2026:JHHC:31330-DB

IN THE HIGH COURT OF JHARKHAND AT RANCHI

(Against the judgment of conviction and the order of sentence, both dated 25.11.2002 passed by the learned Additional District and Sessions Judge, Fast Track Court-III, Giridih in Sessions Trial No. 190 of 2001)

Criminal Appeal (D.B.) No.58 of 2003

Bhola Mahto, son of Meghu Mahto, resident of village-Bishunpur, PS-Birni, District-Giridih … **Appellant(s).**

Versus

The State of Jharkhand … **Respondent(s).**

For the Appellant(s) : Mr. Shree Nivas Roy, Advocate
For the Respondent(s) : Mrs. Priya Shrestha, Spl. PP

……..

PRESENT

SRI ANANDA SEN, J.
SRI PRADEEP KUMAR SRIVASTAVA, J.

J U D G M E N T

27th October 2026

***By the Court*:** This case has a chequered history.

2. Appellant was convicted vide judgment of conviction dated 25.11.2002 passed by the learned Additional District and Sessions Judge, Fast Track Court-III, Giridih in Sessions Trial No. 190 of 2001 and was sentenced by order of sentence dated 25.11.2002 for committing offence punishable under Section 302 of the Indian Penal Code.

3. This appeal was heard by this Bench and was decided on 02.12.2024. Vide the judgment dated 02.12.2024, the conviction of the appellant for offence punishable under Section 302 of the Indian Penal Code was converted to conviction under Section 304 Part II of the Indian Penal Code. Consequentially, the Rigorous Imprisonment for Life was modified and the sentence was reduced to Rigorous Imprisonment for a period of 5 (five) years.

4. When this appeal was heard on 02.12.2024, at the relevant time, since the appellant was not represented by the appellant's lawyer, an Amicus Curiae was appointed. After hearing the arguments of the learned Amicus Curiae, judgment was pronounced.

5. The appellant, thereafter moved before the Hon'ble Supreme Court of India, challenging the aforesaid judgment in Criminal Appeal No.1450 of 2026 arising out of Special Leave Petition (Crl.) No. 19427 of 2025. The said Special Leave Petition was disposed of by the Hon'ble Supreme Court on 07.11.2025, whereby, after setting aside the judgment dated 02.12.2024, the Hon'ble Supreme Court had remanded the appeal for deciding the appeal on merits again without being prejudiced by the findings. The Hon'ble Supreme Court also ordered that the appeal will be heard preferably by the very same Member Judges of the Division Bench, who had the occasion to decide the appeal on 02.12.2024. Thus, this appeal has again been listed before us for hearing on merits.

6. Before the Hon'ble Supreme Court, the learned counsel for the appellant informed that the appellant was not made aware of the absence of the learned counsel for the appellant before the Division Bench of the High Court, thus, Amicus Curiae was appointed without the appellant's knowledge. The Hon'ble Supreme Court at paragraph 9 of its judgment, based on the report of the Registrar General of the High Court, observed that no notice was issued informing him that his counsel was not appearing, ahead of appointing the Amicus Curiae before the Division Bench. In paragraph 11, contention of the learned advocate was recorded wherein learned advocate contended that there was gross failure of justice as the appellant has not been

meted out with a fair treatment. His argument was that the grounds, which the appellant has raised in the memo of appeal, was not argued by the learned Amicus Curiae, instead he argued grounds, which the appellant had not raised in the memo. It was the contention of the learned counsel for the appellant before the Hon'ble Supreme Court that since the Amicus Curiae did not raise all the grounds mentioned in the memo of appeal, the Division Bench did not consider the same, which according the appellant, would have set up a strong case for acquittal. In paragraph 12, the learned counsel urged to argue all the points before the Hon'ble Supreme Court, which were taken in the memo of appeal before this High Court, to claim acquittal.

7. The Hon'ble Supreme Court in paragraph 13 did not accept the argument of the appellant and the Hon'ble Supreme Court held that if the grounds have not been urged, the blame cannot be placed upon the Amicus Curiae. The Amicus Curiae was appointed, considering there was no report from the side of the appellant, despite repeated calls and the learned Amicus Curiae urged only one ground and succeeded. The Hon'ble Supreme Court did not find anything wrong in the approach of the learned Amicus Curiae. The Hon'ble Supreme Court also held that the appellant was not at all concerned with the appeal as he was already on bail. It was further observed that the appellant had himself to blame for not pursuing the appeal before the High Court. It is necessary to quote paragraph-13 of the aforesaid judgment, which reads as under: -

