

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 870 of 2009

- Bhagwat S/o Ramdulari Prajapati, aged 42 years, R/o Kharkhod, PS Pamgarh, District Janjgir Champa (CG)

---- Appellant

In Jail

Versus

- State Of Chhattisgarh, through Police Station Pamgarh, District Janjgir-Champa (CG)

---- Respondent

For appellant : Shri Sumit Singh, Advocate.
For Respondent : Shri Rahul Tamaskar, PL.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Chandra Bhushan Bajpai

Judgment On Board By Justice Pritinker Diwaker

25/01/2016

This appeal arises out of the judgment of conviction and order of sentence dated 11.9.2009 passed by the II Additional Sessions Judge (FTC), Janjgir in S.T.No.111/2009 convicting the accused/appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life and fine of Rs.100/- with default stipulation.

02. Brief facts of the case are that on 18.2.2009 in between 9-10 am after committing murder of Dahruram @ Chander Sao by causing several injuries on his body with axe, the accused/appellant made extrajudicial confession before PW-3 Mankunwar, PW-4 Gopal Das, PW-6 Gorelal and PW-7 Sahodra Bai that it is he who committed murder of the deceased. Merg intimation (Ex.P/12) was registered on

18.2.2009 itself at the instance of PW-5 Tajuram. Thereafter, FIR (Ex.P/13) was registered against the accused/appellant at the instance of PW-5 under Section 302 of IPC. Inquest over the body of the deceased was prepared vide Ex.P/17. The dead body was sent for postmortem examination, which was conducted on 19.2.2009 by PW-1 Dr. KK Dahire vide Ex.P/1 wherein he noticed as many as five incised wounds, including fracture of cervical vertebra, and opined that the cause of death is antemortem severe bleeding and shock as a result of repeated attack over scalp and neck by any sharp object and that the death was homicidal in nature. After investigation charge sheet was filed against the appellant and accordingly, charge under Section 302 of IPC were framed.

03. So as to hold the accused/appellant guilty, the prosecution examined as many as 8 witnesses. Statement of the accused 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 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 extrajudicial confession allegedly made before some of the prosecution witnesses but the said evidence is admittedly a weak type of evidence.

There was no occasion for the accused/appellant to make such extrajudicial confession.

(ii) though on the disclosure statement of the accused/appellant (Ex.P/8), bloodstained full pant and full shirt worn by the appellant at the time of commission of offence and one bloodstained axe were seized vide Ex.P/9 and P/10 respectively, but the seizure witness PW-4 Gopal Das has not supported the prosecution case and other seizure witness PW-6 Gorelal does not appear to be reliable. Even otherwise, in absence of FSL report, seizure of the aforesaid articles is of no consequence.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel as under:

(i) that immediately after commission of murder of the deceased, the accused/appellant made extrajudicial confession before PWs-3, 4, 6 & 7, statements of these witnesses are trustworthy and therefore, there is no reason for this Court to disbelieve their evidence.

(ii) that on the disclosure statement of the appellant (Ex.P/8), seizure (Ex.P/9 & P/10) of bloodstained wearing apparels of the appellant and axe was made. PW-6, a witness to memorandum and seizure, has fully supported the prosecution case whereas PW-4 has admitted his signature on all the documents. Even as per query report Ex.P/2, it has been opined by the doctor that the injuries sustained by the deceased could be caused by the said weapon.

(iii) though there is no FSL report, but considering the other available evidence against the appellant, his conviction under Section 302 of IPC

is in accordance with law.

(iv) that medical report of the deceased also supports the prosecution case.

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

08. PW-1 Dr. KK Dahire conducted postmortem on the body of the deceased on 19.2.2009 vide Ex.P/1 and noticed following injuries on his person:

(i) incised wound, 2 x 1 x 1 inches, over left cheek, margin sharp, clear obliquely from jaw towards left pinna, caused by sharp object.

(ii) incised wound, 3 x 1 x 1 inches, over occipital area, obliquely from left side towards midline and fracture of bone.

(iii) incised wound, 3 x 1.5 x 2 inches,

(iv) incised wound, 2 x 1 x 1 inches,

(v) incised wound, 3 x 1 x 1 inches,

(vi) abrasion, 4 x 0.5 inches, 2.5 x 5 cm over back side of shoulder.

Injuries No. (iii) to (v) were over front part of neck caused by sharp object and there was fracture of cervical vertebra.

In his opinion, the cause of death is antemortem severe bleeding and shock as a result of repeated attack over scalp and neck by any sharp object and that the death was homicidal in nature.

He had also examined the weapon of offence axe sent to him by the police and vide query report Ex.P/2, opined that the injuries suffered by the deceased could have been caused by the said weapon.

09. PW-2 Vijay Kumar, Patwari, prepared the spot map (Ex.P/3). PW-3 Mankunwar, a witness to extrajudicial confession, has stated that she

knew the accused/appellant. On the date of incident when she was watching TV in her house, the accused/appellant came there and informed her that he has committed murder of the deceased. Thereafter, when she came out from her house, she saw the deceased lying on the cot. Though this witness has been declared hostile but she has supported the prosecution case on the point of extrajudicial confession made by the appellant before her.

10. PW-4 Gopal Das, another witness to extrajudicial confession, who is resident of the same village, has stated that when he was returning from the other village, on the way he met Sarpanch, who informed him that the accused/appellant has committed murder of the deceased. He has stated that thereafter he had gone to the place of occurrence and saw dead body of the deceased lying on the cot and axe was also lying near the said cot. He also noticed bloodstains near the place of occurrence, he asked the Sarpanch about Tajuram for lodging the report and then went to his house. He has further stated that the accused/appellant also followed him to his house and there he confessed before him that it is he who has committed murder of the deceased. The accused/appellant also asked him to accompany him to police station. Thereafter, he along with Tajuram went to police station for lodging report. He is also a witness to spot map Ex.P/6, seizure Ex.P/7, memorandum of the appellant Ex.P/8 and seizure Ex.P/9 and P/10. He has admitted his signature on all these documents.

11. PW-5 Tajuram is lodger of merg intimation and FIR. PW-6 Gorelal, a witness to extrajudicial confession made by the accused/appellant before him, memorandum Ex.P/8, seizure Ex.P/9 & P/10, has duly

supported the prosecution case. PW-7 Sahodra Bai is also a witness to extrajudicial confession made before her by the accused/appellant. While supporting the prosecution case she has stated as to the manner in which commission of offence was confessed by the appellant. PW-8 JS Jouhar, investigating officer, has duly supported the prosecution case.

12. Close scrutiny of the evidence makes it clear that on 18.2.2009 it is the accused/appellant who committed murder of the deceased by causing him several injuries with axe on vital parts of his body. After committing murder, he voluntarily confessed commission of the offence before PW-3 Mankunwar, PW-4 Gopal Das, PW-6 Gorelal and PW-7 Sahodra Bai.

13. True it is that 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. The value of the evidence as to confession, just like any other evidence, depends upon the veracity of the witness to whom it is made and it will have to be proved like any other fact. Even though the Court requires the witness to give the actual words used by the accused as nearly as possible, but it is not an invariable rule that the Court should not accept the evidence if not the actual words but the substance were given. It is for the Court having regard to the credibility of the witness, his capacity to understand the language in which the

accused made the confession, to accept the evidence or not.

14. If we examine the evidence of the witnesses (PWs, 3, 4, 6 & 7) before whom extrajudicial confession was made by the accused/appellant, on the touchstone of aforesaid principle of law as to extrajudicial confession, their evidence appears to be trustworthy and free from the suspicion of falsity and as such, there is no reason for this Court to disbelieve their testimony. There is nothing on record to suggest that the said confession was made by the accused/appellant under any pressure, threat or coercion, rather it appears to have been made voluntarily. The evidence of extrajudicial confession also finds due corroboration from memorandum of the appellant Ex.P/8 and seizure (Ex.P/9 & P/10) effected in pursuance thereof whereby bloodstained wearing apparels of the appellant and weapon of offence axe were seized. As per query report Ex.P/2, the doctor has opined that the injuries noticed on the body of the deceased could be caused by the said weapon. PW-4 Gopal Das and PW-6 Gorelal are witnesses to memorandum and seizure. Though PW-4 has turned hostile but has admitted his signature on all the documents whereas PW-6 has duly supported the prosecution case. Medical evidence also lends support to the prosecution case. Admittedly, there is no FSL report confirming presence of blood on the seized articles, but in view of the other evidence on record i.e. memorandum, seizure, extrajudicial confession, query report, medical evidence and statement of appellant under Section 313 Cr.P.C. wherein there is only bald denial of all the incriminating circumstances, non-production of FSL report is not fatal to the prosecution case.

15. Thus, taking into consideration the cumulative effect of the entire evidence adduced by the prosecution, it can safely be inferred that it is the accused/appellant who committed murder of the deceased. Being so, the prosecution has been successful in proving guilt of the appellant on the basis of circumstantial evidence and as such, the findings recorded by the trial Court holding the appellant guilty under Section 302 of IPC deserve to be maintained.

16. In the result, the appeal being sans merit is liable to be dismissed and is hereby dismissed. As the accused/appellant is already in jail, no further order regarding his surrender etc. is required.

Sd/

(Pritinker Diwaker)
Judge

Sd/

(C.B. Bajpai)
Judge