

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.303 of 2001

1. Radha Bai, W/o Narayan Satnami, aged about 22 years,
 2. Bismat Bai, W/o Choualal, aged about 29 years,
- Both are R/o Village Chhindouli, Chouki Patewa, Police Station Tumgaon, District Mahasamund (CG)

---Appellants

versus

State of Chhattisgarh, through District Magistrate, Mahasamund (CG)

---- Respondent

For Appellants	:	Smt. Indira Tripathi, Advocate
For State/Respondent	:	Smt. Smita Ghai, Panel Lawyer

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

Per Navin Sinha, Chief Justice

19/1/2016

1. The Appellants stand convicted under Sections 302 and 302/34 IPC respectively and sentenced to life imprisonment by the Second Additional Sessions Judge, Mahasamund in Sessions Trial No. 201 of 2000 dated 27.2.2001.
2. Appellant No. 1 lodged Merg (Exhibit P-9) on 22.4.2000 at 18:30 hours stating that earlier at 16:30 hours she had killed the deceased-Kumari Bai with the help of Appellant No. 2 because the deceased was not agreeing to withdraw her complaint against the husband of the Appellants for theft of grain and because of which they were in the lockup. She stated that the Tangiya used for assault and the decapitated head of the deceased were kept at home. Formal FIR (Exhibit P-7) was registered the same day at 18:30 hours. The postmortem report (Exhibit P-23) conducted by PW-15, Dr. Om Prakash Dubey opined that the decapitation of the head from the

neck by a sharp edged object was the cause of death.

3. Learned Counsel for the Appellants submitted that even if the Appellant No. 1 went to the police station with the decapitated head as alleged and made a confession for having killed the deceased, it was not admissible in evidence under Section 25 of the Evidence Act. Similarly, the fact that any confession may have been recorded leading to recovery of the Tangiya alleged to have been used in the assault from a pile of garbage near the house, an open place is inconsequential. The fact that any blood stains may have been found on the Tangiya or on the clothes of the Appellants in pursuance of the inadmissible confession before the police is also irrelevant for conviction. It was for the prosecution to have established the Appellants were the assailants by leading proper evidence. Motive is a double edged sword and can cut both ways for false implication as also for commission of offence. While the prosecution alleges motive against the Appellants because their husband having been put in the lockup on a complaint by the deceased, more than one prosecution witness has deposed of previous enmity between the parties on account of a land dispute. The body was found in an open area of the house accessible to anyone. Merely because earlier the Appellants may have come to the house of the deceased and have had a fight with her on the issue cannot lead to an inescapable conclusion of their being the assailants alone. The prosecution has led no evidence in support of the charge except the alleged confession. In the circumstances, conviction was unjustified and they are entitled to acquittal. Reliance was placed on AIR 1966 SC 119 (Aghnoo Nagesia v. State of Bihar).

4. Learned Counsel for the State submitted that PW-1, Bharatlal and PW-2, Keja Bai, father and mother of the deceased have both deposed of the Appellants having come to the house of the deceased with Tangiya and Lathi. They entered into an altercation with the deceased and then

assaulted her. Motive clearly existed as their husband had been incarcerated on a complaint for theft of grain by the deceased. Appellant No.1 herself went to the police station carrying the head of the deceased having decapitated it corroborated by PW-7, Dayashankar Sahu, who was present at the police station. Similar is the evidence of PW-11, Manrakhan, a driver employed in the police station. The prosecution case was therefore not based on the confession of Appellant No.1 to the police only but it was also corroborated by two independent witnesses. The recovery of the Tangiya from a heap of garbage having blood stains on it and the clothes of the Appellants with blood stains on them both confirmed in the FSL report conclusively establish guilt. It is not normal for a person to have blood on the clothes and if it is there, it is for the person concerned to explain the same. The Appellants have offered no explanation. Normally, no one goes near a garbage pile and therefore the argument that it was open place accessible to all is no consequence as only a person who throws a Tangiya on a garbage pile will be aware that it is kept there. A garbage pile will may not strictly qualify as an open place where people generally go.

