NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 963 of 2012

(Arising out of judgment/order dated 16.08.2012 in Sessions Trial No.158/2011 of the learned Sessions Judge, North Bastar, Kanker)

- Sube Sinh Kawde S/o Chamru Ram Aged About 60 Years R/o Vill. Eragaon , Police Chauki - Kachche , P.S. Bhanupratappur, distt Kanker C.G.

---- Appellant

Versus

- State Of C.G. S/o Through - P.S. Bhanupratappur, Distt. North Bastar Kanker Cg.

---- Respondent

For Appellant	:	Shri B.M.Rao, Advocate
For Respondent/State	:	Shri Ashish Shukla, Government Advocate

Hon'ble Shri Gautam Bhaduri &
Hon'ble Shri Sanjay Agrawal, JJ

Judgment on Board

28.10.2017

Per Sanjay Agrawal, J.

1. This is the criminal appeal preferred by the appellant Sube Sinh under Section 374 (2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Cr.P.C.' in short) against the judgment of conviction and order of sentence dated 16.08.2012 passed by the learned Sessions Judge, North Bastar Kanker in Sessions Trial No. 158/2011 whereby the appellant has been convicted for an offence punishable under Section 302 of the Indian Penal Code (henceforth, 'the IPC') and sentenced to undergo rigorous imprisonment for life and fine amount of Rs.500/-. In default of payment of fine amount, he was required to undergo rigorous imprisonment for additional one

month.

2. The prosecution story, briefly stated, is that on 16.08.2011 at 09.10 am, the appellant Sube Sinh returned home after grazing cattle and when demanded food from his wife, the same was refused by her saying that food is not cooked. Upon hearing so, the accused got annoyed and asked her that why didn't you prepare food for him and shouted further that the money, which was earned by their children, was not given to him and instead used it often for drinking liquor and by shouting so, assaulted his wife by giving two blows on her head by axe and thus committed an offence punishable under Section 302 of the IPC.

3. Based upon the aforesaid incident, merg intimation (Ex.P.2) and then First Information Report (Ex.P.11) were lodged by his son Bhaiyalal (P.W.1) on 16.08.2011 while narrating the aforesaid story. Pursuant to the said information, the matter was investigated and an offence was registered against the appellant Sube Sinh under Section 302 of the IPC by the Station House Officer, Bhanupratappur and submitted its final report before the Judicial Magistrate First Class, Bhanupratappur, who in turn, committed the case for trial to the District and Sessions Judge, North Bastar, Kanker, vide order dated 08.11.2011.

4. On the basis of material contained in the charge-sheet, the learned trial Court has framed the charge against the appellant vide order dated 22.11.2011 for an offence punishable under Section 302 of the IPC.

5. The appellant has pleaded not guilty in connection with the charges

so framed and claimed to be tried. To prove the guilt of the accused Sube Sinh, the prosecution has examined as many as 10 witnesses while none was examined in defence by the appellant.

6. After considering the evidence of the prosecution witnesses, the trial Court, vide its impugned judgment, has convicted the appellant Sube Sinh with regard to the alleged crime punishable under Section 302 of the IPC and sentenced him as mentioned aforesaid in para 1.

7. Being aggrieved, the appellant has preferred this appeal under Section 374 (2) of the Cr.P.C. registered as Criminal Appeal No. 963/2012 by submitting, inter alia, that the judgment impugned as passed by the trial Court is perverse and illegal, inasmuch as, it did not appreciate the evidence in its proper perspective.

8. Shri B.M.Rao, learned counsel for the appellant submits that the findings of the trial Court convicting the appellant in relation to the offence under Section 302 of the IPC even in absence of the Forensic Science Laboratory report and corroboration of the statement of Bhaiyalal (P.W.1), before whom, the alleged extra judicial confession was made by his father (appellant Sube Sinh), cannot be held to be sustainable.

9. On the other hand, Shri Ashish Shukla, learned Government Advocate for the respondent / State submits that the impugned judgment has been passed with due and proper appreciation of the evidence of appellant's son Bhaiyalal and other witnesses while pointing out the circumstantial evidence at para 13 of the judgment and that by considering the evidence of extra judicial confession of the appellant Sube Sinh before his son himself. Therefore, there is

no infirmity in passing the judgment impugned while convicting the appellant with regard to the offence punishable under Section 302 of the IPC. He placed his reliance upon the decision rendered in the case of ***Narayan Singh and others*** vs. ***State of M.P.,*** reported in **(1985) 4 SCC 26.**

10. We have heard learned counsel for the parties and perused the entire record carefully.

11. Bhaiyalal, the son of appellant Sube Sinh, who has lodged the merg intimation (Ex.P.2) and F.I.R. (Ex.P.11), examined as P.W.1 and deposed at para 1 of his evidence that when he returned home at 12.00 noon, he saw dead body of his mother lying on the floor in a pool of blood and no one was there at that time. He states further that he went to his field but did not find his father, i.e., present appellant there in the field. He states further that upon asking about the incident, his father informed that he has killed his mother Ramshila Bai with an axe, but did not assign any reason for it. This witness, however, states at para 4 of his testimony that his father has not informed him that he has killed his mother and has informed him further that his mother might have died due to dash with the wall in a drunken condition. In view of such evidence, the statement of this witness cannot be relied upon with regard to the fact that any extra judicial confession, as held by the trial Court, was made by the appellant before him. Therefore, the statement of this witness in this regard cannot be relied upon and is hereby disbelieved.

