

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 848 of 2017

Sukhram Sahu S/o Tihari Ram Sahu, Aged About 25 Years R/o Andhyarkhor,
Police Station Nawagarh, District Durg Now District Bemetara,
Chhattisgarh., Chhattisgarh

---- Appellant

Versus

State Of Chhattisgarh Through Station House Office, Police Station
Nawagarh District Durg Now District Bemetara Chhattisgarh., Chhattisgarh

---- Respondent

For Appellant : Shri Manoj Mishra, Advocate
For State : Shri Lalit Jangde, Dy. Govt. Advocate

**D.B. :Hon'ble Shri Justice Manindra Mohan Shrivastava &
Hon'ble Smt. Justice Vimla Singh Kapoor**

Judgment On Board

17/06/2021

Per Manindra Mohan Shrivastava, J.

1. This appeal is directed against the judgment of conviction and order of sentence dated 30.12.2009 passed by learned Additional Sessions Judge, Bemetara, District- Durg (now District- Bemetara) (CG) whereby and whereunder the appellant has been held guilty of commission of offence punishable under Sections 302, 201 IPC and sentenced as below:-

Conviction	Sentence
u/S 302 IPC	Life imprisonment and fine of Rs.500/-, in default of payment of fine, additional RI for 2 months
u/S 201 IPC	RI for 3 years and fine of Rs.100/-, in

	default of payment of fine, additional RI for 1 month
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2. The prosecution story, as unfolded from the records of the case is that an intimation regarding death of one Kanti Bai was given in the police station on 4.3.2009 at about 9:55 in the morning by Darshan (PW8) in which it was disclosed that the appellant had killed his mother Kanti Bai in the house and had set the dead body on fire. Appellant- Sukhram was seen in the house holding an axe in his hand and was threatening them. After recording morgue in Ex.P-10, the police proceeded to place of occurrence and an inquest over dead body was prepared in presence of witnesses and then dead body was sent for postmortem. Postmortem was conducted by Dr. R.K. Singh (PW7) who, on the basis of the condition of the body that it was cut in several pieces and burnt also, gave an opinion of homicidal death. FIR was already registered at the instance of Darshan in Ex.P-11 in which it was informed to the police that upon coming to know about death of Kanti Bai, wife of Tihari, he along with informant went to the house and there they saw that the appellant was standing in the veranda with an axe in his hands and had set on fire the dead body of his mother which was cut into various pieces and having seen them, threatened to leave the place. The appellant was taken into custody and from his possession, an axe was said to be recovered which was sent for query by the doctor and according to opinion of Dr. R.K. Singh (PW7), the injury could be caused by the said weapon (axe). Further case of the prosecution is that from the appellant, his blood stained clothes namely full pant and a shirt was also seized while seizing axe vide Ex.P-1. From the place of incident, simple and blood stained soil were also seized vide Ex.P-2. The axe and the clothes of the appellant which were said to be seized along with simple and blood stained soil collected from the spot were also sent for examination to FSL. After filing of charge sheet, learned trial Court on the basis of material contained in the charge sheet, framed charges against the appellant charging that the appellant had murdered his own mother. The appellant having abjured guilt was put to trial. The prosecution, in order to prove its case, examined

as many as ten witnesses. Thereafter, the accused was examined under Section 313 Cr.P.C. in respect of incriminating evidence and circumstances appearing against him. No defence witness was examined. Learned trial Court relying upon the evidence led by the prosecution held the appellant guilty of commission of offence as described above, giving rise to present appeal.

3. Assailing legality and validity of the impugned judgment of conviction and order of sentence, learned counsel for the appellant would argue that there are no eyewitnesses of the incident and, therefore, the prosecution was required to prove its case beyond doubt by proving incriminating circumstances forming a complete chain to hold the appellant guilty, but the prosecution case is based on extremely weak circumstantial evidence. There is no FSL report of presence of blood much less that of the blood group and origin of the deceased in the axe and the clothes of the appellant as no FSL report was led in evidence before the trial Court. Cross-examination of the prosecution witnesses also establishes that the house of the deceased was in the enclosed premise and nobody could enter the house and attack. No strong motive has been stated by the prosecution as to why the deceased would be killed by her own son that too so brutally and thereafter set on fire.
4. Per contra, learned counsel for the State would submit that in the present case, there is prompt morgue intimation and FIR immediately after the incident which disclosed the name of the appellant as the assailant. Though there is no direct evidence, there is evidence in the form of extra-judicial confession made by the appellant to as many as two independent witnesses namely Ritesh Mishra (PW1) and Devnath (PW9) and nothing could be elicited in their cross-examination as to why they would falsely implicate the appellant. It is also argued that Ritesh Mishra (PW1), Dharshan Das (PW8) and Devnath (PW9) have clearly deposed that when they reached the house of the deceased, the appellant was holding an axe in his hands. Smt. Shanti Bai (PW4) has also proved presence of the appellant at the spot. Ritesh Mishra (PW1) has proved seizures of axe and

