

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 342 of 2013

- Pitambar S/o Gurudayal Khairwar Aged About 45 Years, occupation Agriculture, R/o Village Lurgi, Ps Ramanujganj, Distt. Balrampur - Ramanujganj C.G.

---- Appellant

Versus

- State Of Chhattisgarh Through Police Station-Ramanujganj, Distt. Balrampur-Ramanujganj C.G.

---- Respondent

For Appellant	:	Shri RK Pali, Advocate.
For Respondent/State	:	Smt. Madhunisha Singh, Panel Lawyer.

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

Judgment On Board By Justice Pritinker Diwaker

20/09/2017

This appeal arises out of the judgment of conviction and order of sentence dated 9.1.2013 passed by the Additional Sessions Judge, Ramanujganj, Distt. Balrampur-Ramanujganj in ST No.311/2009 convicting the appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life and to pay a fine of Rs.500/- with default stipulation.

02. In the present case, name of the deceased is Shankar Khairwar, elder brother of the accused/appellant. It is said that on account of old land dispute on 18.4.2009 at about 6 pm the appellant committed murder of Shankar by causing him several injuries by axe and club.

Dead body of the deceased was found in the field of one Budhdhan Manjhi and after seeing the same, information was given to the family members of the deceased. On 19.4.2009 at 8.15 am merg intimation Ex.P/1 was registered at the instance of PW-1 Maheshwar, son of the deceased. Immediately thereafter at 8.20 FIR (Ex.P/2) was registered under Section 302 of IPC against the appellant at the instance of PW-1. Inquest over the dead body was conducted vide Ex.P/7 on 19.4.2009 and thereafter the body was sent for postmortem which was conducted on the same day by PW-10 Dr. AK Tirkey vide Ex.P/13 who noticed number of incised and lacerated wound on his body including fracture of frontal bone, mandibular bone and middle finger of right hand. In his opinion, the cause of death was coma and shock due to injury to vital organ brain and due to excessive hemorrhage and that the death was homicidal in nature. On the memorandum of the appellant recorded on 19.4.2009 vide Ex.P/8, club and axe were seized vide Ex.P/9 & P/10 respectively and as per FSL report (Ex.P/15) blood was found on these articles. However, there is no serologist report. 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 11 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.

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 two eyewitnesses PW-2 Lalsai and PW-3 Fatehchand are not reliable and therefore, their evidence cannot be taken into consideration for holding the appellant guilty.

(ii) that the witness of so-called extrajudicial confession PW-4 Judawan Singh is also not reliable and in fact, no such confession was made by the appellant before this witness.

(iii) though on the disclosure statement of the appellant, seizure of club and axe has been made and FSL report is also positive but in absence of any serologist report confirming the origin and group of the blood, the said circumstance is of no consequence.

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.

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

08. PW-2 Lalsai, eyewitness to the incident, has stated that on the relevant date he was grazing his goat along with PW-3 Fatehchand and at about 4 pm in the field of one Budhdhan they saw the appellant and the deceased grazing their goat and then saw the appellant causing injury to the deceased by a club. He states that when he returned from jungle he saw the family members of Shankar wailing. In cross-examination he has stated that though he and PW-3 Fatehchand

saw the appellant assaulting the deceased but they did not disclose this fact to any one, not even to their parents. Further, he has stated that he could not see as to whom the appellant was beating and also denied seeing the deceased grazing goat. He has also denied seeing the appellant going towards the place of occurrence near the deceased. However, he has further stated that it is incorrect to say that he has not seen the incident and is not a genuine witness.

09. Similar is the position with PW-3 Fatehchand, another eyewitness to the incident, who in examination-in-chief has categorically stated that he along with PW-2 while grazing their goat saw the appellant assaulting the deceased by club in the field of one Budhdhan, however, in cross-examination he is a bit shaky and has stated that he saw the incident from some distance and as it was uneven surface he could not see the incident properly. If his entire statement is seen as a whole, according to us he is a reliable witness.

10. PW-4 Judawan Singh is a witness before whom extrajudicial confession was made by the appellant. He has stated that he saw the appellant passing through his house shouting that he has done *Lunka Dahan* and now he has to go to heaven. He is also a witness to inquest Ex.P/7, memorandum of the appellant Ex.P/8 and seizure of club and axe made in pursuance thereof (Ex.P/9 and P/10). He has duly supported the prosecution case on the point of memorandum and seizure.

