

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 266 of 2015

- Ratan Lal S/o Late Tikait Ram Banjare Aged About 58 Years Banti Semariya State R/o Thadbahra P.S. Baloda District Janjgir Champa C.G. , Chhattisgarh

---- Appellant

Versus

- State Of Chhattisgarh S/o Through Police Station Baloda District Janjgir Champa C.G. , Chhattisgarh

---- Respondent

For Appellant	:	Shri Sumit Singh, Advocate
For Respondent	:	Shri Adil Minhaj, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Gautam Chourdiya

Judgement

Per P. Diwaker, J

09/08/2018

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 5.11.2014 passed by the Sessions Judge, Janjgir Champa in S.T. No.231/2012 whereby the learned Sessions Judge has convicted the accused/appellant for the offence punishable under Section 302 of the Indian Penal Code (henceforth 'the IPC') and sentenced him to undergo RI for Life with fine of Rs.5,000/-.
2. Facts of the case, in brief, are that deceased Hemlal, younger brother of accused/appellant, was in the habit of creating nuisance in the family after consuming liquor as a result of which accused/appellant along with his family had started residing separately about six months prior to the date of incident. It is further case of the prosecution that the deceased was trying

to sell out the joint family property and the appellant used to object the same. On the date of incident i.e. 17.10.2012 the deceased, after consuming liquor, a quarrel took place in between accused/appellant and deceased in connection with sale of house property and in that process, the accused/appellant gave a club blow to the head of the deceased as a result of which he started bleeding and died on the spot. At the instance of accused/appellant, FIR (Ex.P-14) under Section 302 of IPC was recorded on 17.10.2012 at 2 pm against the accused/appellant. Merg Intimation (Ex.P-13) was registered at 2.05 p.m. on the same day. Inquest over the body was prepared vide Ex.P-4. Dead body was sent for post-mortem examination which was conducted by Dr. S.S. Tomar (PW-3) vide Ex.P-8 and he noticed one crushed injuries in occipital region of 11x2cm in size and occipital bone came out from occipital region. The autopsy surgeon has opined that cause of death was due to cardio respiratory arrest because of shock along with asphyxia due to head injury and the death was homicidal in nature. One club and clothes of accused both having blood like stains were seized from the accused/appellant vide Ex.P-5 & P-7 respectively. After completion of investigation, charge sheet was filed against the accused/appellant and accordingly, the charge under Section 302 IPC was framed against him by the trial Judge.

3. So as to hold the accused/appellant guilty, the prosecution has examined 09 witnesses. After recording of the evidence for the prosecution was over, the accused/appellant was examined under Section 313 of Cr.P.C. regarding the incriminating materials found in the evidence adduced on the side of prosecution. He denied such evidence to be false and once again reiterated his stand that he is not guilty of any offence.
4. After hearing counsel for the respective parties and considering the material available on record, the trial Court by the impugned judgement,

convicted and sentenced them as described above.

5. Learned counsel for the appellants in both the appeals submits that:-

- appellant is convicted only on the basis of FIR lodged by the accused/appellant him which contains a full confession of guilt by the appellant, but this FIR is not admissible in evidence as the same is hit by Section 25 of the Evidence Act. Reliance is placed on the decision of the Full Bench of the Hon'ble Supreme Court in Aghnoo Nagesia v. State of Bihar reported in AIR 1966 SC 119 in Khatri Hemraj Amulakh v. The State of Gujarat reported in (1972) 3 SCC 671 as well in Khatri Hemraj Amulakh v. The State of Gujarat reported in (1972) 3 SCC 671 & Bandlamuddi Atchuta Ramaiah & ors vs. State of AP reported in (1996) 11 SCC 133.
- even if the entire prosecution case is accepted to be true, it is apparent that the incident occurred all of a sudden, there was no premeditation on the part of the appellant and therefore, he is liable to be convicted for lesser offence.

6. State counsel however supports the judgment impugned and submits that the findings recorded by the Court below convicting the accused/appellant under Sections 302 of IPC are based on due appreciation of the evidence on record and there is no infirmity in the same warranting interference in exercise of appellate jurisdiction.

7. We have heard learned counsel for the parties and perused the material available on record.

8. Bhanu Prasad Sahu (PW-1), lodger of FIR & neighbour of accused & deceased, has stated that on coming to know that accused/appellant has been beating his wife (deceased) for a long time, he along with his nephew Narendra & brother Laxmi Sahu had gone to the house of accused/appellant and found the deceased lying in dead condition. Injury

was present on the face and blood was oozing from it. At that time, the accused was present on the spot and he was in drunken condition. The accused tried to flee but stopped by him. Thereafter he went to the police station and lodged the FIR (Ex.P-1). This witness remained firm in his cross-examination.

9. Mahesh Kumar (PW-2) did not support the prosecution case and turned hostile.
10. Narendra Sahu (PW-3) has stated that as the accused and the deceased used to quarrel with each other after consuming alcohol, therefore, he ousted them from his house where they were residing as tenant. He has further stated that on coming to know about the incident from Mahesh over telephone, he had gone to the house of accused/appellant, at that time accused/appellant was sitting inside the house and on being asked, the accused told that he has given 2-3 slaps to his wife and she is not getting up. Thereafter, he along with others had gone to the police station to lodge the report of the incident.
11. Laxmi Prasad Sahu (PW-4) has deposed in the similar manner as has been deposed by PW-1 & PW-3.
12. Kumar Prasad Yadav (PW-5) did not support the prosecution case and turned hostile. However, in the cross-examination he has admitted that accused used to quarrel with his wife (deceased).
13. Dr. Savitri Tigga (PW-6) is the person who conducted post-mortem of the body of deceased and noticed the injuries as mentioned above. She opined that the cause of death was head injury (fracture of skull) leading cardio respiratory failure and death was homicidal in nature. She has further opined that all the injuries present on the body of deceased were ante mortem in nature.
14. R.K. Mishra (PW-7) is the police person who recorded FIR (Ex.P-1) and

thereafter sent a copy of the same to the Court of Judicial Magistrate 1st Class, Gharghoda and obtained receipt thereof.

15. B.P. Mishra (PW-8) is the investigating officer who has duly supported the prosecution case.

16. Close scrutiny of the evidence available on record makes it clear that there is no legally admissible evidence on record connecting the accused/appellant with the murder of deceased Hemlal Banjare, except FIR (Ex.P-14) lodged by accused/appellant containing his confessional statement of killing the deceased, which too is not admissible in evidence being hit by the provisions of Section 25 of the Evidence Act, which reads thus:-

“25. No confession made to a police officer shall be proved as against a person accused of any offence.”

In this connection, we may also refer to the case of Aghnoo Nagesia (supra) wherein the Supreme Court has held that no part of a first information report lodged by the accused with the police could be admitted into evidence if it was in the nature of a confessional statement. Relevant paragraph of said judgment reads thus:-

“9. Section 25 of the Evidence Act is one of the provisions of law dealing with confessions made by an accused. The law relating to confessions is to be found generally in Ss. 24 to 30 of the Evidence Act and Ss. 162 and 164 of the Code of Criminal Procedure, 1898. Section 17 to 31 of the Evidence Act are to be found under the heading "Admissions". Confession is a species of admission, and is dealt with in Ss. 24 to 30. A confession or an admission is evidence against the maker of it, unless its admissibility is excluded by some

provision of law.”

Thus, in view of above legal position, the statement contained in the first information report (Ex.P-14), which amounts to admission of guilt by accused/appellant, being hit by Section 25 of the Evidence Act cannot be made basis for holding the appellant guilty under any offence much less the offence under Section 302.

17. True it is that a club and some clothes of deceased having blood like stains were seized from the possession of accused/appellant, but the prosecution has failed to produce FSL report and even no explanation has been furnished as to why FSL report has not been obtained and produced before the Court although it was necessary to ascertain as to whether the club seized at the instance of accused/appellant was actually used in commission of crime or not and as to whether the blood found on the clothing of accused/appellant was human blood and that too of the blood group of the deceased. Thus, non-production of the FSL report in the Court by the prosecution is fatal as in the absence thereof it is difficult to reach to the conclusion that seized clubs have been used in commission of offence. In such situation, the recovery of alleged articles alone is not sufficient to connect the complicity of accused/ appellant with the crime in question.

18. Accordingly, the appeal is allowed. Conviction and sentence of the appellant under Section 302 of IPC are hereby set aside and he is acquitted of that charge by extending him benefit of doubt. The appellant is in jail. He be set at liberty forthwith if not required to be detained in connection with any other offence.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Gautam Chourdiya)
Judge

roshan/-