

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Appeal (D.B.) No. 989 of 2003

[Against the judgment of conviction and order of sentence dated 26.06.2003 & 27.06.2003, respectively passed by learned Additional Sessions Judge-cum-Fast Track Court No.1, Gumla in S.T. No.65 of 2002/26 of 2003]

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1. Mani Oraon, son of Bandhan Oraon
 2. Birsai Oraon, son of Bandhan Oraon
 3. Bimal Oraon, son of Birsai Oraon
- All are R/o village-Jokhar, P.S.-Gumla, District-Gumla

... .. **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

For the Appellants : Mr. A. K. Chaturvedi, Advocate

For the State : Mr. Shailesh Kumar Sinha, A.P.P.

JUDGEMENT

C.A.V. on 01.04.2026

Pronounced on 06/05/2026

Per- Pradeep Kumar Srivastava, J:

1. The instant criminal appeal is directed against the judgment and order of conviction and sentence dated 26.06.2003 and 27.06.2003, respectively, passed by learned Additional Sessions Judge-cum-Fast Track Court No.1, Gumla in S.T. No.65 of 2002/26 of 2003, whereby and whereunder the appellants have been held guilty for the offence under Sections 302/109 of the I.P.C. and sentenced to undergo rigorous imprisonment for life. The co-accused persons, namely, Yadunandan Nayak and Tija Oraon have been acquitted by extending the benefit of doubt.

2. It is to be mentioned at the very outset that out of four appellants, appellant No.4, Satan Oraon, had died during the pendency of this appeal as such, the appeal preferred by above named appellant has abated vide order dated 24.02.2026.

Factual Matrix:-

3. Factual matrix giving rise to this appeal is that on 23.09.2001, in the early hours of the morning, informant was threshing paddy in her house and her sole brother, Balku Oraon (deceased), was sleeping in the room. It is alleged that in the meantime 15-16 persons armed with deadly weapons, out of whom the informant identified one Loha Singh who asked about her brother and father. The informant told that they have gone out of station but the accused persons interrogated with villagers, namely, Charwa Oraon, Ropa Oraon and Satan Oraon, who informed them that the informant's father and brother are in the house. Thereafter, the accused persons again took away the informant's father and brother with them to village Akhada and badly assaulted them. It is further alleged that **Loha Singh and others had taken away the brother of the informant outside of village**, the informant heard sound of firing but due to fear she went at the place of occurrence, when the accused persons fled away and saw the dead body of her brother. It is alleged that there was land dispute with Mani Oraon, Charwa Oraon, Birsai Oraon, Ropa Oraon, Kalkatia Oraon, Pusa Oraon, Vimal Oraon, Bandhan Oraon & Satan Oraon, hence they might have called Loha Singh and other accused persons and murdered her brother.
4. On the basis of above information, F.I.R. was registered for the offences under Sections 302, 323, 341 and 34 of the I.P.C., Section 17 of the

Criminal Law Amendment Act, 1908 and Section 27 of the Arms Act against Loha Singh and other 14-15 unknown miscreants.

5. After conclusion of investigation, charge-sheet was submitted under Sections 302, 323, 341, 120B/34 of the I.P.C. After taking cognizance, the case of accused persons were committed to the Court of Sessions in two instalments. Firstly, the case of accused persons, namely, Mani Oraon, Vimal Oraon, Satan Oraon & Birsai Oraon was committed (G.R. Case No. 634 of 2001) vide order dated 15.03.2002, which was registered as S.T. Case No. 65/2002/26/2003. The case of accused persons, namely, Tija Oraon @ Chalis Oraon and Yadunandan Nayak was committed (supplementary G.R. Case No. 634 of 2001) vide order dated 11.12.2002. Accordingly, both sessions trials were registered and amalgamated together for joint trial.
6. The accused persons pleaded not guilty and claimed to be tried.
7. In the course of trial, altogether 13 witnesses were examined by prosecution.

