IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (D.B.) No. 145 of 2022

[Against the judgment of conviction and order of sentence dated 06.10.2018 and 09.10.2018, respectively, passed by learned Additional Sessions Judge-V, Jamshedpur in Sessions Trial No. 77 of 2015 arising out of Kowali P.S. Case No. 41 of 2014 corresponding to G.R. No. 3470 of 2014.]

Hapan Sardar, Son of Lt. Nando Sardar, Resident of Village- Upar Dewali, P.O. & P.S.- Kowali, Dist.- East Singhbhum.

... ... **Appellant**

Versus

The State of Jharkhand … … **Respondent**

P R E S E N T

SRI ANANDA SEN, J.

SRI PRADEEP KUMAR SRIVASTAVA, J.

For the Appellant : Mr. Arbind Kumar Sinha, Advocate
: Mr. Akhouri Prakhar Sinha, Advocate
: Mr. Rupesh Singh, Advocate
For the State : Mrs. Amrita Kumari, A.P.P.

JUDGEMENT

C.A.V. on: 28.10.2026 **Pronounced on: 06/11/2026**

Per- Pradeep Kumar Srivastava, J.

1. Instant Criminal Appeal is directed against the judgment of conviction and order of sentence dated 06.10.2018 and 09.10.2018 respectively passed by learned Additional Sessions Judge-V, Jamshedpur in Sessions Trial No. 77 of 2015 arising out of Kowali P.S. Case No. 41 of 2014 corresponding to G.R. No. 3470 of 2014, whereby and whereunder, the appellant has been held guilty for the offence under Section 302 of the Indian Penal Code and sentenced to **undergo rigorous imprisonment for life alongwith the fine of Rs. 10,000/-** with default stipulation.

Factual Matrix:-

2. Factual matrix giving rise to this appeal, as per fardbeyan (Ext.-1/1) of one Koushalya Sardar (wife of the deceased) recorded on 05.11.2014 by S.I. J. Ram, officer in-charge of Kowali police station at about 13:30 hours at the house of informant is that there was dispute of partition of landed property between husband of the informant and elder brother Hapan Sardar (present appellant). On 4.11.2014 at about 10:00 hours in the night, her elder brother-in-law Hapan Sardar started abusing to the husband of the informant. On protest by her husband, the accused started assaulted him by wooden Khunta in the courtyard of the house. The informant forbade the accused from assaulting to her husband but he continued to assault on head, back, legs and hands by wooden khunta, causing severe injuries to her husband. Then, she raised alarm and her *Nanad* Shakuntala Sardar also arrived and forbade the accused from assaulting his own younger brother. It is alleged that due to sustaining severe injuries, her husband died within few times in the courtyard of the house. It is further alleged that due to darkness in the night, she could not inform about the occurrence at police station but hearing the sound of her weeping, several villagers had assembled there, then, in the following morning, i.e., on 05.11.2014, she sent information to her brother Mahabir Sardar, resident of village Kandar, who also informed to police and police arrived at the place of occurrence, where her fardbeyan was recorded. The informant has claimed that her elder brother-in-law Hapan Sardar has killed her husband by brutally assaulting with wooden khunta and danda on head, back, legs and hands, and other parts of the body.

On the basis of above fardbeyan of the informant, F.I.R. **(**Kowali P.S. Case No. 41 of 2014**)** was registered against the above named accused for the offence under Section 302 of the I.P.C.

3. Charge of investigation was undertaken by the officer in-charge S.I. J. Ram of Kowali police station, who has recorded the re-statement of the informant and interrogated with other witnesses, namely, Shakuntala Sardar, Mahabir Sardar, Dilip Sardar and Raja Ram Sardar. He also seized wooden stick and one khunta stick stained with blood from the place of occurrence and prepared seizure list. Arrested the accused and finding sufficient evidence collected during investigation, submitted charge-sheet against the accused for the offence under Section 302 of the I.P.C. After taking cognizance, the case was committed to the Court of Sessions, where Sessions Trial No. 77 of 2015 was registered.

