

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 434 of 2007****Order Reserved on 27.01.2017****Order Delivered on 09.03.2017**

Hansram, s/o Balloram Sahu aged about 52 years, r/o village
Basantpur, P.S. Janjgir, District Janjgir-Champa, Chhattisgarh.

---- Appellant (in Jail)**Versus**

State of Chhattisgarh through S.H.O., P.S. Janjgir, District Janjgir-
Champa, Chhattisgarh.

---- Respondent

For the Appellant	:	Shri Alok Bakshi, Advocate.
For the Respondent/ State	:	Shri Arvind Dubey, Panel Lawyer.

Hon'ble the Acting Chief Justice**Hon'ble Shri Justice Rajendra Chandra Singh Samant****CAV JUDGMENT****Per R.C.S. Samant, J.**

1. This appeal has been preferred against the judgment of conviction and order of sentence dated 04.05.2007, passed by the Additional Sessions Judge, Janjgir, District Janjgir-Champa, Chhattisgarh in Sessions Trial No.6 of 2006, whereby and whereunder the learned Additional Sessions Judge has convicted the appellant/ accused under Section 302 of the Indian Penal Code (for short 'IPC') and sentenced him to undergo imprisonment for life and to pay fine of Rs.5,000/-, and in default of payment of fine to further undergo RI for one year.

2. The case of the prosecution, in brief, is that Dev Kumar Sahu (PW-6) lodged First Information Report on 11.11.2005 at about 8.10 am stating that

on 10.11.2005 there has been a verbal duel between the deceased and the appellant/accused along with his son Virendra with regard to some old dispute. Thereafter, on the date of incident i.e. 11.11.2005, deceased Ramkumar went towards canal to answer the call of nature where the appellant/accused met him and there was some altercation between them. At that time, the appellant/accused who was armed with an axe assaulted Ramkumar Sahu by causing injury on his head. Dev Kumar (PW-6) and his brother Krishna Kumar tried to stop accused - Hansram who was running away after assaulting the deceased. Dev Kumar Sahu (PW-6) threw a club which hit the hand of the accused- Hansram upon which the axe slipped off his hand, which was collected and deposited in police station Janjgir. The First Information Report Ex. P/6 was lodged in police station Janjgir and the offence under Section 307 of the IPC was registered.

3. Ramkumar Sahu was medically examined by Dr. O.P. Shrivastava (PW-13) in District Hospital, Janjgir vide Ex. P/12 and thereafter he was referred for further treatment to CIMS, Bilaspur where he died at about 12:40 pm on the same day. On the basis of the information received from CIMS, a merg intimation Ex. P/10 was recorded in police station City Kotwali, Bilaspur. The investigation was conducted by police station Janjgir. One blood stained axe was seized from the possession of complainant – Dev Kumar Sahu vide Ex. P/7. The blood stained *Banyan* of the appellant was seized vide Ex. P/8. Inquest of the dead body of the deceased was conducted vide Ex. P/2 by police station City Kotwali. The postmortem of the deceased was conducted by Dr. Hulesh Mandley (PW-19) vide report Ex. P/11A. The articles preserved in postmortem were seized vide Ex. P/4. The seized axe was examined by Dr. O.P. Shrivastava (PW-13) vide report

Ex. P/3. He opined that the injuries caused to the deceased may have been caused by the same article. The blood stained soil and plain soil were seized from the spot. The spot map Ex. P/15 was prepared. Statements of the witnesses were recorded and on completion of the investigation, the appellant was charge-sheeted.

4. The trial Court framed charges against the appellant under Section 302 of the IPC. On his denial of charge, the trial was conducted. The prosecution examined as many as 19 witnesses and the defence examined two witnesses. On being examined under Section 313 of the Cr.P.C., denying all the incriminating evidence against him, the appellant pleaded innocence and false implication. He stated in defence statement that on the spot near the canal, the deceased was present along with Krishna Kumar, Dev Kumar and Shail Kumar. They were armed with axe and clubs. There was some exchange of words between them and thereafter they assaulted the appellant with clubs and axe. In the meanwhile, he caught hold of the axe and swung it to save himself and thereafter he fell unconscious. He pleaded false implication.

5. After giving opportunity of hearing and leading evidence to the prosecution and the defence, the impugned judgment has been passed by which the appellant has been convicted and sentenced as mentioned above.

