

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 330 of 2014**

- Tikamchand Jain S/o Dharamchand Jain, 26 years, R/o Near Kevati Chowk, Bhanupratappur, Post & P.S. Bhanupratappur, Civil & Rev. District North Bastar Kanker (CG)

---- Appellant**Versus**

- State of Chhattisgarh Through - District Magistrate, Kanker, Civil & Revenue District North Bastar Kanker (C.G.)

---- Respondent**And****CRA No. 459 of 2014**

1. Harendra Sonwani, aged about 27 years, S/o Shri Nandlal Sonwani, R/o Kewati Chowk, Bhanupratappur, Post & P.S. Bhanupratappur, Civil & Rev. District North Bastar Kanker (CG)
2. Ramesh Tekam, aged about 24 years, S/o Shri Prem Singh Tekam, R/o Kuhche, Tahsil - Antagarh, Post & P.S. - Antagarh, Civil & Revenue District - North Bastar Kanker (C.G.)
3. Jitendra Kumar Dugga, aged about 23 years, S/o Shri Dengaram Dugga, R/o Harharpani, Post & P.S. Bhanupratappur, Civil & Revenue District - North Bastar Kanker (C.G.)

---- Appellants**Versus**

- State of Chhattisgarh Through - Police Station - Bhanupratappur, District - North Bastar Kanker (C.G.)

---- Respondent**And****CRA No. 498 of 2014**

1. Rakesh Kumar Sinha, aged about 24 years, S/o Shri Harak Ram Sinha, R/o Patelpara Kewati, Post & P.S. - Bhanupratappur, Civil & Revenue District - North Bastar Kanker (C.G.).
2. Rishi Kumar Bhuarya, aged about 31 years, S/o Shri Deendayal, R/o Chowkpara, Post & P.S. - Bhanupratappur, Civil & Revenue District - North Bastar Kanker (C.G.)

---- Appellants

Versus

- State of Chhattisgarh Through - Police Station Bhanupratappur, District North Bastar Kanker (C.G.)

---- Respondent

For Appellants	:	Shri Y.C. Sharma, Advocate.
For Respondent/State:		Smt. Fouzia Mirza, Addl. Advocate General.

D.B. : Hon'ble Shri Justice Manindra Mohan Shrivastava & Hon'ble Smt Justice Rajani Dubey

Judgment On Board

03.01.2019

Per Manindra Mohan Shrivastava, J

These appeals are directed against the impugned judgment of conviction and order of sentence dated 19.03.2014 passed by learned Additional Sessions Judge (F.T.C.), North Bastar Kanker (C.G.), in S.T. No.07/2009 whereby and whereunder the appellants have been held guilty of commission of offences and sentenced as described below :-

Conviction	Sentence
Under Section 147 of IPC	R.I. for six months and fine of Rs.100/-, in default of payment of fine to undergo additional R.I. for one month.
Under Section 148 of IPC	R.I. for one year and fine of Rs.100/-, in default of payment of fine to undergo additional R.I. for two months.
Under Section 302 read with section 149 of IPC	Rigorous imprisonment for life and fine of Rs.100/-, in default of payment of fine to undergo additional R.I. for six months.
Under Section 201 of IPC	R.I. for three years and fine of Rs.100/-, in default of payment of fine to undergo additional R.I. for three months.

02. According to the case of the prosecution, on 01.09.2008, a merg intimation in Ex.P/8 was given in the police station Bhanupratappur by Manish Yogi (PW/5) that his cousin brother, Nitin Yogi was murdered and his dead body has been seen in which he was found having sustained injuries on his forehead. After recording merg intimation as above, the police registered an offence under Section 302 IPC against unknown persons. Having reached the scene of occurrence, inquest over the dead body was prepared in the presence of witnesses and the dead body was sent for postmortem examination which was conducted by Dr. B.S. Thakur (PW/2) who prepared postmortem report in Ex.P/3. As many as 10 injuries were found on the body of the deceased and opinion was given that the cause of death was multiple injuries on vital parts, injuries in the head and brain causing severe hemorrhage and

