

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 774 of 2004

- Radheshyam Kashyap alias Radhe

---- Appellant

Versus

- The State Of Chhattisgarh

---- Respondent

For Appellant	Shri Neeraj Mehta, Advocate
For Respondent-State	Shri S. Majid Ali, PL

Hon'ble Shri Justice Prashant Kumar Mishra

Hon'ble Shri Justice Anil Kumar Shukla

Order On Board by

Prashant Kumar Mishra J.

20/02/2017

1. Appellant has been sentenced to life imprisonment on being convicted under Section 302 IPC for committing murder of deceased Manas Bai, wife of PW-1 Jagdish Kashyap.
2. The prosecution case, briefly stated, is that there was some dispute pertaining to partition of ancestral land between Jagdish Kashyap and his elder brother, the present appellant Radheshyam. It is also said that the oxen belonging to the deceased had soiled the cooked food in the

appellant's house, on which there was quarrel between the appellant's wife and the deceased, therefore, the appellant went to the agricultural field between 9 am to 12 noon on 29.10.2003 and murdered the deceased by strangulation in the nearby agricultural field belonging to PW-6 Dauram. The merger intimation was lodged by the appellant himself at about 3 pm on the date of incident. FIR against unknown persons was also registered after merger enquiry. Before this, FIR was registered at 11:40 hours on 06.11.2003. In the absence of any clue as to who has committed the murder, the Police interrogated the appellant, PW-1 Jagdish Kashyap, husband of the deceased, and PW-6 Dauram. The appellant allegedly made extra judicial confession in presence of the villagers on 10.03.2004. The appellant also informed the Investigating Officer regarding concealment of golden ear ring of the deceased, near the agricultural field of PW-6 Dauram. Based on his memorandum statement (Ex-P-7), the golden ear ring was recovered vide Ex-P-8 on 10.03.2004.

3. After completing the investigation, the charge sheet was filed against the appellant on 07.04.2004.
4. In course of trial, amongst other witnesses, prosecution examined PW-2 Rameshwar and PW-3 Firat Bai, the parents of the deceased, PW-5 Narottam Das, PW-6 Dauram, PW-10 Badri Singh and PW-14 Chaitram Sahu.

The appellant abjured the guilt, pleaded innocence and examined one defence witness namely Raju @ Rajkumar Bhardwaj (DW-1). At the conclusion of trial, the appellant has been convicted as stated supra, for committing murder of the deceased Manas Bai.

5. Challenging the conviction, Shri Neeraj Mehta, learned counsel appearing for the appellant, would submit that there is absolutely no evidence against the appellant so as to incriminate him in the present offence, therefore, the conviction deserves to be set aside.
6. Per contra, Shri Majid Ali, learned State counsel, would submit that the prosecution has proved the case against the appellant by producing circumstantial evidence in the nature of extra judicial confession and presence of the appellant at the place of occurrence approximately at the same time when the incident has happened.
7. There being no ocular evidence to the crime, case of the prosecution solely rests on the circumstantial evidence, therefore, before proceeding further to marshal the evidence, we would like to remind ourselves about the principles laid down by the Supreme Court in **Sharad Birdhichand Sarda vs State of Maharashtra, AIR 1984 SC 1622**, wherein it has underlined the conditions, which

must be fulfilled for convicting an accused on the basis of circumstantial evidence and held in para-152 as under:

“152. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established :

- (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned ‘must or should’ and not ‘may be’ established. There is not only a grammatical but a legal distinction between ‘may be proved’ and ‘must be or should be proved’ as was held by this Court in *Shivaji Sahebrao Bobade Vs. State of Maharashtra*, (1973) 2 SCC 793 : (AIR 1973 SC 2622) where the following observations were made:

‘certainly, it is a primary principle that the accused must be and not merely may be guilty before a Court can convict and the mental distance between ‘may be’ and must be’ is long and divides vague conjectures from sure conclusions.’

- (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.
- (3) the circumstances should be of a conclusive nature and tendency.
- (4) they should exclude every possible hypothesis except the one to be proved, and
- (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

8. It is equally settled that circumstantial evidence in the nature of extra judicial confession is always considered to be a

weak type of evidence, therefore, conviction on such evidence can form basis if it passes the test of credibility and the Court is fully convinced that the extra judicial confession is made voluntary in fit state of mind without being any coercion or duress. The extra judicial confession must also be clear, unambiguous to convey that the accused is the perpetrator of the crime.

9. Turning back to the evidence available in the case in hand, the evidence of extra judicial confession has been put forth in the statements of PW-2 Rameshwar, PW-3 Firat Bai, PW-5 Narottam Das and PW-6 Dauram. PW-2 Rameshwar and PW-3 Firat Bai are the parents of the deceased. In para 2 of his statement, PW-2 Rameshwar would state that the appellant has confessed to have committed the crime in the Police Station where he was also present. PW-3 Firat Bai would state in para 2 of her statement that the appellant confessed to her at the time when she had gone to attend the 10th day ceremony after the death of her daughter Manas Bai. Strangely, both the witnesses did not inform the Police about the extra judicial confession, even though in para 11 of the statement of Investigating Officer PW-22 Guljar Khan, he has admitted that prior to the extra judicial confession made by the accused on 10.03.2004, the parents of the deceased had visited the Police Station on 3-

4 occasions.

