

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (DB) No.115 of 1995 (R)

Ribu Mahato son of Jagannath Mahato, resident of village Bansa,
P.S. Chandil, District Singhbhum (West).

----- Appellant

Versus

The State of Bihar (now Jharkhand)

----- Respondent

With

Cr. Appeal (DB) No.136 of 1995 (R)

Suresh Singh Sardar son of Late Saraban Singh Sardar, resident of
village Bansa, P.S. Chandil, District Singhbhum (West).

----- Appellant

Versus

The State of Bihar (now Jharkhand)

----- Respondent

PRESENT

HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY
HON'BLE MR. JUSTICE ARUN KUMAR RAI

For the Appellants : Mr. Rajesh Kumar, Advocate

Mrs. Sunita Kumari, Amicus Curiae

For the Respondent : Mr. Pankaj Kumar Mishra, A.P.P

CAV on 24.03.2025

Pronounced on 08/04/2025

JUDGMENT

Per R. Mukhopadhyay, J.

1. Heard Mr. Rajesh Kumar, learned counsel for the appellants assisted by Mrs. Sunita Kumari, learned Amicus Curiae and Mr. Pankaj Kumar Mishra, learned A.P.P.
2. Since both these appeals arise out of a common judgment, they are being disposed of by this common order.
3. These appeals are directed against the judgment and order of conviction and sentence dated 30.08.1995 passed by Shri Paras Nath Sinha, learned Sessions Judge, Singhbhum West at Chaibasa in S.T No. 171 of 1991 whereby and whereunder the appellants have been convicted for the offence punishable under Section 302 / 34 I.P.C and have been sentenced to imprisonment for life.

4. The prosecution case arises out of the Fardbayan of Suchan Mahato recorded on 29.12.1989 in which it has been stated that last night at 7.00-7.30 pm the informant was in his house when his brother-in-law and Mukhiya Amin Chandra Mahato both of village Bansa had come and all of them had chicken and rice for dinner. After having dinner, the Mukhiya expressed his intention of sleeping in the house of the brother-in-law of the informant namely Jhari Mahato. Both his brother-in-law and the Mukhiya left for the house of the brother-in-law of the informant and the informant accompanied them for some distance. As soon as the Mukhiya and Jhari Mahato reached the road, the informant saw Ribu Mahato and Suresh Singh Sardar standing in the corner of the house of the informant. Ribu Mahato ascertained by calling out Mukhiya ji and when the answer was in the affirmative, Suresh Singh Sardar fired at Mukhiya ji who fell down and both the accused persons thereafter fled away. It has been alleged that Mukhiya ji had a firearm injury on his leg and blood was coming out. Several persons had reached the said place on hearing the cry of alarm. It has further been alleged that the Mukhiya ji had disclosed to the persons present that Suresh Singh Sardar had shot at him while Ribu Mahato was also present. It has been stated that Mukhiya ji was somehow taken to the hospital where the doctors declared him dead.

On the basis of the aforesaid allegations, Chandil P.S. Case No. 172 of 1989 was instituted for the offences punishable under section 302 / 34 I.P.C 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 S.T. No. 171 of 1991. Charge was framed against the accused under Section 302 / 34

I.P.C which was read over and explained to them in Hindi to which they pleaded not guilty and claimed to be tried.

5. The prosecution has examined as many as nine witnesses in support of its case.

6. P.W.1 Fulchand Mahato has stated that he was in his house when he heard a cry of distress that Ribu and Suresh had shot at Amin Chandra Mahato. When he came out of his house, he found Amin Chandra Mahato lying on the ground. When he went near Amin Chandra Mahato, he found that he had been shot. Amin Chandra Mahato had asked him to inform his family members that Suresh and Ribu had shot at him. At this, he went to the house of Amin Chandra Mahato and disclosed about the incident to his brother. When he returned back to the place of occurrence with the brother of Amin Chandra Mahato, he had seen Jhari Mahato, Ramkishto Mahato, Gurusharan Mahato putting Amin Chandra Mahato on a cot. On the same day, he came to know from the hospital that Amin Chandra Mahato has died.

In cross-examination, he has deposed that the informant Suchan is his own brother. One or two persons had reached the place of occurrence before him. He has further deposed that Amin Chandra Mahato was lying on the road situated at a distance of 100-150 hands from the house of Suchan.

