



HIGH COURT OF CHHATTISGARH, BILASPUR

**D.B.: HON'BLE SHRI JUSTICE NAVIN SINHA &
HON'BLE SHRI JUSTICE R.N. CHANDRAKAR**

Criminal Appeal No. 788 of 2011

APPELLANT

Tejram S/o Parasram, aged about 37 years, Occupation Agriculturist, R/o village Kardana (Kadnai) Schoolpara, Police Station Batouli, District Sarguja (C.G.)

Versus

RESPONDENT

State of Chhattisgarh, through Station House Officer, Police Station Batouli, District Sarguja (C.G.)

(Criminal Appeal under Section 374 (2) of The Code of Criminal Procedure, 1973)

Appearance:

Mr. Vivek Kumar Pandey, Advocate for the appellant.
Mr. Ashok Swarnkar, Panel Lawyer for the State/ respondent.

JUDGMENT
(Passed on 31st July, 2014)

Following judgment of the Court was dictated on Board by
JUSTICE NAVIN SINHA.

1. The sole appellant stands convicted under Section 302 I.P.C. to suffer life imprisonment along with fine of Rs.2,000/-, failing which, he shall have to undergo further six months rigorous imprisonment, by judgment dated 29.07.2011 of the Sessions Judge, Sarguja (Ambikapur) in Sessions Trial No. 102 of 2008.
2. The prosecution case in Batouli P.S. Case No.06 of 2008



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registered on 08.02.2008 at 10:00 am, penned by PW 11, Krishna Pandey, Inspector Batouli Police Station, and witnessed by PW 5, Hira Sai, marked as Exhibit P/8, is that on 07.02.2008 at about 10:00 pm, the body of the two deceased Nadhi Ram and Bhadwa Ram were lying on the ground near the house of PW 5 with blood around them. He stayed inside the house as it was late at night. In the morning, he called Ram Sunder (not examined) and PW 2, Sarvajeet and others. PW 2, Sarvajeet told him that the appellant had come to the latter's house at night and informed that he had killed the two deceased. PW 2, Sarvajeet, had kept the appellant at his house in the night. PW 10, Manmati Bai, wife of the appellant and PW 3, Bajri Bai, wife of the deceased Nadhi Ram had informed him that at night the two deceased had a fight with the appellant. The appellant had assaulted the two deceased with a half burnt wooden plank and also attempted to assault PW 3 and also his own wife, PW 10, Manmati Bai. The wooden plank with blood spots was seized and marked as Exhibit P/12 witnessed by PW 6, Rajnath. The shirt of the appellant with blood stains on the left sleeve was seized as also the finger nails of the appellant were cut, collected and were collectively marked Exhibit P/17. The FSL report with regard to the seized items confirming presence of blood on all of them was Exhibit P/14. The appellant was taken into custody on 08.02.2008 at 21:00 hrs, marked as Exhibit P/18.

3. The bodies of the two deceased were sent for postmortem on

09.02.2008, conducted at 10:00 am and 10:30 am respectively, by PW 1 Dr. Anupam Minj, who found following injuries on the person of the deceased:-

Deceased- Nadhi Ram:-

- Bleeding and blood clot present over nose and left ear.
 - Blood stained face both sides.
 - Coal stained areas over left side of chest over auxiliary line over 7th, 8th and 9th ribs of area 4 cm in diameter, over back (inter-scapular space) 3 cm in diameter.
 - Lacerated wound over left parietal region of 3 x 1 x 1 cm (horizontal).
 - Swellings on right parietal regions of size 2 cm in diameter.
 - The clot and congestion present over layers of scalp.
 - Depressed fracture of left parietal bone of 10 cm x 4 cm.
 - Subdural clot of size 3 cm in size present, congested brain matter.
 - Right parietal bone- linear fracture 3 cm in length.
- Death was opined to have been caused by coma due to head injury. The assault estimated to be 24-48 hrs. earlier. The postmortem report was marked as Exhibit P/1.

Deceased- Bhadwa Ram:-

- Bleeding and blood clot present over right ear, nose and mouth.
- Staining of blood over right ear, side of face near right ear.
- Diffuse swelling over right parietal and temporal region of 15 cm x 10 cm.
- Blood clots present over layers of scalp.
- Fracture on right parietal and temporal bone.
- Linear fracture in 2 cm length over parietal and depressed fracture over right temporal bone of area 2 x 2 cm.

