

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 922 of 2012

Latif Khan S/o Sikander Khan, Aged About 27 Years R/o Village - Balenga
Sodma, PS - Makdi, Distt. - Bastar C.G. , Chhattisgarh

---- Appellant

Versus

State Of Chhattisgarh Through PS - Makdi, Distt. - Bastar C.G. ,
Chhattisgarh

---- Respondent

For Appellant	:	Shri Vaibhav Goverdhan, Advocate with Shri Vivek Mishra, Advocate
For State	:	Shri Vikash Shrivastava, Panel Lawyer

**D.B. :Hon'ble Mr. Justice Manindra Mohan Shrivastava &
Hon'ble Mrs. Justice Vimla Singh Kapoor**

Judgment on Board

13/12/2019

Per Manindra Mohan Shrivastava, J.

1. This appeal is directed against the judgment of conviction and order of sentence dated 6.9.2012 passed by learned Special Judge (SC ST Act) Bastar at Jagdalpur in ST No. 13 of 2009 whereby and whereunder the appellant/accused has been held guilty of commission of offence alleged against him and sentenced as described below:-

Conviction	Sentence
under Section 302 IPC	Life imprisonment and fine of Rs.500/-
under Section 201 IPC	RI for 2 years and fine of Rs.500/-

2. The prosecution case, as unfolded from the records of the case, is that on

23rd August 2008, Dhaniram (PW1) lodged a report in the Police Station-Makari that since fifteen days, his brother Ghassu who had gone to earn livelihood has not returned. It was also disclosed that on 22.8.2008, one Sikandar Khan came to the house in intoxicated condition and disclosed that his brother Ghassu has been murdered by his son Latif by giving assault with shovel and dead body has been buried in the house. Further case of the prosecution is that on the basis of such report lodged, police station registered offence, carried out investigation and memorandum of the appellant was recorded in Ex.P-6 and, thereafter, it is said, dead body of Late Ghassu was exhumed from the house. The dead body was sent for postmortem and the postmortem revealed injury and the opinion of the doctor was that the cause of death was homicidal in nature. Upon completion of usual investigation, charge sheet was filed and the learned trial Court framed charges against the appellant for alleged commission of offence, charging the appellant that he had murdered Ghassu by assaulting with the help of a shovel. The appellant having abjured guilt was put to trial.

3. The entire case of the prosecution was based on circumstantial evidence and in order to prove its case, prosecution mainly led evidence of recovery of dead body from the house of appellant on the basis of his memorandum statement Ex.P-6. Relying mainly on this incriminating evidence, failure of the appellant to explain the same, the appellant was held guilty of commission of offence alleged and sentenced as described above.
4. Learned counsel for the appellant argues that the conviction of the appellant is wholly unsustainable in law and only on the basis of suspicion without there being proof beyond reasonable doubt that the dead body was recovered from the house of the appellant at his instance, the conviction has been awarded. He submits that the prosecution witnesses, though, in their examination-in-chief, say that dead body was recovered from the house of the appellant, in their cross-examination, it is clear from their admission to suggestion made to them that dead body of Ghassu was recovered from a dilapidated place and not from the house of appellant. His next submission is that prosecution has not come out with any incriminating evidence that shovel alleged to have been used in

commission of offence was stained with human blood, much less, blood of group and origin of that of the deceased. Further submission is that the prosecution has not come out with any motive whatsoever as to why appellant would kill the deceased. Further submission is that except doubtful recovery, there is no other incriminating evidence led by the prosecution much less proof to hold the appellant guilty of commission of offence. Learned counsel for the appellant lastly submits that it is not even a case where the prosecution has succeeded in proving that on the basis of disclosure statement (Ex.P-6) of the appellant, dead body was recovered from the stated place. He would submit that the witnesses of memorandum have failed to support and prove recording of memorandum of the appellant.

