

Uttam Chandra Das Vs State Of Jharkhand

Court: Jharkhand High Court

Date of Decision: Jan. 23, 2025

Acts Referred: Code of Criminal Procedure, 1973 â€” Section 313
 Indian Penal Code, 1860 â€” Section 34, 201, 302

Hon'ble Judges: Ananda Sen, J; Gautam Kumar Choudhary, J

Bench: Division Bench

Advocate: Kaushik Sarkhel, Priya Shrestha

Final Decision: Allowed

Judgement

Gautam Kumar Choudhary, J

1. Appellants are before this Court in appeal against the judgment of conviction and sentence under Sections 201, 302/34 of the IPC.

2. As per the written report of the father of the deceased, dispute ensued between the deceased and the other group involved in the Saraswati Puja

celebration on the issue of screening of cinema. The deceased insisted that Hindi film be screened, whereas the accused persons wanted screening of

a Bangla film. This resulted in altercation and on 05.02.1996, Nakul Chandra Das father of Uttam Chandra Das threatened the informant's son

with his life. On 06.02.1996, Dijen Mandal came to his house and asked his son Phulkishore (deceased) to accompany him on the occasion of

immersion of idol of goddess Saraswati. Initially, he refused, but later on his request, he accompanied him, but never returned back home. Informant

and his sons informed this to Nakul Chandra, but he did not extend any help. It is further case of the prosecution case that on that night while on

search of the deceased, Akshay Kumar Das (P.W. 1) had seen all the four accused persons near the bus stand variously armed lathi, iron rod, knife

etc. During course of search, they found blood stains behind the house of the Mukhiya and also a muffler. They followed blood-stained marks from

there and the dead body was found from the railway track.

3. Initially, Madhupur Railway Police registered U.D. Case No.13/96 on 07.02.1996 and thereafter, as the jurisdiction was within Jamtara District, so

it was lodged as Jamtara P.S. Case No.42 of 1996 Police on investigation, found the case true and submitted charge sheet. Appellants were put on

trial for the offence under Section 302/201 of the IPC.

4. Altogether six witnesses have been examined on behalf of the prosecution and two witnesses have also been examined on behalf of the defence

and the relevant documents including post-mortem examination report were adduced into evidence and marked as exhibits. After prosecution

evidence, statement of the accused persons were recorded under Section 313 of the Cr.P.C. Defence is of innocence and false implication on account

of contract business rivalry.

5. D.W. 2 has deposed that he had heard that the deceased had died in a rail accident. He has claimed that he was also present during the procession

of immersion of the idol, but had not seen the deceased to be present there. D.W. 2 has also deposed that deceased was not present at the time of

immersion of the idol in the pond.

6. It is argued by learned counsel on behalf of appellants that there is no direct eye witness to the incidence and there is wide gaping hole in the

incriminating circumstances on the basis of which judgment of conviction has been passed by the learned trial Court. The claim of P.W. 1 that in the

intervening night 05/06.02.1996, while searching for the deceased, he had seen all the four accused persons armed with various weapons, is a product

of afterthought. This is argued, as before the delayed FIR on 08.02.1996, in the U.D. Case No.13/96 dated 07.02.1996 there is no reference to the

appellants having been spotted by the P.W. 1 in night in suspicious circumstance. Had he seen the accused persons that night with blood-stained arms,

it was but natural for the informant party to have lodged the FIR in place of a U.D. Case. It is intriguing as to why this information was not shared

with the police immediately next day. The very testimony that in the dead of night, he could identify all the appellants with arms and blood-stains over

the cloth in the flash of torch, is far-fetched.

7. It is further argued that the chain of circumstance is not complete from which an inference can be drawn that the appellants were the author of

crime.

8. Learned A.P.P. has defended the judgment of conviction and sentence.

FINDING

9. The deceased died a homicidal death, is objectively established by the Doctor (P.W. 5) who conducted post-mortem of the dead body and found as

many as four ante-mortem injuries which may have been caused by Gupti (a penetrating weapon). The dead body was thrown on a railway line and

was overrun by train and had also several post-mortem injuries as noted in the post-mortem report (Exhibit 5). The post-mortem examination report

establishes that the death was homicidal and thereafter, the dead body was disposed of on the railway track so as to give it a picture of rail traffic

accident.

10. Prosecution relies on the following circumstances to prove the charge against the appellants: -

I. In the night on 04.02.1996, there was some dispute between the deceased and the appellants on the screening of a film.

