

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 815 of 2010

1. Narayan Singh, S/o Jaikaran Singh Bhaina, aged 24 years, R/o village Rumga Bandha-Tola, Chowki Kotmi, Police Station Pendra, District Bilaspur (CG)

**---- Appellant
(in jail)**

Versus

1. State of C.G. through District Magistrate, District Bilaspur (CG)

---- Respondent

For Appellant:
For Respondent;

Shri Dharendra Pandey, Advocate
Shri Arvind Dubey, Panel Lawyer

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice C.B. Bajpai

JUDGEMENT

Per P. Diwaker, J

29/10/2015

1. This appeal arises out of the judgment of conviction and order of sentence dated 23.9.2010 passed by the Additional Sessions Judge (FTC), Pendra Road, District Bilaspur in S.T. No.16/10 convicting accused/appellant under Section 302 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo R.I. for Life and fine of Rs.100/-, in default to undergo additional R.I. for 01 month.
2. Accused/appellant is the son of deceased Basanta Bai. As per case of the prosecution, on 28.12.2009 the accused/appellant, his mentally challenged brother Sumer and mother Basanta Bai had gone to sleep in the house. At about 10.00 p.m. in the night after hearing bark of dog and cries from the house, Sukhram (PW-1), brother of accused/appellant residing in the adjacent house, rushed to the house of accused/appellant and saw his mother lying on the floor and blood was oozing from her head. At that time

accused/appellant was standing nearby. On being enquired, Sumer disclosed that it is the accused/appellant who had caused injuries to their mother by burning wooden log. Sumer further disclosed that he too was beaten by accused/appellant. Immediately thereafter Sukhram took his mother to the house of Mangal Singh (PW-2) but by that time she had expired. Further case of the prosecution is that accused/appellant was in the habit of beating his deceased mother. On the basis of information given by Sukhram (PW-1), unnumbered merg of Ex.P-1 & unnumbered FIR (Ex.P-3) under Sections 302 & 307 of the IPC were recorded by the Police Outpost Kotmi on 29.12.2009. Thereafter numbered Merg (Ex.P-11) & FIR (Ex.P-12) were recorded at Police Station Pendra. The Investigating Officer left for scene of occurrence and after summoning the witnesses, prepared inquest (Ex.P-9) over the body of deceased in the presence of witnesses. Dead body was sent for post-mortem examination to the Primary Health Centre, Kotmi where Dr. Dilip Singh Paikra (PW-7) conducted autopsy and noticed following injuries;-

- Lacerated wound of 5x3cm with irregular margins on the forehead and above left eye & eyebrows along with fracture of left frontal bone deep upto brain tissue.
- Lacerated wound of 4x2cm on the left ear
- Lacerated wound of 3x2cm above and posteriorly of left ear on temple-temporal region of head.
- Left eyeball depressed down due to injuries and clotted blood was present.

Cause of death was violent assault on the vital organs- head, skull & brain and death was homicidal in nature. Injured Sumer was also medically examined vide Ex.P-23. Accused/appellant was taken into custody and on the basis of his disclosure statement (Ex.P-4), wooden log used for committing the offence were seized vide Ex.P-5 & P-6. Seized articles were

sent for chemical examination to the Forensic Science Laboratory from where report of Ex.P-19 was received in which presence of blood on the wooden logs seized from the possession of accused/appellant has been affirmed. Statements of witnesses were recorded under Section 313 of Cr.P.C.

3. On completion of investigation, charge sheet for the offence punishable under Sections 302 & 307 of the IPC was filed against the accused/appellant and accordingly the charges were framed against him by the trial Court. The prosecution in order to bring home the charges levelled against the accused/ appellant had examined seven witnesses in all. Statement of accused/ appellant was recorded under Section 313 of Cr.P.C. in which he abjured his guilt and pleaded innocence & false implication. He has taken the defence that it is his uncle Balkaran who had killed the deceased.
4. After hearing counsel for the parties and considering the material available on record, the trial Court vide impugned judgment, while acquitting accused/appellant from the charge under Section 307 of the IPC, convicted & sentenced him under Section 302 of IPC in the manner as described above.
5. Learned counsel for accused/appellants submits that it is Balkaran, uncle of deceased, who had committed murder of the deceased. It has come in the evidence of Sukhram (PW-1), Mangal (PW-2) & Shatruhan (PW-3) that accused/appellant is a mentally deficient person and it is settled position that nothing is an offence which is done by a person who, at the time of doing it, was incapable of knowing the nature of act and thus accused/appellant cannot be convicted under Section 302 of the IPC. He further submits that Sumer, who could be the star witness of prosecution, has not been examined by the prosecution for the reasons best known to it. He further submits that though blood stains on the articles seized from the

accused/appellant were found in the FSL report, but in absence of report of Serologist, the same is not sufficient to connect the accused/appellant with crime in question.

6. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of accused/appellant is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court. He further submits that burden of proof that mental condition of accused/appellant was, at the time of commission of offence, such as is described by Section 84 of the IPC, lies on the accused, but he failed to discharge this burden and therefore he is not entitled for this benefit. He further submits that body of deceased was found inside the house where accused/appellant was residing along with deceased and his brother Sumer, but he failed to offer any acceptable explanation in his statement recorded under Section 313 of Cr.P.C. that as to how she died. He further submits that though there is no serological report but as per FSL report (Ex.P-19), blood stains were found on the articles seized from accused/appellant and he failed to offer any explanation as to how it came on the articles seized from him. He further submits that in the inquest it has been specifically recorded that it is the accused/appellant who killed the deceased and likewise in the statement of Sukhram (PW-1) it has come that when he reached the place of occurrence, appellant was present there.
7. We have heard learned counsel for the parties and perused the impugned judgment and record of the trial Court.
8. Sukhram (PW-1) is the brother of accused/appellant and son of the deceased. He has stated that on the fateful day he was sleeping in his house and his mother Basanta Bai, elder brother Sumer and accused/appellant were sleeping in the other house. On hearing bark of dog, he came to the house where accused/appellant, his deceased mother & brother

