IN THE HIGH COURT OF JHARKHAND AT RANCHI
Criminal Appeal (D.B.) No. 395 of 2022

[*Against the Judgment of conviction dated 26.02.2022 and Order of sentence dated 08.03.2022 passed by learned Additional Sessions Judge-I, Bermo at Tenughat in Sessions Trial No. 76/2016*]

Etwari Singh, aged about 62 years, son of Late Janki Singh, resident of Village – Jhanjhuko Dangamahuwa, P.O. and P.S. – Peterwar, District-Bokaro.

... ... **Appellant**

Versus

The State of Jharkhand ... ... **Respondent**

.....

For the Appellant : Mr. Rajesh Kr. Mahtha, Advocate
For the Respondent : Mr. Abhay Kr. Tiwari, A.P.P.

.....

P R E S E N T
SRI ANANDA SEN, J.
SRI PRADEEP KUMAR SRIVASTAVA, J.

JUDGMENT

Dated: 3rd November, 2026

By Court:- The instant criminal appeal is directed against the judgment of conviction dated 26.02.2022 and order of sentence dated 08.03.2022 passed by the learned Additional Sessions Judge-I, Bermo at Tenughat in Sessions Trial No. 76/2016, whereby and whereunder the appellant has been convicted for the offence under Section 302 of the Indian Penal Code and sentenced to undergo imprisonment for life along with a fine of Rs. 5,000/- with default stipulation.

2. We have heard Mr. Rajesh Kumar Mahtha, learned counsel representing the appellant and Mr. Abhay

Kumar Tiwari, learned A.P.P. representing the State and have gone through the materials available on record.

3. Learned counsel for the appellant submits that the case will not fall within Section 300 of the I.P.C., rather it is culpable homicide not amounting to murder, as there was no intention to cause death of the deceased. He further submits that though the injuries were on the head, but there is only one injury and the Doctor has not opined that it seems sufficient in ordinary course of nature to cause death. He also submits that from the evidence itself, it is clear that dispute arose between the parties on spur of moment and one blow was given. Learned counsel submits that there are eye-witnesses of the said occurrence, which could not be burst aside. It is further submitted that they are reliable witness. He submits that although assault was with an axe on head but there was no intention to commit murder of the deceased, as the entire incident occurred on spur of moment. There is nothing on record to suggest that the appellant had come with arm to assault the deceased.

4. Learned A.P.P. representing the State, opposes the prayer and submits that the prosecution has been able to prove that the appellant gave fatal blow on the head of the deceased and the death was homicidal.

5. The prosecution case as based upon the fardbeyan of the informant Somay Besra (P.W.-7) is that on 22.12.2015 at about 4:00 P.M., he was working in his filed situated by the side of his house. The accused Etwari had come to his house and he along with his father sat on the cot in the courtyard. Thereafter some altercation took place between them and Etwari Singh assaulted his father at his head by axe. Seeing that, the informant's children started raising alarm. Heaving heard hulla, the informant rushed to his house and saw that his father was lying on the cot in pool of blood and the accused Etwari Singh was making axe blow over him. Thereafter, the informant snatched axe from him and called the village doctor on mobile. The doctor came and declared him dead. The informant claims that the accused caused death of his father by inflicting axe injury over his head.

6. On the basis of fardbeyan, Petarwar P.S. Case No. 198 of 2015 was registered for the offence under Sections 302 of the I.P.C. and after investigation, the I.O. of the case submitted charge sheet against the accused. After taking cognizance, the case was committed the court of Sessions, where charge were framed against the accused for the aforesaid offence.

7. The prosecution has altogether examined eight (08) witnesses, who are as follows:-

P.W.-1 : Nuni Bala Devi.

P.W.-2 : Fulmani Devi.

P.W.-3 : Dhuma Kisku.

P.W.-4 : Birso Besra.

P.W.-5 : Dr. Bikash Kumar.

P.W.-6 : Maheshwar Manjhi.

P.W.-7 : Somay Besra (Informant).

P.W.-8 : S.I. Santosh Kumar (I.O.).

8. Some documents were also exhibited in this case, which are as follows:-

Exhibit-1 : Endorsement on Fardbeyan.

Exhibit-1/1 : Fardbeyan.

Exhibit-1/2 : Signature of Birso Besra on Fardbeyan.

Exhibit-2 : Seizure List.

Exhibit-2/1 : Signature of Birso Besra on Seizure List.

Exhibit-2/2 : Signature of Maheshwar Besra on Seizure List.

Exhibit-3 : Post Mortem Report of deceased Sawan Manjhi.

Material Exhibit-I : Seized axe.

