

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**Criminal Appeal No.1194/2002**

**APPELLANTS**  
**(In jail)**

- 1 Munshi Singh s/o Sukhal Korba  
aged 35 years, R/o Chhatasarai,  
P.S. Katghora, District Korba (CG)
- 2 Anant Singh s/o Dharmu Korba  
aged 30 years, R/o village  
Chhatasarai, P.S. Katghora,  
District Korba (CG)

**VERSUS**

**RESPONDENT**

State of Chhattisgarh, Through PS  
Katghora, District Korba (CG)

**CRIMINAL APPEAL U/S 374 (2) OF THE CODE OF CRIMINAL  
PROCEDURE**

**Appearance:**

Shri K.K. Singh, counsel for the appellants.

Shri Arun Sao, Government Advocate for the State.

**Division Bench:-**

**Hon'ble Shri T.P. Sharma &  
Hon'ble Shri R.L.Jhanwar, JJ**

**ORAL JUDGMENT**

(30.11.2010)

**Per T.P.Sharma, J.**

Challenge in this appeal is to the judgment of conviction and order of sentence dated 30.10.2002, passed by the Sessions Judge, Bilaspur (CG) in S.T.No.521/2001, whereby and whereunder the learned Sessions Judge, after holding the appellants guilty for commission of culpable homicide amounting to murder of Godharam and concealing the evidence of criminal case, convicted the appellants under Sections 302 and 201 of the IPC and sentenced each of the appellant for life imprisonment

and R.I. for 3 years and to pay fine of Rs.200/-, in default of payment of fine to further undergo R.I. for 1 month respectively.

2. The conviction is impugned on the ground that without there being any iota of evidence sufficient for conviction of the appellants, the learned Sessions Judge has convicted and sentenced the appellants as aforementioned and thereby committed illegality.

3. As per case of prosecution, on fateful day of 3.11.2001, at about 05.00 pm, Godhuras (since deceased) and the appellants were quarreling on some dispute near a *nala*, on which, the appellants Munshi Singh assaulted him by axe and Anant Singh assaulted by stick and thereby caused his instantaneous death; thereafter, they buried the dead body in a ditch. As Godhuras was missing from his village Chhatasari, Sarpanch and villagers prepared intimation relating to murder of Godhuras and sent it to Police Station, Katghora. The Investigating Officer came to village Chhatasari on 7.11.2001. On 7.11.2001 both the appellants made extra judicial confession before Lagnu Ram (PW-2) and Hariram (PW-3) in presence of Baraiha (PW-6). Baraiha (PW-6) lodged merged intimation and FIR vide Ex. P/16 and P/17. After summoning witnesses vide Ex. P/11 and exhuming the dead body from the ditch, inquest over the dead body was prepared vide Ex. P/10. Dead body was sent for autopsy to Government Hospital, Korba vide Ex. P/1, where Dr. A.R. Porte conducted autopsy vide Ex. P/2 and found following injuries :

- i. Dead body was decomposed
- ii. Maggots were present
- iii. Foul smell was coming from the body
- iv. Skin was peeled off
- v. Incised wound of 5 x 2 cm over right side of the occipital region up to bone deep

- vi. Incised wound of 5 x 2 cm on left parietal region of scalp up to bone deep
- vii. Incised wound of 5 x 2 cm over occipital-parietal region on left side up to bone deep
- viii. One cut wound of 3 x 2 cm up to bone deep over left occipital region
- ix. Incised wound of 5 x 3 cm over left ear
- x. Clotted blood was found on the eyebrow and haematoma was found on face and ear
- xi. clotted blood was found on left elbow of 4 x 3 cm area
- xii. Cut fracture of back part of skull was found.

Injuries were ante mortem in nature. Mode of death was shock. Plain soil and blood stained soil was recovered from the spot vide Ex. P/6. Spot map was prepared vide Ex. P/7. During the course of investigation appellant Munshi Singh was taken into custody; he made disclosure statement of axe vide Ex. P/4; same was recovered at his instance vide Ex. P/5. One stick was seized from appellant Anant Singh vide Ex. P/9 on the basis of his memorandum Ex. P/12. Viscera of the deceased was seized vide Ex. P/13. Dehati Nalici was recorded on the spot vide Ex. P/14. Seized articles were sent for chemical examination vide Ex. P/21 and presence of blood on the axe recovered from appellant Munshi Singh was confirmed vide Ex. P/23. Statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 ( in short the Code).

4. After completion of investigation, charge sheet was filed before Judicial Magistrate First Class, Katghora, who in turn, committed the case to the Court of Sessions, Bilaspur, where, the learned Sessions Judge conducted the trial.

