

**HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE**  
**DIVISION BENCH: HON'BLE SHRI JUSTICE ALOK VERMA**  
**AND HON'BLE SHRI JUSTICE VED PRAKASH SHARMA**

**Criminal Appeal No.1030 / 2013**

Ballu s/o Lalchand

Vs.

State of Madhya Pradesh

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Shri R.B. Singh, learned counsel for the applicant.

Shri C.S. Ujjainiya, learned counsel for the  
respondent/State.

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**J U D G M E N T**

**(Delivered on 27/03/2017)**

**Per: Alok Verma, J.**

This criminal appeal arises out of judgment of conviction passed in Sessions Trial No.98/2012 dated 24/06/2013 by Additional Sessions Judge, Narsingharh, Rajgarh, whereby, learned Additional Sessions Judge found the present appellant guilty under Section 302 IPC and sentenced him to life imprisonment and fine of Rs.100 with default stipulation.

**2)** According to the prosecution story, the incident took place on 16/02/2012. Complainant – Champabai w/o Gopal Kushwaha was coming back from Vivekanand School along with her children Muskan and Sandeep. The present appellant Ballu Kachhi and co-accused Guddu Kachhi were walking in-front of her. They went inside the house of co-accused Dileep. When the complainant reached in-front of

house of Dileep, she heard voice of her brother-in-law deceased – Pappu. According to the prosecution, the complainant heard the deceased telling Kasula that she should not have permitted these *Gundas* to enter into her house, on which, co-accused Kasula asked the deceased to go away. The complainant, on hearing the voice of the deceased, stood near the door of house of co-accused Dileep. The deceased, who is cousin brother of co-accused Kasula, insisted that she should not permit these persons to enter in her house, on which, co-accused Kasula asked the present appellant to cut him with an axe. On this, the present appellant went inside a room of house and brought an axe and gave multiple blows on head of the deceased, due to which, he suffered various injuries and subsequently, succumbed to the injuries in a hospital at Bhopal. The complainant after the incident came out of the house shouting loudly and hearing her shouting, other persons of the village – Sunil, Hemraj and Rahul came there. They put the deceased in a handcart and took him to the hospital. After the deceased was taken to the hospital by other persons, the complainant went to the police station and reported the matter at 04.40 p.m. The incident reportedly took place at 04.00 p.m. The distance of police station from the scene of crime is stated to be 1 km.

**3)** Learned Sessions Judge did not found the charge under Section 302/34 IPC against co-accused Guddu, Dilip and Kasulabai but he found the present appellant guilty under Section 302 IPC and sentenced him as aforesaid. Being aggrieved by the judgment of conviction and sentence, this jail appeal is filed.

4) Learned counsel for the respondent/State supports the impugned judgment and submits that it should be confirmed.

5) Rahul PW/1 has been declared hostile by prosecution. He did not support the prosecution story. According to the statement under Section 161 Cr.P.C., he heard cries of Chandrakala PW/2 and complainant Champabai PW/7. Daughter of Champabai (PW/7) – Muskan told him that her maternal uncle – deceased Pappu was killed by an axe. He went to the house co-accused Kasula along with Sunil and Hemraj. They saw the present appellant running away with an axe in his hand and the deceased was lying injured on the ground in the house of co-accused Kasula. There were many injuries on his head, and thereafter, they took the deceased to hospital. However, in his statement in the Court, he did not support this version of the prosecution story and totally resiled from his statement under Section 161 Cr.P.C. Chandrakala PW/2 is also an eye witness. In her statement under Section 161 Cr.P.C., she said that she heard the cries of Champa PW/7, who was going in-front of her and they both were coming from school bringing back their children. Chmpa was shouting loudly that “they killed him – they killed him”. She saw the present appellant along with co-accused Guddu and Dileep running away from the house of Kasula and the complainant Champa was standing there holding the co-accused Kasula. The deceased Pappu was lying there in a 'pool of blood'. She went away to inform wife of the deceased (Pappu) – Hirabai. This witness in her statement denied that she saw any incident or present appellant running away but she merely accepted