6. The grounds in this appeal are that the trial court has passed an erroneous judgment of conviction against the appellant. The evidence of the prosecution witnesses is full of contradictions, omissions and improvements. The trial Court has believed the statement of the interested witnesses. The

presence of witnesses on the spot seems to be improbable. The doctor, who conducted autopsy has not opined whether the death of the deceased was homicidal in nature and further no intention has been proved by the prosecution against the appellant. On the basis of these grounds, it is prayed that the impugned judgment be set aside.

7. It is submitted by counsel for the appellant that the deceased and eyewitnesses – Devkumar (PW-6), Shail Kumar (PW-9) as well as Dr. O.P. Shrivastava (PW-13) are related to each other and therefore they are interested to implicate the appellant in this case. The presence of these witnesses on various spots as per the spot map Ex. P/15 seems to be improbable and it appears that the prosecution has planted the presence of these witnesses on the spot. A counter case was registered under Sections 307, 323 and 324 of the IPC against Shail Kumar, Dev Kumar and Krishna Kumar, who are the witnesses in this case, alleging that they had assaulted appellant-Hansram and caused injuries to him which was not taken into consideration by the trial court to determine as to who was the assailant in this case. On these grounds, it is prayed that the appellant/ accused is entitled for benefit of doubt.

8. Considering the material on record and the arguments advanced on behalf of the parties, the question which arises in this appeal is, whether the conviction against the appellant is supported by evidence of the prosecution beyond all reasonable doubt?

9. Dev Kumar (PW-6), who is an eyewitness, has stated that at the time of incident he had been near the canal to answer the call of nature and the

deceased was also present there. When he was leaving the place, he saw that the appellant and the deceased were having some conversation which he could not hear. According to this witness, the appellant was carrying an axe and assaulted the deceased Ramkumar Sahu. On seeing this, he ran towards the spot and the appellant started fleeing, then he threw a club towards the appellant for stopping him, which hit the hand of the accused-Hansram upon which the axe slipped off his hand, which was collected and deposited in police station Janjgir. Thereafter, the accused ran away from the spot. He stated about lodging FIR (Ex. P/6) and providing medical assistance to the deceased. In cross-examination, he stated that he saw Krishna Kumar arriving on the spot and he was carrying Ramkumar in injured condition. This witness denied that he alongwith Krishna Kumar and deceased planned to murder the appellant and went to the spot armed with clubs and axe. He further denied the suggestion that he and his brothers assaulted the appellant, then the appellant/accused snatched the axe and swung it for self defence thereby causing injury to deceased Ramkumar Sahu. This witness admitted that the appellant gave only one blow with axe to the deceased and denied further suggestions in defence. There is no other statement in defence to contradict his statement in examination-in-chief.

10. Shail Kumar (PW-9) has stated that on the date and time of incident when he was going towards the canal, he heard Dev Kumar (PW-6) calling for help. He went to the spot and saw that deceased Ramkumar Sahu was in injured condition and blood was oozing out from his head. He was told by Dev Kumar (PW-6) that it was the appellant who caused injury to Ramkumar. In cross-examination, he denied the suggestions put to him in

support of the version of defence. His statement in examination-in-chief has remained unrebutted.

11. Krishna Kumar (PW-3) has stated about the dispute prior to the date of incident. He stated that at the time of incident he went to answer the call of nature towards the canal and while returning he saw his brother Ramkumar was brushing teeth by the side of canal. At that time, the appellant came towards the deceased and assaulted Ramkumar with an axe on his head. On Seeing this, he ran towards the spot. He shouted for help, upon which his brother and one Preetam came on the spot,. They chased the appellant and his brother threw a club which hit the hand of the accused- Hansram upon which the axe slipped off of his hand and thereafter the accused/ appellant ran away. In his cross-examination, he has been consistent with the statement. The contradictions and omissions in his statement are of no material consequence and the credibility of his statement made in examination-in-chief remained intact. He denied all the suggestions put to him in support of defence.

