

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 586 of 2009

- Yamini Sen W/o Kamlesh Sen, Aged about 20 years, R/o Vill. Mudhagaon, PS Chhura, District Raipur

---- Appellant

Versus

- State Of Chhattisgarh through the District Magistrate, District Raipur (CG)

---- Respondent

CRA No. 458 of 2009

- Anita, W/o. Lilesh Sen, Aged about 22 years, R/o Vill. Mudhagaon, PS Chhura, District Raipur

---- Appellant

Versus

- State Of Chhattisgarh, Through Police Station Chhura, District Raipur (CG)

---- Respondent

For Appellants	: Shri R.K.Pali, Smt. Fouzia Mirza and Smt. Smita Jha, counsel for the appellants in respective appeals.
For Respondent/State	: Shri Neeraj Mehta, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Arvind Singh Chandel

Judgement on Board by Pritinker Diwaker, J.

13/12/2017

As these two appeals arise out of the judgment and order dated 19.06.2009 passed by the Additional Sessions Judge Gariyaband, district Raipur (CG) in Sessions Trial No.35/2008 convicting the accused/appellant in Cr. A. No. 586/2009 under Sections 302 and 201/34 IPC and sentencing her to undergo imprisonment for life with

fine of Rs. 500/- u/s. 302 and to undergo RI for 5 years with fine of Rs. 100/- u/s. 201/34 whereas convicting the accused/appellant in Cr.A. No. 458/2009 under Sections 201/34 IPC and sentencing her to undergo RI for five years with fine of Rs. 100/- with default stipulations, they are being disposed of by this common judgment.

2. In the present case name of the deceased is Kalyani Bai, mother-in-law of accused/appellants. As per prosecution case, on 02.08.08 dead body of the deceased Kalyani Bai was found in the open place near the kitchen garden of her house and the appellants had informed Dayal Singh Diwan (PW-7), who is the neighbour of the accused persons, that dead body of the deceased is lying there. On hearing this, he along with Nand Kumar Sinha (PW-2), Ram Avtar Yadav (PW-10) and Mohan Lal Sen (PW-1) husband of the deceased who at the relevant time was cutting hair in the village, had gone to the place of occurrence and saw the dead body of the deceased. Immediately thereafter Mohan Lal (PW-1) lodged merger intimation Ex.P-1 on 02.08.08. Inquest (Ex.P-4) on the dead body was prepared and body was sent for postmortem examination which was conducted by Dr. G. L. Tandon (PW-11) vide Ex.P-18 and he opined that the cause of death was shock due to excessive bleeding and death was homicidal in nature. On 02.08.08 memorandum of accused Yamini was recorded vide Ex.P-9 based on which recovery of axe Ex.P-10 was made however there is no FSL report. Further case of the prosecution is that accused Yamini caused injury to the deceased with axe whereas accused Anita had helped her in disappearing the evidence. While framing the charge, trial judge has framed charge against the appellants under Sections 302/34 and 201/34 IPC.

3. In order to establish the guilt of the accused/appellant, prosecution has examined 13 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/appellant Yamini under Section 302/201 IPC whereas accused/appellant Anita has been convicted under Section 201 IPC. Hence the present appeal.

5. Contention of counsels for the appellants is that

i) there is no eyewitness to the occurrence and conviction of the appellants and is based on circumstantial evidence but none of the circumstances from which the inference of guilt of the appellants can be drawn has been proved beyond reasonable doubt.

ii) the main piece of evidence against the appellants is the so called confessional statement made by them before Nand Kumar Sinha (PW-2) and Ram Avtar Yadav (PW-10) however from the statement of PW-2 it is apparent that the police was also present and likewise from the statement of Ram Avtar Yadav (PW-10) it appears that the statement was made before the villagers and not before PW-10 individually.

iii) that there appears to be improvement in the statement of Ram Avtar Yadav (PW-10).

iv) though on the memorandum of the accused/appellant Yamini, axe has been seized but in absence of FSL report any seizure made by the prosecution losses its significance.

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 on record.

8. Nand Kumar Sinha (PW-2) is a witness before whom extra judicial confession is alleged to have been made by the accused Yamini. He however admits that the said statement was made in the presence of police. Ram Avtar Yadav (PW-10) is another witness before whom accused Yamini has made extra judicial confession. In para 11 he however has stated that when accused/appellant Yamini made extra judicial confession he was not present. Though in the court he further deposes that the extra judicial confession was made before the villagers but this part of statement is omitted. Mohan Lal (PW-1) is the husband of the deceased. In para 13 of his deposition he has stated that his house was adjacent to the house of Dayal Singh Diwan (PW-7) and whereas on the other side Budharu resides. He has further stated that on the back side of his house, there is jungle. He has admitted that the kitchen garden is accessible to anyone. He submits that even for attending the nature's call one has to go through the kitchen garden. Considering the statement of this witness it cannot be said that the appellants alone were in possession of the kitchen garden and the possibility of some third person entering the kitchen garden cannot be ruled out. Though as per autopsy surgeon death was homicidal in nature but in absence of any legally admissible evidence against the appellants it cannot be said with certainty that it is the appellants who are involved in the commission of the murder of the deceased.

9. Close scrutiny of the evidence makes it clear that there is no direct evidence against the appellants and the appellants have allegedly made extra judicial confession before PW-2 and PW-10 however there are material contradictions in the statement of PW-10. A person can be convicted on the basis of extra-judicial confession only if such statement inspires confidence and is corroborated by other materials. It is required to be established from the facts and evidence so produced. The veracity of the extra-judicial confession is read from the credibility of the persons to whom it is made, the circumstances in which it is made.

10. Keeping in view the aforesaid facts, the conviction recorded by the trial court is not supported by any credible evidence and the prosecution has failed to establish the guilt of the accused beyond reasonable doubt and in our opinion, the prosecution has failed to prove its case beyond reasonable doubt therefore benefit of doubt is to be extended to the appellants.

10. Accordingly, the conviction and sentence imposed on the appellants is set aside. As the appellants are on bail, no order regarding their surrender etc. is required. Their bail bonds stand discharged.

11. In the result, the appeals are allowed.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Arvind Singh Chandel)
Judge