

HIGH COURT OF CHHATTISGARH, BILASPUR

CORAM: **Hon'ble Shri Sunil Kumar Sinha &**
Hon'ble Shri Rangnath Chandrakar, J J.

Criminal Appeal No. 2354 of 1997

APPELLANT

Manharan Yadav S/o Shri
Makhanlal Yadav, aged about 30
years, R/o Village- Pondi, Police
Station- Ratanpur, District
Bilaspur, M.P. (Now C.G.)

Versus

RESPONDENT

State of Madhya Pradesh
(Now State of Chhattisgarh)
Through Station House Officer,
Ratanpur, District Bilaspur

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

Appearance:

Mr. R.K. Jain and Mrs. Kiran Jain, Advocates for the appellant.

Mr. S.R.J. Jaiswal, Panel Lawyer for the State.

JUDGMENT
(03.05.2013)

Following judgment of the Court was delivered by
Sunil Kumar Sinha, J.

(1) This appeal is directed against the judgment dated 17th of October, 1997 passed in Sessions Trial No. 82/97 by the Sessions Judge, Bilaspur. By the impugned judgment, the appellant has been convicted u/S 302 IPC and sentenced to undergo imprisonment for life and to pay fine of Rs.5,000/- with default sentence of R.I. for 2 years.

(2) The facts, briefly stated, are as under:-

2.1 Deceased- Anil Jaiswal was son of Ramdhin (PW-1). The case of the prosecution is that he had illicit relations with wife of the appellant. On 21.11.96 at about 7.00 p.m. when the appellant came to his house, he saw the deceased in compromising position with his wife, Bootan Bai (PW-6). On this, he became angry and took out a *tabli* and chased the deceased and gave multiple blows by *tabli* to the deceased. The deceased received following injuries and succumbed to those injuries:-

- (i) Incised wound of 5 x 2 x 1 inches on the front portion of the neck;
- (ii) Incised wound of 5 x 2 x 1 inches on the right portion of the neck, right ear-pinna was also cut;
- (iii) Incised wound of 2 x ½ x ½ inches on the left scapular region;
- (iv) Abrasion of 1 x 1 inches near injury no. (ii);
- (v) Incised wound of 2 x 1 x 1 inches on the lower back portion of the neck;
- (vi) Incised wound of 1 ½ x ½ inches on the left portion of the neck;
- (vii) Incised wound of 4 x 1 x ½ inches, 1 inch below the left ear on the left portion of the neck; &
- (viii) Incised wound of 1 ½ x ½ x ½ inches on the right portion of skull.

Esophagus, trachea etc were completely cut and the skull was attached with the skin only. The Autopsy Surgeon, Dr. Harish Chandra Tawrani (PW-8), opined that the above injuries were ante-mortem caused by sharp edged weapon; injuries were sufficient to cause death in ordinary course of nature; and the cause of death was respiratory failure on account of the above injuries and the death was homicidal in nature. The postmortem report is Ex.-P/14.

2.2 Ramdhin (PW-1) lodged mereg intimation (Ex.-P/2), based on which First Information Report (F.I.R. – Ex.-P/1) was registered. He was informed by the villagers that his son was assaulted by the appellant on the last night.

2.3 The Investigating Officer reached to the place of occurrence, gave notice (Ex.-P/3) to the *Panchas* and prepared inquest (Ex.-P/4) on the dead body of the deceased. After the inquest, autopsy was performed by Dr. Harish Chandra Thawrani (PW-8) who found above injuries and gave his report.

2.4 In further investigation, the appellant was taken into custody and his memorandum statement (Ex.-P/5) u/S 27 of the Evidence Act was recorded and various articles, including *tabli* was seized at his instance vide seizure memo(s) Ex.-P/6 & P/12. The seized articles were sent for their chemical examination to Forensic Science Laboratory (FSL), Sagar and a report Ex.-P/19 was received. According to the FSL report, blood stains were found on various articles i.e. cloths belonging to the deceased as also a *gamchha* and *tabli* belonging to the appellant. The above articles were sent for their further examination to Serologist and human blood were confirmed on the articles belonging to the deceased, however, origin of blood stains on *tabli* could not be ascertained on account of their disintegration. Serologist report is Ex.-P/28.

