

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.1220 of 2002

Judgment Reserved on : 2.5.2018

Judgment Delivered on : 31.7.2018

Thadeyus Minj, S/o Anjulus Minj, aged about 25 years, Caste Oraon, Occupation Farmer, R/o Village Harradiya, P.S. Sana, District Jashpur Nagar, Chhattisgarh

---- Appellant

versus

The State of Chhattisgarh through P.S. Sana, District Jashpur Nagar, Chhattisgarh

--- Respondent

For Appellant : Shri R.K. Jain, Advocate
For Respondent : Shri U.K.S. Chandel, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal is directed against the judgment dated 25.11.2002 passed by the 2nd Additional Sessions Judge (FTC), Jashpur Nagar in Sessions Trial No.128 of 2002 convicting and sentencing the Appellant as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 304 Part II of the Indian Penal Code	Rigorous Imprisonment for 5 years and fine of Rs.500/- with default stipulation

2. Facts of the case, in brief, are that deceased Anjulus Minj was father of the Appellant and husband of acquitted accused Teresa. The deceased had sold some of his lands and wanted to sell his other lands too. On account of this, a dispute had arisen between

him and his son (the Appellant) and his wife (acquitted accused). It is alleged that on 4.2.2002 at about 10:00 -11:00 p.m., with a common intention, the Appellant and his mother Teresa assaulted the deceased with a tangi and fists. First Information Report (Ex.P7) was lodged by Kotwar Baldeoram (PW1) on 5.2.2002. Initially, offence was registered under Section 307/34 of the Indian Penal Code. When even after medical treatment, the deceased did not get cured, he was brought back to his house and on 10.3.2002 he died. Morgue intimation (Ex.P1) was lodged by Kotwar Baldeoram (PW1) on 11.3.2002. On 11.3.2002 itself, post mortem examination on the dead body of the deceased was conducted by Dr. R.S. Paikara (PW7). His report is Ex.P16 in which he found that the deceased died of coma due to fracture of parietal bone (head injury) and the death was homicidal in nature. On the basis of memorandum (Ex.P5) of the Appellant, a tangi was seized from him vide Ex.P4. Vide Ex.P12A, the tangi was sent for examination by a doctor. Report of the doctor is on record, but the same is not exhibited. Later on, the tangi was sent to the Forensic Science Laboratory vide Ex.P13A for chemical examination. FSL Reports are Ex.P15 and P15A. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure. On completion of the investigation, a charge was filed against the Appellant and acquitted accused Teresa for offence punishable under Section 302/34 of the Indian Penal Code. Charge was framed against them under Section 302/34 of the Indian Penal Code.

3. To rope in the accused persons, the prosecution examined as many as 8 witnesses. Statements of the accused persons were

also recorded under Section 313 of the Code of Criminal Procedure in which they denied the guilt, pleaded innocence and false implication. No witness has been examined in their defence.

4. After trial, the Trial Court acquitted accused Teresa of the charge framed against her, but convicted and sentenced the Appellant as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant argued that though the case of the prosecution is based on extra judicial confession yet it was not duly proved. It was further argued that on the same set of evidence, accused Teresa, who is mother of the Appellant has been acquitted of the charge framed against her. Therefore, the present Appellant also deserves acquittal. It was submitted that the only evidence against the Appellant is that a tangi was seized from him on which blood stains were found. But, there is no serological report on record in this regard. Therefore, on the basis of mere recovery of a blood stained tangi from the Appellant, no conviction can be imposed upon him.
6. On the other hand, Learned Counsel appearing for the State supported the impugned judgment and submitted that this was a house murder and, therefore, the Appellant is the person who had to explain how his father (the deceased) sustained injuries inside the house. In addition to this, a tangi had also been seized from him on which blood stains were found. Therefore, he has rightly been convicted and sentenced by the Trial Court.
7. I have heard Learned Counsel appearing for the parties and

perused the record with due care.

