

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.391 of 2013

(Against the Judgment of conviction dated 22.01.2013 and Order of sentence dated 30.01.2013 passed by the Adhoc Additional Sessions Judge-III, Gaya, in Sessions Trial No.109 of 2010/52 of 2009(S.J.).

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Kail Manjhi, son of Baudh Manjhi, resident of village- Arjun Bigha, P.S.- Magadh University, District- Gaya.

.... Appellant.

Versus

The State of Bihar

.... Respondent.

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Appearance :

For the Appellant : Mr. Shailesh Kumar, Advocate.

For the State : Mr. A.K. Sinha, A.P.P.

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 06-05-2016

The sole Appellant has been convicted under Section 302 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life and fine of Rs.1000/- vide Judgment of conviction dated 22.01.2013 and Order of sentence dated 30.01.2013 passed by the Adhoc Additional Sessions Judge-III, Gaya, in Sessions Trial No.109 of 2010/52 of 2009(S.J.).

2. The case of the prosecution, according to the Informant Surati Devi (P.W.1), is that on the previous day, while she was sitting alongwith her mother-in-law Bhagiya Devi, Appellant Kail Manjhi



and co-accused Munarik Manjhi with 'Lathis' came at her door and started to abuse them and asked them to leave or else they would be killed. At this, she and her mother-in-law protested saying as to what wrong they had done. As soon as her mother-in-law said this, Appellant Kail Manjhi assaulted her mother-in-law on her head with 'Lathi' whereas co-accused Munarik Manjhi assaulted her with 'Lathi'. She herself was also assaulted when she tried to intervene. On 'Hulla' several persons such as Kuldeep Yadav(P.W.2), Lakshman Manjhi, Chandradeo Yadav(P.W.4), Tetar Manjhi(P.W.7) and Lakhan Manjhi (P.W.3) came. The cause of occurrence was that there was some dispute going on over witch craft practices. She explained that she could not reach earlier at the Police Station because of unavoidable reasons.

3. During trial, the prosecution examined altogether seven witnesses.

4. P.W.1 Surati Devi, the Informant, stated that the deceased Bhagiya Devi was her mother-in-law, who had been murdered while they were sitting at the door and she further narrated that when they were sitting at the door, the Appellant alongwith Munarik Manjhi came and started to abuse them and asked them to leave to which the deceased protested. The Appellant being enraged assaulted her with 'Lathi' on her head and she herself was assaulted

on the head. She did not take the deceased to the hospital because it was night time and she herself administered medicines. In the morning at about 06.00 A.M. when the deceased was being taken to the hospital, she expired on the way. She asserted that she had also been assaulted.

In cross examination, it was suggested to her that, in fact, the Appellant had not assaulted and the manner of occurrence was something else.

5. P.W.2 Kuldeep Yadav stated that about eight years ago at about 07.00 P.M., the deceased Bhagiya Devi was sitting at her door and he saw the Informant and the deceased fighting with the Appellant Kail Manjhi in course of which, he assaulted the deceased on her head due to which she fell down. The next morning, while she was being removed to the hospital, she died.

In cross examination, it was suggested to him that, in fact, the deceased had died on account of some other incidents.

6. P.W.3 Lakhan Manjhi gave a similar statement as P.W.2 but he elaborated that the accused persons were asking the Informant and the deceased to vacate the house.

In cross examination, he explained that the deceased was his sister-in-law by village relationship and also that when he reached the place of occurrence he had seen the deceased lying on the ground.

However, no effort was made to give her treatment at night and it was only in the next morning at 07.00 A.M. she was sought to be taken to the hospital. It was suggested to him also that the manner of occurrence was quite another.

7. P.W.4 Chandradeo Yadav is not an eye witness to the occurrence and he reached the place of occurrence and seen the deceased lying injured on the ground. He heard about the occurrence from the Informant. He explained that he used to live 1/2 kilometer away from the place of occurrence.

In cross examination, he stated that he had not met the police nor he had been examined by it.

8. P.W.6 Bira Manjhi also stated that he was not in the village on the date of occurrence and when he reached home, he was informed by his wife, the Informant, that while she and his mother were sitting at the door, the two accused persons came and started to abuse and the Appellant Kail Manjhi assaulted his mother on her head with 'Lathi' on account of which she died the next day.

In cross examination, he once again asserted that he was not present at the place of occurrence.

9. P.W.7 Tetar Manjhi is a formal witness on the point of preparation of the Inquest Report, however, he does not prove the same.

10. P.W.5 is Dr. Arvind Prasad, who conducted the Post-Mortem Examination of the dead body of the deceased and found the following injuries on her person.

- (i). Stitched wound 1" X 1/4" X bone deep at left parietal region of scalp with clean cut margin, hairs shaven around the wound in 3" diameter area.

Haematoma under the scalp at wound was present.

- (ii). Depressed fracture 1/4" diameter present over left parietal bone with linear fracture of 1" extending backwards. Intra cerebral haemorrhage present.

- (iii). Abrasion 1 1/4 X 1/8" at three places over right knee present.

Time since death-within 24 hours.

Cause of death-shock and haemorrhage by the injury to head.

All the injuries were produced by hard and blunt substance except injury no.(i).

He proved the Post-Mortem Examination Report as Ext.1.

There is nothing which is of note in his cross examination.

11. We, thus, find that the consistent evidence of the eye witnesses is that while they were sitting at the door, the two accused persons came and in the midst of altercation assaulted the deceased

on her head. There is no allegation of repetition of blow, which is also evident from the evidence of the Doctor (P.W.5).

12. Under the facts and circumstances of the case, we would of the opinion that, at best, a case under Section 304 Part-I of the Indian Penal Code is made out against the Appellant and, therefore, the conviction of the Appellant is converted from one under Section 302 of the Indian Penal Code into one under Section 304 Part-I of the Indian Penal Code and his sentence is reduced to the period already undergone by him.

13. With the aforesaid modification in the Judgment of conviction and Order of sentence passed against the Appellant, this Appeal is dismissed.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

Pradeep Srivastava.

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