

**Criminal Appeal (D.B.) No. 29 of 2011
With**

Criminal Appeal (D.B.) No. 32 of 2011

[Arising out of judgment of conviction dated 13.12.2010 and order of sentence dated 16.12.2010 passed by learned Additional Sessions Judge, F.T.C. V, West Singhbhum in Sessions Trial No. 239 of 2008]

Criminal Appeal (D.B.) No. 29 of 2011

Budhu Nag Chatar, son of Late Pandu Nag Chatar, resident Village Kansara, Jarjata, P.O. Natki, P.S. Karaikela District Singhbhum West

.... **Appellant**

--Versus--

The State of Jharkhand **Respondent**

With

Criminal Appeal (D.B.) No. 32 of 2011

Gangu Purty @ Marshal son of Late Mochi Purty, resident of Village Raigadha, P.O. & P.S. Sonua, District Singhbhum West

.... **Appellant**

--Versus--

The State of Jharkhand **Respondent**

For the Appellants : Mr. R.P. Gupta, Advocate

For the State : Mr. Manoj Kumar Mishra, A.P.P.

PRESENT: SRI ANANDA SEN, J.

SRI GAUTAM KUMAR CHOUDHARY, J.

JUDGMENT

Reserved on: 09.09.2024

Pronounced On:17.09.2024

Per Gautam Kumar Choudhary, J. Both these appeals arise out of the common judgment of conviction and sentence by which appellants have been convicted and sentenced under Section 302/34 of the IPC.

2. Informant of the case is Village Headman (Munda), Lawrence Purty. As per his statement given to police on 23.06.2008, his co-villager Soma Purty was missing since 19.06.2008. When they started searching for him, it transpired that on 19.06.2008, Soma Purty had been seen at Razi with his cousin brothers Gangu Purty @ Marshal and Budhu Nag Chatar (appellants), and thereafter, he was not seen again. A meeting was convened on 22.06.2008 and both these appellants were interrogated, and on pressure, they confessed the crime of killing him in the night on 19.06.2008 by Farsa and Tangi. Thereafter, in order to cause the disappearance of the evidence, the dead body

had been concealed 5 Km. deep in the forest. On the said disclosure, informant along with Malki Purty, Alfos Purty, Dugi Bandia, Dunda Soren went to the place where the body had been concealed in a ditch covered with leaf. There was deep wound on the neck and over the right knee. The Tangi and Farsa were recovered from their home. Motive for the offence was disclosed by the appellants to be land dispute. Both the appellants along with the dead body was handed over to the police.

3. On the basis of the statement, Sonua P.S. Case No.22/2008 was registered under Sections 302, 201/34 of the IPC against both the appellants. After investigation, charge sheet was submitted and the appellants were put on trial for offence under Section 302/34 of the IPC. Altogether six witnesses have been examined on behalf of the prosecution and the relevant documents including post mortem examination report, seizure list and FSL report have been adduced into evidence and marked as exhibits.

4. After the prosecution evidence, statement of the accused has been recorded under Section 313 of the Cr.P.C. Defence is of denial, but no specific defence has been pleaded.

5. It is argued by the learned counsel on behalf of the appellants that there is no direct eye witness to the incidence and the case rests on extra judicial confession which is considered a weak evidence. There is no corroboration to prove the guilt of the appellants. Out of the six witnesses examined, five witnesses are material witnesses. P.W. 4 is the Doctor and P.W. 6 is the Investigating Officer. P.W. 2, P.W. 3 and P.W. 5, have not supported the case and were declared hostile. The confessional statement is also vitiated because it was obtained under duress as deposed to by P.W. 1 in para 14.

6. Learned A.P.P. has defended the judgment of conviction and sentence.

7. It is not in dispute that deceased- Soma Purty died a homicidal death which has been proved by P.W. 4, who conducted autopsy on the dead body and proved the post mortem examination report (Exhibit 5). The following ante mortem injuries were found: -

- I. External: - Incised wound on right side of neck cutting neck vessels, muscles, trachea, oesophagus and vertebral bone at C-2/C-3 level- 5" x 3" x 4 ½ ". Head attached with body with skin tag.
- II. Incised wound amputating leg from (right) mid-thigh, amputated part

approximating a thigh belonging to same person.

III. Incised wound of left knee 2" x ½" x 1".

Doctor opined that the death was caused by hemorrhage and shock due to injury by sharp edged instrument.

