

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 330 of 2011

1. Anand Ram Sahu, S/o Keju Ram Sahu, 30 years, R/o village Harmudi, P.S. Navagarh, Distt. Durg (CG)

**---- Appellant
(In custody)**

Versus

1. State Of Chhattisgarh, through District Magistrate, Durg (CG)

---- Respondent

For Appellant:
For Respondent.

Shri Akash Pandey, Advocate
Shri Adil Minhaj, Panel Lawyer

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Inder Singh Uboweja

JUDGEMENT

Per P. Diwaker, J

22/09/2015

1. This appeal arises out of impugned judgment of conviction & order of sentence dated 16.3.2011 passed by the Additional Sessions Judge, Bemetara in S.T. No.14/09 convicting the accused/appellant under Sections 302 & 201 of the Indian Penal Code (for short 'the IPC') and sentencing him with rigorous imprisonment for life & fine of Rs.1,000/- and in default to undergo additional R.I. for 01 month and rigorous imprisonment for 05 years and fine of Rs.500/-, in default R.I. for 15 days respectively.
2. In the present name of deceased is Sunita, first wife of accused/appellant. It is stated that marriage of accused/appellant was solemnized with deceased Sunita about eight years back from the date of incident and as their relations became strained, she left the company of accused/appellant and started living in her parental home. Accused/appellant had performed second marriage by local custom with one Savitri (PW-8) but after some time of marriage, she too has left his house. Thereafter the accused/appellant went

to the house of his first wife and brought her back. After some time his second wife had also returned and since then he was living with his both the wives. Further case of the prosecution is that on 21.1.2009 in between 8.00 p.m. to 12.00 in the midnight, accused/appellant committed murder of the deceased, took her dead body on his bullock-cart, threw the same in the outskirts of village and while he was returning, on the way he met Mehtaru (PW-7), Sukhram Sahu (PW-9) & Ishwar (PW-10) before whom he made extra-judicial confession that he had thrown the dead body of his wife after committing her murder. Rajesh Manikpuri (PW-6), village Kotwar, lodged named FIR on 26.11.2009 at about 8.30 a.m. and immediately thereafter merged intimation of Ex.P-3 was also recorded. Inquest was prepared vide Ex.P-2. Dead body was sent for post-mortem examination to the Community Health Centre, Nawagarh where Dr. Sanjay Kumar (PW-13) & Dr. T.N. Mahileshwar (PW-16) conducted post mortem vide Ex.P-16 and noticed multiple injuries. Cause of death was asphyxia & coma due to throttling and subdural haemorrhage and the death was homicidal in nature. During the course of investigation, accused/appellant made disclosure statement (Ex.P-5) of one axe, shirt, bloodstained peticoat, gunny bag & lungi and the same were recovered at his instance vide seizure memo of Ex.P-6 & Ex.P-7 respectively. After completion of investigation, charge sheet was filed against accused/appellant for the offences punishable under Sections 302 & 201 of the IPC and accordingly the charges were framed against him.

3. In order to hold accused/appellant guilty, the prosecution had examined as many as 18 witnesses. Statement of accused/appellant was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case and pleaded innocence & false implication.
4. The trial Court after hearing counsel for the respective parties and

considering the material available on record, by the impugned judgment, convicted and sentenced the accused/appellant as described above.

5. Learned counsel for the appellant submits that:

- conviction of accused/appellant is based on extra-judicial confession which is a very weak type of evidence and therefore he could not have been convicted on the basis of so-called extra-judicial confession made before Mehtaru (PW-7), Sukhram Sahu (PW-9) & Ishwar (PW-10). He further submits that out of these three witnesses, Mehtaru (PW-7) & Ishwar (PW-10) have turned hostile and considering the material contradictions in the statement of Sukhram Sahu (PW-9), accused/appellant could not have been convicted. That apart, appellant had inimical relations with the aforesaid witnesses and therefore possibility of false implication of accused/appellant by them cannot be ruled out.

