

(2025) 01 JH CK 0069

Jharkhand High Court

Case No: Criminal Appeal (DB) No. 73 Of 1999(R)

Sunil Namata

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision: Jan. 14, 2025

Acts Referred:

- Code of Criminal Procedure, 1973 - Section 313
- Indian Penal Code, 1860 - Section 302

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

Bench: Division Bench

Advocate: Naveen Kumar Jaiswal, Nehala Sharmin

Final Decision: Dismissed

Judgement

Rongon Mukhopadhyay, J.Â Â Â Â

1.Â Â HeardÂ Â Mr.Â Â NaveenÂ Â Kumar Jaiswal,, learned counsel for the appellant and Mrs. Nehala Sharmin, learned Spl. P.P.

2. This appeal is directed against the judgment and order of conviction and sentence dated 10-02-1998 passed by Sri S.H. Kazmi, learned 3rd

Additional Sessions Judge, Jamshedpur in S.T. No. 685 of 1994, whereby and whereunder the appellant has been convicted for the offence punishable

under Section 302 IPC and has been sentenced to undergo imprisonment for life.

3. The prosecution case arises out of the fardbeyan of Joshi Dolai recorded on 14-04-1993 in which it has been stated that on the same day at

3:30PM, the father of the informant had gone to the pond to ease himself and the informant was playing football in a nearby field when the informant

saw his father being assaulted with a sword by Sunil Namata (appellant). On hearing his father letting out a cry of alarm, the informant reached to the said spot and saw the accused repeatedly assaulting his father with a sword. The informant was threatened by Sunil Namata at which he rushed to his mother and intimated her about the incident. When the mother of the informant rushed to the place of occurrence, she saw the accused fleeing away with a sword and he was shouting that he had murdered Prafulla Dolai and was going to the Police Station. Nobody made any attempt to catch the accused because he was threatening everybody. When the informant went back to the place of occurrence with his mother, he found his father dead.

Based on the aforesaid allegations, Musabani P.S. Case No. 28/93 was instituted against Sunil Namata under Section 302 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. 685/1994. Charge was framed against the accused under Section 302 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 eight witnesses in support of its case:

P.W.1 Joshi Dolai is the informant and the son of the deceased who has stated that on 14-04-1993 at 3:00PM, he was playing football in the field and his father was watching the game. After sometime, his father left for the pond to ease himself. Sunil Namata was hiding, who had assaulted his father with a sword and resultantly he fell down. He had witnessed the assault committed by Sunil Namata upon his father. When he went ahead towards Sunil Namata, he was threatened and thereafter Sunil left for his house. He has stated that he had disclosed about the incident to his mother and returned back with his mother to the place of occurrence where he found his father dead. He has stated that there was a previous enmity between his father and Sunil Namata and this resulted in the occurrence.

In cross-examination, he has deposed that there were 5-6 boys playing football with him. He could recollect the name of Sanju, Lobin and Gadu as the boys who were playing with him. The accused had committed assault upon his father when he was easing himself and blood was found at the said

place. The distance to the place of occurrence from the place where he was playing football was around 20-30 hands. The boys who were playing

football had seen the occurrence and had thereafter fled away. At 6:00PM, his fardbeyan was recorded by the Police in the football field itself.

On recall, he has proved his signature in the fardbeyan which has been marked as Exhibit-1.

P.W.2 Kiran Bala is the mother of the informant, who has stated that the incident is of 3 years 2 months back and her husband had gone to ease

himself when her son came running and disclosed that her husband has been murdered by Sunil Namata with a sword. At this, she rushed to the place

of occurrence where she saw Sunil Namata fleeing away with a blood-stained sword in his hand towards the Police Station. She found her husband

lying dead and there were 6-7 injuries on his person inflicted with sword. A day prior to the incident, Sunil Namata was demanding some donation

from her and when she refused, he became angry and had threatened of murdering her as well as her son. Earlier also, there used to be quarrels

between her family and Sunil Namata.

In cross-examination, she has deposed that Sunil Namata is her nephew. Joshi Dolai had informed her about the incident and thereafter she had gone

to the place of occurrence with Joshi Dolai. There was a long-standing enmity between her family and Sunil Namata on account of a land. She had

witnessed the assault committed by Sunil Namata and he had a blood-stained sword with him. The incident was witnessed by Gadu, Tupru, Mantu,

Sanju, Gamini and others.

P.W.3 Subodh Dolai has stated that his brother Joshi Dolai had informed him that his father has been murdered by Sunil Namata with a sword. When

he came out of the house, he had seen Sunil Namata with a sword and blood was dripping from the sword and Sunil Namata was fleeing away. When

he, along with his brother and mother went near the pond, they found his father dead, lying in a pool of blood.

