

Manoj Jha @ Manoj Kr. Jha Vs State Of Bihar (Now Jharkhand)

Court: Jharkhand High Court

Date of Decision: Jan. 28, 2025

Acts Referred: Indian Penal Code, 1860 " Section 307, 324
Arms Act, 1959 " Section 27

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

Bench: Single Bench

Advocate: Jitendra S. Singh, Vandana Bharti

Final Decision: Allowed

Judgement

Rongon Mukhopadhyay, J.Ã,

1. Heard Mr. Jitendra S. Singh, learned counsel for the appellants and Mrs. Vandana Bharti, learned A.P.P. for the State.

2. This appeal is directed against the judgment and order of conviction and sentence dated 04.01.1997 (sentence passed on 06.01.1997) passed by Sri

Swaroop Lal, learned 1st Additional Sessions Judge, Godda in Sessions Case No. 25 of 1989 / 10 of 1989, whereby and whereunder, the appellants

have been convicted for the offence punishable u/s 302/34 of the IPC and have been sentenced to undergo imprisonment for life.

3. The prosecution case arises out of the fardbeyan of Radhe Paswan recorded on 16.05.1988, in which, it has been stated that the informant had got

down from Bumbhola Bus at 4:30 P.M. with diesel at Dumaria Bus Stand and was going to his village on a bicycle. In front of him Saroj Kumar

Choudhary, Suresh Yadav @ Suro Yadav and Kanhai Jha were going on foot and after crossing the river the informant saw a quarrel between

Kanhai Jha and Suresh Yadav. It has been stated that Saroj Kumar Choudhary pacified the warring party with an assurance that a decision will be

taken once they reached the village. Kanhai Jha went ahead alone while Saroj Kumar Choudhary advised Suresh Yadav to go on the bicycle of the

informant. Suresh Yadav started cycling while the informant sat on the rod of the bicycle. Saroj Kumar Choudhary was coming on foot from behind.

It has been alleged that as soon as the informant and Suresh Yadav reached near the culvert they saw Kanhai Jha approaching them from the village

and asked the informant to stop which resulted in the informant and Suresh Yadav falling on the ground. As soon as Suresh Yadav got up Kanhai Jha

shot at him with a country made pistol and thereafter speedily fled away. Suresh Yadav fell down due to the firearm injury. Several persons had

assembled on hearing the sound of firing and thereafter Suresh Yadav was taken to Godda Hospital for treatment.

Based on the aforesaid allegations Godda (M) P.S. Case No. 13/1988 was instituted against Kanhai Jha u/s 324/307 of the IPC and Section 27 of the

Arms Act. 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 Sessions Case No. 25 of 1989/10 of 1989. Charge was framed against the accused u/s 302/34 of the IPC which

was read over and explained to them 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 (Jyotish Raut @ Jyotish Yadav) has stated that he was going to Motia from Panjwara and along with him were Kedar Yadav, his mother,

Kalru Yadav, Pachu Mandal and Chunnilal Yadav. Ahead of them Suresh Yadav was going. He has stated that in the road near the bridge Kanhai

Jha, Manoj Kumar Jha, Tuntun Singh and Shyam Sundar Singh were present and Kanhai Jha shot at Suresh Yadav. The firearm was given to Kanhai

Jha by Manoj Jha. Suresh Yadav fell on the ground on being struck with a bullet in his abdomen. When the villagers came rushing the accused

persons fled away. Suresh Yadav was taken to Sadar Hospital, Godda and from there to Bhagalpur. In Sadar Hospital, Godda Suresh Yadav had

disclosed about the persons who were involved in committing assault upon him. In Bhagalpur Hospital Suresh Yadav breathed his last.

In cross-examination, he has deposed that Kedar and his mother were not going ahead of him but were accompanying him. In Dumaria he saw

Suresh Yadav going on a bicycle and he and the others were behind him. There was sound of firing at which all of them rushed to the source of firing.

There was total chaos in the road. Radhe Paswan and Akhilesh Paswan who were ahead of him were shouting that a murder has been committed.

When he and the others reached, they found Suresh lying on the ground. He had not stated before the Police that Kanhai Jha had shot at Suresh

Yadav on his chest. He had stated before the Police that when Kedar raised an alarm he went rushing and saw the accused persons fleeing away.