10. The next set of witnesses to the extra judicial confession are PW-5 Narottam Das and PW-6 Dauram. In para 2 of his statement, PW-5 Narottam Das would depose that immediately on the next date of the incident the Police had summoned the appellant in the Police Station, where the appellant informed the Police in his presence that he had a meeting with Narottam Das, on the date of incident, after committing murder of the deceased. Similarly, PW-6 Dauram would depose in para 1 of his statement that the appellant confessed to him regarding commission of murder on the date of incident itself. However, the IO PW-22 Guljar Khan would depose in para 10 of his statement that before appellant's extra judicial confession on 10.03.2004, he had no clue or evidence of appellant's involvement in the crime, although in the next breath he says that before 10.03.2004, Narottam Vaishnav, Khikhram and Chaitram had informed him about the presence of the appellant at the place of occurrence on the date of incident. If this statement of the IO is correct, PW-5 Narottam Das was interrogated before 10.03.2004, yet the IO says that he had no clue about the appellant's involvement before 10.03.2004, meaning thereby that during interrogation of the Police prior to 10.03.2004, neither Narottam Das (PW-5) nor Dauram (PW-6) ever

informed the IO about the extra judicial confession made by the appellant.

11. In addition to the above, there is enough oral evidence on record that when the Police was clueless about the perpetrator of the crime, a writ petition was filed in the High Court and when notice in the writ petition was issued, the appellant, his brother Jagdish Kashyap PW-1 and PW-6 Dauram were summoned and detained for investigation in the Police Station. There is oral evidence to the effect that the Police used third degree methods to extract the extra judicial confession from the appellant. There is also evidence to the effect that when the appellant confessed to the Police about the commission of crime, the Police summoned the villagers, informed them about the confession and directed the appellant to state before the villagers all those things which he had confessed before the Police. In our considered view, such manner of extracting extra judicial confession is neither desirable nor should be adopted by the Police. The extra judicial confession is neither voluntary nor truthful. It being a result of pressure exerted by the Police, probably to have an answer in the writ petition, the same cannot be relied upon to convict the appellant.

12. Evidence of the appellant's presence near the place of occurrence as stated by PW-10 Badri Singh and PW-14 Chaitram Sahu is of no assistance to the prosecution, because the place of occurrence i.e. the agricultural field of PW-6 Dauram is adjoining to the agricultural field of the appellant himself. It is very natural for a cultivator to attend his agricultural field and there was nothing abnormal about it, even if the statement of these two witnesses is believed. Despite this evidence, it cannot be concluded that the appellant was the perpetrator of the crime, merely on the basis that he was seen by somebody at his agricultural field or near to it on the date of occurrence. To convict a person for committing murder, the evidence has to be of clinching nature pointing only towards the guilt of the accused to the exclusion of all other hypothesis of his innocence. There is absolute lack of such circumstantial evidence in the case in hand. The other piece of circumstantial evidence is of appellant's memorandum statement vide Ex-P-7 and consequent recovery of the golden ear ring of the deceased vide Ex-P-8. Even if this memorandum and seizure is taken to be proved, the IO PW-22 Guljar Khan has admitted in para 15 of his statement that the golden ear ring was never put to identification to prove that it belongs to the deceased or that she was wearing the same at the time of incidence. Since the parents of the deceased have been examined, the

ear ring could have been put to identification. The IO having not done so, this piece of evidence cannot be considered as a link in the chain of circumstantial evidence.

13. It is settled that motive for commission of crime is important where the prosecution case rests on circumstantial evidence. [See: **Babu vs State of Kerala {(2010) 9 SCC 189}**]

14. In the case in hand, there are two theories of motive attributed to the appellant, the first one is in the nature of land dispute as a consequence of partition between the appellant and his brother PW-1 Jagdish Kashyap, however, PW-1 Jagdish Kashyap denies of any such dispute between the brothers. PW-8 Lav Singh is another villager who has deposed that relation between the two brothers was cordial. The other motive is of a dispute between the two family in connection with the oxen belonging to the deceased spuriating the cooked food belonging to the appellant, however, this is too trivial an issue, which would drag the appellant to commit murder. This piece of evidence has been deposed by PW-2 Rameswhar, however, he derives this information as a part of the information supplied by the appellant himself to the Police or to the villagers at the time of making extra judicial confession, therefore, since we have already held that the extra judicial confession was extracted

by way of coercion and it was not voluntary, this theory of motive for committing murder is also not proved against the appellant.

15. For the foregoing, we are unable to sustain the appellant's conviction for committing murder of the deceased Manas Bai. The impugned judgment deserves to be and is hereby set aside. The appellant is on bail. Surety and personal bonds earlier furnished at the time of suspension of sentence shall remain operative for a period of 6 months in view of the provisions of Section 437-A of the Cr.P.C. The appellant shall appear before the higher Court as and when directed.

Sd/-

Judge
Prashant Kumar Mishra

Sd/-

Judge
Anil Kumar Shukla