

**Surendra Mishra Vs. State of Jharkhand**

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**Court :** Jharkhand

**Decided On :** Jun-29-2005

**Reported in :** [2005(4)JCR439(Jhr)]

**Judge :** S.J. Mukhopadhaya and; Hari Shankar Prasad, JJ.

**Acts :** [Arms Act, 1959](#) - Sections 27; [Indian Penal Code \(IPC\), 1860](#) - Sections 302

**Appeal No. :** Cri. Appeal (DB) No. 446 of 2004

**Appellant :** Surendra Mishra

**Respondent :** State of Jharkhand

**Advocate for Def. :** APP

**Advocate for Pet/Ap. :** Subhadra Chaturvedi,; Radhey Shyam and; Ashok Kumar Sinh

**Disposition :** Appeal dismissed

**Judgement :**

S.J. Mukhopadhaya

1. This Criminal Appeal has been preferred by appellant Surendra Mishra against the judgment and order of conviction and sentence both dated 21st February,

2004, passed by the learned 12th Additional Sessions Judge, Dhanbad, in Sessions Trial No. 24 of 2001, whereby and whereunder, he has held the appellant guilty of the offence under Section 302 of the Indian Penal Code as also Section 27 of the Arms Act and sentenced him to undergo life imprisonment with a fine of Rs. 500/-under Section 302 of the Indian Penal Code and in default of payment of fine to undergo simple imprisonment for seven days. However, in view of the aforesaid sentenced, no separate sentence has been awarded under Section 27 of the Arms Act.

2. The prosecution, as arisen on the basis of fardbeyan (Ext. 4) of the informant Bidyut Kumar Modi, who was working as car-driver of Chandrashekhar Choubey (deceased) since 1999 and was driving the Ambassador Car of the deceased bearing Registration No. BR-17F-0041, recorded on 11th August, 2000, is that on the same day he drove Chandrashekhar Choubey (deceased) on the car to Chas Nala More. Within 3 to 4 minutes they reached Chas Nala More near N.S. City Computer Center and parked the car near the road-side 'Gumti'. Chandrshekhar Choubey asked him (the informant) to call for Shashadhar Mukherjee (PW 2) from his Auto Parts shop. Chandrashekhar Choubey was sitting on the back seat of the car and was talking with Shashadhar Mukherjee. When he (the informant) was about to sit in the car on the driving seat, all of a sudden Surendra Mishra (appellant), owner of Bhubneshwari Medical Hall, appeared with a country made pistol in his hand. He (the appellant) pushed aside Shashadhar Mukherjee and fired at Chandrashekhar Choubey from a point-blank range from his country made pistol. Chandrashekhar Choubey immediately fell down on the seat and there was perfused bleeding from his face. Thereafter, he (the informant) rushed through the vehicle to his owner's house and told Vinod Kumar Choubey PW 4, the elder son of the deceased, that 'Malik' has been shot at. Thereafter Vinod Kumar Choubey and Deepak Kumar Choubey PW 6 accompanied him and proceeded for Colliery Hospital. On the way, Vinod Kumar Choubey PW 4 informed the police patrolling party about the incident and rushed to Chas Nala Hospital with the police personnel where Chandrashekhar Choubey was declared dead. On the basis of the aforesaid fardbeyan, a formal First Information Report was drawn up and charge-sheet was submitted against the appellant for the offence under Sections 302 of the Indian Penal Code and 27 of the Arms Act. Thereafter, the trial

proceeded and charges were framed, which were explained to the accused appellant in Hindi, to which he pleaded not guilty and claimed to be tried.

3. The prosecution has examined altogether nine witnesses in support of its case whereas the defence has also examined two witnesses. Certain documents have also been exhibited on behalf of both the parties, as discussed hereunder. PW 1 Bidyut Kumar Modi, informant of the case, in his deposition, has stated that the occurrence took place on 11th August, 2000 the evening at about 7.00 p.m. At that time, he was the driver of Ambassador Car of Chandrashekhar Choubey. On the said day, at that particular time, he had gone to Chas Nala More along with Chandrashekhar Choubey and there was no other person in the said car. Choubey Jee was sitting on the back seat on left side of the Ambassador car bearing Registration No. BR-17F-0041. When they reached Chas Nala More near N.S. City Computer Center, he stopped the vehicle as Choubey Jee asked him to call Shashadhar Mukherjee. He called Shashadhar Mukherjee from his Auto Parts shop. While Choubey Jee was talking with Shashadhar Mukherjee, owner of Bhubneshwari Medical Hall (appellant) came there and pushed aside Mukherjee Babu and fired at Choubey Jee. He has further stated that Surendra (appellant) is the owner of the Bhubneshwari Medical Hall and it was he, who had fired at Choubey Jee with small pistol. Choubey Jee having been shot at, fell down on the right side of the seat. Surendra Mishra at that time threatened him of dire consequences. This witness has further stated that he took the injured Choubey Jee on the car to his house and thereafter, proceeded for Chas Nala Colliery Hospital after taking Vinod Kumar Choubey and Deepak Kumar Choubey with him. On the way, they met the police patrolling party, who took them to Chas Nala Hospital where Choubey Jee was declared dead. He has proved the signature of Shashadhar Mukherjee on the fardbeyan and has also identified the accused appellant. In his cross-examination, this witness PW 1 informant while stated that large number of crowd was not gathered when Choubey Jee was shot at, has further deposed that there are 10 to 12 shops on both sides of the road near the place of occurrence. He has further stated that he stayed at the place of occurrence for about a minute and did not call anyone, as he was panicked. He informed Vinod Kumar Choubey that 'Malik has been shot at and Surendra Mishra had fired from the door-side of the car from a close range. The informant has fully

