

(2002) 02 JH CK 0034

Jharkhand High Court

Case No: Criminal Appeal No"s. 2 and 58 of 1989

Gulam Ali Mian and Charka Mian
alias Charka Mian and Others

APPELLANT

Vs

The of State Bihar (Now
Jharkhand)

RESPONDENT

Date of Decision: Feb. 15, 2002

Acts Referred:

- Penal Code, 1860 (IPC) - Section 109, 300, 302, 304, 323

Citation: (2002) 1 BLJR 579

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

Bench: Division Bench

Judgement

S.J. Mukhopadhaya, J.

All the three appellants, namely, gulam Ali Mian alias Charka Mian, Basiruddin Ansari (Cr. Appeal No. 2 of 1989) and Jamiruddin Ansari (Cr. Appeal No. 58 of 1989) have challenged the common judgment dated 17th December, 1998, passed by learned 2nd Additional Sessions Judge, Giridih, in Session Trial No. 61 of 1987. Appellant Gulam Ali Mian alias Charka Mian has been convicted under Sections 302 and 109 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life whereas appellants Basiruddin Ansari and Jamiruddin Ansari have been convicted u/s 302/34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life. Appellants Gulam Ali Mian and Basiruddin Ansari have further been convicted u/s 323 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for six months. However, the sentences passed against appellants Gulam Ali Mian and Basiruddin Ansari have been directed to run concurrently.

2. The incident, in question, which gave rise to the present case, occurred on 21st July, 1986, at about 7.00 a.m. The informant Jan Mohammad (P.W. 10) alleged that about 4 Acres of lands belonged to his father Nemtul Mian and uncle Gulam Ali Mian alias Charka Mian (one of the appellants), which was acquired by the Irrigation

Department and as a compensation of the same, the informant's father Nemtul Mian received a Bank draft of Rs. 12,000/- and appellant Gulam Ali Mian received another Bank draft of Rs. 4,000/- The informant Jan Mohammad is five brothers whereas the appellants Basiruddin Ansari and Jamiruddin Ansari themselves are full brothers, being sons of appellant Gulam Ali Mian i.e., cousin of the informant.

On receipt of compensation, the informant's brother requested their uncle Gulam Mian (appellant) to divide the entire compensation amount, as received by the informant's father (Nemtul Mian) and uncle Gulam Ali Mian, in two equal shares and to partition the remaining lands in two equal shares. The uncle of the informant Gulam Ali Mian said that his son Jamiruddin Ansari (appellant) was in Bombay, so he will take decision after calling Jamiruddin from Bombay for which he wrote a letter to Jamiruddin and Jamiruddin came to his house on 20th July, 1986 from Bombay. The deceased Muslim Ansari, one of the brothers of the informant, who was also working at Bombay, at the relevant period, had already come to Village and was to return back to Bombay on 21st July, 1986 in the evening. For the said reason, Muslim Ansari (deceased), in the morning of 21st July, 1986, went to the house of the accused persons for having a talk with them regarding the division of money and lands. But, came to know that all the three accused persons had gone to Dalahi Tand, situated at Village, Barangada, P.S., Dumri, Giridih, for ploughing the lands. Thereafter, the informant and all his brothers including Muslim, went to Dalahi Tand and started talk with the accused persons about partition of compensation amount and land, on which the appellants became enraged and caught hold of Muslim (deceased). Appellant Gulam Ali Mian ordered his two sons, namely, appellants Basiruddin Ansari and Jamiruddin Ansari to finish Muslim (deceased), saying that he was the root cause of all dispute. Because of such order, appellant Jamiruddin took out a dagger (Chhura) from his waist and inflicted dagger blow on the chest of Muslim. The other appellant Basiruddin also inflicted a number of dagger (Chhura) blows on the head of Muslim, who fell down on the ground being injured.

The informant and his other brothers Sakur Ansari, Fateli Mian and Maksul tried to rescue Muslim, during which appellant Gulam Ali Mian assaulted them with lathi causing injury to all of them. Sakur Mian caught hold of the lathi of appellant Gulam Ali Mian, when appellant Basiruddin gave him a Chhura blow, causing injury on his eye-brow. The informant and his brothers, having managed to snatch lathi from Gulam Ali Mian, they also in their defence used lathi, which caused some injuries to the appellants, who then fled away. Thereafter, Muslim (deceased), who was badly injured, was lifted to shift him to Giridih for treatment, but he died on the way, near Village, Parsabera. The informant's party kept the dead-body of Muslim at a Madarsa and went to Dumri Police Station and lodged First Information Report (Ext. 6). The Police after investigation, submitted charge-sheet u/s 302/34 of the Indian Penal Code, as also under Sections 325 and 323 of the Indian Penal Code against the appellants, cognizance therefore, was taken and thereafter, the case was committed to the court of Sessions on 19th March, 1987.