In support of aforesaid submission, reliance is placed in the matter of SK Yusuf vs. State of West Bengal reported in (2011) 11 SCC 754; State of Punjab vs. Gurdeep Singh reported in AIR 1999 SC 3724 & Jaswant Gir vs. State of Punjab reported in (2005) 12 SCC 438.

- Other piece of evidence on which basis accused/appellant has been convicted is disclosure statement (Ex.P-5) of accused/appellant based on which alleged recoveries were effected vide Ex.P-6 & Ex.P-7 respectively, but the witnesses to the memorandum and seizures memos are not fully reliable. Even there is no FSL report on record suggesting presence of blood on the seized articles. In support of this submission, he placed reliance in the judgment reported in Mustkeem alias Sirajudeen vs. State of Rajasthan reported in (2011) 11 SCC 724.

6. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State that conviction of the accused/appellant is

strictly in accordance with law and there is no illegality or infirmity in the judgment impugned warranting interference by this Court. He further submits that it is not the thumb rule that accused cannot be convicted solely on the basis of extra-judicial confession. If the extra-judicial confession is made voluntarily and truly in a fit state of mind then it can be relied upon and conviction can be founded thereon. He further submits that though Mehtaru (PW-7) & Ishwar (PW-10) have been declared hostile on some points but Sukhiram Sahu (PW-9) has fully supported the prosecution case and there is no reason to disbelieve his statement. He further submits that Mehtaru (PW-7), Sukhiram Sahu (PW-9) & Ishwar (PW-10) were not strangers to accused/appellant because accused/appellant and these witnesses being residents of same village are known to each other. Even, Sukhiram Sahu (PW-9) is distantly related to accused/appellant and therefore it cannot be said he was stranger to him. On the basis of disclosure statement of appellant, certain articles were seized, which can be considered as additional evidence against him. Though accused/appellant had taken a plea of alibi in his statement recorded under Section 313 of Cr.P.C. by stating that on the date of incident he had gone to the house of his sister but there is nothing on record establishing this fact. He further submits that accused/appellant was residing in the house along with the deceased and his second wife and as per medical report, the deceased died due to asphyxia, but there is no explanation from accused/appellant as to how his wife died.

7. Dhaniram (PW-1) is the father of deceased. He has stated that after the marriage of deceased with accused/appellant, once she was beaten by accused/appellant for which report was lodged in the police station where they were made to understand. He is also a witness of inquest (Ex.P-2). He has further stated that accused/appellant had performed second marriage

and his daughter remained in his house for about four years. He has further stated that when second wife of accused/appellant left his house, he took the deceased with him. Though there are minor omissions in the statement of this witness but they are insignificant in nature.

8. Ganeshram (PW-2) is the witness of inquest (Ex.P-2). Tejbai (PW-5) is mother of the deceased and she has made almost similar statement as has been made by her husband Dhaniram (PW-1).
9. Rajesh Manikpuri (PW-6) is the Kotwar of village at whose instance FIR (Ex.P-1) & Merg (Ex.P-2) were recorded. He is also witness of memorandum of accused/appellant (Ex.P-5) and seizure memos (Ex.P-6 & P-7). This witness has stated that FIR was lodged by him on the basis of information given to him by the villagers including Mehtaru (PW-7), Sukhram Sahu (PW-9) & Ishwar (PW-10) that on the previous night the accused/appellant made confessional statement before them that he has thrown the body of his wife after committing her murder. He has further stated that on the basis of information given by the witnesses, when he along with other villagers reached on the spot, he saw the dead body of deceased lying there.
10. Mehtaru (PW-7) is the witness of extra-judicial confession made by accused/appellant. He has stated that he knew the accused/appellant who is resident of his village. On the date of incident at about 12.00 in the night, his neighbour Ishwar (PW-10) woke-him up and told that noise of bullock-cart is coming from the field side, let's go & see. Thereafter both of them awakened Mahendra and went towards the village side. They had also awakened two neighbourers namely Sukhi (PW-9) & Ramesh (not examined) and informed that noise of bullock-cart is coming towards the agricultural field of Dhanha. Thereafter they proceeded towards the field and on the way, they saw the accused/appellant standing in the field of Mahadev with his bullock-cart. He has further stated that on being asked,

