

IN THE HON'BLE HIGH COURT OF CHHATTISGARH
AT BILASPUR
CRIMINAL APPEAL NO. 443 /2012

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APPELLANT:
(in Jail)

NUR MOHAMMAD, S/o
Abdul Gafur, Aged 30 years,
Occupation Driver, R/o Village
Arjundih PS chhattarpur Distt.
Daltonganj (Jharkhand)

P.No. 443/12
Presented by Shri. D. Pandey
Dated 11.05.12

VERSUS

RESPONDENT:

State of Chhattisgarh,
through- District Magistrate,
District Raigarh (C.G.)

MEMO OF CRIMINAL APPEAL UNDER SECTION. 374(2) OF
CRIMINAL PRICEDURE CODE.

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HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 140 of 2011

1. Chhotu Uraon

---- Appellant

Versus

1. State of Chhattisgarh

---- Respondent

CRA No. 718 of 2010

1. Jai Prakash Agrawal

---- Appellant

Vs

1. State of Chhattisgarh

---- Respondent

And

CRA No. 443 of 2012

1. Nur Mohammad

---- Appellant

Vs

1. State of Chhattisgarh

---- Respondent

For Appellants : Mr. Awadh Tripathi with Mr. Vivek Tripathi in Cr.A.No.718/2010.
Mr. Manoj Kumar Sinha in Cr.A.No.140/2011.
Mr. Dheerendra Pandey in Cr.A.No.443/12.

For Respondent/State: Mr. Satish Gupta, G.A. for the State.

Hon'ble Shri Justice T. P. Sharma
Hon'ble Shri Justice Inder Singh Uboweja

Judgement on Board by T.P.Sharma, J.

24/03/2015

Criminal Appeals No. 140/2011, 443/2012 and 718/2010 filed by the appellants against the common judgment dated 23.09.2010 passed in Sessions Trial No.49/09 by the 3rd Additional Sessions Judge (F.T.C.), Raigarh are being disposed of by this common judgment.

2. By filing the aforesaid criminal appeals, appellants have challenged the legality, validity and propriety of the judgment of conviction and order of sentence dated 23.09.2010 passed by the 3rd Additional Sessions Judge (F.T.C.), Raigarh in Sessions Trial No.49/2009 whereby and whereunder, the trial Court, after acquitting the other two accused persons – Kuber Sao and Nizamuddin Ansari, held the appellants – Chhotu Uraon and Nur Mohammed guilty for committing murder of three persons, namely, Shivprasad Sahu, Dharmendra Sahu and Chandramani Dwivedi during the course of robbery and for concealing evidence of criminal case and convicted them under Section 396, 396 read with Section 201 of the I.P.C. and sentenced them to life imprisonment with fine of Rs.1000/- each and to further undergo RI for ten years with fine of Rs.500 each and in default to further undergo RI for one month and fifteen days on each count. Likewise, appellant – Jappu @ Jai Prakash Agrawal was also held guilty by the Court below for possessing the stolen property knowing the same to be stolen property and was convicted under Section 411 of the I.P.C. and sentenced to undergo RI for nine months with fine of Rs.1000/- and in default of fine amount, he shall further undergo RI for one month.

3. Conviction is impugned on the ground that without there being any iota of evidence against the appellants, the Court below convicted and sentenced the appellants as aforementioned and thereby committed illegality.

4. As per case of the prosecution, on fateful day, deceased persons Shiv Prasad

Sahu, Dharmendra Kumar Sahu and Chandramani Dwivedi were present inside the Truck bearing registration No. M.P.18-GA-0610, which was being driven by Chandramani Dwivedi. The said truck was owned by P.W.15 Ramesh Kumar Sahu, son of deceased Shiv Prasad Sahu, who was managing the truck. Deceased Dharmendra Kumar Sahu was working as helper in the said truck. On 13.11.2008, the truck was loaded with rods (bars of metal) at Mahamaya Rolling Mill and Gayatri Rolling Mill, Raigarh and the rods were required to be transported to Ekta Traders, Budhar, but the same could not be reached Budhar till 17.11.2008. Appellants along with co-accused persons entered into conspiracy for committing robbery of truck loaded with rods (bars of metal). On 13.11.2008, appellants stopped the truck being driven by Chandramani Dwivedi. They dragged Chandramani Dwivedi, Shiv Prasad Sahu and Dharmendra Kumar Sahu from the truck and forcibly got them boarded in their vehicle and took them to a forest. Firstly they killed two persons and thereafter they killed one person. Then they took the loaded truck to appellant Jappu @ Jai Prakash Agrawal to whom they sold the rods (bars of metal) and thereafter they took the truck from the appellant – Jai Prakash Agrawal and left the same unattended in a forest.