3. Altogether 12 witnesses were examined on behalf of the prosecution. Sakur Mian (P.W. 1), Maksul Ansari (P.W. 2), Fateli Mian (P.W. 4) and the informant Jan Mohammad (P.W. 10), all brothers of Muslim (deceased), were the eye-witnesses. Out of the aforesaid four, Maksul Ansari (P.W. 2), Fateli Mian (P.W. 4) and the informant Jan Mohammad (P.W. 10) also sustained injuries.

4. Moiuddin (P.W. 3), a labourer of the adjacent land, and Sitaram Singh (P.W. 5), the other cultivator of the nearby land, are independent eye-witnesses. On the other hand, Akbar Ansari (P.W. 6), the Mukhiya and Raman Mian (P.W. 7), co-villagers are hearty witnesses. Kauam Ansari (P.W. 12), shepherd by profession, was tendered. Dr. Bisheshwar Jha (P.W. 8) and Dr. Kapil Muni Mishra (P.W. 9) have examined the injured and held post-mortem examination respectively. Kauleshwar Prasad Singh (P.W. 11) was the Investigating Officer, Incharge of Dumri Police Station at that time. Two daggers (Chhuras) were recovered and placed as material evidence and the statements of witnesses and material evidence were taken into consideration by the Court below to convict the appellants.

5. The Counsel for the appellants raised the following contentions:

(i) There being numerous contradictions of statements of witnesses, the prosecution case should be held to be untrue:

(ii) Even if the narration of events, as explained by the prosecution witnesses, is accepted, there being no pre-meditation and the death having caused on account of sudden quarrel in course of conversation, appellant Jamiruddin is entitled for benefit of exception (4) to Section 300 of the Indian Penal Code, for punishment u/s 304 Part-I of the Indian Penal Code.

(iii) Similarly in respect to appellant Basiruddin he is entitled to the benefit of exception (2) to Section 300 I.P.C so as to get the advantage of the offence of murder, as culpable homicide.

(iv) So far as appellant Gulam Ali Mian is concerned in absence of any allegation of abatement, at best a case u/s 323 I.P.C. would have been proceeded, instead of Section 302/34 I.P.C.

6. Reliance was placed by the Counsel for the appellant on Supreme Court's decision in the case of Sasi v. State of Kerala 2000 SCC 95, as also the case of Rajendra Singh v. State of Bihar 2000 SCC 796, including certain decisions of the Patna High Court.

7. In respect to first issue i.e. contradiction of statements, Counsel for the appellants highlighted the statements, made by Fateli Mian, who, in his statement, has said that the cheque for Rs. 12,000/- was received by his father Nemtul Mian and another cheque of Rs. 4,000/- was issued in the name of Gulam Ali Mian (one of the appellants). Similar statement was made by the informant Jan Mohammad (P.W. 10) that the draft of Rs. 12,000/- was received by his father Nemtul Mian and the

another draft of Rs. 4,000/- was issued in the name of his uncle Gulam Ali Mian (One of the appellants). On the other hand, Maksool Ansari (P.W. 2) stated that the compensation amount of Rs. 12,000/- was paid by cheque and was issued in the name of his father Nemtul Mian and the uncle Gulam Ali Mian (one of the appellants).

8. To decide the issue, first it is to be seen as to whether the prosecution has proved the charges against the accused beyond all reasonable doubts or not.

9. Jan Mohammad (P.W. 10), the informant, stated that 4 Acres of land belonged to his father Nemtul Mian and uncle Gulam Ali Mian (one of the appellants) which was acquired by the Government for canal. Sakur Mian (P.W. 1), Maksul Ansari (P.W. 2) and Fateli Mian (P.W. 4), the other brothers of the informant and eyewitnesses, also supported the case of informant that the land of their father Nemtul Mian and uncle Gulam Ali Mian was acquired by the Government for which compensation amount was paid. The informant (P.W. 10) stated that a cheque of Rs. 12,000/- was issued in the name of his father Nemtul Mian and another cheque of Rs. 4,000/- was issued by the Government in the name of his uncle Gulam Ali Mian. Maksul Ansari (P.W. 2), while made clear that 4 Acres of land belonged to his father Nemtul Mian and uncle Gulam Ali Mian, which sub-merged in the Canal and for which compensation amount of Rs. 12,000/- was paid by cheque jointly in the name of his father Nemtul Mian and uncle Gulam Ali Mian, also stated that a separate cheque for Rs. 4,000/- was issued in the name of his uncle Gulam Ali Mian (one of the appellants). They wanted half and half share of the total amount, for which they talked to the uncle Gulam Ali Mian, who told them that his son Jamiruddin Ansari (one of the appellants) had gone to Bombay and on his return, it will be divided. Jamiruddin returned from Bombay a day prior to the incident i.e., on 20th and then having come to know that Jamiruddin had come back from Bombay, Muslim (deceased) at 7.00 a.m. in the morning of 21st had gone to the house of his uncle Gulam Ali Mian where he could learn that his cousins (two of the appellants) and uncle (one of the appellant) have gone to Dalahi Khet. Almost similar statement was made by Fateli Mian (P.W. 4) that certain amount was received towards compensation, their lands having merged in the Canal. Muslim talked to his uncle (Gulam Ali Mian) and told that he has purchased the ticket for return to Bombay and to divide the money so that he (Muslim) may go to Bombay with his part of money.

