

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 547 of 2011

- Suman, S/o Late Shri Thakana, aged about 25 years, R/o Village Kotashari, P.S. Dabhara, Rajpur, Distt. Surguja (CG)

---- Appellant

In Jail

Versus

- State Of Chhattisgarh, through the Incharge Officer, P.S. Dabhara, Rajpur, Distt. Surguja (CG)

---- Respondent

For appellant : Shri Uttam Kumar Sahu, Advocate
For Respondent/State : Shri V. Goverdhan, Panel Lawyer

Hon'ble Shri Justice Pritinker Diwaker, &

Hon'ble Shri Justice P. Sam Koshy, JJ

Judgment On Board by Pritinker Diwaker, J

31/07/2015:

This appeal arises out of the judgment of conviction and order of sentence dated 12.5.2011 passed by the I Additional Sessions Judge, Ambikapur Distt. Surguja in S.T.No.534/09 convicting the accused/appellant under Sections 302 and 201 of IPC and sentencing him to undergo imprisonment for life, to pay a fine of Rs.1000/- and RI for three years, to pay a fine of Rs.500/- with default stipulation respectively.

02. In the present case, name of the deceased is Thakna, who was father of the accused/appellant. It is alleged that there used to be some

dispute between the accused/appellant and the deceased. On 4.10.2009 the accused/appellant committed murder of his father in the field by causing four injuries with axe on his body including head and neck. After committing murder, the accused/appellant disclosed the said incident to the villagers and in turn, the villagers informed the same to the Sarpanch. On 5.10.2009 unnumbered FIR (Ex.P/1) was lodged by Mansai (PW-1) and thereafter, merg intimation (Ex.P/15) was recorded and then FIR (Ex.P/16) was recorded against the accused/appellant on 5.10.2009 for the offence under Section 302 of IPC. Postmortem on the body of the deceased was conducted on 5.10.2009 by PW-3 Dr. Ramprasad Tirki vide Ex.P/6 wherein he noticed incised wound over occipital region, lacerated wounds over abdomen and neck as well as fracture of skull bone. In his opinion, the cause of death was syncope as well as coma and the death was homicidal in nature. After investigation charge sheet was filed against the accused/appellant under Sections 302 & 201 of IPC and charges were framed accordingly.

03. So as to hold the accused/appellant guilty, the prosecution examined as many as 11 witnesses. Statement of the accused 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.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the accused/appellant as mentioned in para-1 of this judgment.

05. Learned counsel for the appellant submits as under:

(i) that the accused/appellant has been convicted on the basis of so-called extrajudicial confession made by him before number of witnesses but those witnesses have not supported the prosecution case.

(ii) the other piece of evidence against the appellant is seizure of axe on his disclosure statement but the witnesses to memorandum and seizure have not supported the prosecution case and have turned hostile.

(iii) in the facts and circumstances of the case, even taking the prosecution case as it is, at best the accused/appellant can be convicted under Section 304 Part-I or II of IPC. Further, considering the fact that the accused/appellant is in jail since 6.10.2009, after converting his conviction he may be sentenced to the period already undergone by him.

(iv) considering the overall evidence on record, at least offence under Section 201 of IPC is not made out against the accused/appellant.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel that apart from extrajudicial confession made by the accused/appellant before number of witnesses, on the basis of his memorandum Ex.P/9, seizure of axe was made vide Ex.P/10, on which as per FSL report Ex.P/20 blood was found. The witnesses to memorandum and seizure (PW-8 & PW-9) have also admitted their signatures on the documents. Further, the investigating officer PW-11 has also supported the memorandum and seizure. State

