

(2004) 03 JH CK 0002

Jharkhand High Court

Case No: Criminal Appeal (DB) No. 220 of 1999

Hiralal Munda

APPELLANT

Vs

State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision: March 24, 2004

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 161
- Penal Code, 1860 (IPC) - Section 302

Citation: (2005) 2 JCR 539

Hon'ble Judges: S.J. Mukhopadhaya, J; Lakshman Uraon, J

Bench: Division Bench

Advocate: Kameshwar Prasad, for the Appellant; R.P. Gupta, APP, for the Respondent

Final Decision: Dismissed

Judgement

Lakshman Uraon, J.

The sole appellant has preferred this appeal against the judgment and order of conviction and sentence dated 21.6.1999 and 23.6.1999 respectively, passed by the learned 3rd Additional Sessions Judge, Hazaribagh, in Sessions Trial No. 305 of 1995, whereby and where- under, he has been convicted u/s 302 of the Indian Penal Code and sentenced to undergo life imprisonment.

2. Informant Ramesh Prasad (PW 2) was at his shop, situated in his own house at Village-Sukarigarha (Laari), Police Station-Ramgarh, in his business premises. On that day i.e., 11.1.1995 at 11.15 a.m. he was informed by his cousin brother Ranjit Prasad (PW 9) that his elder brother Rabindra Prasad was murdered at Sauradih by this appellant Hira Lal Munda. He along with his younger brother Umesh Prasad (PW 1) went to village Sauradih where they found the dead body of his elder brother Rabindra Prasad in front of the house of Maha karmali. At that place Gulia Devi (PW 4), Panko Devi (PW 5), Pyaso Devi (PW 8) and Bhano alias Pravatia Devi (PW 7) were also present, who informed that while Rabindra Prasad (deceased) was driving the

motorcycle, carrying appellant Hira Lal Munda, on the back seat and reached near the house of Gansu Karmkar at Village-Sauradih, appellant Hira Lal Munda pushed Rabindra Prasad from the motorcycle, who fell down. Appellant tried to catch hold of him but raising alarm to save him, the deceased started fleeing away towards the house of Maha Karmali, on being chased by this appellant. In front of the house of Maha Karmali, on road deceased was caught hold of, who fell down. Thereafter, appellant stabbed him on his chest. Injured Rabindra Prasad also cried. Hearing his cry, many persons assembled there. Kirti Karmali (PW 6) on demand gave water to the injured and thereafter, injured succumbed to his injury. The motorcycle of Rabindra Prasad and hawai chhappal of the accused was found fallen at a distance of 30 yards towards north-west from the dead body near the house of Gansu Karmali. The cause of the alleged occurrence, as disclosed by the informant, is that the appellant Hira Lal Munda had borrowed money from Rabindra Prasad. Rabindra Prasad was demanding repayment of that advance loan which caused annoyance to the appellant, who committed this ghastly act, causing murder only to get rid of the repayment of the loan, advanced to him by the deceased.

3. After the alleged occurrence, the Investigating Officer, S.I. Raj Kapoor (PW 15), who is Incharge of Ramgarh Project Out-Post, on hearing the rumour, proceeded for Village-Sauradih along with other police personnel and recorded the fardbeyan of the informant Ramesh Prasad on 11.1.1995 at 11.15 a.m. On that basis a formal First Information Report (Ext. 6) was drawn up and charge sheet was submitted.

4. The prosecution examined altogether eighteen witnesses to substantiate the charges, levelled against this appellant. PW 1 Umesh Prasad and PW 2 Ramesh Prasad, both brothers of the deceased, are hearsay witnesses, who came to know from the villager Ranjeet Prasad (PW 9), who himself is a hearsay witness, who came to know when he heard talks of the persons, assembled at Chitarpur Bus Stand, where he had gone. PW 3 Pancham Sao and PW 3(A) Chandradeo Sao are the independent eye-witnesses. PW 4 Gulia Devi, PW 5 Panko Devi, PW 6 Kirti Karmali, PW 7 Parvatia Devi and PW 8 Pyaso Devi, were present at the place of occurrence, are the eye-witnesses, before whom the deceased Rabindra Prasad also informed that he was stabbed by this appellant Hira Lal Munda. Although Kirti Karmali (PW 6) gave water to the deceased but all the witnesses, who are females of the village and independent witnesses, have not supported the prosecution case in course of their evidence in Court and hence they have been declared hostile by the prosecution. PW 10 Dr. Niranjana Minj conducted the post-mortem examination on the dead body of Rabindra Prasad. PW 11 Manjoor Khan is a hearsay witness, who has signed on the inquest report, which was prepared in his presence. PW 12 Abhimanyu Tiwary is also a hearsay witness, in whose presence motorcycle of the deceased and hawai chhappal of the appellant were seized from the place of occurrence and seizure list was prepared on which he signed. PW 13 Ram Lagan Sah is another witness in whose presence inquest report was prepared on which he signed. PW 14 Rameshwar Thakur is also a seizure list witness, who has signed on the seizure list.

PW 15 Raj Kapoor is the Investigating Officer of this case. PW 16 Moti Ram, a formal witness, has proved the formal First Information Report. PW 17 Dinesh Prasad Singh, constable, has produced the chhura recovered from the well, alleged to have been used by the appellant in stabbing the deceased. PW 18 Baleshwar Sah has proved the confessional statement of the appellant, recorded by the police.

5. The learned Court below relied the evidence of PW 3 and PW 3(A), corroborated by the evidence of the doctor (PW 10) as also the objective finding i.e., inquest report, seizure list and the recovery of knife on the confession made by this appellant, although recorded by the police which is inadmissible but the hostile witnesses i.e., PWs 4, 5, 6, 7 and 8, who are eye-witnesses, in course of investigation u/s 161 Cr PC, in whose presence the deceased also disclosed the name of the appellant as assailant, was also corroborated by the I.O. (PW 15) before whom attention of the statements, recorded by him of the hostile witnesses were drawn. The learned Court below relied these evidence and, convicted the appellant and sentenced him to undergo rigorous imprisonment for life for the offence, punishable u/s 302 of the Indian Penal Code.

6. Challenging the judgment and order of conviction and sentence, passed by the learned Court below, learned counsel for the appellant has submitted that PW 3 and PW 3(A), namely, Pancham and Chandradeo, are planted witnesses, who have been introduced subsequently by the prosecution as eye-witnesses. The witnesses who were present and claimed themselves to be eyewitnesses i.e., PWs 4, 5, 6, 7 and 8, have not supported the prosecution case, who have been declared hostile by the prosecution.

7. The seizure list in respect of the recovered knife does not contain any blood on it. There is no evidence that the knife recovered from the well was used by the appellant in stabbing Rabindra Prasad and has relied upon a case, reported in Pulukuri Kottaya and Ors. v. Emperor AIR 1947 PC 67 wherein, it has been held that "it is fallacious to treat "fact discovered" within the section as equivalent to the object produced. The fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given, must relate distinctly to this fact. Information as to past user, or the past history of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that. "I will produce a knife concealed in a roof of my house" does not lead to the discovery of the knife, knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added "with which I stabbed A" these words are inadmissible since they do not relate to the recovery of the knife in which house of the informant". The learned counsel relying the authority referred to above has submitted that the appellant was taken into police remand and his confessional

statement was recorded by the I.O. (PW 15) on 19.11.1995 at 15.00 hours is inadmissible in evidence. However, the confession made by this appellant which led towards recovery of the knife thrown into the well, which was recovered by chaukidar Ragho Karmali and Narhky Ghasi have not been examined by the prosecution. The accused/appellant was taken into custody and his confessional statement was recorded while in custody. Hence the entire confessional statement leading towards recovery can be rejected on this point, Learned counsel for the appellant on this point has further replied a case, reported in [Abdul Sattar Vs. Union Territory, Chandigarh](#),

