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HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 942 of 2012

[Arising out of judgment/order dated 06.03.2012 in Sessions Trial No.63/2011 of the learned Additional Sessions Judge, North Bastar Kanker (C.G.)]

1. Meher Singh Dugga, S/o Agnu Dugga, aged about 20 years, R/o village Gumdidih, Schoolpara, P.S.- P.O. Durgukondal,

2. Jagdevram Pudo, S/o Sonuram Pudo, aged about 45 years, R/o village Nahgida, P.O. - P.S. Badgaon,

Both District Uttar Basar Kanker (C.G.) Pin 494 334 **---- Appellants**

Versus

- State Of Chhattisgarh, through Police Station Kanker, District Uttar Bastar Kanker (C.G.) Pin – 494 334 **---- Respondent**

For Appellants	:	Shri Ravish Verma, Advocate
For Respondent/State	:	Shri Anil S. Pandey, Government Advocate

Hon'ble Shri Sanjay Agrawal &
Hon'ble Shri R.C.S. Samant, JJ

Judgment on Board

24.03.2018

Per R.C.S. Samant, J.

1. This appeal has been preferred against the judgment passed by the Additional Sessions Judge, North Bastar Kanker in Sessions Trial No. 63/2011 on 06th March, 2012 convicting both the appellants under Section 302/34 IPC and sentencing them with life imprisonment along with fine of Rs.500/- and under Section 201/34 IPC to undergo rigorous imprisonment for three years along with fine of Rs.500/- with usual default stipulations.

2. Case of the prosecution, in brief, is that appellant No.1 is the nephew and appellant No.2 is the brother-in-law of the deceased Sagram. It is alleged that on account of some dispute that the

deceased had murdered his wife, the sister of appellant No.2, both the appellants caused death of deceased on 07.01.2011 by assaulting him with club and causing fatal injury. Subsequently, both of them disposed of the dead body in the agricultural fields of the deceased by burying him in a pit. As the deceased Sagram could not be found, the villagers convened a meeting and made an enquiry from appellant No.1 regarding the missing of the deceased. In the enquiry, appellant No.1 made an admission before the witnesses, namely, Prabhuram Yadav (P.W.3), Shyam Sunder Nishad (P.W.4) and Raghuram (P.W.5) that he and appellant No.2 both had murdered the deceased and buried his dead body in his field.

3. Merg intimation was given in Police Station, Durgkondal on 12.1.2011 and F.I.R. was also lodged against the appellants on the same day vide Ex.P.12. Subsequent to that, dead body was recovered at the instance of appellant No.1 vide his memorandum statement (Ex.P.5) and the same was recovered from the spot pointed out by appellant No.1 vide seizure memo (Ex.P.7). On the basis of statement given by appellant No.1 that appellant No.2 was also in his company in commission of the offence, appellant No.2 was also apprehended and interrogated and on his memorandum statement (Ex.P.8), one club was recovered at his instance vide seizure memo (Ex.P.9). Further, at the instance of appellant No.1 vide his memorandum statement (Ex.P.16), one bloodstained *Lungi* of the deceased was recovered from his possession and the same was recovered vide seizure memo (Ex.P.14). All the seized articles were sent for

F.S.L. examination and F.S.L. report was received vide Ex.P. 33.

4. The post-mortem of the deceased was conducted by Dr. R.D.Koreti (P.W.6), who submitted his post-mortem report vide Ex.P.17 opining that cause of death of deceased was due to excessive bleeding from the head injury caused to him and the death was homicidal in nature.

5. Statements of witnesses were recorded and on completion of investigation, charge sheet has been filed before the concerned Court. The trial Court framed charges under Section 302/34 and 201 IPC against the appellants. The appellants denied the charges and prayed for trial.

6. In order to prove the guilt of the appellant, the trial Court examined as many as 8 witnesses. In the examination under Section 313 Cr.P.C., both the appellants denied all the incriminating circumstances appearing against them and pleaded innocence and false implication. No evidence was led in defence.

7. After considering the evidence led by the prosecution, the trial Court, vide its impugned judgment, has convicted the appellants and sentenced as aforesaid.

