

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 788 of 2006

- 1. Kali Ram, aged 50 years, son of Shri Daya Ram
- 2. AINU Ram @ Aiju Ram, aged 24 years, son of Shri Kali Ram.

Both are residents of village Utarwara, P.S. Gurur, District Durg.

---- Appellants

Versus

- State Of Chhattisgarh, through the Police Station Gurur, District Durg.

---- Respondent

For Appellants	:	Shri Ritesh Verma, Advocate.
For Respondent	:	Shri Neeraj Mehta, Panel Lawyer.

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

Per P.Diwaker, J

10/10/2017

1. By this criminal appeal, the accused/appellants have challenged the legality and propriety of the judgment of conviction and order of sentence dated 24.3.2006 passed by the Special Judge {Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989}, Durg in Special Case No.34/05 by which appellant No.1 has been convicted for the offence punishable under Sections 302 & 201 of the Indian Penal Code (for short 'IPC') and sentenced to undergo RI for life & to pay a fine of Rs.500/- and RI for 5 years, with usual default clauses, respectively. Whereas, accused/appellant No.2 has been convicted for the offence punishable under Section 201 of IPC and sentenced to undergo RI for 5 years and fine of Rs.500/-, in default to undergo RI for 3 months.

2. In the present case name of deceased is Baratu.
3. Case of the prosecution is that on 14.3.2005 at about 9 in the night, Baratu (since deceased) entered the house of appellants and demanded liquor from them. Some dispute between the daughter-in-law of appellant No.1 and the deceased cropped up and in the course of quarrel, accused/appellant strangulated the deceased with lungi of deceased and threw the dead body in a nearby ditch. However, fearing that they may be arrested in connection with the murder of deceased, they picked up the body of deceased and threw the same in the brook. Three days after the incident, body of the deceased was recovered from the brook and after due identification, on 17.3.2005 at 9.05 a.m. merg intimation (Ex.P-18) was recorded at the instance of Dhanwar, brother of deceased. Inquest (ExP-4) was prepared over the body of deceased. FIR (Ex.P-20) was registered under Sections 302 & 201 of IPC against unknown persons. Body was sent for post-mortem examination which was conducted by Dr. R.S. Bhardwaj (PW-11) vide Ex.P-14 and he did not notice any injury or ligature mark around neck as the body was putrefied and skin partially rubbed. According to post-mortem report, the cause of death could be asphyxia due to strangulation and nature of death was homicidal. Duration of death could be 48 to 72 hrs before the post-mortem examination. In pursuance of disclosure statement (Ex.P-10) made by accused/appellant No.1, lungi of the deceased was recovered vide seizure memo of Ex.P-7. Seized lungi was sent for chemical analysis to the FSL, however, no blood could be detected on it. Statements of witnesses under Section 161 CrPC were recorded.
4. After investigation, charge sheet against the accused/appellants was filed. The Court below framed the charges under Sections 302 & 201 of IPC

and Section 3 (2) (v) of the Act, 1989 against the accused/appellants. The prosecution in order to bring home the charges levelled against the accused/appellants examined 14 witnesses in all. Statements of accused/appellants were recorded under Section 313 of Cr.P.C. in which they abjured their guilt and pleaded innocence & false implication.

5. The trial Court after appreciation of the entire evidence on record came to the conclusion that the prosecution has been able to establish the offence under Sections 302 & 201 of IPC against the appellants and accordingly convicted and sentenced them in the manner as described above. However, the trial Court has acquitted them of the charge under Section 3 (2) (v) of the Act, 1989.
6. Counsel for the appellant submits that;
 - the entire conviction of appellants is based on the circumstantial evidence i.e. recovery and extra judicial confession, but the evidence rendered by the prosecution fell short of the requirement to bring home the circumstantial evidence relied upon by the prosecution.
 - the confession is said to have been made in the presence of the police and, therefore, it is not admissible in evidence.
7. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of accused/appellants is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court.
8. We have heard learned counsel for the parties and perused the evidence on record as also the impugned judgment.
9. Smt. Rainibai Dehari (PW-1), wife of deceased, and Smt. Ramsheela Bai (PW-2), mother of deceased, have not stated anything incriminating against the accused/appellants.
10. Maheshwar (PW-3) is the witness of seizure memo (Ex.P-1) and spot map

(Ex.P-2).

11. Yashwant Kumar Thakur (PW-4) & Atmaram (PW-5) have not supported the prosecution case and as such declared hostile.
12. Dwarika Prasad Sahu (PW-6) is the person before whom accused/appellants is said to have confessed their guilt. According to this witness, on 19.3.2005 at 9 in the morning he along with others were sitting in the Panchayat Bhawan. Accused/appellant No.1 came and informed that he has committed a mistake and thereafter he confessed that he committed murder of Baratu by strangulating him with lungi and threw his body firstly in the ditch in front of his house and thereafter threw the same in the brook. In Para-5 this witness has admitted that the police brought accused/appellant No.1 to the panchayat building. He has denied the suggestion that the meeting of panchayat was held on 18th and not on 19th.
13. Gangaram Sahu (PW-7) is another person in whose presence the accused/appellant No.1 had confessed the guilt. According to him, after 2-3 days of the incident, both the accused came to the panchayat building and admitted to have killed the deceased. He has stated that said confession was made by them on 18th and as he was inside the building at the relevant point of time, therefore, he cannot say as to whether the accused persons were brought by the police or not.
14. Joganlal (PW-8) is the police person who took the body of deceased for post-mortem examination.
15. Faguwa Ram (PW-10) is Patwari who prepared the spot map of Ex.P-2.
16. Dr. R.S. Bhardwaj (PW-11) is the person who conducted post-mortem examination on the body of deceased and opined that mode of death could be asphyxia due to strangulation and death was homicidal in nature.
17. A.K. Pipre (PW-13) is the Sub Divisional Officer (Police), who did some

part of the investigation.

