

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Appeal No. 943 of 2012**

Santram Agariya (Lohar) S/o Dhasdu Lohar, aged about 32 years,
Occupation Labour (Lohari) R/o Village Horroguda, Police Station Lailunga,
Distt Raigarh (CG) P.O. Lailunga PIN No.496 116

----Appellant**Versus**

State of Chhattisgarh, through Station House Officer, Police Station:
Gharghoda, District : Raigarh (CG) P.O. Gharghoda PIN No.496113

---- Respondent

For Appellant : Mr.Manoj Kumar Jaiswal, Advocate
For Respondent : Mr.Dhiraj Wankhede, G.A.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board by Pritinker Diwaker, J.**24/05/2017**

This appeal arises out of the impugned judgment and order dated 29.9.2012 passed by the Second Additional Sessions Judge, Raigarh in S.T.No.43/2011 convicting the accused/appellant under Section 302 of the IPC and sentencing him to undergo imprisonment for life with fine of Rs.2000/- plus default stipulation.

2. As per case of the prosecution, on 16.12.2010 the accused/appellant was celebrating local festival in his house and had invited his relatives including Sukh Sai (since deceased), cousin brother of the accused/appellant for food on the said occasion. It is stated that all of them had consumed liquor and at about 4 pm, deceased Sukh Sai started abusing his father and he also kicked him. Further case of the prosecution, when the accused/appellant entered into said dispute, the deceased also abused the appellant,

resultantly, the appellant picked up the wooden stick lying there and gave a solitary blow on the head of the deceased, as a result of which, he became unconscious. As the quarrel was between the relatives, parties thought not to lodge any report and the appellant agreed to bear the medical expenses of Sukh Sai. Sukh Sai was taken to local hospital from where he was referred to Government Hospital, Lailunga where he expired on 20.12.2010. No report was lodged by the injured or by any of the eyewitnesses regarding the incident dated 16.12.2010 till the deceased expired. After the death of the deceased, merg intimation Ex.P/4 was recorded on 21.12.2010 at about 6.30 pm at the instance of village Kotwar Itwar Sai (PW-3) and thereafter, FIR Ex.P/5 was lodged on 21.12.2010 at about 6.35 pm by him against the appellant under Section 302 of the IPC. Inquest on the dead body of the deceased was conducted on 22.2.2010 vide Ex.P/1. Dead body was sent for postmortem examination on the same day which was conducted by Dr. Rajkumar Gupta (PW-9) vide Ex.P/14 who noticed following two injuries:-

- (i) Lacerated wound of 3x2 cm over left parito oxypital region oblique blood clot like surrounding bony deep with depression. Margin irregular with healing.
- (ii) Contusion 2x3 cm over left arm.

According to him, cause of death was neurogenic shock as a result of lacerated wound with depressed fracture on left parito oxypital region. Death was homicidal in nature. After investigation, charge-sheet was filed against the accused/appellant under Section 302 of the IPC and accordingly charge was also framed by the Court below.

3. In order to establish the guilt of the accused/appellant, the prosecution has examined as many as ten witnesses. Statement of the accused/appellant was also recorded under Section 313 of the CrPC in which he denied the charges levelled against him and pleaded his innocence and false implication in the case. The accused/appellant has examined two defence witnesses in support of his case.

4. After hearing the parties, the trial Court by judgment impugned, has convicted and sentenced the accused/appellant as mentioned in paragraph 1 of the judgment. Hence, the present appeal.

5. Contention of counsel for the appellant is that the appellant has been convicted solely on the basis of so-called extra-judicial confession made by him before village Kotwar Itwar Sai (PW-3). It has been argued that extra-judicial confession is a weak piece of evidence and unless there is some corroboration, it will not be safe to convict the accused/appellant on that basis. Other piece of evidence against the appellant is seizure of club Ex.P/8, but there is no FSL or serological report and thus, the seizure loses its significance. It has further been argued that the incident occurred all of a sudden in a heat of passion on sudden provocation and thus, case of the appellant would fall under Exception 4 of Section 300 of the IPC and at best, he can be convicted under Section 304 Part-I or Part-II of the IPC. He submits that the appellant is in jail since 12.12.2010 and therefore after converting his conviction under Section 304 Part-I or Part-II of the IPC, he may be sentenced to the period already undergone by him.

