

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 462 of 2016

Reserve on : 30/07/2018

Delivered on : 06/09/2018

- Mukesh Nagesiya, S/o Amarjeet Nagesiya, aged about 23 years, Occupation: Agriculturist, R/o Village: Mutu, Police Station Jashpur, Tahsil & District Jashpur (C.G.)

---- Appellant

Versus

- State of Chhattisgarh, Through – Station House Officer, Police Station: Jashpur, District: Jashpur (C.G.)

---- Respondent

For Appellant : Shri Rajneesh Shrivastava, Advocate

For Respondent/State : Shri Anil Pillai, Deputy Advocate General

Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Shri Justice Gautam Chourdiya

C.A.V. Judgment

Per Gautam Chourdiya, J

1. This appeal arises out of the judgment of conviction and order of sentence dated 11.03.2008 passed by learned Sessions Judge, Jashpur, District Jashpur (C.G.) in Sessions Trial No. 68/2007, whereby, the appellant stands convicted and sentenced as under:-

<u>Conviction:</u>	<u>Sentences:</u>
Under Section 302 of the Indian Penal Code (hereinafter referred to as the 'IPC')	Rigorous imprisonment for life

2. In the present case, the name of deceased is Sukru Ram. Case of the prosecution, in brief, is that First Information Report (FIR – Ex.-P/5) was lodged on

04.03.2007 at about 09:30 AM by Sunil Kerketta (PW-6), in which, he stated that at about 7:00 AM information was received by Paaras that yesterday i.e. 03.03.2007 at about 5:00 PM, accused/appellant- Mukesh Nagesiya has murdered his maternal grand-father (deceased) with the help of axe. On this information, he (PW-6) went along with Kaladayus, Sudhir and Junus to the house of the deceased and saw that the deceased lying dead on the ground in the mat where he used to sleep. The deceased sustained injuries on his forehead and nose and blood was oozing. Thereafter, he alongwith Sukhdeo and Simon went to police station to lodge the report.

3. The Investigating Officer left for the scene of occurrence and inquest was prepared under Ex.-P/2. *Nazri-naksha* and Panchnama were prepared by Patwari – Bhagwati Charan Tandon (PW-5) under Ex.-P/3 and Ex.-P/4. Blood stained soil and plain soil were seized from the place of occurrence. The accused /appellant was arrested on 04.03.2007 and his memorandum (Ex.-P/11) was recorded on 04.03.2007. On the basis of memorandum (Ex.-P/11), an axe was seized at the instance of the appellant under Ex.-P/12. Full-pant and T-shirt of the accused were seized under Ex.-P/13 in which blood stains were found. During investigation, 161 Cr.P.C. statements of PW-1 – Sukhdeo Ram, PW-7 – Kasturam and other villagers were recorded wherein they have stated that the accused/appellant has made extra-judicial confession that he has killed his maternal grand-father.

4. The dead body of the deceased was sent for postmortem examination to Government District Hospital, Jashpur under Ex.-P/9 and the postmortem examination was conducted by Dr. R.N. Kerketta (PW-10), who prepared his report Ex.-P/6. He noticed that there was lacerated wound over the left side of face extending to left eye, nose, maxilla and Tm joint; wound was depressed in nature; there was fracture of bone on the left side of orbito frontal extending to nasal bone, left maxillary bone, zygomatic bone; blood clots were present in the wound: injury was antemortem in nature in size about 10 cm x 10 cm and caused by hard and

blunt object. Doctor opined that the cause of death was excessive hemorrhagic shock due to bleeding over the left side of face at the level of left eye and death was homicidal in nature. The death had occurred within 22-24 hours.

5. After completion of the usual investigation, the charge-sheet was filed against the accused/appellant under Section 302 IPC and while framing the charge, the trial Judge framed the charge against the accused/appellant under Section 302 IPC.

6. So as to hold the accused/appellant guilty, the prosecution has examined as many as 11 witnesses. Statement of the accused/appellant was also recorded under Section 313 of the Criminal Code of Procedure, in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. There was no witness examined on behalf of the defence.

7. The trial Court after hearing counsel for the parties and considering the material available on record, by the impugned judgment convicted and sentenced the accused/appellant mentioned as para-1 of this judgment, hence this appeal.

8. Learned counsel for the appellant has not disputed the homicidal death of the deceased and argued that the conviction of the appellant is based on extra-judicial confession made before PW-1 – Sukhdeo Ram and PW-7 – Kasturam, but in their court evidence, there are major contradictions and omissions because they have changed their versions in examination-in-chief and cross-examination from time to time. He also argued that there is no clinching and legal evidence against the appellant. He further argued that extra-judicial confession is not reliable and no motive was proved by the prosecution and the judgment of trial Court is bad in-law. He submitted that the appellant is in jail for about more than 11 years and he is an innocent person and has been falsely implicated in this case.

9. On the other hand, learned Deputy Advocate General appearing on behalf of

the State opposed these arguments and supported the judgment of the trial Court. It has argued by the State counsel that the conviction of the accused/appellant is in accordance with law and there is no infirmity in the same.

10. We have heard the counsel for the respective parties and perused the evidence available on record.

11. PW-2 – Sudhir Beck and PW-8 – Suiya Ram are only stating about the murder of deceased-Sukru and they saw the body of the deceased and injury on the body of the deceased. After seeing the dead body of the deceased, Sunil Kerketta lodged the FIR (Ex.-P/5). *Nazri-naksha* (Ex.-P/3) and *Panchnama* (Ex.-P/4) were prepared by Patwari- Bhagwati Charan Tandon (PW-5). Dr. R.N. Kerketta (PW-10) conducted the autopsy of the dead body of the deceased and opined that the death of the deceased was homicidal in nature.

