

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 30.11.2016
Pronounced on 23.12.2016

Cr.A. No.519 of 2012

1. Rajesh Sahu, S/o Panchram Sahu, aged about 27 years,

2. Panchram Sahu, S/o Chhali Sahu, aged about 53 years,

Both are R/o Village Khurshi, Police Station Lalpur, District Bilaspur (C.G.)

3. Panna @ Parmeshwar, S/o Chirounji Lal Sahu, aged about 37 years,

4. Golu @ Harish Sahu, S/o Sushil Kumar, aged about 24 years,

Appellant No. 3 & 4 are R/o Dharampura, Police Station Jarhagaon, District Bilaspur (C.G.)

---- Appellants

Versus

State of Chhattisgarh, Through Police Station Lalpur, District Bilaspur

---- Respondent

And

Cr.A. No.433 of 2012

Santosh Kashyap, S/o Derha Ram Kashyap, age 25 years, R/o Dharampura, P.S. Jarhagaon, Dist. Bilaspur (C.G.)

---- Appellant

Versus

State of Chhattisgarh, Through Station House Officer Lalpur, District Bilaspur

---- Respondent

For Appellants	:	Shri V.C.Ottalwar, Shri Vinay Dubey and Shri Yogeshwar Sharma, Advocates.
For Respondent/State	:	Shri Ravindra Agrawal, P.L.

Hon'ble The Chief Justice &
Hon'ble Shri Justice Sanjay Agrawal

CAV Judgment

Per Sanjay Agrawal, J.

1. These are the appeals filed by the accused persons against the judgment dated 26.04.2012 delivered by the learned Additional Sessions Judge, Mungeli,

Dist. Bilaspur in Sessions Trial No.22/2011 whereby the appellants have been convicted and sentenced as under :-

In Cr.A. No.519 of 2012

	<u>CONVICTION</u>	<u>SENTENCE</u>
Rajesh Sahu, Panchram Sahu, Panna @ Parmeshwar and Golu @ Harish Sahu	302/34, 120-B of the IPC	Life imprisonment and to pay fine amount of Rs.1000/- under both the sections and in default to undergo further RI for 6 months on each count.
Panna @ Parmeshwar & Golu @ Harish Sahu	201 of the IPC	RI for 4 years, to pay fine amount of Rs.500/- and default to undergo further RI for 6 months.

In Cr.A. No.433 of 2012

	<u>CONVICTION</u>	<u>SENTENCE</u>
Santosh Kashyap	201 of the IPC	RI for 4 years, to pay fine amount of Rs.500/- and default to undergo further RI for 6 months.
	25 (1-B)(a) of the Arms Act	RI for 1 year, to pay fine amount of Rs.500/- and in default to undergo further RI for 6 months.

2. Since both the appeals arise out of the common impugned judgment, therefore, they are being decided by this common judgment.

3. The prosecution story, briefly stated, is that the deceased Atmaram, a shopkeeper, used to run a medical shop in the name of Vidya Medical Shop at Kodwabani and used to go there daily from his village Khurshi. When he did not return to his village from Kodwabani on 24.02.2011 at his usual time of return, i.e., at 8.00 PM, then his younger brother Ram Kumar had made a search of him at about 10.00 PM along with his brothers, namely, Indra Kumar and Dwarika. Upon a search, they found the dead body of his brother Atmaram and his motorcycle at about one kilometer away from their village Khurshi. They also saw the head injury on his body with blood.

4. Based upon the aforesaid incident, a merg intimation (Ex.P.1) and then the

first information report (Ex.P.2) was lodged by Ram Kumar. It is stated in these reports that the deceased might have fallen down from the motorcycle due to the accident while returning to his village Khurshi. In pursuance to the said information, the case was registered by the concerned Station House Officer of Lalpur, District Bilaspur, with regard to the offence punishable under Section 304-A of the I.P.C.

5. Matter was investigated and the accused/appellants were charged for having committed offences punishable under Sections, 302, 120-B, 201 and 34 of the I.P.C. read with Sections 25 & 27 of the Arms Act.

