

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Criminal Appeal (D.B.) No. 854 of 2003

[Against the Judgment of conviction and Order of sentence both dated 03.06.2003, passed by learned Additional Sessions Judge (Fast Track Court-1), Chatra, in Sessions Trial No. 328 of 1994]

1. Pasupati Pandey @ Buchu Pandey, Son of Madan Pandey, resident of Village – Salaiya, P.S. – Imamganj, District - Gaya.
2. Bigu Bhuiyan, Son of Bhagalu Bhuiyan, resident of Gidha, P.S. – Pratappur, District - Chatra.

... ... **Appellants**

Versus

The State of Jharkhand **Respondent**

P R E S E N T

HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY
HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

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For the Appellants : Mr. Binod Kumar Dubey, Advocate.

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

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JUDGMENT

C.A.V. on 19.11.2025

Pronounced on 28.01.2026

Per Pradeep Kumar Srivastava, J.

1. Heard learned counsel for the parties.
2. The instant criminal appeal is preferred challenging the conviction and sentence dated 03.06.2003 passed by learned Additional Sessions Judge, Fast Track Court-1, Chatra in Sessions Trial No. 328 of 1994, whereby and whereunder, the appellants have been held guilty for the offence under Sections 302, 201/34 of the I.P.C. and sentenced to undergo imprisonment for life and rigorous imprisonment for three years respectively. Both the sentences were directed to run concurrently.

FACTUAL MATRIX

3. The factual matrix giving rise to this appeal as per fardbeyan of one Ran Bijay Singh dated 21.01.1991 at about 8:30 hours is that on last Thursday i.e. on 17.01.1991, the brother of the informant namely, Brij Nandan Singh went outside from the house and till 19.01.1991, he did not return back, then suspicion arose and family members started searching out. It is alleged that during course of search, one Kailash Singh of Village – Mahugain told that informant's brother was seen drinking tari in the bagan of Prayag Pasi at Kalyanpur Aahar. It was told that one Ayodhya Singh had seen the brother of informant coming back after consuming tari with one Pashupati Pandey and Sohrai Bhuiyan of Village Salaiya, P.S. – Imamganj, District – Gaya. They have also seen Brij Nandan Singh laying down in courtyard of Prayag Pasi. It is also alleged that earlier, there was a dispute between Brij Nandan Singh, brother of informant and Prayag Pasi, which was settled without lodging any FIR. Therefore, informant suspects that due to previous enmity Prayag Pasi along with his associates Pashupati Pandey @ Bhuchu Pandey and others might have committed murder of his brother and concealed the dead body at a secret place.

4. On the basis of above fardbeyan (Exhibit-5), Pratappur P.S. Case No. 04 / 1991 was registered against the above-named accused persons for the offence under Sections 302 / 201 read with Section 34 of the I.P.C. After conclusion of investigation, charge-sheet was submitted for the aforesaid offences. The case was committed to the court of Sessions, where S.T. No. 328/1994 was registered and trial commenced. In course of trial, one co-accused Prayag Pasi was absconding and his case was separated vide S.T. No. 328A/1994 and trial proceeded against present appellants, who have been held guilty and sentenced as stated above.
5. Learned counsel for the appellants has strenuously argued that the appellants have been falsely implicated merely on the basis of suspicion. They have no inimical terms with the deceased nor have any concern with the co-accused Prayag Pasi, against whom previous dispute has been alleged by the prosecution. It is further submitted that the appellants have been convicted only on the basis of evidence of P.W.-1 Dwarika Singh and P.W.-3 Mosaheb Singh. Virtually these two witnesses are not eye-witnesses of the occurrence and their testimony appears to be very unnatural and unworthy of

credence. They have claimed to see the accused persons while fleeing away in the night of 17.01.1991 itself from a distance of 133 ft. in a torch light. Surprisingly these witnesses have also admitted that they informed about the occurrence in the evening of 18.01.1991 to police, but no such FIR was lodged at their instance and they have also admitted that the informant, who was close door neighbour of witnesses, was also not informed about the above occurrence. Therefore, the theory of last seen propounded by these witnesses is absolutely not believable and the learned trial court has committed serious illegality while putting much weightage on the testimony of aforesaid witnesses. It is further submitted that no incriminating article connecting the appellants with the alleged occurrence have been recovered during investigation and brought on record. The mischievous plea of last seen, as stated, afterthought by the witnesses cannot form basis of their conviction. If the said last seen theory is excluded from consideration, there remains nothing to prove the guilt of the appellants. The testimony of witnesses also does not corroborate from the post-mortem report of the deceased, wherein cause of death is opined due to asphyxia caused by

strangulation. Although, the purported eye-witness have stated that the deceased was brutally assaulted by six persons after tying his hands and hanged on tree. Therefore, conviction and sentence of the appellants is fit to be set aside and they deserve to be acquitted from the charges leveled against them.