> *"13. We are not prepared to accept this argument. It is true that whatever grounds the appellant did raise in the memorandum of appeal were not urged before the High Court by the learned amicus. However, nothing turns on it. If such grounds have not been urged, the blame cannot be placed on the learned amicus. The learned amicus came to be appointed by the High Court when it was*

noticed that the appeal remained pending for more than two decades and there was no representation from the side of the appellant despite repeated calls. In his wisdom, the learned amicus urged only one ground and succeeded. We see nothing wrong in the approach of the learned amicus. Also, the approach of the High Court endeavouring to expedite a decision on the appeal is not unjustified. Appellant was enjoying the concession of bail for two decades without being in any manner concerned about the fate of his appeal. It was not a case where the appellant was in custody and, thus, disabled or inconvenienced to contact his counsel to argue the appeal. Appellant, while enlarged on bail, has himself to blame for not keeping track of his appeal and by not persuading the High Court to decide the appeal at an early date, considering the vehemence with which learned counsel seeks to argue before us that the appellant merits an acquittal based on the multiple grounds raised in the memorandum of appeal. We hasten to add that whatever be the worth of the grounds so raised, the appellant cannot appeal to us to consider the same for the first time once it is found that such grounds were not pressed for consideration by the High Court."

8. Further in paragraph 14, the Hon'ble Supreme Court has laid down the procedure to be followed in a case where Amicus Curiae is appointed by the Court. On this ground, the appeal was remanded for hearing *de novo*.

9. Today, when the matter was taken up for hearing, learned counsel engaged by the appellant has appeared before this Court. This Court had pointed a question to him as to whether he has received instruction from the appellant or not, and what are the grounds, he is urging before us to support his case for acquittal in this case.

In reply to the first query, he said that he has proper instruction from his client. On the second query, learned counsel for the appellant only takes the following grounds: -

(i) This case cannot fall within the purview of Section 302 of the Indian Penal Code as under the heat of passion, the incident had taken place.

(ii) Since the occurrence had taken place in open field, non-examination of any independent witness is fatal for the prosecution, which, according to him, will mean that the prosecution has failed to prove involvement of this appellant as other witnesses are interested and related witnesses.

(iii) Learned counsel for the appellant lastly submits that since the appellant is now aged about 75 years, mercy should be shown to him.

(iv) PWs have stated about use of different weapons. Thus, there are discrepancies in their evidence which creates doubt about the prosecution case.

(v) Iron rod was not recovered.

10. It is worth to mention that the first ground, which the lawyer of the appellant has taken in this case is the same, which the learned Amicus Curiae had taken on the earlier occasion when the appeal was decided by this Bench on 02.12.2024.

11. Learned counsel for the State opposes the prayer and submits that as per the judgment of the Hon'ble Supreme Court, this Court is to rehear the appeal on its own merits. He submits that this case, as per the evidence, needs to be dismissed and the conviction under Section 302 of the Indian Penal Code needs to be upheld. He submits that assault was fatal, which resulted in death of the deceased. He submits that P.W.3 is an independent witness, whose testimony cannot be discarded and brushed aside, who also supported the prosecution case. It is his contention that it is not the number of witnesses which matters, but it is the quality of evidence. In this case, the witnesses stood firm and their testimony is supported by medical evidence. He lastly submits that the appellant should be held guilty for committing offence under Section 302 of the Indian Penal Code.

12. The Hon'ble Supreme Court, in the case of "**Sukhpal Singh vs. Kalyan Singh**" reported in **1962 SCC OnLine SC 149** has held

that the Court is not bound to deal with each and every point, which has been raised in memo of appeal, unless the same is argued. Since only these two points were raised, we firstly will deal with these two points.

13. To understand the points raised, it is necessary to go through the facts of this case, which are dealt hereinafter.

14. The prosecution case, in brief, is that on 28.10.2000 at about 9:30 p.m., informant Nanhku Mahato (PW4) produced the dead body of his brother Ritlal Mahato at Birni Police Station and got his fardbeyan (Ext.3) recorded, alleging that at about 6:00 a.m., the deceased was irrigating his chilli plants from a well near village-Bishunpur. At the same time, Bhola Mahto, Meghu Mahato and Bundiya Devi w/o Bhola Mahato also went there to irrigate their chilli plants where an altercation arose with accused Bhola Mahto over the flow of water through a "Karha". During the altercation, Bhola Mahto allegedly assaulted the deceased repeatedly on the head with a "sabbal", while accused Meghu Mahto assaulted him with lathi and Bundiya Devi, wife of Bhola Mahto, instigated them to kill him. The occurrence was witnessed by Jagannath Mahto (PW3), Sukar Mahto and others. The informant took the injured to Birni Police Station, from where he was referred to Ranchi, however, he succumbed to his injuries. Based on the aforesaid *fardbeyan,* FIR being Birni PS Case No. 74 of 2000 was instituted under Section 302/34 of the Indian Penal Code.