that she went to the house of deceased to inform his wife. Lilabai PW/30 – the land lady, in whose house, co-accused – Kamlabai along with husband – Dileep were residing. She was according to her statement under Section 161 Cr.P.C., was an eye witness, however, she also turned hostile. Dr. Mahendra Gupta PW/4 examined the deceased in Civil Hospital, Narsingharh. Mangilal and Ramcharan are witnesses of seizure and disclosure memo under Section 27 of Evidence Act. Champabai PW/7 lodged the F.I.R. - Ex.P/14. According to the facts stated in the FIR, she showed herself an eye witnesses. In her examination-in-chief, she supported the prosecution story and said that on the date of incident, she was coming back from school bringing back her children. When she reached in-front of house of co-accused Kasula, she saw her brother-in-law deceased Pappu sitting there. She heard co-accused Kasula asking Ballu to cut the deceased by axe, otherwise, the deceased would kill them. On that, the present appellant inflicted injuries by axe on the deceased. All the other accused – Dileep and Guddu asked the present appellant to kill the deceased, otherwise, the deceased would kill them. He tried to caught hold of present appellant Ballu, but they all fled away. Dileep, Sunil and Hemraj came there and with their help, they placed the deceased on handcart and with Sunil and Hemraj, sent him to hospital, while, she proceeded to police station to lodge the report. However, in para 5 of her cross-examination, she totally changed her version, which she stated in the FIR-P/14 and her statement under Section 161 Cr.P.C. - Ex.D/1 and said that she was not an eye witness but Chandrakala PW/2 was the eye witnesses. She said that she saw Chandrakala

going back running. She asked her where she was going in a hurry, on which, she informed her that her brother-in-law – Pappulal was cut by present appellant with an axe. She further stated that when she reached there, she saw the deceased lying on the ground. In para 6, she admitted that in the FIR that she narrated the incident, as she was told by Chanda Bahan and at one place she said that Chandrakala PW/2 and Chanda Bahan are two different woman. Said Chanda Bahan has not been examined by the prosecution. She further admitted that before she reached the spot, what conversation took place between Kasulabai and deceased was not heard by her. She again said that while the present appellant was running away, she caught hold of him but other accused fled away. Then, in para 7, she further stated that wife of deceased Pappulal also went to police station to report the matter and she said that before she reached the police station, the police came on the spot but she did not narrated the story to the police, neither said Chandabai narrated any incident to the police. This apart, there were material contradictions and omissions in her statement under Section 161 Cr.P.C. and in her Court statement. In her cross-examination, she also said that axe was given to the present appellant by co-accused Kasulabai, however, this fact was not mentioned in her statement under Section 161 Cr.P.C. - Ex.D/1.

**6)** Going through the statement of this witness, it is doubtful that whether she was an eye witness and saw the present appellant giving blows by axe.

**7)** This apart, there is doubt about time mentioned on the FIR. According to Champabai (PW/7), she went to police

station and the deceased was taken on handcart to the hospital. At 4.40 p.m., the report was lodged stating therein that the incident took place at 4.00 p.m. Distance from place of incident to the police station was 1 km. The Investigating Officer – R.P. Pathak (PW/15) stated that immediately after writing of FIR, he went to Narsingharh Hospital, where, he issued Ex.-P/4 – the requisition for medical examination of the deceased, however, Ex.-P/4 was taken to the hospital by one Pradeep Jatav – Constable No.493. The deceased was examined at 5.00 p.m. by Dr. Mahendra Gupta – PW/4.

**8)** The Investigating Officer stated in his statement that thereafter, he proceeded to spot of crime, but, as no person was available including the complainant, he sealed the spot, however, no memo was prepared for sealing of the spot. This apart, the complainant Champabai was available at the police station. She could have accompanied with the Investigating officer to the scene of crime. The other three accused persons, who stand acquitted in this case, were also arrested on the next day at 03.00 p.m. from their own houses. Nowhere it was explained that they fled away from their houses after the incident. The present appellant was resident of Biaora, Narsingharh and he was arrested next day from his house, however, no intimation was sent to police station Biaora for his immediate arrest. When, the Investigating Officer had already know that who committed the crime. It is unexplained that why he did not arrest the accused persons or took necessary steps to arrest them immediately after the crime.