7. P.W.2 Jaldhar Mahato has stated that he was in his house when on hearing a cry of alarm, he had come out and had gone to the house of Mukhiyaji where he saw Mukhiyaji lying on a cot in the courtyard and several persons had assembled at the said place. In the meantime, the Sarpanch had also arrived and when the Sarpanch asked Mukhiyaji as to who was responsible for his condition, Mukhiyaji had disclosed that on the order of Ribu Mahato, Suresh Singh Sardar had shot at him. Since the

tempo had not arrived, they had taken Mukhiyaji on a cot when on the way a tempo could be arranged and when they reached TMH, doctors declared Mukhiyaji dead. He has proved his signature and the signature of Anil Kumar Das on the seizure list of blood-stained earth which have been marked as Exhibit-1 and 1/1 respectively.

In cross-examination, he has deposed that when he went to the courtyard, he had found Mukhiyaji lying on a cot. Blood was coming out from the wound in his body. There were about 20 villagers who had arrived at the house of the Mukhiya. He has deposed that Mukhiyaji had disclosed the name of the appellants to the Sarpanch in Bangla. The Police had recorded his statement.

8. P.W.3 Sidam Chandra Das has stated that in the night he was in his house when Srikant Mahato had come to his place and disclosed that Mukhiyaji has been shot. At this, he went to the house of Mukhiyaji with Suchan and saw Mukhiyaji lying on a cot in the courtyard. Several persons had already gathered by then. Mukhiyaji had disclosed to him that Suresh and Ribu had fired at him and that he should immediately be shifted to a hospital. The Mukhiya was taken to TMH where the doctors declared him dead. He is the Sarpanch of Bansa Gram Panchayat.

In cross-examination, he has deposed that it was a dark night. There are only 2-3 houses between his house and that of the Mukhiya. Before Srikant had told him about the incident, he had not heard any sound of alarm. Mukhiyaji was in a conscious state and he had gone to meet him. His statement was never recorded by the Police.

9. P.W.4 Jhari Mahato has stated that it was 6.30-7.00 pm and he and the Mukhiya Amin Chandra Mahato were on the road when Mukhiyaji asked him to go to the house of Suchan Mahato. Both of them thereafter went to the house of Suchan

Mahato where they had chicken and rice after which they came out on the village road. He has stated that Mukhiyaji went ahead while he and Suchan were following him from behind. After a short distance, he had seen Ribu and Suresh. When Ribu enquired about the identity, Mukhiyaji had disclosed about him at which on the order of Ribu, Suresh had fired at Mukhiyaji. He had tried to lift Mukhiyaji as he had fallen down while Suchan chased the assailants. On alarm, several persons had assembled and Mukhiyaji had disclosed to the villagers that Suresh had shot at him on the direction of Ribu. He and the others had thereafter lifted Mukhiyaji on a cot and he was kept in the courtyard. Since there was a delay in the arrival of the tempo, Mukhiyaji was taken on the said cot to the hospital. He had returned back to his house. In the morning, he came to know that Mukhiyaji has died.

In cross-examination, he has deposed that Suchan is his brother-in-law. When he and Mukhiyaji had gone to the house of Suchan, he had not seen anybody outside the house. There are several houses adjacent to the house of Suchan. It was dark outside. Suchan had a torch in his hand. The firing was made at a distance of 100 yards from the house of Suchan. He had seen the accused persons fleeing away in the light of the torch.

10. P.W. 5 Parwati Mahatain has been tendered by the prosecution.

11. P.W. 6 Suchan Mahato is the informant who has stated that on 28.12.1989 at about 7.00-7.30 pm, he was in his house when the Mukhiya Amin Chandra Mahato and Jhari Mahato had come to his house and had dinner at his place. After having dinner, both had come out of the house and he had also come out. Mukhiyaji sat down to urinate when the accused Ribu asked Mukhiyaji as to whether he was Mukhiyaji or not and on being answered in the affirmative, Suresh had fired at Mukhiyaji.