8. Learned counsel for the appellant has further submitted that the alleged dying declaration made by the injured (deceased Rabindra Prasad) in the facts and circumstances of the case is inadmissible in evidence and has relied a case reported in [Ram Nath Madhoprasad and Others Vs. State of Madhya Pradesh](#), It has also been submitted that there is delay in lodging the First Information Report, which has given enough opportunity to procure chance witnesses i.e., PW 3 and PW 3(A) to be eye-witnesses. The delay in lodging the FIR has created doubt in the prosecution case, as the persons, who were present and claimed to be the eye-witnesses did not support the prosecution, these chance witnesses at a belated stage have been managed by the I.O. On this point the learned counsel for the appellant has relied the case, reported in [Ganesh Bhavan Patel and Another Vs. State of Maharashtra](#), : [Ishwar Singh Vs. State of U.P.](#), Anil Rai v. State of Bihar 2001 (3) E CC 329 (SC) and Baun Yadav etc. etc. v. State of Bihar 2001 (3) ECC 9. On these grounds it has been submitted that the appellant deserves benefit of doubt for his acquittal.

9. Learned A.P.P. refuting the argument advanced on behalf of the appellant has submitted that although PWs 4, 5, 6, 7 and 8 are the village independent female witnesses who had seen the alleged manner of occurrence and had stated in their statements u/s 161, Cr PC before the I.O. (PW 15) have retracted their entire statement and have turned hostile. But the I.O. (PW 15) in course of his evidence has stated that all the witnesses, declared hostile, had claimed themselves to be the eye-witnesses and had fully supported the case of the prosecution stating that after chasing Rabindra Prasad, this appellant stabbed with chhura on his chest and thereafter, taking chhura in his hand, fled away. All these witnesses went to Rabindra Prasad, who was given water by Most. Kirti Karmali (PW 6) and thereafter, he died. All these witnesses have also informed the informant Ramesh Prasad (PW 2) that this appellant stabbed with chhura on the chest of Rabindra Prasad, who ultimately succumbed to his injury. PW 3 Pancham Sao and PW 3 (A) Chandradeo Singh are the Independent village witnesses, who have supported the prosecution case as eye-witnesses. The ocular evidence was corroborated by PW 10 Dr. N. Minj. The appellant was taken into police remand and he made his confessional statement, which was recorded by the I.O., led towards the recovery of the knife which he had thrown into a well. No one was knowing that a knife is there in the well. With the help of two chaukidars on the statement of this appellant that knife

was brought out of the well. Hence, this part of recovery is admissible in evidence. As the knife itself was thrown into the well, having water up to chest deep, no question of blood stain to be present on it arises. There is no delay in lodging the FIR as one chaukidar went to the police station and informed that Rabindra Prasad was murdered at Village Sauradih. The informant and his brother PW 1 and 2 rushed there and prior to their arrival, PW 3 and PW 3(A) were also there. They informed that the deceased made statement before them that this appellant stabbed him on his chest with knife. This part of dying declaration corroborated by the hostile witnesses in course of their statements u/s 161 Cr PC was affirmed by the I.O. (PW 15) in course of his evidence in Court. The learned Court below has considered all these aspects and relied the evidence of PW 3 and PW 3(A) to be trustworthy, whose evidence also finds corroborated by Dr. N. Minj (PW 10) has rightly convicted and sentenced the appellant to undergo rigorous imprisonment for life for causing murder of Rabindra Prasad.

