

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.157 of 2011

Jangli @ Dinbandhu, S/o Sukan Bhuihar, aged about 47 years, R/o Village Lamdand,
PS. Lailunga, Distt. Raigarh (C.G.)

---- Appellant

Versus

State of Chhattisgarh, through Station House Officer, Police Station Lailunga, Distt.
Raigarh (C.G.)

---- Respondent

For Appellant:	Mr. B.D. Badgaiyan, Advocate.
For Respondent/State:	Mr. Sumit Jhanwar, Panel Lawyer.

Hon'ble Shri Justice T. P. Sharma and
Hon'ble Shri Justice Inder Singh Uboweja

Judgment On Board

06/04/2015

The Judgment of the Court was delivered by T.P. Sharma, J.

1. Challenge in this appeal is to the judgment of conviction & order of sentence dated 27-1-2011 passed by the Sessions Judge, Raigarh in Sessions Trial No.52/2010, whereby & whereunder learned Sessions Judge after holding the appellant guilty for causing homicidal death amounting to murder of his daughter-in-law Sushma and Mahadev – alleged paramour of Sushma, convicted the appellant under Sections 302 & 302 of the IPC and sentenced him to undergo imprisonment for life & imprisonment for life, respectively.
2. Conviction is impugned on the ground that without there being an iota of evidence, the trial Court has convicted and sentenced the appellant and thereby committed an illegality.
3. As per case of the prosecution, on the fateful day of 14-3-2010 between 4.30 and 4.45 p.m., the appellant – father-in-law of deceased Sushma, killed Sushma by axe on the ground that she was having illicit relation with another deceased Mahadev, thereafter, he also killed Mahadev and went to the house of Phoolchand (PW-8) and made extra-judicial confession before him and Brijbhan (PW-3) that he has killed Sushma. The incident relating to Mahadev has been witnessed by Etwaru Bhuihar (PW-9). Chhattar Singh (PW-1) went to Police Station Lailunga and lodged FIR vide Ex.P-1 and morgue vide Exs.P-2 & P-3.
4. The Investigating Officer left for the scene of occurrence and after summoning the

witnesses vide Exs.P-6 & P-7, prepared inquest over the dead body of the deceased vide Exs.P-4 & P-5. Spot map was prepared vide Ex.P-8. Bloodstained and plain soil were recovered from the place where dead body of Sushma was lying vide Ex.P-10. Bloodstained and plain soil were recovered from the place where dead body of Mahadev was lying vide Ex.P-11.

5. Dead body of deceased Sushma was sent for autopsy to the Government Hospital, Lailunga vide Ex.P-17A. Dr. Yogeshwar Singh Saratiya (PW-6) conducted autopsy vide Ex.P-17 and found following injuries and symptoms: -

1. Body lying supine slightly right turned.
2. Both hands abducted and flexed from elbow with blood stained over head, neck and sari.
3. Incised chopped injury over neck midway left side deep to bone and trachea, 8 c.m. x 3 c.m. x 9 c.m.
4. Incised chopped injury over posterior part of neck right side below and posterior to ear, 6 c.m. x 6 c.m. x 12 c.m.

Mode of death was haemorrhage and spinal shock, and death was homicidal in nature.

6. Dead body of deceased Mahadev was also sent for autopsy to the Government Hospital, Lailunga vide Ex.P-18A. Dr. Yogeshwar Singh Saratiya (PW-6) conducted autopsy vide Ex.P-18 and found following injuries: -

1. Incised injury over left lower side of neck, 7 c.m. x 4 c.m. x 5 c.m.
2. Incised injury over posterior neck lower, 6 c.m. x 3 c.m. x 6 c.m. deep to vertebra.
3. Large superficial lacerated wound over upper chest extending to right upper part with sharp borders, 8 c.m. x 6 c.m.
4. Large chopped incised wound multiple lacerated injury deep to trachea with haemorrhagic froth, 10 c.m. x 8 c.m. x 6 c.m.

Mode of death was spinal shock and asphyxia, and death was homicidal in nature.

