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ISHWARI LAL YADAV & ANR.

v.

STATE OF CHHATTISGARH

(Criminal Appeal No. 1522 of 2019)

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OCTOBER 03, 2019

**[R. F. NARIMAN, R. SUBHASH REDDY AND
SURYA KANT, JJ.]**

Penal Code, 1860 – ss.364/34 r/w. s.120B, ss.302/34 r/w. s.120B and s.201 – Gruesome murder – Prosecution case was that on 4.3.2010 a missing report was lodged by PW-2 about missing of his six year old daughter – Eight months later, another child (boy) was found missing from his house and his parents started searching for him – They noticed loud music being played in the house of appellants – When they entered the house, they found freshly dug mound of earth – Appellants who were claiming to be “tantriks” admitted that they killed the boy and buried him to attain “siddhi” – During investigation, A-4 made a statement to the police that few months back, he had kidnapped one small girl on the asking of A-1 and A-2 – The said girl was killed by way of human sacrifice and her body was buried in the compound of the appellants – Recovery of skeletal remains along with her cloths was made – Conviction of appellants and death sentence – High Court affirmed conviction however modified death sentence to life imprisonment – On appeal, held: Medical evidence substantiated the case of prosecution – In addition, parents of the deceased identified the cloths, which the deceased child was wearing on the date of missing – They also found the cloth pieces, attached to skeletal remains – The colour of cloth pieces tallied with the description in the missing report lodged by PW-2 earlier on 4.3.2010 – It was also proved that the body of boy was found in the house of appellant-A-1 – By applying s.106 of the Evidence Act, the onus was on the accused to explain the fact within their knowledge as to how the body of boy came to be buried in their house – Apart from the recoveries, there was a strong and consistent evidence of independent witnesses to prove the guilt of the accused – It was also proved that the house belonged to the appellants where skeletal remains were removed –

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As such it was clearly proved beyond any reasonable doubt that the appellants were responsible for the offence alleged against them – Further, as there was no acceptable evidence on record except the alleged confession to prove the offence under ss.364/34 r/w 120B, the appellants are acquitted of said offences – At the same time, by burying the dead body of the deceased caused disappearance of evidence of offence, appellants are rightly convicted for offence under s.201 – Considering the gruesome nature of murder the sentence imposed by the High Court is confirmed.

Evidence: Confession made to police – The confessional statements made to the police cannot be the basis to prove the guilt of the appellants but at the same time there is no reason to discard the confessions made to the independent witnesses at the time when boy's body was found, prior to the arrival of police – Extra judicial confession, is a weak piece of evidence but at the same time if the same is corroborated by other evidences on record, such confession can be taken into consideration to prove the guilt of the accused – Penal Code, 1860.

Partly allowing the appeal, the Court

HELD: It is proved by cogent evidence that the body of boy was found in the house of appellant-A-1. By applying the provision under Section 106 of the Evidence Act definitely it is the burden of the accused to explain the fact within the knowledge of them how the body of boy came to be buried in their house. Apart from the recoveries, there was a strong and consistent evidence of independent witnesses to prove the guilt of the accused. The FSL Report conclusively established that PW-3 was the biological relative of the deceased. The said evidence if considered along with other oral evidence of PW-2 and PW-3, it is proved beyond reasonable doubt that the skeletal remains of the body removed from the house of the appellants was only that of their daughter. The house belonged to the appellants where skeletal remains were removed. Further, as there was no acceptable evidence on record except the alleged confession to prove the offence under Sections 364/34 read with 120B IPC, the appellants are entitled for acquittal for offences punishable under Sections 364/34 and 120B IPC. At the same time, by burying the dead body of the deceased caused disappearance of evidence

- A of offence, they are rightly convicted for offence under Section 201 IPC. Having regard to gruesome nature of murder, the trial court has imposed the punishment of death for offence under Sections 302/34 read with 120B IPC but on appeal the High Court has modified the sentence to that of imprisonment for life without any remission or parole. Considering the gruesome nature of murder the sentence imposed by the High Court is to be confirmed. [Paras 24-27][922-C-D, F-H; 923-A-C]

- C *Aghnoo Nagesia v. State of Bihar* AIR 1966 SC 119 : [1966] SCR 134; *Ronny v. State of Maharashtra* (1998) 3 SCC 625 : [1998] 2 SCR 162; *Firozuddin Basheeruddin & Ors. v. State of Kerala* (2001) 7 SCC 596; *Sushil Murmu v. State of Jharkhand* (2004) 2 SCC 338 : [2003] 6 Suppl. SCR 702 – referred to.

