

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 882 of 2004

1. Vrinda Sai, S/o Nanhu Sai, age 49 years, occupation – Agriculture, R/o Village Dhuriamba, P.S. Tapkara, Distt. Jashpur (CG) (Now Dead)
2. Hiran Sai S/o Vrinda Sai, age 19 year, Occupation Agriculture, R/o Village Dhuri Amba, P.s. Tapkara, Distt. Jashpur (CG)
3. Shubhak Sai S/o Panch Sai, age 19 years, occupation Agriculture, R/o Village Dhuri Amba, PS Tapkara, Distt. Jashpur (CG)

---- Appellant

Versus

- State Of C.G. Through: Police Station – Tapkara, Distt. Jashpur (CG)

---- Respondent

For Appellant	:	Shri AK Prasad, Advocate.
For Respondent/State	:	Smt. Madhunisha Singh, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Shri Justice R.C.S. Samant

Judgment On Board By Justice Pritinker Diwaker

19/05/2017

This appeal arises out of the judgment of conviction and order of sentence dated 30.9.2004 passed by the Additional Sessions Judge, Jashpur in ST No.63/2004 convicting the appellants under Sections 302/34 & 201/34 of IPC and sentencing them to undergo imprisonment for life, pay a fine of Rs.1000/- and RI for three years and pay a fine of Rs.500/- with default stipulations respectively.

02. In the present case, there are two deceased namely Dharamsai and his wife Phuleshwari (somewhere also named as Phusari and Phulwari). It is said that in the night intervening 25/26.4.2004 dead bodies of the deceased were found in their house. On the basis of information given by PW-1 Devprakash Toppo, Dehati Nalishi Ex.P/1 was recorded on 26.4.2004 and thereafter at 1.10 pm merg intimation

Ex.P/2 was recorded at the instance of PW-1. Inquest over the dead body of Phulsari and Dharamsai were conducted on 26.4.2004 vide Ex.P/5 & P/6. Thereafter, their bodies were sent for postmortem, which was conducted on the same day by Dr. SP Paikra (PW-9) vide Ex.P/33 and P/34 respectively. In his opinion, the cause of death of deceased Phulsari was shock due to cutting of right jugular vein, cervical vertebra, mastoid bone and brain membrane and cause of death of Dharamsai was shock due to incised head injury, cervical injury and cutting of jugular vein. According to the doctor, their death was homicidal in nature. After merg enquiry, FIR (Ex.P/16) was registered against four accused persons including one juvenile Dinesh. On 26.4.2002 memorandum of appellant Shubhak was recorded vide Ex.P/12 which led to recovery of two iron sickle, fullpant and one T-shirt. Likewise on the memorandum of accused/appellant Hiransai Ex.P/10 recorded on 27.4.2004, seizure of one sickle and one jeans was made vide Ex.P/11. However, there is no FSL report. Further case of the prosecution is that accused/appellant Shubhak Sai made extra-judicial confession before Shivshankar (PW-4). After filing of charge sheet, the trial Court framed charge under Sections 302/34 and 201/34 of IPC against the present appellants.

03. So as to hold the accused guilty, the prosecution examined 9 witnesses in all. Statements of the accused were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them 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, by the impugned judgment convicted and sentenced the appellants as mentioned above.

It is relevant to mention here that in compliance of earlier directions of this Court, after verification from the concerned police station it has been informed by the State counsel that appellant Vrinda Sai has expired on 27.1.2017. Counsel for the appellants submits that he is not pressing this appeal on behalf of deceased appellant Vrinda Sai. Accordingly, the present appeal, insofar as it relates to deceased appellant Virnda Sai, stands abated and is dismissed as such. It is now confined only in respect of appellants Hiran Sai and Shubhak Sai.

05. Counsel for the appellant submits as under:

(i) that the appellants have been convicted mainly on the basis of their memorandum and seizure, however, there is no FSL report connecting the articles so seized with the crime in question and as such, the seizure is of no consequence.

(ii) that the other piece of evidence against the appellants is the so-called extra-judicial confession made by appellant Shubhak before PW-4 Shivshankar Yadav, but this witness has categorically stated that at the time of recoding extra-judicial, police was also present.

(iii) in fact, present is a case of no evidence, however, the appellants have been convicted on the basis of some inadmissible evidence.

06. On the other hand, State counsel supporting the impugned judgment has submitted that the judgment impugned is strictly in accordance with law and there is no scope for any interference by this Court.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-4 Shivshankar Yadav is the main prosecution witness as extra-judicial confession was made by the appellant Shubhak Sai before him. He has stated that appellant Shubhak on being enquired by the Sarpanch and other villagers had informed that he along with accused Dinesh and Hiran committed murder of the deceased persons and at that time accused Vrinda was standing at the door. Since he further expressed ignorance about the act of accused Hiran Sai, he was declared hostile. In cross-examination, he has categorically stated that the appellant Shubhak Sai made such confessional statement in the presence of Station House Officer.

