IN THE HIGH COURT OF JHARKHAND AT RANCHI
Criminal Appeal (S.J.) No. 1321 of 2008

[*Against the Judgment of conviction and Order of sentence dated 30.09.2008, passed by learned Additional Sessions Judge-III, (F.T.C.), Jamtara, in Sessions Case No. 111 of 2007*].

1. Mardhu Tudu, S/o Themka Tudu.
2. John Tudu, S/o Rusilal Tudu.
Both resident of Village – Barwn, P.S. – Bindapathar, District - Jamtara.

... ... **Appellants**

Versus

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

.....

For the Appellants : Mr. Rajiv Lochan, Advocate.
Mr. Sanjay Prasad, Advocate.
For the Respondent : Mrs. Vandana Bharti, A.P.P.

.....

P R E S E N T

HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

JUDGMENT

C.A.V. on 09.09.2026 Pronounced on 06.11.2026

1. At the outset, it is pertinent to mention here that during pendency of this appeal, original appellant no. 2 Bijay Soren has died and the appeal on his behalf was abated in terms of order dated 14.07.2026. Surviving appellants are hereby re-numbered.

2. Heard learned counsel for the parties.

3. The instant Criminal Appeal is directed against the judgment of conviction and order of sentence dated 30.09.2008 passed by learned Additional Sessions Judge-III, (F.T.C.) Jamtara in Sessions Case No. 111 of 2007,whereby and whereunder, the appellants have been held guilty for the offence under Sections

304/34 of the I.P.C. and sentenced to undergo R.I. for six years.

FACTUAL MATRIX

4. The factual matrix giving rise to this appeal is that on 01.05.2007, in the evening, informant along with her husband went to attend marriage ceremony of daughter of Gurung Tudu at Village – Barwa. It is alleged that at about 9:00 P.M., after completion of marriage ceremony, informant along with her husband was about to return home, but in the meantime, son of Themka Tudu started quarrelling with his father. The informant's husband intervened and forbade from quarrelling, but the accused Mardhu Tudu, Bijay Soren and John Tudu caught hold of the husband of the informant namely, Indrasen Hembram and assaulted him with hand and legs and thrashed on the ground. It is alleged that when informant's husband fell down then Mardhu Tudu again assaulted him on chest and stomach by his leg. Her husband became unconscious due to above injuries. She requested to the persons, who were present there to carry her husband to Hospital, but no one was ready to help her husband for medical treatment at Hospital. Anyhow the informant managed a vehicle on 03.05.2007 at about 1' O Clock

and brought her husband at the clinic of Dr. Tapan Sen Gupta, who declared her husband as dead.

5. On the basis of fardbeyan of informant namely, Miloni Murmu, recorded by A.S.I. N.M. Jha of Fathehpur O.P.on 03.05.2007 at about 14:45 hours, the FIR being Nala (Bindapather) P.S. Case No. 46 of 2007 was registered against the accused persons for the offence under Sections 302/34 of the I.P.C.

6. The charge of investigation was assumed by Officer-in-Charge, Bindapather Police Station, Sri Shiv Shankar Triwari, who after completion of investigation, submitted charge sheet against the above accused persons for the offence under Sections 304 I.P.C. After taking cognizance of the offence, the case was committed to the Court of Sessions, where Sessions Case No. 111 of 2007 was registered and charges were framed for the offence under Sections 304/34 of the I.P.C., to which, the accused persons pleaded not guilty and claimed to be tried.

7. In course of trial, the prosecution has examined altogether 11 witnesses and also adduced following documentary evidence:-

Exhibit-1 : Post-mortem Report.

Exhibit-2 : Formal F.I.R.

Exhibit-3	:	Fardbeyan
Exhibit-3/1	:	Forwarding Report in the Fardbeyan.
Exhibit-3/2	:	Endorsement in the Fardbeyan.

8. On the other hand, no oral or documentary evidence is adduced by the defence, but the defence has pleaded denial from occurrence and false implication as well as plea of innocence.

9. The learned trial court, after scrutinizing the evidence, held the appellants guilty for the offence under Sections 304/34 of the I.P.C. and sentenced them, as stated above, which has been assailed in this appeal.