4. The appellant denied the charge levelled against him and claimed to be tried.

5. In the course of trial altogether 08 witnesses have been examined by the prosecution, who are as under:-

1) PW-1: Mahabir Sardar
2) PW-2: Dilip Sardar
3) PW-3: Raja Ram Sardar
4) PW-4: Kaushalya Sardar (Informant)
5) PW-5: Shakuntala Sardar
6) PW-6: Dr. Lallan Choudhary
7) PW-7: S.I. Jitendra Ram (J. Ram)
8) PW-8: Yogendra Singh Sardar

6. Apart from oral testimony of the witnesses, following documentary and material evidence has been adduced:-

i. Exhibit-1: Signature of Mahabir Sardar (PW-1) on the fardbeyan.

ii. Exhibit-1/1: Fardbeyan

iii. Exhibit-1/2: Endorsement of S.I. J. Ram (PW-7) on fardbeyan.

iv. Exhibit-2: Post-mortem report alongwith the signature of Dr. Lallan Chaudhary (PW-6).

v. Exhibit-3: Formal F.I.R.

vi. Exhibit-4: Seizure list.

vii. Exhibit-5: Memo of arrest.

viii. Exhibit-6: Forwarding of the O/c, Kowali P.S.

Material Evidence:

ix. Mat. Exhibit-1 & 2: Two wooden Balla.

7. On the other hand, defence has not examined any oral or documentary evidence.

8. The case of the defence is denial from the occurrence and has stated that brother-in-law of his brother has falsely implicated him in this case and someone else has put the deceased in the courtyard after beating him.

9. The learned Trial Court after evaluating the evidence oral as well as documentary led by the prosecution, arrived at definite conclusion about the guilt of the appellant for the offence under Section 302 of the Indian Penal Code. Accordingly, the learned Trial Court convicted and sentenced the appellant as stated above, which has been assailed in this appeal.

Submissions on behalf of appellant: -

10. At the first instance, learned counsel appearing on behalf of the appellant has submitted that during examination of the prosecution witnesses, the learned counsel on behalf of accused, appointed by D.L.S.A., appears to be not cross-examined the witnesses. However, learned counsel appearing on behalf of the appellant assailing the impugned judgement has strenuously argued that the learned Trial Court has committed serious illegality while placing reliance upon the evidence of PW-4 (Kaushalya Sardar, Infrormant) and PW-5 Shakuntala Sardar (Nanad of the Informant), who have been declared hostile and not supported the prosecution story as alleged in the F.I.R. In this case, the informant (PW-4) is the star witness-cum-sole eye witness of the occurrence as per the F.I.R. but she has categorically stated during trial that at the time of occurrence, she was not present in the house rather had gone to her parental home, where she came to know about death of her husband in the morning and came alongwith her brother Mahabir Sardar (PW-1) to her matrimonial home, where she found her husband lying in the courtyard in injured condition. Similarly, PW-5 (Shakuntala Sardar) is another witness of occurrence, who is non-else than sister of the accused and deceased, has also not supported the prosecution version and has been declared hostile. Rest of the witnesses of facts are simply hearsay witnesses having no personal knowledge of about the occurrence. The prosecution has also failed to prove genesis and manner of occurrence. The informant (PW-4) has also denied any dispute or scuffle between her husband (deceased) and the present appellant rather she admitted that landed property were partitioned and only house property was subject to

partition. It is further argued that the learned Trial Court has placed reliance upon the evidence of the investigating officer (PW-7), who has deposed about the contents of the fardbeyan of informant as well as her re-statement recorded by him to be gospel truth, even when the witness has not adhered to the same. The investigating officer has not sent the seized materials for chemical examination so as to ascertain the root and source of blood. The blood sample of the appellant was also not taken. No finger print of the appellant was taken for identification of fingerprint on the blood stained wooden khunta allegedly used for assaulting the deceased. Therefore, the seized materials are not connected with commission of any offence. There is absolutely no evidence at all in this case against the appellant. Therefore, the impugned judgment of conviction and sentence suffers from serious illegality, based on conjecture and surmises and liable to be set aside and the appellant deserves to be acquitted from the charge levelled against him. Accordingly, this appeal may be allowed.

