



HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.1202 of 2014

{Arising out of judgment dated 7-11-2014 in Sessions Trial No.80/2013 of the 1st Additional Sessions Judge, Sakti, District Janjgir-Champa}

1. Jamuna Bai, W/o Narendra Jaiswal, aged about 36 years, R/o Ward No.12, Village Sakti, P.S. & Tahasil Sakti, District Janjgir-Champa (C.G.)
2. Shyam Sunder, S/o Ramcharan Jaiswal, aged about 33 years, R/o Village Ghoghari, P.S. Dabhara, Distt. Janjgir-Champa (C.G.)
(In Jail)
---- Appellants

Versus

State of Chhattisgarh, Through Station House Officer, Sakti, Distt. Janjgir-Champa (C.G.)
---- Respondent

Criminal Appeal No.1160 of 2014

Surendra Kumar, S/o Ramcharan Jaiswal, aged about 31 years, R/o Village Ghoghari, P.S. Dabhara, Distt. Janjgir-Champa (C.G.)
---- Appellant

Versus

State of Chhattisgarh, Through Station House Officer, Sakti, Distt. Janjgir-Champa (C.G.)
---- Respondent

AND

Criminal Appeal No.1143 of 2014

1. Sahaniram, S/o Puniram Jaiswal, aged about 43 years,
2. Dadhibal, S/o Puniram Jaiswal, aged about 40 years,

Both are R/o Village Mahuapali, P.S. Sarangarh, Distt. Raigarh (C.G.)
---- Appellants

Versus

State of Chhattisgarh, Through Station House Officer, Sakti, Distt. Janjgir-Champa (C.G.)
---- Respondent





 For Appellants: Mr. Surendra Singh, Senior Advocate with Mr. Neeraj Mehta, Advocate.
 For State / Respondent: -
 Mr. Ashish Tiwari, Government Advocate.

Hon'ble Shri Sanjay K. Agrawal and
Hon'ble Shri Sanjay S. Agrawal, JJ.

Judgment On Board
(13/07/2022)

Sanjay K. Agrawal, J.

1. Two appellants namely, Jamuna Bai (A-1) & Shyam Sunder (A-2) in Cr.A.No.1202/2014; sole appellant namely, Surendra Kumar (A-3) in Cr.A.No.1160/2014; and two appellants namely, Sahaniram (A-4) & Dadhibal (A-5) in Cr.A.No.1143/2014, have preferred these appeals under Section 374(2) of the CrPC feeling aggrieved and dissatisfied with the impugned judgment dated 7-11-2014 passed by the 1st Additional Sessions Judge, Sakti, District Janjgir-Champa in Sessions Trial No.80/2013, by which the learned Additional Sessions Judge has convicted and sentenced the appellants in the following manner: -

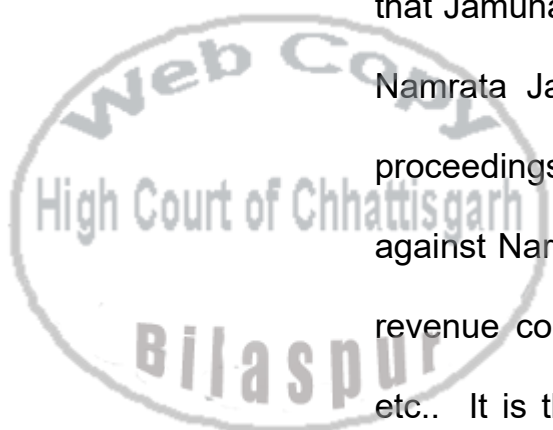
Conviction	Sentence
Section 120B of the IPC	Imprisonment for life and fine of ₹ 20,000/- each, in default, additional RI for two years
Section 460 of the IPC	RI for ten years and fine of ₹ 20,000/- each, in default, additional RI for two years
Section 302 read with Section 34 of the IPC (two counts)	Imprisonment for life and fine of ₹ 20,000/- each, in default, additional RI for two years

2. Since all the three criminal appeals have arisen out of one and same judgment dated 7-11-2014 passed by the 1st Additional Sessions Judge, Sakti, District Janjgir-Champa, in one Sessions Trial No.80/2013 and since common question of fact and law is involved in



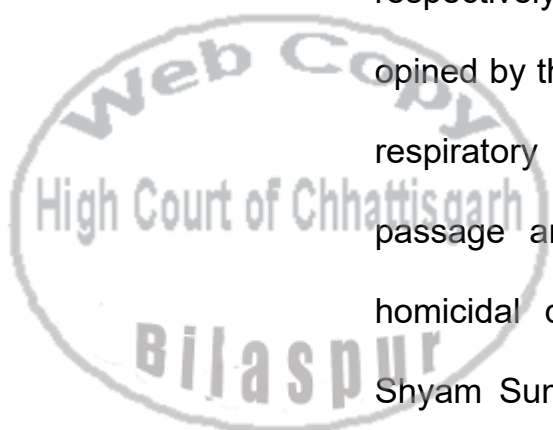
all the three appeals, they have been clubbed together, heard together and are being disposed of by this common judgment.

3. It is admitted fact on record that Sushil Chand Jaiswal had two daughters namely, Jamuna Bai – the accused / appellant (A-1) and Namrata Jaiswal – deceased. Jamuna Bai was married to Narendra Kumar (PW-7) and Namrata was married to Shyam Kumar – another deceased. The family of Jamuna Bai was staying in the house owned by Sushil Chand Jaiswal at Sakti in ground floor and Namrata Jaiswal along with her husband Shyam Kumar on the fateful day was residing in second floor along with her family. It is the case of the prosecution that Jamuna Bai wanted to grab the entire property in which her sister Namrata Jaiswal along with her husband were staying. Revenue proceedings Exs.P-30 to P-44 were initiated by Namrata Jaiswal against Narendra Kumar (PW-7) – husband of Jamuna Bai before the revenue court (Tahsildar, Kharsia and Tahsildar, Sakti) for partition, etc.. It is the further case of the prosecution that Jamuna Bai (A-1) also lodged complaint before Police Station Kharsia against the deceased persons vide Ex.P-20 and in light of that complaint, statements were recorded vide Exs.P-21 to P-24. Further case of the prosecution, in brief, is that on 10-4-2013, in the morning, one Onkar Prasad Jaiswal (neither cited nor examined) informed Shivkumar (PW-6) – brother of deceased Shyam Kumar about the incident, thereafter, Shivkumar (PW-6) came to Sakti in the house of Namrata Jaiswal & Shyam Kumar and noticed that throat of both Namrata & Shyam Kumar was cut and they were lying dead on bed and blood spread all over the floor. Thereafter, Shivkumar (PW-6) lodged first information report Ex.P-15 at Police Station Sakti on 10-4-2013 against unknown





person and on the same day, morgue intimations were got registered by Shivkumar (PW-6). Morgue intimation Ex.P-16 was registered for death of Shyam Kumar, whereas morgue intimation Ex.P-17 was registered for death of Namrata Jaiswal and thereafter, two separate inquest reports were prepared i.e. Ex.P-3 in respect of Smt. Namrata Jaiswal and Ex.P-4 in respect of Shyam Kumar. Thereafter, dead bodies of both the deceased persons were sent for postmortem examination to Community Health Centre, Sakti where Dr. Krishna Kumar Sidar (PW-10) conducted postmortem over the dead bodies of Shyam Kumar and Smt. Namrata Jaiswal vide Exs.P-27 & P-28, respectively. After examining the nature of injuries and wounds, it was opined by the doctor that cause of death in both the cases was cardio respiratory arrest associated with asphyxia by obstruction of airway passage and massive blood loss and the nature of death was homicidal done by solid heavy metal and sharp-edged weapon. Shyam Sunder (A-2) was taken into custody on 11-4-2013 and his memorandum statement was recorded vide Ex.P-8 in presence of Tankeshwar Jaiswal (PW-2) pursuant to which chopper – sharp-edged weapon, shirt, full pant and motorcycle were seized vide Ex.P-9 on 12-4-2013. Thereafter, on 12-4-2013, memorandum statement of Jamuna Jaiswal (A-1) was recorded as Ex.P-10 and pursuant to her memorandum statement, her bloodstained petticoat and curtain were seized vide Ex.P-11. Apart from other usual investigation, on 20-5-2013 articles seized were sent for forensic examination vide Ex.P-58 and the FSL report dated 30-4-2014 has been brought on record as Ex.P-60 in which in reference to seized articles, human blood of Group 'A' was found on petticoat of Jamuna Jaiswal (Art. 'C'), chopper





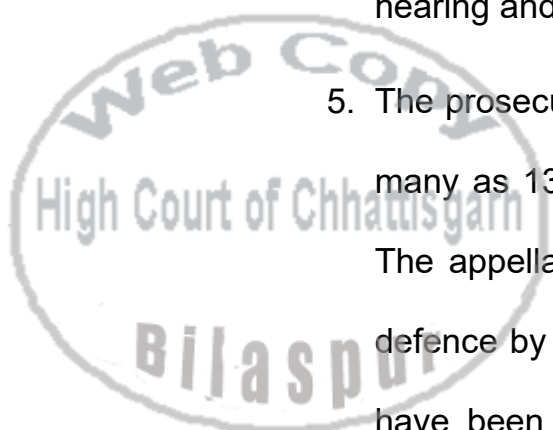
seized from accused Shyam Sunder Jaiswal (Art. 'E') and vest of deceased Shyam Kumar (Art. 'H1'), and human blood was also found on Articles A, G1 and G3. On 13-5-2014, the FSL report as obtained from the Forensic Science Laboratory was sent to the District Prosecution Officer for production before the learned trial Court.

