

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Appeal (D.B.) No. 787 of 2003

[Against the judgment of conviction and order of sentence dated 27.05.2003 & 28.05.2003, respectively passed by learned Additional Sessions Judge, XIII, Dhanbad in S.T. No.575 of 1995]

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1. Kedar Ram
 2. Hridya Ram
 3. Bijay Ram

All sons of Late Bihari Ram, residents of Sabar, P.O.-Sabar, P.S.-Karamchat, District-Kaimur, Bhabhua, (Bihar)

... .. **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. Manoj Tandon, Advocate

For the State : Mr. Manoj Kumar Mishra, A.P.P.

JUDGEMENT

C.A.V. on 12.01.2026

Pronounced on 24/03/2026

Per- Pradeep Kumar Srivastava, J:

1. The instant criminal appeal is preferred by the above-named appellants for setting aside the judgment and order of conviction and sentence dated 27.05.2003 & 28.05.2003, respectively, passed by learned Additional Sessions Judge-XIII, Dhanbad, in Sessions Trial No. 575 of 1995, whereby and whereunder the appellants have been held guilty and convicted for the offence under Section 302 read with Section 34 of the I.P.C. and sentenced to undergo imprisonment for life.
2. It is here pertinent to mention that one co-convict Kishun Ram (main assailant) had preferred Cr. A. (DB) No. 774 of 2003 and due to death of the said appellant, his appeal has been abated.

Factual Matrix:-

3. Factual matrix giving rise to this appeal is that on 27.05.1995 at about 08:00 P.M., some scuffle took place between the appellants and one Ramayan Ram. It is alleged that accused Kishun Ram was holding Sabbal (iron rod) and other accused persons were armed with *lathi*, all the accused persons assaulted to deceased Ramayan Ram. It is further alleged that Sabbal blow inflicted on the head of the deceased was responsible for his death. It is also alleged that the informant Rama Kant Ram brought his injured brother to Central Hospital, Jagjivan Nagar, Dhanbad for treatment but he could not be saved and died on 31.05.1995. The *fardebayan* of the informant was recorded at Central Hospital, Dhanbad. Accordingly, the F.I.R. was registered for the offence under Section 302/34 of the I.P.C.
4. After completion of investigation, charge-sheet was submitted against the appellants for the aforesaid offence. The case was committed to the Court of Sessions where S.T. No. 575 of 1995 was registered.
5. The accused persons denied from the charges and pleaded their innocence and false implication. Accordingly, the trial proceeded.
6. In the course of trial, altogether 8 witnesses were examined by prosecution to substantiate the charges levelled against the accused persons. However, no oral or documentary evidence was adduced by defence.
7. The learned Trial Court, after evaluating the evidence available on record, oral as well as documentary, adduced by the prosecution, recorded the finding about guilt of the appellants and sentenced to them for the offence under Section 302 read with Section 34 of the I.P.C. as stated above, which has been assailed in this appeal.

Submissions on behalf of appellants:-

8. Learned counsel for the appellants challenging the impugned judgment and order of conviction and sentence has pointed out the following main grounds:-

(i) Admittedly, the death blow by Sabbal is attributed only against Kishun Ram, no specific overt act has been attributed against these appellants. The cause of death of the deceased has also been opined to be head injury caused by hard and blunt substance like Sabbal. Other injuries on the body of the deceased are either abrasions or bruises of small measurement. Therefore, even if it may be assumed that the appellants were also present with *lathi* and assaulted the deceased, it cannot be inferred from the nature of injuries alleged to be caused by them, that they were also intending to cause death of the deceased and acted in furtherance of common intention to kill the deceased.

(ii) There is crucial difference between “common intention” and “similar intention”.

(iii) It is specific case of the prosecution that all the accused persons surrounded the deceased and there was some scuffle but no *lathi* blow by the present appellants was given to the deceased. In the meantime, Kishun Ram went inside of his house and came again with a Sabbal and assaulted on head of the deceased. Therefore, it was the premeditated act only on the part of Kishun Ram and the other accused persons cannot be saddled with liability attracting the provision of Section 34 of the I.P.C., inasmuch as there was no common intention of the present appellants along with co-convict Kishun Ram to cause death of the deceased. Therefore, the appellants may be held guilty for their individual act in assaulting the deceased by *lathi* and resultant injuries caused to the deceased which are simply bruise and abrasions.

