

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Criminal Appeal (D.B.) No. 390 of 2003

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*[Against the Judgment of conviction and sentence dated 24.01.2003,
passed by learned Additional Sessions, Fast Track Court No.IV, Dhanbad
in Sessions Trial No.185 of 2001]*

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Chhotelal Mahto @ Chhotan, son of Sri Daulat @ Dulu Mahto,
resident of village Pawapur/Majhali Tanr, Police Station
Topchanchi, District Dhanbad.

.... **Appellant**

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 Appellant : Mr. A.K. Kashyap, Sr. Advocate
For the State : Mrs. Nehala Sharmin, Spl. P.P.

.....

C.A.V. on 14.10.2025

Pronounced on 30.10.2025

Per Pradeep Kumar Srivastava, J.

1. We have already heard Mr. A.K. Kashyap, learned senior counsel appearing for the appellant and Mrs. Nehala Sharmin, learned Spl.P.P. appearing for the State.
2. Instant criminal appeal has been preferred by the above named sole appellant for setting aside his judgment of conviction and

sentence dated 24.01.2003 passed by Additional Sessions Judge, Fast Track Court No. IV, Dhanbad, in S.T. No.185 of 2001 arising out of Topchanchi (Hariharpur) P.S. Case No.137 of 2000 (corresponding to G.R. Case No.3379 of 2000), whereby and whereunder the appellant has been held guilty for the offence under Section 302 of the Indian Penal Code and sentenced to undergo imprisonment for life.

FACTUAL MATRIX

3. Factual matrix giving rise to this appeal is that on 21.10.2000 at about 09:00 a.m., the informant, Upasi Devi (P.W.11) gave her ailing son (Baneshwar Mahto @ Raju) Rs.150/- to go to Topchanchi Hospital for his treatment. It is further alleged that on the same day at about 11:00 a.m., while informant was going to her paddy field situated towards southern side of village, she saw that the accused Chhotelal Mahto @ Chhotan was fleeing away with a blood stained tangi in his hand. The informant also noticed that her cousin mother-in-law namely Basanti Devi (P.W.3) was also coming from the side of the road raising alarm that Baneshwar Mahto @ Raju had been murdered. The informant rushed towards the road and found her son Baneshwar Mahto was lying dead sustaining injury on his neck. Meanwhile, several villagers assembled there, who have seen the occurrence. It is further alleged that the deceased Baneshwar Mahto @ Raju as

well as Chhotelal Mahto were running grocery shop in the village and there was business rivalry so the accused had jealousy with the informant's son due to his higher income from grocery shop, hence, the accused has caused murder of the deceased.

On the basis of above fardbeyan, Topchanchi (Hariharpur) P.S. Case No.137 of 2000 was registered for the offence under Section 302 of the I.P.C. against the appellant.

4. After completion of investigation, charge-sheet was submitted against the accused appellant for the aforesaid offence. The learned C.J.M., Dhanbad took cognizance of the offence and committed the case to the Court of sessions where S.T. No.185 of 2001 was registered. The accused did not plead guilty and claimed to be tried.
5. In the course of trial, altogether 13 witnesses were examined by the prosecution.

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

- | | | |
|-----------------|---|---|
| Exhibit 1 | : | Signature of Kewal Rajwar on seizure list |
| Exhibit 2 | : | Signature of Lilu Mahto on inquest report |
| Exhibit 2/1 | : | Signature of Suresh Mahto on Inquest report (carbon copy) |
| Exhibit 3 & 3/1 | : | Seizure list |
| Exhibit 4 | : | Post-mortem Report |

Exhibit 5 : Fardbeyan

Exhibit 6 : Formal F.I.R.

