

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 637 of 2003

Judgment reserved on : 10.01. 2017

Judgment delivered on : 27.02.2017

Bhagwan Das S/o. Adheram, by caste- Satnami, Aged about 35 years, R/o. Baseen, P.S. Arjunda, District Durg (C.G.)

---- APPELLANT

Versus

State of Chhattisgarh, Through- Police Station Arjunda, District Durg (C.G.)

---- RESPONDENT

For Appellant	:-	Mr. Adil Minhaj, Advocate
For Respondent /State	:-	Mr. S. Majid Ali, Penal lawyer

Hon'ble Shri Justice Prashant Kumar Mishra

Hon'ble Shri Justice Anil Kumar Shukla

C.A.V. Judgment

Per Anil Kumar Shukla, J.

1. Challenge in this appeal is to the judgment of conviction & order of sentence dated 30.05.2003 passed in Sessions Trial No. 441/2001 by the VIII Additional Sessions Judge (FTC) Durg, District- Durg, whereby and whereunder the Additional Sessions Judge, after holding the appellant guilty for commission of murder of his father Adheram, convicted him

under Section 302 IPC and sentenced to undergo imprisonment for life.

2. As per case of the prosecution, on 15.08.2001 at about 12.30 PM, a morgue intimation (Ex.P-1) was lodged by Pratapsingh (PW-1) in Police Station- Arjunda, District Durg that deceased Adheram was his cousin brother. After three years of marriage of Adheram with Hansuliya, Adheram had left her. The appellant is the son of Adheram (deceased) and Hansuliya. The appellant was residing with her mother Hansuliya and was earning his livelihood. The relation between the appellant and his father Adheram (deceased) was not cordial and Adheram did not like his son (the appellant). One day, the appellant began to cultivate the agricultural land of his father (the deceased), but his father did not allow him to continue the cultivation in his land. On 15.08.2001, at about 12.30 PM, the appellant assaulted his father on the head and mouth with back portion of an Axe. As a result of which, Adheram died. Kotwar Tirathram (PW-2) informed about the incident to Pratapsingh (PW-1). Kotwar Tirathram (PW-2) was informed about the incident by Hariram, father of deceased Adheram.

3. On the basis of morgue intimation (Ex.P-1), First Information Report (Ex.P-2) was registered in Police Station- Arjunda, District Durg against the appellant for the offence punishable under Section 302 IPC. The Investigating Officer

reached the place of occurrence, gave notice (Ex.P-3) to *Panchas* and prepared Naksha Panchayatnama (Ex.P-4). Spot map (Ex.P-5) was also prepared. The appellant was arrested vide arrest memo (Ex.P-6). Memorandum (Ex.P-7) of the appellant was recorded under Section 27 of the Evidence Act before Budharuram (PW-7) and Mahasingh. In further investigation, at the instance of the appellant, an Axe was seized vide Ex.P-8. Full shirt of the appellant was seized vide Ex.P-9. Plain soil and blood stained soil were seized from the place of occurrence vide Ex.P-10. Another spot-map was prepared by Sub-Inspector Mahesh Sinha (PW-8) vide Ex.P-11. Dead body of the deceased was sent to Community Health Centre, Gundardehi, District Durg for postmortem examination vide Ex.P-12. Dr. C.B. Prasad (PW-10) conducted the postmortem examination on the dead body of deceased and gave his report (Ex.P-17), in which, he found clotted blood over the right ear and chest, compound fracture on frontal head in the size of 3"x2"x1½", fracture on lower jaw and cut wound on lower lip measuring 2"x1½", whole face was stained with blood, left and right lungs were pale and the heart was pale and empty. Liver, spleen and kidney were pale and bladder was empty. The doctor opined that the cause of death was coma due to fracture of cranial bone, profuse bleeding and fracture of skull bone. The seized articles were sent to Forensic Science Laboratory, Raipur

vide Ex.P-15 and the FSL Report is Ex.P-16. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure. After completion of the investigation charge-sheet was filed against the appellant before the Judicial Magistrate First Class, Durg, who, in turn, committed the case to the Court of Sessions at Durg from where the learned VIII Additional Sessions Judge (FTC), Durg received the case on transfer.

4. In order to bring home the offence, the prosecution examined as many as 10 witnesses. Statement of the appellant was recorded under Section 313 Cr.P.C. in which he denied the circumstances appearing against him and pleaded innocence and false implication in the crime in question.
5. After affording opportunity of hearing to the parties and appreciation of evidence available on record, the trial Court convicted and sentenced the appellant as mentioned in the first paragraph of this judgment.
6. We have heard learned counsel appearing for the parties, perused the judgment impugned and record of the trial Court.
7. Learned counsel appearing for the appellant argued that the judgment of the trial Court is contrary to the facts of the case and law. On the basis of evidence adduced by the