12. Prosecution case is based on extra-judicial confession made by the accused before PW- 1 -Sukhdeo Ram and PW-7 – Kasturam; memorandum of the accused (Ex.-P/11); seizure of the axe (Ex.-P/12), seizure of cloths (Ex.-P/13) and the postmortem report (Ex.-P/6).

13. PW-1 – Sukhdeo Ram is the hearsay witness. He stated that the villagers has informed him that the accused has killed deceased-Sukru and has not supported the prosecution case regarding extra-judicial confession made before this witness by the accused. Even PW-1 – Sukhdeo Ram also stated in his examination-in- chief that the incident was told to him by the village people that the accused has killed his maternal grand-father and later he told that this was not told by the village people. Therefore, his statement was also not trustworthy and reliable.

14. PW-2 – Sudhir also not supported the prosecution case and he has been declared hostile. PW-3 – Maneshwar Ram is the witness of inquest (Ex.-P/2). PW-

4 – Simon is a formal witness. PW-5 – Bhagwati Charan Tandon has prepared *Nazri-naksha* (Ex.-P/3) and *Panchnama* (Ex.-P/4).

15. PW-6 – Sunil Kerketta lodged the FIR (Ex.-P/5). He stated that on the date of incident, he was taking meal. On that date Paaras came and said that accused-Mukesh has killed his maternal grand-father. Then he went to the house of deceased and saw dead body of the deceased and also saw the injury on the forehead of the deceased. Thereafter, he went to the police station to lodge the report.

16. In the face of the evidence aforesaid, the question that falls for consideration is as to whether the conviction of the appellant is fit to be sustained only on the basis of the extra-judicial confession coupled with the recovery of weapon (axe) of crime at the instance of the appellant.

17. PW-7 – Kasturam is the only witness of extra-judicial confession. He stated, in para-2, that on the date of incident at about 8:00 PM, accused-Mukesh had come to his house and told that he (accused) has killed Sukru-deceased with the help of axe. But, in his cross-examination, in para-9, he admitted that this was not told by the accused that he (accused) has killed his maternal grand-father. Further, in para-12, he admitted that he was disturbed in telling, therefore, he said later that the accused did not tell me about the murder of his maternal grand-father. In para-13, he also admitted that he did not tell this to any person that the accused has killed his maternal grand-father.

18. On the basis of statement of PW-7 – Kasturam, it was very unsafe to hold that extra-judicial confession was made by the accused/appellant before this witness because in examination-in-chief, he (PW-7) stated, in para-9, that the accused had come to his (PW-7) house and told that he (accused) has killed the deceased with the help of axe and in-cross-examination, in para-12, he admitted that the accused did not tell me about murder of the deceased and also in para-13,

he (PW-7) admitted that he did not tell any person that the accused has killed the deceased. In these circumstances, this witness (PW-7) is not trustworthy and reliable witness because his statement is shaky and not consistent.

19. In **Podyami Sukadu Vs. State of Madhya Pradesh (Now Chhattisgarh), (2010) 12 SCC 142**, the Apex Court held that “the evidentiary value of extra-judicial confession depends upon trustworthiness of the witness before whom confession is made. Law does not contemplate that the evidence of an extra-judicial confession should in all cases be corroborated. It is not an inflexible rule that in no case conviction can be based solely on extra-judicial confession. It is basically in the realm of appreciation of evidence and a question of fact to be decided in the facts and circumstances of each case”.

20. Evidence about extra-judicial confession is considered in the nature of things as a weak piece of evidence. Even in cases where extra-judicial confession is established by cogent evidence in the exact words used by the accused, it is thought that prudence and justice demand that such evidence cannot be made the sole ground of conviction and it could be used only as a corroborative piece of evidence. In a case like the present one where extra-judicial confession is said to have been made by the accused to a person in whom the accused had no occasion to repose confidence, the Court must be satisfied that such confession was voluntary, free from suspicion of falsity and finds due corroboration from other evidence, oral or documentary.

21. As per memorandum of the accused (Ex.-P/11), seizure of the axe (Ex.-P/12) and seizure of the cloths Ex.-P/13 of the accused/appellant were made before Phoolchand and Martin, but both the witnesses have not been examined by the prosecution. Therefore, no any conclusion can be drawn on the basis of Ex.-P/11, Ex.-P/12 and Ex.-P/13. Even if we take these documents as proved documents, then also, in absence of FSL or Serologist report, the said documents

lose their efficacy.

22. As stated earlier, though the extra-judicial confession is said to have been made by the appellant before PW-1 – Sukhdeo Ram and PW-7 – Kasturam but at one place both have stated that the accused has made extra-judicial confession before them that the accused had killed his maternal grand-father and at another place they stated that this was not told by the accused, this was told by the villagers. Every time they change their versions about extra-judicial confession made by the accused that he has killed the deceased. Thus, the evidence of both the prosecution witnesses is slippery and from their evidence, it is difficult to hold with certainty that any extra-judicial confession in fact was made by the appellant. This state of evidence leaves us in doubt and we are of the opinion that the witnesses of the extra-judicial confession do not inspire confidence and merely on the ground of recovery of weapon (axe) of crime at the instance of the appellant, it shall be unsafe to sustain the conviction of the appellant. Accordingly, we grant the appellant the benefit of doubt.

23. For the foregoing reasons, the appeal is allowed. The conviction and sentence awarded to the accused/appellant under Section 302 IPC, are set aside. The appellant is acquitted of the charge framed against him. It is stated that the appellant is in jail since 04.03.2007. He be set at liberty, forthwith, if not required in any other case.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Gautam Chourdiya)
Judge