

Jharkhand High Court

Dabloo Linda vs State Of Jharkhand on 22 January, 2013

Cr. Appeal (DB) No. 1311 of 2005 (Against the judgment of conviction dated 8th August, 2005 and order of sentence dated 11th August, 2005 passed by Sri D.N. Tiwari, Additional Sessions Judge, F.T.C. III, Bokaro in Sessions Trial Case No.276 of 2002)

Dabloo Linda Appellant Versus The State of Jharkhand Respondent
For the Appellant: Mr. Bijay Kumar Sinha For the Respondent:
Mr. Vibhuti Shankar Sahay, A.P.P.

PRESENT: HON'BLE MR. JUSTICE D. N. PATEL
HON'BLE MR. JUSTICE S. CHANDRASHEKHAR Per se D.N. Patel, J.

1) The present appeal has been preferred by the appellant accused against judgment of conviction dated 8th August, 2005 and order of sentence dated 11th August, 2005 passed by the Additional Sessions Judge, F.T.C. III, Bokaro in Sessions Trial Case No.276 of 2002 whereby the present appellant accused has been mainly punished for an offence under Section 302 of the India Penal Code for life imprisonment and also punished for five years' rigorous imprisonment under section 376 to be read with 511 of the Indian Penal Code. Both the sentences were ordered to run concurrently.

2) The case of the prosecution is that on 18th February, 2002 at about 19.30 hours (i.e. 7.30 p.m.) the informant Budhani Manjhyain (deceased) gave her statement to the police at Casualty Ward of Bokaro General Hospital. At that time her father Jaleshwar Manjhi (PW.8) was also present. It is stated by Budhani Manjhyain (deceased) that on 18th February, 2002 at about 3.30 p.m., she was changing her clothes after taking bath in her house. Her house is situated in Jopari Colony. Thereafter, the two accused persons in which one was Dabloo (appellant) and another co accused, who is unknown, entered the house looking to the fact that she is all alone. Both the accused attempted to commit rape upon her. She resisted against the same and, therefore, the accused persons took the container of kerosine oil from her house, poured it on her body and set her on fire. The accused persons thereafter fled away from the house of the informant. Informant raised alarm and her neighbours came there and thereafter they extinguished the fire, but, till then the body was badly burnt. The mother of the informant Binoti Devi (PW.6) came from hospital (because the father of the informant was hospitalized and she had gone to the hospital to supply food). Injured informant was taken to Bokaro General Hospital for her treatment. The statement of the informant was recorded by Rizwan Ahmed Khan, who is Investigating Officer (PW.9) in presence of Jaleshwar Manjhi (PW.8). The statement of the informant was also signed by Dr. R.K. Singh (PW.4) and also by Executive Magistrate Mr. Rajiv. Thereafter, injured Budhani Manjhyain (informant) expired on 25th February, 2002 at about 5.30 a.m. She was declared dead and death

c e r t i f i c a t e i s E x t . 4 . A f t e r investigation, the police submitted charge sheet against this appellant and thereafter the case was committed to the Court of Sessions being Sessions Trial Case No.276 of 2002 and on the basis of the evidence of PW.1 to PW.9 and on the basis of documentary evidences available on record, the learned trial Court has convicted and sentenced the present appellant for an offence under Section 302 of the Indian Penal Code for life imprisonment and the appellant has also been punished for an offence under Section 376 to be read with 511 of the Indian Penal Code for rigorous imprisonment of five years. The appellant accused was not available for investigation after recording the F.I.R., but, he surrendered in the Court on 21 st February, 2002. Against this judgment of conviction and order of sentence, the present appeal has been preferred by the appellant.

3) We have heard the learned counsel for the appellant who has mainly submitted that the prosecution has not proved the offence beyond all reasonable doubts. There is no eyewitness to the incident. The prosecution witnesses, who have supported the case of the prosecution, are close relatives of the deceased. This aspect of the matter has not been properly appreciated by the learned trial Court and, hence, the judgment of conviction and order of sentence passed by the learned trial Court deserve to be quashed and set aside.