- D *Shambu Nath Mehra v. The State of Ajmer* [1956] SCR 199; *State of Goa v. Sanjay Thakran* (2007) 3 SCC 755 : [2007] 3 SCR 507; *Prakash vs. State of Karnataka* (2014) 12 SCC 133; *Sahadevan & Anr. v. State of Tamil Nadu* (2012) 6 SCC 403 : [2012] 4 SCR 366 – held inapplicable.

Case Law Reference

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|---|-------------------------|-------------------|---------|
| E | [1966] SCR 134 | referred to | Para 11 |
| | [1956] SCR 199 | held inapplicable | Para 24 |
| | [1998] 2 SCR 162 | referred to | Para 11 |
| | (2001) 7 SCC 596 | referred to | Para 11 |
| F | [2003] 6 Suppl. SCR 702 | referred to | Para 11 |
| | [2012] 4 SCR 366 | held inapplicable | Para 23 |
| | [2007] 3 SCR 507 | held inapplicable | Para 25 |
| G | (2014) 12 SCC 133 | held inapplicable | Para 25 |

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1522 of 2019.

From the Judgment and Order dated 30.11.2016 of the High Court of Chattisgarh, Bilaspur in Criminal Appeal No. 1068 of 2014.

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Birendra Kumar Mishra, Adv. (A.C.)

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Siddhartha Dave, Sr. Adv., Ms. Liz Mathew, Ms. Ninni Susan Thomas, Yash S. Vijay, Ms. Jemtiben AO., Ms. Saumya Gupta, Siddhant Krishna Dave, Kabir Dixit, Rajeev Kumar Bansal, M. P. Singh, Akshay K. Ghai, Sumeer Sodhi, Ashish Tiwari, Ms. Ridhima Juneja, Ms. Suditi Batra, Advs. for the appearing parties.

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The Judgment of the Court was delivered by

R. SUBHASH REDDY,J.

1. Leave granted.

2. This appeal is filed by appellant Nos. 1 and 2 in Criminal Appeal No.1068 of 2014 filed before the High Court of Chhattisgarh, Bilaspur, aggrieved by the common judgment in Criminal Reference No.4 of 2014 and Criminal Appeal No.1068 of 2014. The appellants herein were charged for offences punishable under Sections 364/34 read with 120B IPC, Sections 302/34 read with 120B IPC and Section 201 IPC. On the aforesaid charges they were tried in Sessions Trial No.98 of 2011 by the learned Sessions Judge, Durg, and they were convicted for the offences charged and sentenced for imprisonment for life and a fine of Rs.5,000/- - was imposed for the offence under Sections 364/34 read with 120B IPC, sentence of death and a fine of Rs.5,000/- for the offence under Sections 302/34 read with 120B IPC, rigorous imprisonment for five years and a fine of Rs.2,000/- for the offence under Section 201 IPC. In view of the death sentence imposed, the learned Sessions Judge made a reference to the High Court in Criminal Reference No.4 of 2014. Challenging the conviction recorded and the sentence imposed on them, appellants have filed Criminal Appeal No.1068 of 2014. Vide impugned judgment dated 30.11.2016, the High Court has confirmed the conviction recorded against appellants. However, the death sentence imposed by the Trial Court is modified to imprisonment for life. It was further observed that appellants-accused are not entitled to any remission or parole. Aggrieved by the said judgment this appeal is filed.

