

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1539 of 2015

1. Ramesh Mandavi S/o Tularam Mandavi Aged About 40 Years R/o Village Chandeli, Police Station Charama, District Kanker Chhattisgarh.
2. Vijay Komra S/o Dharmuram Komra Aged About 28 Years R/o Village Chandeli, Police Station Charama, District Kanker Chhattisgarh.
3. Arun Korram S/o Siyaram Korram Aged About 40 Years R/o Village Udkuda, Police Station Charama, District Kanker Chhattisgarh.

---- Appellants

Versus

- The State Of Chhattisgarh Through The Station House Officer, Police Station Charama, District Kanker Chhattisgarh.

---- Respondent

For Appellants	:	Shri D.N. Prajapati, Advocate
For Respondent	:	Shri Adil Minhaj, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Smt. Justice Rajani Dubey

Judgement

Per P. Diwaker, J

18/09/2018

1. This appeal arises out of the judgment of conviction and order of sentence dated 17.11.2015 passed by the learned Additional Sessions Judge, (FTC) Raipur in S.T. No.32/14 convicting the accused/appellants under Sections 364/34, 302/34 & 201/34 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo RI for 10 years & fine of Rs.100/-; RI for life & fine of Rs.500/- and RI for 2 years & fine of Rs.50/-, with usual default clauses, respectively.

2. As per prosecution case, deceased Ram Singh was keeping an evil eye on the daughter of accused/appellant No.1 Ramesh Mandavi. In between 17th & 18th March, 2014 accused/appellant No.1 called the deceased to his house where he along with co-accused persons had beaten him and thereafter took him in a Jeep towards Damkasa forest after tying his hands with a cloth and committed his murder. Thereafter the accused/appellants ran over the Jeep on the body of deceased, thrown his body on the national highway and thereby tried to show cause of death of deceased as an accidental one. On 18.3.2014 at 1.05 in the afternoon FIR (Ex.P-35) was lodged at the instance of Devraj (PW-11), father of deceased. Immediately thereafter at 4 in the evening, merg intimation (Ex.P-33) was recorded at the instance of PW-11. Inquest (Ex.P-2) was prepared on the body of deceased on 18.3.2014. Body was sent for post-mortem examination which was conducted by Dr. P. S. Pradhan (PW-6) vide Ex. P-7 and he noticed following injuries:-

- lacerated wound on right & left shoulder.
- lacerated wound on right side forearm & left side of arm.
- lacerated wound on front of chest
- lacerated wound below umbilical.
- lacerated on front & back side of waist.

The doctor has opined the cause of death as shock due to cardio respiratory failure on account of head injury, ribs fracture & vital organ injuries. Nature of death was homicidal and duration of death was 18-20 hours from the time of post-mortem examination. Memorandum of accused/ appellant Arun Korram was recorded vide Ex.P-15 and based on his disclosure statement one Jeep in running condition, bloodstained & plain soil and one bloodstained stone weighing about 2 kilogram were seized vide seizure memos Ex.P-16 & Ex.P-17 respectively. Memorandum of accused/appellant Ramesh Mandavi was recorded vide

Ex.P-24 and based on his disclosure statement, one towel, gamchha & nylon rope were seized vide seizure memo Ex.P-25 & P-26. Seized articles were sent for chemical examination to the Forensic Science Laboratory. On chemical examination, the chemical examiner found blood on the shirt of accused/appellant No.3. Further case of the prosecution is that the accused persons made extra-judicial confession in a panchayat before PW-1, PW-10, PW-11 & PW-13 that they have committed murder of the deceased.

3. After completion of investigation, charge sheet against the accused/appellants herein was filed under Sections 364/34, 302/34 of IPC and accordingly the charges under those sections were framed against them by the trial Court. The prosecution in order to bring home the charges levelled against the accused/appellants examined 13 witnesses in all. Statements of accused/appellants were recorded under Section 313 of Cr.P.C. in which they abjured their guilt and pleaded innocence & false implication.
4. After hearing counsel for the parties and considering the material available on record, the trial Court by the impugned judgment convicted & sentenced the accused/appellants in the manner as described above.
5. Counsel for the appellants submits
 - that, there is no direct evidence against the appellants connecting them with the crime in question and their conviction is solely based on the extra-judicial confession allegedly made by them before PW-1, PW-10, PW-11 & PW-13, but these witnesses have not fully supported the prosecution case and therefore their evidence cannot be relied upon to convict the appellants for the offence like murder. Even otherwise, the testimonies of these witnesses do not inspire confidence being full of contradictions and omissions.

