

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**  
**Cr. Appeal (DB) No. 86 of 1995 (R)**

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(Against the judgment and order of conviction and sentence dated 18.07.95 (sentence passed on 20.07.95) by Smt. Shakuntala Sinha, learned Additional Judicial Commissioner, Khunti in S.T. No. 226/92)

1. Mahendra Mahto @ Dharma Mahto, son of late Lalu Mahto, resident of village-Guthjera, P.S. Khunti, District-Ranchi.
2. Ishwar Mahto, son of Shri Hari Mahto, resident of village-Guthjera, P.S. Khunti, District-Ranchi.

....Appellants

**Versus**

The State of Bihar (now Jharkhand)

...Respondent

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**CORAM: HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY**  
**: HON'BLE MR. JUSTICE NAVNEET KUMAR**

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For the Appellants : Mr. Hemant Kumar Shikarwar, Advocate

For the State : Mr. Sanjay Kumar Srivastava, A.P.P.

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**C.A.V. On 18.07.2024**

**Pronounced on 13/08/2024**

**R. Mukhopadhyay, J.** Heard Mr. Hemant Kumar Shikarwar, learned counsel for the appellants and Mr. Sanjay Kumar Srivastava, learned A.P.P. for the State.

**2.** This appeal is directed against the judgement and order of conviction and sentence dated 18.7.95 (sentence passed on 20.7.95) passed by Smt. Shakuntala Sinha, learned Additional Judicial Commissioner, Khunti in S.T. No. 226/92, whereby and whereunder the appellants have been convicted for the offences punishable under sections 302/34, 397, 324/34 IPC and the appellant no. 1 has further been convicted for the offence under section 419 IPC and have been sentenced to rigorous imprisonment for life and a fine of Rs.5,000/- each and in default in payment of fine to undergo further rigorous imprisonment for one year for the offence under section 302/34 IPC, rigorous imprisonment for seven years for the offence under section 397 IPC and rigorous imprisonment for six months for the offence under section 324/34 IPC. The appellant no. 1 has been sentenced to rigorous imprisonment for one year for the offence under section 419 IPC. All the sentences are to run concurrently.

**3.** The Fardbeyan of Ramesh Sharma was recorded on 4.7.90 in which it has been stated that on 12.6.90 his brother Dinesh Lal Sharma had come to Dumardaga Teachers' Training School at Khunti for making enquiry with regard to the admission of his brother Ganesh Sharma in the training school. He had met a person in the school who had assured him that on payment of Rs.1400/- admission will be done. Dinesh Sharma returned to his house at

Narayanpur and on 2.7.90 the informant and his brother Dinesh Lal Sharma proceeded for the school and on 3.7.90 they reached the school. The person who had earlier assured that on payment of Rs.1400/-admission will be done met them who gave his identity as that of a Peon in the school. When the informant disclosed that he has brought Rs.1400/- with him the Peon stated that the Principal of the school is absent and the matter will be settled once the Principal comes in the evening. The Peon whose name was Mahendra Mahto had enticed them to go to Gutjora to the place of his uncle who is a teacher in a school. The informant, his brother and Mahendra Mahto accordingly had gone to Gutjora where they stayed for sometime in the house of Mahendra Mahto. It has been alleged that thereafter all proceeded to the house of the uncle of Mahendra Mahto at village-Ghasibara. The informant wanted to go to Ranchi but Mahendra Mahto asked them to stay in his house and when the informant and his brother showed their reluctance, Mahendra Mahto went along with them to help them get a bus for Ranchi. It has been alleged that Mahendra Mahto brought them to village-Dadigaon and went to meet someone. He returned after fifteen minutes and took them through a forest road where they found two boys sitting on a rock. Both were having pistols and one of them asked the informant and his brother to handover the money. When the informant and his brother tried to flee away, the informant had sustained a knife injury but he managed to escape and reached the hospital where he was treated. His brother had also fled away but the informant did not know which way he had gone.