accused/appellant told them that after committing murder of his first wife, he had dumped her body at a particular place. Thereafter he and other villagers returned to their respective houses. He has further stated that neither accused/appellant told nor they asked him as to by which weapon he had killed. He has further stated that in the morning intimation was given to the village Kotwar & other panchas and thereafter they had gone to the house of accused/appellant to inquire but he was not there and therefore at the instance of elderly persons, they had gone towards the field where bullock-cart of accused/appellant was standing in the previous night and on reaching there, they saw the dead body of deceased lying at some distance. He has further stated that he does not know that accused/appellant and his first wife used to quarrel on account of his second marriage. At this stage, he has been declared hostile and in the cross-examination by the defence counsel he has denied the fact that accused/appellant told them that after committing murder of his first wife, he had dumped her body at a particular place.

11. Savitri (PW-8) is the second wife of accused/appellant. She has not deposed anything against the accused/appellant and has been declared hostile by the prosecution.
12. Sukhram Sahu (PW-9) is another witness before whom the accused/appellant had made extra-judicial confession. He has stated that accused/appellant is his uncle in relation, on the date of incident about 12.30 in the night, Ishwar, Mehtaru, Mahendra & Ramesh came to him, woke him up and informed that noise of cart is coming from the field. When they were going towards the field from where noise of cart was coming, on the way they met accused/appellant who made extra-judicial confession before them that after committing murder of his first wife, he had dumped her body at a particular place and asked us not to go in that direction. In the cross-examination this witness remained firm and nothing could be elicited from

him which makes his testimony unreliable or doubtful.

13. Ishwar (PW-10) is another witness before whom accused/appellant had made extra-judicial confession. Though this witness has not been declared hostile but he has not fully supported the prosecution. He has stated that he knew accused/appellant who is resident of his village but on the date of recording of statement, he had forgotten name of accused/appellant. In the examination-in-chief he too has stated that accused/appellant made confessional statement before him and other witnesses that he had committed murder of his first wife. On being confronted from his case diary statement, he has stated that he has not made any such statement to the police, but his entire evidence does not reflect that he has totally denied the prosecution and therefore his testimony cannot be wholly discarded.

14. Gopal Singh Parihar (PW-11) is the Patwari who prepared the spot map of Ex.P-14.

15. Dr. Sanjay Kumar (PW-13) has stated that he along with Dr. T.N. Mahileshwar (PW-16) conducted post mortem over the body of deceased and noticed following injuries;-

- Bruise of 9x7cm size on the forehead above right eyebrow, black in colour.
- Injury on the right parietal region of scalp of 3cm x 1cm x muscle deep.
- Bruise of 5cm x 1cm below the chin.
- Abrasion of 5cm x 1.5cm of size below the right eye.
- Bruises of 5cm x 1.5cm on the upper side of throat.
- Multiple abrasions of 1cm x ¼ cm on both the sides of throat.
- Bruises of 6cm x 1cm on the outer side of right knee, black & blue in colour.
- Bruises of 8cm x 1cm on the umbilicus region.

The doctor has opined that cause of death was asphyxia & coma due to throttling and sub-dural haemorrhage and the death was homicidal in nature.

16. Laxman Sahu (PW-14) is a witness of memorandum (Ex.P-5) and seizures (Ex.P-6 & Ex.P-7) and he has duly supported the prosecution case.