P.W.15 Ramesh Kumar Sahu, son of deceased Shiv Prasad Sahu, did not receive any information then he inquired into the matter. He also searched about his father – Shiv Prasad and helper Dharmendra Sahu. Ultimately, he noticed that both the dead bodies were lying inside the forest of Navrangpur area. He lodged merg intimations on 20.11.2008 vide Ex.P.21 and Ex.P.22. On 21.11.2008 P.W.16 Pravin Kumar Dwivedi, son of deceased Chandramani Dwivedi, noticed the dead body of his father lying in a forest at Navrangpur area. He lodged merg intimation on 21.11.2008 vide Ex.P.20. Registered merg with regard to death of Chandramani Dwivedi was recorded vide Ex.P.23. Finally, F.I.R. was registered on 23.11.2008 at Police Station Bhupdeopur, Dist. Raigarh, vide Ex.P.31.

5. After summoning the witnesses vide Ex.1 to 3, inquest over the dead body of Dharmendra Kumar Sahu was prepared vide Ex.P.4. Similarly, inquest over the dead body of Chandramani Dwivedi was prepared vide Ex.P.5. Likewise, inquest over the dead body of Shiv Prasad Sahu was prepared vide Ex.P.6. Dead bodies were sent for autopsy to B.M.O. Chaple, Government Hospital, Kharsiya block vide Ex.P.13A, 14A and 15A. P.W.8 Dr.S.K.Rathiya conducted autopsy over the dead body of Shiv Prasad Sahu vide Ex.P.13 and found lacerated wound over left temporal region with fracture of temporal bone, some brain material escaped out, in abdomen some intestines were found lost, muscles of both thighs were lost, both ears and left side of jaw were lost. Mode of death of Shiv Prasad Sahu was opined to be coma.

Likewise, P.W.8 Dr. S.K.Rathiya conducted autopsy on the dead body of Chandramani Dwivedi vide Ex.P.14 and found following injuries and symptoms:

- i. Lacerated wound over left chin of 4 x 2 cm.
- ii. Lacerated wound over right lower chest below axilla of 3 x 3 x 2 cm.
- iii. Loss of upper 1/3rd of the left thigh muscles.
- iv. Both eyes were closed with cloth and its knot was above left temporal.
- v. Bluish black discoloration over middle of the neck and upper part of chest.
- vi. Nails are cynosed and facial material was present all around anal region. Lips were black and swollen and nose was lost.

Mode of death was opined to be Asphyxia due to throttling.

Similarly, autopsy was conducted over the dead body of Dharmendra Kumar Sahu by the Doctor vide Ex.P.15 and found following injuries and symptoms:

- i. Intestines in abdomen, spleen, both kidneys, muscles of both thighs, both ears and lower jaw were found lost.
- ii. Lacerated wound over occipital region with fracture of occipital bone and skin

over the scalp peeled off at some part.

Death of Dharmendra Kumar Sahu was opined to be coma due to head injury. Death of three deceased persons are homicidal in nature.

6. Truck bearing registration C.G. 12-C-1428 was seized from Dhananjay Singh vide Ex.P.16. Spot map was prepared vide Ex.P. 24. Shoes containing red colour cloth was seized vide Ex.P.27. Shawl, towel, bloodstained stone, bloodstained and plain soils were seized from the spot vide Ex.P.30. Patwari prepared spot map vide Ex.P.7 and 7A. Spot map was again prepared vide Ex.P.39 and P.40.

