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**(2003) 04 JH CK 0043**

**Jharkhand High Court**

**Case No:** Criminal Appeal No. 149 of 1999

Tula Sardar

APPELLANT

Vs

State of Bihar (Now Jharkhand)

RESPONDENT

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**Date of Decision:** April 2, 2003

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 302

**Citation:** (2003) 51 BLJR 858 : (2003) 2 JCR 440

**Hon'ble Judges:** Vinod Kumar Gupta, J; Lakshman Uraon, J

**Bench:** Division Bench

**Advocate:** A.K. Kashyap, for the Appellant; Manjusri Patra, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

Lakshman Uraon, J.

This criminal appeal is directed against the judgment and order dated 26.3.1999 passed by Shri S.H. Kazmi, 3rd Addl. Sessions Judge, Jamshedpur in ST No. 82/1994, whereby and where under, the appellant, Tula Sardar, has been convicted u/s 302, IPC and sentenced to undergo imprisonment for life.

2. The prosecution case is based on the fardbeyan of Keshawati Sardarin, PW 3, daughter of the deceased, recorded at Hansa Dungli by the SI, S. Pd, Officer-in-Charge of Potka P.S., on 3.8.1993 at 16 Hrs. in which the informant alleged that on that date at about 11 a.m. her mother, Surajmani Sardarin, had gone to Lalu Chuandungri, situated at distance of 500 yards from her house, to dry paddy on the rock taking bamboo bucket, paddy, umbrella, broom and one day to cut grass for the cattle. The informant was sitting in front of the tiled house of Atisar Sardar in the village. After sometimes she saw PW 4, Binni Bhumij, wife of Lakhan Bhumij, PW 5, Srimati Bhumij, wife of Phulchand Bhumij, PW 6, Basanti. wife of Bhunesh-war, PW 7 Shushila Bhumij, wife of Lawan Bhumij and PW 8, Panpati Bhumij, wife of Sanatan Bhumij, running towards the village. The informant looked at them as her mother

had gone towards Hansadungri. Her mother also left the belongings and was running away towards the village. The appellant had an axe in his hand who was chasing her mother. At Hansadungri, he gave an axe below to her mother from behind. Her mother fell down. The appellant, Tula Sardar, took the axe and went to his house. Again from his house he took the axe and one bag and went to Hansadungri where her mother had fallen. The appellant severed the neck of her mother by the axe. He put the head in the bag and went towards Haldipokhar via her village. On his way he met the informant but did not speak to her. Tula Sardar was calling Surajmani Sardarin as a witch.

3. In this case the prosecution has examined 9 witnesses out of them the informant, PW 3, Keshawati Sardarin and PW 4, Binni Bhumij, claim to be the eye-witness. The other witnesses PW 5, Srimati Bhumij, PW 6, Basanti Bhumij, PW 7, Sushila Bhumij and PW 8, Panpati @ Pansuri Bhumij, were present at the P.O. where they were uprooting the paddy. All these witnesses fled away from that place towards their village when the appellant asked them to flee away who had an axe in his hand. All these witnesses have not supported the prosecution case as to who has assaulted Surajmani Sardarin. Hence all of these four witnesses have been declared hostile by the prosecution. PW 1, Goman Sardar, is also a hostile witness who knows nothing about the murder of Surajmani Sardarin. PW 2, Dr. Akhilesh Kumar Chaudhary, conducted the post mortem examination on the dead body of Surajmani Sardarin and submitted the postmortem report, Ext. 1 PW 9, Satyendra Prasad, is the I.O. of this case who seized the blood-stained tangi, Ext. 2, blood-stained soil, Ext. 2/1, prepared inquest-report of the head of Surajmani Sardarin, Ext. 3, inquest-report of the headless body of Surajmani Sardarin, Ext. 3/1 and recorded the fardbeyan of the informant, PW 3, Keshawati Sardarin, Ext. 4.

4. The 3rd Addl. Sessions Judge, Jamshedpur, relied the evidence of the informant, PW 3, Keshawati Sardarin, PW 4, Binni Bhumij, PW 2 Dr. Akhilesh Kumar Choudhary and the I.O., PW 9, Satyendra Prasad, and came to the conclusion that the prosecution has proved the charge u/s 302, IPC against this appellant and convicted and sentenced him to undergo imprisonment for life.