4. Based on the aforesaid allegations, Khunti P.S. Case No.62/90 was instituted for the offences punishable under sections 419, 420, 341, 379, 324, 307/34 IPC against Mahendra Mahto and two other unknown persons. On completion of investigation, chargesheet was submitted and after cognizance was taken the case was committed to the court of sessions where it was registered as S.T. No. 226/92. Charge was framed against both the accused under sections 302/34, 324/34 and 397 IPC and additionally against Mahendra Mahto under section 419 IPC which were read over and explained to the accused in Hindi to which they pleaded not guilty and claimed to be tried.

5. The prosecution has examined as many as eight witnesses in support of its case.

**P.W-1-Sudhir Kumar Sinha** had conducted the test identification

parade on 30.7.90 of Ishwar Mahto and Paras Nath Mahto. One witness namely Ramesh Sharma had participated in the test identification parade. In the test identification parade, both the accused were identified; Ishwar Mahto having separated the two brothers while Paras Nath Mahto had assaulted him with a knife and taken out the money while Ishwar Mahto had taken out money from the bag of Ramesh Sharma. He has proved the test identification chart, which has been marked as Ext-1.

In cross-examination, he has deposed that neither before the test identification parade or after the test identification parade, Paras Nath or Ishwar had stated about they having been identified by the informant in the police station.

**P.W-2-Doman Kumar** has stated that on 3.7.90 he was in Dumardaga Primary School and the attendance of all the students were taken. Dharma Mahto whose roll number was 49 did not attend school on that day. He has proved the seizure list of seizure of the attendance register, which has been marked as Ext-2.

In cross-examination, he has deposed that his statement was recorded by the police.

**P.W-3-Chandra Mohan Mahto** has stated that on 23.8.90 the then Officer in Charge of Khunti P.S. Shri M.P. Singh had come and had taken away the attendance register with him and on the same day, he had prepared a seizure list, which was signed by him, Doman Mahto and Ashok Srivastava. The role number of Dharma Mahto is 49.

In cross-examination, he has deposed that in the attendance register, in front of role number 49 on 6.7.90, he had signed. In the entry in the attendance register for 2.7.90 and 3.7.90 the space in front of the name of Dharma Mahto was crossed and it was encircled with red ink.

**P.W-4-Ramesh Sharma** is the informant and the brother of the deceased who has stated that his younger brother Dinesh Lal Sharma had gone to Dumardaga Training School on 12.6.90 for gathering information regarding the admission of Ganesh Lal. Dinesh Sharma had met a Peon in the school whose name was Mahendra Mahto @ Dharma Mahto who asked Dinesh Sharma to bring Rs.1400/- and admission will be done in teachers' training school. Accordingly, on 2.7.90 he and his brother Dinesh Sharma left for Dumardaga Training School along with Rs.1400/-. On 3.7.90 at 11 A.M. they reached Dumardaga Training School where they met Mahendra Mahto who disclosed that the Principal is not present at which all three of

them went to a hotel to eat. After having lunch, Mahendra Mahto asked them to go to the village where his uncle lives and admission will be done. Accordingly they went to the village-Gutjora but they could not meet the uncle of Mahendra Mahto. Mahendra Mahto thereafter took them to a school which was closed. He has stated that he expressed his desire to go to Ranchi at which Mahendra told them that he will help them catch a bus. He, his brother and Mahendra Mahto thereafter went to Dari village and asked them to stay while he went to call his friends and all of them will thereafter proceed for Ranchi. Mahendra came back and disclosed that he could not locate his friends and he will be accompanying them to catch a bus. All of them thereafter left to catch the bus through a jungle road. In the jungle, they met two persons who had pistols in their hand and who demanded the money to be handed over to them. He gave them Rs.12,000/- from the pocket and Rs.2000/- from the bag and they forced him and his brother to sit on a rock. After one hour when it was dusk they took him and his brother towards a ditch. One person started chasing him and inflicted upon him some knife blows and he fell down. His brother Dinesh started running towards the jungle. After one hour he regained consciousness after which he managed to find his way to Khunti hospital. On 4.7.90, police had come to the hospital where his Fardbeyan was recorded. Later on he went with the police to the jungle where he found the dead body of his brother-Dinesh. In the test identification parade, he had identified both the miscreants; Paresh Mahto had inflicted knife blows upon him and Ishwar Mahto had taken the money from him. When both the persons had taken the money from him Dharma Mahto was present and when they were taken towards the ditch, Dharma Mahto was again present. He has proved his signature in the fardbeyan which has been marked as Ext-3.