7. During the course of investigation, on 24.01.2009, appellant Chhotu, s/o Laxman was taken into custody. He made disclosure statement of one truck loaded with rods (bars of metal) of Jagadama mark of 18.30 metric ton and Dollar Gold of 15.040 metric ton vide Ex.P.17. The same were seized at his instance from the appellant Jappu @ Jai Prakash Agrawal vide Ex.P.18. Appellant Mohammed Nur was also taken into custody on 27.01.2009 at 5.00 pm. He was interrogated, in which, he made disclosure statement of one mobile set vide Ex.P.8. Same was recovered at his instance vide Ex.P.9. Pieces of rope in a sealed packet taken from the deceased persons were seized vide Ex.P.10.

8. Statements of the witnesses were recorded under Section 161 of the Criminal Procedure Code, 1973 (for short 'the Code').

9. After completion of investigation, charge sheet was filed before the Court of J.M.F.C. Kharsiya, who in turn committed the case to the Court of Sessions, Raigarh. The learned Additional Sessions Judge received the case on transfer for its trial.

10. In order to prove the guilt of the appellant, prosecution examined as many as 20 witnesses. Accused persons were examined under Section 313 of the Code, in which, they denied the circumstances appearing against them and innocence and

false implication of the crime in question was claimed.

11. After providing an opportunity of hearing to the parties, the learned Additional Sessions Judge while acquitting the co-accused persons convicted and sentenced the present appellants as aforementioned.

12. We have heard learned counsel for the parties and perused the record of trial Court including judgment impugned.

13. Mr. Manoj Kumar Sinha, learned counsel for Chhotu Uraon in Criminal Appeal No. 140/2011, vehemently argued that virtually this is a case no evidence. Prosecution has failed to collect any other evidence against the appellant. Alleged disclosure statement Ex.P.17 and recovery of rods (*sariya*) vide Ex.P.18 has not been proved by the prosecution. Witnesses of documents have been declared hostile witnesses. Evidence of investigating officer (I.O.) is not sufficient for proving the guilt of the appellant. Even otherwise the evidence relating to disclosure statement and recovery, the act attributed to the appellant does not travel beyond the scope of Section 411 of the I.P.C.

14. Mr. Dheerendra Pandey, learned counsel for the appellant – Mohammed Nur in Criminal Appeal No. 443/2012, vehemently argued that in the present case prosecution has tried to prove possession of one Nokia mobile set on the basis of disclosure statement Ex.P. 8 and in pursuance thereof recovery Ex.P.9. If disclosure of mobile set and then its recovery is considered as gospel truth, then even it would be difficult for the prosecution to prove the fact the aforesaid Nokia mobile set was possessed by any of the deceased at the time of commission of offence. In absence of such evidence, his conviction and sentence as above is not sustainable in law.

15. Mr. Awadh Tripathi with Mr. Vivek Tripathi, learned counsel for the appellant Jai Prakash @ Jappu in Criminal Appeal No.718 of 2010, vehemently submits that conviction of the appellant is based on possession of stolen property, but, the

prosecution has failed to prove that the property was stolen property and it was in possession of the appellant. Prosecution has not tried to find out as to who was owner of the godown. Therefore, conviction of the appellant – Jappu @ Jai Prakash is also not sustainable in law.

16. On the other hand, Mr. Satish Gupta, learned counsel for the State in all the appeals, opposed the appeals while submitting that conviction of the appellants is substantially based on the evidence of disclosure statements and recovery of Nokia Mobile set and iron rod (bars of metal). Three persons have been mercilessly killed by the appellants. Murder and robbery in the present case are integral part of same transaction, therefore, proof of recovery of articles of stolen property on the basis of disclosure statement of the appellants is sufficient for drawing an inference that the appellants are the authors of the crime, in which, three persons have been murdered brutally.

17. In order to appreciate the arguments advanced on behalf of the parties, we have to examine the evidence adduced on behalf of the prosecution. In the present case, homicidal death as a result of fatal injuries found over bodies of deceased persons – Shiv Prasad Sahu, Chandramani Dwivedi and Dharmendra Kumar Sahu has not been substantially disputed on behalf of the appellants, on the other hand, also established by the evidence of P.W.1 Mukesh Kumar Agrawal, P.W.2 Kalap Ram, P.W.15 Ramesh Kumar Sahu, P.W.16 Praveen Kumar Dwivedi, P.W.8 Dr. S.K.Rathiya, F.I.R. Ex.P.31 Merg intimations Ex.P.20 to 23 and autopsy reports Ex.P.13 to 15. Death of deceased persons were homicidal in nature.