12. Pertinently to be noted herein that while lodging merg intimation (Ex.P.2) and F.I.R. (Ex.P.11), this witness (P.W.1) has informed with regard to the alleged extra judicial confession of his father to his

brother Badev, Shivnath and other family members and also to the villagers, namely, Raisingh, Ramnath and Sade Singh etc. This fact was, however, not corroborated by the evidence of said Baldev (P.W.2), Ramnath (P.W.3) and Raisingh (P.W.4). Baldev (P.W.2) and Raisingh (P.W.4) have rather turned hostile though admitted this fact in their case diary statements (Ex.P.6 and Ex.P.10), respectively. However, that piece of evidence alone cannot be relied upon, particularly, when it was not in consonance with the statement of Bhaiyalal (P.W.1).

13. Ramnath, the Patel of the village, who was examined as P.W.3, stated at para 2 that the appellant Sube Sinh while coming to his house on 16.08.2011 has informed that he has killed his wife Ramshila Bai but stated at para 3 that despite asking the reasons for commission of crime, he did not disclose the same because he was in a drunken condition. This witness has, however, stated suo-moto in his cross-examination at para 6 that someone else has killed. Therefore, the statement of this witness cannot be relied upon.

14. P.W.7 Dr. Akhilesh Dhruv, who has conducted the post-mortem on the dead body of Ramshila, has found the following injuries:

    01. Lacerated wound of 6” x 3” x 3” at superior sagital suture (anteriorly)

    02. Lacerated wound of 3” x 3” x 2 1/2” at right parietal bone anteriorly.

    03. Lacerated wound of 5” x 2 1/2” x 1” just above right ear at cheek.

    04. Incised wound of 1 cm x ½ cm x ½ cm at right shoulder.

15. After examining the aforesaid injuries, it was opined by him that the

alleged injuries could be inflicted by a blunt and sharp weapon and death was opined to be due to shock owing to excessive bleeding and brain hemmorhage. He deposed further at para 3 after examining the weapon of offence (axe) that the alleged offence could be caused by it and stated further that the nature of blood, whether it is the human blood or not, as found on the alleged weapon, could be ascertained only on the basis of F.S.L. report and accordingly has suggested for its verification from Forensic Science Laboratory vide letter (Ex.P.17). Based on the said recommendation, the alleged seized weapon (axe) was sent for its examination on 19.09.2011 by the Superintendent of Police, District North Bastar, Kanker, but no report was submitted by the prosecution in order to establish the said fact that the blood found on the weapon of offence is “human blood”.

16. In view of the aforesaid evidence, it cannot be held that any extra judicial confession was made by the appellant Sube Sinh to his son Bhaiyalal so as to attribute him in connection with the alleged crime punishable under Section 302 of the IPC.

17. The contention of Shri Ashish Shukla based upon the decision rendered in **Narayan Singh and others** vs. **State of M.P.** (supra) that the extra judicial confession was made by the appellant Sube Sinh before his son Bhaiyalal (P.W.1) immediately after the occurrence of the said crime is noted to be rejected as the facts involved in the said decision is entirely on different footing. That is the case where one of the accused-persons had admitted before the two of the prosecution witnesses (P.W.5 & P.W.6) that he had murdered the deceased and this confession before these two witnesses was duly corroborated by the eye witness (P.W.11), who

was admittedly present at the time of the commission of crime. However, in the instant case, the statement of Bhaiyalal (P.W.1), in whose presence, the alleged confession was made by the appellant Sube Sinh, as alleged by the prosecution, cannot be held to be relied upon in view of the contradictory statements made by him at paras 2 & 4 of his evidence. The said statement of Bhaiyalal (P.W.1 is even otherwise could not be corroborated by other prosecution witnesses, as discussed in preceding paragraphs.

18. Consequently, the appeal is allowed. We hereby set aside the judgment of conviction and order of sentence dated 16.08.2012 passed by the Sessions Judge, North Bastar Kanker in Sessions Trial No.158/2011 convicting the appellant Sube Sinh, S/o Chamru Ram under Section 302 of the IPC. The appellant is hereby acquitted of the aforesaid charge. He shall be set at liberty forthwith, if not required in any other case.

Sd/-
(Gautam Bhaduri)
JUDGE

Sd/-
(Sanjay Agrawal)
JUDGE

Anjani