IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (SJ) No. 586 of 2025

Baburam Chaude, aged about 34 years, s/o late Jagdish Chowde, r/o Village-Kusmatand Sinjadih, P.O. & P.S.-Bengabad, Dist.-Giridih, Jharkhand-815312

.... Appellant

Versus

1. The State of Jharkhand
2. Badki Devi, aged about 49 years, w/o Mangra Murmu, r/o Village-Chirkidih, P.O. & P.S.-Pirtand, Dist.-Giridih, Jharkhand

…. Respondents

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

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For the Appellant : Mr. Rajiv Sinha, Sr. Advocate
: Mr. Niraj Kumar, Advocate
: Ms. Shreesha Sinha, Advocate
For the State : Mr. Sardhu Mahto, Addl. P.P.

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By the Court:-

1. Heard the parties.

2. This Criminal Appeal Petition has been preferred against the judgment of conviction dated 27.02.2025 and order of sentence dated 28.02.2025 passed by the learned Additional Sessions Judge-IX, Giridih in Sessions Trial No. 21 of 2024 whereby and where under, the appellant has been held guilty of the offence punishable under Section 304 Part II of the Indian Penal Code and has been sentenced to undergo Rigorous Imprisonment for a period of five years and fine of Rs. 5,000/- and in default of

payment of fine, further Simple Imprisonement for a period of six months.

3. The brief fact of the case is by alleging that the appellant with whom the deceased daughter of the informant was living as husband and wife for a considerable period of time; consequent upon the love affair between them, used to regularly assault the deceased and was not permitting the deceased to go to her parental house. On 23.03.2023 the deceased Sunny Murmu came back to her parental house and she said that the appellant assaulted her at 08:30 pm on the same day. Sunny Murmu was admitted in a private hospital and during course of her treatment she died at 10:00 am on 24.02.2023.

4. On the basis of the written report submitted by the informant, police registered Bengabad P.S. Case No. 49 of 2023 for the offence punishable under Section 302 of the Indian Penal Code and took up investigation of the case. After completion of investigation police submitted charge sheet against the appellant for having committed the offence punishable under Section 302 of the Indian Penal Code and the learned Additional Sessions Judge-IX, Giridih framed charges against the appellant on 29.01.2024.

5. In support of its case, the prosecution altogether examined six witnesses, P.W.1- Mangra Murmu is the father of the deceased. He has stated about the deceased being driven out from the house of the appellant by the appellant after assaulting her. The deceased came crying to the house of P.W.1. He saw injury on her body. There was injury on her head also. She was treated in a private hospital at Chirki. On the next day of being admitted at 10:00 am she died. The wife of P.W.1 submitted a written report to the police and basing upon the same, police registered the case. In his cross-examination, he has stated that about two years before her death, the deceased used to live with the appellant. The deceased went to the house of the appellant for the purpose of marrying him. The deceased was liking the appellant. The appellant and the deceased used to live with each other. There was injury on the back and head of the deceased. In para no. 17, he has stated that no person has told him as to how the deceased sustained injury. He never went to the village of the appellant to enquire how the deceased sustained injury. In para no.19 he has stated that since no person of his village was present in the village of the appellant at the time of his daughter sustaining injury hence, he does not know as how the deceased sustained injury.

6. P.W.2- Badki Devi is the informant and also mother of the deceased. She has also stated about the love between the appellant and the deceased and that the appellant and the deceased used to live together properly for about two years. The deceased later on came to know that appellant was earlier married and was having children hence, the deceased refused to marry the appellant. Thereafter, the appellant assaulted the deceased- Sunny Murmu and drove her out from his house. The deceased came crying to the house of P.W.2. She saw injury all over her body and there was bleeding injury on her head. Her daughter told her that the appellant assaulted her with a *jhanjhara* i.e. a big kitchen skimmer. The deceased was admitted in Chirki private hospital and she died on the next day morning. They took the dead body to their house and informed the appellant and the police. In her cross-examination, she has stated in para no.10, that her daughter came to her house in an unconscious state. The villagers of the village where her daughter were residing did not tell her as to how her daughter sustained injury.

7. P.W.3-Baburam Murmu @ Babulal Murmu is the paternal uncle of the deceased. He has also stated about the love relationship between the appellant and the deceased and the deceased used to live for two years with

the appellant. He further stated that the appellant assaulted Sunny Murmu and drove her out from his house. On being asked the deceased stated that the appellant assaulted her. He has also stated that Sunny Murmu was admitted in a private hospital and she died on the next day. In his cross-examination, he has stated that when the deceased came to her house she did not talk to anyone.

