

Criminal Appeal
Present : The Hon'ble Mr. Justice Ashim Kumar Banerjee
And
The Hon'ble Mr. Justice Kalidas Mukherjee

Judgment on : May 21, 2010.
C.R.A. No.225 of 2004

Fatey @ Thate Kishku & Others
-VS-
State of West Bengal

POINTS

SINGLE WITNESS – BENEFIT OF DOUBT – Single witness supporting the prosecution case could assist the Court in holding the accused guilty of the offence – No direct evidence with regard to the presence of the other accused – Whether they deserve benefit of doubt – Indian Evidence Act 1872 .

FACTS

At about 3.35 a.m. on October 26/27, 2002 Japala lodged a written complaint with the Police Station being accompanied by his son in-law Babu Ram Soren. Babu Ram scribed the complaint. As per the complaint, on October 26, 2002 at about 9.30/10.00 p.m. 1) Srimath Tudu and 2) Guru Tudu both nephews of Japala being the son of one 3) Sabin tudu, elder brother of Japala, Jetha Murmu, the brother in-law; 5) Fate; 6) Mantu Murmu, friend of Srimath and Guru entered the house. Turki and Japala were making their bed on the varandah for sleep after dinner. Their son and daughter being PW-4 and 5 were not in the house as they went out to listen to Manasa Songs. Sabin accused Turki as “*fuksin*” (witch). Sabin accused her being responsible for his illness and the illness of his other brother Rabin. He ordered to kill her. Instantly, Srimath, Jetha, Fate flattened Turki. Fate cut her throat with a sharp knife. Turki raised alarm and tried to

resist. Japala raised alarm and tried to resist. Guru dealt a blow on his right hand with a bamboo stick. Mantu flattened him. Guru pressed his mouth with a napkin. Fate stabbed Turki on the back of the upper portion of the waist by a knife. Guru and Jetha left their napkin and torch light on the spot. All of them left the place. It was a moon lit night and Japala recognized all of them. Earlier Sabin had been suffering for one year whereas Rabin had been suffering for one month. They told Japala to arrange for their treatment. Japala assured them of their treatment, but being doubted with their behaviour Japala sent Turki at her parental place. However his relations brought her back. The accused went to Deotala under Police Station Gazole in the District of Malda and met a Mahan (Jan Guru) and came to know that Turki was a fuksin (witch). Hence, they killed Truki.

HELD

It is well settled principle of law that in a criminal trial it is quality and not quantity that matters with regard to the evidence. Even a single witness supporting the prosecution case could assist the Court in holding the accused guilty of the offence as against series of witnesses who could not be relied upon for reasons. In the instant case Japala lost his wife. He was alone in the residence. He tried to resist the accused when he was also assaulted. There is no reason why he would tell lie. It has not come out from analysis of the evidence that there had been any enmity save and except a wrong notion the accused had as against the victim in view of the declaration by a Mahan Guru that the victim was a witch, responsible for the illness of Sabin and Rabin. The people involved herein were rustic villagers. They were illiterate and often became subjected to superstition. The motive is clear and was successfully proved by the prosecution. The neighbours became hostile, so were the distant relatives. Para 26

The parties were known to each other. The calendar of 2002 wherefrom it is found that the Laxmi Puja was scheduled on October 20, 2002 whereas the Kali Puja was scheduled on November 5, 2002. The incident occurred on October 26, it was closer to Laxmi Puja than Kali Puja. Hence, there was sufficient light. Sufficiency is a relative term. From the evidence it appears that the family of the victim did not have any electricity connection. Hence, they were habituated to live with the nature's support. It was thus quite probable that the complainant as well as the victim could recognize the miscreants being known to them before hand. In the complaint PW-1 blamed six accused barring Rabin. He was consistent while deposing before the trial Court. However, if his complaint is compared with his deposition before the learned Judge then it is found that he categorically named all the six accused barring Rabin to the effect that they went to Jan Guru and had his verdict. PW-1 however did not specifically name the accused with regard to commission of crime and their involvement barring Guru and Fatey. Sabin had already died. Mantu and Rabin were already acquitted. Para 28

