

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 900 of 2010

- Bimal Toppo, S/o Shri Rambihari Toppo, aged about 29 years, R/o Village-Pakardih, Police Station-Kusmi, Distt. Surguja (CG)

---- Appellant

Versus

- State Of Chhattisgarh, through Station House Officer, Police Station-Kusmi, Distt. Surguja (CG)

---- Respondent

For Appellant	:	Shri Arun Shukla, Advocate.
For Respondent/State	:	Shri Vaibhav Goverdhan, P.L.

Hon'ble Shri Pritinker Diwaker,
Hon'ble Shri Arvind Singh Chandel, JJ

Per P. Diwaker, J

03/11/2017

This appeal arises out of the judgment of conviction and order of sentence dated 23.11.2010 passed by the Sessions Judge, Surguja (Ambikapur) in ST No.220/2009 convicting the appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life and to pay a fine of Rs.2000/- with default stipulation.

02. As per prosecution case, deceased Rambihari was a drunkard and wanted to sell his land, which was not liked by his wife (DW-3 Jankibai) and his son i.e. appellant. Further case of the prosecution is that the appellant was residing with the deceased and his wife in a separate house whereas appellant's mother was residing in a separate about 200 meters away. On 18.4.2009 the appellant and the deceased

were in one house and it is said that on the said day the appellant caused about five injuries by a wooden plank on the head of the deceased resulting in his death. FIR (Ex.P/1) was lodged on 19.4.2009 at 12.45 pm by PW-1 Rampyari, uncle of the appellant under Section 302 of IPC against the appellant. Immediately thereafter at 12.55 pm merger intimation (Ex.P/2) was recorded at the instance of PW-1. Inquest over the dead body was prepared vide Ex.P/5 on 19.4.2009. The dead body was thereafter sent for postmortem which was conducted on 20.4.2009 by PW-5 Dr. T. Sai vide Ex.P/15 who noticed lacerated wound on right frontal region of scalp, bruises over left & right forearm and, back and on internal examination found fracture of frontal bone, rupture of brain membrane as also fracture of 5th to 8th ribs of left side. In his opinion, the cause of death was coma and external and internal hemorrhage due to injury on head thorax, and the death was homicidal in nature. On 20.4.2009 memorandum of the appellant was recorded vide Ex.P/9 pursuant to which a wooden plank was seized (Ex.P/10), which was subsequently found to be stained with blood as per FSL report Ex.P/22. However, there is no serological report. Further case of the prosecution is that the accused/appellant made extrajudicial confession before his uncle PW-1 Rampyari informing him that he has killed his father. After filing of charge sheet, the trial Court framed charge under Section 302 of IPC against the appellant.

03. So as to hold the accused/appellant guilty, the prosecution examined 7 witnesses in all. Statement of the accused was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded

innocence and false implication. In defence, he examined three witnesses.

04. 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 appellant as mentioned above.

05. Counsel for the appellant submits as under:

(i) that there is no eyewitness account to the incident and the appellant has been convicted solely on the basis of circumstantial evidence but its nature is not as such which can be made basis for his conviction.

(ii) that the witness of alleged extrajudicial confession PW-1 Rampyari is not reliable and he has falsely implicated the appellant.

(iii) even if the entire prosecution case is taken as it is, at best the appellant is liable to be convicted under Section 304 Part-I of IPC.

06. On the other hand, State counsel supporting the impugned judgment has submitted that the judgment impugned is strictly in accordance with law and there is no illegality or infirmity in it warranting any interference by this Court. He submits that present is a case of house murder where the appellant has committed murder of his father over land dispute and in his statement under Section 313 of CrPC he admitted the fact that he was residing separately with his father. He further submits that even FSL report is positive and no explanation has been offered by the appellant in his defence as to how blood was found on the article i.e. wooden plank seized at his instance.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-1 Rampyari, uncle of the appellant, is lodger of FIR and merged intimation. He has not supported the prosecution case so far as making of extrajudicial confession before him by the appellant is concerned. However, in para-13 he has stated that the deceased was not having any enmity with anyone in the village and on the date of incident, no guest had come to the house of the deceased. He has further stated that appellant is the only son of the deceased and that on the fateful day, mother and wife of the appellant were not present in the village. He has admitted the fact that on the fateful night, only the appellant and the deceased were present in the house in question.