5. On the other hand learned counsel for the State submits that the Court below has minutely scrutinized the evidence of the prosecution witnesses, particularly those witnesses who were present at the time of exhumation of the dead body from the house of the appellant and the suggestion given to witnesses are only an attempt to confuse them. He would submit that as per spot map (Ex.P-11), the place wherefrom dead body is said to have been exhumed, is adjacent to the house of the appellant, therefore, the prosecution story and prosecution evidence that dead body was recovered from the house of the appellant has been rightly believed by learned Court below. On the aspect of memorandum, learned counsel for the State submits that both the witnesses have clearly stated regarding recording of memorandum of the appellant by the Investigating Officer. In any case, it is contended, as the dead body was recovered from the house of the appellant, it was the appellant who had to explain as to how dead boy was found in his house.
6. We have heard learned counsel for the parties and perused the records of the Court below.
7. The entire case of the prosecution rests on the incriminating evidence of recovery of dead body of deceased Ghassu from the house of the appellant. In this connection, prosecution has examined Dhaniram (PW1) Sugandh (PW2), Lakhuram (PW3) as the main witnesses to prove recovery of dead body from the house of appellant.

8. Dhaniram (PW1) in his examination-in-chief, has stated that when he went to the house of appellant along with villagers, appellant and his mother was present. Keys were obtained and room was opened. It was dilapidated and the floor was excavated and debris was lying there. Upon inquiry from appellant, the appellant disclosed that after having killed his brother, he had buried the dead body in that room. However, in para-10 of his evidence in cross-examination, he admits suggestion that there is dilapidated building outside the village and the dead body of his brother was recovered from that building. He further admitted that the said building is not used for residence by anyone.
9. The other witness Sugandh (PW2) has also stated in his examination-in-chief regarding recovery of dead body from the house of the appellant, but in his cross-examination, he admits that dead body was recovered from a dilapidated building outside the village and it was open and unlocked.
10. The third witness Lakhuram (PW3) who is the Sarpanch has been declared hostile and upon his cross-examination by the prosecution with the permission of the Court, he has admitted suggestion regarding recovery of the dead body. However, in his cross-examination, he admits that next day after the incident, he was informed by Dhaniram, brother of the deceased, that his brother has been murdered by Latif (appellant). This witness then says that he had also disclosed that the dead body has been recovered.
11. If we look into the evidence of aforesaid three witnesses, the prosecution story that the dead body was recovered from the house of appellant becomes highly doubtful because each of the witness in their cross-examination has not stood firm on what he stated in examination-in-chief with regard to place where from the dead body was recovered.
12. Though learned counsel for the State sought to emphasize upon the spot map (Ex.P-11), the evidence of the prosecution witnesses, as stated in their cross-examination, is that dead body was recovered from an open and dilapidated place which is outside the village. No evidence has been led by the prosecution to prove that the said dilapidated building, lying unoccupied by anyone and unlocked, belonged to and owned by the appellant or that it was in the possession of the appellant.

- 13.As far as recovery of dead body on the memorandum (Ex.P-6) of the appellant is concerned, we find that the evidence of memorandum witnesses namely Sugandh (PW2) and Lakhuram (PW3) are also doubtful in this regard.
- 14.The prosecution story is not that the appellant, on his memorandum statement, stated regarding the dilapidated building as the place where the dead body was lying. According to prosecution, the appellant in his memorandum statement, stated that he had murdered Ghassu and buried dead body in his own house. Once the place where the dead body was recovered itself becomes doubtful, memorandum does not seem to have an incriminating value with regard to discovery of fact in view of provision contained in Section 27 of the Evidence Act. There is no other incriminating evidence led by the prosecution to connect guilt of the appellant. There is neither any motive nor any evidence of last seen. The shovel said to have been seized from the house of the appellant is not found stained with human blood much less that of group and origin of the deceased. Thus, the entire case of the prosecution becomes highly doubtful, the benefit of which must necessarily go to the accused.
- 15.In the result, the appeal is allowed. Impugned judgment of conviction and order of sentence is set aside. The appellant be set at liberty forthwith.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge