NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 766 of 2007

- Karamkhela, S/o Banshi, aged about 45 years, Occupation Agriculturist, R/o Village Kundarukhand (Sendur), P.S. Ramanujganj, District Surguja (C.G.)

---- Appellant

Versus

- State of Chhattisgarh Through : Police Station, Ramnujganj, District Surguja (C.G.)

---- Respondent/State

For Appellant	:	Shri Rajkumar Pali, Advocate
For Respondent/State	:	Shri Ashish Gupta, Panel Lawyer

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

24.02.2020

1. This appeal arises out of the judgment of conviction and order of sentence dated 04.07.2007 passed by the First Additional Sessions Judge (FTC) Ramanujganj, Surguja (C.G.) in Sessions Trial No. 389 of 2006, whereby the Appellant stands convicted and sentenced as under:-

Conviction		Sentence
Under Section 304 of Indian Penal Code (for short 'IPC')		R.I. for five years and pay a fine of Rs.500/-, in default of payment to further undergo R.I. for one month.

2. Facts of the case in brief are that on 11.04.2006 at about 15:35 hours F.I.R. (Ex.-P/3) was lodged by Suraj Dayal (PW-1), son of deceased- Ramchander Gond, against the accused/appellant Karamkhela under Section 302 of IPC informing that on 10.04.2006 at about 07:00 am, deceased Ramchander Gond was going to village Lalmati for settlement of marriage of his son Suraj Dayal (PW-1), but the vehicle in which he was to go, was missed by him. When on the way at about 07:00 pm the deceased was returning to his home abusing appellant Karamkhela, it was heard by one Chaituram. Thereafter, on the next day i.e. on 11.04.2006, Dubraj (PW-2) came to his

home (PW-1's home) and told that Ramchander Gond was lying dead near the house of Karmkhela and hearing this, PW-1 went alongwith PW-2 and saw that deceased Ramchander Gond was lying in dead condition. The deceased sustained injuries on his head, back and ankle joint of left leg. It was mentioned in the F.I.R. that the appellant has stated before Sitaram, Gopal and Dubraj that the deceased assaulted him, therefore, he committed the murder of the deceased. It was also mentioned that there was land dispute between the deceased and the appellant.

3. During investigation, the Investigating Officer gave notice to the *panchas* vide Ex.-P/4 and prepared the spot map vide Ex.-P/2 which is part of crime detail form. Inquest of the dead body was prepared vide Ex.-P/5. Dead body of Ramchander Gond was sent for postmortem examination to District Medical Officer, CHC, Ramanujganj, where the postmortem examination was conducted by PW-13 Dr. Sudhir Kumar and he gave his report Ex.-P/12. According to his report Ex.-P/12, he found following injuries on the body of deceased Ramchander Gond:-

1. Lacerated wound of size approximate 2½ -3 inch x 1½ – 2 inch at the left side of frontal region.
2. Fracture of tibia and fibula at lower end near ankle joint of left leg

Doctor opined that cause of death was shock due to internal haemorrhage & injury to vital organ (brain) and the death was homicidal in nature. Duration of death was found to be within 48 hours.

4. In further investigation, *nazrinaksha* (Ex.-P/6) was prepared by Patwari PW-10 Shivprasad. Plain soil and blood stained soil were seized from the place of occurrence under Ex.-P/7. Memorandum statement (Ex.-P/9) of accused/appellant was recorded on 12.04.2006 consequent to which on club (bamboo-stick) was recovered at the instance of the appellant vide Ex.-P/8.

5. After investigation, charge-sheet was filed against the appellant/accused for

the offence under Section 302 of IPC. While framing the charge, the First Additional Sessions Judge (FTC) Ramanujganj, Surguja (C.G.) framed the charge against the accused/appellant under Section 302 of IPC. The accused/appellant has denied the charge framed against him and prayed for trial.

6. So as to hold the accused/appellant guilty, the prosecution examined 13 witnesses namely Suraj Dayal (PW-1), Dubraj (PW-2), Sitaram (PW-3), Tulsi (PW-4), Gopal (PW-5), Chaituram (PW-6), Bigni Bai (PW-7), Ganpat (PW-8), Sobran (PW-9), Shivprasad (PW-10), Ramsai (PW-11), Ramsahay Paikra (PW-12) and Dr. Sudhir Kuamr (PW-13) in support of its case. Statement of the accused/Appellant was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. The appellant examined one Jainath as DW-1 in his defence.

7. After appreciation of the evidence available on record, the First Additional Sessions Judge (FTC) Ramanujganj, Surguja (C.G.) by the impugned judgment, while acquitting the accused/appellant of the charge under Section 302 of IPC, convicted and sentenced him as mentioned in para- 1 of this judgment, hence this appeal.

8. Learned counsel for the appellant submits that in this case there is no eyewitness to the incident. He also submits that only on suspicion, the appellant was falsely implicated by the villagers and no extra-judicial confession was made by the appellant voluntarily. He further submits that there is absolutely no motive proved by the prosecution as against the appellant. Therefore, the trial Court has wrongly convicted and sentenced the appellant for the offence under Section 304 of IPC.

