

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (D.B.) No.485 of 2003

[Against the judgment of conviction dated 22.03.2003 passed by learned 5th, Additional Sessions Judge, Bermo at Tenughat in S.T. Case No.89 of 2001]

Amit Mukhi, son of Ashok Mukhi, residents of Jarandih P.S. and
District-Bokaro Appellant

Versus

The State of Jharkhand Respondent

For the Appellant : Mr. Yogesh Modi, Advocate

For the State : Mrs. Kumari Rashmi, A.P.P.

For the Informant : Mr. A.K. Sahani, Advocate

Mr. Ajit Kun

PRESENT

HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY

HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

JUDGMENT

CAV On 06/12/2025 Pronounce On 28/01 /2026

Pronounce On 28/01 /2026

Per- Pradeep Kumar Srivastava, J.

1. We have already heard the arguments of Mr. Yogesh Modi, learned counsel for the sole appellant and learned A.P.P. appearing for the State assisted by Mr. A.K. Sahani, learned counsel for the informant.
2. It is to be mentioned at the very outset that the present appeal was filed by three accused persons, out of them, appellant No.1, Ashok Mukhi and appellant No.3, Sumit Mukhi have died and their appeal has been abated vide order dated

13.08.2025. This appeal is now heard on behalf of the sole surviving appellant, namely, Amit Mukhi.

3. The instant criminal appeal is preferred against the order dated 22.03.2003 passed by learned 5th, Additional Sessions Judge, Bermo at Tenughat in S.T. Case No.89 of 2001, whereby and whereunder the present appellant has been held guilty for the offence under sections 302 read with section 34 of IPC and sentenced to undergo imprisonment for life.

Factual Matrix:-

4. The factual matrix giving rise to this appeal is that on 01.01.2001 at 9:00 pm, the informant, Ramesh Mukhi (P.W.9) returned to his quarter then his wife Anjula Devi (P.W.5) told him that their son, Umesh Mukhi has been assaulted by the appellants in the street. The informant managed first aid of his injured son at CCL Hospital, Jarandih, thereafter, brought to Bokaro General Hospital, Bokaro for further treatment but on 02.01.2001 at about 8:30 am, Umesh Mukhi died in the hospital.
5. On the basis of written report of the informant, Bokaro Thermal P. S. Case No.01 of 2001 was registered for the offence under section 302 read with section 34 of IPC against the accused persons. After completion of investigation, charge-sheet was submitted against all three accused persons, namely, Ashok Mukhi, Amit Mukhi and Sumit Mukhi. The accused

persons have denied the charges leveled against them and claimed to be tried. All the accused persons faced trial and convicted and sentenced as stated above.

6. In the course of trial, altogether 10 witnesses have been examined by the prosecution, namely:-

P.W.1-Bhim Ram

P.W.2- Rajesh Mukhi

P.W.3-Raju Turi

P.W.4-Dr. Ratneshwar Pd. Verma

P.W.5-Anjula Devi

P.W.6-Renu Kumari

P.W.7-Shyam Bihar Singh Dinkar

P.W.8-Ram Lakhan Prasad

P.W.9- Ramesh Mukhi(informant)

P.W.10-S.I. Basant Pathak (I.O.)

7. Apart from oral testimony of the witnesses, following documentary evidence has also been adduced by the prosecution:-

Ext. 1- Post-mortem report

Ext.2.-Inquest R

Ext.3- Formal FIR

Ext.3/1-Endorsement on formal FIR

Ext.4-Written report

Ext.4/1-Signature of Ramesh Mukhi on written report

Ext.4/2-Signature of Shakil Alam on written report

Ext.5- Charge-sheets

Ext.6-Case diary

8. On the other hand, no documentary evidence has been adduced by the defence. However, the defence has also examined altogether six witnesses namely:-

