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HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 367 of 2006

1. Ramsorat alias Jangalia, son of Babulal, aged about 32 years, Caste — Harijan, resident of Ramgarh, P.S. Janakpur, Korea, Distt Korea (C.G.)

---- Appellant

Versus

1. State Of Chhattisgarh Through — P.S. Janakpur, Distt. Korea (C.G.)

---- Respondent

For Appellant. : Shri Malay Kumar Bhaduri, Advocate.
For Respondent. : Shri Ravindra Agrawal, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Chandra Bhushan Bajpai

Judgment On Board By

Pritinker Diwaker, J

06/09/2016

This appeal arises out of the judgment of conviction and order of sentence dated 17.02.2006 passed by the Additional Sessions Judge, Manendragarh, District Koriya, in S.T. No.37/2005 convicting the accused/appellant under Section 302 IPC and sentencing him to undergo imprisonment for life with fine of Rs.1000/-, plus default stipulations.

02. As per prosecution case, accused/appellant is brother-in-law of the deceased. It is said that deceased Dheer Sai was having illicit relation with the wife of appellant and, therefore, on 25.11.2004 after entering the house of the deceased, accused/appellant committed his murder, by throttling. On 26.11.2004 merged intimation (Ex.P/2) was

recorded at the instance of Manroop (PW/2) against an unknown person. Inquest on the body of deceased was prepared on the same day and body was sent for postmortem to Primary Health Center, Kuwarpur. Postmortem examination on the body of deceased was conducted on 26.11.2004 by Dr. S.S. Gupta (PW/07) who gave his report Ex.P/5 opining the cause of death to be asphyxia due to throttling and mode of death was homicidal in nature. Dehati nalisi (Ex.P/11) was recorded on 27.11.2004 and immediately thereafter FIR (Ex.P/11-A) was registered against the appellant under Section 302 IPC. On completion of investigation, charge sheet for the offence punishable under Section 302 IPC was filed against the accused/appellant and accordingly the charge was framed against him by the trial Court.

03. So as to hold the accused/appellant guilty, the prosecution examined as many as 10 witnesses. Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record has convicted and sentenced him as mentioned in para-1 of this judgment. Hence, this appeal.

05. Learned counsel for the appellant submits as under:

(i) that the accused/appellant has been convicted mainly on the basis of his memorandum (Ex.P/8) and seizure in pursuance thereof (scarf)

vide Ex.P/9.

- (ii) though the seizure of scarf is said to have been made from the appellant but in absence of any serological report that seizure is of no consequence;
- (iii) that other piece of evidence against the accused/appellant is so called extra-judicial confession made before Manroop (PW/2), Meera Bai (PW/4), Bela (PW/5) and Ram Sunder (PW/6), however, the evidence of these witnesses reflect that the extra-judicial confession was made in presence of police and, therefore, the said extra-judicial confession loses its significance;
- (iv) even otherwise the extra-judicial confession is a weak type of evidence and the accused/appellant cannot be convicted on the basis of said extra-judicial confession especially when it was made involuntarily.

06. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State that the conviction of the accused/appellant is strictly in accordance with law and there is no infirmity in the same.

07. We have heard learned counsel for the parties and perused the material available on record.

08. Manroop (PW/2) is brother of deceased and the lodger of merg intimation (Ex.P/2). He has stated that after recording merg intimation police came to inquire the matter. Accused/appellant is his cousin brother who used to suspect that deceased was having illicit relation with appellant's wife for which a report was also lodged in police station. He has also stated that a Panchayat meeting was also convened and

compromise was arrived at between the accused/appellant and deceased but the appellant was not satisfied with the decision of panchayat. However, para 7 of his cross-examination goes to show that so called extra-judicial confession was made by the appellant in presence of police.

09. Deendayal (PW/3) is a witness to inquest (Ex.P/4). Meera Bai (PW/4) is wife of the deceased. She is witness to so-called extra-judicial confession made by the appellant but in cross-examination she has also stated that the same was made in presence of police.

10. Bela (PW/5) is also a witness to so called extra-judicial confession made by the appellant. In para 3, she has stated that prior to 1-2 months of the incident, the accused/appellant had threatened the deceased.

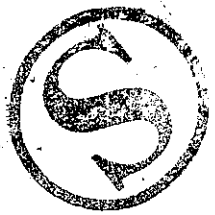
11. Ramsunder (PW/6) is a witness of extra-judicial confession but according to this witness also the same was made in presence of police.

12. Dr. S.S. Gupta (PW/7) conducted the postmortem on the body of deceased vide Ex.P/5 and found following injuries/symptoms:-

- (i) Rigor mortis present, both eyes were closed, pupil dilated and fixed. Conjunctiva congested.
- (ii) Mouth was closed, tongue was inside the mouth, both hands semi-flexed.
- (iii) Ligature mark present below the thyroid cartilage and encircling the neck horizontally and completely.
- (iv) Multiple undefined abrasion present over ligature mark.
- (v) Three lacerated wounds present around the root of penis each about $\frac{1}{2}$ cm x $\frac{1}{8}$ cm in size.

The Doctor has opined that the cause of death of deceased was asphyxia due to throttling and the death was homicidal in nature.

13. Bhararam Bunkar (PW/08) is witness to memorandum (Ex.P/4)



and seizure affected in pursuance thereof (Ex.P/9). Gonsai (PW/9) is Investigating Officer who has duly supported the prosecution case. Mohd Islam (PW/10) is also a witness to memorandum of accused (Ex.P/8) and seizure (Ex.P/9) but has not supported the prosecution case.

14. Close scrutiny of the evidence makes it clear that but for the memorandum of the accused/appellant (Ex.P/8) and seizure (Ex.P/9) by which scarf was seized, there is no legally admissible evidence against the accused/appellant to bring home his guilt. Moreover, there is no FSL report on record to show that the scarf seized from the appellant was used in commission of offence. The prosecution has utterly failed to prove that it is the said scarf which has been used for commission of offence, thus, in absence of FSL report, the seizure of scarf (Ex.P/9) is of no consequence. Likewise, other piece of evidence against the accused/appellant is so-called extra-judicial confession made before Manroop (PW/2), Meera Bai (PW/4), Bela (PW/5) and Ramsunder (PW/6) but from the evidence of aforesaid witnesses, it appears that the same was made in presence of police which itself cannot be made basis for convicting the accused/appellant. It is settled position of law that in case the prosecution relies on extra-judicial confession, the Court has to examine the same with a greater degree of care and caution. It is further settled legal position that extra-judicial confession is a weak type of evidence and if the entire case of the prosecution hinges upon it, a greater degree of care and caution is required to be taken by the Court while appreciating the evidence. Manroop (PW/2), Meera Bai (PW/4) and Ramsunder (PW/6)

in their evidence have categorically stated that the accused/appellant made extra-judicial confession before them in presence of police. Extra-judicial confession made by the accused/appellant appears to be involuntary and he might have said the same on account of pressure of the police. There is no conclusive piece of evidence on record to hold the accused/appellant guilty beyond all reasonable doubts.

15. Thus considering the evidence collected by the prosecution, this Court is of the opinion that conviction of the accused/appellant under Section 302 IPC is not based on due appreciation of the evidence available on record and that being so he is entitled for benefit of doubt. This being the position, the judgment impugned convicting the accused/appellant under Section 302 IPC is set aside and he is hereby acquitted of the charge levelled against him. The appellant is on bail, his bail bonds stand discharged and he need not surrender.

16. Appeal is thus allowed.

Sd/-

(Pritinker Diwaker)
JUDGE

Sd/-

(C.B. Bajpai)
JUDGE