

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 724 of 2008**

- Padum Singh Sidar, S/o Jal Singh Sidar, aged about 30 years,
 - Smt. Brinda Bai W/o Padum Singh Sidar, aged about 28 years,
- All are R/o Gathadih, P.S. Sarsiva, Distt.-Raipur (C.G.)

---- Appellants**Versus**

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

---- Respondent

For Appellants	:	Shri N.K. Malviya, Advocate.
For Respondent/State	:	Smt. Smita Ghai, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker**Hon'ble Shri Justice R.C.S. Samant****Judgment On Board By Justice Pritinker Diwaker****03/04/2017**

This appeal arises out of the judgment of conviction and order of sentence dated 30.6.2008 passed by I Additional Sessions Judge, Baloda-Bazar in ST No.004/2008 convicting each of the accused/appellants under Sections 302/34, 201 & 379 of IPC and sentencing them to undergo imprisonment for life, pay a fine of Rs.500/-; RI for five years, fine of Rs.500/-; and RI for one year, fine of Rs.200/- with default stipulations respectively.

02. As per the prosecution case, deceased Balakram was neighbour of the appellants and was having illicit relations with appellant No.2 Smt. Brindabai, wife of accused/appellant No.1 Padum Singh Sidar. It is said that in the night intervening 17/18th November, 2007 the deceased entered the house of the appellants where he was first beaten by hands and fists by the appellants and thereafter, was strangulated to death. After committing his murder, the appellants

threw his dead body near the borewell in the village. On 18.11.2007 dead body of the deceased was found in an open place, which was noticed by the villages and then at about 8.45 am mereg intimation Ex.P/1 was recorded at the instance of PW-1 Hetram. Inquest Ex.P/3 was prepared on the body of the deceased and thereafter, the body was sent for postmortem which was conducted on 18.11.2007 by PW-20 Dr. Kishore Kumar Gandhav vide Ex.P/20. The autopsy surgeon noticed ligature mark around the neck of the deceased and minor hyoid bone was fractured. In his opinion, the cause of death was sudden tightness of neck resulting in asphyxia and the death was suicidal in nature. Pursuant to report sought by the police from the doctor, vide Ex.P/21 the doctor opined that the fracture of hyoid bone indicates that the death was homicidal in nature; the ligature mark found around the neck does not appear to be self-inflicted, and that viscera was not preserved since the death appeared to be homicidal in nature. However, in his further report Ex.P/23 the doctor has opined that present appears to be a case of suicide because no injury of struggle was noticed on the person of the deceased. Memorandum of accused/appellant No.1 Padum Singh was recorded vide Ex.P/12 and pursuant to that one nylone rope, one gamchha, one lungi and shirt of the appellant No.1 were seized vide Ex.P/13. Likewise, on the memorandum of accused/appellant No.2 Brindabai Sidar vide Ex.P/14, 19 notes of 100 rupee denomination, total Rs.1900/-, were seized vide Ex.P/15. However, as per FSL report, no blood was found on the clothes of the appellant No.1. After completing investigation, charge sheet was filed against the accused/appellants under Sections 302, 397 & 201 of IPC and accordingly, charges were framed by the trial

Court against them.

03. So as to hold the accused persons guilty, the prosecution examined 24 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 accused/appellants as mentioned above.

05. Counsel for the appellants submits as under:

(i) that the appellants have been convicted solely on the basis of circumstantial evidence but its nature is not as such which can be made basis for their conviction.

(ii) that the Court below has wrongly placed reliance on the evidence of PW-3 Dhanai Bai and PW-4 Fot Kunwar, who are said to have last seen the deceased alive with the appellants, as both these witnesses have not supported the prosecution case and have been declared hostile.

(iii) that PWs-6, 7, 9, 12, 14 & 22, who are said to be the witnesses of extra-judicial confession, are not reliable, no extra-judicial confession was ever made by the appellants before them. From the evidence, it is clear that while the police was enquiring from the appellants, some of these witnesses overheard the appellants admitting their guilt. Further, PW-6 and PW-22 are witnesses of memorandum but they too have been treated as witnesses of extra-judicial

confession.

(iv) that FSL report also does not support the prosecution case because no blood was found on the clothes seized from appellant No.1 Padum Singh.