10. Learned counsel for the appellants assailing the impugned judgment has submitted that the learned trial court has miserably failed to properly appreciate the evidence available on record. Most of the witnesses have been turned hostile and not supported the prosecution story. The testimony of informant-cum-wife of the deceased, who happens to be sole eye-witness of the occurrence, suffers from material contradictions and discrepancies, as regards manner of assault given by the appellants to the deceased. It was sudden scuffle and no lethal weapon was used in assaulting the deceased, rather he was assaulted by legs and slaps and fists. Due to unavailability of

proper treatment, the deceased died. It is further submitted that the main cause of death of the deceased was internal hemorrhage due to stomach injury as is opined by the Dr. Bishwanath Chowdhary (P.W.-5) caused by fists and legs on the stomach. Other external injuries on face and nose were of simple nature with blood clots and not responsible for death of the deceased. The injury on stomach by legs and feet is attributed against Mardhu Tudu alone and rest of the appellant Bijay Soren and John Tudu have caused only simple injuries. The manner of occurrence also shows that it was not pre-meditated assault or executed in a pre-planned manner. Therefore, conviction with the aid of Section 34 of the I.P.C. is not warranted in this case.

11. On the other hand, learned APP appearing for the State has opposed the contentions raised on behalf of the appellants and defended the impugned judgment and order on merits.

12. The only point for consideration of this appeal is as to whether the impugned judgment of conviction and order of sentence of appellants suffers from any error of law, calling for any interference by way of this appeal.

13. I have gone through the record the case along with

impugned judgment of conviction and order of sentence of the appellants in the light of contentions raised on behalf of both side.

14. Before imparting my judgment, it would be apposite to take brief resume of prosecution evidence.

15. It appears that altogether 11 witnesses have been examined in this case, out of which **P.W.-2 Sarbati Murmu, P.W.-3 Swaraswati Marandi, P.W.-4 Haripada Tudu, P.W.-7 Debiswar Tudu, P.W.-8 Jatin Tudu, P.W.-9 Gurung Tudu, P.W.-10 Prabhas Tudu and P.W.-11 Kamal Tudu** have been declared hostile by the prosecution.

16. **P.W.-1 Miloni Murmu**. She is the informant-cum-wife of the deceased and also the eye-witness of this case. In her evidence, this witness has stated that on the date of occurrence, she went to the house of Gurung Tudu with her husband Indrasen Hembram on the occasion of marriage of her daughter. When she was ready to return back to her house with her husband, in the meantime, Mardhu Tudu was quarrelling with his father namely, Themka Tudu. Her husband forbade to the Mardhu Tudu, but Mardhu Tudu did not listen to him and the accused persons namely, Mardhu Tudu, Bijay Soren and John Tudu threw the deceased, who fell down and thereafter, they

assaulted him by fists and legs. They also assaulted her husband on his stomach by legs and hands. Thereafter, her husband became senseless. This witness has further stated that she requested to the villagers to carry her husband to Doctor for his treatment, but no any villagers helped her. Her husband died in absence of treatment. She brought her husband before his death to the Doctor Prabhakar for treatment, but the Doctor declared him dead.

In her cross-examination, this witness has stated that after incident, her husband stayed in the house of Gurung Tudu and on the third day of incident, he was taken to Fatehpur P.S. and at that time, her husband was alive.

17. **P.W.-5 Doctor Biswanath Chowdhary** has conducted autopsy on the dead body of the deceased Indrasen Hembram, aged about 50 years and found following:-

External Appearance.

Average built, dark complexion, black scalp hair, eye closed, mouth semi opened, exposing teeth, abdominal distension, penis scrotal swelling.

Anti-mortem Injuries

Diffused swelling at left side of face just lateral to nose. Clotted blood at left nostril. No other external

injury.

<u>On Dissection:-</u>

Abdominal cavity was found to contain bloody fluid. The stomach was raptured at greater courvature just above the pyloric and ½" in length.

The small intestine was raptured near the jejunum, size ¼" in length, skull-N.A.D., Brain – N.A.D., Chest – No bone injury, Lung – Pale, Heart – All chambers empty.

This witness has opined the cause of death was due to shock and internal haemorrhage caused by above mentioned injuries, which is caused by hard and blunt substance. Time elapsed since death within 36 hours. Stomach injury may be raptured by feet and legs on the stomach.

