

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 4 of 2014

1. Hemlal Khadia S/o Jeetram Khadia Aged About 22 Years R/o Village Donde, Chowki-Baya, PS Kasdol, Distt. Baloda Bazar C.G. , Chhattisgarh
2. Nirmal Khadia S/o Jaitram Khadia Aged About 25 Years R/o Village Donde, Chowki-Baya, PS Kasdol, Distt. Baloda Bazar C.G. , District : Balodabazar-Bhathapara, Chhattisgarh

---- Appellants

Versus

State Of Chhattisgarh Through PS Kasdol, Chowki-Baya, Distt. - Baloda Bazar C.G. , Chhattisgarh

---- Respondent

For Appellants : Shri Ashok Swarnkar, Advocate
For State : Shri Neeraj Mehta, Panel Lawyer

D.B. : Hon'ble Mr. Justice Manindra Mohan Shrivastava & Hon'ble Mrs. Justice Rajani Dubey

Judgment On Board

08/04/2019

Per Manindra Mohan Shrivastava, J.

1. This appeal is directed against the judgment of conviction and order of sentence dated 20th November 2013 passed by learned First Additional Sessions Judge, Balodabazar (CG) in ST No. 53 of 2013 whereby and whereunder the appellants/accused have been held guilty of commission of offence alleged against them and sentenced as described below:-

Conviction	Sentence
under Section 302/34 IPC	Life imprisonment and fine of Rs.1000/-and in default of payment of fine, additional RI for 6 months

Section 201 IPC	RI for 3 years and fine of Rs.500/-, in default of payment of fine, additional RI for 3 months.
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2. Case of the prosecution is that one Sawan (the deceased) had gone missing and his mother Sonkunwar called a village meeting. According to prosecution, Sawan was last seen with the present appellants about 30 days before. Appellant – Hemlal was called in the meeting which had taken place on 23rd and 24th July 2012. According to prosecution, appellant-Hemlal confessed in the village meeting in presence of number of villagers including Panchas and Kotwar that when he came to know that Sawan was maintaining an illicit relation with his sister Radha, he and Nirmal had taken him towards forest, assaulted him and murdered. Upon such disclosure, a morgue as well as FIR ("0" numbered) was recorded in the police station on 24th July 2012 at the instance of Ramsingh (PW6), cousin of the deceased. According to prosecution, on the next day i.e. 25th July 2012, memorandum/disclosure statements of two appellants in Ex.P7 & Ex.P8 were recorded in presence of witnesses and it is said that on the basis of those memoranda, skull of a male human being and wearing apparels, footwear, personnel belonging were seized from the spot in forest vide Ex.P-11. Skeletal remains which were seized, were sent for postmortem and Dr. Rajkumar Singh (PW19) examined the skeletal remains and according to him, the skeletal remains were of male human being. Fracture was found in the skull at different places. Usual investigation carried out by the prosecution culminated in filing of charge sheet against two appellants on the allegation of having committed offence under Section 302 read with Section 34 and Section 201 IPC. The prosecution came out with case of extra-judicial confession, last seen and recovery of the skeletal remains and belongings of the deceased Sawan from the spot on the basis of memorandum of appellant- Hemlal. Learned trial Court relied upon the aforesaid set of circumstantial evidence to hold that the prosecution succeeded in proving that it is the appellants and appellants alone who killed the deceased out of a motive that Hemlal suspected that deceased Sawan was maintaining illicit relation with his sister Radha and, therefore,

he eliminated Sawan.

3. Assailing correctness and validity of the impugned judgment of conviction and order of sentence, learned counsel for the appellants would argue that there is no direct evidence to involve two appellants in the alleged commission of offence. According to him, the evidence of last seen given by the prosecution witnesses namely Mannulal (PW7), Ramu (PW8) and Tularam (PW9) is highly doubtful because these witnesses do not say that disappearance of Sawan with the appellants was immediately disclosed by them either to the family members of the deceased or to the police or anybody else in the village and even at the time of village meeting, said to be convened on 23rd and 24th July 2012, these witnesses had not disclosed to all in the meeting that they had seen the deceased going along with the present appellants.

