

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.899 of 2002**

Tikesh Kumar Sahu, son of Bhagwan Singh Sahu, aged about 24 years,
Occupation Kirana Business, R/o Village Kot-tara, Thana Charama, District
Kanker, Chhattisgarh

---- Appellant**versus**

State of Chhattisgarh through District Judge, Kanker

---- Respondent

For Appellant	:	Smt. Indira Tripathi, Advocate
For State/Respondent	:	Smt. Madhunisha Singh, Panel Lawyer

Hon'ble Shri Deepak Gupta, Chief Justice**Hon'ble Shri Justice P. Sam Koshy****C.A.V. Judgment****Per Deepak Gupta, Chief Justice****13.7.2016**

1. This appeal by accused Tikesh Kumar Sahu is directed against judgment dated 16.8.2002 passed by First Additional Sessions Judge, Kanker in Sessions Trial No.438 of 2000, whereby the accused has been convicted for an offence punishable under Section 302 IPC and sentenced to undergo imprisonment for life and to pay fine of Rs.1,000/-, in default of payment of fine, to undergo additional rigorous imprisonment for 1 year.

2. The prosecution case, briefly stated, is that on 24.7.2000, accused/Appellant Tikesh Kumar Sahu along with two co-accused Hemant Kumar Rangari and Satish David committed murder of Bisambhar. A complaint was lodged by Bisanu Ram, PW-7 in which it is stated that on 24.7.2000, his father Ghurwa, PW-3 along with his brother Bisambhar had gone to the fields. His father Ghurwa, PW-3 returned home from the fields same day at about 12:30 p.m. and told him that Bisambhar was along with the father till about 11:00 a.m. Bisambhar left the fields saying his father Ghurwa, PW-3 that he is to go home. At about 12:00 noon, when his father Ghurwa, PW-3 was also returning from the fields, he saw the body of Bisambhar lying

on the way near the pond. He saw cut wounds on the body of Bisambhar and oozing out of blood from those wounds. Thereafter, Bisanu Ram, PW-7 went to the spot and merged intimation, Ex.P-13 was recorded at his instance. On the basis of the report of Bisanu Ram, PW-7, First Information Report, Ex.P-14 was registered. Thereafter, the police came into action, started investigation, recovered a blood stained sword and other articles at the instance of the accused. After completion of the investigation, final report under Section 173 Cr.P.C. was filed against three accused including the Appellant and on the basis of the investigation the Appellant along with two other co-accused was charged for having committed murder of Bisambhar. The Trial Court acquitted the two co-accused of the charge framed against them, but convicted and sentenced the Appellant as mentioned above in first paragraph. Hence, this appeal by the Appellant.

3. We have heard Learned Counsel for the parties and perused the evidence available on record with utmost circumspection.

4. Learned Counsel for the Appellant submits that the case of the prosecution is based on circumstantial evidence. She further submits that the statement of Ghurwa, PW-3 that he saw the occurrence has not been believed by the Trial Court and, therefore, his evidence cannot be based for conviction. She also submits that the incriminating circumstances against the Appellant as stated by the prosecution have not been proved. Therefore, she prays that the Appellant be acquitted of the charge framed against him.

5. The star witness of the prosecution is Ghurwa, PW-3, who is father of deceased Bisambhar. He states that on the date of occurrence, he was working in the fields along with his son Bisambhar. According to this witness, Bisambhar told him that he would go home, have a bath and thereafter would go to the market. Thereafter, Bisambhar left for home. At that time, he was ploughing the fields. After sometime, he heard the sound of Bisambhar's

cries. He then ran towards the place from where the cries were coming. He reached the spot and saw that Appellant Tikesh was giving blows with a sword to his son Bisambhar. One blow was given by the Appellant on the head of his son. According to him, at that time, four other persons, namely, co-accused Hemant, co-accused Satish, Balihar and Rajendra were present at the place of occurrence. They were five persons in all. After his son fell down, all the five persons gave blows to his son and co-accused Hemant drove a motorcycle over his son. Thereafter, all the five persons escaped from their motorcycles. He reached near the body of his son and covered the dead body of his son with a *Lungi* lying there. Thereafter, he returned home where he told about the occurrence to his sons Bisanu Ram, PW-7 and Sawant. This witness also states that earlier one Tulsiram had been murdered and his son Bisambhar was suspected that he had committed the murder. He further states that his sons Bisambhar and Sohan were charged with the murder of Tulsiram.

6. Ghurwa, PW-3 was confronted with his statement of Ex.D-1 recorded under Section 161 Cr.P.C. in which there is no mention of his having heard the cries of his son Bisambhar, having gone to the place of occurrence or having seen anyone of the accused or any other person or having seen giving 15 blows to his son. He could not state any reason why these facts were not mentioned in his statement.