Submissions on behalf of State:-

11. Per contra; learned A.P.P. defending the impugned judgment of conviction and sentence of the appellant has argued that the learned Trial Court has very wisely and aptly analysed overall aspects of the case and properly scrutinized the evidence available on record. There is strong circumstantial evidence against the appellant showing his involvement in commission of murder of the deceased. The learned Trial Court has considered every aspect of the case, which has been got explained in the examination of the accused under Section 313 of the Cr.P.C. Therefore, there is no illegality or infirmity in the impugned judgment of conviction

and sentence of the appellant calling for any interference in this appeal, which is devoid of merits and fit to be dismissed.

Analysis, discussions and reasons: -

12. We have gone through the record of the case alongwith impugned judgment in the light of contentions raised on behalf of respective parties.

13. On the basis of rival contentions of both the parties, the only question for consideration in this appeal emerges that ***"as to whether the impugned judgment of conviction and sentence of the appellant suffers from any serious error of law calling for any interference in this appeal or not?"***

14. Before adverting to record any finding on the above point, we have to appraise with the evidence available on record adduced by the prosecution during trial.

15. It appears that altogether 08 witnesses have been examined in this case by the prosecution:-

16. **PW-1 Mahabir Sardar** is brother-in-law of the deceased. He has stated that his brother-in-law *(jija)* was murdered on 04.11.2014. He received informant on 05.11.2014 and came there, where he found injuries on head, elbow and knee. Thereafter, he went to police station and on his information, the police arrived. He has further stated that the deceased was murdered by Hapan Sardar (present appellant). A wooden stick of 3 feet and a wooden khunta were used for assaulting the deceased. Police had seized both wooden stick and wooden khunta. There used to be always quarrel with regard to land dispute between the accused and the deceased. He has proved his signature on the fardbeyan as witness marked as Ext.-1.

In his cross-examination, this witness admits that occurrence has not taken place in his presence rather he saw injuries on the body of the deceased. He also admits that no case was lodged for land dispute prior to this occurrence. He further admits that seizure list was prepared in his presence and he had put his signature.

PW-2 Dilip Sardar has stated that there was dispute with regard to partition of landed property between the accused and deceased. He came to know in the morning that accused Hapan Sardar has murder the deceased.

In his cross-examination, this witness also admits that he has not seen the occurrence. He has also heard from other about land dispute. He denies the suggestion of defence that he has given false evidence.

PW-3 Raja Ram Sardar has been declared hostile by the prosecution. However, he has stated that dispute had taken place in the day between the accused and the deceased but it was tranquilized. He has further stated that he has not seen as to Hapan (present appellant) has murdered the deceased.

This witness has been cross-examined by the prosecution, where he denies the suggestion of prosecution that he has stated before police that on hearing screaming he went to the place of occurrence and saw the deceased was lying dead in courtyard on 04.11.2004 at 10:00 P.M. and there were injuries on his head and legs and blood was also oozing out. The accused was having one wooden khunta and stated him that he murdered his brother with this wooden khunta.

This witness has also been cross-examined by defence, where he admits that he is not the eye witness of the occurrence. He came to know in the morning.

PW-4 Koushalya Sardar is the informant of this case. She speaks Bangla language only. Therefore, an advocate was deputed, who took oath to transcribe the evidence in correct and same version.

She has stated that when her husband died, she was at her maternal uncle's house. She came to know about murder of her husband from his brother-in-law (accused). There were injuries on head, hands and legs and blood was oozing but she can't state by which article, the injuries were sustained. She also does not know, as to who murdered her husband. It might be that the accused might have murdered her husband. She has further stated that no scuffle has taken place earlier between her husband and the accused. Police had also arrived after the incident and interrogated her. Thereafter, this witness has been declared hostile by the prosecution.

In her cross-examination by prosecution, she has denied her fardbeyan get recorded by the police on 05.11.2014 but has admitted that she had given thumb impression on the seizure list of recovered wooden stick.

In her cross-examination by defence, she has stated only that she has no personal knowledge and on instruction of police, she put thumb impression on paper.

PW-5 Shakuntala Sardar, she also speaks Bangla language only. Therefore, an advocate was depute, who took oath to transcribe the evidence in correct and same version.