In cross-examination, he has deposed that when he became injured he had fled through the jungle and agricultural fields.

**P.W-5-Dr. Tribhuvan Prasad Vais** was posted as a Deputy Superintendent at Sub Divisional Hospital, Khunti and on 5.7.90 he had conducted autopsy on the dead body of Dinesh Lal Sharma and had found the following injuries:-

- (i) *Incised wound  $\frac{3}{4}$  of neck below thyroid cartilage with cutting of all measures throat vessel and anterior vertebral body.*
- (ii) *Incised wound size 6"x2"x4" posterior part of the neck below occipital with complete cutting of vertebral.*

All the injuries were ante mortem caused by heavy sharp cutting weapon. The cause of death was opined to be on account of injury nos. (i) and (ii). The postmortem report has been proved and marked as Ext-5.

On 3.7.90 he had examined Ramesh Sharma and had found the following injuries:-

- (i) *Punctured wound ½"x1/4"x1 ½" on the back of neck, simple in nature caused by sharp gun pointed weapon such as cleak.*
- (ii) *Punctured wound ½"x1/4"x1/4" on the front chest. Simple in nature caused by sharp pointed weapon.*

The injury report has been proved and marked as Ext-6.

**P.W-6-Ropan Toppo** did not support the case of the prosecution and was declared hostile by the prosecution.

**P.W-7-Jayant Kumar Sen** was posted as Judicial Magistrate, First Class and on 30.7.90 on the order of A.C.J.M, Khunti he had recorded the 164 Cr.P.C. statement of Doman Mahto. He has proved the 164 Cr.P.C. statement, which has been marked as Ext-7.

**P.W-8-Nageshwar Prasad Singh** was the officer incharge of Khunti P.S. who had recorded the fardbeyan of Ramesh Sharma at Khunti hospital. He has proved the fardbeyan which has been marked as Ext-8. He has also proved the formal FIR, which has been marked as Ext-9. He had taken over the investigation of the case and had recorded the statements of the teachers of Dumardaga training school. He had inspected the register as well as the attendance register of the year 1990 wherein Dharma Mahto was marked absent on 2.7.90. The entire page of the attendance register showing absence of Dharma Mahto has been proved and marked as Ext-A/1. He has proved the inquest report which has been marked as Ext-10. He had seized the bloodstained earth and the slippers of the deceased and had sent the body for postmortem examination. He had conducted the test identification parade of the two suspects. He had recorded the confessional statements of Ishwar Mahto and Dharma Mahto and the confessional statements have been proved and marked as Ext-1 and 1/1. On completion of investigation, chargesheet was submitted by him.

In cross examination on behalf of Ishwar Mahto, he has deposed that the restatement of the informant was recorded in the hospital itself.

In cross examination on behalf of Dharma Mahto, he has deposed that the distance from the police station to the place where the dead body was recovered was fifteen kilometers.

6. The statements of the accused were recorded under section 313 Cr.P.C. in which they have denied their complicity in the commission of the offence.

7. It has been submitted by Mr. H.K. Shikarwar, learned counsel for the appellants, that the appellants have been implicated only on the basis of suspicion. It has been submitted that so far as appellant no. 1 is concerned, admittedly no overtact has been alleged against him. The appellant no. 2 has been identified by the informant in the test identification parade, the role being assigned to him of taking money from the informant. As per P.W.4 (informant) he had become unconscious and he had regained consciousness after one hour but no further bodily harm seems to have been done upon the informant. There are no eye witnesses to the assault committed upon the deceased. It has been submitted that the learned trial court has erred in convicting the appellants without there being any appropriate reason in support thereof.

