

HIGH COURT OF CHHATTISGARH, BILASPURCriminal Appeal No.550 of 2017

Ramu S/o Sudru Raut, aged 38 years, Business-agriculturist, Resident of village Jangerpal, Police Station-Tongpal, District-Sukma (CG)

---- Appellant
(In Jail)

Versus

State of Chhattisgarh Through Police Station-Tongpal,
Dist-Dantewada (now Sukma)

---- Respondent

For Appellant:	Mr.Azad Siddiqui, Advocate
For Respondent/State:	Mr.Aditya Sharma, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal and
Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board
(11.11.2021)

Sanjay K. Agrawal, J.

1. This criminal appeal under Section 374(2) of the CrPC is directed against the judgment dated 25.3.2015 passed by the Sessions Judge, Dakshin Bastar Dantewada in Sessions Trial No.189/2010, whereby the learned Sessions Judge has convicted the appellant for offence under Section 302 of the IPC and sentenced him to undergo imprisonment for life.
2. Case of the prosecution, in brief, is that on 26.5.2010 at about 10 p.m. at village Jangarpal, Police Station-Tongpal, District-Sukma, the appellant / accused caused injuries by iron rod (*sabbal*) to his aunt Mahadei (since deceased) and thereby committed the offence of murder punishable under Section 302 of the IPC. Further

case of the prosecution is that on 26.5.2010 in the evening, some quarrel took place between the appellant herein and his aunt Mahadei and the appellant threatened her aunt to kill, which was intervened by Jaldeo (PW-1) not to assault his aunt and thereafter both Jaldeo (PW-1) and the appellant went to river for taking bath. On the next day i.e. 27.5.2010 when Jaldeo (PW-1) had visited to the house of Libru (PW-3) to collect his footwear, then he also went to the house of deceased Mahadei, where he found her door opened and when he entered into the house, he noticed that deceased Mahadei was lying died with injuries in her head and hand, then he searched accused Ramu, the accused was found in the house of Sarpanch, then he escorted the accused to the house of Mahadei and in presence of village Sarpanch, Lachinder and others accused Ramu admitted that he has caused murder of Mahadei on account of quarrel for last few days. On the report of Jaldeo (PW-1) on 27.5.2010 at 1.15 p.m. investigating officer K.C. Gaen (PW-12) registered the FIR vide Ex.P-5 and merg vide Ex.P-6 and after summoning the witnesses vide Ex.P-7, prepared inquest of dead body of the deceased Mahadei vide Ex.P-8. Dead body of deceased Mahadei was sent for postmortem vide Ex.P-9 where Dr.Kamal Sethe (PW-11) conducted postmortem of body of deceased Mahadei. Spot map was prepared by investigating officer vide Ex.P-10. The accused made disclosure statement vide Ex.P-12,

pursuant to which, one iron rod (*sabdal*) was recovered from him vide Ex.P-1. Bloodstained soil and plain soil were recovered from the spot vide Ex.P-2. Clothes of the deceased were recovered vide Ex.P-13. Iron rod, soil and clothes were sent for chemical examination vide Ex.P-14 and report received from Forensic Science Laboratory is Ex.P-16. Statements of the witnesses were recorded under Section 161 of the CrPC. After completion of investigation, charge-sheet was filed against the appellant / accused and it was committed to the jurisdictional Criminal Court for hearing in accordance with law for offence under Section 302 of the IPC. The appellant herein abjured the guilt and entered into defence.

3. In order to bring home the above-stated offence, the prosecution examined as many as 12 witnesses and exhibited 16 documents, whereas the accused / appellant has examined none in his defence.
4. The trial Court after appreciating oral and documentary evidence available on record, by its judgment dated 25.3.2015, convicted the appellant for offence under Section 302 of the IPC and sentenced him as aforementioned, against which, this criminal appeal has been preferred by the appellant / accused.
5. Mr.Azad Siddiqui, learned counsel for the appellant / accused, would submit that extra-judicial confession allegedly made by the appellant is not voluntary