17. Smt. Vipatti Bai (PW-15) is the mother of accused/appellant. Though this witness has been declared hostile by the prosecution but she has stated that she was living in a separate house and accused/appellant was living in a separate house with his two wives and as he was living separately, she cannot tell as to whether relations between accused/appellant & his wives were cordial or not. She has further stated that on the second day, when accused/appellant returned at about 10.00 a.m., he was arrested.
18. Dr. T.N. Mahileshwar (PW-16) is the doctor who along with Dr. Sanjay Kumar (PW-13) conducted post-mortem over the dead body of deceased.
19. Lata Bai (PW-17) has been declared hostile but in the cross-examination she has stated that on the date of incident, her husband and accused/appellant had gone another village to drop their sister and they returned from there on the next day at about 10.00 a.m.
20. R.P. Singh (PW-18) is the investigating officer and has duly proved the prosecution case. This witness has also proved the disclosure statement (Ex.P-5) and recoveries at the instance of accused/appellant vide Ex.P-6 & Ex.P-7 respectively.
21. Admittedly, there is no direct evidence available on record so as to attribute the commission of crime to accused/appellant but it is only on the basis of an extra judicial confession. There is no doubt that conviction can be based on extra judicial confession if it is made voluntarily in a fit state of mind to a person who has no reason to depose falsely against the accused and is corroborated by the other circumstance, but it is also well settled that in the very nature of things, it is a weak type of evidence.
22. In the present case, accused/appellant has made confessional statement before three witnesses namely Mehtaru (PW-7), Sukhram Sahu (PW-9) & Ishwar (PW-10), who are residents of same village where accused/appellant

was residing and known to him. Out of these three witnesses, though Mehtaru (PW-7) & Ishwar (PW-10) have not supported the prosecution case in totality and have been declared hostile on certain points, but Sukhram Sahu (PW-9) stuck to his version. He has stated that on hearing sound of cart coming towards the field, he along with Mehtaru (PW-7), Ishwar (PW-10), Mahendra & Ramesh was going in that direction. On the way they met accused/appellant and on being asked, he told them that he had thrown dead body of his first wife after committing her murder. Accused/appellant also asked them not to go ahead else they would be implicated. On the basis of this confessional statement of accused/appellant, dead body of deceased was recovered by the villagers and thereafter named FIR (Ex.P-1) against accused/appellant was lodged by the Village Kotwar in which also it has been mentioned that accused/appellant made extra-judicial confession before Mehtaru (PW-7), Sukhi (PW-9), Ishwar (PW-10), Mahendra & Ramesh. There is neither any suggestion nor anything in the evidence or in the cross-examination to disbelieve testimony of Sukhram Sahu (PW-9). Thus, in absence of any material to show that Sukhram Sahu (PW-9) had been motivated to falsely implicate the appellant, his testimony could not be doubted.

That apart, on the basis of disclosure statement (Ex.P-5) made by accused/appellant, bloodstained axe, shirt, lungi & peticoat were recovered vide seizure memos of Ex.P-6 and there is no explanation from the accused/appellant as to how the blood stains are there in the articles seized from his possession. Though the prosecution has not produced the report of FSL, but considering the fact that witnesses to memorandum & seizures (Ex.P-5 to P-7) have remained very firm and the defence has utterly failed to elicit anything in their cross-examination to discredit their testimonies, it cannot be said that non-production of FSL report is fatal to the prosecution.

Even the doctor performing autopsy has opined that injuries found on body of deceased could be caused by the axe so seized.

Further, evidence of Vipatti Bai (PW-15) goes to show that accused/appellant was living separately along with his two wives and as per medical evidence, cause of death of deceased was asphyxia due to throttling. Thus there was corresponding burden on accused/appellant to offer explanation as to how his wife died, but in the statement recorded under Section 313 of Cr.P.C. he has simply taken the plea of alibi by saying that on the date of incident he was not present in the village and had gone to the house of his sister, which even was not proved by him by adducing evidence to this effect.

23. For the foregoing reasons, we are of the opinion that extra-judicial confession made by accused/appellant was voluntary and before the person who has no reason to depose falsely against accused/appellant and the same gets corroboration from the promptly lodged FIR and seizure of bloodstained axe, shirt & lungi at the instance of accused/appellant. There is no scope for any doubt regarding the complicity of appellant in the crime.

24. Considering the evidence available against the accused/appellant, we are of the view that there is no error in the conviction and sentence awarded by the trial Court. Appeal being meritless is liable to receive the fate of dismissal. Ordered so. Since the appellant is already in custody, no further order is required.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(I.S. Uboweja)
Judge

roshan/-