(iv) There are material contradictions and discrepancies in the evidence of alleged eye-witnesses, namely P.W.-2-Rama Kant Ram (informant-cum-brother of the deceased) and P.W.-3-Bindhyachali Devi. Other witnesses are either hearsay witnesses or have been turned hostile. P.W.-3 has claimed to be sole eye-witness of the occurrence and denied the presence of even informant (P.W.-2) at the relevant time of occurrence. She has attributed no role to the present appellants except against the Kishun Ram who inflicted Sabbal blow on head which was responsible for the death of the deceased.

9. In the premises of above points of argument, it is submitted that the presence of appellants have been shown but no participation in the alleged crime has been proved by any cogent evidence. Therefore, the conviction of the appellants with the aid of Section 34 of the I.P.C. is absolutely unwarranted, beyond the weight of evidence and based on conjectures and surmises which is liable to be set aside and this appeal may be allowed.

Submissions on behalf of State:-

10. On the other hand, Mr. Manoj Kumar Mishra, learned A.P.P. has controverted the aforesaid points of argument and submitted that the evidence of P.W.-1, P.W.-2 & P.W.-3 categorically shows the genesis, manner and place of occurrence and the actual role played by the appellants in assaulting the deceased which ultimately resulted in his death.

The learned Trial Court has very wisely and aptly considered the overall evidence available on record and arrived at right conclusion. The presence and participation of all the accused persons have been proved beyond doubt. Therefore, the conviction of appellants with the aid of Section 34 of the I.P.C. is genuine and fit to be upheld and conferred. This appeal has no merits and fit to be dismissed.

11. We have gone through the impugned judgment and order of conviction and sentence of the appellants in the light of respective argument of the learned counsel for the parties.
12. The only point for consideration in this appeal is that as to **“whether the conviction and sentence of appellants passed by learned Trial Court suffers from any serious error of law calling for any interference by way of this appeal?”**

Analysis, discussions and reasons:-

13. Before imparting our verdict on the above point, we have to take brief resume of oral testimony of witnesses examined in this case.
14. It appears that out of 8 witnesses examined by prosecution, P.W.-6-Nathuni Harijan, P.W.-7-Rambali Pd. Gaud & P.W.-8-Gulab Harijan have been declared hostile by the prosecution and expressed their no personal knowledge about the occurrence.

P.W.-5-Nand Lal Paswan is a hearsay witness. According to him, after happening of the incident, informant Rama Kant Ram came to his house and told that his brother Ramayan Ram has been assaulted by accused persons namely Kishun Ram, Hridya Ram, Kedar Ram and Bijay Ram. He went to the place of occurrence and saw the injured Ramayan Ram was lying on a cot under pool of blood. He went to manage an ambulance, send the injured to Central Hospital, Dhanbad and after 2-3 days he came to know about the death of the deceased.

P.W.-1-Dr. Shailendra Kumar has conducted autopsy on the dead body of deceased.

Investigating Officer of the case has not been examined in this case.

15. The case of prosecution rests upon the testimony of P.W.-2, P.W.-3 & P.W.-4.

P.W.-2- Rama Kant Ram is the informant, has deposed that on 27.05.1995 at about 08:00 P.M. his brother Ramayan Ram was assaulted by Kedar Ram, Kishun Ram, Hridya Ram & Bijay Ram. It is further alleged that Kishun Ram gave a Sabbal blow and other accused persons assaulted by *lathi*. He has further deposed that **at the relevant time of occurrence he had gone to walk near station along with Hridya Ram (appellant)** and returned to his home at about 08:00 P.M., then his brother Ramayan Ram told this witness “You used to walk with enemy and go away”. In the meantime, Kishun Ram arrived and caught hold of Ramayan Ram by neck meanwhile, other accused persons also came with *lathi* then Kishun released the neck of Ramayan Ram and went to his house and brought a Sabbal and gave a Sabbal blow on head and due to above assault his brother fell down and became unconscious. Meanwhile, his sister-in-law Bindhyachali Devi (P.W.-3) also arrived at the place of occurrence. The matter was also communicated to Village Mukhiya, Nand Lal Paswan. Thereafter, an ambulance was managed and they brought the injured to Central Hospital, Jagjivan Nagar, Dhanbad, where his brother died during course of treatment. He has proved his signature on *fardebayan* recorded by police at the hospital.

