

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.434 of 2021

Arising Out of PS. Case No.-200 Year-2019 Thana- MAKHDUMPUR District- Jehanabad

Madheshwar Manjhi, Son of Late Jagmohan Manjhi, Resident of Village-
Mane Bigha, Police Station- Makhdumpur, District- Jehanabad.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 321 of 2021

Arising Out of PS. Case No.-200 Year-2019 Thana- MAKHDUMPUR District- Jehanabad

Sanjay Manjhi, Son of Late Ram Swarup Manjhi, Resident of Village - Bhane
Bigha, P.S.- Makhdumpur, District - Jehanabad.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 421 of 2021

Arising Out of PS. Case No.-200 Year-2019 Thana- MAKHDUMPUR District- Jehanabad

Anil Mistry, Son of Late Hari Mistry, R/O Village- Bhane Bigaha, P.S.-
Madkhdumpur, District- Jehanabad.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 431 of 2021

Arising Out of PS. Case No.-200 Year-2019 Thana- MAKHDUMPUR District- Jehanabad

Madan Manjhi, Son of Ramashish Manjhi, Resident of Village - Mane Bigha,
P.S.- Makhdumpur, Distt.- Jehanabad.

... .. Appellant/s

Versus

The State of Bihar



... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 434 of 2021)

For the Appellant/s : Mr. Pramod Kumar, Advocate

For the Respondent/s : Mr. Abhimanyu Sharma, APP

(In CRIMINAL APPEAL (DB) No. 321 of 2021)

For the Appellant/s : Mr. Binod Kumar, Advocate

For the Respondent/s : Mr. Dilip Kumar Sinha, APP

(In CRIMINAL APPEAL (DB) No. 421 of 2021)

For the Appellant/s : Mr. Santosh Kumar, Advocate

For the Respondent/s : Mr. Abhimanyu Sharma, APP

(In CRIMINAL APPEAL (DB) No. 431 of 2021)

For the Appellant/s : Mr. Shashank Shekhar Jha, Advocate

Mr. Hitesh Suman, Advocate

For the Respondent/s : Mr. Dilip Kumar Sinha, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 18-10-2024

All the four appeals have been taken up together and are being disposed off by this common judgment.

2. We have heard Mr. Pramod Kumar, Mr. Binod Kumar, Mr. Santosh Kumar and Mr. Shashank Shekhar Jha, the learned Advocates for the four appellants respectively. The State is represented by Mr. Abhimanyu Sharma and Mr. Dilip Kumar Sinha, the learned Additional Public Prosecutors.

3. The appellants have been convicted under



Sections 147/149, 148/149, 341/149, 323/149, 307/149 and 302/149 of the Indian Penal Code *vide* judgment dated 19.03.2021 passed by the learned Fast Track Court No. 1, Jehanabad in Sessions Trial No. 392 of 2019/ 45 of 2020. By order dated 22.03.2021, they have been sentenced to undergo RI for one year under Section 147 IPC; RI for two years under Section 148 IPC; RI for one year under Section 323/149 IPC; SI for one month under Section 341/149 IPC; RI for five years, to pay a fine of Rs. 5,000/- and in default of payment of fine to further suffer RI for three months under Section 307/149 IPC and RI for life, to pay a fine of Rs. 5,000/- and in default of payment of fine to further suffer RI for three months under Section 302/149 IPC.

4. The sentences have been ordered to run concurrently.

5. One Pramod Vishwakarma is alleged to have been killed at the hands of the appellants. Though in the



FIR lodged by Prem Prakash Kumar, son of the deceased (PW-4), many other persons also have been named as participants in the crime, but it appears that investigation against others are still pending.