09. PW-1 Devprakash Toppo lodged Dehati Nalishi and merger intimation. PW-2 Digambar Prasad Yadav is a witness of inquest as well as memorandum and seizure. Since he has not supported the prosecution case in respect of appellant Shubhak Sai, he has been declared hostile and in further examination supported the prosecution case in respect of appellant Shubhak Sai. PW-3 Shobhnath Sai, has turned hostile. PW-5 Budhram Bhagat, Patwari, prepared the spot map Ex.P/15. PW-6 RP Singh, investigating officer, has supported the prosecution case. PW-7 Habil Ekka has turned hostile. PW-8 Kripadan Lakda, Head Constable, helped in the investigation.

10. PW-9 Dr. SP Paikra, conducted postmortem on the bodies of the deceased Phulsari and Dharamsai on 26.4.2004 vide Ex.P/33 and P/34 respectively. On the body of Phulsaribai he noticed four incised

wounds on the neck, two oblique incised wounds on right chin, three oblique incised wounds on right cheek, two incised wounds over mastoid region and two incised wounds on right shoulder. He also noticed cutting of jugular head, cervical bone, spinal cord, medietal bone, zygomatic bone and humerus bone. Likewise, on the person of deceased Dharamsai he found four oblique incised wounds on neck, three incised wounds on left ear and mastoid region, four incised wounds on left cheek, three incised wounds on nose in the middle up to left eye, five incised wounds on temporal and parietal region, two oblique incised wounds on left shoulder, one oblique incised wound on metacarpal region of left hand and one oblique incised wound on right wrist. This apart, he also found cutting of jugular vein, cervical bone, mastoid bone, zygomatic bone, nasal bone, orbit bone, parietal temporal bone, humrus bone and metacarpal bone. In his opinion, the cause of death of deceased Phulsari was shock due to cutting of right jugular vein, cervical vertebra, mastoid bone and brain membrane and cause of death of Dharamsai was shock due to incised head injury, cervical injury and cutting of jugular vein. According to the doctor, their death was homicidal in nature.

11. Admittedly, there is no direct evidence against the appellants to show their complicity in the crime in question and their conviction rests mainly upon the incriminating articles seized on their memorandum and the so-called extrajudicial confession made before PW-4 Shivshankar Yadav.

12. So far as recovery of incriminating articles is concerned, firstly the witnesses to the memorandum and seizure i.e. PW-2 Digambar Prasad Yadav and PW-3 Shobhnath Sai, have not fully supported the

prosecution case on the point of seizure. Secondly, there is no FSL report on record to connect the articles allegedly seized at the instance of the appellants with the commission of the offence. These lacunas on the part of the prosecution in proving the aforesaid circumstances is sufficient enough for discarding the evidence of memorandum and seizure.

13. Now the only piece of evidence which remains against the appellants is the so-called extrajudicial confession made by appellant Shubhak before PW-4 Shivshankar Yadav. The concept of an extrajudicial confession is primarily a judicial creation, and must be used with restraint. Such a confession must be used only in limited circumstances, and should also be corroborated by way of abundant caution. Extra-judicial confession as is well known is a weak piece of evidence, although in given situations reliance thereupon can be placed. When there is a case hanging on an extra-judicial confession, corroborated only by circumstantial evidence, then the Courts must treat the same with utmost caution. If the Court believes the witnesses before whom the confession is made and it is satisfied that the confession was voluntary, then in such a case conviction can be founded on such evidence alone. If such an extra-judicial confession is surrounded by suspicious circumstances, needless to state that its credibility becomes doubtful and consequently it loses its importance.

In the case in hand, from perusal of the statement of PW-4 Shivshankar Yadav it is clear that when the alleged confessional statement was made by appellant Shubhak, Station House Officer was also present there. Furthermore, this witness has not stated in explicit

terms as to in which manner and under what circumstances such confessional statement was made by the appellant, rather he has denied the suggestion that he made any such statement before the police regarding extrajudicial confession by appellant Shubhak. In these circumstances, the evidence of extra-judicial confession loses its value and cannot be made the basis of conviction of the appellants.

14. Thus considering the nature and quality of overall evidence collected by the prosecution to bring home the charges against the appellants, we are of the opinion that the same are not sufficient to justify the conviction of the appellant under Sections 302, 201, 34 of IPC and as such, the trial Court has fallen in error by placing reliance on such evidence while recording conviction of the appellants. In these circumstances, the appellants deserve to be acquitted of the said charges by extending them benefit of doubt.

15. In the result, the appeal, insofar as it relates to appellants Hiran Sai and Shubhak Sai, is allowed. They are acquitted of the charges leveled against them by giving them benefit of doubt. They are reported to be on bail, therefore, their bail bonds stand discharged and they need not surrender.

Sd/
(Pritinker Diwaker)
Judge

Sd/
(R.C.S. Samant)
Judge