

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (DB) No.599 of 1994**

Sessions trial no. 56/1994 arising out of Kahalgaon P.S. case no. 96/1984
District- BHAGALPUR

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1. Nanhku Dome @ Nanduka @ Nandu Dome son of Chhatsi Dome

2. Gurudeo Dome son of Jagdish Dome

Both resident of Chhorodham P.S. Khalgaon District Bhagalpur

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Krishna Mohan

Mr. Praveen Kumar

For the Respondent/s : Mr. Shiwesh Chandra Mishra

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date: 17-01-2018

1. This criminal appeal has been preferred against the judgment of conviction dated 09.12.1994 and sentence order dated 14.12.1994 passed by the Addl. Sessions Judge VI, Bhagalpur in Sessions trial no. 56/1994 by which and whereunder both the appellants were convicted for the offences punishable under sections 302/34 and 201 of the Indian Penal Code and accordingly, they were sentenced for life imprisonment under section 302/34 of the Indian Penal Code and also undergo rigorous imprisonment for seven years for the offence punishable under section 201 of the



Indian Penal Code. Both sentences were ordered to run concurrently.

2. Kahalgaon P.S. case no. 96/1984 under sections 302, 201 of the Indian Penal Code was registered on the basis of fardbeyan of PW 12 Kaushal Kishore Sinha who gave his fardbeyan to PW 15 Arvind Prasad Singh on 28.4.1984 to this effect that on 26.4.1984 his brother, namely, Brij Kishore Sinha had gone to Kahalgaon market in search of work but did not return till late evening and, therefore, he along with his brother-in-law, namely, Shambhu Prasad went to Kahalgaon market and met one Shankar Choudhary who disclosed that his brother Kaushal Kishore Sinha had come to his floor mill between 11 a.m. to 12 noon but there was no work for him as a result of whereof Brij Kishore Sinha went to Holi river Ganga for bath and thereafter, Brij Kishore Sinha did not return. The informant made hectic search to some other places and on 28.4.1984 at about 4 to 5 p.m. while he was going in search of his brother, he came to know that some Domes had cut neck of a young person at Charodham Ghat and one dome was caught by the people who was being assaulted by the said people. He went there and found head of his brother was separated from his torso and was lying there



and one Ramdeo dome had been apprehended by the people. The aforesaid Ramdeo dome made his confessional statement before assembled people as well as informant that brother of the informant was killed by him as well as Adhik Dome, Nanhku Dome (Appellant no.1), Gurudeo Dome (Appellant no.2) and Ashok Dome. The aforesaid Ramdeo dome also disclosed that brother of the informant was forcibly drowned into river by them and his dead body was concealed in water and after two days, his head was separated from his torso with intention to sell bones of the deceased. The apprehended FIR named accused Ramdeo dome was handed over to the police and fardbeyan of the informant was recorded which has been marked as exhibit 4.

3. Formal FIR was drawn up against the appellants and other accused for the offences punishable under sections 302, 201/34 of the Indian Penal Code and after completion of investigation, charge sheet was submitted and the cognizance of the offences was taken and case was committed to the court of sessions, in usual course.

4. It is pertinent to note here that before commitment, appellants as well as other charge sheeted accused including Ramdeo dome were declared permanent



absconder. However, appellants were subsequently, arrested and were put on trial. Appellants were charged for the offences punishable under sections 302/34 and 201/34 of the Indian Penal Code and charges were read over and explained to them to which they pleaded not guilty.

5. In course of trial, prosecution examined, altogether, 15 prosecution witnesses and also got exhibited some documents including post mortem report of the deceased. The statements of the appellants were recorded under section 313 of the Code of Criminal Procedure in which they reiterated their innocence. No evidence was adduced on behalf of the appellants but from perusal of the trends of cross-examination as well as statements of the appellants recorded under section 313 of the Code of Criminal Procedure, it is obvious that the defence of the appellants was total denial of the prosecution story and they claimed that they were falsely implicated. The learned court below, having perused the evidences available on record, convicted the appellants, basically, having relied upon extra judicial confessional statement made by FIR named accused Ramdeo dome.

