

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1010 of 2013**

1. Devkumar @ Gudda, S/o . Gourishankar Aged About 24 Years
R/o. Senderi Bahar Kachhar, Lakhpara, P.S. Pathalgaon, Civil
And Rev. Distt. Jashpur C.G
2. Gourishankar S/o . Prahlad Dansena Aged About 54 Years
R/o. Senderi Bahar Kachhar, Lakhpara, P.S. Pathalgaon, Civil
And Rev. Distt. Jashpur C.G.

---- Appellants**Versus**

- State Of Chhattisgarh, Through District Magistrate, Jashpur
C.G.

---- Respondent

For Appellants	: Shri Manoj Mishra, Advocate
For Respondent/State	: Shri Suryakant Mishra, PL

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

Judgment on Board by Manindra Mohan Shrivastava,J.**05/02/2019**

This appeal is directed against the impugned judgment of conviction and order or sentence dated 26.09.2013 passed by the Additional Sessions Judge, Kunkuri, district Jashpur in ST No. 04/2012 by which the appellants have been held guilty for commission of the offence under Sections 302 and 201/34 IPC and sentenced as described below :

<u>Offence</u>	<u>Punishment</u>
Under Section 302 IPC	Imprisonment for life with fine of

	Rs. 20,000/- in default of payment of fine to further undergo RI for one year
Under Section 201/34 IPC	To undergo RI for 3 years and fine of Rs. 5,000/-, in default of payment of fine to further undergo RI for one year

2. According to the prosecution case, as unfolded from the records of the case and the impugned judgment, appellants who are the sons and grandsons of Prahlad Dansena, took him away in a motorcycle and it is alleged that they have committed murder of Prahlad Dansena due to property dispute. Postmortem examination was conducted by Dr. Shakuntala Nikunj (PW-12) and having found injury, gave opinion that the cause of death was throttling leading to asphyxia and death. The appellants being suspects, were taken into custody, their memorandum statements are said to have been taken. According to the prosecution, certain recoveries were also made. The appellants were arrested and upon completion of investigation charge sheet was filed. Appellants were charged and committed to trial for the offence of murder. Though there was no direct evidence, learned trial court, relying upon the circumstantial evidence, convicted and sentenced the appellants.

3. Assailing correctness and validity of the impugned judgment of conviction and order of sentence, counsel for the appellant argued that the last scene evidence of PW-6 Narayan Singh is not reliable because Narayan himself was suspect and he was kept in the police station throughout the day on 2nd November 2011. Later on, appellants made him a witness of last seen. It is next submitted that

as far as the evidence of PW-7 Ramla Bai wife of the deceased, is concerned, the evidence of quarrel and *maar-peth* by appellant Dev Kumar with deceased Prahlad could not be proved to be of immediate past but few months earlier. It is next argued that Ramla has not only stated regarding property dispute amongst all the members of the family, including Dev Kumar and not only Gouri Shankar, one of the sons. It is then submitted that the evidence of extra judicial confession having been given to some of the members of the family in the form of threat, is concocted evidence because it is improbable that after the incident, the appellants after being suspected would come to the house and start threatening other members of the family. Therefore, the entire case of prosecution could not travel beyond the limit of suspicion to bring home guilt and therefore, the same is sufficient to draw inference of guilt.

4. On the other hand, State counsel supporting the judgment of conviction argues that Narayan is an independent witness who has clearly stated that in the night, appellant Dev Kumar had come and took his motorcycle and then when he did not come back, he went ahead and found that the appellants were taking Prahlad in the motorcycle and the next morning, Prahlad's dead body was found. He would next argue that the deceased, who happens to be the father of Gourishankar and grandfather of Dev Kumar had clearly stated that Dev Kumar and Gouri Shankar had assaulted Prahlad and in respect of which report was also lodged and they used to harass them. According to the State counsel, the family members have deposed against the appellants that after the incident they had come in the house and had threatened the family members that if

they disclosed, they would also be assaulted and killed. He would argue that all these allegations against the appellants' conduct have been given by none other than their own grand mother and uncles of Dev Kumar therefore, all these taken together, form a complete chain of circumstances and conviction of the appellant has been rightly ordered.

5. We have considered the submission of the counsel for the parties and perused the records.

6. Case of the prosecution rests only on circumstantial evidence which are motive (previous enmity), last scene and extra judicial confession.

