

## Santu Nagesia Vs State Of Jharkhand

**Court:** Jharkhand High Court

**Date of Decision:** Jan. 14, 2025

**Acts Referred:** Code of Criminal Procedure, 1973 â€” Section 313  
 Indian Penal Code, 1860 â€” Section 34, 120B, 302, 304II

**Hon'ble Judges:** Rongon Mukhopadhyay, J; Arun Kumar Rai, J

**Bench:** Division Bench

**Advocate:** Pradip Kumar, Tarun Kumar

**Final Decision:** Dismissed

### Judgement

Rongon Mukhopadhyay, J.Ã, Ã, Ã, Ã,

1. Heard Mr. Pradip Kumar, learned counsel for the appellant and Mr. Tarun Kumar, learned A.P.P. for the State.

2. This appeal is directed against the judgment and order of conviction and sentence dated 30.04.1997 passed by Sri Gangadhar, learned 1st Additional

Sessions Judge, Gumla in S.T. No. 218 of 1988, whereby and whereunder, the appellant has been convicted for the offence punishable u/s 302 of the

Indian Penal Code and has been sentenced to undergo R.I. for life.

3. The prosecution case arises out the fardbeyan of Jagbandhu Ram recorded on 16.11.1987, in which, it has been stated that Harihar Mishra of

Kansari Mohalla has lands at Bajratola Dobnapani and for harvesting of the crops the informant had gone with Harihar Mishra to the said place. After

the crops were cut they were kept in the khalian. It has been stated that today i.e. 16.11.1987 he and Harihar Mishra had gone to catch fish when

they saw Chhotku Kharia already catching fish and he was asked to bring two fishing rods. The fishing rods were immediately brought by Chhotku

Kharia after which the informant and Harihar Mishra got busy catching fish. The shepherd of Ram Prasad Ram namely, Santu Nagesia (appellant)

was grazing cattle nearby and Radha Ram, the son of Baldeo Ram was also grazing cattle. It has been alleged that Harihar Mishra started making

small talks with Santu Nagesia. Since darkness was descending the informant asked Harihar Mishra to return to the village. Harihar Mishra after

handing over the fishing rod to Chhotku Kharia started washing his hands and the informant in the meantime had seen a signal from Radha Ram to

Santu Nagesia and Santu Nagesia committed an assault upon Harihar Mishra with a Tabla after which he fled away towards the jungle. The incident

was also witnessed by Tulsi Bhagat who was grazing cattle nearby. The informant had brought the injured Harihar Mishra to the house of Bhadwa

Nagesia and while he was going to Palkot to call a Doctor he had seen Ram Prasad Ram fleeing away towards the forest. After about one hour of

the incident Harihar Mishra died in the house of Bhadwa Nagesia.

Based on the aforesaid allegations Palkot P.S. Case No. 72 of 1987 was instituted u/s 302/120B of the IPC. On completion of investigation charge

sheet was submitted and after cognizance was taken the case was committed to the Court of Sessions where it was registered as S.T. No. 218 of

1988. Charge was framed against the accused u/s 302/34 of the IPC which was read over and explained to him in Hindi to which he pleaded not guilty

and claimed to be tried.

4. The prosecution has examined as many as nine witnesses in support of its case.

5. P.W.1 (Chhotku Kharia) has stated that he was catching fish when Jagbandhu and Harihar came and they wanted fishing rods as they also

expressed their desire to catch fish. He went and brought two fishing rods from his house. Thereafter all three got themselves engaged in catching

fish when Santu Nagesia came and started conversing with Harihar Mishra. When Jagbandhu and Harihar started washing their hands Santu Nagesia

assaulted Harihar Mishra with a Tabla. The assault was committed on a signal given by Radha who was standing nearby. Santu and Radha thereafter

fled away towards the direction where Ramprasad and Baldeo were present. Harihar Mishra was taken to the house of Bhadwa Nagesia where after

one hour he died. There was a land dispute between Harihar Mishra and the Nagesias. A meeting was held a day prior to the incident in the house of

Baldeo where the murder of Harihar Mishra was planned.