clothes. According to Vihari (PW3), only the appellant was present in the house when the mutilated dead body of his mother was seen burning there at the spot. It is further argued that the conduct of the appellant also incriminates him and involves in the alleged commission of offence. Learned counsel for the State argues that there is reliable evidence to prove that the appellant was in the house with his mother and there was no other member of the family present in the house. It was for the appellant to explain how his mother was so brutally killed, cut into pieces and then pieces of the dead body set on fire. Therefore, it is argued, case of the prosecution proves the guilt and the appellant has been rightly convicted by the learned trial Court.

5. We have heard learned counsel for the parties and perused the records.
6. Present is a case of brutal assault and murder. Postmortem report which has been proved by Dr.R.K. Singh (PW7) clearly proves that Kanti Bai was brutally murdered and her dead body was cut into several pieces. On this aspect, the evidence of the doctor and postmortem report could not be impeached.
7. Present is not a case where the prosecution has come out with direct evidence but the case of the prosecution has been found proved by learned trial Court only on the basis of circumstantial evidence.
8. Darshan (PW8) has proved lodging of morgue intimation in Ex.P-10 and FIR in Ex.P-11 by him in Police Station Nawagarh, District- Durg soon after the incident. This witness Darshan (PW8) has deposed in his evidence that he had informed the matter to the police after having gone to the house of the appellant and having seen dead body of his mother burning and the appellant standing at the spot with an axe in his hands. R.P. Singh (PW10), Investigating Officer and SHO of Police Station- Nawagarh has also deposed that on the basis of information given by Darshan, he had recorded morgue intimation in Ex.P-10 and has proved his signature. Lodging of FIR in Ex.P-11 by Darshan has also been proved by him and he has proved his signature. Darshan (PW8) has also clearly stated in his evidence that he had

lodged morgue intimation as well as FIR and has proved his signatures. According to morgue intimation (Ex.P-10) and FIR (Ex.P-11), the matter was reported in the police station quite promptly as in the FIR, time of incident is said to be around 8:30 a.m., whereas information is said to be received in the police station at 10:00 am i.e. within two hours five minutes before, morgue was recorded in the police station which is clear from morgue intimation (Ex.P-10).

9. The morgue intimation and FIR was lodged in the police station by a responsible person namely Darshan Das, Kotwar of the village. In the morgue as well as in the FIR both, appellant has been named as the person who was standing with an axe at the spot where the mutilated dead body of his mother was burning. According to FIR, Sukhram threatened them as to why he had come and he should go away. That is what has been stated in morgue intimation also which was promptly lodged. Thus, name of the appellant as an assailant was disclosed within two hours of the incident by Kotwar of the village.
10. Ritesh Mishra (PW1) has deposed that brother of the accused called up at around 8:30 in the morning on 4.3.2009 to inform that his brother Sukhram had murdered his mother. Thereafter, he informed to Kotwar and along with him, he went to the house of accused-appellant Sukhram where he found that accused was sitting at home holding an axe in his hands. They smelt something burning and they asked the accused what was burning. The accused confessed that he had cut his mother into pieces and the dead body was being burnt. This witness further deposes that as the accused was holding an axe, he could not gather courage to do anything further and then he informed the police. In the cross-examination, it has been elicited that he is the up-sarpanch of the village and stated that he was informed by brother of the accused. Definitely, this witness is not an eyewitness but certainly he proves that when he reached the house of the appellant, he saw the appellant present in the house along with an axe, dead body of his mother burning and appellant confessing before him that he had killed his mother. Moreover, it has also been elicited in the cross-examination that

when he reached the house of the accused, there was no one else and only accused was present. He has stated that he had seen from distance and it appeared as the appellant was setting the dead body on fire. Darshan Das (PW8), Kotwar of the village has also deposed that upon being informed by Ritesh Mishra, he went to house of the appellant and there he and Ritesh saw that dead body was burning in the courtyard of the house of the appellant and the appellant was standing there with an axe in his hands. Up-sarpanch Ritesh Mishra asked as to why he killed his mother, then he said they have no business and they should leave the place otherwise they will also be cut into pieces. This witness also proves that when he reached the house of the appellant after receiving information regarding death of Kanti Bai, dead body of Kanti Bai was burning in the courtyard of the house of the appellant and the appellant was found present therein along with an axe.

