

## Chitta Oraon, Upendra Oraon and Kuar Ho Vs The State of Bihar (now Jharkhand)

**Court:** Jharkhand High Court

**Date of Decision:** March 27, 2006

**Acts Referred:** Criminal Procedure Code, 1973 (CrPC) â€” Section 313  
Penal Code, 1860 (IPC) â€” Section 302, 34

**Citation:** (2006) 2 JCR 362

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

**Bench:** Division Bench

**Advocate:** A.S. Dayal, for the Appellant; Sumir Prasad, APP, for the Respondent

**Final Decision:** Allowed

### Judgement

1. The appellants, three in number, were arrayed as A-1, A-2 and A-3. In the judgment, they will be referred to as A-1, A-2 and A-3, for the

sake of convenience.

2. The deceased, Bhondua Oraon, had come to the village Anandih to take his two sisters, PWs-2 and 3 from their in-laws house to his home.

They were not in the house. The deceased waited for them. As they did not come, the deceased became impatient. He left the house in search of

his sisters, who had gone to a pond to take bath. On the way, the appellants were seen sitting and taking drinks. They asked the deceased to stop.

The deceased did not care to stop and proceeded. The accused appellant Nos. 1 to 3 thereafter inflicted injuries on the deceased with Farsa. The

deceased fell down there. PW-8, Bharat Oraon, who was at the spot at that time, saw the occurrence. PW-8 thereafter left the village to meet his

father. In the meantime, PW-7, Jagarnath Sao, Dalpati of Padampur village Paqnchayat, was informed by Village Mukhiya that an occurrence had

taken place in the village. No details were given to PW-7 by the Mukhiya. PW-7 went to the village and questioned the witnesses, who could not

give any information and he later found the dead body of Bhondua Oraon with injuries. He went to the police station and gave Ext. 1, the

Fardbayan, which was registered as a crime against unknown persons and investigation was taken up.

3. After the investigation was taken up, Ext. 2, the Inquest report was prepared, during which witnesses were examined and the body was sent to

the hospital by the Investigating Officer with a requisition, requesting the doctor to conduct the autopsy.

4. On receipt of the dead body and the requisition, PW-9, Dr. Narendra Kumar Civil Assistant Surgeon attached to Saraikela Government

Hospital conducted autopsy on the dead body. He found the following five injuries on the person of the deceased:

1. Incised wound 7"  $\times$  1"  $\times$  2" cutting left pinna, skull bone and facial bone upto angle of left eye.
2. 7"  $\times$  4"  $\times$  4" deep incised wound in back of neck cutting vertebral column and major vessels.
3. 2"  $\times$  1"  $\times$  6" deep having tear in place at left: chest in between clavicle and first rib was upward to downward and was left to right side  
damaging chest wall and left lung.
4. 3"  $\times$   $\frac{1}{2}$ "  $\times$   $\frac{1}{2}$ "  $\times$  1" deep incised wound over left: shoulder  $\times$  joint
5. 2"  $\times$   $\frac{1}{2}$ "  $\times$   $\frac{1}{2}$ "  $\times$  1" deep over right side chest (back)

The doctor issued Ext. 4, the post mortem certificate, opining that death was on account of excessive haemorrhage and shock and death would

have occurred prior to 48 hours of post mortem examination. He has also opined that Injury Nos. 1, 2 and 4 could have been caused by sharp

cutting weapon and Injury Nos. 3 and 4 could have been caused by an arrow.

4. After the completion of investigation, final report was filed. The appellants denied all the incriminating circumstances, when they were questioned

u/s 313 of the Code of Criminal Procedure.

5. The learned trial judge, findings the appellants guilty, as charged, u/s 302/34 of the Indian Penal Code, sentenced each one of them to

imprisonment for life.

6. The learned Counsel appearing for the appellants submits that PW-8, Bharat Oraon, could not have been present to witness the occurrence and

if the occurrence had been witnessed by him, he would not have gone to meet his father without even informing the relatives of the deceased,

especially, when the deceased was also closely related to him.

7. On the above contention, we have heard Mr. Sumir Prasad, learned A.P.P. for the State.

8. Though, the prosecution succeeded in establishing the fact that Bhondur Oraon died on account of homicidal violence through the evidence of

Dr. Narendra Kumar, PW-9, and the post mortem certificate, Ext. 4, issued by him, we are of the view that it had failed to establish that the

appellants are responsible for the injuries found on the dead body by the doctor.

9. PW-8 was projected by the prosecution as a witness to the occurrence and it could be seen from his evidence that while he was proceeding in

the village, he found the appellants asking the deceased to stop and that when the deceased did not stop, he was attacked by the accused-

appellants. PW-8 claimed in his evidence before the trial court that he saw the occurrence and has also stated that after the occurrence, he

informed his mother PW-1, Sonamani Oraon wife of Gulab Oraon about the occurrence. Gulab Oraon is actually the brother-in-law of the

deceased. It is, therefore, clear that if PW-8 had really seen the occurrence and informed his mother, PW-1, whose husband is the brother-in-law

of the deceased, then the fact that the deceased was murdered by the appellants would have spread like a wild fire in the village. On the contrary,

none of the witnesses had any inkling that the deceased was murdered by the appellants as otherwise, PW-1 would have clearly mentioned the fact

to Dalpati, PW-7, that the deceased was murdered by the appellants when PW-7 wanted to know from the villagers as to what happened in the

village.

10. We have to remember at this stage the evidence of PW-7, who has claimed in his evidence that he was informed by village Mukhiya that an

occurrence had taken place in the village and that when he made enquiries from the villagers, they could not give any information and that he found

the body of deceased. According to him, he later went to the police station and gave the statement, which was registered against unknown

persons.

11. At the risk of repetition, we cannot but say that if PW-8 was really the eye witness and informed his mother, PW-1, whose husband is the

brother-in-law of the deceased, then the said fact would have been informed to PW-7, the Dalpati, and that the names of all accused would have

been mentioned by him in Fardbayan, Ext. 1. But, no such statement was made by PW-7 in the Fardbayan. It is also artificial to accept the

evidence of PW-8 that on seeing the close relative being murdered, he went away to another village to meet his father. The evidence of PW-8 is

not only artificial but is also not supported by the other materials. We, therefore, reject his evidence and set aside the order of conviction and

sentence imposed upon the appellants.

12. The appeal is allowed and the appellants are acquitted it is reported that the appellants are on bail; they are discharged from the liabilities of

their bail bonds.