

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 577 of 2011

- Amar Singh Sidar S/o Lt. Pyari Sidar, aged about 35 years, R/o Village Nawagarh, P.S. & Tahsil-Dharamjaigarh, Distt.-Raigarh, C.G.

---- Appellant

In Jail

Versus

- State Of Chhattisgarh through Police Station Dharamjaigarh, Tahsil Dharamjaigarh, Distt. Raigarh (CG)

---- Respondent

For appellant : Shri Rajnish Shrivastava, Advocate.
For Respondent/State : Shri Adil Minhaj, PL.

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

Judgment On Board By Shri Justice Pritinker Diwaker

08/02/2016

This appeal arises out of the judgment of conviction and order of sentence dated 20.6.2011 passed by the Sessions Judge, Raigarh in ST No.123/2009 convicting the accused/appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life and to pay a fine of Rs.1000/- with default stipulation.

02. As per prosecution case, in connection with murder of father of the appellant, father of the deceased was made an accused and prosecuted for the offence under Section 302 of IPC, however, he was acquitted by the trial Court of the said charge. On account of this dispute between the two families, it is alleged that in the night

intervening 28/29th September, 2009 deceased Ramchandra Sidar was assaulted by the appellant by a knife causing three injuries on vital organs of his body. The deceased was taken to hospital but there he succumbed to his injuries on 29.9.2009. FIR (Ex.P/2) was lodged by PW-1 Gopal Singh Thakur on 29.9.2009 at about 4.30 am based on which offence under Section 302 of IPC was registered against unknown person. Immediately thereafter at 4.45 am merger intimation Ex.P/1 was registered at the instance of PW-1. Inquest over the dead body was prepared vide Ex.P/6 and thereafter, it was sent for postmortem which was conducted on 29.9.2009 by PW-22 Dr.Arjun Singh vide Ex.P/17 wherein he noticed three incised wounds on stomach and opined that the cause of death was shock as a result of injuries to liver and spleen and excessive bleeding and that the death was homicidal in nature. On the memorandum of the accused/appellant Ex.P/10, one bloodstained knife was seized vide Ex.P/11. As per query report Ex.P/18 given by the doctor, the injuries sustained by the deceased could have been caused by the said weapon. 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 27 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 eyewitness to the incident PW-2 Shyam Kumar, PW-5 Jeth Singh and PW-14 Smt. Malti Bai are not reliable as they have exaggerated their version in the Court.

(ii) that witnesses to extrajudicial confession i.e. PW-2 appears to be unnatural because the same witness becomes eyewitness and thus his credibility is doubtful.

(iii) that other witnesses to extrajudicial confession PW-9 Laxman Chouhan, PW-10 Narad and PW-12 Jageshwar have turned hostile and did not support the prosecution case.

(iv) that in absence of FSL report, seizure Ex.P/11 of knife from the appellant is of no consequence.

(v) that even if the entire prosecution case is taken as it is, considering the act of the appellant, at best he is liable to be convicted under Section 304 Part-II of IPC.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel that there is no reason for this Court to doubt the credibility of PW-2 Shyam Kumar, eyewitness to the incident. Even this witness has not been confronted with his case diary statement. Other eyewitnesses (PW-5 Jeth Singh and PW-14 Smt. Malti Bai) are also intact throughout their examination and therefore, their testimony cannot be discarded. This apart, PW-2 is also a witness to extrajudicial confession and his evidence inspires confidence. He

further submits that on the basis of memorandum of the appellant Ex.P/10, seizure of weapon of offence knife was made vide Ex.P/11, and witnesses to these documents PW-16 Kirtan Das has admitted his signature on the documents whereas PW-26 Patiram has duly supported the prosecution case. It has been submitted that as per query report Ex.P/18, the doctor has opined that the injuries suffered by the deceased could have been caused by the weapon so seized. He submits that looking to the manner in which the appellant killed the deceased with a deadly weapon, his conviction under Section 302 of IPC suffers from no illegality and therefore, the same needs no alteration.

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

08. PW-1 Gopal Singh Thakur is lodger of FIR and merged intimation. PW-2 Shyam Kumar, eyewitness to the incident, while supporting the prosecution case has stated that he knew the accused/appellant and on the date of incident he had gone to Dharamjaigarh along with other villagers to enjoy Dashhara fare. On the way he met the appellant and then he along with appellant Amar Singh, Bhoku, Ghasi, Lagan and Jaggu consumed liquor near the bus stand and thereafter, Ghasi, Jaggu and himself went to enjoy Dashhara fare. He has stated that when he reached near the Court, the deceased came there and the appellant also came there. There the appellant assaulted the deceased with knife on his stomach, and after seeing the incident on account of fear they fled from there. Next morning when he, Narad and Laxman were going on motorcycle, they met the appellant who informed them

that he has killed the deceased. When they asked as to how he killed the deceased, the appellant told them that he killed the deceased by assaulting him with knife. In cross-examination also this witness remained very firm and nothing could be elicited from him by the defence to render his evidence untrustworthy or doubtful.