Exhibit 7 : Inquest Report

6. On the other hand, no oral or documentary evidence has been adduced by defence.
7. The case of defence is denial from occurrence and false implication due to previous enmity. Accused is innocent and has committed no offence at all.
8. The learned trial court after appreciating the evidence available on record arrived at conclusion about guilt of the accused for the offence under Section 302 of the I.P.C. and sentenced him as stated above which has been assailed in this appeal.
9. Mr. A.K. Kashyap, learned senior counsel for the appellant has vehemently argued that the learned trial court has committed serious error of law while passing the judgment of conviction of the appellant without any substantive evidence of any eye witness. The prosecution has raised suspicion against the appellant due to business rivalry and also on the ground of last seen of the accused fleeing with a tangi. On both counts, the prosecution story is not sustainable at all. The informant has admitted in the F.I.R. that at about 11:00 a.m., while she was going to her paddy field, one Basanti Devi disclosed that her son had been murdered and when she went to the place of occurrence, she found dead body of her

son. Therefore, she is not an eye witness of the occurrence and Basanti Devi (P.W.3) has been declared hostile by the prosecution. Moreover, the injuries sustained by the deceased have been found to be stab injuries which are not possible by use of tangi even if it may be assumed that the appellant was seen fleeing with a tangi, it does not correspond with the injuries caused to the deceased. It is further submitted that no tangi was recovered from the possession of the appellant and no other incriminating articles have been seized from his conscious possession to connect him with the alleged murder. The prosecution case started with raising suspicion against the appellant and till conclusion of trial remains suspicion and nothing more. It is trite that suspicion, howsoever, grave it may be, cannot take place of legal proof. It is further submitted that the learned trial court has accepted the bald testimony of the informant as an eye witness of the occurrence without going through her cross-examination and the earliest version contained in the F.I.R. and other attending circumstances of the case, therefore, has committed serious error of law. Hence, impugned judgment of conviction and sentence is liable to be set aside and appellant deserves to be acquitted from the charge levelled against him.

10. On the other hand, learned Special Public Prosecutor for the State defending the impugned judgment of conviction and sentence of

appellant has submitted that the learned trial court has very wisely and aptly considered all the aspects of the case and evaluated the evidence in threadbare manner and arrived at right conclusion about the guilt of the appellant. There is no illegality or infirmity in the impugned judgment and order calling for any interference. This appeal is devoid of merits and fit to be dismissed.

11. The only point for determination in this appeal is that as to whether the impugned judgment of conviction and sentence of the appellant suffers from any error of law calling for any interference by way of this appeal or legally sustainable?
12. We have gone through the record of the case and perused the impugned judgment in the light of contentions raised on behalf of both side.
13. First of all, we have to appraise with the evidence adduced by the prosecution in this case.

It appears that out of 13 witnesses examined in this case, **P.W.1 Kewal Rajwar** is a witness of seizure list and proved his signature as Ext.1. According to him, from the place of occurrence, blood stained soil was seized by the police nearby the dead body of Baneshwar Mahto.

P.W.3 Basanti Devi, **P.W.4 Gahanu Mahto**, **P.W.7 Sudhir Mahto** and **P.W.9 Govind Mahto** have been declared hostile by the prosecution and not supported the prosecution story at all and

also declined from any statement before police during investigation.

P.W.2 Tulsi Mahto has only seen the dead body of deceased at the place of occurrence at about 11 hours in the night where mother of the deceased Baneswhar Mahto was weeping. There is nothing else in his evidence.

P.W.5 Lilu Mahto and **P.W.8 Suresh Prasad** are uncle and brother respectively of the deceased. They proved their signature on inquest report as Ext.2 and Ext.2/1. These witnesses have whispered nothing about any business rivalry between deceased and the accused.

P.W.6 Hemlal Mahto has also seen the dead body of deceased. Hearing the alarm raised by informant, he went to the place of occurrence and saw injuries on neck of the deceased. He has further proved his signature on seizure list of a tangi which was recovered by police from the house of accused Chhotelal Mahto but he has not seen whether it was blood stained or not. He does not know the exact cause or motive for the occurrence but later on he came to know that accused Chhotelal has assaulted to the deceased by tangi.

