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**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 78 of 2015**

1. Chhotu alias Compotar son of Genduwa Uraon, aged about 27 years, R/o village Gelhapani, 9 Number Dafai Koriya, Permanent Address : R/o Raghunathpur, Madwapara, Police Station Lundra, Sarguja, CG

**---- Appellant****Versus**

1. State of Chhattisgarh through Station House Officer, Police Station, Manendragarh, District Koriya, CG

**---- Respondent****CRA No. 431 of 2015**

1. Nure Alam S/o Habibulla Musalman, aged about 37 years, R/o Gelhapani, 9 Number Korea, Permanent Address : Gorakhpur, Uttar Pradesh

**--- Appellant****Versus**

1. State of Chhattisgarh through the Police Station Chirmiri but wrongly mentioned as PS Manendragarh, District Korea, CG

**--- Respondent****AND****CRA No. 554 of 2015**

1. Ahmad Ali alias Babu S/o Bismilla Ansari, aged about 31 years, R/o Korea Colliery, permanent resident of Gorakhpur, Tamkohiganj, Police Station Kasiya, District Gorakhpur, UP

**Appellant****Versus**

1. State of Chhattisgarh through Station House Officer, Police Station Manendragarh, District Korea, CG

**--- Respondent**


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For Appellants : Shri G.P. Kurre, Shri A.N. Pandey  
and Shri I. Lakara Advocates

For Respondent/State : Shri Avinash K. Mishra and  
Shri Vivek Sharma, GAs

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**Hon'ble Shri Justice Pritinker Diwaker &  
Hon'ble Shri Justice Gautam Chourdiya**

**Judgment on Board by Pritinker Diwaker, J**

**03/08/2018**

As the aforesaid three Criminal Appeals arise out of the same judgment dated 20.11.2014 passed by Additional Sessions Judge, Manendragarh, District Koriya, in Sessions Trial No. 23/2007 convicting the accused/appellants under Sections 364, 302 & 201 IPC and sentencing each of them to undergo imprisonment for life and pay fine of Rs. 2000/- u/s 364 and 302, and RI for five years with fine of Rs. 1000/- u/s 201 IPC plus default stipulations, they are being disposed of by this common judgment.

2. As per the case of prosecution, deceased Anand Vishwakarma used to drive the Bollero vehicle owned by a colliery employee AK Das (PW-12) and that on 10.10.2006 the vehicle was hired by the accused/appellants for being taken to Ambikapur from Haldiwadi. It is said that on the way to Ambikapur near village Kalua the accused/appellants stopped the vehicle and asked the deceased driver to take it towards the forest on the pretext of answering the call of nature. It is further said that after reaching the forest, the accused/appellants strangulated the deceased with the help of scarf already put on his shoulders and buried his body on

the bank of a river within the territorial jurisdiction of Shrinagar police station. Since the deceased did not return for three days, his father Pooran Sai (PW-5) lodged the missing report Ex. D-3 on 13.10.2006 at police station Chirmiri which also contains the particulars of the vehicle hired by the accused/appellants. Case of the prosecution further says that when the search of the deceased was on, Station House Officer of police station Khadda, district Kushinagar (UP) intercepted a Bollero vehicle on 21.12.2006 being driven by accused/appellant Nure Alam who on interrogation failed to produce any document related thereto. Accused Nure Alam is however said to have confessed that on 10.10.2006 he along with accused/appellants Chhotu alias Compotar and Ahmad Ali alias Babu had looted the said vehicle from its driver Anand Vishwakarma and after killing him buried his body near a river and brought the vehicle to Uttar Pradesh for sale. Un-numbered FIR against accused Nure Alam was registered for the offence under Sections 41 of the Code of Criminal Procedure and 411 of the Indian Penal Code at police station Chirmiri vide Crime No. 637/2006. On the memorandum of accused Chhotu alias Compotar (Ex. P-8) dated 22.12.2006 recovery of beheaded dead-body was made from the river bed under Ex. P-9 whereas on the memorandum of accused Nure Alam (Ex. P-15) a golden colour wrist watch and a small note book allegedly belonging to the deceased were seized under Ex. P-16. Test Identification Parade ("TIP" for short) was conducted by B. Kujur (PW-3) vide Ex. P-6 and the watch