**9)** It is also surprising that statement of Rahul (PW/1) under Section 161 Cr.P.C. was recorded on 04/03/2012, though, he was resident of same area and it is not said that he was not available immediately after the incident. Similarly, statement of Chandrakala (PW/2) was also recorded on 04/03/2012. Chandrakala was following Champabai (PW/7). As per the prosecution story, she was told by Champabai that she saw in the house of co-accused, and therefore, her evidence was part of *Res gestae*, however, her statement was also recorded on 04/03/2012 without any explanation. Lilabai is land-lady of the house, where, co-accused Kasula and Dileep used to reside. It is not possible that she was also not available in the house when the Investigating Officer reached on 16/02/2012 immediately after the incident.

**10)** This Court is well aware that the investigating officer was not cross-examined on these aspects, but, taking his statement as true, many questions remain unserved, which create doubt on correctness of prosecution story.

**11)** Apart from complainant Champabai PW/7, Sunil PW/8 has also been examined. According to him, he was told by daughter of complainant Champabai – Muskan about the incident, and thereafter, they went on spot and saw the deceased lying injured on the ground while the accused Guddu and Ballu were running away from the spot. The present appellant was having axe in his hand. About the incident, she was informed by Champabai. However, this witness reached on the spot after the incident and he was informed by Champabai but as stated above, it is doubtful, whether

Champabai herself saw the incident. Dinesh is younger brother of the deceased, who reached directly to the hospital.

**12)** Apart from eye witnesses, another piece of evidence, according to the prosecution is recovery of axe on disclosure memo of present appellant. As per FSL report – Ex.P/26, human blood was found on the axe and group of the blood found on the axe is also ascertained, which was of “B” group, however, the blood group, of blood found on blood stained soil, recovered from the spot, could not be ascertained. The specimen of blood stained soil was marked as Ex.A and it was found that blood was present in this specimen, however, its species and group could not be ascertained. The exhibits marked as Ex. F & G are towel and shirt of the deceased. The blood group and species of the blood on these items could also not be ascertained, and therefore, there was no evidence to show that the blood group of the deceased was “B”, and therefore, it can not be said that the axe recovered on disclosure memo of the present appellant contained the blood of the deceased and that was the same axe used for commission of crime. Even, recovery of the axe is also doubtful. For this purpose, prosecution examined Ramcharan PW/6. He said that the present appellant was arrested along with other co-accused. Arrest memos P/7 to P/10 were prepared before him and he signed the arrest memos. The disclosure memo is Ex.P/11. The police recovered an axe from the ground near the community hall and prepared seizure memo, which is Ex.P/12 and clothes of accused was seized by seizure memo Ex.P/13. However, in para 8 of his statement, during cross-examination, he said that axe was recovered from



the ground behind the community hall from a bush. He denied that it is open space. He himself said that there is a barbed wire fencing around the ground. He further said that there is a *Chowkidar* in the community hall. He places a lock, and thereafter, nobody can enter into the ground, however, this fact was denied by the Investigating Officer – R.P. Pathak (PW/15). In para 11 of his statement, he admitted that the axe was recovered from an open ground from bush. He admitted that anybody can go there easily, and therefore, recovery of axe from such open ground is also doubtful.

**13)** Reverting back to the report of Forensic Science Laboratory – Ex.P/26, the shirt recovered from the present appellant is Ex.D, which was allegedly blood stained. Human blood was found on this shirt, however, it was not ascertained that the blood was of group “B” and was blood of the deceased.

**14)** In these circumstances, the only evidence available against the present appellant is that he was seen by prosecution witnesses running away from the house of co-accused Dileep.

**15)** It is admitted that the appellant used to visit the house of co-accused Kasula and Dileep and that was objected by the deceased, as co-accused Kasula was his cousin sister and he did not like the present appellant visiting the house of his sister and doubted that they had illicit relationship with each other. However, if he was found in the house of co-accused, merely this fact is not sufficient to convict the appellant for crime.

**16)** Conduct of co-accused Guddu and Dileep was also same, because prosecution witnesses saw them also running

from the house of co-accused Kasula, and therefore, if the appellant was also seen running from the house of co-accused, for the same set of evidence alone, he can not be convicted for the crime.

**17)** After taking the whole evidence available against the present appellant in totality, we are of the considered view that charge under Section 302 IPC is not proved against the present appellant. This appeal deserves to be allowed and accordingly **allowed**. The present appellant is acquitted from the charge under Section 302 IPC. His bail and bonds are discharged. The seized property may be destroyed.

Certified copy as per rules.

**(Alok Verma)**  
**Judge**

**(Ved Prakash Sharma)**  
**Judge**