8. P.W.4-Mahadev Hembrom is also another paternal uncle of the deceased. Like P.Ws. 1 to 3 he has also stated of there being love between the appellant and the deceased and the deceased used to live with the appellant. The appellant drove the deceased out from his house after assaulting her. On being asked, the deceased said that the appellant assaulted him with *jhanjhara* and by kicks and punch. The deceased Sunny Murmu was taken in a private hospital where she died on the next day. In his cross-examination, he has stated that when the deceased came to her paternal house, she became unconscious after entering into the house.

9. P.W.5- Anish Kumar Pandey is the I.O. of the case. He has proved the First Information Report and formal FIR which has been marked exhibits. He recorded the statement of witnesses, went to the place of occurrence which is the house of the appellant. He recorded the

statement of the independent witnesses Sitaram Choure and Anita Soren. He arrested the appellant. He could not find the c*holni* (big kitchen skimmer) which was allegedly used for assaulting the deceased. The appellant expressed his ignorance about any *cholni*. He went to Maa Durga Health Care and the manager of the said institution submitted the written report to the officer-in-charge of Bengabad police station. In his cross-examination, he has stated that none of the witnesses has stated about having seen the occurrence of assault. The deceased never reported any complaint against her husband in the police station; during her lifetime. During the investigation he came to the conclusion that the deceased died while being taken for treatment by the informant, her husband and relatives. The doctor of Maa Durga Health Care Pirtand disclosed that the deceased was brought for treatment but keeping in view her precarious condition he refused for treatment of the deceased.

10. P.W.-6 is the doctor who conducted the autopsy of the dead body of the deceased. He has stated that the cause of death was head injury caused by hard and blunt object. He proved postmortem report; which was marked exhibit. In his cross-examination, he has stated that he found only one injury on the deceased and the injury may be possible by fall on hard surface.

11. After closure of the prosecution evidence, the statement of the appellant was recorded under Section 313 of Cr.P.C. and he denied all the questions put to him and he pleaded innocence and did not want to examine any witness in his defence.

12. The learned trial court relied upon the judgment of the Hon'ble Supreme Court of India in the case of **Rajendra vs. State of Maharashtra** reported in **2024 0 Supreme (SC) 473** wherein, it was held by the Hon'ble Supreme Court of India that once the dying declaration was found to be authentic, inspiring confidence of the court, then the same can be relied upon as the sole basis for conviction without any corroboration and considering the evidence in the record came to the conclusion that the prosecution has succeeded in proving that the deceased died due to assault/beating given by the appellant on vital part of her body hence, the prosecution has succeeded in establishing the charge of culpable homicide which does not fall under the purview of exception 4 to Section 300 of the Indian Penal Code but falls under Section 304 Part II of the Indian Penal Code and held the appellant guilty, convicted and sentenced him as already indicated above.

13. It is submitted by the learned Senior Advocate appearing for the appellant that the learned trial court has

failed to take into consideration that there is an inordinate and unexplained delay in lodging of the FIR. It is next submitted by the learned Senior Advocate appearing for the appellant that though the informant and the witnesses claimed to be aware on 22.03.2023 itself, of the appellant allegedly assaulting the deceased and the deceased died around 10:00 am on 24.02.2023 but the FIR was lodged at least two days thereafter i.e. at 10:15 am on 25.02.2023; which raises a suspicion regarding the whole occurrence. It is next submitted by the learned Senior Advocate appearing for the appellant that all the witnesses have stated that the deceased while she came to her parental house was on unconscious state. It is then submitted by the learned Senior Advocate appearing for the appellant that P.W.3 has categorically stated in para no.9 of his cross-examination that the deceased did not talk to anyone after coming to her parental house; so the whole story of dying declaration is shrouded with suspicion and materials in the record is sufficient to give an indication that the story of dying declaration was invented only for the purpose of this case; hence, unlike the finding given by the learned trial court, this is not a case where the dying declaration is authentic nor it inspires confidence. It is further submitted by the learned Senior Advocate appearing for the appellant that though all material

witnesses i.e. P.W.s 1 to 4 have consistently stated about the deceased being taken to a private hospital and admitted there overnight but the same is also found to be false as the hospital management intimated the I.O. of the case that the deceased was never admitted in the hospital and on that basis the I.O. came to the conclusion that the deceased died while being taken to the hospital and not while being taking treatment in the hospital as stated by P.Ws. 1 to 4 and this also raises a grave doubt about the case of the prosecution. It is further submitted by the learned Senior Advocate appearing for the appellant that the animosity and ill-will between the appellant and the deceased is admitted; as it is apparent that the parents of the deceased were not happy because of the deceased was living with the appellant against their wish; as she was in love with the appellant, so in this case the false implication of the appellant, out of animosity cannot be ruled out. Hence, it is submitted that this is a fit case where the appellant be acquitted by giving him the benefit of doubt.

