

SUPREME COURT OF INDIA

Fagu Manjhi

Vs.

State of Bihar

(K.T. Thomas and R.P. Sethi JJ.)

14.11.2000

ORDER

1. Ten persons were convicted for murdering one Begru Manjhi under Section 302 read with Section 149 of the Indian Penal Code and all were sentenced to imprisonment for life. All of them filed an appeal before the High Court and while the appeal was pending Jailal Manjhi died. So, the appeal was heard in respect of the remaining nine convicted persons. A Division Bench of the High Court confirmed the conviction and sentence of all those nine persons. Some days after the High Court's judgment was pronounced one more convicted person died and his name is Rupilal Manjhi. Out of the remaining 8 persons three did not file any appeal along with the present appellants. Those three are A2-Santu Manjhi, A3-Gaya Manjhi and A4-Sukdeo Manjhi. Later when Santu Manjhi-A2 came to know of the filing of the present appeal he sent a petition for leave for special leave separately, but that was dismissed by this Court on 24.04.2000 (vide S.L.P. (Crl.) No. 1225/2000). Thus the position is that those three persons have now to undergo imprisonment for life in respect of the offence under Section 302 read with Section 149 I.P.C.

2. We are now only concerned with the remaining five who are the appellants herein. We heard Mr. Shekhar Prit Jha, learned Counsel for the appellants and Mr. B.B. Singh, learned standing Counsel for the State of Bihar.

3. According to the prosecution, on 31.7.1987 when deceased-Begru Manjhi went to his field along with his brother Bishwanath Manjhi all the assailants were waiting in ambush. On sighting the deceased they emerged out of the bushes and then they were all variously armed. Seeing the assailants rushing behind them the deceased and his brother Biswanath Manjhi took to their heels and the assailants chased them. Two of the assailants shot arrows and when the deceased fell down, A2-Santu Manjhi cut his neck by inflicting a bhala blow. It was followed by A3-Gaya Manjhi cutting with a sword and A4-Sukdeo Manjhi cutting with bhujali (something like a chopper). The last cut severed his neck into two; that was the end of the deceased.

4. Three eyewitnesses were examined by the prosecution. PW-1-Kanthi Manjhi and PW-2-Bishwanth Manjhi are the brothers of the deceased. PW-3-Battu Punjhar is the only witness who did not belong to either of the factions. In other words he is depicted by the prosecution and the defence as the only independent witness.

5. According to PW-3, the deceased was attacked only by three persons and he saw only A2-Santu Manjhi, A3-Gaya Manjhi and A4-Sukdeo Manjhi. No other person inflicted any injury nor did any

one of those others in the array of the accused participate in the crime. PW-3 was then asked by the public prosecutor with reference to his statement recorded under Section 161 of the CrPC. He admitted having stated to the investigating officer that he saw three or four other persons running behind the first mentioned three assailants, but none else attacked the deceased.

6. We have before us two sets of evidence belonging to the prosecution. One spoken to by the two brothers of the deceased involving all the arrayed accused and the other spoken to by PW-3 whom the prosecution also described as the only independent witness, pointing to three persons alone as the assailants.

7. Even if some other persons also ran behind those three assailants it is a very difficult exercise for the Court to conclude that those other persons who ran behind the three assailants shared the common object of murdering the deceased. It would have been easier for the prosecution to succeed if PW-3 had also said that along with the three assailants the other persons also ran. The difficult situation for the prosecution now is that if we have to place reliance on the testimony of PW-3 the conviction has to be confined to three persons mentioned above and the rest of the persons cannot be convicted. When we perused the medical evidence in this case we found that all the injuries sustained by the deceased could be attributed to the actions alleged against the aforesaid three persons. This is yet another reason creating difficulty to the prosecution so far as they present appellants are concerned.

8. On a conspectus of the whole evidence we entertain a reasonable doubt as to the degree of involvement of the present appellants. We are unable to hold., with reasonable certainty, that these five persons also shared the common object along with the three principal assailants for murdering Begru Manjhi.

9. In view of the said area of reasonable doubt we are disposed to give the benefit of it to the appellants. In the result, we allow the appeal filed by these five appellants and set aside the conviction and sentence passed on them. We direct them to be released from jail forthwith unless they are required in any other case.