10. In the present case, the deceased Rabindra Prasad and this appellant Hira Lal Munda were known to each other, belonging to the same village, Deceased was employed in CCL, Rajrappa Project, as Welder Grade II. He used to attend his duty by going from his village home Sukargarh (Laari) on motorcycle bearing Registration No. BEN 5360. He had advanced friendly loan to the appellant. On demand it annoyed the appellant. While going on duty, carrying this appellant on the back seat of the motorcycle Rabindra Prasad was stabbed. PW 3 Pancham Sao of Village-Laari was going to sell rings etc. at 8.00 a.m. on that day. When he reached near Saurdih pond, he saw this appellant Hira Lal Munda running away taking a blood stained knife in his hand. He saw a number of persons gathered in front of the house of Maha Karmali. He saw his villager Rabindra Prasad fallen down, having bleeding injury. He took his head on his lap and asked as to who injured him, to which the injured replied that it was Hira Lal Munda, who stabbed. At that place PW 4 Gulia Devi, PW 5 Panko Devi, PW 6 Most. Kirti Karmali, PW 7 Bhano alias Parvatia Devi and PW 8 Pyaso Devi were present, who informed him that Hira Lal Munda was on the back seat of the motorcycle, driven by Rabindra Prasad. Near the house of Gansu Karmli, Hira Lal Munda pushed down Rabindra Prasad and chased him having chhura in his hand. Near the house of Maha karmali, Rabindra Prasad was caught and stabbed with chhura on his chest. At the spot, motorcycle of the deceased and hawai chapped of the appellant were fallen down. PW 3/A Chandradeo Singh of another village, namely, Sarh, was going in search of labours, who had also seen this appellant stabbing with chhura on the abdomen of Rabindra Prasad. Injured Rabindra Prasad also made his statement before these witnesses that Hira Lal Munda stabbed him with chhura. His statement was recorded after 10 to 11 days of the alleged occurrence. PW 10 Dr. N. Minj on 11.1.195 at 17.10 hours conducted autopsy on the dead body of Rabindra Prasad and found the following ante-mortem injuries on his person :--
(1) Abrasion 3 cm. x 1 cm. 1/2 cm. x 1/2 cm. on left forehead.

(2) Lacerated wound-3 cm. x 1 cm. x soft tissue on the chin below the lower lip.

(3) Stab wound-3 cm. x 1 cm/ x cavity deep on the right chest front.

The weapon penetrated into the chest cavity through the right fifth inter costal space, purported the pericardial and entered into the right vertical of the heart.

The doctor opined that abrasions and lacerated wounds were caused by hard and blunt substance whereas injury No. 3 was caused by sharp cutting pointed weapon. The death was due to shock and haemorrhage since 6 to 24 hours from the time of post-mortem examination. Ext. 2 is the Post-Mortem Report in his pen and signature, PWs 4, 5, 6, 7 and 8 were at the place of occurrence when the I.O. (PW 15) reached there. He recorded their statements who have supported the prosecution case regarding giving chhura blow by this appellant to Rabindra Prasad on his chest. Hira Lal Munda appellant made confessional statement before the I.O. (PW 15) which led towards recovery of the knife from the well. PW 17 Dinesh Prasad Singh produced recovered seized chhura (Material Ext. 1), which led towards recovery on the confessional statement, made by this appellant, which was proved by PW 18 and a copy of the seizure list was handed over to this appellant, who signed on it. His confessional statement recorded by the police is Ext. 7 which does not require any consideration as it is inadmissible in evidence but leading towards recovery of knife is admissible in evidence.

11. The alleged occurrence took place only due to advancement of friendly loan by the deceased " Rabindra Prasad, an employee of CCL, Rajrappa Project, to this appellant Hira Lal Munda. The informant PW 2 Ramesh Prasad has supported his statement as made in the fardbeyan (Ext. 1) that his brother Rabindra Prasad had advanced a loan to the appellant, which he used to demand. That caused annoyance to the appellant, who committed this heinous crime by committing murder of his friend. Informant (PW 2) and his brother (PW 1) are hearsay witnesses, who were informed by PW 9 Ranjeet Prasad that Rabindra Prasad was stabbed to death by this appellant.

When both PW 1 and PW 2, on getting information, went to the P.O. village, which is Sauradih, they saw the dead body of their brother Rabindra Prasad. At that place PW 3 and PW 3-A, who are eye-witnesses and claimed to have heard from the deceased before his death that this appellant stabbed him to death, were present. Similar is the statement of PWs 4 to 8 who have informed the informant (PW 2) and his brother (PW 1) that appellant stabbed resulting death of Rabindra Prasad but they have not supported their statements in Court and are hostile witnesses. All the hostile witnesses have deposed that due to fog, they could not see as to who assaulted the deceased. The I.O. Raj Kumar (PW 15), who in course of investigation recorded the statements of these witnesses, who are hostile in Court, have supported the entire prosecution case in toto. All these hostile witnesses i.e., PWs 4 to 8 are females, who had gone for easing towards the pond. It was the month of

January. During this period in the morning by the river side or by the pond side or in the Forest area some fog are seen in the morning. But the alleged occurrence has taken place in Village-Saurdih at about 8.00 a.m. At that time there is no possibility of fog in the village and no other witnesses except these hostile female witnesses have brought the story of fog, to say that due to fog they could not see the alleged occurrence.

