

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 250 of 2014

- Dhoba @ Khoru Baiga, S/o Vishnu Baiga, Aged About 19 Years, R/o Village- Jamuntolapara, Ajwain Bah, PS Kukdur, Distt. Kabirdham C.G.

---- Appellant

Versus

- State of Chhattisgarh Through PS Kukdur, Distt. Kabirdham C.G.

---- Respondent

For Appellant	: Shri RN Mukherjee, Advocate
For Respondent/State	: Shri PK Bhaduri, Government Advocate

**Hon'ble Shri Justice Prashant Kumar Mishra &
Hon'ble Shri Justice Parth Prateem Sahu**

Judgment on Board by Prashant Kumar Mishra, J.

08.09.2018

1. The appellant would assail the impugned conviction and sentence whereby the trial Judge has sentenced him to undergo life imprisonment upon his conviction for committing murder of his father- Vishnu at about 5 pm on 19.09.2012.

2. The First Information Report (FIR) was lodged by PW-1 Mahu at about 17.35 hours on 20.09.2012 stating that during the previous night, accused came to his house and informed that since his father, deceased- Vishnu was raising quarrel in an inebriated condition and was trying to assault him, he had committed murder by inflicting injuries over his left mandible by means of a Tabbal. In course of investigation, memorandum statement of the appellant was recorded vide Ex.P/12 which led to recovery of Tabbal vide Ex.P/13. Post-mortem was conducted by PW-6 Dr BL Raj, who submitted his report vide Ex.P/8 finding one incised wound

over lateral angle of left mandible to the left lateral side of neck up to tissue muscles, bone deep of the size 10 x 4 x 7 cm; the cause of death was reported to be coma due to shock and haemorrhage caused by incised wound over neck and nature of death was homicidal.

3. In course of trial, prosecution examined PW-1 Mahu, PW-2 Puniyabai, PW-3 Titru, PW-4 Ghundu, PW-6 Dr BL Raj and PW-7 KC Gayin.

4. The trial Court has convicted the appellant mainly on the basis of extra judicial confession in form of statement made by the accused to his mother PW-2 Puniyabai as also to the informant, PW-1 Mahu, which finds support by medical evidence as stated by PW-6 Dr BL Raj.

5. Learned counsel for the appellant would submit that there being no eyewitness to the incident, the conviction is not well founded. He would submit that the witnesses have improved their version in the Court which has not been considered by the trial Court in true perspective.

6. Learned State counsel would support the impugned conviction and read the statement of PW-1 Mahu, PW-2 Puniyabai and PW-6 Dr BL Raj.

7. In the FIR itself, PW- 1 Mahu has informed the Police that it was the appellant who came to his house and stated that he has committed murder of his father. Similarly, PW- 2 Puniyabai, mother of appellant, has also stated that when she returned to her house at about 5 pm, she found the dead body of her husband lying in the courtyard and the appellant who was present in the house admitted to have committed murder of his father.

During cross-examination by the appellant, she again stated that it was the appellant who has committed murder of her husband- Vishnu.

8. PW-6 Dr BL Raj has conducted post-mortem and has found one injury over the neck of deceased- Vishnu. Thus, the statement by PW-1 Mahu and PW- 2 Puniyabai are duly corroborated by the medical evidence rendered by PW-6 Dr BL Raj. In view of this evidence, the trial Court has rightly found that the appellant has inflicted injuries over the neck of deceased.

9. The question to be considered is whether the act of causing injury over the person of deceased would amount of murder or it would fall under any of exceptions to Section 300 of IPC. We have considered the entire evidence to find out as to whether the appellant who has killed his father, had done so out of grave and sudden provocation without having any intention to commit murder but we are unable to find any such evidence which would bring the act of the appellant within any of the exceptions to Section 300 of IPC. Neither any witness nor the appellant himself in his examination under Section 313 Cr.P.C has tried to place on record any material to the effect that the incident happened because of grave and sudden provocation; in a fit of anger without any premeditation and it was not brutal or cruel. PW-2 Puniyabai has tried to depose that the deceased was trying to assault her by means of Tabbal, seeing which the appellant committed his murder but during cross-examination by the Public Prosecutor as also by the appellant's counsel, she has stated that when she returned to her house at 5 pm, her husband was already dead and that the appellant informed her that he has committed murder of the

deceased. Her case diary statement has not been exhibited. Thus, we are left with the evidence of PW-2 Puniyabai, who was the first in point of time to reach the place of occurrence and to whom the appellant stated about the incident but to this witness also the appellant has not stated that he committed murder because the deceased was trying to assault him therefore, he committed the murder.

10. The nature of injuries sustained by the deceased as mentioned in the post-mortem report would establish that the injury was on vital part of the body and the appellant was well aware that any injury by a sharp edged weapon over neck, which is vital part of body, would be fatal and yet he gave such intense blow to his father aged about 40 years that he died instantly. The appellant's act was thus, cruel. Had the appellant intended to cause injury and not death, he would have chosen a non-vital part of the body. However, the injury was caused over neck, therefore, considering from this angle also, the appellant's act would fall under Section 300 IPC. Thirdly, and not within any of the exception to Section 300 of IPC. The appellant has rightly been convicted for committing murder of the deceased. There is no scope for interference with the impugned judgment.

11. The appeal being bereft of any merit, is liable to be and is hereby dismissed.

Sd/-
Judge
(Prashant Kumar Mishra)

Sd/-
Judge
(Parth Prateem Sahu)