PW-2 and 3 were declared hostile. They consistently deposed that Japala could not identify the accused. Both of them however supported the case of Japala that the incident occurred on a day closer to Laxmi Puja than Kali Puja. PW-4 being the son of Japala and victim corroborated PW-2 and 3 to the extent that Japala could not recognize the assailants. PW-5, however, mentioned the names of Srimath, Fatey, Mantu and Rabin. She did not mention the name of Guru or Jetha who were specifically named by PW-1. If we take a sum total we would find that the involvement of Guru and Fatey was proved by PW-1 and his testimony could not be shaken in cross-examination. The other witnesses being PW-2, 3, 4 and 5 were not safe to be relied upon. Similarly, PW-6 and 7 being neighbours also could not throw much light on the incident. In our considered view, the evidence of PW-1 was sufficient to affirm the conviction of Fatey and Guru. Para 29

The incident was proved by PW-1. Injuries were proved by PW-11 being the doctor who performed the post mortem examination. Sufficiency of light as claimed by PW-1 was supported by PW-2 and 3 although they were declared hostile. Possibly, PW-4 wanted to save the other members of the family so was PW-5 in respect of Guru and Jetha. The neighbours also supported their attempt. PW-1 was however consistent on the happening of the incident. He was definite about the involvement of Guru and Fatey. It is true that he mentioned the other names in his complaint. It is also true that he uttered those names while deposing before the learned Sessions Judge. However their actual involvement was not specifically spelt out. Hence, the others can get benefit of doubt. Para 30

Since there was no direct evidence with regard to the presence of the other accused except Fatey and Guru they deserve benefit of doubt as observed earlier. Para 31

CASES CITED

- i) 1991, Supreme Court Cases (Criminal), Page-1058 (Jawahar –VS- State of Uttar Pradesh)*
- ii) 1998, Supreme Court Cases (Criminal), Page-461 (Sudhir Samanta –VS- State of West Bengal and Another)*
- iii) 2002, Volume-VI, Supreme, Page-194 (Balus Sonba Shinde –VS- State of Maharashtra)*
- iv) All India Reporter, 2002, Supreme Court, Page-319 (Sukhan Raut and Others –VS- State of Bihar)*
- v) 2006, Criminal Law Journal, Page-4038 (Sabbu Mallesu & Others –VS- State of Andhra Pradesh)*

vi) 2006, Volume-II, Supreme Court Cases (Criminal), Page-43 (Munna Chanda –VS- State of Assam)

vii) 2009, Volume-III, Supreme Court Cases (Criminal), Page-1289 (State of Maharashtra –VS- Pradash Sakha Vasave & Others)

viii) 2009, Volume-III, Supreme Court Cases (Criminal), Page-1223 (Ram Singh –VS- State of Madhya Pradesh)

xi) 2009, Volume-III, Supreme Court Cases (Criminal), Page-1396 (Rajender Singh & Another – VS- State of Haryana)

For the Appellants : Mr. Jayanta Narayan Chatterjee

For the State : Mr. Amajit De

ASHIM KUMAR BANERJEE.J:

1. INCIDENT :-

1. On October 26, 2002 at about 9.00 to 10.00 p.m. Japala Tudu and his wife Turki Soren were making their bed after dinner on the varandah of their house. Miscreants appeared at the spot, overpowered the victims. Turki was flattened. Her throat was cut. She received a deep penetrated stab injury under her waist on the left side. Japala tried to resist them when one of the miscreants hit him with a bamboo stick. His mouth was covered by a napkin. The miscreants left leaving their torch and the napkin. After being released Japala raised hue and cry. Jetha, Paltan and Munsu rushed to the place when they found Turki lying dead. The victim's children were not at home. They went to listen to Manasa Songs. On being informed by one Sanjoy Seal they also rushed to the spot and found their mother dead.

