

**(2006) 11 JH CK 0027****Jharkhand High Court****Case No:** None

Krishna Mahto and Another

APPELLANT

Vs

State of Jharkhand

RESPONDENT

**Date of Decision:** Nov. 23, 2006**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 201, 302, 34

**Citation:** (2007) 2 JCR 308**Hon'ble Judges:** Dhananjay Prasad Singh, J; Amareshwar Sahay, J**Bench:** Division Bench**Final Decision:** Allowed

### **Judgement**

1. Both the appellants stand convicted for the offence u/s 302/201 of the Indian Penal Code and sentenced to undergo RI for life u/s 302, IPC and further sentenced to undergo RI for 7 years u/s 201 of the IPC by Judgment dated 7/9th August, 2001 in Sessions Trial No. 133 of 2000 by Additional Judicial Commissioner-cum-Special Judge-1, Ranchi.

2. Brief facts leading to this appeal are that one Sunil Tirkey of village Baazpur in the evening of 27.10.1999 at about 8. p.m. approached the informant Sukara Oraon of same village to accompany him for the purpose of a walk. According to the Informant both of them went out and visited the house of one Pati Oraon uncle of the deceased and husband of PW 3. According to the informant when they were going out of the house of PW 3, convict Krishna Mahto Invited them to share the drinks. The Informant along with deceased and the appellant Krishna Mahto went in search of drinks and could not find it. As further stated when all of them reached near a bridge situated out side the village adjacent to Guru Hospital, all of sudden appellant Shibhu Mahto arrived there carrying a sword. According to the informant both the appellants felled the deceased on ground and cut the neck of Sunil Tirkey. The informant was threatened by them to be killed if he raised alarm. Thereafter

they kept the dead body by the side of the Road and took the Informant along with them to their house where they ate. Further stated they came back with a spade and buried the dead body in a paddy field with the help of the informant. The informant was further asked by the appellants to sleep in the hospital and in the morning taken to another village from where he was forced to drink and eat and only in the evening of 28.10.1999 he was left alone.

3. The informant tried to find out the grand father of the deceased but could not locate him as he has gone out of the village. According to him when the grand father of deceased PW 1 returned next day in the evening he narrated the incident to him. This PW 1 further asked him to wait till morning so that he can report the matter to police. However, in the morning police arrived at the village and recorded the statement of the informant. According to this informant the genesis of the occurrence was a love affair between the sister's daughter of the appellants and the deceased. The informant further asserted that though he has seen the occurrence, he could not help the deceased because of fear of the appellants. The dead body was recovered from the paddy field in presence of witnesses. Statements of informant was recorded at 11 a.m. on 31.10.1999 on the basis of which Ratu P.S. Case No. 85 of 1999 dated 31.10.1999 was registered against the appellants under Sections 302, 201/34 of the Indian Penal Code. The inquest report was prepared and dead body was sent for post-mortem examination and finally charge-sheet was submitted against both the appellants. The trial of the appellants was committed to the Court of sessions.

4. The appellants were charged and tried together for the above noted offences under Sections 302, 201/34 of the Indian Penal Code. The learned trial Court found and held both of them guilty for the offences stated above and sentenced them as to undergo RI for life u/s 302, IPC and seven years u/s 201, IPC.

5. The present appeal has been, preferred on the grounds that the learned trial Court has committed mistake by believing the statement of PW 2 Sukra Oraon who has taken part in the alleged offence. It is also asserted that the informant kept this information concealed for four days without any probable and valid explanation. It is further asserted that the police has lodged the FIR after much delay and witnesses examined before the trial Court were not trustworthy. It is also asserted that the genesis of the occurrence "Love Affair" between the deceased and the sister's daughter of the appellants has not been proved. The learned Counsel for the appellant Sri B.M. Tripathy further pointed out that even if the witnesses are relied upon the delay in lodging of FIR after four days makes the whole story doubtful. The learned Counsel repeatedly pointed out that the conduct of PW 2 Sukra Oraon itself creates doubt on the whole prosecution version. Its also asserted that PW 1 Rama Oraon said to be grand father of the deceased also mentions that his statement were recorded by police on 30.10.1999 and the 10 PW 5 specifically asserted in his examination-in-chief that fardbeyan was recorded on 31.10.1999, therefore, the

registration of the case on 31.10.1999 and the fardbeyan of PW 1 recorded on 31.10.1999 vide Ext. 2 shows that the entire story is concocted one. Accordingly to Sri Tripathy, the informant himself given different version and concealment of the fact of offence u/s 302, IPC discredits him.

