

**IN THE HIGH COURT OF JHARKHAND AT RANCHI
Criminal Appeal (D.B.) No. 589 of 2019**

[Against the Judgment of conviction dated 27.05.2019 and Order of sentence dated 28.05.2019 passed by learned Additional Sessions Judge-I-cum-Special Judge, POCSO-cum-Children Court, Dhanbad, in G.R. No. 4195 of 2017]

Vivekanand Kumar @ Vivek Kumar, Son of Banaras Chouhan, Resident of Shiv Dangal, P.O. & P.S. – Nirsa, District – Dhanbad, Jharkhand.

... .. **Appellant**

Versus

The State of Jharkhand **Respondent**

.....

For the Appellant : Mr. Shivam Utkarsh Sahay, Advocate

For the State : Mr. Pankaj Kumar, P.P.

For the Informant : Mr. Pradeep Kumar Deomani, Advocate

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P R E S E N T

**HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY
HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA**

JUDGMENT

C.A.V. on 04.05.2026 Pronounced on 18.06.2026

Per Pradeep Kumar Srivastava, J.

- 1.** Heard Mr. Shivam Utkarsh Sahay, learned counsel for the appellant and Mr. Pankaj Kumar, learned P.P. as well as Mr. Pradeep Kumar Deomani, learned counsel for the informant.
- 2.** The instant criminal appeal is preferred by above named sole appellant for setting aside his conviction and sentence dated 27.05.2019 and 28.05.2019 respectively passed by learned Additional Sessions Judge-I-cum-Special Judge, POCSO-cum-Children Court, Dhanbad in G.R. No. 4195 of 2017 (arising out of Nirsa P.S. Case No. 253 of 2017), whereby and

whereunder, the appellant (Child in conflict with law) has been held guilty for the offence under Section 302 of the I.P.C. and in view of Section 21 of the Juvenile Justice (Care & Protection of Children) Act, 2015 has been awarded rigorous imprisonment for 14 years and fine of Rs. 30,000/- with default stipulation.

FACTUAL MATRIX

3. The factual matrix giving rise to this appeal is that one Radhey Lal Barnwal was murdered on 30/31.10.2017 by the present appellant, who was working as servant in the shop of the deceased Radhey Lal Barnwal. It is alleged that informant Pawan Kumar Barnwal, son of the deceased received information in the morning on 31.10.2017 about the said occurrence and he along with his cousin Raj Kumar Barnwal and some local people went to the shop of his father and open the shutter of the shop, then found the key of the motorcycle of his father was kept in his bag and motorcycle was standing outside the shop and milk bottle and water bottle also kept in a bag. The informant also noticed that his father was lying on earth. It is alleged that the accused Vivekanand, aged about 20 years was working in the shop of his father from last 20-25 days. It is further alleged by the informant that the local shopkeepers

have seen Vivekanand along with his father Banaras Chouhan was fleeing from the shop of deceased and after apprehending him handed over to police.

4. On the basis of above written report of the informant, Pawan Kumar Barnwal, FIR being Nirsa P.S. Case No. 253 of 2017 was registered for the offence under Section 302 of the I.P.C. against unknown and after completion of investigation charge sheet was submitted against the present appellant, who happened to be Child in Conflict with law for the offence under Section 302 of the I.P.C.
5. The Principal Magistrate and members of Juvenile Justice Board, Dhanbad, vide order dated 06.04.2018 conducted preliminary enquiry under Section 18 of the Juvenile Justice (Care and Protection of Children) Act, 2015 found that the alleged offence is heinous offence and the age of the child in conflict with law is above 16 years, but less than 18 years and there is need of the trial of the said child as an adult. Accordingly, the case record was sent to the Children Court for trial. The child in conflict with law denied the charge leveled against him and claimed to be tried.
6. In course of trial, altogether 07 witnesses were examined by the prosecution.

- P.W.-1 : Kamal Kumar Rawani;
P.W.-2 : Mukesh Kumar Mandal;
P.W.-3 : Pawan Kumar Barnwal;
P.W.-4 : Raj Kumar Barnwal @ Pappu;
P.W.-5 : Binod Barnwal;
P.W.-6 : Ajit Kumar Lakra;
P.W.-7 : Dr. J. Srinivas Rao;

Apart from oral testimony of witnesses, following documentary evidences have been adduced:-

- Exhibit-1 : Signature of P.W.-1 on the search-cum-seizure list.
Exhibit-2 : Written report.
Exhibit-2/1 : Case registration endorsement on written report.
Exhibit-3 : Signature of P.W.-5 on the seizure list.
Exhibit-4 : Formal computerized F.I.R.
Exhibit-5 & 6 : Two seizure lists.
Exhibit-7 : F.S.L. Report.
Exhibit-8 : L. No. 2292 dated 26.09.2018 of the Director, State Forensic Science Laboratory, Ranchi.
Exhibit-9 : Post-mortem report.
Exhibit-10 : Computerized retail invoice / bill of Lenovo Mobile.

- Mat. Exhibit-I : Iron rod.
- Mat. Exhibit-II : Small box of tin.
- Mat. Exhibit-III : Money box with money Rs. 3370/-.
- Mat. Exhibit-IV : Two mobiles.
- Mat. Exhibit-V : Coins inside polythene bag.
- Mat. Exhibit-VI : One half pant of Katha colour.
- Mat. Exhibit-VII : One ganji.
- Mat. Exhibit-VIII : Piece of gauge.
- Mat. Exhibit-IX : Two piece of gauge.
- Mat. Exhibit-X : Piece of Bora.
- Mat. Exhibit-XI : Two SIMs.

- 7.** The learned trial court, after scrutinizing the evidence available on record held the appellant guilty for the offence under Section 302 of the I.P.C. and sentenced him, as stated above.
- 8.** Learned counsel for the appellant has submitted that there is no eye-witness of the occurrence and entire prosecution case hinges on circumstantial evidence alone. There are no circumstances of conclusive nature leading to the exclusive inference about guilt of the appellant beyond all reasonable doubt. The involvement of the present appellant in the instant

case was shown on basis of suspicion alone and said suspicion never culminated into legal proof against the appellant.

- 9.** In alternative, it is submitted that the appellant is in custody since 02.11.2017 and up till now has undergone more than 08 years' custody, out of 14 years R.I. awarded to him. It is further submitted that it was first offence of the appellant and he was never convicted for any other offence and as per the order of the learned trial court, the appellant has to undergo the skill training and reformative training in the Observation Home during custody period, which has successfully completed. Further imprisonment will ruin the golden period of life of the appellant. Therefore, the sentence of the appellant may be reduced to the imprisonment already undergone by him.
- 10.** On the other hand, learned P.P. appearing for the State assisted by learned counsel for the informant has controverted the aforesaid points of argument raised on behalf of the appellant and submitted that the heinous crime of murder has been committed by present appellant while he was working as a servant in the shop of deceased just from 20-25 days prior to the occurrence. Sufficient incriminating articles were

seized from his possession on the basis of confession of the appellant. The appellant has also made extra-judicial confession before several shopkeepers regarding commission of murder of the deceased. Therefore, there is no merit in this appeal, which is fit to be dismissed.

- 11.** So far quantum of sentence is concerned, the learned trial court has awarded a very moderate punishment to the appellant considering his age and antecedent, which also does not require any interference or any leniency in the matter of sentence for such a heinous crime.
- 12.** We have gone through the record of the case along with impugned judgment and order in the light of contentions raised on behalf of both side.
- 13.** The only point for determination in this appeal is that as to whether the impugned judgment of conviction and order of sentence of appellant suffers from any serious error of law, calling for any interference in this appeal or not?
- 14.** Before adverting to adjudicate on the above point, we have to take brief resume of oral as well as documentary evidence adduced during trial.
- 15. P.W.-1 Kamal Kumar Rawani :** According to his evidence, he has simply identified his signature on

seizure list, which was prepared by the police on 31.10.2017 at police station, marked as Exhibit-1. He has expressed his complete ignorance as to how and under what circumstances, Radhey Lal Barnwal was murdered, although he was a very prestigious person in the society. He has seen the dead body of the deceased. He also states that one flour mill was being run by Radhey Lal Barnwal and in his shop itself, his murder was committed. He does not know that any servant was working in his shop. He has been declared hostile.