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3. On 04.03.2010, Beeru Dewar (PW-2) had lodged a complaint with the Police Station, Bhilai Nagar, stating that his six year old daughter Ku. Manisha is missing.

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4. On 23.11.2010, a child by name Chiraj Rajput was found missing from his house. A missing report was given in Police Station, Bhilai Nagar, District Durg. Thereafter, the parents were searching for their child.

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- A On hearing loud music being played in the house of appellants i.e. Ishwari Lal Yadav (A-1) and Smt. Kiran Yadav (A-2), they entered their house. When they entered the house they found freshly dug mound of earth and appellants herein who were claiming as “*tantriks*”, have admitted that they had killed Chirag and buried him there to attain “*siddhi*”. Further, it is the case of the prosecution that during the investigation in the said case, Mahanand Yadav (A-4), made a statement to the police that about seven/eight months earlier, he had kidnapped one small girl on the asking of A-1 and A-2.5.

- C The said girl had been killed by way of human sacrifice and her body was buried in the compound of the appellants herein. On 24.11.2010, one constable of Bhilai Nagar Police Station made ‘O’ entry to the effect, that an information has been received about the kidnapped girl who had been killed by way of human sacrifice and her skeletal remains were recovered along with the cloths which she was wearing. On the said date a statement was recorded under Ext.P-15. On the basis of the aforesaid statement, investigation was done and skeletal remains of the child were recovered.

- E 6. After recovery of the skeletal remains, DNA test was conducted and it was determined that skeletal remains found in the house of Ishwari Lal Yadav (A-1) and Smt. Kiran Yadav (A-2) were of Ku.Manisha who was also reported to be missing. After completing investigation, the appellants herein were charged for the offences alleged against them.

- F 7. On behalf of the prosecution, PW-1 to PW-21 were examined to prove the guilt of accused. The Trial Court on appreciation of evidence on record has held that the appellants and two other accused are guilty for the charges framed against them, convicted and sentenced the appellants as follows :

Accused	Conviction U/s.	Sentence
G H	Ishwari Lal Yadav	364/34 and 120B IPC
		Imprisonment for life and fine of Rs.5000/-. In default of payment of fine, further rigorous imprisonment for four months.
	302/34 and 120B IPC	Death sentence and fine of Rs.5000/-. In default of payment of fine, further rigorous imprisonment for four months.
	201 IPC	Rigorous imprisonment for five years and fine of Rs.2000/-. In default of payment of fine, two months rigorous imprisonment.

Smt. Kiran Yadav @ Gurumata	364/34 and 120B IPC	Imprisonment for life and fine of Rs.5000/-. In default of payment of fine, further rigorous imprisonment for four months.	A
	302/34 and 120B IPC	Death sentence and fine of Rs.5000/-. In default of payment of fine, further rigorous imprisonment for four months.	B
	201 IPC	Rigorous imprisonment for five years and fine of Rs.2000/-. In default of payment of fine, two months rigorous imprisonment.	

8. On appeal, High Court has acquitted accused nos.3 and 4, namely, Rajendra Kumar Mahar and Mahanand Yadav respectively. So far as appellants are concerned their conviction is confirmed, the death sentence imposed on them is modified to one of imprisonment for life for offence under Section 302/34 and 120B, IPC. At the same time their conviction and sentence is confirmed for the offence under Section 364/34 and 120B IPC and 201 IPC.

9. We have heard Sri Siddhartha Dave learned senior counsel appearing for the appellants and Sri Sumeer Sodhi, learned counsel appearing for the respondent-State of Chhattisgarh.

10. It is contended by the learned senior counsel for the appellants that the prosecution has failed to prove the guilt of accused beyond reasonable doubt and inspite of the same they were convicted and sentenced for the offences alleged. It is submitted that the confessional statements ought not to have been relied on in absence of any corroborative evidence to prove the guilt of the accused. It is further contended that there are material contradictions among the witnesses, as such the evidence is unreliable. It is further submitted that the femur bone that was preserved, was sent to CDFC Hyderabad for DNA analysis, and in fact the report relied upon by the prosecution was the FSL Report, Sagar. Even the FSL Report does not conclusively draw to the fact that PW-3 is the mother, but, states that she is a biological relative. There are also discrepancies with regard to the cloths found on her. Further, it is submitted that appellants were in custody from 23.11.2010 and recoveries were made on 24.11.2010 but disclosure statements were recorded thereafter.