P.W.3- Bindhyachali Devi is the wife of deceased. According to her evidence, on the date of occurrence at about 08:00 P.M., her husband Ramayan Ram was sitting in front of the house. Meanwhile, her brother-in-law Rama Kant Ram (informant) came along with accused Hridya Ram then her husband started scolding to Rama Kant Ram, saying that why you are walking with enemy and go out of home. Upon this Kishun Ram arrived and caught hold of her husband by neck and started abusing in filthy language and Hridya Ram, Kedar Ram & Bijay Ram also approached holding *lathi*. She has further deposed that Kishun Ram inflicted Sabbal blow to her husband on **head and**

thereafter, all the accused persons fled away. Her husband was admitted in Central Hospital but within 2-3 days he died.

In her cross-examination she admits that accused Kishun Ram is her maternal uncle who was also working in the same colliery at Bagdigi with her husband. She also admits that the house of accused persons is also adjacent to her house. She clearly admits that at the time of occurrence alarm was raised and several villagers arrived. **She also claims that the first blow was given by Kishun Ram to her husband by Sabbal** then her husband fell down. She could not tell how many stick blow were given by other accused persons. **She also claims that at the time of occurrence only she along with her husband were present in the house and none else family members were present.**

P.W.-4-Rajendra Lohar has also claimed to be eye-witness and stated that on 27.05.1995 at about 08:00 P.M., he returned from his duty and hearing *halla*, he went towards the house of Ramayan Ram where occurrence of assault was going on. He saw that Kishun Ram went to his house and came with a rod and inflicted a blow on his head due to which Ramayan Ram fell down and Hridya Ram, Kedar Ram & Bijay Ram also assaulted by *lathi*. Thereafter, injured was brought to Central Hospital, Dhanbad and later on he died.

In his cross-examination this witness admits that he works in Lodna Colliery which is situated at a distance of one and half kilometre from Bagderi Colliery. **He attended his duty on 27.05.1995 at about 04:00 P.M. and has to work till 12 hours in night but he left his work and returned to his home without any information to his immediate Superior Officer/Mining Sardar.** He also admits that he has not taken leave on that day. He also admits that Mining Sardar comes out after expiry of duty hours but on that day he did not come out along with Mining Sardar after discharging his duties.

The evidence of this witness, in the light of above cross-examination, spread serious doubt on his testimony regarding his presence at the place of occurrence rather he also appears to be hearsay witness who came to know about the incident, later on. The manner in which he has deposed that he heard *halla* when incident of assault was still going on then how he can say that in the meantime Kishun Ram went to his own house and brought a Sabbal and gave a Sabbal blow. Although, other witnesses claimed that Sabbal blow was given at first thereafter, other accused persons assaulted by *lathi*.

P.W.-1-Dr. Shailendra Kumar has conducted the autopsy on the dead body of the deceased Ramayan Ram and found the following ante-mortem injuries:-

1. Stitched wound 1/2" long with three stitched situated vertically in the middle of forehead near hairline.
2. Abrasion 2" x 1/2" on the right side of front of chest.
3. Abrasion 1.1/2" x 1/2" in the middle of a bruise 7" x 4" on the outer aspect of upper portion of right arm.
4. Bruise 1" x 1/4" on the inner side of upper portion of front of left arm.
5. Abrasion 1/4" x 1/4" over the upper portion of front of right leg.
6. Abrasion 2" x 1/2" on the lower portion of front of right leg.
7. Abrasion 1" x 1/2" in the middle of a bruise 3" x 2" on the front of lower portion of left leg.
8. Abrasion 2.1/2" x 1/2" on the back of left side of chest.
9. Abrasion 2" x 1" over back of right leg just below popliteal fossa.