7. Bisanu Ram, PW-7 is one of the sons of Ghurwa, PW-3. He states that his father had gone to plough the fields and after his father returned home at about 11:30 a.m., he told him that Bisambhar had been murdered. He then went to the place of occurrence to see the body of Bisambhar where he found that there were injuries on the head, neck and other parts of the body of his brother Bisambhar which was lying on the side of the road. Thereafter, he went to meet Dashrath, the Sarpanch of the village and informed him about the occurrence. Thereafter, all these people came to the spot. This witness

clearly states that his father had not named before him any person as the assailant. The statement of Bisanu Ram, PW-7, who is the brother of deceased Bisambhar and son of Ghurwa, PW-3, totally falsifies the statement of Ghurwa, PW-3 that he had seen the occurrence.

8. Dashrath, the Sarpanch of the village was examined as PW-2. He states that Sawant, brother of deceased Bisambhar had come to his house and informed him that somebody had murdered Bisambhar. Thereafter, he informed the Village Kotwar about the occurrence and all they went to the place of occurrence. The dead body of Bisambhar was lying near the pond. This witness also states that they were taking tea in the shop of Rajkumar, at that time accused/Appellant Tikesh came there on a motorcycle and there were two pillion riders on the motorcycle whom he did not recognize. It is not even clear from his statement that he saw Appellant Tikesh prior to the murder or after the murder. This witness is also a witness to the recovery of certain articles. He, in examination-in-chief, states that one sword and one *Gupti* (small Dagger) were recovered from a *Nala* (culvert) at the instance of Appellant Tikesh, who told that he had thrown the two weapons in the Nala at *Sarar*. He also states that at the instance of accused Hemant, a full-pant was recovered. With regard to accused Satish, his statement is that no recovery was made from accused Satish in his presence. In cross-examination, this witness states that the seizure documents were got signed from him in the police station. He also states that the seized sword and *Gupti* were lying in the police station. The bag and the full-pant which were seized were also lying in the police station. Devlal, PW-1 only states that he along with Dashrath, PW-2 and others had gone to the place of occurrence and saw the dead body of the deceased.

9. Kanshiram, PW-4, Govind Ram, PW-5, Kamal Prasad Choubey, PW-6, Khileshwar Sahu, PW-8, Chhannulal, PW-9, Develal, PW-10, Roopdas, PW-11 have not supported the case of the prosecution and have turned hostile.

The statement of Ramratan Sanghoriya, PW-12 is not relevant as he is only the witness of preparation of the site map. From the statement of Dr. S.M. Ghosalkar, PW-13, who performed post mortem on the dead body of Bisambhar, it is apparent that Bisambhar was murdered. Latel, PW-14 only states that he had seen the dead body of the deceased. Sub-Inspector Santosh Singh, PW-15 is the witness who investigated the occurrence.

10. From the evidence discussed and appreciated above, it is apparent that the statement of Ghurwa, PW-3 that he witnessed the murder of his son Bisambhar is totally unbelievable. His statement that he witnessed the murder did not find mention in the merger intimation or in the FIR. This does not even find mention in the statement of this witness recorded under Section 161 Cr.P.C. More importantly, Bisanu Ram, PW-7, one of the sons of Ghurwa, PW-3 also does not support the case of the prosecution. Had Ghurwa, PW-3 seen the murder of his son Bisambhar, he would have informed his family members, Sarpanch and Kotwar of the village and other villagers about the occurrence. He would have also made such a statement to the police in his statement, Ex.D-1. Therefore, his statement in this regard cannot be relied upon and it is more than obvious that he did not see anybody committing the murder, but only saw the dead body of his son Bisambhar.

11. There is no eye-witness to the occurrence. The only thing which is proved is that Bisambhar was charged with the offence of murder of Tulsiram, the uncle of Appellant Tikesh. That may provide a motive for the murder of Bisambhar, but that can also provide a motive for voluntarily implicating the Appellant in the murder of Bisambhar. There is no other cogent or reliable evidence available on record. The circumstance of last seen has not been proved on record. The statement of Dashrath, PW-2 is totally silent about the time when he saw the Appellant on a motorcycle near the shop of Rajkumar. The evidence of recovery of incriminating material has not been supported by any of the witnesses. The forensic expert also does not support the case of

the prosecution.

12. In view of the above discussion, we are of the considered view that the prosecution has not been able to prove its case against the Appellant and Learned Trial Judge has grossly erred in convicting the Appellant.

13. The appeal is allowed. The impugned judgment dated 16.8.2002 passed by First Additional Sessions Judge, Kanker in Sessions Trial No.438 of 2000 is set aside. The Appellant is acquitted of the charge framed against him. He is on bail. He need not surrender and the bail bonds submitted by him are discharged.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE