

Udit Ram Vs. State of Jharkhand

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Court : Jharkhand

Decided On : Jun-20-2003

Reported in : [2003(4)JCR642(Jhr)]

Judge : Vishnu Narayan and; Lakshman Uraon, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 120B, 201 and 302; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Crl. Appeal No. 222 of 2001

Appellant : Udit Ram

Respondent : State of Jharkhand

Advocate for Def. : Anshu Dubey, APP

Advocate for Pet/Ap. : P.C. Tripathy, Adv.

Disposition : Appeal allowed

Judgement :

Lakshman Uraon, J.

1. The sole appellant, Udit Ram, has preferred this appeal against the judgment and order of conviction and sentence dated 1.5.2001 and 2.5.2001 respectively passed by Shri K.N. Sah, the learned 8th Additional Sessions Judge, Palamau at

Dallonganj in S.T. No. 125/2000, whereby and whereunder, the appellant was convicted under Sections 302/34, IPC and sentenced to undergo RI for life and further convicted under Sections 201/ 120B, IPC but no separate sentence was awarded under those Sections. However, co-accused, Salamgir, was found not guilty and acquitted.

2. The prosecution case based on the fardbayan. Ex. 6 of PW 4, Sabir Alam, recorded by the S.I. Sher Jahan Khan, PW 11, on 1.12.1998 at 14.30 hrs. at village Gurdi, P.S. Garhwa, is that in the evening of 30.11.1998 at about 6.30 p.m. he was talking with his father, Minhazuddin, at his door. His father was in service at telephone booth Railha. He used to return home on each day in the evening. At that time two persons wrapped with blanket came there and asked his father that they had to make calls on telephone. Then his father asked them to come to Railha in the morning to make calls on phone. The informant, his father and those two unknown persons went towards the East of his house talking together reached to their khalian. Both the unknown persons informed the father of the informant that they are much tired due to extensive firing and are feeling hungry. They asked to arrange food. The father of the informant asked the informant to bring food for them. The informant went home and returned back to khalian taking food for them. After sometimes the unknown persons asked the informant to go home. The informant returned home and his father was sitting there alongwith those unknown two persons in the khailhan. After half an hour the informant again went to khalian where he did not find the two unknown persons and his father. He informed the villagers and his uncle who went in search of them. At night they could not be traced out. The informant and others were going to inform the Police. In the meantime, the Police went to the village where his Jardebayan, Ext. 6 was recorded. The informant claimed to identify both the unknown persons who kidnapped his father to cause his murder. On the basis of the Jardebayan, formal FIR, Ext. 7, under Section 364, IPC was drawn against two unknown persons. In the course of investigation, the dead body of Minhazuddin, the father of the informant, was found East of Kuraila hilltop in village Pratappur Tola Karauna and offence under Section 302, IPC was added. After investigation charge-sheet was submitted against Udit Ram, Shekh Salamgir, Akbar Khan and Sowem RaiTinath Ram (absconder) co-accused, Akbar Khan, has also absconded. The learned 2nd

Additional Sessions Judge, Palarnau, framed charges against Udit Ram and Shekh Salamgir under Sections 302/34/201/120B, IPC.

3. The prosecution has examined altogether 11 witnesses to prove its case. PW 4, Sabir Alam, is the son of Minhazuddin and informant of this case. PW 1, Mohamda Bibi, is the wife of the deceased, Minhazudding Khan, PW 2, Niyajuddin Khan and PW 3, Reyajuddin Khan are the hostile witnesses. PW 5, Md. Sagir Ahmad, is the seizure-list witness. PW 6, Riyajuddin Khan. PW 7, Tajmul Ansari and PW 8, Kalamuddin Khan are also the hostile witnesses. PW 9, Binod Kr. Mishra, Judicial Magistrate, 1st Class, conducted the T.I. Parade and submitted the T.I. Parade chart (Ext. 4) under his pen and signature. PW 10, Dr. Ajay Kumar Jha, conducted the post mortem examination on the dead body of Minhazuddin mid submitted the post mortem examination report in his pen and signature, Ext. 5. PW 11, Sher Jalan Khan, is the I.O. of this case who on rumour making S.D. Entry No. 223/98 went to the village Gurdi and got recorded the fardbayan, Ext. 6 of Sabir Alam, recorded by A.S.I. Janak Kishore Sinha, under his signature, Ext. 6. On that basis formal FIR, Ext. 7, was drawn. He found the P.O. to be the khaliyan of the informant towards 250 meters East of the village. From there at a distance of 100 yards he found two Thalties (one of aluminium and one of steel) and one lota thrown. He found the dead body of Minhazuddin near Kuraila hill and prepared inquest-report. Ext. 8, in presence of two independent witnesses. He seized blood and blood-stained soil but did not prepare seizure-list.

4. The learned 8th Additional Session Judge, Palamau at Daltonganj considered the oral and documentary evidence adduced on behalf of the prosecution and convicted this appellant under Sections 302/34/201/120B, IPC and sentenced him to undergo RI for life whereas he acquitted the co-accused, Salamgir Shekh, from all the charges levelled against him.

5. Assailing the judgment and order of conviction and sentence passed against the appellant, Udit Ram the learned counsel for the appellant has submitted that no independent witness of the village has been examined on behalf of the prosecution. There is no eye-witness of the alleged murder of Minhazuddin Khan. The independent witnesses. PWs 2. 3, 6. 7 and 8 have not supported the

prosecution case and have been declared hostile, PW 5, seizure list witness, has signed on a blank paper. The identification of the appellant by PW 1 and PW 4 is doubtful as the T.I. Parade was held after seven months. At the time of T.I. Parade the appellant had injuries and the others who were, put in the line had no injuries on their faces by the side of the eye. On the similar set of evidence, co-accused, Sabmgir Shekh, has been acquitted and is such this appellant also deserved acquittal. Lastly it was argued that Shri Kumar Ganesh Dutt, learned 2nd Additional Sessions Judge, examined the accused persons under Section 313 of the Cr PC on 16.1.2001 in the most perfunctory manner and has not recorded answers therein to the questions put to the appellant and the co-accused. The staff of the Court simply filled in the column of the heading and typed the questionnaires but it was never asked to the appellant and the answer portion is blank. Thus, the appellant was not given an opportunity to explain any circumstances appearing in the evidence against him which has caused serious prejudice to him and therefore the evidence on the record cannot form basis for his conviction.

6. The learned APP refuting the argument advanced on behalf of the appellant has submitted that the informant is the son of Minhazuddin Khan. He was talking with him in presence of his mother, Mohamda Bibi, PW 1 when the appellant alongwith co-accused had come to his house and they had the occasion to see them and these two known persons had kidnapped his father and in the next morning the dead body of his father, Minhazuddin, was found at Kuraila hill. This appellant was put on T.I. Parade. In the T.I. Parade both the witnesses had identified this appellant who had taken his father at night and the dead body of his father was found in the morning. PW 9, Binod Kumar, Magistrate 1st Class, conducted the T.I.P. and submitted his report which cannot be brushed aside. The learned Court below considered these evidence and has rightly convicted this appellant and sentenced him to undergo RI for life.

7. The alleged occurrence took place on 30.11.1998 at about 6.30 a.m. when two known persons had gone to the door of the informant who was talking with his father, Minhazuddin. They desired to telephone as Minhazuddin was working in a telephone booth at Railha. When his father informed that the following morning