Next submission of learned counsel for the appellants is that the prosecution case of appellant- Hemlal giving extra-judicial confession before prosecution witnesses particularly Karan Singh Chouhan (PW2), Mannulal (PW7), Ramu (PW8) and Tularam (PW9) is also concocted because there is contradiction in the statements of these witnesses with regard to the dates of meeting and particularly the meeting in which Hemlal is said to have confessed commission of offence by him. It is argued that the very fact that large number of villagers interrogated Hemlal in more than one meeting proves that the confession of Hemlal was not voluntary but an outcome of pressure exerted by the villagers only on suspicion because it was the story spread in the village that Sawan had illicit relation with Radha, sister of Hemlal. It is only on this suspicion, it is argued, the entire case of the prosecution has been built.

As far as appellant- Nirmal is concerned, learned counsel for the appellant would argue that confessional statement of Hemlal cannot be treated as an evidence of extra-judicial confession by Nirmal either before the villagers or before anybody else. He further argues that as the evidence of last seen is doubtful, only on the basis of confessional statement of co-accused Hemlal, Nirmal could not be held guilty. Next submission of learned counsel for the appellants is that the prosecution has come out with concocted case of

recovery of skeletal remains and belongings of the deceased on the basis of memorandum Ex.P-7 & P-8 of Hemlal and Nirmal respectively because even according to prosecution, Ramsingh (PW6) had already lodged FIR on 24.7.2012 at about 15:00 hrs., in which, it was clearly stated that in village meeting, Hemlal had confessed whereafter, villagers had already gone to the spot and seen skeletal remains and belongings of the deceased. This disclosure of skeletal remains and belongings of the deceased having already been seen by large number of villagers, as stated in the FIR, the memorandum of the appellant and alleged recovery of skeletal remains and belongings loses its evidentiary value.

Last submission of learned counsel for the appellants is that the entire case of the prosecution is built on the premise of death of Sawan but there is no conclusive and clinching evidence led by the prosecution to prove that skeletal remains were that of Sawan. It is argued that the belongings like footwear, jeans pant, T-shirt and ring all are common articles which are used by everybody and there are no peculiar evidence to connect the articles found at the spot with the identity of the deceased.

4. On the other hand, learned State counsel supporting the judgment of conviction and order of sentence would argue that even though there is no direct evidence, the prosecution case is based on clinching circumstantial evidence, more than one, including last seen, extra-judicial confession, recovery and motive which has been stated by large number of prosecution witnesses including Panchas and Kotwar of the village. They all are independent witness and nothing has been elicited in their cross-examination that all of them had any motive to falsely implicate appellant in the alleged commission of offence. He would argue that the conviction of appellant-Nirmal is based on unimpeachable last seen evidence and confessional statement of co-accused- Hemlal which lends assurance to the evidence of last seen and, therefore, relevant incriminating circumstances as provided in Section 30 of the Evidence Act.
5. We have given our anxious consideration to the detailed submissions made by learned counsel for the respective parties and perused the records of the Court below.

6. Present is a case based only on circumstantial evidence as nobody has seen the appellant killing deceased Sawan. Therefore, we are required to examine the evidence in the background of circumstantial evidence to find out whether prosecution has been able to prove its case beyond doubt in the manner that all incriminating circumstances form a complete chain to draw an inference that in all probability, the accused and the accused alone must have committed the offence, the rigours and test being those as laid down by the Supreme Court in one of its celebrated decision in the case of **Sharad Birdhichand Sarda Vs. State of Maharashtra** (AIR 1984 SC 1622) where five golden rules were laid down where circumstantial evidence could be relied upon to prove the guilt of the accused, as under:-

“152. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established :

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned ‘must or should’ and not ‘may be’ established. There is not only a grammatical but a legal distinction between ‘may be proved’ and ‘must be or should be proved’ as was held by this Court in *Shivaji Sahebrao Bobade Vs. State of Maharashtra*, (1973) 2 SCC 793 : (AIR 1973 SC 2622) where the following observations were made:

‘certainly, it is a primary principle that the accused must be and not merely may be guilty before a Court can convict and the mental distance between ‘may be’ and must be’ is long and divides vague conjectures from sure conclusions.’

(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."