4. The investigating officer after completion of investigation, charge-sheeted the two appellants namely, Jamuna Bai (A-1) & Shyam Sunder (A-2) and other three appellants namely, Surendra Kumar (A-3), Sahaniram (A-4) & Dadhibal (A-5) before the jurisdictional criminal court from where the case was committed to the court of sessions for hearing and disposal in accordance with law.

5. The prosecution, in order to bring home the offence, has examined as many as 13 witnesses and exhibited 60 documents Exs.P-1 to P-60. The appellants / accused persons abjured the guilt and entered into defence by stating that they have not committed the offence and they have been falsely implicated. They have examined two witnesses namely, Firulal (DW-1) and Dr. P. Singh (DW-2) in support of their defence and also exhibited two documents Exs.D-1 & D-2 – statement of Shivkumar Jaiswal and MLC report of Shyam Sunder Jaiswal (A-2), respectively.

6. The trial Court after appreciating ocular, oral and documentary evidence on record, convicted and sentenced the appellants in the manner mentioned in the opening paragraph of this judgment against which these appeals have been preferred.

7. The trial Court has merely found following circumstances proved against appellants Jamuna Bai (A-1) and Shyam Sunder (A-2): -





1. Motive for the offence is proved pursuant to documents Exs.P-30 to P-44 – revenue proceedings initiated by Namrata Jaiswal against Narendra Kumar Jaiswal (PW-7) – husband of Jamuna Bai and furthermore, Nandkishore Tamboli (PW-1), Vijay Bahadur (PW-5), Shivkumar (PW-6) and Narendra Kumar (PW-7) have proved motive for the offence against these two appellants.
2. Pursuant to the memorandum statements of Jamuna Bai (A-1) and Shyam Sunder (A-2) – Exs.P-8 & P-10, material objects have been recovered vide Exs.P-9 & P-11, respectively, and same were sent for forensic examination from where FSL report Ex.P-60 has been received according to which human blood of Group 'A' was found on petticoat (Art. 'C') of Jamuna Bai, chopper (Art. 'E') seized from Shyam Sunder and vest (Art. 'H1') of deceased Shyam Kumar which connects the present two appellants with the offence in question.
8. Against appellants Surendra Kumar (A-3), Sahaniram (A-4) & Dadhibal (A-5), the trial Court has held that by virtue of Section 30 of the Indian Evidence Act, 1872, the confessional statements made by accused Jamuna Bai & Shyam Sunder Exs.P-8 & P-10 are admissible in evidence, though it is a corroborative piece of evidence, yet they are guilty of offence under Sections 302 read with Section 34, 460 and 120B of the IPC and the trial Court has convicted them accordingly.

Submissions of learned counsel for the parties: -

9. Mr. Surendra Singh, learned Senior Counsel appearing on behalf of appellants – Jamuna Bai & Shyam Sunder in Cr.A.No.1202/2014, submits as under: -





1. Motive of the appellants for committing the offence in question has not been established satisfactorily, at the most, motive can be said to be a strong suspicion, but it cannot be made basis for conviction of the appellants for the offence in question. Reference has been made upon the decisions of the Supreme Court in the matters of Sampath Kumar v. Inspector of Police, Krishnagiri¹ and Sunil Rai alias Paua and others v. Union Territory, Chandigarh².
2. The confessional statement made by appellant Shyam Sunder vide Ex.P-8 and the confessional statement made by Jamuna Bai vide Ex.P-10 were not truthful and voluntary as the same have been caused by inducement, threat or promise and therefore the said confessions made by accused persons are irrelevant in a criminal proceeding. Appellant Shyam Sunder in his statement recorded under Section 313 of the CrPC, in paragraph 63, has clearly stated that the investigating officer has assaulted him and beaten him by wooden stick by which he became unconscious and he was also taken to hospital at Janjgir. As such, the confessional statement, particularly of Shyam Sunder is hit by Section 24 of the Evidence Act read with Article 20(3) of the Constitution of India. Confessional statement of accused can be used in view of Section 27 of the Evidence Act qua the fact discovered, but also the place from where it is produced and knowledge of the accused to this. Reliance has been placed upon the decisions of the Supreme Court in the matters of Asar Mohammad and others v. State of

1 AIR 2012 SC 1249

2 AIR 2011 SC 2545





U.P.³ and **Ashish Jain v. Makrand Singh and others**⁴.

3. The seized articles which were sent to the Forensic Science Laboratory for forensic examination were never produced before the court particularly, petticoat of Jamuna Bai, sharp-edged weapon and others which have been marked as articles, therefore, it cannot be said that the articles which were seized from two accused Jamuna Bai & Shyam Sunder are the very articles which were subjected to forensic examination and as such, the authenticity of the FSL report is doubtful and it cannot be relied upon to connect the appellants with the offence in question.

4. Though on Articles C, E & H1, human blood was found and blood group has been ascertained as Group 'A', but merely because, blood group of the deceased and the blood found on petticoat, chopper and vest are matching, the appellants cannot be convicted and it does not prove the culpability of the accused persons. Reliance has been placed upon the decisions of the Supreme Court in the matters of **Debapriya Pal v. State of West Bengal**⁵ and **Sonvir alias Somvir v. State of NCT of Delhi**⁶.

5. Appellants Jamuna Bai & Shyam Sunder were not seen partly before the incident and partly after the incident near the place where Namrata Jaiswal and Shyam Kumar were residing and they were murdered therefore the appellants cannot be connected with the offence in question. Reference has been made upon the judgments of the Supreme Court in the matters

3 AIR 2018 SC 5264

4 AIR 2019 SC 546

5 AIR 2017 SC 1246

6 AIR 2018 SC 3131





of Prem Singh v. State of Punjab⁷ and State of Rajasthan v. Ramanand⁸ and consequently, the judgment of conviction and order of sentence are liable to be set aside.

10. Mr. Surendra Singh, learned Senior Counsel, however, would submit on behalf of appellant – Surendra Kumar (A-3) in Cr.A.No.1160/2014 and appellants – Sahaniram (A-4) & Dadhibal (A-5) in Cr.A. No.1143/2014, that these appellants have been convicted by the trial Court merely on the basis of confessional statements of Shyam Sunder Ex.P-8 and Jamuna Bai Ex.P-10 in light of Section 30 of the Indian Evidence Act, 1872. He would further submit that the confessional statement of co-accused by virtue of Section 30 of the Evidence Act is a very weak piece of evidence and it can only be a corroborative piece of evidence if there is already on record other material to connect the appellants with the offence in question, which is lacking in the present case and which is apparent from the finding recorded by the trial Court in paragraphs 41 & 66, therefore, merely on the basis of confessional statements, conviction cannot be maintained in view of the decision of the Supreme Court in the matter of Haricharan Kurmi v. State of Bihar⁹ followed by the Supreme Court in the matter of Dipakbhai Jagdishchandra Patel v. State of Gujarat and another¹⁰. As such, the judgment of conviction recorded and order of sentence awarded in respect of the present appellants are also liable to be set aside.

