

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 489 of 2007

- Prakash Singh, S/o. Kamlaram, aged about 34 years, R/o. Loda, PIS. Patharia, District Bilaspur (CG)
- Munna Ram S/o Faguram, aged about 36 years
- Dilip S/o Atma Ram, aged about 36 years
- Appellants 2 & 3 R/o Vill. Birgaon, P.S. Jarhagaon, Distt- Distt-Bilaspur, C.G.

---- Appellants

Versus

- State Of Chhattisgarh, Through Station House Officer (SHO) Police Station Jarhagaon District Bilaspur (CG)

---- Respondent

And

CRA No. 719 Of 2007

- Jawahar, S/o. Paras Ram, Aged about 41 years, R/o. Village Daukapa, PS. Jarhagaon, District Bilaspur (CG)

---- Appellant

Vs

- State of Chhattisgarh, Through P.S. Jarhagaon, District Bilaspur (CG)

---- Respondent

For Appellants	: Shri Ravindra Agrawal and Shri Pradeep Rathore, Advocates
For Respondent/State	: Shri Neeraj Mehta, P.L.
For Objector	: None present.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgement on Board by P. Diwaker

08/02/2017

As these two appeals arise out of the judgment and order dated 05.05.2007 passed by the Additional Sessions Judge, Mungeli, District Bilaspur in Sessions Trial No.187/2006 convicting the accused/appellants in Cr.A. No. 489/2007 under Sections 114, 201/34 IPC and sentencing them to undergo imprisonment for life and fine of Rs. 1,000/- u/s. 114/34 and RI for seven years and fine of Rs. 500/- under Section 201 IPC; convicting the accused/appellant in Cr.A. No. 719/2007 under Sections 302 and 201 IPC and sentencing him to undergo imprisonment for life and to pay fine of Rs. 1000/- u/s. 302 and to undergo RI for 7 years and fine of Rs. 500/- u/s. 201 IPC with default stipulation, they are being disposed of by this common judgment.

2. As per prosecution case, accused No.3 Dilip was having previous enmity with the deceased Sukhnandan Kashyap and to eliminate him he gave Rs. 40,000/- to accused No.2 Munna Ram and in turn on 26.12.2005, between 4.30 a.m. to 8.30 a.m. accused/appellant Jawahar committed his murder. Dead body of the deceased was found lying near the roadside (Bharri turning) at village Daukapa. At the instance of village Sarpanch (PW-11) merged intimation Ex.P-27 was lodged on 26.12.2005 at 9.15 a.m. At the spot itself dehati nalishi was recorded vide Ex.P-40, FIR Ex. P-30 was lodged on 26.12.2005 at 12.15 afternoon under Section 302 IPC against unknown person. Inquest was prepared vide Ex.P-2 and body was sent for postmortem examination which was conducted by Dr. Smt. Kiran Nahrel (PW-19) vide Ex.P-36 and according to her cause of death was shock due to external haemorrhage of head injury and death was homicidal in nature. During

investigation on the memorandum of accused/appellant Jawahar, seizure of axe and clothes worn by him while committing the murder of deceased vide Ex.P-14 and P-15; on the memorandum of accused Prakash Singh seizure of club vide Ex.P-16; on the memorandum of accused/appellant Munna Ram recovery of cash of Rs. 885/- vide Ex. P-17; on the memorandum of accused/appellant Dilip Singh seizure of shawl vide Ex.P-18 was made. Some of the seized articles were sent for FSL but there is no FSL report. After investigation, charge sheet was filed against the accused/appellant Jawahr under Section 302/201 IPC whereas against the remaining three accused persons namely Prakash Singh, Muna Ram and Dilip under Sections 114/34 and 201/34 IPC and accordingly charges were framed.

3. In order to establish the guilt of the accused/appellants, prosecution has examined 20 witnesses. Statement of the accused/appellants were also recorded under Section 313 of the Cr.P.C. in which they denied the charges levelled against them and pleaded their innocence and false implication in the case.

