

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 461 of 2010

- Jagannath S/o Karuram Kashyap Caste Muriya Occup.Cultivation R/o Vill.Matnar Schoolpara, Ps Mardum, Bastar

---- Appellant

Versus

- State Of Chhattisgarh, through Station House Officer, Police Station Mardum, District Bastar (CG)

---- Respondent

For Appellants	:	Shri Sushobhit Singh, Advocate
For Respondent	:	Shri Bhaskar Payasi, Panel Lawyer

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

Judgement

Per P. Diwaker, J

05/09/2017

1. This appeal has been filed against the judgment of conviction and order of sentence dated 28.4.2010 passed by the Additional Sessions Judge, Bastar at Jagdalpur in S.T. No.110/09 convicting the accused/appellant under Section 302 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo R.I. for Life and fine of Rs.500/-, in default to undergo additional R.I. for 02 months.
2. In the present case name of deceased is Samaluram.
3. The prosecution story, in brief, is that in the night intervening 10th & 11th August, 2009 the accused/appellant armed with hammer had gone to the house of Samaluram (since deceased) and asking him as to why did he have a talk with his wife, assaulted the deceased with sharp side of hammer as a result of which he died instantaneously. Hearing voice of the

deceased, Shankar (PW-1), cousin of deceased, reached the spot and found the deceased lying dead. FIR (Ex.P-1) was lodged on 11.8.2009 at the instance of Shankar (PW-1) under Section 302 IPC against the accused/appellant. Merg Intimation (Ex.P-2) was also recorded at the instance of Shankar (PW-1). Inquest was made over the body of the deceased vide Ex.P-13. Body of the deceased was sent for post-mortem examination which was conducted by Dr. N.S. Nag (PW-8) and he noticed following injuries on the body of deceased:-

- Incised wound on the parietal region of skull of 1 x 0.9 cm in size.
- Incised wound over parietal region of skull of 1x0.9x0.2 cm in size.
- Incised wound over occipital region of skull of 1x0.6x0.5 cm in size.
- Incised wound over the forehead of 1x0.8x0.3cm in size.

The doctor has opined that cause of death was internal haemorrhage; cardio respiratory arrest and shock due to head injury. On 12.8.2009 memorandum (Ex.P-5) of the accused/appellant was recorded based on which one hammer used in the commission of crime came to recovered vide seizure memo Ex.P-6.

4. On completion of investigation, charge sheet for the offence punishable under Section 302 IPC was filed against the accused/appellant and accordingly the charge was framed against him by the trial Court. The prosecution in order to bring home the charge levelled against the accused/ appellant examined 08 witnesses in all. Statement of accused/ appellant was recorded under Section 313 of Cr.P.C. in which he abjured his guilt and pleaded innocence & false implication.
5. After hearing the parties, the Court below has convicted & sentenced the accused/appellant in the manner as described above.
6. Counsel for accused/appellant submits that;-
 - conviction of appellant is solely based on the statements of Shankar

(PW-1) & Lachharam (PW-2) who allegedly saw the appellant running away from the spot, but these witnesses have not supported the prosecution case on material points and turned hostile and thus the trial Court erred in law in basing conviction of appellant on the testimonies of these witnesses.

- extra-judicial confession allegedly made by the appellant before Samluram (PW-3) & Manglaram (PW-6) is not voluntary. Moreover, PW-3 did not support the prosecution case and turned hostile, whereas it has come in the evidence of PW-6 that alleged confession was made by the appellant in the presence of police, which is not admissible in evidence.
 - though recovery of hammer has been made pursuant to disclosure statement of appellant, but the same has no value in the eyes of law because there is no report of FSL on record opining that the hammer seized at the instance of appellant was stained with blood.
7. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of accused/appellant is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court.
 8. We have heard counsel for the parties and perused the evidence available on record.
 9. Shankar (PW-1) is the cousin of deceased. He is also lodger of FIR (Ex.P-1) & Merg Intimation (Ex.P-2). He has stated that as he came out of his house hearing some commotion, he saw a person running away from the house of the deceased, however, he could not identify him due to dark. This witness has further stated that the accused/appellant had confessed in presence of the police that he had killed the deceased. At this stage this witness has been declared by the prosecution.

10. Lachhuram (PW-2) has stated that on the fateful night he was in his house. Hearing commotion when he came out of the house, he saw the accused/appellant running away from the spot after assaulting the deceased. However, this fact has not come in the diary statement of this witness and he has stated so for the first time in the Court during trial. This witness has admitted in his deposition that at the time of occurrence there was no light on the spot.
11. Samluram (PW-3) is the witness before whom the accused/appellant had confessed that he had killed the deceased. He is also witness to memorandum (Ex.P-5) and seizure memo (Ex.P-6). However, this witness did not support the prosecution case and turned hostile.
12. Samdu Ram Kashyap (PW-4) is the Patwari who prepared the spot map Ex.P-10. Prakash Shukla (PW-5) is the investigating officer who has duly supported the prosecution case.
13. Mangram (PW-6) is another witness before whom the accused/appellant confessed to have killed the deceased. However, this witness has stated that at time of making confessional statement the accused/appellant was in the police station.
14. Dr. N.S. Nag (PW-8) is the doctor who performed autopsy on the body of deceased and noticed the injuries as described above. This witness has opined that cause of death was internal haemorrhage and cardio respiratory arrest & shock due to head injury.
15. Close scrutiny of the evidence available on record makes it clear that there is no legally admissible evidence on record connecting the accused/appellant with the crime in question. Though it has come in the evidence of Lacchuram (PW-2) that he saw the accused/appellant running away from the house of deceased but when the incident occurred, admittedly, it was dark and as per version of Lacchuram (PW-2) himself, there was no

light at or around the place occurrence. According to Shankar (PW-1) also, though he saw one person running away from the house of the deceased, but he could not identify him due to dark. It is thus clear that there was no light at or around the spot in order to enable Lacchuram (PW-2) to have a full view of the assailant. If there was no light to identify the assailant at the spot, how could Lacchuram (PW-2) say that the appellant was the assailant who committed murder of the deceased. Moreover, Lacchuram (PW-2) did not disclose this fact either in the FIR or in his statement under Section 161 and such allegation has been made for the first time while making statement before the Court during trial. Therefore, such version of Lacchuram (PW-2) lacks credence and is liable to be discarded.

16. Another circumstance against the accused/appellant is alleged extra judicial confession made by him. The prosecution had examined Samluram (PW-3) & Mangalram (PW-6) to prove the extra judicial confession. Out of these two, PW-3 turned hostile and PW-6 has stated that in the presence of the police the accused/appellant admitted that he had killed the deceased. It is settled position that if the confession was made in the presence of the police, then such a confession is hit by Section 25 & 26 of the Indian Evidence Act. Therefore, such a confession, in our considered opinion, is devoid of any legal merit nor the same can be acted upon.

17. That apart, the prosecution also failed to prove that the hammer which was seized at the instance of accused/appellant was used in commission of crime because the charge sheet has been filed without securing report from the FSL. In these circumstances, we have no hesitation in saying that the prosecution has utterly failed to discharge the burden lies on it of establishing a close link between discovery of material object and its use

in the commission of offence by accused/appellant.

18. For the foregoing reasons, the appeal is allowed. Conviction and sentence of appellant under Section 302 IPC are hereby set aside and he is acquitted of that charge. Appellant is reported to be on bail. His bail bonds stand discharged.

Sd/-
(P. Diwaker)
Judge

Sd/-
(RP Sharma)
Judge

roshan/-