12. PW 3 Pancham Sao is the villager of the deceased. He had gone to sell rings etc. to the P.O. village and reached near the pond of the village and saw the appellant Hira Lal Munda running with a blood stained chhura in his hand. He saw a number of persons gathered in front of the house of Maha Karmali. He saw Rabindra Prasad injured. He took his head on his lap and on query he was informed by the injured that this appellant Hira Lal Munda had stabbed him. PW 3-A Chandradeo Singh of Village Sarh had gone to Village Sauradih in search of labours. On hearing the alarm, he went to the place of occurrence and saw appellant stabbing with chhura in the abdomen of the deceased. Thereafter, appellant taking the blood stained knife fled away. PW 10 Dr. Niranjana Minj, who conducted the post-mortem examination, found injury Nos. 1 and 2 to be abrasions, may be caused by means, other than assault, by hard and blunt substance and injury No. 3 stab wound was found on the right chest front. The weapon penetrating into the chest cavity through the right 5th inter-coastal spaces and entered into the right ventral of the heart. It was caused by sharp cutting pointed weapon. The appellant is alleged to have stabbed on the abdomen with knife. In general terms, the chest area where stab wound was found can easily be said by the villagers to be an abdomen area. There is no contradiction in the medical evidence and the ocular evidence regarding the stab injury, sustained by the deceased on his right chest front inter coastal spaces. The other two injuries No. 1 and 2 which are abrasions and lacerations are on the left forehead and chin, below the lower lip. These injuries were caused while the deceased was chased by this appellant, who laid him down, pushing him from the motorcycle. He fell down and was running, who was chased, caught and stabbed. Thus, Injury Nos. 1 and 2, which are caused due to fall, are not the result of assault by hard and blunt substance, as deposed by PW 10 in his cross-examination (Pr. 8). The I.O. prepared inquest report (Ext. 3) in presence of the witnesses Manjoor Khan (PW 11) and Ram Lagan Sah (PW 13), who signed on it. The inquest report (Ext. 3) shows that the dead body was found at Village-Saurdih in front of the house of Maha Karmali. The evidence of PWs 1, 2, 3, and 3-A, who have deposed that the dead body was found in front of the house of Maha Karmali, has well been corroborated by the evidence of the I.O. (PW 15). Thus, the time of occurrence, place of occurrence and the means of assault i.e. chhura have well been established by the prosecution.

13. Learned counsel for the appellant has much argued that the confessional statement, leading towards recovery of the knife, is inadmissible in evidence, as the two chaukidars who brought out the knife from the well have not been examined and the knife, which was produced as Material Ext. 1 in the Court, had not contained

any blood stain on it. In the case in hand, the fact is quite different with the facts and the case, relied by the learned counsel for the appellant. In the case, relied by the learned counsel, referred to in the previous paragraphs, the recovery of Material Ext. was much prior to the confessional statement of the accused. In the present case, this is not the fact. On the other hand, the accused was taken on police remand who had already surrendered in the Court, apprehending the manhandling by the public, which shows his guilty intention. When the police took him on remand, he confessed his guilt and disclosed that he had thrown the knife into the well. PW 3 Pancham Sao saw appellant Hira Lal Munda running away with a blood stained knife. Thereafter, he might have thrown the knife into the well which was not known to anyone except himself. Although the well is accessible to all the villagers but none of the villagers was knowing that there was a knife in it. It was only the confessional statement made by this appellant (Ext. 7), recorded by the police, which disclosed that he had thrown the knife into the well. Thus, the recovery of the knife was only on the basis of the confessional statement, made by this appellant, which is admissible in evidence and the authorities relied by the learned counsel for the appellant in this regard are of no help in view of the facts and circumstances, discussed above.

