

---

**(2009) 05 JH CK 0063**  
**In the Jharkhand High Court**

Jagdish Bhagat

APPELLANT

Vs

State of Jharkhand

RESPONDENT

---

**Date of Decision :** 19-05-2009

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 120B, 302, 34

**Citation :** (2009) 05 JH CK 0063

**Hon'ble Judges :** Rakesh Ranjan Prasad, J; Amareshwar Sahay, J

**Bench :** Division Bench

**Final Decision :** Allowed

---

## Judgement

1. The sole appellant was put on trial along with Ranjit Xalxo and Basudeo Ram for committing murder of Nageshwar Prasad Sahu. On being found guilty, the appellant as well as Ranjit Xalxo were convicted u/s 302/34 of the Indian Penal Code whereas Basudeo Ram was convicted u/s 302/120(B) of the Indian Penal Code. All of them were sentenced to undergo imprisonment for life.

2. The prosecution case is that the informant Niranjan Lal Sahu (P.W.4) while was taking tea on 14.1.1996 at village Birkera, Nageshwar Prasad Sahu riding a motor cycle came at about 11.30 A.M. over there where Suresh Singh (P.W.2), servant of Nageshwar Prasad Sahu, was present from before. Thereafter Nageshwar Prasad Sahu riding his own motor cycle and the informant Niranjan Lal Sahu as also Suresh Singh on another motor cycle left for Mokra Bazar and they were going ahead on Nageshwar Prasad Sahu. While they proceeded slightly ahead from Ghatiagarha, they saw two persons coming in playful mood from opposite direction and after some times they heard sound of firing, upon which the Informant Niranjan Lal Sahu stopped his motor cycle and then Suresh Singh ran towards the opposite direction and found Nageshwar Prasad Sahu lying on the road dead. At that moment, two persons were seen running away. On finding Nageshwar Prasad Sahu dead, Suresh Singh (P.W.2) started raising alarm and the Informant Niranjan Lal Sahu (P.W.4) left the place for informing other persons.

3. On the same day when someone informed to Raidih police station, Officer-in-Charge of that police station, Shyam Bihari Singh (P.W.9) came to the place of occurrence and got the Fardbeyan (Ext.4) of Niranjana Lal Sahu recorded, upon which a case was registered and the matter was taken up for investigation by said Shyam Bihari Singh (P.W.9), who held inquest on the dead body and prepared Inquest report (Ext. 7). From the place of occurrence, motor cycle as well as HMT watch were seized under seizure list (Exts.5 and 5/1) and the dead body was sent for post mortem examination which was conducted by Dr. Mritunjay Sarawgi (P.W.1) who found seven incised wounds as well as number of abrasions on the person of the deceased. That apart, one oval lacerated wound with Inverted margin having tattooing was found over abdomen. Bullet was found lodged at posterior area of abdominal wall.

4. Accordingly Doctor issued post mortem report (Ext.1) with an opinion that death occurred due to shock and haemorrhage caused by injuries found over the skull of the deceased as well as firearm Injury.

5. In course of investigation, one Ranjit Xalxo was apprehended, who confessed his guilt wherein he disclosed about the complicity of this appellant as well as Basudeo Ram.

6. After completion of investigation, police submitted charge sheet against the appellant whereupon cognizance of the offence was taken and in due course, when the case was committed to the court of sessions, charges were framed to which the appellant pleaded not guilty and claimed to be tried.

