

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 929 of 2013

- Ratnu Yadav S/o Sunderlal Yadav, aged about 43 years, R/o Village Farhada, PS Kharora, Distt. Raipur C.G. , Chhattisgarh

---- Appellant

Versus

- State Of Chhattisgarh Through SHO, PS Kharora, Distt. Raipur C.G. , Chhattisgarh

---- Respondent

For Appellant	:	Shri Jitendra Gupta, Advocate with Shri Ravi Bhagat, Advocate.
For Respondent	:	Shri Rahul Tamaskar, Panel Lawyer

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Sharad Kumar Gupta

Judgement

P. Diwaker, J

07/04/2018

1. This appeal has been filed against the judgment of conviction and order of sentence dated 9.7.2013 passed by the Additional Sessions Judge, Raipur, District Raipur in S.T. No.86/13 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 to pay a fine of Rs.500/-, in default to undergo additional R.I. for 03 months.
2. In the present case name of deceased is Smt. Hemwati Bai, step mother of accused/appellant.
3. The prosecution case in brief is that there was old land related dispute between accused/appellant & deceased and therefore the accused/appellant was keeping grudge against the deceased. On the date of incident i.e. 2.3.2013, after beating the deceased, the accused/appellant

caught hold the deceased by her hairs, dragged her upto the village pond, put her head inside the water and in this position made the deceased suffocated to death. Merg intimation (Ex.P-7) was recorded at the instance of PW-4 Dashru, brother of accused/appellant. Dehati Nalishi (Ex.P-8) was recorded on 3.3.2013. Inquest over the body of deceased was prepared vide Ex.P-2 in presence of witnesses. Body of deceased was sent for post-mortem examination which was conducted by Dr. Pankaj Kishore (PW-9) vide Ex.P-15 and he did not notice any external injury on the body of deceased. As per post mortem report (Ex.P-15), the death was due to asphyxia as a result of drowning however, in the post-mortem examination cause of death could not be ascertained, therefore, viscera was preserved for chemical examination and it was opined that final opinion regarding cause of death will be given after receipt of viscera chemical analysis report. On the basis of merg inquiry, offence under Section 302 of IPC was registered against the accused/appellant.

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 accused/appellants examined 10 witnesses in all. Statement of accused/appellant was recorded under Section 313 of Cr.P.C. in which he abjured his guilt and pleaded innocence & false implication.
5. After hearing the parties, the trial Court has convicted & sentenced the accused/appellant in the manner as described above.
6. Counsel for appellant submits that;-
 - there is no eyewitness to the occurrence and conviction of appellant is based on the circumstantial evidence but none of the circumstances from which inference of guilt of appellant could be drawn has been proved beyond doubt by the prosecution.

Therefore, there can be no inference that it was the appellant who committed the crime in question.

- Since Chaprasi (PW-5), who allegedly saw the appellant beating the deceased, is son-in-law of the deceased, therefore, he is a relative and interested witness and thus no reliance should have been placed on his statement by the learned trial Judge.
 - Sukhmani Bai (PW-1), before whom alleged extra-judicial confession was made by appellant, is not a reliable witness.
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. Sukhmani Bai (PW-1) is the village Kotwar. She has deposed that on the date of incident accused/appellant came to her and informed that his mother has expired and he has kept her body near the village pond. Hearing this, she along with accused/appellant went to the pond and saw body of deceased. Thereafter she along with Panch & Sarpanch had gone to the police station and lodged the report. At a stage the Special Public Prosecutor declared this witness as hostile and requested the Court to grant permission to cross-examine her. In the cross-examination this witness has admitted that on 2.3.13 at about 7 in the evening the accused/appellant came to her house and confessed to have killed his step mother (deceased) by putting her head into the pond thereby making her suffocate to death.
 10. Bisoha (PW-2) & Jagdish Chandrakar (PW-3) have not supported the prosecution case and as such declared hostile.
 11. Chaprasi (PW-5) is the uncle of accused/appellant. He has deposed that

on the date of incident the accused/appellant came to him and asked to go along with his wife and stay in his kitchen garden and said that he will settle the score today with the deceased by cutting her into pieces. He tried to make him understand. After return of the deceased from the market, the accused/appellant filthily abused her, whereupon the deceased said to him that everyday he used to quarrel with her and if he wanted to kill her, he can do so. Thereafter, accused/appellant knocked her down by catching her hairs. When Bisoha tried to intervene, he too was abused by accused/appellant. He has further stated that when the accused took his mother (deceased) near the pond, he went to call other villagers of the village and on his return, he was informed by some persons that Hemwati has expired. In the cross-examination this witness remained firm and nothing could be elicited by the defence which makes his testimony unreliable or untrustworthy.

12. Hemin Bai (PW-7), did not support the prosecution case and as such declared hostile. Nitin Singh Thakur (PW-7) is the Patwari who prepared the spot map of Ex.P-3. Satya Kumar Paikra (PW-8) is the police person who took the body of deceased to the Primary Health Centre, Kharora for post-mortem examination. Dr. Pankaj Kishore (PW-9) is the doctor who conducted post-mortem examination over the body of deceased and opined that death was due to asphyxia as a result of drowning. However, he has opined that final opinion regarding cause of death could be given only after receipt of result of viscera chemical analysis report. Narayan Otti (PW-10) is the investigating officer who has duly supported the prosecution case.
13. Close scrutiny of the evidence available on record makes it clear that it is the accused/appellant who committed the murder of deceased by putting her head into the pond and thereby made her suffocate to death. According to Chaprasi (PW-5), he saw accused/appellant taking the

deceased by catching her hairs towards village pond and after some time the deceased was found lying dead near the pond. According to Sukhmani Bai (PW-1) on 2.3.13 at about 7 in the evening the accused/appellant came to her house and confessed to have killed his step mother (deceased) by putting her head into the pond thereby making her suffocate to death. Medical evidence also shows that the deceased had died due to asphyxia as a result of drowning.

True it is that PW-1 before whom such extra-judicial confession was made did not support the prosecution and turned hostile. However, it is well settled that if some portion of the statement of a hostile witness inspires confidence, it can be relied upon and the witness cannot be termed as wholly unreliable. In the present case, version of PW-1 that accused/appellant had confessed before her that he had killed his mother by putting her head into the pond gets corroboration from the medical evidence, according to which, the death of deceased was due to asphyxia as a result of drowning. This apart, nothing could be brought on record by the defence to show that PW-1, who had deposed on extra-judicial confession, was biased or inimical to the accused or had a motive for attributing unstated self-incriminating assertions to the accused/appellant. In these circumstances, statement of Sukhmani (PW-1) to the effect that accused/appellant had confessed his guilt to her inspires confidence of this Court and the trial Court has rightly relied upon the same for convicting accused/appellant.

14. As regards the submission of counsel for appellant that Chaprasi (PW-5) being related to the deceased was an interested witness. Relationship is not a factor to affect the credibility of a witness. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of

relationship far from being a foundation is often a sure guarantee of truth. If there is no ill will or hostility a close relation would be the last person to screen the real culprits and falsely implicate an innocent person. No doubt, Chaprasi (PW-5) was a relative of the deceased, however, there is nothing on record to suggest that he had any enmity with accused/appellant before the occurrence or has got other motive or consideration for false implication of the appellant nor it is shown that the deceased had any prior enmity with accused/appellant to his knowledge. Thus the evidence of Chaprasi (PW-5) cannot be discarded merely on the ground that he is relative of the deceased.

15. That apart, it is well settled in law that when attention of the accused is drawn to the said circumstances that inculpated him in the crime and he fails to offer appropriate explanation or gives a false answer, the same can be counted as providing a missing link for building the chain of circumstances. In the case at hand, the circumstances which were adverse to accused/appellant were put to him, yet he chose not to give any explanation under Section 313 CrPC except choosing the mode of denial. Thus, it is also a circumstance that goes against him.”
16. For the foregoing reasons, we do not find any merit in this appeal, the same is liable to be dismissed and it is hereby dismissed. Since the accused/appellant is reported to be in jail, no direction regarding his surrender etc. is required.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Sharad Kumar Gupta)
Judge

roshan/-