5. Assailing the judgment and order of conviction and sentence passed by the 3rd Addl. Sessions Judge, Jamshedpur, the learned counsel for the appellant has submitted that the learned Court below approached this case from a wrong angle of vision and came to an erroneous finding. The learned Court below has relied upon the statement of the hostile witnesses and has not considered the contradictions about the manner of the alleged occurrence. The informant, PW 3, could not have seen the alleged assault on her mother from a distance of 500 yards. She has deposed that the other villagers, namely Basanti, Pansuri and Srimati, were working in the field nearby the P.O. They have not supported the prosecution case as they did not see any assault made on Surajmani Sardarin by this appellant. The I.O., PW 9, had not seized the bag in which the appellant is alleged to have taken the head of

Surajmani Sardarin while he had gone to surrender at the P.S. The I.O. did not see any blood-stain on the clothes of this appellants at the P.O. The alleged axe, seized at the P.S., was also not produced in the Court in course of trial.

6. The learned APP has submitted that the informant saw this appellant assaulting her mother. When her mother fell down at Hansadungri then the appellant went to home and again went to Hansadungri where her mother had fallen down taking an axe and one bag. She saw that the appellant chopped off the head of her mother and kept it in the bag. Thereafter, he went towards Haldtpokhar via village Gomiasai. The head was seized at the Police Station. This appellant informed the I.O. that he had chopped off the head of Surajmani Sardarin only because she was witch. The I.O., PW 9, found the blood-stained soil, blood-stained axe, chopped off head and body. The Doctor, PW 2, conducted the post mortem examination and found the chopped off head and body having the following injuries : (1) Lacerated wound with sharp cutting look over lateral aspect of right shoulder 7 cm. x 3/3 cm. x muscle deep. (2) Lacerated transverse wound through parietal frontal temporal scalp measuring 18 cm. transversally and 6 cm. vertically x cranial cavity. (3) The head separated from the trunk through neck at its root by a lacerated wound 12 cm. vertically and 16 cm. transversally cutting in its bone, skin, soft tissues, major blood vessels, bones etc. The doctor found all these injuries ante-mortem in nature caused by heavy sharp cutting weapon with thick edge. He found that both the parts of the body belonged to one individual. The death was caused due to above injuries within 24-36 hours from the post mortem examination report, Ext. 1, On these grounds, the learned APP has submitted that the severed head was found to be the head of the trunk which was the body of the deceased, Surajmani Sardarin, and has submitted that the learned Court below has rightly convicted and sentenced the appellant.

7. In this present case the informant, PW 3, Keshawati Sardarin, daughter of the deceased, was sitting in front of the house of Atisar Sardar at village Gomiasai. She saw the appellant, Tula Sardar. assaulting her mother with an axe. Tula Sardar asked other village women, who were uprooting the paddy near the P.O. to flee away. When her mother fell down then the appellant went to the house and again went to Hansadungri where her mother had fallen down taking one bag and axe. He chopped off the head of her mother and kept it in the bag. The appellant went towards Haldipokhar via the village Gomiasai. The P.O. is at a distance of 500 yards from the village Gomiasai where the informant, PW 3, was sitting in front of the house of Atisar Sardar. She has specifically deposed in her cross-examination that she had seen the village women fleeing away. She has deposed that there was no enmity between her mother and this appellant. This appellant was on visiting term to her house prior to the alleged occurrence. There was cordial relationship between their families. No one had uttered her mother as a witch.

8. Except the informant, PW 3 and PW 4, the other witnesses, who are alleged to have been near the place of occurrence, uprooting the paddy, have not supported the prosecution case who have deposed that they know nothing as to what happened and who caused the murder of Surajmani Sardarin. The appellant has pleaded himself innocent and has totally denied about the alleged commission of murder. He has also denied that he had handed over the chopped off head of Suraj-mani Sardarin to the Police at the P.S. containing in a bag.

9. PW 9, I.O. recorded the fardbeyan, Ext. 4, of the informant, PW 3. He prepared inquest-report of the head (Ext. 3) and the trunk of the body (Ext. 3/1) of Surajmani Sardarin. He also prepared seizure-list in respect of seizure of blood-stained axe, Ext. 2. and blood-stained soil, Ext. 2/1. The post mortem report Ext. 1, was prepared by PW 2, Dr. Akhilesh Kumar Choudhary, who conducted the post mortem examination on the dead body of Surajmani Sardarin which proves that Surajmani Sardarin was done to death by cutting her neck with heavy sharp edged weapon. In view of this fact, the murder of Surajmani Sardarin has not been denied. Moreover, the P.O. has also not been denied as blood-stained soil was found and seized and seizure-list (Ext. 2/1) was prepared at the P.O. by the I.O. PW 9.