16. P.W.-2 Mukesh Kumar Mandal is also a businessman and is a hearsay witness. According to his evidence, he was going to bring milk then some persons were talking in the way that Radhey Lal Barnwal is traceless since night. When he returned after taking milk and reached near the shop of Radhey Lal Barnwal, then he saw a crowd of several persons, who were shouting that Radhey Lal Barnwal has been murdered. Later on, he came to know that the servant of Radhey Lal Barnwal working in his flour mill has killed him and fled away. This witness has also been declared hostile by prosecution.

17. P.W.-3 Pawan Kumar Barnwal is the informant of this case. He has corroborated the contents of his

written report. According to his evidence, in the night of 30.10.2017, his father was murdered by 4-5 miscreants. At that time, he was at Kolkata. He received telephonic call from his brother Santosh Kumar Barnwal, who was at Pune, that father is traceless since night and Raj Kumar Barnwal @ Pappu and Binod Barnwal are searching his father since night. Thereafter, this witness talked with his brother Binod Barnwal and Raj Kumar Barnwal @ Pappu, who told him to come soon, some untoward thing has happened. He had a taxi and proceeded from Kolkata to Dhanbad, in the meantime, he also received telephonic call from friend of his father namely, Dev Narayan Tanti that his father has been killed by staff of the shop, whose name was Vivekanand Chouhan. It has also been mentioned that local persons apprehended Vivekanand Chouhan and handed over to police. He straight forward came to the Nirsa Police Station, where dead body of his father was brought and sent for post-mortem. He went to mortuary ward and saw the dead body of his father, his both eyes has become black and there were several cut injuries present on the different parts of the body like chest and hand. He has further deposed that written report was scribed by Raj Kumar Barnwal

and on advice of S.I. S.N. Singh of Nirsa Police Station, the name of other four persons was deleted from the F.I.R. and the age of accused was suggested to be mentioned as 14 years in place of 20 years.

Admittedly, this witness is not an eye-witness of the occurrence, rather everything has been heard by him.

In his cross-examination, he has expressed his suspicion in connection with murder of his father against Dev Narayan Tanti, Parmeshwar Yadav, Lalan Sharma and his in-laws family members namely, Anjali Barnwal, Amit Barnwal and his maternal uncle, father-in-law, Binod Barnwal etc.

In his cross-examination also, his entire evidence revolves only suspicion. He has proved his written report as Exhibit-2. He also claims that his father was very healthy bodied person and this tender year boy alone could not have murdered him. There must be hand of 4-5 persons.

18. P.W.-4 Raj Kumar Barnwal @ Pappu is cousin of the informant. This witness has also stated about knowledge of occurrence from Santosh Kumar Barnwal, son of the deceased. He went to the shop of Radhey Lal Barnwal at about 7:30 in the morning at

Mugma More and found his dead body lying on the earth. His motorcycle was outside the shop, key was also put in the motorcycle and in the bag, there was water bottle and milk bottle. He has disclosed nothing about the involvement of any person or any suspicion against any miscreants. This witness also has been declared hostile by the prosecution.

19. P.W.-5 Binod Burnwal is also hearsay witness, who came to know that his uncle Radhey Lal Barnwal has been murdered at his flour mill shop. He also heard that his own staff has killed him, but he does not know the name of staff and could not identified him. He has simply proved his signature on seizure list and failed to state that what was recovered. This witness has also been declared hostile by the prosecution.