8. Mr. S.K. Srivastava, learned A.P.P., has submitted that the appellant no. 1 is the main architect of the incident as he had enticed away the informant and his brother to the jungle and in connivance with the other accused persons had looted them as well as physically harmed them resulting in the death of the brother of the informant. The appellant no. 2 was also instrumental in acting in furtherance of a common intention and was a vital cog in the wheel of conspiracy hatched by the appellant no.1.

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

10. Seeking admission of his brother in Dumardaga training school, the deceased Dinesh Lal Sharma had met the appellant no.1 who was a Peon and who advised them that for Rs.1400/- admission will be done in the training school. This assurance on the part of the appellant no. 1 influenced Dinesh Lal Sharma and his brother (informant) to visit the school and get over with the process of admission. The absence of the Principal faltered their endeavour and attempts made by the appellant no. 1 to make some headway in the admission failed and ultimately while trying to go to Ranchi they were accosted by Paras Nath Mahto and the appellant no. 2 who took away the money and Paras Nath Mahto inflicted knife blows upon the informant. The informant managed to escape and inform the police and on returning back to the jungle the dead body of his brother was recovered.

11. The canvas of the prosecution case seems to indicate a dominant

role played by the appellant no. 1 in the commission of the offence. The learned trial court has accepted such proposition of the prosecution. However, what has not been appropriately considered by the learned trial court is of any authoritative role played by the appellant no.1 as per the evidence of the informant (P.W.4). P.W-4 has narrated the entire sequence of events but has failed to signify any specific overtact against the appellant no. 1. He has failed to imbibe any direct participation of the appellant no. 1 in the incident and has only expressed suspicion primarily drawn from the appearance of two of the accused at the scene who had committed assault upon the informant with knife and had looted the amount of Rs.1400/-from the informant. Admittedly, there are no eye witnesses to the incident of murder of the brother of the informant and only an inference has been drawn about the participation of the accused in the murder. If at all there was an intention to commit murder the informant would have been an easy prey as according to the informant (P.W-4) he after being assaulted with a knife had fallen down unconscious and regained consciousness after about an hour. The role essayed by the appellant no.1 creates two scenarios; the first being the appellant no. 1 genuinely assisting the informant and his brother in getting the other brother of the informant admitted in the training school and the second being the architect of the entire episode. On consideration of the evidence of P.W-4 the first scenario appears to be more probable and plausible as he had not disclosed about any effort made by the appellant no.1 to nab him or commit the murder of his brother. The benefit of doubt in the circumstances depicted above therefore should be extended to the appellant no. 1.

**12.** So far as the appellant no. 2 is concerned, he has been identified in the TIP by P.W-4 and the role which has been essayed by him is of taking the money from P.W-4. The infliction of knife blows upon P.W-4 has been attributed to Paras Nath Mahto. Nothing has been stated by either P.W-4 or any of the witnesses from which it could be gathered that the appellant no. 2 had participated in the murder of Dinesh Lal Sharma. What seems to transpire is that by showing a pistol an amount of Rs.1400/- was extorted from the informant. This act on the part of the appellant no. 2 would put his offence in the bracket of Section 383 IPC punishable under Section 387 IPC. Section 387 IPC envisages a maximum punishment of seven years imprisonment. The incident is of the year 1990 and the appellant no. 2 has remained in custody for some time. We, therefore, sentence him to the

period already undergone by him.

**13.** We, therefore, on the premises of the discussions made hereinabove set aside the judgment and order of conviction and sentence dated 18.07.95 (sentence passed on 20.07.95) passed by Smt. Shakuntala Sinha, learned Additional Judicial Commissioner, Khunti in S.T. No. 226/1992 so far as the appellant no. 1 is concerned. He is discharged from the liability of his bail bond.

**14.** As regards the appellant no. 2 is concerned, he is acquitted from the charges levelled against him under section 302/34, 397, 324/34 IPC and we modify the conviction accordingly to one under section 387 IPC and sentence him to the period already undergone.

**15.** This appeal stands disposed of.

**(R. Mukhopadhyay, J.)**

**(Navneet Kumar, J.)**

**Jharkhand High Court, Ranchi,  
Dated the 13/08/2024  
Rakesh/-**