

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 04-08-2017

Judgment delivered on 31-08-2017

Criminal Appeal No. 245 of 2013

Kanhaiya Nishad, Aged about 37 years, S/o. Nathu Nishad, R/o. Village Parkhanda, Thana- Kurud, District Dhamtari(C.G.) Presently Taj Nagar, Santoshi Nagar, Opposite Jeetu Shop, Raipur, Thana-Tikrapara, Raipur (C.G.)

---- Appellant

Versus

State of Chhattisgarh, Through the District Magistrate, Raipur (C.G.)

---- Respondent

For Appellant	:	Mr. Sachin Singh Rajput, Advocate.
For Respondent/State	:	Mr. Ravindra Agrawal, Panel Lawyer.

**Coram: Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Ram Prasanna Sharma**

CAV JUDGMENT

Per Ram Prasanna Sharma, J.

- 1) This appeal is directed against the judgment of conviction and order of sentence dated 20.02.2013 passed by the Sessions Judge, Raipur, District Raipur (C.G.), in Sessions Trial No. 65 of 2011, convicting the accused/appellant under Section 302 of the IPC and

sentencing him to undergo imprisonment for life and to pay fine of Rs. 5,000/-, with default stipulation.

- 2) As per the prosecution case, deceased Kisan Sahu was son of one Sadharam Sahu (PW-6) and Smt. Tuleshwari @ Poona (PW-5). The mother of the deceased was working with appellant Kanhaiya Nishad. Sadharam Sahu suspected illicit relation between his wife and the appellant. The appellant was their neighbour and used to visit the house of Sadharam Sahu. Sadharam Sahu prevented his wife to meet the appellant and before 2 -3 days of the incident, mother of the deceased asked the accused/ appellant not to visit her home in future and thereafter the deceased was missing since 31.10.2010. Search was made at different places and on 19.11.2010, the dead body of the deceased was found in a pit full of water in Ayodhya Nagar, Raipur. The matter was reported to Police and after registration of First Information Report (Ex.P-13), Police swung into action. On discovery statement of the accused/appellant cycle with chain was recovered, the cycle was locked with chain and the key of the lock was recovered from the house of the accused/ appellant. During investigation, statements of the witnesses were recorded under Section 161 of the Cr.P.C. After completion of the investigation, charge sheet was filed against the accused/ appellant in the Court of Judicial Magistrate, First Class, Raipur, who, in turn, committed the case to the Court of Sessions Judge, Raipur. The appellant was charge sheeted under Section 302 of the IPC to which he did not plead guilty, therefore, trial was conducted and after completion of evidence of the

prosecution side, statement of the appellant under Section 313 of the Cr.P.C., was recorded and after completion of trial, the trial Court considering the material available on record by the impugned judgement convicted and sentenced the accused/appellant as mentioned above.

3) Learned counsel appearing for the accused/appellant submits as under:

- (i) That the recovery of the dead body and bicycle with chain is not proved according to law and extra-judicial confession is also not proved.
- (ii) That there is no evidence to connect the appellant with the crime in question.
- (iii) That the medical evidence does not support the case of the prosecution and diatom test is in favour of the appellant and the trial Court overlooked the same.

4) *Per contra*, learned State counsel supporting the impugned judgement of the trial Court has submitted that the judgement of the trial Court is well founded and does call for any interference.

5) We have heard counsel for the parties and perused the material on record.

6) To substantiate the charge prosecution has examined as many as 12 witnesses. The appellant did not examine any witness in his defence.

7) Dr. Ullas Gonnade (PW-12) conducted autopsy on the dead body of the deceased on 19.11.2010 at about 11.00 am, the dead body of

the deceased was brought by constable No. 4162, Raghunath Diwan, Police Station Tikrapara, Raipur. Doctor directed the Police for Forensic examination of visra and diatom test of tibia and after getting report, looking to the positive report of diatom test, doctor opined that the deceased had drunk water of the pit and was alive for some time in the pit. Dr. opined that bone of the deceased was examined but no important medico-logical fact was discovered and it is not in the report of the doctor that the death is homicidal in nature.