20. P.W.-6 Ajit Kumar Lakra is the Investigating Officer in this case. According to his evidence, on 30.10.2017, he took the charge of investigation of Nirsa P.S. Case No. 253 of 2017. He prepared the inquest report of deceased Radhey Lal Barnwal and also inspected the place of occurrence. The place of occurrence of this case is situated within jurisdiction of Nirsa Police Station at a distance of 3 Km towards West at Mugma More, Zila Parishad Shop No. 4, where dead body of informant's father was found in

his shop. There is iron shutter in the shop and adjacent to his shop, there are several shops also. He has recorded the statement of witnesses Raj Kumar Barnwal @ Pappu and Binod Barnwal, re-statement of informant and other witnesses, who supported the occurrence. He has also seized blood stained iron rod. Aluminum money box, 50 Kg. wheat bag stained with blood. He collected some blood of the deceased from the floor in gauge cotton and also seized two SIM cards one of Docomo and another is of JIO along with mobile set. He has further deposed that local persons have apprehended the accused Vivekanand Kumar @ Vivek Kumar and handed over at police station, who was formally arrested and his statement was recorded. From the personal search of the accused, Rs. 3370/- cash, Lenovo Mobile, some coins, kept in polyethene, amounting to Rs. 1411/- and his wearing cloths stained with blood i.e. white ganji and half pant with blood spots were seized in presence of witnesses Manoj Kumar Singh @ Bhola Singh and Kamal Rawani. He has further deposed that the statement of accused Vivekanand was taken by member of Child Line, Dhanbad, Sri Niraj Kumar Dey and Farid Allam. He also got medical examination of the accused and obtained post-mortem report of the deceased. The

seized materials were also sent to FSL Ranchi for chemical examination as per order of the Court. After collecting sufficient evidence constituting the offence under Section 302 of the I.P.C. against the Vivekanand Kumar @ Vivek Kumar, he submitted charge sheet against him.

The attention of this witness has been drawn against the statement of witness Kamal Kumar Rawani and Mukesh Kumar Mandal, who have made statement like hearsay witness before. Witness Raj Kumar Barnwal @ Pappu has stated to this witness that since 20-25 days prior to occurrence Vivekanand Chouhan was working in the shop of his uncle Radhe Lal Barnwal.

In his cross-examination, this witness admits that seizure list was prepared by the officer-in-charge before receiving the charge of investigation of this case. In his cross-examination, he admits that clothes of accused as banyan and half pant were not seized by police.

He has denied the suggestion of defence that the clothes of accused was blood stained of his own blood due to assault given by public while producing before police. He also admits that production-cum-seizure list was not prepared.

In the course of investigation conducted by him, none of the witnesses have claimed to see the accused while committing murder of the deceased. The accused Vivekanand Kumar was handed over to police on the basis of suspicion except this fact, nothing was revealed during investigation. He also admits that the seized materials were not sealed at the place of occurrence. He has not examined finger print on the iron rod seized in this case. He has also not obtained the call detailed report from SIM cards seized in this case. He can't say in whose name the SIM cards were issued. He further admits that seized materials were sent to FSL on 23.01.2018. He came to know from witness Raj Kumar Barnwal that accused Vivekanand Kumar was working in the shop of the deceased.

He has denied the suggestion of defence that investigation is absolutely defective and he has conducted table work and without any evidence submitted charge sheet against the accused.

21. P.W.-7 Dr. J. Srinivas Rao, an Associate Professor in the Department of FMT, PMCH, Seraidhela, Dhanbad has conducted post mortem on 31.10.2017 at 1:45 P.M. and found following injuries:

(I) External:-

(i) Lacerated wound of 4" x 2" x cranial cavity deep

present over top and right back of head.

- (ii) Laceration 1" x ¼" x Scalp deep over back of the head.
- (iii) Laceration 1.5" x 0.5" x Bone deep over left top of the head.
- (iv) Laceration 1.5" x 0.5" x Cranial Cavity deep over left side forehead.
- (v) Contusion of both size upper and lower eye lids.

(II) Dissection of head, chest and abdomen,
following injuries were noted:-

- (i) Laceration of fronto right temporo parietal and occipital scalp.
 - (ii) Contusion of fronto temporo parietal and occipital scalp.
 - (iii) Depressed communicated fracture of fronto temporo parietal and extended to occipital bone of skull.
 - (iv) Laceration of meninges.
 - (v) Laceration contusion of whole brain.
 - (vi) Fracture ribs posteriorly 3-10 of right side.
 - (vii) Contusion of lower lobe of right lungs.
- (III) Stomach contained about 20 gm. Pasty material.**

(IV) Opinion:-

- (i) Injuries noted above were antemortem and caused by hard and blunt objects.
- (ii) Death is due to head injury.
- (iii) Times since death 12 hours to 18 hours (approximately) from the time of post mortem examination.

