

IN THE HIGH COURT OF JHARKHAND AT RANCHI
(Criminal Appellate Jurisdiction)

Criminal Appeal (D.B.) No. 371 of 2012

(Against the judgment of conviction and order of sentence both dated 27.02.2012 passed by the learned 1st Additional Sessions Judge, Singhbhum (West) at Chaibasa in Sessions Trial No. 77 of 2007)

1. Mahendra Purty

2. Sri Ram Purty,

Both Sons of Late Lota Purty, Resident of Gitlipi, Post Office and Police Station-Jagannathpur, District-Singhbhum (West)

..... **Appellants**

Versus

The State of Jharkhand

..... **Respondent**

PRESENT

HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR

HON'BLE MR. JUSTICE RATNAKER BHENGRA

For the Appellants	: Ms. Rajendra Prasad Gupta, Advocate
	: Mrs. Sudha Gupta, Advocate
For the State	: Mr. Gouri S. Prasad, Spl.P.P
For the Informant	: Mr. Anup Kumar Agarwal, Advocate

JUDGEMENT

Per, Shree Chandrashekhar, J.

Dated: 27th January, 2020

Oral Order

In her *fardebayan* which was recorded on 13.07.2006 at 16:00 hours at village-Gitlipi, Jano Kumari has named the appellants as the accused persons who have killed her mother Menjhari Devi. On the basis of her *fardebayan*, Jagannathpur P.S. Case No.36 of 2006 was registered against Sri Ram Purti, Mahendra Purti, Sumti Pan and Laxmi Gope. The appellants have faced the trial on the charge under section 302 read with section 34 of the Indian Penal Code and under sections 3 and 4 of the Prevention of Witch (Daain) Practices Act, 1999. Sumti Pan has been declared juvenile and at the time, when the aforesaid charges

were framed against the appellants investigation against Laxmi Gope was pending.

2. In Sessions Trial No.77 of 2007, the appellants have been convicted and sentenced to R.I for life and fine of Rs.5,000/- each under section 302 read with section 34 of the Indian Penal Code and R.I for three months and fine of Rs.1,000/- each under sections 3 and 4 of Prevention of Witch (Daain) Practices Act, 1999.

3. The informant of this case is daughter of the deceased. In her *fardbeyan*, Jano Kumari has stated that last evening Laxmi Gope came to her house and asked her mother to come in the meeting which was convened at puja sthal. She along with her mother had gone to puja sthal where Sumti Pan was performing *gajwani puja* alongwith her associates and about 30 to 35 villagers were present there. The informant and her mother were also observing the puja and in the meantime the appellants came from behind and assaulted her mother. Mahendra Purti has inflicted one *danda (baadi)* blow on the head of her mother whereupon she fell upon the ground and thereafter Sri Ram Purti who was carrying a *tangi* assaulted her mother on her neck indiscriminately. Her mother had died on the spot. Seeing the occurrence, afraid, the villagers ran away. In the court, the informant has narrated a similar story about the occurrence in the evening of 12.07.2006. She has stated that in the fateful evening, she was with her mother and they had gone to puja sthal where several persons had assembled. She has stated about the assault on her mother by the appellants at puja sthal. Her uncle, who has been examined as P.W.2, is another eye-witness. He has stated that when the informant and her mother came to puja sthal he was present there. He has seen the appellants assaulting Menjhari Devi and he has stated that after the incident they had fled away from the place of occurrence.

4. P.W.1 is the husband of Menjhari Devi. He is not an eye-witness. He has deposed in the court that on hearing *hulla* he had gone to the place of occurrence where he found head of his wife severed from her body. He has stated that his daughter informed him

that the appellants had assaulted her mother. P.W.5 and P.W.6 are the seizure witnesses and P.W.7 has proved the post-mortem report. The post-mortem examination which was conducted by Dr. D.N. Singh has been admitted in evidence without objection. Dr. Ashok Kumar Mishra, who was posted as Medical Officer, Sadar Hospital, Chaibasa where Dr. D.N. Singh was also posted as Deputy Superintendent, has read the contents of the post-mortem examination report in the court. He has been cross-examined by the defence. The Investigating Officer, who has been examined as P.W.4, has inspected the place of occurrence and seized material objects from the place of occurrence. He has prepared inquest report and proved the post-mortem examination report. During his cross-examination, presumably to a suggestion by the defence that Menjhari Devi has been sacrificed he has stated that during the investigation he has found that she has been killed by *kulhari* and it is not that she has been sacrificed.

5. On such evidence, the prosecution has proved presence of the appellants at the place of occurrence and assault by them on Menjhari Devi. P.W.2 and P.W.3 are the eye-witnesses. P.W.2 has stated that she along with her mother was observing puja at puja sthal and in the meantime the appellants came from behind and assaulted her mother. P.W.3 has also corroborated her testimony on all material aspects of the case. P.W.1 has corroborated their evidence to the extent that on hearing *hulla* when he had gone to the place of the occurrence his daughter has informed him about the appellants assaulting her mother. And, the homicidal death of Menjhari Devi by a sharp-cutting weapon is corroborated by the medical evidence.

6. However, in our opinion, conviction of Mahendra Purti with the aid of section 34 of the Indian Penal Code is not proper.

7. Mr. Anup Kumar Agarwal, the learned counsel for the informant, however, submits that the appellants, who came together armed with weapons and have fled away together uttering that now

witchcraft has been wiped out, in view of the proved motive for the crime, have rightly been convicted under section 302 read with section 34 of the Indian Penal Code. The learned counsel for the informant has further submitted that P.W.2 and P.W.3 who of course are related witnesses but not interested witnesses.