P.W.-1-Bandhain Oraon

P.W.-2-Botwa Oraon

P.W.-3-Kanglu Oraon

P.W.-4-Vijay Oraon

P.W.-5-Champu Orain (Informant)

P.W.-6-Feku Oraon

P.W.-7-Beri Oraon

P.W.-8-Sawana Oraon

P.W.-9-Rati Oraon

P.W.-10-Doctor Ajit Kumar Agrawal

P.W.-11-Md. Sabbir Khan

P.W.-12-Ranjan Prasad Singh

P.W.-13-S.I., Shyam Nandan Mandal

8. Apart from oral testimony of witnesses, following documentary evidence has been adduced:-

Exhibit-1: Signature of Kanglu Oraon on the fardbeyan.

Exhibit-1/1: Signature of Kanglu Oraon on the inquest report.

Exhibit-1/2: Signature of witness Rati Oraon on the inquest report.

Exhibit-1/3: Signature of Kanglu Oraon on the seizure list.

Exhibit-1/4: Signature of witness Rati Oraon on the seizure list.

Exhibit-2: Post-mortem report.

Exhibit-3: Formal F.I.R.

Exhibit-4: Fardbeyan in the writing and signature of Officer-in-charge.

Exhibit-5: Inquest report of deceased.

Exhibit-6: A letter seized near the body of the deceased.

Exhibit-7: Seizure list

Exhibit-8: The case diary.

9. The learned Trial Court after evaluating the oral as well as documentary evidence available on record, arrived at conclusion about guilt of the appellants for the offence under Sections 302 read with Section 109 of the I.P.C. and sentenced them as stated above.

Submissions on behalf of appellants: -

10. Assailing the impugned judgment, the learned counsel for the appellants has vehemently argued that no specific overt act of assaulting the deceased by any weapon or use of firearm has been attributed against the appellants. Admittedly, the appellants were implicated in this case only on the basis of suspicion on account of existing land dispute with the informant's father and brother (deceased). The prosecution has miserably failed to prove any land dispute existing between the parties. The case of the prosecution originates from suspicion and never culminated into legal proof against the appellants. It is further submitted that the extreme allegation is against one Loha Singh who brought the

deceased from his house, took away some distance thereafter, informant heard sound of firing. The learned Trial Court has convicted the appellants only with the aid of Section 109 of the I.P.C. but there is no iota of evidence at all as to how the appellants abetted the commission of murder of the deceased. Therefore, the impugned judgment and order of conviction and sentence is absolutely illegal, unwarranted and beyond the weight of evidence available on record. The appellants deserve to be acquitted from the charges levelled against them and this appeal may kindly be allowed.

Submissions on behalf of State: -

11. *Per contra*, learned A.P.P., Mr. Shailesh Kumar Sinha, defending the impugned judgment of conviction and sentence of appellants submitted that it is a serious offence of abetting the murder of the deceased and as well as their presence at the spot clearly proves the commission of offence by the appellants. There is no illegality or infirmity in the impugned judgment and no substance in the point of arguments raised on behalf of appellants, this appeal has no merit and is fit to be dismissed.
12. The only point for determination in this appeal is **“as to whether the impugned judgment and order of conviction and sentence of the appellants suffers from any serious error of law calling for any interference in this appeal?”**

Analysis, reasons and decision

13. Before imparting our verdict on the above point, we have to apprise with the evidence adduced in this case during trial.

P.W.-5-Champu Orain @ Champu Kumari is the informant of this case. According to her evidence, on the date of occurrence at about

5:00 A.M., she was threshing paddy in her house meanwhile, party people (Naxalites), armed with various weapons like rifle, gun, pistol, axe and *balua* total 16-17 persons **including Loha Singh, Nanku and Jatta surrounded her house and asked about her father and brother.** She told them that they are not present and have gone outside, thereafter, they inquired in the village and village persons namely, Charwa, Ropa, Kalkatia, Vimal, Satan, Mani, Birsai, Bandhu, Bandhan and Pusa etc. disclosed about the presence of her brother and father in the house. Subsequently, the accused persons entered into her house, broke open the lock and brought out her father and brother. She went in the village to complain the villagers and raised alarm. The accused persons took away the brother and father of this witness towards Village-Akhara where they assaulted her father with wooden stick and her brother was also killed. She heard twice sound of firing and found her brother died and father severely injured. She has further deposed that there is land dispute between her father and accused persons namely, Pusa, Vimal, Bandhan, Satan, Bandhu, Charwa, Birsai, Mani, Ropa and Kalkatia due to this reason her brother had been killed. Her *fardebayan* was recorded by police which was read over and explained to her then she put her thumb impression. She has also proved that a letter was brought out from the pocket of shirt of the deceased which was seized by the police.