18. As regards complicity of the appellants in crime in question, homicidal death as a result of fatal injuries found over the body of deceased persons – Shiv Prasad Sahu, Dharmendra Kumar Sahu and Chandramani Dwivedi has not been substantially disputed on behalf of the appellants. They have also not disputed the robbery of rods (bars of metal) and truck and also murder of three persons and their

involvement in commission of crime. Initially it was a case of blind murder. As per case of prosecution, these three persons were found in a Truck bearing registration M.P. 18-GA-0610, which was brought by them to Mahamaya Rolling Mill and Gayatri Rolling Mill, Raigarh for loading of iron rods (bars) and the same was loaded by them. Iron rods (bars) were required to be transported to Budhar but the truck did not reach its destination, i.e., Budhar, but, dead body of three persons, who were in the same truck, were found in the forest and the truck was lying unattended and rods were missing.

19. During the course of investigation, appellant – Chhotu Uraon, s/o Laxman was taken into custody, he was interrogated, in which, he made disclosure statement on 24.01.2009 at 8.10 am vide Ex.P.17 relating to robbery of rods and the place where rods were kept. He has also disclosed about two mobile sets and currency notes. On the basis of his disclosure statement, 18.30 metric ton of rods of Jagdamba Mark and 15.040 metric ton of Dollar Gold rods were recovered from the possession of appellant Jappu @ Jai Prakash vide Ex.P.18. Prosecution has examined Panch witnesses of aforesaid both documents as P.W.11 Rajesh Kumar Sahu and P.W.12 Rameshwar. Both the witnesses have denied the factum of disclosure and recovery but they have admitted their signatures upon Ex.P.17 and Ex.P.18. Prosecution has declared them as hostile witnesses. The above witnesses have not deposed anything to show that why they have signed upon Ex.P.17 and Ex.P.18 when the proceedings have been conducted before them. It shows that they suppressed the truth, therefore, only evidence of Investigating Officer Rakesh Kumar Bhoi (P.W.20) inspired confidence and trustworthy. As per his evidence, especially, in para 11, appellant – Chhotu Uraon, s/o Laxman, has made disclosure statement vide Ex.P.17 and on the basis of disclosure statement (Ex.P.17), the aforesaid articles have been recovered from the possession of co-accused Jai Prakash Agrawal vide Ex.P.18. Defence has cross-examined this witness at length and in his detailed cross-examination, especially in para 41, nothing has been asked to this witness relating to

Ex.P.17 and Ex.P.18 on behalf of the appellant – Chhotu. He has been cross-examined on behalf of the appellant Jai Prakash Agrawal in detail and in his evidence, especially, in para 22, he has admitted and deposed that rods were found in possession of the appellant – Jai Prakash. Notice for ownership of rod has been issued by this witness to him vide Ex.P.41, which was replied by the appellant – Jai Prakash that he has not received any property, which finds part of Ex.P.41. Evidence of this witness, especially, relating to recording of statement of appellant – Chhotu under Section 27 of the Evidence Act vide Ex.P.17 and recovery of articles on the basis of Ex.P.18 adduced on behalf of Investigating Officer inspires confidence and trustworthy. He is a police witness and only on the ground that this witness is a police and interested witness and outcome of the evidence, his evidence cannot be rejected outright if he has followed the procedure prescribed and defence has failed to show that he was having any enmity with the appellants. In the present case, his evidence clearly shows that he has followed the procedure prescribed and defence has failed the factum of enmity against the appellants. His evidence further reveals that appellant – Chhotu Uraon was taken into custody, who made disclosure statement of rods vide Ex.P.17 and on the basis of disclosure statement, 18.30 metric ton of Jagdamba Mark and 15.040 metric ton of Dollar Gold Mark of iron rods have been recovered from the possession of co-appellant Jappu @ Jai Prakash Agrawal, who has failed to offer any explanation that how those rods came into his possession. Even he has failed to provide any document or receipt showing purchase of rods, especially, when it was asked to him vide Ex.P.41.