seized under Ex. P-16 was identified by Pooran Sai (PW-5) to be that of the deceased. Memorandum of accused Ahmad Ali (Ex. P-14) was recorded on 22.12.2006 based on which and also that of accused Chhotu alias Compotar beheaded skeleton of the deceased was exhumed vide exhumation *Panchnama* Ex. P-2. FIR Ex. P-28 was registered on 22.12.2006 at police station Chirmiri against the accused/appellants for the offences punishable under Sections 397, 302, 201, 34 IPC. After drawing inquest Ex. P-3, the skeleton was sent for postmortem examination which was conducted by Dr. DK Vishwakarma (PW-7) who gave his report Ex. P-17. Subsequently, the beaded skeleton was identified by father of the deceased (PW-5) vide Ex. P-7 on the basis of clothes worn by the deceased. As per the un-exhibited DNA report dated 31.10.2014 the DNA of PW-5 and PW-9, both parents of the deceased, as also that of the deceased was found the same. After investigation, *challan* was filed by the police under Sections 397, 394, 302, 201, 34 IPC followed by framing of charge by Court below under Sections 364, 397, 302, 201, 412 in the alternative 414 IPC.

3. In order to prove its case the prosecution has examined 30 witnesses in support of its case. Statements of the accused/appellants were also recorded under Section 313 of the Code of Criminal Procedure in which they denied their guilt and pleaded innocence and false implication in the case. This apart, one defence witness namely Mehmood has also been examined in the case.

4. After hearing the parties the Court below has convicted and sentenced the accused/appellants as mentioned above by the judgment impugned.

5. Counsel for the accused/appellants submit as under:

(i) That no cogent and clinching evidence is there showing the involvement of the accused/appellants in the crime in question.

(ii) That the prosecution has utterly failed to prove that on 21.12.2006 when the vehicle was intercepted by the Uttar Pradesh police, the same was in possession of accused/appellant Nure Alam.

(iii) That witnesses to seizure of the vehicle have not supported the case of the prosecution.

(iv) That identification of the accused/appellants is defective and not conclusive as the the witnesses examined in this regard have not supported the case of the prosecution.

(v) That the witnesses to seizure of watch and note book made under Ex. P-16 have also not supported the case of the prosecution.

(vi) That the vehicle in question was booked by the accused/appellants as also one Gaurav Das (PW-20) son of AK Das (PW-12) and Saloni Das (PW-13) but PW-20 has failed to identify the accused/appellants.

(vii) That it has come in the statement of PW-5 - father of the deceased that when he contacted the owner of the vehicle

namely AK Das (PW-12), he had informed him that the vehicle would ultimately be traced but it would be difficult to trace out the deceased which indicates that PW-12 was also involved in commission of the offence but he has not been made accused.

(viii) That though the entire case is based on the circumstantial evidence, the circumstances do not complete the chain.

6. On the other hand counsel for the respondent/State support the judgment impugned and submit as under:

(i) That the Bollero vehicle was hired by the accused/appellants which was ultimately seized from the possession of accused Nure Alam and no explanation has been offered by him as to how and where it came in his possession and who took it to Uttar Pradesh.

(ii) That the moment the vehicle was seized from the custody of accused/appellant Nure Alam, he disclosed to the police that the deceased was killed and his body was buried in the river bed.

(iii) That at the instance of accused Chhotu alias Compotar and Ahmad Ali the body was recovered and thus it is apparent that it is only the accused/appellants who were having the special knowledge as to where the dead-body was buried.

(iii) That on the memorandum of accused Nure Alam watch and a note book of the deceased were seized and in the TIP Ex. P-6 it was identified by PW-5 to be that of his son ( the deceased) on the basis of his clothes.

(iv) That identity of the dead-body has not been disputed by the accused persons in the trial Court.

(v) That the DNA report dated 31.10.2014 also says that the samples taken from the parents of the deceased being PW-5 and PW-9 for the said purpose duly matched with that of the deceased.

(vi) That at the time when the vehicle was hired by the accused/appellants, PW-13 and PW-20 were also present there and they had seen the accused persons taking the vehicle and identified them on 23.12.2006 vide Ex. P-18.

7. Heard counsel for the parties and perused the evidence available on record.

8. Pooran Sai (PW-5) - father of the deceased has stated that for three months prior to the incident his son (deceased) was employed with AK Das (PW-12) for driving his Bollero vehicle. He has stated that on the date of incident his son had gone for driving the vehicle and did not return thereafter. He has further stated that while going for his work, the deceased had worn blue colour Jeans pant, full sleeved blue shirt and a lady's wrist watch. When the deceased did not return home, the following day this witness went to PW-12 and asked him as to why his son did not get back, on which he told him that the deceased would come back, and may be, on account of mechanical fault in the vehicle he might have stayed somewhere. This witness has further stated that about two months thereafter, PW-12 conveyed a message through one

