

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 808 of 2011

1. Nilesh Dewangan @ Rohan @ Sonu, S/o Devcharan Dewangan, aged about 21 years, Resident of Village-Chhapoura, Police Station-Malkharod, Distt. Janjgir-Champa (CG)

Present Address-Bhadra Para, Police Station – Balco, Distt. Korba (CG)

2. Dhanjay Sidar S/o Samaylal Sidar, aged about 21 years, R/o Village – Chhapoura, Police Station-Malkharod, Distt. Janjgir-Champa (CG)

Present Address: Bhadra Para, Police Station – Balco, Distt. Korba (CG)

---- Appellants

Versus

- State Of Chhattisgarh through Police Station Balco, Distt. Korba (CG)

---- Respondent

For Appellants	:	Shri Yogeshwar Sharma, Advocate.
For Respondent/State	:	Shri Ravindra Agrawal, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Shri Justice Sanjay Agrawal

Judgment On Board By Justice Pritinker Diwaker

28/02/2018:

This appeal arises out of the judgment of conviction and order of sentence dated 30.9.2011 passed by the Sessions Judge, Korba in S.T. No.126/2010 convicting each of the appellants under Sections 302, 201/34 of IPC and sentencing them to undergo imprisonment for life, pay a fine of Rs.3000/- and RI for two years, fine of Rs.1000/- with default stipulations respectively.

02. In the present case, name of the deceased is Khilesh Kumar Chanda. On 11.8.2010 at about 5.30 pm after returning from school he left his house on bicycle by informing his family members that he is going to his friend's house and thereafter, did not return. On the next day i.e. 12.8.2010 a missing report was lodged by his uncle PW-1 Shankar Singh. While the deceased was being searched, PW-1 Shankar Singh and PW-4 Chandrakant Chandra informed everyone that the deceased might have gone to the appellants as he had disclosed the said fact to them. PW-1 then enquired from the appellants regarding whereabouts of the deceased, on which it was disclosed by appellant No.1 Nilesh that he with the help of appellant No.2 Dhanjay killed the deceased near Ash Dam and concealed his dead body there. Dehati Merg Ex.P/23 was lodged on 14.8.2010 by PW-1. After discovery of the dead body of the deceased, Dehati Nalishi Ex.P/24 was recorded on 14.8.2010 at 5.40 pm. Numbered merg Ex.P/16 was recorded on 14.8.2010 at 6.55 pm and thereafter, FIR (Ex.P/17) was recorded on 14.8.2010 at 7.15 pm under Sections 302, 201, 34 of IPC against the appellants. Inquest on the dead body was conducted on 14.8.2010 vide Ex.P/9 and thereafter the body was sent for postmortem which was conducted on 15.8.2010 vide Ex.P/11 by PW-5 Dr. MS Pal. The autopsy surgeon noticed that whole body and clothing were stained completely with ash and mud, foul smell was emanating, maggots crawling over whole body, scalp hairs peeled off easily, right part of skull depressed with fractured pieces of temporal and parietal bone inside the cranial cavity with liquefied and decomposed brain tissue, left eye bulged out, right eye compressed;

fracture of right zygomatic part of maxilla; bulge of nose and whole face stained with ash mud; tongue protruded out with loose mandible bone; abdomen and back skin reddish; scrotal skin reddish and bilateral missing of testis; skin peeled off at many places; rigor mortis passed off and decomposition of every part of body was in advance stage; right thumb with broken skin and crawling number of maggots; left upper and forearm, hands compressed with no fracture. All the above injuries were antemortem in nature. In his opinion, the cause of death was coma as a result of fracture of skull bones i.e. right zygomatic part of maxilla and fracture of nose. However, viscera was preserved for chemical analysis. On 15.8.2010 at 10 am memorandum of appellant No.1 was recorded vide Ex.P/12, pursuant to which one Nokia cell phone was seized vide Ex.P/15. On the same day at 10.10 am memorandum of appellant No.2 was recorded vide Ex.P/13, based on which a concrete stone of about 8 kg was seized vide Ex.P/14. However, there is no FSL report in respect of the seized articles. While framing charge, the trial Court framed charges under Sections 302 & 201/34 of IPC against the accused/appellants.

