

Criminal Appeal (DB) No. 203 of 1998(R)

Against the judgment and order of conviction and sentence dated 13.07.1998 passed by Shri S.H. Kazmi, learned 3rd Additional Sessions Judge, Jamshedpur in Sessions Trial No. 514 of 1996

1. Gurmeet Singh
2. Jaswant Singh @ Jasse @ Boltu
3. Pratap Singh
All sons of Surjeet Singh, resident of Namda Basti, Jamshedpur,
P.S. Gulmuri, District East Singhbhum

... Appellants

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 : Dr. (Mrs.) Vandana Singh, Advocate
For the Respondent (State) : Mr. Vineet Kumar Vashistha, Spl.PP

CAV on 25.03.2025 Delivered on 08.04.2025

Rongon Mukhopadhyay, J. : 1. Heard Dr. (Mrs.) Vandana Singh, learned counsel appearing for the appellants and Mr. Vineet Kumar Vashistha, learned Spl.PP

2. This appeal is directed against the judgment and order of conviction and sentence dated 13.07.1998 passed by Shri S.H. Kazmi, learned 3rd Additional Sessions Judge, Jamshedpur in Sessions Trial No. 514 of 1996, whereby and whereunder, the appellants have been convicted for the offences punishable u/s 302/34 of the Indian Penal Code (IPC) and 201/34 of the Indian Penal Code and have been sentenced to undergo rigorous imprisonment for life for the offence u/s 302/34 IPC and rigorous imprisonment for five years for the offence u/s 201/34 IPC. Both the sentences were directed to run concurrently.

3. The prosecution case arises out of the written report of Chanchal Singh in which it has been stated that on 18.11.1995 at 6.00 a.m., the son of the informant, namely, Bachan Singh had come and disclosed that the other son of the informant, namely, Balwant Singh @ Bantey has been murdered and his body has been thrown beneath the railway bridge in Namda Basti in order to conceal the same. At this information, the informant went to the said place

and found the body of Balwant Singh with his intestine protruding out. It has been stated that on 17.11.1995, Balwant Singh at 5 p.m. had left the house without informing anyone.

Based on the aforesaid allegations, Golmuri P.S. Case No. 2141/1995 was instituted against unknown for the offences punishable u/s 302/201 of the I.P.C. On completion of the investigation, charge-sheet was submitted and after cognizance was taken, the case was committed to the Court of Sessions, where it was registered as Sessions Trial No. 514 of 1996. Charge was framed against the accused persons for the offence punishable u/s 302/34 of the I.P.C. and Section 201/34 I.P.C. which was read over and explained to the accused in Hindi to which they pleaded not guilty and claimed to be tried.

4. The prosecution has examined as many as eight (08) witnesses in support of its case.

P.W. 1 Chanchal Singh is the informant and father of the deceased who has stated that the incident is of 17.11.1995 and his son Bachan Singh had disclosed that he had seen the dead body of his brother Balwant Singh below the railway bridge. When on information he went to the said place, he had found the body of Balwant Singh with his intestine protruding out. Bachan Singh had disclosed to him about the body and he and the others had gone to see the dead body. After seeing the dead body, he had informed Golmuri P.S. He had signed on the written report which has been marked as Ext. 1, while the written report has been marked as 'X'.

In cross examination he has deposed that there was no case pending against Balwant Singh before any Court.

In examination on recall he has stated that all the accused are residents of Namda Basti and he was acquainted with them from childhood.

P.W. 2 Jaspal Singh has stated that on 18.11.1995, on hearing a commotion he had gone to the Railway Pul beneath which the dead body of Banwant Singh was found. The intestine of the dead body had come out. He has proved his signature on the inquest report which has been marked as Ext.

1/a. The carbon copy of the inquest report has been marked as 'Y' for identification.

In cross examination he has deposed that he is a resident of Namda Basti since his birth and he was well acquainted with Balwant Singh.

P.W. 3 Balkar Singh has stated that on 17.11.1995 he had gone to Namda Basti to meet his father and while he was returning along with his family members to his quarter at Tin Plate Colony at about 8-8.30 p.m., he had seen his younger brother Balwant Singh @ Bantey standing near Gurudwara Chowk and along with him were Jaswant Singh, Gurmeet Singh and Kumher Singh with their father Surjeet Singh. He proceeded towards Tin Plate Colony and in the morning when he was going to fetch milk, he heard a commotion that a murder has taken place. On hearing this news, he also went to the Railway Bridge Crossing where he saw his brother Balwant Singh lying dead with his intestine protruding out. He has proved his signature on the inquest report which has been marked as Ext. 1/b. The deceased Balwant Singh used to work as a cleaner in a truck of the accused Jaswant Singh.

