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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 157 of 2004

Shrimati Subhag Bai, widow of Ramsagar, Aged 32 years, resident of village Goverdhanpur, Police Station- Basantpur, District Sarguja (C.G.)

---- APPELLANT

Versus

State of Chhattisgarh, Through- Station House Officer, Basantpur, District Sarguja (C.G.)

---- RESPONDENT

For Appellant	:-	Mr. J.S. Baraik, along with Ms. Savita Tiwari, Advocates
For Respondent /State	:-	Mr. Shashank Thakur. Govt. Advocate

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Anil Kumar Shukla

Judgment on Board By
Prashant Kumar Mishra, J.

19.12.2016

1. Appellant has been convicted for committing murder of her husband Ramsagar at about 3.00 PM on 13.09.2001.
2. The prosecution case emerging from Dehatinalishi and FIR is that in the evening of 13.09.2001 one Chandar, grand son of Jai Hirman Tirkey(PW-1) of village Murkol, informed Bodhan (PW-7) (father of the deceased) that Ramsagar has died. Bodhan lodged Dehatinalishi (Ex.P /3) at about 9.15 AM on 14.09.2001, to the effect that when after receiving information he went to village Goverdhanpur, he witnessed that the deceased has been

murdered by causing head injury. Postmortem report has not been exhibited, however, the death was found to be homicidal, therefore, on the basis of the fact that the deceased and the appellant were alone in the house on 13.09.2001, when the deceased died out of the head injury in his own house where he was residing as *Gharjamai*, the prosecution filed charge sheet for committing offence under section 302 of the IPC.

3. During the FSL examination, Blouse and Sari belonging to the appellant as well as blood stained soil, Axe and wearing apparels of the deceased were sent for chemical examination, wherein Sari, Axe and wearing apparels of the deceased were found to be blood stained vide (Ex.P/18), however, the origin of blood could not be determined as the blood stains had disintegrated.
4. The Trial Court has convicted the appellant mainly on the statements of Jai Hirman Tirkey (PW-1) and Budhai Gond (PW-11).
5. It is argued by the learned counsel for the appellant that there is absolutely no evidence against the appellant, therefore, the conviction deserves to be set aside. She would submit that the trial Judge has developed its own theory and story about the case of the prosecution insofar as the motive is concerned. Therefore, the entire findings are perverse.
6. Learned State counsel would submit that the trial Court has culled out the case from the material available on record,

therefore, the findings recorded against the appellant are correct being emerging from the evidence and not perverse.

7. A reading of the Dehatinalishi (Ex.P-3), the FIR (Ex.P-4), Merg intimation (Ex.P-5), Dehati merg intimation (Ex.P-6) would reveal that the deceased was the second son of Bodhan Gond (PW-7), he was married with the appellant about 20 years back and after his marriage, he started residing in his in-law's house at village Goverdhampur as *Gharjamai*. However, there was no dispute about the father and the son or between the brother.
8. On the contrary, the evidence would suggest that the deceased was in the habit of consuming liquor. He often used to ill-treat the appellant in an inebriated condition. Jai Ram Tirkey (PW-1) was the tenant of Budhai Gond (PW-11). Thus, he was residing in the house belonging to Budhai Gond (PW-11) and the present appellant who was the daughter of Budhai Gond (PW-11) as *Gharjamai*. The deceased was exerting pressure on Jai Hirman Tirkey (PW-1) to leave the house and reside elsewhere. On the date of incident, Jai Hirman Tirey (PW-1) had shifted one part of his belongings to another accommodation. It is said, the appellant was not pleased with the deceased for insisting Jai Hirman Tirkey (PW-1) to vacate the house, therefore, she committed his murder. However, the prosecution has not proved any motive for commission of crime of murder, for the reason that there is no allegation of an affair between the appellant and Jai Hirman Tirkey (PW-1).

9. The story of an affair has been culled out by the trial Judge without there being any suggestion to this effect in the charge sheet. As a matter of fact, the prosecution case did not allege any strong motive for the appellant to commit murder.
10. Be that as it may, prosecution case is also based on the alleged extra judicial confession made by the deceased to witnesses Bodhan Gond (PW-7) and Budhai Gond (PW-11). Bodhan Gond (PW-7) is the father-in-law of the appellant. This witness has deposed in his examination-in-chief that the appellant confessed that she has committed mistake, however, this part of the statement is not available in his case diary statement (Ex.D-1). This evidence of extra judicial confession made by the appellant before Bodhan Gond (PW-7) was stated before the Court for the first time. Therefore, this evidence is not believable.
11. Similarly, Budhai Gond (PW-11) is the father of the appellant. According to him, the appellant confessed before him that she has killed her husband, however, in cross-examination he would deny that appellant had made any confessional statement to him. Thus, the statement of this witness is not of any assistance to the prosecution.
12. The statements of Bodhan Gond (PW-7) and Budhai Gond (PW-11) are untrustworthy in respect of extra judicial confession. We are now left with no other evidence except forensic evidence, however, as stated earlier, the forensic evidence is

also inconclusive for want of serological report about the origin of blood stains found on the Sari belonging to the appellant. It is also to be noted that the prosecution could have collected the evidence in the nature of finger print on the Axe, but the same does not appear to have been collected.

13. For the foregoing reasons, it is a case where the prosecution has not been able to prove its case beyond all reasonable doubts. The trial Judge has wrongly convicted the appellant for the offence under Section 302 of the IPC.
14. In our considered view, the appeal deserves to be and is hereby allowed. The impugned judgment of conviction and sentence is set aside.
15. The appellant is reported to be on bail. Her bail bonds are not discharged at this stage and shall remain operative for a further period of six months from today in terms of Section 437-A of Cr.P.C.

Sd/-

Judge

Prashant Kumar Mishra

Sd/-

Judge

Anil Kumar Shukla