
(2026) 01 JH CK 1954

In the Jharkhand High Court

Case No : Criminal Appeal (D.B.) No. 1577 Of 2003

Kamal Khan Son of Zasim Khan

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 28-01-2026

Acts Referred:

Indian Penal Code, 1860 — Section 34, 201, 302

Citation : (2026) 01 JH CK 1954

Hon'ble Judges : Rongon Mukhopadhyay, J;Pradeep Kumar Srivastava, J

Bench : Division Bench

Advocate : Zaid Ahmed, Vishwanath Roy

Final Decision : Allowed

Judgement

Pradeep Kumar Srivastava, J

1. We have already heard Mr. Zaid Ahmed, learned counsel appearing for the appellants and Mr. Vishwanath Roy, learned Spl. P.P. appearing for the State.

2. Above appeals are arising out of common judgment dated 23.10.2003 passed by learned Additional Sessions Judge (F.T.C.), Latehar in Sessions Case No.405 of 1994, hence taken together for hearing and disposal. The appellants have been held guilty for the offences under Sections 302 and 201 read with Section 34 of the Indian Penal Code and directed to undergo imprisonment for life along with fine of Rs.5,000/- each and R.I. for 5 years along with fine of Rs.1,000/- each for respective offences with default stipulation. Both sentences are directed to run concurrently.

FACTUAL MATRIX

3. Factual matrix giving rise to this appeal as per fardbeyan of one Baleshwar Ram recorded by S.I. Abhay Kumar, Officer In-Charge of Balumath Police Station dated 01.03.1990 at about 11:00 p.m. is that on 27.07.1990 at about 05:00 a.m., the informant's father Chaman Mochi left his home on bicycle to go Civil

Court, Latehar for doing pairvi in a case but did not return till night, therefore, informant along with other family members did not search him for 2-3 days due to habit of his father to stay at Latehar but after a week on 31.07.1990 at about 11:30 a.m., one Sabu Oraon told the informant that his cousin brother Surju Oraon had found a cotton bag in Nawada jungle which was shown to the informant and he identified that some documents in the bag were belonging to his father which he has taken with him while proceeding from the home. The informant also went to Latehar jungle towards the said forest area but no clue of his father was found. Thereafter, he went to Civil Court, Latehar where advocate's clerk told him that his father had come for doing pairvi in the case on that day, thereafter, he returned to his home. The villagers were also searching the father of informant and his skeleton dead body was found in the forest area along with his hairs and wearing slipper.

Accordingly, F.I.R. Balumath P.S. Case No.46 of 1990 dated 07.08.1990 for the offences under Sections 302 and 201 read with Section 34 of the I.P.C. was lodged against the appellants on the basis of suspicion that there was dispute with the appellants, therefore, they have killed the informant's father.

4. After completion of investigation, charge-sheet was submitted against the appellants who had faced trial and held guilty and sentenced as stated above.

5. Learned counsel for the appellants has argued that there is no iota of direct or circumstantial evidence against the appellants showing their involvement in commission of murder of the deceased rather they have been falsely implicated on sundry ground of suspicion which never culminated into legal proof. No incriminating article has been collected during investigation showing involvement of the appellants in the alleged offence nor they have been seen by any of the witnesses examined by the prosecution either taking the deceased from his house or causing his death by assaulting him. Admittedly, no dead body was recovered rather skeleton has been recovered in this case which has not been conclusively proved to belong to the deceased. The learned Trial Court has committed serious illegality by placing reliance upon scanty circumstantial evidence to the extent that the deceased had gone to do pairvi in the case at Civil Court, Latehar and there was enmity between deceased and the appellants. This circumstance itself cannot come within the parameter of conclusive evidence to hold the accused guilty for the offence of murder. Therefore, the learned Trial Court has committed serious error of law and arrived at wrong conclusion holding the appellants guilty for the offence of murder and imposing severe sentence which is fit to be set aside allowing these appeals.

