

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 875 of 2011

- Tikaram Sahu, S/o. Mohan Lal Sahu, Aged about 22 years, Occupation : Labour, R/o. Village Kathouli, Police Chowki, Birjher Police Station Kurud, District Dhamtari, Chhattisgarh

---- Appellant

Versus

- State Of Chhattisgarh Through: Police Chowki Birjher, P.S. Kurud, Distt.-Dhamtari, C.G.

---- Respondent

For Appellant	: Shri Afroz Khan, Advocate
For Respondent/State	: Smt. Smita Ghai, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Ram Prasanna Sharma

Judgement on Board

Per Pritinker Diwaker, J.

01/09/2017

This appeal arises out of judgment and order dated 30.08.2011 passed by the Sessions Judge, Dhamtari in Sessions Case No. 14/2011 convicting the accused/appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life with fine of Rs. 1,000/- with default stipulation.

2. As per prosecution case, on 29.12.2010, at about 7.00 p.m. accused/appellant returned to his house in a drunken condition and had asked for some eatery (*Tevra*) from her sister. It is said that when she went to ask for the same from the deceased Kumari Bai-step mother of the appellant, she asked her to take and give the same to him, but

accused/appellant got angry, abused her and when his father Mohan Sahu (PW-1) intervened, he slapped the deceased, went inside the house brought a carpenter-axe and at first, assaulted his father Mohan Sahu (PW-1) on his head and temple and when he ran out he chased him, his wife followed him but near the house of Chhannu, accused/appellant gave a solitary blow of carpenter-axe on the head of the deceased as a result of which she died. Unnumbered FIR Ex.P-2 was lodged by Mohan Sahu (PW-1) at 10.00 p.m. under Section 302 & 307 IPC. Unnumbered merg Ex.P-1 was recorded immediately after the FIR and seizure Ex,P-15 of carpenter-axe was made. Injured (PW-1) was medically examined by Dr. U.S. Navaratan (PW-7) vide Ex.P-13 and he opined that clotted blood was present on the right upper eyelid and occipital region of skull. Inquest Ex.P-8 was prepared on 30.12.10, numbered FIR Ex.P-19 was registered against the appellant under Section 302 and 307 IPC. Numbered merg Ex.P-18 was recorded on 30.12.2010. Body was sent for postmortem examination which was conducted by Dr. Prabhakar Rao (PW-6) vide Ex.P-12 who opined that the cause of death was comma and syncope due to head injury and hemorrhagic shock and death was homicidal in nature. The carpenter-axe seized from the appellant was sent for FSL and as per FSL report blood was found on the said axe but there is no serological report to prove the origin of blood and the blood group. After filing of the charge sheet, trial judge has framed charge against the appellant under Section 302/324 IPC.

3. The prosecution has examined 15 witnesses to prove its case. Statement of the accused/appellant was also recorded under Section 313 of the Cr.P.C. in which he denied the charges levelled against him and pleaded his innocence and false implication in the case.

4. After conclusion of the trial, the trial Court vide its judgment impugned, found the accused/appellant guilty of the offence as mentioned in paragraph 1 of the judgment. Hence the present appeal.

5. Counsel for the appellant submits as under :

- i) that all important witnesses of prosecution have turned hostile.
- ii) that the accused/appellant has been convicted solely on the basis of circumstantial evidence but the nature of circumstantial evidence collected by the prosecution is very weak and the chain of circumstantial evidence is not complete.
- ii) the main piece of evidence against the appellant is the seizure of carpenter-axe Ex.P-15, though as per FSL report Ex.P-24 blood has been found on the weapon however there is no serological report to prove the origin of blood or the blood group and thus merely on the basis of FSL report appellant cannot be convicted.
- iii) the other piece of evidence against the accused/appellant is the so called extra judicial confession made before PW-13 however merely on that basis the appellant cannot be convicted.
- iv) it has been argued that the evidence of extra judicial confession is a weak type of evidence and merely on that basis the appellant cannot be convicted.

6. On the other hand supporting the impugned judgment it has been argued by the State counsel that the conviction of the appellant is in accordance with law and there is no infirmity in the same.

7. Heard counsel for the parties and perused the material on record.

8. Mohan Sahu (PW-1) is the father of appellant who lodged FIR and the merged intimation has not supported the prosecution case and has been declared hostile. Bisoha Sahu (PW-2) neighbour of the appellant has also not stated anything against the appellant and has been declared hostile. Roop Ram Nishad (PW-3) is a witness to inquest and spot map. Punendra Dev Sahu (PW-4) and Umendra Sahu (PW-5) have been declared hostile. Dr. Prabhakar Rao (PW-6) conducted postmortem examination vide Ex.P-12 and according to him, the cause of death was comma and syncope due to head injury and hemorrhagic shock and death was homicidal in nature. Dr.U.S.Navratana (PW-7) has examined injured Mohan Sahu (PW-1) and the MLC report is Ex.P-13. According to him, there was incised wound and clotted blood present on the right upper eyelid and incised wound and clotted blood present on the occipital region of skull. Gulab Ram Nishad (PW-8) is a witness to inquest and seizure Ex.P-15 has been declared hostile. Khilawan (PW-9) and Kumar Dhaneshwari (PW-10) sister of the appellant have been declared hostile. Leela Ram (PW-11) ASI assisted in the investigation. Kartik Ram Nishad (PW-12) is a witness to seizure Ex.P-15 has been declared hostile. Rohit Das (PW-13) is a witness to extra-judicial confession however he appears to be inconsistent in his statement. Initially he has stated that the accused/appellant came to his house and informed him that he had killed his mother however in cross-examination he has stated that after the quarrel between his mother and father, it is his father who had killed his mother. From the overall statement of this witness he does not appear to be trustworthy and reliable. Ram Das (PW-14) is the SI who assisted in the investigation. G.S.Thakur (PW-15) is the Investigating Officer who has done the

investigation.

As per FSL report, Articles A, B, C, D, D₁, D₂, E₁, E₂ and E₃ contained blood however there is no serological report to this effect.

9. Close scrutiny of the evidence makes it clear that there is no reliable and clinching evidence showing the involvement of the appellant in the commission of the offence. At the instance of the appellant, seizure of one carpenter-axe was made vide Ex.P-15 and in the FSL report though blood was found on the axe but there is no serological report to prove the origin of blood or the blood group. The other piece of evidence against the appellant is the so called extra judicial confession made by him before Rohit Das (PW-13). Though in the examination-in-chief, this witness has stated that the accused/appellant came to his house and made extra judicial confession before him that he has killed the deceased, however in cross-examination he has stated that there was a quarrel between his mother and father and it is his father who had killed her.

In relation to extra-judicial confession, in the matter of **Sahadevan Vs. State of Tamil Nadu** reported in **(2012) 6 SCC 403** wherein it has been held that :

“it is a settled principle of criminal jurisprudence that extra judicial confession is a weak piece of evidence. Wherever the court, upon due appreciation of the entire prosecution evidence intends to base a conviction on an extra judicial confession it must ensure that the same inspires confidence and is corroborated by other prosecution evidence. If however, the extra judicial confession suffers from material discrepancies or inherent improbabilities and does not appear to be cogent as per the prosecution version, it may be difficult for the court to base a

conviction on such a confession. In such circumstances, the court would be fully justified in ruling such evidence out of consideration.

In case of circumstantial evidence the onus lies upon the prosecution to prove the complete chain of events which shall undoubtedly point towards the guilt of the accused. Moreover in a case of circumstantial evidence, where the prosecution relies upon an extra-judicial confession, the Court has to examine the same with greater degree of care and caution.

In the matter of **Vijay Shankar Vs. State of Haryana** reported in **(2015) 12 SCC 644**, it has been held that “for an extra-judicial confession to form the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities. It was a case of circumstantial evidence where not only has the prosecution failed to prove all the facts and events to complete the chain of events pointing towards the guilt of the accused but there are also definite discrepancies in the case of the prosecution, contradictions between the statements of the material witnesses and the most important piece of prosecution evidence, the extra-judicial confession, not worthy of credence as well as the facts recorded stand disproved by another prosecution witness herself.” In the case in hand, extra-judicial confession allegedly made before Rohit Das (PW-13) does not inspire confidence and cannot form the basis for the conviction.

10. Keeping in view the aforesaid facts, the conviction recorded by the trial court is not supported by any credible evidence and the prosecution has failed to establish the guilt of the accused beyond reasonable doubt and therefore benefit of doubt is to be extended to the appellant.

11. Consequently, the appeal is allowed. Impugned judgment convicting and sentencing the accused/appellant as mentioned above is set aside. He is acquitted of the charges levelled against him. Accused/appellant is reported to be on bail. His bail bonds stand discharged.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(Ram Prasanna Sharma)
Judge