In cross-examination, he has deposed that he had gone to the place of occurrence to catch fish. He had never witnessed any quarrel or scuffle

between the accused and Harihar Mishra. Before Jagdambu and Harihar Mishra came he was catching fish alone. Harihar was catching fish since

3:00 P.M. Santu had a conversation with Harihar after which he left to graze the cattle. Harihar and Santu had conversed for one hour though he does

not know the topic of their conversation. When the assault was committed Radha was standing at a distance of hundred yards.

6. P.W.2 (Tulsi Bhagat) has stated that he was grazing cattle when he saw Santu Nagesia assaulting Harihar Mishra with a tangi. Harihar was

washing his hands and feet and Santu, Jagbandhu and Chhotku were present. Due to the assault Harihar fell down on the earth. The place where he

was grazing the cattle Radha was also present. After the assault was committed Santu and Radha fled away towards the forest. Santu was pursued

by Jagbandhu. He has stated that Harihar Mishra was brought to the house of Badhwa Nagesia.

In cross-examination, he has deposed that no one from the village were present at the time of the incident. He was aware about the fact that Harihar

Mishra will be murdered. At the place of occurrence Harihar Mishra had a conversation for 12-15 minutes with Santu Nagesia. He has deposed that

Santu and Radha were with him.

7. P.W.3 (Dr. Yogendra Prasad Sinha) was posted as a Civil Assistant Surgeon at Sadar Hospital, Gumla and on 17.11.1987 he had conducted

autopsy on the dead body of Harihar Mishra and had found the following:

(i) Incised wound over occipital region from above downwards of the size 6" x 1" x 4".

The injury was grievous in nature sufficient to cause death and it was caused by sharp cutting weapon like tangi. He has proved the post-mortem

report which has been marked as Exhibit-1.

8. P.W.4 (Bhadwa Nagesia) has stated that the incident is of two years four months back and he had brought Harihar Mishra in an injured condition

to his house. There was an injury on the back of the head. Harihar Mishra was washing his hands and feet when Santu Nagesia assaulted him with a

Tabla. Harihar Mishra had his raiyati land at Bazra Domnapani which was a cause of dispute with Chhaili and Baldeo.

In cross-examination, he has deposed that for the last three years there was a dispute between Chhaili and Harihar Mishra. Santu Nagesia is the

servant of Baldeo. Before his evidence in Court his statement was never recorded earlier.

9. P.W.5 (Bandhu Bhagat), has been tendered by the prosecution.

10. P.W.6 (Jagbandhu Ram) is the informant who has stated that he and Harihar Mishra were catching fish and the fishing rods was provided by

Chhotku Kharia. Santu Nagesia, Tulsi Bhagat and Radha Nagesia were grazing cattle nearby. Santu Nagesia had come to the place where they were

catching fish and he had a conversation with Harihar Mishra. When he and Harihar Mishra were washing their hands and feet before proceeding to

their respective houses Santu Nagesia assaulted Harihar Mishra on the back portion of his head with a Tabla. He had carried Harihar Mishra to the

house of Bhadwa Nagesia and he had thereafter left for calling a Doctor and informing the Police about the incident.

When he had returned back Harihar Mishra was dead by then. His fardbeyan was recorded by the Police at the Police Station which has been proved

and marked as Exhibit-2. There was a land dispute going on between the accused and Harihar Mishra.

In cross-examination, he has deposed that the house of Chhotku Kharia is at a distance of 20-22 feet from the place of occurrence. He has also

deposed that Radha Nagesia and Tulsi Bhagat were also present at the place of occurrence.