6. Learned counsel appearing for the appellants



assailed the impugned judgment of conviction and sentence order arguing that so far as so-called extra judicial confessional statement made by charge sheeted co-accused Ramdeo dome is concerned, the same was not admissible in evidence against the appellants but the learned trial court wrongly admitted the aforesaid extra judicial confessional statement in evidence against the appellants. He, further, submitted that except the aforesaid extra judicial confessional statement of Ramdeo dome, there was nothing against the appellants but learned court below wrongly mentioned in the impugned judgment that appellants were seen along with Ramdeo dome at the time of recovery of head as well as torso of the deceased and hence, committed illegality in convicting the appellants.

7. On the other hand, learned Additional Public Prosecutor appearing for the State supported the impugned judgment of conviction and sentence order arguing that separate head and torso of the deceased were recovered and at the time of recovery, Ramdeo dome was caught and disclosed before witnesses that he as well as appellants and others had committed murder of the deceased. Learned Addl. Public Prosecutor, further, submitted that post mortem report as well



as testimony of doctor clearly go to show that the deceased was killed in a very brutal manner and, therefore, there is no scope to interfere into judgment of conviction and sentence order.

8. Having heard the contentions of both parties, we went through the record. From perusal of the record, we find that prosecution witness nos. 1, 2, 3 and 4 have stated only to this extent that Ramdeo dome was caught with head and torso of the deceased on 28.4.1984 and Ramdeo dome confessed his guilt disclosing the names of appellants and others. It would appear from the testimonies of the aforesaid prosecution witnesses that appellants were neither caught with Ramdeo dome nor so-called separated head of the deceased was recovered from their possession and names of the appellants came in picture in extra judicial confessional statement of co-accused Ramdeo dome. Furthermore, we find that prosecution witness nos.5 and 6 are witnesses on the inquest report and there is nothing important in the testimonies of these witnesses. Furthermore, we find that prosecution witness nos. 7, 8, 9, 10, 11 and 13 have been tendered by the prosecution and they have stated nothing against the appellants. PW 12 is the informant and this



witness narrates the facts which have already been stated by him in exhibit 4. Therefore, even if the fardbeyan (exhibit 4) as well as depositions of PWs 1, 2, 3, 4 and 12 are taken into consideration, then also, the prosecution has only succeeded to bring on record the extra judicial confession of co-accused Ramdeo dome.

9. PW 14 is the doctor who did post mortem examination of the deceased and proved post mortem report as exhibit 3. The death as well as recovery of dead body of the deceased are not in dispute. PW15 is the Investigating officer who proved recording of fardbeyan. PW 15 stated that he recorded the statements of the witnesses and submitted charge sheet. Therefore, it is obvious that PW15 being I.O is not an eye witness of the alleged occurrence nor so-called confessional statement was made in presence of PW15.

10. It is admitted position that Ramdeo dome has not been tried along with appellants in Sessions trial no. 56/1994 and prior to commitment, Ramdeo dome was declared permanent absconder. It is also an admitted position that entire prosecution case hinges upon so-called extra judicial confessional statement of the above stated co-accused Ramdeo dome.



11. Here, I would like to refer section 30 of the Evidence Act which says that when more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the court may take into consideration such confession as against such other person as well as against the person who makes such confession.

12. From bare perusal of section 30 of the Evidence Act, it is obvious that pre requisite condition of application of section 30 of the Evidence Act is that the person who had made confession must be tried along with other accused but in the present case, admittedly, Ramdeo dome, who had made extra judicial confessional statement, has not been tried along with appellants and, therefore, in view of section 30 of the Evidence Act so-called extra judicial confessional statement of Ramdeo dome can not be read against the appellants and, therefore, we are of the view that there is nothing against the appellants on the basis of which appellants could have been convicted and we are further of the view that the court below has committed error in convicting the appellants.

13. On the basis of the aforesaid discussions, this criminal appeal is allowed and accordingly, the impugned



judgment of conviction dated 09.12.1994 and sentence order dated 14.12.1994 passed by the Addl. Sessions Judge VI, Bhagalpur in Sessions trial no. 56/1994 are, hereby, set aside. Appellants are acquitted of the charges. They are on bail, hence, they are discharged from the liabilities of their bail bonds.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

AFR/NAFR	AFR
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Shahid