Sumer were sleeping and saw that his mother is lying down and she has died. On being asked, accused/appellant, who was mentally disturbed at that time, did not tell me anything. Thereafter he took her mother to the house of Mangal but by that time his mother had expired. Injury on the forehead of her mother was present and blood was oozing from it. On the next morning, he went to the police outpost Kotmi and informed the police about the incident. This witness has further stated that his brother Sumer, who is also a mentally deficient person, had also received injury on his temporal region and he was taken to the hospital for treatment. At this stage this witness has been declared hostile and In the cross-examination by the prosecution he has stated that he cannot tell as to whether it is accused/appellant who killed his mother, however, when he reached the house at that time accused/appellant was standing at the doorstep. He further submits that accused/appellant & his elder brother Sumer both were of feeble mind. He has further stated that on the date of recording of his statement, accused/appellant informed him that on the date of incident two persons came in the house on motorcycle and consumed liquor and it is they who have killed his mother. He has admitted the fact that police do not have any enmity with him or his family members. He further stated that he alone cannot bring Sumer for recording of his evidence.

9. Mangal Singh (PW-2) has stated that on the fateful night, Sukhram came to his house with his mother and made her lie down. His mother had expired. Incident was disclosed to the Sarpanch & Kotwar of the village in the night itself. He has further stated that in his presence the police had enquired from accused/appellant and he admitted his guilt. He has further stated that memorandum statement (Ex.P-4) of accused/appellant was recorded in his presence based on which wooden log was seized vide seizure memo of Ex.P-5. In Para-10 of evidence this witness has stated that Sumer is feeble minded and earlier the accused/appellant was feeble minded but now his

mental condition is alright.

10. Shatruhan (PW-3) is brother of accused/appellant & son of the deceased. He has stated that on the date of incident he had gone to village Bagdi and returned home from there in the next morning. He has further stated that earlier the accused/appellant was insane but now he seems to be normal.
11. Satan Singh (PW-4) has not supported the prosecution case and he has been declared hostile by the prosecution.
12. Niranjana Gond is the witness of inquest (Ex.P-9), memorandum statement (Ex.P-4), seizure memos (Ex.P-5, P-6, P-7 & P-10). Though this witness has turned hostile but he has admitted his signature over the aforesaid documents.
13. B.P. Sahu (PW-6) is the Investigating Officer and he has duly supported the prosecution case.
14. Dr. Dilip Singh Paikra (PW-7) conducted post-mortem examination on the body of deceased and noticed the injuries as described above. According to his opinion, cause of death was violent assault on the vital organs i.e. head, skull & brain, and the death was homicidal in nature.
15. PW-8 Ramkunwar Maina (wrongly mentioned as "PW-11" in the deposition sheet & impugned judgment) is the cousin sister of accused/appellant. She has stated that on the date of incident Sukhram (PW-1) had brought the deceased to her house and told her that accused/appellant had killed his mother and also caused injuries to Sumer.
16. Close scrutiny of evidence makes it clear that on the fateful night accused/appellant, deceased and Sumer, brother of accused/appellant were sleeping in the house. According to Sukhram (PW-2), on hearing the sound of barking, he reached the house of accused/appellant and found the deceased lying in pool of blood and Sumer in injured condition. On being asked from accused/appellant, who was standing nearby at that time, he did not tell anything. Thereafter he enquired from Sumer who told him that it is

the accused/appellant who had assaulted the deceased brutally on her vital parts i.e. head, skull & brain, by wooden log. Sukhhram (PW-2) thereafter took the deceased to the house of Mangal (PW-3) but by that time she had died. Thus it is evident that incident occurred inside the privacy of a house where three persons were residing and out of them, one died and another received injuries and in this situation, there was a corresponding burden on the accused/appellant to give a cogent explanation as to how the crime was committed, but he failed to do so. True it is that accused/appellant has taken a plea in his statement under Section 313 of Cr.P.C. that Balkaran had killed the deceased but the defence has not been able to substantiate the said allegation by explaining as to why accused/appellant would be falsely implicated in this case. This apart, wooden log used in the murder of the deceased was recovered at the instance of accused/appellant and as per FSL report (Ex.P-19), blood was found on the said wooden log, but there is no explanation from the appellant as to how blood stains are there in the wooden log. According to medical evidence also, the injuries found on the vital parts of body of deceased i.e. head, skull & brain, and resulted in the death of deceased could be caused by wooden log seized at the instance of accused/appellant. Since other surrounding circumstances unflinchingly indicate as to the involvement of accused/appellant in the crime in question, non-examination of Sumer, a man of unsound mind who also suffered injuries in the same incident, would not have any adverse impact on the case of the prosecution.

17. As regards the argument that appellant was an insane person, the burden, though not as heavy as upon the prosecution in a criminal case, was upon the accused to prove that he was of unsound mind at the time of commission of the offence and as such, incapable of knowing the nature of his act or that he was doing what was either wrong or contrary to law. In absence of any concrete evidence or material to discharge that burden,

stand of the defence that at the time of commission of offence accused/ appellant was of unsound mind has no substance and the same is hereby turned down.

18. Thus, this Court is of the considered opinion that the findings recorded by the Court below are based on due appreciation of the evidence available on record. That being so, the judgment impugned does not call for any interference. Accordingly, the appeal being without substance is liable to be dismissed and it is dismissed as such. Since the accused/appellant is already in custody no extra direction is needed regarding his surrender etc.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(C.B. Bajpai)
Judge

roshan/-