- 8) There is no eye-witness to the incident. As per the statement of Police Inspector Shamshir Khan (PW-11) and Imran @ Sanni (PW-4) on the discovery statement of the appellant bicycle, chain with lock was found in the pit and the key of the lock was given by the accused/ appellant to the police and the lock was opened by the same key. From the statement of these two witnesses it is clear that the dead body was not attached with the bicycle, when the diatom test is positive and deceased was alive in the pit, the theory of throwing the dead body with the cycle is not established.
- 9) The prosecution had to establish that the dead body of the deceased was thrown by the appellant in the pit but there is no evidence to connect the appellant in this regard that the dead body was thrown by him. There is no iota of evidence against the appellant that he had been seen by anyone near the place of the dead body at any time. Therefore, from the recovery of cycle/chain/lock and key it can not be inferred that the accused/ appellant has thrown the dead body of the deceased, specially

from the medical evidence it is not established that the death is result of a criminal act.

- 10) Hon'ble the Supreme Court in the case of **Sahadevan and Another vs State of Tamil Nadu** reported in **(2012) 6 SCC 403**, has observed as under:-

14. It is a settled principle of criminal jurisprudence that extra-judicial confession is a weak piece of evidence. 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. In such circumstances, the court would be fully justified in ruling such evidence out of consideration.

In **Balwinder singh v. State of Punjab 1995 Supp(4) SCC 259**, Court stated the principle that:

“ 10. An extra-judicial confession by its very nature is rather a weak type of evidence and requires appreciation with a great deal of care and caution. Where an extra-judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance.”

Further In **Pakkirisamy v. State of Tamil Nadu (1997) 8 SCC 158**, the Court held that

“ 8.It is well settled that it is a rule of caution where the court would generally look for an independent reliable corroboration before placing any reliance upon such extra-judicial confession.”

- 11) Imran @ Sanni (PW-4) deposed that the accused/ appellant made extra-judicial confession before him that he had committed murder of son of Sadhram Sahu. The extra-judicial confession is a weak type of evidence and unless it is corroborated by surrounding

circumstances the same can not be acted upon, as earlier pointed out that there is no reliable medical evidence to establish that the death of deceased Kisan is a criminal act, so in the present case such weak type of extra-judicial confession is not sufficient to bring home the guilt of the accused/appellant.

- 12) The case of the prosecution is based on circumstantial evidence and as per the law laid down by Supreme Court in the case of **Jaharlal Das vs State of Orissa, (1991) 3 SCC 27;** circumstantial evidence in order to sustain the conviction must satisfy three conditions;

((i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(ii) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accuse;

(iii) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else, and it should also be incapable of explanation on any other hypothesis than that of the guilt of the accused.

In case depending largely upon circumstantial evidence there is always a danger that conjecture or suspicion may take the place of legal proof. The court must satisfy itself that the various circumstances in the chain of evidence should be established clearly and that the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused. When the main link goes, the chain of circumstances gets snapped and the other circumstances cannot in any manner establish the guilt of the accused beyond all reasonable doubts. It is at this juncture the Court has to be watchful and avoid the danger of allowing the suspicion to take the place of legal proof for sometimes unconsciously it may happen to be a short step between moral certainty and legal proof. At times it can be a case of 'may be true'. But there is a long mental distance between 'may be true' and 'must be true' and the same divides conjectures from sure conclusions.

- 13) In the case on hand, when the cause of death is not clear circumstances brought on record can not establish the guilt of the accused/ appellant. From the evidence it is tried to establish that the mother of the deceased had prevented the appellant from visiting her home and that may be a cause for commission of crime but it is a settled law that suspicion, howsoever, strong can not take the place of legal proof.
- 14) For the foregoing, we are of the considered opinion that the finding arrived at by the trial Court is not sustainable and the same is set aside. The appellant is acquitted of the charge framed against him. He shall be set at liberty, if not required, in any other case. The appeal is accordingly allowed.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(Ram Prasanna Sharma)
JUDGE