

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 7-4-2018****Pronounced on 25-4-2018****Criminal Appeal No. 683 of 2012**

Manharan Dhruv S/o Gayaram Dhruv Aged About 35 Years R/o Village
Kaundkera, P.S. Mahasamund, Distt. Mahasamund, C.G.

---- Appellant**Versus**

State Of Chhattisgarh Through - P.S. Mahasamund, Distt.
Mahasamund C.G.

---- Respondent

For appellant : Smt. Usha Chandrakar, Adv.
For respondent : Shri Avinash K. Mishra, Panel Lawyer

Hon'ble Shri Pritinker Diwaker and
Hon'ble Shri Sharad Kumar Gupta, JJ

C.A.V. JUDGMENT**Per Sharad Kumar Gupta, Judge**

1. In this criminal appeal, challenge is to the judgment of conviction and order of sentence dated 21-6-2012 passed by the 1st Additional Sessions Judge, Mahasamund (CG) in Sessions Case No. 21/2012 vide Annexure A-1 whereby and whereunder he convicted and sentenced the appellant as under :

Sr. No.	Offence u/S.	Sentence	In default of payment of fine
1.	302, IPC	Imprisonment for life + fine of Rs. 1,000/-	Additional RI for 2 months
2.	201, IPC	RI for 2 years + fine of Rs. 1,000/-	Additional RI for 2 months

Both the substantive jail sentences have been directed to run concurrently.

2. It is admitted by the appellant that he is resident of village

Kaundkera; he was living with the deceased- Radhika Dhruv (wife) and children. P.W. 2 Punit Ram and some other villagers told Kotwar P.W. 1 Punit Das that a dead body of an unknown person, wrapped with straws, is lying in the barn (Byara) of Bhuneshwar Chandrakar, thus he intimated the same to the police, thereafter, police came to the spot, straws were removed and a dead body was found, some part of the face was scratched off by animals, he himself reached at the spot and identified the body as his wife.

3. In brief, prosecution story is that on 30-1-2012, some labourers were curing the under construction cement ring of a well. They saw a dead body wrapped with straws lying in the barn of Bhuneshwar Chandrakar at village Kaundakera. Labourers intimated P.W. 2 Punit Ram and some other persons, who went to the spot. P.W. 1 Punit Das Kotwar went to Police Station Mahasamund. Morgue intimation was recorded on 30-1-2012 vide Ex. P-1. P.W. 8 Rajeev Sharma, Inspector, City Kotwali, Mahasamund reached the spot, prepared inquest vide Ex.P-2, sent the dead body for autopsy. P.W. 8 Dr. Girdharilal Chandrakar conducted post-mortem on the body of the deceased, his post-mortem report is Ex.P-8. During inquiry, merged statements of the witnesses were recorded. At the instance of the appellant, panchnama was prepared on 5-2-2012 vide Ex. P-3. FIR was lodged vide Ex.P-9. During investigation, statements of witnesses were recorded under Section 161 of the Cr.P.C. Spot map was prepared vide Ex. P-10. Viscera was sent to FSL. After completing the investigation, a charge sheet was filed against

the appellant under Sections 302 and 201 of the IPC. The trial Court framed charges against the appellant under Sections 302 and 201 of the IPC. The appellant abjured the guilt and faced trial. To bring home the charges, prosecution examined as many as 9 witnesses.

4. The appellant has not examined any witness in his defence. His defence is that witnesses had stated against him on account of previous enmity.

5. After completion of the trial, trial Court convicted and sentenced the appellant as aforesaid. Being aggrieved, the appellant has preferred this appeal.

6. Smt. Usha Chandrakar, counsel for the appellant argued that extra judicial confession allegedly made by the appellant is not believable. There is no clinching evidence available on record. Thus, aforesaid conviction and sentence may be set aside.

7. Shri Avinash Mishra, Panel lawyer appearing for the State argued that the aforesaid conviction and sentence of the appellant are based on cogent evidence led by the prosecution. He supported the aforesaid conviction and sentence and submitted that the appeal may be dismissed.

8. In the case is hand, prosecution case is not based on direct evidence, rather, it is based on circumstantial evidence i.e. alleged panchanama Ex.P-3, extra judicial confession and previous ill-treatment by the appellant.

9. In **Bhagwan Dass vs. State (NCT) of Delhi** {AIR 2011

SC 1863} the Hon'ble Supreme Court has observed in para-8, relevant portion is reproduced below:-

“8.....In our opinion the statement of the accused to his mother Smt. Dhillo Devi is an extra judicial confession. In a very recent case this Court in Kulvinder Singh & Anr. vs. State of Haryana Criminal Appeal No.916 of 2005 decided on 11.4.2011 (reported in 2011 AIR SCW 2394) referred to the earlier decision of this Court in State of Rajasthan vs. Raja Ram (2003) 8 SCC 180, where it was held (vide para 10) :

"An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. The value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. It is not open to any court to start with a presumption that extra-judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession. Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused, the words spoken to by the witness

are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it. After subjecting the evidence of the witness to a rigorous test on the touch-stone of credibility, the extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility."

In the above decision it was also held that a conviction can be based on circumstantial evidence.

Similarly, in *B.A. Umesh vs. Registrar General*, High Court of Karnataka, (2011) 3 SCC 85 the Court relied on the extra judicial confession of the accused."