- Subdural clot of size 2 cm present.

Death was opined to have been caused by coma due to head injury. The assault estimated to be 24-48 hrs. earlier. The postmortem report was marked as Exhibit P/2.

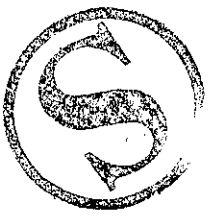
4. PW 2, Sarvajeet in his deposition in Court stated that the appellant had come to his house at night and informed of an altercation with the deceased and that he was going to the Police Station. The witness persuaded him to stay back at his house. He sent PW 5, Hira Sai and Brij Lal (not examined) to the Police Station for writing a report. The Police came in the morning at about 10:00-11:00 am and the inquest report was prepared vide Exhibits P/4 and P/5 respectively, signed by PW 2, Sarvajeet.
5. PW 3, Bajri Bai, wife of the deceased Nadhi Ram, an eyewitness to the assault stated that she along with her husband had gone to the house of the appellant at about 4:00-5:00 pm to ask for return of Rs.2,500/- loaned to the latter. The appellant had prepared *Mahua* liquor. PW 10, Manmati Bai, wife of the appellant was also home. All four of them consumed liquor till about 8:00 pm. Nadhi Ram then asked the appellant to return his money. The appellant started to assault Nadhi Ram with the wooden plank and the latter fell down. Injuries were caused on his face, head and chest leading to bleeding from the head. The appellant chased her and his own wife, PW 10 to assault, but they ran away. PW 3 learnt the next morning that her husband had been killed. The body Bhadwa Ram having injuries on head and face, was

also lying there. In cross-examination, she specifically denied any suggestion that the appellant had not assaulted her husband in her presence. She denied that her husband had assaulted the appellant. No material has been placed before of any injuries caused to the appellant by reason of assault on him by Nadhi Ram. She denied any suggestion that the two deceased had a drunken brawl between themselves.

6. PW 4, Tedhi Bai, wife of Bhadwa Ram, denied having witnessed any assault and claimed that she was not aware when her husband left home at night. In morning, Kuri had informed that someone had killed her husband. After being declared hostile on question by the prosecution, she contradicted herself by stating that her husband went out at night after hearing the commotion outside i.e. the assault by the appellant on Nadhi Ram.

7. PW 5, Hira Sai, reiterated that PW 2, Sarvajeet, had sent him to report to the Police Station. He denied that PW 2, Sarvajeet had told him of any confession made by the appellant to Sarvajeet or that the latter had told him that he had kept the appellant at his house in night. Significantly, PW 11, Krishna Pandey, the Investigating Officer on cross examination by the defence reiterated that he had recorded the statement of the witness as narrated by him.

8. PW 6, Rajnath was a formal witness having signed Exhibit P/12, the seizure list of half burnt wooden plank, mud soaked earth and clothes.



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9. PW 7, Mohan Ram stated that he along with PW 5, Hira Sai were at the house of PW 2, Sarvajeet. At about 10:00 pm, the appellant came to the house of PW 2, Sarvajeet and informed that he had killed the two deceased and stayed in the house of PW 2, Sarvajeet at night.

10. PW 8, Jhadi Ram, son of Nadhi Ram was not an eyewitness like PW 9, Dhaneshwari Bai. In cross-examination, she denied having told the Police that the appellant was shouting at night that if anyone came in his way, he would assault that person also. But PW 11, Krishna Pandey specifically deposed on cross-examination by the defence that he had recorded the statement exactly as per disclosure made to the Police by the witness.

11. PW 10, Manmati Bai, wife of the appellant tried to take a plea of alibi that the appellant was not home on the night of occurrence but could not prove it. On the contrary, in her cross-examination, she admitted that the deceased Nadhi Ram and his wife, PW 3, Bajri Bai had come to her house and consumed liquor. In her cross-examination by the defence she denied having any knowledge that Nadhi Ram ran towards the house of Adim Sai when PW 3, Bajri Bai, the witness herself and Bhadwa Ram tried to persuade the appellant not to fight. Again, PW 11, Krishna Pandey deposed on question being asked by the defence that he had recorded the statement exactly according to disclosure made by the witness to the Police.

