2026:JHHC:33589-DB

IN THE HIGH COURT OF JHARKHAND AT RANCHI

(Against the judgment of conviction dated 17.08.2016 and the order of sentence dated 20.08.2016 passed by the learned District and Additional Session Judge, at Ghatshila in Sessions Trial No. 315 of 2014)

Criminal Appeal (D.B.) No.53 of 2017

CNR: JHHC01-028027-2017

Fagu Mahali @ Pagu Mahali, son of late Nimai Mahli @ late Nimai Mahali, resident of village Satyabakra Tola, Lokapani, PO and PS Dumaria, District East Singhbhum, Jharkhand **… Appellant(s).**

Versus

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

PRESENT

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

For the Appellant(s) : Mr. Rohit Ranjan Sinha, Advocate
Ms. Chanchal Verma, Advocate
Ms. Muskan Kumari, Advocate
Mr. Kishore Kunal, Advocate
Mr. Shubham Kumar, Advocate

For the Respondent(s) : Mr. Bhola Nath Ojha, Spl. PP

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J U D G M E N T

CAV on : 28.09.2026 Pronounced on : 26th November 2026

Per Ananda Sen, J.: This Criminal Appeal arises out of the judgment of conviction dated 17.08.2016 and the order of sentence dated 20.08.2016 in Sessions Trial No. 315 of 2014 whereby and whereunder learned District and Additional Session Judge, at Ghatsila convicted the appellant under Section 302 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for life under Section 302 of the Indian Penal Code along with fine of Rs. 10,000/-. In default of payment of fine, he has to undergo further S.I. for 6 months.

2. The learned counsels for the appellant submitted that the entire case is based on the evidence of PW6, who claims to be an eye-witness but if the entire evidence of PW6 is read with the evidence of other witnesses, the only conclusion will be that she is not an eye-witness to the occurrence. It is his contention that presence of PW6, so called eye-witness at the place of occurrence is doubtful. Therefore, it was not proper for the Trial Court to hold the appellant guilty on solitary testimony of PW6 without independent corroboration. He submits that the deceased was allegedly assaulted by the appellant by branding her as witch, but the learned Trial Court did not find any material to convict the appellant under the Prevention of Witch (Daain) Practices Act, as the conviction is only under Section 302 of the Indian Penal Code. Further he contends that the blow is also a single blow and not from the sharp side which clearly suggests that even if assault was made by the appellant there was no intention to commit murder of the deceased. The Trial Court when arrived at a conclusion that there was single blow and not from the sharp side, it could not have convicted the appellant under Section 302 of the Indian Penal Code. Only on the basis of presumption the Trial Court has convicted the appellant under Section 302, which is illegal. He submits that PW2 is not an eye-witness to the occurrence and his statement could not be relied upon.

3. The learned counsel for the State opposed the prayer and by referring to the evidence of PW6 contends that there is no material to disbelieve the testimony of PW6. PW6 along with the deceased were carrying water when the incident had occurred. Thus, the appellant has been correctly convicted. He lastly contends that not holding the appellant guilty under the Witch Craft Act is of no consequence as when there is an eye-witness of

the occurrence of committing murder, the motive losses its relevance.

4. The prosecution case is based on the fardbeyan of Makro Sardar-PW1 recorded at about 1:15 PM on 11.06.2014. The prosecution case in brief is that at the night of 10/11.06.2014 the appellant-Fagu Mahali was quarrelling with Lakhan Mahali and his wife Lipi Mahali. When Fagu Mahali tried to assault Lipi Mahali, she came to their house. His wife saved her. On the next morning his wife and his daughter-in-law (PW6) were returning after fetching water when Fagu Mahali came there and calling his wife '*daain*' gave one axe blow on her head which caused her death. The appellant also tried to assault informant's son but the informant's son snatched the Axe from his hand. Thereafter with the help of villagers, he was caught. On the basis of his *fardbeyan*, FIR was registered being Dumaria P.S. Case No. 13 of 2014 under Section 302 of the Indian Penal Code and Section 3/4 of the Prevention of Witch (*Daain*) Practices Act.

