

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 5-7-2017

Judgment delivered on 17-7-2017

Criminal Appeal No. 413 of 2012

- Ramsai Chandra s/o. Hariram Chandra, aged about 55 years, r/o. village Aamgaon, Police Station Jaijaipur, District Janjgir Champa (CG).

---- Appellant

Versus

- State of Chhattisgarh, Through Police Station – Jaijaipur, District Janjgir Champa (CG).

---- Respondent

For Appellant	:	Mr. Yogeshwar Sharma, Advocate.
For Respondent/State	:	Ms. Smita Ghai, Panel Lawyer.

**Coram: Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Ram Prasanna Sharma**

CAV JUDGMENT

Per Ram Prasanna Sharma, J.

1. This appeal has been preferred against the judgment of conviction and order of sentence dated 29-2-2012 passed by the Additional Sessions Judge, Sakti, District Jaingir Champa (CG), in Sessions Trial No. 179 of 2010 convicting the accused/appellant under Sections 302 of the IPC and sentencing him to undergo imprisonment for life and to pay fine of Rs. 5000/-, with default stipulation.
2. As per the prosecution case, the deceased Ganpat Yadav is a resident of village Karibhawar. Both appellant and deceased had adjacent land near Sarhadi Khar and there was a dispute between

them about boundary of the land. On the date of incident i.e. on 17-8-2010 when both the appellant and deceased were working in their fields, at about 11.00 a.m., the appellant inflicted injuries on the head and various parts of the body of the deceased by means of Kudali (axe) and caused his death. After the incident the appellant informed about the incident to Devlal Sahu, his wife Dhan Bai and his daughter Sukrita Sahu. Thereafter, the appellant himself went to Police Station Jaijaipur and reported the incident which is recorded in Rojnamchasana (Ex/P/16). First Information report was lodged by the son of the deceased Bahadur Lal Yadav as per Ex.P/15.

3. Autopsy of the deceased Ganpat Yadav was conducted on 17-8-2010 vide Ex.P/12 by Dr. S.I. Nirala (PW/8), who noticed lacerated wound over right side of fore-head measuring 1"x1"x1/2", crushed injury on frontal region measuring 11" x 6" x 8, crushed injury over left ear measuring 6" x 1/2"x 1/2" and lacerated wound over left shoulder measuring 2" x 1/3" x 1/4" and brain matter came out from his skull due to fracture of his skull bone and all injuries are ante-mortem in nature. He opined that cause of death was shock due to excessive haemorrhage due to head injury and death of the deceased was homicidal in nature. Thereafter, authorities investigated the matter. Certain properties were seized on the basis of discovery statement of the appellant and after completion of investigation charge-sheet was filed against the appellant under Section 302 of the IPC followed by framing of charge by the trial Court accordingly.

4. In order to prove the complicity of the accused/appellant in commission of crime in question, the prosecution has examined 13 witnesses in support of its case. Statement of the accused/appellant has also been recorded under Section 313 of the Code of Criminal Procedure in which he denied the allegations made against him and pleaded his innocence and false implication in the case.
5. 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 accused/appellant as mentioned above.
6. Learned counsel appearing for the accused/appellant submits as under:
 - (i) That the prosecution has failed to prove the ingredients of Section 302 of the IPC and the case comes under exception of Section 300 of the IPC;
 7. (ii) That the material available on the record of the trial Court is not sufficient to hold the appellant guilty for the said offence;
 - (iii) That the judgment of the trial Court is not in the fitness of factual matrix and legal aspect of the matter; and
 - (iv) That the confession made by the appellant is not admissible and the same cannot be made basis for conviction.

In support of his arguments, he has placed reliance on the judgments of Hon'ble Apex Court of India and the High court of

CG in the matters of **Aghnoo Nagesia Vs. State of Bihar¹, Ghapoo Yadav and others vs. State of MP², Litta Singh and another vs. State of Rajsthan³ Balu Sombo Sinda vs. State of Maharashtra⁴, Dilip Kumar Mandal and another vs. State of Paschim Bengal⁵, Gaukaran and another vs. State of CG⁶ and Mithilesh vs. State of MP.⁷**

