

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Acquittal Appeal No. 108 of 2015**

Manoj Agrawal S/o Babulal Agrawal Aged About 58 Years R/o Village Kapa, Police Station Kawardha, District Kabirdham Chhattisgarh.

---- Appellant

Versus

1. Rishi Bai, W/o Rupchand Sahu Aged About 30 Years R/o Village Kapa, Police Station Kawardha, District Kabirdham Chhattisgarh.
2. Lakkhu S/o Balaram Sahu Aged About 42 Years R/o Village Kapa, Police Station Kawardha, District Kabirdham Chhattisgarh.
3. Station House Officer, Police Station Kawardha, District Kabirdham Chhattisgarh.

---- Respondents

For Appellant:-

Shri Rajeev Kumar Dubey, Advocate.

For Respondent No.3/State:-

Shri B. Gopa Kumar, Deputy Advocate General.

Hon'ble The Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Order On Board**Per Navin Sinha, Chief Justice****29/09/2015**

1. The Appellant questions the acquittal of Respondents No.1 & 2 from the charge under Sections 120-B/34, 302/34 and 404/34 IPC in Sessions Trial No.22/14 dated 23.4.2015 by the Additional Sessions Judge (FTC), Kabirdham.
2. Learned Counsel for the Appellant submits that the Learned Trial Judge grossly erred in proper appreciation and dealing with the evidence available regarding the complicity of the accused based on their confession and the recovery pursuant to the same. It was next submitted that the Learned Trial Judge grossly erred in allowing the prosecution not to lead the evidence of the patwari who had prepared the spot map.

3. We have considered the submissions on behalf of the parties.

4. The deceased Vinod Agrawal @ Tulu was found lying dead at the bushes near Palanpat hill with injuries on his body. There was no eye witness to the occurrence and the entire case of the prosecution was based on circumstantial evidence.

5. The confession by an accused before the police during investigation is inadmissible in evidence under Section 25 of the Evidence Act. Section 27 of the Evidence Act raises the ban to a limited extent only, if pursuant to the confession, there is any recovery. Only to that extent, the confession would be admissible. The recovery therefore is at best a piece of corroborative evidence only and not substantive evidence for conviction. The fact that a tangia may have been recovered on confession and on which blood may have been found, cannot therefore be substantive evidence for conviction in a case of circumstantial evidence without establishing the chain of circumstances leading inescapably to the conclusion of the accused being the assailant only. There is no material to invoke the last seen theory even. The Learned Trial Court had rightly observed that even if any blood had been found on the trouser of Respondent No.2, in absence of any serologist report, in the facts of the case, that it was the same blood group as the deceased was not relevant. More importantly, the Investigation Officer Manish Kurre, PW-11 has acknowledged in his deposition that on the day when the body of the deceased was recovered, he had carried out minute inspection of the area, but did not find anything objectionable. The alleged recovery of the tangia from the very same place of occurrence one month later after the confession was recorded, creates serious doubts about the prosecution case, as opined by the Learned Trial Judge and we find no reason to take any different view of the matter in a case like the present based on circumstantial evidence only.

6. We therefore find no reason to interfere with the acquittal.
7. The appeal is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE

Priya