

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 978 of 2007

1. Jagdish Nirala, S/o Kholbahara Nirala, aged about 37 years, R/o village Tushar, Police Station Jaijaipur, District Janjgir-Champa (CG)
2. Chandram Banjare S/o Shayam Lal Banjare R/o Village Van Dhabhra, P.S. Jaijaipur, Distt.-Janjgir-Champa,c.G.

---- Appellants

Versus

- State Of Chhattisgarh, through Police Station Jaijaipur, Chowki-Hasaud, District Janjgir Champa (CG)

---- Respondent

For Appellants	:	Shri P.K. Patel, Advocate.
For Respondent	:	Shri Avinash K Mishra, Panel Lawyer.

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

Judgement

Per P. Diwaker, J

14/09/2017

1. This appeal has been filed against the judgment of conviction and order of sentence dated 10.10.2007 passed by the Additional Sessions Judge, Sakti, District Janjgir-Champa (CG) in S.T. No.205/06 convicting the accused/appellants under Sections 302/34 & 201 of the Indian Penal Code (for short 'the IPC') and sentencing each of them to undergo R.I. for Life and fine of Rs.500/- and R.I. for 7 years, with usual default clause, respectively.
2. In the present case name of deceased is Bhushan Satnami, brother-in-law of accused/appellant No.1 Jagdish Nirala.
3. The prosecution story, in brief, is that the deceased began to suspect illicit

relationship between his wife and accused/appellant No.1, co-brother of deceased, and this led to a dispute between deceased and accused/appellant No.1 and therefore in the night intervening 25th & 26th October, 2005 accused/appellant No.1 with the help of accused/appellant No.2 committed murder of the deceased by causing grievous injuries on his head with wooden plank and thereafter threw his dead body in the water tank situate at village Harethikala in order to save themselves from the legal punishment of murder. Kotwar Samaru Das upon noticing the body of deceased immediately went to police station and lodged Merg Intimation (Ex.P-1) on 26.10.2005 at 1.30 p.m. Inquest was made over the body of the deceased vide Ex.P-6. Body of the deceased was sent for post-mortem examination which was conducted by Dr. K.L. Uraon (PW-15) and he noticed following injuries on the body of deceased:-

- Laceration of tongue, brownish red colour, in the size of 1/6 x 1/6"
- Lacerated wound over left lower lip, reddish brown in colour, 3/4"x 1/4"x1/6" in size
- lacerated wound over left upper lip, reddish brown in colour, 3/4"x 1/4"x1/6" in size
- Lacerated wound on left eyebrow, reddish brown in colour, 1"x 1/4"x1/6" in size
- Loosing of left lateral and central of lower incisor teeth.
- Abrasion like mark seen on posterior and upper part of neck.

The doctor has opined that cause of death intra cranial haemorrhage due to head injury. Viscera was preserved for chemical analysis as per post-mortem report, but the viscera report was never filed by the prosecution before the Court. After merg inquiry, on 14.12.2005 FIR (Ex.P-28) was registered under Sections 302, 201, 34 of IPC against the accused/appellants. Memorandum statement of accused/appellant No.1 was

recorded vide Ex.P-13 and he got recovered one wooden plank and bloodstained shirt which he had worn at the time of incident. Accused/appellant No.2 also got recovered one bloodstained shirt which he was wearing at the time of incident. Statements of witnesses were recorded under Section 161 CrPC in which Mantora Bai (PW-3) & Gulpat (PW-14) had stated that accused persons had confessed before them to have committed the murder of deceased. Whereas, Samay Singh (PW-6) has stated that he saw the deceased in the company of accused persons in the evening of 25.10.2005, for the last time.

4. On completion of investigation, charge sheet for the offence punishable under Sections 302 & 201, 34 of IPC was filed against the accused/appellants and accordingly the charges were framed against them by the trial Court. The prosecution in order to bring home the charges levelled against the accused/appellant examined 27 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. After hearing the parties, the Court below has convicted & sentenced the accused/appellants in the manner as described above.
6. Counsel for accused/appellant submits that;-
 - this is a case of circumstantial evidence and there is no direct evidence against the appellants as there is no eye-witness account of this occurrence. The last seen evidence is not reliable because the witnesses to last seen remained silent and did not disclose the said fact to anyone till recording of their diary statements which admittedly recorded with inordinate delay.
 - the trial court had wrongly considered the extra-judicial confession of the appellants because according to the witnesses of alleged confession, after 4-5 days of the incident the accused persons

confessed to have killed the deceased. The extra-judicial confession made after 4-5 days of the incident is not reliable in the eye of law. Moreover, the confession is made before the mother of the deceased and therefore the same cannot be made the basis for convicting the appellants.

