

Ashim Kumar Biswas Vs State Of Jharkhand

Court: Jharkhand High Court

Date of Decision: Jan. 23, 2025

Acts Referred: Code of Criminal Procedure, 1973 â€” Section 161, 313
Indian Penal Code, 1860 â€” Section 34, 120, 120B, 201, 302, 364

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

Bench: Division Bench

Advocate: B.M. Tripathi, Navin Kr. Jaiswal, Sanjay Kr. Srivastava

Final Decision: Allowed

Judgement

Ananda Sen, J

1. This Criminal Appeal is preferred on behalf of the appellant being aggrieved by the judgment of conviction dated 16.09.2002 and order of sentence

dated 18.09.2002 passed by Learned Additional District & Sessions Judge, Fast Track Court No.5, Dhanbad, in Sessions Trial No.630 of 1993,

whereby and where under the appellant has been convicted for offences under Sections 302 and 201 IPC. He was sentenced to undergo

imprisonment for life with fine of Rs.5,000/- under Section 302 IPC and further to undergo rigorous imprisonment for 07 years with fine of Rs.2,000/-

for offence under Section 201 IPC. Both sentences were ordered to run concurrently.

2. Heard learned counsel for the appellant and learned A.P.P. for the State and perused the material available on record.

3. Learned senior counsel representing the appellant prays for acquittal of the appellant on the ground that evidences of most of the prosecution

witnesses are contradictory to each other and the prosecution case is based on false and concocted fact. There is an inordinate delay in lodging the

F.I.R. and no plausible explanation has been offered for the said delay. It is further argued that the prosecution has failed to prove the business

relationship between the deceased and the appellant as has been indicated in the F.I.R. In view of these contradictions, it is urged that prosecution has

failed to prove the charge against the accused.

4. Learned A.P.P. representing the State vehemently opposed the Criminal Appeal and submits that the appellant has been rightly convicted in this

case. Informant in the written report clearly alleged that the appellant took his brother Dashrath Singh on his scooter on the pretext of giving him

money in part. Informant started intensive search for his brother after he came to know that Ashim went out from the house by saying that he is going

to Bankura and one skinny boy was also going along with him as a pillion rider. Several incriminating materials were found and exhibited from the

place of occurrence which are sufficient to establish the guilt of this appellant.

5. The crux of the case is that a written report was filed by the informant Rameshwar Singh, stating therein that on 13.02.1993 at about 09:30

A.M., Ashim Kumar Biswas (Appellant), who was working in Civil Engineering Department, Koylanagar, Amiya Kumar Biswas and A.K. Biswas,

Personal Manager at South Tisra Colliery took his younger brother Dashrath Singh, on his Scooter bearing No.BR-17-A-1258 on the words that he

will give him money in Bhaga. His brother had given Rs.48,000/- to Ashim for contract. On earlier occasion, five months ago, his brother had given

Rs.5,000/- and the informant himself was the witness. The settlement with Ashim Kumar Biswas was done in front of his younger brother Nandji

Singh, which came to Rs.48,000/-. From that day till filing of the written report, nothing was known about his brother. On 15.02.1993, when his brother

did not return home he went in search of his brother along with Amiya Kumar Biswas to his brother who was working in Civil Engineering

department, who told him that Ashim went out from the house by saying that he is going to Bankura and one skinny boy was also sitting behind the

seat of his scooter and he don't know that boy. The informant suspected that something was wrong and did not let go the brother of Amiya and on

17.02.1993 he went to Bankura with his friend's brother where he came to know that Ashim had gone to Dhanbad with his elder brother Amiya

and on 18.02.1993, when the informant went to Dhanbad, he found that Ashim was there and was telling that on 12.02.1993, he had given ornaments

worth Rs.35,000/- to Dashrath and Rs.10,000/- cash but according to the informant, neither there were ornaments nor cash in his house. He stated

that on 12.02.1993, his brother was in his house and he told his younger brother that on 13.03.1993 he was told to make him payment next day and if

he failed to do so, he will come with his Scooter. On 13.03.1993, Ashim came to a betel shop near his house and beckoned his brother Dashrath

Singh. He told his brother that he will come with money within 2-3 hours. When they are going on Scooter, one contractor namely Aanandi was

also there, to whom he said that they are coming and one Devki Nandan Sahni was also present there. When Ashim was going with his brother, one

Jaikaran Singh identified his brother and tried to stop him but Ashim had accelerated his Scooter. He stated that why Ashim had took his brother when

he paid the amount. He had apprehension that his brother had been killed.

6. On the basis of aforesaid written report, F.I.R. was registered being Dhanbad P.S. Case No.112/1993 under Section 364 IPC and finally charge-

sheet was submitted against the appellant under Sections 364/ 302/ 201/34/ 120 IPC. Thereafter, the case was committed to the Court of Sessions

where charge was framed under Sections 364, 302, 201, 34 and 120 B IPC against the appellant and others.

7. To prove the prosecution case, the prosecution has examined altogether 16 witnesses:-

P.W.-1 namely Jitan Modi, is the owner of Tea stall. He is a hearsay witness. He had also not supported the prosecution story and turned hostile.