2.5 There was no eye-witness to the actual incident of assault given to the deceased. The case of the prosecution was based on the evidence of Bhagirathi (PW-2) and Paleshwar Sharma (PW-12) before whom the appellant made extra-judicial confession as also on the evidence of conduct of the appellant of chasing the deceased with a *tabli* and returning after commission of the incident. The learned Sessions Judge relied all above circumstances and convicted and sentenced the appellant as above.

Hence this appeal.

(3) Learned counsel for the appellant have argued that the above circumstances were not fully established, therefore, the conviction based on them cannot be sustained. Alternatively, they have argued that since the appellant became enraged after seeing his wife in compromising position with the deceased, therefore, he assaulted the deceased on a spur of moment. Thus an offence u/S 302 IPC would not be made out.

(4) On the other hand, learned counsel for the State has opposed these arguments and supported the judgment passed by the Sessions Court.

(5) We have heard counsel for the parties.

(6) Let us firstly look into the evidence of Paleshwar Sharma (PW-12) and Bhagirathi (PW-2).

(7) Paleshwar Sharma (PW-12) was village Sarpanch. He deposed that on the fateful day at about 8-9.00 p.m. Parmeshwar Yadav brought the appellant in his house. He said that the appellant had committed some mistake. When he asked the appellant, he stated that he had committed murder of Jaiswal (deceased) on account of certain dispute. He (PW-12) advised him to go to the police station, but the appellant was frightened. Then he called village Kotwar, Bhagirathi (PW-2), and send him to the police station. Paleshwar Sharma (PW-12) was permitted to be cross-examined by the Public Prosecutor and in his cross-examination, he admitted that the appellant had stated in detail that when he returned to his house in the evening, he saw one Jaiswal boy (deceased) in

compromising position with his wife in his house, on which, he became angry and committed his murder by using a *tabli*.

(8) Bhagirathi (PW-2) was village Kotwar. He deposed that on the fateful day, he was called by village Sarpanch, who said him to take the appellant to the police station. They had gone to the police station. On the way, he had asked the appellant about the incident who stated him that he had seen the deceased in compromising position with his wife, therefore, he had committed murder of the deceased. The appellant had also stated that he had assaulted the deceased by *tabli*.

(9) These two witnesses were put to cross-examination by the defence, but nothing material could be brought on which either their testimonies may be discarded or it may said that they were falsely implicating the appellant in the above incident.

(10) It is settled that if the evidence about extra judicial confession comes from the mouth of witness/witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive for attributing an untruthful statement to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it, then after subjecting the evidence of the witness to a rigorous test on the touchstone of credibility if it passes the test, the extra judicial confession can be accepted and can be the basis of a conviction.

(11) The extra judicial confession is weak type of evidence. It must be established to be true and made voluntarily in a fit state of mind. The words of witness must be clear, unambiguous and clearly convey that accused is the perpetrator of the crime. The extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility. (Vide: **Sk. Yusuf –Vs- State of West Bengal, AIR 2011 SC 2283; State of Rajasthan –Vs- Raja Ram, (2003) 8 SCC 180 and Kulvinder Singh & Another –Vs- State of Haryana (2011) 5 SCC 258**).

(12) On appreciation of evidence of these two witnesses, it was established that after commission of the incident in the evening, the appellant was taken to village Sarpanch (PW-12), where he made extra-judicial confession. Thereafter the village Sarpanch called Kotwar (PW-2) who took him (appellant) to the police station and on the way, the appellant made extra-judicial confession before Kotwar also. Thus the appellant had made extra-judicial confession before two different persons at two different occasions and the Sessions Judge was fully justified in holding that the said circumstance was established against the appellant.

(13) Apart from the above, other circumstances like seizure of the various articles on the discovery statement made by the appellant was also established and it was also established that the blood stains were found on various articles belonging to the appellant. Therefore, the above circumstances were fully established against the appellant. These circumstances were not capable of being explained and all the circumstances, were suggesting the guilt of the appellant. Thus the

Sessions Judge has rightly recorded a finding that it was none else than the appellant who committed murder of the deceased by using a *tabli*.

