

HIGH COURT OF CHHATTISGARH, BILASPUR**ACQA No. 230 of 2012**

State of Chhattisgarh through District Magistrate, District Raipur
(C.G.)

--- APPELLANT

Versus

1. Motiram, S/o. Tulsiram Dewangan, Aged about 49 years, R/o. Village Saragaon, P.S. Chhura, District Raipur (C.G.)
2. Sudhram, S/o. Ghasiaram Nishad, Aged about 35 years, R/o. Village Dulla, P.S. Chhura, District Raipur (C.G.)
3. Gaimdram, S/o. Vishesar Kanwar, Aged about 26 years, R/o. Village Dulla, P.S. Chhura, District Raipur (C.G.)
4. Samaruram, S/o. Bisnath Kanwar, Aged about 37 years, R/o. Village Parsapani, P.S. Chhura, District Raipur (C.G.)

---- RESPONDENTS

For the Appellant	:-	Mr. P.K. Bhaduri, Govt. Advocate
For the Respondent No.1	:-	Mr. Raja Sharma, Advocate
For the Respondent Nos. 2 to 4:-		Mr. Vikas Pradhan, Advocate
For the Objector	:-	Mr. R.K. Pali, Advocate on behalf of Mr. P.P. Sahu, Advocate

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

Judgement on Board

Per Ram Prasanna Sharma, J.

21. 03. 2018

1. This acquittal appeal is directed against the judgment dated 26.12.2011 passed by the Additional Sessions Judge, Gariyabandh, Session Division- Raipur, in Session Trial No. 13/2011, wherein the

said Court has acquitted all four respondents from the charges under Sections 302 and 201 of the IPC, 1860 for commission of murder of one Jaggu Yadav between 19.11.2010 to 01.12.2010 and for causing disappearance of evidence to screen them from legal punishment.

2. As per the prosecution case, there was some dispute between the deceased and the respondent Motiram regarding payment of amount of selling land and on that account on 19.11.2010 respondent Sudhram Nishad went to the house of deceased and called the deceased from his house and they left the house on the said date, thereafter, the deceased did not return. Gangabai who is wife of deceased Jaggu Yadav reported the matter to Police Station Chhura. On the report, search and investigation was made during which one skull was found upon the discovery statement of the respondents, certain weapons and other articles were also seized from the respondents. The matter was investigated and all the respondents were charge sheeted. After completion of investigation, charge sheet was filed against the respondents. Respondents pleaded innocence and therefore, the trial was conducted. After examination of all the witnesses, statement of the respondents was recorded under Section 313 of the CrPC. After hearing the parties, the trial Court acquitted the respondents as aforementioned.
3. Shri P. K. Bhaduri, learned counsel for the State and Shri R.K. Pali, learned counsel for the objector would submit as under;-
 - (I) That the trial Court overlooked the statement of Investigating Officer Shri C.L. Ukey (PW-7) who affected recovery of incriminating articles at the instance of all the respondents.

- (ii) That the trial Court ignored version of Mahesh Ram Dhruv (PW-7) and Jeevan Yadav (PW-12) before whom all the four respondents had made extra judicial confession.
 - (iii) That the trial Court also ignored other incriminating circumstances as motive of the offence, seizure of weapon from of the respondents and came to wrong conclusion.
4. Per contra, Shri Raja Sharma and Shri Vikas Pradhan, learned counsel for the respondents would submit that the finding arrived at by the trial Court is based on proper marshaling of the evidence adduced by the prosecution and same is not liable to be disturbed or modified while invoking jurisdiction of the appeal.
 5. We have heard learned counsel for both the parties and perused the record of the trial Court.
 6. First point for consideration is whether Jaggu Yadav died homicidal death, in the present case dead body of the deceased has not been recovered. It is alleged by the Investigating Officer that one skull was seized upon the discovery statement of the respondent and that skull was examined by Dr. R.K. Singh (PW-18). As per version of this witness the skull appears to be of a male as bone appears to be of a male. Opinion of this expert, is not conclusive regarding death of the deceased. The opinion of expert is based on examination of skull but there is no evidence on record to establish that it is the skull of the deceased and there is no opinion regarding cause of death. In absence of any opinion of medical expert it is difficult for us to hold that the deceased died homicidal death.

7. There is no eyewitness account to the incident, case of the prosecution is based on extra judicial confession and certain recoveries made from the respondents. Mahesh Ram Dhruv (PW-7) is the witness of extra judicial confession. He deposed that all the respondents admitted their guilt in presence of 40-50 persons of the locality. But he has admitted in (para-4) of his deposition that when the respondents made confession they were in custody of police and were handcuffed. The other witness of extra judicial confession, Jeevan Yadav (PW-12), has also deposed on same line that the confession was made in presence of 30-40 persons. He also admitted (in Para-17) that respondents were handcuffed by the police and were surrounded by 30-40 persons of the locality and there they made confession. It is settled that any confession made before the police is inadmissible, therefore, it is not established by the evidence of these two witnesses that any legally admissible confession was made by any of the respondents.
8. As per version of Investigating Officer certain articles like Knife, *Gamchha*, Spectacle were seized on the discovery statement of the respondents, but there is no serological report to the effect that any of the articles was stained with human blood of group same as blood group of the deceased, therefore, all the articles seized are not connecting piece of the evidence with crime in question. The prosecution has led evidence of Ganga Bai, who is wife of the deceased and as per version of this witness there is dispute regarding payment of selling of land and that may be a motive for committing the offence or may be a cause for committing the offence but motive itself is not sufficient to bring home the guilt of the respondents.

9. As per version of Ganga Bai, the deceased left the house with respondent Sudharam, thereafter, he did not return. She further deposed that when her husband did not return she reported the matter to Police after five days. In the present case, the deceased left the house on 19.11.2010 and one skull was recovered on 01.12.2010 i.e. after 12 days. There is nothing on record that Sudharam was continuously in company of the deceased for these 12 days, therefore, it is difficult to hold that deceased was last seen with respondent Sudharam and theory of last seen is not applicable in the facts of the present case. Theory of last seen applies in a case where the time gap is too small that possibility of any third person meeting with the deceased is impossible but in the present case time gap is 12 days and it was not safe for the trial Court to hold that the deceased was last seen in the company of respondent Sudharam and is responsible for crime.
10. Looking to the entire evidence especially when the homicidal death of the deceased is not proved, the other evidence adduced by the prosecution is very weak type of evidence it would not be proper for us to disturb the findings recorded by the trial Court. Accordingly, the acquittal appeal fails and is hereby dismissed.

Sd/-

Judge
Prashant Kumar Mishra

Sd/-

Judge
Ram Prasanna Sharma