

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 802 of 2012**

1. Rati Ram S/o Juga Ram Netam Aged About 26 Years R/o Vill. Madagaon, PS - Kondagaon, Distt. Kondagaon C.G. , Chhattisgarh
2. Neeladhar S/o Karati Netam Aged About 24 Years R/o Vill. Madagaon, PS - Kondagaon, Distt. Kondagaon C.G. , District : Kondagaon, Chhattisgarh

---- Appellants**Versus**

- State Of Chhattisgarh Through District Magistrate, Kondagaon, Distt. Kondagaon, C.G.

--- Respondent

For Appellants : Shri Keshav Dewangan, Advocate
 For Respondent/State : Shri Ramakant Mishra, Dy. A.G.

Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Rajani Dubey

Judgment on Board by Smt. Rajani Dubey, J.**11/10/2018**

This appeal is directed against the impugned judgment of conviction and order of sentence dated 20.07.2012 passed by the Additional Sessions Judge, Kondagaon in Sessions Trial No. 195/2012 whereby and whereunder the appellants have been found guilty of the commission of offence under Sections 302/34 and 201/34 IPC and sentenced them to undergo imprisonment for life and to undergo RI for three years and also to pay fine of Rs. 100/- on each count respectively with default stipulations.

2. Prosecution story in brief, is that in the intervening night of

26-27/5/2010 deceased Kuma Ram went to visit Bamni mela and when he did not return, his father-complainant Sudru Ram lodged a missing report at police station. Search was made and on investigation it has revealed that as there was illicit relation of deceased Kuma Ram with wife of the accused/appellant Rati Ram, on the date of incident, when deceased after watching the mela was returning home, appellant Rati Ram along with his nephew Neeladhar followed the deceased who was accompanied by one Dhaniram on their motorcycle. On being threatened by the accused/appellants, Dhaniram ran away and they caught the deceased, assaulted him with axe and buried the body near the bank of river Madgaon. On information being received, the appellants being suspected, their memorandum statements were recorded and at their instance, the axe is alleged to have been seized from the appellant Ratiram whereas the cycle of deceased Kuma Ram was seized from appellant Neeladhar. After merging intimation (Ex.P-8) and *dehati nalishi* (Ex.P-9) were written, FIR was registered at police station. Spot map was prepared. Dead body was sent for postmortem examination. Postmortem examination was conducted by Dr. Suresh Kashyap and according to him, cause of death was due to shock and lacerated wound on skull, upper and lower limb and death was homicidal in nature. The axe seized from the accused/appellant was sent for chemical examination. After completion of usual investigation and recording diary statements, charge sheet was filed and the appellants were tried for commission of alleged offence under Sections 302/34 and 201/34 IPC.

3. In order to prove its case, the prosecution examined as many as 7 witnesses. The appellants were thereafter examined under Section 313 Cr.P.C. in respect of incriminating evidence and circumstances

appearing against them in the evidence lead by the prosecution and the appellants have denied the allegations levelled against them and pleaded their innocence. No defence witness was examined. Relying upon the evidence lead by the prosecution, the trial court held the appellants guilty of commission of the offence and sentenced as mentioned above.

4. Assailing the correctness and validity of the impugned judgment of conviction and order of sentence, learned counsel for the appellants contended that the conviction is based upon the memorandum and seizure of the weapon used in the crime. Ramadhar Poyam (PW-5) and Sudru (PW-6) before whom the appellants allegedly confessed that they committed the murder of the deceased have not supported the prosecution case. Learned trial court ought to have seen that father of the deceased Sudru (PW-6) has admitted that the facts which are mentioned in his case diary statement, has not been narrated by him. The evidence of extra judicial confession is a weak type of evidence and it cannot be made the sole basis to convict the appellants but the learned trial court based its conviction on the statement made by Ramadhar (PW-5) and Sudru (PW-6).

5. On the other hand, State counsel supports the impugned judgment of conviction and order of sentence. He further states that the conviction of the appellants is strictly in accordance with law and there is no infirmity in the same.

6. Gagra Ram (PW-3) has stated that Dhaniram informed him that the accused/appellants have committed the murder of the deceased and the axe was seized before him vide Ex.P-04 and Ex.P-06. He has also signed the memorandum Ex. P-2 & P-3. Ramdhar Poyam (PW-5)

and Sudru (PW-6) have stated that the accused/appellants have confessed before the police as also before the villagers that they have committed the murder of Kuma Ram and buried his dead body in the sand.

7. In the present case, the conviction is recorded by the trial court mainly on the basis of the statements of Ramdhar (PW-5) and Sudru (PW-6) as the statement of other witnesses were not reliable. Therefore, it is to be examined as to whether conviction could be sustained on the basis of such statements.

8. Close scrutiny of the evidence makes it clear that the confessional statements were admittedly recorded after the arrest of the accused and when they were in police custody. Therefore, such statements were inadmissible. Thus, as pointed out above, not only the confessions were made to a police officer, such confessional statements were made by the appellants after their arrest while they were in police custody.

9. The question is as to whether this could be taken into consideration to believe the confessional statements made by the appellants, which were otherwise inadmissible in law. In such a circumstance, necessary evidence is required to be proved. No such evidence has been produced. We are, therefore, of the opinion that there is no sufficient evidence to prove that it is the accused/appellants who have committed the murder. Moreover, FIR and merg intimation was lodged against unknown persons and merely on the basis of memorandum and seizure of cycle and axe vide Ex.P-6 and P-4 the appellants cannot be convicted because there is no FSL or serological report.

10. Aforesaid discussion leads us to conclude that the prosecution has miserably failed to prove, beyond reasonable doubt, the charge against the accused/appellants under Sections 302/34 and 201/34 IPC. In our considered view, the Trial Court has committed a serious illegality in convicting these two accused in a very casual manner. We hold that the accused are entitled for acquittal. As a result, the appeal is allowed and the impugned judgment and sentence is accordingly, set aside. Appellants are acquitted of the charges levelled against them. Appellants are in jail. They be set free forthwith if not required in any other case.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Rajani Dubey)
Judge