8. In support of his submissions, the learned counsel for the informant has relied on the decisions in “*Gopi Nath @ Jhallar Vs. State of Uttar Pradesh*” reported in (2001) 6 SCC 620 and “*Namdeo Vs. State of Maharashtra*” reported in (2007) 14 SCC 150.

9. Section 34 of the Indian Penal Code postulates constructive liability of all. In “*Gopi Nath @ Jhallar*” case, the Supreme Court has observed as under;

“8. We have carefully considered the submissions of the learned counsel on either side. As for the challenge made to the conviction under Section 302 read with Section 34 of the Indian Penal Code, it is necessary to advert to the salient principles to be kept in consideration and often reiterated by this Court, in the matter of invoking the aid of Section 34 IPC, before dealing with the factual aspect of the claim made on behalf of the appellant. Section 34 IPC has been held to lay down the rule of joint responsibility for criminal acts performed by plurality of persons who joined together in doing the criminal act, provided that such commission is in furtherance of the common intention of all of them. Even the doing of separate, similar or diverse acts by several persons, so long as they are done in furtherance of a common intention, render each of such persons liable for the result of them all, as if he had done them himself, for the whole of the criminal action – be it that it was not overt or was only a covert act or merely an omission constituting an illegal omission. The section, therefore, has been held to be attracted even where the acts committed by the different confederates are different when it is established in one way or the other that all of them participated and engaged themselves in furtherance of the common intention which might be of a pre-concerted or pre-arranged plan or one manifested or developed at the spur of the moment in the course of

the commission of the offence. The common intention or the intention of the individual concerned in furtherance of the common intention could be proved either from direct evidence or by inference from the acts or attending circumstances of the case and conduct of the parties. The ultimate decision, at any rate, would invariably depend upon the inferences deducible from the circumstances of each case.”

10. Section 34 of the Indian Penal Code which fastens vicarious liability on all the accused persons for the act of one or more is pressed into service only when it is established that the final act has been committed in furtherance of common intention of all. A common intention which is different from the same or similar intention can be pre-arranged or it can form at the spur of moment. The common intention of the accused persons can be gathered from their conduct, manner of occurrence, weapon held by them and the nature of injury caused to the victim. In “*Gopi Nath*” case, the Supreme Court has observed that the ultimate decision, at any rate, would invariably depend upon the inferences deducible from the circumstances of each case. Merely because two persons have come together and left the place of occurrence together an inference of common intention to commit murder can not be drawn. Mahendra Purty was holding a *lathi* and both the eye-witnesses have stated that he gave one *danda* blow on the head of Menjhari Devi from the back whereupon she fell on the ground. There is no allegation of repeated blow by Mahendra Purty on Menjhari Devi or any other overt act by him and at the same time it also needs to be recorded that assault by Mahendra Purty on Menjhari Devi by *danda* is not corroborated by the medical evidence; the doctor has not found any corresponding injury on the back of head of Menjhari Devi. From the evidences led by the prosecution it appears that he has accompanied Sri Ram Purty who was carrying a *tangi* and given one *danda* blow from the back on the head of Menjhari Devi, but from such evidence it cannot be inferred that he shared common intention with Sri Ram Purty to commit murder of Menjhari Devi.

It has come in the prosecution's evidence that sister of the appellants was ill for which they had performed *puja* through Sumti Pan and Sumti Pan had told them that witchcraft was practiced by Menjhari Devi on their sister. It is an admitted position that sister of the appellants was alive at the time when the incident had taken place.

11. The above being the factual scenario, we find that the prosecution has failed to establish that Mahendra Purty shared common intention with Sri Ram Purty to cause death of Menjhari Devi.

12. Accordingly, we hold that conviction of Mahendra Purty under section 302 read with 34 of the Indian Penal Code is not proper and, therefore, his conviction for the said offence is set aside. He has inflicted one *danda* blow on the head of Menjhari Devi and though *danda* had not been recovered, in our opinion at best he can be held guilty for the offence under section 324 of the Indian Penal Code.

13. Accordingly, he is convicted and sentenced to R.I for two years under section 324 of the Indian Penal Code.

14. Mahendra Purty is on bail and, therefore, he shall stand discharge of liability on the bail-bonds furnished by him.

15. The evidence against Sri Ram Purty who has assaulted Menjhari Devi with tangi is consistent. Both the eye-witnesses have stated that he has assaulted Menjhari Devi with tangi indiscriminately and the post-mortem report which has been proved through P.W.7 records that due to repeated blow on the neck it has got severe from the body. His act which is reflected in severance of neck of Menjhari Devi demonstrates that he intended to cause death of Menjhari Devi and, therefore, he is liable to be convicted under section 302 of the Indian Penal Code. The minor inconsistency in the evidence of the prosecution witnesses and lapses committed by the Investigating Officer during the investigation would not create a doubt on complicity of Sri Ram Purty in the crime.

16. Accordingly, we hold that the prosecution has proved the charge under section 302 of the Indian Penal Code against

Sri Ram Purty and, therefore, Cr. Appeal No. 371 of 2012 qua the appellant no.2, namely, Sri Ram Purty is dismissed. However, this criminal appeal stands allowed qua the appellant no.1, namely, Mahendra Purty.

17. Let a copy of the judgment be transmitted to the Court concerned through 'FAX'.

18. Let lower-court records be transmitted to the court concerned, forthwith.

(Shree Chandrashekhar, J.)

(Ratnaker Bhengra, J.)

Jharkhand High Court, Ranchi
Dated : 27th January, 2020
S.D./Pappu-
A.F.R.