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**(2012) 07 JH CK 0034**

**In the Jharkhand High Court**

**Case No : Criminal Appeal (PB) No. 1762 of 2003**

Mahli Bhengra @ Manish Bhengra

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

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**Date of Decision : 04-07-2012**

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 302

**Citation :** (2013) 1 AJR 189 : (2012) 4 JCR 482 : (2012) 4 JLJR 455

**Hon'ble Judges :** R.K. Merathia, J;Dhrub Narayan Upadhyay, J

**Bench :** Division Bench

**Advocate :** A.A. Kumar, for the Appellant; M.B. Lal, Assistant Public Prosecutor  
For the State, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

1. This appeal is directed against the judgment of conviction and order of sentence dated 28.3.2003 passed by learned Additional Judicial Commissioner-IV, Khunti Sessions Trial No. 505 of 2001, convicting the appellant u/s 302 I.P.C. and sentencing him to undergo rigorous imprisonment for life. A fine of Rs. 25,000/- has also been imposed out of which Rs. 20,000/- was to be given to the family of the deceased, failing which the appellant was to undergo R.I. for further two years. The prosecution case in short is that P.W. 8 Saniaro Bhengra lodged her Fardbeyan before the police on 9.6.2001 that at about 12 noon, when she and her parents came out of the house after taking meal, the appellant, who is the villager, came with an axe and call her mother witch and started assaulting on her head. Her mother started crying and fell on the ground with Needing injures and died. When her father came out of the house, the appellant started assaulting him also due to which he ran but he was chased by the appellant and he again assaulted her father on his head as a result of which father of the informant also died.

2. Learned counsel, appearing for the appellant, submitted that the prosecution has not been able to prove its case beyond all reasonable doubt. He further

submitted that the informant said that the police came after two days of occurrence, but she gave her fardbeyan on the same day before police. She further stated that she gave her fardbeyan in Mundari language, whereas the I.O. said that it was given in Sadri language. Moreover, the place of occurrence has not been properly explained by P.W. 8. He further submitted that the informant did not say about repeated injuries, but several injuries have been found by the Doctors-P.W. 1 and P.W. 7 on the persons of two deceased. Moreover, P.W. 7 found the death was caused due to head injury caused by blunt heavy weapon with additional pressure on neck, but such additional pressure on the neck has not been explained by the prosecution. He further submitted that two persons could not be killed by one person with several injuries to both of them. He lastly submitted that the appellant has remained in jail for 11 years and he should be given benefit of doubt.

3. On the other hand, counsel for the State, supported the impugned judgment.

4. The prosecution examined 9 witnesses. P.W. 1 is the Doctor who examined the deceased-mother of the informant, Randai Bhengra. She found that the death was caused due to hemorrhage and shock. The injury was caused by sharp cutting weapon such as Kulhari, which was sufficient to cause death. There were three injuries on the head and one on the abdomen. The deceased was carrying a pregnancy of about 6 months of a female baby. The other Doctor P.W. 7, who examined father of the informant, found two lacerated injuries on head and one abrasion on interior part of neck. 4th and 5th ribs of right side were found broken. In his opinion, the death was caused due to head injury caused by blunt heavy weapon with additional pressure on neck. Head injury could be possible by blunt portion of Kulhari.

5. After carefully going through the records and hearing the parties, we do not find any force in the aforesaid submissions of the learned counsel for the appellant. P.W. 2, 3 and 6 have been declared hostile. P.W. 4 and 5 are not of much relevance. P.W. 8 is the informant and the only eye witness in this case. She is a child witness. We have carefully examined her evidence and the other materials on record. She has fully supported the prosecution case. P.W. 8 clearly proved her fardbeyan, said to have been recorded by her on the same day. Therefore if she said that police came after two day, it cannot be treated as a contradiction. Regarding the language of fardbeyan, the I.O. clearly said that it was made in Sadri language which he understood fully and not in Mundari language. In this situation the statement of P.W. 8 that she gave statement in Mundari is also not a vital contradiction on which the prosecution case can be brushed aside. From the materials available on record, we find that the place of occurrence has been fully explained, where both the persons were killed, one after another. It is not expected from a child witness that she will explain the manner and number of assaults in detail. As per the prosecution case, the mother of the informant was assaulted on her head due to which she died at the spot. Thereafter her father came and he was also assaulted and then he was

chased by the appellant and was assaulted on his head due to which he died. The weapon of assault was recovered on the confession of the appellant. After going through the materials on record and hearing the parties at length, in our opinion, the learned trial court has rightly recorded the judgment of conviction and order of sentence, which we are inclined to affirm.

In the result, the conviction and sentence of the appellant awarded by the trial court is hereby affirmed and the appeal is, accordingly, dismissed.