

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 453 of 2004**

- Rohi Das @ Roye Das, S/o.Boderam Netam, Aged about 50 years, Occupation Agriculture, Resident of Village Haliya PO Keshkal, District Bastar

---- Appellant**Versus**

- State Of Chhattisgarh

---- Respondent

For Appellant	: Ms. Minu Banerjee, Advocate
For Respondent/State	: Shri Anand Verma, GA

Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Rajani Dubey

Judgment On Board By Manindra Mohan Shrivastava, J.**15/01/2019**

The appellant has been convicted under Section 302 IPC and sentenced to undergo imprisonment for life vide impugned judgment of conviction and order of sentence dated 29th January 2004 passed by the Sessions Judge Bastar at Jagdalpur in ST No. 423/2003.

2. As per prosecution story, PW-1 Asadu Ram gave information regarding death of Lakhu Ram on which a merg in Ex.P-12 was recorded in the police station at 12.15 hrs. in which, it was recorded that the dead body of Lakkharam was found lying dead in his farmhouse. In *dehati nalishi* i.e. spot FIR recorded by the police after reaching the place of incident Ex.P-7 also, similar disclosure was made by Asadu Ram PW-1 that Lakhuram was found dead in his farm

house and some unknown person appears to have killed him. The dead body of Lakhu Ram was sent for postmortem. Dr. K. Bisen (PW-7) conducted postmortem examination. In the postmortem, injuries were found in right and left temporal region and haematoma was also present in the right temporal region. There were abrasions also. The doctor opined that the cause of death was head injury which was homicidal in nature. The appellant being suspected, was arrested, FIR was recorded in Ex.P-25, Investigation was conducted, charge sheet was filed and appellant was tried for commission of the offence. Asadu Ram (PW-1) though claimed to be eyewitness to the incident, in his examination-in-chief, he admitted that he had not seen the incident. PW-2 Jageshwar has deposed that extra judicial confession was made by the appellant as informed to him by Asadu Ram. He then states that on the next day, appellant confessed before him that he has murdered Lakhu Ram.

On the basis of the said evidence, learned trial court held the appellant guilty for commission of the offence.

Counsel for the appellant would argue that though learned trial court has rejected the testimony of PW-1 Asadu Ram as eyewitness, it convicted only on the basis of extra judicial confession made before Jogeshwar. Counsel for the appellant would argue that the so called extra judicial confession which otherwise is a very weak evidence by its very nature, cannot be made sole basis for his conviction. Further argument is that even otherwise, the evidence of Jogeshwar is not at all reliable because the time when the appellant is said to have confessed before Jogeshwar, in all probability, the appellant was

already taken into custody. Jogeshwar was witness of inquest conducted on 5.7.03 on which date, according to prosecution, appellant is said to have confessed before Jogeshwar therefore the evidence of Jogeshwar cannot be relied upon and is highly doubtful. Therefore, the appellant is entitled to be acquitted by giving benefit of doubt.

State counsel would argue that though PW-1 has admitted in his evidence that he had not seen the incident, Jogeshwar, the independent witness, being Kotwar of the village, has supported the prosecution case by stating that after Asadu Ram informed that appellant had confessed before him, on the next day, the appellant also confessed before Jogeshwar that he had murdered Lakhu Ram which has remained uncontroverted on the basis of which conviction of the appellant can legally be sustained.

Even according to the case of the prosecution, the evidence on the basis of which the appellant's conviction rests is the evidence of PW-2 Jogeshwar, who has stated in his evidence that he was informed by Asadu Ram that the appellant had confessed to have murdered his brother Lakhu Ram, whereafter, he went to the place of incident and report was lodged. He then states that on the next day of the incident, when enquiry was made from the appellant, he confessed having murdered his brother Lakhu.

As far as the confession, as stated before Asadu Ram is concerned, the same is hearsay evidence. In any case, Asadu Ram has only claimed to be eyewitness and not a witness to extra judicial confession.

The other part of his evidence that on the next day, the appellant confessed before Jogeshwar, the same appears to be extremely doubtful. We find that the incident happened on 4th of July and inquest of dead body was prepared next day i.e. on 5th July.

Jogeshwar is one of the witness to inquest. However, in the inquest report, the opinion of the panchas including Jogeshwar is that Lakhuram died in suspicious circumstances, If by that time, appellant had confessed before Jogeshwar PW-2, there was no reason why Jogeshwar would immediately inform this fact to the police when police and other panchas who were present at the time of inquest proceedings. Thereafter, the appellant being suspect, was taken into custody and even if, something has been stated by the appellant at a later part of investigation, while in custody, the same would clearly be inadmissible in evidence. This is the only solitary evidence connecting the appellant with the alleged offence. Recovery part does not establish live link with the present appellant, therefore, in our considered opinion, there is serious doubt whether the appellant committed the offence.

In view of the above consideration we are inclined to give appellant benefit of doubt and acquit him from the charges. In the result, appeal is allowed. Impugned judgment of conviction and order is set aside. Appeal is allowed. As the appellant was already on bail, bail bonds stand discharged.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Rajani Dubey)
Judge