11. As such, it is submitted that, same raises a strong probability that these weapons have been planted by the police. It is further submitted

A that even the blood which was found on the weapons, there is no proof that it was human blood. In support of his arguments, learned counsel has relied on the judgments of this Court in the case of *Aghnoo Nagesia* vs. *State of Bihar*¹, *Sahadevan & Anr. vs. State of Tamil Nadu*², *Shambu Nath Mehra vs. The State of Ajmer*³, *Ronny vs. State of Maharashtra*⁴, *State of Goa vs. Sanjay Thakran*⁵, *Prakash vs. State of Karnataka*⁶ and *Firozuddin Basheeruddin & Ors. vs. State of Kerala*⁷.

C 12. To buttress the submission that as there is strong probability that the weapons seized have been planted by the police, as such recoveries cannot be relied on, learned counsel relied on the judgment in the case of *Sanjay Thakran*⁵. Further, reliance is also placed on the judgment in the case of *Prakash*⁶. In support of his submission that as the blood on the weapon used in crime is not shown to be that of the deceased, it raises a grave suspicion that investigation was not fair and benefit of doubt is to be given to the accused.

D 13. On the other hand Sri Sumeer Sodhi, learned counsel appearing for the respondent-State has submitted that as the case relates to the gruesome murder of a minor girl of six years, for the purpose of human sacrifice and from the oral evidence on record, the prosecution has proved the guilt of the accused beyond reasonable doubt, as such there are no grounds to interfere with the impugned judgment. It is submitted that when a child of two years by name Chirag was missing, his parents were on search for missing child along with family members and residents of locality, on hearing the loud music emanating from the house of the appellants, they got suspicious and entered the house. It is submitted that at that point of time both the appellants-accused have confessed their guilt of committing the act of murder of Chirag and burying the body in the precinct of the house. It is submitted that looking at the fresh mound of mud, same was excavated and the body of Chirag was found in two parts. At that time one of the accused in the said case also revealed committing of similar offence of a girl child. It is submitted that there

G ¹ AIR 1966 SC 119

² (2012) 6 SCC 403

³ 1956 SCR 199

⁴ (1998) 3 SCC 625

⁵ (2007) 3 SCC 755

⁶ (2014) 12 SCC 133

H ⁷ (2001) 7 SCC 596

was already a complaint of missing child of six year old daughter of Beeru Dewar (PW-2), lodged on 04.03.2010, investigation was made. Further investigation of the police revealed that they have kidnapped and committed murder of minor girl by name Km.Manisha. She was also buried near to the place of Chirag. As such by excavating skeletal remains along with cloths were taken out. It is submitted that from the evidence on record it is clearly proved by confession of several independent witnesses, which is corroborated by other evidence on record to prove that Manisha was murdered for the purpose of human sacrifice by appellants, as such they were rightly convicted and sentenced by the Trial Court and their sentence of death was modified by the High Court to that of imprisonment for life without any remission or parole. As such, it is submitted that there are no grounds to interfere with the same. Learned counsel has also relied on the judgment in the case of *Sushil Murmu vs. State of Jharkhand*⁸.

14. Having heard the learned counsels on both the sides, we have perused the impugned judgment and also the other material on record.

15. To prove the guilt of appellants-accused, several independent witnesses were examined. From the evidence on record it is clear that on 23.11.2010 when there was search by the parents of the deceased Chirag Rajput for their missing child along with others of the locality, on hearing the loud music from the house of the appellants, they got suspicious and entered the house. Upon entering the house a freshly dug mound of earth was found in the house of the appellants and on confession made by the appellants body of Chirag was traced. Further, as it was disclosed by one of the accused that about 7/8 months earlier, they have kidnapped one small girl on the asking of A-1 and A-2 and they have handed over the girl to Ishwari Lal Yadav and Kiran Yadav, further investigation was made in view of the complaint lodged by Beeru Dewar (PW-2) on 04.03.2010. On 04.03.2010, Beeru Dewar (PW-2) filed a report to the effect that his six year old daughter Ku.Manisha was missing. On further investigation, the skeletal remains were also recovered from the house of the appellants from the place adjoining from where body of Chirag was taken out. In oral evidence Beeru Dewar (PW-2), father of the deceased stated that when they went to the house of Ishwari Lal Yadav (A-1), they found the skeletal remains and they have also identified the cloths of his daughter Ku. Manisha.

⁸ (2004) 2 SCC 338.

A 16. Mother of the deceased Smt. Durga Bai was examined as PW-3. In her deposition, she has stated that about 1½ years earlier to the date of statement, she had gone to Kasaridih at about 06.00 pm for begging. Her daughter was wearing one red coloured two piece set and at about 8.00 pm when *pooja* was over in the temple, her daughter Ku. Manisha stated that she wanted to defecate. She also stated in her
B deposition that after sometime when she went back to the place of electric pole where her daughter was defecating, she did not find her there. It is stated that at the instance of police officials they went to the house of appellants at Ruabandha and in her presence a grave was dug which was inside the house of the appellants and cloths of her daughter were
C lying there along with some pieces of bones. She identified the cloths to be that of her daughter Ku.Manisha.

17. Dilip Thakur was examined as PW-11, who was one amongst the persons who went inside the house of the appellants in search of other child Chirag. He has, in clear terms, stated that at that time both the appellants Ishwari Lal Yadav and Smt. Kiran Yadav confessed that
D earlier they had sacrificed one small girl child whom they had brought from Kasaridih and that she had been buried in their house.

18. PW-13 Shrikant Gawander stated that on pointing out by Ishwari Lal Yadav, some mound in the courtyard was dug up and inside the same skeletal remains were found along with red coloured frock and
E red coloured underwear.

19. PW-16 is the Assistant Sub Inspector, who has recorded the merg intimation (Exhibit P-28) and (Exhibit P-29).

20. One Khuman Singh Sahu was examined as PW-21. In his deposition he has stated that he knows accused Ishwari Lal Yadav and
F his wife Smt. Kiran Yadav, appellants herein, who are his neighbours. He has stated that both the accused A-1 and A-2 were engaged in witchcraft. Rajendra Kumar (A-3) and Mahanand Yadav (A-4) are the disciples of (A-1) and (A-2). He was also one of the members in the team in search of missing boy Chirag earlier. He too stated in his
G deposition that the appellants have admitted that one girl by name Ku. Manisha who had been kidnapped earlier, had been sacrificed by them. A confession is also to the effect that they have buried the girl next to the place where Chirag's body has been buried.

21. From the evidence on record, it is clearly established beyond
H reasonable doubt that Km.Manisha is the daughter of PW-2 and PW-3

and was missing since 04.03.2010. Though, the said complaint was recorded in the Police Out Post Padmanabhpur, Durg, on 04.03.2010 but there was no breakthrough. Only after Chirag's case has come to light, based on admissions by the appellants and two others, further investigation revealed that the appellants earlier also committed similar offence of murder of Km.Manisha for their *tantrik* activities and buried the body of minor girl in their house.

22. The confessional statements made to the police by the appellants, cannot be the basis to prove the guilt of the accused but at the same time there is no reason to discard the confessions made to the independent witnesses at the time when Chirag's body was found, prior to the arrival of police. It is true that extra judicial confession, is a weak piece of evidence but at the same time if the same is corroborated by other evidences on record, such confession can be taken into consideration to prove the guilt of the accused. In the case on hand, the evidence from independent witnesses is in one voice and consistent. The medical evidence on record also substantiated the case of the prosecution. In addition to the same, PW-2 and PW-3 who are the parents of the deceased have identified the cloths, which the deceased child was wearing on the date of missing. It is also clear from the evidence that the skeletal remains were removed. They have also found the cloth pieces, attached to skeletal remains. The colour of such cloth pieces was tallied with the description in the missing report lodged by PW-2 earlier on 04.03.2010. As such it is clearly proved beyond any reasonable doubt that the appellants are responsible for the offence alleged against them.

