

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL APPEAL NO. 210 OF 2001

Suraj Bai, aged about 19 years, D/o Lochan Udiya, R/o Trimurti Nagar,
Raipur, District Raipur

... Appellant

Versus

The State of Chhattisgarh

... Respondent

For Appellant	:	Ms. Renu Kochar, Advocate.
For Respondent-State	:	Mr. Ashok Swarnakar, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

24/11/2016

1. The present appeal has been preferred by the Appellant assailing the judgment dated 24.2.2001 passed by the Sixth Additional Sessions Judge, Raipur in Sessions Trial No. 196 of 2000, whereby the Appellant has been convicted under Section 304 (Part-I) of IPC and sentenced to undergo R.I. for 5 years with fine of Rs.500/- and in default of payment of fine to undergo additional R.I. for two months.

2. Case of the prosecution in brief is that on 28.4.2000 a body of a dead child one or two days old was found behind railway quarters near Trimurti Nagar Railway Station in a small ditch with water. PW-7, Masto Durga is the person who has first seen the child. Merg (Exhibit P-9) was reported on the same day. Thereafter, FIR (Exhibit P-4) was lodged on 29.4.2000. During the course of investigation, it was suspected that the Appellant might be the person who must have delivered the child and dumped near the place of incident. It is alleged that in the course of investigation the police authorities had called for the examination of the Appellant and in the course of examination it is told that the Appellant is said to have confessed upon her having delivered the child and later having dumped the child in a ditch

behind railway quarters near Trimurti Nagar Railway Station. Thereafter, on the basis of the investigation which was conducted, a charge-sheet was filed and a case was registered against the Appellant and one Ramji Lal as Sessions Trial No. 196 of 2000 before the Sixth Additional Sessions Judge, Raipur.

3. As per the prosecution, the Appellant was working as a labourer with co-accused Ramji Lal who was a contractor. It is said that the said Ramjilal developed physical relationship with the Appellant and in the course she got conceived and since it was an illicit relationship therefore they had conspired to dump the child to be born to the Appellant and accordingly immediately after the child was born to the Appellant she is said to have dumped the child in the ditch behind railway quarters near Trimurti Nagar Railway Station. The body was recovered after about a couple of days and followed by the trial. The two accused persons were prosecuted for the offence under Sections 302, 201 of IPC alternatively under Section 317 of IPC as also under Section 109 of IPC. In the course of trial the prosecution examined as many as 12 witnesses. No witnesses were examined on behalf of the defence.

4. The Court below finally vide its judgment dated 24.2.2001 reached to the conclusion that the case of the prosecution against the accused Ramji Lal was not established and therefore the Court below acquitted him of the charges levelled against him under Section 302/109 of IPC. So far as the present Appellant is concerned, the Court below reached to the conclusion that the prosecution though has not been able to establish the offence under Section 302, 201 and 317 of IPC but in the light of the extra-judicial confession that she had made to PW-7, Masto Durga, convicted her for the offence under Section 304 (Part-I) of IPC and sentenced her to undergo R.I. for 5 years with fine of Rs.500/- with default stipulation. It is this judgment of

conviction and order of sentence which is under challenge in the present appeal.

5. The Appellant in the instant appeal challenges the impugned judgment on the ground that the prosecution has miserably failed to make out the offence which has been charged against her inasmuch as proving the first relevant ground for establishing the case against her that of the child which was recovered from the place of incident being the child born to the Appellant. According to the Counsel for the Appellant, when she is being charged for having killed her own child the first thing which the prosecution ought to have established is the fact that the child was that of the Appellant. There was no DNA test conducted of the child neither was there any sort of test conducted so as to determine whether the child was that which was born to the Appellant. In the absence of these very vital facts itself the entire case of the prosecution gets collapsed and the judgment of conviction deserves to be set aside.

6. Counsel for the Appellant further submits that it is a case where there were some material contradictions in the statements of the material witnesses examined by the prosecution particularly the lodger of the report, i.e., PW-7, Masto Durga, who in his deposition before the Court stated of the child to be a male child whereas the post-mortem and the body which was recovered as per the other witnesses was that of a female child. This discrepancy also is a relevant factor the benefit of which should go in favour of the Appellant. She also submits that the entire conviction is based upon the assumption and presumption. According to her, once when the prosecution has charged the Appellant of having committed an act it is the duty which is casted upon the prosecution first to establish the said charge beyond reasonable doubt. The Court should not have drawn adverse inference against the Appellant for the purpose of convicting. The Appellant

cannot be forced to give an evidence against her neither the weakness of the defence be taken as a factor for convicting the Appellant which was otherwise supposed to be proved by the prosecution. Thus, she prayed for the setting aside the impugned judgment.

7. Counsel for the State however opposing the appeal submits that it is a case where the prosecution has led evidence of 12 witnesses and most of the witnesses have supported the case of the prosecution to the extent first the recovery of a dead child, then the Appellant missing from her house during the relevant period, and the statement of PW-9 Dr. T. Nagaria who found the Appellant to have undergone delivery within a short span of time from the date of her examination which correlates the date of incident. Further, there being no justification so far as pregnancy and subsequent delivery if any given by the Appellant it gives an indication of her having been involved in the commission of the offence. In addition, the State Counsel also tried to draw the attention of the Court to the extra-judicial confession that was made by the Appellant before PW-7, Masto Durga, the lodger of the report. He thus on these circumstances prayed for the rejection of the appeal.

8. Having considered the rival contentions put forth on behalf of either side and on perusal of the records, true it is that the circumstances may give an indication of the Appellant alone to have committed the offence for the reason that PW-9, Dr. T. Nagaria who had physically examined the Appellant gives a report of the Appellant having undergone delivery within a short span of time from the date of her examination. Further, it was also the case where the PW-7, Masto Durga is said to have reached the house of the Appellant on 5.5.2000 when she had returned home after some time and before whom the Appellant is said to have confessed of having committed the offence of dumping the child in a ditch. But these two

circumstances alone would not be in the opinion of this Court sufficient grounds for convicting the Appellant. In the instant case, though there is a recovery of the child from a particular place but whether the child was born to the Appellant ought to have been proved by the prosecution, first establish the fact whether the report of the test which should have been conducted on the child matches with that of the Appellant. In the absence of any such test or even conducting the DNA test of the child so as to ascertain the fact whether it was the child born from the Appellant, it cannot be conclusively held that the body recovered on 28.4.2000 was that of the child born to the Appellant. In the absence of any such report in favour of the prosecution, this Court is of the opinion that it cannot be said that the prosecution has been able to lead cogent evidence to establish the fact that it was the Appellant alone who had dumped her child at the place of incident or for that matter the body of the child recovered was that of the child born to the Appellant.

9. In the circumstances, this Court has no hesitation in reaching to the conclusion that the finding of the guilt of the Appellant for the offence under Section 304 (Part-I) of IPC is not proper, legal and justified and the same deserves to be and is hereby set aside.

10. The appeal is accordingly allowed. The impugned judgment is set aside and the Appellant is acquitted of the charge under Section 304 (Part-I) of IPC. The Appellant is on bail, therefore, her bail-bonds shall remain in operation for a period of six months from today in view of provisions contained in Section 437-A of CrPC.

Sd/-
(P. Sam Koshy)
Judge