

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 624 of 2013

Sandeep Ekka S/o Sushil Ekka Aged About 23 Years R/o Lamdand, P.S. Lailunga,
Civil And Rev. Distt. Raigarh C.G. , Chhattisgarh

---- Appellant

Versus

State Of Chhattisgarh Through - SHO., P.S. Lailunga, Civil And Rev. Distt.
Raigarh C.G. , Chhattisgarh

---- Respondent

For Appellant	:	Shri Rajesh Ranjan Sinha, Advocate
For State	:	Shri Anand Verma, Dy. Govt. Advocate

**D.B. : Hon'ble Mr. Justice Manindra Mohan Shrivastava &
Hon'ble Mrs. Justice Rajani Dubey**

Judgment On Board

03/04/2019

Per Manindra Mohan Shrivastava, J.

1. This appeal is directed against the judgment of conviction and order of sentence dated 17.05.2013 passed by learned Second Additional Sessions Judge, Raigarh (CG) in ST No.114 of 2011 whereby and whereunder the appellant/accused has been held guilty of commission of offence under Section 302 IPC and sentenced to undergo life imprisonment on the allegation that he strangled to death Kamla Ekka, his adoptive mother, on 14.3.2011 in their house.
2. The prosecution case is that a morgue intimation was lodged in the police station that Kamla Ekka was found dead in her house. After preparation of inquest, dead body was sent for postmortem and then, during morgue enquiry, when number of residents and neighbours enquired, the appellant confessed before them that he murdered his own adoptive mother. It followed lodging of FIR against present appellant on the allegation of commission of offence of murder. The investigation eventually culminated in filing of charge sheet against the appellant. Learned trial Court framed

charges against the appellant on the basis of material contained in the charge sheet. The appellant having abjured guilt, was put to trial.

3. In order to bring home the guilt of the appellant, the prosecution came out mainly with the circumstantial evidence of dead body found in the house where the appellant and deceased resided and motive on the part of appellant because the deceased was not prepared to give the sale proceeds to the appellant after selling out the house, Kamla Ekka died homicidal death due to strangulation, dead body was lying in the house since 3-4 days, it was not disclosed by the appellant to anybody and extra-judicial confession made by the appellant to neighbours and residents of the locality that he murdered his own mother. The learned trial Court relying upon the evidence and circumstances led by the prosecution and holding this circumstantial evidence proved against the appellant, held the appellant guilty of commission of offence alleged against him and sentenced as described above.
4. Assailing correctness and validity of the impugned judgment of conviction and order of sentence, learned counsel for the appellant would argue that the conviction of the appellant is unsustainable in law because the circumstantial evidence could not form complete chain so as to draw an inference that in all probability, the appellant and the appellant alone must have murdered his own mother. He would argue that in the background of feeble evidence of motive, the circumstances in which extra-judicial confession is said to have been given clearly show that it was not voluntary because the police was already informed of the incident. He would next submit that the dead body having been found in the house may only give rise to suspicion but in order to translate the same into truth, the prosecution was required to lead clinching circumstantial evidence to hold that the appellant killed his own mother.
5. Per contra, learned counsel for the State, supporting the judgment of conviction and order of sentence, would argue that the prosecution case has been proved beyond reasonable doubt because the dead body was found in the house, the death is proved to be homicidal and the appellant failed to explain as to how his mother sustained injury, because he resided with his mother in the house. Therefore, it was for the appellant to explain

the fact which was especially within his knowledge, relating to death of his own mother. He would next submit that the conduct of the appellant is also of guilty mind because Kamla Ekka died 3-4 days before and the appellant did not disclose this fact to anybody until a search was started to trace Kamla and finally her dead body was found inside the house. This conduct on the part of appellant in suppressing that Kamla Ekka died 3-4 days before and the dead body remained inside the house strongly points towards the guilt of appellant. It is next contended by learned counsel for the State that the extra-judicial confession has been given by the appellant before independent witnesses Joshef Bada (PW1) and Shyamsundar (PW3) who have stated that the appellant confessed before them that he murdered his mother and a motive has also come out in the prosecution evidence that the appellant was enraged because the deceased told that she would be selling out house and will not be giving sale proceeds to the appellant. Therefore, this circumstantial evidence forms complete chain leading to reasonable inference that in all probability, it is the appellant and appellant alone who must have killed his mother. Therefore, the impugned judgment of conviction and order of sentence does not warrant any interference.