6. P.W.2 (Kusuma Devi) is the wife of the deceased Suresh Yadav who has stated that it was around 6:00 P.M. when she heard a cry of alarm, at

which, she rushed to the road where she saw her husband lying on the ground in a pool of blood. Her husband was conscious at that point of time who

disclosed that Manoj had given a bullet to Kanhai who fired at him and fled away. He had also disclosed that Tuntun and Shyam Sundar were also

present. The accused Kanhai Jha had already died. As per her knowledge there was no enmity between her husband and the accused.

In cross-examination, she has deposed that her husband had disclosed the incident in presence of everyone. In the Police Station her statement and

the statement of others were recorded including the statement of Suresh who had disclosed everything to the Police. She had not disclosed to the

Police that on an alarm raised that Kanhai Jha had shot at Suresh she had rushed to the place of occurrence. She had also not disclosed that her

brother-in-law and mother-in-law have stated about Kanhai Jha making the firing. Her husband and Kanhai Jha were clerks working in the private

Bus Stand at Godda.

7. P.W.3 (Bhago Devi) is the mother of the deceased Suresh Yadav who has stated that it was a Monday when she was returning from Panjwara

market with her sons Kedar and Suresh and behind them were Pachu Marar and Kalru Yadav. Suro was going ahead of him along with his other son

Kedar when Manoj Jha, Tuntun Singh, Shyam Sundar Singh and Kanhai fired at Suro. There were four accused but the firing was made by Kanhai

Jha. When Suro fell down the other accused persons surrounded him. Suro thereafter died. She has stated that Suro was taken to Godda Hospital and

from there to Bhagalpur where he died.

In cross-examination, she has deposed that she had rushed to the place of occurrence on hearing the sound of firing where she found her son lying in

an injured condition. The Police had not recorded her statement.

8. P.W.4 (Kalru Yadav) has stated that he was returning from Panjwara and along with him were Kedar, the mother of Kedar, Pachu Marar and

Jyotish. Suresh was going ahead on his bicycle and near the Katha tree there was a sound of firing, at which, he rushed to the said spot where he saw

Kedar fleeing away and on being asked he had disclosed that Kanhai has shot at Suro. Kedar had not disclosed the name of any other person. He had

not seen anybody. Suro was found in an injured state who disclosed that Kanhai had fired at him. Suro was initially taken to Godda Hospital and from

there to Bhagalpur Hospital.

In cross-examination, he has deposed that before he and the other villagers could reach the place where Suro was lying the accused persons had

already fled away. He and the other had reached the place of occurrence before Bhago Devi.

9. P.W.5 (Injola Devi) is the sister-in-law of the deceased Suresh Yadav who has stated that she was in her house when on hearing a cry of alarm

she rushed out to the road near Kaitha Bahiyar and saw Suresh lying on the ground shouting. When she asked Suresh as to what had happened

Suresh had disclosed that Kanhai Jha, Tuntun Singh, Shyam Sundar Singh and Manoj Jha had fired at him. Suresh had further disclosed that Tuntun

Singh had brought the pistol and Kanhai Jha had shot at him. Suresh was thereafter taken to Dumaria from where on the advice of the Doctor he was

taken to Bhagalpur.

In cross-examination, she has deposed that she is acquainted with all the accused since they belonged to the same village. It is not a fact that she had

disclosed to the Police that Suresh was lying on the ground groaning who had stated about Kanhai Jha firing at him on being handed over a pistol by

Tuntun Singh. Suresh was in a conscious state till he was brought to Godda.

10. P.W.6 (Radhey Paswan) is the informant who has stated that he had got down from Bumbhola bus at Dumaria and was going on a bicycle to

Motia. Suresh Yadav and Kanhai Jha had crossed the river before him. When he crossed the river Suresh Yadav took a ride on his bicycle and while

Suresh Yadav sat on the seat cycling, he sat on the rod of the bicycle. When they reached the bridge, they saw Kanhai Jha give a push to his bicycle

as a result of which he and Suresh both fell down. Thereafter Kanhai Jha had shot at Suresh Yadav and fled away.

Several persons assembled who took Suresh Yadav to Godda. He did not accompany them.

In cross-examination, he has deposed that after the firing was made, he had gone to Motia village and had informed everybody about the occurrence.

The family members of Suresh were also informed who on hearing the cry of alarm had left for the place of occurrence.

11. P.W.7 (Kedar Prasad Yadav) has stated that he along with his mother Bhago Devi and brother Suresh Yadav were returning from Panjwara

market and after they crossed Dumaria river his brother and mother went ahead of him. He sat down to urinate. When his mother and brother

crossed the bridge Kanhai Jha, Tuntun Singh, Shyam Sundar Singh and Manoj Jha came out and started pushing and heckling Suresh and his mother.