18. **P.W.-6 Shivshankar Tiwary** is the I.O. of this case. On 04.05.2007, he has assumed the charge of this case and on the first day, he received the fardbeyan of the informant, Miloni Murmu through the Fatehpur O.P. and registered the case. This witness went to Village – Barwa in course of investigation and again recorded the statement of informant Miloni Murmu, who fully supported the case of prosecution. This witness also visited the place of occurrence with the

informant, which is house of Gurung Tudu. This witness has also took statement of other witnesses. This witness has received inquest report of the deceased Indrasen Hembram and made entry in the case diary. This witness has identified the fardbeyan in the pen and signature of S.I. Ram Charan Rai, which has been marked Exhibit-2. This witness has also identified the fardbeyan in the pen and signature of A.S.I. N.N. Jha, which has been marked as Exhibit-3. This witness has also identified the forwarding report in his pen and endorsement in the pen and signature of A.S.I. Ram Charan Rai, which has been marked as Exhibit-3/1 and 3/2. This witness has also stated that he took the statement of Sabrati Murmu, who supported the occurrence. He also received the post-mortem report of deceased Indrasen Hembram and submitted charge sheet against the accused persons.

19. From recapitulating the entire evidences available on record, it appears that P.W.-2 Sarbati Murmu, P.W.-3 Swaraswati Marandi, P.W.-4 Haripada Tudu, P.W.-7 Debiswar Tudu, P.W.-8 Jatin Tudu, P.W.-9 Gurung Tudu, P.W.-10 Prabhas Tudu and P.W.-11 Kamal Tudu have been declared hostile. P.W.-1 (informant) is the only eye-witness of this case. The testimony of the

P.W.-1 is fully corroborated by the evidence of P.W.-5 Dr. Biswanath Chowdhary. There is no reason to disbelieve the testimony of sole eye-witness. It is trite that conviction can be based upon solitary testimony of witness, if he is found wholly reliable. Law is settled that in a case where the testimony of the solitary witness inspires confidence and it is wholly reliable, it can be the basis for passing a judgment of conviction and sentence. From the evidences, it appears that the main allegation of assault on deceased's chest and stomach is by Mardhu Tudu. Therefore, conviction of the appellant-John Tudu with respect to Section 304/34 of I.P.C. cannot be sustained, as such set aside. However, from the evidence and in the facts and circumstances of the case, I am of the considered view that the appellant- John Tudu is guilty for the offence under Section 323 of the I.P.C.

20. So far quantum of sentence is concerned, it appears that the appellant – John Tudu has remained in custody for about four months, therefore, in my considered view, imprisonment already undergone by the appellant-John Tudu would meet the ends of justice in this case, as he has sufficiently been punished in the facts and circumstances of this case.

21. Accordingly, the conviction and sentence of the appellant – John Tudu for the offence under Section 304/34 of the I.P.C. is set aside and he is convicted and sentenced for offence under Section 323 of I.P.C., as stated above. **Appeal filed on behalf of John Tudu is partly allowed.**

22. The appellant – John Tudu is on bail. As such, he is discharged from the liability of bail bonds and sureties shall also discharged

23. So far conviction of appellant – Mardhu Tudu is concerned, he has assaulted on deceased's chest and stomach by his leg when deceased fell down, although it was not intentional, causing of death on the part of appellant - Mardhu Tudu. Therefore, the conviction and sentence of the appellant- Mardhu Tudu awarded by the learned trial court is moderate and no interference is required. Accordingly, the same is upheld and **the appeal filed on behalf of Mardhu Tudu is dismissed**.

24. Appellant – Mardhu Tudu is on bail. As such, his bail bond is cancelled and he is directed to surrender before the trial court within two months from the date of this Judgment and undergo the remaining period of sentence awarded to him by the learned trial Court, failing which, the learned trial Court shall take all

coercive steps for arrest and detention of the appellant namely, Mardhu Tudu for sustaining the remaining period of sentence awarded to him.

25. Accordingly, this appeal is **disposed of** and pending I.A., if any, stand also disposed of.

26. Let a copy of this judgment along with trial court record be sent back to the court concerned for information and needful.

(Pradeep Kumar Srivastava, J.)

Jharkhand High Court, Ranchi
Dated, the 6th November, 2026.
Sunil /**N.A.F.R.**
Uploaded On : 06/11/2026