

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1258 of 2017

Sarvan Bhuniyan S/o. Mandhar Bhuniyan, aged about 20 years, (at present aged about 26 years) occupation Agriculturist, R/o. Village Kurra, Police Station and Tahsil Lailunga, District Raigarh (CG)

---- Appellant

Versus

State of Chhattisgarh Through Station House Officer- Police Station Lailunga, District Raigarh(CG)

---- Respondent

For the Appellant :- Dr. Kumaresh Tiwari, Advocate
For the respondent :- Mr. Anurag Verma, Panel Lawyer

Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Vimla Singh Kapoor,

Judgment on Board
By Manindra Mohan Shrivastava, J.

04.08.2021

1. This appeal is directed against the impugned judgment of conviction and order of sentence dated 07.09.2011 passed by the Sessions Judge, Raigarh, in Sessions Trial No. 105/2010, wherein and whereunder the appellant has been held guilty for commission of offence under Sections 302 IPC and sentenced him to undergo for life imprisonment.
2. According to the prosecution case, FIR (Ex.P-1) was lodged by Sumitra (PW-1), daughter of the deceased and sister of the

appellant that early in the morning, when the appellant was burning chilly, it was objected to by his father and thereafter, the appellant opened assault on his father and assaulted badly with help of *lathi* (club) and a shovel. In this incident, the mother was also assaulted and injured. Injured father Mandhan died. After having recorded FIR, Police proceeded to the scene of occurrence and inquest over dead body was prepared, dead body was sent for postmortem. Dr. Yogeshwar Singh Sartiya (PW-5) conducted postmortem and found as many as seven injuries on the dead body of Mandhar including serious injury in the skull, mandible part and fracture on both knees, wrist and forearm. In the opinion of doctor, the cause of death was due to external injury because of multiple fracture and grievous injuries caused by hard and blunt object. Vrindawati (PW-2) the wife of the deceased had also sustained injuries and therefore, she was also examined and was found having sustained multiple injuries including injury on her head. The appellant who is said to be caught and tied up at the spot, was taken into custody. After completion of usual investigation, recovery of weapon etc, charge sheet was filed, appellant was charged of having committed offence of murder of his own father which was denied therefore, the appellant was put to trial.

3. In order to prove its case, prosecution examined number of witnesses including eyewitness. Statements of the accused/appellant was also recorded under Section 313 Cr.P.C. in which he denied the circumstances appearing against him in the

evidence led by the prosecution case and stated that he is habitual of consuming 'ganja' at the time of incident, he was intoxicated and his family members would not talk to him. He further stated that because of scuffle, his father fell down and sustained injuries and he did not assault him. No defence witness was examined.

Learned trial Court relying upon the evidence led by the prosecution particularly eye-witness account, evidence of homicidal death, held the appellant guilty and convicted.

4. Learned counsel for the appellant limited his argument to the aspect that it has come on record from the evidence of prosecution witnesses that the appellant was a habitual consumer of 'ganja' and mostly remained in intoxicated state and at the time of incident also he was intoxicated. Evidence has also come that he was of retarded mind and used to behave like insane. Taking cue from such statement, emerging from the evidence of the prosecution witness, an argument has been advanced that in such a case, the act done by the appellant could not be said to be an offence in view of provisions contained in section 84 and 86 IPC, because the act alleged to have been done by the appellant was in a state of intoxication and that too, when the appellant, otherwise a person who used to act as insane. Further submission is that defence of the appellant renders it possible that because of the bad habits of the appellant, his family members have gone against him and all of them are falsely implicating him.

5. State counsel on the other hand, supported the judgment of conviction and order of sentence by submitting that the prosecution case is proved by overwhelming evidence of eye-witnesses, extra judicial confession and multiple injuries leading to homicidal death of his own father and one of the prosecution witness which is his own mother who was also injured by the assault of the appellant.
6. We have heard learned counsel for the parties, perused the impugned judgment and record.
7. The first information report was lodged by Sumitra (PW-1) within four hours of the incident, which is clear from the FIR itself. The incident is said to have taken place early in the morning at about 4.00 AM. Sumitra (PW-1) is the sister of the appellant and daughter of deceased Mandhar. In the FIR, she has clearly stated regarding appellant assaulting the deceased as well as his mother, she coming out to seek help and the appellant caught red handed at the spot and tied down by the neighbours. Lodging of FIR has been proved by PW-1 and by IO. They have proved their signatures. Homicidal death of Mandhar is not substantially in dispute and proved by overwhelming evidence of doctor (PW-5), who conducted postmortem, prepared injury report upon examination. In his evidence, doctor has proved as many as seven injuries having been caused on the deceased including grievous injuries on the head and various parts of the body resulting in fracture on both the knees, wrists and also upper part of arm and there was grievous injury on the head and the opinion of the

doctor is internal bleeding because of multiple grievous injuries. Nothing could be elicited in his cross-examination to doubt the nature and extent of injuries and cause of death as stated by the doctor. Homicidal death of Mandhar therefore is proved beyond doubt.

