

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 350 of 2002**

Hira Singh S/o Late Umarao, R/o village Katelabhatha, PS Pulgaon, District Durg, Chhattisgarh.

---- **Petitioner**

Versus

1. Ashwani Kumar Sagar Banshi (uria) Age 35 years, R/o Lakhan Lal Sagar Banshi R/o village Parsada, Police Chauki Bori, PS Dhamdha at present R/o Chikhali (In House of Tej Lal Sahu) Police Chowki, Jewar Sirasa, District Durg, Chhattisgarh
2. State of Chhattisgarh, Through PS Pulgaon, District Durg, Chhattisgarh.

---- **Respondents**

For Petitioner	:	None.
For Respondent No. 1	:	Shri Aman Kesharwani, Advocate.
For Respondent No. 2/State	:	Ms. Madhunisha Singh, Panel Lawyer.

Hon'ble Shri Deepak Gupta, Chief Justice

Hon'ble Shri P. Sam Koshy, J.

Order on Board

Per Deepak Gupta, Chief Justice

30/06/2016

1. This revision petition has been filed by the complainant challenging the order passed by the learned Sessions Judge, Durg in Sessions Trial No. 439 of 2001 dated 28.03.2002 whereby the learned Sessions Judge acquitted the Accused/Respondent No. 1 of the charge under Section 302 IPC.

2. Earlier, this case was listed for hearing on 22.06.2016 when none had appeared for the Petitioner. We had heard the matter in part on 23.06.2016 when none had appeared for the Petitioner. We felt that the Petitioner may advance some arguments and therefore we adjourned the matter for today. Today also, none appeared for the Petitioner. Therefore, we proceed to decide the revision petition on merits.

3. Briefly stated facts of the case are that daughter of the complainant Saraswati Bai (hereinafter called 'the Deceased') was married to Ashwani Kumar-Respondent No. 1. The story of the prosecution is that on 23.08.2001

at about 11:30 pm, there was a dispute between Ashwani Kumar and his wife. Since Ashwani Kumar used to come home late at night, his wife suspected that he had some illicit relations with some other woman. Saraswati Bai went to the toilet and when she was returning, Ashwani Kumar strangled her with a rope by putting the rope around her neck and thereby committed her murder. After committing the murder of his wife, Ashwani Kumar made an extra-judicial confession before his father-in-law and his sister-in-law.

4. The matter was reported to the police, which started the investigation. The body of the deceased was subjected to medical examination and postmortem and after investigation, the accused was charged with having committed murder of his wife.

5. PW-1, Heera Singh made a report to the police (Exhibit P/1). The merger intimation was lodged at about 01:15 am. The place of occurrence is stated to be about 2 KM from the police station and the report was lodged within a short time of the occurrence.

6. The prosecution case is based mainly on the alleged extra-judicial confession made by the accused. PW-1, Heera Singh is the father of the deceased and he is the person who lodged the complaint, on the basis of which FIR (Exhibit P/2) was recorded. He states that his daughter Saraswati Bai was married to the accused. According to him, on 23.08.2001, he had gone to poultry farm. In the night, his grand-son Baccha came to the poultry farm and informed him that the accused had killed Saraswati Bai. He came to the spot and saw that the body of his daughter Saraswati Bai lying next to the Rickshaw which was plied by Baccha (PW-2) in the Kothar (courtyard). He then reported the matter to the police. He is also witness to the other parts of investigation. In cross-examination, he states that the accused and Saraswati Bai had come to his house on the eve of *Tija*. The accused used to go out after taking his meals. He also states that neither his daughter nor his son-in-law told him about any dispute between them. After *Tija*, the accused

remained in his house for eight days alongwith deceased Saraswati Bai and there was no altercation between them. He also stated that Baccha (PW-2) had told him that the accused had confessed that he had committed murder of Saraswati Bai. According to him, he had told this fact to the police both in the complaint (Exhibit P/1) as well as in the FIR (Exhibit P/2). He was confronted with Exhibit P/1 and P/2 in which this fact was not recorded.

7. PW-2, Baccha is a Rickshaw puller. He is the grand-son of PW-1, Heera Singh and deceased Saraswati Bai was his *Mausi* (maternal aunt). According to him, on 23.08.2001, at about 11:45 pm, the accused woke him up and told him that his maternal aunt had gone to ease herself but has not returned and asked him to go and see as to what has happened. Thereafter, this witness woke up his mother Ramshila Bai (PW-3) and then went to *Kothar* where they found the dead body of Saraswati Bai. He then went to poultry farm to call his maternal grand-father, PW-1, Heera Singh and informed him about the incident. According to him, when he alongwith his grand-father returned home, they found that the accused was crying. His grand-father asked accused-Ashwani how Saraswati Bai had died, on which the accused told him that Saraswati Bai had made allegation that he had kept a second wife and therefore he had used a rope to strangle her. In cross-examination, he states that about 11:45 pm, he had told his grand-father that accused-Ashwani had killed Saraswati Bai by strangulating her with a rope. He also states that he had told this fact to the police but no such thing was mentioned in the FIR (Exhibit P/2). He could give no explanation for the same. He further states that when his grand-father left for poultry farm, at that time Saraswati Bai was alive. When Saraswati Bai died, his grand-father was not at home. When his grand-father returned, at that time the accused told them that he had killed Saraswati Bai. Even in the statement made to the police under Section 161 CrPC with which he has been confronted, he has clearly admitted that for the first time in the Court he had mentioned that he asked the accused why he was crying.

