

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 172 of 2012**

- Gulab Ratre S/o Panchram Ratre, aged about 45 years, R/o Chhote Aamakoni, Police Station - Sariya, District Raigarh. (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh Through : District Magistrate, Raigarh, District Raigarh (C.G.)

---- Respondent

For Appellant	:	Shri Awadh Tripathi, Advocate.
For Respondent/State	:	Shri Ravindra Agrawal, G.A.

Hon'ble Shri Justice Pritinker Diwaker**Hon'ble Shri Justice Sanjay Agrawal****Judgment on Board by Pritinker Diwaker, J****12/03/2018**

This appeal has been filed against the judgment of conviction and order of sentence dated 23.01.2012 passed by the Additional Sessions Judge, Sarangarh, District Raigarh, in Sessions Trial No. 20/2011 convicting the accused/appellant under Sections 302, 201/34 IPC and sentencing him to undergo imprisonment for life with fine of Rs. 2000/- and R.I. for seven years with fine of Rs.1000/- plus default stipulation.

02. In the present case name of the deceased is Ruplal Ratre, elder brother of the accused/appellant.

03. It is said that Kumari Bai (PW/4), wife of deceased Ruplal Ratre, was living separately for last 10 years as there was some family dispute between them. Accused/appellant was residing

along with his wife and juvenile accused Sanjay Ratre aged about 16 years and in the same house deceased was also residing in an adjacent room. According to the prosecution case, in the night intervening 12-13/03/2011, some quarrel took place between the accused/appellant and deceased in which accused/appellant caused number of injuries including main injury on the neck of the deceased by carpenter axe resulting his instantaneous death. As the deceased bled severely, the accused/appellant with the help of juvenile accused cleaned the room and stitched the wound of the neck of deceased by nylon thread of mat lying in the room. On the next day i.e. 13.03.2011 at about 12.30 PM, merger intimation (Ex.P/18) was lodged by the accused/appellant informing the police that on the previous night, deceased came in drunken condition and fell on grinding stone resulting into his death. On the same day, inquest on the body of deceased was conducted vide Ex.P/11 and dead body was sent for postmortem examination to Community Health Center, Baramkela which was conducted by Dr. Devraj Behra (PW/1) who gave his report (Ex.P/1) noticing following injuries:-

- (i) Incised wound of 2cm x 1cm x deep below left eye over maxilla bone.
- (ii) Prominent incised wound stitched continuous with double nylon thread in the size of 9cm x 1cm on left side of neck parallel to clavicle bone.
- (iii) Bruise with abrasion in the size of 8cm x 4cm over left loin.
- (iv) Abrasion of 1cm x 1/4 cm over right chin. All features were antemortem in nature.

Autopsy Surgeon opined the cause of death of deceased to be hemorrhagic shock due to incised wound over left neck and

raptured of left kidney and death was homicidal in nature.

04. On the basis of merg inquiry, FIR (Ex.P/19) was registered on 14.03.2011 against unknown person under Section 302 of IPC. On 14.03.2011 itself, memorandum of the accused/appellant was recorded vide Ex.P/6, based on which, one carpenter axe, lungi, mat made of chhind and one needle measuring 3 1/2 inch were seized from his possession. Vide separate seizure (Ex.P/9), one mat was seized and it is said that nylon threat of this mat was used for stitching neck wound of the deceased. As per unexhibited FSL report, blood has been found on the seized articles. Further case of the prosecution is that the accused/appellant made extra-judicial confession before Kumari Bai (PW/4), wife of the deceased. After completion of investigation, charge sheet was filed against the accused/appellant under Sections 302 and 201/34 of IPC and accordingly charge was framed against him by the trial Court. Accused Sanjay Ratre being juvenile was tried separately by the Juvenile Justice Board.

05. In order to prove complicity of the accused/appellant in the crime in question, the prosecution has examined 11 witnesses. Statement of the accused/appellant under Section 313 Cr.P.C. was also recorded in which he denied his guilt and pleaded innocence and false implication in the case.

06. After hearing the parties the Court below has convicted and sentenced the accused/appellant as mentioned above in paragraph No.1 of this judgment. Hence, this appeal.

07. Counsel for the accused/appellant submits :

(i) That there is no eyewitness account in this case and the accused/appellant has been convicted solely on the basis of

circumstantial evidence but the circumstances on which the prosecution has relied upon are not as such to connect the accused/appellant with the crime in question.

(ii) That present is an unfortunate case where the deceased died when he was under intoxication condition and fell on the grinding stone.

(iii) That Kumari Bai (PW/4), witness to extra judicial confession, is not reliable as there are material contradictions in her statement.

(iv) That even if the entire prosecution case is taken as it is, the accused/appellant cannot be convicted under Section 302 IPC as it appears that the incident occurred all of a sudden when the deceased came in drunken condition and there was some quarrel between the accused/appellant and deceased. Learned counsel further submits that the accused/appellant is liable to be convicted under Section 304 Part-I IPC and not under Section 302 IPC.

08. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State as under :-

(i) That after committing murder of the deceased, not only the appellant cleaned room but also kept the body of deceased in the adjacent room and thereafter stitched the wound by nylon thread of mat.

(ii) That all these things took enough time to clean the room, stitched the wound and thereafter very conveniently on the next afternoon he lodged the mereg intimation giving false information to the police. He also submits that in the postmortem report no liquor has been found in the abdomen of the deceased and thus defence of the accused/appellant that the deceased after consuming excessive liquor fell on the grinding stone is not tenable. The

accused/appellant offered false explanation before the police by giving incorrect fact in lodging merger intimation (Ex.P/18)

(iii) That considering the number and nature of injuries sustained by the deceased, his conviction under Section 302 IPC is in accordance with law and under no circumstance the appellant is liable to be convicted for any lesser offence.