2. COMPLAINT :-

2. At about 3.35 a.m. on October 26/27, 2002 Japala lodged a written complaint with the Police Station being accompanied by his son in-law Babu Ram Soren. Babu Ram scribed the complaint. As per the complaint, on October 26, 2002 at about 9.30/10.00 p.m. 1) Srimath Tudu and 2) Guru Tudu both nephews of Japala being the son of one 3) Sabin tudu, elder brother of Japala, 4) Jetha Murmu, the brother in-law; 5) Fate; 6) Mantu Murmu, friend of Srimath and Guru entered the house. Turki and Japala were making their bed on the varandah for sleep after dinner. Their son and daughter being PW-4 and 5 were not in the house as they went out to listen to Manasa Songs. Sabin accused Turki as "*fuksin*" (witch). Sabin accused her being responsible for his illness and the illness of his other brother Rabin. He ordered to kill her. Instantly, Srimath, Jetha, Fate flattened Turki. Fate cut her throat with a sharp knife. Turki raised alarm and tried to resist. Japala raised alarm and tried to resist. Guru dealt a blow on his right hand with a bamboo stick. Mantu flattened him. Guru pressed his mouth with a napkin. Fate stabbed Turki on the back of the upper portion of the waist by a knife. Guru and Jetha left their napkin and torch light on the spot. All of them left the place. It was a moon lit night and Japala recognized all of them.

3. Earlier Sabin had been suffering for one year whereas Rabin had been suffering for one month. They told Japala to arrange for their treatment. Japala assured them of their treatment, but being doubted with their behaviour Japala sent Turki at her parental place. However his relations brought her back. The accused went to Deotala under Police Station Gazole in the District of Malda and met a Mahan (Jan Guru) and came to know that Turki was a fuksin (witch). Hence, they killed Turki.

3. INQUEST :-

4. Inspector Ananda Kumar Mondal, PW-12 held an inquest. The injuries as described by the complainant almost tallied with the inquest. During the Inquest Report it was disclosed that on October 26, 2002 at about 9.00/10.00 p.m. Srimath and Fate and some others being assembled, entered into the house of Japala by opening the tin fencing. They caught hold of Turki and accused her as “witch”. Japala tried to resist them when they assaulted Japala. They committed several injury on Turki with a knife. Sabin and Rabin had been suffering for a long time and they suspected Turki as witch and as such the miscreants killed her. Japala signed the inquest, so were Paltan Tudu, Jetha Soren and Munshi Murmu.

4. CHARGE :-

5. The learned Sessions Judge, Dakshin Dinajpur framed charge dated September 1, 2003, under Section 302/149 of the Indian Penal Code to the effect that on October 26, 2002 between 21.30 hrs and 22.30 hrs the accused Srimath Tudu, Jetha, Fatey, Mantu, Munshi and Guru for being member of an unlawful assembly and in prosecution of the common object i.e. rioting, commission of murder etc. did commit murder by intentionally or knowingly causing death of Turki Soren. The learned Sessions Judge by another charge dated November 13, 2003 framed identical charge against Rabin Tudu, another brother of Japala.

5. EVIDENCE :-

PW-1 (Japla Tudu):-

6. Japla was the husband of Turki. He made the complaint to the Police. In the complaint he accused Srimath, Guru, Fate, Sabin, Jetha and Mantu. During trial he gave details of the incident. According to him, Sabin, Guru, Srimath, Fate, Jetha and Mantu went to "Mahan Guru" and came back. Thereafter "*they came*" to his house, attacked his wife at about 9.00/9.30 p.m. when they were about to sleep and their children were out to listen to music, miscreants entered his house. Guru attacked him with lathi on his head and hand. Guru closed his mouth with napkin. When they released Japala he found his wife murdered. The throat of his wife had been cut by Fate with knife. Fate also inflicted stab injury with a knife on her waist. "*Other assailants*" caught hold of his wife. "*Thereafter the miscreants went away*". In cross-examination, he deposed that the incident occurred one or two days after Laxmi Puza and before Kali Puza. After the death of his wife he re-married. His in-laws were also convicts and suffering sentence for witch haunting.

