

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (D.B.) No. 274 of 2004

[Against the Judgment of conviction and Order of sentence dated 31st January, 2004 passed by learned 3rd Addl. Sessions Judge, Palamau at Daltonganj in Sessions Trial No. 405 of 1993, arising out of Sadar Daltonganj P.S. Case No. 40 of 1991]

- 1. Bishwanath Manjhi, Son of Late Nanhu Manjhi,
- 2. Surendra Manjhi, Son of Shri Chandradeo Manjhi,
- 3. Sant Lal Manjhi, Son of Shri Ram Brish Manjhi,

All of Village Pokhaha Khurud, P.S. Daltonganj, Dist-Palamau

... **Appellants**

Versus

The State of Jharkhand **Respondent**

For the Appellants : Mr. Venkatesh Kumar, Advocate
Mr. Jai Shanker Tripathi, Advocate
For the Resp. State : Mr. Manoj Kumar Mishra, APP

PRESENT

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

JUDGMENT

CAV On 21/04/2026 **Pronounced On 06/05/2026**

Per- Pradeep Kumar Srivastava, J.

- 1. The instant criminal appeal is directed against the Judgment dated 31st January, 2004 passed by learned 3rd Addl. Sessions Judge, Palamau at Daltonganj in Sessions Trial Case No. 405 of 1993 corresponding Daltonganj Sadar P.S. Case No. 40 of 1991 (G.R. Case No. 109 of 1991) whereby and whereunder the appellants have been held guilty under Section 302/34 of the IPC and sentenced to undergo R.I. for life.
- 2. We have already heard the arguments of Mr. Venkatesh Kumar, learned counsel for the appellants and learned APP for the State.

Factual Matrix:-

3. The factual matrix giving rise to this appeal is that in the night of 25-26/01/1991, a person Dukhi Oraon was murdered. F.I.R. was lodged by one Mr. Vishwanath Vishwakarma (P.W.-2) on 26.01.1991 at about 02:00 PM stating *inter alia* that at about 12:00 noon when he went for fishing in Beti Bandh, he found a dead body near the Nahar (Canal) who was later on identified as Dukhi Oraon by village Mukhiya. It is alleged that the said person was killed by wrapping Lungi etc. and there were some injuries on his body. The F.I.R. was registered against unknown miscreants for committing murder of the deceased Dukhi Oraon.

In the course of investigation, statement of three witnesses were recorded under Section 164 of the Cr.P.C. showing involvement of the present appellants in the alleged offence of murder. Therefore, after completion of investigation, the investigating officer submitted charge sheet against the aforesaid appellants for the offences under Section 302/34 and 201 of the IPC.

The case was committed to the Court of Sessions, where S.T. Case No. 405 of 1993 was registered. The accused persons denied from the charges leveled against them and claimed to be tried

4. In the course of trial, altogether 8 witnesses were examined in this case but the investigating officer has not been examined by the prosecution. On 20.03.1991, the statement under Section 164 Cr. P.C. of three prosecution witnesses namely Bali Oraon (P.W.-1), Raman

Mochi @ Raman Ram (P.W.-5) and Rajdeo Oraon (P.W.-6) were recorded by learned Judicial Magistrate 1st Class.

P.W.-1	Bali Oraon
P.W.-2	Vishwanath Vishwakarma (Informant)
P.W.-3	Sri Bhanu Pratap Singh(Assistant, Civil Court)
P.W.-4	Kanhai Ram (Village Mukhiya)
P.W.-5	Raman Ram @ Raman Mochi
P.W.-6	Rajdeo Oraon
P.W.-7	Narayan Chandra Agrawal
P.W.-8	Rajnish Kumar, Advocate Clerk

5. Apart from oral testimony of the witnesses, following documentary evidence has also been adduced by the prosecution: -

Ext.-1	Statement of Bali Oraon under Section 164 of the Cr.P.C.
Ext.-1/1	Statement of Raman Ram under Section 164 of the Cr.P.C.
Ext.-1/2	Statement of Rajdeo Oraon under Section 164 of the Cr.P.C.
Ext.-2	Post Mortem Report
Ext.-3	F.I.R.
Ext.-4	Carbon copy of Inquest Report
Ext.-5	Case-Diary (Para -9)

6. On the other hand, the case of the defence is false implication and they are innocent. However, no oral or documentary evidence has been adduced by the defence.

