

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 278 of 2008

- Lokchand Satnami @ Lokoo Satnami, aged about 30 years, S/o Shri Sawant Ram Satnami, Occupation-Driver, R/o Village – Binouri, Police Station-Pandaria, District-Kabeerddham, at present R/o Ward No.2, Tilda, P.S. Newra, Tahsil Tilda, Distt.-Raipur, (C.G.)

---- Appellant

Versus

- State Of Chhattisgarh through P.S. Nevra, Distt. Raipur (CG)

---- Respondent

For Appellant	:	Shri J.A. Lohani, Advocate.
For Respondent/State	:	Shri Avinash K. Mishra, P.L.

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

Judgment On Board By Justice Pritinker Diwaker

03/05/2017

This appeal arises out of the judgment of conviction and order of sentence dated 7.2.2008 passed by the Sessions Judge, Raipur (CG) in ST No.244/2007 convicting the appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life and to pay a fine of Rs.500/- with default stipulation.

02. Brief facts of the case are that on 14.9.2007 the neighbours of the deceased Budharu Satnami noticed some foul smell emanating from his house and when Jagtu (PW-2) went to the house of Budharu, he found Budharu lying dead on his cot. At the instance of PW-2 merger intimation Ex.P/4 was registered on the same day. Inquest over the

dead body was conducted on 14.9.2007 vide Ex.P/6 and thereafter the dead body was sent for postmortem which was conducted on the same day by PW-5 Dr. Sudha Samuel vide Ex.P/9 who noticed fracture of left parietal bone with crack of adjacent bone near orbit lateral side, left maxillary bone distorted, fracture of upper jaw, central teeth with jaw are turned inwards and placed in oral cavity and the body was in a late decomposition state. According to her, in this case no definite opinion can be given regarding the cause of death. It seems to be head injury and the death may be homicidal or depends upon circumstantial evidence. Thereafter, FIR (Ex.P/12) was registered on 15.9.2007 against unknown person under Section 302 of IPC. On 16.9.2007 memorandum of the appellant (Ex.P/1) was recorded wherein he has stated that about 15 days back he killed the deceased by causing injuries on his head with a cement pot and by hammer also. As per seizure memo Ex.P/2, cement pot and one hammer were seized. However, there is no FSL report. After investigation, charge sheet was filed against the appellant under Section 302 of IPC followed by framing of charge by the trial Court accordingly.

03. So as to hold the accused/appellant guilty, the prosecution examined 9 witnesses in all. Statement of the accused was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him 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 appellant as mentioned above.

05. Counsel for the appellant submits as under:

(i) that the appellant has been convicted solely on the basis of his so-called extrajudicial confession made before PW-4 Mahesh Kumar but the evidence of this witness is not worth reliance as their relations were not cordial and hence there was no occasion for the appellant to make any such confession before PW-4.

(ii) that wife of PW-4 namely Smt. Rekha (PW-6) has not supported the prosecution case and has categorically stated that relations between her husband and her family members including the appellant were not cordial and that they never used to visit houses of each other.

(iii) once it has been proved from the evidence on record that relations between PW-4 and the appellant were strained, so-called extrajudicial confession becomes doubtful and cannot be made basis for conviction of the appellant.

He has placed reliance on the judgments of the Supreme Court in the matters of ***Ajay Singh Vs State of Maharashtra, (2007) 12 SCC 341; Shiva Karam Payaswami Tewar Vs. State of Maharashtra, AIR 2009 SC 1692; Podyami Sukada Vs. State of M.P. (Now C.G.), AIR 2010 SC 2977; and S. Arul Raja Vs. State of Tamil Nadu; (2010) 8 SCC 233.***

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 illegality or infirmity in it warranting any interference by this Court.

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

on record.