5. We have considered the submissions on behalf of the parties and also perused the evidence on record.

6. According to PW-1, Bharatlal and PW-2, Keja Bai, father and mother of the deceased, the Appellants had come to the house of the deceased earlier in the day and had an altercation with her. Both of them did not mention in their police statement that the Appellants had come armed with a Tangiya and a Lathi. This was an improvement in their Court statement. Even the police statement was recorded nearly one month later acknowledged by PW-2, giving sufficient time for thinking and making up stories because of enmity between the parties. No explanation has been put forth by the prosecution for the delay in recording the police statements. PW-2, Keja Bai alleges that the deceased was dragged by the Appellants

inside the house and the door was locked from inside for assaulting her. According to the inquest report (Exhibit P-1) and also the spot map (Exhibit P-2) the body was lying in the verandah of the house and not inside the house. Blood was splattered on the walls of verandah. There is no evidence led by the prosecution regarding evidence of any assault inside the house. What may have happened thereafter till the Appellant No.1 went to the police station has not been established by the prosecution. The possibility of any intervening circumstances and the fatal assault having been made in some other manner by another cannot be ruled out, the benefit of which doubt will have to be given to the Appellants. If the confession of Appellant No.1 was inadmissible under section 25 of the Evidence Act, there is no other evidence against Appellant No.2. If PW-2, Keja Bai was actually an eye witness to the assault by the Appellants nothing prevented her from making that specific statement of assault on the verandah instead of stating that after the deceased was dragged inside the room she asked her husband PW-1 to go to the police. It only establishes lack of evidence by the prosecution regarding any assault by the Appellants.

7. According to the prosecution case, Appellant No.1 went to the police station and made a confession. Even if she was not in police custody, she can certainly be stated to have been in constructive custody of the police as observed in *Aghnoo Nagesia* (supra). Section 25 of the Evidence Act prohibits any confession made before the police from being taken into consideration. PW-7, Dayashankar Sahu is not an eye witness to the assault but to a confession before the police. If the confession itself is inadmissible in evidence, his corroboration is of no consequence. The same taint attaches to the evidence of PW-11, Manrakhan who was a driver at the police station.

8. The facts of the case bear marked similarity with *Aghnoo Nagesia* (supra). In that case also, the Appellant murdered the aunt, her daughter,

son-in-law and their son at two different locations and then went to the police station and confessed his guilt. After registering the FIR, the Appellant was taken into custody. On his confession, bodies were recovered and a blood stained Chadar was recovered from his house. There was no eye-witness to the murders as is the present case and the principal evidence was the FIR based on a confession. Referring to Section 25 of the Evidence Act, it was observed at paragraph 18 as follows:

“18. If the first information report is given by the accused to a police officer and amounts to a confessional statement, proof of the confession is prohibited by S. 25. The confession includes not only the admission of the offence but all other admissions of incriminating facts related to the offence contained in the confessional statement. No part of the confessional statement is receivable in evidence except to the extent that the ban of S. 25 is lifted by S. 27.”

9. It was therefore observed that the only part of the police report was admissible in evidence under Section 27 of the Evidence Act regarding identification of the Appellant as the maker of the FIR. The only material against the Appellant was the information given by him to the police where the dead bodies were lying and where he concealed the Tangiya coupled with the recovery of a blood stained Chadar from his house all of which were considered insufficient to convict in absence of any independent evidence by the prosecution of his being the assailant.

10. In the facts of the present case also, the only material available is the confession of the Appellant No.1 before the police naming the Appellant No.2 as co-accused and on basis of which the FIR was lodged. The recovery of the Tangiya and blood stained clothes are at best corroborative evidence and not substantive evidence. If there is no substantive evidence conviction cannot be based on corroborative evidence alone. In view of our conclusion that there is no material to establish that the Appellants had come armed to the house of the deceased to kill her, that there being no

evidence of any assault by them inside the house, PW-2, Keja Bai, mother of the deceased, according to the witness was present at home when the assault took place but did not specifically name the Appellants as the assailants, the materials collected by the prosecution are considered insufficient for conviction. Motive by itself will not be sufficient for conviction and suspicion howsoever strong cannot take place of proof.

11. In conclusion, we are unable to uphold the conviction of the Appellants which is set aside but subject to the compliance by them with the conditions in Section 437A Cr.P.C.

12. The appeal is allowed.

Sd/-
(**Navin Sinha**)
CHIEF JUSTICE

Sd/-
(**P. Sam Koshy**)
JUDGE