P.W.-2 namely Anandi Singh is the contractor and was partner of the deceased. He got Rs.60,000/- and thereafter went back to his work site on his

scooter. He stated that he knew Rameshwar Singh (informant), who was the employee of BCCL and the earning of the said business of the contract

was deposited in the joint account of the deceased and in his account.

P.W.-3 namely Ram Shanker Modi, is a tendered witness. P.W.-4 namely Devki Nandan Sahani, stated that when he was drinking tea at the tea stall,

Ashim came and called the deceased and thereafter they were having talk. After sometime Anandi also came and had given Cheque and thereafter

the deceased went with Ashim to Bhaga.

P.W.-5 namely Vijay Kumar Srivastava, is an employee of BCCL. He stated that after the arrest of the appellant and brothers, in his presence the

tangi and the bed sheet were recovered by the police. In his cross-examination, he stated that he was called at the time of confession of the appellant.

It was admitted by this witness that his statement was not recorded by the Investigating Officer in the case diary. He stated that he was examined for

the first time before the Trial Court.

P.W.-6 namely Dukhan Roy, stated that he knew Dashrath Singh and the informant-Rameshwar Singh. He stated that a bed-sheet was seized from

the house / Bhaga but the said bed sheet was not produced before the Trial Court. He stated that the police had not recorded his statement in the case

diary and he deposed for the first time before the Trial Court. He denied that he had ever went to the police station on the question of any person

being arrested. He kept mum on the point of putting signature in the seizure list.

P.W.-7 namely Nandji Singh is the younger brother of the deceased. He only had seen Ashim taking his brother in a scooter.

P.W.-8 namely Rameshwar Singh (informant) stated that when he was talking with the deceased in the house, Ashim came and invited the deceased

to come to the tea shop where he was present, then the deceased told him that he was going with Ashim Kumar Biswas for taking money. He also

told him that if Ashim will not give him money, he will come back taking his scooter. When Ashim and the deceased were talking, Anandi came there

and gave a Cheque. He stated that P.W.-2 and P.W.-4 have met with the deceased brother. Thereafter, he came with Ashim on his scooter.

P.W.-9 namely Dr. S. Yadav is a Legal Practitioner. He stated that he is tenant in the servant room of one of the BCCL's quarter which is

situated at the back side of the house. He only stated that he saw Ashim coming on that day.

P.W.-10 namely Dr. Radhika Kumari Sinha is the Doctor who conducted the post-mortem on the body of the deceased. She found following injuries:-

1. Incised wound 4" x 1 1/2" over right side of neck.
2. Incised wound 3" x 1/3" x 2" over right side of neck.
3. Incised wound 2" x 1 1/2" x 3" over right side of neck
4. Incised wound 4" x 2" x 3" over occipital region of scalp.
5. Incised wound 6" x 3" x 4" over occipital region of scalp.
6. Incised wound 3" x 2" x 4" over left side of neck.

All injuries were ante-mortem in nature. Cause of death is shock and haemorrhage.

On dissection, following were found:

Lungs both side were congested. Heart was congested. Liver and spleen and both side of kidney were congested. Stomach contains 300 CC digested

food materials. Small and large intestine disfunctioned.

The Doctor observed that all the aforesaid injuries were vital in nature and were sufficient to cause death of the patient. The injuries were caused by

sharp cutting weapon such as tangi.

P.W.-11 namely Nand Keshwar Pandey, has only stated about the recovery of an unknown dead body near the railway track of Station in a gunny

bag. He exhibited the inquest report and memo for sending the dead body to post-mortem.

P.W.-12 namely Rajiv Beldar, has also stated about the recovery of unknown dead body from Railway Station. He prepared the inquest report of the

dead body in presence of two witnesses namely Sanjay Kumar Singh and Dilip Pal, but those two witnesses have not been examined.

P.W.-13 namely Janardan Prasad Jha, is the Investigating Officer of this case. He stated that he recorded the confessional statement of the appellant.

He stated that when the appellant was arrested, he searched his person and found nothing. He kept mum on the question of keys of the said house,

from where it has been alleged that recovery of the tangi was made. He has admitted that no recovery of shirt had been made from the said house.

He stated that the appellant had made contradictory statement before him.

P.W.-14 namely Birendra Kumar Shukla, has just stated about the recovery of an unknown dead body in the Railway Station.

P.W.-15 namely Binod Prasad, has just stated about the recovery of an unknown dead body in the Railway Station.

P.W.-16 namely Rajendra Ram, has just stated about the recovery of an unknown dead body in the Railway Station.