7. Keeping in forefront the aforesaid settled and judicially evolved principles with regard to proof of guilt based on the circumstantial evidence, we shall examine the evidence on record.
8. FIR ("0" numbered) was lodged on 24th June 2012 by Ramsingh (PW6), cousin of the deceased. He has proved in his evidence that he has lodged the report in the police station and his signature has also been proved. A morgue information is stated to have been lodged by Ramsingh (PW6) at about 15:20 hrs. on 24.7.2012 which has also been proved by Ramsingh (PW6). In the FIR ("0" numbered) Ex.P-5, it has been stated that about 30-35 days before, his aunt, Kunwar, disclosed that Sawan had left the house at 3:00 pm and thereafter he did not return. Initially they did not give much concern, thinking that he would have gone in connection with earning his livelihood, but later on, it was heard that Sawan had a love affair with Radha, sister of Hemlal and from the date he had gone along with Hemlal and Nirmal in a motorcycle since then he is not traceable. On this suspicion, a village meeting was called in the presence of number of villagers whereafter Sawan admitted his affair with Radha but he did not disclose whereabouts of Sawan, but on the next day, when again panchayat meeting was called, then Hemlal, in the presence of Panchas admitted and confessed that he along with Nirmal had taken Sawan to a forest and he was assaulted with club and stone and murdered, dead body was thrown

in a culvert. This FIR further records that, thereafter, the FIR informant and others went to jungle, searched for the dead body and found footwear, blue jeans pant, red-coloured T-shirt and skeletal remains of skull and bones and, thereafter, he came to the police station to lodge report. From the evidence of this witness, motive of the incident disclosed is that Radha, sister of Hemlal, had an affair with appellant/accused Sawan and because of this, Hemlal had taken Sawan and Nirmal was also along with him and he and Nirmal murdered Sawan.

9. The motive behind alleged commission of offence, apart from evidence of FIR informant Ramsingh (PW6), is also stated by Saheb Lal (PW1) who states that in the meeting, Hemlal had disclosed that Sawan had entered into illicit relation with his sister. Similar is the statement of Karan Singh Chouhan (PW2), Krishna Kumar (PW3), Akshay Kumar (PW4), Mannulal (PW7), Ramu (PW8) and Tularam (PW9). There is, thus, abundance of evidence led by the prosecution with regard to motive on the part of Hemlal to commit murder of Sawan.
10. The other set of incriminating evidence led by the prosecution against the appellants is of deceased last seen with the appellants. To begin with, Karan Singh Chouhan (PW2) Kotwar of Village- Dondu has deposed that on 22nd June 2012 while he was sitting in his shop along with Akshay, Mannulal, Ramu and Tularam, appellant -Hemlal had come along with Nirmal and Sawan in a motorcycle. They stopped in front of his *kirana* shop, purchased betel-nut pouches and when he asked, they stated that they are going to Barnawapara. On this part of evidence of last seen, the evidence of this witness has remained uncontroverted. Similar is the evidence of Akshay Kumar (PW4) who has also stated that when he was purchasing in the shop of Karan Chouhan, at that time, Ramu, Mannu Chouhan, Tularam Chouhan, shopkeeper Karan Kotwar are also present. The appellants had come along with Sawan in a motorcycle and then they left the place. On this evidence, no serious challenge has been thrown in cross-examination.

Similar is the evidence of Mannulal (PW7), Ramu (PW8) and Tularam (PW9). All of them have spoken on similar line that they all had seen the deceased Sawan going along with the appellants in a motorcycle and this

evidence has remained uncontroverted.

We thus find that there is overwhelming evidence on record to prove that on and around 22nd June 2012, deceased Sawan had come to the shop along with appellants in a motorcycle and stopped in front of shop of Karan Chouhan (PW2) where other witnesses, referred to herein-above, were also present and from there, they all went together.

11. There is nothing in the evidence of any of the witnesses nor any different case has been set up much less established by any standards that after 22nd June 2012, deceased Sawan was seen by others or he was found present in the house or in the village or elsewhere.
12. The next set of evidence is with regard to aspect of extra-judicial confession of appellant- Hemlal. The prosecution in order to prove that appellant- Hemlal confessed in the village meeting that he along with appellant- Nirmal had killed Sawan (deceased), has examined Mannulal (PW7), Ramu (PW8) and Tularam (PW9).

Mannulal (PW7), who is also a witness of last seen, has deposed in para-3 of his evidence that in the village meeting held on 25.7.2012, Hemlal, in the presence of villagers, had confessed that as Sawan was maintaining illicit relation with Radha (sister of Hemlal), he along with Nirmal, killed Sawan and thrown the dead body in forest near Saihabhatha. He further states that some of the villagers had gone to the police station to lodge report. In the cross-examination, suggestion has been given which as been denied that Hemlal was pressurized and assaulted to admit guilt of killing Sawan. Moreover, a suggestion which has been admitted is that police people had not come in the first meeting and Hemlal and Radha both were inquired. The evidence of this witness that in his presence, Hemlal confessed commission of murder in village meeting, has remained un-controverted and unchallenged in the cross-examination. There is not even a suggestion that no such confession was made but the suggestion is that confession was extracted by exerting pressure and beating. That suggestion has been denied.