10. In **Sharad Birdhichand Sarda -v- State of MH** (AIR 1984 SC 1622 at pg. 2848), while dealing with the circumstantial evidence, it has been held that onus was on the prosecution to prove that the chain is complete and infirmity of lacuna in prosecution cannot be cured by false defence or plea. The conditions precedent in the words of this Court, before conviction could be based on circumstantial evidence, must be fully established. They are :-

"(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must' or 'should' and not 'may be' established;

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

(3) the circumstances should be of a conclusive

nature and tendency.

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

11. In **Bhagwan Dass** (supra) Hon'ble Supreme Court has observed in para-5, relevant portion is reproduced below:-

“5. This is a case of circumstantial evidence, but it is settled law that a person can be convicted on circumstantial evidence provided the links in the chain of circumstances connects the accused with the crime beyond reasonable doubt vide *Vijay Kumar Arora vs. State (NCT of Delhi)*, (2010) 2 SCC 353 (para 16.5), *Aftab Ahmad Ansari vs. State of Uttaranchal*, (2010) 2 SCC 583 (vide paragraphs 13 and 14), etc.”

12. In **Chanchal Ku. -v- Union Territory Chandigarh** (AIR 1986 SC 752) the Hon'ble Apex Court has held that Suspicion however strong cannot take the place of proof.

13. In **Manzoor -v- State of UP and Suleman -v- State of up** (AIR 1983 SC 295) Hon'ble Apex Court has held that where the prosecution failed to prove the guilt satisfactorily beyond reasonable doubt, the benefit of 'doubt' must go to accused and the accused must be acquitted.

14. As per the alleged post mortem report Ex. P-18, P.W. 9 Dr. Girdharilal Chandrakar opined that no definite opinion can be given because the body was almost putrefied. Thus, the

prosecution does not get any help from Ex. P-18.

15. As per the alleged panchnama Ex.P-3 on 05-2-2012 at 20:30 pm appellant told that on 12-1-2012 he had killed the deceased by pressing her mouth, hid the dead body in the heap of straws at the barn of Bhuneshwar Chandrakar.

16. P.W. 2 Punit Ram says in para 4 of his statement given on oath that on 5-2-2012 at Murrum quarry at village Kaundakera, the appellant told that he had killed his wife and hid her dead body in the heap of straws of the barn of Bhuvneshwar Chandrakar.

17. P.W. 3 Hemant Kumar Chandrakar says in para 2 of his statement given on oath that on 5-2-2012, the appellant confessed before Punit Das, village Kotwar and him that he had killed his wife.

18. Alleged panchnama Ex. P-3 was prepared by P.W. 8 Rajiv Sharma, Inspector. P.W. 2 Punit Ram is the witness of Ex. P-3. Moreover, he says in para 6 during cross examination that when the appellant confessed, at that time police personnel were present. Ex. P-3, the aforesaid statement of para 4 of this witness, and aforesaid statement of P.W. 3 Hemant Kumar Chandrakar are hit by Sections 25 and 26 of the Indian Evidence Act. Thus, the prosecution does not get any help from Ex. P-3, aforesaid statement of para 4 of P.W. 2 Punit Ram and aforesaid statement of P.W. 3 Hemand Kumar Chandrakar.

19. When P.W. 6 Arjun was declared hostile then he says in para 3 that it is true that appellant told him on 4-2-2012 that he

had killed his wife by pressing her mouth and neck, hid her dead body in the heap of straws of the barn of Bhuvneshwar. In para 2 during examination-in-chief he had stated that the appellant had not told him about the incident. Further, he stated in para 4 during cross-examination that it is true that the appellant had not told him anything about the incident. He had stated in para 5 during re-examination-in-chief that he had not given the statement of “A to A” (*Dinank 05/02/2012 ko Manharan Galti Ho Gai Hai*) of Ex. P-5. In these circumstances, this Court disbelieves the aforesaid statement of para 3 of this witness.

20. Looking to the above mentioned facts and circumstances of the case, this Court finds that above mentioned judicial precedents by Hon'ble Supreme Court in **Bhagwan Dass** (supra) **Sharad Bhirdhichand Sarda** (supra) go against the prosecution case.

21. P.W. 2 Punit Ram says in para 1 that 4-6 months prior to the incident, deceased had lodged report in police station against the appellant. P.W. 6 Arjun says in para 2 that 2-3 months ago from the date of incident the deceased had lodged report in police station and the appellant was sent behind the bars. These circumstances cast a suspicion on the appellant. Looking to the judicial precedent by Hon'ble Supreme Court in **Chanchal Ku.** (supra), this Court finds that mere suspicion on the appellant cannot take place of proof.

22. Looking to the above mentioned facts and circumstances of the case, material placed on record, this Court finds that prosecution has failed to prove guilt of the appellant under

sections 302 and 201 of the I.P.C. beyond reasonable doubt.

23. Looking to the judicial precedent by the Apex Court in **Manzoor** (supra), the appeal is allowed. Impugned judgment of conviction and order of sentence are set aside. The appellant is acquitted of all the charges by extending him benefit of doubt. He is in jail. He be set at liberty forthwith, if not required in any other case.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(Sharad Kumar Gupta)
Judge