D.W.1-Bhimlal Mandal

D.W.2-Khageshwar Rajak

D.W.3-Md. Idu

D.W.4-Uma Shankar Prasad

D.W.5-Ranjit Singh

D.W.6-Ashok Mukhi(deceased appellant)

Submission on behalf of the Appellant:-

9. Learned counsel for the appellant submits that the appellant has been falsely implicated in this case due to some altercation took place between his father and the deceased, Umesh Mukhi on the occasion of new-year. It is further submitted that neither the informant nor his wife has seen the occurrence rather they are hearsay witnesses. No specific role has been attributed against the appellant, Amit Mukhi. It is further submitted that in the written report lodged by the informant, it is alleged that the occurrence was seen by Nageshwar Bishwakarma, wife of

Madhu Thakur and wife of Doodhnath Dubey but the aforesaid witnesses have not been examined by the prosecution. The witnesses, who were closed relatives and family members of the informant, were all along hearsay witnesses have been projected as eye-witnesses of the occurrence. Surprisingly, these witnesses, P.W. 1, P.W.2, P.W.3 and P.W.5 have also not attributed any specific role against the present appellant showing his involvement in assaulting the deceased. The witnesses have stated about the involvement of the present appellant in a general and omnibus manner. No incriminating materials have been collected and proved against the appellant. Learned trial court has overlooked the aforesaid aspects appearing in the evidence of witnesses and acted upon bald testimony of the witnesses simply because they have named the appellant as perpetrator in the incident of assault to the deceased. Learned trial court has also failed to properly appreciate the evidence of defence witnesses that at the time of occurrence, the deceased was involved in snatching the money from D.W.1, Bhimlal Mandal, therefore, he was chased and assaulted by fists and slaps by the local persons and FIR was lodged after thought against the appellant, his father and brother. The impugned judgment and order of conviction and sentence is based upon conjecture and surmises

and no cogent and reliable evidence is available on record. Therefore, the impugned judgment of conviction and sentence of the appellant is liable to be set aside.

Submission on behalf of State:-

10. On the other hand, learned A.P.P. assisted by learned counsel for the informant defending the impugned judgment of conviction and sentence of the appellant has submitted that learned trial court has very wisely and aptly taken into consideration over all aspects of the case and also appreciated properly the evidence adduced by the prosecution and defence and has rightly recorded the findings of guilt of the appellant along with others. There is no illegality or infirmity in the impugned judgment and order calling for any interference by way of this appeal, which is fit to be dismissed.

11. The sole point for determination in this appeal is “as to whether the impugned judgment of conviction and sentence of the appellant suffers from any error of law and based beyond the weight of evidence available on record, which requires any interference in this appeal?”

Analysis, Reasons and Decision:-

12. We have gone through the record of the case along with impugned judgment and order of conviction and sentence of

the appellant in the light of contentions raised on behalf of the both side.

13. Before delving on merits in connection with above points, we have to take brief resumes of evidence adduced by the parties for proper adjudication of the issues.

14. It appears that altogether 10 witnesses were examined by the prosecution.

P.W.1-Bhim Ram, who is a student of class 10th of Rajendra High School, Jarandih. According to his evidence, on 01.01.2001 at about 8:00 to 8:30 pm, he was standing near the shop of Jogendra, in the meantime, Umesh Mukhi came there and met him along with Jogendra Mukhi and Ashok Mukhi and congratulated for new-year shaking hand with them. He further deposed that Ashok Mukhi taunted to Umesh Mukhi saying that “चोर-चुहार भी आजकल सलाम करता है”. Upon this, Umesh Mukhi replied that uncle “if I would be a thief then how to walk on foot at this time.” Thereafter, Ashok Mukhi slapped to Umesh Mukhi and also assaulted on his leg and attempted to press his neck. Upon intervention of this witness, Umesh Mukhi fled away towards his home and this witness also returned to his house. Thereafter, he came to know that Sumit Mukhi and Amit Mukhi have assaulted to Umesh Mukhi due to which he became unconscious and was admitted

to C.C.L. Hospital, and thereafter brought to Bokaro General Hospital but he died.

