

**Gandra Munda Vs. the State of Bihar**

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**SooperKanoon Citation :** [sooperkanoon.com/917821](http://sooperkanoon.com/917821)

**Court :** Patna

**Decided On :** May-16-2011

**Judge :** Anjana Prakash, J.

**Acts :** Indian Penal Code (IPC) - Sections 304(II), 374(2); Code of Criminal Procedure (CrPC) (Cr.P.C) - Section 164

**Appeal No. :** Criminal Appeal (SJ) No. 290 OF 1996

**Appellant :** Gandra Munda

**Respondent :** The State of Bihar

**Judgement :**

1. The appellant has been convicted under Section 304 (II) IPC and sentenced to RI for ten years by the 1st Additional Sessions Judge, Nawadah in S.Tr. No. 113/95/47/95 by a judgment dated 19.04.1996.
2. The prosecution case is that on 14.02.1995 when the informant P.W. 5 went on the roof of the Sessions Office he received information from the deceased that some body was throwing bricks at which they went there to verify the matter. The appellant who was standing on the roof gave a brick blow on the head of the deceased on account of which he fell down, while the informant fled away from there.

3. During trial the prosecution in all examined ten witnesses out of whom P.W. 9 is the Investigating Officer. P. W. 6 is the Doctor who performed the post-mortem whereas P.W. 1, P.W. 3, 2 P.W. 5 and P.W. 8 have deposed as eye-witnesses. P.W. 2 is the brother of the deceased and P.W. 7 is the father of the deceased. The case however rests on the solitary evidence of P.W. 5 the informant.

4. On behalf of the defence one Doctor was examined on the point of examination of the appellant on the date of occurrence. Further it appears that the appellant had given a statement recorded under Section 164 Cr.P.C. to the effect that the deceased was beating him and when he was running away to save himself he was chased and assaulted. The deceased had then fallen down on account of which he had died.

5. From the evidence of the witnesses it appears that the only material that has transpired against the appellant is to the effect that the appellant was seen on the terrace where the occurrence took place. P.W. 5 who is the sole eye-witness is merely on the point of being part eye-witness since it is his own case that he ran away on seeing the deceased being assaulted.

6. From the evidence of the Doctor, I find that the deceased had sustained five injuries and the same does not corroborate the prosecution case that the appellant had given a brick blow on the head of the deceased. Further, in the light of his statement under Section 164 Cr.P.C. as also injuries sustained by him which is an admitted position it is difficult to accept that the prosecution has brought the true version of the occurrence before the Court.

7. In the result, the appeal is allowed and the judgment dated 19.04.1996 passed by the 1st Additional Sessions Judge, Nawadah in S.Tr. No. 113/95/47/95 is set aside. The appellant is discharged of the liability of his bail bond.

8. Let a copy of this judgment be handed over to the Counsel who has appeared amicus curiae for the needful.