09. PW-2 Dasmani Bai, wife of PW-1, has also stated that the appellant was residing with the deceased in one house. However, this witness was subsequently declared hostile. PW-3 Harishchandra is a witness to inquest (Ex.P/5), memorandum of the appellant (Ex.P/9) and the seizure (Ex.P/10). He has though admitted his signature on the documents but expressed ignorance about the contents thereof and as such, has been declared hostile. PW-4 Ramsai, a witness to inquest, has also turned hostile, though he has admitted the fact that the appellant and the deceased were living together in one house. PW-5 Dr. T.Sai conducted postmortem on the body of the deceased on 20.4.2009 and noticed lacerated wound on right frontal region of scalp, bruises over left & right forearm and, back and on internal examination found fracture of frontal bone, rupture of brain membrane as also fracture of 5th to 8th ribs of left side. In his opinion, the cause of death was coma and external and internal hemorrhage due to injury on head thorax, and the death was homicidal in nature. He had also examined

the weapon of offence i.e. wooden plank and opined that the injuries suffered by the deceased could be caused by the said weapon. He has specifically denied the suggestion that the injuries found on the body of the deceased could be caused due to fall. PW-6 Rajnath, witness to inquest, memorandum and seizure, though has been declared hostile but admitted his signature on the documents. PW-7 Ravindra Singh Maravi, investigating officer, has duly supported the prosecution case.

10. DW-1 Mangra is a person in whose house some programme was arranged on the date of incident. He has stated that wife of the deceased had come to his house. DW-2 Jhagar Ram has not stated anything specific in favour of the appellant. However, he too has admitted the fact that the appellant and the deceased were residing in one house. DW-3 Janki, wife of the deceased and mother of the appellant, has stated that she was living in a separate house about 200 meters away from the house where the appellant was residing with his father/deceased and his wife. She states that at about 4 am the appellant came to her and informed that something has happened to the deceased. She has further stated that the deceased was a drunkard and wanted to sell his land which was not liked by her and the appellant. She has further admitted the fact that on account of behaviour of the deceased, she and the appellant were disturbed. She has stated that it is on account of behaviour of the deceased that she started living in a separate house whereas the deceased was residing in a small house. She has also admitted the fact that after having food she slept in a separate house.

11. In his statement under Section 313 of Cr.P.C. the appellant has categorically admitted that at the relevant time he alone was living with the deceased in the house in question, he had informed PW-1 Rampyari about the death of the deceased; that his wife and mother were not present in the village at the time of incident and that the deceased was not having enmity with any of the villagers.

12. Admittedly, there is no direct evidence in this case and its a case of circumstantial evidence. It is well settled that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should be in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused. {See ***Sattatiya @ Satish Rajanna Kartalla Vs. State of Maharashtra, (2008) 3 SCC 210***}.

13. In the present case, it is not in dispute that the dead body was found inside the house where the appellant was also residing with the deceased. As per evidence on record adduced by the prosecution as also by the defence, it is not in dispute that on the date of incident and at the relevant time, only the deceased and the appellant were living in the house in question. The aforesaid fact has also been admitted by

the appellant in his statement under Section 313 of Cr.P.C. In such a case when an offence takes place inside the privacy of a house where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it is extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence is insisted upon. In such cases, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house can not get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on the accused to offer any explanation.

14. In the present case, as observed above, the appellant was the only inmate of the house in question and as such, he was under a legal obligation to offer explanation as to how and under what circumstances his father suffered such injuries and succumbed to be same. However, no such explanation is there and rather the appellant has admitted his presence in the house.