7. Sealed clothes of the deceased were seized vide Ex.P-21. During the course of investigation, bloodstained axe and clothes of the appellant were seized vide Ex.P-12. Statements of the witnesses were recorded under Section 161 of the CrPC.
8. After completion of investigation, charge sheet was filed before the Court of Judicial Magistrate First Class, Gharghoda, who committed the case to the Court of Sessions, Raigarh where trial was conducted.
9. In order to prove the guilt of the accused/appellant, the prosecution has examined as

many as 10 witnesses. The accused was examined under Section 313 of the CrPC in which he denied the circumstances appearing against him, pleaded innocence and false implication in the crime in question.

10. After providing opportunity of hearing to the parties, learned Sessions Judge convicted & sentenced the appellant as aforementioned.
11. We have heard learned counsel for the parties, perused the judgment and record of the trial Court.
12. Learned counsel for the appellant vehemently argued that conviction of the appellant is substantially based on the evidence of Phoolchand (PW-8) and Etwaru Bhuihar (PW-9), but their evidence do not inspire confidence and are not trustworthy. Evidence of Phoolchand (PW-8) does not find support from the evidence of Brijbhan (PW-3) who was also present at the time of such extra-judicial confession. Extra-judicial confession is a weak type of evidence and conviction on the basis of extra-judicial confession without corroboration is not safe.
13. On the other hand, learned State counsel opposed the appeal and submitted that evidence of Phoolchand (PW-8) and Etwaru Bhuihar (PW-9) are sufficient for proving the guilt of the appellant that the appellant has killed Sushma and Mahadev, therefore, the trial Court has rightly convicted and sentenced the appellant.
14. In order to appreciate the arguments advanced on behalf of the parties, we have to examine the evidence adduced on behalf of the prosecution.
15. In the present case, homicidal death as a result of fatal injuries found over the persons of deceased Sushma and Mahadev has not been substantially disputed on behalf of the appellant. On the other hand also, it is established by evidence of Brijbhan (PW-3), Phoolchand (PW-8), Etwaru Bhuihar (PW-9), Dr. Yogeshwar Singh Saratiya (PW-6) and autopsy reports Ex.P-17 & P-18, that death of deceased Sushma and Mahadev was homicidal in nature.
16. As regards complicity of the appellant in the crime in question, conviction of the appellant is substantially based on the evidence of Phoolchand (PW-8) and Etwaru Bhuihar (PW-9).
17. As per evidence of Phoolchand (PW-8), on the fateful day, Brijbhan (PW-3) was sitting with him, at that time, father of Brijbhan (PW-3) i.e. the appellant, came and made extra-judicial confession that he has killed Sushma. Brijbhan (PW-3) – son of the appellant, has not deposed aforesaid facts. The prosecution has declared him hostile. He is son of the appellant and his hostile attitude is not unnatural. Defence has cross-examined Phoolchand (PW-8) but has not been able to elicit anything in his cross-examination to discredit his testimony relating to extra-judicial confession. Etwaru Bhuihar (PW-9) has deposed that the appellant has killed Mahadev. His

evidence is also unchallenged. These evidence are sufficient to prove the fact that the appellant has killed Sushma and Mahadev and caused their homicidal death.

18. As regards the question of motive, motive only aids in criminality and in case of direct evidence it loses its importance. Motive can be inferred on the basis of the weapon used, part of the body effected, nature of injury and other similar circumstances.
19. As per deposition of prosecution witnesses, there was some illicit relation of deceased Sushma with deceased Mahadev which was the cause of incident and father-in-law of Sushma has killed both the persons. He has not killed both the persons at the same time. He has not seen these persons in objectionable position. The manner in which he has killed the deceased persons clearly reveals that he has caused homicidal death of deceased amounting to murder.
20. After appreciating the evidence available on record, learned Sessions Judge has convicted and sentenced the appellant in the aforesaid manner. On close scrutiny of evidence, we do not find any illegality or infirmity in the judgment of conviction and order of sentence.
21. Consequently, the appeal being devoid of merit is liable to be dismissed and is hereby dismissed.

Sd/-
T.P. Sharma
Judge

Sd/-
Inder Singh Uboweja
Judge