

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 602 of 2016**

- Agardas S/o Tijram Aged About 60 Years R/o Village Dhamni, Police Station Hasaud, District Janjgir Champa Chhattisgarh.

---- Appellant**Versus**

- State Of Chhattisgarh Through Station House Officer, Police Station Malkharouda, District Janjgir-Champa Chhattisgarh.

---- Respondent

For Appellant : Shri Yogeshwar Sharma, Advocate.

For Respondent/State : Smt. Madhunisha Singh, P.L.

Hon'ble The Acting Chief Justice
Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board**Per The Acting Chief Justice,****28/02/2017**

This appeal arises out of the judgment of conviction and order of sentence dated 29.2.2016 passed by the First Additional Sessions Judge, Sakti, Distt. Janjgir-Champa in ST No.15/1993 convicting the appellant under Section 302/34 and sentencing him to undergo imprisonment for life, pay a fine of Rs.5000/- with default stipulation.

02. As per prosecution case on 7.9.1992 at about 7 pm accused/appellant Aagardas with the help of two other accused persons Samaylal and Dilaram caused several injuries to Ashok Saraf. Injured Ashok Saraf was taken to BDM Hospital, Champa where he succumbed to his injuries. Unnumbered FIR (Ex.P/14) was lodged on

8.9.1992 by PW-7 Ajay Prasad Saraf, brother of the deceased, based on which offence under Section 307 of IPC was registered against unknown person. Thereafter, numbered FIR (Ex.P/26) was registered against unknown person under Section 307 of IPC. After death of the deceased, intimation was sent to the police and accordingly, merged intimation Ex.P/15 was recorded on 8.8.1992 at the instance of PW-7 Ajay Kumar Saraf. Inquest over the dead body was prepared vide Ex.P/38 on 8.9.1992. The dead body was sent for postmortem, which was conducted on 8.9.1992 by PW-12 Dr. VK Paliwal vide Ex.P/20 wherein he noticed stitched wounds on right parietal region, forehead, scapular region; contusion on right shoulder, abrasion and swelling. In his opinion, the cause of death was coma as a result of head injury caused by hard and blunt object. After investigation, charge sheet was filed against the accused persons under Section 302/34 of IPC. The trial Court framed charge under Section 302 of IPC against all the accused persons.

03. During trial, accused Dilaram absconded on 17.6.1996 and therefore, the trial proceeded against accused Samaylal and accused/appellant Aagardas. However, after recording of evidence of 14 witnesses, accused/appellant Aagardas also absconded on 4.12.1996 and therefore, the trial was concluded only in respect of accused Samaylal vide judgment dated 26.12.1998. On 7.10.2013 accused/appellant Aagardas surrendered before the police and thereafter, cross-examination was done on behalf of accused/appellant Aagardas for the remaining 15 witnesses.

04. So as to hold the present accused/appellant guilty, the prosecution

examined 29 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.

05. 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.

06. Counsel for the appellant submits as under:

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

(ii) that on the memorandum of the appellant Ex.P/9, recovery of club and his clothes Ex.P/10 was made, however, merely on that basis the appellant cannot be convicted.

(iii) though as per FSL report Ex.P/41, blood has been found on the lathi and shirt seized from accused/appellant, but there is no evidence to show that the said blood was human blood or of the group of the deceased and in these circumstances, the report of the chemical examiner is of no consequence.

(iv) the other piece of evidence against the appellant is the so-called extra-judicial confession made by co-accused Samaylal before PW-4 Babulal, however, the said extrajudicial confession has no evidentiary value in the eye of law because this witness appears to have made such statement before the Court under the threat and pressure of the police.

07. 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.

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

09. PW-1 Umit Kumar has not supported the prosecution case and has been declared turned hostile. PW-2 Shatruhan Lal is a witness of seizure Ex.P/4, P/5 & P/6. PW-3 Dharamdas is a witness of memorandum Ex.P/9 of accused Aagardas and seizure Ex.P/10 of clothes. PW-4 Babulal is a witness before whom extra-judicial confession is alleged to have been made by accused Samaylal. He states that Samaylal had informed him that with the help of other accused persons he killed the deceased. However, in cross-examination he states that upon being threatened by the police he disclosed this fact to the police and he was slapped by the police 8-10 times. He further states that he is making such statement before the Court as he apprehends that if he does not make any such statement, he would be involved in some other case by the police.

