

Nirmal Bhuiyan 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, 201, 302

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

Bench: Division Bench

Advocate: Shekhar Siddharth, Manoj Kumar Mishra

Final Decision: Allowed

Judgement

Rongon Mukhopadhyay, J.Ã, Ã, Ã, Ã,

1. Heard Mr. Shekhar Siddharth, learned counsel for the appellants and Mr. Manoj Kumar Mishra, learned A.P.P. for the State.

2. This appeal is directed against the judgment and order of conviction and sentence dated 27.06.1998 (sentence passed on 30.06.1998) passed by Sri

Dilkeshwar Pandey, learned 2nd Additional Sessions Judge, Chatra in S.T. No. 55 of 1996 / 15 of 1997, whereby and whereunder, the appellants have

been convicted for the offence punishable u/s 302/34 of the Indian Penal Code and have been sentenced to undergo R.I. for life.

3. The prosecution case arises out of the fardbeyan of Sugia Devi recorded on 29.07.1995, in which, it has been stated that the son of the informant

namely, Rambriksh Bhuiyan had left his house on Monday by saying that he is going to Sherghati for working as a labour and he assured the informant

that he will return on Wednesday. When the son of the informant did not return on Wednesday, the informant, on Thursday went in search of her son

and in village Noniapali she had met Lachhu Kurmi who disclosed that the son of the informant was in Ghagri Bazar on Wednesday and he had

returned home along with co-villagers Nirmal Bhuiyan, Kargha Bhuiyan and Yamuna Bhuiyan. At this information, informant went to the house of the

said persons but they could not be found. The informant came to know that these persons had fled away. It has been alleged that on Friday there was

a rumour that a dead body is lying in Bishunpur Jungle and when the informant along with her relatives and some villagers had gone to the said place

she had seen the body of her son. There was a black mark on the throat which indicates that the son of the informant was strangled to death.

There was a previous enmity between the informant and the accused persons who always issued threats of committing murder.

Based on the aforesaid allegations Hunterganj P.S. Case No. 39 of 1995 was instituted for the offence u/s 302/34 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. 55 of 1996. Charge was framed u/s 302/34 of the IPC which was read over and explained to the accused in Hindi to which they 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 (Sudama Bhuiyan) has stated that the incident is of one year, one and a half months back, in which, his nephew Rambriksh Bhuiyan had died

and he was murdered by Jamuna Bhuiyan, Kargha Bhuiyan and Nirmal Bhuiyan, He had not seen anyone committing the murder. Rambriksh was

murdered because of land dispute. He has stated that just a few days back before the incident there was a quarrel between the accused and the

deceased over a gairmazurwa land. The threat given by the accused was in his presence. The quarrel happened on Sunday and on Monday

Rambriksh Bhuiyan had gone to Sherghati for work.

When on Friday there was a rumour that a dead body is lying in Bishunpur Jungle he had also gone to the Jungle along with the informant, Sudama

Bhuiyan, Charitar Bhuiyan, Shivcharan Bhuiyan and others where he had seen the dead body lying besides the winding road in the Jungle. There was

a mark of rope on the neck of the dead body.

In cross-examination, he has deposed that two days prior to the incident there was a quarrel between the accused and the deceased over a piece of

land which was forcibly occupied by the deceased. He had also occupied a part of the disputed land. He has deposed that the wife of the deceased

had reached the place of occurrence after the incident had happened. The accused and the deceased were friends and there never used to be any

quarrel between them. He had not seen the occurrence but had given the name of the accused on the basis of suspicion.

6. P.W.2 (Lachhu Kurmi) has stated that he was going home from Ghagri Bazar and Nirmal Bhuiyan Karghani Bhuiyan, Jamuna Bhuiyan and

Rambriksh Bhuiyan (deceased) were going in front of him.

In cross-examination, he has deposed that sun had not set and he was returning from the market at around 2:30-3:00 P.M. The accused and the

deceased were ten yards ahead of him. He had not disclosed about this earlier to anyone. There were several other persons between him and the

accused and the deceased.

7. P.W.3 (Sahdeo Yadav) has stated he was in Hunterganj P.S. when on the orders of the Inspector he had accompanied a Choukidar to Bishunpur

where they saw the dead body of Rambriksh. Sugia Bhuiini and Sudama Bhuiyan had reached the said place prior to them. He does not know who had

committed the murder. The dead body was taken to Hunterganj P.S. and from there it was sent for post-mortem to Chatra.

8. P.W.4 (Dr. Nitya Nand Mandal) was posted as a Civil Assistant Surgeon at Chatra Sadar Hospital and on 29.07.1995 he had conducted autopsy on

the dead body of Rambriksh Bhuiyan and had found the following:

(i) Whole body putrefied- Soft tissue of face eaten away by crawling maggots. Only skeletal parts of face present. Skin cuticle peeled out, blebs at few places &

reddish fluid, whole body swollen, maggot crawling over face & abdomen & thigh.

(ii) Anti-mortem injury:- Blackish zone of ecchymosis over front of chest wall on right side 6" away from midline and extending to left side of chest 5" away

from midline. At the back of 2nd rib on the right and 3rd rib on left side. Another one are the lower part of 8th rib on right side 4" away from midline extending

to 7th rib on left side 3" away from midline. Cracking sensation of chest rib present on chest. On exploration of the chest both thoracic cavity full of blood. Both

lungs lacerated 3" x 3", 1/2" haematoma in the lungs (right side). On left side lacerated wound 3", 1/2" x 3", 1/2" haematoma present. There was fracture of

multiple ribs on right side & multiple on left side. Mucosa of larynx and trachea was failed.