4. After hearing the parties, the trial Court by judgment impugned, has convicted and sentenced the accused/appellants as mentioned in paragraph 1 of the judgment. Hence the present appeals.

5. Contention of counsel for the appellants is that

i) that the accused/appellants have been convicted solely on the basis of their memorandum and so called recovery.

ii) it has been argued that merely on the basis of memorandum and recovery of certain articles, appellants cannot be convicted.

iii) that there is no FSL report on record and thus any seizure made by

prosecution loses its significance.

iv) that even assuming that there was some motive for Dilip to commit murder of the deceased merely on that basis he could not have been convicted.

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

7. Heard counsel for the parties and perused the material available on record.

8. Balbhadra Prasad (PW-1) is the brother of the deceased who identified the dead body. He is also the witness to inquest Ex.P-2. He has stated that he had suspicion that accused/appellant Dilip may be behind the murder of deceased. Dilip Kumar Kashyap (PW-2) is also the brother of the deceased and he also suspected that accused Dilip may be the person behind murder of the deceased. Laxmi Bai (PW-3) wife of the deceased has stated that accused Dilip had illegally constructed the house on the land of one Rajesh Yogi which was dismantled by the police after getting court order and at that time, accused/appellant Dilip had threatened her husband for dire consequences. She also suspected that it is the accused/appellant Dilip who may be behind the murder of the deceased. Ram Snehi (PW-4) is a witness to seizure of certain articles made from the spot. He is also a witness to inquest and spot map. Harshmani Prasad Kashyap (PW-7) is a witness to memorandum Ex.P-14, 15,16,18 and seizure Ex. P-19, 20

and 22-25 has turned hostile. Murli Pandey (PW-8) is a witness to inquest. Tileshwar (PW-9) has not stated anything against the accused/appellants and has been declared hostile. Umashankar Singh (PW-10) is the patwari who prepared spot map. Sunil Kumar (PW-11) is the Sarpanch and lodger of merg intimation. Gorelal (PW-12) is the witness to seizure of axe from the village pond, has turned hostile. V.P.Mishra (PW-13) is the Branch Manager of District Cooperative Bank, Takhatpur has stated that Dilip was questioned by the department for embezzlement. Rajkumar Kashyap (PW-14) is a witness to memorandum Ex.P-14, 16,17 & 18 and seizure of certain articles Ex. P-13, 19 & 20. V. N. Bharadwaj (PW-17) is the ASI who has done part of the investigation. S.S.Rao (PW-18) is the Investigating Officer who has done part of the investigation. Dr. Smt. Kiran Nahrel (PW-19) has conducted postmortem examination on the body of deceased Sukhnandan Kashyap and according to her cause of death was shock due to external haemorrhage of head injury and death was homicidal in nature. Pitamber Gilhare (PW-20) is the Constable who has done part of the investigation.

9. Close scrutiny of the evidence makes it clear that there is absolutely no legally admissible evidence against the accused persons and they have been convicted by the trial court solely on the basis of their memorandum. It is a settled position of law that no one can be convicted solely on the basis of the memorandum. Even if certain articles are alleged to have been seized on the memorandum of the accused persons but in absence of any FSL or serological report, the said seizure cannot be connected with the complicity of the crime. Though assuming that there was any motive on the part of accused

Dilip for committing the murder of the deceased but that itself is not sufficient to uphold the conviction of the accused persons. The motive has also not been proved by the prosecution as required under the law. Thus, taking the cumulative effect of the facts and circumstances of the case, the nature of evidence adduced by the prosecution, we are of the view that the trial court has erred in law in convicting the accused/appellants. The prosecution has not been successful in proving the involvement of the accused/appellants in the crime in question.

10. Appeal is thus allowed. Conviction of the accused/appellants under Sections 114, 201/34 & 302/201 IPC are set aside and they are acquitted of the said charges. Appellants are reported to be on bail therefore their bail bonds shall continue for a period of six months from today in view of Section 437-A of Cr.P.C.

Sd/-

Pritinker Diwaker
Judge

Sd/-

R.C.S.Samant
Judge