09. PW-3 Sanatram, a witness to seizure of plain and bloodstained soil from the place of occurrence (Ex.P/4), has turned hostile. PW-4 Santram, father of the deceased, has proved the motive for commission of the offence. PW-5 Jeth Singh, eyewitness to the incident, while supporting the prosecution case has stated that while he was returning along with his wife Smt. Malti Bai after watching Dashhara fare, on the way he met the accused/appellant who chased him for assaulting by saying that either he will kill him (this witness) or the deceased. In order to save himself, he (this witness) hid himself under the tractor and from there he witnessed the appellant assaulting the deceased with knife on his stomach and thigh. Though there appears to be some contradiction in his statement from that of his case diary statement, but they are not so significant on which basis his entire evidence can be discarded. PW-14 Smt. Malti Bai, wife of PW-5 Jeth Singh, is another eyewitness to the incident. She has duly supported the prosecution case. PW-6 Duryodhan Bhagat is a witness to inquest Ex.P/6, spot map Ex.P/7 and seizure Ex.P/8 of clothes of the deceased. He has proved these documents. PW-7 Sukhchand, brother of the deceased, has also proved the motive for commission of the offence. PW-8 Ghasidas is a hearsay witness. PW-9 Laxman Chouhan, PW-10 Narad and PW-12 Jageshwar, witnesses to

extrajudicial confession, have turned hostile. PW-11 Sahis Ram is a witness to inquest Ex.P/6. PW-16 Kirtandas is a witness to memorandum of the appellant Ex.P/10, seizure Ex.P/11 and arrest memo Ex.P/12. Though he has been declared hostile but has admitted his signature on these documents. PW-17 Jagdish Tigga, a witness to seizure Ex.P/4, has turned hostile. PW-18 Sarju, Revenue Inspector, prepared the spot map Ex.P/14. PW-19 J. Lakda and PW-21 NL Rathia, Assistant Sub Inspectors, took the deceased to hospital along with other persons. PW-22 Dr. Arjun Singh conducted postmortem on the body of the deceased on 29.9.2009 vide Ex.P/17 and noticed following injuries on his person:

- (i) Incised penetrating injury 3" below epigastric, 4 x 2 x 6 cm deep, liver was damaged.
- (ii) Incised penetrating injury on left lateral lumbar region, 4 x 3 x 5 cm deep, spleen damaged.
- (iii) Incised penetrating injury on left lateral thigh region, 3 x 2 cm muscle deep.

The above injuries were caused by hard and sharp edged weapon. In his opinion, cause of death was shock as a result of injuries to liver and spleen and excessive bleeding and that the death was homicidal in nature. He had also examined the weapon of offence knife and opined that the injuries suffered by the deceased could have been caused by the said weapon vide Ex.P/18.

10. PW-24 HR Chandra, investigating officer, has duly supported the prosecution case. PW-26 Patiram, is a witness to memorandum of the appellant Ex.P/10 and seizure Ex.P/11 by which weapon of offence knife was seized. He has duly supported the prosecution case. PW-27

Indrapal Singh Paikra, Inspector, helped in the investigation.

11. Close scrutiny of the evidence makes it clear that in the night intervening 28/29th September, 2009 it is the accused/appellant who killed the deceased by causing him injuries with knife on his stomach and thigh. The incident was witnessed by PW-2 Shyam Kumar, PW-5 Jeth Singh and PW-14 Smt. Malti Bai. They have supported the prosecution case and stated as to the manner in which the appellant assaulted the deceased. Though there are minor contradictions in the statements of PW-5 and PW-14, but considering their entire evidence, the same are required to be ignored. This apart, extrajudicial confession was also made before PW-2, the defence has not been able to elicit anything from him to discredit his testimony on this point and as such, we have no reason to disbelieve this witness in respect of extrajudicial confession. Evidence of these witnesses also gets due corroboration from the medical evidence, according to which corresponding injuries were noticed by the autopsy surgeon on the body of the deceased.

Yet another piece of evidence against the appellant is that on his memorandum Ex.P/10, seizure of knife was made (Ex.P/11). Though witness to these documents PW-16 has turned hostile but he has admitted his signature on the documents and another witness PW-26 has duly supported the memorandum and seizure. As per query report Ex.P/18, the doctor has also opined after examination of the seized weapon knife that the injuries noticed on the body of the deceased could have been caused by the said weapon. This apart, it has also come in the evidence of the witnesses that there was old enmity

between the family of the appellant and that of the deceased and as such, the appellant had a strong motive for commission of the offence.

12. Thus, taking into consideration the entire evidence i.e. eyewitness' account, extrajudicial confession of the appellant, seizure of weapon of offence at his instance, medical evidence as also the motive attributed to him, it can safely be inferred that it is the accused/appellant who killed the deceased by causing him injuries on his vital part with knife.

13. As regards the argument that in the facts and circumstances of the case, at best the appellant is liable to be convicted under Section 304 Part-II of IPC, considering the manner in which the appellant assaulted the deceased with a deadly weapon on his vital part with such a force which resulted in his death, it cannot be said that he had no intention of causing death of the deceased and had only knowledge that injuries being inflicted by him may result into death of the deceased. As such, the findings recorded by the trial Court holding him guilty under Section 302 of IPC are based on proper appreciation of the evidence on record and needs no interference by this Court.

14. In the result, the appeal being without substance is liable to be dismissed and is, accordingly, dismissed. The appellant is reported to be in jail, therefore, no further order regarding his surrender etc. is required.

Sd/

(Pritinker Diwaker)
Judge

Sd/

(I.S. Uboweja)
Judge