In his cross-examination, this witness admits that in his presence at the shop of Yogendra, only Ashok Mukhi assaulted to Umesh Mukhi by slapping for which no medical treatment was given and later on what happened he had not seen.

P.W.2-Rajesh Mukhi is the son of the informant and the brother of the deceased. He has told in general and omnibus manner that on 1st January, 2001 at about 8:00 pm, Ashok Mukhi, Sumit Mukhi and Amit Mukhi had assaulted to his brother, Umesh Mukhi due to which he became unconscious and was brought to C.C.L. Hospital while blood was oozing from his mouth. Thereafter, he was admitted to B.G.C. Hospital thereafter he died. This witness has not claimed his presence at the time of occurrence and no specific overt act has been attributed against any of the accused persons.

In his cross-examination, he admits that Ramesh Mukhi and Anjula Devi are his parents as well as Poonam and Renu are his sister and Bhola Mukhi is his uncle. At the time of interrogation by police, all the persons were present in the quarter. He also admits a tense relationship between his family and the family of accused persons prior to the occurrence.

P.W.3-RajuTuri. According to his evidence on 01.01.2001 at about 8:00 pm, he was standing adjacent to mines quarter along with Umesh @ Babu and they also met with Bhim Ram and shook hand with him. Meanwhile, Ashok Ji told him that “चोर-चुहार से हाथ मिलाता है” and also slapped to Umesh Mukhi. He has further deposed that he along with Umesh went to his house where Umesh complained to his mother about the said incident, then, his mother came out and asked to Ashok Ji as to why he has slapped her son but she was abused in a filthy language. In the meantime, Amit and Sumit also came there and started assaulting to Umesh Mukhi by dashing with the wall catching hold of his neck. Umesh became serious and all accused persons fled away.

In his cross-examination, this witness clearly admits that at the time of occurrence, he met with Umesh Mukhi and he shook hands only with Bhim and Ashok (deceased appellant) was sitting in the shop of Bode. Till the time, he was along with Umesh and Ashok was sitting at the shop of Bode and no other person was present there. The attention has been drawn towards his statement recorded under section 161 of Cr.P.C., wherein such statement has not been given by this witness and suffers from serious material contradiction/omissions.

P.W.4- Dr. Ratneshwar Pd. Verma has conducted autopsy on the dead body of the deceased, Umesh Mukhi aged about 16 years on 03.01.2001 and found following injuries:-

External

(i) Rigor mortis less marks in upper limbs and present lower limbs. Left eye closed, right partially opened. Conjunctive congested. Pupils dilated with closed. Lips opened showing teeth tongue in oral cavity serous discharged at right angle of the mouth hands opened.

Injuries

(i) A diffused contusion 3 ½ " x 2 ½" right side of the scalp over *parieto* temporal surface.

(ii) Ecchymosis 3" x 2 ½" middle of the chest wall on the external area

(iii) Abrasion ½" x ½" medial wall puss of left ankle joint

(iv) Lacerated would 1" x ¼" x skin deep puerperal aperture of the penis with blood stain.

On dissection

(i) There was extravasation of blood in the eye cranial spaces and soft tissues of the scalp under beneath of injuries No.1

(ii) There was tissues fractures on the right parietal bone of about 2 ½ " long

(iii) There was big hematoma in the right frontal parietal area of the head under the subdural spaces.

(iv) Meninges congested and intact the brain was also contused and intact

(v) The vessels were congested and stomach and small intestine contained digested food material fluid and gas.

Opinion

(i) The injuries are ante-mortem caused by hard and blunt object.

(ii) Cause of death: Cardio respiratory failure due to severe head injury and multiple trauma.

(iii) Time elapsed since death till P.M. done less than 36 hours.

This witness has proved the post-mortem report as Ext.1.

In cross-examination, this witness admits that injury No.(i) caused due to fall on a person upon rocky earth with sufficient force.

P.W.5- Anjula Devi, the wife of the informant and the mother of the deceased. According to her evidence on 1st January, 2001 at about 8:30 pm, she was in her house meanwhile her son Umesh entered in the house and told that Ashok Mukhi has assaulted him. She went to the house of Ashok to interrogate about the reasons, then he told “तुम अपने बेटे को बाँस बना के रखा है” and again started assaulting to her son, Umesh putting him close to the wall. Her son fell down on earth sustaining head injuries, then she sent her son to home. Meanwhile, the sons of Ashok Mukhi, namely, Amit Mukhi

and Sumit Mukhi came out from back door and Amit Mukhi pressed slipper of her son due to which, he fell down and they also assaulted to her son by slaps, heel and fists. Meanwhile her both daughters and elders son, Mukesh Mukhi came to rescue her son but Mukesh was also assaulted and they anyhow saved Umesh and brought him to hospital, C.C.L. thereafter B.C.G, hospital but he died.

In her cross-examination, she admits that there were no inimical terms between the deceased and the accused persons prior to this occurrence. She admits that she does not disclose the incident to her neighbour. Her attention was drawn towards her statement recorded under section 161 of Cr.P.C. wherein she has not disclosed before the police about specific overt act of assault given to her son by any of the accused persons. She has denied the suggestion that she has not seen the occurrence and does not know about the real facts that her son was snatching money from Bhimlal along with his two other friends and when Bhimlal raised alarm, several local persons assembled and rushed towards her son for chasing but her son slipped and sustained injuries.

P.W.6-Renu Kumari is the sister of the deceased. According to her evidence on 01.01.2001 at about 8:00 to 8:30 pm, she was sitting in her room meanwhile, Umesh came and

told that Ashok Mukhi has assaulted him. Thereafter, her mother along with her younger brother and one sister went to Ashok to ask as to why he has assaulted her son. Then, Ashok Mukhi started abusing in a filthy language. She further deposed that Ashok caught hold from the jacket of his brother Umesh Mukhi and started assaulting him causing injuries on his mouth and nose and Umesh became unconscious. Thereafter, he was brought to C.C.L., Hospital thereafter B.G.H, hospital, where he died.

In her cross-examination, her attention has been drawn towards her statement under section 161 of Cr.P.C. recorded by the Investigating Officer, where she has not stated that when her mother went to ask Ashok Mukhi as to why he has assaulted her son then Ashok started assaulting her brother by catching hold of his neck by his jacket causing severe injuries to Umesh. She has denied suggestion of the defence that she has given false evidence and has not seen the occurrence.

P.W.7- Shyam Bihari Singh Dinkar is a witness of inquest report and has proved his signature as Ext.2.

P.W.8-Ram Lakhan Prasad is an advocate clerk and formal witness, who has proved formal FIR as Ext.3 and endorsement made on formal FIR as Ext.3/1.

P.W.9- Ramesh Mukhi is the informant of this case. He corroborate the contents of his written report and stated that on 01.01.2001 at about 9:00 pm when he returned his house from his office then he saw his son, Umesh is lying unconscious in house sustaining blooded injuries on his nostrils and lips. His wife disclosed that that Ashok Mukhi, Amit Mukhi and Sumit Mukhi have assaulted his son. Thereafter, Umesh Mukhi was brought to C.C.L, hospital where first-aid was given but injured was referred to B.G.C. hospital where his son died in the next day morning. Thereafter, FIR was registered on the basis of written report (Ext.4) against the three named accused persons.

In his cross-examination, he clearly admits that he is not an eye-witness of the occurrence whatsoever he deposed about the occurrence and involvement of the accused persons as disclosed to him by his wife.