8. Learned counsel for the appellants submits that the judgment of conviction and order of sentence passed by the trial Court is erroneous and without any support of the prosecution evidence. The evidence adduced by the prosecution in this case is totally unreliable and unbelievable. It is submitted that the case is totally based on circumstantial evidence whereas not a single

witness of prosecution has proved the circumstance of last seen or the motive or the intention on the part of the appellants. The only evidence on which the trial Court has relied upon is the evidence of extra judicial confession, which has been made by appellant No.1 before the Prabhuram Yadav (P.W.3), Shyam Sunder Nishad (P.W.4) and Raghuram (P.W.5), but, these witnesses have contradicted each other while deposing before the Court, hence, their statement is unreliable and unbelievable. It is also submitted that appellant No.2 himself has not made any statement before the witnesses regarding any extra judicial confession. Therefore, no case is made out against him in any respect on the basis of evidence present on record. On these premises, learned counsel for the appellants prayed that the appellants be acquitted of the charges.

9. On the other hand, learned counsel for the State opposes the submissions made in this regard and submits that the prosecution has proved its case beyond reasonable doubt. The statements of Prabhuram Yadav (P.W.3), Shyam Sunder Nishad (P.W.4) and Raghuram (P.W.5) have remained unshaken in their cross-examination, which is totally reliable. As regards appellant No.2, it is submitted that Section 30 of the Indian Evidence Act, 1872 (for brevity, the Act of 1872) provides that confession made by one of the accused incriminating him and any other accused persons, if proved, can be used against accused persons for conviction, hence, the appellants are not entitled for acquittal.

10. We have heard learned counsel for the parties and perused the entire record carefully.

11. The only evidence on which the learned trial Court has passed the conviction of the appellants is the evidence of extra judicial confession made by appellant No.1 before the Prabhuram Yadav (P.W.3), Shyam Sunder Nishad (P.W.4) and Raghuram (P.W.5). Therefore, this appellate Court shall examine their evidence on the point of extra judicial confession made by appellant No.1

12. Prabhuram Yadav (P.W.3) is the Patel of the village as also neighbour of the deceased. When he did not find the deceased Sagram in his house for 2 – 3 days, he visited the house of appellant No.1 and asked him to find out the deceased Sagram. Subsequently, this witness called a meeting in village and enquired from appellant No.1 about the whereabouts of the deceased. He has stated that in that enquiry, appellant No.1 busted out and admitted that he has murdered the deceased and disposed of the dead body by burying him in the field of deceased. He has further stated that thereafter appellant No.1 led the persons present in the meeting to the place where the dead body was buried. He has also stated that after digging out for some time he has seen the part of dead body. Subsequent to that, the information was given to the police.

13. Prabhuram Yadav (P.W.3) did not make any statement about Jagdevram. On that basis, leading question was asked by the prosecution wherein he has stated that appellant No.1 while making admission before the villagers also admitted that appellant No.2 was also with him when the murder was committed. In cross-examination, he has made a statement in denial that the name of appellant No.2 was disclosed by

appellant No.1 in the said meeting. Otherwise, his statement has remained unshaken with regard to the statement that while making the admission before the villagers, appellant No.1 also led them to the place where the dead body was buried in a pit dug in the field of deceased.

14. Shyam Sunder Nishad (P.W.4), who was present in the same meeting, has stated that while making admission appellant No.1 Meher Singh disclosed that he and appellant No.2 both had jointly committed the murder of deceased and disposed of the dead body. In cross-examination para – 6, he has stated that when appellant No.1 was interrogated in Police Station firstly he made a statement that he himself had killed the deceased and thereafter on the next day he has also made such admission in the village but later on he changed his version that he had not killed the deceased, but his uncle, i.e., appellant No.2 was the person who committed the murder of deceased.

15. Raghuram (P.W.5) has made similar statement in his examination-in-chief and has stated that appellant Meher Singh made this statement before him that he and appellant No.2 both have killed and disposed of the dead body of the deceased. But, in cross-examination, he has stated that when appellant No.1 was making such statement he was not present as he had been away to summon somebody from the village.

16. Ramswaroop Jha (P.W.2) is the witness of memorandum and seizure (Ex.P.8 & P.9). In his statement it has come on record that both the appellants admitted that they have jointly killed Sagram before the police, which is not admissible under the

provisions of Section 25 of the Act of 1872. Hence, statement given by this witness regarding admission made by the appellants before the police cannot be taken into consideration. The relevant part of the statement of this witness is the recovery of dead body vide Ex.P.7 from the spot pointed out by appellant No.1 on the basis of his memorandum (Ex.P.5). Thus, statement of this witness remained as totally unrebutted in his cross-examination.

