

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 901 of 2011**

1. Yudhishir Soora S/o Kashiram Soora, Aged about 40 years, R/o village Sitapur, PS Basana, District Mahasamund CG

---- Appellant**Versus**

1. State of Chhattisgarh through incharge officer Police Station Basana, District Mahasamund, CG

---- Respondent

For Appellant: Shri Vijay Deshmukh, Advocate
 For Respondent/State: Shri Ashish Surana, PL

Hon'ble Shri Justice Pritinker Diwaker**Hon'ble Shri Justice I.S. Uboweja****CAV JUDGMENT****Pritinker Diwaker, J****19/02/2016**

This appeal has been filed against the judgment of conviction and order of sentence dated 15.07.2011 passed by Sessions Judge, Mahasamund, in Sessions Trial No. 66/2010 convicting the accused/appellant under Section 302 IPC and sentencing him to undergo imprisonment for life with fine of Rs. 1000/- plus default stipulation.

2. As per the case of prosecution, in the intervening night of 30/31.7.2010 the accused/appellant committed the murder of his wife Pratima in the field and after that he kept sitting near the deadbody. Dusti Kumar Saand (PW-6) - brother of the accused/appellant saw the deadbody, rushed to the village, met Banwas Saand (PW-1) - the Up Sarpanch of the village and disclosed the entire incident to him, who in turn went to the spot

along with other villagers and saw the deadbody. Thereafter, FIR Ex. P-2 was lodged on 31.7.2010 by Banwas Saand (PW-1) followed by *merg* Ex. P-1. Postmortem on the deadbody was conducted by Dr. B.B. Kosariya (PW-8) who gave his report Ex. P-12 stating that he noticed three injuries on it and the cause of death was haemorrhagic shock due to injury over neck and cut over the main vein and multiple micro vessels and muscles. After investigation, charge-sheet was filed against the accused/appellant for the offence under Section 302 IPC followed by framing of charge under the same section.

3. In order to prove the complicity of the accused/appellant in the crime in question, the prosecution has examined 10 witnesses. Statement of the accused/appellant under Section 313 Cr.P.C. was also recorded in which he denied his guilt and pleaded innocence and false implication in the case.

4. After hearing the parties, the Court below has convicted and sentenced the accused/appellant as mentioned above.

5. Counsel for the accused/appellant submits as under:

- (i) that there is no eyewitness to the incident and the accused/appellant has been convicted merely on the basis of weak type of circumstantial evidence which is not permissible in law;
- (ii) that as the deadbody was found in an open place, possibility of the deceased having been killed by someone else cannot

be ruled out;

- (iii) that the witnesses to extrajudicial confession namely Banwas Saand (PW-1) and Dusti (PW-6) are not trustworthy;
- (iv) that in the same way statement of Dusti (PW-6) in respect of appellant and the deceased being last seen by him is also not reliable; and
- (v) that in the absence of serologist's report, the FSL report Ex. P-15 showing presence of blood on certain articles is of no consequence.

6. On the other hand counsel for the respondent/State supports the judgment impugned and submits that the findings recorded by the Court below are strictly in accordance with law and there is no infirmity in the same. He submits that the evidence of Banwas Saand (PW-1), Sitaram (PW-2), Pankaj (PW-5) and Dusti (PW-6) regarding previous conduct of the accused of picking up quarrel with the deceased, also goes against him. This apart, the accused has voluntarily made extrajudicial confession before Sitaram (PW-1) and Dusti (PW-6) to have killed the deceased and on his memorandum Ex. P-9 seizure of axe and clothes (*gamchha and panchha*) belonging to the appellant was made under Ex. P-3 and P-8 respectively, and in these circumstances, according to the State counsel, the judgment impugned is just and proper and no interference therewith is called for.

7. Heard counsel for the parties and perused the evidence on record.

8. Banwas Saand (PW-1) who at the relevant time was Up Sarpanch of the village has stated that on the date of incident at about 10.30 AM when he was in his field, Dusti (PW-6) had come to him and informed that his brother (accused) killed the deceased, and asked him to accompany to the spot. When he along with *Kotwar, Panch* and *Sarpanch* of the village reached the place occurrence, he saw the body of the deceased lying there with bleeding injuries on head and neck and at that time accused/appellant was not there. According to him, accused was searched by Dusti and Labin, was brought to the place of occurrence and on being asked, he made the confession of killing the deceased and then he went to the police station along with other villagers to lodge the report. He is also the witness to *merg* Ex. P-1 and FIR Ex. P-2. As regards seizure of axe on the memorandum of the accused/appellant Ex. P-9, this witness has stated that the axe was covered with earth in a pit and the police recovered the same on its handle being visible, and at this stage this witness has been declared hostile. Except seizure of axe, this witness has remained firm on all other material particulars. Sitaram (PW-2) has stated in his evidence that there used to be quarrel between the accused and the deceased and at times the accused and the deceased used to stay in the field and the same thing had happened on the date of incident also. According to this witness, when on the date of incident the accused and the deceased did not return home for taking meals, he went to the field and found both of them sleeping there. He is stated to have seen them sleeping from some distance and did not go nearer. Thereupon, he along with Dusti went to the field and found the deceased lying there