15. It is a settled principle of law that in case the statement of the accused under Section 313 CrPC consists of inculpatory part

accompanied by the exculpatory part, then two parts cannot be dissected or separated. Either the two parts have to be accepted as a whole or to be rejected. It is not permissible to rely upon the inculpatory part and ignore the exculpatory part. However, apart from the inculpatory and exculpatory parts, if there is an admission of the accused in his statement under Section 313 CrPC in relation to other facts and circumstances, they can be acted upon as his admission within the parameters of Section 58 of the Indian Evidence Act, 1872. To say in other words, that part of the statement of the accused under Section 313 can be taken note of which makes admission in respect of certain facts other than inculpatory part and exculpatory part. In case the contrary view is taken that the entire statement of the accused under Section 313 CrPC is to be ignored, then the very purpose of such statement beneath Section 313 would be nugatory and meaningless. (See ***Parsadi Vs. State of UP, 2004 CriLJ 104***)

16. In the matter of ***Smt. Rukshana Bee @ Durga Vs. State of CG, 2007 CriLJ 3668***, it has been held as under:

“12. ...But it cannot be said that the admissions made by the accused regarding incriminating circumstances appearing in evidence against him, that means inculpatory admissions, shall altogether be ignored. The Apex Court held in the matter of *State of UP Vs. Lakhmi, Manu/SC/0126/1998* that “the need of law for examining the accused with reference to incriminating circumstances appearing against him in prosecution evidence is not for observance of a ritual in a trial, nor is it a mere formality. It has a salutary purpose. It enables the Court to be apprised of what the indicated person has to say about the circumstances pitted against him by the prosecution.

Answers to the questions may sometimes be flat denial or outright repudiation of those circumstances. In certain cases accused would offer some explanations to incriminating circumstances. In very rare instances accused may even admit or own incriminating circumstances adduced against him perhaps for the purpose of adopting legally recognized defences. In all such cases, the Court gets the advantage of knowing his version about those aspects and it helps the Court to effectively appreciate and evaluate the evidence in the case. If an accused admits any incriminating circumstance appearing in evidence against him there is no warrant that those admissions should altogether be ignored merely on the ground that such admissions were advanced as a defence strategy.”

17. Here in this case, the deceased had a homicidal death, his body was found inside the house where admittedly the appellant was the only inmate, with lacerated wounds, bruises as also fracture of frontal bone, rupture of brain membrane and fracture of 5th to 8th ribs of left side and the cause of death was coma and external and internal hemorrhage due to injury on head thorax. It has also come in the un rebutted evidence of the witnesses that the appellant did not like the behaviour/conduct of the deceased as he (deceased) wanted to sell his land and that the deceased had no enmity with any of the villagers. In the facts and circumstances of the case, dispute between the appellant and the deceased over selling of land appears to be a motive with the appellant to commit the offence.

18. Thus, in light of the above principles of law, considering the overall facts and circumstances of the case, the admission of the appellant as to certain incriminating circumstances in his statement

under Section 313 of CrPC, the motive attributed to him coupled with medical evidence, we are of the opinion that the findings of guilt recorded by the trial court are based on proper appreciation of the evidence calling for no interference by this Court.

In the given facts and circumstances of the case, the nature and extent of injuries caused to the deceased, we are unable to accept the argument of counsel for the appellant that while inflicting such injuries the appellant was having only intention to cause bodily injury and not having the knowledge of it being resulted in his death, making him liable to be convicted only under Section 304 Part-I of IPC. The appellant has rightly been convicted and sentenced under Section 302 of IPC by the trial Court.

19. In the result, the appeal fails and is, accordingly, dismissed. The appellant is reported to be on bail, therefore, his bail bonds stand cancelled and he is directed to be taken into custody forthwith to serve out the remaining part of the sentence.

Sd/

(Pritinker Diwaker)
Judge

Sd/

(Arvind Singh Chandel)
Judge