prosecution, the conviction of the appellant is not sustainable in the eyes of law. Learned counsel further argued that the statement of eye witness Hariram was not recorded before the Court below and on account of his death there is no material on record against the appellant. Learned counsel argued that Pratapsingh (PW-1) has not stated anything against the appellant and turned hostile. Learned counsel further argued that Tirathram (PW-2) and Arun Kumar (PW-3) are the hearsay witnesses of the incident and they have not supported the statement of Tirathram (PW-2). Learned counsel argued that Devsharan Singh Deshmukh (PW-4), Manbodhram (PW-5) and Vrishketu (PW-6) have not said anything against the appellant. Learned counsel further argued that from the evidence of Budharu Ram (PW-7), it is not clear as to how the seizure was made. He further argued that the medical report does not support the case of the prosecution. Therefore, the entire findings are perverse and accordingly the appellant deserves to be acquitted.

8. Learned State counsel submits that the trial Court has culled out the case from the material available on record, therefore, the findings recorded against the appellant are correct and not perverse.

9. The questions arising for consideration before this Court are thus-

- (i) Whether the death of deceased Adheram falls within the category of culpable homicide amounting to murder?
- (ii) Whether the appellant committed murder of the deceased?

10. The first question for consideration is whether the death of the deceased falls within the category of culpable homicide amounting to murder? To establish this fact, Panchanama (Ex.P-4) of the dead body was prepared and statements of its witnesses Pratapsingh (PW-1) and Tirathram (PW-2) were recorded. An inquiry was also conducted by Sub-Inspector Mahesh Sinha (PW-8). According to the opinion of the panchas, appellant Bhagwan Das committed murder of the deceased with an axe due to some property dispute. Identification of the dead body of the deceased was made by witness Pratapsingh (PW-1) and Keshav and Loknath.

11. To know the actual reason of death, postmortem of the dead body was conducted by Dr. C.B. Prasad (PW-10) on 16.08.2001 at 4.00 PM. Dr. C.B. Prasad (PW-10) after the postmortem examination submitted his report vide Ex.P-17 in which he found clotted blood over the right ear and chest, compound fracture on frontal head in the size of 3"x2"x1½", fracture on lower jaw and cut wound on lower lip measuring 2"x1½", whole face was stained with blood, left and right lungs were pale and the heart was pale and empty. Liver,

spleen and kidney were pale and bladder was empty. The doctor opined that the cause of death was coma due to fracture of cranial bone, profuse bleeding and fracture of skull bone and the death was homicidal in nature.

12. The second question for consideration before this Court is whether the appellant committed murder of the deceased? From the statements of the witnesses examined by the prosecution before the Court below, it reveals that Adheram (deceased), his son appellant Bhagwan Das, wife of the appellant Rajwantinbai and father of the deceased Hariram were residing together. Due to death of Hariram during the pendency of the trial, his statement could not be recorded before the Court below. The statement of Rajwantinbai and extra judicial confession of the appellant were also not recorded before the Court below. Thus, in absence of statements of eye-witnesses Hariram and Rajwantinbai, the entire case of the prosecution depends upon the circumstantial evidence.

13. So far as motive of the appellant is concerned, Pratapsingh (PW-1), who is cousin brother of the deceased and uncle of the appellant, in his cross-examination, accepted the fact that the relation between the appellant and the deceased was not cordial and there was a dispute between them regarding property. Pratapsingh (PW-1) further deposed that the deceased was firm in his opinion that as far as he would

be alive, he would not partition the property and, therefore, they used to quarrel on this issue. Manbodhram (PW-5) deposed that the deceased had told him that the appellant was not treating him properly and was quarreling with him for the property. From the evidence of both these witnesses, it is clear that there was a property dispute between the deceased and the appellant.

14. Now, the question arise for consideration is whether the appellant committed murder of the deceased?. FIR (Ex.P-2) was lodged by Pratapsingh (PW-1) on 15.08.2001 at 5.30 PM, wherein it is stated that when he returned to his home after the flag hoisting ceremony, Kotwar Tirathram (PW-2) informed him that Adheram had died due to axe blows. Pratapsingh (PW-1) further deposed that he went to the house of deceased Adheram along with Sarpanch Arun Kumar (PW-3), Kotwar Tirathram (PW-2) and 10-12 other villagers, where Adheram was lying dead on the floor. Blood was present on the floor and the deceased had received injuries on the head and mouth. Pratapsingh (PW-1) further deposed that when they had reached the house of the deceased, wife of the appellant Rajwantinbai was present there and on being asked from her by Sarpanch Arun Kumar (PW-3) and Kotwar Tirathram (PW-2) about the incident, she did not reply anything to them. Pratapsingh (PW-1) turned hostile. In para-10 of his cross-examination, Pratapsingh (PW-1) deposed that on the date of

incident, appellant Bhagwan Das and his wife Rajwantinbai were present in the flag hoisting ceremony. He further deposed that he did not know as to who assaulted the deceased. He has not supported the case of the prosecution.