10. Thus, if there is any discrepancy as to in whose name the cheque of Rs. 12,000/- was issued by the State Government, such contradictions have no direct bearing with the question as to whether the appellants murdered Muslim (deceased) or at their instance murder took place or not.

11. The eye-witnesses Jan Mohammad (P.W. 10) Fateli Mian (P.W. 4) Sakur Mian (P.W. 1) have made consistent statements that their brother Muslim (deceased) had gone to the house of the appellants for enquiry where he came to know that all the appellants had gone to Dalahi Khet. Muslim (deceased) was to return Bombay as he

was working at Bombay. Therefore, he asked the informant (P.W. 10) and other brothers for going to Dalahi Khet for having talk with the appellants, whereinafter, the informant Jam Mohammad (P.W. 10), Sakur Mian (P.W. 1), Maksul Ansari (P.W. 2) and Fateli Mian (P.W. 4) went to Dalahi Tand along with Muslim. Muslim (deceased) asked the appellant Gulam Ali Mian for taking decision in the matter whereinafter, appellant Gulam Ali Mian became enraged and ordered his sons Jamiruddin and Basiruddin (other two appellants) to kill Muslim, saying that he was the root cause of dispute. Thereafter, all the three appellants surrounded Muslim. Appellant Jamiruddin took out a dagger (Chhura) from his waist and gave a Chhura blow, just below the chest and above the abdomen of Muslim and appellant Basiruddin gave four dagger (Chhura) blows on his (Muslim) head. Thereafter, appellant Gulam Ali Mian started bandishing lathi, causing injuries on the person of the informant (P.W. 10) and other brothers Fateli Mian (P.W. 4), Sakur Mian (P.W. 1) and Maksul Ansari (P.W. 2). Appellant Basiruddin gave dagger (Chhura) blow to Sakur Mian (P.W. 1), causing injury on his eye brow and then Sakur Mian (P.W. 1) snatched lathi from appellant Gulam Ali Mian and used it for his self defence, resulting to some injuries to the appellants, who then fled away from the spot, after throwing the r daggers (Chhuras). Thereafter, rest of the brothers of Muslim (deceased) along with Sitaram Singh (P.W. 5). Kauam Ansari (P.W. 12) and Moiuddin (P.W. 3) took Muslim and were bringing him to Giridih, he (Muslim) died in the way at Village, Parsabera. The dead-body of Muslim was kept at a Madarsa and the informant (P.W. 10) then went to inform the Mukhiya, who came and after seeing the dead-body, asked the informant to lodge First Information Report in the Police Station.

12. Moiuddin (P.W. 3) is an independent eye-witness. He has stated that while he was working in the Khet (field) of Sukhdeo Bhagat at 7.00 a.m., having gone to plough the field, he heard Hulla, coming from Dalhai Balihar Khet. In the said filed appellants Gulam Ali Mian, Jamiruddin and Basiruddin were present. Muslim and his brothers Sakur Mian, Fateli, Jan Mohammad and Maksul were also present. On hearing the Hulla, when he reached near Dalhai Balihar Khet, from a distance of about 10 hands, he saw that Jamiruddin (one of the appellants) gave dagger (Chhura) blow on Muslim (deceased) and Basiruddin (other appellant) also gave dagger (Chhura) blow. Jamiruddin gave dagger (Chhura) blow on Muslim, below the chest but above the stomach. Basiruddin gave dagger (Chhura) blows, three to four time, on the head of Muslim (deceased). Gulam Ali Mian (the other appellant) was shouting "Maro-Mar" (Kill-Kill). The brothers of Muslim had also gone to save Muslim. Gulam Ali also assaulted them with lathi, The dispute took place between Muslim and appellants because of division of money, in respect to the land submerged in the Canal. Muslim was telling to divide the money when the scuffle started.

13. Sitaram Singh (P.W. 5), other independent witness, in his statement has stated that on the day he was in the Dalahi Khet, having gone there for bowing the paddy crops. The appellants were working in their field. At that place Sakur Mian and his

other four brothers came. Muslim Mian proceeded first towards the Parti Tand and started talking with the three appellants. They started fighting and after two minutes he saw that Muslim fell down. He saw injury on the head and abdomen of Muslim from where blood was cozing out. All the four brothers of Muslim ran and took him for Hospital.