Submissions on behalf of appellants: -

7. Assailing the impugned judgment, learned counsel for the appellants has strenuously argued that admittedly the occurrence happened in the night of 25-26/01/1991. The so-called eye witness P.W.-1 Bali Oraon whose statement was recorded under Section 164 of the Cr.P.C. after two months of the occurrence i.e. on 20th March, 1991 has simply stated that he saw the accused persons namely Bishwanath Manjhi, Surender Manjhi and Sant Lal Manjhi caught hold of Dukhi Oraon and started assaulting by slaps and Danda, when intervened by this witness along with Raman Mochi and Rajdeo Oraon, they threatened them showing pistol and knife. Hence, they fled away. Thereafter, dead body of Dukhi Oraon was found at the place of occurrence. It is further submitted that another witness Raman Mochi (P.W.-5) has been declared hostile by the prosecution and he has simply stated that on the date of the occurrence at about 7-7:30 PM, he returned to his home and slept, in the next morning, he heard about murder of Dukhi Oraon. He has further stated that he was threatened by Police Officer to state before Magistrate as police told him, therefore, his statement was recorded by Magistrate under fear of police and he has not stated before the Police about the occurrence. It is submitted that the third witness namely Rajdeo Oraon was not examined during trial of the case. It is further submitted that rest of the witnesses are either formal witnesses of inquest report, the formal F.I.R or hearsay witnesses. It is submitted that the learned trial Court has declared P.W.-1 as very important witness of the prosecution but in his cross-examination, the

said P.W.1 himself has admitted that his one eye sight is weak and he was not acquainted with the accused persons by name and face, prior to occurrence. He has also failed to state the size of knife and pistol and clearly admits that in spite of having pistol and knife, accused persons were simply assaulting by fist and slaps. This witness was projected by prosecution after one month of the occurrence, which cast serious cloud on his testimony as to under what circumstances, he kept mum for two months and projected by police to be an eye witness of the occurrence and his submission was also recorded under Section 164 of the Cr.P.C. to pin down him. Learned counsel has further submitted that the other witness P.W.-5 whose statement was also recorded under Section 164 Cr.P.C. has been claimed by P.W.-1 namely Bali Oraon to be present along with him, categorically admitted that under threat of police, his statement was recorded under Section 164 of the Cr.P.C. and he has not seen any occurrence. Therefore, the conviction and sentence passed by the learned trial Court only on the basis of evidence of P.W.-1 is liable to be set aside and appellants deserve to be acquitted from the charges leveled against them. Therefore, this appeal may be allowed.

Submissions on behalf of the State

8. On the other hand, learned A.P.P. appearing for the State defending the judgment of conviction and order of sentence of the appellants has submitted that the learned trial Court has very wisely and aptly relied upon the evidence of P.W.-1 namely Bali Oraon which was recorded under Section 164 of the Cr.P.C. during investigation and it does not

matter that after one month, his statement was recorded under Section 164 Cr.P.C. and prior to that, he did not disclose the said incident to any villagers or any person. The post-mortem report of the deceased also shows that he was brutally assaulted and there was head injury sufficient to cause his death in ordinary course of nature. The presence and involvement of the present appellants have been proved beyond doubt, hence there is no illegality or infirmity in the impugned judgment calling for any interference in this appeal, which is devoid of merits and fit to be dismissed.

9. We have gone through the record of the case along with the impugned judgment in the light of rival contentions raised on behalf of the parties.
10. The sole point for determination in this appeal is “as to whether the impugned judgment of conviction and sentence of the appellants suffers from any error of law, which requires any interference in this appeal?”

Analysis, reasons and decision:

11. Before imparting judgment on the above point, we have to take brief resume of the evidence available on record.
12. It appears that altogether 8 witnesses were examined by the prosecution, out of them, **P.W.-2 is Vishwanth Vishwakarma** happens to be informant of this case. Although as per F.I.R. itself, he is not an eye witness of the occurrence but he saw a dead body and informed to village Mukhiya and thereafter, his fardbeyan was recorded but this

witness has denied the contents of the F.I.R. itself and expressed no knowledge about the occurrence.

P.W.-3 Shri Bhanu Pratap Singh is working as Assistant in Civil Court and was attached to the office of Shri B.B. Lal, Judicial Magistrate, First Class on 20.03.1991 and has proved that on that day, statements under Section 164 Cr.P.C. was recorded by Shri B.B. Lal, Judicial Magistrate, First Class of witnesses namely Bali Oraon, Raman Mochi and Rajdeo Oraon which has been marked as Exhibit 1, 1/1 and 1/2.

P.W.-4 Kanhai Ram is a witness of inquest report. He has identified his signature on carbon copy of inquest report which was written by S.I. Raghuram Sharma and stated nothing else about the occurrence.

P.W.-5 Raman Mochi @ Raman Ram has been declared hostile by the prosecution. He is by profession a Rikshaw Puller. According to him, about 3-4 years ago, at about 7:30 pm, he returned to his home and slept, in the next morning, he came to know that Dukhi Oraon has been murdered. He has not seen the dead body of the Dukhi Oraon. After declaring hostile, his attention was drawn towards the statement recorded by Magistrate, where he stated that his statement was recorded under fear of police. He has seen nothing and he does not know about the occurrence.

P.W.-6 Rajdeo Oraon has also been declared hostile by the prosecution. According to him, he was returning to his home at about 8:00-9:00 pm in the night and when he reached near the Nahar (Canal),

then, Bali Oraon also met him and they went their home. He does not know anything about the occurrence and murder of Dukhi Oraon. He has denied any statement before the Police and Magistrate rather he admits that he was threatened and assaulted by police to give statement as dictated by police. Hence, his statement was recorded.

He has reiterated in his cross-examination that he has stated before the police that he does not know about the occurrence but he was assaulted by police and dictated that he has to say before the Magistrate what was told by police.

P.W.-7 Narayan Chandra Agrawal is civil assistant surgeon at Sadar Hospital, Dhanbad, who has simply proved post mortem report of the deceased to be in the handwriting of Dr. Jawaharlal. He has not conducted the post mortem on the dead body of the deceased and stated nothing else about the contents of the post mortem report.

P.W.-8 Rajneesh Kumar is an advocate clerk who has proved the formal F.I.R. and carbon copy of inquest report marked as Exhibit 3 and 4 respectively. He has further stated that para 9 of the case-diary is also in the handwriting of the S.I. Raghu Raj Sharma which is marked as Exhibit-5.

13. We have given thoughtful consideration to the testimony of ocular witnesses examined in this case.

14. It is quite obvious that except P.W.-1, none of the witnesses have supported the prosecution case. It is also quite evident that P.W.-1 whose statement was recorded under Section 164 Cr.P.C., two months of the occurrence, has simply stated that accused persons

assaulted to Dukhi Oraon by fist and slaps. Although they were having pistol, knife and Danda. He himself admitted his weak eye sight and not firm in proving the identity of the accused persons, as he was not aware with them, prior to occurrence, as admitted in his cross-examination. The other two witnesses whose statements were recorded under Section 164 Cr.P.C. have also not supported the prosecution case. It is very strange as to how the learned trial Court has placed reliance upon the sole testimony of P.W.-1 Bali Oraon. According to his evidence, the deceased was assaulted by *Fat* and fist, although they were equipped with knife and pistol. The post mortem report of the deceased (Exhibit-2) shows that the cause of death was shock and hemorrhage due to head injuries caused by hard and blunt substance. A *Gamcha* was also wrapped on the neck of the deceased. Inquest report also shows that death was caused by strangulating the neck through *Lungi*. Therefore, the testimony of P.W.-1 namely Bali Oraon who himself was not aware with the appellants, prior to the occurrence and his statement under Section 164 of the Cr.P.C. was recorded, after two months of the occurrence, in the meantime, he has not disclosed about the incident to anyone, which also does not find corroboration from the post mortem report of the deceased, cannot be relied upon as an eye witness of the occurrence.

15. Considering the overall facts and circumstances as proved by the prosecution, we are of the firm view that the learned trial Court has committed serious error of law in believing the testimony of P.W.-1

namely Bali Oraon for sole basis of conviction of appellants without taking into consideration the materials elicited in his cross-examination, in the light of attending circumstances and arrived at wrong conclusion.

16. In view of the aforesaid discussions and reasons, we find merits in this appeal and substance in the points of argument raised on behalf of the appellants. Accordingly, the impugned judgment of conviction and order of sentence of the appellants is hereby **set aside and this appeal is allowed**. Consequently, the appellants are acquitted from the charges leveled against them.

17. The appellants are on bail, hence, they are discharged from the liabilities of bail bonds. The sureties are also discharged.

18. Pending I.A(s), if any, is also disposed of, accordingly.

19. Let a copy of this judgment along with Trial Court Records be sent back to the court concerned for information and needful.

(Rongon Mukhopadhyay, J.)

(Pradeep Kumar Srivastava, J.)

Jharkhand High Court, at Ranchi

Date: 06/05/2026

Basant/-N.A.F.R.

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