5. In order to prove the guilt of the accused/appellants, prosecution examined as many as 8 witnesses. Accused were examined under Section 313 of the Code, in which, they denied the circumstances appearing against them, innocence and false implication in crime in question was claimed.

6. After affording opportunity of hearing to the parties, the learned Sessions Judge has convicted and sentenced the appellants as aforesaid mentioned.

7. We have heard Shri K.K. Singh, learned counsel for the appellants and Shri Arun Sao, learned Government Advocate for the State, perused the judgment impugned and record of the trial Court.

8. Learned counsel for the appellants vehemently argued that in the present case, he is not disputing the homicidal death of deceased Godhuraam; as per case of prosecution, conviction of the appellants is based on extra judicial confession made by the appellants before Lagnu Ram (PW-2) and Hariram (PW-3), which does not inspire confidence and trustworthy to rely for conviction of the appellants that too for commission of the heinous offence of murder. He further argued that as per evidence of Lagnu Ram (PW-2) and Hariram (PW-3), extra judicial confession was made much before lodging of the written report Ex. D/2; the written report Ex. D/2 does not contain the names of appellants as assailants and therefore, it makes the extra judicial confession doubtful. He placed reliance on **AIR 2007 SC 2316, State of Madhya Pradesh V. Nisar**, in which, the Apex Court held that in case of extra judicial confession made much before lodging of the FIR, non-mentioning the name of the appellant in FIR makes reliability doubtful. He further placed reliance on **AIR 2005 SC 4352, Sidharth, etc.etc., Appellants V. State of Bihar**,

**Respondent**, in which, the Apex Court held that confession voluntarily made by the accused is only reliable. He argued that in absence of any other evidence, conviction of the appellants under Sections 302 and 201 of the IPC is not sustainable under the law.

9. On the other hand, learned counsel for the State opposed these arguments and submitted that evidence of Lagnu Ram (PW-2) and Hariram (PW-3) is sufficient for conviction of the appellants and Court below has rightly convicted and sentenced the appellants as aforesaid mentioned.

10. In order to appreciate the arguments advanced on behalf of the parties, we have examined the evidence adduced on behalf of the prosecution.

11. In the present case, homicidal death of Godhuram has not been substantially disputed on behalf the appellants; on the other hand, it is established by the evidence of Dr. A.R.Porter (PW-1) and autopsy report, Ex. P/2.

12. As regards complicity of the accused/appellants in crime in question is concerned, conviction of the appellants is based on extra judicial confession made before Lagnu Ram (PW-2) and Hariram (PW-3). K.N. Verma (PW-7) has admitted in para 10 of his cross examination that he received the information relating to murder of Godhuram vide Ex. D/2 on 4.11.2001, but he went to the spot on 7.11.2001 for making inquiry in the matter, where he registered Dehati merg and Dehati Nalici. Ex. D/2 revealed that Godhuram has been murdered and it was intimated to Sarpanch and others by the Kotwar i.e. Hariram (PW-3). As per evidence of Lagnu Ram (PW-2), both the appellants came to his house and requested him to accompany up to the house of Kotwar-Hariram (PW-3) then he went along with the appellants to the

house of Kotwar where they made extra judicial confession before him to the Kotwar. Hariram (PW-3) has also corroborated the evidence of Lagnu Ram (PW-2). In para 7 and 8 of his cross examination, Hariram (PW-3) has specifically deposed that before tendering Ex. D/2, written at the instance of Sarpanch to the Police, he was having knowledge that the appellants have committed murder of Godharam on the basis of extra judicial confession, but he has not told this fact to the Sarpanch even the fact of extra judicial confession, which does not find place in Ex. D/2 the first information to the Police. Hariram (PW-3) has not explained as to why he has not stated this important fact to the Police at the time of tendering Ex. D/2.

13. In these circumstances, the factum of extra judicial confession made before Lagnu Ram (PW-2) and Hariram (PW-3) becomes suspicious as is held in the matter of **State of Madhya Pradesh V. Nisar, AIR 2007 SC 2316**. The evidence of Lagnu Ram (PW-2) and Hariram (PW-3) does not inspire confidence and trustworthy and there is not other evidence against the appellants, therefore, conviction and sentence of the appellants under Sections 302 and 201 of the IPC is not sustainable under the law.

14. Consequently, the appeal is allowed. Conviction and sentence of the appellants under Sections 302 and 201 of the IPC is hereby set aside. They be set at liberty at once, if not required in any other case.

Sd/-  
T.P. Sharma  
Judge

Sd/-  
R.L. Jhanwar  
Judge