

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 11 of 2011

- Padman, S/o Rathiram Gond, aged about 50 years, R/o Pariyabahalpara, Madangmuda, Thana Devbhog, District Raipur (C.G.)

---- Appellant

Versus

- State of Chhattisgarh Through Police Station Devbhog, District Raipur (C.G.)

---- Respondent

For Appellant	:	Mr. Hemant Kesharwani, Advocate
For Respondent/State	:	Mr. Ashish Shukla, Govt. Advocate

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Inder Singh Uboweja

CAV JUDGMENT

Delivered on : 13/05/2016

Per, I.S. Uboweja, J.

1. This appeal is directed against the judgment of conviction and order of sentence dated 21.12.2010 passed in Sessions Trial No.22/2010 by the Additional Sessions Judge, Gariaband, District – Raipur (C.G.) whereby the appellant has been convicted under Sections 302 and 201 of the Indian Penal Code (for short, 'the Code') and sentenced to undergo imprisonment for life & to pay fine of Rs.100/- and to undergo R.I. for 3 years & to pay fine of Rs.100/-, in default of total fine of Rs.200/- additional S.I. for ten days.
2. Conviction is impugned on the ground that without there being an iota of evidence, the trial Court has convicted and sentenced the appellant as aforementioned and thereby committed illegality.

3. The facts of the case, in brief, are that on 09.04.2010 at about 7 to 8 p.m., present appellant committed murder of Damodar Manjhi. Thereafter he along with his brothers namely Dinger and Gundhar (acquitted accused) tried for disappearance of evidence by hiding the dead body in Belkachhar Canal. Report of missing of Damodar was lodged by his wife Smt. Bilaso Bai (PW-8) on 11.04.2010 at police station Devbhog, District Raipur (C.G.). Accused/appellant Padman came to village Kotwar Duryodhan (PW-10) and husband of Sarpanch, he confessed before them that he committed murder of Damodar by club and buried the dead body near Badjor Nala. Thereafter, Merg Intimation (Ex.P-20) and First Information Report (Ex.P-19) were lodged by Smt. Bilaso Bai (PW-8). Police registered the offence under Sections 302 & 201/34 against the present appellant and others.
4. During the course of investigation accused/appellant Padman was taken into custody, he made disclosure statement about buried place of dead body of Damodar, rope and pole, which were used in commission of murder of Damodar, vide Ex.P-8. At his instance dead body of Damodar was recovered from Badjor Nala vide Ex.P-14 and one pole & one rope were also recovered vide Ex.P-10. Sand and mud of buried place were seized vide Ex.P-11. One club & plastic torch were also seized from accused Padman vide Ex.P-12. Identification memo of dead body was prepared vide Ex.P-7 and spade was seized from co-accused Gundhar vide Ex.P-13.

5. After summoning the witnesses vide Ex.P-4, inquest over the dead body of deceased Damodar was prepared vide Ex.P-3. Dead body of the deceased was sent for autopsy to the Community Health Centre, Devbhog, where Dr. H.K. Chauhan (PW-4) conducted autopsy vide Ex.P-5 and found following injuries :-

- (i) Lacerated wound on right side of penis with scrotal lacerated wound with crushing present;
- (ii) Contusion with Haematoma over right parieto temporal area of scalp;
- (iii) Right mandible depressed with eye transposed. Injuries were ante mortem in nature and sufficient to cause death.

Cause of death was due to cardio respiratory arrest and death was homicidal in nature.

6. Patwari prepared spot map vide Ex.P-2. Statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short, 'the Code') and after completion of investigation, charge-sheet was filed in the Court of Judicial Magistrate First Class, Devbogh, who in turn committed the case to the Court of Sessions from where learned Additional Sessions Judge, Gariaband received the case on transfer for trial.

7. In order to prove guilt of the accused persons, the prosecution has examined as many as 18 witnesses. Statements of the accused persons were recorded under Section 313 of the Code, in which they

denied the circumstances appearing against them and pleaded innocence & false implication in the crime in question.

8. After providing opportunity of hearing to the parties, the trial Court while acquitting accused Dinger and Gundhar convicted and sentenced the appellant as mentioned above.
9. We have heard learned counsel for the parties and perused the judgment impugned including the record of court below.
10. Learned counsel for the appellant vehemently argued that conviction of the appellant is based on the evidence of extra judicial confession made before the villagers, but that is not in accordance with law which is not permissible. It is also based on disclosure statement of the appellant, but the prosecution has failed to prove any disclosure statement given by the appellant and recovery is consequent to such disclosure statement. The prosecution also failed to prove the chain of circumstances to connect the appellant with crime in question, therefore, conviction of the appellant is not sustainable under the law. In support of his arguments, he has placed reliance on a decision of the High Court of M.P., in the matter of **Santosh Kushwah v. State of M.P.** reported in 2009 (5) M.P.H.T. 90, in which High Court of M.P. has held that extra judicial confession alone is not sufficient for conviction, some corroboration is necessary because extra judicial confession is itself a weak type of evidence.
11. On the other hand, learned State counsel has opposed these arguments and supported the judgment passed by the trial Court.