11. PW-1 Maheshwar, son of the deceased, at whose instance FIR and merg intimation were recorded, is also a witness to inquest. He has stated that the appellant and his father/deceased were not on

talking terms. He has stated that there was old land dispute between the appellant and his father/deceased. PW-5 Ramlal Singh, Sarpanch, is a witness to inquest Ex.P/7, memorandum (Ex.P/8) and seizure (Ex.P/9 & P/10). Though in cross-examination he has pleaded ignorance about the contents of the memorandum, but admitted seizure and his signature on the said documents. PW-6 Satyanarayan Singh is a witness to inquest and seizure of plain and bloodstained soil from the spot (Ex.P/12). PW-8 Krishna Kumar Singh, Patwari, prepared the spot map Ex.P/6. PW-11 PD Kujur, investigating officer, has duly supported the prosecution case. PW-10 Dr. S.K. Tirkey conducted postmortem on the body of the deceased on 19.4.2009 vide Ex.P/13 and noticed following injuries:

- (i) incised wound over mid of forehead, 3 x 2 cm and 3 x 1 cm parallel to each other bony deep,
- (ii) incised wound over right ear about 6 cm x 1 cm muscle deep,
- (iii) lacerated wound over left forehead, 6 x 2 cm bony deep,
- (iv) incised wound from lower lip to ear, 4 x 2 cm bony deep,
- (v) lacerated wound over right cheek, 1 cm bony deep,
- (vi) fracture of frontal bone,
- (vii) hematoma present on the parietal region,
- (viii) fracture of middle finger of right hand,
- (ix) fracture of mandibular bone.

In his opinion, the cause of death was coma and shock due to injury to vital organ brain and due to excessive hemorrhage and that the death was homicidal in nature. He had also examined the weapon of offence i.e. club and axe seized at the instance of the appellant and

in his opinion, the injuries suffered by the deceased could be caused by the said weapons.

12. On the memorandum of the appellant recorded 19.4.2009 vide Ex.P/8, club and axe were seized vide Ex.P/9 & P/10 respectively and as per FSL report (Ex.P/15) blood was found on these articles. However, there is no serologist report.

13. Close scrutiny of the evidence makes it clear that there was old land dispute between the appellant and his elder brother i.e. deceased Shankar Khairwar and in connection therewith some altercation took place between the two on 18.4.2009 and then the appellant inflicted injuries on Shankar by club and axe as a result of which Shankar died on the spot itself. The incident was witnessed by PW-2 Lalsai and PW-3 Fatehchand whose names also find place in the merg intimation (Ex.P/1) and FIR (Ex.P/2) lodged by PW-1 Maheshwar, son of the deceased. Though at some places PW-2 & PW-3 are shaky in their cross-examination but if their statements are seen as a whole, keeping in mind the background they belong to, that they are herdsmen and are rustic villagers, their evidence cannot be disbelieved *in toto*. What comes out from their statements which remains undisputed is that at the relevant point of time they were grazing their goat and saw both the appellant and the deceased in the field of one Budhdhan where dead body of deceased was found lying in the pool of blood. They have also stated unequivocally that they saw the appellant beating someone with club. According to medical evidence, the injuries suffered by the deceased could be caused by the club and axe seized at the instance of the appellant. Thus, taking into consideration all these things

together i.e. long standing land dispute between the appellant and the deceased, their presence in the field, the appellant beating someone with club and the medical evidence, it can safely be inferred that it is the appellant who assaulted the deceased by club and axe in the field of one Budhdhan and committed his murder.

14. Another piece of evidence against the appellant is the evidence of PW-4 Judawan Singh who on the fateful day saw the appellant passing through his house shouting that he has done *Lunka Dahan* and now he has to go to heaven. Though it cannot be construed to be an extrajudicial confession but in the present context, the utterance of those words by the appellant suggest that he after commission of murder of the deceased was considering his act to be a noble one and thus was ventilating his feelings in this manner.

15. This apart, memorandum of the appellant led to recovery of club and axe, which on chemical examination were found to be stained with blood as per FSL report. PW-4 Judawan Singh a witness to memorandum and seizure has duly supported the prosecution case in this regard. PW-5 Ramlal Singh, another witness to the memorandum and seizure has also proved seizure and admitted his signature on these documents. Though serologist report is not there on record, but the said circumstance attains significance in view of the above ocular, medical and other circumstantial evidence, as discussed above, coupled with the non-explanation of the appellant with regard to these incriminating circumstance in his statement under Section 313 of Cr.P.C. except bald denial of all.

16. For the reasons stated above, we are of the opinion that the prosecution has been able to prove guilt of the appellant on the basis of evidence adduced by it and as such, the findings of guilt recorded by the trial Court are just and proper, warranting no interference by this Court. Accordingly, the appeal being without any substance is liable to be dismissed and is dismissed as such. Appellant is reported to be already in jail, therefore, no further order regarding his arrest/surrender etc. is required.

Sd/

(Pritinker Diwaker)

Judge

Sd/

(R.P. Sharma)

Judge