PW-2 (Jetha Soren):-

7. Jetha Soren was also a relation of Japala. He was his sister's husband. PW-2 deposed that the incident occurred after Laxmi Puja which supported the case of PW-1. PW-2, however, deposed that PW-1 shouted by saying "thief thief". When he was asked he disclosed that three "Palia" (Rajbanshi) miscreants covering their face entered the house and committed the crime. PW-2 also deposed that Japala and his wife were selling liquor and disputes/altercation took place at his house because of taking wine etc.

8. Needless to say, PW-2 was declared hostile and was cross-examined by the prosecution as well as the defence.

PW-3 (Gupin Mandi) :-

9. This witness also deposed that Japla did not disclose the identity of the accused. He only stated that three miscreants committed the crime. PW-3 was also declared hostile. He also deposed that the incident occurred during “new moon season”.

PW-4 (Bimal Tudu) :-

10. PW-4 was the son of the victim as well as Japala. He came back along with his sister after being informed by Sanjoy that his mother had been murdered. He rushed to the house along with his sister and found his mother lying dead having her throat cut and stab injury on the waist. He enquired from Japala when Japala told him that assailants also assaulted him on his head and hand when he tried to save the victim. PW-4 could not say who murdered the victim. In cross-examination he deposed that Japala could not recognize any of the miscreants.

PW-5 (Binita Tudu) :-

11. Binita was the daughter of the victim as well as Japala. She read up to class VII. She came back along with her brother after being informed by Sanjoy. She also noticed her mother having stab injury on her waist and her throat cut. On enquiry, her father told her that Fate Kisku, Sabina Tudu, Srimath Tudul, Mantu Murmu, Rabin Tudu killed the victim after accusing her as witch. In cross-examination the witness deposed that Japala did not name the assailants to any of the villagers.

PW-6 (Baburam Soren) :-

12. Baburam was the brother in-law of Japala. According to him, on enquiry he came to know from Japala that Sabin, Guru, Rabin Srimath, Fate along with others killed the victim. He scribed the FIR as dictated by Japala. In cross-examination he admitted that five of his family members along with three others were also suffering sentence in a witch haunting case.

PW-7 (Bishnu Robidas) :-

13. The witness deposed that Japala did not disclose the names of the assailants. He was declared hostile. In cross-examination he deposed that Japala told him that three “Palia” (Rajbanshi) came and killed his wife and he could not recognize any one of them. He deposed that it was a dark night being two/three days prior to Kali Puza.

PW-8 (Munshi Murmu) :-

14. He is a villager. He also deposed that Japala told him that three miscreants came and assaulted his wife and he could not recognize them. The witness was declared hostile. In cross-examination he deposed that three palia miscreants, in disguise, murdered the victim as told by Japala.

PW-9 (Paresh Chandra Roy) :-

15. The witness was a constable who carried the deadbody for post mortem examination.

PW-10 (Monoj Kumar Modak) :-

16.The witness was the Sub-inspector attached to the Kumarganj Police Station. As Officer in-charge he started the proceeding by receiving the FIR. He endorsed the case to the Sub-inspector Ananda Kumar Mondal for investigation.

PW-11 (Dr. Ashok Dutta) :-

17.The witness was the Medical Officer of Howrah District Hospital. He conducted the post mortem. He recovered the knife from the body of the victim. He supported the injuries as appearing in the inquest report as well as the post mortem report.

PW-12 (Ananda Kumar Mondal) :-

18.The witness was the Investigating Officer. He prepared the inquest and sent the body for post mortem examination through PW-9. He proved the inquest report as well as seizure list. According to him, PW-2, 3, 7 and 8 consistently stated before him during investigation that the accused were responsible for the crime.