(14) Now we shall consider the second argument advanced by counsel for the appellant. It was argued that when the appellant returned to his house in the evening, he saw his wife in compromising position with the deceased in a room of his house, therefore, he lost his self-control and caused the death of the deceased. In substance, it was argued that the act of the appellant would fall under *Exception 1* of Section 300 IPC.

(15) *Exception 1* provides that the culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident. The above provisions of *Exception 1* is subject to certain exception described in three Clauses of *Exception 1* with an *Explanation* that whether the provocation was grave and sudden enough to prevent the offence from amounting to murder would be a question of fact.

(16) In the instant matter certain facts are undisputed. The appellant was engaged in work of extracting milk of cow and buffalo. He used to visit to various houses in the village. The prosecution came with the case that in the evening when the appellant returned to his house after his work, he saw that his wife was in compromising position with the deceased in one of the rooms of his house. In evidence of Bhagirathi (PW-2) and Paleshwar Sharma (PW-12), all these facts were stated by the appellant while making extra-judicial confession. We quote the actual words used by the appellant before these witnesses. The appellant stated

Bhagirathi (PW-2) that “अनिल का उसकी पत्नी के साथ गलत संबंध होते हुए देख लिया था इस कारण उसने अनिल को जान से मार डाला है ।” Likewise his statement to Paleshwar Sharma (PW-12) was that “वापस लौटा तो उसने देखा कि उसके घर के कमरे में एक जायसवाल लड़का उसकी पत्नी के साथ गलत काम कर रहा था । उसने यह भी बताया कि क्रोध में आकर अपने घर के बरामदे में रखी फरसी लेकर जायसवाल को मार दिया ।”

(17) The Panel Lawyer has argued that no provocation as such was given by the deceased to the appellant, therefore, *Exception 1* cannot be made applicable in this case. In fact, he canvassed that the deceased did not quarrel with the appellant, he did not say anything to the appellant, he simply got up from the above scene of occurrence and started running away from the house of the appellant where he was chased and committed to death.

(18) What would amount to ‘provocation’ in light of *Exception 1* and whether the provocation was grave and sudden is a fact to be looked into. According to AIYAR’S ADVANCED LAW LEXICON, 3RD EDITION 2005, provocation means, in law, that treatment by another which arouses anger or passion. Thus no straightjacket formula can be evolved to find out as to what acts may amount to provocation much less grave and sudden provocation, however, in ordinary course a test may be applied that if on account of the act done by the deceased a reasonable man will do the same act which the accused did may amount to provocation. The provocation, in its ordinary sense, may not be verbal or physical attack or exhortation. It may be by gesture or by some act of the like nature relating

to the conduct of the deceased. To bring the case under *Exception 1* there must be a situation of deprivation of the power of self-control by the acts done in either of the manners referred to above or by any other act of like nature.

(19) In the instant matter, as stated above, when the appellant returned to his house in the evening after completing his work, he saw the deceased and his wife in compromising position. Any reasonable man, in the above situation, would be provoked and would be deprived of the power of self-control. We have examined all attaining circumstances of the case. On evidence on record, it is clear that when the appellant was suddenly faced with the above situation which he may not have thought, he lost his self-control and then he took out a *tabli* which was already there in the house and gave multiple assaults to the deceased. We are of the opinion that in the above facts and circumstances, the case of the appellant would fall under *Exception 1* of Section 300 IPC and it shall be held to be culpable homicide not amounting to murder and the appellant would be liable for punishment under Part-I of Section 304 IPC.

(20) For the foregoing reasons, the appeal is partly allowed. The conviction and sentences awarded to the appellant u/S 302 IPC are set-aside. Instead thereof, the appellant is convicted u/S 304 Part-I IPC and sentenced to undergo R.I. for 10 years. The appellant shall be entitled to set-off the period already undergone.

JUDGE

JUDGE

HEADLINE

Principles defined on *Exception 1* to S. 300 IPC.

भा0द0सं0 की धारा 300 के *अपवाद 1* के अंतर्गत सिद्धान्त विवेचित ।

(R.K. Vatti)
Private Secretary

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State of Madhya Pradesh
(Now State of Chhattisgarh)

JUDGMENT

For consideration

Judge
/05 /2013

HON'BLE SHRI JUSTICE RANGNATH CHANDRAKAR

Judge
/05/2013

Post for Judgment : /05/2013

Judge
/05/2013