

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 413 of 2010

- Mangal S/o Pandara Caste Bhatara Occup, Labour R/o Gram Markel
Makdia Guda Para, Thana Nagarnar, Bastar (CG)

---- Appellant

Versus

- State Of Chhattisgarh through Police Station Nagar Nar, Distt. Bastar.

---- Respondent

For appellant : Shri N.K. Malviya, Advocate.
For Respondent/State : Shri Ajit Singh, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Inder Singh Uboweja

Judgment On Board

Per P. Diwaker, J

10/08/2015:

This appeal arises out of the judgment of conviction and order of sentence dated 11.5.2010 passed by the Sessions Judge, Bastar at Jagdalpur in S.T.No.133/09 convicting the accused/appellant under Sections 302 of IPC and sentencing him to undergo imprisonment for life and to pay a fine of Rs.500/-, in default thereof to undergo additional RI for one month.

02. As per prosecution case, on account of some old dispute in the intervening night of 2nd/3rd October, 2009 the accused/appellant committed murder of deceased Samundsai while the deceased was sleeping in the nearby house of the appellant, by causing two axe injuries on his head. Merg intimation Ex.P/8 was recorded on

3.10.2009 at 11.30 am at the instance of PW-3 Umashankar, grandson of the deceased. Based on that, FIR (Ex.P/7) was recorded on 3.10.2009 at 11.40 am at the instance of PW-3 Umashankar under Section 302 of IPC against unknown person. Inquest over the body of the deceased was conducted on 3.10.2009 vide Ex.P/15. Thereafter, postmortem was conducted on dead body on 3.10.2009 by Dr.C.L. Gavde (PW-2) vide Ex.P/2, according to which there was cut wound, fracture of the forehead, lacerated wound over occipital region and the cause of death was head injury and that the death was homicidal in nature. After investigation, charge sheet was filed under Section 302 of IPC and charge was framed against the accused/appellant accordingly.

03. So as to hold the accused/appellant guilty, the prosecution examined as many as 8 witnesses. Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the accused/appellant as mentioned in para-1 of this judgment.

05. Learned counsel for the appellant submits as under:

(i) that the accused/appellant has been convicted solely on the basis of so-called extrajudicial confession made by him before PW-4 Pooranlal whereas as per case diary statement of this witness, no such extrajudicial confession was made by the appellant.

(ii) the other piece of evidence against the accused/appellant is seizure of Tangi and clothes of the appellant vide Ex.P/12 & P/13 pursuant to his disclosure statement Ex.P/11, however, in absence of any FSL report, the same cannot be connected with the crime in question as it has not been proved that these articles were stained with blood.

(iii) that in fact the present is a case of no evidence, yet the accused/appellant has been convicted under Section 302 of IPC.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel that conviction of the appellant is strictly in accordance with law and there is no illegality or infirmity in the judgment impugned warranting interference by this Court.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-3 Umashankar, grand-son of the deceased at whose instance merged intimation Ex.P/8 and FIR (Ex.P/7) were recorded, has stated that on the night of the incident his grand-father Samundsai was sleeping in the courtyard of his new house, he went there to offer him food but his grand-father refused to eat. On the second day when he was passing through the house of the deceased, he found the deceased lying in front of the house drenched with blood. There was injury on his head and he had died. He has stated that on account of some old dispute between the appellant and the deceased over theft of certain wood, the appellant may have killed his grand-father. He has further stated that he is not aware as to who had killed the deceased. He has clarified that personally he was not aware about any quarrel

between the accused/appellant and the deceased and he came to know about this through his grand-father. PW-4 Pooranlal, son of the deceased, came to know about the death of his father through his wife who informed him on phone that the accused/appellant and his brother-in-law on account of there being dispute in relation to wood have committed murder of the deceased. He has stated that on the date of incident when he was going to call his relatives, on the way he met the accused/appellant who was in drunken condition and then the appellant confessed before him that it is he who killed his father Samundsai and also threatened to kill him. However, if the case diary statement of this witness is seen, there is no such statement regarding extrajudicial confession being made by the accused/appellant before him. PW-5 Rukmani, daughter-in-law of the deceased, also came to know about the death of the deceased after it had taken place. She too has not stated anything specific against the accused/appellant.