18. D.S. Dehari (PW-14) is the Investigating Officer who has duly supported the prosecution case.
19. We have heard learned counsel for the parties and perused the record of the trial Court including the impugned judgment.
20. Since the conviction of accused/appellants is mainly based on the extra-judicial confession made by them, we wish to bring out the law relating to extra-judicial confession by referring to a judgment of the Hon'ble Supreme Court in **State of UP v. M.K. Anthony** reported in **(1985) 1 SCC 505**, relevant portion of which reads thus: -

"15.....It thus appears that extra judicial confession appears to have been treated as a weak piece of evidence but there is no rule of law nor rule of prudence that it cannot be acted upon unless corroborated. If the evidence about extra judicial confession comes from the mouth of witness/ witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive for attributing an untruthful statement to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it, then after subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, if it passes the test, the extra judicial confession can be accepted and can be the basis of a conviction. In such a situation to go in search of corroboration itself tends to cast a shadow of doubt over the evidence. If the evidence of extra-judicial confession is reliable, trustworthy and beyond reproach the same can be relied upon and a conviction can be founded thereon."

21. The law on the question of confession and its admissibility is clear. If a confessional statement is made in presence of the police while the

accused is in custody, the same would become in-admissible in evidence. Sections 25 & 26 of the Indian Evidence Act are anti-thesis to the admissibility of such confession. Section 25 says that no confession made to a police officer shall be proved as against a person accused of any offence. Section 26 of the Indian Evidence Act provides that no confession made by any person whilst he is in custody of the police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

22. Keeping the above principles in mind, we shall proceed to consider whether the trial Court was justified in convicting the accused/appellants or not?
23. Close scrutiny of the evidence on record reveals that in the present case no one has seen the manner in which deceased Baratu was done to death. His dead body was first seen by Thanwar, brother of deceased, and intimation was given by him to the police at 7.00 a.m. on 17.3.2005. According to the post-mortem report, the death had taken place about 2-3 days before the time when the post mortem was conducted and the cause of death could be asphyxia as a result of strangulation. Conviction of appellants herein for the offence punishable under Section 302 of IPC is based solely on the extra-judicial confession, which is said to have been made by them to Dwarika Prasad Sahu (PW-6), Gangaram Sahu (PW-7) & Krishnakant (PW-12), but the evidence of these witnesses and alleged extra-judicial confession do not inspire confidence for the reason that said extra judicial confession was made in the presence of the police as has been deposed by PW-6. Though PW-7 & PW-12 have stated in their evidence about such confession being made by accused/appellants, but they showed ignorance about the presence of the Police there at the material time by saying that as they were inside the panchayat building,

therefore, they could not see whether accused persons were brought by the police or not. In absence of any evidence to show that there was no police at the time when the alleged confession was made, we find no reason to disbelieve the evidence of PW-6. Therefore, in view of Section 26 of the Evidence Act the statement purporting to be the confession is inadmissible in evidence, as the same cannot be proved against the accused/appellant. Section 26 of the Evidence Act reads thus;-

“26. Confession by accused while in custody of police not to be proved against him.- No confession made by any person while he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.”

24. Furthermore, the confession was merely a recital of facts already in possession of the police i.e. the deceased was strangled to death; recovery of body of deceased from the brook, and the police discovered nothing incriminating in pursuance of the confession and their knowledge about the material facts of the case was not enriched in any manner by the confession. True it is that a lungi allegedly belonging to the deceased was recovered at the instance of accused/appellant, but in absence of identification of said lungi to be that of the deceased, it alone is not sufficient to conclude beyond shadow of doubt, in a serious offence of this nature, that the appellants had murdered the deceased. Even otherwise, no blood has been detected in this article on chemical analysis by the FSL.

Most importantly, the medical evidence also did not corroborate the confession of the accused that he strangled deceased to death. The body was recovered 2-3 days after the incident, it was in a decomposed state and the doctor, who had conducted post-mortem examination, did

not give concrete opinion as to the cause of death.

Thus, there is no independent corroboration of any of the material facts contained in the confession. It is settled position that the facts within the knowledge of the police before the confession was made, could not be used as evidence corroborating the confession.

That apart, the prosecution has not collected any evidence to connect accused/appellants with the murder of deceased. In other words, there is no evidence whatsoever in the case on which the conviction of the appellants could stand.

25. From the facts and circumstances of the case, it comes out that there is no evidence connecting the appellants with the crime or at least for drawing an inference that they are perpetrators of crime in question. In other words the main link in the chain of circumstances is completely broken and there is no connecting evidence whatsoever worth mentioning incriminating the appellants with the crime in question.
26. As regards the conviction of accused/appellants under Section 201 of IPC, there is no evidence to show that the body was removed and the evidence of offence was destroyed and being so, their conviction under Section 201 of IPC is also not sustainable in the eyes of law and they are entitled for acquittal of this offence also.
27. In the result, the appeal is allowed. Impugned judgment of the trial Court is hereby set aside. The appellants are acquitted of the charges under Sections 302 & 201 IPC. The appellants are reported to be on bail. Their bail bonds stand discharged.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(RP Sharma)
Judge