08. PW-4 Mahesh Kumar Gendre, co-brother of the appellant, has stated that after two days of the incident the appellant informed him near highway that he has killed the deceased and then further informed that he killed the deceased by a cement pot. However, the appellant did not disclose the reason for committing murder of the deceased. In cross-examination, he has admitted the suggestion that there was no previous animosity between the deceased and the appellant and that he did not inform the police about the confessional statement by the appellant.

09. PW-6 Smt. Rekhabai, wife of PW-4, has not supported the prosecution case and has been declared hostile. She has stated that her husband never informed her about the confession made before him by the appellant regarding commission of murder of the deceased. She has further stated that her husband and the appellant are not on talking terms and they also never visit the houses of each other.

10. PW-1 Nand Kumar Netam and PW-2 Jagtu Mandle are witnesses to memorandum (Ex.P/1) of the appellant and seizure Ex.P/2 & P/3. Though they have supported the prosecution case, but there is no FSL report to show presence of blood on the seized articles. PW-3 Ravichand Satnami is a witness to inquest Ex.P/6. PW-5 Dr. Sudha Samuel conducted postmortem on the body of the deceased on 14.9.2007 vide Ex.P/9 and noticed fracture of left parietal bone with crack of adjacent bone near orbit lateral side, left maxillary bone distorted, fracture of upper jaw, central teeth with jaw are turned

inwards and placed in oral cavity and the body was in a late decomposition state. According to her, in this case no definite opinion can be given regarding the cause of death. It seems to be head injury and the death may be homicidal or depends upon circumstantial evidence. PW-7 Santosh Kumar Verma, Patwari, prepared the spot map Ex.P/8. PW-8 Radheshyam Sahu, Head Constable, helped in the investigation. PW-9 D.R. Sapre, investigating officer, has supported the prosecution case.

11. Admittedly, there is no direct evidence against the appellant to show his complicity in the crime in question and his conviction rests mainly upon his so-called extrajudicial confession made before PW-4 Mahesh Kumar.

12. The concept of an extra-judicial 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.

13. Close scrutiny of the evidence makes it clear that on 14.9.2007 dead body of the deceased was found in his house in a decomposed condition and the appellant has been roped in this offence on the basis of his so-called extrajudicial confession made before PW-4 Mahesh Kumar. If the evidence of extra-judicial confession in the present case is examined on the touchstone of the aforesaid principle of law, we find it difficult to base conviction on the said evidence, particularly considering the fact that relations between the appellant and PW-4 Mahesh Kumar were not cordial and as such, there appears to be no occasion for the appellant to make confession of such a heinous offence before him. Admittedly, PW-4 did not disclose about such confessional statement to the police at any point of time and stated about it for the first time in the Court, which also raises suspicion on the veracity of his statement.

The other piece of evidence collected by the prosecution is the recovery of incriminating articles at the instance of the appellant. Though the witnesses to memorandum and seizure have supported the prosecution case, however, this circumstance has also not been proved to the hilt by the prosecution as there is no FSL report to confirm presence of blood on the seized articles. This apart, the medical evidence is also not conclusive as to the nature of death of the deceased. The autopsy surgeon has stated that no definite opinion can be given regarding the cause of death, it seems to be head injury and the death may be homicidal or depends upon circumstantial evidence.

14. Thus considering the nature and quality of overall evidence collected by the prosecution to bring home the charge against the

appellant, we are of the opinion that the same are not sufficient to justify the conviction of the appellant under Section 302 of IPC and as such, the trial Court has fallen in error by placing reliance on such evidence while recording conviction of the appellant. In these circumstances, the appellant deserves to be acquitted of the said charge by extending him benefit of doubt.

15. In the result, the appeal is allowed. The impugned judgment of the trial Court is hereby set aside. The appellant is acquitted of the charge under Section 302 of IPC by giving him benefit of doubt. He is reported to be on bail, therefore, his bail bonds stand discharged and he need not surrender.

Sd/

(Pritinker Diwaker)

Judge

Sd/

(R.C.S. Samant)

Judge