She has been declared hostile by the prosecution. She has stated in her chief that she was at her maternal uncle's house at the time of occurrence. On Second day of occurrence, her brother Hapan Sardar (present appellant) told her about death of deceased. Thereafter, she reached her home.

In her cross-examination by prosecution, she admits that police had interrogated her. She has further stated that police had seized wooden stick and Khunta and had prepared seizure list, on which she had put her thumb impression. She had denied the suggestion of prosecution that she has given false evidence, as the accused is her own brother.

In her cross-examination by defence, she had denied to be an eye witness and on instruction of police, she put thumb impression on the paper.

PW-6 Dr. Lalan Chaudhary has conducted post mortem of the deceased and found the following injuries:-

Antemortem Injuries:- **A-Abrasions:**

(1) 2.5 CM x 1.5 CM over forehead.

(2) 1 CM x 6.5 CM over left side of forehead.

(3) 1 CM x 1 CM over cheek.

(4) 9 CM x 8 CM over left side lower chest in Axillary line.

B-Bruise:- 20 CM x 15 CM over outer aspect of right arm, under tissue massively continues.

C. Lacerated Wound:-

1. 5 CM x 2 CM x bone deep and 4.5 CM x 2 CM x bone deep over lower part of right leg, both bones at lower part fracture.

2. 8 CM x 3 CM x bone deep over right forearm upper back, both bone at upper part fracture.

On dissection frontal scalp contusion 7 CM x 6 CM, right half of brain contusion and whole brain shoft. Organs are pale, Stomach contain semi digested food 170 Gm.

Opinion:-

Cause of death- Haemorrhage and shock.

All the injuries are caused by hard and blunt object.

Time since death- 36 hours to 42 hours approximately form the time of post mortem examination.

Doctor has proved the post-mortem report of the deceased, which is marked as Ext.-2.

In his cross-examination, doctor has stated that injuries found on the body of the deceased cannot be sustained by collapsing on wall and felling on sharp edge stone.

PW-7 Jitendra Ram @ J. Ram is the investigating officer of this case. On 05.11.2014, he received information about murder of a person at village Upar Devli on 04.11.2014. When he reached at the spot, he found the dead body of a person lying in the courtyard of Kaushalya Sardar (informant). She stated him that this was the dead body of her husband. He recorded the *Fardbeyan* (written statement) of Kaushalya Sardar (Informant). Thereafter, he prepared the inquest report of the deceased. He seized a tin container, a piece of wood, and a wooden block (Khunta) measuring one cubit and two fingers in length with a hole on the upper side and prepared a seizure list of these articles. He has identified his signature on the seizure list, which is marked as Ext.-4**.** Kaushalya Sardar

(informant), in her statement and *Fardbeyan* recorded before him, has stated that on the night of 04.11.2014 at around 10:00 PM, her brother-in-law (*Bhaisur*) Hapan Sardar (accused) started abusing her husband. When her husband objected to the abuse, her brother-in-law took a wooden Khunta used for tying cattle and began beating him in the courtyard of the house. In the meantime, she stepped out of her house and tried to stop the beating. However, her brother-in-law did not listen and continued the assault. Her husband sustained severe injuries near his right elbow and below the knee of his right leg. Upon seeing her husband being beaten, her sister-in-law (*Nanad*) Shakuntala Sardar (PW-5) also arrived and started questioning why he was being beaten so brutally. After a short while, her husband succumbed to his injuries right there in the courtyard. Due to it being night time, she could not inform the police station or anyone else. On 05.11.2014, she informed her brother Mahabir Sardar (PW-1), who subsequently informed the police station on 05.11.2014. He recorded the statement of witness Shakuntala Sardar (PW-5). Shakuntala Sardar has also stated before him in her statement that when Hapan Sardar (accused) was abusing the deceased, she had objected to it. On 04.11.2014, at around 10:00 PM, Hapan Sardar (accused) struck the deceased with a wooden log (khunta) used for tying cattle, causing his head to split open. He also hit him near the right elbow, and his right leg broke and was left hanging. As a result of which, the deceased died in the courtyard. She tried hard to stop him, but the accused did not listen. The place of occurrence of this incident is the mud and tiled house of the informant Kaushalya Sardar. There is a courtyard in the middle of this house. The assault took place in the courtyard in