6. JUDGMENT :-

19.On analysis of the evidence discussed above, the learned Sessions Judge convicted Srimath, Guru, Fatey, Jetha and Mantu guilty of the offence punishable under Section 302/149 of the Indian Penal Code and sentenced them to suffer imprisonment for life. The other two accused Rabin Tudu and Munsu Hansda were found not guilty of the offence and as such were acquitted of the charges.

7. JUDGMENT ANALYSIS :-

- i) PW-1 was the only eye-witness. His son and daughter were away from home. They came back and found an assembly of many persons.
- ii) The accused being close relatives had known that the other inmates of the house would be away and availed the opportunity to attack the deceased.
- iii) PW-1 was habituated to live in the midst of nature having no electricity. Moon light was sufficient to identify the accused.
- iv) The incident occurred in the night. It was not possible for the neighbours to watch the occurrence. The testimony of the PW-1 could not be shaken during cross-examination.
- v) The injury caused to the victim was corroborated by medical evidence. Hence, conviction based upon single eye-witness was justified.
- vi) Although the son did not support the PW-1 the daughter supported the father on the issue of naming of the accused. Her evidence was clear, cogent, believable and her conduct was normal.
- vii) No reason could be attributed as to why PW-1 would adduce false evidence to implicate his own brother and other relatives.
- viii) PW-3 and 4 were gained over.
- ix) PW-7 and 8 were contradicted with their statements made before the police under Section 161.
- x) Motive was clear as the accused had believed that the victim was a witch for whom Sabin and Rabin had been suffering from illness.
- xi) The accused formed an unlawful assembly and committed the crime. The prosecution was able to prove their guilt and they were liable for conviction.

- xii) Rabin and Munshi were held not guilty of the charges as PW-1 did not mention about Rabin. Similarly, Munshi had no role to play in committing the crime.

8. APPEAL :-

20. Being aggrieved by the judgment and order of conviction and sentence, five accused preferred the instant appeal which was heard by us on the above mentioned dates.

9. APPELLANTS' CONTENTION :-

21. Mr. Jayanta Narayan Chatterjee, learned counsel appearing for the appellants, contended as follows :-

- i) The entire trial was vitiated by illegality and irregularity
- ii) The complaint made by Japala was nothing but an attempt of vindication because of the family dispute.
- iii) The weapon said to have been recovered from the victim's body was not examined by the Forensic Expert.
- iv) The injuries so certified by the doctor in the Post Mortem Report did not tally with the injuries found in the inquest.
- v) The neighbours were not examined who could unfold the narrative.
- vi) The prosecution arrested the accused from their respective residence. Hence, the conduct of the appellants was normal and could not have an adverse presumption.
- vii) The prosecution witnesses contradicted each other. Japala was not supported by his son.
- viii) The PW-4 and 5 being the son and daughter of the victim contradicted each other.

- ix) The other prosecution witnesses turned hostile when they were asked about the involvement of the accused.
- x) The Investigating Officer did not correctly depose before the Court as his statements were full of contradictions.
- xi) The napkin and the torch light seized by the prosecution were not proved to be belonging to Jetha or Guru as contended.
- xii) It was a dark night and identification was not safe to be relied upon.
- xiii) The wearing apparels were not examined by the Forensic Expert.
- xiv) Sanjoy Shil who informed PW-4 and 5 about the incident, was not examined.
- xv) The accused were not properly examined as required under Section 313 of the Code of Criminal Procedure.

22.As and by way of an alternative submission Mr. Chatterjee contended that at best Fatey could be held responsible as there had been direct evidence against him if such evidence was believed by the Court. Others were entitled to be acquitted in absence of cogent evidence.