(v) that the appellants are in jail for the last more than 9 ½ years, though they were granted bail by this Court on 25.4.2012, but as they failed to furnish bail bonds due to their poor financial condition, they are still languishing in jail.

06. On the other hand, State counsel supporting the impugned judgment has submitted that the trial Court after due appreciation of the entire evidence has rightly convicted and sentenced the appellants. There is no illegality or infirmity in the judgment impugned warranting interference by this Court.

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

08. PW-6 Dildar Sahu is said to be a witness of alleged extrajudicial confession made by appellant No.1 Padum Singh, however, he has categorically stated that the said statement was made by appellant No.1 while he was questioned by the police. This witness was subsequently declared hostile. PW-7 Reshamlal, another witness of extrajudicial confession, in his examination-in-chief has stated that accused/appellant No.1 Padum Singh disclosed that he had killed the deceased with the help of his wife/appellant No.2 Brindabai. He, however, has nowhere stated as to what was the occasion for appellant No.1 to make extrajudicial statement before him. In para 9 he has stated that two police personnel were present at the time of

enquiry being made from the accused persons. PW-9 Suklal Shrivastava has also been examined by the prosecution as a witness of extrajudicial confession made by appellant No.1 Padum Singh. However, from his statement it is clear that the extrajudicial confession was made by appellant No.1 before the police. PW-12 Pooranlal, alleged witness to extrajudicial confession, too has stated that it is the police who recorded the statement Ex.P/17, which was signed by him, wherein appellant No.1 admitted to have killed the deceased with the help of appellant No.2 Brinda Bai. PW-14 Sunder Singh, another witness to extrajudicial confession, has also not clarified as to what was the occasion for appellant No.1 Padum Singh to make such confessional statement before him. From his statement it also appears that the police was present when enquiry was being conducted. PW-22 Jethuram is also one of the witnesses to extrajudicial confession. However, from his evidence it does not appear as to under what circumstances appellant No.1 made such confessional statement before him and others. In fact, he is a witness to memorandum of the accused/appellants and it appears that the facts disclosed by the witnesses to the police were overheard by him and therefore, he has stated that in his presence, the accused/appellant No.1 confessed to have killed the deceased. From his cross-examination also it is apparent that all the proceedings were completed by the police in presence of this witness. He is also a witness of spot map and inquest.

09. PW-1 Fotram, lodger of merged intimation Ex.P/1, has stated that the deceased was a drinker and in the past, there was some dispute between appellant No.1 Padum and the deceased because the deceased had entered the house of appellant No.1 Padum after

consuming liquor. He states that the matter was also reported to elderly people of the village. However, this witness was subsequently declared hostile.

10. PW-2 Urmila Bai, wife of the deceased, has stated that her husband/deceased was having illicit relation with appellant No.2 Brindabai and was having inimical relation with accused/appellant No.1. She states that earlier also accused/appellant No.1 Padum had beaten her husband, for which Panchayat meeting was called and appellant Padum was punished. She admits that her husband was a habitual drinker and used to quarrel with her.

11. PW-3 Dhanai Bai has been examined as a witness who last saw the deceased entering the house of the appellants. However, she has turned hostile and not supported the prosecution case. PW-4 Fotkunwar, another witness of last seen, has also turned hostile. PW-5 Ratan Singh too has not supported the prosecution case and has been declared hostile. PW-8 Sanat Kumar Sidar has stated that there was a previous dispute between the deceased and appellant No.1 Padum Singh. PW-13 Chhotun @ Chhotu and PW-15 Anandram are formal witnesses. PW-16 Harish Kumar Thakur, Patwari, prepared the spot map Ex.P/11. PW-17 Bhuribai has not stated anything specific against the accused/appellants. PW-18 Ramdas Sidar has stated about previous quarrel between the appellants and the deceased. PW-19 Arvind Naik, Police Constable, deposited the seized articles in the FSL for chemical examination. PW-23 Ramakant Sahu, investigating officer, has supported the prosecution case.

12. PW-20 Kishore Kumar Gandharv conducted postmortem on the body of the deceased vide Ex.P/20 and noticed following injuries:

- (i) ligature mark found around the neck.
- (ii) minor hyoid bone fracture on palpation.
- (iii) bleeding present in left nostril.
- (iv) no stool is found in anus region.
- (v) no any other injuries are found in the body.
- (vi) ligature mark is created by thread like rope.