Sanyal that he was required to go to the police station. After he went to police station, he was informed by the Station House Officer that the vehicle was standing there. Thereafter, the police people took him to the river bed from where the beheaded skeleton was exhumed at the instance of accused/appellant Nure Alam vide Exhumation *panchnama* Ex. P-7. This witness has further stated that on the basis of clothes, he identified the beheaded skeleton to be that of his deceased son. According to him, one wrist watch seized from the spot was also identified by him vide Ex. P-6. In cross-examination also, this witness stood firm to what he has stated in the examination-in-chief. A.K. Das (PW-12) – the actual owner of the Bollero vehicle which however was registered in the name of Saloni Das (PW-13) has stated that the deceased was employed with him as driver from whom accused/appellant Nure Alam had hired the Bollero vehicle for Rs. 1,400/- on 9.10.2006 for going to Ambikapur. According to him, on 10.10.2006 at 5 AM the deceased had taken the vehicle to Domahill and got back at 7 PM along with accused Nure Alam. Accused Nure Alam however told him that since his family members were to go somewhere for dinner, he would require the vehicle in between 7 and 8 PM for going to Ambikapur. When the driver did not get back with the vehicle for two days, this witness started search for the same and went in the pursuit upto Ambikapur but in vain. Even the parents of the deceased could not disclose to him as to his whereabouts. Thereafter, he went to police station Chirmiri

and gave information in this regard. On being asked by the Station House Officer, he also took parents of the deceased to the police station where they lodged the missing report of their son (the deceased herein). About 3 months thereafter he received an information from the Chirmiri police that his vehicle was intercepted by the Uttar Pradesh police and that on being asked by him to go to the police station for identifying the same, he did so. He identified the vehicle in the police station as well as all the three accused in the Court who had taken his vehicle. He was then taken to the river bed and after digging a pit the beheaded skeleton of the deceased was taken out. On the basis of clothes, shoes and belt he identified the said skeleton to be that of the deceased. Police is also stated to have seized shoes and belt of the deceased. According to this witness, memorandums of accused/appellants were recorded and in his presence exhumation *panchnama* Ex. P-2 was drawn which was signed by him. Gaurav Das (PW-20) – the son of PW-12 and PW-13 has stated that on the fateful evening all the accused/appellants present in the Court came to him and took his vehicle on hire for a sum of Rs. 1,400/- to be taken to Ambikapur. At the time of hiring the vehicle, accused Nure Alam had disclosed his name as Jagdev and had kept beard. He has stated that memorandum of accused Nure Alam was recorded and in his presence he confessed to have buried the body of the deceased in the river bed. A wrist watch is also stated to have been recovered on the memorandum of

accused Nure Alam. Saloni Das (PW-13) – the registered owner of the vehicle in question and wife of PW-12 has stated that she identified all the accused persons vide Ex. P-5. Sukhan Ali Ansari (PW-1) is the witness who helped in exhumation of the dead-body. Barkat Khan (PW-2) is the witness to exhumation Panchnama Ex. P-2. B. Kujur (PW-3) is the witness to TIP proceedings Ex. P-5 and P-6 where the watch and chain recovered at the instance of accused Nure Alam were identified. Kailash Nath Pandey (PW-6) – the witness to memorandum of the accused/appellants and seizure made thereunder has not fully supported the case of the prosecution. Dr. D.K. Vishwakarma (PW-7) is the witness who conducted postmortem on the beheaded skeleton of the deceased and gave his report Ex. P-17. Though he has stated that the cause of death was uncertain yet he has opined on the basis of bones including jaws that it was of male aged about 20-25 years. Ashish Saxena (PW-8) is the Naib Tehsildar & Executive Magistrate who conducted TIP of accused Chhotu alias Comptoor and Ahmad Ali has categorically stated that they were identified by Saloni Das (PW-13) and Gaurav Das (PW-20). Lalmania (PW-9) – the mother of the deceased has stated that her deceased son was working as driver when he went missing and that her husband had told her that body of the deceased was buried and subsequently his clothes, *chappal* and belt were recovered from the river bed. Narendra Singh (PW-10) – the friend of the deceased had identified accused Nure Alam in the Court as he had seen him while the

vehicle was being hired. S. Sudhakar John (PW-16) is the witness who collected samples of PW-5 and PW-9 for DNA test. Mahendra Kumar Das (PW-17), Shivam Pandey (PW-18), Jeevan Singh (PW-19), Dhruv Das (PW-19-A) and Chhatradhari Tiwari (PW-22) have not supported the case of the prosecution and have been declared hostile. Hemnath Nag (PW-21) is the Tehsildar & Executive Magistrate in whose presence dead-body was identified vide Ex. P-7. Maheshwar Singh (PW-24) is the witness who proved the proceedings drawn by Uttar Pradesh police. Babulal Gupta (PW-25), Subal Singh (PW-26) and Anil Kumar Mishra (PW-27) are the witnesses who assisted in the investigation. KMS Khan (PW-30) is the investigating officer who has duly supported the case of the prosecution. Mehmood (DW-1) has not stated anything specific in favour of the accused/appellants.