4) It is also submitted by the learned counsel for the appellant that the so-called dying declaration of the deceased recorded on 18 th February, 2002 was without endorsement of the doctor about consciousness of the injured Budhani Manjhyain (deceased) and, therefore, the dying declaration is not a reliable document at all which is in the form of F.I.R. It is also submitted by the counsel for the appellant that there is no corroboration to the dying declaration by any other prosecution witnesses. The independent witnesses, who are PW.1, PW.2 and PW.3, have not supported the case of the prosecution. These aspects of the matter have not properly been appreciated by the learned trial Court and hence, the judgment of conviction and order of sentence passed by the learned trial Court deserve to be quashed and set aside. It is also submitted by the counsel for the appellant that the Executive Magistrate, in whose presence the statement of the deceased was recorded, has not been examined by the prosecution. Thus, a crucial witness, who is Executive Magistrate, who was present when the so-called dying declaration was recorded by the police, is not examined and, therefore, the judgment of conviction and order of sentence passed by the learned trial Court deserve to be quashed and set aside.

5) We have heard the learned A.P.P. appearing for the State who has submitted that in the present case, accused is named in the F.I.R. The informant has expired later

on because of burn injuries and in her F.I.R. which is recorded in presence of PW.4, PW.8 and PW.9, the victim has clearly stated the name of the appellant and the role played by the appellant in causing murder of the deceased informant. This is a dying declaration under Section 32 of the Indian Evidence Act, 1872. It is also submitted by the learned A.P.P. that PW.4 has clearly stated in his deposition before the learned trial Court that informant Budhani Manjhyain (deceased) was fully conscious. There were burn injuries upon the body of the informant. PW.4 has proved the dying declaration of the informant. He has also proved the signature of Executive Magistrate Mr. Rajiv who has also signed the said F.I.R. which is in the form of dying declaration. It is also submitted by the learned A.P.P. that PW.8 Jaleshwar Manjhi, father of the informant, was also present when the F.I.R. was recorded and he has also proved his signature upon the F.I.R. or the statement of Budhani Manjhyain (deceased). Similarly, PW.9 who is Investigating Officer who has recorded the statement of the victim, has also stated that the statement of the informant was reduced in writing by PW.9. Thus, the F.I.R. is correctly treated as a dying declaration because the informant was fully conscious and she has stated clearly the name of the appellant and the fact that as he attempted to commit rape upon her along with another co-accused, who is unknown and as she resisted, both the accused poured kerosine upon her and ablazed her. No error has been committed by the learned trial Court in appreciating the evidences of these witnesses, namely, PW.4, PW.8 and PW.9. It is also submitted by the learned A.P.P. that PW.5 is the brother of the deceased who had rushed immediately at the house hearing alarm of his sister and he has clearly stated before the learned trial Court that he saw his sister burning and she had stated before him that two accused, one of which is Dabloo and another is unknown, attempted to commit rape upon her and upon her resistance, they poured kerosine oil on her and set her on fire. This witness has also identified the appellant, because the appellant was residing nearby house of the PW.5. Thus, it is submitted by the A.P.P. that the dying declaration is getting enough corroboration by the evidence of PW.5 and other evidences on record and, therefore, the learned trial Court has rightly convicted the appellant for the offence of committing murder of the deceased and the prosecution has proved the offence beyond all reasonable doubts committed by this appellant and, therefore, the appeal may not be entertained by this Court.

6) Having heard learned counsel for both the sides and looking to the evidences on record, it appears that the incident has taken place on 18th February, 2002 at about 3.30 p.m. at the house of Budhani Manjhyain (deceased), when she was all alone in her house and when she was changing her clothes after taking bath in her house. Two accused, one of them is present appellant and another is unknown, entered the house and attempted to commit

rape upon her. She resisted the same. She is aged about 15 years and a school going girl. She has resisted the rape and the accused persons, therefore, took the container of kerosine oil from her house and poured it upon her body and set her on fire. Accused thereafter ran away. She raised alarm, her neighbours and her brother (PW.5) came at her house. She stated before her brother (PW.5) that present appellant and one unknown person tried to commit rape upon her and upon her resistance, they poured kerosine oil on her and she was ablazed by them. Immediately, mother of the Budhani Manjhyain (deceased), who is PW.6 Binoti Devi, entered the house and thereafter the injured was taken to Bokaro General Hospital where her statement has been recorded on 18 th February, 2002 at about 7.30 p.m. in presence of PW.4 Dr. R.K. Singh and in presence of PW.8 Jaleshwar Manjhi who is father of the deceased informant and the statement of the informant was reduced in writing by PW.9 Rizwan Ahmed Khan, Investigating Officer, and also in presence of Sri Rajiv, Executive Magistrate. She has clearly narrated the name of the appellant, the place of scene of offence and the manner of occurrence in detail. Thereafter, she has expired on 25th February, 2002 in the hospital at about 5.30 a.m. She was declared dead by the doctor. Death certificate of the deceased informant is Ext.4. Thus, the F.I.R., which is recorded by PW.9, is a dying declaration.

7) Looking closely to this document, which is reduced in writing by PW.9, it appears that the said statement has been signed by Dr. Randhir Kumar Singh (PW.4). Looking to the deposition of PW.4, he has clearly stated before the learned trial Court that Budhani Manjhyain (deceased) was fully conscious. She had sustained kerosine burn injuries. Her statement was recorded in his presence and also in presence of Sri Rajiv, Executive Magistrate. He has proved his signature as Ext.2. He has also proved the signature of the Executive Magistrate as Ext.2/1. He has also proved the signature of Budhani Manjhyain (deceased) because he is eyewitness of recording of the statement. The said signature of Budhani Manjhyain (deceased) is Ext.2/2 and he has also proved the signature of Jaleshwar Manjhi (PW.8) who is father of victim Budhani Manjhyain and the same has been exhibited as Ext.2/3 and has also proved the death certificate of Budhani Manjhyain (deceased) which is Ext.4. Looking to his cross examination, nothing is coming in favour of the appellant accused. On the contrary, this witness has clearly stated even during cross examination that Budhani Manjhyain (deceased) was fully conscious when her statement was recorded by PW.9 in his presence. We see no reason to disbelieve this independent witness who is Dr. Randhir Kumar Singh, serving at Bokaro General Hospital, District - Bokaro. His deposition has been correctly appreciated by the learned trial Court and he has proved the First Information Report given by Budhani Manjhyain (deceased) and reduced in writing by PW.9 which is a dying declaration. The statement clearly states the reason for the injuries caused upon the body of Budhani Manjhyain (deceased) because of which she expired later on. Looking to the deposition given by PW.8 who

is father of Budhani Manjhyain (deceased), he has proved his signature upon the statement of Budhani Manjhyain (deceased) which is Ext.2/3. He was present at Bokaro General Hospital, Bokaro, district - Bokaro, where his daughter was taken for treatment on 18th February, 2002. He has clearly stated that the statement was recorded in his presence and Budhani Manjhyain (deceased) has given the name of the appellant who had initially attempted to commit rape upon his daughter and upon her resistance, another accused, who is unknown, poured kerosine oil upon her and she was set on fire.

8) Looking to the deposition of PW.6 Binoti Devi, mother of the deceased informant, she has also clearly stated before the learned trial Court that upon hearing alarm of her daughter, she immediately rushed to her house and she has seen her daughter Budhani Manjhyain (deceased) in a burning condition and she has also identified the appellant accused. She has also stated before the learned trial Court that her daughter has stated that the present appellant has attempted to commit rape upon her and upon her resistance, appellant and another accused, who is unknown, took the kerosine from her house and poured upon the body of the deceased and set her on fire. Thus, looking to the depositions of PW.5 and PW.8, they have clearly narrated the whole incident without any exaggeration. Though they are rustic witnesses, they have not added any other person to the effect that one more accused who has participated in causing murder of the deceased, but without any exaggeration, they have stated that the same person is still unknown.