5. After investigation, the Investigating Officer submitted chargesheet against the appellant for the offence punishable under Section 302 of the Indian Penal Code and Section 3/4 of the Prevention of Witch (Daain) Practices Act.

6. On the basis of chargesheet and materials available on record, cognizance was taken and case was committed to the Court of Sessions where charges were framed under Section 302 of the Indian Penal Code and Section 3/4 of the Prevention of Witch (Daain) Practices Act and trial proceeded.

7. To prove the prosecution case, altogether 7 witnesses were examined by the prosecution, who are:-

i. PW1 :- Makro Sardar
ii. PW2 :- Santosh Sardar
iii. PW3 :- Jairam Sardar

iv. PW4 :- Shivlal Sardar
v. PW5 :- Sadanand Sardar
vi. PW6:- Jharna Sardar
vii. PW7:- Dr. Shankar Tudu

PW1-Makro Sardar is the informant. He has stated that Fagu Mahali and Lipi Mahali were quarrelling. Lipi Mahali came to their house. His wife saved her. On the next morning his wife and his daughter-in-law went to fetch water and while returning Fagu Mahali with an Axe came there and assaulted his wife causing her death on spot. His son Santosh Sardar-PW2 caught Fagu Mahali. In the cross-examination he stated that he was not present at the time of occurrence as he was gone for ploughing.

PW2-Santosh Sardar has stated that Lipi-daughter-in-law of Fagu Mahali was quarrelling with Fagu. She came to their house. In the morning his mother and sister-in-law-PW6 went to Kuchabera well. While returning Fagu came there and had given an Axe blow on the head of his mother alleging her to be a daain causing her bleeding head injury. He identified his signature in the fardbeyan as Exhibit-1. In the cross-examination he stated that he had not seen the occurrence and when he reached the place of occurrence no one was there.

PW3-Jairam Sardar stated that he reached the place of occurrence where he had seen Fagu Mahali was caught by the villagers. Later on police came. He had seen the dead body of deceased lying there bleeding due to head injury. One axe with blood stained was also there, which was seized by the police with the help of the villagers. He signed the seizure list of Axe which was marked as Exhibit-2.

PW4-Shivlal Sardar stated that on hearing hulla he had reached the place of occurrence where he had seen that Fagu Mahali ws tied by the villagers who had killed the deceased. In

his cross examination he stated that on hearing commotion he reached the placed the occurrence.

PW5-Sadanand Sardar on hulla reached there. He had seen dead body of the deceased who was assaulted by the accused with an axe. Fagu Mahali was caught and tied. He identified his signature in the fardbeyan and Inquest Report.

PW6-Jharna Sardar has stated that in the morning, she along with her mother-in-law (deceased) on the date of occurrence went to fetch water. While returning after fetching water the appellant-Fagu Mahali came there and called her mother-in-law daain and gave an axe blow on her head. On her hulla her brother-in-law PW2 came and caught the accused and snatched the axe. On the previous night Fagu Mahali was chasing his daughter-in-law to beat who came and stayed with them. In her cross-examination she stated that at the time of occurrence, no one was there except her and her mother-in-law.

PW7-Dr. Shankar Tudu is the doctor who conducted the postmortem of the dead body of the deceased and found the following:

Sharp wound left fronto temporal region 4 cm x 5 cm x 6 mm.
Brain matter smashed.
The injury is caused by hard object.

In the opinion of the doctor, the cause of death hemorrhage and shock and the time elapsed since death within 24 hours. The postmortem report is marked as Exhibit-3.

8. Following documents have been exhibited by prosecution:

i.	*Ext.1 –*	*Signature of Santosh Sardar on the fardbeyan*
ii.	*Ext.1/1 –*	*Signature of Sadanand Sardar on the fardbeyan*
iii.	*Ext.2 –*	*Signature of Jairam Sardar on the seizure list*
iv.	*Ext.3 –*	*Postmortem report of Khori Sardar*

9. After concluding prosecution evidence statement of accused was taken under section 313 Cr.PC. No defence witness was examined in this case. Finally, after the arguments of both the parties the appellant was convicted under section 302 of the Indian Penal Code and sentenced as stated above.