6. PW-4 had lodged the written report on 05.05.2019 alleging that sometimes prior to the occurrence, appellant/ Madheshwar Manjhi, Jagmohan Manjhi, Ranjeet Manjhi and appellant/ Sanjay Manjhi were assaulting a motorcyclist in front of his shop. PW-4 and his father intervened. The appellants and others got infuriated because of such intervention for an outsider. The enmity festered in their minds. Because of such act of PW-4 and his father, appellant/ Madheshwar Manjhi, Ranjeet Manjhi and appellant/ Sanjay Manjhi started abusing the family members of PW-4 on 04.05.2019 at about 8:00 PM. The deceased was not present at the house at that time as he had gone out for campaigning for a political party in the elections. In the meantime, it was alleged, Ranjeet Manjhi and Uma Mistry crossed



over the boundary of the house of PW-4 and made some overtures towards outraging the modesty of a female family member, viz., Nagmani (not examined). When Nagmani shouted for help, the family members of PW-4 arrived and protested. In the meantime, Ranjeet Manjhi and Uma Mistry called their other associates. It was at that point of time that appellants/ Madheshwar Manjhi, Sanjay Manjhi, Madan Manjhi along with several others came to the house of PW-4. All of them were variously armed with *lathi* and iron-rod. As the fight escalated, appellant/ Anil Mistry caught the deceased and thereafter appellant/ Madheshwar Manjhi gave an iron rod blow on his head as a result of which the deceased got severely injured and fell down on the ground. Thereafter, it has been alleged that the accused persons including the appellants went on a rampage and assaulted the other members of the family, injuring seven of them. Out of those seven injured persons, three have been examined as PWs. 1, 2 and 6 at the



trial. In the meantime, it has been alleged that the villagers arrived and seeing them, the accused persons took to their heels. The deceased and the injured persons were taken to the referral hospital, Makhdumpur where the deceased was declared dead whereas the other injured persons were afforded treatment. It was also stated in the written report that a land dispute existed between Anil Mistry and the deceased.

7. On the basis of the aforementioned written report, a case *vide* Makhdumpur P.S. Case No. 200 of 2019 dated 05.05.2019 was registered for investigation under Sections 147, 148, 149, 452, 341, 342, 354, 323, 324, 325, 326, 307, 302 and 120-B of the IPC.

8. The police after investigation submitted charge-sheet against the appellants, whereafter the appellants were tried.

9. The Trial Court, after having examined seven witnesses on behalf of the prosecution and none on behalf of the defence, convicted and sentenced the



appellants as aforesaid.

10. The learned Advocates for the appellants have argued that the Trial Court has failed to appreciate the evidence in correct perspective and threw to the winds all the accepted canons of appreciating evidence. It has also been argued that the Trial Court did not take into account the fact that the postmortem report of the deceased is not at all in sync with the ocular testimony, suggesting that the manner of occurrence, as reported by PW-4 and other witnesses, was not the correct version of the occurrence. Some fight might have taken place because of some dispute, perhaps a civil dispute, and since one of the victims died and some were injured albeit only superficially, an attempt was made to rope in all the members of the family of the appellants. Lastly, it has been argued that from the narration of events by PW-4 and other witnesses, it cannot be said that there was a common object of all the appellants and others to assault and kill the deceased. Taking into account the



fact that seven persons were injured in the occurrence, it has been argued that there was a scuffle in which without any intention on the part of anyone of the appellants, Pramod Vishwakarma received an iron-rod blow leading to his death.

11. Apart from this, the learned Advocates have also argued that no independent person has been examined at the trial and the Investigator has completely forsaken his responsibility and did not even investigate the aspect of enmity arising of a land dispute and the earlier occurrence which perhaps was the reason for the accused persons to harbour some kind of enmity or ill-will against the deceased and his family. The prosecution, according to them, has not been able to prove the case beyond all reasonable doubts, especially with respect to the intention of the appellants in killing the deceased.

12. That apart, if PW-4 is to be believed, it has been argued that merely because the deceased and PW-



4 interfered and prevented any clash between the accused persons and a motorcyclist, this occurrence had taken place. In all its probability, this could not have been a ground for avenging such enmity by making a group and coming to the house of the deceased. In fact, the deceased was not even present in the house when some of the accused persons were abusing the family members. It was only later that the deceased arrived from outside and he was assaulted leading to his death.

