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HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 402 of 2005**

(Arising out of judgment/order dated 28.03.2005 in Case No.03/2005 of the learned 5th Additional Sessions Judge, Bilaspur)

- Jhulchand Dubey S/o Umed Prasad Dubey, aged about 44 year, resident of village Paraghat, P.S. Masturi District Bilaspur (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh, Through : The Station House Officer, Police Station Masturi, District Bilaspur

---- Respondent

For Appellant.	:	Ms. Nirupama Bajpayi, Advocate.
For Respondent.	:	Shri Vaibhav Goverdhan, P.L.

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

Judgment On Board**By Pritinker Diwaker, J****24/08/2017**

This appeal arises out of the judgment of conviction and order of sentence dated 28.03.2005 passed by 5th Additional Sessions Judge, Bilaspur, in S.T. No.03/2005 convicting the accused/appellant under Sections 302, 201, 182 and 211 IPC & sentencing him to undergo imprisonment for life with fine of Rs.1000/-, R.I. for two years with fine of Rs.200/-, R.I. for three months and R.I. for two years with fine of Rs.200/- respectively, plus default stipulations.

02. In the present case name of the deceased is Lalita Bai, mother of the appellant. At the time of her death she was

aged about 87 years. As per the prosecution case, the appellant was a man of notorious mind-set and used to create nuisance and quarrel with people after consuming liquor. He also used to threaten the people for implicating them in some false case. Just prior to the incident he was released on bail in a criminal case and it is said that on 28.07.2004 he caused injuries to his old ailing mother and a report was lodged by him before the police implicating number of villagers in the said case. The said report was entered in the rojnamcha sanha (un-exhibited). The deceased was shifted to hospital at Bilaspur on 28.07.2004 where she was medically examined by Dr. A.R. Banjare (PW/5) vide Ex.P/2 and found contusion of 4" x 2" over right mandible region and lacerated wound of 1 cm x 1/2 cm x 1/4 cm over middle of lip. In the meanwhile, an information was sent to brother of the appellant namely Rupchandra Dubey (PW/6) about the physical condition of deceased Lalita Bai who immediately returned to the village and after meeting with the villagers lodged a written report Ex.P/5 on 29.07.2004 informing the police that it is the appellant who had caused injuries to the deceased and had falsely implicated the villagers in case of marpeet to her mother. During treatment, deceased expired in the hospital on 08.08.2004. Thereafter, unnumbered merg Ex.P/12 and numbered merg Ex.P/8 were recorded by the police. After merg inquiry, inquest on the body of deceased was prepared on 09.08.2004 vide Ex.P/9 and dead body was sent for

postmortem examination to CIMS, Bilaspur where Dr. G. Prabhakar Naidu (PW/14) conducted postmortem on the body of deceased on 09.08.2004 and gave his report Ex.P/15 opining the cause of death to be shock due to head injury (brain). After filing of the charge sheet, the trial Court framed charges under Sections 302, 201, 182 and 211 of IPC against the appellant.

03. So as to hold the accused/appellant guilty, the prosecution examined as many as 14 witnesses. Statement of the accused/appellant 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.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record has convicted and sentenced him as mentioned in para-1 of this judgment. Hence, this appeal.

05. Learned counsel for the appellant submits :-

- (i) That present is a case of no evidence yet the appellant has been convicted in commission of crime.
- (ii) That so called witness to extra-judicial confession Madhav Sarkar (PW/1) has not fully supported the prosecution case and merely on his statement the appellant cannot be convicted.
- (iii) That most of the prosecution witnesses are hearsay witnesses to whom the incident was informed by Madhav

Sarkar (PW/1) and, therefore, their evidence are not admissible in the eye of law.

06. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State that the conviction of the accused/appellant is strictly in accordance with law and there is no infirmity in the same.

