

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 999 of 2004**

1. Rambagas Nai (dead)
2. Ganesh Nai
3. Govind Lohar

---- Petitioner

Versus

- State Of Chhattisgarh

---- Respondent

For Appellants	Ms. Renu Kochar, Advocate
For Respondent-State	Shri S. Majid Ali, PL

Hon'ble Shri Justice Prashant Kumar Mishra**Hon'ble Shri Justice Anil Kumar Shukla****Order On Board By****Prashant Kumar Mishra J.****13/02/2017**

1. Appellants' conviction under Section 302 and 201 read with Section 34 IPC for committing murder of deceased Kundiya Bai is based on retracted extra judicial confession allegedly made in presence of the witnesses PW-1 Shantilal, PW-2 Bhaiyyaram, PW-5 Sakharam and PW-6 Chaitram.
2. Deceased Kundiya Bai was the daughter of PW-3 Ghosulram. She was earlier married with PW-4 Makhan, but she left his

company and started residing with Devendra, son of appellant No.1 Rambagas Nai (since deceased). After few months, Devendra went to Nagpur in search of livelihood and in his absence the deceased developed illicit affair with the accused/appellant No.2 Ganesh Nai, another son of appellant No.1 Rambagas Nai. The deceased belongs to Gond Tribal Community, whereas the deceased appellant No.1 and his son appellant No.2 Ganesh Rai belong to Barber Community.

3. In the above societal background, the deceased was found missing on 02.01.2004 for which Rambagas Nai informed the Village Kotwar on 03.01.2004. When she could not be traced despite rigorous search amongst relatives and nearby villages, Rambagas Nai requested the villagers to search the deceased in the nearby hilltops. In the meanwhile, a complaint of missing person was also lodged with the concerned Police on 07.01.2004 vide Ex-P-14. When Rambagas Nai and other villagers climbed the hilltops to trace the deceased, the dog who joined them found the dead body concealed beneath stones. Upon removing the stones, the dead body was identified by Rambagas Nai. It is said that when the villagers were climbing down from the hilltop and decided to visit the Police Station, Rambagas Nai requested them not to contact Police and made extra judicial confession that he along with Ganesh Nai and another person have committed murder.

4. After registering the merger intimation (Ex-P-2) and the FIR (Ex-P-1) at about 4:50 pm on 11.01.2004, 161 Cr.P.C. statements of the witnesses were recorded on 12.01.2004. Though the postmortem report (Ex-P-13) performed by PW-7 Dr. Vipin Jain could not opine the exact cause of death, yet the accused persons were sent for trial under Section 302 IPC on the basis of extra judicial confession made by Rambagas Nai.
5. Referring to the law laid down by the Supreme Court in **Chhittar vs. State of Rajasthan**, reported in AIR 1994 SC 214, it is argued that extra judicial confession being a weak type of evidence, conviction cannot be sustained only on such extra judicial confession without any corroboration either in form of medical evidence or any other evidence.
6. Learned State counsel would support the impugned conviction.
7. PW-1 Shantilal, PW-2 Bhaiyyaram, PW-5 Sakharam and PW-6 Chaitram are the witnesses to the extra judicial confession. All the witnesses have stated that deceased appellant No.1 Rambagas Nai alone made the extra judicial confession immediately after the dead body was recovered on the hilltop. However, PW-5 Sakharam has stated in his cross-examination that Rambagas Nai had not made any confession at the place where the dead body was found, whereas the other witnesses would say that Rambagas Nai had made extra judicial confession immediately after the dead body was found, when they were planning to move the Police Station.

8. The most glaring and important aspect of the matter is that while performing the autopsy, PW-7 Dr. Vipin Jain has not found any bony injury on the person of the deceased. Even if the dead body was highly putrefied, as mentioned in the postmortem, the doctor could have found the injury on trachea or hyoid bone so as to find corroboration to the extra judicial confession, whereas Rambagas Nai had said that they have committed murder by strangulation. It is also to be seen that extra judicial confession has been made by deceased appellant No.1 Rambagas Nai alone and not by two other accused persons. Even after the extra judicial confession made by Rambagas Nai, the villagers never tried to catch hold of Ganesh Nai nor did they enquire from him to test the veracity of the statement of Rambagas Nai. Even the Investigating Officer has not recorded any memorandum statement nor any recovery has been made from the appellant No.2 Ganesh Nai and appellant No.3 Govind Lohar. There is absolutely no corroboration to the alleged retracted extra judicial confession made by Rambagas alone.
9. In the matter of **Chhittar** (supra), the Supreme Court has held that if extra judicial confession about the manner in which the murder has been committed is not finding support or corroboration from the medical opinion, the said extra judicial confession would be highly unsafe to convict the appellant.

10. In the case at hand also, Rambagas Nai has allegedly confessed that he along with two other accused persons committed the murder by strangulating the deceased, but the postmortem report is silent about any corresponding injury nor there is any opinion about the cause of death nor even the opinion that the death was homicidal in nature.

11. For all the above stated reasons, we find ourselves in complete disagreement with the finding of guilt recorded by the trial Court. The appeal insofar as it concerns the appellant No.1 Rambagas Nai has already been dismissed as abated vide order dated 20.07.2011, therefore, the present appeal on behalf of appellant No.2 Ganesh Nai and appellant No.3 Govind Lohar deserves to be and is hereby allowed. Conviction and sentence imposed on the appellant Nos.2 & 3 under Sections 302 and 201 read with Section 34 IPC are hereby set aside and they are acquitted of the said charges. The appellants are on bail. Surety and personal bonds earlier furnished at the time of suspension of sentence shall remain operative for a period of 6 months in view of the provisions of Section 437-A of the Cr.P.C. The appellant Nos.2 & 3 shall appear before the higher Court as and when directed.

Sd/-

Judge
Prashant Kumar Mishra

Sd/-

Judge
Anil Kumar Shukla