7. (PW-6) Narayan, has been cited as prosecution witness of last seen who had deposed that on 1st of November 2011, appellant Dev Kumar came to him, demanded his motorcycle, he picked up his motorcycle saying that he would return in 5-10 minutes and when he did not return this witness went outside to search Dev Kumar and near their new house he saw that Dev Kumar and Gourishankar were taking Prahlad Dansena away in the motorcycle which was being driven by Devkumar. He has stated that Gourishankar was sitting behind and in between Dev Kumar and Gouri Shankar, Prahlad Dansena was sitting. He has further deposed that at about 9.30, the appellants came back in the motorcycle and at that time, Prahlad was not with them.

8. Credibility of this witness is said to be impeached on the ground that this person was called by the police on 2nd of November

2011 and the appellants were also there in the police station and they all were made to sit in the police station throughout the day but on that day, no FIR was registered which renders statement of the witness doubtful. We find that in the present case, the appellants were suspect and morgue enquiry was going on. Postmortem report was received only on 5th November 2011 which led to filing of FIR on 6th November 2011. This is what has been stated and therefore only on this ground, we do not consider it strong circumstance to disbelieve the testimony of Narayan as last seen witness.

9. There were disputes and the appellants were having inimical relations with Prahlad as seen from the evidence of none other than mother of Gourishankar and grand mother of Dev Kumar, Smt. Ramla Bai (PW-7). She has deposed in her evidence that Dev Kumar had come to the house and was searching for Prahlad and when he could not find him he started beating her due to which she had become unconscious and later on, when her husband Prahlad came there, they got a report lodged. She has also deposed regarding quarrel of Dev Kumar with deceased. She also deposed that after the report was given in the police station, her husband was assaulted by Dev Kumar and Gouri Shankar. In the cross-examination, it has been elicited that all the four sons were not allowing her to cultivate and there existed dispute amongst all the brothers with regard to their shares in the property, since last five years.

10. Learned counsel for the appellant would submit that this evidence of Ramla would show that it is not the appellants but the other sons who were having dispute with regard to property and

therefore, it cannot be said that it is only the appellant who had inimical relation with the deceased.

Even if the evidence of existence of dispute amongst all the brothers including Gourishankar is accepted, the allegation of assault on Prahlad Dansena by Gourishankar and Dev Kumar is specific as stated by Ramla (PW-7) and there is no reason why she would speak false against her own son and grand son.

PW-5 Shridhar, brother of the appellant Gouri Shankar and son of deceased Prahlad, has stated that his father was threatened by Devkumar and others and prior to the date of incident, on number of occasions dispute had taken place between Gourishankar and his father. This witness is the brother of Gourishankar.

11. PW-8 Kanhaiya Lal Dansena, other brother of the appellant Gourishankar has stated in his cross-examination that when Gouri shankar was taken away by the appellants as one of the suspect and Dev Kumar had eloped, later on, Dev Kumar came and declared that he has killed Prahlad and he would kill others. Similar evidence is given by PW-9 Jwala Prasad Dansena also that after the incident, Gourishankar and Dev Kumar had come, armed with club in the house and had given an open threat to the family members that if any of them would disclose that he had killed Prahlad they will kill them also and at that stage Gourishankar was caught by the police. In his cross-examination, he has not stated anything with regard to threat being given by Devkumar but then such threat was given by Dev kumar by openly declaring that he had killed Prahad, is corroborated from the evidence of PW-8 Kanhaiya Lal Dansena who

had also spoken on similar lines.

12. From the aforesaid evidence of the prosecution we find that present is a case where the circumstances proved against the appellant are previous enmity, assault with the deceased, last seen and extra judicial confession in the form of open declaration made in the house that they have killed Prahlad and if anybody else discloses they would also be killed. The challenge to the evidence with regard to open threat given by the police upon declaration that they have killed Prahlad on the ground that no report was made in the police station, in our opinion, does not discredit the testimony of these witnesses. From the evidence on record, it is clear that the appellants were suspected, one of them arrested and other was absconding and in this state of affairs, the evidence of the prosecution cannot be discarded only on this ground.

13\ Having so considered, we are of the view that the trial court's finding that in all probability, it is the appellants who must have killed Prahlad Dansena, does not warrant any interference. Appeal is accordingly dismissed.

Sd/-

(Manindra Mohan Shrivastva)
Judge

Sd/-

(Rajani Dubey)
Judge