(iii) Injury over left side whole skin, muscle and soft tissue eaten away by maggot.

(iv) Skin and whole abdomen already opened over lower part size 4" x 5" parts of gas & tissues from abdomen was protruding out which was due to

putrefaction.

The cause of death was opined to be on account of shock and haemorrhage resulting from chest injury. He has proved the post-mortem report which

has been marked as Exhibit-1.

In cross-examination, he has deposed that it was not a case of asphyxia by strangulation.

9. P.W.5 (Sugia Devi) is the informant and the mother of the deceased who has stated that she was in her house when her son Rambriksh Bhuiyan

left saying that he will be returning on Wednesday. When he did not return on Wednesday she went in search of him on Friday and on coming to

know that a dead body is lying in Bishunpur Jungle she went to the said place along with Charitar Bhuiyan, Sudama Bhuiyan and Shivcharan Bhuiyan

and identified the body as that of her son. Lachhu Kurmi had disclosed to her that he had seen her son with Nirmal Bhuiyan, Kargha Bhuiyan and

Yamuna Bhuiyan. Her son was done to death by pressing his neck. When she had gone to the house of Nirmal Bhuiyan, Kargha Bhuiyan and

Yamuna Bhuiyan she could find none of them present. There was an enmity with the three accused persons who always threatened her son of

committing his murder. When the Police had come her fardbeyan was recorded.

In cross-examination, she has deposed that there was no intimacy between the deceased and the accused.

10. P.W.6 (Urmila Devi) is the wife of the deceased who has stated that on Monday her husband had gone to Sherghati for business purpose and

when he did not return even on Thursday she started searching for him and came to know that her husband was coming back from Ghagri Bazar with

the accused persons. In the village there was a rumour floating around that a dead body is lying near the bushes in Bishunpur Jungle. She along with

her mother-in-law, Shivcharan, Charitar, Sudama had gone to see the dead body and identified the same to be that of her husband. There was a mark

of rope in the neck. Her husband had been murdered by Yamuna, Nirmal and Karghani.

In cross-examination, she has deposed that the accused persons and her husband used to spend time together. She had not seen the assault. The

Police had not recorded her statement.

11. P.W.7 (Sukhlal Yadav) has proved his signature on the inquest report of Rambriksh Bhuiyan which has been marked as Exhibit-2.

In cross-examination, he has deposed that he had not seen the accused persons committing assault upon Rambriksh Bhuiyan.

12. P.W.8 (Dhobi Yadav) has stated that he had seen the dead body of Rambriksh Bhuiyan about two and a half years back.

In cross-examination, he has deposed that he does not have any knowledge as to who had committed the murder of Rambriksh Bhuiyan.

13. P.W.9 (Uma Shankar Prasad Singh) has proved the formal FIR which has been marked as Exhibit-3. He has also proved the fardbeyan which has

been marked as Exhibit-4.

14. The statements of the accused were recorded u/s 313 Cr.P.C., in which, they have denied their complicity in the murder.

15. It has been submitted by Mr. Shekhar Siddharth, learned counsel for the appellants that admittedly there are no eye-witnesses to the occurrence

and only on the basis of the deceased being last seen with the appellants they have been convicted. There was a cordial relationship existing between

the appellants and the deceased as stated by P.W.6 and there was no occasion or reason for the appellants to have indulged in the murder of

Rambriksh Bhuiyan.

16. Mr. Manoj Kumar Mishra, learned A.P.P. for the State has submitted that the evidence of P.W.2 clearly reveals that he had seen the deceased

and the accused in the market returning home and the recovery of the dead body was also in close proximity to the deceased having been last seen

with the appellants and there being a land dispute in existence the same in categorical terms indicate the appellants as the assailants.

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

18. Admittedly there are no eye-witnesses to the murder of Rambriksh Bhuiyan. The entire case of the prosecution is based on circumstantial

evidence and the implication of the appellants is on account of they having been last seen with the deceased which has been sought to be juxtaposed

with the enmity between both the sides arising out of a land dispute. The basis for involvement of the appellants is the disclosure of Luchhu Kurmi

who is said to have seen the deceased in the company of the appellants at Ghagri Bazar. The facts regarding such disclosure made by Luchhu Kurmi

to the informant has been reiterated in the evidence of the informant who has been examined as P.W.5. Luchhu Kurmi has been examined as P.W.2

and he has stated about seeing the appellants with the deceased in the afternoon at Ghagri Bazar going home and all these persons were just in front

of him. P.W.2 has stated about the presence of several persons in the market but none have been examined by the prosecution. P.W.2 has not stated

about any unusual conduct on the part of the appellants either between themselves or with the deceased and nothing has been stated about the

appellants being in possession of any article which could be used for causing bodily harm. Although P.W.1 and P.W.5 have stated about the enmity

between both the sides but the evidence of the wife of the deceased examined as P.W.6 reveals about the intimacy both sides shared. Moreover, the

dead body of Rambriksh Bhuiyan was not recovered in close proximity to his having been last seen with the appellants. No incriminating article was

recovered either from the place of occurrence or from the possession of the appellants. There is no corroborative material or evidence to lead

credence to the last seen theory and in fact the circumstances originating from the case relegates the prosecution case to the strata of no evidence.

19. The learned trial court having not properly appreciated the materials available on record which points to the innocence of the appellants, we hereby

set aside the judgment and order of conviction and sentence dated 27.06.1998 (sentence passed on 30.06.1998) passed by Sri Dilkeshwar Pandey,

learned 2nd Additional Sessions Judge, Chatra in S.T. No. 55 of 1996/15 of 1997.

20. This appeal is allowed.

21. Since the appellants are on bail they are discharged from the liability of their bail bonds.