13. Ramu (PW8) has also given similar evidence of Hemlal having given extra-

judicial confession of his guilt that he and Nirmal had killed Sawan and thrown the dead body in the culvert near Saihabhata because Hemal came to know regarding illicit relation of his sister Radha with Sawan. In the cross-examination, it has been elicited that enquiry was made in the meeting from Hemlal by the villagers and Kotwar. He has stated that no threat was administered to Hemlal. Of his own, the witness clarifies that enquiry was not made in cruel manner. No suggestion has been given to this witness that any threat was administered to Hemlal or he was given beating.

14. Tularam (PW9) has deposed that in the village meeting, Hemlal admitted that he along with Nirmal killed Sawan because Sawan raped his sister. In his cross-examination, this witness has stated that in his presence, only one meeting was held and police personnel were not present. He states that Hemlal had disclosed regarding the incident in the very first meeting. Suggestion that Hemlal was given beating has been denied or that confession was extracted by threat.

15. The aforesaid three witnesses are independent witnesses, not related to the parties. No suggestion has been given to these witnesses as to why they would falsely implicate the appellant in the alleged commission of offence. It is also pertinent to notice hear that while suggestion of threat and beating has been given to Mannulal (PW7) and Tularam (PW9), such suggestion has not been given to Ramu (PW8). The evidence of Mannulal (PW8) regarding extra-judicial confession has remained un-controverted. The witnesses have stated that in the first meeting of the village, Hemlal had disclosed the incident that he and Nirmal killed Sawan and at that time, no police personnel was present. All of them have also clearly stated that in the meeting, Hemlal had disclosed that as the deceased had an illicit relation with the sister, that was the motive for him to kill Sawan.

16. The challenge to the aforesaid evidence on the ground that there is contradiction in the statement with regard to time of meeting, is not borne out from the evidence of three witnesses. All the witnesses have stated that meeting was held after one month. Mannulal (PW7) gave specific date as 25.7.2012. The other two witnesses have not given any specific date. The evidence of witnesses is coherent on the aspect that meeting was called

after one month. The only contradiction which has been elicited is that one of the three witness states that Hemlal disclosed that deceased Sawan had raped her sister whereas according to other two witnesses of extra-judicial confession, the motive was that Hemlal came to know about illicit relation. We do not consider this to be a such contradiction which would lead to rejection of the evidence of these witnesses. Broadly speaking, the motive was relationship of Radha with deceased Sawan.

17. Serious doubt has been raised on the testimony of Mannulal (PW7) on the ground that according to him, meeting was held on 25.7.2012 in which Hemlal gave extra-judicial confession whereas according to the case of prosecution, morgue intimation and FIR both were lodged on 24.7.2012 i.e. a day before. On this basis, it is contended that the entire evidence of extra-judicial confession given by three witnesses namely Mannulal (PW7), Ramu (PW8) and Tularam (PW9), is false and concocted and only after the police arrived in the village on 25.7.2012 and the appellant Hemlal was apprehended, he was beaten up by the villagers in the presence of police personnel to somehow extract involuntary confession of commission of offence.

18. We have given our anxious consideration to the submission made by the appellant. No doubt, the morgue intimation and FIR both were lodged on 24.7.2012 as has been stated by Ramsingh (PW6) cousin of the deceased. His evidence is that a meeting was called after one moth of Sawan having gone missing, at the instance of mother of Sawan, Sonkunwar and there in the meeting, Hemlal had given extra-judicial confession. He states that, thereafter, morgue intimation and FIR both were lodged by him. According to his evidence, after the meeting was held, report was lodged in the police station. In para-6 of his cross-examination, it has been clearly elicited that he had gone to police station only after meeting and not before that. If the evidence of Mannulal (PW7), Ramu (PW8) and Tularam (PW9) is appreciated in the light of evidence of Ramsingh (PW6), it is found that these witnesses of extra-judicial confession talk of confession given by Hemlal in first village meeting and they have stated that police personnel were not present. Therefore, the evidence of this witness is corroborated from the evidence of Ramu (PW8) with regard to time when meeting was held and after that

report was lodged in the police station only after meeting. It is also worth noticing that Ramsingh (PW6), Mannulal (PW7), Ramu (PW8) and Tularam (PW9) all talk of meeting after one month of the incident after Sawan had gone missing.