03. So as to hold the accused/appellants guilty, the prosecution examined 14 witnesses in all. Statements of the accused were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication.

04. 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 appellants as mentioned above.

05. Counsel for the appellants submits as under:

(i) that there is no eyewitness account to the occurrence and conviction of the appellants is based on circumstantial evidence but none of the circumstances from which inference of guilt can be drawn has been proved beyond reasonable doubt and therefore, there can be no inference that the appellants were the perpetrator of the crime in question.

(ii) that the dead body was recovered on 14.8.2010 at 3.30 pm vide Ex.P/1 whereas certain articles allegedly belonging to the deceased were seized on 14.8.2010 at 3.10 and 3.20 pm. Thus, it cannot be said that the recovery was made on the basis of mere intimation.

(ii) that even motive has not been proved by the prosecution for commission of the offence.

(iv) that there is no confessional statement of the accused persons.

(v) that statement of PW-4 Chandrakant Chandra does not in any manner implicate the appellants.

(vi) that PW-1 Shankar Singh in his Court statement has nowhere stated that he was aware as to with whom the deceased had gone to meet.

06. On the other hand, State counsel supporting the impugned judgment has submitted as under:

(i) that the dead body was recovered at the instance of the appellants and once this fact was within the special knowledge of the

appellants, it can easily be presumed that it is the appellants who committed murder of the deceased.

(ii) that Dehati Merg Ex.P/23 was recorded at 2 pm on 14.8.2010, the police reached the spot and then Dehati Nalishi Ex.P/24 was recorded at 5.40 pm. He submits that Exs. P/1, P/2 & P/3 are not panchanama of the dead body but they are in respect of articles seized from near the place of occurrence.

(iii) that accused/appellant No.1 Nilesh made extrajudicial confession before PW-1 and PW-2 and nothing could be elicited from these witnesses by the defence in their cross-examination to make it doubtful.

(iv) that the memorandum and seizure witnesses (PW-7 & PW-8) have duly supported the prosecution case.

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

08. PW-1 Shankar Singh, uncle of the deceased, has stated that on 11.8.2010 he had gone to the house of Chandrakumar, father of the deceased, where Chandrakumar received a telephonic call at about 6 pm that the deceased had left for his friend's house but did not return. He states that the deceased was searched and on the second day i.e. 12.8.2010 a missing report was lodged. He has further stated that on 12.8.2010 appellant No.1 Nilesh Dewangan made a telephonic call to father of the deceased Chandrakumar that the deceased is with him and then he and Chandrakumar went to appellant No.1 and enquired from him about the deceased, on which appellant No.1 confessed before them that after killing the deceased his dead body has been

concealed. He states that immediately after receiving the said information he informed about the same to the police who in turn caught hold of the appellants and took them to a place where they had concealed the dead body. He is also a witness to Panchanamas Ex.P/1 to P/3 by which certain articles were seized from near the place of occurrence.

09. PW-2 Chandrakumar, father of the deceased, has stated that on 11.8.2010 the deceased had left his house by saying that he is going to his friend's house and when he was being searched he called his son who informed him that he is in the company of the accused persons and on the second day he received a call on his cell phone that the deceased is with them and thereafter he had suspicion in his mind because of the background of the accused persons as they were criminal. A missing report was lodged and during enquiry it was confessed by appellant No.1 that they had killed the deceased and concealed his dead body near dam. Thereafter, the police was informed about the same and the dead body was recovered at the instance of the accused persons. He is also a witness to Ex.P/1 to P/3, inquest Ex.P/9 & dead body supurdnama Ex.P/10.