9) The dying declaration is getting enough corroboration by the deposition given by PW.5 who is Shiba @ Shiva Manjhi, who is brother of Budhani Manjhyain (deceased). Hearing the alarm of his sister, he immediately rushed the house and he saw his sister in a burning condition. He has stated before the learned trial Court that the present appellant and another accused, who is unknown, entered the house looking to the fact that she is all alone in the house and when she was changing her clothes after taking bath in her house, they had attempted to commit rape upon her and upon her resistance, they took the kerosine oil from her house and poured upon her and set her on fire. He is a child witness of ten years. He is also close relative of the deceased. We have closely gone through the deposition given by this child witness and looking to his cross examination, it appears that he knows the value of oath and he is knowing the whole incident in detail and capable of being a witness in the Court. Though he is child witness, he, even during his cross examination, stated that he knows the present appellant. The appellant consistently pressing the child whenever he was meeting him to address him as "Jija" (brother in law) so that he will give him a chocolate. This child eyewitness has also stated that her sister has clearly narrated before him the name of the appellant and the role played by the appellant in

causing murder of the deceased. This is an oral dying declaration of Budhani Manjhyain (deceased) before the PW.5. Looking to his cross-examination, it appears that his examination in-chief has remained intact as it is. The deposition of PW.5 is getting enough corroboration to the dying declaration recorded by PW.9 Investigating Officer in presence of doctor (PW.4) and in presence of his father (PW.8) and also in presence of Executive Magistrate who is Sri Rajiv.

10) Thus, looking to the evidences of prosecution witnesses PW.4, PW.8 and PW.9, the dying declaration of Budhani Manjhyain (deceased) has been proved by the prosecution beyond all reasonable doubts. In this dying declaration, she has clearly stated the role played by the appellant-accused as stated herein above. This dying declaration is getting enough corroboration by the deposition of PW.5. These evidences on record have been correctly appreciated by the learned trial Court and we see no reason to alter the judgment of conviction and order of sentence passed by the learned trial Court.

11) The counsel for the appellant has submitted vehemently that the prosecution witnesses who have supported the case of the prosecution are the close relatives of the deceased. It is settled principle of law that whenever the attempt of rape is committed inside the house and upon the resistance of the prosecutrix when the accused are committing murder in the house, mostly the witnesses will be close relatives and in the facts of the present case, the whole incident has taken place in the house of informant Budhani Manjhyain (deceased). The close relative, who is PW.5, rushed immediately upon hearing alarm of his sister. Though, he is a child witness and a rustic witness, without any exaggeration, omission, contradiction or improvement he has stated clearly before the learned trial Court what is conveyed to him by his sister. This is an oral dying declaration. There is one more co-accused along with this appellant which is unknown as per the statement of Budhani Manjhyain (deceased) and no attempt has been made by this witness to add any more accused. This reflects the truth in the deposition. Similarly, looking to the deposition of PW.6 and PW.8, who are mother and father of the deceased-informant respectively, though they are close relatives, their depositions before the learned trial Court are without any contradiction or exaggeration and looking to their depositions, nothing is coming in favour of the appellant-accused. Merely because they are close relatives, that does not mean that the depositions given by brother, father and mother should be discarded by this Court or should be brushed aside straightly. Whenever close relatives are giving their depositions before the learned trial Court, their depositions should be viewed with all circumspect and closely. We have perused the deposition of these three witnesses and looking to their cross-examination and looking to their examination in-chief, they have clearly stated the role played by the appellant-accused in causing injuries to the

injured informant who had ultimately expired later on because of burn injuries. This aspect of the matter has also been properly appreciated by the learned trial Court. Prosecution has proved the offence of murder and attempt of rape beyond all reasonable doubts which has been committed by this appellant accused and we see no reason to alter the judgment of conviction and order of sentence passed by the Additional Sessions Judge F.T.C. II, Bokaro dated 8 th August, 2005 and 11th August, 2005 respectively in Sessions Trial Case No.276 of 2002.

12) We, therefore, uphold the decision rendered by the learned trial Court and there is no substance in the instant criminal appeal which is hereby dismissed.

(D. N. Patel, J) (S. Chandrashekhar, J) High Court of Jharkhand, Ranchi
Dated, the 22nd day of January, 2013 Manoj/ N.A.F.R.