09. PW-2 C.L. Gavde conducted postmortem on the body of the deceased vide Ex.P/2 and noticed following injuries:

(i) cut wound (incised) and fracture of the forehead, size 2.4 inch x 1 inch deep to the skin; skull and up to the brain (about 2 inch) on the forehead above the nose at middle of the forehead. Frontal bone are fractured, size 2.4 inch x 1 inch x brain are also cut and lacerated. Blood clot, haematoma present on the brain.

(ii) lacerated wound - size 1 inch x 1 inch deep to the scalp bone and up to the brain (about 1 inch) on the above and behind the left ear occipital region of the head, left side occipital bone, brain lacerated, blood present inside the cranial cavity.

In his opinion, the cause of death was head injury (incised wound and cut fracture of the forehead and frontal bone and cut injury to the brain and lacerated wound and fracture of the occipital bone and laceration of the brain and that the death was homicidal in nature.

10. PW-1 Sushil Patel and PW-7 Manoj Kumar Sinha, Police Constables, helped during investigation. PW-6 Maniram is a witness of memorandum of the accused/appellant Ex.P/11 and seizure Ex.P/12 & P/13. He has supported the prosecution case and stated that at the instance of the accused/appellant axe was seized from the house of brother-in-law of the accused/appellant. PW-8 K.L. Chandrakar, investigating officer, has also supported the prosecution case.

11. In this case, there is no FSL report to prove the fact that Tangi and clothes of the appellants seized at his instance vide Ex.P/12 & 13 bear blood stains. Conviction of the appellant is based on the so-called extrajudicial confession made by him before PW-4 Pooranlal.

12. Evidence about extrajudicial confession is considered in the nature of things as a weak piece of evidence. Even in cases where extrajudicial confession is established by cogent evidence in the exact words used by the accused, it is thought that prudence and justice demand that such evidence cannot be made the sole ground of conviction and it could be used only as a corroborative piece of evidence. In a case like the present one where extrajudicial confession is said to have been made by the accused to a person in whom the accused had no occasion to repose confidence, the Court must be satisfied that such confession was voluntary, free from suspicion of

falsity and finds due corroboration from other evidence, oral or documentary.

13. In the present case, though as per PW-4 Pooranlal extrajudicial confession was made by the accused/appellant before him in a drunken condition that it is he who killed Samundsai but in his case diary statement, which was recorded promptly on the date of incident itself i.e. 3.10.2009, no such statement was made by this witness about any extrajudicial confession being made by the appellant to him. Another piece of evidence against the appellant is his disclosure statement Ex.P/11 which led to discovery of Tangi and clothes of the appellant vide Ex.P/12 & 13. However, there is no FSL report to show that these articles were stained with blood. Thus in the absence of any FSL report, seizure of the aforesaid articles cannot be taken as an incriminating circumstance against the appellant. The report was lodged merely on the basis of suspicion as there was an old dispute between the appellant and the deceased over theft of wood by the appellant. As such, the possibility of false implication of the accused/appellant on account of there being previous animosity between the appellant and the deceased, cannot be ruled out.

14. Having regard to the totality of the case, the nature and quality of evidence adduced by the prosecution, we are of the considered opinion that there is no legally admissible evidence against the appellant to prove his involvement in the crime in question. The prosecution has utterly failed to prove its case against the appellant beyond reasonable doubt. The findings recorded by the trial Court holding the appellant guilty under Section 302 of IPC on the basis of

evidence adduced by the prosecution suffer from illegality and therefore, the appellant deserves to be acquitted of the said charge by extending him benefit of doubt.

15. In the result, the appeal is allowed. Impugned judgment of the trial Court is hereby set aside and the appellant is acquitted of the charge under Section 302 of IPC by extending him benefit of doubt. He is reported to be in jail since 6.10.2009, therefore, he be set free forthwith if not required to be detained in connection with any other offence.

Sd/

(Pritinker Diwaker)

Judge

Sd/

(I.S. Uboweja)

Judge