19. Sitaram (PW15) who is uncle of the two appellants has also corroborated the evidence of extra-judicial confession by stating in para-5 of his examination-in-chief that in village Panchayat, Hemlal had disclosed before all that he and Nirmal had taken Sawan on motorcycle towards jungle and there he was killed. In the cross-examination, he has emphatically re-affirm that in the meeting he was also present along with all villagers. The suggestion of Hemlal having been administered threat to extract confession has been denied. This witness is the uncle of the two appellants and he has fully supported the prosecution case with regard to extra-judicial confession.

Yet another independent witness Ram Singh (PW6) has also stated in his evidence that in the village meeting, Hemlal disclosed that as Sawan was in affair with his sister, therefore, he along with Nirmal killed Sawan.

Dharam (PW24) another villagers also supports prosecution case by deposing that in the village meeting, in his presence, appellant Hemlal disclosed that he along with Nirmal killed Sawan as Sawan had teased his sister.

20. As far as recovery of the skeletal remains, cloths and other articles said to be that of deceased Sawan are concerned, those are recovered from jungle on the basis of memorandum Ex.P-7 and Ex.P-8 allegedly given by appellant – Hemlal and Nirmal respectively. From the evidence of Ram Singh (PW6) and the document of morgue intimation, FIR it is found that on that date itself, Hemlal had disclosed regarding commission of offence in village meeting, whereafter, the villagers along with FIR informant had gone to spot and seen the skeletal remains and other articles. The memorandum was taken on the next date. That means, even before taking memorandum, the skeletal remains and other articles were seen by the villagers in jungle. Therefore, the prosecution case of recovery of skeletal remains and other articles from jungle on the basis of memorandum given by appellants, loses

its value as an incriminating piece of evidence against the appellants, to say that skeletal remains and other articles were recovered at the instance of the appellant. Nevertheless, the evidence of Saheb Lal (PW1), Karan Singh Chouhan (PW2), Krishina Kumar (PW3), Ram Singh (PW6), Ramu (PW8) and Tularam (PW9) all have stated that in the village meeting Hemlal confessed that he and Nirmal killed the Sawan and thrown the dead body in jungle, near Saihabhatha, all of them and other villagers had gone to spot in the jungle where they had seen the skeletal and other articles. It appears that thereafter, Ramsingh (PW6) one of the villagers who was present throughout in the meeting and also at the place of incident where the villagers and number of witnesses had gone, came back and reported the matter in the police station and at his instance, morgue intimation and FIR were recorded in the police station on 24.7.2012.

21. Dr. Rajkumar Singh (PW19) who examined the skeletal remains seized from the spot by the police on 25.7.2012 along with other articles like T-shirt, pant and underwear as also club and stone has deposed that after examination of the skeletal remains, details of which have been stated by him in para-2 of his evidence, he reached to the conclusion that the skeletal remains were that of male aged 20-25 years and he found fracture in the skull. What was recovered was skeletal remains and, therefore, it was not possible to identify as to who was the deceased but the Investigating Officer Rajesh Kumar Sahu (PW22) has stated in his evidence that on 25.7.2012, from the spot, where the skeletal remains were seized, he also seized footwear, T-shirt, one underwear, one jeans pant and one bracelet of brass. Sonkunwar (PW23) mother of the deceased has deposed that she had identified the cloths and the bracelet of her son. It appears that this witness did not fully support the prosecution story with regard to identification of other articles. With the Court's permission she was examined by the prosecution in which she has admitted that she had also identified footwear of her son. In her cross-examination, she has admitted that these articles were not seen by her at the place of incident but she has affirmed that these articles were shown to her which she had identified. Khemraj (PW5) has stated that the clothes of the deceased were shown to Sonkunwar and Bundram, mother and father of the deceased and they had identified, in respect of which an identification panchnama in Ex.P-3 was

prepared in his presence and he has proved his signature. He further deposed that the bracelet and footwear seized from place of incident were also identified by Bundram and Sonkunwar that it belonged to their deceased son Sawan. The aforesaid evidence regarding the details of skeleton and other articles found around it, duly identified by mother of the deceased, leave no manner of doubt that the skeletal remains were that of deceased Sawan.