covered with a piece of cloth and the accused/appellant was also sitting there. According to him, when he saw by removing the cloth, he found injury over her neck and she was dead and on being asked as to what did he do, the accused told him to make her alive. Thereafter, he got back to village and took the *Kotwar*, *Sarpanch* and *Up Sarpanch* with him to the field. This witness has further stated that the accused had killed the deceased with axe which was recovered from the spot. As regards recovery of axe on the disclosure statement of accused/appellant, this witness has expressed his ignorance and has been declared hostile. He however has admitted his signature on memorandum Ex. P-9 and seizure memo Ex. P-3. Lalita Tandi (PW-4) is the village Kotwar and witness to inquest Ex. P-6 who had reached the place of incident after it had taken place. Pankaj (PW-5) aged about 11 years at the relevant time is the son of the accused/appellant who has stated that it is the accused/appellant who has killed his mother. He has stated that the accuse did not keep his mother (deceased) properly, used to beat and keep her in captivity. Dusti Kumar Saand (PW-6) - the brother of the accused/appellant has stated in his evidence that there used to be quarrel between the accused and the deceased and on the date of incident at about 12 noon Sitaram (PW-2) had informed him that the accused and the deceased were asleep in the field; perhaps the deceased was dead and her body was covered with a piece of cloth. Thereafter, he accompanied Sitaram to the field and found the deceased dead with bleeding injuries on neck and head and her body was covered with a piece of cloth and the accused/appellant was sitting nearby. He has stated that on being asked by the villagers including *Panch* and *Sarpanch*, the accused/appellant confessed to have killed the deceased and then

the report was lodged. This witness has further stated that a day prior to the date of incident at about 4 PM the accused/appellant had taken his wife (deceased) to the field and killed her. Dr. B.B. Kosariya (PW-8) is the witness who conducted postmortem examination on the body of the deceased and gave his report Ex. P-12 detailing the injuries noticed by him which are as under:

- (i) Incised wounds over right side of neck, size 10 cm x w cm x 3 cm, the jugular vein and stemocledo mastoid muscle are cut.
- (ii) Incised wound ove rright infra mandibular region, size 3 cm x 2 cm x 2 cm (small capillaries and muscle are cut.
- (iii) Incised wound over right supraclavical region – 2 cm x 2 cm x 2 cm, muscle and capilaries are cut.

According to the opinion given by this witness, cause of death was due to haemorrhage shock, haemorrhage was from injuries over neck, cut in jugular vein and multiple micro vessels, and the death was homicidal in nature. Chaturbhuj Bariha (PW-9) is the Patwari who prepared spot map Ex. P-14. Amar Singh Dhruv (PW-10) is the investigating officer who has duly supported the case of the prosecution.

9. As per the FSL report Ex. P-15 blood was found on the axe and clothes of the accused/appellant and he has not offered any explanation regarding the same in his statement recorded under section 313 of the Code of Criminal Procedure.

10. We have gone through the evidence of the witnesses and other material available on record with utmost care and caution

which makes this Court to hold that in the intervening night of 30/31.7.2010 it is the accused/appellant who had killed his wife by causing axe injuries on her neck and head. Further, evidence of Dusti Kumar Saand (PW-6) duly establishes the accused and the deceased having been seen last while going to the field which is about one and half KM from the village. Even the previous conduct of the accused/appellant in picking up quarrel with the deceased and subjecting her to beating has also been supported by Banwas Saand (PW-1), Sitaram (PW-2), Pankaj (PW-5) and Dusti Kumar Saand (PW-6). Not only this, the accused/appellant has also made extra judicial confession before Banwas Saand (PW-1), Sitaram (PW-2) and Dusti Kumar Saand (PW-6) that he had killed the deceased. Furthermore, on the memorandum of the accused/appellant Ex. P-9, seizure of axe and clothes of the accused/appellant was made and as per the FSL report Ex. P-15 presence of blood has also been confirmed thereon. Though serologist's report is not on record yet in the absence of any explanation for the presence of blood over the seized articles, the accused/appellant cannot derive any benefit for non availability of the report of serologist. Almost all the witnesses have stated in their Court statements that sometimes the accused and the deceased used to stay in the field even in the night hours and on the date of incident also the accused/appellant was found sitting near the deadbody and therefore the submission of the counsel for the appellant that as the deadbody was found in an open place possibility of somebody else killing the deceased cannot be ruled out, has no substance at all particularly when the accused has in categorical terms confessed his guilt in presence of number of persons. Banwas Saand (PW-1) – the lodger of the report putting

forth his denial has stated that the accused/appellant has been named on account of suspicion and the deceased has been killed by someone else. Even the doctor conducting postmortem examination has clearly stated that he noticed number of injuries on the body of the deceased in particular head and neck and those injuries could have been caused by the axe produced before him.

11. Thus in view of the aforesaid factual discussion, the Court below appears to be have been fully justified in holding the accused/appellant guilty under Section 302 IPC and the findings recorded by it in the judgment impugned are based on proper appreciation of the evidence of the witnesses. This Court does not see any reason to dislodge the well reasoned judgment which is under challenge in this appeal. It is accordingly **affirmed** and the appeal being without any substance is hereby **dismissed**. Accused/appellant is already reported to be in jail, therefore, no order regarding his surrender etc.is required to be passed.

Sd/-

(Pritinker Diwaker)

Judge

Sd/-

(I.S. Uboweja)

Judge