corroborated the statement, made in the First Information Report, and no contradiction could be pointed out from his cross-examination. He is an independent witness and is an eye-witness of the occurrence.

4. PW 2 Shashadhar Mukherjee is another eye-witness of the occurrence, according to the First Information Report. He has deposed that he was acquainted with Chandrashekhar Choubey (deceased), who was a Trade Union Leader and was murdered on 11th August, 2000 in the even at about 7.00 p.m. On the said date in the evening, while he was sitting in his shop, namely, Sulekha Auto Parts, Bidyut Kumar Modi PW 1 informant, driver of Chandrashekhar Choubey, came to call him. He went to Chandrashekhar Choubey, who Was sitting at the left side of the car and while he was talking with him, someone came there and pushed him aside. He could not see the person, who pushed him and had come and stood near Choubey Jee. Thereafter, he heard as sound like cracker and when he got up, he saw the person running away. He has further stated that at the time the occurrence took place, darkness had set in and the person, who had pushed him, was stoutly built. He has stated to be acquainted with Surendra Mishra (appellant), who had a medical shop at his residence.

5. PW 3 Dost Mohammad, driver of ambulance, has deposed that at Chas Nala Hospital on the fateful date, he arrived and saw a large number of crowd assembled there. He took the dead body of Choubey Jee for post-mortem examination.

6. PW 4 Vinod Kumar Choubey, son of the deceased, in his deposition, has stated that his father was murdered in the evening of 11th August, 2000 at about 6.45 p.m. He has stated that his father had left for Chas Nala More on his car, bearing Registration No. BR-17F-0041, which was driven by Bidyut Kumar Modi PW 1. He has further stated that he and Deepak Kumar Choubey were at home. After about 10 to 12 minutes, his driver returned with the car and told him that the 'Malik' had been shot at. Thereafter, he and Deepak Choubey rushed to the hospital in the same car. Near Chas Nala More, the police personnel were checking the vehicles. He went near the police, informed them about the occurrence and proceeded for hospital. He has further stated that he could come to know from Bidyut, while in

car, that Surendra Mishra had shot at his father. He had also threatened him (driver) and Shashadhar Mukherjee PW 2. He has proved his signature (Ext. 2/1) on the inquest report (Ext. 2). In his deposition, he PW 4 has further stated that his family and the family of Surendra Mishra (appellant) are acquainted with each other and infractions were there between both the families. He has further stated that there was no past enmity with the family of Surendra Mishra. He has also stated that on the way to the hospital, the police party met them at Chas Nala More, to whom he disclosed about the occurrence. He PW 4 remained in the hospital till 10.45 p.m.

7. Before dealing with the evidence of PW 5 Dr. Shailendra Kumar, who conducted post-mortem examination on the dead body of deceased Chandrashekhar Choubey, it is desirable to notice the deposition of PW 6, Deepak Kumar Choubey, who is the nephew of the deceased. He has deposed that on 11th August, 2000 at about 6.45 p.m. in the evening his uncle Chandrashekhar Choubey had gone to Chas Nala More with the driver. At about 7.00 p.m. the driver rushed back with the car and informed that 'Malik' has received bullet injury. Thereafter, he and Vinod PW 4 proceeded for Chas Nala Hospital in the same car. At the hospital his uncle was declared dead by the doctor. He has further stated that the car was searched by the police- personnel, who found huge amount of blood sprayed on the back seat and floor of the car. In his cross-examination, this witness PW 6 has stated that he was living in the house of his uncle at Chas Nala at that time. He has further stated that he generally comes to Chas Nala on occasions like marriage and also for meeting his uncle. He had come to his uncle's place two days prior to the incident and has further stated that there was friendly terms between the family of his Surendra Mishra and that of his uncle. He has further deposed that Surendra Mishra was arrested on the very day of the incident and on the question of the Court, he deposed that on the day of incident the mental condition of Surendra Mishra was normal, who used to sit in his shop. On the suggestion of the defence, he has deposed that he was not aware whether Surendra Mishra had been undergoing treatment for mental disease since last ten years.

8. PW 5 Dr. Shailendra Kumar, who has conducted the post-mortem examination, has found the following ante-mortem injuries on the person of the deceased

Chandrashekhar Choubey :

Wound of entrance of firearm 4' x 3 1 /2' x cavity deep with lacerated marking on the right cheek. Effects of burning and blackening were found present in the subcutaneous tissue and in the bullet track. Unburnt gun-powder were also present in the bullet track. Some hairs of beards were found ringed along with marking of the wound. Tattooing was absent. Margins of the wound were contused also.

Wound of exit: 1 /2' diameter on right side back of head in lower occipital region. Margins were averted with no evidence of burning, blackening or tattooing.

No other injury was found anywhere on the person of the deceased.

On dissection, upper jaw and the lower jaw (both on right side) were found broken into pieces at the site of injury No. (1) with dislocation of teeth. Four teeth (all the three molars and one lateral premolar) of the lower jaw and five teeth (all the 3 molars and all the two premolars) of the upper jaw were missing. Temporal bone and occipital bones were also found broken into pieces on right side. Bone of skull were also fractured into pieces on right side. Brain matter were completely lacerated in the temporal and occipital region along with the base of brain on right side. Heart and bladder were empty. Stomach contained about 50 cc. Of rice with no particular smell. All internal organs were pale.

Time elapsed since death From 12 hours to 24 hours. Cause of death Death was instantaneous due to aforementioned injuries of head and brain, caused by contact shot bullet wounds.

9. PW 7 Jai Krishna Singh was the Officer-in-charge of Pathardih Police Station at the time of incident. He has proved the fardbeyan (Ext. 4) and the forwarding (Ext. 4/1), made thereon, and has also proved the writing (Ext. 4/2) of the Officer-in-charge, Jorapokhar, who registered the case as also the formal First Information Report (Ext. 5). In his deposition, he has stated that the Ambassador car bearing Registration No. BR-17F-0041 was seized by him. It was the car in which Chandrashekhar Choubey was murdered. Bloodstain marks were found on the

back seat of the car. He has proved the signatures of Vinod Kumar Choubey and Gangasagar Yadav on the seizure list. In his deposition, he has mentioned the place of occurrence as north side of Sindri-Jharia main road, near N.S. City Computer Center, Chas Nala More. There is an Audio Cassette shop of Pradeep Singh in front of the main road. The deceased was sitting on the left side of the back seat of his Ambassador car when the incident took place. He has further deposed that accused Surendra Mishra was arrested from his house on 12th August, 2000 at about 2.45 a.m. but accepted that the motive of occurrence could not be traced out during the investigation. He has further deposed that on the basis of admission, made by appellant Surendra Mishra, one empty cartridge, one loaded pistol and two live cartridges, used in the occurrence, were seized for which a separate case was registered being Jorapokhar Police Station Case No. 199 of 2000 regarding seizure of the arms. After his transfer, charge of investigation was handed over to Sub-Inspector Arbind Kumar PW 8.

10. PW 8 Arbind Kumar, who has conducted part of investigation, in his deposition has stated that on 5th September, 2002 he took charge of investigation and sent the seized empty cartridge to Forensic Science Laboratory. The forwarding report of the cartridge has been marked as Ext. 7.

11. PW 9 Ramakant Prasad Singh has deposed that on 11th August, 2000 while he was posted at Pathardih Police Station, on the same day in the evening he was conducting checking of vehicles at Chas Nala More. The son of the deceased Chandrashekhar Choubey came down from the Ambassador car, informed him that Surendra Mishra had shot at his father and proceeded for Chas Nala Hospital. The doctor declared Choubey Jee dead and inquest report was prepared by him. The empty cartridge was recovered from the seat of the car and seizure list was prepared. On the basis of the admission of accused Surendra Mishra, the pistol, which was used in the occurrence, was recovered from the well of Mr. Mishra. This witness has proved the inquest report (Ext. 9) the revolver (material exhibit), as was produced in the Court, and the empty cartridge (Ext. 2).

12. The defence has adduced two witnesses, namely, Dinesh Mishra DW 1 and Dr. Sanjay Kumar Subodh DW 2. DW 1 Dinesh Mishra, LIC, agent, while accepted

that the accused Surendra Mishra was his maternal cousin, has proved certain prescriptions, issued by Dr. C.S. Prasad on 9th January, 1988 and 13th February, 1988. He has also proved the medical prescriptions (Ext. A series), issued by one or other doctor. He has stated that accused Surendra Mishra while in jail was treated at RINPAS, Kanke, Ranchi, DW 2 Dr. Sanjay Kumar Subodh has stated that he was a member of the General Medical Board. He DW 2 had examined the accused on 31st January, 2001 and recommended for treatment of the accused at RINPAS, Kanke, Ranchi.

13. Learned counsel for the appellant has given much stress on the mental condition of the appellant. While referring the evidence of DW 1 and DW 2 as also the medical prescription, as contained in Ext. A series he has submitted that the appellant was suffering from schizophrenia, which is a form of insanity. It indicates splitting of mind and causes auditory hallucination, passivity feelings and primary delusions in a setting of clear consciousness. It has been submitted that schizophrenia is a sign of abnormal physical condition and as the appellant was suffering from mental illness, the punishment was uncalled for. He has placed reliance on certain decisions of the Court. However, it is not necessary to refer such decisions, in view of the following facts :

The aforesaid plea has been taken into consideration by the learned Court below, who on perusal of evidence and different exhibits, including Ext. A series, came to a definite conclusion that the appellant was not suffering from any mental illness. Learned Court below has noticed that the prosecution relied on the documents, relating to mental status of the accused, including Ext. 10, a letter written by the Medical Superintendent, RINPAS, Kanke, Ranchi to the learned Chief Judicial Magistrate, Dhanbad. From the said letter it appears that the learned Chief Judicial Magistrate, Dhanbad, has referred the matter to the Medical Superintendent, RINPAS, Kanke, Ranchi to examine the accused and to submit report. By the said letter dated 6th August, 2001 (Ext. 10), the Medical Superintendent, RINPAS, Kanke, Ranchi has informed the learned Chief Judicial Magistrate, Dhanbad, that on 16th March, 2001 accused Surendra Mishra was admitted for examination regarding his mental status and treatment. After examination, he (accused) was declared fit for discharge and trial. Exts. 11 and 12 are the certified copies of the

statement and the order-sheet of G.R. Case No. 2344 of 2000, which pertains to a case under the Arms Act against the accused Surendra Mishra, arising out of the same incident. In the said case also similar argument was advanced but the learned Court below after going through the evidence and exhibits gave specific finding in the said case that accused Surendra Mishra was mentally fit and capable of making his defence. On the basis of the evidence, adduced on behalf of both the parties regarding mental status of accused Surendra Mishra, learned Court below came to a safe conclusion that accused was not suffering from mental instability even prior to the incident or at the time of incident. I also find no ground to be made to differ with such finding. 14. I have noticed the observations of the learned Court below that although some evidence were placed by the defence in support of the mental trouble of the accused, in absence of specific finding by the doctor or degree and nature of mental trouble, it can not be relied upon to declare the accused Surendra Mishra mentally unfit or that he was insane at the time of occurrence. I have also noticed the evidence and testimony of the witnesses, which are consistent and corroborated with the First Information Report PW 1 and PW 2 are direct eye-witnesses of the incident and their evidence are natural, without any contradiction. PW 1 Biduyt Kumar Modi, who was the driver of the vehicle in which the deceased was traveling to N.S. City Computer Center i.e., place of occurrence, has stated that at 7.00 p.m. in the evening when he took Choubey Jee to Chas Nala More, he was asked to call Shashadhar Mukherjee from the Auto Parts shop. Choubey Jee was talking with Mr. Mukherjee when accused Surendra Mishra came and after pushing aside Mr. Mukherjee fired at Choubey Jee from a close range. The account, as given by this witness (informant), has been fully corroborated by his fardbeyan and is also supported by the evidence of PW 2 Shashadhar Mukherjee, who has stated that somebody pushed him aside, fired at Choubey Jee from, a close range and ran away. The statement of the eye-witness PW 1 is also corroborated by the testimony of the Post-Mortem Report, prepared by Dr. Shilendra PW 5, who has conducted post-mortem examination, found ante-mortem injuries on the person of the deceased, as quoted above, and has opined that the death was instantaneous due to contact shot bullet injuries on the head and brain. The oral account of the eye-witness is fully corroborated by the medical evidence. PW 4 and PW 6, though they are near

relatives of the deceased, who accompanied the deceased to the hospital, have also stated that they came to know from the driver, who at the initial stage informed that Chandrashekhar Choubey was shot at by accused Surendra Mishra.

15. Thus, on the basis of the evidence of record, I find that the prosecution has succeeded in proving the charges, levelled against the appellant Surendra Mishra of committing murder of Chandrashekhar Choubey by firing at him from a close range with country made pistol. As such, I find no ground to be made not to differ with the findings, as given by the learned 12th Additional Sessions Judge, Dhanbad, in Sessions Trial No. 24 of 2001. There being no merit, this Criminal Appeal is hereby dismissed.

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