

**(2009) 03 JH CK 0020**  
**Jharkhand High Court**  
**Case No:** None

Joljus Minz, Chonhas Minz and  
Bishram Minz

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

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**Date of Decision:** March 6, 2009

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 109, 147, 148, 302, 323

**Hon'ble Judges:** Rakesh Ranjan Prasad, J; Amareshwar Sahay, J

**Bench:** Division Bench

**Final Decision:** Dismissed

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**Judgement**

1. The appellant Nos. 1 and 3, namely, Joljus Minz and Bishram Minz were put on trial for the charge u/s 302/34 of the Indian Penal Code along with the appellant No. 2 Chonhas Minz charged u/s 302 of the Indian Penal Code and also with Marga Minz and Daud Minz, charged u/s 302/109 of the Indian Penal Code, for committing murder of Rajan Minz. Further, Joljus Minz was also charged u/s 148 of the Indian Penal Code, whereas all other accused persons were charged u/s 147 of the Indian Penal Code. That apart the appellant Nos. 2 and 3, namely, Chonhas Minz and Bishram Minz were also charged u/s 323 of the Indian Penal Code.

2. The trial court, while acquitting the Marga Minz and Daud Minz, found Chonhas Minz guilty for offence u/s 302 of the Indian Penal Code whereas the other two appellants, namely, Joljus Minz and Bishram Minz, were found guilty for offence u/s 302/34 of the Indian Penal Code and all the three were awarded sentence for imprisonment of life.

3. The case of the prosecution is that on 27.06.1997, at about 6 o'clock, in the morning, the deceased, Rajan Minz asked his wife, Pushpa Minz, the informant (P.W.-5) to come to the place of one Rajendra Ram, for taking pieces of wood as Rajendra Ram has been cutting the branches of the tree. By saying so, the deceased

went ahead. After half an hour Pushpa Minz, wife of the deceased, came to field of Lodhro Baraik and saw brother of Rajendra Ram, cutting the branches of the tree. At that point of time, the deceased along with Rajendra Ram came over there and while they had had talk with the brother of Rajendra Ram, all the three appellants, came over there along with their mother-Marga Minz, who asked from the deceased, as to why, he has taken some earth from the place where she had put her step but the deceased denied of taking earth. Upon which Marga Minz exhorted her three sons i.e. all the appellants to kill him. Daud Minz father of all the three appellants, who was standing near his house, also exhorted these three appellants to kill the deceased.

Thereupon all the three appellants caught hold of Rajan Minz-the deceased and the appellant, Joljus Minz inflicted two or three injuries with the knife on the back of the deceased. Even then the deceased, after getting rid of himself, from their clutches, started running away, but the accused persons again caught hold of him and thereupon Joljus Minz again inflicted knife injury and when his wife Pushpa Minz, the informant (P.W.-5) came to rescue him, she was also assaulted by the appellants Chonhas Minz and Bishram Minz, but she any how fled from there. In the meantime, her husband also started running away but he fell down in the field of Birbal Baraik, where all the appellants started assaulting him indiscriminately and the appellant Chonhas Minz assaulted the deceased on his head with the piece of stone. Thereafter, appellants ran towards Pushpa Minz, for killing her, but she fled away and while she was coming to the Police Station to inform about the occurrence, she met with Silbanus Tigga (P.W.9), Officer-in-Charge of Bano Police Station and other police personnel and came to the place of occurrence and they caught hold of, all four accused persons, including these three appellants.

Thereupon, Pushpa Minz, wife of the deceased gave her fardbeyan (Ext. 3) to said Silbanus Tigga upon which the case was instituted and the same was taken up for investigation, by P.W.-9, who made an inquest, on the dead body of the deceased and prepared an inquest report (Ext.-4). The I.O.(P.W.9) seized piece of stone (Ext.II) and earth smeared with blood, under Seizure list Ext.5, from the place of occurrence. Sleeper (Ext.III) of the deceased, was also seized, under Seizure list Ext.5/1. On the confessional statement, made by the accused, knife (Ext.I), was also seized from near a Papaya tree, under Seizure list Ext.5/2. Thereafter, dead body was sent for postmortem examination, which was done by Dr. C.N. Jha (P.W.1). on examination, following injuries were found on the person of the deceased.

- i. A lacerated wound 4"x1/2"x scalp deep situated on occipital area in central portion;
- ii. A lacerated wound 2"x1/2"x scalp deep situated on left side of occipital area;
- iii. A lacerated wound 3"x1/2"x scalp deep situated on partial area on left side;
- iv. An incised wound 1/2"x1/4"x1" deep situated on right side of neck;

- v. An incised wound 1"x1/6"x1" deep situated on back of neck;
- vi. An incised wound 1"x1/6"x1/4" situated on right side of back;
- vii. An incised wound 1/2"x1/6"x1/4" situated on left side of back;

4. On dissection, the occipital bone was found fractured, Cerebral hemisphere was lacerated. According to the Doctor, the injury Nos. I, II and III were caused by hard blunt weapon, such as stones, bricks etc. whereas injury Nos. IV, V, VI and VII were, caused by sharp cutting weapon such as knife or any sharp cutting instrument. Accordingly, the Doctor issued post examination report (Ext.1) with an opinion that death was caused due to injury No. 1.