6. On the other hand supporting the impugned judgment it has been argued by the State Counsel that conviction of the accused/appellant is strictly 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. Itwar Sai (PW-3) is village Kotwar, who lodged the FIR and merged intimation. He has stated that a year back when he was working as mason in the school along with his wife Sumitra and labour Sulochna Yadav, at about 5 pm the accused/appellant came to him and informed him that there was some quarrel between him and the deceased and in the said quarrel he gave a blow of club on the head of the deceased. He has further stated that the appellant also requested him to accompany him and to see the injured Sukh Sai. He has further stated that when he reached the house of the appellant, Sukh Sai was sitting there and there was injury on his head. He has further stated that thereafter injured Sukh Sai went back to his house and on the next day he was taken to hospital and then subsequently he came to know that Sukh Sai has expired in the hospital. He has admitted in his cross-examination that while making confession before him, the accused/appellant was under the influence of liquor. Likewise when he met the injured he too was under the influence of liquor. Surajbhan Bhagat (PW-1) and Bahadur Bhagat (PW-4) are the witnesses of inquest. Chaituram (PW-2), father of the deceased, Nehru Lohar (PW-6), Krupal Lohar (PW-7) and Purno Yadav (PW-8) have not supported the prosecution case and have been declared hostile. Sonuprasad Lohar (PW-5) is Patwari, who has prepared the spot map Ex.P/10. Dr.Rajkumar Gupta (PW-9) conducted postmortem examination on the body of the deceased. According to him, cause of death was neurogenic shock as a result of lacerated wound with depressed fracture on left parieto occipital region. Death was homicidal in nature. C.L. Sidar (PW-10) is the investigating officer, who has duly supported the prosecution case.

9. Defence witnesses have stated that the deceased sustained injuries when he fell down from bicycle after consuming liquor. Defence witness No.2 Yashoda Lohar has deposed that he was not having good relation with the accused/appellant. It is relevant to mention here that club Ex.P/8 has been seized at the instance of the accused/appellant, but there is no FSL or serological report.

10. A close scrutiny of the evidence makes it clear that there is absolutely no legally admissible evidence against the appellant showing his involvement in the commission of offence except extra judicial confession made by him before village Kotwar Itwar Sai (PW-3), but in cross-examination this witness has admitted that while making confession before him the accused/appellant was under the influence of liquor.

11. It is settled position of law that extra judicial confession is a weak piece of evidence and unless there is some corroboration, it will not be safe to convict the accused/appellant merely on that basis.

12. While dealing with the question of credibility of evidence of extra-judicial confession, the Supreme Court in the matter of **Mohd. Azad @ Samin Vs. State of West Bengal**¹ has held as under:-

“22. An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. The value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. It is not open to any court to start with a presumption that extra-judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession. Such a confession can be relied upon and conviction can be founded thereon if the evidence about

¹ 2009 AIR SCW 752

the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it. After subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, the extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility.”

13. Further, in the matter of **Baldev Singh Vs. State of Punjab**² it has been held by the Supreme Court that evidence of extra-judicial confession is generally of a weak nature. No conviction ordinarily can be based solely thereupon unless the same is corroborated in material particulars.

14. Thus, having examined the evidence of extra-judicial confession allegedly made by the accused/appellant before village Kotwar Itwar Sai (PW-3) on the touchstone of the principles of law laid down by the Supreme Court in the aforesaid judgments (supra), this Court finds it difficult to base the conviction of the accused/appellant on such confessional statement.

15. As regards the recovery of club at the instance of the appellant, since there is not even the FSL report, the said circumstance alone cannot be taken against the appellant to hold him guilty.

16. Thus, present is a case of no evidence. In the facts and circumstances of the case, we are of the opinion that the trial Court has erred in law in convicting and sentencing the accused/appellant under Section 302 of the IPC.

² 2009 AIR SCW 3730

17. In the result, the appeal is allowed. Conviction of the accused/appellant under Section 302 of the IPC is set aside and he is acquitted of the said charge. The appellant is reported to be in jail, he be released forthwith, if not required in any other case.

Sd/-

(Pritinker Diwaker)
Vacation Judge

Sd/-

(Sanjay K.Agrawal)
Vacation Judge

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