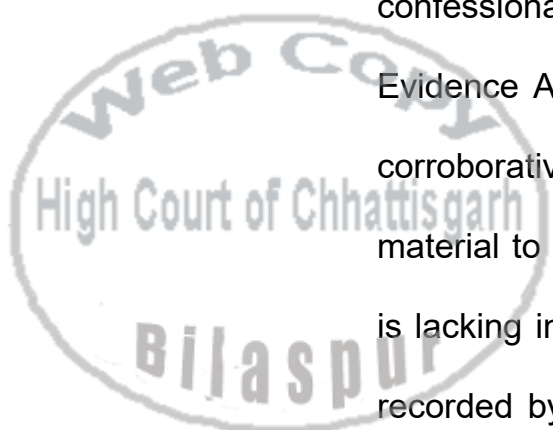
11. Opposing the submissions advanced on behalf of the appellants, Mr. Ashish Tiwari, learned State counsel, would submit qua appellants

7 AIR 1997 SC 221

8 AIR 2017 SC 2100

9 AIR 1964 SC 1184

10 AIR 2019 SC 3363





Jamuna Bai & Shyam Sunder in Cr.A.No.1202/2014, as under: -

1. On account of old land dispute which has been proved by documents Exs.P-30 to P-44 which are documents relating to revenue partition proceedings filed by Shyam Kumar / Namrata Jaiswal against Narendra Kumar (PW-7) – husband of Jamuna Bai and which are duly proved by examination of Atul Shete (PW-11) – Tahsildar, Kharsia and Anupam Tiwari (PW-12) – Tahsildar, Sakti, the appellants have strong motive to commit the offence and they have committed the offence. Both these official witnesses have proved the existence of property dispute between Namrata Jaiswal and Narendra Kumar – husband of accused Jamuna Bai (A-1). Order sheets Exs.P-30, P-35 & P-40 would demonstrate the pending land dispute between them. Furthermore, statements of Nandkishore Tamboli (PW-1), Vijay Bahadur (PW-5), Shivkumar (PW-6) and Narendra Kumar (PW-7) – husband of accused Jamuna Bai, overwhelmingly establish that there is strong motive for commission of offence of murder of Namrata Jaiswal and her husband Shyam Kumar by the appellants and in that regard, reliance has been placed upon the decision of the Supreme Court in the matter of **Ujjagar Singh v. State of Punjab**¹¹.
2. Appellant Jamuna Bai had also lodged a complaint on 19-3-2013 at Police Station Kharsia against Shyam Kumar vide Ex.P-20 and in light of the said complaint, statements Exs.P-21 to P-24 have been recorded by Silmani Toppo (PW-8) which goes to show that complaint was regarding land dispute. As such,



argument in this regard that motive for offence has not been established by the prosecution deserves to be rejected.

3. Confessional statements of Shyam Sunder & Jamuna Bai Exs.P-8 & P-10 were voluntary and truthful pursuant to which recovery of material objects has rightly been made vide Exs.P-9 & P-11 and same were sent for forensic examination. Replying to the submission that statement was induced by pressure and threat and therefore it is not admissible in evidence, he would submit that memorandum statement of Shyam Sunder was recorded on 11-4-2013 and thereafter, on 12-4-2013, he was medically examined by Dr. P. Singh (DW-2) who has recorded in the MLC report Ex.D-2C and has also clearly stated before the Court that no external injury was found over the body of Shyam Sunder and he was hale and healthy, physically and mentally as well. Aforesaid facts have also been proved by investigating officer S.B. Singh Rana (PW-13), who has refuted the fact that appellant Shyam Sunder (A-2) was subjected to any sort of pressure or he was physically assaulted, except the fact that he was referred to hospital at Janjgir for pain in chest. As such, the confessional statement is strictly in accordance with law.
4. In the FSL report Ex.P-60, it has been reported that human blood of Group 'A' was found on the seized articles i.e. petticoat of Jamuna Bai (Art. 'C'), iron chopper recovered from accused Shyam Sunder (Art. 'E') and vest of deceased Shyam Kumar (Art. 'H1'). In support of his contention, he would rely upon the decision of the Supreme Court in the matter of **Balwan Singh v.**





State of Chhattisgarh and another¹² and referring to paragraphs 22 & 23 of the report, he would submit that in the instant case, recovery of bloodstained articles have been proved beyond doubt by Tankeshwar Jaiswal (PW-2), even if it is not the case of the prosecution that the investigation in question any way is not tainted, merely on the basis of assumption that in India, population is more and there would be more people of Group A blood, the appellants cannot escape of their culpability for committing the offence in question.

5. Case of the prosecution is based on circumstantial evidence, it is not the case based on the theory of last seen together, therefore, the decisions relied upon by learned Senior Counsel in Prem Singh (supra) and Ramanand's case (supra) is of no help to the appellants. Even otherwise, Jamuna Bai – one of the accused, was staying in the same premises on ground floor, the accused persons have assembled together in the previous night of the offence and thereafter the offence is said to have been committed. As such, the appeal of Jamuna Bai and Shyam Sunder deserves to be dismissed.
6. In respect of production of articles before the Court which were sent to the FSL, though argued, but the appellants have not laid any foundation before the trial Court by subjecting the investigating officer to any cross-examination and therefore they cannot be permitted to make out any case before the appellate court for which they have not laid any foundation before the trial Court at that stage as such, the appeal deserves to be





dismissed. Reliance has been placed upon the decision of the Supreme Court in the matter of Lakshmi and others v. State of U.P.¹³.

12. Mr. Ashish Tiwari, learned State counsel, however, would further submit qua appellants Surendra Kumar (A-3) in Cr.A.No.1160/2014 and appellants Sahaniram (A-4) & Dadhibal (A-5) in Cr.A. No.1143/2014 that conviction of the appellants by the trial Court only on the basis of confessional statements made by Jamuna Bai (A-1) and Shyam Sunder (A-2) vide Exs.P-8 & P-10 is strictly in accordance with law since motive and seizure of articles have also been proved, therefore, the present appellants have rightly been convicted and their appeals also deserve to be dismissed.

13. We have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.

14. The first question for consideration would be, whether the death of two deceased persons namely, Namrata Jaiswal and Shyam Kumar was homicidal in nature?

15. The trial Court after relying upon the postmortem reports Ex.P-27 of Shyam Kumar and Ex.P-28 of Namrata Jaiswal which have been proved by Dr. Krishna Kumar Sidar (PW-10) came to the conclusion that the death of Shyam Kumar and Namrata Jaiswal was homicidal in nature, as the doctor has opined that cause of death was cardio respiratory arrest associated with asphyxia by obstruction of airway passage and massive blood loss and death was homicidal in nature.

After considering the postmortem reports Exs.P-27 & P-28 of the two

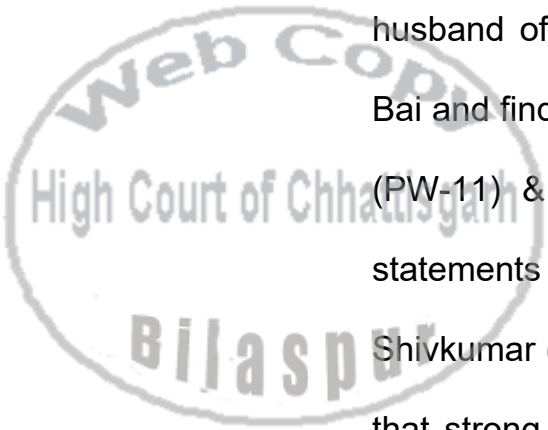


deceased persons and considering the injuries suffered by them and also considering the cause of death and finding of the trial Court, we are of the opinion that the trial Court is absolutely justified in holding that nature of death of the two deceased persons was homicidal and we hereby affirm the said finding recorded by the trial Court.

Cr.A.1202/2014 preferred by Jamuna Bai and Shyam Sunder and submissions made on behalf of both the sides: -

Motive of the offence: -

16. The trial Court relied upon the documents Exs.P-30 to P-44 relating to revenue proceedings initiated by Namrata Jaiswal against the husband of Jamuna Bai namely, Narendra Kumar (PW-7) / Jamuna Bai and finding that those documents have been proved by Atul Shete (PW-11) & Anupam Tiwari (PW-12) and further relying upon the statements of Nandkishore Tamboli (PW-1), Vijay Bahadur (PW-5), Shivkumar (PW-6) & Narendra Kumar (PW-7), came to the conclusion that strong motive for commission of offence is proved, as Namrata Jaiswal and her husband both were staying on second floor of the house, whereas Jamuna Bai along with her husband and children were staying on ground floor, therefore, Namrata Jaiswal initiated various revenue proceedings Exs.P-30 to P-44 demanding her share in the property which is being denied by Jamuna Bai and as such there is strong motive for commission of the offence in question which has seriously been questioned by learned counsel for the appellants.
17. Section 8 of the Evidence Act provides that any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.





18. In the matter of **Wakkar v. State of Uttar Pradesh**¹⁴, it has been held by their Lordships of the Supreme Court that in a case which is based on circumstantial evidence, motive for committing the crime on the part of the accused assumes importance. In **Sampath Kumar** (supra), it has been held by the Supreme Court that motive may be an important circumstance in a case based on circumstantial evidence but cannot take the place of conclusive proof. The Supreme Court in **Sunil Rai alias Paua** (supra) has held that motive, however, cannot be basis for conviction of the offence. In the instant case, motive for the offence in question has been proved by the prosecution in view of the finding recorded herein-below, therefore, the two decisions cited on behalf of the appellants namely, **Sampath Kumar** (supra) and **Sunil Rai alias Paua** (supra), nowhere help the appellants.