In her cross-examination she admits that while she was threshing paddy, the door was open and **her brother and father were sleeping in another room, the door of the room was also open.** She also admits that when the accused persons approached her house, none of the villagers were present, all the members were of party people. She has

denied the suggestion of defence that no litigation is going on with the accused persons regarding land dispute and her brother has been killed by *Naxalite* party and she has falsely implicated the accused persons because it was suspected that they have disclosed the presence of her father and brother in the house. She also admits that no T.I.P. was conducted in this case to identify any of the accused persons who arrived at her house.

P.W.1-Bandhain Orain has simply stated that on the date of occurrence, she had gone to discharge nature's call at about 04:00 A.M. then 15-16 party member armed with rifle came to the house of Champu Orain @ Champu Kumari (P.W.-5) and took out her brother and father from the house. She also heard two sounds of firing and in search of brother and father of the informant went towards place of occurrence and saw the dead body of Balku sustaining injuries of fire arm. She also states that there was land dispute between deceased and the accused persons namely Birsai Oraon, Ropa Oraon, Kalkatia Oraon, Pusa Oraon, Vimal Oraon, Mani Oraon, Bandhan Oraon, Satan Oraon, Charwa Oraon etc. They were threatening to kill the deceased.

This witness has tried to project herself as eye-witness in her cross-examination and claims to have seen the occurrence. She also admits that both accused persons and the deceased were belonging to same family and *Gotia* of each other and there was dispute of partition. She has not seen any documents regarding land dispute between the parties. Therefore, this witness is a hearsay witness and admittedly in search of the brother and father of informant she went to the place of occurrence and saw the dead body and not an eye-witness of the

occurrence and even has not disclosed who have arrived at the house of deceased.

P.W.-2-Botwa Oraon is father of the deceased. According to his evidence also while he was sleeping some miscreants came to his house and surrounded, they entered into the house and took away his son Balku Oraon towards Khori and he was left in his house. The accused persons assaulted his son and also gave *danda* blow to this witness, due to which he became unconscious, **he can't tell where his son was taken by the accused persons and who killed him** but he saw that his son had sustained fire arm injuries and died. He has also stated that partition dispute of the property was going on with the accused persons namely, Birhor, Birsai, Marwari, Bandhan, Ropa, Kalkatia, Pusa, Bimal, Bandhu, Satan and Mani who belongs to his family and he had only son hence, the accused persons called party people and murdered his son in order to grab his property.

In his cross-examination he admits that police has not recorded his statement. Birsai, Birhor and Marwari or his brother and about 30 years ago a case was undergone with them, the case has been disposed of about 8-9 years ago. He has denied the suggestion of defence that his son Balku Oraon himself was belonging to M.C.C. and due to internal dispute he was killed by party members and the present accused persons have been falsely implicated due to much prior dispute which was resolved.

P.W.-3-Kanglu Oraon is a hearsay witness and brother-in-law of the deceased, he has only seen the dead body of the deceased at village-Tongari, who had sustained fire arm injuries. He has also proved his

signature on *fardebayan* as Exhibit-1 and signature on inquest report as Exhibit-1/1 and also signature of Rati Oraon as Exhibit 1/2. He has also signed over the seizure list of a letter brought out from the pocket of the deceased as Exhibit 1/3 and signature of Rati Oraon as Exhibit 1/4, **he has denied any statement before the police.**

P.W.4-Vijay Oraon has also seen the dead body of deceased sustaining fire arm injuries and came to know from the informant that there was land dispute with the accused persons namely, Charwa Oraon, Kalkatia, Pusa and others due to that reason party people headed by Loha Singh murdered the deceased, therefore, this witness is also not an eye-witness of the occurrence.

P.W.6-Feku Oraon has also heard about the occurrence and went to the place of occurrence and saw the dead body of deceased Balku who has sustained fire arm injuries. He came to know that M.C.C. members have killed the deceased. He also states that there was no enmity of the deceased with any person.