P.W.10- S.I. Basant Pathak is the Investigating Officer. According to his evidence on 02.01.2001 a written report was submitted by the informant on the basis of which, FIR (Ext.3) was registered for the offence under sections 302/34 of IPC. He took charge of investigation and recorded the restatement of the informant, Ramesh Mukhi and other witnesses, Anjula Devi, Sakil Alam, Shyam Bihari Singh in the police station

itself and proceeded to the place of occurrence, where he investigated the place of the occurrence also interrogated with Bhim Ram, Raju Turi, Poonam Kumari, Renu Kumari and Bula Mukhi etc. He also raided the house of the accused persons but could not found their whereabouts and after recording the statement of the witnesses, he inspected the place of occurrence, later on he came to know that the accused persons surrendered before the court. Thereafter, he handed over the further charge of the investigation to S.I. Anil Kumar Singh.

In his cross-examination, this witness admits that witness Anjula Devi (P.W.5) has stated before him that slipper (चप्पल) was pressed on her son then he fell down and then Sumit and Amit started assaulting her son by fists and slaps. This witness further deposed that P.W.3 has not stated before him that he along with Umesh was standing on road and met with Bhim where Ashok told him “ चोर-चुहार से हाथ मिलाता है ” and Ashok slapped to Umesh.

15. On the other hand, the defence has also examined altogether six witnesses.

D.W.1-Bhimlal Mandal. On 01.01.2001, he was going to his residence and reached near mines road, meanwhile, two persons caught hold him and snatched Rs.90 from his pocket

and assaulted him. Upon raising alarm by this witness, 10-12 local youths came from mines colony and caught hold of one of miscreants while others managed to escape. The apprehended miscreant was also assaulted by captors.

In his cross-examination, he admits that the occurrence took place at 8:00 pm, he has not lodged any case for the above incident. He has disclosed the above incident to Ashok Mukhi hence he has come to depose in this case.

D.W.2- Khageshwar Rajak. According to his evidence, on 01.01.2001 at about 7:45 pm, he heard *hulla "chor-chor"* near the house of Uttam Mukhi and also saw some persons were assaulting Umesh Mukhi saying that he has attempted to steal money from Bhimlal Mandal (D.W.1).

D.W.3 Md. Idu has stated that the informant, Ramesh Mukhi and Ashok Mukhi(deceased appellant) are *mamera* and *fufera* brothers and resides as neighbour to each other. He further stated that on 01.01.2001 at about 8:30 pm, he heard *hulla* of *chor-chor* and also saw that some local persons have caught hold of Umesh Mukhi, who has committed theft from one Bhim lal Mandal.

D.W.4- Uma Shankar Prasad is the neighbour of Ramesh Mukhi. He has also stated that Ramesh and Ashok are *mamera* and *fufera* brothers. On 01.01.2001 at about 7:00 pm to

9:30 pm, he was in his quarter, he heard *hulla* of *chor-chor* and came out from his house and he came to know from Bhim Lal that Umesh Mukhi has snatched his money and some persons have assaulted Umesh.

D.W.5-Ranjit Singh has stated that on 01.01.2001 at about 8:00 pm, he heard *hulla* of *chor-chor*. In front of his house, he met Bhimlal Mandal, who told him that some boys had snatched away some money from him. He further stated that somebody was assaulting Umesh Mukhi, many others were present there. Ashok Mukhi came there and told the persons present there to take Umesh Mukhi to hospital. Thereafter Umesh Mukhi was brought to the hospital but he died.

D.W.6-Ashok Mukhi, one of the accused persons. According to his evidence, he and Ramesh Mukhi (informant) are *mamera* and *fufera* brothers of each other and Ramesh is Bhagina of his father. He also admits the strain relationship with Ramesh Mukhi from lifetime of his father. He further deposed that on 01.01.2001 at about 8:00 pm, he heard *hulla chor-chor* and when he went to the spot where Khageshwar, Idu, Uma and Ranjeet Singh were present, who told that Umesh and another boy was snatching money from Bhimlal. He also inquired about Bhimlal Mandal, who told that Umesh has snatched his money and two other boys have managed

there escape but Umesh Mukhi slipped and fell down and was caught by the local persons and assaulted. This witness further deposed that he has falsely been implicated in this case.