8. Several documents have also been exhibited. Those are :-

i. Ext.1 :- Signature of Bijoy Kr. Srivastava on the seizure list.

ii. Ext.1/1 :- Signature of Bijoy Kr. Srivastava on the another seizure list.

iii. Ext.1/2 :- Signature of Dukhan Roy on the seizure list

iv. Ext.1/3 :- Signature of Asim Kr. Biswas on the seizure list

v. Ext.2 :- Signature of Janardan Pd. Jha on the seizure list

vi. Ext.2/1 :- Signature of Janardan Pd. Jha on the another seizure list

vii. Ext.2/2 :- Signature of Dukhan Roy on the seizure list

viii. Ext.3 :- Seizure list

ix. Ext.3/1 :- Seizure list.

x. Ext.4 :- Written report

xi. Ext.5 :- Production list

xii. Ext.6 :- Post-mortem report

xiii. Ext.7 :- Inquest report

xiv. Ext.8 :- Challan

xv. Ext.9 :- Written report of GM GRPS

xvi. Ext.10 :- Pagination, Sinni Police Station

xvii. Ext.11 :- Pagination Saraikela Police Station

xviii. Ext.12 :- Signature on F.I.R.

xix. Ext.13 :- Blood report

xx. Ext.14 :- Signature of Ashim Kr. Biswas on confessional statement

xxi. Ext.15 :- F.I.R. of Saraikela P.S.

xxii. Ext.16 :- FSL Report

XXIII. Mat. Ext.I :- Kulhari

xxiv. Mat. Ext.II :- Bed sheet (Chadar)

xxv. Mark of identification:- photo of deceased

xxvi. Mark of identification :- -do-

xxvii. Mat. Ext.III :- One Full Pant

xxviii. Mat. Ext.IV :- Two shock

xxix. Mat. Ext.V :- One bed sheet

9. Indisputably there is no direct eye witness to the incidence and the case rests on circumstantial evidence. The occurrence can be divided in three

parts:- (1) taking of the deceased with Ashim (appellant) to Bhaga; (2) recovery of the dead body at Sinni Railway Station in the District of

Singhbhum; and (3) commission of murder at Bhaga.

10. So far as the deceased accompanying this appellant to Bhaga is concerned, P.W.-4 has stated that the appellant came and called the deceased

and the deceased and the appellant went to Bhaga. P.W.-8 is the informant who has deposed that this appellant came then the deceased told him that

he was going with Ashim for taking money. Thus, from the statement of this witness, it is clear that the deceased was with this appellant and the

deceased stated that he was going with the appellant.

11. The dead body of the deceased was found in Sinni Railway Station within the District of Singhbhum. The prosecution tried to rely upon the

disclosure statement of this appellant, on the basis of which the weapon said to be used in the offence was recovered from the quarter of Ashim

Kumar Biswas at Bhaga. If the crime was at all committed at Bhaga quarter, there is no legal evidence on record to suggest as to how the dead body

had come from Bhaga to Sinni. As per the confessional statement, the body was wrapped in a bed sheet and was transported in a tempo to Railway

Station and from there by a train, the same was taken to Sinni and was dropped there. There is no legal evidence in support of all these statements.

The tempo driver was not examined nor the dead body was recovered on the alleged confessional statement of this appellant. It is an admitted case of

the prosecution that an unknown dead body was recovered at the railway track near Sinni, which was later on identified to be that of the deceased.

Thus, the prosecution has failed to prove the chain of circumstances as to how the body had been transported to Sinni and was found there.

12. So far as the place of murder is concerned, the prosecution has set up case that the offence was committed in the quarter of this appellant at

Bhaga, as a blood stained axe and a bed sheet was recovered by the police in the quarter at Bhaga. Admittedly, the said bed sheet was not produced

before the Trial Court. Those materials were kept concealed behind the Almirah. The Investigating Officer (P.W.-13) had stated that there was no

recovery of shirt etc., from the said house. On the question as to how the door of the said house was opened and where was the key, he kept mum.

This also creates a doubt in the mind of this Court as to how the police came to know that the axe which was recovered is the murder weapon or the

said house was the place where the murder had taken place. Be it noted that there is no legal evidence to suggest that in the said house, the murder

had taken place.

13. P.W.-11, P.W.-12, P.W.-14, P.W.-15 and P.W.-16 deposed only on the point of recovery of the dead body at Sinni Railway Station. They

absolutely stated nothing about the fact of murder and how the dead body had reached that place.

14. P.W.-5 and P.W.-6 are the two witnesses who only stated about seizure of the axe and the bed sheets but surprisingly they had stated in Court

that their statement was not recorded under Section 161 Cr.P.C., rather, they are giving their statement for the first time in Court. In backdrop of this

statement, their evidence cannot be considered.

15. Thus, from the evidence of the prosecution, the only material which has been proved by the prosecution is that the deceased was last seen with

this appellant. Solely on the basis of last seen theory, the appellant cannot be convicted without there being any other corroborating evidence. The

chain of circumstances i.e. where the deceased was murdered, how the body had travelled such a long distance has neither been established nor

proved by the prosecution. The evidence is very weak in this case to implicate this appellant. Thus, I find merit in this Appeal. The appellant is

acquitted.

16. Accordingly, this Criminal Appeal stands allowed. The impugned judgment of conviction dated 16.09.2002 and order of sentence dated 18.09.2002

passed by Learned Additional District & Sessions Judge, Fast Track Court No.5, Dhanbad, in Sessions Trial No.630 of 1993, are hereby set aside. As

the appellant is on bail, he is discharged from the liability of bail bonds, so are the bailers.

17. Pending interlocutory application, if any, stands disposed of.

18. Trial Court Record be transmitted back to the Court concerned.