19. In order to consider the plea raised at the Bar, it would be appropriate to notice Exs.P-30 to P-44 which are documents exhibited by the trial Court and the description of which are as under: -

S.No.	Particulars of documents	Exhibit	Page number of the paper book
1.	Revenue order sheets of the Court of Tahsildar, Kharsia (Namrata v. Narendra)	P-30	143-148
2.	Application under Section 178 of the Chhattisgarh Land Revenue Code	P-31	149-150
3.	Form B-1 issued by the Tahsildar, Kharsia	P-32	151
4.	Objection as to maintainability of the case filed by non-applicant Narendra Kumar	P-33	152
5.	Reply to objection as to maintainability of the case filed by applicant Namrata Jaiswal	P-34	153
6.	Revenue order sheets of the Court of Tahsildar, Kharsia (Namrata v. Narendra)	P-35	154-161



7.	Application under Section 178 of the Chhattisgarh Land Revenue Code	P-36	162-163
8.	Form B-1 issued by the Tahsildar, Kharsia	P-37	164
9.	Objection as to maintainability of the case filed by non-applicant Narendra Kumar	P-38	165
10.	Reply to objection as to maintainability of the case filed by applicant Namrata Jaiswal	P-39	166
11.	Revenue order sheets of the Court of Tahsildar, Sakti	P-40	167-171
12.	Application under Section 178 of the Chhattisgarh Land Revenue Code with affidavit	P-41	172-178
13.	Form B-1 issued by the Tahsildar, Sakti	P-42 to 44	179-181

20. Atul Shete – the then Tahsildar, Kharsia has been examined as PW-

11. He has clearly stated before the Court that during his posting as Tahsildar at Tahsil Kharsia, Namrata Jaiswal has filed a proceeding under Section 178 of the Chhattisgarh Land Revenue Code for partition of land which has been registered as Revenue Case No.19/A-27/Year 2011-12 and Revenue Case No.18/A-27/Year 2011-12 and which was pending. The said documents, objections, replies, order sheets etc. are Exs.P-30 to P-34 and other documents are Exs.P-35 to P-39. Similarly, Anupam Tiwari – the then Tahsildar, Sakti has been examined as PW-12. He has stated that during his posting at Sakti, Namrata Jaiswal has filed a case for partition of land against Narendra Kumar Jaiswal which has been registered as Revenue Case No.11A-27/2012-13 and documents relating to the said case are Exs.P-40 to P-44. As such, institution of revenue proceedings under Section 178 of the Land Revenue Code for partition of agricultural land against Narendra Kumar – husband of Jamuna Bai, is duly established and all the such cases were pending on the date of





offence in question. Similarly, Nandkishore Tamboli (PW-1) and Vijay Bahadur (PW-5) have also stated that there was land dispute between Namrata Jaiswal and Narendra Jaiswal. Shivkumar (PW-6), who is elder brother of deceased Shyam Kumar, has also stated that land dispute was going on between Namrata Jaiswal and Narendra Kumar. Similar statement has been made by Narendra Kumar (PW-7). Though he has been declared hostile, but he has admitted that land dispute was going on between him and deceased Namrata Jaiswal. Not only this, Jamuna Bai had lodged a complaint on 19-3-2013 at Police Station Kharsia against Shyam Kumar vide Ex.P-20 and in light of the said complaint, statements Exs.P-21 to P-24 have been recorded which is proved by Silmani Toppo (PW-8) and which goes to show that complaint was lodged regarding land dispute by Jamuna Bai. As such, motive is established.

Confessional / disclosure statements of Shyam Sunder (A-2) and Jamuna Bai (A-1): -

21. It has been contended on behalf of the appellants that the confessional statements of Shyam Sunder (A-2) and Jamuna Bai (A-1) are not voluntary and truthful, therefore, they are not reliable and same have been caused by inducement, threat / pressure or promise, as such, they are hit by Section 24 of the Indian Evidence Act and also by Article 20(3) of the Constitution of India. Reliance has been placed upon the statement of accused Shyam Sunder (A-2) recorded under Section 313 of the CrPC, who while answering question No.63 has made following statement: -

63- आपको और कुछ कहना है?

उत्तर- मुझे दिनांक 11/4/13 को शाम को लगभग 4-5 बजे पुलिस वाले



सक्ती थाना लाये थे । तथा थाना में पुलिस वाले मेरे पेंट शर्ट निकलवाये थे । तथा मेरे साथ बहुत मारपीट किये थे। जिससे मेरे पुरे शरीर मे सुजन आ गया था । डंडा से मारने के कारण मेरे बाये पैर की एडी में चोट लगा था । खून निकल रहा था । जिसे देखकर मै बेहोश हो गया था । जब रात को 4:00 बजे होश आया तो मै अस्पताल में था । दुसरे दिन मै चल फिर नहीं पा रहा था । तब मुझे यह पता चला था कि मै जांजगीर अस्पताल में हूँ । दिनांक 12/4/13 को 3 या 3.30 बजे सक्ती थाना लाये थे । उस समय मै अस्पताल का चादर पहना था उसी हालत में न्यायालय में पेश किया था । फिर हमें जेल भेज दिया गया । जेल में भी इलाज चला था । वहाँ से अस्पताल इलाज हेतु भेजे थे । मुझे झुठा फंसाया गया है।

22. Relying upon the above-quoted statement of accused Shyam Sunder

it has been contended that he was beaten / pressurized by the police on 11-4-2013 pursuant to which he made disclosure statement and recovery was made pursuant to the disclosure statement, on 12-4-2013 at 3.30 p.m.. In order to prove the aforesaid fact, the defence has examined Dr. P. Singh, who was at that time Medical Officer of Primary Health Centre, Kurda and In-charge Block Medical Officer, Sakti, as DW-2. He has clearly stated before the Court that on 12-4-2013 at 4 p.m., Shyam Sunder was brought to the hospital and he was medically examined. He has further stated that he did not found any external injury on his body, he was hale and healthy, mentally and physically as well, and his report is Ex.D-2C. Furthermore, on this point, S.B. Singh Rana (PW-13) – investigating officer was also cross-examined and in paragraph 23, he has clearly refuted the suggestion that the accused was assaulted by the police from 10 a.m. to 8 p.m. on 11-4-2013. In paragraph 25, it has been clarified by the investigating officer (PW-13) that since the accused was complaining of pain in chest, he was taken to the Janjgir District Hospital. He has also refuted that the appellant – Shyam Sunder was subjected to assault or marpit by the official staff. As such, the argument that the confessional statement / disclosure statement so made pursuant to





pressure, inducement or threat given to the accused on behalf of the respondent State is not established on record.

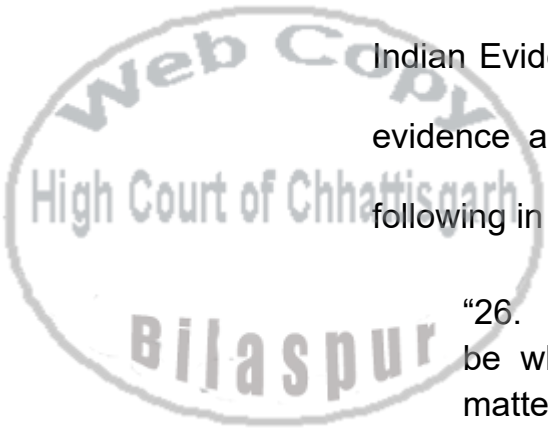
23. At this stage, it would be appropriate to notice Section 27 of the Indian Evidence Act, 1872, which states as under: -

“27. How much of information received from accused may be proved.—Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.”

24. The Supreme Court in the matter of Mani v. State of Tamil Nadu¹⁵, considering the nature, scope and applicability of Section 27 of the Indian Evidence Act, 1872, has held that discovery is a weak kind of evidence and cannot be wholly relied upon and has observed the following in paragraph 26 of the judgment :-

“26. The discovery is a weak kind of evidence and cannot be wholly relied upon and conviction in such a serious matter cannot be based upon the discovery. Once the discovery fails, there would be literally nothing which would support the prosecution case. We have already held that the prosecution has failed to prove that the house where alleged bloodstains were found belonged exclusively or was possessed exclusively by the appellant, we have further pointed out that the discovery was absolutely farcical. There is one other very relevant factor ignored by both the courts that the prosecution never made any attempts to prove that the clothes belonged to the appellants. There is literally no evidence to suggest anything to that effect. Therefore, even if we accept the discovery, it does not take us anywhere near the crime. Both the courts below have ignored this very important aspect. Once these two important circumstances are disbelieved, there is nothing which would remain to support the prosecution theory.”

25. As such, it appears that Section 27 of the Evidence Act is applicable





only if the confessional statement relates distinctly to the fact thereby discovered.

26. The Supreme Court in Asar Mohammad (supra) with reference to the word “fact” employed in Section 27 of the Evidence Act has held that the facts need not be self-probatory and the word “fact” as contemplated in Section 27 of the Evidence Act is not limited to “actual physical material object”. It has been further held that the discovery of fact arises by reason of the fact that the information given by the accused exhibited the knowledge or the mental awareness of the informant as to its existence at a particular place and it includes a discovery of an object, the place from which it is produced and the knowledge of the accused as to its existence. Their Lordships relying upon the decision of the Privy Council in the matter of Pulukuri Kotayya v. King Emperor¹⁶ observed as under: -

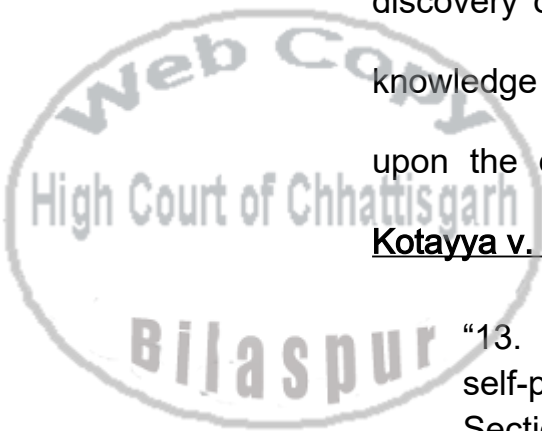
“13. It is a settled legal position that the facts need not be self-probatory and the word “fact” as contemplated in Section 27 of the Evidence Act is not limited to “actual physical material object”. The discovery of fact arises by reason of the fact that the information given by the accused exhibited the knowledge or the mental awareness of the informant as to its existence at a particular place. It includes a discovery of an object, the place from which it is produced and the knowledge of the accused as to its existence. It will be useful to advert to the exposition in the case of *Vasanta Sampat Dupare v. State of Maharashtra*¹⁷, in particular, paragraphs 23 to 29 thereof. The same read thus:

“23. While accepting or rejecting the factors of discovery, certain principles are to be kept in mind. The Privy Council in *Pulukuri Kotayya v. King Emperor* (supra) has held thus: (IA p. 77)

“... it is fallacious to treat the ‘fact discovered’ within the section as equivalent to the object produced;

16 AIR 1947 PC 67

17 (2015) 1 SCC 253





the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that 'I will produce a knife concealed in the roof of my house' does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added 'with which I stabbed A', these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant.

xxx xxx xxx
 xxx xxx xxx
 xxx xxx xxx”



27. Furthermore, in Ashish Jain (supra), the Supreme Court has considered the issue and held that if recovery of incriminating material is not voluntary and caused by inducement, pressure or coercion, evidentiary value of such statement leading to recovery, is nullified and relying upon its earlier decision in the matter of Selvi v. State of Karnataka¹⁸, observed as under: -

“21. As regards the recovery of incriminating material at the instance of the accused, the Investigating Officer K.D. Sonakiya, PW35, has categorically deposed that all the confessions by the accused persons were made after interrogation, but the mode of this interrogation does not appear to be of normal character, inasmuch as he himself has deposed that the accused persons were further grilled and interrogated multiple times before extracting the confessions which lead to the recovery of the ornaments, cash, weapons and key. We find from the totality of facts and circumstances that the confessions that led to the



recovery of the incriminating material were not voluntary, but caused by inducement, pressure or coercion. Once a confessional statement of the accused on facts is found to be involuntary, it is hit by Article 20(3) of the Constitution, rendering such a confession inadmissible. There is an embargo on accepting selfincriminatory evidence, but if it leads to the recovery of material objects in relation to a crime, it is most often taken to hold evidentiary value as per the circumstances of each case. However, if such a statement is made under undue pressure and compulsion from the investigating officer, as in the present matter, the evidentiary value of such a statement leading to the recovery is nullified. It is noteworthy to reproduce the observations of this Court regarding the relationship between Section 27 of the Evidence Act and Article 20(3) of the Constitution in *Selvi v. State of Karnataka*, (2010) 7 SCC 263:



“102. As mentioned earlier “the right against self-incrimination” is now viewed as an essential safeguard in criminal procedure. Its underlying rationale broadly corresponds with two objectives—firstly, that of ensuring reliability of the statements made by an accused, and secondly, ensuring that such statements are made voluntarily. It is quite possible that a person suspected or accused of a crime may have been compelled to testify through methods involving coercion, threats or inducements during the investigative stage. When a person is compelled to testify on his/her own behalf, there is a higher likelihood of such testimony being false. False testimony is undesirable since it impedes the integrity of the trial and the subsequent verdict. Therefore, the purpose of the “rule against involuntary confessions” is to ensure that the testimony considered during trial is reliable. The premise is that involuntary statements are more likely to mislead the Judge and the prosecutor, thereby resulting in a miscarriage of justice. Even during the investigative stage, false statements are likely to cause delays and obstructions in the investigation efforts.

xxx xxx xxx

xxx xxx xxx

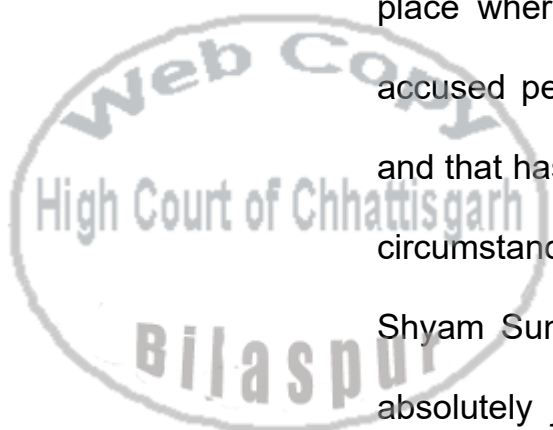
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22. We are of the opinion that the recovery of the stolen ornaments, etc. in the instant matter was made on the



basis of involuntary statements, which effectively negates the incriminating circumstance based on such recovery, and severely undermines the prosecution case.”

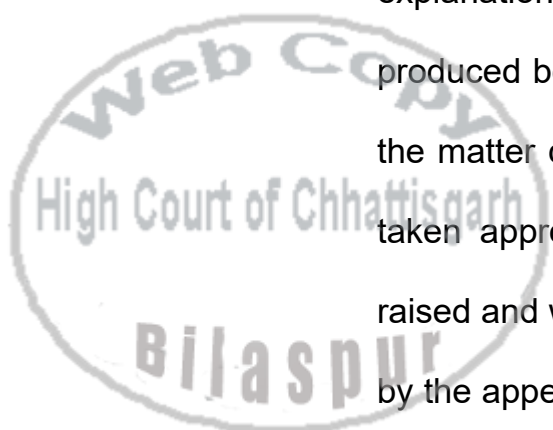
28. Reverting to the facts of the case in light of the principles of law laid down by their Lordships of the Supreme Court in Asar Mohammad (supra) and Ashish Jain (supra) and further taking the view that the confessional statements of the accused particularly Shyam Sunder (A-2) is voluntary and it was not caused by inducement, pressure or coercion or is the result of any assault as claimed by the accused / appellant, it is quite established that the physical object produced by accused / appellant Shyam Sunder as well as recovered from the place where the physical objects were kept and knowledge of the accused persons / appellants as to this extent would be admissible and that has only been relied upon by the prosecution as incriminating circumstance against the two appellants – Jamuna Bai (A-1) and Shyam Sunder (A-2). We are of the opinion that the trial Court is absolutely justified in holding that the confessional statements are voluntary and truthful and same have been proved by Tankeshwar Jaiswal (PW-2) – memorandum witness. As such, the argument in this behalf being violative of Section 24 of the Evidence Act read with Article 20(3) of the Constitution of India raised by the learned Senior Counsel, is hereby rejected.
29. Now, the next submission made on behalf of the learned Senior Counsel is that the seized articles namely, chopper, shirt and full pant stained with blood from accused Shyam Sunder vide Ex.P-9 and petticoat seized vide Ex.P-11 from Jamuna Bai were not produced before the court and not marked as articles, therefore, it cannot be established that the said articles were the same which were seized





from the accused / appellants pursuant to their memorandum statements Exs.P-8 & P-10. However, it has been argued by the learned State counsel that no such foundation for such a submission was laid before the trial Court by the appellants and investigating officer S.B. Singh Rana (PW-13) was also not questioned on this aspect at the time of his examination. A careful perusal of the statement of S.B. Singh Rana (PW-13) would show that no question was put to him that these articles, which were seized pursuant to the memorandum statements of Jamuna Bai and Shyam Sunder, were not produced before the court, otherwise, he could have given explanation if the articles were not kept in safe custody and were not produced before the trial Court and the trial Court which was seisin of the matter could have taken cognizance of the same and could have taken appropriate steps in that regard, but no such objection was raised and we can say safely that no foundation was laid in this regard by the appellants before the trial Court or at the time of examination of investigating officer S.B. Singh Rana (PW-13).

30. In this regard, the decision of the Supreme Court in Lakshmi (supra) may be referred herein pertinently. Their Lordships of the Supreme Court in Lakshmi (supra) have held that undoubtedly, the identification of the body, cause of death and recovery of weapon with which the injury may have been inflicted on the deceased are some of the important factors to be established by the prosecution in an ordinary given case to bring home the charge of offence under Section 302 IPC. This, however, is not an inflexible rule. It cannot be held as a general and broad proposition of law that where these aspects are not established, it would be fatal to the case of the prosecution and in all



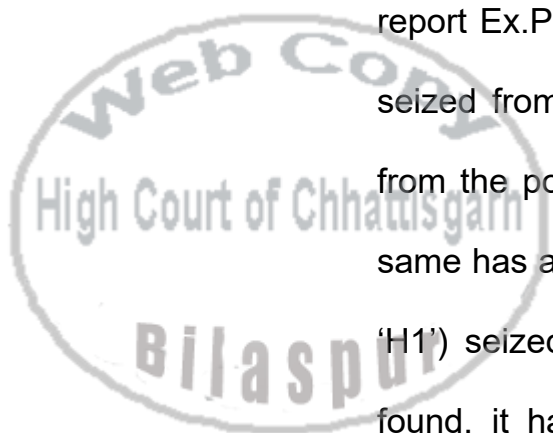


cases and eventualities, it ought to result in the acquittal of those who may be charged with the offence of murder. It would depend on the facts and circumstances of each case.

31. In the instant case also, the appellants for the reasons best known to them have failed to lay foundation of the said plea before the trial Court either at the time of examination of the investigating officer or at the time of trial before the said Court, as such, the objection in this regard raised belatedly at the appellate stage without laying any foundation before the trial Court, is hereby rejected.

32. The next submission on behalf of the appellants is, though in the FSL report Ex.P-60, human blood has been found on Art. 'C' i.e. petticoat seized from Jamuna Bai (A-1) and on iron chopper (Art. 'E') seized from the possession of Shyam Sunder (A-2) and blood group of the same has also been ascertained as 'A', and similarly, on the vest (Art. 'H1') seized from deceased Shyam Kumar blood of Group 'A' was found, it has been argued by learned Senior Counsel that merely ascertaining of blood group on the aforesaid articles that too of the same blood group of deceased Shyam Kumar, would not lead to culpability of the appellants in the offence in question, relying upon **Debapriya Pal** (supra) followed in **Sonvir alias Somvir** (supra).

33. In **Debapriya Pal** (supra), blood detected on clothes recovered at instance of accused and on bed sheet at spot, found matching, but blood group of accused and deceased however, was not ascertained and their Lordships of the Supreme Court held that matching blood groups on recovered clothes and bed sheet by itself cannot be proof of involvement of accused. The two-Judges Bench decision of the Supreme Court in **Debapriya Pal** (supra) has been followed by

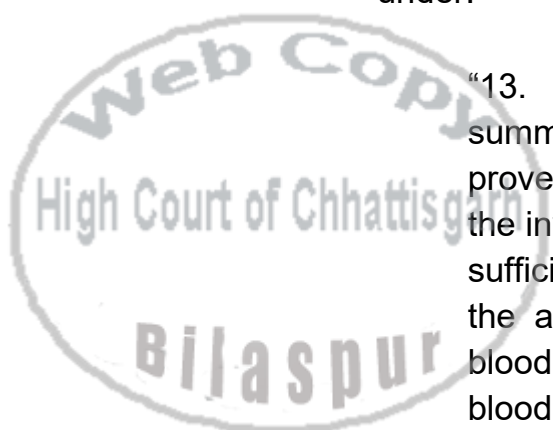




another two-Judges Bench of the Supreme Court in Sonvir alias Somvir (supra). However, on behalf of the State / respondent, a three-Judges Bench decision of the Supreme Court in Balwan Singh (supra) has been relied upon in which their Lordships have considered the issue and held that if the recovery of bloodstained articles is proved beyond reasonable doubt by the prosecution, and if the investigation was not found to be tainted, then it may be sufficient if the prosecution shows that the blood found on the articles is of human origin though, even though the blood group is not proved because of disintegration of blood. It has been observed by their Lordships as under: -

“13. From the aforementioned discussion, we can summarise that if the recovery of bloodstained articles is proved beyond reasonable doubt by the prosecution, and if the investigation was not found to be tainted, then it may be sufficient if the prosecution shows that the blood found on the articles is of human origin though, even though the blood group is not proved because of disintegration of blood. The court will have to come to the conclusion based on the facts and circumstances of each case, and there cannot be any fixed formula that the prosecution has to prove, or need not prove, that the blood groups match.”

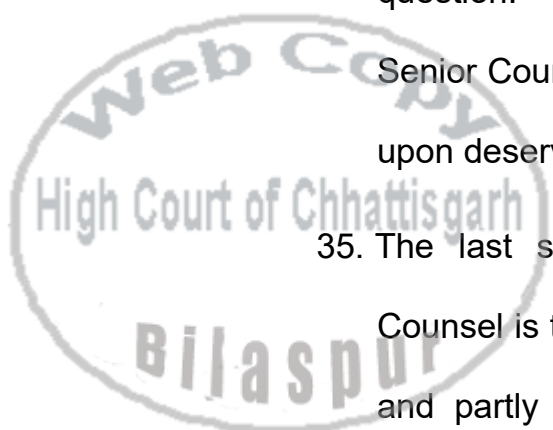
34. Reverting to the facts of the present case, it is quite vivid that it is not the case of the appellants that the investigation made by the police was tainted anyway or it has not been done in accordance with law and even the recovery of bloodstained articles have been duly proved by Tankeshwar Jaiswal (PW-2) which has not been seriously questioned. Not only this, bloodstains have been found on the petticoat seized from the possession of Jamuna Bai (A-1) and on the chopper seized from the possession of Shyam Sunder (A-2) and the blood on those two articles is of human origin ascertained to be of





Group A. Furthermore, blood found on the vest seized from deceased Shyam Kumar i.e. Art. 'H1' was also found to be of Group A and that was matching with the articles recovered from Jamuna Bai (A-1) and Shyam Sunder (A-2). As such, there is no ground to reject the FSL report Ex.P-60 holding that many people have the blood of Group A. Even otherwise, in Debapriya Pal (supra), blood group of accused and deceased was not ascertained, but in the instant case, blood group of one of the deceased was duly ascertained by examining his vest Art. 'H1' and blood group was found to be of Group 'A'. As such, the FSL report Ex.P-60 also connects the appellants with the offence in question. Therefore, the argument raised on behalf of the learned Senior Counsel that the FSL report is not reliable and cannot be relied upon deserves to be and is hereby rejected.

35. The last submission advanced on behalf of the learned Senior Counsel is that the appellants were not seen partly before the incident and partly after the incident near the place where the offence in question has taken place i.e. in the house of deceased persons Namrata Jaiswal and Shyam Kumar. It is relevant to mention here that it is not the case of the prosecution that the appellants were seen along with the deceased persons lastly as the case of the prosecution is not based on the theory of last seen together, rather it is based on other circumstantial evidence. Even otherwise, it is not in dispute that one of the appellants – Jamuna Bai was already staying in the same house (in ground floor) in which Namrata Jaiswal and Shyam Kumar, both were found dead on the fateful day, as such, the two decisions relied upon by the learned Senior Counsel namely, Prem Singh (supra) and Ramanand's case (supra) are of no help to the appellants





and this submission is accordingly rejected.

36. On the basis of the aforesaid discussion, we are of the considered opinion that the trial Court is absolutely justified in holding that the prosecution has been able to prove the offence beyond reasonable doubt against Jamuna Bai and Shyam Sunder by holding that motive of the offence in question is proved pursuant to the disclosure statements Exs.P-8 & P-10 whereupon seizure of blood-stained petticoat has been made vide Ex.P-11 and seizure of chopper, shirt, full pant & motorcycle has been made vide Ex.P-9. The seized articles were sent for forensic examination and vide Ex.P-60, FSL report has been received according to which human blood was found on petticoat & chopper and blood group has been ascertained as Group A which is matching with the vest (Art. 'H1') seized from deceased Shyam Kumar. Furthermore, the investigation was not tainted and recovery was also proved beyond doubt by Tankeshwar Jaiswal (PW-2). As such, the chain of circumstances is complete and it is duly established.

37. In that view of the matter, the trial Court is absolutely justified in convicting and sentencing appellants Jamuna Bai (A-1) and Shyam Sunder (A-2) for offence under Sections 120B, 460 and 302 read with Section 34 (two counts) of the IPC. We hereby affirm the judgment of conviction and order of sentence awarded to Jamuna Bai and Shyam Sunder. Accordingly, Cr.A.No.1202/2014 preferred by the two appellants named above deserves to be dismissed.

Cr.A.No.1143/2014 by Sahaniram & Dadhibal and Cr.A. No.1160/2014 by Surendra Kumar: -

38. It has been contended by the learned Senior Counsel that these three



appellants namely, Surendra Kumar (A-3), Sahaniram (A-4) and Dadhibal (A-5) have been convicted by the trial Court with the aid of Section 30 of the Evidence Act. The learned Senior Counsel has taken us to paragraphs 41 & 66 of the judgment of the trial Court by which it has been held that in view of the confessional statements of co-accused Jamuna Bai (A-1) and Shyam Sunder (A-2), their evidence is admissible by virtue of Section 30 of the Evidence Act, though their confessional statements are corroborative pieces of evidence. Paragraphs 41 and 66 of the judgment of the trial Court state as under: -

41- इसके अतिरिक्त आरोपी श्याम सुन्दर एवं आरोपिया जमुनाबाई के मेमोरण्डम कथन से आरोपीगण के मध्य मृतिका श्रीमती नम्रता जायसवाल एवं मृतक श्याम कुमार जायसवाल की हत्या करने का षडयंत्र करने एवं सामान्य आशय बनाने के अलावा घटना में संलिप्त अन्य आरोपीगण सुरेन्द्र कुमार, दधीबल एवं सहनीराम की घटना में संलिप्ता होने तथा उनका उक्त षडयंत्र एवं सामान्य आशय में शामिल होने के तथ्यों का पता चला है, जो धारा 30 भारतीय साक्ष्य अधिनियम के तहत समर्थनकारी साक्ष्य के रूप में ग्राह्य है। इस प्रकरण में केवल ऐसा नहीं है कि आरोपिया जमुनाबाई एवं आरोपी श्याम सुन्दर के मेमोरण्डम कथन से ही अन्य आरोपी सुरेन्द्र, दधीबल एवं सहसीराम के नाम आए हैं, बल्कि सभी आरोपीगण का घटना में संलिप्त होने के तथ्य का रहस्योद्घाटन साक्षी नरेन्द्र कुमार (अ.सा.-7) के धारा 161 द.प्र.सं. के कथन के आधार पर हुआ है और जिसके आधार पर विवेचना अधिकारी द्वारा विस्तृत विवेचना किए जाने पर घटना के तह तक पहुंचा जा सका है, किन्तु यह भिन्न विषय है कि अपने न्यायालयीन कथन के दौरान साक्षी नरेन्द्र कुमार (अ.सा.-7) द्वारा अभियोजन कथानक का पूर्ण समर्थन नहीं किया गया है, किन्तु अभियोजन के अन्य साक्षी अभियोजन मामले का समर्थन किए हैं।

66- इस प्रकरण में आरोपीगण द्वारा मृतक श्याम कुमार एवं श्रीमती नम्रता जायसवाल की हत्या करने का षडयंत्र कर उनकी सामान्य आशय से हत्या किया जाना परिस्थितिजन्य साक्ष्य से सन्देह से परे प्रमाणित है, अतः आरोपीगण को उनके उक्त तर्कों का लाभ प्राप्त नहीं होता है। जहां तक, धारा 30 भारतीय साक्ष्य





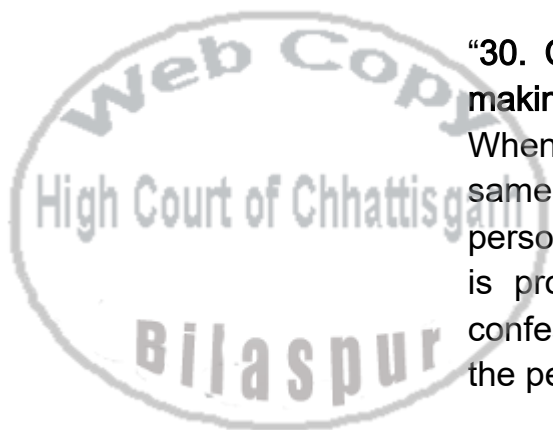
अधिनियम के तहत एक आरोपी की संस्वीकृति अन्य आरोपी के विरुद्ध साक्ष्य में ग्राह्य नहीं होने का है, तो उक्त तर्क भी स्वीकार योग्य नहीं है क्योंकि धारा 30 भारतीय साक्ष्य अधिनियम के तहत संस्वीकृति अन्य आरोपी के विरुद्ध साक्ष्य में ग्राह्य है। यह अवश्य है कि उक्त संस्वीकृति सारवान् साक्ष्य के रूप में न माना जाकर समर्थनकारी साक्ष्य के रूप में माना गया है। अतः आरोपीगण को उनके उक्तानुसार तर्कों का लाभ प्राप्त नहीं होता है तथा मानीय न्याय दृष्टान्त आलोकनाथ दत्त वगै. बनाम पश्चिम बंगाल राज्य (2008) 2 एस.सी.सी. (क्राइम्स) 264 की तथ्य एवं परिस्थितियां एवं इस प्रकरण के तथ्य एवं परिस्थितियां भिन्न होने से आरोपीगण को, उनका कोई लाभ प्राप्त नहीं होता है।

39. Now, the question would be, whether the trial Court is justified in convicting the aforesaid three appellants with the aid of Section 30 of the Indian Evidence Act, 1872, which states as under: -

“30. Consideration of proved confession affecting person making it and others jointly under trial for same offence.— When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.

Explanation.—“Offence”, as used in this section, includes the abetment of, or attempt to commit, the offence.”

40. A careful perusal of the aforesaid provision would show that the object of this provision is that where an accused person unreservedly confesses his own guilt, and at the same time implicates another person who is jointly tried with him for the same offence, his confession may be taken into consideration against such other person as well as against himself, because the admission of his own guilt operates as a sort of sanction, which, to some extent, takes the place of the sanction of an oath and so affords some guarantee that the whole statement is a true one. When a person admits his guilt to the





fullest extent, and exposes himself to the pains and penalties provided therefore, there is a guarantee for his truth. The Court could use the confession of one accused against another accused only if the following two conditions are fulfilled: -

1. The co-accused should have been charged in the same case along with the confessor.
2. He should have been tried together with the confessor in the same trial.

41. Section 30 of the Evidence Act came up for consideration before their Lordships of the Supreme Court in Haricharan Kurmi (Constitution Bench) (supra) in which their Lordships have considered the probative value of confession of co-accused and its use how to be made in joint trial. In Haricharan Kurmi (supra), their Lordships clearly held that though confession may be regarded as evidence in that generic sense because of the provisions of Section 30, the fact remains that it is not evidence as defined by Section 3 of the Act and observed as under: -

“11. ... The basis on which this provision is founded is that if a person makes a confession implicating himself, that may suggest that the maker of the confession is speaking the truth. Normally, if a statement made by an accused person is found to be voluntary and it amounts to a confession in the sense that it implicates the maker, it is not likely that the maker would implicate himself untruly, and so, S. 30 provides that such a confession may be taken into consideration even against a co-accused who is being tried along with the maker of the confession. There is no doubt that a confession made voluntarily by an accused person can be used against the maker of the confession, though as a matter of prudence criminal courts generally require some corroboration to the said confession particularly if it has been retracted. With that aspect of the problem, however, we are not concerned in the present appeals. When S. 30 provides that the confession of a co-accused may be taken into consideration, what exactly is





the scope and effect of such taking into consideration is precisely the problem which has been raised in the present appeals. It is clear that the confession mentioned in S. 30 is not evidence under S. 3 of the Act. ...

12. ... It would be noticed that as a result of the provisions contained in S. 30, the confession has no doubt to be regarded as amounting to evidence in a general way, because whatever is considered by the Court is evidence; circumstances which are considered by the court as well as probabilities do amount to evidence in that generic sense. Thus, though confession may be regarded as evidence in that generic sense because of the provisions of S. 30, the fact remains that it is not evidence as defined by S. 3 of the Act. The result, therefore, is that in dealing with a case against an accused person, the court cannot start with the confession of co-accused person; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence. That, briefly stated, is the effect of the provisions contained in S. 30. The same view has been expressed by this Court in *Kashmira Singh v. State of Madhya Pradesh*, 1952 SCR 526: (AIR 1952 SC 159) where the decision of the Privy Council in *Bhuboni Sahu's case*, 76 Ind App 147 (AIR 1949 PC 257) has been cited with approval.

16. ... As we have already indicated, it has been a recognised principle of the administration of criminal law in this country for over half a century that the confession of a co-accused person cannot be treated as substantive evidence and can be pressed into service only when the court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of its conclusion deducible, from the said evidence. In criminal trials, there is no scope for applying the principle of moral conviction or grave suspicion. In criminal cases where the other evidence adduced against an accused person is wholly unsatisfactory and the prosecution seeks to rely on the confession of a co-accused person, the presumption of innocence which is the basis of criminal jurisprudence assists the accused person and compels the Court to render the verdict that the charge is not proved against him, and so, he is entitled to the benefit of doubt. That is precisely what has happened in these appeals.”