After the firing was made, Ribu fled followed by Suresh. He had chased them with a torch but when he failed to find them, he came back to the place of occurrence. Mukhiyaji was in a conscious state and he was wanting to go home while saying that Suresh had shot at him. He has stated that Mukhiyaji was taken to his house where the villagers had assembled and in their presence, Mukhiyaji had disclosed that Suresh had fired at him. Mukhiyaji was brought on a tempo to TMH but the doctors declared him dead. His Fardbayan was recorded by the Police at TMH. He has proved his signature on the Fardbayan which has been marked as Exhibit-2.

In cross-examination, he has deposed that Jhari Mahato is his brother-in-law in village relation. He has further deposed that Mukhiyaji was urinating and he had also sat down to urinate. He had not put on the torch before answering the call of nature. It was so dark that nothing could be visible without a torch light. He did not have a lantern. He had seen Ribu and Suresh when he put on the torch light after answering the call of nature. He had seen the accused fleeing away and they were at a distance of 5-7 feet. When he had started chasing the assailants, Mukhiyaji was standing and when he returned, he found Mukhiyaji lying on the ground. In his restatement, he had not stated before the Police that Mukhiyaji was in a conscious state and he had stated about the assailants being Ribu and Suresh.

12. P.W. 7, Andu Ram Mahato has stated that it was night and he was in his house when on hearing a commotion, he had gone to the house of his brother Amin Chandra Mahato where he had seen his brother lying on a cot. Amin Chandra Mahato had disclosed to him that Suresh had injured him and Ribu was also with Suresh. His brother was taken to the hospital where he died.

In cross-examination, he has deposed that he and Mukhiyaji stay in the same house. His brother had raised a cry

of alarm in the house. When he had reached the courtyard, there were 50-60 persons present. He cannot say as to whether the Sarpanch had recorded the statement of his brother or not. The Police had recorded his statement. He had not stated before the Police that on hearing an alarm, he had seen his brother lying on the cot in the courtyard.

13. P.W. 8, Sabbir Ahmad was posted as a Sub-Inspector of Police in Chandil P.S. and on 29.12.1989, he had recorded the Fardbayan of Suchan Mahato in TMH. He has proved the Fardbayan which has been marked as Exhibit-3. The formal F.I.R has been proved and marked as Exhibit-4. He had taken over the investigation and had recorded the restatement of the informant. He has proved the inquest report which has been marked as Exhibit-5. He had recorded the statement of some of the witnesses at TMH. He had inspected the place of occurrence which is an unmetalled road at village Bansa. Some blood was detected at the place of occurrence which was seized and a seizure list was prepared which has been marked as Exhibit-6. He had recorded the statements of some of the witnesses. He has proved the post-mortem report which has been marked as Exhibit-7. On completion of investigation, he had submitted charge sheet.

In cross-examination, he has deposed that there are several houses adjacent to the house of Suchan Mahato. He had not seized any torch or Lathi or any lantern. He had conducted a search in the house of the accused but no firearm could be recovered. The witness Suchan Mahato had not stated before him that Amin had told him to inform the inmates of his house that Ribu had wanted to confirm his identity while Suresh had shot at him. The witness Jaldhar Mahato had not stated before him that Mukhiyaji had disclosed that on the order of Ribu Mahato, Suresh Singh Sardar had shot at him.

14. P.W. 9 Dr. Tulsi Mahato was posted as a Tutor in the Department of Forensic Medicine, MGM Medical College, Jamshedpur and on 22.12.1989, he had conducted autopsy on the dead body of Amin Chandra Mahato and had found the following:-

“Externally: 1. Fire arm wound with a wound of entrance measuring 3 cm x 1 cm x chest cavity deep over the back of left side of the chest. 6 cm left to mid-line at the level of 9/10 thoracic vertebrae. The wound is longitudinally above down wards with abraded collar and inverted margin.

Internally: The projectile had entered the chest cavity through the 8th intercostal space fracturing the 9th ribs of left side and passing through the left lower lobe lung and diaphragm and perforating the posterior surface of stomach and comes to lie underneath the skin of left side of front of chest 8 cm below the nipple and 9 cm from the mid-line in the 7th intercostal space from where the bullet had been recovered. The bullet was handed over to the police concerned. During its course the projectile had extensively lacerated the organ with extensive extra-vasation of blood clot in the thoraco-abdominal cavity.”