In cross examination he has deposed that he is acquainted since long with the family members of Jaswant Singh and Gurmeet Singh. He has deposed that no criminal case was ever lodged against his brother at Golmuri P.S. His quarter at Tin Plate Colony is at a distance 1 ½ Km. from the house of his father. He had stated before the police that Balwant Singh was working in the truck of Jaswant Singh for the last one month and that he did not suspect anyone.

P.W. 4 Ram Singh has stated that on 18.11.1995 at 7.45 a.m. when he came out of his house, he saw the persons of the locality running and on being asked they had disclosed that a dead body is lying beneath the railway bridge which they are going to see. He had seen the dead body which was of Balwant Singh with its intestine protruding out. He has proved his signature on the seizure list which has been marked as Ext. 1/c. The seizure list has been marked as Ext. 2.

In cross examination he has deposed that whatever has been stated by him is for the first time.

P.W. 5 Bachan Singh is the elder brother of the deceased Balwant Singh who has stated that on 18.11.1995 the dead body of Balwant Singh was being taken for postmortem to the Hospital at Sakchi, when Jaswant Singh, Pratap Singh, Gurmeet Singh and Surjeet Singh had come at which Balbinder Kaur, the wife of the deceased started wailing and shouting directed at them as to why they have come after committing the murder of her husband. The said persons had fled away while the others present were busy in consoling Balbinder Kaur. When on returning home Balbinder Kaur was questioned about the outburst, she had disclosed that about three days prior to the murder her husband had confided in her that the accused persons will kill him and they are forcing him to be involved in theft. Balbinder Kaur had also disclosed that on 17.11.1995, the accused persons had come and had taken away her husband despite objection and her husband did not return thereafter.

In cross examination he has deposed that on 18.11.1995 he had come to know about the murder after which he had gone and seen the dead body of Balwant. Prior to the occurrence Balwant had never made any complaint to him. It is incorrect to say that his deceased brother had criminal antecedents.

P.W. 6 Balbinder Kaur is the wife of the deceased who has stated that she and her husband were sitting outside at around 5 p.m. when Jaswant, Pratap, Gurmeet and Surjeet came which made her husband nervous who asked her to make Roti and vegetables. All the four persons had taken away her husband who never did return to his house. On the next day, she came to know that her husband has been murdered. When her family members took her to the postmortem house on seeing Jaswant, Pratap, Gurmeet and Surjeet, she had admonished them for coming after committing the murder of her husband. When on returning home her family members asked her the reason for her outburst, she had disclosed that three days prior to the occurrence her husband had confided in her that he has a threat to his life as the accused persons were compelling him to commit theft. The accused persons were annoyed with her husband since he did not indulge in stealing.

In cross examination she has deposed that on 17th when her husband did not return home, she had not disclosed about the same to her parents-in-law and others. About one and half months prior to the occurrence, her husband was working in the truck of Jaswant Singh. Since then her husband used to keep within himself and did not speak much. She had not disclosed the change in behaviour of her husband to her other family members.

P.W. 7 Dr. Lalan Choudhary was posted as a Tutor in MGM Medical College, Jamshedpur and on 18.11.1995 he had conducted autopsy on the dead body of Balwant Singh @ Bantey and had found the following:

Ante-mortem injuries:

- (i) *Stab wound of size 2 cm X 1 cm x muscle deep over left temporal region of scalp 3 cm above left ear;*
- (ii) *Multiple tiny abrasions over an area of 14 cm X 7 cm of left side face upper part including left side forehead;*
- (iii) *Stab-wound of size 2 cm X 1 cm X 1 cm over middle part of ulnar border of right fore-arm;*
- (iv) *Stab-wound of size 2 cm X .5 cm X.5 cm over anterior aspect of middle part of right fore-arm;*
- (v) *stab wound of size 1.5 cm X 0.5 cm X 1 cm over a cubital fossa (anterior pit y the elbow);*
- (vi) *Stab wound of size 2 cm X 1.5 cm X 1 cm over right anterior auxiliary line in right axilla;*
- (vii) *Stab wound of size 1.5 cm X 0.5 cm X 0.5 cm X skin deep right side chest 5 cm below and medial to right nipple;*
- (viii) *Stab wound of size 1.5 cm X 0.5 cm X 0.5 cm over right side anterior auxiliary line at the lever of umbilicus;*
- (ix) *Stab wound of the size 1.5 cm X 0.5 cm X 1 cm under middle auxiliary line on the right side abdomen, 4 cm posterior to injury no. (viii);*
- (x) *Stab injury of side 2 cm X 1 cm X abdominal cavity deep over abdomen 5 cm below umbilicus. Intestine was protruded out and these was a cut of size 2 cm X 1 cm through which focal matter coming out.*