10. After hearing the parties and after going through the evidence on record, I find that there is only one eye-witness in this case, the said eye-witness is none but the daughter-in-law of the deceased i.e. PW6.

PW6 in her evidence has stated that she was with the deceased when they were returning after fetching water. She clearly stated that at that point of time no one was there at the place of occurrence except her. She stated that she screamed when her brother-in-law-PW2 came and caught the appellant. She is the sole eye-witness.

11. When there is sole eye-witness, that too, related, the testimony has to be analyzed with very caution.

12. The Hon'ble Supreme Court in the case of ***Joy Devaraj v. State of Kerala,*** reported in **(2024) 8 SCC 102** has held that it is the quality of evidence and not the quantity that matters. If the evidence of a solitary witness appeals to the court to be wholly reliable, the same can form the foundation for recording a conviction.

Further, the Hon'ble Supreme Court in the case of ***Yakub Ismailbhai Patel v. State of Gujarat,*** reported in **(2004) 12 SCC 229** at paragraph 45 has held as under:-

> **45.** The legal position in respect of the testimony of a solitary eyewitness is well settled in a catena of judgments inasmuch as this Court has always reminded that in order to pass conviction upon it, such a testimony must be of a nature which inspires the confidence of the Court. While looking into such evidence this Court has always

> advocated the rule of caution and such corroboration from other evidence and even in the absence of corroboration if testimony of such single eyewitness inspires confidence then conviction can be based solely upon it. In the case on hand, the testimony of the solitary eyewitness stands corroborated by other circumstances and evidences and more particularly PW 1 whose testimony has been relied upon by both the courts.

13. It is also true that merely because a witness is a close relative is not enough to reject his testimony if it is otherwise credible. In "***Mano Dutt v. State of U.P"*** *reported in* ***(2012) 4 SCC 79*** the Hon'ble Supreme Court has observed thus:

> *"24. …..Firstly, there is no bar in law in examining family members, or any other person, as witnesses. More often than not, in such cases involving family members of both sides, it is a member of the family or a friend who comes to rescue the injured. Those alone are the people who take the risk of sustaining injuries by jumping into such a quarrel and trying to defuse the crisis. Besides, when the statement of witnesses, who are relatives, or are parties known to the affected party, is credible, reliable, trustworthy, admissible in accordance with the law and corroborated by other witnesses or documentary evidence of the prosecution, there would hardly be any reason for the Court to reject such evidence merely on the ground that the witness was a family member or an interested witness or a person known to the affected party."*

14. The fact that she was assaulted by axe is proved from the statement of the eye-witness-PW6 and also from the evidence of PW3 who had seen the axe with the blood stained which was seized by the police. PW3 is also a seizure witness. From the evidence it is evident that the appellant was immediately caught by the villagers and was tied is also proved by PW5 who reached the place of occurrence immediately. Thus, involvement of the appellant in the occurrence has been proved by the prosecution.

Now the question is whether the appellant can be convicted for committing offence under section 302 of the Indian Penal Code or under other provisions of the Indian Penal Code. The doctor-PW7 found only one sharp wound on the frontal temporal region and the brain matter was smashed. The fact that the brain matter was smashed is sufficient to infer the power of the impact. The murder weapon was an axe. It is not the case that the appellant out of sudden grave provocation has assaulted the deceased with the axe rather from the prosecution case and the from the evidence it is clear that he carried the axe with him to commit the act. This clearly suggest that he had intention to commit the murder. Even if a single blow was blown but the force and intensity clearly suggest the intention. Thus, this case definitely comes within the purview of Section 302 of the Indian Penal Code and the Trial Court has rightly concluded to that extent. I find no material to disagree with the findings of the Trial Court.

15. Thus, this appeal is **dismissed**.

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

17. 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.- I agree.

(PRADEEP KUMAR SRIVASTAVA, J.)

High Court of Jharkhand, Ranchi
Dated : 26th November 2026
Tanuj/cp-3

Uploaded on 26.11.2026