The cause of death was opined to be due to haemorrhage and shock as a result of firearm injuries noted above. The post-mortem report has already been proved and marked as Exhibit-7.

15. The statements of the accused were recorded under Section 313 Cr.P.C in which they have denied their complicity in the murder of Amin Chandra Mahato.

16. It has been submitted by Mr. Rajesh Kumar, learned counsel for the appellants assisted by Mrs. Sunita Kumari, learned Amicus that there are major contradictions in the evidence of the witnesses. It has been submitted that the evidence of P.W. 4 and P.W. 6 revealed that it was pitch dark and therefore the identity of the appellants being involved in the

murder of Amin Chandra Mahato is doubtful. The deceased had rice and chicken in the house of P.W.6 but absence of the same in the stomach of the deceased at the time of conducting autopsy depicts that the deceased never had any food in the house of P.W.6. It has also been submitted that no incriminating materials were recovered from the house of the appellants though a search was conducted by the investigating officer.

17. Mr. Pankaj Kumar Mishra, Learned A.P.P has submitted that apart from P.W.4 and P.W.6 being witnesses to the occurrence, the oral dying declaration of Amin Chandra Mahato before the villagers is a corroborative piece of evidence which categorically demarcates the role of the appellants who were having a common intention in committing the murder of Amin Chandra Mahato.

18. We have heard the learned counsel for the respective parties and have also perused the trial court record.

19. The identity of the appellants as the perpetrators of the murder have been doubted by the defence. Admittedly there are only two eyewitnesses, P.W.4 and P.W.6. It appears that it was a dark night and P.W.6 had a torch with him. P.W.6 had sat down to urinate putting off the torch light and during this period the firing was made. As per P.W.4 and P.W.6 they had seen both the appellants fleeing away in the light of the torch. The investigating officer had not seized any torch. Such background facts make the identity of the appellants doubtful. Moreover, no firearm was recovered from the house of either of the appellants despite a search having been conducted.

20. The other incriminating factor as per the prosecution is the disclosure made by the deceased before the villagers about the name of the appellants as the assailants as stated by P.W.1, P.W.2, P.W.3 and P.W.7 apart from the eyewitnesses P.W.4 and P.W.6. Although as per P.W.8 (I.O.), P.W.1 and P.W.2 had not stated before him about the disclosure made by the deceased

regarding the involvement of the appellants but the other evidence does certify the fact that the deceased was in a conscious state of mind and had taken the name of the assailants. The validity or otherwise of such disclosure can be borne out from the post-mortem report which states about how the projectile had passed through the body after entering the chest cavity and damaging several vital organs of the body in course of its journey. The condition of a person on receiving such firearm injury has been disclosed by P.W.9 to the effect that there would be profuse internal bleeding as well and the patient would be gasping for breath. P.W.9 has also stated that in absence of medical aid the patient may not survive for more than half an hour. The damage caused by the bullet to the internal organs would make it impossible for the deceased to have repeatedly stated about the name of the assailants and the manner in which the incident had taken place. This part of the prosecution case seems to have been developed by the witnesses in course of time as it seems that despite the precarious condition of the deceased he was disclosing about the incident to all and sundry.

21. The aforesaid discussions would lead us to conclude that the oral dying declaration purportedly relied upon by the prosecution cannot form a substantive piece of evidence against the appellants and the identity of the appellants in taking part in committing the murder of Amin Chandra Mahato is clearly doubtful in view of what has been stated above. The learned trial court has not made an in-depth analysis with respect to the evidence on record and as a consequence to the discussions made herein above, we hereby set aside the judgment and order of conviction and sentence dated 30.08.1995 passed by Shri Paras Nath Sinha, learned Sessions Judge, Singhbhum West at Chaibasa in S.T No. 171 of 1991.

22. This appeal is allowed.

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

24. We take this opportunity to appreciate the assistance rendered by Mrs. Sunita Kumari, learned Amicus Curiae and direct the Member Secretary, High Court Legal Services Committee to extend the stipulated fees to Mrs. Sunita Kumari within a period of three weeks from the date of receipt / reproduction of a copy of this order.

(Rongon Mukhopadhyay, J.)

(Arun Kumar Rai, J.)

Shamim/-