

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 475 of 2011**

1. Bundsai Rathia, aged about 70 years, son of Mangal Singh Rathiya, residence of village Botli, Police Station Kartala, District Korba (C.G.)
2. Smt. Dhanmati Bai, wife of Bundsai, aged about 60 years, residence of village Botli, Police Station Kartala, District kKorba (C.G.)

---- Appellants**Versus**

- State of Chhattisgarh Through : Station House Officer, Kartala, Police Station Kartala, District Korba (C.G.)

---- Respondent

For Appellants.	:	Shri C.J.K. Rao, Advocate.
For Respondent/State	:	Smt. Smita Ghai, P.L.

**Hon'ble Shri Justice Pritinker Diwaker &
Hon'ble Shri Justice Ram Prasanna Sharma**

Judgment On Board**By Pritinker Diwaker, J****24/07/2017**

This appeal arises out of the judgment of conviction and order of sentence dated 28.03.2011 passed by II Additional Sessions Judge (F.T.C.), Korba in S.T. No.107/2010 convicting the accused/appellants under Sections 302, 201 IPC and sentencing them to undergo imprisonment for life with fine of Rs.100/-, R.I. for three years with fine of Rs.100/-, plus default stipulations.

02. In the present case name of deceased is Jaglal - son-in-

law of the accused/appellants. As per the prosecution case, on 16.07.2010 a mere intimation Ex.P/1 was lodged by accused/appellant Bundsai (A-1) informing the police that on 11.07.2010 some dispute took place between his daughter Mathura Bai and son-in-law Jaglal as a result of which his daughter returned to his house. On 14.07.2010, deceased Jaglal came to his house and on 15.07.2010 they again quarreled. On 15.07.2010, appellant Bundsai (A-1) slept in his house along with his wife and at about 4.30 am when he woke up, he saw the body of deceased lying in the courtyard and that one pesticide bottle was also lying near the head of deceased and his motorcycle was also there in the courtyard. Thereafter, inquest on the body of deceased was prepared on 16.07.2010 vide Ex.P/3 and dead body was sent for postmortem examination to Community Health Center, Kartala vide Ex.P/10-A where Dr. K.K.S. Porte (PW/5) conducted postmortem on the body of deceased on 17.07.2010 who gave his report Ex.P/10 opining the cause of death to be asphyxia as a result of compression of trachea due to strangulation. On 09.08.2010, FIR Ex.P/13 was registered against an unknown person under Section 302 IPC. On 10.08.2010, memorandums of accused/appellant Bundsai (A-1) and Smt. Dhanmat Bai (A-2) were recorded vide Ex.P/6 and P/4, based on which, one club and rope were seized vide Ex.P/7 and P/5 respectively, however, there is no FSL and serological report on record.

03. On completion of investigation, charge sheet for the offence punishable under Sections 302 and 201 IPC was filed against the appellants and accordingly charges were framed against them by the trial Court.

04. So as to hold the accused/appellants guilty, the prosecution examined as many as 15 witnesses. Statements of the accused/appellants 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.

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

06. Learned counsel for the appellants submits as under:

- That the accused/appellants have been convicted solely on the basis of their memorandums Ex.P/4, P/6 and seizure thereof made under Ex.P/5 and P/7.
- That in absence of FSL and serological report, memorandums and seizure cannot be used against the accused persons.
- That but for this (memorandums and seizure) there is no other legally admissible evidence against the accused/appellants showing their involvement in the crime in

question.

- That the accused/appellants are in jail since 10.08.2010 and have completed more than 6 years of jail sentence and therefore and they be set at liberty forthwith.