23. Learned counsel for the appellants has relied on a judgment of this Court in the case of *Aghnoo Nagesia*¹ to buttress his contention that the courts below have committed error in recording a finding of guilt of the appellants based on confession. But same is a case where the appellant therein was charged under Section 302 IPC for murdering his aunt and others and there were no eye witnesses to the murder. The principal evidence against the appellant was First Information Report which contains a full confession of guilt by the appellant himself. The said confession was made to a police officer and the same is not provable having regard to Section 25 of the Indian Evidence Act. Further reliance is also placed on a judgment of this Court in the case of *Sahadevan*². In the aforesaid judgment of two-Judge Bench of this Court it is held that the extra judicial confession is a weak piece of evidence and court must ensure that same inspires confidence and is corroborated by other

A prosecution evidence. If the totality of oral evidence on record is considered in the case on hand, it is consistent and inspires confidence of the case of the prosecution to prove the guilt of the main accused. We are of the view that the aforesaid judgments would not render any assistance to support the case of the appellants.

B 24. Learned counsel also relied on the judgment of this Court in the case of *Shambu Nath Mehra*³. In the aforesaid judgment this Court has held that in a criminal case burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. It is held that on the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are “especially” within the knowledge of the accused and which he could prove without difficulty or inconvenience. In this case on hand it is proved by cogent evidence that the body of Chirag was found in the house of Ishwari Lal Yadav. By applying the provision under Section 106 of the Indian Evidence Act definitely it is the burden of the accused to explain the fact within the knowledge of them how the body of Chirag came to be buried in their house. The judgment relied on in the case of *Shambu Nath Mehra*³ also would not be helpful for the appellants. In the case of *Firozuddin Basheeruddin*⁷ this Court has discussed the ingredients which constitute criminal conspiracy within the meaning of Section 120B of the IPC. As we are of the view that the evidence on record is not sufficient to prove the guilt of the appellants under Section 120B of IPC, as such it is not necessary to elaborate any further.

25. The other judgments relied on by the learned counsel for the appellants in the case of *Sanjay Thakran*⁵ and the judgment in the case of *Prakash*⁶ also would not render any assistance to the case of the appellants having regard to facts and circumstances of the present case. Apart from the recoveries there is a strong and consistent evidence of independent witnesses to prove the guilt of the accused. The FSL Report, Sagar, conclusively establishes that PW-3 is the biological relative of the deceased. The said evidence if considered along with other oral evidence of PW-2 and PW-3, it is proved beyond reasonable doubt that the skeletal remains of the body removed from the house of the appellants was only that of their daughter Ku.Manisha. It is also proved from the evidence on record that the house belonged to the appellants where skeletal remains were removed.

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26. Further, as there is no acceptable evidence on record except the alleged confession to prove the offence under Sections 364/34 read with 120B IPC, the appellants are entitled for acquittal for offences punishable under Sections 364/34 and 120B IPC. At the same time, by burying the dead body of the deceased caused disappearance of evidence of offence, they are rightly convicted for offence under Section 201 IPC.

27. Having regard to gruesome nature of murder, the Trial Court has imposed the punishment of death for offence under Sections 302/34 read with 120B IPC but on appeal the High Court has modified the sentence to that of imprisonment for life without any remission or parole. Considering the gruesome nature of murder the sentence imposed by the High Court is to be confirmed.

28. For the aforesaid reasons, this Criminal Appeal is partly allowed, setting aside the conviction recorded and sentence imposed for the offence under Sections 364/34 read with 120B IPC. However, we confirm the conviction recorded and sentence imposed for the offence under Sections 302/34 and Section 201 IPC.