

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Appeal (DB) No.466 of 1994**

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**Against the Judgment of conviction and order of sentence dated 25<sup>th</sup> of July, 1994 passed by the 2<sup>nd</sup> Additional Sessions Judge, Katihar in Sessions Trial No.304 of 1990**

Om Prakash Arya son of Puran Chandra Arya resident of village Saribhalli,  
P.S. Bhubarwal, District Pauri Garhwal

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

**Appearance :**

For the Appellant/s : Mr. Ranbir Singh, Amicus Curiae

For the Respondent/s : Mr. Abhimanyu Sharma, APP

**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI**

**and**

**HONOURABLE MR. JUSTICE SANJAY PRIYA**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)**

**Date : 06-01-2018**

Heard learned Amicus Curiae for the appellant as well as the learned APP for the State.

2. It is a Jail Appeal preferred by the appellant against the judgment of conviction dated 25.07.1994 passed by the court of 2nd Additional Sessions Judge, Katihar in Sessions Trial No.304 of 1990. The appellant has been sentenced for life under Section 302 IPC. He was further sentenced to undergo RI for one year under Sections 201 and 379 of the IPC. The sentences were to run concurrently.

3. Submission of the Amicus Curiae is that the conviction of the appellant cannot be sustained on the primary ground that there



is no material evidence of any kind to link the murder of one Chako Devi, wife of Sukdeo Das, except for the so-called extra judicial confession made by the appellant before one Polen Kumar, a constable in the BMP.

4. One Sukdeo Das also a constable in the BMP at Katihar along with constable Polen Kumar produced the appellant, Om Prakash Arya, before the local police station and also instituted an FIR that wife of informant, Chako Devi, aged about 45 years has been missing from his residential quarter since 09.05.1990. Prior to the institution of the FIR, a Sanha was also given in the same police station on 23.05.1990 that the wife of informant was wearing a green saree, blouse, and petticoat and some silver ornaments with a golden nose pin.

5. On 01.06.1990, constable Polen Kumar informed the informant, Sukdeo Das, that the appellant had gone to his house 5-6 days ago and wanted to mortgage a nose pin. It is said that Polen Kumar suspecting the nose pin belonging to Chako Devi, he informed the husband of Chako Devi about the said occurrence and they both jointly went and confronted the appellant at his house, who tried to flee away. The informant and Polen Kumar caught the appellant and wanted to know about the whereabouts of Chako Devi and it is said that the appellant confessed that he had



called Chako Devi to his residence and then murdered her and removed all the ornaments and buried her body in a field near his house. It is said that he also confessed to disclose the place where the dead body was buried and was willing to also return the ornaments.

6. The FIR was registered on the basis of the above information, investigation proceeded and the accused was charge-sheeted for murder of Chako Devi.

7. Altogether 10 witnesses were examined on behalf of the prosecution. I.O. was examined as a court witness. PWs 1 to 4 were formal witnesses, who either proved the seizure list, farbeyan, the signature of the IO and the FIR. PW 5 and 6 supposedly proved the signature on the so-called confessional statement of the accused but ironically they also stated during the course of their examination that this confessional statement was not made before them. If that be so then not much credence can be lend to identification of the signature on the confession.

8. PWs 7 to 10 are said to be material witnesses, according to the trial court, because it is before them that the appellant is supposed to have confessed his guilt and all the witnesses are constables posted at the BMP. From narration of their evidence, it is evident that it is repetition of the same set of fact and they also



seemed to be hearsay witnesses and the entire prosecution has been woven around the so-called confession made by the appellant before the informant and another constable Polen Kumar.

9. None of the witnesses can be said to be witnesses to the crime. The confession being extra judicial and no effort having been made by the IO or the prosecution to get the confession recorded before a Magistrate, not much weightage or credence can be given to the so-called confessional statement and, therefore, there is no material evidence to link the disappearance or the murder of the wife of 1<sup>st</sup> informant and link the present appellant with the said crime. The best which can be said is that the dead body was recovered at the instance of the appellant and to that extent, the evidence or confession can be taken into consideration. There is serious doubt about the dead body which was recovered to be that of the wife of the 1<sup>st</sup> informant. The vague kind of evidence has come as to the identity of the body because by the time the recovery was made it is said that the body was highly decomposed and Doctor refused to conduct any kind of postmortem in that state.

10. The submission of the counsel for the appellant seems to be correct that the trial court has gone an extra mile for convicting the appellant on the basis of extra judicial confession where no



independent, scientific or other evidence having come to show that the appellant was responsible for the disappearance and murder of the deceased. The maximum which the appellant can be charged with was recovery of the dead body and that by itself cannot bring him within the ambit of Section 302 of the Indian Penal Code.

11. The circumstances being such we are of the opinion that the conviction of the appellant under Section 302 of the IPC is unwarranted. So far as conviction under Sections 201 and 379 is concerned, we are not inclined to interfere with that part of the sentence. But taking into view that the appellant had already suffered incarceration for almost 9 years, he is not required to undergo rest of the sentences because he has overstayed the punishment imposed upon him under Sections 201 and 379 of the IPC. The appellant stands exonerated of the charges of murder. The appeal stands allowed to the extent indicated above. He is discharged from the liability of the bail bonds. Let the lower court records be returned forthwith.

**(Ajay Kumar Tripathi, J)**

**( Sanjay Priya, J)**

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