8. *Per contra*, learned State counsel supporting the impugned judgment has submitted that the impugned judgment is strictly in accordance with law and there is no illegality or infirmity in it warranting any interference by this Court.
9. We have heard counsel for the parties and perused the material on record.
10. PW/7 Devlal Sahu has stated in his deposition that he was working in his field at village Aamgaon with his wife Dhan Bai (PW/4) and his daughter Ku. Sukrita Sahu (PW/5). The field of the appellant is near to his field and the field of the deceased Ganpat Yadav is also near to his field. He has further stated that he had seen the appellant going towards his field with Kudali (axe), after some time he had seen the deceased Ganpat Yadav going to his field and thereafter heard some dispute between the deceased and the appellant. After half an hour, the appellant returned from his field

¹ AIR 1966 SC 119

² 2003 (2) CCSC 642 (SC)

³ 2013 (3) CCSC 1642 (SC)

⁴ 2003(1) CCSC 18 (SC)

⁵ 2015(1) CCSC 207 (SC)

⁶ 2003 (1) CGLJ 337

⁷ 2008 (II) MPWN 22

and told him that he had committed murder of Ganpat Yadav and was going to Police Station. The statement of this witness is duly supported by the statements of Ku. Sukrita Sahu (PW/5) and Dhanbai (PW/4) to whom the appellant told that he had killed the deceased and was going to Police Station. Version of these witnesses is supported by PW/13 S.K. Pathak, Sub Inspector that it is the appellant who reported the incident in Police Station Jaijaipur on 17-8-2010 at about 12.40 p.m., and the same is recorded in Rojnamchasana vide Ex.P/16. As per the version of Dharamu (PW/2), Kirtan Das Mahant (PW/11) and Sub Inspector S.K. Pathak (PW/13), Kudali (axe) was seized from the appellant on the basis of his discovery statement.

11. PW/8 Dr. S.L. Nirala conducted post-mortem on the body of the deceased Ganpat Yadav on 17-8-2010 i.e., on the date of incident vide Ex.P/12 and noticed lacerated wound over right side of forehead measuring 1"x1"x1/2", crushed injury on frontal region measuring 11" x 6" x 8, crushed injury over left ear measuring 6" x 1/2"x 1/2" and lacerated wound over left shoulder measuring 2" x 1/3" x 1/4" and brain matter came out from his skull due to fracture of his skull bone and all injuries are ante-mortem in nature. He opined that cause of death was shock due to excessive haemorrhage due to head injury and death was homicidal in nature.
12. We have undertaken an arduous exercise of going through the entire material collected by the prosecution as also the evidence of the witnesses while deciding the fate of this appeal. It is clear

from the evidence of three witnesses of extra judicial confession that the same is made voluntarily just after incident being not obtained by coercion, inducement or promise of favour. No suggestion was made to these three witnesses that the confession was tainted and non-voluntary. It is made before three persons who have no reason to state falsely and it is not open to the court trying the criminal case to start with a presumption that extra-judicial confession is always a weak type of evidence. An unambiguous extra-judicial confession possesses high probative value as it emanates from the person who committed the crime and is admissible in evidence provided it is free from suspicion and suggestion of any falsity. Confession was made to the persons who were present close to the spot and the same is made just after the incident and is not alleged to have been procured under any undue influence, coercion or pressure and the trial Court was right on basing its conviction upon such confession.

13. Learned counsel on defence side submits that it is a case of culpable homicide and falls under exception (I) and (iv) of Section 300 of the IPC. To dwell with issue, exceptions (I) & (iv) of Section 300 of the IPC may be read as under

“Exception 1:- When culpable homicide is not murder:-

Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

xxx xxx xxx

Exception 4:-

Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offenders having taken undue advantage or acted in a cruel or unusual manner”.

14. From the evidence on record, there is no scope to say that any grave and sudden provocation was caused by the deceased at the time of incident and when skull of the deceased is smashed by the appellant, resulting in coming out of the brain matter, it cannot be said that the appellant had not acted in a cruel manner. In the statement recorded under Section 313 of the Cr.P.C., the appellant did not explain any circumstances established against him and his defence is mere denial and same is merit-less and also smacks of his involvement in the brutal killing of the deceased.
15. Considering all the facts and circumstances of the case, we are of the considered opinion that the case laws cited by learned counsel for the appellant are distinguishable from the facts of the present case.
16. Thus in the aforesaid view of the matter this Court is of the considered opinion that the findings recorded by the Court below do not suffer from any legal flaw warranting inference in this appeal. Resultantly, the appeal being devoid of merit is liable to be dismissed and it is hereby dismissed as such with the affirmation of the judgment impugned. As the appellant is already

reported to be behind the bars, no further order for arrest etc is necessary.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(Ram Prasanna Sharma)
JUDGE

Raju