6. All the accused persons have pleaded not guilty in connection with the charges as framed and claimed to be tried. To prove the guilt of the accused persons, the prosecution has examined 13 witnesses and marked several exhibits while accused persons examined none in defence and no exhibits were marked on their behalf.

7. The trial Court after considering the evidence adduced by the prosecution, has convicted the appellants vide its impugned judgment dated 26.04.2012 and sentenced them as mentioned above in para – 1.

8. Being dissatisfied with the aforesaid judgment of the trial Court, the accused persons have preferred these appeals on the ground that the judgment of the trial Court is perverse and illegal, inasmuch as, it did not appreciate the prosecution evidence in its right perspective and thereby erred in convicting them as such.

9. We have heard the learned counsel for the respective parties and have perused the entire material available on record carefully.

10. Ram Kumar (P.W.1), the complainant and the brother of the deceased Atmaram, who lodged the merg intimation (Ex.P.1) and the first information report (Ex.P.2) has stated in his evidence that the accused persons have murdered his

brother Atmaram. He stated further that the accused Rajesh Sahu had business rivalry with his brother from the date when he had opened the shop at Kodwabani, and therefore, he wanted to kill his brother. He stated further that he had heard this information from his brother Atmaram when he was alive. He, however, admitted the fact that he did not furnish any written information nor has informed the villagers with regard to the alleged rivalry of the accused persons with his brother, i.e., deceased Atmaram.

11. However, a mere examination of the reports (Ex.P.1 and Ex.P.2), i.e., mere intimation and the F.I.R. as lodged by him (P.W.1), coupled with aforesaid evidence adduced by him would lead to an irresistible conclusion that whatever he had stated before the trial Court is not only contrary to these reports (Ex.P.1 & Ex.P.2) but even the same could not have been supported by the Sub-Inspector K.K.Sahu (P.W.11), who had recorded these reports (Ex.P.1 and Ex.P.2) and registered the case under Section 304-A of the I.P.C., as per the information furnished by him. This witness (P.W.11) has deposed very specifically at para – 16 of his evidence that if the evidence as adduced by the complainant – Ram Kumar before the trial Court would have disclosed him, then certainly he would have recorded all that. Material contradictions as made by these two prosecution witnesses would show that the complainant – Ram Kumar has not only exaggerated the story falsely but has tried to implicate the accused persons. Therefore, the evidence of the deceased's brother Ram Kumar (P.W.1) cannot be relied upon and the trial Court while convicting the appellants has certainly overlooked this material piece of evidence.

12. The other prosecution witnesses, namely, Vijay Kumar (P.W.2) and Santosh Singh (P.W.6) have turned hostile and have not supported the prosecution case. Kalam Prasad, examined as P.W.3, has also not supported the prosecution case as he knows only some of the accused persons, i.e., accused/appellants – Rajesh Sahu and Panchram Sahu and several omissions are also found there in his

evidence.

13. Raj Kumar (P.W.4) is the attesting witness to the seizure memo (Ex.P.15) whereby a steel-rod was seized from the accused Panna @ Parmeshwar. However, this itself would not help the prosecution to bring home the guilt of the accused persons as no blood was found on this seized article (steel-rod) as evidenced by the report (Ex.P.35) furnished by the Forensic Science Laboratory, Raipur. Similarly, the other prosecution witnesses have not stated anything with regard to the offences as alleged to be committed by the accused persons.

14. From close scrutiny of the entire evidence, it is clear that there is absolutely no evidence or materials of any kind, by which, the accused persons could be held liable for the alleged offences, as convicted by the trial Court vide its impugned judgment dated 26.04.2012.

15. In view of the foregoing discussions based upon the materials available on record, both the Criminal Appeals No.519 and 433 of 2012 are allowed. We hereby set aside the impugned judgment dated 26.04.2012 passed by the learned Additional Sessions Judge, Mungeli, in Sessions Trial No.22/2011.

16. The appellants are hereby acquitted of the charges. The appellants shall be set at liberty forthwith. They are on bail. The bail bonds of the appellants shall remain effective for a period of 6 months, in view of the provisions prescribed under Section 437-A of the Code of Criminal Procedure, 1973.

Sd/-
(Deepak Gupta)
Chief Justice

Sd/-
(Sanjay Agrawal)
Judge