9. On the other hand, learned counsel for the State supporting the impugned judgment submits that looking to confession made by the accused/appellant before the villagers and duly proved by the witnesses, the appellant was

rightly convicted and sentenced by the trial Court which needs no interference by this Court.

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

11. In the postmortem report Ex.-P/12 proved by PW-13 Dr. Sudhir Kumar, the deceased was found to have sustained one lacerated wound at the left side of frontal region and fracture of tibia & fibula at lower end, near ankle joint of left leg. PW-13 opined that cause of death was shock due to internal haemorrhage & injury to vital organ (brain) and the death was homicidal in nature. Duration of death was found to be within 48 hours.

12. In the presence of villagers namely Dubraj (PW-2), Sitaram (PW-3), Tulsi (PW-4), Gopal (PW-5) and Ganpat (PW-8), the appellant has made extra-judicial confession that he has committed the murder of deceased. Sitaram (PW-3) and Tulsi (PW-4) are the witnesses of memorandum statement (Ex.-P/9) of the appellant in which the appellant had admitted that he has committed the murder of the deceased.

13. PW-1 Suraj Dayal is the son of the deceased. PW-1 had lodged the FIR (Ex.-P/3) against the appellant that the appellant has committed murder of his father by club (bamboo-stick). PW-1 has proved the FIR (Ex.-P/3) and spot map (Ex.-P/2).

14. PW-2 Dubraj has stated that Sitaram (PW-3) and Gopal (PW-5) have told him that the appellant has committed murder of the deceased and thereafter, PW-2 has informed PW-1 Suraj Dayal about the incident.

15. PW-5 Gopal has also proved the fact that on the date of incident, he alongwith Sitaram (PW-3), Tulsi (PW-4) and Ganpat (PW-8) had gone to forest for taking wood. When they were returning from the forest, they heard the sound of assault upon a person with club and they run towards the place such sound was coming from and saw that Ramchander Gond was lying in injured condition and appellant Karamkhela was telling that '*jaisa kiya vaisha paya*'. Thereafter, they caught hold of Karamkhaa and asked him (appellant)

about the incident, then Karamkhela said that he had committed the murder of the deceased by club. Similar is the statements of Sitaram (PW-3), Tulsi (PW-4) and Ganpat (PW-8) and they have supported the version of PW-5. There is no reason to disbelieve the evidence of PW-3, PW-4, PW-5 and PW-8.

16. PW-7 Bigni Bai is the wife of deceased Ramchander Gond. PW-7 has stated that on the fateful day, her husband (deceased) was going to another village for settlement of marriage of his son, but the vehicle in which he was to go, was missed by him and the deceased did not come to his home. On the next morning one Dubey came to her home and informed about the incident. Thereafter, she went to the place of occurrence and saw that the deceased was lying in dead condition near the house of the appellant. Thereafter, the villagers informed her about the incident that the appellant has committed murder of the deceased. PW-7 has also stated that her husband (deceased) sometimes used to consume liquor and he (deceased) used to quarrel with the people under the influence of liquor.

17. Inquest (Ex.-P/5) has been proved by Sitaram (PW-3), Sobran (PW-9) & Ramsai (PW-11) and they have seen the injuries on the body of the deceased.

18. It was argued by learned counsel for the appellant that the deceased sustained injuries due to falling down on the ground strewn with stones. But in this case, no any witness had seen that the deceased had fallen down under the influence of liquor. Looking to the nature of injury found of the parts of the deceased, it cannot be said that the injury sustained by the deceased was due to his falling down on ground strewn with stones.

19. The appellant/accused examined one defence witness namely Jainath as DW-1, but DW-1 has admitted that he has not seen the incident and he cannot tell as to at what time the incident occurred.

20. Thus, in the totality of facts and circumstances of the case, the evidence of

above witnesses PW-3, PW-4, PW-5 and PW-8 in whose presence, the appellant/accused made extra-judicial confession that he has committed the murder of deceased by assaulting him by club (bamboo-stick) stands corroborated by the medical evidence. As per postmortem report (Ex.-P/12), the deceased sustained injuries as mentioned in Para-3 of this judgment and Dr. Sudhir Kumar (PW-13) opined that the cause of death was shock due to internal haemorrhage & injury to vital organ (brain) and the death was homicidal in nature. Doctor also examined club (bamboo-stick) vide Ex.-P/13 and opined that the injuries found on the body of the deceased could be caused by the said club and that the same were not possible due to the deceased falling down on the ground. Being so, conviction of the appellant under Section 304 of IPC awarded by the trial Court appears to be just and proper warranting no interference by this Court.

21. Consequently, the appeal being devoid of substance deserves to be and is hereby dismissed.

22. In the present case, as per report dated 23.02.2020 received from Deputy Jail Superintendent, Central Jail Ambikapur, District Surguja (C.G.), accused/appellant Karamkhela S/o Banshi had been released on 15.08.2009 from jail after extending benefit of remission provided by the State, therefore, there is no requirement for passing any order regarding his arrest, surrender etc. by this Court.

Sd/-
(Gautam Chourdiya)
Judge

vatti