In his opinion, the cause of death was sudden tightness of neck resulting in asphyxia and the death was suicidal in nature. Pursuant to report sought by the police from the doctor, vide Ex.P/21 the doctor opined that the fracture of hyoid bone indicates that the death was homicidal in nature; the ligature mark found around the neck does not appear to be self-inflicted, and that viscera was not preserved since the death appeared to be homicidal in nature. In cross-examination, he clarifies that due to inadvertence he had mentioned the nature of death as suicidal in his report Ex.P/20 as at the relevant time he was in a hurry and therefore, he gave another report Ex.P/21. However, in his further report Ex.P/23 the doctor has opined that present appears to be a case of suicide because no injury of struggle was noticed on the person of the deceased.

13. Admittedly, there is no direct evidence against the appellants to show their complicity in the crime in question and their conviction is based on circumstantial evidence. It is by now well settled that in a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have not only to be fully

established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis except the guilt of the accused and the chain of the evidence must be so complete as not to leave any reasonable ground for the belief consistent with the innocence of the accused. It needs no reminder that legally established circumstances and not merely indignation of the court can form the basis of conviction and the more serious the crime, the greater should be the care taken to scrutinize the evidence lest suspicion takes the place of proof.

14. Close scrutiny of the evidence makes it clear that there is no legally admissible evidence against the appellants connecting them with the crime in question. The so-called witnesses to last seen i.e. PW-3 Dhanai Bai and PW-4 Fotkunwar have specifically denied to have last seen the deceased entering the house of the appellants. They have not supported the prosecution case and have been declared hostile.

15. The other piece of evidence heavily relied upon by the trial Court is the alleged extrajudicial confession made by appellant No.1 before PWs-6, 7, 9, 12, 14 & 22. True it is that a person can be convicted on the basis of extra-judicial confession only if such evidence inspires confidence and is corroborated by other materials. Wherever the court, upon due appreciation of the entire prosecution evidence, intends to base a conviction on an extra-judicial confession, it must ensure that the same inspires confidence and is corroborated by other prosecution

evidence. If, however, the extra-judicial confession suffers from material discrepancies or inherent improbabilities and does not appear to be cogent as per the prosecution version, it may be difficult for the court to base a conviction on such a confession.

16. In the case in hand, having given a thoughtful consideration to the evidence of witnesses to extra-judicial confession, it appears that when memorandum of appellant No.1 Padum Singh was being recorded and the police was enquiring from him, some of the witnesses /villagers overheard the appellant No.1 confessing his guilt and the same was deposed by them in the Court, which has erroneously been treated by the Court as evidence of extra-judicial confession. None of these witnesses have stated as to under what circumstances or what prompted appellant No.1 to make such confessional statement before them. In view of all these infirmities in evidence of witnesses to extra-judicial confession, their evidence cannot be taken against appellants for holding them guilty of committing murder of the deceased.

17. This apart, the prosecution has also failed to prove that the death was homicidal in nature. In the postmortem report (Ex.P/20), the autopsy surgeon has opined the cause of death to be sudden tightness of neck resulting in asphyxia and the nature of death to be suicidal. However, vide Ex.P/21 he opined that the fracture of hyoid bone indicates that the death was homicidal in nature and in his further report Ex.P/23 he has opined that present appears to be a case of suicide because no injury of struggle was noticed on the person of the deceased.

18. Though pursuant to memorandum of appellant No.1 Padum

Singh, his bloodstained clothes were seized by the police, however, as per FSL report, no blood was found on his clothes. As such, this circumstance has also not been proved by the prosecution to the hilt.

19. Thus regard being had to all the circumstances relied upon by the trial Court to hold the appellants guilty, we are of the considered view that if all these circumstances are taken together, they do not form a complete chain which could unerringly point towards the guilt of the accused/appellants, rather they seem to be consistent with the innocence of the appellants. The prosecution has surely failed to prove the guilt of the appellants beyond all reasonable doubt and as such, they are entitled to be acquitted of the charges by extending them benefit of doubt.