By that time, he had reached the said place he heard Tuntun exhorting the others to fire at which Kanhai Jha fired at Suresh Yadav on his chest who

fell down on the ground. When he and his mother raised alarm, they were threatened by the accused persons. When people started assembling the

accused persons fled away. Pachu Marar, Jyoti Yadav, Kalru Marar and others had assembled to whom Suresh Yadav had disclosed that on the

order of Tuntun, Kanhai Jha had shot at him. He has stated that Suresh was brought in an auto-rickshaw to a Hospital at Godda from where he was

taken to Bhagalpur where in course of treatment he died. The Police had recorded his fardbeyan at Bhagalpur Hospital and the said fardbeyan has

been marked as Exhibit-1 with objection.

In cross-examination, he has deposed that his statement was recorded by the Police on three occasions. In all the three statements he had disclosed

about Kanhai Jha firing at his brother on the orders of Tuntun Singh. His brother was unconscious during treatment and was not in a position to give

his statement. There was an animosity between Suresh Yadav and Kanhai Jha. By the time he had run to his brother Suresh the accused persons had

fled away.

12. P.W.8 (Akhilesh Paswan) did not support the case of the prosecution and was declared hostile by the prosecution.

13. P.W.9 (Saroj Kumar Choudhary) has been tendered by the prosecution.

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. Jitendra S. Singh, learned counsel for the appellants that in the fardbeyan and the evidence of the informant (P.W.6)

allegation of firing has been specifically leveled against Kanhai Jha and the name of the appellants have not been taken by him. P.W.6 was the

nearest person to Suresh Yadav as both were riding a bicycle and the implication of the appellants made by the other witnesses indicates that the

prosecution story was developed during trial. It has been submitted that many of the material witnesses who were following the deceased have not

been examined by the prosecution. Even the Investigating Officer and the Doctor have not been examined. The only document exhibited by the

prosecution is the purported fardbeyan of Kedar Prasad Yadav recorded in Bhagalpur Hospital. The evidence of Kedar Prasad Yadav (P.W.7) does

not speak about the presence of P.W.6 at the place of occurrence. The evidence of the other material witnesses do not speak about they having seen

the incident of firing. It has been submitted that none of the appellants were present at the place of occurrence and it was Kanhai Jha who was the

solitary person involved in the firing.

16. Mrs. Vandana Bharti, learned A.P.P. for the State has submitted that the deceased had stated before the witnesses about the involvement of the

appellants in the firing made upon him. She has referred to the evidence of the witnesses P.W.2 and P.W.5 in such context. Though it was Kanhai

Jha who had shot at Suresh Yadav but the common intention on the part of the appellants is palpable on the face of the evidence of the prosecution

witnesses.

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

18. The evidence of the informant (P.W.6) speaks about he and Suresh Yadav going on a bicycle with P.W.6 sitting on the rod of the bicycle. On the

way they met Kanhai Jha who pushed at the bicycle and P.W.6 as well as Suresh Yadav fell on the ground and thereafter Kanhai Jha shot at Suresh

Yadav and fled away. The evidence of P.W.6 is in consonance with his fardbeyan. P.W.6 does not even mention about the presence of the appellants

in the vicinity. The evidence of P.W.1, P.W.3, P.W.4 and P.W.7 speaks about rushing to the place of occurrence on hearing the sound of firing and

none have in their cross-examination claimed to have seen the firing. Another noticeable feature in this case is the absence of P.W.6 in the evidence

of the witnesses though as per P.W.6 the deceased was going with him on his bicycle when the firing had taken place. Though it has been stated by

the witnesses that the deceased had disclosed about the assailants in his oral dying declaration but such dying declaration was not recorded by the

Police. The capability of Suresh Yadav to disclose about the incident also seems to be shrouded in doubt since P.W.7 has deposed that his brother

was unconscious during treatment. The prosecution has failed to examine several key witnesses who were returning to Motia village at the time when

the firing had taken place.

19. What can be culled out from the evidence of the prosecution witnesses is that it was Kanhai Jha who had shot at Suresh Yadav and the evidence

of P.W.6 and the contradictions emanating from the evidence of the other eye-witnesses rule out the presence and involvement of the appellants in

such incident.

20. We, therefore, on the basis of the discussions made hereinabove, set aside the judgment and order of conviction and sentence dated 04.01.1997

(sentence passed on 06.01.1997) passed by Sri Swaroop Lal, learned 1st Additional Sessions Judge, Godda in Sessions Case No. 25 of 1989 / 10 of

1989.

21. This appeal is allowed.

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

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