vasovagal shock (syncope). He also opined that the death of deceased appears to be homicidal in nature, obviously because of multiple injuries found on the body of the deceased. During investigation, the needle of suspicion was pointed towards the present appellants in these three appeals and it is the case of the prosecution that the appellants were taken into custody and their memorandum statements were recorded in the presence of witnesses, in which, it was disclosed by the appellants that they had assaulted the deceased with the help of several weapons and caused his death. Further, according to the case of the prosecution, on the basis of disclosure statement given by the appellants, the weapons alleged to have been used in the commission of offence were recovered from the places stated in the disclosure statements. With this much of evidence, the police filed charge sheet against the appellants alleging their involvement in the commission of offence of murder of Nitin Yogi. The prosecution evidence led before the Court was with regard to recording of memorandum statements and recovery of weapons alleged to be used in the commission of offence on the basis of disclosure statements and that alone formed the basis of conviction of the appellants, giving rise to these appeals.

03. Learned counsel appearing for the appellants would argue that present is a case where incident has not been

witnessed by anyone and there is no eye-witness of the case. He would submit that the prosecution has led very weak circumstantial evidence of recovery of certain weapons from the possession of the appellants on the basis of so-called disclosure statements given by the appellants which hardly constitutes an incriminating evidence because in none of the weapons, any blood stains, much less, that of human and that too of the group and origin of the deceased was proved by leading any cogent evidence either from the Forensic experts or any other report of the serologist. Learned counsel for the appellants would end-up his argument by pointedly submitting that on the basis of such disclosure statements and recovery of certain weapons alone, without there being any other incriminating circumstantial evidence, conviction of the appellants could not be sustained under the law. He would further add that the evidence of witnesses of disclosure statements Manish Yogi (PW/5) and Tushar Baghel (PW/6) only states regarding preparation of certain documents.

04. On the other hand, learned State counsel would submit that though there is no eye-witness, clinching circumstantial evidence of recovery of various weapons from the possession of the appellants has been proved beyond reasonable doubt and, even if, there are no blood stains found on the same, the nature and number of injuries found on the body of the deceased could be caused by such weapons as stated by the

Dr. B.S. Thakur. (PW/2) who has proved his query report upon production of those weapons before him.

05. We find that the entire case of the prosecution is founded solely on the recovery of weapons on the memorandum statements given by the appellants and nothing more. The prosecution has also not been able to come out with any evidence of motive as to why the appellants would murder the deceased. It hardly needs to be emphasized that whatever has been stated in the memorandum statements by each of the appellants, to the extent of it being inculpatory is not admissible in evidence and only that part which leads to discovery of a fact would be admissible under Section 27 of the Evidence Act.

06. No doubt, the evidence of Dr. B.S. Thakur (PW/2) and the postmortem report (Ex.P/3) proves that present is a case of homicidal death because the deceased sustained multiple injuries on various parts of his body, including vital parts, leading to hemorrhage and vasovagal shock (syncope). But then, only on that basis, one cannot jump to the conclusion, in absence of there being any other clinching evidence that the appellants were the assailants.

07. The weapons allegedly used in the commission of offence have not been found to have contained any blood stains of human blood much less of the group and origin of the deceased.

08. In absence of there being any other incriminating circumstantial evidence, conviction of the appellants only on the basis of recovery of certain weapons alleged to have been used in the commission of offence could not be founded under the law. This, at the most, could be used as a corroborative piece of evidence along with the other clinching evidence to connect the appellants with the alleged commission of offence, which we hardly find in the evidence of the prosecution. There is not even an iota of any evidence or any motive regarding murder. The contents of memorandum, except for the purpose of recovery, are not admissible in evidence.

09. In the result, the impugned judgment of conviction and order of sentence passed by the learned trial Court is found unsustainable in the law and the same is liable to be and is accordingly set aside. The appellants are acquitted of the charges levelled against them. The appellants are reported to be in jail. They be set at liberty forthwith, if not required in any other case.

10. The appeals are thus allowed.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Rajani Dubey)
Judge