8. PW-3, Ramshila Bai is the sister of the deceased. She states that at about 6 months ago, at about 11:45 pm, her son Bachha (PW-2) woke her up and told her that his *Mausi* (Saraswati Bai) had gone for toilet outside but had not returned. He was informed about this by the accused. Thereafter, she alongwith her son Baccha went outside and saw the dead body of Saraswati Bai in the *Kothar*. The body was lying next to the Rickshaw and there was a rope around the neck. Thereafter, people of the locality gathered there. Her son Baccha (PW-2) went to call her father, Heera Singh (PW-1). When her father returned home, he asked the accused as to how Saraswati Bai had died, on which the accused stated that Saraswati Bai used to suspect him of having illicit relations with some other woman, therefore he had killed her. She also admits that she neither saw any quarrel between the deceased and the accused nor they complained to her about any misbehaviour. She also states that the accused was crying. According to her, even Sarpanch of the village came to the spot and a large crowd had gathered. According to her when her son returned alongwith her father from poultry farm, the accused did not say anything to them. When the Sarpanch asked the accused as to what had happened, the accused did not give any reply. Thereafter, she stated that the accused had informed that he had killed Saraswati Bai. She was confronted with her statement under Section 161 CrPC where this fact was not recorded.

9. PW-5, Dukhharan is the brother of Heera Singh (PW-1). According to him, on 23.08.2001, at about 12:30 am, he was woken up and informed that Saraswati Bai had died. He then went to the place of occurrence i.e. house of his brother Heera Singh (PW-1). According to him, he asked Heera Singh whether he had informed anybody. Thereafter, this witness went to call the Sarpanch. The Sarpanch and many other people came to the spot. Thereafter, the police also came to the spot. This witness further states that when the police interrogated the accused, he kept silent. However, when from the pocket of the accused, silver tops and one silver chain were recovered, then the accused admitted that he had killed Saraswati Bai.

10. The statements of other witnesses are not relevant to decide the issue involved in this revision. This is the entire evidence with regard to the so called extra judicial confession made by the accused. The learned trial Court has disbelieved the version of the prosecution and in our opinion, rightly so.

11. Ramshila Bai (PW-3), the sister of the deceased states that when her son Baccha came to her, he told her that the accused had informed him that the deceased had gone for toilet but had not returned and therefore, both she and her son Baccha went out to look for the deceased. They found the body of the deceased in the *Kothar*. She does not say a word of any confession having been made by the accused till that stage. This totally belies the version of PW-1, Heera Singh and PW-2, Baccha that Baccha had informed PW-1, Heera Singh about the confession. The version of PW-3, Ramshila Bai clearly indicates that no confession had been made till that stage when Baccha left for poultry farm to bring back his grand-father Heera Singh to the place of occurrence. If such confession had been made there would be a mention of it in the FIR. The statements of PW-1 and PW-2 are also contradictory with regard to the time of making confession. This witness however states that the accused made confession later on and at that time Sarpanch and other villagers had also gathered there. Neither the Sarpanch nor any other villager has supported the prosecution case. The only witnesses produced to prove the prosecution story are the close relatives of the deceased. When independent witnesses including the Sarpanch had gathered, there examination was necessary in this regard. Adverse inference can be drawn against the prosecution due to non examination of the important and relevant witnesses.

12. Furthermore, the statement of Dukhharan (PW-5) clearly indicates that the so called confession was made after the police had come and started investigation in the matter. He is the real brother of PW-1, Heera Singh and uncle of the deceased. If his version is accepted to be correct, then obviously the first confession was made to the police and such confession made to the

police is totally inadmissible in evidence in view of Section 25 of the Indian Evidence Act, 1872, which reads as follows:

“25. Confession to police officer not to be proved. - No confession made to a police officer, shall be proved against a person accused or any offence.”

13. Therefore, in view of the aforesaid provision of law, the so called confession cannot even be read in evidence. There are no eye witnesses and this is a case of circumstantial evidence and the main circumstance i.e. extra-judicial confession has not been proved by the prosecution. It is true that the accused was last seen in the company of his wife but that circumstance by itself is not sufficient to convict the accused. In case the deceased had gone out of the house to ease herself, then she could have been killed by anybody outside. In a case of circumstantial evidence, it is for the prosecution to prove all the circumstances and to link them in a manner which only leads to one conclusion i.e. guilt of the accused. Furthermore, the evidence should be so strong that it points out only to the guilt of the accused and in case, any other person could have committed the crime, the accused cannot be convicted. The trial Court, which had the benefit of seeing the demeanor of witnesses, had acquitted the accused. The presumption of innocence has been strengthened by the judgment of acquittal. Therefore, we see no reason why we should interfere in the judgment at this stage.

14. In view of above discussion, the revision petition is dismissed.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE

Sd/-

(P. Sam Koshy)
JUDGE