In cross-examination, he has deposed that on hearing the cry of alarm of his brother, several villagers had come out.

P.W.4 Swapan Kumar Madina has stated that he does not know who had committed the murder of Prafulla Dolai. He had not seen anyone fleeing

away with a sword. He has identified his signature on the seizure list which has been marked as Exhibit-2.

P.W.5 Kanhai Mahali was the Mukhiya of village Badhiya and about 3-4 years back, the villagers had informed him that Prafulla Dolai has been

murdered. He had gone to the place of occurrence and found the dead body of Prafulla Dolai lying on the ground.

In cross-examination, he has deposed that he cannot say who had disclosed about the name of Sunil Namata.

P.W.6 Gurucharan Mahali has proved his signature on the seizure list which has been marked as Exhibit-2/1.

P.W.7 Bishnu Dolai has stated about the murder of his father committed on 14-04-1993 by Sunil Namata with a sword.

In cross-examination, he has deposed that nobody had informed him about the murder of his father. His statement was not recorded by the Police.

P.W.8 Ranjan Sinha had conducted autopsy on the dead body of Prafulla Dolai and had found the following:

(i) Sharp cut wound on left side of the middle of neck, cutting skin muscles and major vessels, size about 4 inch, 1 inch and 3 inch.

(ii) Superficial sharp cut wound on left clinical extending back to left holder, size about 6 inch and half inches.

(iii) Sharp cut penetrating wound on front of chest.

(iv) Penetrating wound on the left side of lower chest, penetrating the lungs and heart size inch, half inch and 3 inches deep

(v) Sharp cut wound on left arm.

(vi) Sharp cut looking penetrating wound on lower left chest size about 2.1/2 inch, 1 inch and 3 inch.

(vii) Sharp cut wound on middle of back size about 4 inch, 1/2 inch x 1/2 inch width.

The cause of death was opined to be on account of shock and hemorrhage caused by the above mentioned wounds, particularly wound no. (i) and (iv)

which were caused by sharp cutting pointed weapon. He has proved the post mortem report which has been marked as Exhibit-3.

5. The statement of the accused was recorded under Section 313 Cr.P.C. in which he has denied his complicity in the offence.

6. It has been submitted by Mr. Naveen Kumar Jaiswal, learned counsel for the appellant that the appellant has been falsely implicated due to previous enmity. It has been submitted that as per P.W.1, there were several boys who were playing with him, but none have been examined by the prosecution. The informant has developed his story of witnessing the assault since the distance between the place where the informant was playing and the place near the pond where the assault was committed seems to demolish the claim of the informant of being an eyewitness. It has been submitted that no independent witness has been examined by the prosecution and even the Investigating Officer has not been examined which has caused prejudice to the defence.

7. Mrs. Nehala Sharmin, learned Special P.P. has submitted that the evidence of P.W.1, P.W.2 and P.W.3 leaves no room for doubt that it was the appellant who was instrumental in committing the murder of Prafulla Dolai by means of a sword.

8. We have heard the learned counsel for the respective sides and have also perused the trial court records.

9. The evidence of the prosecution witnesses reveal that it is only P.W.1 who had witnessed the assault committed upon his father with a sword by the appellant. P.W.1 was playing in the field, while his father had gone to ease himself near a pond which was at a distance of 20-30 hands from the field. The appellant, who was hiding, had committed the assault with a sword upon the father of P.W.1 and considering the distance between the field and the place of occurrence, it was quite natural and believable for P.W.1 to have seen the assault. So far as P.W.2 is concerned, she in her cross-examination has also claimed to have witnessed the assault, but such evidence seems to have been developed primarily due to the fact that she had come to the place of occurrence after being informed about the assault by P.W.1 and as per P.W.1 when he returned with P.W.2 to the place of occurrence, his father was lying dead by then. The examination-in-chief of P.W.2, wherein she has stated about seeing the appellant fleeing away with a sword seems to be more consistent and relatable to the incident as even P.W.3 has stated about seeing the appellant fleeing away with a sword.

Although it is the case of the defence that none of the persons who were playing, except P.W.1, have been examined by the prosecution, but such claim cannot be accepted as the evidence of P.W.1 is reliable, consistent and free from any exaggeration and is corroborated by the evidence of P.W.2 and P.W.3. Even the post-mortem report corroborates the manner of assault committed upon the father of the informant.

10. The circumstances noticed above have rightly been considered by the learned trial court while convicting the appellant for the offence under Section 302 IPC and sentencing him accordingly and there being no illegality or perversity in the impugned judgment dated 10-02-1998, we hereby dismiss this appeal.

11. Since the appellant is on bail, he is directed to surrender before the learned trial court immediately and forthwith to serve out the remaining part of his sentence.

12. Pending I.A.s, if any, stands closed.