front of the accused's door, due to which the deceased was seriously injured and consequently died. In the middle, there is a 20-foot courtyard. He recorded the statements of witnesses Mahabir Sardar (PW-1), Dilip Sardar (PW-2), and Raja Ram Sardar (PW-3). Witness Raja Ram (PW-3) has stated before him that he went to the spot upon hearing the sound of screaming and saw that on the night of 04.11.2014 at around 10:00 PM, deceased was lying in his courtyard with severe head and leg injuries. The accused was holding a piece of wood used for tying cattle and was saying that he killed his brother by beating him with this piece of wood. On 05.11.2014, he arrested the accused. The arrest memo bears his signature, which is marked as Ext.-5. Thereafter, finding the sufficient evidence against the accused, he submitted Chargesheet against the accused for the offense under Section 302 of the Indian Penal Code (IPC).

In his cross-examination, he has stated that he has not seized blood stained soil and cloth. He has also not sent the wooden stick for examination of finger print.

PW-8 Yogendra Singh Sardar has produced the seized materials before the Court. He has identified the signature of officer in-charge of police station on forwarding letter which is marked as Ext.-6. He has also proved two wooden articles, which are marked as material Exts.-1 & 2.

In his cross-examination, this witness admits that he has no personal knowledge about the occurrence and has only produced the seized material before the Court.

17. On the other hand, defence has not examined any oral or documentary evidence.

18. We have given thoughtful consideration to overall aspects of the case as testified by the prosecution witnesses during trial and also examined the evidence available on record.

19. We have also gone through the impugned judgment. It transpires that on the basis of testimony of PW- 4, Koushalya Sardar, who is wife of the deceased and also claimed to be eye-witness of the occurrence but later on, she has been declared hostile, PW-6 Dr. Lalan Chaudhary, who conducted post-mortem of the deceased and PW-7 J. Ram, who investigated the case, the present appellant has been held guilty for the offence under Section 302 of the I.P.C. and sentenced accordingly.

20. It further transpires that when PW-4 Koushalya Sardar, wife of the deceased was declared hostile during trial, her attention was drawn towards her earlier version recorded under Section 161 of the Cr.P.C. and her re-statement, to which she denied but no reason was explained by her as to under what circumstances, such statement was recorded by the investigating officer (PW-7). PW-4 has also admitted her thumb impression over her fardbeyan recorded by the investigating officer (PW-7) of this case, which was read over and explained to her, thereafter she put her signature on it. She also admits that her elder brother-in-law is in jail custody in connection with murder of her husband.

21. Similarly, PW-5 Shakuntala Sardar has also in her initial statement recorded under Section 161 of the Cr.P.C. has stated about her presence and has seen the occurrence but during trial turned hostile. The attention of this witness towards her statement under Section 161 of the Cr.P.C. has also been drawn by the prosecution but she also simply denied. Under such circumstances, the prosecution has drawn attention towards

the statement recorded under Section 161 of the Cr.P.C. by PW-4 & PW-5 by the investigating officer, who has categorically deposed that these witnesses were present on the spot and are eye witness of the occurrence and also stated what they have exactly stated before him, which has not been confronted by the defence, nor any material has been elicited showing any ill will or motive of the investigating officer to record false statement of PW-4 and PW-5 with a view of get convicted the appellant.

22. It appears that the learned Trial Court under such circumstances has relied upon following judgments quoted at paragraph-21 of the impugned judgment, which is extracted here under:

> "21. In the case of ***Paramjeet Singh @ Pamma vs State Of Uttarakhand on 2 September, 2010,*** the Hon'ble Apex court considered the matter of hostile witnesses and held as follows-
>
> 17.- The fact that the witness was declared hostile at the instance of the public prosecutor and he was allowed to cross examine the witness furnishes no justification for rejecting en bloc the evidence of the witness. However, the court has to be very careful, as prima facie, a witness who makes different statements at different times, has no regard for the truth. His evidence has to be read and considered as a whole with a view to find out whether any weight should be attached to it. The court should be slow to act on the testimony of such a witness; normally, it should look for corroboration to his testimony. (Vide: ***State of Rajasthan v. Bhawani & Anr.***, (2003) 7 SCC 291).
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> 18.- This Court while deciding with the issue in ***Radha Mohan Singh @ Lal Saheb & Ors, v. State of U.P.***, (2006) 2 SCC 450, observed as under:
>
> ".....It is well settled that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as

hostile and cross-examined him. The evidence of such witness cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent his version is found to be dependable on a careful scrutiny thereof..."

