

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 23-8-2018****Pronounced on 29-8-2018****CRIMINAL APPEAL No. 1347/2003**

(Arising out of judgment dated 14-11-2003 passed by the 3rd Additional Sessions Judge (FTC), Raigarh in ST No. 77/2003)

Vidur Ram son of Dhondhi Ram Kanwar, aged about 25 years, R/o. Mohloi, PS Tamnar, Distt. Raigarh (CG) **-Appellant**

-v-

State of Chhattisgarh through Police Station Tamnar, Distt. Raigarh (CG) **-Respondent**

For appellant : Ms. Smriti Shrivastava, Adv.

For State : Shri Sangarsh Pandey, Dy. Govt. Adv.

Hon'ble Shri Sharad Kumar Gupta, Judge

C.A.V. JUDGMENT

1. In this criminal appeal the challenge levied is to the judgment of conviction and order of sentence dated 14-11-2003 passed by Third Additional Sessions Judge (Fast Track Court) Raigarh in ST No. 77/2003 whereby and whereunder he convicted the appellant for offence punishable under Sections 304(II) of the Indian Penal Code (in brevity 'IPC') and sentenced him to undergo RI for five years and to pay a fine Rs. 200/-, in default of payment of fine, to further undergo additional imprisonment for one month.
2. In brief the prosecution case is that the deceased Budhani Bai is the mother of the appellant. She was resident of village Mahloi. On 09-03-2003 in the night, hearing of noise from the house of

appellant, Bhupdev Rathia, Ghasiya and Kanhaiya reached there. They saw that the dead body of the deceased was lying on the courtyard and the appellant was standing near the dead body of his mother. On inquiry from appellant, he told that deceased was not doing his marriage, thus he caused injuries on her head by plank of cot. Bhupdev Rathia had given the information to Police Station Tamnar where merger intimation was lodged. Thereafter FIR was registered. After completion of the investigation a charge-sheet was filed against the appellant under Section 302 I.P.C. Trial Court framed the charge against the appellant under Section 302 I.P.C. Appellant abjured the charge and faced the trial. To bring whom the charge prosecution examined as many as five witnesses. Appellant did not examine any witness on his defence.

3. After the conclusion of the trial, trial Court convicted and sentenced the appellant as aforesaid. Being aggrieved appellant preferred this criminal appeal.
4. Counsel for the appellant argued that trial Court has not appreciated the evidence in proper perspective. The aforesaid conviction and sentence are not based on clinching evidence. Thus, the conviction and sentence of the appellant may be set aside and he may be acquitted of the aforesaid charge.
5. State counsel argued that the conviction and sentence of the appellant are just and proper and do not call for interference by this Court.
6. Prosecution case is based on circumstantial evidence i.e. extra judicial confession.

7. As per the postmortem report Ex. P-11, PW-5 Dr. Pankaj Sahu has conducted autopsy on the dead body of the deceased Budhni Bai, he had found one lacerated wound on left forehead, size 2 cm x 1 cm x 1 cm, clotted blood was present at right lateral canthus of eye, one lacerated wound on right parieto occipital region size 10 cm x 8 cm x 2 cm, there was round fracture of scalp, brain matter was coming out from scalp. He opined that mode of death was hemorrhagic shock due to excessive hemorrhage leading to cardiorespiratory arrest. The nature of death could be homicidal in nature.
8. There is no such evidence in record on strength of which it can be said that Ex. P-11 is not believable, thus this Court believes on Ex. P-11.
9. After the appreciation of the evidence discussed herebefore, this Court finds that death of the deceased Budhni Bai was culpable homicide.
10. PW-1 Kartik Ram @ Jhakhar says in paras 2 and 3 of his statement given on oath that near the dead body of the deceased, appellant was present, on inquiry, he told that he had killed his mother by plank of the cot.
11. P.W. 4 Chitrasen says in para 3 of his statement given on oath that appellant was present near the dead body of the deceased. On inquiry he told that he had killed his mother by plank of the cot on account of dispute regarding his marriage.
12. In the matter of Bhagwan Dass v. State (NCT of Delhi) [AIR 2011 SC 1863], Hon'ble Supreme Court observed that :-

“In our opinion the statement of the accused to his mother Smt. Dhillon Devi is an extra-judicial confession. In a very recent case this Court in *Kulvinder Singh and anr. v. State of Haryana* [(2011) 5 SCC 258] referred to the earlier decision of this Court in *State of Rajasthan v. Raja Ram* [(2003) 8 SCC 180] , where it was held:

“19. An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. The value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. It is not open to any court to start with a presumption that extra-judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak of such a confession. Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it. After subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, the extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility.”

13. There is no such evidence on record on the strength of which it can be said that at the time of the alleged extra judicial confession, the appellant was not in a fit state of mind.
14. There is no such evidence on record on the strength of which it can be said that P.W. 1 Kartikram alias Jhakhar and P.W. 4 Chitrasen were biased, they were inimical to the appellant, they had a motive of giving an untruthful statement to the accused.
15. There is no such evidence on record on the strength of which it can be said that the aforesaid statements of P.W. 1 Kartikram alias Jhakhar and P.W. 4 Chitrasen are not clear, ambiguous.
16. The aforesaid statements of P.W. 1 Kartikram alias Jhakhar and P.W. 4 Chitrasen convey that the appellant was the perpetrator of the crime and nothing is omitted by these witnesses which may militate against it.
17. Looking to the abovementioned facts and circumstances of the case, this Court finds that aforesaid statements of P.W. 1 Kartikram alias Jhakhar and P.W. 4 Chitrasen are simple, normal and natural. Thus, this Court believes on aforesaid statements of P.W. 1 Kartikram alias Jhakhar and P.W. 4 Chitrasen. Thus, aforesaid judicial precedent laid down by Hon'ble Supreme Court in **Bhagwan Dass** (supra) is applicable in favour of the prosecution and against the appellant.
18. In the case in hand, the aforesaid extra judicial confession gets corroboration from the aforesaid motive and Ex. P-11.
19. After the appreciation of the evidence, this Court finds that

the prosecution has succeeded to prove beyond reasonable doubt the charge punishable under Section 304 (II) of IPC against the appellant. The sentence imposed upon the appellant is just and proper. Thus, the aforesaid judgment of conviction and order of sentence passed by the trial Court are hereby affirmed. The appeal being devoid of merit, deserves to be and is hereby dismissed.

20. The bail bond of the appellant is cancelled. The appellant is directed to surrender before the trial Court for serving the remaining part of sentence, if any.

Sd/-
(Sharad Kumar Gupta)
Judge