14. Learned counsel for the appellant has further argued that the statement made by the deceased, alleged to be oral dying declaration, is also inadmissible in evidence, as PW 3 and PW 3-A are planted witnesses, who are alleged to be present at the place of occurrence and have seen the appellant running away. PW 3 and PW 3-A were examined by the I.O. after 10 to 11 days. The delay in recording their evidence embellished and gave an opportunity to concoct the prosecution case, as the eyewitnesses i.e., PWs 4 to 8 have not supported the prosecution case. In this regard the evidence of PWs 3 and 3-A is worth considerable. They are not on inimical terms with the appellant. They are independent witnesses of the village. PW 3 Pancham Sao is co-villager of the deceased. When he heard regarding stab injury, sustained by the deceased Rabindra Prasad, he went there and took the head of Rabindra Prasad on his lap and on query injured Rabindra Prasad informed that this appellant stabbed him with knife. PW 3-A had gone in search of labours to that village and saw this appellant who chased, caught, laid down Rabindra Prasad and stabbed him with chhura on his chest. He is of another village Sarh, having no animosity with the appellant. When both these witnesses went to the place of occurrence, already the villagers of Village-Saurdih had assembled there amongst whom hostile witnesses i.e., PWs 4 to 8 were also there. PW 6 Kirti Karmali gave water to the injured to drink who also disclosed in their presence that this appellant stabbed him. Thereafter, he succumbed to his injury. The statements of these witnesses, who are independent village witnesses, out of them the female witnesses of Village-Saurdih, have become hostile only because appellant Hira Lal Munda is also of the same village i.e., Sauradih. The I.O. (PW 15) has deposed that these hostile witnesses had fully supported the fact that this appellant stabbed Rabindra

Prasad. First he pushed Rabindra Prasad from the motorcycle, who fell down and tried to flee away. At that place motorcycle of the deceased and hawai chapped of the appellant were found. The appellant chased and in front of the house of Maha Marmali laid him down and stabbed only once with chhura on his vital part of the body i.e., chest up to the cavity deep. The I.O. seized the motorcycle and hawai chap-pal in presence of the witnesses and prepared the seizure list. He also seized the knife (Material Ext. 1) and prepared seizure list in presence of the witnesses. The motorcycle belonged to the deceased and the hawai chappal belonged to the appellant, as deposed by PWs 1 to 2. The knife (Material Ext. 1) was produced from the Malkhana by PW 12 Dineshwar Prasad Singh, which was seized by the I.O. in presence of the witnesses. The chhura was recovered only on the confessional statement of the appellant. Thus, the prosecution has connected that the chhura (Material Ext. 1) the means of assault was with this appellant in his hand who after stabbing Rabindra Prasad, fled away and threw it into the well. The two chaukidars who brought out the knife from the well have not been examined by the prosecution, which does not discredit the evidence of the prosecution. The seizure list witnesses as a result are not required to be examined unless it is required by the Court or by the I.O. In this case, the seizure list prepared in connection with the recovered chhura bears the signature of this appellant Hira Lal Munda. The seizure list was prepared in presence of independent witnesses Mantu Mahto (not examined) and Rameshwar Thakur (PW 14), PW 14 Rameshwar Thakur has signed on it, although he has deposed that it was not recovered in his presence.

15. When considered all the pros and cons of the prosecution evidence, oral and documentary, I find that the prosecution has proved its case in all corners beyond all reasonable doubts. The learned Court below has meticulously considered these evidence and has found this appellant guilty and accordingly, convicted him u/s 302 of the Indian Penal Code and sentenced him to undergo life imprisonment. I do not find any legal infirmity in the impugned judgment and order of conviction and sentence, passed by the learned Court below. On the other hand, I do not find any merit in this Criminal Appeal, which fails and accordingly, dismissed. The judgment and order of conviction and sentence passed by the learned 3rd Additional Sessions Judge, Hazaribagh, in Session Trial No. 305 of 1995, is hereby confirmed.

S.J Mukhopadhaya, J.

16. I agree.