This witness has proved the post mortem report as Exhibit-9.

22. On the other hand, no oral or documentary evidence has been adduced by the defence, but in his statement under Section 313 of Cr.P.C. the accused appellant has admitted that on the relevant date of occurrence, he was working as a servant in the shop of deceased, but he has disclosed nothing as to how the stolen mobile phone of the deceased came into his possession along with money box and currency notes as well as coins. He has pleaded simply innocence.

23. From the aforesaid discussion of evidence available on record, it is crystal clear that the present appellant was working in the shop of deceased Radhey Lal Barnwal on the date of occurrence. It is also proved that he was apprehended while escaping from the shop and local persons and handed over to the police.

This fact has also been corroborated by the evidence of I.O. It is also proved by the I.O. that a purse containing Rs. 3370/-, out of them one note of Rs. 2,000/- denomination, one currency note of Rs. 500/- denomination, eight currency notes of Rs. 100/- denomination and seven notes of Rs. 10/- denomination was recovered from Jeans pocket of appellant Vivekanand Kumar @ Vivek Kumar. Simultaneously, a bag contained Lenevo mobile without SIM bearing IMEI No. 866225029980915 and 866225029980923 and coin of Rs. 1411/- kept in a polythene bag and his white half ganji containing stained with dry blood drop and half Kathha colour pant stained with dry blood drop were seized from the possession of appellant in presence of witnesses Manoj Kumar Singh and Kamal Rawani, who have also proved their signature on the seizure list. Therefore, the seizure of the above things which has also been proved during trial are concrete incriminating materials showing the involvement of the appellant in the alleged offence of murder. He has offered no valid explanation as to why and under what circumstances, he left the shop while his master was already present in the shop. He has also not offered any explanation that on that day, he has not worked in the shop. It also transpired that mobile phone

recovered from the possession of the appellant was issued in the name of informant Pawan Kumar Barnwal and being used by his father Radhey Lal Barnwal (deceased). The blood stained rod and piece of jute bag were also found stained with blood of the deceased. Above incriminating circumstances points single inference about guilt of the present appellant and there is no one else, who has committed murder of the deceased.

- 24.** In view of the above discussion and reasons, we are of the definite opinion that the learned trial court has passed well-considered judgment while recording the finding of guilt of the appellant. We find no illegality or infirmity in the impugned judgment of conviction and sentence of the appellant and no error of law vitiating the conclusion of the learned trial court, calling for any interference in this appeal.
- 25.** So far sentence passed against the appellant is concerned, it appears that it was first offence of the appellant and on the date of occurrence, he was in between 16-18 years and a child in conflict with law. No previous conviction of the appellant was brought on record by the prosecution and even at the appellate stage, nothing has been pointed out by the learned public prosecutor in this regard.

- 26.** We further find that the appellant has already undergone more than half of the sentence awarded to him and his bright future prospect has almost ruined and further detention in custody, his golden life time will be vanished.
- 27.** It is also obvious from the impugned judgment that there was direction to the authority to impart skill training and reformation education to the appellant, as such, in the aforesaid period of detention, he has been imparting sufficient training for being self-dependent and no adverse comments regarding his conduct and behaviour in the jail is brought to notice of this court. Therefore, considering the reformatory theory of punishment particularly in case of a child in conflict in law, we are of the considered view that the appellant deserves reduction of sentence to the extent of period already undergone instead of undergoing 14 years as awarded by the learned trial court.
- 28.** In view of the above, this appeal is **dismissed** on merits with modification in sentence of the appellant to the extent mentioned above.
- 29.** Appellant is directed to be released forthwith, if not involved in any other case.
- 30.** Pending I.A., if any, stand disposed of.

31. Let a copy of this judgment along with trial court record be sent back to the court concerned for information and needful.

(Rongon Mukhopadhyay, J.)

(Pradeep Kumar Srivastava, J.)

Jharkhand High Court, Ranchi

Dated, the 18th June, 2026.

Sunil / **N.A.F.R.**

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