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

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

09. Sahukar Khandekar (PW/1) is the Head Constable who recorded merg intimation vide Ex.P/1. Nakul Singh (PW/2) is a witness to inquest made under Ex.P/3. PW/2 and Jag Singh (PW/10) are also witnesses to memorandum of the accused/appellants Ex.P/4, P/5 and seizure made under Ex.P/6 and P/7. Charan Singh (PW/3) and Jotram (PW/4) are the witnesses to inquest Ex.P/3 and seizure of pesticide bottle Ex.P/9. Dr. Kamlesh Kumar Singh Porte (PW/5) conducted the postmortem on the body deceased vide Ex.P/10 and found following injuries/symptoms:-

- (i) Stool was passed out, body was welled, rigor mortis passed off all over the body, petrification started.
- (ii) Both eyes were forced out of their socket, tongue was protruded out from mouth, there was bleeding present from both nostril.
- (iii) Ligature mark present over lower side of neck,

bruise mark present on chest, which were multiple size and shape.

(iv) Ligature mark was running transversely in front of the anterior side of neck.

The Doctor has opined that the cause of death of deceased was asphyxia as a result of compression of trachea due to strangulation and death was homicidal in nature.

10. Shyamlal Singh (PW/6) is the Patwari who prepared spot map vide Ex.P/11. Uttam Sahu (PW/7) - Assistant Sub Inspector assisted in the investigation. Nohar Singh (PW/8) is witness to inquest Ex.P/3 and arrest memos Ex.P/14 and P/15. Devdhar Singh (PW/9), Birih Ram (PW/11), Amrut Lal (PW/12) and Vidyasagar Pathak (PW/13) have turned hostile. Rudraksh Singh (PW/14) has been examined to prove the extra-judicial confession allegedly made by Dhanmat Bai (A-2). Though this witness has been confronted with his diary statement but from his diary statement it is apparent that the extra-judicial confession was made by accused/appellant Bundsai (A-1). Vijay Kumar Chelak (PW/15) is Investigating Officer who has supported the prosecution case. It is relevant to note that though on the memorandums (Ex.P/4 and P/6) of the accused/appellants, seizure of rope and club have been made under Ex.P/5 and P/7 but there is no FSL and serological report on record and thus, the seizure is of no consequence.

11. Close scrutiny of the evidence makes it clear that but for the memorandums of the accused/appellants (Ex.P/4 and P/6)

and seizure (Ex.P/5 and P/7) by which one rope and club were seized, there is no legally admissible evidence against the accused/appellants to bring home their guilt. It is settled legal position of law that merely on the basis of memorandum and seizure, the accused/appellant (s) cannot be convicted unless there is some other corroborative piece of evidence available on record. There is neither FSL report on record to show that the seized articles were used in commission of offence nor serological report to show presence of human blood on it. Being so, the seizure Ex.P/5 and P/7 effected on the basis of memorandums (Ex.P/4 and P/6) of the accused/appellants loses its efficacy. Likewise, other piece of evidence against the accused/appellants is so-called extra-judicial confession made before Rudraksha Singh (PW/14). According to Court statement of PW/14, it is Dhanmat Bai (A-2) who made extra-judicial confession before him, whereas in his diary statement he has stated that it is Bundsai (A-1) who made extra-judicial confession. There is contradiction in his Court statement and diary statement on material point. As such, conviction of the accused/appellants on the basis of evidence of PW/14 is not sustainable in the eye of law. 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. There is no credible, clinching and reliable evidence on record to bring home their guilt beyond shadow of all reasonable doubt.

12. Thus considering the evidence collected by the prosecution, this Court is of the opinion that conviction of the accused/appellants under Sections 302 and 201 of IPC is not based on due appreciation of the evidence available on record and that being so they are entitled for benefit of doubt. This being the position, the judgment impugned convicting the accused/appellants under Sections 302 and 201 IPC is set aside and they are hereby acquitted of the charges levelled against them. As per record, the appellants are languishing in jail, they be set at liberty forthwith if not required in any other case.

13. Appeal is thus allowed.

Sd/-

(Pritinker Diwaker)
JUDGE

Sd/-

(Ram Prasanna Sharma)
JUDGE