

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 577 of 2013**

Luknu, S/o Nanku Korva, aged about 25 years, R/o village Lilauti, police station and post Rajpur, District Revenue and Civil Surguja, Chhattisgarh.

---- Appellant (in Jail)**Versus**

State of Chhattisgarh through Station House Officer, police station Rajpur, District Surguja, Chhattisgarh.

---- Respondent

For the Appellant	:	Shri U.R Koshaley, Advocate.
For the Respondent/ State	:	Shri Arun Sao, G.A.

Hon'ble Shri Justice Pritinker Diwaker**Hon'ble Shri Justice Rajendra Chandra Singh Samant****Judgment on Board by Pritinker Diwaker****04/11/2017**

1. This appeal has been preferred against the judgment of conviction and order of sentence dated 11.8.2011, passed by the Learned First Additional Sessions Judge, Ambikapur, Chhattisgarh, in Sessions Trial No. 276 of 2010, whereby and whereunder the Learned First Additional Sessions Judge has convicted the appellant under Sections 302 and 323 of the Indian Penal Code (for short 'the IPC') and sentenced him to undergo imprisonment for life and to pay fine of Rs.1,000/- and to undergo RI for 6 months with default stipulation, respectively.

2. As per the prosecution case, in the intervening night of 15th and 16th March, 2010 on account of trivial issue, the accused/ appellant committed murder of his father-in-law Sube by causing severe injuries on his vital parts by an axe. Unnumbered merg intimation and numbered merg intimation Ex. P/15 were recorded on 16.3.2010 at 4:00 pm and immediately thereafter, First Information Report Ex. P/5 was registered against the appellant under Sections 302 and 323 of the IPC. Inquest on the dead-body was conducted vide Ex. P/9 on 16.3.2010 and the body was sent for postmortem, which was conducted on 17.3.2010 by Dr. A. Kachhap (PW-9) vide Ex. P/3.

3. As per the postmortem report, following injuries were found on the body of the deceased:

1. Supine position. Swelled body. Distended abdomen going on decomposition. Blisters formed on the body and foul smell coming through the body.
2. Eyes closed and mouth slightly open.
3. Rigor mortis present both upper and lower limb.
4. Incised wound approximately 2 x ½ cm just back to left ear.
5. Abrasion (superficial) approximately 4 ½" x 3" upper and mid part of the chest.

As per the opinion of the Doctor, the cause of death was syncope due to excessive internal haemorrhage and due to rupture of vital organs; and the death was homicidal in nature. The period of death was within 36-48 hours till the postmortem examination.

4. On 18.3.2010, memorandum of the accused/ appellant was recorded vide Ex. P/2, based on which, Seizure Ex. P/6 was made and one blood-

stained axe and clothes were seized. As per FSL report Ex. P/18, blood was found on the axe. Further the case of the prosecution is that Smt. Belaso (PW-2) and Buddhe (PW-8) saw the accused/ appellant committing the murder of the deceased and after committing murder, he also made an extra-judicial confession before Sukara (PW-4) and Ruiya (PW-6).

5. After investigation, charge-sheet was filed against the accused/ appellant under Sections 302 and 323 of the IPC and accordingly charges were framed in which he denied the charges levelled against him and pleaded his innocence and false implication in the case.

6. In order to establish the guilt of the accused/ appellant, the prosecution examined as many as 16 witnesses. Statement of the accused/ appellant was recorded under Section 313 of the Cr.P.C.

7. After hearing both the parties, the trial Court by judgment impugned has convicted and sentenced the accused/ appellant as mentioned in paragraph 1 of the judgment. Hence, the present appeal.

8. Learned counsel for the appellant submits that the eyewitnesses, namely, Smt. Belaso (PW-2) and Buddhe (PW-8) are not reliable and their evidence cannot be relied upon to hold the accused/ appellant guilty as there are contradictions and omissions. Witnesses of extra-judicial confession, namely, Sukara (PW-4) and Ruiya (PW-6) are also not reliable and the evidence of extra-judicial confession is also a weak nature of evidence.

9. On the other hand, learned State counsel supported the order of

conviction and sentence. However, regarding nature of offence, it was submitted that there is no infirmity in this case.

10. Smt. Belaso (PW-2) is the wife of the appellant. She stated that on the date of incident, all her family members consumed country-made liquor and the accused/ appellant started beating her father. She stated that she is not aware about the cause of quarrel but when she returned, she saw the dead-body of her father lying in the courtyard. She also stated that when she enquired, the appellant informed her that he had killed the deceased. She has further stated that in the said incident, she too has sustained injuries which were caused by the appellant. After being declared hostile, this witness has stated that the accused/ appellant had not only beaten her but had also caused injuries to the deceased.

11. Buddhe (PW-8) has stated that he saw the accused/ appellant killing his son. In cross-examination, at one place he has stated that he did not see the appellant killing the deceased but he has also reiterated that he saw the accused/ appellant, who killed the deceased.

12. Sukara (PW-4), witness of extra-judicial confession, though being declared hostile, has categorically stated that the appellant made extra-judicial confession before him that he killed the deceased. Almost similar statement has been made by Ruiya (PW-6). On the memorandum of the accused/ appellant Ex. P/2, vide Ex.P/6 one blood-stained axe and clothes of the appellant were seized and as per FSL report, blood has been found on the seized axe.

13. Considering the entire evidence adduced by the prosecution, the guilt of the accused/appellant has been duly proved by the prosecution. Though there are minor contradictions in the statements of Smt. Belaso (PW-2) and Buddhhe (PW-8), but if their entire evidence is taken into consideration, it appears that they saw the accused/ appellant killing the deceased. The accused/ appellant has also made extra-judicial confession before Sukara (PW-4) and Ruiya (PW-6) and both these witnesses have also supported the prosecution case. Thus, overall appreciation of the evidence makes it clear that it is the accused/ appellant who killed the deceased and the trial Court was fully justified in convicting the accused/ appellant.

14. Thus, on the basis of the aforesaid discussion, there is no reason for us to interfere with the judgment of conviction and sentence passed by the learned First Additional Sessions Judge. Hence, the appeal filed by the appellant cannot be accepted. Consequently, the appeal is dismissed maintaining the conviction as well as the sentence imposed by the trial Court against the appellant. The Appellant is in jail and therefore, no further order is required.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(R.C.S. Samant)
Judge