8. The criminal overt act of the appellant has been proved by overwhelming evidence led by the prosecution. Sumitra (PW-1) is the sister of the appellant and daughter of the deceased, who has clearly stated in her evidence that early morning, appellant came at around 4.00 AM and started beating her father, though there was no dispute and she does not know why her brother assaulted his own father. She, however, says at that time, when the appellant was assaulting her father, she was at home and this has been witnessed not only by her but her mother also. She has also deposed that while her mother came there to save his father, she was also assaulted due to which, she also sustained injuries on her head and her head was also broken. She further deposed that her father sustained injuries because of assault given on hand, legs and all the places and one Godhihas Kumhar was called and he has also seen the incident. Mohan also came at the spot and by that time, appellant had killed his father. She has also stated name of Shinde Uraon and Bantu Uraon, neighbours who subsequently arrived. She has deposed that these persons caught hold of his brother Shravan, the appellant was tied down with the pole, as he was trying to run away. She has been subjected to detail cross-examination but nothing could be elicited in her cross-

examination to doubt her testimony. She has, however, admitted that her brother used to consume 'ganja'. In her cross-examination it has also come that appellant assaulted her father on his head with the help of a shovel, whereas a *danda* to assault on his hands and legs. Statement is sought to be impeached as improvement upon her diary statement. Overall reading of her evidence does not contain anything which would doubt her testimony. She is the sister of the appellant and daughter of the deceased and she had no reason to speak false and involve her own brother in the incident.

9. The other eye-witnesses is none other than the wife of the deceased namely Smt. Vrindawati (PW-2), who is an injured witness. Her statement is also to the effect that while the appellant was burning chilly, his father objected to it and immediately thereafter the appellant stated assaulting his father. She has stated that the appellant assaulted on various part of the body including head with the help of shovel also. She was also assaulted and she could somehow escape and go for help whereafter, some people came in, appellant was caught hold of and tied down. In her cross-examination, all that has been elicited that the appellant used to consume '*ganja*' and on the date of incident also, he had taken '*ganja*'. She also admits that at the time of assaulting, the appellant had no knowledge that he was assaulting none other than his own parents.
10. Another prosecution witness Godhihar Kumhar (PW-4), a neighbour has also stated that when Sumitra came to his house, stating that

her father was being assaulted by appellant Shravan, he went to the house and saw that the appellant was assaulting Mandhar on his head with the help of weapon. Mandhar had sustained several injuries and his hands and legs were broken. In the cross-examination, it has been elicited that his statement was not taken by the police and the facts are being stated before the Court for the first time. Suggestion that he has not seen the incident has been denied. He admits that earlier there was no dispute between the appellant and the deceased and he also does not know why appellant assaulted his father.

11. Mohanlal Gupta (PW-6) has stated that when he was called by Sumitra to help as stating that her father was being assaulted by the appellant with the help of club and a shovel, he went to the house and saw that appellant was holding club in his hand and there was lot of blood on his body, Mandhar was lying in the verandah taking last breath. Though this witness is not the witness of actual assault but he confirmed presence of the appellant at the spot with a club in his hand and his body stained with blood.

Ajit Kumar (PW-7) has also deposed that at the call given by Sumitra (PW1) regarding assault being given to the deceased by the appellant, he went to the house and saw that appellant was assaulting his father and then he was caught hold of and tied down. In the cross-examination, it has been elicited that the fact regarding he being witness the incident of assault, was not stated earlier, meaning thereby, that it is an improvement. We did not go

into much detail in the evidence of this witness because many other prosecution witnesses have stated regarding they having witnessed the actual assault by the appellant to the deceased.

Suggestion that the appellant, even prior to incident, used to behave like madman and also looked mentally retarded, though, admitted but denied that at the time when he was tied down with the rope he was not normal.

12. The aforesaid overwhelming evidence on record proves beyond doubt that it is the appellant who assaulted his father with club and then with the help of a shovel on various part of body so much so that further received serious fracture injuries on the head, wrists and other injuries also, in total seven in number. The opinion of the doctor makes it clear that the cause of death was multiple assaults leading to internal injuries.
13. The argument of learned counsel for the appellant is that the evidence on record, as elicited from the cross-examination of the prosecution witnesses that the appellant used to consume 'ganja' and at the time of incident also he was in the state of intoxication and also there being an evidence of he behaving like insane and mentally retarded, the accused may be granted benefit of Section 84 and 86 IPC and it may be held that the criminal overact of the appellant did not amount to an offence.
14. We are not convinced with the submission of learned counsel for the appellant because in order to make out a case under Section 84 and 86 IPC, proper, clinching and reliable evidence including

that of medical practitioner is required to be led. Further more, mere intoxication is not a defence. The intoxication has to be proved to be of such a degree that it would completely put the accused by the side of his mind. There is evidence that the appellant used to consume ganja and at the time of incident also he seemed to be intoxicated, it cannot be said that he was not in senses as has been stated by Ajit Kumar (PW-7). No other evidence much less any evidence of medical examination of the appellant has been led either by the accused or emerging from the evidence of the prosecution to give the appellant benefit of section 84 IPC.

15. In the result, we do not find any good ground to interfere with the impugned judgment of conviction and order of sentence appeal is fails and is hereby dismissed.

Sd/-

Manindra Mohan Shrivastava
Judge

Sd/-

Vimla Singh Kapoor
Judge