

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1020 of 2012

- Ekaadashiya S/o Chhintaram Satnami Aged About 65 Years R/o Mungadih Out Post Bhanwarpur , P.S. Basana ,distt. Mahasamund C.G.

---- Appellant

Versus

- State Of C.G. S/o Through - P.S. Basana ,distt. Mahasamund C.G.

---- Respondent

For Appellant	:	Smt. Usha Chandrakar, Advocate.
For Respondent	:	Shri Vaibhav Goverdhan, Panel Lawyer.

Hon'ble The Chief Justice
Hon'ble Shri Justice Pritinker Diwaker

Judgement

Per P. Diwaker, J

09/09/2017

1. This appeal has been filed against the judgment of conviction and order of sentence dated 15.3.2012 passed by the Sessions Judge, Mahasamund in S.T. No.64/11 convicting the accused/appellant under Section 302 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo R.I. for Life and fine of Rs.1,000/-, in default to undergo additional R.I. for 06 months.
2. In the present case name of deceased is Muritram Satnami, son of accused/appellant.
3. The prosecution story, in brief, is that on 9.7.2011 unnumbered FIR (Ex.P-1) was lodged by village Kotwar (PW-1) alleging in it that he received information that on account of some family problem, accused/appellant had chopped right leg of his son (deceased) as a result

of which he died. Immediately thereafter numbered FIR (Ex.P-15) was registered against the accused/appellant under Section 302 IPC. Inquest was made over the body of the deceased vide Ex.P-6. Body of the deceased was sent for post-mortem examination which was conducted by Dr. J.P. Pradhan (PW-6) vide Ex.P-7 and he noticed following injuries on the body of deceased:-

- Incised wound having multiple marks of injuries and the leg was amputated from thigh.
- Incised wound below and above 5 cm of the amputated wound.
- Incised wound on right knee of 9cm x 2mm x bone deep.

The doctor has opined that cause of death was cardio pulmonary arrest on account of circulatory failure due to incised wounds and amputation right leg and the death was homicidal in nature. On 10.7.2011 memorandum of accused/appellant was recorded vide Ex.P-2 and on the basis of disclosure statement of accused/appellant, one battleaxe was recovered from his house vide seizure memo of Ex.P-3.

4. On completion of investigation, charge sheet for the offence punishable under Section 302 IPC was filed against the accused/appellant and accordingly the charge was framed against him by the trial Court. The prosecution in order to bring home the charge levelled against the accused/ appellant examined 11 witnesses in all. Statement of accused/ appellant was recorded under Section 313 of Cr.P.C. in which he admitted to have chopped the leg of his son but without any intention to cause his death as he just wanted to make him handicap so he could not consume alcohol and trouble him and his family members.
5. After hearing the parties, the Court below has convicted & sentenced the accused/appellant in the manner as described above.
6. Counsel for accused/appellant submits that;-
 - the appellant had caused a single incised injury on the right leg of

the deceased and not on any vital part of his body. Absence of any injury caused on a vital part of body of deceased is indicative of the fact that the appellant had no intention to kill the deceased for which he had more than sufficient opportunity. Therefore, the case of the appellant is squarely covered under Exception 4 to Section 300 IPC and the trial Court has committed a mistake in convicting the appellant under Section 302 IPC.

- the appellant is already in jail for the last more than six years and therefore by altering his conviction, he may be sentenced to the period already undergone by him.

7. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of accused/appellant is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court.
8. We have heard counsel for the parties and perused the evidence available on record.
9. Darasram (PW-1) is the Kotwar at whose instance FIR (Ex.P-1) was registered. This witness has stated that on 9.7.2011 at about 1.00 - 2.00 in the afternoon the grandson of appellant came and informed him that right leg of deceased has been cut and detached from the body. Hearing this, he rushed to the house of accused/appellant and on reaching there he found the deceased lying dead. He asked accused/appellant as to what had happened and the accused replied that as the deceased used to trouble him after consuming liquor, therefore, he has cut one of his legs. He is also a witness to memorandum statement (Ex.P-2) and seizure memos of Ex.P-3 & P-4.
10. Meena Bai (PW-2), wife of the deceased, did not support the prosecution case and turned hostile.

11. Chaindas (PW-3) is another witness before whom the accused/appellant confessed to have cut the leg of his son (deceased). This witness has stated that only injury on the leg of the deceased was present.
12. Manoj Kumar Lahare (PW-4) is the witness of inquest (Ex.P-6). Teerath Ram Baghel (PW-5) is the witness of memorandum (Ex.P-2) and seizure memo (Ex.P-3). He has duly supported the prosecution case.
13. Dr. Jaiprakash Pradhan (PW-6) is the doctor who performed autopsy on the body of deceased and noticed the injuries as described above. This witness has opined that cause of death was cardio pulmonary arrest due to circulatory failure on account of incised wounds and amputation of right leg from thigh and the death was homicidal in nature. The query- whether the injuries present on the body of deceased could be caused by the battle axe produced before him for examination, has been answered by this witness in the affirmative vide Ex.P-8.
14. Daruram (PW-7) did not support the prosecution case and turned hostile. Kanhaiya Lal Bhoi (PW-8) is the Patwari who prepared spot vide Ex.P-11. Shyamlal Tandon (PW-9) is the investigating officer who has duly supported the prosecution case. M.K. Hota (PW-10) is the police person who helped in the investigation. Pooran Das (PW-11) is the Kotwar and also witness of inquest (Ex.P-6).
15. To connect the accused with the crime in question, there is no direct evidence available in the case and the prosecution case entirely hinges upon the evidence given by Kotwar Darasram (PW-1), regarding extra judicial confession alleged to have been made to him by the accused, and the circumstance of blood stained battleaxe having been discovered and seized at the instance of and from the possession of accused and also confessional statement of accused appearing in the examination under Section 313 of CrPC. Therefore, in turn the point for determination is as to

whether the said evidence is reliable and can be accepted for holding the accused/appellant guilty for committing the said murder.