they would talk on phone at Railha. He alongwith two unknown persons and the informant. PW 4, went to his khalihan talking together. Although those two unknown persons had covered themselves with blanket but the witnesses have contradicted in the evidence that they had simply put the blankets on their shoulders. At khalihan those unknown persons felt hungry and asked to manage food. The deceased, Minhazuddin, asked his son to go home and bring food for them. PW 4, Sabir Alam, went his home and returned back to khalihan taking food for them. Thereafter, he was asked by those two unknown persons to go home. PW 4 went home. After half an hour he went to the khalihan where he did not find his father and two unknown persons. Throughout the night they were searched by the villagers. Me informed the Police. The fardbayan was recorded on which he signed, Ext 2, and the witness, PW 3, Rayajuddin Khan, also signed on it, Ext. 2/1. He attended the T.I. Parade in Garhwa Jail where he identified this appellant. Before going to identify the accused in T.I. Parade his mother PW 1, Mohamda Dibi had received a letter written by one Taufik. PW 1, Mohamda Bibi, wife of Minhazuddin (since dead) has also deposed that two unknown persons had come to her house in the evening at 6 p.m. who desired to have telephone talk to Aurangabad. Her husband asked them to come to Railha at 8 a.m. in the next morning for the purpose and they went talking together towards the khalihan. After then minutes her husband returned home and asked for food for those persons. Her son, PW 4, Sabir Alam, taking food and water for them went to the khalihan. Her son, PW 4, came back home as desired by those unknown persons. However after half an hour when he went to khalihan then he did not find them. She had received one letter from jail written by Taufik Khan regarding the murder of her husband. She had attended the T.I. Parade and identified this appellant as one of the persons who had kidnapped her husband and murdered him. She has deposed that the unknown persons were in shirt and pant but they had not covered themselves with blanket. They were not on visiting term with her family. When she had asked her husband as to who were those two unknown persons-then he had told her that they had come to talk on telephone. PW 10, Dr. Ajay Kr. Jha, conducted the autopsy on the dead body of Minhazuddin Khan on 2.12.1998 and found one incised wound 6' x 4' x vertebral column deep cutting the cervical and ventibal bodies including trachea, blood vessels with blood and blood clots,

three abrasions and one depressed wound caused by sharp cutting weapon on his person which were ante-mortem in nature. The death was due to injury No. 1 within 12-48 hours from the time of post mortem examination. He submitted the post mortem report in his pen and signature, Ext. 5. The I.O. in course of investigation came to know that the dead body was lying near Kuralla hill. He went there and prepared inquest-report, Ext. 8, in presence of the independent witnesses. He found there blood and blood-stained soil which he seized but he did not prepare any seizure list.

8. In this present case the other village independent witnesses have not supported the case of the prosecution and have been declared hostile. On the oilier hand, PW 1 is the wife of the deceased and PW 4 is the son of the deceased who have simply alleged that two unknown persons took the deceased to the khalihan where they took meal and since thereafter they were found traceless. In the morning the dead body of Minhazuddin was found near Kuraila hill. There is no eye-witness of the alleged kidnapping of Minhazuddin for his murder. It is surprising to know that two unknown persons were not familiar and were not on visiting terms with the informant and his family, even then, Minhazuddin, father of the informant, talking with them went to the khalihan and provided them with meal. In the fardbayan, Ext. 6 the informant has mentioned that both those unknown persons informed his father that they were tired due to intensive firing and were feeling hungry. The shows that they were criminal and might have fired indiscriminately somewhere else and got tired. Even then, the father of the informant asked his son to manage food for them at their demand. Although they were unknown persons but the conduct of Minhazuddin shows that he was definitely familiar with them. So he had talk with them and he went with them up to khalihan and also ordered his son to manage food for them. They look food at the khalihan and threw the utensils at a distance of 100 yards away from the khalihan. The conduct of the deceased, Minhazuddin, appears to be suspicious in the facts and circumstances of this case. PW 1 has not been mentioned as a witness who was present at the time when the informant, his father and two unknown persons had gone to the khalihan talking together, PW 1 has deposed that she had received a letter from jail written by one Taufik Khan. The assailants were unknown. They could not be seen in the night of the alleged occurrence as it was dark and they had converted themselves with blankets. But