P.W.-7-Beri Oraon has also expressed no personal knowledge about the occurrence rather he came to know that Balku has been murdered then he saw the dead body. He also came to know from the villagers that **M.C.C. party members kidnapped the deceased and killed.** He has also expressed no enmity between the deceased and the accused persons.

P.W.8-Sawana Oraon has also claimed to see the dead body of the deceased and nothing else.

P.W.9 is **Rati Oraon.** According to his evidence, on Sunday at about 7:00-8:00 A.M., informant along with her mother came to his house and told about murder of Balku Oraon, he is brother-in-law of deceased. He

went to village Charari Tongari, where deceased was murdered and saw fire arm injuries on his body. **He was also informed by the family members of deceased that M.C.C. party members took away the deceased from her house and killed.** Admittedly, this witness was not present on the spot at the time of occurrence and is an hearsay witness.

P.W.10-Doctor Ajit Kumar Agrawal has conducted autopsy on the dead body of the deceased and found following ante-mortem injuries:-

(i) Fire arm wound- wound of entry one lacerated 3/4 c.m. diameter with inverted margin with tattooing of surrounding skin in 3" diameter over left temple.

Wound of exit-Lacerated wound 1.½ c.m. diameter with inverted margin over right side of forehead lateral to right eyebrow. Both wound communicating to each other.

On dissection

Horizontal and to right side fracture of temporal and frontal bone both side with laceration of meninges and brain matter with blood clot inside cranial cavity, close range.

(ii) Fire arm wound of entry 1.½ " c.m. diameter blacken and inverted margin over right side arm front chest. Wound of exit-lacerated wound 3 c.m. diameter averted margin over right side of middle part of back. Both wound communicating to each other. Direction downwards and backwards. Causing fracture of body of lower sternum and 7th and 8th rib right side with laceration of lower part of both side of lung, liver, diaphragm mesentery and loop of large and small intestine with copious amount of blood inside the abdominal cavity. Range-close range.

14. All the above injuries have been caused by fire arm and grievous in nature.
15. Injury Nos. (i) & (ii) are sufficient to cause death in ordinary course of nature either singly or in combination. Cause of death-shock and haemorrhage and brain injury.

Time elapsed since death 24 to 36 hours approx. This witness has put his signature on the post mortem report which has been marked as Exhibit-2.

P.W.-11-Md. Sabbir Khan is the investigating officer of this case. According to his evidence on 16.11.2001, he was posted as S.I. at Gumla Police Station, on that day he was handed over charge of investigation of Gumla P.S. Case No. 236 of 2001, in the course of investigation, he has gone through the earlier case diary and in compliance of orders of senior officers submitted charge-sheet against accused persons namely, Mani Oraon, Birsai Oraon, Vimal Oraon and Santan Oraon keeping investigation continued against other accused persons. He has proved formal F.I.R. in the handwriting of the then Munshi of police station namely, Kailash Prasad Yadav and signed by Officer-in-charge, Rana Ramsudan Singh which is marked as Exhibit-3. He has further proved the *fardebayan* of the informant recorded by the then Officer-in-charge, Subodh Kumar Jaiswal marked as Exhibit-4.

P.W.-12-Ranjan Prasad Singh is the first investigating officer of this case. According to his evidence on 23.09.2001, **he got rumour information that at village-Jaukhand one person has been murdered**, he went to the place of occurrence along with police force where the officer-in-charge recorded the statement on *fardebayan* of

informant Champu Orain. The inquest report was prepared at village-Charari Tongari by Officer-in-charge, Subodh Kumar Jaiswal in presence of witness which is not verified. He also seized a letter near the dead body of deceased which was produced by informant and seizure list was prepared which is marked as Exhibit-6 and signature of this witness as Exhibit-7. He recorded re-statement of the informant and dead body was send to Sadar Hospital, Gumla for post mortem. He also inspected the place of occurrence situated in village Jaukhand from where near about ½ K.M. distance dead body of Balku Oraon was found near Pagdandi road at Charari Tongari at a lonely place. He has stated that the first place of occurrence is the house of the informant from where the deceased along with his father were dragged out and taken away by the accused persons. The third place of occurrence in village Jaukhand Akhada where prior to murder **the deceased was assaulted by Loha Singh and his associates.** The Akhada is 10 x 10 feet. He also recorded the statement of witnesses Vijay Oraon, Sawana Oraon, Beri Oraon, Feku Oraon etc. On the next day he recorded statement of Bodhwa Oraon & Bandhan Oraon and also raided the house of accused persons but they were absconding. He arrested Mani Oraon, Birsai Oraon, Vimal Oraon & Satan Oraon on 01.10.2001 and also received post mortem report of deceased. Thereafter, he was transferred. He has proved his case diary from para 1 to 48 in his handwriting and 49 in the handwriting of Officer-in-charge and para 50-75 in the handwriting of S.I., Md. Shabbir Khan which is marked as Exhibit-8.