20. In the result, the appeal is allowed. The impugned judgment is hereby set aside. The appellants are acquitted of the charges under Sections 302/34, 201 & 379 of IPC by giving them benefit of doubt. They are reported to be in jail, therefore, they be set free forthwith, if not required to be detained in connection with any other offence.

21. In this case, the appellants were directed to be released on bail vide order dated 25.4.2012. On 23.1.2017 none appeared for the appellants and the matter was then fixed for 25.1.2017. On 25.1.2017 again when there was no representation on their behalf, this Court was constrained to cancel the bail granted to the appellants and issued non-bailable warrant against them. Today the appellants have been produced from the jail and on being asked they informed that despite there being order granting them bail, they were behind the bars as due to their poor financial condition they could not furnish bail bonds.

22. It is really very unfortunate that though the appellants were granted bail way back in the year 2012, they could not get the benefit of that order and are still languishing jail. In such cases, it was the duty of the jail authorities to take appropriate steps for ensuring their release from jail by making correspondence with this Court or the High Court Legal Services Committee or the District Legal Services Committee.

23. Earlier pursuant to order dated 25.4.2007 passed by this Court in Cr.A.No.1523/98 a circular dated 7.5.2007 was issued by the Registry of this Court directing all the District & Sessions Judges of the State that as and when an order is passed for releasing the accused on bail on furnishing bail bond to the satisfaction of the trial Court, it is the duty of the concerned trial Court to intimate this Court as to whether in compliance of this Court's order the accused has been released on bail or not or the accused failed to submit the bail bonds. All the subordinate Courts were directed to observe and follow the above directions scrupulously.

This Court while allowing the criminal appeal i.e. Cr.A.No.575/2005 vide judgment dated 29.9.2016 where the appellant was granted bail in the year 2006 but could not be released from jail due to non-furnishing of bail bonds, has also issued the aforesaid directions.

24. Registrar (Judicial) is directed to further communicate the aforesaid circular alongwith copy of the above-stated judgments to all the District & Sessions Judges of the State, who in turn shall communicate the same to their subordinate Courts forthwith. Registrar (J) is also directed to ensure strict compliance of this circular by the

subordinate Courts.

25. In this view of the matter, we further deem it appropriate and therefore, direct all the District & Sessions Judges to call for information from the Additional Sessions Judges and the Central Jails of the State about the convicts languishing in jail on account of non-furnishing of bail bonds. Let this be done within two months from the date of receipt of copy of this judgment. District Judges shall forthwith pass on the said information to the Registrar (J) of this Court. Secretaries of District Legal Services Authorities are also directed to visit jail along with their counsel to collect such information and submit the same to the Secretary, State Legal Services Authority within two months from the date of receipt of copy of this judgment and the said authority to take appropriate steps in this regard.

26. Needless to say that on such report being received from the trial Court, the Registrar (J) shall, without wasting any time, place the matter before a Court dealing with the roster, for necessary orders.

Let widespread circulation of this order be made to all the District & Sessions Judges, Secretaries of District Legal Services Authorities as also the Secretary, State Legal Services Authority.

27. Today two other matters are also listed i.e. Cr.A.No.1101/2008 and Cr.A.No.497/2008, in which also the accused persons have been produced from District Jail-Rajnandgaon and District Jail-Bemetara.

28. It has been informed that in all the cases, the accused persons have been taken out from the jail early in the morning. In one case, only some biscuits have been given to the accused whereas in other

cases, nothing has been given to them.

29. When this Court questioned the police constables, who have produced the accused persons from the jails, they submit that they are not aware as to whether any prisoner allowance (कैदी भत्ता) is being granted to the accused persons. It also transpires that though train/bus warrants are issued by the authorities but no travelling expenses is being paid to the police personnel for bringing the accused persons from jail to railway station/bus stand and then from railway station/bus stand to High Court.

30. The accused/appellants (in Cr.A.No.724/2008) have informed that for the last ten years, they have not even once been granted the benefit of parole and are continuously in jail from the date of their arrest.

31. Keeping in view all this, the Registry is directed to register a separate petition (In Reference High Court of Chhattisgarh on its own motion Vs. State of Chhattisgarh) under Section 482 of Cr.P.C. read with Article 226/227 of the Constitution of India and list the same on 19th April, 2017.

Sd/
(Pritinker Diwaker)
Judge

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