22. In the present case, while there is evidence of Hemlal having given extra judicial confession and last seen both, as against Nirmal, the evidence is of last seen, which is quite empathetic and duly reliable. True it is that there is no extra-judicial confession evidence as against appellant- Nirmal, in view of provision contained in Section 30 of the Evidence Act, confession made by Hemlal affecting himself and Nirmal is reliable and may be taken into consideration against Nirmal also. In the case of **Govt. of NCT of Delhi Vs. Jaspal Singh** (2003) 10 SCC 586, it has been held that even though the confession of co-accused cannot be treated as substantive evidence to convict, other than maker of it, on the evidentiary value of it alone, but if on the basis of the consideration of other evidence on record, the Court is inclined to accept the other evidence, but not prepared to act on such evidence alone, the confession of a co-accused can be pressed into service to fortify its belief to act on it also. Applying the aforesaid ratio in the facts and circumstances of the present case, the corroborative evidence with regard to extra-judicial confession made by Hemlal before large number of villagers and the evidence of villagers including appellant's own uncle Khemraj (PW5) that in that meeting Hemlal confessed that he and Nirmal had killed Sawan, lends assurance to the evidence of last seen that Hemlal and Nirmal had taken Sawan on motorcycle about thirty days before the date on which skeletal remains were found. There is nothing to show that from the date Sawan was seen going along with Nirmal and Hemlal, till the date skeletal remains were found, he was seen alive at any other place and/or in company of others.

23. Learned counsel for the appellant has placed reliance on Supreme Court's decision in the case of **Sahadevan & Anr. Vs. State of Tamil Nadu** (2012) 6 SCC 403, in support of his submission that extra-judicial confession in the

present case is liable to be disbelieved. In the aforesaid decision, the principles in respect of evidentiary value and reliability of extra-judicial confession were discussed and summarized as below :-

“16. Upon a proper analysis of the above-referred judgments of this Court, it will be appropriate to state the principles which would make an extra-judicial confession an admissible piece of evidence capable of forming the basis of conviction of an accused. These precepts would guide the judicial mind while dealing with the veracity of cases where the prosecution heavily relies upon an extra-judicial confession alleged to have been made by the accused.

(i) The extra-judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution.

(ii) It should be made voluntarily and should be truthful.

(iii) It should inspire confidence.

(iv) An extra-judicial confession attains greater credibility and evidentiary value, if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.

(v) For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.

(vi) Such statement essentially has to be proved like any other fact and in accordance with law. “

24. The evidence of extra-judicial confession, as elaborately discussed by us in paragraphs herein-above, fully meets the legal requirement as adumbrated in the aforesaid decision. Present is a case where not one but large number of independent witnesses, being respectable inhabitants of the village, present in the village meeting, have stated regarding extra-judicial confession given by appellant- Hemlal before them. Nothing could be elicited from their evidence,

as discussed above, that it was not voluntary or that it was an outcome of any threat or pressure exerted by appellant -Hemlal or that it was made in the presence of any police officer. The case of the prosecution is proved not only from the evidence of extra-judicial confession but other circumstantial evidence also which includes motive as well as last seen which we have discussed herein-above.

25. The other decision in the case of **Krishnan Alias Ramasamy and Ors. Vs. State of Tamil Nadu** (2014) 12 SCC 279 is distinguishable because there, the Court doubted that the deceased was last seen together with the accused and in the intervene period of seven days there was nobody in contact with the accused. Contradiction about place where accused were last seen with the deceased was also noted. In the present case, the evidence of last seen is very clear and emphatic as stated by large number of witnesses which are independent and there is nothing to suggest why they would falsely implicate the appellants in the alleged commission of offence.

26. The appellant has also relied upon the decision in the case of **Somaru & Ors. Vs. State of Chhattisgarh** (ILR 2018 CG 216). That was a case where the Court found that except last seen, there was no other evidence. Therefore, the accused was acquitted giving him benefit of doubt. On facts, in the present case, we have found that the prosecution has succeeded in proving more than one circumstantial evidence of incriminating nature.

27. In the result, we do not find any ground to interfere with the judgment of conviction. The prosecution, by proving incriminating circumstances, has succeeded to establish chain of circumstances so complete as to draw inference that in all probability, it is the appellants and the appellants alone who must have killed the deceased- Sawan.

28. The appeal fails and is hereby dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Rajani Dubey)
Judge