6. We have heard learned counsel for the parties and perused the records of the Court below.
7. The conviction of the appellant is based on circumstantial evidence because there is no eyewitness to the incident of Kamla Ekka assaulted by appellant.
8. Homicidal death of Kamla Ekka is proved beyond reasonable doubt from the evidence of Dr. Rajkumar Gupta (PW4) who conducted postmortem and proved his report in Ex. P-8. He has deposed in his evidence that the dead body of Kamla Ekka was brought and he had noticed that a stole like cloth termed in local dialect as "गमछा" was wound around the neck of the deceased which had a knot, found above thyroid cartilage having a deep impression, tongue and eyes were protruded. An injury seen on the left part of the mandible, blood clots found on the left ear. Upon examination of neck, he found that on the back side of the neck, there was a knot and petechial hemorrhage was also found under the skin. Cricoid cartilage was

also found compressed and congested above and under the knot. Upon examination of the internal and external injuries, he opined that the nature of death was homicidal. All the injuries were found to be antemortem in nature. Though he has admitted suggestion with regard to difference in the nature of injury depending upon manner in which the strangulation taken place, nothing material could be elicited in his cross-examination to doubt the nature and extent of the injuries and cause of death of the deceased. Therefore, we have no hesitation to hold that the deceased Kamla Ekka died because of strangulation caused by winding of a cloth (गमछा) around her neck which was also knotted resulting in compression in the cartilage leading to asphyxia.

9. From the evidence of prosecution witnesses Joseph Bada (PW1), Chhattar Singh (PW2), Shyamsunder (PW3), Nirakar Pradhan (PW7), Mukti Kumar Bada (PW8), Mariyanus (PW9) and Joseph Topno (PW10), it is proved from overwhelming evidence that dead body of Kamla was found lying on a cot in a room of the house. In the evidence of these witnesses, it has also come that the deceased was residing along with the appellant in that house and that the appellant was his adoptive son and evidence has also come that there used to be quarrel between the appellant and deceased because the deceased used to assert that she would not give her property to the appellant but she will sell it out and even the sale proceeds will not be given.
10. There is yet another important aspect of the matter which also is compatible with hypothesis of guilt of the appellant and that is his own conduct in not disclosing to anybody for 3-4 days, that Kamla Ekka died in the house. Chhattar Singh (PW2) deposed that on the date of incident about 6:30 in the evening, Joseph Bada and appellant both came to his house and the appellant pretended that Kamla is not seen since last four days in the house despite he having searched, whereafter he told him to inform when Kamla Ekka is traced. He further deposed that next day, he went to the village of the appellant in his house and when he went towards the room, the dead body of Kamla Ekka was found and injury was seen in the neck. This shows that the appellant had been giving impression to others that Kamla bai had gone missing since last four days but when Chhattar Singh (PW2) went to the house of the appellant, the dead body

was found in the house. This is what all other witnesses including panchnama witnesses have stated that when they reached the house of the appellant, Kamla Ekka was found dead in her own house. This also shows the guilty mind of the appellant. If we look into medical evidence and the postmortem report as also the evidence of the Dr. Rajkumar Gupta (PW4), it is clear that in the postmortem, the doctor opined that death had taken place between 3 to 4 days. That means, Kamla died last 3-4 days before and her dead body kept lying in the house unnoticed and unknown to anybody and appellant had been spreading news that Kamla Ekka had gone missing.

11. At least two prosecution witnesses Joseph Bada (PW1) and Shyamsunder (PW3) have clearly stated that when the appellant was asked by the neighbours and other respective inhabitants of the village as to how Kamla found dead in her house, the appellant confessed that he had killed her. Joseph Bada (PW1) has deposed that in the night when appellant was asked as to how Kamla died, the appellant stated that he had pushed her against the wall due to which she died. In the cross-examination, a suggestion has been given to this witness, which he admitted, that the appellant had not stated that he had assaulted the deceased or killed the deceased. On this, learned counsel for the appellant would raise an argument that this admission proves that the appellant has not given extra-judicial confession of he having killed the deceased.

The confession of the appellant before this witness that he had pushed the deceased against wall due to which she died does not get diluted because of the statement made in the cross-examination of the witness wherein he admitted that the appellant did not tell him that he had murdered Kamla Ekka.

12. In any case, the reliable testimony of Shyamsunder (PW3), again an independent witness, fully corroborated the extra-judicial confession made by the appellant to Joseph Bada (PW1) that when villagers were pressing upon inquiry, appellant admitted and confessed that he had murdered Kamla Ekka by winding a cloth (गमछा) around her neck and pushing her against the wall. These two witnesses are independent and there is no reason why they would falsely implicate the appellant in the alleged commission offence. Nothing has been elicited in their cross-examination

that these persons had any motive to falsely implicate the appellant.

13. Thus, from the prosecution evidence not only the evidence of extra-judicial confession was found proved, failure of the appellant to explain as to how his mother died in the house wherein she resided along with appellant, the appellant's conduct of not disclosing death of Kamla Ekka for 3 to 4 days and dead body lying in the room of the house and the motive that there was a dispute between appellant and deceased over the property, in our considered opinion, complete the chain of circumstances, to draw inference that in all probability, it is the appellant and the appellant alone who must have killed his own mother. We, therefore, do not find any ground to interfere with the impugned judgment of conviction and order of sentence.

14. The appeal is therefore dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Rajani Dubey)
Judge