

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 918 of 2010

Judgment Reserved on 22-3-2018

Judgment delivered on 6-4-2018

1. Dindayal s/o. Dhumdas Banjare, aged 28 years, occupation Labour, r/o. Village Shikarikesli, P.S. Suhela, Distt. Raipur C.G.
2. Laxminarayan S/o. Dhumdas Banjare, aged 26 years, occupation Labour, r/o. Village Shikarikesli, P.S. Suhela, Distt. Raipur C.G.

---- Appellants.

Versus

- State of Chhattisgarh through the Station House Officer, PS Suhela, District Raipur (CG).

---- Respondent

For Appellants : Mr. V.C. Ottalwar, Advocate.
For Respondent/State : Mr. Rajendra Tripathi, Panel Lawyer.

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

Per Ram Prasanna Sharma, J.

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 29-11-2010 passed by the Additional Sessions Judge, Bhatapara, Sessions Division Raipur (CG), in Sessions Trial No. 53 of 2009, wherein the said court has convicted the appellants under Section 302 of IPC and sentenced them to undergo imprisonment for life and to pay fine of Rs.100/- each with default stipulation for commission of

murder of one Ramsai on 2-9-2009 at about 14.30 hours at village Shikarikesli at Police Station Suhela, District Raipur (CG).

2. One Mahachand Dhruv was returning from school at 3.30 pm and saw dead body of a person at village Shikarikesli and informed the same to Police Station Suhela. Death information was registered as per Ex.P/12. The matter was investigated, the appellants were charge-sheeted and after completion of trial, the trial Court convicted and sentenced the appellants as mentioned above.
3. Learned counsel appearing for the accused/appellants would submit as under:
 - (I) There is no eye-witness account to the incident and the case of the prosecution is based on so called extra-judicial confession, but the same is not substantiated by any of the prosecution witnesses.
 - (ii) Seizure made on discovery statement of the appellants is not connecting piece of evidence and the same is not sufficient to bring home the guilt to the appellants.
 - (iii) The trial Court over-looked major contradictions and omissions and the judgment of the trial Court is based on hypothetical premise.

4. *Per contra*, State counsel supporting the impugned judgment has submitted that the impugned judgment is strictly in accordance with law and there is no illegality or infirmity in it warranting any interference by this Court.
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 twenty-one witnesses.
7. Dr Sunaina Behra (PW/18) conducted autopsy of the deceased Ramsai on 3-9-2009 at about 10.00 pm at Primary Health Centre, Suhela and found the following injuries.
 - i) Cricoid bone is broken.
 - ii) Mandible bone is broken and lacerated with blood.
 - lii) Three holes on the neck length wise haemorrhaged of 2 ml.
 - iv) Frontal two teeth are broken with haemorrhage
 - v) Dry blood found on the back of neck which is ante mortem stage 4" in breadth, blood line on the back of the neck.

She opined that cause of death is excessive bleeding and nature of death is homicidal. She further opined that death is caused since 20 hours of the incident. Version of this witness is

unshaken during cross examination and there is no other expert opinion contrary to the opinion of this expert.

8. As there is no eye-witness account to the incident, the case of the prosecution is based on circumstantial evidence. PW/1 Santram Yadav has not supported the version of the prosecution. As per version of this witness, he had seen the dead body of the deceased Ramsai while returning after grazing his cattle. This witness is subjected to leading questions from prosecution side, but nothing could be elicited in favour of the prosecution. PW/2 Parmeshwar, PW/3 Dharmu Ram, PW/4 Mahachand Dhruv, PW/5 Gopal, PW/6 Santosh, PW/7 Rajju Verma, PW/8 Heeralal, PW/9 Rajendra, PW/11 Bhagwan Singh, PW/12 Harish Chandra Sahu, PW/13 Ishwar Singh, PW/14 Ghanshyam Verma, have not supported the case of prosecution and there is nothing in their deposition to support the prosecution case. PW/15 Thanuram is a witness of seizure. PW/16 Shiv Narayan, Constable assisted during investigation after registration of FIR. PW/17 V.N. Chandrawanshi deposed that one revenue case is pending in revenue court between the parties. PW/20 Chetanlal Solni is Head Constable who assisted during investigation and PW/21 Kapoor Lal Kurre is the Patwari who has prepared spot map.

9. PW/10 Ganesh Bai is wife of the deceased. She deposed that she has seen the appellants having sword and battle axe in their hands and they were saying regarding their return after killing Ramsai, but this version is not mentioned in her earlier statement recorded by the Investigating Officer under Section 161 of the Code of Criminal Procedure. Version of this witness is exaggerated version before the trial Court. Any exaggerated version can be accepted if there is plausible explanation for not stating the same at the first instance after commission of offence. This witness has not explained as to why she has not stated before the Investigating Officer that both appellants have stated that they are returning after killing Ramsai.
10. It is settled principle of law that extra-judicial confession is admissible if it inspires confidence and made voluntarily, but there is inherent weakness in extra-judicial confession as an item of evidence. In the present case, prosecution tried to establish extra-judicial confession on the basis of statement of Ganesha Bai (PW/10), but her version is not stable right from the beginning of the investigation. During investigation she has not narrated that any extra-judicial confession was made by any of the appellants. True it is that we cannot start with a presumption that extra judicial confession is always a weak type of evidence. It would depend on the nature of the circumstances, the time

when confession is made and the credibility of the witnesses who speaks about such confession.

11. Now the point for consideration is whether statement regarding extra-judicial confession made by GaneshaBai (PW/10) can be acted upon.
12. It is settled principle of law that it is the quality of the evidence which has to be weighed and if the witness is wholly reliable then his/her version can be acted upon, but in the present case, GaneshaBai (PW/10) is not stable in her statement regarding extra-judicial confession and her version before the trial Court is not acceptable without plausible explanation for not stating the same just after the incident. GaneshaBai (PW/10) further deposed that one Santram Yadav (PW/1) informed her that both appellants killed Ramsai near one Gayatri Mandir but Santram Yadav (PW/1) has not supported the version of Ganesh Bai (PW/10). As per version of Santram Yadav (PW/1), neither he has seen the incident nor has informed Ganesha Bai (PW/10) about the incident. From the version of Ganesha Bai (PW/10) and Santram Yadav (PW/1), it is not established that any of the appellants is author of the crime.
13. PW/19 R.L. Sahu is the Investigating Officer. As per version of this witness he seized one battle axe from appellant Dindayal and one Chatwar (weapon made of iron) from appellant

Laxminarayan, but the same is not connecting piece of evidence as there is no laboratory report regarding human blood found in the said articles matching the blood group of the deceased, therefore, so called seizure of weapons of offence is also not incriminating piece of evidence.

14. On overall assessment of the evidence adduced by the prosecution, it is not established that any of the appellants committed murder of deceased Ramsai and the finding arrived at by the trial Court is not sustainable in law.
15. Accordingly, the appeal is allowed. Conviction and sentence awarded by the trial Court is set aside. The appellants are acquitted of the charge framed against them. The appellants are reported to be on bail and their bail bonds shall continue for a period of six months as per provisions of Section 437(A) of Cr.P.C. Fine amount, if any paid by them, be refunded.

Sd/-

Judge

(Prasant Kumar Mishra)

Sd/-

Judge

(Ram Prasanna Sharma)