6. On the other hand, learned Spl. P.P. appearing for the State has vehemently opposed the aforesaid contentions raised on behalf of the appellants and submitted that the learned trial court has very wisely and aptly analyzed, scanned and appreciated the oral as well as documentary evidence available on record against the appellants and arrived at right conclusion about guilt of the appellants. The impugned judgment and order of conviction and sentence of

appellants suffer from no error of law calling for any interference by way of these appeals which is devoid of merits and fit to be dismissed.

7. The only point for consideration in these appeals is as to whether the impugned judgment and order of conviction and sentence of the appellants suffer from any error of law calling for any interference or not ?

8. Before imparting our verdict on the above point, we have to appraise with the evidence adduced in this case.

9. It appears that altogether 10 witnesses were examined by the prosecution to substantiate the charges levelled against the appellants. Admittedly, there is no eye witness of the occurrence and the prosecution case hinges upon circumstantial evidence as stated by witnesses.

P.W.1 Shobhan Ram has stated about previous land dispute between deceased Chaman Mochi and Jasim Kha. Chaman Mochi had gone to Civil Court, Latehar to do pairvi in the case but did not return to home even after expiry of one week. He has further deposed that while he was travelling in a vehicle then one person disclosed that in the forest some documents belonging to Chaman Mochi is lying then he informed to informant Baleshwar Ram and also went to forest area in search of the deceased and after some time cycle of the deceased, hairs and skeleton were found in the forest along with his clothes and shoes of the deceased Chaman Mochi. Accordingly, he was identified and F.I.R. was lodged.

In his cross-examination, he admits that he got knowledge about the bag of the deceased containing some documents from Surju Oraon. There is nothing else material in his evidence.

P.W.2 Arjun Ram has also deposed that after one week of missing of Chaman Ram Mochi, he came to know from one Surju Oraon that some documents and clothes of the deceased were lying in the forest area. Thereafter, dead body of deceased was found towards road side of Chachpa forest where skeleton of the deceased his wearing clothes and shoes were also found. Thereafter, F.I.R. was lodged.

P.W.3 Dukhan Ram has also deposed in the same line that Chaman Mochi has gone to do pairvi in his case at Latehar Civil Court but did not return. After a week, his son Baleshwar Ram came to know from Surju Oraon that a bag containing documents of his father has been found in the bushes. Thereafter, dead body was also recovered from the forest area along with hairs, clothes, bones and shoes of the deceased and F.I.R. was lodged.

P.W.4 Bandhan Mochi is the brother of deceased. According to him, there was land dispute between appellants and the deceased and civil and criminal cases were also going on between the parties. He has also stated that his brother went to do pairvi in the case but did not return till one week. Thereafter, his son Baleshwar Ram came to know from one Surju Oraon that some documents of deceased has been found in a bag from the forest area. Thereafter, cycle,

skeleton, shoes of the deceased were also recovered from the forest area and case was lodged.

He fairly admits in his cross-examination that the appellants have been involved in this case only on the basis of suspicion and there is no eye witness of the occurrence.

P.W. 5 Nageshwar Ram is also brother of the deceased. According to his evidence also, deceased had gone to do pairvi of his case at Latehar Civil Court but did not return and after hectic search his skeleton, clothes and shoes were found from forest area and case was lodged on the basis of suspicion due to previous land dispute and litigations between the parties.

P.W.6 Anachha Ram is nephew of the deceased. He has also stated as hearsay witness that he came to know that deceased has been murdered in the forest area and his skeleton, shoes, bones and hair locks were found and seized from the forest area. Admittedly, this witness is not eye witness of the occurrence and also states that the appellants have been involved in this case on the basis of suspicion.

P.W.7 Surju Oraon is a witness who has first time disclosed to the informant that while he was grazing cattle, he found a bag containing some documents which he brought to his home and also shown to his uncle Sabu. The said bag was shown by Sabu to Baleshwar Ram who identified that it was belonging to his father. Thereafter, dead body of the deceased was recovered from the forest area. There is nothing else in his evidence.

P.W.8 Shiv Dayal Ram is also a hearsay witness of the occurrence from the informant having no personal knowledge about the occurrence.

P.W.9 Baleshwar Ram is the informant-cum-son of the deceased. Admittedly, this witness is not an eye witness of the occurrence rather while he was searching of his father then he met with Sabu Oraon who told that his cousin Surju Oraon has found a bag containing some documents of the deceased which was identified by this witness and he started hectic search of his father towards forest area and ultimately, the hairs and bones of deceased was found hither and thither scattered in the forest area along with his plastic shoes, shirt, dhoti and chadar which was produced before the police. He admitted that the name of accused persons has been given in the F.I.R. only on the basis of suspicion and there is no eye witness of the occurrence. He has proved his signature on his fardbeyan as Ext.1/1 and also formal F.I.R. as Ext.1/2 and production-cum-seizure list prepared by the then Officer In-charge Abhay Kumar as Ext.2 and seizure list of skeleton and clothes and shoes of deceased as Ext.3 and Ext.3/1. Inquest report of the deceased along with signature of Officer In-charge as Ext.4 and Ext.4/1. There is nothing in his evidence showing involvement of the appellants in commission of murder of his father.

P.W.10 Dr. Ajeet Kumar Choudhary who conducted postmortem on the skeleton

and found following :-

(i) Skull bone-1

(ii) Hip bone-1 of left side, scapula 1 of left side, sacrum 1, Tibia 2 left and right side of which upper and lower ends were eaten up.

(iii) Clavicle 1 of left side-vertebral thoracic 12 in number cervical bone-7 and lumbar 5 in number.

(iv) Ribs-right 9 and left 12 in number.

(v) Soft of scalp hairs black and grey of 18 cm long having joints, little amount of soft tissue in decomposed state whole attached in the bones.

(vi) The bones were some what mossed and annexed order.

(vii) Skull - Glabella occiput prominent mastoid process bigger surface orbital prominent, Upper orbital margin round - 14 permanent teeth erupted attrition present in molar teeth- last molar impacted vascular suture united externally sagittal coronal lambdoidal not united but internally the sagittal and coronal union is in progress and somewhat advanced.

(viii) Hip bones -Greater sciatic notch smaller and narrower preauricular sulcus. All parts of the hip bones united. Symphysis surface granular and margins developing.

(ix) Sacrum - Uniform curvature longer all segments united.

Ante mortem injuries :- There was fracture and long gap measuring 13 x 11 cms in left fronto - parieto temporal sphenoid bones. The broken small bony pieces are missing and from long gap crack fracture extends over rest portion of parietal and left frontal bone.

Opinion-

(i) The bones were of human origin and belonged to male aged 40 plus minus 10 years.

(ii) The above noted injuries were antemortem caused by hard and blunt substance.

(iii) Death was due to head injury.

(iv) Time elapsed since death was between 1-3 months from the date of first examination i.e. 16.09.1990.

This P.M. report was dictated and corrected by him and bears his signature which is marked as Ext.5.

10. We have meticulously examined the testimony of ocular witnesses and also perused the impugned judgment and order of conviction and sentence of the appellants. The evidence of witnesses including the informant categorically goes

to show that due to some land dispute and pending litigation, the name of appellants has been mentioned in the F.I.R. The case was initiated only on the basis of suspicion and that suspicion never culminated into legal proof either at the time of investigation or during trial of the case. The entire evidence as discussed above do not lead to any inference as to involvement of the appellants in commission of murder of the deceased. Not even a single circumstance, except suspicion, has been brought on record showing involvement of the appellants in the alleged murder. It is quite strange how the learned Trial Court has convicted the appellants without any iota of link evidence. The impugned judgment appears to be palpably illegal and based upon no iota of evidence at all.

11. Therefore, we are constrained to hold that the appellants are innocent and have committed no offence at all. Their conviction and sentence suffer from serious error of law and based upon non- application of judicial mind towards the testimony of witnesses who have categorically denied any involvement of the appellants in the alleged occurrence. Therefore, we set aside the impugned judgment and order of conviction and sentence of the appellants and allow these appeals.

12. The appellants are on bail, they are discharged from the liability of their bail bonds and sureties are also discharged.

13. Pending I.A., if any, stands disposed of.

14. Let a copy of this judgment along with trial court record be sent back to concerned trial court for information and needful.