13. As opposed to the aforementioned contentions, Mr. Abhimanyu Sharma and Mr. Dilip Kumar Singh, the learned APPs have argued that *prima facie* there are no mitigating features of this case suggesting any other manner of occurrence than what has been projected by the prosecution. There is nothing on record to indicate that there was any free fight and the accused persons also had received any injury. In fact, there was no protest at all and after the fight, seven persons including females were left injured apart from the deceased who



had received several injuries including an injury which is directly attributable to appellant/ Madheshwar Manjhi. Under such circumstances, the appellants are not entitled to question that the prosecution has not been able to prove its case beyond all reasonable doubts. The mere fact that the deceased died of the head injury and seven persons were injured in the occurrence, clearly suggests that the accused persons, for whatever reason, perpetrated the assault.

14. After having analysed the evidence in detail, we have noticed that there was a minor incident in front of the shop of PW-4 about 5 to 6 days prior to the main occurrence in the night of 04.05.2019. Even with respect to the earlier occurrence, viz., an attempt to save a motorcyclist from being assaulted by the accused persons, a scuffle had ensued and for which a case had been lodged by the deceased against the appellants. According to PW-4, for that reason alone, some of the accused persons including some of the appellants, after a



gap of about 5 to 6 days, came to the house of the deceased and started abusing the family members. This was protested by PW-4 and others.

15. An attempt also appears to have been made to outrage the modesty of Nagmani. There is no reason whatsoever for Nagmani not to have been examined at the trial when other family members were brought to the witness-stand.

16. This story, *viz.*, of an attempt to misbehave with Nagmani could not be proved and, therefore, does not appear to be correct. Thereafter, as narrated by all the witnesses, *viz.*, Babita Devi (sister-in-law of the deceased, PW-1); Poonam Devi (wife of the deceased, PW-2); Shankar Mistry (brother of the deceased, PW-6), the family members of the deceased were assaulted. In the meantime, appellant/ Anil Mistry took the deceased in his arm-lock and appellant/ Madheshwar gave an iron rod blow.

17. The manner in which the occurrence is said



to have been committed and about which narration has been made by the witnesses, the case appears to be doubtful. We say so for the reason that when Dr. Uday Shankar (PW-3) conducted the postmortem examination on the deceased on 05.05.2019, he found one sharp wound on the face just below the left eye; a sharp wound over upper and lower lips, a lacerated wound over right side of the occipital area of the scalp and a black abrasion over left side of the chest as also on the left side of the leg. The index finger of the right hand of the deceased was found to be dislocated. This report suggests that the deceased was assaulted not only by a hard and blunt substance but by a sharp cutting weapon as well.

18. In this context, Mr. Abhimanyu Sharma and Mr. Dilip Kumar Sinha have suggested that an assault by iron rod, in all likelihood, can cause sharp cut wounds. They have also suggested that though the fatal assault was made by appellant/ Madheshwar but before that,



the accused persons were indiscriminately assaulting all the members of the family, especially those who came to the rescue of the deceased and others.

19. Under such circumstances, it has been suggested on behalf of the prosecution that merely because the deceased had suffered more than one injury, the case cannot be doubted at the threshold.

20. We have also found that the report by PW-3 was not complete, inasmuch as there is no reference of those injuries being postmortem or antemortem. The time of the deceased having received such injuries also could not be specified by PW-3. However, what remains intact as a piece of evidence is that the deceased was assaulted by many persons but the fatal assault was on the occipital region and which assault is attributed to appellant/ Madheshwar.

21. The Investigator (PW-7) conducted the inquest examination on 05.05.2019 at about 2:15 PM. The inquest was performed in the hospital. At that time



the deceased was lying on the hospital bed. This also has sent us thinking as to whether the narration made by PW-4 in his written report and his deposition before the Trial Court, conforms to the actual happening. According to PW-4, the deceased was declared dead on his being brought to the referral hospital. In that case, there was no reason for the dead body to be found lying on the hospital bed in the ward. Nonetheless, nothing else could be presumed over this fact alone as admittedly the deceased was brought to the hospital along with the other injured persons who received treatment at the same hospital. It is quite possible that if a person in an injured condition is brought to the hospital, the injuries are addressed to in the ward only. However, the deceased in this case, was declared brought dead and thereafter, the inquest proceeding was conducted.