12. In order to appreciate the arguments advanced on behalf of the parties, we have to examine the evidence adduced on behalf of the prosecution.
13. In the present case, homicidal death of deceased Damodar as a result of fatal injuries found over his body has not been substantially disputed on behalf of the appellant. On the other hand, it is also established by the evidence of Devnarayan (PW-5), Rekh @ Reklal Nagesh (PW-6), O.D. Diwan (PW-13), inquest (Ex.P-3), FIR (Ex.P-19), Merg Intimation (Ex.P-20), Dr. H.K. Chauhan (PW-4) and autopsy report (Ex.P-5) that death of deceased Damodar was homicidal in nature.
14. As regards complicity of the appellant in commission of crime in question, conviction of the appellant is substantially based on the following evidence :
 - (i) Confession before the wife of deceased and other villagers;
 - (ii) Disclosure of facts and recovery of certain articles at his instance;
 - (iii) Medical evidence shows that death was homicidal in nature and seized articles may have been used for fatal injuries over the dead body of deceased.
15. As per evidence of village Kotwar Duryodhan (PW-10), he was informed by Keshav and Parmeshwar that last night i.e., prior to the date of incident, some quarrel took place between the deceased and the appellant and the same has been corroborated by other witnesses Nugendra (PW-15) and Guruwara (PW-17).

16. As per evidence of Bilaso Bai (PW-8), appellant and her husband deceased Damodar were having dispute towards the land and her husband was missing, in a village meeting, accused/appellant confessed before Kotwar, Sarpanch & other villagers that he had killed Damodar and thrown his dead body in jungle in two bags.
17. Duryodhan (PW-10), who is a village Kotwar, has deposed that when Bilaso Bai (PW-8) informed him that Damodar was missing and village persons Keshav and Parmeshwar informed him that last night i.e., prior to the date of incident, appellant and deceased were fighting with each other, then the appellant was called in village meeting and opportunity was given to him for his explanation, he denied that he fought with deceased, again time was given to him for proper reply. On the next day, after lodging of missing report, at about 2.30 p.m. accused confessed before him that he killed Damodar and threw his dead body in Belkachhar Jungle. He further deposed that the appellant brought me and the villagers to jungle where they exhumed the buried dead body.
18. Parmanand (PW-1) and Nugendra (PW-15) are the witnesses of extra judicial confession, they deposed that one meeting was held in village regarding missing of Damodar, at there accused/appellant admitted that he has killed Damodar and he brought them to the spot where he buried the dead body. They also corroborated the statements of Bilaso Bai (PW-8) and Duryodhan (PW-10).

19. Bilaso Bai (PW-8), Parmanand (PW-1), Duryodhan (PW-10) and Nugendra (PW-15) have been cross-examined by the defence on extra judicial confession, but nothing could be elicited to discredit their testimonies.
20. Investigating Officer, T.R. Nagwansi (PW-18) has deposed that on 12.04.2010 accused/appellant was taken into custody, he made disclosure statement about the place, where dead body of deceased Damodar was buried, he also disclosed about used torch, rope and pole and at his instance dead body of deceased Damodar was recovered, one pole & one rope were recovered vide Ex.P-10, one club & plastic torch were also seized from him vide Ex.P-12.
21. Memorandum and seizure witnesses Devnarayan (PW-5) and Ludar Singh (PW-16) have not supported those documents, but they have not denied their signatures on those documents, it means that they are intentionally not supporting the fact. Statement of T.R. Nagwanshi (PW-18) is sufficient to prove the memorandum and seizure of the articles.
22. Naib Tehsildar, O.D. Diwan (PW-13) proved his statement that after exhuming the dead body of deceased Damodar, injuries were seen over it and was sent for postmortem to Government Hospital.
23. Dr. H.K. Chauhan (PW-4) proved his statement that multiple injuries were seen over the dead body of deceased Damodar and injuries may have been caused by hard and blunt object likewise club. He has proved his autopsy report (Ex.P-5) and query report (Ex.P-6).

24. On a close scrutiny of the prosecution evidence, it is clear that for the animosity of the agricultural land accused/appellant committed murder of Damodar, buried his dead body in Belkachhar jungle and had also hidden the articles, which were used for commission of offence, for causing disappearance of evidence of offence. Extra judicial confession before Bilaso Bai (PW-8), Duryodhan (PW-10), Parmanand (PW-1) and Nugendra (PW-15) is totally reliable, trustworthy & cogent. On the memorandum of appellant, place of burial of dead body was identified from where dead body of deceased Damodar was recovered. On the memorandum of appellant the articles which were seized at his instance are also incriminating evidence and even medical evidence also clearly supports the case of prosecution.
25. For the foregoing reasons as discussed in the preceding paragraphs in our considered opinion, conviction of the appellant for offence punishable under Sections 302 and 201 of the IPC is just, proper and legal, therefore, the conviction and sentence awarded by the Court below deserves to be and is hereby maintained.
26. The appeal stands accordingly dismissed.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(I.S. Uboweja)
JUDGE