9. We have perused the evidence of the witnesses and other material available on record, and having done so it becomes crystal clear that on 10.10.2006 the accused/appellants had hired a Bollero vehicle from PW-12 to be taken to Ambikapur. Actual owner of the said vehicle was AK Das (PW-12), registered owner was Saloni Das (PW-13) and the driver thereof at the relevant time was the deceased herein. Record also makes it clear that when the deceased did not return for a considerable long time nor was there any clue of the vehicle, a search operation was launched by the father of the deceased and PW-12 but all that went in vain. Meanwhile as the evidence indicates, on 21.12.2006, the said

vehicle was intercepted by the Uttar Pradesh police from the possession of accused Nure Alam who at the relevant time was driving the same. During inquiry, accused Nure Alam confessed that he with other two accused persons had hired the vehicle and on the way committed the murder of deceased Anand Vishwakarma - the driver of the vehicle. Uttar Pradesh police registered an un-numbered FIR and later the case was transferred to Chhattisgarh where in police station Chirmiri numbered FIR Ex. P-28 was registered. On the disclosure statement of the accused/appellants body of the deceased was exhumed from the river bed which was identified by PW-5 - the father of the deceased on the basis of clothes worn by him. Subsequently, samples were taken from the parents of the deceased (PW-5 and PW-9) vide Ex. P-44 and P-45 for the purpose of DNA test and as per the DNA report the same matched with the DNA of the deceased. Further, on the memorandum of accused Nure Alam, a wrist watch was seized under Ex. P-16 which was identified by PW-5 vide Ex. P-6 to be that of the deceased. This Court finds no substance in the argument of the defence counsel that the body has not been identified because PW- 5 and PW-12 have categorically stated that they had identified the same to be that of the deceased on the basis of clothes worn by the deceased. What is worth emphasis here is that identity of the dead-body was not disputed during trial and it is for the first time in this appeal such a question is being raised. This apart, Ashish Saxena (PW-8) - the Naib Tehsildar & Executive

Magistrate who conducted TIP of accused Chhotu alias Comptoar and Ahmad Ali has categorically stated that they both were identified by Saloni Das (PW-13) and Gaurav Das (PW-20). Narendra Singh (PW-10) – the friend of the deceased has also identified accused Nure Alam in the Court as he had seen him while the vehicle was being hired. Gaurav Das (PW-20) – the son of PW-12 and PW-13 has also stated that on the fateful evening all the accused/appellants present in the Court came to him and took his vehicle on hire for a sum of Rs. 1,400/- to be taken to Ambikapur. He has also stated that at the time of hiring the vehicle, accused Nure Alam had disclosed his name as Jagdev and had kept beard. He has stated that memorandum of accused Nure Alam was recorded and in his presence he confessed to have buried the body of the deceased in the river bed. In view of all this factual analysis, it can safely be held that the prosecution has proved all the circumstances appearing against the accused/appellants – right from the beginning to the end where the vehicle was hired for being taken to Ambikapur; on the way the accused/appellants committed the murder of the deceased who at the relevant time was driving the said vehicle; buried his body in a river bed; proceeded ahead with the vehicle to Uttar Pradesh where it was intercepted by the police; un-numbered FIR was registered there; after the case was sent to Chirmiri police station; the body was exhumed from a river bed at the instance of accused Nure Alam; and it was ultimately identified by PW-5 and PW-12 on the basis of

clothes. So also the Court below has also arrived at the conclusion that the circumstances relied upon by the prosecution are not fragmented and thus held the accused/appellants guilty under Sections 364, 302 and 201 IPC, and there is no infirmity in the approach of the Court below.

10. In the result, this Court does not see any substance in the judgment impugned. We concur with the findings recorded by the Court below and thereby dismiss all these appeals – three in number. No order asking the accused/appellants to surrender etc. is necessary as they are already in prison.

11. Appeals dismissed.

Sd/-

(Pritinker Diwaker)  
Judge

Sd/-

(Gautam Chourdiya)  
Judge