

**(2006) 05 JH CK 0040**

**Jharkhand High Court**

**Case No:** Criminal Appeal No. 172 of 1998

Rowan Choudhary @ Roman  
Choudhary, Bhukhu Choudhary  
and Ishar Choudhary

APPELLANT

Vs

The State of Bihar (now  
Jharkhand)

RESPONDENT

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**Date of Decision:** May 1, 2006

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 161, 313
- Evidence Act, 1872 - Section 32
- Penal Code, 1860 (IPC) - Section 302, 34

**Citation:** (2006) 3 JCR 397

**Hon'ble Judges:** N. Dhinakar, C.J; Rakesh Ranjan Prasad, J

**Bench:** Division Bench

**Advocate:** B.P. Jaiswal, for the Appellant; B.B. Sinha, APP, for the Respondent

**Final Decision:** Dismissed

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**Judgement**

R.R. Prasad, J.

Accused 1 to 3 in Sessions Trial No. 189 of 1997 are the appellants. Janu Chaudhary and Manu Chaudhary, who were arrayed as A-4 and A-5, were acquitted and the appellants alone were found guilty for the offence u/s 302/34 of the Indian Penal Code, upon which each one of them was sentenced to imprisonment for life. The appeal is against the said conviction and sentence.

2. The deceased, Binod Ram, is the brother of PW-4, Sanjay Ram. At about 7.00 - 8.00 p.m. , Binod Ram, the deceased, was returning from Chainpur market after purchasing medicines. He found accused persons surrounding the deceased Binod Ram. A-4 and A-5, who were acquitted by the trial court, were found holding the hands of the deceased. A-1, Roman Chaudhary shot at the deceased with the Double

Barrel Breach Loading gun. PW-3 raised alarm and on hearing his cries, Sanjay Ram, PW-4 reached the place. The accused went away. PW-1, in whose courtyard the deceased fell down, also reached the place. The deceased wanted his father to be brought. After the father of deceased came to the scene of occurrence, injured, Binod Ram, was taken to the police station from where he was referred to the hospital. On the way, he died. The Fardbayan, Ext. 3, on being given by PW-3, who is the brother of the deceased, Binod Ram, a crime was registered and investigation was taken up. PW-8, Rajendra Singh, the police officer, conducted inquest and later sent the dead body to the hospital for autopsy.

3. On receipt of the requisition and the dead body, PW-6, Dr. Narayan Chandra Agrawal, conducted post mortem on the dead body of Binod Ram and found a gun shot injury with the entry wound measuring 1/2 cm in diameter. There was blacking and charring around the entry wound. Another wound was found in left mid clavicular line 3" below left nipple. Exit wound was found measuring 2" in diameter with blacking and charring over left sub-scapular line 4" below the tip of left scapula, On probing the wound, the doctor noticed that both wound were communicating with each other. On dissection, anterior and lower part of left pleura was seen lacerated and congested. The diaphragm was found pierced and the abdomen and spleen were punctured through and through, with congestion and blood. The peritoneal cavity was found with full of blood.

The doctor issued Ext.2, the post mortem certificate, with his opinion that death is on account of gun shot injury.

4. After the completion of investigation, final report was filed. On being questioned u/s 313 of the Code of Criminal Procedure, the accused-appellants denied all the incriminating circumstances. They did not examine any witness on their side.

5. The learned Counsel appearing for the appellants strenuously contends that since PW-8, who has conducted investigation, stated that PW-4 did not say in his evidence recorded u/s 161 Cr.P.C. that he saw the occurrence, the present evidence of PW-4 that he witnessed the occurrence cannot be believed. It is his further submission that trial court having disbelieved PW-3 ought not to have believed PW-4 for finding the appellants guilty, in view of the fact that PW-4 did not mention at the earliest point of time, when his statement was recorded u/s 161 Cr.P.C. that he is a witness to the occurrence. He further submits that since PW-4 has admitted that he gave the Fardbayan at the police station, the present Fardbayan, Ext.3, said to have been given by PW-3 cannot be treated as First Information in this case and the earlier statement given by PW-4 was suppressed as it is not found in tune with the prosecution version. He, therefore, submits that the accused-appellants are entitled for acquittal.

6. We have heard Mr. B.B. Sinha, learned A.P.P., appearing for the State, on the above contentions.

7. It is not in dispute that Binod Ram died on account of the injury suffered by him. The doctor, who conducted autopsy and who issued Ext.2, the post mortem certificate, proved the said fact.
8. PWs 3 and 4 were examined before the trial court by the prosecution to establish that the deceased was shot at by the accused. The trial court disbelieved PW-3, since, in cross examination, he admitted that he came to the scene of occurrence after hearing the gun shot and that he was informed about the occurrence by others. The trial court believed PW-4 and now we will consider the contention of the counsel to find out whether the evidence of PW-4 can be accepted.
9. PW-4, no doubt, claimed in his evidence that he saw the occurrence and that the deceased also informed him about the occurrence. It was suggested to PW-4 that he was not an eye witness and when PW-8, the Investigating Officer, was in the box, he was questioned as regards the statement given by PW-4 and recorded by him u/s 161 Cr.P.C. PW-8 stated that PW-4 did not tell him when his statement was recorded u/s 161 Cr.P.C. that he saw the occurrence. In court, PW-4 also stated that he saw the accused running away from the occurrence. We are, therefore, of the view that PW-4 though did not witness to the occurrence had gone to the scene on . hearing gun shot and saw the accused 1 to 4 running away from the scene of occurrence. According to him, he found the deceased with injury in the courtyard of PW-1 and questioned him. He has stated that deceased gave the names of the accused-appellant as the persons who are responsible for causing the gun shot injury.
10. The evidence of PW-4, in the above background, shows that PW-4 though did not witness the occurrence, reached the place on hearing the gun shot, found the accused running away from the place and the deceased informed him about the names of his assailants. The statement made by the deceased, which is relevant u/s 32 of the Evidence Act, shows that the deceased implicated the appellants-accused with the crime. Though an attempt was made by the counsel that the deceased could not have been in a position to talk, he could not succeed in his attempts, since the doctor, who conducted autopsy, was not even questioned to the effect that the deceased after receiving the gun shot injury could not have been in a position to talk. Not only there is no evidence for us to hold that the deceased could not have been in a position to give the names after receiving injury, in view of absence of any such evidence by the doctor, there is also evidence of PW-1 which corroborates the evidence of PW-4 that the deceased was very much conscious and was in a fit position to speak. It is the evidence of PW-1 that on hearing the gun shot, he went there and that the deceased requested him to bring his father. The evidence of PW-1, on this aspect, remains unchallenged. The above evidence of PW-1, therefore, shows that the deceased was very much conscious and was in a position to talk. Therefore, it is clear that the deceased was not only conscious but also in a position to give the name of the accused to PW-4. The evidence of PW-4 that the deceased

gave the names of the accused-appellants also stands unchallenged.

11. Once we hold that the deceased was conscious and gave the statement implicating accused then we find no reason as to why we should reject the prosecution version that the appellants inflicted injuries, leading to his death. We accept the evidence of PW-4 that the deceased gave statement implicating the accused in the crime and hold that the prosecution has established the case against the appellants.

12. The other attempt of the counsel that there must have been another information given by PW-4 and recorded at the hospital is not borne out by any material. It is, no doubt, true that PW-4 in his evidence stated that his statement was recorded at the police station; but it is to be remembered that the witnesses are illiterates and it is possible that when he said that his statement was recorded at the hospital, he would have been probably referring to the statement given by him at the hospital, during the course of inquest. We, therefore, do not attach much importance to the answer given by PW-4 that he gave a statement and the said statement is the basis for the F.I.R.

13. We, in the above circumstances, find no reason to take a different view from the one taken by the trial court. The conviction of the appellants is, hereby, confirmed. The appeal is rejected.

It is reported that the appellant nos. 2 and 3, Bhukhu Choudhary and Ishar Choudhary, are on bail; their bail bonds are cancelled and they are directed to surrender before the court below for serving the remaining sentence. The court below is also directed to take all coercive steps for their arrest.