15. Tirathram (PW-2) deposed that on 15.08.2001, Hariram, father of deceased Adheram came to him and told that his grandson (appellant) assaulted Adheram with an axe, as a result of which Adheram died. Tirathram (PW-2) narrated the incident to Sarpanch Arun Kumar (PW-3) and thereafter they went to the house of deceased Adheram where they saw that Adheram was lying dead on the floor. In paragraph-3 of his deposition, Tirathram (PW-2) deposed that when they asked the wife of the appellant about the incident, she told that the appellant and the deceased were quarreling with each other and she had tried to make her husband (appellant) understand, but the appellant did not understand and killed his father Aadheram. From the evidence of Kotwar Tirathram (PW-2), it is clear that he is the hearsay witness. In his police statement under Section 161 of Cr.P.C., Tirathram (PW-2) has not stated that the appellant and the deceased were quarreling with each other and Rajwantinbai had tried to pacify the quarrel between them. In the Police statement under Section 161 of the Cr.P.C., Rajwantinbai had not stated that the appellant and the deceased were quarreling with each other. Tirathram (PW-2), in his Police statement, had not

mentioned the word *Tangiya*. His statement recorded before the Court below was an improved version to his earlier statement recorded before the Police.

16. Sarpanch Arun Kumar (PW-3) deposed that when he reached the house of deceased Adheram along with Kotwar Tirathram (PW-2), they saw that Adheram was lying dead on the floor. He further deposed that Hariram, father of the deceased was sitting in the adjacent room. Sarpanch Arun Kumar (PW-3) did not directly ask any question from Hariram. Whatever information was available with him, was given to him by Kotwar Tirathram (PW-2). This fact has been accepted by Arun Kumar (PW-3) in paragraph -4 of his deposition. In cross-examination, he deposed that Hariram had narrated the incident to Kotwar Tirathram (PW-2).

17. Manbodhram (PW-5) deposed that deceased Adheram was his neighbour. He further deposed that on 15.08.2001, after returning from the flag hoisting ceremony, he was informed that Aadheram was killed by his son (appellant). This witness did not make it clear as to who informed him about the incident.

18. Vrishketu (PW-6) deposed that the deceased was his neighbour. He further deposed that he heard about the incident when wife of the appellant Rajwantinbai was narrating the incident to the Police. In paragraph-4 of his cross

examination, he deposed that he did not tell this fact to the Police and he deposed about it for the first time in the Court.

19. From the evidence of prosecution witnesses, it reveals that Tirathram (PW-2) was informed about the incident by Hariram, father of the deceased and Rajwantinbai, wife of the appellant. Tirathram (PW-2) is the most reliable witness of the prosecution, but there is contradiction in his statements recorded before the Police and the Court below. From the evidence of Tirathram (PW-2), it can be suspected that the deceased would have been killed by the appellant, but this doubt cannot take place of an evidence.

20. The other important evidence adduced by the prosecution against the appellant is the weapon of assault, i.e, the axe, which, according to the prosecution, was used for the assault and seizure of the shirt which was worn by the appellant at the time of incident. According to the memorandum statement of the appellant (Ex.P-7), the weapon of assault, i.e., the axe was seized vide Ex.P-8 from nearby the bush of *Jimikanda* and a tree of Mango, while Tirathram (PW-2) has deposed that he had gone to the house of deceased Adheram after the incident and in paragraph-10 of his deposition he has stated that he had seen the axe lying outside the house of the deceased in the courtyard and the place where the axe was lying was a rough soil. But, in the memorandum statement of the appellant, it is stated that the axe was hidden by the appellant

in the bush in front of the house and was recovered therefrom at the instance of the appellant. In these circumstances, there is no explanation offered by the prosecution that how the axe reached from the courtyard to the bush. Likewise, according to Budharuram (PW-7), the shirt was seized from the house of the appellant vide Ex.P-9.

21. Pratapsingh (PW-1) deposed in paragraph-9 that it was heavily raining on the date of incident and delay in lodging the FIR (Ex.P-2) was due to heavy rainfall and interruption in transport. In this circumstance, possibility of removal of blood from the axe lying outside the house cannot be ruled out. The report (ExP-18) of the Serologist also reveals that blood stains on the seized *Tangiya* and shirt were disintegrated and their origin could not be determined. Resultantly, it is not proved that the seized axe was the weapon which was used for commission of the offence. From the evidence of the prosecution, a suspicion can be raised against the appellant, but the suspicion cannot substitute an evidence.

22. From the above discussion, we find that the impugned judgment of conviction and sentence passed by the Court below is perverse and unsustainable. Consequently, the appeal is allowed. The judgment of conviction and sentence is set aside and the appellant is acquitted of the charge framed against him under Section 302 IPC. The appellant is reported to be on bail. His bail bonds are not discharged at this stage

and the same shall remain operative for a further period of six months from today in terms of Section 437-A Cr.P.C.

**Sd/-
Judge**

Prashant Kumar Mishra

**Sd/-
Judge**

Anil Kumar Shukla