12. The FSL report, Exhibit P/14 confirmed the presence of blood on



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the shirt of the appellant seized by the Police as also in his nail clippings. The appellant in his statement under Section 313 Cr.P.C. had acknowledged that Police had taken his shirt and nail clippings. In reply to a question that he was arrested from his house, he stated that he was taken into custody while going home.

13. The prosecution story as unfolded by the witnesses can be summed up as the deceased and his wife coming to the house of the appellant and consuming liquor together, the demand for return of money by the deceased followed by an assault on the spur of moment. In the ensuing commotion, deceased Bhadwa Ram came out from his house and tried to intervene. The appellant assaulted him also. The postmortem report sufficiently indicates that only a wooden plank had been used for assault. The Trial Judge came to the conclusion that the appellant was last with the deceased Nadhi Ram and his wife, PW 3, Bajri Bai, an eyewitness of occurrence. The appellant had made an extra judicial confession, without any coercion voluntarily. He has not retracted. The evidence of PW 2, Sarvajeet, with regard to the same is corroborated by PW 7, Mohan Ram. The nature of the assault made in the background of facts was enough to hold that at least he had the knowledge that the assault may lead to death.

14. The evidentiary value of a extra-judicial confession made voluntarily essentially being a weak evidence, but if corroborated by other evidence can be taken into consideration was observed in (2013)

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9 SCC 778 (Sahib Hussain v. State of Rajasthan) as follows :-

"15. The prosecution heavily relied on the extra-judicial confession. The extra-judicial confession, though a weak type of evidence, can form the basis for conviction if the confession made by the accused is voluntary, true and trustworthy. In other words, if it inspires the confidence, it can be acted upon. We have already noted that the appellant-accused mentioned the details of the incident to Satish (PW 4) and the courts below accepted his version as reliable and trustworthy. Ms Archana, learned counsel for the State took us through the entire evidence of Satish (PW 4) and on going through the same, we are satisfied that his evidence is reliable, acceptable and inspires our confidence. We have already noted that the evidence of PW 4 supports the stand taken by PW 1. It is also on record that PW 4 was the friend of the appellant-accused and they were residing in the same area. In those circumstances, the confession made by the appellant to PW 4 can be acted upon along with other material evidence."

15. Mr. Vivek Kumar Pandey, learned counsel for the appellant made a short and limited submission before us that on the own finding of the Trial Court at paragraph-36 of the judgment that the appellant certainly had knowledge that death is likely to be caused, but had no intention to cause death. Therefore, the sentence of life imprisonment was

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unjustified and it should be converted to one under Section 304 Part-II I.P.C. No other submission whatsoever was made before us to assail the conviction.

16. Mr. Ashok Swarnkar, learned Panel Lawyer for the State submitted that in the nature of assault made, the Trial Court has rightly held that it was a repeated not a single assault. The conviction therefore called for no interference.

17. We have considered the submissions on behalf of the parties and perused the judgment under appeal along with the evidence on record.

18. The genesis of the occurrence as noticed originated in consumption of liquor leading to a demand for return of money. The appellant threatened to assault not only the deceased, his wife PW 3, Bajri Bai, but also his own wife, PW 10, Manmati Bai. Bhadwa Ram, the other deceased, who came out on hearing the commotion also faced his wrath. Apparently, the appellant had no intention to cause death as in that event, he may undoubtedly have used a more serious weapon of assault rather than half burnt wooden plank on a rainy night. The intervention by Bhadwa Ram to stop the fight, propelled his assault also on the spur of moment.

19. In view of the conclusion of the Trial Court that the appellant had the knowledge that his act was likely to cause death and there was no material with regard to intention and absence of any previous enmity we

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are unable to sustain the life imprisonment awarded to the appellant under Section 302 I.P.C.

20. Two persons are stated to be have been deceased, the altercation ensued on a demand for money, notwithstanding, that their relations were cordial enough to consume liquor together, the appellant had assaulted the two persons with wooden plank and also attempted to assault on his own wife, PW 10, Manmati Bai. We are satisfied to direct direct that the sentence for life imprisonment be substituted by punishment under Section 304 Part II I.P.C with imprisonment for 10 years with fine as imposed by the Trial Court.

21. With the above modification, the appeal stands disposed.

Sd/-
Navin Sinha
Judge

Sd/-
R.N.Chandrakar
Judge

Anu