

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 914 of 2010

- Ramdayal Sahu, S/o Sambhu Sahu, aged about 55 years, R/o Village Koylari, P.S. Lalpur, District Bilaspur (CG)

---- Appellant

In Jail

Versus

- State Of Chhattisgarh, Through Police Station Lalpur, Distt. Bilaspur (CG)

---- Respondent

For appellant : Shri CR Sahu, Advocate.

For Respondent/State : Shri Chandresh Shrivastava, P.L.

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

Judgment on board by Justice Pritinker Diwaker

20/01/2016

This appeal arises out of the judgment of conviction and order of sentence dated 25.10.2010 passed by the II Additional Sessions Judge (FTC), Mungeli, Distt. Bilaspur in S.T.No.18/2010 convicting the accused/appellant under Section 302 of IPC and sentencing to undergo imprisonment for life and fine of Rs.2000/- with default stipulation.

02. As per prosecution case, on 15.3.2010 at about 9.30 pm FIR (Ex.P/2) was lodged by Dileshwar Sahu (PW-1), son of the accused/appellant, that his younger brother Vedram was residing with the appellant. When he (PW-1) returned from the field at about 8 pm

on 15.3.2010 he found the dead body of his brother Vedram in the courtyard, there was one pickaxe lying near the dead body and he noticed injuries near the face of the deceased. He has further stated that his mother Fulmatbai (PW-3) was crying there and on being asked, she informed him that at about 7.30 pm it is the accused/appellant who committed murder of Vedram by saying that he does nothing and roams around without any purpose. Based on this FIR, offence under Section 302 of IPC was registered against the accused/appellant. Immediately thereafter, mereg intimation Ex.P/1 was recorded at the instance of PW-1. Inquest over the dead body was prepared vide Ex.P/4 on 16.3.2010. Thereafter, the dead body was sent for postmortem which was conducted on 16.3.2010 by PW-7 Dr. RS Ayam vide Ex.P/10 wherein he noticed as many as four injuries, including fracture, on the body of the deceased and opined that the cause of death was head injury and that the death was homicidal in nature. After investigation charge sheet was filed against the appellant under Section 302 of IPC and accordingly, charge was framed.

03. So as to hold the accused/appellant guilty, the prosecution examined as many as 9 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 there is no eyewitness to the incident, the appellant has been convicted solely on the basis of circumstantial evidence, but nature of the circumstantial evidence is not such which can be made basis for his conviction.

(ii) that even assuming that the deceased was killed by the accused/appellant, his case would not fall under Section 302 of IPC and at best, he can be convicted under Section 304 Part-I or II of IPC because the appellant being father of the deceased had no intention to kill him, the incident occurred all of a sudden in the heat of passion upon a sudden quarrel as the appellant was annoyed with the deceased for not doing any job and out of anger, the appellant appears to have assaulted the deceased, which unfortunately resulted in his death.

(iii) that the appellant is in jail since 16.3.2010 and therefore, after converting his conviction into Section 304 Part-I or II, his sentence may be reduced suitably.

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

(i) that the accused/appellant made extrajudicial confession before PW-4 Vedram, Village Kotwar, and there is no reason for this Court to disbelieve his statement.

(ii) that it is the accused/appellant who took Vedram (PW-4) and other villagers to a place where he had hidden the dead body of the

deceased in the heap of hay.

(iii) that present is a case of house murder and no explanation has been offered by the accused/appellant as to how the deceased died in his house and rather he made false statement in his statement under Section 313 of Cr.P.C. while answering to Question No.3 that the deceased was not residing with him.

(iv) that from the place of incident, a pickaxe was seized vide Ex.P/6 and clothe of the appellant was seized vide Ex.P/7 and as per FSL report Ex.P/17, blood was found on the aforesaid articles.

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

08. PW-1 Dileshwar, son of the accused/appellant and brother of the deceased, has admitted that he lodged the FIR (Ex.P/2). He has further stated that the deceased was residing with the appellant whereas he (this witness) was residing separately with his wife. When he returned from his field, he found dead body of the deceased lying in the courtyard, at that time his mother was crying, however, he was declared hostile as he has not stated that he was informed by his mother that it is the accused/appellant who killed the deceased. PW-2 Lata, sister of the deceased, PW-3 Fulmatbai, wife of the appellant and mother of the deceased, and PW-5 Dongru, brother of the deceased all of them have turned hostile.

