

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.200 of 1995

**Against the judgment and order dated 15.06.1995 passed by Sri M.M. Alam,
1st Addl. Sessions Judge, Jehanabad in Sessions Trial No. 11/93 /88/93,
District- JEHANABAD.**

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1. Nanhku Manjhi, Son of Badri Manjhi,
 2. Jawahar Manjhi, son of Bodh Manjhi,
 3. Prit Manjhi @ Ram Prit Manjhi,
 4. Tassu Manjhi, (Sl. No. 3 & 4, both sons of Badri Manjhi)
 5. Badri Manjhi, son of Deocharan Manjhi,

All resident of Village Kalopur, P.S. Parasbigha, District Jehanabad.

.... Appellants

Versus

The State of Bihar

.... Respondent/s

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Appearance:

For the Appellant/s : Mr. Ajay Kumar Thakur,
Mr. Ritwaj Raman and
Ms. Swati Sinha, Advocates.

For the Respondent/s : Mr. S.B. Verma, A.P.P.

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**CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 03-04-2018

This Criminal Appeal has been preferred for setting aside
the judgment dated 15.06.1995 passed by the learned 1st Additional
Sessions Judge, Jehanabad in Sessions Trial No. 11/93 (S.J.) / 88/93
(A.D.J. I) (hereinafter referred to as 'the trial court') by which the
learned trial court has held Nanhku Manjhi (appellant no. 1) guilty



U/S 302 IPC whereas Jawahar Manjhi, Tasu Manjhi and Badri Manjhi have been convicted U/S 302/149 IPC but they have been acquitted U/S 307 IPC. All the convicts have been sentenced to undergo rigorous imprisonment for life.

2. It appears from I.A. No. 2676 of 2017 that during pendency of the present appeal, except Jawahar Manjhi (appellant no. 2), all other appellants died long back. Photocopy of the certificate issued in this regard by one Ram Vinay Kumar, Mukhiya of the Gram Panchayat Gonwa, District Jehanabad has been brought on record. In this view of the matter, the present appeal insofar as it relates to Nanhku Manjhi (appellant no. 1), Prit Manjhi @ Ram Prit Manjhi (appellant no. 3), Tasu Manjhi (appellant no. 4) and Badri Manjhi (appellant no. 4) stands abated.

3. The prosecution case as culled out from the records received from the trial court is stated as under:

One Tekan Manjhi (PW8) made a statement (*Fard-e-beyan*) (Ext.2) giving rise to a formal F.I.R. being Jehanabad P.S. Case No. 0136/90 dated 17.05.1990 (Ext.1). In the *Fard-e-beyan* the informant alleged that in the past night on Monday there was an altercation in between Mushhars of Village Sesamba and the son of the informant namely Ram Pravesh Manjhi near Sesamba High School. It is alleged that Ram Pravesh Manjhi had given a stick blow



to one of the Mushhars of Village Sesamba, due to this the co-villagers Nanhku Manjhi, Jawahar Manjhi and their family members, boasting themselves to be the Heroes of the village, showed their annoyance. On 16.05.1990 it is alleged that at about 6:00 P.M. when the cousin of the informant, namely, Ganauri Manjhi along with the informant's own brother Babu Chand Manjhi had gone to the village in connection with some work they had some quarrel with the accused persons near the well of Dudhesar Mahto on the issues of altercation which had taken place with the Mushhars of Sesamba. After the said incident, according to the informant, said Ganauri Manjhi and Babu Chand Manjhi returned back to their house and had started to discuss the matter with the neighbours Baisarti Manjhi and Ramjanam Manjhi sitting in the AANGAN of the informant.

It is alleged that in the meantime, at about 7:00 P.M., accused Nanhku Manjhi with Bhala, Jawahar Manjhi with Gadansa, Prit Manjhi, Tasu Manjhi and Badri Manjhi with lathi suddenly came there. Nanhku Manjhi allegedly gave a Bhala blow in the stomach of Ganauri Manjhi and Jawahar Manjhi gave a Gadansa blow on the head of Babu Chand Manjhi, both the injured fell down whereupon Prit Manjhi, Tasu Manjhi and Badri Manjhi assaulted them with lathi. Allegedly, they also threatened and chased the informant and his brother, who could save their life running away from the said place. It



is stated that after some time when the informant returned back, he found Ganauri Manjhi and Babu Chand Manjhi in a pool of blood. The informant claimed that both the injured disclosed him that the accused persons had assaulted them. The injured were taken to Sakurabad Hospital where Ganauri Manjhi was declared dead. Thereafter, the deceased Ganauri Manjhi was brought to Parasbigha where *Fard-e-beyan* of the informant was recorded by A.S.I. Rijwan Alam of the said Police Station. After recording the *Fard-e-beyan*, the said A.S.I. forwarded the same to the Officer-in-charge of Jehanabad Police Station for registering the case whereupon the present case was instituted.

4. After investigation, the A.S.I. Rijwan Alam, who was the Investigating Officer, submitted a charge sheet against all the accused persons U/S 147, 148, 149, 448, 307, 302, 323 & 324 IPC. The learned A.C.J.M., Jehanabad took cognizance of the offence on 08.10.1990, later on, the record was transferred to the court of the learned Judicial Magistrate 1st Class, Jehanabad for commitment, who committed the case to the Court of Sessions and, accordingly, the record was transferred to the court of 2nd Additional Sessions Judge, Jehanabad where charges were framed U/S 302, 302/149 and 307 IPC against all the accused persons. The accused persons denied the charge and claimed to be tried.



