

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No.619 of 2004**

- Bodwa, s/o Ramvriksh, aged 35 years, resident of village Chunchuna, P.S. Chando, Dist. Surguja (C.G.)

---- Appellant**Versus**

- State Of Chhattisgarh, Through : Station Incharge, Police Station Chando, Dist. Surguja (C.G.)

---- Respondent

For Appellant	:	Smt. Savita Tiwari, Advocate
For Respondent/State:		Shri Ramakant Mishra, Deputy Advocate General

**Hon'ble Shri Justice Prashant Kumar Mishra &
Hon'ble Shri Justice Chandra Bhushan Bajpai**

Judgment On Board**29/07/2016**

In this appeal, the appellant has called in question the conviction and sentence imposed upon him for committing offence under Section 302 of the I.P.C. in regard to murder of one Sohari Bai.

2. Case of the prosecution, in short, is that the appellant had lost his two sons and was suspecting that they have died on account of sorcery practised by the deceased on his children. According to the prosecution, at about 6.00 pm on 09.09.2000, the deceased and Patto Bai (P.W.5) were consuming liquor on the embankment of corn field. At that time, appellant came to the place and alleged that deceased has killed his children and is still abusing and in the same action he assaulted over her neck by using the back side of the axe. Thus Patto Bai (P.W.5) was projected as an eye witness. The said Patto Bai

(P.W.5) later informed the incident to Krishna Ram Nagesia (P.W.4) who lodged the F.I.R. at about 18.30 hours on 11.09.2000.

3. Although in the postmortem report, the death was found to be homicidal in nature and the said fact has been proved by Dr. T. Sai (P.W.6), the question to be considered is whether the appellant is responsible for causing death of deceased Sohari Bai.

4. The prosecution examined six witnesses to bring home the charges. Out of the 6 witnesses, Krishna Ram Nagesiya (P.W.4) and Patto Bai (P.W.5) are the witnesses around whom the edifice of the prosecution case is built. Patto Bai (P.W.5) was presented by the prosecution as an eye witness, however, when examined in Court, she has turned hostile. Even during cross-examination, she has not stated anything which may be used as necessary corroboration to any other evidence proved by the prosecution against the appellant. Thus P.W.5 Patto Bai's statement has not helped the prosecution in establishing the guilt of the accused. This leaves this Court to appreciate as to whether the conviction is possible on the testimony of Krishna Ram Nagesiya (P.W.4) who himself is not an eye witness but speaks about information obtained by Patto Bai or the extra judicial confession made by the appellant to him.

5. When examined in Court, P.W.4 Krishna Ram Nagesiya (P.W.4) has stated that soon after becoming aware the death of Sohari Bai, they went to the agricultural field of Ramchalittar and found the dead body. They suspected that the appellant might have killed the deceased, therefore, they went in search of the appellant. When they reached his house, they found the appellant's brother – Sheetal Prasad, who called the appellant and on enquiry, the appellant made extra judicial confession that he has committed murder of

deceased Sohari Bai because she was involved in practicing sorcery. This witness was confronted with the F.I.R. (Ex.P.1) wherein he had not disclosed to the Police that the appellant has made extra judicial confession. This witness admitted that he has never disclosed to the Police about extra judicial confession made by the appellant. In this view of the evidence available on record, it is absolutely difficult to hold that the appellant has made extra judicial confession in the presence of P.W.4 Krishna Ram Nagesiya.

6. The prosecution has thus tried to prove its case by producing one eye witness and one witness to the extra judicial confession. However, neither the eye witness has supported the case of prosecution nor the other witness has ever disclosed about the extra judicial confession during investigation. His statement on this count is highly untrustworthy.

7. In the considered opinion of this Court, there is absolute lack of cogent and reliable evidence to conclude that the appellant has committed murder of deceased. The finding of guilt recorded by the trial Court is not borne out from the evidence available on record, therefore, the impugned judgment of conviction and order of sentence imposed upon the appellant deserves to be and is hereby set aside.

8. The appeal is accordingly allowed.

9. The appellant is on bail, his bail bonds shall remain in operation for a period of six months from today, in view of the provisions contained under Section 437-A of the Cr.P.C. He shall appear before the higher Court as and when directed.

Sd/-
Judge
(Prashant Kumar Mishra)

Sd/-
Judge
Chandra Bhushan Bajpai)