14. Learned Addl. P.P. on the other hand opposes the prayer and submits that the evidence in the record particularly the statement of the deceased made before the witnesses that she was assaulted by the appellant goes to show that the same inspire full confidence and is

convincing hence, no illegality has been committed by the learned Additional Sessions Judge-IX, Giridih in convicting the appellant and the sentence is also proper. Hence, it is submitted that this criminal appeal being without any merit be dismissed.

15. Having heard the rival submissions made at the Bar and after carefully going through the materials available in the record, it is pertinent to mention here that it is a settled principle of law that dying declaration can be the sole for conviction but the rider is that such dying declaration must inspire full confidence of the court as has been held by the Hon'ble Supreme Court of India in the case of Atbir v. Government (NCT of Delhi) (2010) 9 SCC 1.

16. Now coming to the facts of the case, this is a case of oral dying declaration made by the deceased where the exact words uttered by the deceased has not been brought on record. Keeping in view the consistent statement of P.Ws.2, 3 and 4 in their cross-examination that the deceased was in unconscious state of mind when she reached at paternal house and the testimony of P.W.3 in para no.9 of her cross-examination that the deceased did not talk to anyone in her parental house after coming there, this Court is of the considered view that these circumstances goes to show that the deceased either has

not made any statement as claimed by the P.Ws.2, 3 and 4 or at least she was not in a fit state of mind, if at all she has made any statement. The suspicion regarding unfit state of mind of the deceased arises from the fact that the doctor of the hospital, where the deceased was claimed to be admitted has categorically stated that when she was brought to the hospital, because of her precarious condition he refused to treat her and advised to take her to the district hospital. It is pertinent to mention here that as per the testimony of the material witnesses, on the same day, may be after a few hours of the deceased being allegedly assaulted by the appellant, as the deceased was taken to the said hospital. This fact is apparent from the fact that as per the material witnesses the deceased was allegedly assaulted at 8.30 p.m. on the date of her being taken to the hospital. The dying declaration becomes suspicious for another reason because P.W.1 – the father of the deceased has not stated anything about the dying declaration.

17. Further, the failure of the I.O. to recover the alleged weapon of offence being the *jhanjhara / Cholni* also raises doubt and assuming for the sake of argument that the deceased was assaulted with a *jhanjhara* the question arises that a *jhanjhara* ordinarily used in a village home whether can be used to cause the nature of injury allegedly

sustained by the deceased. The prosecution without any plausible reason has not put the question to P.W.6, as to whether the injury sustained by the deceased could have been possible by assault with a *jhanjhara*. On the other hand, the defence put the question to P.W.6 and which was also accepted by P.W.6 that the nature of the injury sustained by the deceased can be possible by fall on hard surface. Moreover, the testimony of the material witnesses that the deceased sustained injuries all over her body was found to be not true in the autopsy as the P.W.6 found only one single injury on the deceased as has categorically been stated by him in para no.7 of his cross-examination.

18. Further, unexplained delay in lodging of the FIR and the discrepancy in the prosecution case as to whether the deceased was ever admitted in a hospital as claimed by the P.Ws.1 to 4 for a night as an indoor patient which is contradicted by the I.O. also raises a doubt.

19. The motive for false implication of the appellant is also apparent; as it appears from the evidence in the record that P.W.1 and 2 were not happy with the deceased living with the appellant as husband and wife without any marriage; though acceptable as per Santhal customs to which community the deceased and the appellant belong; so the false implication of the appellant in the case cannot be ruled out.

20. Keeping in view the aforesaid discussions made above, this Court is of the considered view that this is a fit case where the appellant be acquitted of the charge by giving him the benefit of doubt and the learned trial court has committed an illegality by not giving the benefit of doubt to the appellant.

21. Accordingly, the impugned judgment of conviction dated 27.02.2025 and order of sentence dated 28.02.2025 passed by the learned Additional Sessions Judge-IX, Giridih in Sessions Trial No. 21 of 2024 is set aside and the appellant is acquitted of the charge by giving him the benefit of doubt.

22. The appellant who is in custody is directed to be set free unless his detention is required in connection with any other case.

23. In the result, this criminal appeal is allowed.

24. Let a copy of this Judgment along with the Lower Court Record be sent back to the court concerned forthwith.

25. In view of the disposal of this criminal appeal, interlocutory application, if any, is disposed of being infructuous.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 11th September, 2026
AFR/Gunjan/-

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