5. The learned trial court, upon perusal of the evidences of the prosecution witnesses, particularly the evidence of PW8 Tekan Manjhi, who is the informant of the case, together with the medical evidence of PW10 Dr. Atri Sharma, who had conducted the post-mortem of the dead body of the deceased Ganauri Manjhi, came to a conclusion that the allegations were fully corroborated by the post-mortem report. On the manner of occurrence, the learned trial court believed the statements of PW 6, 7 & 8 and held that the manner of occurrence is also proved from the evidence of these witnesses. The learned trial court held that the accused persons, after forming an unlawful assembly, had gone to the AANGAN of the informant with a common object of committing murder of the deceased Ganauri Manjhi and with this object the accused Nanhku Manjhi (since deceased) gave a Bhala blow in his stomach and the rest accused persons (except accused Jawahar Manjhi) assaulted him with lathi and, therefore, the charge U/S 302 IPC against the accused Nanhku Manjhi and charges U/S 302/149 IPC against rests stand well proved. The learned trial court, however, disbelieved the charge U/S 307 IPC against accused Jawahar Manjhi, Badri Manjhi, Tasu Manjhi and Prit Manjhi.

6. The learned trial court held that PW 6, 7 & 8 have deposed that the accused Jawahar Manjhi gave a Gadansa blow to



PW6 Babu Chand Manjhi but there is no evidence on record that the said injury found on the person of PW6 Babu Chand Manjhi was dangerous to life. The learned trial court found that the doctor who had examined the injury on the person of the injured Babu Chand Manjhi was not examined although his injury report was formally proved by PW11 which was marked as Ext.4 and, therefore, on these grounds the learned trial court held that the prosecution had failed to prove the charge U/S 307 IPC against the above named accused persons.

7. Learned counsel representing the appellant no. 2 Jawahar Manjhi has assailed the judgment of the learned trial court on the grounds, inter alia, that in the present case, the place of occurrence as well as the manner of occurrence is highly doubtful. There is no recovery of blood-soaked soil from the courtyard of the house (AANGAN) of the informant where, according to him, the occurrence took place. It is also submitted that where the place of occurrence is highly doubtful, examination of the Investigating Officer was necessary but the prosecution has failed to examine the Investigating Officer in this case and non-examination of the Investigating Officer would prove fatal to the case of the prosecution because it has prejudiced the case of the defence.

8. Learned counsel further submits that from the evidences



available on the record the learned trial court itself has recorded that after the deceased Ganauri Manjhi fell down, he was given a Bhala blow in his stomach by accused Nanhku Manjhi, the rest accused persons, except appellant no. 2 Jawahar Manjhi, assaulted him with lathi. Thus, learned counsel submits that there is a specific finding that this appellant Jawahar Manjhi had not assaulted the deceased Ganauri Manjhi and there is no evidence at all on the point that the appellant Jawahar Manjhi had been a party to the unlawful assembly with a common object to kill Ganauri Manjhi. Learned counsel further submits that the charge U/S 307 IPC against accused Jawahar Manjhi has not been proved and, therefore, in the facts and circumstances of the present case there is no evidence against the appellant Jawahar Manjhi to sustain his conviction U/S 302/149 IPC.

9. On the other hand, learned A.P.P. representing the State submits that this appellant no. 2 Jawahar Manjhi was a member of the unlawful assembly and had gone to the courtyard of the house of the informant with other accused with a common object to kill the deceased Ganauri Manjhi. Learned A.P.P. submits that there are eye witnesses to the occurrence and the witnesses have supported the place of occurrence being the courtyard of the house of the informant.

10. Having heard learned counsel for the appellant no. 2 Jawahar Manjhi and learned A.P.P. for the State, we find that there is



a serious dispute with respect to the place of occurrence. The informant and his family members, such as, PW7 Daulati Devi has stated that the place of occurrence is the courtyard of the house of the informant but there are other witnesses, such as, Sitaram Manjhi (PW1), Baishakhi Manjhi (PW2) and Ramjanam Manjhi (PW3), who have given different version about the place of occurrence, according to them the place of occurrence is the well which is near the house of Dudhesar Manjhi.

11. Apart from the fact that the place of occurrence is disputed, we also find that the Investigating Officer in this case has not been examined, therefore, the dispute, if any, which was there with respect to the place of occurrence the same has not been resolved with the aid of evidence of independent witnesses. Moreover, we find that the appellant Jawahar Manjhi has already been acquitted from the charge U/S 307 IPC by the learned trial court. There is no allegation of assault on the deceased Ganauri Manjhi by the appellant Jawahar Manjhi as has been held by learned trial court itself and there is no evidence that the appellant Jawahar had gone there with common object to kill Ganauri particularly when he has not assaulted Ganauri, therefore, we are unable to sustain the conviction of the appellant Jawahar Manjhi U/S 302/149 IPC. The judgment of learned trial court, insofar as the appellant Jawahar Manjhi is concerned, is set



aside and he is acquitted from the charge and is hereby discharged from his liability of bail bonds.

12. The appeal is allowed accordingly.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Dilip, AR

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