16. The Apex Court in unequivocal terms held in catena of decisions that extra-judicial confession is a weak evidence by itself and it has to be examined by the Court with greater care and caution. It should be made voluntarily and should be truthful. It has been further held that it should inspire confidence. The Apex Court has further held that an extra-judicial confession attains greater credibility and evidentiary value if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence. It has been further held that if the basis of conviction is an extra-judicial confession then it should not suffer from any material discrepancies and inherent improbabilities.
17. To prove the evidence of confession made by accused/appellant, the prosecution has relied upon Darasram (PW-1) & Chaindas (PW-3). According to Darasram (PW-1), the grandson of accused/appellant came to him and informed that accused/appellant had killed his father (deceased). On this, he went to the house of accused/appellant and on being asked, the accused/appellant, in presence of villagers, admitted to have cut one leg of his son (deceased). Thereupon he took the accused/appellant to the police station and lodged FIR (Ex.P-1). Evidence of PW-1 gets corroboration from the statement of Chaindas (PW-3) who had also stated that accused/ appellant admitted that he had chopped the leg of the deceased. Whatever stated by accused/appellant to Darasram (PW-1) was also found correct when the police and others reached to the scene of occurrence. Accused/appellant further disclosed to this witness that he has committed the crime in question because the deceased used to trouble them after drinking liquor and this fact has not been disputed by the defence. The fact of disclosure that

accused/appellant assaulted the deceased with battleaxe was also found to be correct for the reason that the injuries sustained by the deceased on his leg were incised wounds and the query- whether the injuries present on the body of deceased could be caused by the battleaxe produced before him for examination, has been answered by the doctor (PW-6) in affirmative vide Ex.P-8. In the cross- examination nothing has come on record that the aforesaid witnesses had any reason to speak false against accused/appellant to implicate him in the offence like murder or that the confession which was made by accused/appellant before them, was not voluntary. For the aforesaid reasons, the confession was made by accused/ appellant before the aforesaid witnesses stands corroborated by the factual situation and medical evidence. In these circumstances, there is no reason to disbelieve the fact that the accused/appellant made a confessional statement that he had assaulted his son (deceased).

Darasram (PW-1) had also deposed that memorandum statement (Ex.P-2) of accused/appellant was recorded in his presence and pursuant to the information given by accused/appellant regarding battleaxe, weapon of offence, the same was seized in his presence from the possession of accused/appellant. It is true that this weapon was not sent for chemical or serological examination, but the same was examined by the autopsy surgeon and the blood stains were found on it. Thus, to some extent the recovery of weapon of offence and its examination by the doctor confirming presence of blood stains on it, support the correctness of confession made by accused/appellant before Darasram (PW-1) & Chaindas (PW-3)

That apart, the answers given by the accused during his examination under Section 313 Cr.P.C., in particular Answers No.6 & 57, fully corroborate the evidence of Darasram (PW-1) & Chaindas (PW-3)

wherein the accused/appellant confesses that he had cut the leg of his son. The Hon'ble Supreme Court has time and again held that the statement made in defence by accused under Section 313 CrPC can certainly be taken aid of to lend credence to the evidence led by the prosecution and if the accused confesses to the commission of offence with which he is charged, the Court may rely upon the confession and proceed to convict him.

Thus, from the evidence adduced by the prosecution the involvement of accused/appellant in the crime in question stands proved beyond doubt.

18. Now the question arises for consideration before this Court is whether act of accused/appellant amounts to murder or it falls within any of the Exceptions to Section 300 of the IPC?
19. It has come in the prosecution evidence that the deceased was a dipsomaniac and in the fit of intoxication he used to beat his parents & children and used to create nuisance in the village as well. The accused/appellant had taken a defence in his statement recorded under Section 313 CrPC that he had not assaulted his son with an intention to cause his death but behind doing so his only intention was to make him handicap by chopping his leg so that he cannot give trouble to him or his family members after consuming liquor. Evidence available on record also goes to show that though the deceased was armed with weapon like battleaxe but he did not use the same to cause injury on any vital part of the body of deceased and only chopped the leg of his son. Had it been the intention of accused/appellant to cause death of deceased, nothing could have prevented him from causing injuries on the vital parts like neck, head etc., of the body of deceased. It is thus apparent that the accused/appellant did not intent to cause the death of deceased.

However, in the given facts and circumstances of the case, it can be safely inferred that the appellant had the knowledge that the injuries which he is going to cause to the deceased may result in his death. The offence, in such a case, would, therefore, be only culpable homicide not amounting to murder as per Exception IV to Section 300 of IPC, which is punishable under Section 304 Part II of IPC. We, therefore, are of the opinion that the trial Court was not justified in convicting the appellant for the offence under Section 302 IPC. He could only be convicted for an offence punishable under Section 304 Part II of IPC.

20. Accordingly, the appeal is partly allowed. Conviction and sentence of accused/appellant under Section 302 IPC are hereby set aside. However, looking to his act and evidence on record, he stands convicted under Section 304 Part-II IPC and sentenced to the period already undergone by him. Accused/appellant is reported to be in jail. He be set at liberty forthwith if not required to be detained in connection with any other case.

Sd/-

(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-

(Pritinker Diwaker)
Judge

roshan/-