- though bloodstained shirts were recovered at the instance of appellants, but in absence of report of FSL or Serologist, the same has no value in the eyes of law.

7. On the other hand, supporting the impugned judgment learned counsel for the State submits that the prosecution has fully proved its case beyond any reasonable doubt. The last seen evidence, extra judicial confession and recovery of bloodstained shirts prove that there is a chain of evidence and on the basis of circumstantial evidence, accused/appellants have been found guilty and have been rightly convicted and sentenced as aforesaid.
8. We have heard counsel for the parties and perused the evidence available on record.
9. Samaru Das (PW-1) is the person who first saw the body of deceased lying near Ramsagar Pond and lodged Merg Intimation (Ex.P-1). He is also a witness to inquest (Ex.P-2).
10. Sarha (PW-2) has stated about the previous enmity between the accused/appellants and the deceased and that after about 7 days of the death of the deceased, the accused/appellants came to his house and confessed to have killed the deceased and requested him to somehow suppress the truth. However, in Para-9 of the statement he has deposed that the accused/appellants did not inform him as to where and how they killed the deceased. It is also relevant to note here that the diary statement of this witness was recorded on 14.12.2005 only i.e. after a

lapse of more one and a half month from the date of recovery of dead body.

11. Mantora Bai (PW-3), mother of deceased, has also stated about the previous enmity between the deceased and appellant No.1 and that after about 2 days of the incident, accused/appellants came to her and admitted that they had killed the deceased after looting cash of Rs.40,000/- from the deceased. This witness has further stated that the deceased left the house along with accused/appellants for village Bandabhra and thereafter his dead body was recovered. It is pertinent to mention here that the fact that the accused persons had admitted their guilt does not find place in the diary statement of this witness and she has disclosed this fact for the first time before the Court during trial at the time of recording of her evidence.
12. Phoolbai (PW-4) is also a witness of last seen. She has stated that on the date of incident at about 5 in the evening the accused persons took the deceased along with them by saying that wife of deceased, who at that point of time was in her parental house, is not well and thereafter the deceased did not return and his dead body was recovered. She has also stated about some dispute between the deceased and the appellant No.1.
13. Rampyare Sahu (PW-5) is the witness of seizure memos Ex.P-3 & Ex.P-4.
14. Samay Singh (PW-6) is another witness of last seen. He has stated that he saw that the deceased and accused/appellants were going on separate motorcycles. Vidhyadhar (PW-7) is the witness of inquest (Ex.P-6) and seizure memos of Ex.P-9 & Ex.P-10. Purushottam (PW-8) is also a witness of inquest (Ex.P-5). Oshiyaar Ratnakar (PW-10) is the witness of memorandum (Ex.P-13) and seizure memos Ex.P-14 & Ex.P-15. Hemant Kumar Dewangan (PW-11) is the Patwari who prepared the spot map (Ex.P-8).

15. Gulpat (PW-14) is the witness of extra-judicial confession. This witness has stated that brother-in-laws of the deceased had informed him that as the deceased used to falsely blame them of having illicit relationship with his wife, therefore, they had killed him. He has further stated that they further informed him that in order to avoid repayment of loan of Rs.40,000/- advanced to him by the deceased, they had eliminated the deceased.
16. Dr. K.L. Uraon (PW-15) is the doctor who performed autopsy on the body of deceased and noticed the injuries as described above. This witness has opined that cause of death was intra cranial haemorrhage due to head injury.
17. S.P. Khakha (PW-20), Vyas Narayan (PW-21), B.S. Markaam (PW-23), Baldeo Prasad Rathore (PW-24) & R.A. Singh (PW-25) are the police persons who assisted in the investigation.
18. B.P. Bakhla (PW-27) is the investigating officer who has duly supported the prosecution case.
19. Anand Ram (PW-12), Santosh (PW-13), Baldau (PW-17), Belsajjar Lakda (PW-18), Ramayan Bai (PW-19) & Makhanlal (PW-22) are the formal witnesses, therefore, there is no purpose to discuss the deposition of these witnesses.
20. Conviction of accused/appellants is mainly based on the evidence of last seen and the extra judicial confession stated to have been made by the accused/appellants.
21. So far as the last seen aspect is concerned, it is necessary to take note of some decisions of the Hon'ble Supreme Court. In State of UP v. Satish reported in (2005) 3 SCC 114 it was held thus:-

"22. The last seen theory comes into play where the time-gap between the point of time when the accused and the

deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases. In this case there is positive evidence that the deceased and the accused were seen together by witnesses PWs. 3 and 5, in addition to the evidence of PW-2."