- (xi) *Stab wound of size 2.5 cm X 1 cm X left side chest cavity deep, 4 cm below the left nipple.*
- (xii) *Stab wound of size 2.5 cm X 1 cm X muscle deep over left side chest 14 cm below and lateral to nipple.*
- (xiii) *Abrasion of size 6 cm X 6 cm over left iliac region in front.*
- (xiv) *Stab wound of size 2.5 cm X 1 cm X muscle deep over posterior aspect of left forearm, 4 cm elbow.*
- (xv) *Stab wound of size 2 cm X 1 cm X muscle deep over medial aspect of left elbow.*
- (xvi) *Stab wound of size 2.5 cm X 1 cm X 1 cm over outer border of right forearm, 3 cm below right elbow.*
- (xvii) *Stab wound of size 3 cm X 1 cm X 1 cm over front of upper 2/3rd of right arm.*

On dissection and internal examination, the following injuries were found:

(A) Chest and Abdomen

Contusion over left side upper part of chest 6 cm X 6 cm. fourth inter-costal space in left side pierced. Left side chest cavity contained about 1 liter of blood lower end of right side liver pierced. Abdominal cavity contained 1 liter of blood.

(B) Skull - Left temporal region contused.

The injuries were caused by sharp pointed weapon. He has proved the postmortem report which has been marked as Ext. 2.

P.W. 8 Upendra Kumar Rai was posted as a Sub Inspector of Police of Golmuri P.S. and on 18.11.1995 a case was registered on the basis of a written report submitted by Chanchal Singh. After registering the case, he was given the charge of the investigation. He has proved the endorsement on the written report which has been marked as Ext. 3. He has identified the signature of Martin Tirkey on the formal F.I.R. which has been marked as Ext. 1/d and 1/e. The formal F.I.R. has been marked 'X' for identification. He had recorded the restatement of the informant. He had prepared the inquest report and has identified the signature of Suresh Paswan which has been marked as Ext. 4. He had inspected the place of occurrence which is in the field below the

TISCO Railway Line Bridge in Namda Basti. The said place is lonely. It is at a distance of 500 meters from the house of the deceased. He has proved the seizure list which has been marked as Ext. 5. The body was sent for postmortem and the statement of other witnesses were recorded by him.

In cross examination he has deposed that in his restatement the informant had not expressed suspicion against anyone or had disclosed about enmity with anyone. The brother of the deceased Bachan Singh had stated that the deceased was in the habit of regularly consuming liquor and that on 17.11.1995 a person had called his brother who was not at home. He does not know who had come to call his brother. The witness Jain Singh had stated that the deceased had contacts with criminals. The wife of the deceased, Balbinder Kaur had stated that her husband had called out for her and asked her to make Roti and vegetable and at that point of time, there were three other persons with him whom she could not identify then. When she came out after making Roti, she did not find her husband. She was of the impression that these three persons were perhaps from the same locality.

5. The statements of the accused/ appellants were recorded under Section 313 Cr.P.C. in which they have denied their complicity in the murder of Balwant Singh.

6. The defence has examined four witnesses in support of its case.

D.W. 1 P. Ram Mohan Rao is the owner of Kiran Roadways which hire trucks for supply to the transport company as per requirements. On 16.11.1995 he had taken a truck on hire and the said truck belonged to Jaswant Singh. He has produced the commission slip issued on taking the truck on hire which has been marked as Ext. A with objection. Jaswant Singh had left for Mumbai with the commission slip.

In cross examination he has deposed that he used to regularly hire the trucks of Jaswant Singh. When Jaswant Singh had left with the truck, he did not accompany Jaswant Singh.

D.W. 2 Dinesh Jha has proved the letter of the company dated 01.12.1995 which had been written by Amal J. Verma to the Chief Judicial Magistrate, Jamshedpur and which has been marked as Ext. B with objection.

In cross examination he has deposed that he does not have any personal knowledge about the contents of the letter.

D.W. 3 Badal Gorai has proved the appearance slip of Ranjeet Singh, Jaskaran Singh, Pratap Singh and Manjeet Singh in S.T. Case No. 46 of 1995 which has been marked as Ext. C.

In cross examination he has deposed that he is the Advocate Clerk of Advocate Suraj Prakash.