7. The prosecution in order to bring the charges home examined as many as ten witnesses. Of them, Suresh Singh (P.W.2) has testified that while he along with Niranjana Lal Sahu (P.W.4) were proceeding for the market at Mokra, the deceased on his motor cycle was coming from behind and when they reached Ghatiagarha village, they found two persons coming and after a while, they heard some sound and hence, he got down from the motor cycle and ran behind to some distance where he found his master Nageshwar Prasad Sahu lying dead on the road and at that moment, he saw the same two persons, who were climbing over the hillock by running. This witness has identified this appellant as well as Basudeo Ram as the culprits to whom he had also identified in course of Test Identification Parade. P.W.3, Fudnath Nagesia saw two persons wandering in village and one of them was having Bhujali and his clothes were smeared with blood. He identified one of them as Ranjit Xalxo. However, he declined to identify any of the accused persons. P.W.4, Niranjana Lal Sahu has testified in the same manner as he had made statement in his Fardbeyan. P.W.5, Narayan Prasad "Sahu and P.W.6, Manmohan Prasad are the witnesses to the seizure of Motor Cycle and Watch. P.W.8, Khudi LalSao has testified that on the day of occurrence, he saw two persons running away and of, them, one was having Bhujali and his clothes were smeared with blood to whom he identified as Ranjit Xalxo in course of Test Identification Parade but strangely the prosecution did not get it confirmed in course of evidence. However, Test Identification Parade chart has

been proved by formal witness P.W.10, Ramesh Tiwari which has been marked as Ext. 10.

8. The trial court having placed its reliance on the testimonies of P.Ws. 2, 3, 4, and 8 found this appellant as well as Ranjit Xalxo and Basudeo Ram guilty and, accordingly they were convicted.

9. Being aggrieved with the order of conviction and sentence, the appellant has preferred this appeal.

10. Learned Counsel appearing for the appellant submits that when this appellant as well as Basudeo Ram and Ranjit Xalxo were convicted by the trial court, Basudeo Ram and Ranjit Xalxo preferred Cr. App. No. 184 of 2002 and Cr. App. No. 1697 of 2003 respectively. Both the appeals on being heard were allowed and both of them have been acquitted and, therefore, the appellant also deserves to be acquitted. It was further submitted that there has been absolutely no evidence to the effect that this appellant caused either firearms or incised injuries, rather only evidence against the appellant is that the appellant, as per the evidence of P.W.2, were seen running away from the place of occurrence but that circumstance alone never points conclusively towards the guilt of the appellant and hence, that circumstance alone cannot be sufficient to hold the appellant guilty for the alleged offence.

11. Heard learned Counsel appearing for the State.

12. Having heard learned Counsel appearing for the parties and on perusal of the record, we do find, as has been stated above, that while the deceased was proceeding to the market on his motor cycle, P.W.2 Suresh Singh as a pillion rider was also going on the motor cycle being driven by P.W.4 Niranjana Lal Sahu and they were ahead of the deceased. According to both the witnesses, when they came near village Ghatiagarha, they found two persons coming in a playful mood. After a while, they heard sound of firing, upon which P.W.4 Niranjana Lal Sahu stopped his motor cycle and the pillion rider P.W.2 Suresh Singh ran behind to some distance where he found his master Nageshwar Prasad Sahu lying dead on the road and then saw two persons going up the hill by running.

13. Further we do find that this witness (P.W.2) claims to have been identified this appellant as well as Basudeo Ram in course of Test Identification Parade and also in the court. But this never points towards the guilt of this appellant as neither the P.W.2, Suresh Singh or P.W.4, Niranjana Lal Sahu has testified that they saw this appellant and other accused with any kind of weapons while fleeing away and that situation it would be hard to believe that it is only this appellant and other accused who committed murder of the deceased, more so when the prosecution has not come forward with a case that this appellant was having any kind of enmity with the deceased and further possibility of appellant and others fleeing away after hearing sound of firing can not be ruled out. We do find that taking into consideration all these aspects of the matter, Basudeo Ram and Ranjit Xalxo have already been acquitted by this Court.

14. Under these circumstances, we do find that the trial court has committed illegality in holding the appellant guilty. Thus, the judgment of conviction and order of sentence passed by the trial court in Sessions Trial No. 132 of 1996 is hereby set aside. Consequently, the appellant is acquitted of the charges levelled against him. Accordingly, the appellant is directed to be released forthwith, if not wanted in any other case.

15. In the result, this appeal is allowed.