22. We have found that the written report was registered by one Nikhil Kumar, Officer in-charge of the concerned police station, who too has not been



examined.

23. When the Investigator (PW-7) visited the place of occurrence, he had found blood spots and broken pieces of brick bats, clearly suggesting a scuffle at that place. Though he recorded the statements of the witnesses but no independent person or an unconnected person of the neighborhood was brought to the witness-stand.

24. However, all the aforementioned witnesses, viz., PW-1, PW-2 and PW-6 have admitted of a land dispute between the deceased and appellant/ Anil Mistry.

25. Could it be a case of the civil dispute having taken an ugly turn?

26. For the reason of the Investigator completely ignoring this aspect of the matter while investigating the case, we get no clue about it. Nonetheless, the law is well settled that motive may not form the most essential part of the prosecution case as



only the person who harbours a motive knows the purpose of his action. What can but safely and conclusiveness he inferred is that all the appellants had participated in the assault. They were accompanied by others also whose cases are still pending investigation.

27. However, whether there was any common object for the aforementioned rampage and assault is questionable and under doubt. Not all the appellants had arrived at the house of the deceased together. Madheshwar and his company were called by the other associates/accused persons. Had there been any common object, all of them would have proceeded simultaneously. The parties appear to be co-villagers and some of them are agnates as well. Anil Mistry stands in the relation of an uncle to PW-4.

28. These aspects clearly reveal that there was no clear intention to kill or injure anyone of the victims to the extent that those injuries would cause his or their death. It is quite fortuitous that the assault by



Madheshwar proved fatal. However, Madheshwar would be responsible for the attack on the head of the deceased as he would have known that such attack would lead to his death.

29. Any act done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, the mischief of Section 313 gets triggered. However, such is not the case with respect to rest of the appellants.

30. Considering this aspect of the matter and there being doubt about the real intention and the cause of the occurrence, we find that the conviction of appellants/ Sanjay Manjhi, Anil Mistry and Madan Manjhi for the offences under Section 302 with the aid of Section 149 to be unmerited and untenable.

31. Their conviction under Sections 302/149 is set aside.



32. No interference, however, is made with their conviction under Sections 147, 148, 323, 341 and 307 of the IPC.

33. Thus, the conviction of appellants/ Sanjay Manjhi [Cr. App. (DB) No. 321 of 2021], Anil Mistry [Cr. App. (DB) No. 421 of 2021] and Madan Manjhi [Cr. App. (DB) No. 431 of 2021] is altered to one only under Sections 147, 148, 323, 341 and 307 of the IPC.

34. The sentences under all the counts for the appellants/ Sanjay Manjhi [Cr. App. (DB) No. 321 of 2021], Anil Mistry [Cr. App. (DB) No. 421 of 2021] and Madan Manjhi [Cr. App. (DB) No. 431 of 2021] would be for the period which they have already undergone in custody as that, in the estimation of the Court, would be sufficient to meet the ends of justice.

35. Appellants/ Sanjay Manjhi and Anil Mistry are on bail. They are discharged of their liabilities of the bail bonds.



36. Appellant/ Madan Manjhi is in jail. He is directed to be released forthwith, if not required or detained in any other case.

37. As discussed above, we see no reason for interfering with the conviction and sentence of appellant/ Madheshwar Manjhi.

38. Appellant/ Madheshwar Manjhi shall serve out his sentence of life imprisonment.

39. Cr. App. (DB) No. 434 of 2021 is dismissed.

40. Cr. App. (DB) Nos. 321 of 2021, 421 of 2021 and 431 of 2021 are partially allowed with alteration in the conviction and sentence.

41. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail forthwith for compliance and record.

42. The records of this case shall also be transmitted to the Trial Court forthwith.



43. Interlocutory application/s, if any, also stand disposed off accordingly.

(Ashutosh Kumar, J)

(Rajesh Kumar Verma, J)

Rajesh/Vanisha

AFR/NAFR	NAFR
CAV DATE	NA
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