23.In support of his contentions Mr. Chatterjee relied on the following decisions :

- i) 1991, Supreme Court Cases (Criminal), Page-1058 (Jawahar –VS- State of Uttar Pradesh)*
- ii) 1998, Supreme Court Cases (Criminal), Page-461 (Sudhir Samanta –VS- State of West Bengal and Another)*
- iii)2002, Volume-VI, Supreme, Page-194 (Balu Sonba Shinde –VS- State of Maharashtra)*
- iv) All India Reporter, 2002, Supreme Court, Page-319 (Sukhan Raut and Others –VS- State of Bihar)*

v) 2006, *Criminal Law Journal*, Page-4038 (*Sabbi Mallesu & Others –VS- State of Andhra Pradesh*)

vi) 2006, *Volume-II, Supreme Court Cases (Criminal)*, Page-43 (*Munna Chanda –VS- State of Assam*)

10. PROSECUTION CONTENTION :-

24.Mr. Amajit De, learned counsel appearing for the prosecution contended as follows :

- i) The accused were known to the complainant. They were close relatives. Hence, the plea of lack of light would not suffice.
- ii) The testimony of the PW-1 could not be shaken during cross-examination. He was corroborated by his daughter being PW-5. Hence, based on the deposition of PW-1 and 5 the conviction could be upheld.
- iii) Injuries were proved by the doctor. Nature of injury did not suggest that the crime was committed on the spur of the moment.
- iv) From the nature of injury it was clear that the murder was a result of deep rooted hatred, the accused had as against the victim.
- v) When there had been multiple injuries details were not required to be spelt out and any mistake and/or anomaly on that score would not vitiate the trial or the ultimate decision.

25.In support of his contention he relied on the following decisions :-

i) 2009, *Volume-III, Supreme Court Cases (Criminal)*, Page-1289 (*State of Maharashtra –VS- Pradash Sakha Vasave & Others*)

ii) 2009, *Volume-III, Supreme Court Cases (Criminal)*, Page-1223 (*Ram Singh –VS- State of Madhya Pradesh*)

iii) 2009, Volume-III, Supreme Court Cases (Criminal), Page-1396 (Rajender Singh & Another –VS- State of Haryana)

11. OUR VIEW :-

26.It is well settled principle of law that in a criminal trial it is quality and not quantity that matters with regard to the evidence. Even a single witness supporting the prosecution case could assist the Court in holding the accused guilty of the offence as against series of witnesses who could not be relied upon for reasons. In the instant case Japala lost his wife. He was alone in the residence. He tried to resist the accused when he was also assaulted. There is no reason why he would tell lie. It has not come out from analysis of the evidence that there had been any enmity save and except a wrong notion the accused had as against the victim in view of the declaration by a Mahan Guru that the victim was a witch, responsible for the illness of Sabin and Rabin. The people involved herein were rustic villagers. They were illiterate and often became subjected to superstition. The motive is clear and was successfully proved by the prosecution. The neighbours became hostile, so were the distant relatives.

27.The Apex Court in the case of *Balu Sonba Shinde (Supra)* observed that declaration of a witness to be hostile does not ipso facto reject the evidence. The parties may take advantage of the portion of the evidence that is advantageous to them. The Court, however, must be cautious before relying on such evidence.

28. The parties were known to each other. We have consulted the calendar of 2002 wherefrom we find that the Laxmi Puja was scheduled on October 20, 2002 whereas the Kali Puja was scheduled on November 5, 2002. The incident occurred on October 26, it was closer to Laxmi Puja than Kali Puja. Hence, there was sufficient light. Sufficiency is a relative term. From the evidence it appears that the family of the victim did not have any electricity connection. Hence, they were habituated to live with the nature's support. It was thus quite probable that the complainant as well as the victim could recognize the miscreants being known to them before hand. In the complaint PW-1 blamed six accused barring Rabin. He was consistent while deposing before the trial Court. However, if we closely compare his complaint with his deposition before the learned Judge we would find that he categorically named all the six accused barring Rabin to the effect that they went to Jan Guru and had his verdict. PW-1 however did not specifically name the accused with regard to commission of crime and their involvement barring Guru and Fatey. Sabin had already died. Mantu and Rabin were already acquitted.