11.Devnath (PW9) is the real brother of the appellant and son of the deceased. He has deposed that when he returned home, he found that his brother Sukhram had already cut his mother into pieces and set it on fire and by that time, no villager had come to the spot. When he asked his brother as to how his mother died, accused stated that his mother left for heavenly abode and when he again inquired as to how she died, then the appellant confessed that he cut his mother into pieces by an axe. He stated that he first assaulted her with the help of club and thereafter, she was cut into pieces with the help of an axe and then dead body was set on fire. This witness (PW9) admits that the appellant had not entered into any quarrel with him or his father but he had hurled abuses to the mother. He states that his brother is not a person of unsound mind. In his cross-examination, he has re-affirmed that his brother had informed regarding having committed murder.

12.Smt. Shanti Bai (PW4) sister-in-law has deposed that when the appellant went towards bore, washed his face and at that time, mother was sitting in the veranda. After washing his face, he approached his mother and abused her and then this witness heard sound of assault. She states that her house

and the house of Kanti Bai are adjacent. According to her, the incident happened at around 8:00 in the morning. She states that she had informed police that Sukhram was quarreling with his mother. Though she has not seen the appellant actually assaulting his mother, in cross-examination, it has come that house of this witness and that of the deceased are adjacent and separated by a curtain only and she could hear conversation in the other house. She further deposes that she had heard appellant abusing his mother complaining that why she cut papaya tree.

13. From the aforesaid evidence of Ritesh Mishra (PW1), Smt. Shanti Bai (PW4), Darshan Das (PW8) and Devnath (PW9), it is proved that FIR and morgue intimation was lodged immediately in which name of the appellant was disclosed as assailant. It is further proved that in the morning, a quarrel was going on between appellant and his mother and the appellant was abusing his mother. It has also been proved from the evidence of prosecution witness that when they reached to house of the appellant, the dead body of Kanti Bai was burning and the appellant was standing at the spot with an axe in his hand and was threatening the witnesses not to stay and to leave the place otherwise they will also be cut into pieces. From the evidence of prosecution witnesses, it has also been proved that in the house there was only appellant and nobody else. The evidence of extra-judicial confession has also been clearly established in the evidence of Ritesh Mishra (PW1) and Devnath (PW9). Ritesh Mishra (PW1) is up-sarpanch of the village and his evidence in this regard has remained un-impeached. Nothing could be elicited in his cross-examination as to why he would falsely implicate the appellant. Devnath (PW9) is none other but the appellant's own brother and there is no reason why he would falsely involve his own brother in the murder of his own mother. This witness has remained firm that the appellant had confessed before him that he killed the mother.

14. The prosecution case has also been proved from seizure of axe from the possession of the appellant. This has been proved from the evidence of Ritesh Mishra (PW1). In any case, Darshan Das (PW8) and Devnath (PW9)

have clearly stated that the appellant was holding an axe. The query report given by the doctor and proved by him in his evidence proves that injury could be caused by the weapon, the axe, seized by the police.

15. Moreover, once it is proved beyond doubt that when the appellant and mother alone were present in the house, failure on the part of appellant to explain as to how his mother died is an additional link in incriminating circumstantial evidence proved against him because in view of provision contained in Section 106 of the Evidence Act, the appellant was required to explain as to how his mother died. On the contrary, the evidence is extra-judicial confession itself found to be proved.
16. Learned counsel for the appellant has vehemently argued that the FSL report of axe and clothes was not led in the evidence, therefore, doubt is not clear and that no strong motive has been proved.
17. The circumstantial evidence which has been led by the prosecution form a complete chain to lead to an inference that it is the appellant and appellant alone who must have killed his own mother. Therefore, failure on the part of the prosecution to lead forensic evidence does not render the prosecution case so doubtful as to disregard the same. Once the chain of circumstantial evidence leads to an inference that in all probabilities, the appellant and the appellant alone must have killed his mother, conviction could be ordered and that is what has been done by learned trial Court and we do not find any good ground to interfere with the impugned judgment of conviction and order of sentence.
18. The appeal, therefore, fails and is accordingly dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge