

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 390 of 2013**

Birbal Banjara S/o Dhansingh Banjara Aged About 34 Years R/o
Kodopara, Joradol, PS Pathalgaon, Distt. Jashpur C.G. , Chhattisgarh.

---- Appellant**Versus**

State Of Chhattisgarh Through P.S. Janjgir, Distt.-Janjgir-Champa, C.G.

---- Respondent

For Appellant	:	Shri Awadh Tripathi, Advocate.
For Respondent/ State	:	Shri Vijay Bahadur Singh, P.L.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Judgment on Board****06/12/2018**

Heard.

(1) Challenge in this appeal is to the judgment of conviction and order of sentence dated 30.3.2013 passed by Learned Additional Sessions Judge, Kunkuri, District Jashpur, Chhattisgarh in Sessions Trial No. 46 of 2009 whereby and whereunder the learned Additional Sessions Judge after holding the appellant guilty for the offences under Section 307 of the Indian Penal Code, sentenced him to undergo rigorous imprisonment for 10 years and to pay fine of Rs.5,000/-, in default of payment of fine, to further undergo additional RI for 1 year.

(2) Conviction is impugned on the ground that without there being any iota of evidence, the trial Court has convicted and sentenced the appellant as aforementioned and thereby committed illegality.

(3) As per case of the prosecution, in brief, on 23.12.2008 at about 4:00 pm in the evening when victim – Ramlal (PW-1) was on his way to home, the appellant all of sudden assaulted him with an axe causing injury on his right ear and temple and when the victim fell down on the ground, co-accused – Dhansingh (the deceased) kept him pinned down and then the appellant assaulted the victim with a sharp-edged part of the axe, amputating the wrist of the right hand and almost amputated the right foot. He also inflicted the other injuries to the victim. Ahilya Bai (PW-2) lodged FIR Ex.P/11 in the police station. The victim was examined by Dr. Shakuntala Nikunj (PW-4), who reported the injuries to be of grievous in nature vide her report Ex. P/2.

(4) Statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code'). The investigation was carried out and on completion of the same, the charge-sheet was filed before the concerned Court. The appellant and the co-accused were charged for the offence under Section 307/ 34 of the IPC. The appellant and the co-accused pleaded not guilty and prayed for trial. Co-accused – Dhansingh expired during the pendency of the trial. Hence, the trial against him was abated.

(5) In order to prove the guilt of the appellant, the prosecution examined 16 witnesses. Statement of the appellant was recorded under Section 313 of the Cr.P.C. in which he denied all the incriminating evidence against him, pleaded innocence and false implication in the crime in question. No witness was examined in defense.

(6) After affording opportunity of hearing to both the parties, learned trial Judge convicted and sentenced the appellant for the charge under Section 307 of the IPC as aforementioned.

(7) I have heard learned counsel for the parties, perused the judgment impugned and records of the Court below.

(8) Learned counsel appearing on behalf of the appellant submits that no case is made out for conviction under Section 307 of the IPC because victim – Ramlal himself has not stated that the appellant had any intention to cause his death and similarly, in the MLC report and deposition of Dr. Shakuntala Nikunj (PW-4) there is no such statement that the injury caused to the appellant was sufficient to cause his death in ordinary course of nature. It may be a case of offence under Section 326 of the IPC. Therefore, it is prayed that by allowing the appeal conviction of the appellant be modified and sentence of imprisonment imposed upon him be reduced.

(9) Per contra, learned counsel for the respondent/ State opposed the prayer and submission. He further submitted that the prosecution has proved its case beyond reasonable doubt. This appellant has inflicted more than one grievous injury on the victim which by itself is sufficient to draw this conclusion that the appellant had intention to cause death of the victim. Hence, no case is made out for modification in the impugned judgment.

(10) In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced by the prosecution.

(11) Ramlal (PW-1) has stated that he had been to the shop and while coming back all of sudden the appellant came from behind and assaulted him on his temple with an axe because of which, he suffered injury on his ear and head. He has stated that when he fell down, the deceased/co-accused came by running and pinned him down, then the appellant had assaulted him with sharp part of axe on his right wrist, which got amputated and also assaulted on the right foot which has almost amputated. He has stated that he become unconscious and was taken to the hospital. In cross-examination, he has admitted that the first blow he received was from the blunt side of the axe and then he had become unconscious. He has denied about receiving injuries in some motor accident.

(12) Ahilya Bai (PW-2) is the eyewitness who saw the assault made by the appellant on the victim and has supported the same in her statement before the Court. In cross-examination, this statement has remained unrebutted.

(13) Premsingh (PW-3) and Shobini Bai (PW-15) are also eyewitnesses who have supported the prosecution and there is no such statement in their cross-examination so as to hold that the statement given by them is contradicted or rebutted. After finding support from the other witnesses, the medical evidence is also present to corroborate the evidence of the

victim. Dr. Shankuntala Nikunj (PW-4) has examined the appellant on the same day of the incident and found that his right hand was amputated from the wrist and bleeding, one incised wound was present over the right ear, one incised wound was present on the right foot from which the bony part was separated, but the muscular tissues were holding the foot and there was sound of broken bones on the tibia and fibula of his left leg. She advised for x-ray examination for all the injuries which are opined vide her report Ex. P/2 that all the injuries caused to the victim were caused by some sharp and heavy object and were of grievous in nature. In cross-examination, she has denied the suggestion given by defence that such injuries may have been caused otherwise in a motor accident.

(14) K.N. Bharti (ASI) (PW-16) has lodged an FIR Ex. P/11 and conducted the investigation procedures. He has stated that at the instance of this appellant, being produced by him, he made a seizure of one axe vide Ex. P/6 and his statement has remained unrebutted in his cross-examination. Mahesh Ram (PW-6) has supported this statement and he has remained firm on his statement in his cross-examination.

(15) Dr. Shakuntala Nikunj (PW-4) has examined the seized axe and opined in her report vide Ex. P/3 that this weapon could have been used for causing injuries to the victim.

(16) After scrutinizing the evidence of the relevant witnesses present on record of the trial Court, it is found that it is clearly proved that it was the

appellant who caused grievous injury to victim – Ramlal by assaulting him with an axe. As regards, the conviction under Section 307 of the IPC, it is essential that there should be presence of evidence that the appellant has intended to cause death of the victim. Ramlal (PW-1) himself neither has made any such statement nor any of the eyewitnesses of the incident have given such statement. Apart from that, examining doctor has also not made it clear that the injuries caused to the victim were sufficient to cause his death in ordinary course of nature. Therefore, I am of this opinion that the prosecution has failed in its part to prove that the appellant had intention to cause death of the victim. Therefore, the conviction under Section 307 of the IPC in the impugned judgment is not made out and it needs to be interfered. On the other hand, according to the evidence and proof present in this case, offence under Section 326 of the IPC is made out.

(17) After due consideration of all the evidence and on the basis of the discussions made herein-above, this appeal is allowed in part. The conviction and sentence imposed upon the appellant is set aside and instead of that the appellant is convicted under Section 326 of the IPC and sentenced with RI of 8 years alongwith fine of Rs.5,000/-.

(18) Accordingly, the appeal is disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
JUDGE