these two interested witnesses who are the mother and the son of the deceased had contradicted by stating that they had simply put the blankets on their shoulders. PW 1 has specifically deposed in para 17 that the unknown persons had not covered themselves with blankets rather they were in shirt and pant. At that time it was not dark. PW 4 has deposed that his mother was also there alongwith his father with him. In para 8 he has deposed that the accused, Salamgir, who was acquitted, is the resident of his village with whom he had good relationship. Even then, in the fardbayan he has not named Salamgir as co-accused. In para 12 he has deposed that both unknown persons were in shirt and pant and having blankets on their shoulders. He does not know as to who handed over the letter written by Taufik to his mother. What happened to that letter is also not known. When considered the evidence of both these interested witnesses, PW 1 and PW 4, I find that there is no legal evidence to lead unerringly that this appellant kidnapped Minhazuddin and caused his murder. On the other hand, Minhazuddin Khan himself went alongwith those unknown persons. He took meal alongwith those two persons in khalihaan. This shows that he was not kidnapped rather he was acquainted with them so he managed food for them. There is no eye-witness of the alleged murder of Minhazuddin. The Doctor, PW 10, Ajay Kumar Jha, found injury No. 1 6' x 4' x vertebral column deep cutting the cervical and ventral bodies including trachea, blood vessels with blood and blood clots, which was the cause of death of Minhazuddin. The evidence of PW 1 and PW 4 is contradictory regarding the clothes worn by two unknown persons with whom Minhazuddin had gone. PW 1 and PW 4 have deposed that the villagers had searched Minhazuddin in the night alongwith him but they could not be traced out rather in the morning the dead body of Minhazuddin Khan was found near Kuraila hill. In this present case I find that the learned 2nd Additional Sessions Judge, Palma at Daltonganj, who examined the appellant under Section 313, Cr PC on 16.1.2001, was quite careless to explain the evidence and circumstances appearing against the appellant in the evidence of the prosecution witnesses. The columns of the form was filled up by his staff and the questions were typed mechanically without recording the answers given by the appellant. The evidence and circumstances appearing against the appellant were never put to the appellant which caused great prejudice to him. When the circumstances and the evidence

appearing against the appellant were not put to him while examining him under Section 313, Cr PC, the same cannot be used against him to convict the appellant under Sections 302/34/201/120B, IPC. The examination of accused under this Section is not a mere formality. The attention of the accused must specifically be invited to inculpatory pieces of evidence or circumstances led on record with a view to providing him an opportunity to give an explanation if he chooses to do so. Section 313, Cr PC imposes a heavy duty on the Court to take great care to ensure that the incriminating circumstances are put to the accused and his explanation is solicited, The purpose of the examination of the accused under this Section is to give an accused an opportunity to explain the incriminating material which has been surfaced on record. It does not matter how weak or scanty the prosecution evidence is on the record to ascertain the incriminating material. It is the duty of the Court to examine the accused and seek his explanation thereunder. In this case I find that the learned 2nd Additional Sessions Judge, Palamau, in examining the appellant under Section 313, Cr PC, failed to discharge his legal duty in accordance with law which has definitely caused miscarriage of justice in this case. As no opportunity was given to this appellant to explain the evidence and circumstances appearing against him, hence they can be used against him to convict him under Sections 302/34/201/ 120B of the IPC. And last but not the least the evidence of PW 1 and PW 4 identifying the appellant in the T.I. Parade after seven months of the occurrence has no relevance. Moreover, there was mark of wound on the left eye of the appellant and no attempt was taken by PW 9 to conceal the said mark in course of T.I. Parade. Therefore, the evidence of PW 1 and PW 4 in respect thereof fit to be brushed aside and it can never form the conviction of the appellant.

9. When considered the pros and cons of the interested witnesses, PW 1, Mohamda Bibi and her son, the informant, PW 4, Sabir Alam, who are widow and son of the deceased, Minhazuddin Khan, I find that they are not the eye witnesses of the alleged kidnapping and murder of Minhazuddin. Their evidence is also contradictory. As there is no eye witness of this occurrence hence the manner of the alleged occurrence remained unexplained. The I.O. did not prepare seizure-list of blood and blood-stained soil, found at the spot. The village independent witnesses have not supported the prosecution case and have been declared

hostile by the prosecution. The learned Court below has also not performed its legal duty in examining the appellant properly under Section 313, Cr PC. Considering the evidence, circumstances and non-examination of the accused properly under Section 313, Cr PC, the judgment and order of conviction and sentence passed by the learned Court below against the appellant cannot be sustained.

10. In the result, I find merit in this criminal appeal which succeeds. This criminal appeal is, accordingly, allowed and the appellant is acquitted. The judgment and order of conviction and sentence passed by the learned Court below against this appellant in S.T. No. 125/2000 is, hereby set aside. As he is in custody, hence it is ordered that he be released forthwith from the custody if not wanted in any other case.

Vishnudeo Narayan, J.

I agree.

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