07. We have heard learned counsel for the parties and perused the material available on record.

08. Madhav Sarkar (PW/1) is the village Doctor. Initially, this witness was examined as witness to extra-judicial confession, however, he has not supported the prosecution case. He has stated that the appellant was residing within his vicinity. On the date of incident, the appellant came to him in drunken condition and informed that his family members were having vengeance and, therefore, he wanted them to punish. He has further stated that after about 2-3 hours he again came to his house and informed that his mother is not well, thereafter, he went to appellant's house and saw his old mother lying on the bed, blood was coming out from her mouth. On being asked as to how his mother suffered injuries, the appellant did not say anything. This witness has also stated that considering serious condition of the deceased, he thought it not to treat her and then in the evening the deceased was taken to hospital by the police. At this stage, this witness has been declared hostile.

09. Makhanlal Kenwat (PW/2) and Ram Pratap Dubey (PW/12)

are the hearsay witnesses. Vikku Yadav (PW/3), Santosh Dubey (PW/7) and Anil Dubey (PW/10) are the witnesses who were threatened by the appellant for falsely implicating them and in fact the report was lodged by the appellant against them. Dr. A.R. Banjare (PW/5) did MLC of the deceased vide Ex.P/2 and noticed contusion in the size of 4 x 2 over right mandible region and lacerated wound of 1 cm x 1/2 cm x 1/4 cm over middle of lower lip. Roopchand Dubey (PW/5) is the brother of deceased who lodged written report Ex.P/5, has not stated anything specific against the appellant. Dr. V.K. Khetrapal (PW/11) initially treated the deceased in the CIMS Hospital and did C.T. Scan also.

10. Dr. G. Prabhakar Naidu (PW/14) conducted the postmortem on the body of deceased vide Ex.P/15 and found following injuries/symptoms:-

- (i) Blood clot over right occipital parietal region.
- (ii) Nodules was seen in liver and shrunk.

The autopsy surgeon opined that the cause of death was shock due to head injury.

11. Close scrutiny of the evidence makes it clear that there is no legally admissible evidence showing involvement of the appellant in commission of murder of his mother. In the present case, initially Dr. Madhav Sarkar (PW/1) was a witness to so called extra-judicial confession made by the appellant but in his statement recorded under Section 161 Cr.P.C., he has stated that the appellant had come to his house in drunken

condition holding iron rod in his hand and stated that he would kill his mother and falsely implicate his family members as they had sent him in jail. Contents of diary statement further goes to show that after some time appellant again came to house of PW/1 and stated that he (appellant) had done his work and requested him to check whether his mother is alive or dead. However, PW/1 in his Court statement has not specifically stated that it is the appellant who made extra-judicial confession before him that he had killed his mother, rather he has stated that appellant had come to him and said that he wanted to punish his family members. This witness has not supported the prosecution case and has been declared hostile. Furthermore, PW/2, PW/4, PW/6 and PW/12 have stated that they have been informed by PW/1 about the act of the appellant. Since, PW/1 has not supported the prosecution case, there are material contradictions in his court evidence and diary statement, and this witness has subsequently been declared hostile by the prosecution, therefore, we have no reason to believe the statement of this witness. In addition to this, according to PW/1, appellant was holding iron rod in his hand but no recovery has been made by the prosecution to bring home guilt of the appellant beyond shadow of doubt. That apart, though PW/3 and PW/7 have stated that they have been threatened by the appellant for false implication in the case but they have not deposed against the appellant for commission of murder of deceased.

12. To sum up, this Court is of the considered opinion that the prosecution has not led enough evidence to prove the complicity of the accused in the crime in question and for that the benefit of doubt has to go to the accused. So also the Court below has fallen in a serious error in appreciating the evidence of the witnesses and in holding the accused guilty for murdering the deceased.

13. In view of what has been discussed above, the findings recorded by the Court below cannot be sustained in the eye of law and are liable to be set aside. The appeal is thus allowed, judgment impugned is set aside and the accused/appellant stands acquitted of the charges levelled against him by extending him benefit of doubt. As per record, bail granted to the appellant was cancelled vide order dated 12.07.2011. If the appellant is still in jail, he be set at liberty forthwith if not required in any other case.

14. Appeal is thus allowed.

Sd/-

(Pritinker Diwaker)
JUDGE

Sd/-

(Ram Prasanna Sharma)
JUDGE