(iv) That the accused/appellant also made extra-judicial confession before PW/4, wife of the deceased, and the said witness has duly supported the prosecution case.

(v) That in the FSL report (though unexhibited), blood has been found and even in absence of serological report, this FSL report can be treated as an additional evidence against the accused/appellant.

09. Heard counsel for the parties and perused the material available on record.

10. Dr. Devraj Behra (PW/1) conducted postmortem examination on the body of deceased and gave his report (Ex.P/1) opining the cause of death of deceased to be hemorrhagic shock due to incised wound over left neck and ruptured of left kidney. He has not found liquor in the abdomen of the deceased.

11. S.L. Sidar (PW/2) is the Patwari who prepared spot map vide Ex.P/4.

12. Baijnath Patel (PW/3) and Sukhi Ram Navrange (PW/5), witnesses to memorandum of the accused/appellant (Ex.P/6) and seizure (Ex.P/7), have though been declared hostile, but admitted their signatures thereon.

13. Kumari Bai (PW/4) is wife of the deceased before whom the extra-judicial confession has been made by the accused/appellant.

She has stated that after receiving an information about the death of the deceased, she reached the place of occurrence where she saw the body of the deceased in pool of blood and thereafter the accused/appellant confessed before her in isolation that on the previous night the deceased came in intoxication condition, some quarrel took place between them in which he (appellant) committed murder of the deceased by carpenter axe. This witness has clarified that at the time of making this confession by the appellant, no one else was present there.

14. Ram Kumar Banjare (PW/6) is a witness to inquest made under Ex.P/11.

15. Shyam Kumar Banjare (PW/7) is brother-in-law of the deceased who after postmortem examination of the body has received the same.

16. Lalchandra Dansena (PW/8) and Shyam Lal Sahu (PW/9) are the formal witnesses.

17. Sushil Kumar (PW/10) is a witness, who after receiving the information about the death of the deceased, has given the same to PW/4, wife of the deceased.

18. M.S. Koushal (PW/11) is the Investigating Officer who has duly supported the prosecution case.

19. Admittedly, there is no eyewitness account in the present case and the entire case is based on the circumstantial evidence and alleged extra-judicial confession of the accused/appellant.

20. In the instant case, Kumari Bai (PW/4), wife of the deceased, was living separately from the deceased for last 10 years and in the house in question accused/appellant was residing along with his

wife and son whereas the deceased was residing in the adjacent room of the same house. On 13.03.2011, some quarrel took place between the accused/appellant and the deceased in which accused/appellant caused number of injuries to the deceased including to his neck by carpenter axe resulting his death. After committing murder of the deceased, accused/appellant with the help of his son aged 16 years (juvenile accused) cleaned the room, stitched the neck wound by nylon thread of mat and thereafter in the next morning he lodged merg intimation (Ex.P/18) giving entire different picture that the deceased died on account of fall on grinding stone after consuming liquor. Now, if the contents of merg intimation (Ex.P/18) are looked into with the postmortem report, it completely falsifies the merg as according to the appellant, deceased died accidentally when he was under intoxicating condition fell on the grinding stone whereas postmortem report (Ex.P/1) clearly proves the death of the deceased to be homicidal in nature and it has nowhere mentioned in the postmortem report that liquor was found in the stomach of the deceased and, therefore, giving false explanation to the police by the accused/appellant can be treated as an additional link to the circumstantial evidence against him.

21. Another aspect of the case is the extra-judicial confession made by the accused/appellant before PW/4, wife of deceased. Despite some minor contradictions in her statement, she has duly supported the prosecution case and has categorically stated that the accused/appellant made extra-judicial confession before her in isolation. It is settled position of law that in case the prosecution relies on extra-judicial confession, the Court has to examine the same with a greater degree of care and caution. It is further settled

legal position that extra-judicial confession is a weak type of evidence and if the entire case of the prosecution hinges upon it, a greater degree of care and caution is required to be taken by the Court while appreciating the evidence. Further, the accused person can be convicted on the basis of extra-judicial confession provided that it must inspire full confidence. In the present case, extra-judicial confession made by the accused/appellant in isolation appears to be voluntary, no third person was present and that he was not pressurized. The evidence of PW/4 before whom the accused/appellant made extra-judicial confession is sufficient to infer that it is the accused/appellant who is the author of crime.

22. Another piece of evidence against the accused/appellant is his memorandum (Ex.P/6), based on which, carpenter axe, lungi, mat made of chind, needle were seized vide Ex.P/7 and old broken mat vide Ex.P/9. The seized articles were subjected to chemical examination and as per unexhibited FSL report, blood has been found thereon. Though there is no serological report on record but in view of other evidence available on record, the FSL report can be treated as an additional evidence against the accused/appellant. In these circumstances, the complicity of accused/appellant in crime in question stands proved beyond reasonable doubt.

23. We find no substance in the argument of counsel for the appellant that the accused/appellant is liable to be convicted under Section 304 Part-I IPC. Considering the conduct of the appellant, gravity of injury, weapon used for causing such injury on vital part i.e. neck of the deceased and further considering the fact that after committing murder of the deceased, appellant cleaned the room and stitched the neck wound of the deceased with nylon thread of mat for disappearing the evidence of offence, it can safely be

inferred that the accused/appellant caused homicidal death of deceased with intent to cause his death.

24. For the reasons set out above, this Court is of the considered opinion that the findings of the Court below are strictly in conformity with the material available on record and the Court below has not committed any error in passing the judgment impugned.

25. The appeal thus has no substance and it is liable to be dismissed. Dismissal recorded accordingly. Appellant is reported to be in jail and therefore no further order regarding his arrest etc. is required.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Sanjay Agrawal)
Judge