II. On 05.02.1996 in the morning, Nakul Chandra Das came to his house in the morning and threatened his son with life for the last night dispute.

III. On 06.02.1996, Dijen Mandal took the deceased with him on the pretext of participating in the idol immersion ceremony.

IV. In the intervening night of 06/07.02.1996 while searching for the deceased, informant and his elder son Akshay Kumar Das (P.W. 1) when reached the main road,

they saw the appellants armed with lathi, rod, knife with blood-stained marks.

V. Blood-stained marks were found behind the house of Nakul Chandra Das (Mukhiya) and the muffler was found.

11. In order to prove these circumstances, prosecution has examined altogether four material witnesses, of whom P.W. 3 was declared hostile and

P.W. 4 has been tendered, and the case precariously rests on the testimony of P.W. 2, who is the informant and the father of the deceased, and P.W.

1, who is the brother of the deceased.

12. So far, the first circumstance is concerned, it is proved by the consistent account of the witnesses. There is no reason to doubt the prosecution

evidence that sharp difference had cropped up between the deceased and the accused persons, with regard to the screening of the film. Deceased

insisted upon screening of a Bangla film, whereas the accused persons were in favour of a Hindi film.

13. Although the informant (P.W. 2) has supported the second circumstance, but for the minor dispute, evidence that Nakul Chandra Das who was

also the Mukhiya of the village had come to the house of the informant and threatened the deceased with his life does not inspire confidence. In any

case since Nakul Chandra Das was not put on trial, therefore this circumstance is not relevant and of no consequence, so far the other appellants

before us are concerned.

14. So far, the fourth circumstance is concerned, I find much force in the argument advanced on behalf of the appellants that had they really seen the

accused persons at night with arms and blood stains, they must have reported the matter to the police the very next day, as there had been past

dispute as well threat from their side as per the prosecution version. U.D. Case No.13/96 dated 07.02.1996 would not have preceded the FIR which

was lodged on 08.02.96. I.O. (P.W. 6) in para 15 has deposed that witness Akhsay Das (P.W. 1) had not mentioned in his statement about the blood

stain marks on the hand and body of the accused persons. It is beyond comprehension that informant and brother of the deceased despite having

witnessed the appellants in such suspicious circumstance, with arms and blood stain on their hand, did not report the matter to the police. In normal

course of human conduct, when someone has received threat to life is missing, and witnesses have seen suspects with arms and with blood stain over

their body, they would not simply keep quiet and come up with these facts only when the dead body is found. Testimony of P.W. 1 and P.W. 2 on this

circumstance is hard to swallow.

15. We are left with the third circumstance against Dijan Mandal that he had taken the deceased from the house on the pretext of joining the

immersion ceremony. P.W. 1 and P.W. 2 are consistent on it. There is no independent corroboration of this circumstance by any of the co-villagers

that they saw the deceased with these appellants on that night either at immersion procession or any other place that evening. Defence witnesses

have disputed this. Even if it is assumed to be true, that Dijan Mondal had called the deceased to join the idol immersion procession, this by itself

cannot be accepted as an incriminating circumstance to prove the charge either against Dijan Mandal or any other appellants.

16. On these sketchy evidences, judgment of conviction and sentence is not justified when the case rests purely on circumstantial evidence. Law on

the point needs no reiteration which has been established by a long line of judicial precedents. Principles have been reiterated by Hon'ble Supreme

Court in Wadla Bheemaraudu v. State of Telangana, 2024 SCC OnLine SC 3589. The law is well-settled that in a case based purely on circumstantial

evidence, the prosecution is under an obligation to prove each and every link in the chain of incriminating circumstances beyond all manner of doubt

and that the circumstances so relied upon by the prosecution should point unequivocally towards the guilt of the accused and should be inconsistent

with the guilt of anyone else or the innocence of the accused. Only in the event of the complete/unbroken chain of circumstances being proved by

cogent and clinching evidence which does not admit of any other inference, otherwise that of the guilt of the accused, the conviction can be recorded.

Under the circumstance, for the reasons discussed above, Appellants are entitled to benefit of doubt. Judgment of conviction and sentence is

accordingly set aside.

Criminal Appeal is allowed.

Appellants are on bail. Sureties are discharged from the liabilities of their bail bonds.

Pending Interlocutory Application, if any, is disposed of.

Let the Trial Court Records be transmitted to the Court concerned along with a copy of this judgment. Let the Trial Court Records be transmitted to

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