09. PW-4 Vedram, Village Kotwar, is a witness to inquest Ex.P/4, spot map Ex.P/5, seizure Ex.P/6 and P/7 and site plan Ex.P/9. He is also a witness of extrajudicial confession made by the accused/appellant

before him. He has categorically stated that in between 8-9 pm when he was in his house, the accused/appellant came to him and asked to accompany him to the house of Sarpanch and then in the house of Sarpanch in his presence, the appellant confessed that he had killed his son Vedram by assaulting him with pickaxe. Thereafter, the accused/appellant took all of them to his house and showed them the dead body of his son which was hidden by him in the heap of hay. In para-13 he has stated that the deceased was having some mental problem and for which information was also given to the police station.

10. PW-6 Dheluram is a witness to inquest Ex.P/4. PW-7 Dr.R.S. Ayam conducted postmortem on the body of the deceased on 16.3.2010 vide Ex.P/10 and noticed the following injuries on his person:

- (i) lacerated wound with depressed compound fracture (3 x 1.5 x 2 cm) just over the nose (forehead).
- (ii) contusion wound with fractures over upper left jaw (8 x 6 cm) and right jaw (7 x 6 cm) and over chin (5 x 4 cm) and broken of teeth.
- (iii) multiple abrasion wounds over anterior aspect of neck (7 x 2.5 cm, 1 x 1 cm) and upper part of chest (3 x 2 cm, 2 x 1 cm, 1 x 1 cm).
- (iv) blood clotted in both the ear.

In his opinion, the cause of death was head injury and the death was homicidal in nature. He had also examined the weapon of offence pickaxe sent to him by the police and opined that the injuries sustained by the deceased could be caused by the said weapon vide Ex.P/11.

11. PW-8 Goverdhan Sahu is a witness to spot map Ex.P/5, inquest Ex.P/4, seizure Exs.P/6, P/7 & P/8, arrest memo of the appellant

Ex.P/12 and site plan Ex.P/9. He has though been declared hostile but admitted his signature on all these documents. PW-9 KK Sahu, investigating officer, has duly supported the prosecution case.

12. In his statement recorded under Section 313 of Cr.P.C., in reply to Question No.3, the appellant has stated that the deceased was not residing with him and he has been falsely implicated.

13. Close scrutiny of the evidence makes it clear that on 15.3.2010 it is the accused/appellant who killed his son Vedram by causing him several injuries with pickaxe. The incident is alleged to have been seen by PW-3 Fulmatbai, wife of the appellant and mother of the deceased, but she has not supported the prosecution case and has been declared hostile. The appellant made extrajudicial confession before PW-4 Vedram, Village Kotwar, and this witness has duly supported the prosecution case. In his evidence it has come that the appellant after making confession of his guilt took Vedram and other villagers to his house and showed them dead body of the deceased which was hidden by him in the heap of hay. From the place of occurrence a pickaxe was seized vide Ex.P/6 and likewise, clothe of the appellant was also seized vide Ex.P/7. As per FSL report Ex.P/17, blood was found on both these articles, however, no explanation was offered by the appellant in his statement under Section 313 of Cr.P.C. as to how blood was found on his clothe.

14. Yet another important aspect of the case against the appellant is that the deceased was residing with him and his dead body was found in the house of the appellant.

15. When an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it is extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence is insisted upon. In such cases, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house can not get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on the accused to offer any explanation.

16. In the case in hand, the prosecution witnesses have categorically stated that the deceased was residing with the appellant in his house and as such, present being a case of house murder, the appellant was under legal obligation to explain as to how the incident occurred. However, instead of offering such explanation, the accused/appellant has denied the fact that the deceased was living with him in his house. It goes against the appellant and can safely be taken as an additional incriminating circumstance against him.

17. Thus, taking into consideration the entire facts and circumstances of the case including the conduct of the appellant, as also the medical evidence, we are of the opinion that the prosecution has succeeded in proving complicity of the accused/appellant in crime in question on the basis of circumstantial evidence.

18. We find no substance in the argument of the appellant that the appellant killed his own son out of anger upon a sudden quarrel without premeditation and therefore, his conviction is liable to be altered to Section 304 Part-I or II of IPC. Considering the manner in which the deceased was done to death by assaulting him with a deadly weapon pickaxe on his vital part head with such a force leading to his instantaneous death, conviction of the accused/appellant under section 302 of IPC cannot be faulted with.

19. In the result, the appeal being without substance is liable to be dismissed and is, accordingly, 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