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**HIGH COURT OF CHHATTISGARH, BILASPUR**

**DB: HON'BLE SHRI SUNIL KUMAR SINHA, &  
HON'BLE SHRI RANGNATH CHANDRAKAR, JJ.**

**Criminal Appeal No. 827/1998**

**APPELLANT**

Kamta S/o Khorbahara Satnami,  
Aged 31 years, Occupation – Labour,  
R/o village Hardi Bhantha,  
Police Station – Sihawa,  
Tahsil Nagari,  
District Raipur (MP) (Now CG)

***Versus***

**RESPONDENT**

State of Madhya Pradesh (Now  
Chhattisgarh)  
Through: Police Station - Sihawa.

**CRIMINAL APPEAL UNDER SECTION 374 OF THE CODE OF  
CRIMINAL PROCEDURE**

**Appearance:**

Mr. R.K. Jain and Mrs. Kiran Jain, Advocates for the appellant.  
Mr. Manish Nigam, Panel Lawyer for the State.

**JUDGMENT  
(30/09/2013)**

Following judgment of the Court was dictated on Board by  
**SUNIL KUMAR SINHA, J.**

1. This appeal is directed against the judgment dated 31st of January, 1998 passed in S.T. No. 293/97 by the Additional Sessions Judge, Dhamtari, District Raipur. By the impugned judgment, the appellant has been convicted under Sections 354 and 302 IPC and sentenced to undergo R.I. for 2 years and imprisonment for life, with a direction to run the sentences con-currently.

2. The facts, briefly stated, are as under:-

2.1 Deceased- Jambai was wife of Suna Ram (PW-1). On 7.6.1997, at about 10.00 am, she had gone to the forest to collect wood. Thereafter, she did not return. A search was made and her dead body was found in the forest. Merg intimation (Ex. P/1) was lodged by Suna Ram (PW-1). The Investigating Officer reached to the place of occurrence, gave notice (Ex. P/3) to the *Panchas* and prepared inquest (Ex. P/4) on the dead body of the deceased. Ramshila Bai (PW-12) had seen that the deceased was going towards the forest. She had also seen that after some time, the appellant had also gone towards the forest on his Bicycle. Ramsunder (PW-11) had seen the appellant in the forest.

2.2 It appears that after preliminary investigation, the appellant was called in *Panchayat Bhawan*, where he allegedly made extra judicial confession before Raju (PW-4), Girdhari, Kotwar (PW-6), Jagguram (PW-8) and Tiyari (PW-2).

2.3 Memorandum statement of the appellant (Ex.P/5) was also recorded, and some clothes were seized at his instance vide seizure memo Ex. P/9. Though the seized articles were sent for their chemical examination to Forensic Science Laboratory (FSL), Raipur, but no report (FSL report) could be filed.

2.4 Admittedly, there was no eye-witness to the incident and the case of the prosecution was based on circumstantial evidence. Following are the main circumstances, on which, the Sessions Judge has relied and convicted and sentenced the appellant :

- i. The deceased had died homicidal death;
- ii. The appellant and the deceased were 'last seen together';
- iii. The appellant made extra judicial confession in village *Panchayat* before the above witnesses; and
- iv. Blood stained clothes were seized at the instance of the

appellant.

3. Learned counsel for the appellant, have argued that none of the circumstances were fully established and the conviction is based on insufficient evidence; 'last seen' was not established; the alleged extra judicial confession was made in presence of the Police Officers; therefore, it was inadmissible under Section 25 of the Evidence Act.

4. On the other hand, Mr. Manish Nigam, learned Panel Lawyer appearing on behalf of the State, has opposed these arguments and supported the judgment passed by the Sessions Court.

5. We have heard counsel for the parties.

6. There is no dispute that the dead body of the deceased was found in the forest situated in the outskirts of the village. It was sent for postmortem and according to the postmortem report, the deceased had died homicidal death. Learned counsel for the appellant have also not disputed the above factual position.

7. As far as the circumstance of 'last seen together' is concerned, the Sessions Judge has mainly relied on the evidence of Ramshila Bai (PW-12) and Ramsunder (PW-11). Ramshila Bai (PW-12) has deposed that on the fateful day, at about 8-9 am, she had seen that the deceased was going towards the forest. She had a talk with the deceased. She saw that after some time, the appellant also went towards the forest. The appellant had gone on his Bicycle. He was holding a *Tangia*. At about 12 noon, she saw that the appellant was returning from the forest. He

was carrying some fire wood on the carrier of his Bicycle. However, she did not see the deceased returning back from the forest. In cross-examination, she deposed that she had seen that both the persons had gone towards the forest, but she does not know as to where the appellant had gone. How the above evidence of Ramshila Bai (PW-12) would prove that the appellant and the deceased were 'last seen together'. Even if we rely on her evidence, it is only proved that the deceased had gone towards the forest and after some time (not together), the appellant had also gone towards the forest on his Bicycle. The house of this witness was situated on the road, which was going towards the forest. It was a common road, on which, many persons were going on. How an adverse inference could be drawn, if someone goes towards forest after the deceased had gone. We are of the view that no inference of 'last seen' could be drawn from her evidence.