Thus, it will be evident that there is a consistency in the statements of eyewitnesses. The statements of independent eye-witnesses, namely, Moiuddin (P.W. 3) and Sitaram Singh (P.W. 5) corroborate the statements of other eye-witnesses like Jan Mohammad (P.W. 10), Sakur Mian (P.W. 1), Maksul Ansari (P.W. 2) and Fateli Mian (P.W. 4), who are the brothers of the deceased. There is also consistent statement in respect to the place of occurrence.

14. Informant Jan Mohammad (P.W. 10) in the First Information Report has stated that the accused fled away leaving behind both the daggers (Chhuras), which were taken by the informant. Similar statement was made by him (P.W. 10) in his deposition.

15. Kauleshwar Prasad Singh (P.W. 11) was the Investigating Officer, posted at that time at Dumri Police Station. He recorded the fardbeyan at the instance of the informant Jan Mohammad (P.W. 10), who (P.W. 10) after reading and hearing signed the fardbeyan. P.W. 11 stated that he collected the blood stained earth from the spot. He also proved the shirt, lungi, ganji etc. which were collected and sent to Forensic Laboratory and were marked as Exts. II, 11/1 and II/2. Two daggers (Chhuras) left by the appellants, were also proved by him and marked as Ext. I and 1/1. the Forensic Report is Ext. A. From his statement, it will be evident that the appellants also lodge First Information Report relating to same very incident against the informant and others, numbered as Dumri P.S. Case No. 36 of 1986. The statement of P.W. 11, Exhibits and the case lodged by the appellants also support the version of the prosecution witnesses, as discussed above.

16. Dr. Kapil Muni Mishra (P.W. 9) held that post-mortem examination of the dead-body of Muslim. He stated that he found rigor mortise present in all the limbs, both fists half clinched, both eyes half open with following ante-mortem injuries:

(i) Incised wound 3" X 1/2" X scalp deep at left parietal region, anteriorly:

(ii) Incised wound 2" X 1/2" X scalp deep at right parietal region anteriorly:

(iii) Incised wound 2" X 1/2" X 1" X scalp deep at right parietal region anteriorly:

(iv) Incised wound 2" X 1/2" X 1" X scalp deep at right parietal region anteriorly; and

(v) Penetrating wound 2" X 1" X peritoneum deep with incised margin middle and upper part of abdomen below X1 pharynx.

Statements of the aforesaid witnesses also corroborate the injuries as narrated by prosecution witnesses as also the cause of death as shown in the post-mortem

report.

17. So far as the second issue is concerned, it is to be seen as to whether the ingredient of exception (4) to Section 300 I. P.C. is said to be satisfied in the case of appellant Jamiruddin Ansari or not. The necessary ingredients of exception (4) to Section 300 I.P.C. are:

(i) A sudden fight:

(ii) Absence of premeditation; and

(iii) No undue advantage or cruelty.

But the action must be sudden not as a cloak for pre-existing malice. It is only an unpremeditated assault committed in the heat of passion upon a sudden quarrel would come within the exception (4) to Section 300 I.P.C. and it is necessary that all the three ingredients must be found.

From the evidences adduced and discussed above, it will be evident that Basiruddin Ansari gave a number of daggers (Chhura) blows on the deceased (Muslim) who fell on the ground after being injured. The other appellant Jamiruddin took out a dagger (Chhura) from his waist and gave fatal blow on the chest of the deceased Muslim, which was the main cause of death. Such consistent statements have not only been made by the informant Jan Mohammad (P.W. 10) and Fateli Mian (P.W. 4). The independent eye-witnesses Moiuddin (P.W. 3) and Sitaram Singh (P.W. 5) also made similar statement.

The motive has been well explained by the witnesses. The deceased and the brothers wanted the compensation amount to be divided between the co-sharers. On the other hand, the appellants could not explain the reason for which they brought the daggers (Chhuras) along with them by which they caused injuries on the deceased, while they had gone to plough the field.

18. Thus, neither the appellant Jamiruddin can claim any benefit of exception (4) to Section 300 I.P.C. nor the appellant Basiruddin can claim any such benefit of exception (4) to Section 300 I.P.C.

19. So far as the appellant Gulam Ali Mian is concerned, the Counsel for the appellant informed that he died during the pendency of the appeal. However, no such statement has been brought on record. If that be the position, the appeal in respect to appellant Gulam Ali Mian will abate.

20. Thus, there being no reason to doubt the decision and no case having been made out, the judgment and conviction are hereby affirmed. There being no merit, both the appeals are, accordingly, dismissed.

Lakshman Uraon, J.

21. I agree.