42. The principle of law laid down in Haricharan Kurmi (supra) has been followed recently by the Supreme Court in Dipakbhai Jagdishchandra Patel (supra). It has also been held by their Lordships that confession of an accused person is not evidence, it cannot be made the foundation of a conviction and can only be used in support of other evidence (see Kashmira Singh v. State of Madhya Pradesh¹⁹, Nathu v. State of Uttar Pradesh²⁰ and Govt. of NCT of Delhi v. Jaspal Singh²¹.)
43. In the matter of Surinder Kumar Khanna v. Intelligence Officer, Directorate of Revenue Intelligence²², their Lordships of the Supreme Court have summarised the law relating to scope of Section 30 of the Evidence Act and observed as under: -

“11. The law laid down in *Kashmira Singh* (supra) was approved by a Constitution Bench of this Court in *Haricharan Kurmi v. State of Bihar* (supra) wherein it was observed: (Haricharan case (supra), AIR p.1188, para 12)

“12. As we have already indicated, this question has been considered on several occasions by judicial decisions and it has been consistently held that a confession cannot be treated as evidence which is substantive evidence against a co-accused person. In dealing with a criminal case where the prosecution relies upon the confession of one accused person against another accused person, the proper approach to adopt is to consider the other evidence against such an accused person, and if the said evidence appears to be satisfactory and the court is inclined to hold that the said evidence may sustain the charge framed against the said accused person, the court turns to the confession with a view to assure itself that the conclusion which it is inclined to draw from the other evidence is right. As was observed by Sir Lawrence Jenkins in *Emperor v. Lalit Mohan Chuckerbutty*²³ a confession can only be used to “lend assurance to

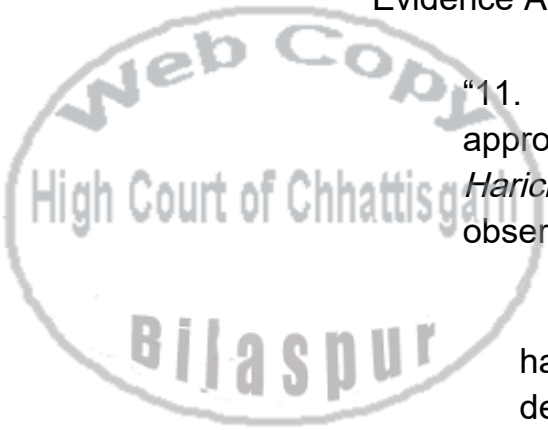
19 AIR 1952 SC 159

20 AIR 1956 SC 56

21 (2003) 10 SCC 586

22 (2018) 8 SCC 271

23 ILR (1911) 38 Cal 559 at p. 588





other evidence against a co-accused". In *Periaswami Moopan, In re*²⁴ Reilly, J., observed that the provision of Section 30 goes not further than this: (SCC OnLine Mad)

'... where there is evidence against the co-accused sufficient, if believed, to support his conviction, then the kind of confession described in Section 30 may be thrown into the scale as an additional reason for believing that evidence'.

In *Bhuboni Sahu v. R.*²⁵ the Privy Council has expressed the same view. Sir John Beaumont who spoke for the Board, observed that: (SCC OnLine PC)

'... a confession of a co-accused is obviously evidence of a very weak type. It does not indeed come within the definition of "evidence" contained in Section 3 of the Evidence Act. It is not required to be given on oath, nor in the presence of the accused, and it cannot be tested by cross-examination. It is a much weaker type of evidence than the evidence of an approver, which is not subject to any of those infirmities. Section 30, however, provides that the court may take the confession into consideration and thereby, no doubt, makes it evidence on which the court may act; but the section does not say that the confession is to amount to proof. Clearly there must be other evidence. The confession is only one element in the consideration of all the facts proved in the case; it can be put into the scale and weighed with the other evidence'.

It would be noticed that as a result of the provisions contained in Section 30, the confession has no doubt to be regarded as amounting to evidence in a general way, because whatever is considered by the court is evidence; circumstances which are considered by the court as well as probabilities do amount to evidence in that generic sense. Thus, though confession may be regarded as evidence in that generic sense because of the provisions of Section 30, the fact remains that it is not evidence as defined by Section 3 of the Act. The result, therefore, is that in dealing with a case against an accused person, the court cannot start with the

24 1930 SCC OnLine Mad 86 : ILR (1931) 54 Mad 75 at p. 77

25 1949 SCC OnLine PC 12 : (1948-49) 76 IA 147 at p. 155





confession of a co-accused person; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence. That, briefly stated, is the effect of the provisions contained in Section 30. The same view has been expressed by this Court in *Kashmira Singh v. State of M.P.* (supra) where the decision of the Privy Council in *Bhuboni Sahu case* (supra) has been cited with approval.”

12. The law so laid down has always been followed by this Court except in cases where there is a specific provision in law making such confession of a co-accused admissible against another accused.²⁶

44. Reverting to the facts of the case in light of the aforesaid principles of law laid down by their Lordships of the Supreme Court in Haricharan Kurmi (supra), Dipakbhai Jagdishchandra Patel (supra) and Surinder Kumar Khanna (supra) and considering the provisions contained in Section 30 of the Evidence Act, it is quite vivid that confessional statement of co-accused is a very weak piece of evidence, unless other circumstantial evidence or ocular evidence is available, conviction cannot be rested only on the confessional statement of the co-accused with the aid of Section 30 of the Evidence Act, as it requires corroboration from other evidence and unless there is other evidence, ocular or circumstantial evidence available on record, merely on the basis of confessional statement of co-accused, conviction with the aid of Section 30 of the Evidence Act cannot be made by the courts.

45. Reverting to the facts of the case finally, in the instant case, as noticed herein-above in paragraphs 41 & 66 of the judgment of the trial Court,

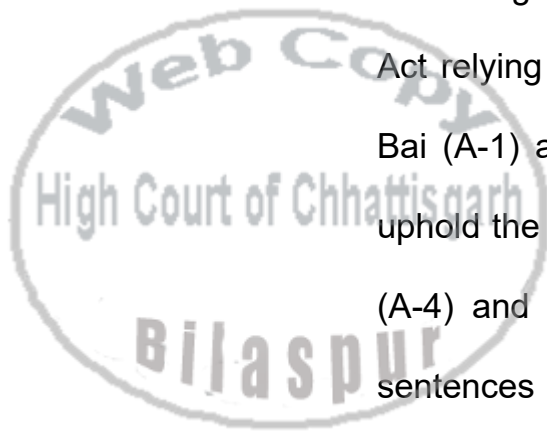
26 For example: State v. Nalini, (1999) 5 SCC 253, paras 424 and 704 : 1999 SCC (Cri) 691



the trial Court has held the present appellants – Surendra Kumar (A-3), Sahaniram (A-4) and Dadhibal (A-5) guilty for the aforesaid offences in question merely on the basis of confessional statements Exs.P-8 & P-10 of co-accused Jamuna Bai (A-1) and Shyam Sunder (A-2), and no other evidence ocular and circumstantial has been brought & established on record to hold these appellants guilty except the confessional statements of Jamuna Bai and Shyam Sunder, whereas confessional statement of co-accused has to be used only as a corroborative piece of evidence. In that view of the matter, we are of the considered opinion that the trial Court is absolutely unjustified in convicting these appellants with the aid of Section 30 of the Evidence Act relying upon the confessional statements of co-accused Jamuna Bai (A-1) and Shyam Sunder (A-2). Accordingly, we are unable to uphold the conviction of appellants Surendra Kumar (A-3), Sahaniram (A-4) and Dadhibal (A-5) and we hereby set aside conviction and sentences imposed upon them under Sections 120B, 460 & 302 read with Section 34 (two counts) of the IPC and they are acquitted of the said charges.

Conclusion: -

46. The criminal appeal preferred by Jamuna Bai (A-1) and Shyam Sunder (A-2) being Cr.A.No.1202/2014 is dismissed being merit-less.
47. The criminal appeals preferred by Surendra Kumar (A-3), Sahaniram (A-4) and Dadhibal (A-5) being Cr.A.Nos.1160/2014 & 1143/2014 are allowed. Conviction and sentences imposed upon them under Sections 120B, 460 & 302 read with Section 34 (two counts) of the IPC are set aside and they are acquitted of the said charges. They are on bail. They need not surrender. However, their bail bonds shall





remain in force for a period of six months in view of the provision contained in Section 437A of the CrPC.

Sd/-
(Sanjay K. Agrawal)
Judge

Sd/-
(Sanjay S. Agrawal)
Judge

Soma





HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.1202 of 2014

Jamuna Bai and another

Versus

State of Chhattisgarh

and two other connected appeals

Head Note

Confessional statement of co-accused can be relied upon as a corroborative piece of evidence by virtue of Section 30 of the Indian Evidence Act, 1872 and conviction cannot solely base on the confessional statement of the co-accused.

भारतीय साक्ष्य अधिनियम की धारा 30 के आधार पर सह-अभियुक्त की संस्वीकृति को एक संयोजक साक्ष्य के रूप में स्वीकार किया जा सकता है तथा केवल सह-अभियुक्त की संस्वीकृति के आधार पर दोषसिद्धि नहीं की जा सकती है।