8. Ramsunder (PW-11) had simply seen the appellant in the forest on his Bicycle. He also did not depose that he had seen the appellant and the deceased together in the forest. Thus, by his evidence, 'last seen' was not proved.

9. Bahur Singh (PW-10), the other proposed witness of 'last seen' has turned hostile.

10. On due appreciation, we find that the circumstance of 'last seen together' was not established and the Sessions Judge committed error in holding that the appellant and the deceased were 'last seen together'.

11. So far as the extra judicial confession is concerned, the

prosecution has examined 4 witnesses namely- Raju (PW-4), Girdhari, Kotwar (PW-6), Jagguram (PW-8) and Tiyari (PW-2). Out of these witnesses, Tiyari (PW-2) has turned hostile. The case of the prosecution was that the appellant was called in *Panchayat Bhawan*, where he made extra judicial confession before the villagers, including the above witnesses. Raju (PW-4) has deposed that a Meeting was convened in the *Panchayat Bhawan*, in which, Sarpanch, Kotwar and many villagers were present. He was also present in the Meeting. The appellant had made extra judicial confession before them in the said Meeting. In cross-examination, para 2, he admitted that the Meeting was called by the Police. Kotwar had called the villagers by *Munadi* (notice by beating drum). Though he said that when the appellant was making confession, Police personnel were not there, but he admitted that the Police personnel were present in the *Varandah* of *Panchayat Bhawan*. He also admitted that before the appellant came to the Meeting, he had gone to the Police.

12. Girdhari, Kotwar (PW-6), also deposed about the alleged extra judicial confession in the village *Panchayat*. However, he admitted in clear words in para 3 of his cross-examination that the Police personnel were also present in *Panchayat Bhawan* along with the villagers.

13. Jagguram (PW-8) deposed that he was also present in village *Panchayat*, where the appellant made extra judicial confession. Police personnel were present in a room in *Panchayat Bhawan* and the

villagers were also present in the room.

14. In appreciation of the evidence of these witnesses, we find that the Police party had reached to the village in the morning and inquest etc. was prepared and the dead body was sent for postmortem. Thereafter, in the evening, they stayed in *Panchayat Bhawan* where the villagers were called on their instructions and a Meeting was convened. In the said Meeting, the appellant made the alleged confession when the Police party was also present in *Panchayat Bhawan*.

15. In *Aghnoo Nagesia v. State of Bihar, AIR 1966 SC 119*, it was held that the law relating to confessions is to be found generally in Ss. 24 to 30 of the Evidence Act. Confession is a species of admission, and it is dealt with in Ss. 24 to 30 of the Evidence Act. A confession or an admission is evidence against the maker of it, if its admissibility is not excluded by some provision of law. Section 25 is imperative, and a confession made to a police officer under no circumstances is admissible in evidence against the accused. In the instant case, as we have already discussed, a Meeting in the *Panchayat Bhawan* was called by the Police itself by instructing the village Kotwar, who had done *Munadi* in the village. The Police personnels were also present in *Panchayat Bhawan* in the evening at the time of the Meeting. Thus, in fact, the alleged extra judicial confession was made by the appellant before the Police, though the prosecution has tried to camouflage that it was made before the villagers. We are of the view that in the above facts and circumstances of the case, the alleged confession would not be admissible in evidence.

and it cannot be proved against the appellant in view of Section 25 of the Evidence Act.

16. So far as the circumstance of blood stains found on the clothes of the appellant is concerned, we find that there is no FSL report and thus, the origin and group of the stains remained unproved.

17. In a case based on circumstantial evidence, the circumstances must be fully established. The circumstances should be of conclusive nature and tendency. The circumstances, so established, must not be capable of being explained and the chain of circumstantial evidence also must be complete. This is what the Supreme Court has said time and again vide many judgments, including Dhananjoy Chatterjee -Vs- State of W.B. (1994) 2 SCC 22 and Bodh Raj alias Bodha and others -vs- State of Jammu and Kashmir, AIR 2002 SC 3164.

18. So far as conviction under Section 354 IPC is concerned, it is based on the introductory part of the alleged confession of the appellant, in which, he said about outraging the modesty of the deceased. Since we have already held that the confession (as a whole) was inadmissible, therefore, the conviction under Section 354 IPC also stands vitiated.

19. On due appreciation of the entire evidence, we find that none of the circumstances were fully established. They were not of conclusive nature and tendency, and almost all the circumstances were capable of being explained and the chain of circumstantial evidence was also not complete.

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20. For the foregoing reasons, we are unable to sustain the conviction of the appellant on the above set of circumstantial evidence and the appeal has to be allowed.

21. In the result, we allow the appeal and set-aside the conviction and sentences awarded to the appellant under Sections 354 and 302 IPC. The appellant is acquitted of the charges framed against him. It is stated that the appellant is on bail. His bail bond are cancelled and surety stands discharged.

Sd/-  
**Sunil Kumar Sinha**  
Judge

Sd/-  
**R.N. Chandrakar**  
Judge

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