6. We have considered the submission of the learned Counsel for the appellants along with the evidence on record. Admittedly the prosecution story depends upon the credibility of PW 2 so called eye-witness of the occurrence. This witness Sukra Oraon has supported his fardbeyan, recorded by police on 31.10.1999 in details. He has asserted in para 3 that when PW 1 returned after two days of the occurrence he narrated the whole incident to him in the evening and with whom he was going to police station then police arrived itself. PW 5 had stated in his examination-in-chief that the statement of PW 2 has been recorded by SI Ashok Kumar Mandal vide Ext. 2 at 11 a.m. at the place of occurrence. He has stated the date of recording of this statement in the first line of his examination-in-chief on 30.10.1999 shows there is gap of 24 hours between the statement recorded by police and lodging of FIR. This witness has further admitted that the dead body was recovered in presence of BDO Ratu on disclosure of the informant. Now when the statement of PW 1 considered in this context, he admitted in cross-examination that on 30.10.1999 his statement was recorded by police. This witness has further stated that the dead body guarded for the whole night by him and two choukidars in the night vide para 6 which further becomes clear vide para 9 that police has arrived at the place where offence has taken place at about 12 noon on 30.10.1999. This also tallies with his admission vide para 4 that he returned to his village in the evening of 29.10.1999 and was informed by the informant regarding the incident. According to him vide para 5 he started for police station next morning at 8 a.m. and the statement of the informant was recorded at police station thereafter police arrived at the place of occurrence. This shows that there was a gap of 24 hours in registration of the case and recording of the statement of PW 1 informant. If these witnesses are relied upon the whole investigation with preparation of inquest report becomes doubtful.

7. As regards the genesis of the occurrence said to be Love Affair between the deceased and the sister's daughter of the appellants is concerned, no positive evidence is brought on record. The police has recovered a photograph from the pock-et of the deceased vide Ext. 4 but did not try to confirm whether the said photograph was of the girl with whom love relation was alleged resulting in his death. The IO has admitted in his cross-examination that the dead body was kept in a gunny bag tied with coffee colour Shawl which does not tally with the information given by PW 1. The recovery of the dead body from the gunny bag has been admitted by PW 1 vide para 11. As against this, PW 2 during cross-examination has stated specifically that due to love affair between Anua, sister's daughter of the appellant, the deceased was killed as he has eloped with her. He has explained that out of fear he did not disclose the occurrence to any of the villager earlier. However, he admitted in cross-examination that after the occurrence he was forced to sleep

for the whole night at the hospital and the appellants were not present there. It has also come on record that next day he was roaming with them and did not dare to disclose the incident to any one. The defence has suggested that he was involved in a case of murder vide Ratu P.S. Case No. 100 of 1998 along with PW 1. According to him vide para 15 the statement was recorded at the police station thereafter they came back and the dead body was dug out next day. He also admitted that the dead body was kept inside a gunny bag and legs were tied with Shawl. The conduct of this witness is not normal and he appears not reliable because in spite of threat he was left to his own in the night of 27 and 28.10.1999 by the appellants. It is also well settled that the exculpatory statement of an accomplish requires to be corroborated with circumstances before it is relied upon. As we have discussed above, the conduct of the informant by not disclosing the incident to any one for two days right from the evening of 28.10.1999 creates a reasonable doubt on his veracity.

8. PW 3, the aunt of the deceased also kept quite for two days and did not make any effort to look for the deceased in spite of the fact that she knew the deceased has gone out with the informant. She explained it that for two days she could not meet Sukra Oraon and when she met he did not disclose anything. The IO of this case has also not conducted the investigation properly. According to him he found the dead body on disclosure of the informant but he did not enquire from PW 2 regarding the dead body concealing in a gunny bag with Sawl. He did not make any effort to enquire from village Tiklitpla where the Informant has remained for one day after the incident. He further did not take any step to verify of the identity of the photo of the girl found from the pocket of the deceased neither he tried to confirm whether any such illicit relationship existed between the deceased and the girl Anua, sisters daughter of the appellants. Therefore the whole prosecution story revolving on the theory the appellants committed this murder because of the love relation between Anua and deceased becomes doubtful.

9. Having considered the above mentioned facts and circumstances where the prosecution version is based upon the statement of PW 2 Sukra Oraon whose conduct creates grave doubts on his veracity as well as the perfunctory investigation conducted by PW 5 makes the whole prosecution case doubtful.

10. Having considered the above mentioned facts and circumstances we are of the opinion that the prosecution in the present fact has not been able to prove beyond doubts the guilt of the appellants under Sections 302, 201/34 of the Indian Penal Code. In the result this appeal is allowed and the conviction and sentence passed by the trial Court is hereby set aside. The appellants, who are in custody are directed to be released forthwith, if not wanted in any other case.