5. The Investigating Officer, on completion of the investigation, submitted charge sheet upon which cognizance of the offence was taken and in due course when the case was committed to the court of Sessions, charges were framed to which the accused persons pleaded not guilty and claimed to be tried.

6. The prosecution in order to prove its case, examined as many as nine witnesses. Of them P.W.-3 has turned hostile whereas P.W.4 and P.W.7, were tendered for cross-examination. Informant was examined as P.W.5 whereas, P.W.6 is an hearsay witness and also witness to the seizure of stone and earth smeared with blood as well as seizure of knife. P.W.-8 is a formal witness.

7. The learned trial court having placed implicit reliance on the testimony of the sole eye witness, getting corroboration by the medical evidence and also by the objective finding of the I.O., found the appellants guilty and thereby passed an order of conviction and sentence, as aforesaid.

8. Being aggrieved with the judgment of conviction and order of sentence, the appellant has preferred this appeal.

9. Learned Counsel appearing for the appellants submits that the entire prosecution case rests on the sole testimony of P.W.-5, who claimed to have seen the occurrence, but her testimony of seeing the occurrence, gets belied by her statement made in the cross-examination, where she had said that she had come at the place of occurrence after half an hour of the occurrence and as such she cannot be an eye witness to the occurrence. Moreover, she being a widow of the deceased is a more interested witness and, therefore, the trial court, in view of the discrepancy, as pointed above, should not have relied on the testimony of P.W.-5.

10. Learned Counsel further submits that it transpires from the fardbeyan and also from the evidence of P.W.5 that the other eye witnesses such as Rajendra Ram and Ramesh Ram were present at the time of occurrence but those witnesses, who could be independent witnesses have been withheld by the prosecution and as such the prosecution can certainly be said to have failed, in proving the charge beyond all reasonable doubt. It was further submitted that even some of the accused persons

have been acquitted, which certainly creates doubt over the prosecution case and in that event, the trial court erred in holding the appellants guilty for the charges leveled against them.

11. Having heard learned Counsel for the parties and on perusal of the record, we do find that P.W.-5, the widow of the deceased is the only eye witness. According to her, while she as well as her husband were talking with the brother of Rajendra Ram, about taking of the branches of the wood, all the appellants and their mother Marga Minz, came over there and Marga Minz made complainant to the deceased, about taking of the earth from the place, where she had put her step, which was denied by the deceased and upon it the appellant Joljus Minz inflicted two or three injuries over the back. In spite of that her husband started running away but when she came to field of Birbal Baraik, he fell down then Joljus Minz again inflicted knife injury and his brother-Chonhas Minz struck the head with a piece of stone. Further she has testified that when she was threatened for life, she fled away and while she was coming to the police station, she met with the Officer-in-Charge, Bano, Police Station, who came along with other police personnel to the place of the occurrence and arrested four accused persons and under this situation, she in her evidence at para-12, has testified that she after half an hour of the occurrence, came at the place of occurrence along with the police personnel, but that never means that she had not seen the occurrence rather she seems to have said so in the context that after occurrence, when she was threatened, she fled away from there and while she was coming to the police station, she met with the Officer-in-Charge of Banu Police Station, who as well as other police personnel came to the place of occurrence and, therefore, that piece of evidence appears to be more natural and that apart testimony of this witness, gets corroboration from the fact that a piece of stone and earth smeared with blood (Ext. II) were seized from the place of occurrence and even knife (Ext.1) used in the crime, was also seized, which fact gets support from the evidence of I.O. as well as P.W.-6. Of course neither weapon used nor earth smeared with blood was sent for forensic examination. Nevertheless, this lacuna as per the defence, does not affect the prosecution case adversely, as the prosecution has been able to establish that the piece of stone as well as earth smeared with blood was seized from the place of occurrence and the weapon used in the crime, was recovered, at the instance of the accused persons, particularly when there has been no suggestion by the defence that occurrence took place at other place than the place of occurrence established by the prosecution. Further, we do find that the testimony of P.W.5, gets corroboration from the evidence of Doctor (P.W.1), who found four sharp cut injuries on the neck and the back of the deceased. However, criticism has been made by the learned Counsel appearing for the appellants that testimony of P.W.5 is not consistent with medical evidence as this witness has testified about the inflicting of four injuries on the back. This inconsistency, in our view is not of such nature, which does affect trustworthiness of the witness as position of both the parts of body being close to each other one, in

the circumstances, may have received injury on the neck though blow would have been targeted at back.

12. Thus, we do find that the trial court, by placing implicit reliance upon the testimony of P.W.-5., has rightly convicted the appellant. Consequently, we do not find any illegality or infirmity in the impugned judgment and hence, it is affirmed.

13. In the result, this appeal stands rejected.