counsel submits that considering the manner in which the appellant assaulted his father with a deadly weapon axe, conviction of the appellant under Section 302 of IPC is just and proper, warranting no alteration.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-1 Mansai is lodger of FIR and merged intimation. PW-2 Thakur is a villager before whom the extrajudicial confession was allegedly made by the accused/appellant. He has stated that after coming to know about murder of the deceased when he reached the place of occurrence he saw dead body of the deceased lying there and Sarpanch of the villager informed him that it is the accused/appellant who had killed the deceased. Thereafter, the accused/appellant also informed him that it is he who had killed the deceased by causing him injuries with axe. However, in cross-examination he has stated that he had not informed the police that the accused/appellant had confessed before him about commission of murder of his father/deceased. If his case diary statement is seen, it is apparent that he had disclosed the police about the extrajudicial confession made by the accused/appellant before him. PW-4 Smt. Dhanmati Bai is also a witness to the extrajudicial confession made by the accused/appellant before her. In her cross-examination though she has first stated that the accused/appellant did not inform her that it is he who had killed the deceased but when this witness was questioned by the Court she has admitted that the accused/appellant came to her house and informed her about the commission of murder. PW-5 Shanti is another witness

to the extrajudicial confession made by the accused/appellant. She has stated that when she reached the place of occurrence she saw the dead body of the deceased and then she has clarified that it is incorrect to say that she did not disclose the police that the accused/appellant had confessed his guilt before her. She has further stated that the deceased used to consume liquor, however, she has clarified that the deceased never used to consume excessive liquor. She has further stated that she does not know as to whether the deceased had died due to fall on account of consumption of liquor. PW-6 Sahdev, son of the deceased, has been declared hostile. However, in para-4 he has stated that he did inform the police that the accused/appellant used to quarrel with his father almost every day and also used to abuse him and that the accused/appellant had confessed before him that he has killed his father. In para-6 of his cross-examination, he however has stated that he did not inform the police that the accused/appellant had killed his father nor did he inform the police that some time there used to be quarrel in his house. PW-7 Lalsai, another son of the deceased, has turned hostile. PW-8 Ramcharan Paikra is a witness of memorandum Ex.P/9 of the accused/appellant, seizure Ex.P/10 whereby axe was recovered and arrest memo of the accused/appellant Ex.P/11. He has though turned hostile but admitted his signatures on these documents. PW-9 Rajesh Paikra who is also a witness to memorandum Ex.P/9, seizure Ex.P/10 & P/13 has turned hostile but has admitted his signatures on the documents. PW-10 Ramu Minj, Police Constable, recorded merg and FIR.

09. PW-3 Ramprasad Tirki conducted postmortem on the body of the deceased vide Ex.P/6 and noticed following injuries on his person:

(i) incised wound over occipital region transversely towards temporal region size 10 cm x 4 cm and 3 cm deep with fracture of the temporal bone left side.

(ii) abrasion and lacerated wound on left thigh size was 10 cm x 3 cm posterior aspect of the thigh.

(iii) lacerated wound on abdomen 14 cm x 5 cm.

(iv) lacerated wound on the anterior aspect of the neck size 5 cm x 3 cm.

After dissection of the brain, fracture of the skull bone transversely occipital to left temporal bone was found. In his opinion, the cause of death was syncope as well as coma and the death was homicidal in nature.

10. PW-11 A.Toppo, investigating officer, has duly supported the prosecution case. He has also stated that during investigation he recorded memorandum of the accused/appellant Ex.P/9 and based on that effected seizure Ex.P/10 of axe.

11. Close scrutiny of the evidence makes it clear that apart from extrajudicial confession made by the accused/appellant before the independent witnesses, on the basis of his disclosure statement (Ex.P/9), weapon of offence axe was seized vide Ex.P/10, on which as per FSL report Ex.P/20 blood was found. From the evidence it appears that the extrajudicial confession made by the accused/appellant was

voluntary. There is no reason to disbelieve the statements of these witnesses. Further, considering the manner in which the appellant assaulted his father with a lethal weapon axe on his vital part head and neck with such a force resulting in his instantaneous death, we are of the opinion that conviction of the accused/appellant under Section 302 of IPC is just and proper, warranting no interference. However, as regards his conviction under Section 201 of IPC, there is nothing on record to show that the accused/appellant in any manner caused disappearance of the evidence of the crime and therefore, the trial Court was not justified in holding him guilty under Section 201 of IPC.

12. In the result, the appeal is allowed in part. While maintaining conviction and sentence of the accused/appellant under Section 302 of IPC, he is acquitted of the charge under Section 201 of IPC. He is reported to be in jail, therefore, no further order is required.

Sd/

(Pritinker Diwaker)

Judge

Sd/

(P.Sam Koshy)

Judge