6. On the other hand, learned PP refuted the aforesaid contentions has submitted that the prosecution has proved the guilt of the appellants beyond all reasonable doubt. The learned trial court has very wisely and aptly considered over all aspects of the case in the light of cogent and reliable evidence of witnesses. Hence, there is no illegality or infirmity in the judgment of conviction and sentence of the appellants, calling for any interference, by way of this appeal, which is fit to be dismissed.
7. The only point for consideration is “whether the impugned judgment suffers from any error of law calling for any interference?”
8. Before imparting our verdict on the above point, we have to apprise ourselves with prosecution evidence.
9. **P.W.-1 Dwarika Singh** is a witness of inquest and proved his signature as Exhibit-1 on the carbon copy of inquest report. This witness was examined after 10 years of occurrence. According to his evidence, he had

gone to the house of Kishore Singh at Village – Jaipur, where his friend Saheb Singh has told him that Pashupati Pandey had called upon Brij Nandan Singh and accompanied with him, but did not return till today, then he along with Saheb Singh went in search of Brij Nandan Singh and also met with Pashupati Pandey @ Bucha Pandey, who told that he has not come. He informed the villagers and again went to the house of Prayag Pasi and in his courtyard, there was crowd of 10-15 persons and six persons out of them three from one side and three from another side were pressing neck of Brij Nandan Singh, who had died, but he identified Prayag Pasi, Pashupati Pandey @ Bucha Pandey and Bighu Bhuiya. He informed the villagers and again went to the house of Prayag Pasi, but dead body was not found, then he came back and on the next day went to police station and dead body of Brij Nandan Singh was pulled out from a well of one Hanif Miya.

In his cross-examination, this witness clearly admits that informant Ran Vijay Singh is gotia brother, but he did not inform him about the occurrence. He has not stated before the police that there was some scuffle and dispute between Prayag Pasi and Brij Nandan Singh, prior to occurrence. He

also admits that he has stated before police as an eye-witness, but his statement was not recorded. He also states that the accused persons were bearing sticks about 3 feet length, which was also thick. He can't tell as to which one of the accused persons were pressing neck of the deceased. Mosaheb Singh was also present with him. He also admits that he saw the accused persons in the dark night from a distance of 2 Zarib i.e. 133 ft. when accused persons were surrounding Brij Nandan Singh. He further states that dead body was found after two days from a well situated at a distance of 1 Km from the house of Prayag Pasi. When the dead body was brought out from the well, police was not present. Thereafter, police arrived and inquest report was prepared.

10. P.W.-2 Jai Ram Singh is a hearsay witness, who came to know about murder of Brij Nandan Singh and knows nothing about the factual aspect of this case.

11. P.W.-3 Mosaheb Singh has claimed to be another eye-witness of the occurrence. According to him, in the month of January, 1991, in the night at about 8:00 P.M., he along with Dwarika Singh (P.W.-1) went to the house of Prayag Pasi in search of Brij Nandan Singh where he saw that in the courtyard of Prayag Pasi Brij Nandan Singh was tied from behind of his

both hands and sticks were put on his neck from both side. He identified Prayag Pasi, Pashupati Pandey @ Bucha Pandey and Bighu Bhuiya in the flash light of torch. He has further stated that on the same day morning at about 10:00 AM Pashupati Pandey called upon Brij Nandan Singh. When he went to the house of Prayag Pasi, he saw Brij Nandan Singh was at the verge of death. He also claims to have chased the accused persons, but they managed to flee away, then this witness returned to his home and again on the next morning went to the house of Prayag Pasi where dead body of Brij Nandan Singh was not found. They started searching the dead body of Brij Nandan Singh and ultimately, it was found in a well of Hanif Mian at Village Gidha. This witness is also neighbor of informant Ram Vijay Singh, but did not inform him about the occurrence, which was claimed to have been seen by him. He also admits that on the same day itself, he did not inform about above occurrence at the police station. He also admits that for the first time he is giving evidence before the Court. He also admits that the dead body was brought out in presence of police from the well.

12. P.W.-4 Kailash Singh has claimed to see the deceased Brij Nandan Singh on 17.01.1991 in the

evening in between Village – Gidha and Baraikhap along with 2-3 persons whom he does not know. Thereafter, he heard about the murder of Brij Nandan Singh and his body was found from a well. He has expressed nothing else within his personal knowledge. He also admits that his statement was not recorded by police, hence declared hostile by prosecution.

13. P.W.-5 Ran Bijay Singh (Informant). According to his evidence, he came to know that his brother had gone from his house on 17.01.1991. This witness is a teacher and in the evening, he returned from his school, then in the night, he came to know from Dwarika Singh (P.W.-1) and Mosaheb Singh (P.W.-3) respectively that his brother Brij Nandan Singh is consuming something and drinking along with his friends Prayag Pasi and others and also told that he has seen Prayag Pasi and others are assaulting his brother Brij Nandan Singh. He went there, but did not found Prayag Pasi in his house, rather door was locked. Thereafter, dead body of his brother Brij Nandan Singh was found in the well of Hanif Mian on 20.01.1991. Thereafter, his fardbeyan was recorded by police, over which, he has put his signature and he has proved his signature as Exhibit-2. There is nothing else in his evidence. Admittedly, this witness

is not an eye-witness of the occurrence, rather claims to have knowledge of the occurrence from P.W.-1 and P.W.-3, who have also categorically denied that they have informed to this witness.

14. P.W.-6 Narain Sao has been declared hostile by the prosecution.

15. P.W.-7 Dr. Nand Kishore Jaiswal has conducted autopsy on the dead body of the deceased and found following:-

Ante Mortem:

Ecchymosis of whole left forearm, blackish red in colour, ecchymosis of whole left palm, blackish red in colour.

Fracture of lower end of radius and ulna.

Ecchymosis of whole right forearm and whole palm blackish red in colour.

Fracture of lower end of right radius and ulna.

Ecchymosis on front of left thigh 3" x 2" blackish red.

Swelling and ecchymosis over chin blackish red in colour 6" x 4" in size.

Swelling and ecchymosis on right side of neck blackish red in colour extending upto lower portion of right ear 8" x 4" in size. On reflection of skin, there

was subcutaneous hematoma on right side of neck 3” x 2”. Underlying muscles were haemotised.

Larynx and trachea bruised and haemotised.

There was laceration of coats of carotid vessels of right side with extravasation of blood in their coats.

Post Mortem:

Rigor mortis absent on both upper and lower limbs and neck. Body was decomposed and flab smelling.

Blackish discolouration of skin, multiple blabs all over body with reddish coloured fluid. Peeling of cuticle were present at places.

Abdomen distended, face swollen.

Both eyes closed, face congested, mouth semi open.

Bloody discharge coming from mouth and nostrils.

Skin of both upper and lower limbs at periphery was puckered.

Lungs congested and oedematous.

Right side of heart full of dark fluid blood, left side empty.

Stomach contained semi digested food materials.

Small intestine distended with gas at places irregular dark red patches due to putrefaction.

Large intestine full of gas.

Spleen congested, soft, pulpy, liver congested both kidneys congested, bladder empty.

Opinion:

The cause of death was opined due to asphyxia resulting from strangulation. Time elapsed since death about 110 hours.

He has proved the post-mortem report as Exhibit-3.

16. P.W.-8 Kapil Deo Singh is the Investigating Officer of this case, who has proved the formal FIR as Exhibit-4, Endorsement on fardbeyan as Exhibit-5, Inquest Report of the deceased as Exhibit-6. He received charge of investigation of this case from S.I. Sheo Madan Singh on 25.02.1992. He has recorded statements of witnesses Jai Ram Singh, Smt. Jhalak Devi and Kailash Singh, Sohrai Bhuiyan. He also inspected the place of occurrence, which is situated in between Gidha Salai and Jaipur in the field of Hanif Mian, wherein a well is also constructed. The dead body of the deceased was found in this well. He sent the dead body for post-mortem and after collecting sufficient evidence, submitted charge sheet against the accused persons.

Attention of this witness has been drawn towards the statement of witness Kailash Singh recorded

under Section 161 of the Cr.P.C., wherein he has not stated anything as deposed during trial, rather stated that he found Brij Nandan Singh under intoxicated state. He can't tell distance between well situated in the field of Hanif Mian and the house of Prayag Pasi. He has also not proved the place of occurrence to be the house of Prayag Pasi. He has denied his investigation to be defective.

- 17.** We have gone through the impugned judgment, wherein the learned trial court has laid much emphasis upon the evidence of P.W.-1, P.W.-3 & P.W.-4, who have claimed to be eye-witnesses of the occurrence. From the evidence of P.W.-1 & P.W.-3, it is crystal clear that they have not informed about the occurrence to the informant, who is close door neighbour of them. They also happened to be gotia of the deceased. On the other hand, informant (P.W.-5) in his fardbeyan has clearly stated that he came to know from P.W.-1 & 3 that his brother was seen drinking tari in the bagan of Prayag Pasi at Kalyanpur Aahar. It was told that one Ayodhya Singh had seen the brother of informant coming back after consuming tari with one Pashupati Pandey and Sohrai Bhuiyan of Village Salaiya, P.S. – Imamganj, District – Gaya. They have also seen that Brij Nandan Singh was

laying down in courtyard of Prayag Pasi. The evidence of P.W.-4 Kailash Singh also suffers from material omissions as is apparent from the evidence of P.W.-8 as discussed above. He has stated nothing as deposed during trial in his earliest version recorded under Section 161 Cr.P.C. The cumulative effect of evidence of P.W.-1, P.W.-3 and P.W.-4 leads towards conclusion that no credence can be placed upon their testimony in view of material contradictions and omissions. The manner in which they have asserted the happenings of the occurrence and claimed as an eye-witness did not stand on reason. P.W.-1 says that he saw six accused persons were surrounding to the deceased from a distance of 133 ft. in the dark night. P.W.-3 claims that he along with P.W.-1 have chased the accused persons about $\frac{1}{2}$ Km, but they succeeded in fleeing away. In spite of the fact that the dead body of the deceased was allegedly lying in the house of Prayag Pasi, they took no pain to woke up the villagers or inform the brother of the deceased and the police station, rather returned to their home and went to sleep. In the next day also, no attempt was taken to lodge any case when the dead body was disappeared from the house of Prayag Pasi and lock was put in his house. Therefore, the evidence of

P.W.-1, P.W.-3 and P.W.-4 suffers from serious clouds of suspicion against them in not disclosing fairly the incident to the villagers and the police. The prosecution has also failed to prove any enmity between the present appellants and the deceased. The first place of occurrence, as alleged by P.W.-1, P.W.-3 and P.W.04, was also not inspected by the Investigating Officer (P.W.-8). Moreover, no incriminating circumstances showing the complicity of the appellants in the alleged offence of murder has been collected and brought on record. We further find that except bald statements of P.W.-1, P.W.-3 and P.W.-4 that they have seen the appellants while surrounding the deceased and putting pressure on his neck by sticks from both side also does not find corroboration from the post mortem report of the deceased, wherein no such marks of violence has been found on the dead body.

- 18.** In view of above glaring infirmities in the prosecution evidence, we are constrained to hold that the learned trial court has not properly appreciated the evidence of witnesses in right perspective and arrived at wrong conclusion about the guilt of the appellants. Therefore, there is serious error of law in recording the guilt of accused persons for the offence of murder without any cogent and reliable evidence.

19. Therefore, the impugned judgment and order is hereby set aside. This appeal is **allowed**.

20. The appellants are on bail. As such, they are discharged from their liability of bail bonds and sureties are also discharged.

21. Pending I.A., if any stand disposed of.

22. Let a copy of this judgment along with trial court record be sent back to the court concerned for information and needful.

(Rongon Mukhopadhyay, J.)

(Pradeep Kumar Srivastava, J.)

Jharkhand High Court, Ranchi

Dated, the 28th January, 2026.

Sunil / **N.A.F.R.**

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