truthful, reliable and unacceptable as Jaldeo (PW-1) in para-4 of his statement has clearly stated that only on being slapped the appellant has made extra-judicial confession to him. No extra-judicial confession has been made before Bhaduram (PW-6) and Lekhan (PW-9) as Jaldeo (PW-1) himself has stated that he has informed Bhaduram (PW-6) about extra-judicial confession made by the appellant, as such, extra-judicial confession has not been made by the appellant voluntarily and on being slapped by Jaldeo (PW-1) he has made extra-judicial confession, therefore, it should not have been relied upon by the trial Court to base his conviction for offence under Section 302 of the IPC. He would further submit that the theory of last seen together relied upon by the trial Court is not at all acceptable piece of evidence as they are related to each other as the deceased was living in front of house of the accused. He would also submit that mere recovery of iron rod (*sabbal*) (Ex.P-1) on the basis of disclosure statement made by the accused, conviction could not have been based as the trial Court has recorded the finding that human blood was found in iron rod recovered on the basis of disclosure statement made by the appellant / accused, whereas in the FSL report Ex.P-16, in iron rod (*sabbal*) only blood was found and there is no serologist report, as such, it has not been established that blood found in Article 'A' i.e. iron rod (*sabbal*) is human blood. Therefore, the finding of the trial

Court in this regard is liable to be set aside and as such, the appeal deserves to be allowed.

6. On the other hand, Mr. Aditya Sharma, learned Panel Lawyer for the respondent / State, would however support the impugned judgment and submit that the prosecution has proved its case beyond reasonable doubt and there is no perversity or illegality warranting interference in the judgment of conviction recorded by the trial Court, as such, the appeal deserves to be dismissed.
7. I have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
8. The trial Court has convicted the appellant herein for offence under Section 302 of the IPC merely on the basis of extra-judicial confession made by the appellant before Jaldeo (PW-1), Bhaduram (PW-6) and Lekhan (PW-9), last seen together of the accused and the deceased and recovery of iron rod (*sabbal*) (Ex.P-1) on the basis of disclosure statement made by the appellant.
9. It is not in dispute that appellant Ramu and deceased Mahadei were related to each other as the deceased was the appellant's aunt. It is also not in dispute that on the evening of 26.5.2010 some quarrel between the deceased and the appellant took place and at that time

the appellant had threatened her aunt to kill, which was sought to be compromised / diluted by Jaldeo (PW-1) and Jaldeo had escorted the appellant herein to river and both have gone to river for taking bath and thereafter on the next day i.e. on 27.5.2010, Jaldeo (PW-1) noticed the deceased lying dead in her house and when searched the appellant, then he found the appellant in the house of Sarpanch and at that time, the appellant in presence of Sarpanch, Up-Sarpanch, Lekhan (PW-9) and other persons admitted the fact of murdering / killing Mahadei at 10 p.m. on previous date i.e. on 26.5.2010 by iron rod (*sabbal*), which was reported vide Ex.P-5 by Jaldeo (PW-1) on 27.5.2010, as such, the prosecution has relied upon extra-judicial confession alleged to have been made by the appellant / accused to Jaldeo (PW-1), Bhaduram (PW-6) and Lekhan (PW-9).

10. Jaldeo (PW-1) in para-4 of his statement before the trial Court has stated that he made search and then he found the appellant to the house of Sarpanch, he asked the appellant why he killed Mahadei and also slapped him, then the appellant / accused admitted the fact that he has killed Mahadei (*dokri*). However, in para-8 of his cross-examination, he has stated that initially the appellant refused to say that he killed Mahadei, but on being slapped, he has admitted his guilt. Likewise, Up-Sarpanch Lekhan has been examined as PW-9. He has stated that in village meeting the accused was

also present and in that meeting, he has informed all available that he has killed Mahadei. On being asked in cross-examination, he has stated that at that time police was present and on being slapped, the appellant admitted the fact of murder of Mahadei. Bhaduram (PW-6) has stated that on being asked by the Station House Officer to the accused, he admitted the murder of Mahadei by iron rod (*sabbal*). In para-7, he has also admitted that at that time police officers were also present and on being slapped by Station House Officer, he admitted the murder of Mahadei.

11. The question for consideration would be whether the statements so made by Jaldeo (PW-1), Bhaduram (PW-6) and Lekhan (PW-9) can be said to be admissible in evidence.