D.W. 4 Rajgrih Choubey has proved the formal F.I.R. which has been marked as Ext. D. The written report of Mohan Singh has been marked as Ext. X/1 for identification.

In cross examination he has deposed that he does not have any personal knowledge of the contents of Ext. D and marked X/1.

7. It has been submitted by Dr. (Mrs.) Vandana Singh, learned Amicus Curiae that there are no eye witnesses to the murder and only on the basis weak circumstantial evidence the appellants have been convicted. The main witness of the prosecution is P.W. 6 who is the wife of the deceased, but as per her statement recorded by the Investigating Officer she had not disclosed the identity of the persons who had come to take away her husband. The question of alibi raised by the defence witnesses has not at all been considered by the learned trial court.

8. Mr. Vineet Kumar Vashistha, learned Spl.PP has submitted that the evidence of P.W. 3, P.W. 5 and P.W. 6 reveals the elevated status of the circumstances projected against the appellants. It appears that as per P.W. 3 and P.W. 6, the deceased was last seen with the appellants and the close proximity of the recovery of the dead body from the deceased having been last seen with the appellants would further lend credibility to the case of the prosecution.

9. We have heard the submissions of the learned counsel for the respective sides and have also perused the trial court records.

10. The written report of the informant (P.W.-1) merely reveals about the commission of murder of his son Balwant Singh without suspecting any particular person for the murder. P.W.-1 in his evidence has been consistent

with his revelation made in the written report. However, the evidence of P.W.-3, P.W.-5 and P.W.-6 seems to have encompassed the appellants within the zone of suspicion based on certain circumstances as revealed by them and which according to the learned trial court was enough to lead to the conviction of the appellant. P.W.-3 who is the brother of the deceased has stated about seeing him with the appellants standing near Gurudwara Chowk when P.W.-3 was returning to his residence at Tin Plate Colony after visiting his father (P.W.1) at Namda Basti. P.W.-5 has revealed that in the postmortem house when the appellants had come they were rebuked and reprimanded by P.W.-6 for daring to visit her after committing the murder of her husband. P.W.-5 has also stated about the disclosures made by P.W.-6 regarding a threat perception from the appellant confided to her by the deceased and on 17.11.1995 they had taken away her husband who never returned back. P.W.-6 has also deposed in similar fashion. It is indeed surprising that when P.W.-6 had known about the threat to the life of her husband, she did not inform any of her family members. Moreover, if at all whatever has been stated by P.W.-6 is correct, it becomes unbelievable that she would not have objected when the appellants had taken away her husband or would not inform anyone in spite of being aware about the threats of murder extended by the appellants to the deceased. The silence on the part of P.W.-6 makes the entire case of prosecution doubtful. The other interesting aspects in the context of the evidence of P.W.-6 would be the evidence of P.W.-8 who is the Investigating Officer and who has stated that P.W.-6 had merely stated before him about three persons having taken away her husband and she was not able to identify those persons though P.W.-6 in her evidence has denied to have made such statement before the police. Even if we accept that the appellants were last seen with the deceased the same would not be an incriminating factor or circumstantial evidence of importance, if the same does not find support from other sources. In the present case, as we have noted, the identity of the appellants being doubtful and the indifferent attitude of P.W.-6 as neither she objected nor put in any sort of resistance to the inclination of the appellants in taking away her

husband and of keeping silent by not informing the disclosures of her husband about the appellants made earlier to anyone puts the prosecution case in the realm of disbelief.

Since we have come to a conclusion that the prosecution has failed to prove its case beyond all reasonable doubt, we desist ourselves from entering into the question of alibi as raised by the learned Amicus Curiae.

In view of the aforesaid narrative, we therefore set aside, the judgment and order of conviction and sentence dated 13.07.1998 passed by Shri S.H. Kazmi, learned 3rd Additional Sessions Judge, Jamshedpur in Sessions Trial No. 514 of 1996.

This appeal is allowed

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

11. We appreciate the assistance rendered by Dr. (Mrs.) Vandana Singh, learned Amicus Curiae and consequently direct the Member Secretary, High Court Legal Services Committee to extend the stipulated fees to her within a period of three weeks from the date of receipt/ production of a copy of this judgment.

12. Office is directed to ensure that the copy of this judgment is supplied to the Member Secretary, High Court Legal Services Committee immediately and forthwith.

(RONGON MUKHOPADHYAY,J.)

(ARUN KUMAR RAI, J.)

Jharkhand High Court, Ranchi
Dated the 8th April, 2025
MK/N.A.F.R.