On dissection:-

Right collar bone was fractured, ribs were found fractured from no.2 to 6 on right side and from no.2 to 4 on left side. Chest cavity contained blood on both sides. Extensive tears were found on both lungs. Left side of heart was

empty and the right side was full of blood. Liver was tear in right side interiorly. Abdominal cavity contained blood. Stomach contained about 100 C.C. of partly digested rice. Bladder was empty. Other internal organs were found pale. Ecchymosis was found under scalp in frontal and both parietal region of head. Frontal bone was found fractured and the portion of frontal bone 2" x 1" was found missing beneath the seat of injury no.1. a surgical manvouring. Brain and meninges were found lacerated at the site. Subdural haematoma was found differed all over the surface of the brain of both sides.

The cause of death has been opined to be aforementioned hard blunt forceful injury on vital organs like brain, lungs and liver. The post mortem report is marked Exhibit-1.

In his cross-examination he admits that injury No.1 is on vital part of the body which cannot be caused due to fall, the chest injury may be caused due to fall.

16. We have given thoughtful consideration to the testimony of ocular witnesses.

It is quite obvious that, except P.W.-2-Rama Kant Ram and P.W.-3-Bindhyachali Devi, there are no eyewitness to the occurrence. As per testimony of P.W.-3-Bindhyachali Devi, at the time of occurrence, she along with her husband, were alone in the house and her brother-in-law, Rama Kant Ram (P.W.-2), came afterwards hearing *halla*. Just reverse to it, P.W.-2-Rama Kant Ram states that he returned along with accused Hridya Ram from the station side at about 08:00 P.M. then his brother Ramayan Ram scolded him, saying that you are walking with enemy and directed to go out. So far manner of occurrence is concerned, both P.W.-2 & P.W.-3 have consistently stated that Kishun Ram went into his house and brought an iron rod and gave mighty blow on the head of the deceased, due to which he fell down and became unconscious. No specific role against rest accused persons, namely Hridya

Ram, Bijay Ram & Kedar Ram (present appellants) has been attributed by these witnesses. It also transpires from the evidence of P.W.-2 & P.W.-3 that prior to fatal assault given to the deceased by Kishun Ram, the present appellants, namely Hridya Ram, Bijay Ram & Kedar Ram were present with *lathi* but they did not assault the deceased. The post-mortem report (Exhibit-2) of the deceased also clearly demonstrates that injury No.1, caused by Sabbal, was on middle of forehead which resulted in fracture of portion of frontal bone. There was hematoma over the surface of the brain of both sides which resulted in death of the deceased. The rest of the injuries as observed in the post-mortem report are simply abrasions and bruise which may be caused due to fall.

17. The present appellants have been held guilty with the aid of Section 34 of the I.P.C. which laid down the principle of joint liability of all the accused persons, who act in concerted manner in furtherance of their common intention to commit a criminal act.

In the instant case, only passive role has been attributed against the present appellants in the sense that they were found standing with *lathi*. No specific overt act has been attributed against them by the ocular witnesses rather P.W.-2 & P.W.-3 simply state that Kedar Ram, Hridya Ram & Bijay Ram assaulted by *lathi* to the deceased when he fell down after receiving the iron rod injury which does not inspire confidence.

In view of the above facts and circumstances, if the present appellants have intended to cause death of the deceased, they might have given blow by their respective *lathi* to the deceased and without providing any opportunity to Kishun Ram to bring a Sabbal from inside his home and then to assault first.

18. In view of above discussion and reasons, we are of the firm view that the learned Trial Court has not properly appreciated the testimony of main ocular

witnesses, P.W.-2 & P.W.-3, in right perspective as regards manner of occurrence and the role played by the present appellants. We further find that the allegation against the appellants for assaulting the deceased by *lathi* indiscriminately does not find corroboration from post-mortem report of the deceased, where rest of the injuries are found to be bruise and abrasions not likely to be caused by *lathi* but rather as a result of falling down of the deceased after receiving mighty blown on head. Therefore, the present appellants deserve the benefit of reasonable doubt and deserve to be acquitted from the charges levelled against them. Accordingly, impugned judgment and order of conviction and sentence of the appellants passed by learned Trial Court is hereby set aside. The appellants are acquitted from the charges levelled against them.

19. The appellants are on bail; they are also discharge from their respective liabilities of bail bonds and sureties are also discharged.
20. Pending I.A., if any, stands disposed of.
21. 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 24/03/2026
Arpit/ N. A. F. R.
Uploaded on 25/03/2026