In *Ramreddy Rajesh Khanna Reddy v. State of A.P.* reported in (2006) 10 SCC 172 the Supreme Court has held thus:-

"27. The last-seen theory, furthermore, comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible."

22. In the instant case, in order to prove the circumstances of 'last seen', the prosecution relied upon the evidence of Mantora Bai (PW-3), Phoolbai (PW-4) and Samay Singh (PW-6). According to Court statement of Mantora Bai (PW-3), the accused/appellants came to her house and took her son (deceased) along with them to village Bandabhar by saying that his wife is sick and thereafter her son did not return. However, the police statement of this witness is altogether different wherein she has stated

that her son (deceased) had left the house alone on the motorcycle saying that he is going to river side. Phoolbai (PW-4), another witness of last seen, has admitted in her cross-examination that having seen the accused/appellants and the deceased going in the same direction, she thought that accused/appellants and deceased were going together. Evidence of Samay Singh (PW-6) on the point of 'last seen' is also not reliable and trustworthy for the reason that in the Court evidence this witness had disclosed the names of accused/appellants but such a material fact though in his knowledge was not disclosed by him to the police in his statement recorded under Section 161 CrPC. Thus, there are material contradictions, omissions and exaggerations in evidence of aforesaid witnesses to the last seen and therefore no reliance could be placed on their testimonies with regard to seeing the deceased last time alive in the company of accused/appellants. Yet another reason for discarding their evidence is that their statements under Section 161 of Cr.P.C. came to be recorded on 14.12.2005 after about one and a half month. No explanation whatsoever was given by the prosecution as to why their statements could not be recorded earlier. In these circumstances, we do not feel it safe to accept their evidence on this vital circumstance, namely, the deceased was last seen alive in the company of the appellants.

23. Another circumstance against the accused/appellants is alleged extra judicial confession made by them. The law relating to extra judicial confession is well settled. An extra judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. The value of the

evidence as to the confession depends on the reliability of the witness who gives the evidence. It is not open to any court to start with a presumption that extra-judicial confession is a weak type of evidence.

24. In the case in hand, to prove the evidence of extra judicial confession, the prosecution had again relied upon Mantora Bai (PW-3) and also on Gulpat (PW-14). According to Mantora Bai (Pw-3), after about 2-3 days of the incident, accused/appellants had confessed before her to have killed the deceased, however, in the police statement (Ex.D-2) of this witness recorded after about a month therefrom, there is no whisper about such confession made by accused/appellants, which creates doubt about the veracity of her evidence. Furthermore, PW-3 Mantora Bai is the mother of the deceased and therefore the accused/appellants were not likely to go to this witness to make extra-judicial confession. Likewise, Gulpat (PW-14) had also stated that after 4-5 days of the death of deceased, the brothers-in-law (साढ़ू व साला) of the deceased came to him and admitted that they had killed the deceased. Strangely, this witness remained silent for about a month after such admission by accused/appellants and had disclosed the said fact for the first time only on 14.12.2005 when his police statement was recorded. It is inconceivable that a person would tell the police after a month of the incident about the purported extra judicial confession which according to the witness himself was made after 4-5 days of the incident. For the aforesaid reasons, taking an overall view, the statements of Mantora Babi (PW-3) & Gulpat (PW-14) regarding extra-judicial confession allegedly made to them by the appellants, do not inspire confidence and do not appear to be credible so as to indict the accuse/appellants of a serious offence like murder.

25. As regards the recovery of bloodstained wooden plank and shirts at the instance of accused/appellants, the prosecution has not taken any step to prove that the blood stains found on the aforesaid articles were of human blood that too of the same group as of the deceased. In absence of determination of blood and its origin, mere presence of blood on the articles seized from the accused/appellants including wooden plank is of no consequence. Hence, the recovery of alleged weapon of offence and bloodstained shirts effected at the instance of accused/ appellants in this case has no evidentiary value.
26. Likewise, there is nothing on record to show that after the death of the deceased the accused/appellants had in any manner caused disappearance of evidence of the offence with intent to screen themselves from legal punishment and being so their conviction under Section 201 IPC is also not sustainable in the eye of law and they are entitled for acquittal of this offence also.
27. For the foregoing reasons, the appeal is allowed. Conviction and sentences of appellants under Sections 302/34 & 201 IPC are hereby set aside and they are acquitted of those charges. Appellants are reported to be on bail. Their bail bonds stand discharged.

Sd/-
(P. Diwaker)
Judge

Sd/-
(RP Sharma)
Judge

roshan/-