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**(2002) 03 JH CK 0062**

**In the Jharkhand High Court**

**Case No : Criminal Appeal No. 155 of 1994 (R)**

Konde Munda and Others

APPELLANT

Vs

State of Bihar (now Jharkhand)

RESPONDENT

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**Date of Decision : 23-03-2002**

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 302, 307, 34

**Citation : (2002) 03 JH CK 0062**

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

**Bench : Division Bench**

**Advocate : B.K. Pandey, for the Appellant; B.V. Kumar, APP, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

S.J. Mukhopadhaya, J.—The appellants, being dissatisfied with the judgment and order of conviction and sentence dated 22.8.1994 and 26.8.1994 respectively, passed by Smt. Shakuntala Sinha, Additional Judicial Commissioner, Khunti (Ranchi), in Sessions Trial No. 100 of 1994/Tr. No. 62 of 1994, whereby, all the appellants have been convicted under Sections 302/34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life as also to pay a fine of Rs. 1,000/- each, in default whereof, to undergo rigorous imprisonment for six months and appellant Ram Munda has further been convicted u/s 307 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for five years, with a direction to run both the sentences, awarded against appellant Ram Munda, concurrently, have preferred this appeal.

2. The prosecution case, in brief, as per the fardbeyan of the informant Randai Mun-dain (PW 6), is that on 20th September, 1993 she along with her husband was sleeping in the verandah (Dhaba) of her house and children were sleeping inside the room. At about 10.00 p.m. she woke up on hearing the sound of opening of door (Darwaja) and saw that accused Ram Munda, Konde Munda, Sawna Munda and Mochi Munda, having dagger (Chaku) and axe (Kulhari) in their hands, came near her husband Rore Munda and told that they will kill both

of them, as the son of Lusa Munda died because of their witch-craft. She (informant) protested and said that they were not witch, when all the four accused persons started assaulting her husband Rore Munda. On her protest, they also assaulted her (the informant) on her right cheek and shoulder with an intention to kill her and started pressing her neck. When she cried, her son, who was sleeping in the house, awoke, came out and saw the incident of assault and also identified all the four accused. Then the aforesaid four accused persons fled away. Her husband Rore Munda was found dead, having injuries on his person; at two places on the right side of neck below the jaw, at one place below the right eye, near the right temporal region, on the right side of head and near the moustache, below the nose. She found huge quantity of blood on the floor.

She has further stated that the incident took place, because about a month back Moka Munda son of Lusa Munda had died of illness but according to the accused, the death took place because of their (informant and her husband) witch-craft. That was the reason to kill her husband and attempt to kill her (informant).

The first information report was lodged on the next day i.e. 21st September, 1993 at about 11.30 a.m. After investigation, charge-sheet was submitted and the learned ACJM, Khunti. committed the case to the Court of Sessions for trial of the accused persons under the aforesaid sections.

3. Altogether seven prosecution witnesses and one defence witness have been examined in this case. Dr. Umesh Chandra Sinha (PW 1) and Dr. Vijay Kumar (PW 2) have examined the informant and held post-mortem examination on the dead body of Rore Munda (deceased) respectively. Bhola Purty (PW 3) and Dimba Purty (PW 4) are two brothers-in-laws (Salas) of Rore Munda (deceased). They are hearsay witnesses. Randai Mundain-informant (PW 6) and her son Mochi Munda (PW 5) are two eye witnesses. Tej Narayan Singh (PW 7) is the Investigating Officer.

4. It may be mentioned that one of the accused persons was also named as Mochi Munda son of Lusa Munda. The said Lusa Munda was a sole Defence Witness (DW 1). who has merely stated that the age of accused Mochi Munda was about 14 years and that is the reason that the case of accused Mochi Munda was separated for trial by a Juvenile Court. Rest of the accused are appellants, namely, 1. Konde Munda (appellant No. 1); 2. Sawna Munda (appellant No. 2); and 3. Ram Munda (appellant No. 3).

5. Learned counsel for the appellants has confined his arguments on certain issued, which will be dealt with at appropriate stage.

6. The informant Randai Mundain (PW 6) is the main eye witness and for the said reason, it is desirable to discuss her evidence first. She has stated that seven months prior, on Monday she along with her husband Kore Munda was sleeping in her verandah (Dhaba) and the children were sleeping inside the room, after taking supper. Accused Ram. Konde, Sawna and Mochi entered inside her house about 10.00 p.m. Konde Munda was armed with dagger (Chaku), Sawna with

Lathi, Ram with Tangi (axe) and Mochi was carrying a torch. They (accused persons) said that they will finish them and then assaulted her husband (Rore Munda) by giving blows on his head. They also assaulted her causing injuries on her cheek. The reason was stated that the accused used to call them witch. She further stated that her husband Rore Munda succumbed to the injuries then and there. She and her children had seen the occurrence and the son (Mochi Munda-PW 5) reported the matter to her brother Bhola Purty (PW 3). Subsequently Bhola Purty came to her house and on arrival of Police, their statements were recorded. As the informant does not know Hindi, she made statement before the Police in Mundari, which was translated and recorded in Hindi.

In her cross-examination, the informant (PW 6) has stated that the police sent her to Hospital for treatment at about 3.00 p.m. She could not give all details of assault to the police, as she was not in a position to talk. She further stated that there was an ordinary door in the dhaha and a dhibri was burning in the verandah (Dhaba), where they were sleeping. She (PW 6) has further made clear during the cross-examination that the accused first assaulted her husband (since dead) and on her protest they also assaulted her. Her children having heard the Hulla, came out of their room and identified all the accused, who then fled away. She was not in a position to cry, having sustained injuries and stated that Ram assaulted her. However, she accepted that no neighbourer turned up in the night on Hulla and many of them fled away from the village.

7. The other eye witness is Mochi Munda (PW 5) son of the informant and deceased. However, he is a child witness, aged about eleven years. This witness has stated that the incident took place six months back in the night of Monday. He and his younger brother Markas were sleeping in the kitchen and their mother and father (informant and deceased) were sleeping in Dhaba (verandah). In the night, on hearing the Hulla of his mother (informant) he came to the Dhaba and saw that accused Ram, Konda, Sawna and Mochi were assaulting their father (Rore Munda) and mother (informant) by dagger and Tangi. He saw the incident and identified the accused in the light of Diya, burning near the door of Dhaba (verandah). All the four accused after assaulting his parents fled away. His father died at the spot and mother was injured but was alive. Second day, he went to village- Indpirhi in the house of his maternal uncle (Mama) and detailed the incident to them. The maternal uncle (Bhola Purty-PW 3) thereafter, came to his house and told every thing to Daroga Babu, which he (PW 5) narrated to him (PW 3).

To test the credibility of the child witness, questions were put by the Court when he made clear that he had come to the Court as witness to give evidence regarding the murder of his father.

8. During cross-examination, he stood to the lengthy questions, put to him and made clear that he, his younger brother Markas and younger sister Etwari were sleeping inside the room and his parents were sleeping in the Dhaba. A Dhibri was burning near the door of which one side is their room and the other side is

the Dhaba. He saw the accused assaulting his father and mother. On reaching the door, while he saw his father lying in the pool of blood, also saw the four accused fleeing, from a very close distance. He further made clear that the door of the Dhaba (verandah) is very ordinary (Kam-chalau), where his father and mother were sleeping and the body of his father was lying in the said Dhaba.

Though Mochi Munda (PW 5) is a child witness but his statement was consistent and also corroborated the evidence of other witness i.e. informant Randai Mundain (PW 6).

9. Bhola Purty (PW 3) and Dimba Purty (PW 4). though related to the informant and deceased and are hearsay witnesses, but they are also direct witness to the fact that the body of Rore Munda (deceased) was lying in the verandah in the pool of blood. Bhola Purty (PW 3) has stated that Mochi Munda (PW 5) came to him and stated that accused Ram. Konde, Sawna and Mochi have killed his father in the night of Monday and have injured his mother Randai Mundain (informant). Thereafter, he went to village-Kadaldth and saw the dead body of Rore lying on the Dhaba (verandah) of the house. The cheek of his sister (informant) was injured and there was a minor injury on her head. When he asked his sister (informant) as to who killed her husband, she took the names of all the four accused and told that she was also injured by them. Bhola Purty (PW 3) stated that the Daroga had come to the place of occurrence and had taken the earth stained with blood and prepared seizure list, on which he gave his thumb impression. He also proved the document. He made clear that he reached village- Kadaldih at 12 noon and had gone to the hospital at about 3.00 p.m. The informant Randai Mundain at that time was not in a position to talk. In the cross-examination, he made clear that the informant Randai Mundain told him on the next Sunday that the four accused had killed her husband and injured her. The statement of Randai Mundain was taken on the next Monday. Mochi Munda (PW 5) also told him that his father was killed by Ram, Sawna. Konde and Mochi.

10. Similar statement has been given by Dimba Purty (PW 4) the other brother-in-law of the deceased i.e., the brother of the informant. He has stated that about six months back, in a morning of a Tuesday, his nephew (Bhagina), Mochi Munda (PW 5). came to his house and informed that his father has been killed by accused Konde, Mochi, Sawna and Ram and his mother has been injured. Soon thereafter, he went to the house of Rore and found his dead body lying in the Dhaba and the sister (informant) in injured and painful condition. In the cross-examination, however, he has stated that he has not stated the police that the Bhagina Mochi Munda (PW 5) had told that his father was killed by Ram, Sawna, Mochi and Konde.

Though they (PWs 3 and 4) are hearsay witnesses but their evidence corroborates the evidence of the eye witnesses. The statements of the aforesaid eye witnesses stand further corroborated and strengthened, if one goes to the post-mortem examination report of deceased Rore Munda and evidence of Dr. Vijay Kumar (PW 2), who submitted postmortem report, as also the injury report

submitted by Dr. Umesh Chandra Sinha (PW 1), who examined the informant (Randai Mundain). The doctor, who held autopsy on the dead body of Rore Munda, found the following injuries :--

(i) 3" x 1/2" x 1/2" on vult of skull (ii) 2" x 1/2" x 1/2" below right eye (iii) 3" x 1/2" x 1/2" on right palm (iv) 2" x 1/2" x 1/2" below right ear

11. The other doctor (PW 1), who examined the informant (PW 6), found one sharp cutting injury on her face, right side from nose to outer angle of right eye, lower flap of skin hanging and bone was visible. The age of injury was stated to be within 24 hours.

12. At this stage it may be mentioned that the counsel for the appellants raised doubt on the post-mortem report on the ground that the doctor had not given evidence showing the cause of death. He placed reliance on the decisions of the Supreme Court in the cases of State of Haryana Vs. Prabhu and Others, and State of Maharashtra Vs. Kalu Shivram Jagtap and Others, . It was submitted that in a case based on circumstantial evidence if no opinion is given by the doctor that a particular injury caused the death, the Court should alter the sentence u/s 304, instead of Section 302 of the Indian Penal Code.

However, it is not necessary to discuss the ratio, laid down by the Supreme Court in the aforesaid cases for the present, as in the present case, the doctor (PW 2) in his evidence has specifically stated that all the injuries (i) to (iv), as he quoted, were caused by sharp cutting weapon. Cause of death was due to shock and haemorrhage for the injuries.

13. The other issue is raised by the counsel for the appellants, as was raised before the trial Court, relating to minor contradictions of evidence of one or other witness. For example the informant (PW 6) in her evidence has stated that Konde was armed with Chhura, Ram was armed with Tangi, Sawna was armed with lathi but no single injury caused by Lathi was found on the person of either deceased or the informant. The Court below has discussed this issue and rightly held that the accused cannot derive advantage of such minor contradictions,

14. It was also submitted that the Investigating Officer (PW 7) deposed, as mentioned in the fardbeyan, that he recorded the statement in the house of the informant at 11.30 a.m. but the informant in her statement stated that it was also taken at 11.30 a.m., which was not possible. But this issue has been rightly dealt with by the learned Sessions Judge that it is not possible for a villager to give either accurate time by minutes and seconds or there may be difference of time in the watch of one or other.

15. At this stage, it may be mentioned that Tej Narayan Singh (Investigating Officer) has also appeared as PW 7. He has proved certain documents and made statements. which corroborate the statements, as made by the informant Randai Mundain, wife of the deceased. Counsel for the appellants could not show any substantive contradiction in the evidence of one or other prosecution witness,

including the evidence of PW 7 (Investigating Officer). From the aforesaid facts and evidence on record, I find that the prosecution has been able to prove its case beyond all reasonable doubts, that Konde Munda. Sawna Munda and Ram Munda have committed offence under Sections 302/34 of the Indian Penal Code and accused Ram Munda has also committed offence u/s 307 of the Indian Penal Code. For the said reason, while all the appellants have been sentenced to life imprisonment for the offence under Sections 302/34 of the Indian Penal Code, appellant Ram Munda has further been sentenced rigorous imprisonment for five years for the offence u/s 307 of the Indian Penal Code, which is to run concurrently, with a fine of Rs. 1,000/-each, I find no reason to interfere with the impugned judgment and order of conviction and sentence.

16. The appeal, being devoid of merit, is hereby dismissed.

Lakshman Uraon, J.

17. I agree.