

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 656 of 2014**

- Domendra Singh Rajput, S/o Bahuran Singh, aged about 29 years, Occupation- Labour, R/o Village Semra-B, Police Station Kurud, Civil and Revenue District- Dhamtari (C.G.).

---- Appellant**Versus**

- The State of Chhattisgarh, Through The Police Station, Kurud, Civil and Revenue Dhamtari (C.G.).

---- Respondent

For Appellant	:	Shri Mahendra Kumar Dubey, Advocate.
For Respondent/State	:	Shri Avinash Chaubey, Panel Lawyer.

Hon'ble Justice Shri Prashant Kumar Mishra**Hon'ble Justice Shri Gautam Chourdiya****Judgment On Board by Justice Shri Prashant Kumar Mishra****18/10/2019**

1. This appeal is filed under section 374(2) of Code of Criminal Procedure, 1973 against the judgment of conviction and order of sentence dated 11.07.2014 passed by Sessions Judge, Dhamtari, District Dhamtari (C.G.) in Session Trial No. 01/2014.
2. By the judgment impugned appellant Domendra Singh Rajput stands convicted and sentenced as under:-

Conviction	Sentence
U/s. 302 of Indian Penal Code	Life imprisonment & fine of Rs. 100/- in default of fine additional R.I. for 3 months.
Under Section 201 of Indian Penal Code	Rigorous imprisonment for seven years & fine of Rs. 100/- in default of fine additional R.I. for 3 months.

3. According to the prosecution case, the appellant and the deceased were friends. In the evening of 13.10.2013, both of them went to

Dhamtari in the motor-cycle belonging to the deceased. After consuming liquor at Dhamtari, they returned to Village- Semra-B and again consumed liquor. At about 11.00 pm dispute arose between the two on which the appellant inflicted injuries on the person of the deceased by means of club and *fawda*. Appellant thereafter hid the dead-body in the kitchen garden (*Badi*) in order to conceal the evidence of crime.

4. The merg intimation vide Ex. P/1 was lodged by Mahendra Kumar Nagrachi, (PW-1). He also lodged the FIR vide Ex. P/2 at around 11.05 a.m. on 14.10.2013 to the effect that he was informed by Lomesh Singh Rajput (PW-2) about the incident on which the informant and Lomesh Singh Rajput (PW-2) went to the house of the appellant where he narrated the entire incident to these two persons. Informant and Lomesh Singh Rajput (PW-2) went to the place where the dead body was hidden and on removing the leaves and grass, the dead body was seen. Memorandum statement of the appellant was recorded vide Ex. P/5 leading to recovery of club, iron *Fawda* and Motorcycle of the deceased from the house of the appellant. Full shirt of the deceased was recovered vide Ex. P/7 whereas full Shirt of appellant was recovered vide Ex. P/9. The seized articles were sent for FSL examination and the report of FSL is though available in the paper book but it is not exhibited. According to the report, no blood stain was found on the club and *Fawda* recovered from the appellant.

5. Before the trial Court, the prosecution examined as many as 7 witnesses namely- Mahendra Kumar Nagrachi (PW-1), Lomesh Singh Rajput (PW-2), Dr. Vijay Fulmali (PW-3), Keshav Ram Sahu, (PW-4), Jay Prakash Kannoje (PW-5), Samaruram (PW-6) and Santosh Singh

(PW-7) to bring home the charges, however, all material witnesses including Mahendra Kumar Nagrachi (PW-1) and Lomesh Singh Rajput (PW-2) have turned hostile without supporting the prosecution at any stage of their examination. Mahendra Kumar Nagrachi (PW-1) and Keshav Ram Sahu, (PW-4) are the witnesses to the memorandum vide Ex. P/5 and the consequent seizure. They have also turned hostile. Since they are admitting their signature over the memorandum statement and seizure memos, the Trial Court has believed their statements to hold that the recording of memorandum and seizure of articles are proved. Taking the Trial court's finding on this aspect as it is, it is required to be considered that even if the memorandum statement is proved, the FSL report for proving the presence of blood stain over club and *Fawada* being negative, the seizure of these articles from the possession of the appellant would not improve the case of prosecution for basing or sustaining conviction.

6. It is well settled law that merely on the basis of memorandum statements and seizure of articles conviction for offence under Section 302 of IPC is not permissible unless the said disclosure statement and recovery are duly supported by cogent & clinching evidence.

7. In the FIR Mahendra Kumar Nagrachi (PW-1) has informed that appellant has made extra judicial confession admitting commission of murder and hiding of the dead-body in his kitchen garden, however, no such statement has been made by this witness in Court. Although, the appellant and the deceased had both left village- Semra-B for Dhamtari in the evening, there is no evidence of any of the villagers seeing them together in one motor-cycle going to Dhamtari or even when they reached back to Semra-B. Thus, there is no evidence of

last seen together also.

8. In our considered view, the trial Court has wrongly convicted the appellant without there being any cogent and reliable evidence to hold him guilty for commission of murder of deceased- Pradeep Shahu. Consequently, we allow the appeal and set aside the impugned judgment of conviction and order of sentence.

9. In the result, the appeal is allowed and the impugned judgment is hereby set aside. The appellant is acquitted of the charges under Sections 302 and 201 of IPC. He is reported to be in jail, therefore, he is directed to be released forthwith, if not required to be detained in connection with any other offence, on his furnishing bail bonds for a sum of Rs. 25,000/- with two equivalent sureties to the satisfaction of the trial Court for his appearance before the higher Court as and when required. The bail bonds so furnished shall remain in force for a period of six months from today in view of provisions of Section 437A of Cr.P.C.

Sd/-

Sd/-

(Prashant Kumar Mishra)
Judge

(Gautam Chourdiya)
Judge