8. Kotwar Baldeoram (PW1) has stated that from the villagers he came to know that Anjulus Minj (the deceased) was lying unconscious in the village. He went to the spot (house of Anjulus Minj) along with 2-4 villagers. There he saw that an injury was present over the parietal bone of Anjulus Minj. No family member of Anjulus Minj was present there. He has further stated that Jagmohan (PW3) told him that the Appellant and his mother Teresa had assaulted the deceased. In paragraph 1 of his cross-examination, he has stated that at that time Jhagru (not examined) was also with him. He has further stated that later on police officials had inquired from the Appellant. The Appellant had told them about having a tangi at his house. He had given the said tangi to the police officials from his house which was seized vide Ex.P4.
9. Manju (PW2) is daughter-in-law of the deceased. She has not supported the case of the prosecution. In her Court statement, she has stated that her father-in-law (the deceased) had sustained injuries on head and leg. She has further stated that she was living in the same house along with her in-laws and husband.
10. Jagmohan (PW3) has stated that he had come to know that a fight had taken place in the house of deceased Anjulus Minj. Next day, Jhagru (not examined) and Ramzan (PW4) had come to his house and told him that the Appellant had assaulted his father (the deceased).
11. Ramzan (PW4) has stated that in the morning at about 6:00

O'clock, he heard that the deceased was shouting "Aayo Aayo". He informed this to the Kotwar. He and the Kotwar went to the spot and saw that the deceased was lying there in injured condition. He has further stated that he did not know how the deceased sustained the injuries. This witness has been declared hostile. He has admitted that the Appellant had told him that a quarrel had taken place between the Appellant and his father (the deceased) in the matter of a land.

- 12.** Constable Baijnath (PW5) is the witness who had taken the dead body of the deceased for post mortem examination. Dr. R.S. Paikara (PW7) has stated that he had conducted post mortem examination on the dead body of the deceased on 13.3.2002 and given his report (Ex.P16) in which he found that the deceased died of coma due to fracture of parietal bone (head injury) and the death was homicidal in nature. Sub-Inspector Piyush Toppo (PW8) recorded numbered FIR (Ex.P17). Assistant Sub-Inspector T.R. Chouhan (PW6) is the Investigating Officer of the offence in question. He has stated that he recorded FIR (Ex.P7). He went to the spot and prepared spot-map (Ex.P8). He seized blood stained and plain soil from the spot vide Ex.P3. He has further stated that on 9.2.2002, he recorded memorandum statement (Ex.P5) of the Appellant and on the basis of which he seized a tangi from him vide Ex.P4. He recorded statements of witnesses under Section 161 of the Code of Criminal Procedure. He sent the seized articles for chemical examination vide memo (Ex.P13). He received FSL Reports (Ex.P15 and P15A).

- 13.** On minute examination of the above evidence, it is clear that there

is no eyewitness to the incident. As per the prosecution story, the Appellant had made extra judicial confession before Ramzan (PW4). Though Ramzan has stated that the Appellant had told him that there was a dispute between the Appellant and his father (the deceased) regarding a land, Ramzan has not stated that the Appellant had made any confession before him that he himself assaulted his father. According to the statement of Kotwar Baldeoram (PW1), when he reached the spot, at that time, Jhagru was also with him and Jagmohan (PW3) told them that the Appellant and his mother Teresa had assaulted the deceased. But, Jagmohan (PW3) has not supported the above statement of Baldeoram (PW1) and has stated that Ramzan (PW4) and Jhagru had come to him and told that the Appellant had assaulted his father. Ramzan (PW4) has not corroborated the above fact and Jhagru has not been examined by the prosecution.

14. No doubt, the deceased was found in his house in injured condition. But, from the statement of Manju (PW2), it is clear that in the house of the deceased, along with him, this witness, the Appellant and his mother were also residing together. In the circumstance, possibility of commission of murder of the deceased by any of them other than the Appellant cannot be ruled out. Though on the basis of the memorandum statement (Ex.P5) of the Appellant a tangi was seized from him and on chemical examination of the said tangi blood stains were also found on it, there is no serological report available on record in this regard to establish that the blood stains found on the tangi were human blood and that too the same was of blood group of the deceased. Therefore, even the seizure of the tangi from the Appellant does

not prove the case of the prosecution beyond reasonable doubt. Apart from the above, it is also pertinent to mention here that the assault was made on the deceased on 4.2.2002 and he died on 10.3.2002. Before his death, the deceased was also treated in the hospital. There is no evidence on record to show that the deceased remained unconscious during the period from 4.2.2002 till 10.3.2002. If the deceased was conscious during the said period, why was his dying declaration not recorded is not explained by the prosecution. Thus, from the aforesaid discussion, I find that the prosecution has not been able to prove its case beyond reasonable doubt.

15. Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellant is acquitted of the charge framed against him.
16. Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
JUDGE