10. PW-3 Shyam Kumar is a witness to inquest Ex.P/9. PW-4 Chandrakant has stated that on 11.8.2010 he received telephonic call from deceased Khilesh who informed him that he was going to meet the accused persons. He has stated that when the deceased did not return he informed his father Chandrakumar that the deceased had informed him that he was going to meet the accused persons. PW-5 Dr. MS Pal conducted postmortem on the body of the deceased on

15.8.2010 vide Ex.P/11 and noticed that whole body and clothing were stained completely with ash and mud, foul smell was emanating, maggots crawling over whole body, scalp hairs peeled off easily, right part of skull depressed with fractured pieces of temporal and parietal bone inside the cranial cavity with liquefied and decomposed brain tissue, left eye bulged out, right eye compressed; fracture of right zygomatic part of maxilla; bulge of nose and whole face stained with ash mud; tongue protruded out with loose mandible bone; abdomen and back skin reddish; scrotal skin reddish and bilateral missing of testis; skin peeled off at many places; rigor mortis passed off and decomposition of every part of body was in advance stage; right thumb with broken skin and crawling number of maggots; left upper and forearm, hands compressed with no fracture. All the above injuries were antemortem in nature. In his opinion, the cause of death was coma as a result of fracture of skull bones i.e. right zygomatic part of maxilla and fracture of nose. However, viscera was preserved for chemical analysis.

11. PW-6 Lakheshwar Singh, Patwari, prepared the spot map Ex.P/5. PW-7 Shriram Kashyap and PW-8 Ramhari are witnesses to memorandum and seizure. They have duly supported the prosecution case. PW-9 Diwakar Upadhyay and PW-11 Rammohit Yadav, assisted in the investigation. PW-10 Vikram Singh Maravi, Police Constable, took the dead body for postmortem. PW-12 MS Minj initially investigated the case. PW-12 Sanjay Soni gave report regarding call details. PW-14 Manjulata Rathore, investigating officer, has duly supported the prosecution case.

12. Close scrutiny of the evidence makes it clear that on 11.8.2010 the deceased had left his house on bicycle informing PW-4 Chandrakant that he was going to meet the accused persons and thereafter he did not return. When the deceased did not return, a missing report was lodged on 12.8.2010 by PW-1 Shankar Singh, uncle of the deceased. During the course of search of the deceased, upon coming to know through PW-2 Chandrakumar that the deceased had gone to meet the accused persons, the accused persons were contacted and then it was confessed by appellant No.1 Nilesh Dewangan before PW-1 & PW-2 that he and other accused/appellant after killing the deceased concealed his dead body near the ash dam. The police was informed about the same, on which the investigation was set into motion and the appellants were arrested.

13. On 15.8.2010 at 10 am memorandum of appellant No.1 was recorded vide Ex.P/12, pursuant to which one Nokia cell phone was seized vide Ex.P/15. On the same day at 10.10 am memorandum of appellant No.2 was recorded vide Ex.P/13, based on which a concrete stone of about 8 kg was seized vide Ex.P/14. Witnesses to the memorandum and seizure (PW-7 and PW-8) have duly supported the prosecution case. The prosecution case further finds corroboration from the medical evidence according to which corresponding injuries were noticed on the person of the deceased, the injuries so found could be caused by the seized stone, and his cause of death was opined to be coma as a result of fracture of skull bones i.e. right zygomatic part of maxilla and fracture of nose.

14. Yet another piece of evidence against the appellants is the

extrajudicial confession made by appellant No.1 Nilesh before PW-1 Shankar Singh and PW-2 Chandrakumar and the defence has not cross-examined these witnesses on the point of extrajudicial confession to disprove it. Furthermore, in their statements under Section 313 of CrPC the appellants have not offered any explanation as to the proved incriminating circumstances and made only bald denial of the same.

15. Thus considering the overall facts and circumstances of the case, we are of the opinion that the prosecution has been successful in proving the guilt of the appellants beyond all reasonable doubt based on the aforesaid circumstantial evidence and as such, the findings of guilt recorded by the trial Court being based on proper appreciation of the evidence call for no interference.

16. In the result, the appeal fails and is, accordingly, dismissed. The appellants are reported to be in jail, therefore, no further order regarding their arrest/surrender etc. is required to be passed.

Sd/

(Pritinker Diwaker)
Judge

Sd/

(Sanjay Agrawal)
Judge