

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1118 OF 2009

TUKARAM S/O BANSHILAL MARAR

...APPELLANT

VERSUS

STATE OF CHHATTISGARH

...RESPONDENT

ORDER

1. This criminal appeal arises from the final judgment and order dated 26.09.2007 passed by the High Court of Chhattisgarh in Criminal Appeal No.577 of 2001 whereby the High Court sustained the conviction of the accused appellant under Section 302 of the Indian Penal Code, 1860 and sentence of life imprisonment as awarded by the Sessions Judge, Rajnandgaon (Chhattisgarh) and dismissed the appeal filed by the appellant.
2. The brief facts pertaining to this case are that the appellant Tukaram, along with his wife Gaya Bai, was residing in the house of his father-in-law Roopram (since deceased), at Village Matekata, Police Station Dongargarh in the State of Chhattisgarh. It is alleged that on the night intervening between 26<sup>th</sup> and 27<sup>th</sup> November, 2000 when all the

family members were sleeping, the appellant-accused woke up them at about 12:30 am and made an extra judicial confession before PW1 Chandra Kumar (brother-in-law of the accused), PW4 Durdeshi Ram (brother-in-law of the accused) and PW2 Dhruv Ram (cousin brother of the deceased), that he had committed the murder of his father-in-law Roopram. On hearing this, all the persons rushed to see whether Roopram was sleeping on the cot. They found that he was dead, there was cut injury on the neck, teeth were broken, injury on his head and blood was oozing out. When they asked as to why he killed the deceased, the accused allegedly told them that deceased Roopram had an illicit relationship with accused's wife Gaya Bai (who is daughter of the deceased) and therefore, he committed the murder of his father-in-law with a Spade. Nobody caught hold of the accused as he was holding blood-smearred Spade and he ran away towards the forest. A report was lodged at Police Station Dongargarh by Chandra Kumar (PW1). After completion of the investigation, charge-sheet was filed in the Court of Additional Chief Judicial Magistrate, Dongargarh and the case was committed to the Sessions Judge, Rajnandgaon.

3. In the post-mortem report it was found that there were 6 lacerated wounds on the neck and face and one linear bruise on lower part of the neck.

4. The evidence in the present case includes testimonies of the witnesses present in the house of the deceased at the time of occurrence (although none of them is an eye witness), post mortem report and recovery of 'Rapa' (a spade) which is the weapon used in the occurrence. Thus, it is clear that the case is completely based on circumstantial evidence. However, the prosecution witnesses have given consistent testimony that the accused woke them up at around 12.30 am and said he had killed the deceased and on being asked why he did so, he answered that the deceased had an illicit relationship with his wife. Further, the wife of the accused has deposed that he indeed had suspicion about the illicit relationship between herself and the deceased and for this reason accused killed the deceased. Moreover, the Rapa (spade) was recovered pursuant to the statement of the accused himself and the doctor has on seeing the spade testified that the injuries on the body of the deceased could be caused by that weapon.
  
5. We have heard the learned counsels for both the sides. The learned amicus curiae appearing for the appellant has put forth that it is a case of circumstantial evidence and no direct evidence is available. In view of this, she argued that motive is negated by the testimony of PW1 who denied the existence of any relationship between accused's wife and the

deceased. Further, she argued that no independent witness was examined. She therefore contended that the circumstantial evidence in the present case was not good enough to sustain the conviction.

6. It would be pertinent to point out here that motive attributed to the commission of offence by the accused is his suspicion of existence of illicit relation between the deceased and the accused's wife. The fact that whether illicit relationship indeed existed or not would not negate the suspicion that the accused had in his mind out of which he committed the offence.
7. Further the counsel for the State of Chhattisgarh has brought forth the admission by the accused in the statement under Section 313 of the Code of Criminal Procedure, 1973, about the fact that he was in the house at the time when the offence was committed. Also, there is no evidence of any enmity between the members of the house and the accused to support the defence of false implication. The information given by the accused to his in-laws family members immediately after the commission of crime and the fact of seeing the deceased dead by the family members immediately after this information, confirms the extra judicial confession made by the accused. There is nothing on record

from which it can be said that the extra judicial confession was made after considerable lapse of time. We, therefore, find that in this case the circumstantial evidence is clinching enough to hold the accused guilty and it passes the test established by this Court in *Sharad Birdichand Sarda V. State of Maharashtra*, (1984) 4 SCC 116.

8. Therefore, in light of the discussion in the foregoing paragraphs, we are of the opinion that the High Court has correctly upheld the conviction and the sentence of the accused as awarded by the Sessions Judge, Rajnandgaon (Chhattisgarh). The appeal is accordingly dismissed.
9. Before parting with this appeal, we would like to express our appreciation for the amicus curiae, Ms. A Sumathi, Advocate for extending her valuable assistance in putting up the facts and law involved in this case before us.

.....J  
(Pinaki Chandra Ghose)

.....J  
(R.K. Agrawal)

New Delhi;  
December 03, 2014.

ITEM NO.1A  
(For Orders)

COURT NO.13

SECTION IIA

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 1118/2009

TUKARAM S/O BANSHILAL MARAR

Appellant(s)

VERSUS

STATE OF CHHATTISGARH

Respondent(s)

Date : 03/12/2014 This appeal was called on for orders today.

For Appellant(s)

Ms. A. Sumathi, Adv. (A.C.)

For Respondent(s)

Mr. Atul Jha, Adv.

Mr. Sandeep Jha, Adv.

Mr. Dharmendra Kumar Sinha, Adv.

Mr. Vijay Singh Charak, Adv. (A.C.)

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Hon'ble Mr. Justice Pinaki Chandra Ghose pronounced the Order of the Bench comprising His Lordship and Hon'ble Mr. Justice R.K. Agrawal.

The Criminal Appeal is dismissed in terms of the signed order.

(VISHAL ANAND)  
COURT MASTER

(SNEH LATA SHARMA)  
COURT MASTER

(Signed Order is placed on the file)