19. In ***Mahesh v. State of Maharashtra***, (2008) 13 SCC 271, this Court considered the value of the deposition of a hostile witness and held as under:-

"..... If PW 1, the maker of the complaint has chosen not to corroborate his earlier statement made in the complaint and recorded during investigation, the conduct of such witness for no plausible and tenable reasons pointed out on record, will give rise to doubt the testimony of the investigating officer who had sincerely and honestly conducted the entire investigation of the case. In these circumstances, we are of the view that PW.1 has tried to conceal the material truth from the Court with sole purpose of shielding and protecting the appellant for reasons best known to the witness and therefore, no benefit could be given to the appellant for unfavourable conduct of this witness to the prosecution".

20.- In ***Rajendra & Anr. v. State of Uttar Pradesh***, (2009) 13 SCC 480, this Court observed that merely because a witness deviates from his statement made in the FIR, his evidence cannot be held to be totally unreliable.

21.- This Court reiterated a similar view in ***Govindappa & Ors. v. State of Karnataka***, (2010) 6 SCC 533, observing that the deposition of a hostile witness can be relied upon at least upto the extent he supported the case of the prosecution.

22.- In view of the above, it is evident that the evidence of a person does not become effaced from the record merely because he has turned hostile and his deposition must be examined more cautiously to find out as to what extent he has supported the case of the prosecution."

23. The place of occurrence is also proved by the investigating officer as admitted in the initial statement of witnesses PW-4 & PW-5, which also finds corroboration from the evidence of PW-7 investigating officer. The manner of assault, i.e., by wooden khunta and stick also finds corroboration from the post mortem report of the deceased conducted by Dr. Lalan Chaudhary (PW-6).

24. PW-1 Mahabir Sardar, who happened to be brother of the informant also does not support hostile version of his own sister deposed during trial. He has nowhere stated that after hearing about the occurrence, he alongwith his sister (PW-4) came to the matrimonial house of his sister rather he came there alone.

25. Considering the overall aspect of the case and the whole conspectus of the prosecution story as depicted by witnesses, we find that the prosecution has been able to prove charge levelled against the accused beyond all reasonable doubt and the learned Trial Court, very wisely and in threadbare manner, has considered all aspects of the case including points of argument raised on behalf of the appellant and after much deliberation of every point with records, has come to a reasoned finding, which suffers from no illegality or interference. We don't find any merit in this appeal, which stands **dismissed.**

26. Pending I.A.(s), if any, stands disposed of.

27. The appellant is in custody. Let a copy of this judgment be furnished forthwith to the appellant through learned A.P.P.

28. It has come in submission of the learned counsel on behalf of the appellant that during examination of prosecution witnesses, the counsel for appellant, appointed by D.L.S.A. has not cross-examined the I.O.

(PW-7) properly but it is crystal clear from the evidence of said witness (PW-7) that he has been cross-examined. As such, learned counsel for the appellant is warned against submission of unauthenticated arguments in future.

29. However, some instances have been brought to our notice that panel lawyers appointed by D.L.S.A, in some districts are not working with utmost responsibility. As such, the Secretary, D.L.S.A of all districts should periodically assess the suitability and performance of the lawyers on regular interval and will take decision, whether to retain each lawyer or to change the panel. This exercise should be done at every six months.

30. Let a copy of this judgment be sent back immediately to the concerned Trial Court for information and needful.

(PRADEEP KUMAR SRIVASTAVA, J.)

Per Ananda Sen, J. : I Agree

(ANANDA SEN, J.)

High Court of Jharkhand at Ranchi
Date: 06/11/2026
Rahul/ ***N. A. F. R.***
Uploaded on: 06/11/2026