12. Chotelal (PW-1) is the witness of the quarrel which took place one day prior to the date of incident. Similar statement has been given by Anil Sahu (PW-5). Preetam Lal Sahu (PW-8) has stated that when the appellant hit the deceased with an axe, he went to the spot to help Krishna Kumar (PW-3) and Dev Kumar (PW-6) helped in chasing the appellant and thereafter taking the injured Ramkumar to the hospital. In cross-examination, his statement has remained unrebutted and no admission has been made to the suggestions given by the defence. Rest of the witnesses examined by the prosecution, have supported the investigative procedures. Radheshyam

(PW-2) and Laxman Prasad (PW-4) were present in the inquest procedure. ASI, J.K. Rathore recorded the merger intimation Ex. P/10 and conducted the inquest procedure. ASI, Krishna Kumar Dubey (PW-15) has conducted some part of investigation. Inspector J.P.N. Singh (PW-16) also partially investigated the case.

13. Dr. O.P. Shrivastava (PW-13) examined Ramkumar Sahu and found one deep incised wound on the middle part of the head and one contusion on right eye. He advised for x-ray test and CT scan for head injury and referred to CIMS, Bilaspur for further treatment vide Ex. P/12. In CIMS, Dr. Neeraj Sande (PW-18) admitted deceased Ramkumar. Dr. Hulesh Mandley (PW-19), who conducted autopsy of the deceased, found one lacerated wound in middle part of his head measuring 6.2 cm long in size and it was stitched. On opening the injury, he found fracture on the skull along with subdural hematoma. Vide his report Ex. P/11A, he opined that the cause of death was severe head injury. Further, he stated that no opinion was given in report that the death was homicidal but looking to the injury caused to the deceased the nature of death was homicidal. In cross-examination, his statement has remained intact.

14. From the statements of the witnesses examined by the prosecution, it has been proved that there had been a previous dispute and quarrel between the appellant and the deceased which can be regarded as enmity between them. There is eyewitness account to the incident where the deceased was assaulted by the appellant by using an axe which caused fatal injury resulting in his death. As argued by counsel for defence that presence of all the eyewitnesses on the spot seems to be improbable,

cannot be accepted. The counter case against Krishna Kumar (PW-3) and others itself indicates the presence of the witnesses in this case on the spot as it was alleged by the appellant that he was assaulted by these eyewitnesses and he snatched the axe from the hands of one of the assailants and swung it in his self-defence. This situation has been explained by the lodger of the FIR, Dev Kumar (PW-6) that the appellant was assaulted by throwing club on him, upon which the axe slipped off of his hand and the accused ran away from the spot. Statement of Dev Kumar (PW-6) explains how the appellant/ accused sustained injury.

15. The counter case was not tried alongwith this Sessions trial. The defence had this opportunity before the trial court to pray for committal of the case under Section 323 of Cr.P.C which was not availed of. Hence, the facts of the counter case cannot be noticed for decision in this case.

16. Seejram (DW-1) stated that he saw Hansram going towards the canal and later on he came to know that an incident of brawl had taken place between the appellant Hansram and deceased Ramkumar Sahu. He is not an eyewitness to the incident. Hansram Sahu (DW-2) is the appellant. He himself gave the statement that he had been to canal for brushing his teeth carrying one *gamcha* (towel). According to him, when he reached near the canal, he found Ramkumar, Krishna Kumar, Dev Kumar and Shail Kumar hiding there. Krishna Kumar was armed with an axe and remaining persons were carrying clubs. They stopped him and assaulted with axe and clubs. In order to save himself, he snatched the axe and swung it over the head and thereafter he fell down unconscious. In cross-examination, he denied the suggestions given by the prosecution in support of the prosecution case.

17. ASI, Krishna Kumar (PW-15) has stated in his cross-examination that he investigated the counter case in which the appellant was medically examined. On seeing the medical report, he found one incised wound on the head of the appellant. He found in the investigation that the appellant assaulted Ramkumar and his brothers. The findings in investigation cannot be accepted as evidence before the court. It is true that the complainant party also participated in the counter case and as submitted in the arguments, they have been acquitted of the charge. This by itself is not sufficient to negate the effect of evidence in this case.

18. After close scrutiny and due consideration of the evidence on record and the arguments advanced on behalf of the appellant and State, we are of the considered opinion that there is no substance in this case to arrive at the conclusion that the appellant has not committed this offence or there is any doubt about committing of the offence by the appellant. The prosecution has successfully proved the charge of murder against the appellant, hence, there is no infirmity in the impugned judgment.

19. In view of the aforesaid reasons, this appeal is dismissed.

Sd/-

(Pritinker Diwaker)
Ag. Chief Justice

Sd/-

(R.C.S. Samant)
Judge