P.W.10 Narayan Mahto also happens to be uncle of the deceased. He has only seen the dead body of the deceased at the

hospital after post-mortem but stated nothing about assailant and for what reason Baneshwar Mahto was murdered.

P.W.12 Dr. Shailendra Kumar has conducted autopsy on the dead body of the deceased and found following ante mortem injuries on the person of the deceased :-

(i) Perforating wound :

- (a) Wound of entrance 1.1/2" x 3/4" on left side back of neck.
- (b) Wound of exit 1.1/2" x 3/4" on the left flant of neck.

Injury No.(ii) – penetrating wound 2" x 3" x bone deep on the left side back of neck situated very closely to the injury No.(i).

Injury No.(iii) – penetrating wound 1.1/2" x 3/4" x bone deep on right side back of neck.

Margins of all injuries were sharp and clean cut.

On dissection :-

Sharp cuts of body of 5th cervical vertebrae were found due to injury Nos.(i) and (iii). Spinal cord was found sharply divided transversely into two by sharp cuts. Blood and clots were found all around. Heart, stomach and bladder were empty. The internal organs were pale.

Time elapsed since death :-

2 to 6 hours prior to post-mortem examination.

Cause of death :-

Death was due to spinal shock as a result of stab injuries on neck caused by sharp cutting penetrating weapon.

In his cross-examination, this witness admitted that barcha, bhala, penetrating rod can cause penetrating wound. The injury found on the person of the injured cannot be caused by fall on a glass or a piece of tin.

P.W.11 Upasi Devi @ Mahatvine is the informant cum mother of the deceased. According to her evidence, on the date of occurrence at about 09:00 a.m., she send her ailing son Baneshwar to Topchanchi for visiting with doctor for his treatment giving Rs.150/- to him. Thereafter, at about 10:00 a.m., on the same day, she was going to her paddy field then heard hulla, she went towards the place of occurrence and saw that her son was lying on earth then she proceeded slight further and saw that Chhotan Mahto was coming with a blood stained tangi and also saw that Chhotan Mahto giving assault by tangi to her son, was fleeing away. She noticed one injury on neck to her son Baneshwar Mahto. According to her, the above incident took place due to business rivalry between deceased and the accused.

It appears that this witness in her fardbeyan has not claimed to be an eye witness of the occurrence except she saw the accused was fleeing away with a blood stained tangi.

In her examination-in-chief during trial, as stated above, initially she has stated that she heard hulla coming from the road side and saw her son was lying on the earth. Thereafter, she has added that Chhotan Mahto was coming with a blood stained tangi and she also saw that accused assaulted to her son by tangi on neck and was fleeing. The above statements of this witness cannot be reconciled together being self-contradictory.

Further, in her cross-examination, she has categorically admitted that she was at her paddy field, when she heard hulla coming towards G.T. road southern side from her field. She has named the persons, who were raising alarm namely Kewal Rajwar, Tulsi Mahto, Basanti Devi, Gahanu Mahto, Lilu Mahto, Bhim Lal Mahto and Sudhir Mahto etc. but none of the above witnesses have claimed to see the occurrence rather happens to be either hearsay witnesses or turned hostile.

Her statement as an eye witness has also not been corroborated through the evidence of I.O. (P.W.13) at para 21 wherein he has specifically stated that Upasi Devi (P.W.11) has not stated before him that she has seen accused Chhotelal while assaulting to her son and fleeing away.

The above statement was never given in the fardbeyan nor in the restatement of the informant.

P.W.13 S.I. Nagendra Ram is the Investigating Officer of the case. According to him, on 21.10.2000 at about 11:30 a.m., he came to know through rumour that in Village Pawapur a young man has been murdered and several persons are assembled there. He made S.D. Entry No.450 and along with other police personnel proceeded towards the place of occurrence for verification of the above information, where he recorded fardbeyan of informant Upasi Devi and prepared inquest report of the deceased. He also seized blood stained soil and prepared seizure list marked Ext.3/1. He has proved fardbeyan as Ext.5. He inspected the place of occurrence and recorded statement of witnesses and arrested the accused. At the time of arrest, the accused Chotelal Mahto confessed his guilt in presence of villagers and also a kulhadi was seized from his house which alleged to have been used in the occurrence. The seizure list is previously proved as Ext.3. He has further proved formal F.I.R. as Ext.6. Carbon copy of inquest report as Ext.7. After completion of investigation, he found sufficient evidence against the accused and submitted charge-sheet against him.

In his cross-examination, this witness has admitted that the seized tangi has not been produced before the Court at the time of

his evidence and the same was not sent to F.S.L. for chemical examination.

14. We have given anxious consideration to the overall evidence adduced by the prosecution as discussed above. It is crystal clear that none of the witnesses examined by prosecution are eye witnesses of the occurrence. The informant Upasi Devi, mother of the deceased, has materially improved her earlier version and projected herself to be an eye witness of the occurrence at the time of trial. She has simply claimed that she saw the accused was fleeing away with a blood stained tangi. The seizure list (Ext.3) of tangi has also been prepared by the I.O. which has been alleged to be recovered from the house of accused but the seizure list witness (P.W.1) of tangi has completely failed to assert that the tangi was blood stained. Moreover, admittedly the said seized tangi was never sent to Forensic Science Laboratory for chemical examination regarding presence of blood and its blood group etc. in order to ascertain its use in commission of the alleged crime. Therefore, bare confession of the accused has no relevance at all in the eyes of law. Admittedly, P.W.11 has reached at the place of occurrence after hearing hulla from other witnesses, i.e., P.W.1 Kewal Rajwar, P.W.2 Tulsi Mahto, P.W.3 Basanti Devi, P.W.4 Gahanu Mahto, P.W.5 Lilu Mahto, and P.W.7 Sudhir Mahto who have also not claimed to have seen the accused fleeing with a

tangi. Even if, it may be assumed that the accused was fleeing away with a tangi that itself is not conclusive proof of commission of murder by him. The prosecution story also does not find support/corroboation from the injuries sustained by deceased as mentioned in the post-mortem report. It is opined by the conducting doctor that the injuries sustained by the deceased was penetrating wound which may caused by barcha, bhala, penetrating rod and such type of penetrating wound cannot be caused by use of a tangi. None of the witnesses have seen the accused while causing injuries to the deceased by tangi. In this view of the matter also, prosecution story becomes absolutely doubtful as against the appellant.

15. In view of above discussion and reasons, we are of the firm view that the learned trial court has committed serious error of law while appreciating the evidence of witnesses available on record and has given undue weightage to the evidence of P.W.11 Upasi Devi, who happens to be mother of the deceased, without considering the contents of F.I.R. which is her earliest version and the evidence of I.O. (P.W.13) who has also categorically stated that Upasi Devi is not an eye witness of the occurrence. The learned trial court has further failed to appreciate that the motive behind the occurrence has also not been proved by any concrete evidence. Therefore, we are constrained to hold that the impugned

judgment of conviction and sentence of the appellant suffers from serious error of law and based upon beyond the weight of evidence available on record which is hereby set aside and this appeal is **allowed**. Appellant is acquitted from the charge levelled against him.

- 16.** Appellant is on bail, he is discharged from the liability of bail bond and sureties are also discharged.
- 17.** Pending I.A., if any, stands disposed of.
- 18.** Let a copy of this judgment along with learned trial court record be sent back to concerned trial court for information and needful.

(Rongon Mukhopadhyay, J.)

(Pradeep Kumar Srivastava, J.)

Jharkhand High Court, Ranchi

Dated: 30/10/2025

Sachin / **NAFR**