10. PW-5 Ramji-seizure witness and PW-6 Devendra Shekhar have turned hostile. PW-7 Ajay Kumar Saraf, brother of the deceased, at whose instance unnumbered and numbered FIR were recorded, has not stated anything specific against the accused persons. PW-8 Pramod is a witness of seizure Ex.P/16 by which button of the shirt and broken spectacles were seized. PW-9 Malikram, Patwari prepared the

spot map Ex.P/17. PW-10 Dayaram has not stated anything specific against the accused persons. PW-11 Ravibai has turned hostile. PW-12 Dr. VK Paliwal conducted postmortem on the body of the deceased vide Ex.P/20 and noticed stitched wounds on right parietal region, forehead, scapular region; contusion on right shoulder, abrasion and swelling. In his opinion, the cause of death was coma as a result of head injury caused by hard and blunt object. PW-13 Dr. Harisingh Chandel conducted MLC of the deceased when he was hospitalized vide Ex.P/21. PW-14 Dwarikaprasad, Police Constable, helped in the investigation. PW-15 CK Gajbhiye, investigating officer, has supported the prosecution case. PW-16 Photobai, PW-17 Bhagwandas, PW-18 Bhakanand, PW-19 Chandrashekhar and PW-20 Basant Kumar have turned hostile. PW-21 Anil Kumar Saraf has also not stated anything specific against the accused persons. PW-22 Chhotelal has also turned hostile. PW-23 Lalmi Shukla registered the unnumbered FIR and helped in the initial investigation. PW-24 Vindhyachal Singh registered the merg intimation Ex.P/39. PW-25 Naresh Kumar, Police Constable, helped in the investigation. PW-26 Dr. V.P. Soni gave merg intimation to the police. PW-27 Shyamlal Gupta and PW-28 Ramesh Kumar Soni are witnesses to inquest. PW-29 Gasimram Sonwari, Police Constable, helped in the investigation.

11. Admittedly, there is no direct evidence against the appellant to show his complicity in the crime in question and his conviction rests upon circumstantial evidence i.e. seizure of incriminating articles at his instance and the extra-judicial confession made by co-accused Samaylal before PW-4 Babulal.

12. 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.

13. So far as seizure of incriminating articles is concerned, PW-3 Dharamdas and PW-22 Chhotelal are witnesses to memorandum of the appellant and seizure. PW-3 in cross-examination has stated that he simply put his signature on the documents and contents of the same were not read over to him by the police whereas the other witness PW-22 has not supported the prosecution case and has been declared hostile. From the appellant, one lathi, his shirt and lungi were seized which were found to be stained with blood as per FSL report but origin of the blood could not be determined as per serological report. Therefore, it cannot be said that this circumstance has been proved by the prosecution beyond all reasonable doubt.

As regards extra-judicial confession, co-accused Samaylal is alleged to have made extra-judicial confession before PW-4 Babulal. However,

this witness in his cross-examination has categorically admitted the fact that he is stating so before the Court on the threat and pressure of the police as he apprehends that if such statement is not made by him, he would be falsely implicated by the police in any other case. Even otherwise, the evidence of extra-judicial confession is considered to be a weak piece of evidence and before acting upon it the Court must ensure that the same inspires confidence and it is corroborated by other prosecution evidence. In the present case, the evidence of PW-4, before whom extra-judicial confession was allegedly made by co-accused, itself goes to show that no such confession was ever made by co-accused before him and he is stating so under the threat of the police.

14. Thus, keeping in mind the aforesaid principles of law relating to circumstantial evidence, on close scrutiny of the entire evidence it emerges that there is no legally admissible evidence on record to connect the appellant with the crime in question. All the circumstances even if taken together do not conclusively and unerringly point towards the guilt of the accused/appellant, none of the circumstances has been proved to the hilt by the prosecution beyond all reasonable doubt, be it recovery pursuant to memorandum of the appellant or the so-called extra-judicial confession made before PW-4. In a case resiting on circumstantial evidence, the prosecution is required to take extra caution while collecting evidence and proving the same. It must be proved in such a manner which could lead only one inference that it is the accused/appellant alone who was the perpetrator of the crime in question. However, in the case in hand, the prosecution has utterly

failed to establish a complete chain of circumstantial evidence against the appellant. Being so, the findings of guilt recorded by the trial Court are liable to be set aside and he is entitled for acquittal of the charge by giving him benefit of doubt.

15. In the result, the appeal is allowed. The impugned judgment is hereby set aside and the appellant is acquitted of charge under Section 302/34 of IPC by giving him benefit of doubt. He is reported to be in jail, therefore, he be set free forthwith if not required in any other case.

Sd/

(Pritinker Diwaker)
Ag. Chief Justice

Sd/

(Sanjay K. Agrawal)
Judge