- though FSL report is positive in respect of certain seized articles but in absence of serological report, the FSL report is insignificant.
 - appellant No.3 was badly beaten by the villagers and his condition became so serious that he was taken to the hospital. This goes to show that the confession was not voluntary.
6. On the other hand, counsel for the respondent-State supports the impugned judgment and submits that the conviction of accused/appellants under Section 364/34, 302/34 & 201/34 IPC and the resultant sentences are just and proper and no interference therewith is warranted.
 7. Chandra Sekhar (PW-1) is a witness of extra-judicial confession made by accused/appellants. However, he did not support the prosecution case and turned hostile. He denied making of extra-judicial confession by accused persons before the villagers. Ramesh Kumar (PW-2), Shyam Singh (PW-3), Goverdhan (PW-4), Pawan Shouri (PW-5) have not supported the prosecution and as such declared hostile.
 8. Dr. P.S. Pradhan (PW-6) is the doctor who conducted post-mortem examination over the body of deceased and noticed the injuries as described above. He has opined the cause of death as shock due to cardio respiratory failure on account head injury, ribs fracture and death was homicidal in nature.
 9. L.D. Diwan (PW-7) is the investigating officer who has duly supported the prosecution case. Mrityunjay Pandey (PW-8) is the police person who assisted in the investigation. Dindayal Nag (PW-9) did not support the prosecution story and turned hostile.
 10. Ashok Kumar (PW-10) is the another witness of extra-judicial confession and he too has not supported the prosecution case. According to him, after the incident a meeting was called and the persons present in the meeting had enquired from the accused persons about the death of

deceased and they admitted having killed the deceased. However, in the cross-examination he admitted that all the accused persons denied to have committed any offence.

11. Devraj (PW-11) is another person before whom extra-judicial confession was made by accused persons. He has not fully supported the prosecution and therefore declared hostile by the prosecution. According to him, on being asked by Sarpanch, all the accused persons admitted that they have killed the deceased and thrown the body on Machandur Road.

12. Yashwant Lal Yadu (PW-12) is the Patwari who prepared the spot map.

13. Lakhmu (PW-13) is the another witness of extra-judicial confession. This witness has stated that on being asked by the accused persons, they have admitted that they had killed the deceased. However, this witness has also been declared hostile by the prosecution.

14. Close scrutiny of the evidence available on record makes it clear that conviction of accused/appellants is mainly based on the extra-judicial confession made by accused/appellant before the number of persons. The prosecution in order to prove the extra-judicial confession has examined Chandrasekhar (PW-1), Ashok Kumar (PW-10), Devraj (PW-11) & Lakhmu (PW-13). Out of these witnesses, Chandrasekhar (PW-1) has not stated anything about the making of extra-judicial confession by the accused persons before him, whereas, from the testimony of Ashok Kumar (PW-10) it is clear that the story of extra-judicial confession was disclosed by him for the first time in the Court. Likewise, Devraj (PW-11) has not stated anything about the extra-judicial confession made in his presence by accused/appellants. Thus, evidence of aforesaid witnesses cannot be relied upon against the appellants. Though Lakhmu (PW-13) has spoken about the extra-judicial confession made by accused/

appellant, but there is no corroboration from any other witness to the extra-judicial confession. It is settled law that extra-judicial confession is a weakest piece of evidence and more so, when there is no corroboration from any corner. This apart, it has come in the evidence of Chandra Sekhar (PW-1) that he was informed by the accused/appellants that they were badly beaten and threatened by the villagers. Accused Ramesh & Vijay were admitted in the government hospital and looking to the critical condition of accused Ramesh, he was referred to a hospital at Dhamtari. Evidence on record also shows that initially the accused/appellants have denied the charge of murdering the deceased. It appears that the accused/ appellants were beaten by the villagers to extort confession. In order to make an extra-judicial confession a reliable evidence it has to be shown that the same was voluntary. The aforesaid factual scenario goes to show that the alleged extra-judicial cannot be termed to be voluntary even if it was said to be have been made, as claimed.

Another piece of evidence against the accused/appellants is seizure of certain bloodstained articles, including shirt of accused Arun Korram, of which FSL report Ex.C-1 has been found positive but there is no serological report confirming its origin and group. Thus, in absence of serological report proving the origin and group of human blood, seizure of certain articles on the basis of memorandum of accused/appellants loses its significance.

15. On the basis of above discussion, we are of the view that it is a case of no evidence to hold the accused/appellants guilty for kidnapping and murdering the deceased and thereafter making an attempt to destroy evidence in order to save themselves from the legal punishment and being so, the benefit of doubt has to stand in their favour. Findings of the Court below thus do not appear to be in consonance with the evidence of

the witnesses and therefore are liable to be set aside.

16. In the result, the appeal is allowed, judgment impugned is hereby set aside and the accused/appellants are acquitted of the charges levelled against them. As the accuse/appellants are in jail, they be released forthwith if not required to be detained in jail in connection with any other offence.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Smt. Rajani Dubey)
Judge

roshan/-