In his cross-examination, he admits that the letter produced by the informant did not get signed by any witnesses including the informant

and case number was also not mentioned over that paper. The attention of this witness has been drawn towards **the statement of Champu Orain @ Champu Kumari (P.W.-5) wherein she has not stated that she locked the door and went to call the villagers at the time of occurrence.** In the meantime, the accused persons took away her brother and father. She has also not stated that she went to get help from her family members but the accused persons broke open the lock of the house.

He also admits that no documents regarding land dispute was produced by the informant during investigation.

P.W.-13-S.I., Shyam Nandan Mandal has tried to prove the confessional statement of accused Yadunandan Nayak recorded by him on 24.02.2002, disclosing the name of other co-accused persons who were involved in Gumla P.S. Case No. 236 of 2001, but only the photocopy of said confessional statement was filed which has not been marked as exhibit.

In his cross-examination, he admits that the confessional statement produced by him does not bear any police station case number and he has not investigated any part in the Gumla P.S. Case No. 236 of 2001, therefore, his testimony carries no legal importance.

16. On the other hand, no oral or documentary evidence has been adduced by defence. The case of defence is denial from occurrence and false implication only on the basis of suspicion.
17. We have gone through the record of the case along with impugned judgment in the light of contentions raised on behalf of both side.

18. The testimony of witnesses as discussed above clearly goes to show that in the F.I.R., the name of one Loha Singh, which was heading the M.C.C. extremist party arrived at the house of informant (P.W.-5) along with 15-16 extremists. It is quite obvious from the evidence of witnesses that none of the appellants have taken any active part in commission of the murder of deceased or assaulting informant's father. Not a single witness including the informant have claimed that the appellants were involved in assaulting the informant's father and brother. The informant (P.W.-5) has expressed her suspicion in the F.I.R. itself that there was land dispute with the present appellants and they were threatening to kill her brother and father in order to grab landed property. The main dispute was about partition of the suit property. She has failed to produce any documentary evidence showing pendency of litigation between the parties.
19. In this connection, P.W.2, Botwa Oraon has stated in his evidence that there was old land dispute about 20-30 years and litigation has been ended about 8-9 years prior to occurrence. None of the other witnesses, examined in this case, have been able to prove any existing enmity between the informant's father, brother and the present appellants. Therefore, the suspicion expressed against the appellants remained in suspicion throughout the conclusion of trial and never culminated into legal proof.
20. It appears that the learned Trial Court has relied upon simple apprehension of informant against the present appellants, who have declined to assist her due to fear of the extremist party. It appears that save and except suspicion raised against appellants, no legal evidence

has been brought on record by the prosecution to sustain their conviction even as an abettors. Therefore, we find that the learned Trial Court has miserably failed to properly appreciate the evidence available on record, as such committed serious error of law while arriving at conclusion of guilt of the present appellants.

21. We find substance in the point of argument raised on behalf of the appellants and merits in this appeal.
22. In view of above discussions and reasons, we set aside the judgment of conviction and order of sentence of the appellants passed by the learned Trial Court. They are acquitted from the charges levelled against them and this appeal is **allowed**.
23. The appellants are on bail; they are discharged from the liabilities of bail bonds and their sureties are also discharged.
24. Pending I.A., if any, stands disposed of.
25. Let a copy of this judgment along with the Trial Court record be sent back to the concerned court for information and needful.

(RONGON MUKHOPADHYAY, J.)

(PRADEEP KUMAR SRIVASTAVA, J.)

Jharkhand High Court
Dated 06/05/2026
Arpit/ N. A. F. R.
Uploaded on 06/05/2026