8. Informant of this case (P.W. 1) is a Village Headman and is independent witness. There is nothing on record to suggest even remotely that this witness had any enmity with the appellants. It has been deposed by him that a Panchayti was convened in the village in which the appellant confessed the guilt of committing murder of Soma Purty. On their disclosure statement, the dead body was discovered from Kantu Lower Jungle. The weapon of offence namely Farsa and Tangi were recovered by police on the disclosure statement made by them. Confession being made not before police will not hit under Section 25 of the Evidence Act.

P.W. 2 has been declared hostile, but he has proved his signature on the fardbeyan which he had signed along with Lawrence Purty. He has not denied the factum of Panchyat being held, but has stated that he had not attended the panchayat. In para 5, he was non-committal on the question whether the dead body was recovered from the Jungle or not. He has identified his signature on the confessional statement of the accused persons and has admitted that they had taken the accused person to the police station.

P.W. 3 identified the signature on fardbeyan and also on the seizure list, but beyond this he has expressed his ignorance even about the deceased, informant or the appellant- Budhu Nag Chatar. Deposition of P.W. 5 is also on the same line.

P.W. 6 is the I.O. of the case. It has been deposed by him that the dead body and weapon of offence was brought by the informant party.

9. The appellants were also produced by the villagers who were formally arrested. Place of occurrence has been said to be the village road between Raigarh and Tonto Mircha. The second place of occurrence from where the dead body was found, was Kantu Lower Jungle.

10. This is a somewhat unique case, in as much that confession leading to recovery of the dead body was not made to the police, but before a Village Panchayat. Confession made to police is not admissible into evidence, and only facts which are deposed to as discovered in consequence of information

received, from a person accused of any offence, in the custody of police officer, is admissible under Section 27 of the Evidence Act. The confession made by the appellants before the Panchayat, has been testified to by P.W. 1, who is an independent witness. The other witnesses have not expressly denied that a Panchayat was held and the confession was made leading to recovery of dead body from the remote forest area. Thus, we have positive assertion on oath made by P.W. 1 whose testimony has remained undemolished in the cross examination regarding the recovery of the dead body on the disclosure statement of the appellants. On the other hand, we have evasive reply of the witnesses on the factum of such a Panchayat being held, as there is no express denial, but only ignorance about it. The principle of appreciating evidence in such case is that in estimating the value of evidence, the testimony of a person who swears positively that certain conversation took place, is of more value than that of one who says it did not. Meaning thereby, an affirmative evidence carries greater weight than an ambivalent or negative evidence. In the present case, no negative evidence has been adduced to deny Panchayat being held in the village and therefore, there is no reason to disbelieve the account of informant (P.W. 1) whose testimony is corroborated by his earlier statement (fardbeyan) in terms of Section 157 of the Evidence Act.

11. Confession made by the accused persons before the Panchayat will come within the meaning of extra-judicial confession and the veracity of it, is established by the recovery of the dead body from the jungle area. The place of recovery deep inside the jungle and knowledge of it to the appellants, raises a presumption under Section 106 of the Evidence Act [see *State of Maharashtra Versus Damu*, (2000) 6 SCC 269] against them. It was incumbent on their part to have explained as to how they came to know about it. Extra judicial confession is a weak piece of evidence, but in the present case, recovery made on its basis lends credence to its credibility. Extra Judicial confession can form the basis for conviction, if person before whom it is made, appears to be unbiased and not inimical to the accused [see (2009) 11 SCC 262]. In (2009) 14 SCC 436, extra judicial confession made by the accused before the Administrative Officer of the village was found reliable and acted upon.

12. For the reasons discussed above, I am of the view that extra judicial

confession made by the appellants in the present case leading to recovery of the dead body from remote forest area, can be acted upon and made the basis for conviction of the appellants. There is no infirmity in the judgment of conviction and sentence passed and there does not exist any strong reason to differ with the finding of the learned trial Court.

Judgment of conviction and sentence stands affirmed.

Both the Criminal Appeal stand dismissed.

Pending Interlocutory Application, if any, is disposed of.

Let the Trial Court Records be transmitted to the Court concerned along with a copy of this judgment.

(Gautam Kumar Choudhary, J.)

Per Ananda Sen, J. I agree.

(Ananda Sen, J.)

High Court of Jharkhand, Ranchi

Dated 17th September, 2024

AFR/Anit