There is nothing in his cross-examination to rebut his aforesaid testimony. Even he has not been suggested by the prosecution that the informant's wife had interrogated with him as to why he has assaulted her son and again this witness along with his sons, namely, Amit and Sumit assaulted to the deceased rather these facts are suggested to deny.

16. We have given thoughtful consideration to the testimony of ocular witnesses examined by the prosecution and the defence. The sum and substance which emerges categorically depict that it was Umesh Mukhi (deceased), who for the first time met with his friends along with Ashok Mukhi, who is uncle in relation. The deceased was shaking hand with his friends then Ashok Mukhi commented “चोर-चुहार से हाथ मिलाता है” and also slapped. This incident has been corroborated by the evidence of P.W.1, Bhim Ram and P.W.3, Raju Turi, who happens to be the friends of the deceased. Admittedly the other witnesses of facts, namely, mother P.W.5 and father, P.W.9, brother, P.W.2 and sister, P.W.6 of the deceased, all are hearsay witnesses. The role of present appellant was not stated by the mother of the deceased, Anjula Devi (P.W.5) to her own

husband. Accordingly, the facts deposed by her during trial does not find place in the written report lodged by the informant, even the testimony of these interested witnesses clearly indicates the first phase of occurrence, which took place between Ashok Mukhi and the deceased, where the deceased was slapped. The second phase of the occurrence as projected by the prosecution regarding the complaint to the mother of the deceased about the assault given by Ashok Mukhi without any reason and thereafter coming out of the deceased along with his mother, who interrogated with the accused, Ashok Mukhi as to why he has slapped and assaulted her son and further assault was given by Amit Mukhi and Sumit Mukhi appears to be material improvement in their evidence and these facts are also omitted in their statement under section 161 of Cr.P.C. recorded by the Investigating Officer, such type of material omissions amount to contradiction. Therefore, we find that no specific overt act has been attributed against the present appellant, Amit Mukhi showing his participation in the alleged occurrence of assault meted with the deceased. It further transpires that altogether six defence witnesses have been examined, who have narrated a story of theft by the deceased at the relevant time and in course of chase, he fell down and sustained injuries. The initial version contained in

the written report of the informant also finds mention of the facts that the main accused of this case, Ashok Mukhi told the deceased “ चोर-चुहार हाथ मिलाता है. This also depicts a story of commission of theft by the deceased. Therefore, overall factual spectrum leads to irresistible inference that the role attributed to the present appellant in commission of murder of the deceased is absolutely doubtful, there is no concrete evidence showing culpability of the appellant for the offence of murder. We further find that learned trial court has failed to properly appreciate the testimony of the witnesses in right perspective and intrinsic value and veracity of the witnesses testing in the light of contradictions and omissions appearing in their evidence and arrived at wrong conclusion while recording the conviction of the appellant.

17. In view of the aforesaid discussion and reasons, we find substance in the point of arguments raised on behalf of the appellant and merits in this appeal. Therefore, the impugned judgment and order of conviction and sentence of the appellant passed by learned 5th, Additional Sessions Judge, Bermo at Tenughat in S.T. Case No.89 of 2001 is hereby set aside. This appeal is **allowed**.

18. The appellant is on bail, hence, he is discharged from liability of bail bonds. The sureties are also discharged.

19. Pending I.A(s), if any, is also disposed of accordingly.
20. Let a copy of this judgment along with Trial Court Records be sent back to the concerned trial court for information and needful.

(Rongon Mukhopadhyay, J.)

(Pradeep Kumar Srivastava, J.)

Jharkhand High Court, at Ranchi

Date: 28/01 /2026

Pappu/- N.A.F.R.

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