12. At this stage, it would be appropriate to notice relevant judgments qua extra-judicial confession. The Supreme Court in the matter of **C.K. Raveendran v. State of Kerala**¹ has held that it is difficult to rely upon the extra judicial confession as the exact words or even the words as nearly as possible have not been reproduced. Such statement cannot be said to be voluntary so the extra judicial confession has to be excluded from the purview of consideration for bring home the charge.

13. In the matter of **Balwinder Singh v. State of Punjab**² the

1 AIR 2000 SC 369

2 (1995) Supp (4) SCC 259

Supreme Court has held that an extrajudicial confession by its very nature is rather a weak type of evidence and requires appreciation with a great deal of care and caution. Where an extrajudicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance. The courts generally look for independent reliable corroboration before placing any reliance upon an extrajudicial confession.

14. In the matter of Sakharam Shankar Bansode v. State of Maharashtra³ the Supreme Court has held that a retracted extra-judicial confession, though a piece of evidence on which reliance can be placed, but the same has to be corroborated by independent evidence.

15. Reverting to the facts of the present case in the light of aforesaid legal position, it is quite vivid that in the instant case, extra-judicial confession was made by the appellant to Jaldeo (PW-1) only when he slapped the appellant, it was not voluntarily extra-judicial confession made to Jaldeo (PW-1) which could be relied upon. Similarly, the accused allegedly made extra-judicial confession to Bhaduram (PW-6) when the police officer was present as admitted in para-7 of his cross-examination, that too on being assaulted by the Station House Officer. Similar statement has been given by Up-Sarpanch Lekhan (PW-9) that extra-judicial confession was made in presence of the police and that too on

3 AIR 1994 SC 1594

being assaulted by the Station House Officer, as such, extra-judicial judicial confession is not voluntarily and it cannot be relied upon to base conviction of the appellant in absence of any corroborative piece of evidence, as such, above-stated extra-judicial confession is wholly inadmissible piece of evidence and the trial Court erred in convicting the appellant on the basis of above-stated extra-judicial confession.

16.The theory of last seen together has also been relied upon by the trial Court to convict the appellant for offence under Section 302 of the IPC, which in our considered opinion is wholly misplaced as the appellant and deceased both were residing in front of each other and it is the case of the prosecution that immediately after quarrel between the deceased and the appellant, Jaldeo (PW-1) has already escorted the appellant to river for taking bath, as such, the appellant had already left the company of the deceased at 6 p.m. in the evening of 26.5.2010 and there is no evidence on record that the appellant had seen the company of deceased Mahadei thereafter, as such, the theory of last seen together is not duly established by adducing appropriate legal evidence.

17.Now third circumstance which the trial Court has relied upon to convict the appellant under Section 302 of the IPC is human blood found in iron rod (*sabbal*), which was recovered pursuant to disclosure statement made by

the appellant herein. A careful perusal of the record would show that *sabbal* was marked as Article 'A', which was recovered from the appellant on 28.5.2010 and *sabbal* was examined by Forensic Science Laboratory vide Ex.P-16 and in Article 'A', only blood was found and there is no evidence on record that blood found in iron rod (*sabbal*) was human blood, though it was sent to the Serologist & Chemical Examiner, Govt. of Kolkatta on 30.8.2010, which is available at page 64 of paper book, but no such serologist report has been received from the said laboratory holding that blood recovered from *sabbal* is human blood, as such, on the basis of said FSL report, it cannot be concluded that it was human blood, but the trial Court in para-39 of its judgment incorrectly recorded that it was human blood, which is contrary to the evidence available on record. The finding recorded by the trial Court in this regard is perverse and contrary to the record.

18. On the basis of aforesaid analysis, we are of the considered opinion that the prosecution has failed to bring home the offence under Section 302 of the IPC beyond reasonable doubt and learned trial Court has convicted the appellant for offence under Section 302 of the IPC by recording the finding which is wholly perverse to record.

19. Consequently, the criminal appeal is allowed. Impugned judgment dated 25.3.2015 passed by the Sessions Judge,

Dakshin Bastar Dantewada in Sessions Trial No.189/2010 convicting and sentencing the appellant for the offence under Section 302 of the IPC are hereby set aside. The accused / appellant is acquitted of the charge under Section 302 of the IPC levelled against him. He is in jail. He be released forthwith, if not required in any other case.

Sd/-

(Sanjay K. Agrawal)
Judge

Sd/-

(Arvind Singh Chandel)
Judge

B/-