11. P.W.7 (Ashok Kumar Gupta) had taken over the investigation from Arvind Kumar Ram who had recorded the statement of the witnesses. After

perusal of the case diary he had submitted charge-sheet. He has proved the formal FIR which has been marked as Exhibit-3.

12. P.W.8 (Sukra Kharia) has stated that the murder of Harihar Mishra was disclosed to him by Bhadwa Nagesia.

13. P.W.9 (Arvind Kumar Rai) was posted as an Officer-Incharge of Palkot P.S. and on 16.11.1987 he had heard a rumour that at Bazratola

Dobnapani Harihar Mishra has been murdered. He had made a station diary entry and thereafter had left for the place of occurrence. He had

recorded the fardbeyan of Jagbandhu Ram which has already been proved and marked as Exhibit-2. He had prepared the inquest report and sent the

body for post-mortem. He had inspected the place of occurrence which is at village Bazratola Dobnapani in a rocky place. He had recorded the

statements of the witnesses. On 18.04.1988 he had handed over the investigation to Sub Inspector Ashok Kumar Gupta on account of his transfer. He

has proved the station diary entry which has been marked as Exhibit-4 with objection.

In cross-examination, he has deposed that in course of investigation it came to light that accused Radha ram was grazing cattle near the place of

occurrence. Chhotku Kharia had not stated that Ram Prasad had a gun in his possession.

14. The statement of the accused was recorded u/s 313 Cr.P.C., in which, he has denied his complicity in the murder of Harihar Mishra.

15. It has been submitted by Mr. Pradip Kumar, learned counsel for the appellant that the prosecution has failed to prove that it was the appellant who

had committed the murder of Harihar Mishra. It has been submitted that at best it can be a case u/s 304 Part-II of the IPC as the incident had

occurred at the spur of the moment and on account of grave provocation given by the deceased Harihar Mishra.

16. Mr. Tarun Kumar, learned A.P.P. for the State has submitted that there are overwhelming materials in the form of P.W.1, P.W.2 and P.W.6

which clearly points to the role of the appellant in committing the murder of Harihar Mishra with a Tabla.

17. We have heard the learned counsel for the respective sides and have also perused the Trial Court Records.

18. The obsession of Harihar Mishra in catching fish in the pond turned fatal on account of he being assaulted with a Tabla on the back portion of his

head. The prime witnesses of the prosecution are P.W.1, P.W.2 and P.W.6. P.W.1 and P.W.6 were also catching fish in close proximity to Harihar

Mishra. P.W.2 is another eye-witness who was grazing cattle nearby. While the deceased was catching fish he had a conversation with the appellant

who was also grazing cattle nearby and as P.W.6 and the deceased started making preparations to go home the appellant assaulted Harihar Mishra

from the back side and Harihar Mishra who was taken to the house of P.W.4 succumbed to his injuries. The evidence of P.W.1 and P.W.6 do not at

all indicate that there was an exchange of hot talks between the deceased and the appellant and in fact P.W.1 has categorically stated in his cross-

examination that he had never witnessed any quarrel or scuffle between the appellant and the deceased. The normal conversation which ensued

between the deceased and the appellant negates the submission propounded by the learned counsel for the appellant that the assault had taken place

at the spur of the moment. It would rather seem that it was a well thought out plan and the appellant was also armed with a Tabla in order to execute

such plan. The defense has failed to elicit any contradiction in the evidence of P.W.1, P.W.2 and P.W.6 who have been consistent in their evidence

regarding the manner of assault and the aftermath of the assault when the deceased was taken to the house of P.W.4 and the evidence of P.W.4

corroborates such fact. Even the autopsy report corroborates the manner of assault as stated by P.W.1, P.W.2 and P.W.6. The learned trial court had

correctly appreciated the evidence of the witnesses while recording a finding of guilt against the appellant. We do not find any reason to differ with

such finding and consequently we dismiss this appeal.

19. The appellant is directed to surrender before the learned trial court immediately and forthwith to serve out the rest part of his sentence.