of killing four small children, we do find in a case revolting to our consciousness indicating the depravity of the mind of the appellant in picking up small children of three years or six years to be killed. The circumstance which appears from the manner of commission of offence in fact from the medical evidence does indicate that the appellant was a depraved person and he had chosen to kill the four children without any rhyme or reason. He could be a threat to the society as was contended by the learned Additional Public Prosecutor, but then, the circumstances which we have also counted like the absence of the motive, the real reason which we could not find for killing the four children. To our conscious, inspite of being the rarest of rare of cases, it might not be fit that we should direct the appellant to be hanged by his neck. In our opinion, the sentence of life imprisonment may also not be meeting the ends of justice but the death sentence at the same time appears to us a bit excessive. Balancing in between, we direct that the appellant should serve the sentence of rigorous imprisonment for life for his entire life. As regards the sentence of fine, we leave that sentence untouched and undisturbed.

14. With the above modification in the order of sentence, we dismiss the appeal in its entirety.

15. We are extremely thankful to Shri Ajay Kumar

Thakur, advocate for assisting us in this appeal. Shri Thakur has refused to accept any fee and we record our appreciation of that attitude of the counsel.

(Dharnidhar Jha, J.)

(Ahsanuddin Amanullah, J.)

Anand Kr./Sanjay/ N.A.F.R.

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