29. PW-2 and 3 were declared hostile. They consistently deposed that Japala could not identify the accused. Both of them however supported the case of Japala that the incident occurred on a day closer to Laxmi Puja than Kali Puja. PW-4 being the son of Japala and victim corroborated PW-2 and 3 to the extent that Japala could not recognize the assailants. PW-5, however, mentioned the names of Srimath, Fatey, Mantu and Rabin. She did not mention the name of Guru or Jetha who were specifically named by PW-1. If we take a sum total we would find that the involvement of Guru and Fatey was proved by PW-1 and his testimony could not be shaken in cross-examination. The other witnesses being PW-2, 3, 4 and 5 were not safe to be relied upon. Similarly, PW-6 and 7

being neighbours also could not throw much light on the incident. In our considered view, the evidence of PW-1 was sufficient to affirm the conviction of Fatey and Guru.

30.The incident was proved by PW-1. Injuries were proved by PW-11 being the doctor who performed the post mortem examination. Sufficiency of light as claimed by PW-1 was supported by PW-2 and 3 although they were declared hostile. Possibly, PW-4 wanted to save the other members of the family so was PW-5 in respect of Guru and Jetha. The neighbours also supported their attempt. PW-1 was however consistent on the happening of the incident. He was definite about the involvement of Guru and Fatey. It is true that he mentioned the other names in his complaint. It is also true that he uttered those names while deposing before the learned Sessions Judge. However their actual involvement was not specifically spelt out. Hence, we wish to give the others benefit of doubt.

31.Mr. Chatterjee made elaborate submission on unlawful assembly. According to him, the accused were members of the family. They were close to the victim as well as complainant. Hence, their presence in the house could not be said to be an unlawful assembly. In support of such contention Mr. Chatterjee relied on four Apex Court decisions. In the case of Sudhir Samanta (Supra) the Apex Court considered the situation where a large number of villagers were present at the scene of the offence whereas the common object of specific acts were attributed only to a few among the nine accused. The Apex Court observed that mere onlooker could not be said to be part of unlawful assembly although they were present to watch the occurrence. In the instant case the accused came to the spot with a pre-determined notion to kill the victim in view of the declaration made by Maha Guru that the victim was a witch and responsible for the illness of Sabin and Rabin.

Hence, the contention of Mr. Chatterjee on that score cannot be accepted. We, however, feel that since there was no direct evidence with regard to the presence of the other accused except Fatey and Guru they deserve benefit of doubt as observed earlier.

12. RESULT :-

32.While passing the sentence it escaped the notice of the learned Sessions Judge that under Section 302 Indian Penal Code in addition to imprisonment for life it is mandatory to impose the sentence of fine. We, therefore, direct that in addition to the sentence to suffer imprisonment for life the appellant no.1 Fatey Tudu and appellants no.3 Guru Tudu are sentenced to pay a fine of Rs.1000/- each and in default to suffer rigorous imprisonment for one month.

33.Modified jail warrant be issued accordingly.

34.The impugned judgment of conviction and sentence of Fatey, being the appellant no.1, and Guru Tudu being appellant no.3 is affirmed.

35.The conviction and sentence imposed on the rest of the appellants being Srimath Tudu, Jetha Murmu and Mantu Murmu is set aside. They may be set at liberty at once, if not wanted in any other case.

36.The appeal is allowed in part accordingly.

13. DIRECTION :-

37.A copy of this judgment be sent to each of the convicts free of cost at the Correctional Home where they are presently suffering their sentence.

38.The Lower Court Records be sent down at once along with a copy of this judgment.

39.Urgent xerox certified copy will be given to the parties, if applied for.

Kalidas Mukherjee, J:

I agree.

[ASHIM KUMAR BANERJEE,J.]

[KALIDAS MUKHERJEE,J.]