15. After investigation, the Investigating Officer submitted chargesheet against the appellant. On the basis of chargesheet and materials available on record, cognizance was taken and the case was committed to Court of Sessions where charge was

framed under Section 302/34 of the Indian Penal Code and trial proceeded.

16. To prove the prosecution case, altogether 5 witnesses were examined by the prosecution, who are PW1-Dr. Suresh Barahmchari, PW2-Nathu Mahto, PW3-Jagannath Mahato, PW4-Nanhku Mahato and PW5-Ramrup Paswan is the investigating officer of the case.

PW1-Dr. Suresh Barahmchari is the doctor who conducted the postmortem on the dead body of the deceased and found the following:

> *"i. Eye closed. Mouth Closed. Partly gray hair. Rigour mortis present in all limps. He has further stated that he found following antimortem injuries:*
> *(i)A stitched wound over the right parietal area of head 2 ½ " in length.*
> *(ii)A stitched wound 1 ½" in length over right parietal scalp.*
> *(iii) A lacerated wound 2 ½" x ½" deep to the bone over right side of occipital bone.*
> *(iv) A stitched wound 2" over right posterior parietal area of skull.*
> *(v) An abrasion ¼" x¼" over right leg above ankle.*
> *<u>On Dissection</u>*
> *Haemotoma over right parietal occipital area with fracture of right parietal bone. Cranical cavity full of blood clots, larynx and trachea – NAD. Thoracic cage NAD. Lungs pale heavy both sides empty. Liver spleen kidney all pale stomach empty. Mucosua-empty, no smell, urinary bladder-full.*
> *Time elapsed since death till P.M. examination within 24 hours.*

He has opined cause of death as shock and hemorrhage due to head injury caused by hard and blunt object such as "*Sabbal*". He has proved postmortem report as Ext.-1.

PW2-Nathu Mahto stated that his land is adjacent to Chaman Mahto. On the date of occurrence in the morning Ritlal Mahto (deceased) was irrigating his field when Bhola Mahto came and started quarrelling with the deceased that he will irrigate his field first and during quarrel Bhola Mahto gave "*sabbal*" blows on head and leg of the deceased. Thereafter Meghu came and instigated to kill him. The wife of Meghu also came and started pelting stone.

PW3-Jagannath Mahato is the independent eye witness to the occurrence. He stated that Bhola Mahto quarreled with the deceased that he will cultivate his land first and during quarrel Bhola Mahto gave rod blow on the leg of the deceased on which deceased fell down and on instigation from Meghu Mahto he assaulted the deceased on head by rod.

PW4-Nanhku Mahato is the informant of this case. He also stated that Bhola Mahto gave "*sabbal*" blow on the leg and head of the deceased and he along with others took the deceased to the police station and on the way to hospital he was dead.

17. The prosecution has exhibited following documents:

i.Ext.1 – Postmortem report.

ii. Ext.2 – Signature of Nathu Mahto on inquest

iii. Ext.3 – Signature and writing of FIR by Ramrup Paswan

iv. Ext.2/1 – Entire inquest report.

18. After closure of the prosecution witnesses, statement of the appellant under Section 313 Cr.P.C. was taken. The defence has not examined any witnesses, however, they have exhibited following documents:

i. *Ext.A– certified copy of information of khatiyan of khata no. 30 of village Bhaluwa.*
ii. *Ext.A/1 – certified copy of information of khatiyan of khata no. 30 of village Bisanpur.*
iii. *Ext. B – certified copy of voter list of village Bhalua.*
iv. *Ext. C – original lal ration card of accused Bhola Mahto.*
v. *Ext. D – sale deed executed by Gunjari Devi and others in favour of Janki Devi*

19. After going through the records and hearing the learned counsel, we find that there are three eye-witnesses to the occurrence. The eye witnesses i.e. PW2, PW3 and PW4 stated that there was an altercation between this appellant and the deceased on the point of watering the field. There was a quarrel as to who would irrigate their field before other. Because of the said altercation, in a sudden fight, this appellant with the Iron rod

(*Sabbal*) assaulted the deceased on his head which resulted in his death.

20. There is consistent evidence of the all the witnesses that due to sudden fight the appellant got outraged and has assaulted the deceased with iron rod. This clearly suggests that there was no intention on the part of the appellant to commit murder of the deceased. He assaulted the deceased on instigation of the others. Thus, in our view this case will fall under Exception 4 of Section 300 of the Indian Penal Code.

21. Section 300 of the Indian Penal Code defines murder: -

> *"300. Murder.*
> *Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or –*
> *2ndly. – If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or –*
> *3rdly. – If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or –*
> *4thly. – If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid."*

There are some Exceptions to Section 300 of the Indian Penal Code. Exception 4 of section 300 IPC reads as follows:-

> *"When culpable homicide is not murder.*
> *Exception 1. – …….*
> *Exception 2. – …….*
> *Exception 3. – ……*
> *Exception 4. – Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner.*
> *Explanation. – It is immaterial in such cases which party offers the provocation or commits the first assault.*
> *Exception 5. – ……"*

22. Thus, from the aforesaid Exception, if in a sudden heat of passion and in an altercation without premeditation, assault takes

place and death occurs because of the said assault, the case would fall under Exception 4 of Section 300 of the Indian Penal Code.

23. The other points which were raised is now being considered.

24. The submission of the learned counsel for the appellant that there is contradiction in the statement of PW2, PW3 and PW4 so far as murder weapon is concerned cannot be accepted.PW2 and PW4 in their deposition specifically stated that this appellant has assaulted the deceased by *"Sabbal"(Iron Rod)* on the leg and when he fell down the appellant assaulted the deceased on his head. Further, PW3 also stated that the appellant has assaulted the deceased by Iron rod. Thus, from the deposition of the witnesses, we are of the view that the weapon used in the offence is definitely the iron rod. "*Sabbal*" is also an iron rod.

It is the contention of the appellant that the iron rod was not recovered. The non-recovery of the murder weapon is of no significance when there are eye-witnesses to the occurrence, who have categorically stated about the whole occurrence.

It is further contended that the judgment is based on the evidence of PW2 and PW4 who are cousin brother and brother of the deceased, highly interested, inimical, partisan witnesses. We are of the option that merely because PW2 and PW4 are relative of the deceased is not enough to reject their testimony. It is well settled that the testimony of relative witnesses cannot be disbelieved on the ground of relationship. The only requirement is to examine their testimony with caution. In "**Masalti v. State of U.P."** reported in **AIR 1965 SC 202** the Hon'ble Supreme Court has observed thus:

> *"14. … There is no doubt that when a criminal court has to appreciate evidence given by witnesses who are partisan or interested, it has to be very careful in weighing such evidence. Whether or not there are discrepancies in the evidence; whether or not evidence strikes the Court as genuine; whether or not the story disclosed by the evidence is*

probable, are all matters which must be taken into account. But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. …… The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard-and-fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct."

From the evidence of the PW2 and PW4, it is not disbelieved that they are the eye witnesses of the incidence and PW3 who is the independent eye witness also corroborated the same.

25. It is further argument of learned counsel for the appellant that the iron rod was not seized by the police. Seizure/ recovery of the crime weapon, blood-soaked soil/cloth and FSL reports cannot be ignored in the trial but it is not necessarily fatal, when eyewitness testimony and other evidence are available. The Hon'ble Supreme Court in the case of **"Rakesh and Anr. vs. State of Uttar Pradesh and Anr."** reported in **(2021) 7 SCC 188** has held that for convicting an accused the recovery of weapon in commission of offence is not a *sine qua non*.

26. Learned counsel for the appellant argued that the medical evidence was not corroborated with the ocular evidence. From the evidence of the witnesses, we find that the eye-witnesses have categorically stated about the full incident. They have consistently stated that the deceased was assaulted with iron rod on his head and legs. From the evidence of the doctor and the postmortem report, we find that there is injury over the right parietal area of head and as per the doctor the said injury is the cause of death. The deceased has also injury on his leg. Thus, we are of the view that the ocular evidence corroborates the medical evidence.

27. Since, we have held that this case will fall under Exception 4 of Section 300 of the Indian Penal Code, we don't feel that the judgment of conviction of the appellant under section 302 of the Indian Penal Code was proper.

28. Considering what has been held above, the conviction of the appellant under Section 302 of IPC cannot be sustained, rather, we convict the appellant for committing offence under section 304 Part-II of IPC. So far as sentence is concerned, we convert the sentence from rigorous imprisonment for life to rigorous imprisonment for a period of five years. Thus, this appeal stands **dismissed** with the aforesaid modification in the judgment of conviction and the order of sentence passed in Sessions Trial No. 190 of 2001.

29. Since the appellant is on bail, his bail is cancelled and he is directed to surrender on or before 10th December, 2026 before the Trial Court concerned to serve the five years sentence, if he has not already served. If the appellant does not surrender, the State will take appropriate action.

30. Pending I.A., if any, stands disposed of.

31. Let a copy of the judgment along with the Trial Court Records be sent back to the Court concerned forthwith.

(ANANDA SEN, J.)

(PRADEEP KUMAR SRIVASTAVA, J.)

High Court of Jharkhand, Ranchi
Dated :27.10.2026
Tanuj/

Uploaded on 06.11.2026