20. Prosecution has placed reliance upon another set of evidence relating to appellant – Mohammed Nur. As per evidence of P.W.20 Rakesh Kumar Bhoi, he has recorded disclosure statement of Mohammed Nur vide Ex.P.8. As per Ex.P.8, which has been recorded on 27.01.2009 at 5 pm, appellant – Mohammed Nur disclosed about two mobile sets and rods with truck. The disclosure about rods with truck has already made by the appellant – Chhotu Uraon on 24.01.2009 at 8/10 am, the same

has been recovered on the same day at 01.30 pm vide Ex.P.18, i.e., discovery of rod was also disclosed on 24.01.2009 prior to recording of disclosure statement Ex.P.8 on 27.01.2009. On the basis of disclosure statement one Nokia mobile set of white colour Model 1110 has been seized from the possession of the appellant – Mohammed Nur vide Ex.P.9. As per evidence available on record, prosecution has failed to conduct test identification parade or has failed to produce the same at the time of evidence. Even otherwise any of the witnesses have not deposed anything to show that any of the deceased persons were having Nokia Mobile Model 1110 of white colour. Although appellant – Mohammed Nur has also not claimed the ownership of such Mobile but in the present case prosecution has failed to connect the Nokia Mobile in crime in question, i.e., failed to connect Nokia Mobile with any of the deceased persons.

21. Iron rods have been identified by P.W.4 Sanjay Agrawal as he has loaded the rods in the truck. His evidence clearly reveals that rods were loaded in the truck bearing registration No. M.P. 18-GA-0610. Truck with rods were robbed by the miscreants. Rods were found in possession of appellant – Jai Prakash on the basis of disclosure statement of appellant – Chhotu Uraon. Appellant – Jai Prakash Agrawal has not offered any explanation why rods were found in his possession and how the appellant – Chhotu came to know about such facts. They have failed to offer any such explanation to show that rods are not in small quantity but in huge quantity. In absence of any explanation, the only inference in terms of Section 114 of the Evidence Act could be possible that appellant Jai Prakash was in possession of stolen property knowing the fact that it was stolen property. Rods have been recovered on the basis of disclosure statement of appellant – Chhotu Uraon, who has also failed to offer any explanation that how he came to know about such facts. In the present case, commission of murder of three persons and robbery of rods were integral part of same transaction. Therefore, as held in the case of **Ganesh Lal vs. State of Rajasthan, (2002) 1 SCC 731**, extendable presumption that person in

whose possession on whose instance property has been recovered is also author of crime of murder.

22. After appreciating the evidence available on record, while acquitting other two accused persons, the Court below has convicted and sentenced the appellants – Chhotu Uraon and Jai Prakash Agrawal as aforesaid. On close scrutiny of the evidence, we do not find any infirmity and illegality in conviction and sentence of the appellant – Jai Prakash Agrawal. Therefore, Criminal Appeal No.718/2010 filed by the appellant – Jai Prakash Agrawal is liable to be and is hereby dismissed. Appellant – Jai Prakash is reported to be on bail. He shall surrender before the Court below for serving remaining sentence imposed upon him. The Court below shall take appropriate steps for sending him serve remaining sentence. Likewise, we also do not find any infirmity and illegality in the judgment of conviction and order of sentence with regard to the appellant – Chhotu Uraon on the basis of extendable presumption. Therefore, Criminal Appeal No.140/2011 is liable to be and is hereby dismissed.

23. As regards conviction and sentence of the appellant – Mohammed Nur, in absence of identity of Nokia Mobile, extended presumption for commission of aforesaid offence could not be available against this appellant. While convicting and sentencing the appellant – Mohammed Nur, the trial Court has not considered the insufficiency of evidence relating to appellant – Mohammed Nur and thereby committed illegality.

24. Consequently, Criminal appeal No.443 of 2012 filed by appellant – Nur Mohammed deserves to be and is hereby allowed. His conviction and sentence under Section 396 and 396/201 of the I.P.C. is hereby set aside and he be set at liberty at once, if not required in any other case.

JUDGE

JUDGE