9. After closure of the prosecution evidence, the trial court has recorded the statement of the accused under Section 313 of Cr.P.C. and the accused in his defence has denied the occurrence.

10. The trial court, after hearing both the parties, vide its judgment of conviction and order of sentence, convicted the appellant and sentenced him, as delineated in the opening paragraph of this judgment, which has been challenged in this Criminal Appeal.

11. After hearing the parties, we have also gone through the evidence documentary and oral evidence.

12. The F.I.R. was at the instance of P.W.-7, who stated that he was working in his vegetable garden on the west side of his house, when children shouting then he rushed towards his courtyard and saw his father (deceased) with blood on his head and sustaining injuries and appellant standing there with axe. He stated that he snatched the axe from the hands of this appellant and caught him. Thereafter, he called the Doctor, who came and declared the injured, dead.

13. P.W.-1 and P.W.-2 are the eye witnesses. From perusal of oral statements of both the witnesses, there is no doubt that they have seen the occurrence, as the presence of P.W.-2 is proved from the evidence of P.W.-1, who has stated that P.W.-2 is also present. Both the witnesses stated that this appellant came to his house and asked the deceased to provide him liquor. On hearing the refusal, the appellant with an axe gave blow on the head of the deceased, which fractured the head. The doctor came, but declared

him dead. They identified the appellant in the dock. In cross-examination, P.W.-2 denied the fact that the deceased used to running a business of liquor and this appellant used to forbade him from selling the same, which resulted in this incident. There was no previous enmity between the parties. It is also clear that there is nothing in the evidence that he had come with any weapon to assault the deceased with any intention. It is apparent that since the appellant demanded liquor and the deceased refused, a blow was given on head. The doctor (P.W.-5), who stated that there is incised wound on temporal parietal region on the head and there is lacerated wound on the occipital region, but he has never mentioned that whether these injuries are sufficient to cause death in ordinary course of nature.

14. Section 299 of the I.P.C. defines “culpable homicide”, which reads as follows:-

> **299. Culpable homicide.—**
>
> Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.
>
> **Illustrations**
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> (a)A lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. Z believing the ground to be firm, treads on it, falls in and is killed. A has committed the offence of culpable homicide.

(b)A knows Z to be behind a bush. B does not know it A, intending to cause, or knowing it to be likely to cause Z's death, induces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence; but A has committed the offence of culpable homicide.

(c)A, by shooting at a fowl with intent to kill and steal it, kills B who is behind a bush; A not knowing that he was there. Here, although A was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill B, or to cause death by doing an act that he knew was likely to cause death.

Explanation 1.— A person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

Explanation 2.— Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.

Explanation 3.— The causing of the death of child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.

15. As per aforesaid definition, there should be intention to cause death or with intention to cause such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death. Thus, from the evidence, we find that in this case, the appellant did not have any intention to cause death, but he was intending to cause bodily injury as is likely to cause death. Thus, this case

comes within purview of Section 299 of the I.P.C., which is culpable homicide not amounting to murder.

16. None of the ingredients of Section 300 of the I.P.C. is attracted in this case, rather, we find that this is a case where first part of Section 304 of I.P.C. can be applied.

17. Section 304 Part-I of the I.P.C. reads as follows:-

> "**304. Punishment for culpable homicide not amounting to murder**. – Whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death or of causing such bodily injury as is likely to cause death;"

18. As per aforesaid provision and reading with the evidence, which have been discussed above, we find that this is a case where the intention of the appellant was to cause such bodily injury as is likely cause death. Thus, in our opinion, the appellant's conviction under Section 302 of the I.P.C. is not sustainable and is converted under Section 304 Part-I of the I.P.C.

19. The punishment for Section 304 Part-I of I.P.C. is imprisonment for life or imprisonment of either description, which may extend to 10 years. Thus, considering the fact that the appellant is in custody

since more than 10 years 10 months, we inflict the sentence of 10 years to the appellant.

20. In view of the discussions and findings, we set aside the conviction of the appellant under Section 302 of the I.P.C. and hold the appellant guilty for committing offence punishable under Section 304 (Part-I) of the I.P.C. In our opinion, the interest of justice will be served by sentencing the appellant to the period already undergone by him in custody.

21. This appeal is, accordingly, **partly allowed** with the modification in the judgment of conviction and order of sentence of the appellant, as stated above.

22. The appellant, above named, shall be released from custody forthwith, if not wanted in connection with any other case.

23. Pending I.A., if any, stand disposed of.

24. Let a copy of this judgment be sent to the court concerned for information and needful.

(Ananda Sen, J.)

(Pradeep Kumar Srivastava, J.)

Jharkhand High Court, Ranchi
Dated, the 3rd November, 2026.
Sunil /**N.A.F.R.**
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