10. The only point for consideration before me is that the learned Court below has relied the evidence of hostile witnesses and also the evidence of the informant, PW 3 and PW 4 and convicted the appellant. PW 3. Keshawati Sardarin, is the daughter of the deceased. She was sitting in front of the house of Atisar Sardar which is at a distance of 500 yards from Hansadungri, the P.O. where her mother is alleged to have been given axe blows from behind by this appellant while she was running towards the village. PW 4, Binni Bhumij, PW 5, Srimati Bhumij PW 6, Basanti Bhumij, PW 7, Sushila Bhumij and PW 8. Panpati Bhumij, who were uprooting the paddy in a nearby field of the P.O., are the eye-witnesses of the alleged occurrence. These witnesses fled away from the field where they were uprooting the paddy towards the village. All the aforesaid witnesses except PW 4 have deposed that they did not see what happened and who assaulted Surajmani Sardarin resulting her death. Moreover, the appellant went to the village home. He took one bag and an axe and went again to the P.O. Hansadungri, where Surajmani Sardarin had fallen.

11. PW 3, the informant. Keshawati Sardarin, saw PW 4. Binni Bhumij, PW 5, Srimati Bhumij, PW 6, Basanti Bhumij, PW 7, Sushila Bhumij and PW 8. Panpati Bhumij, running away towards the village as they were asked to flee away by this appellant who had axe in his hand. All these five witnesses were working in a nearby field and their evidence is admissible to the extent that the appellant, Tula Sardar. having axe in his hand, asked them to flee away. The deceased, Surajmani Sardarin, was also running away towards the village but she was given axe blows by this appellant who was chasing her. This assault was seen by PW 3, Keshawati Sardarin and PW 4, Binni Bhumij. Both of them have deposed that on being assaulted by axe from behind Surajmani Sardarin fell down and then the appellant went to home and again taking

a bag went to the place where Surajmani Sardarin had fallen. Having axe in his hand he severed the head of Surajmani Sardarin with tangi, put the severed head in the bag, went to the P.S. and surrendered with the head containing in a bag. The I.O. seized the blood-stained axe and prepared the seizure-list, Ext. 2, and inquest-report of the head, Ext. 3. The appellant confessed before the I.O. that he had severed the head of Surajmani Sardarin and had brought her head in a bag. The Doctor, Akhilesh Kumar Choudhary, conducted the post mortem examination of the severed head and the trunk and found that the trunk and head was of the same deceased, Surajmani Sardarin. The I.O. PW 9, found the bloodstained soil at the P.O. and seized it which corroborates the P.O. as deposed by PW 3 and PW 4. PW 4, Binni Bhumij, has corroborated the evidence of the informant. Keshawati Sardarin, who saw the manner of the alleged occurrence that the appellant chased her and gave an axe blow from behind. On being injured when Surajmani Sardarin fell down then the appellant went to home and again taking an axe and a bag went to the P.O. where Surajmani Sardarin had fallen and severed her head. There is no contradiction in the evidence of PW 3 and PW 4 who are eye-witnesses of the alleged occurrence. The evidence is corroborated by the I.O. PW 9, Satyendra Prasad, before whom the appellant had surrendered the severed head and confessed his guilt that he had cut the head of Surajmani Sardarin, having a blood-stained axe in his hand. The Doctor, PW 2, also found the severed head from the trunk of Surajmani Devi. Thus, I find that the learned 3rd Addl. Sessions Judge, Jamshedpur has appreciated the evidence of PW 2, PW 3, PW 4, and PW 9 and come to the finding that this appellant is the sole person who is responsible for severing the head of Surajmani Sardarin and convicted him u/s 302, IPC and sentenced thereunder to undergo R.I. for life. I do not find any cogent reason to disbelieve the evidence of PW 3, daughter of deceased, whose evidence has been corroborated by an independent natural and competent eye-witness, PW 4, Binni Bhumij. PW 3 and PW 4 have no reason to depose falsely as they have no animus against the appellant in the absence of any enmity against the appellant prior to the occurrence. Therefore there is no reason to discard their evidence. There appears to be ring of truth in their testimony. As I have considered the evidence of PW 2 and PW 9 that their evidence corroborates the ocular evidence of PW 3 and PW 4 which were meticulously considered by the 3rd Addl. Sessions Judge, Jamshedpur. Thus, the prosecution has proved its case beyond all shadows of reasonable doubts regarding the manner of the alleged occurrence committed by this appellant, severing the head of Surajmani Sardarin. I do not find any legal infirmity in the impugned judgment of conviction and sentence passed by the 3rd Addl. Sessions Judge, Jamshedpur.

12. Considering all these facts, I do not find any merit in this appeal which fails. This criminal appeal is, hereby dismissed and the judgment and order of conviction and sentence passed by the learned Court below in ST No. 82/94, is accordingly, affirmed.

Vishnudeo Narayan, J.

13. I agree.