17. The other evidence that has come on record is the seizure of one club at the instance of appellant No.2 on his memorandum (Ex.P.8) and seizure (Ex.P.9), but, there is no such description in the seizure memo (Ex.P.9) that there were blood stains found on the club and nor it was sent to the F.S.L. for its examination.

18. The other relevant evidence in this case is the Autopsy report of Dr.R.D. Koreti (P.W.6), who has conducted post-mortem examination on the dead body of the deceased on 13.01.2011, in which, he found fracture of the temporal bone, occipital bone as well as one ligature mark around the neck vide his report Ex.P.17. He has opined that the death of deceased was as a result of excessive haemorrhage because of injuries caused to him and his report remained unchallenged in the cross-examination. This witness has also examined the club that was presented before him for its examination and vide report Ex.P.18 he has opined that the injuries caused to the deceased could have been inflicted by this article (club).

19. All the incriminating evidence on record collected by the prosecution against both the appellants, on being examined and

scrutinised, it is found that the extra judicial confession made by appellant No.1 before Prabhuram Yadav (P.W.3), Shyam Sunder Nishad (P.W.4) and Raghuram (P.W.5) has evidentiary value to connect him in crime in question. He was the person who made the statement of commission of offence of murder of the deceased when the matter was being enquired into by the villagers and such statement can be said to be voluntary. Although there is some admission of the one of the witnesses that appellant No.1 was pressurised, but then he disclosed about the whereabouts of the dead body of the deceased and made statement that he along with appellant No.2 has done to death of the deceased and disposed of the dead body. This extra judicial confession made by appellant No.1 before the villagers finds further support from the discovery of the dead body on the spot pointed out by him, which was first witnessed by the witnesses Prabhuram Yadav (P.W.3), Shyam Sunder Nishad (P.W.4) and Raghuram (P.W.5) and later on the body was recovered from the same place vide Ex.P.7. Hence, the evidence of extra judicial confession with respect to appellant No.1 on the basis of such corroboration is sufficient, even though there is no evidence regarding no motive or intention and any other evidence to prove any other circumstance, but the fact that appellant No.1 being relative of the deceased can be said to be natural visitor to the deceased. After scrutinizing the evidence of prosecution on this point, the burden has shifted upon appellant No.1 to prove it otherwise, but, no explanation has been given by him in his examination under Section 313 Cr.P.C. nor any evidence was led in defence. Hence, for these reasons, we are of the considered

opinion that the evidence as discussed herein above is sufficient to hold appellant No.1 guilty in this case.

20. As regards appellant No.2, the evidence of extra judicial confession made by appellant No.1 may be taken into consideration as per section 30 of the Act of 1872. Firstly, the evidence which is relied upon is extra judicial confession, in which, appellant No.1 has made the only statement that appellant No.2 was also in his company when the deceased was done to death. Secondly, Prabhuram Yadav (P.W.3) and Raghuram (P.W.5) have not made any clear statement that name of appellant No.2 was mentioned by appellant No.1 while making admission / extra judicial confession before the villagers. Hence, there remained only the statement of Shyam Sunder Nishad (P.W.4). Apart from that, this is the mere statement which has not been corroborated in any respect, as the recovery made at the instance of appellant No.2 is only of club. The possibility of causing injuries to the deceased with the same article, which was used to cause death of deceased, is not proved as no bloodstains were found on the said club nor there is any F.S.L. report to suggest any bloodstains on the club in order to connect the same with the death of deceased. This raises doubt with regard to the evidence brought on record against appellant No.2. It is well settled principles of law, that in case of doubt, the benefit always goes in favour of accused persons, and therefore, for these reasons, we find that the conviction of appellant No.2 for the offence charged against him is not based on the evidence beyond reasonable doubt.

21. After due consideration, this appeal is partly allowed. The impugned judgment convicting appellant No.1 under Section 302/34 and 201 IPC and sentencing him to life imprisonment and RI for three years is affirmed whereas the conviction under Section 302/34 and 201 IPC and the sentence awarded thereunder against appellant No.2 is hereby set aside. Appellant No.2 is acquitted of the aforesaid charge and he shall be set at liberty forthwith, if not required in any other case.

22. Appellant No.1 is reported to be in custody, and therefore, no order regarding his arrest is required whereas appellant No.2 is on bail. His bail bonds shall remain effective for a period of 6 months, in view of the provisions contained under Section 437-A of the Code of Criminal Procedure, 1973.

Sd/-
(Sanjay Agrawal)
JUDGE

Sd/-
(R.C.S. Samant)
JUDGE

Anjani