

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1108 of 2013

Lalmohan Rajware S/o Late Rudan Aged About 31 Years R/o Village
Telaikachhar, Police Station- Jainagar, Civil And Rev. Distt. Surajpur C.G.

---- Appellant

Versus

State Of Chhattisgarh Through SHO, Jainagar, Civil And Rev. Distt.
Surajpur C.G.

---- Respondent

For Appellant	:	Shri Bhupendra Singh, Advocate
For Respondent-State	:	Shri Prafull Bharat, Additional Advocate General

Division Bench
Hon'ble The Chief Justice
Hon'ble Shri Justice Manindra Mohan Shrivastava

Judgment On Board

01/07/2016

1. This case has been listed for hearing on application for suspension of sentence and grant of bail. After hearing learned counsel for the parties for some time and having gone through the evidence on record, we felt that this is a fit case where if the parties are ready, it can be finally heard and decided today itself. Therefore, with the consent of learned counsel for the parties, the appeal is heard finally.
2. This appeal is directed against the judgment dated 7.10.2013 delivered by learned Additional Sessions Judge, Surajpur in Sessions Trial No.346/2012 whereby the appellant has been convicted for having committed an offence punishable under Section 302 IPC and sentenced him to undergo imprisonment for life and to pay fine of Rs.500/- and in default of payment of fine, to undergo further simple imprisonment for one month.

3. The prosecution story briefly stated is that the accused was married to deceased- Fulbasiya. According to prosecution, the relation between two were strained and husband was suspecting his wife of having some illicit relation with some other person. This being the motive, he, on 1.8.2012 committed murder of his wife with the help of *pahsul* (a curved sharp edged instrument used for cutting vegetables). The 'Merg' intimation (Ex. P-1) was lodged on the information of Sukhlal Rajwade (P.W.1) in the Police Station- Jainagar in which he stated that he along with the accused lived in one house and that the accused Lalmohan used to doubt the fidelity of his wife Fulbasiya and on 1.8.2012 after the wife of the informant had gone for work and the children had gone to school, the accused- Lalmohan was alone with his wife and at that time he used a *pahsul* to commit murder of his wife by giving cut on her throat. On the basis of this information, FIR (Ex.P-2) was lodged. Thereafter, investigation started and after the investigation was completed, charge sheet under Section 173 Cr.P.C. was filed against the accused-appellant having committed the offence of murder of his wife. After trial, the accused was convicted and sentenced as aforesaid. Aggrieved by the said judgment, this appeal has been filed.
4. We have carefully gone through the impugned judgment. The conviction of the accused is based on statements of two witnesses i.e. Sanjay Yadav (P.W.4) and Rajender (P.W.7) alone. According to Sanjay Yadav (P.W.4) immediately after the occurrence when he was at the house of the accused, the accused was shouting that he had killed his wife. As far as Rajender (PW.7) is concerned, according to him, the accused made an extra-judicial confession to him that he had murdered his wife. Therefore, the evidence of these two witnesses is only required to be examined.
5. As far as Sanjay Yadav (PW.4) is concerned, in his examination-in-chief, he states that he had gone to house of accused to collect a pick-up van. At that time, accused came there and started shouting that he had killed his wife (Fulbasia). This witness further states that the accused came out of his house and keep shouting that "I have killed my wife". Thereafter, this witness went inside the house, at the scene of crime and he found the wife of the accused lying dead and there was a cut wound on her throat. The witness was cross-examined and in cross-examination, he came out with a

totally different version. He accepted every suggestion which was made to him on behalf of the accused. He admitted the suggestion that he used to work as a driver of a vehicle owned by the accused. He also stated that he along with accused- Lalmohan and one Sukhlal and other members of family had gone to the field to sow the crop. At that time Fulbasia was alone at home. He further states that he along with accused reached the house at 8:00 a.m. He admitted the suggestion that Lalmohan told him that his wife has been killed by somebody. He also admitted the suggestion that Lalmohan was shouting that somebody had killed his wife. He also admitted the suggestion that thereafter they all along with Lalmohan went to the house of Lalmohan and found the dead body of his wife outside the house. He also admitted the suggestion that the earlier statement given by him was under pressure of the police. He also admitted the suggestion that Lalmohan, Sukhlal and he were together at the time when occurrence took place.

6. Unfortunately though this witness totally turned hostile in his cross-examination, no effort was made by the Public Prosecutor to declare him hostile and not even a prayer was made to re-examine him and confront him with his earlier statement if any. This was a case where the witness had supported the prosecution in the examination-in-chief and in cross examination, he had taken totally different stand. We are of the view that it was the duty of the Public Prosecutor to have sought the leave of the Court to cross-examine him even at that stage. That has not been done and therefore, an adverse inference have to be drawn against the prosecution that it did not want to cross-examine him for reasons best known to it.
7. As far as Rajender (P.W.7) is concerned, he states that accused Lalmohan had confessed that he had killed his wife by cutting her throat with a *pahsul*. He stated that when Lalmohan told him that he had killed his wife, at that time, police officials and 20-25 villagers were also present. Admittedly, such confession was made in the presence of police officials. Such a confession shall not be an extra-judicial confession and shall be a confession made in the presence of the police officials and is therefore inadmissible in terms of Section 25 of the Indian Evidence Act, 1872, which read as follows:

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

8. True it is that this confession has not been made only to a police officer. This confession is an open confession made both to the police officials and public at large. It, therefore, cannot be used against the accused-appellant.
9. There is no other evidence against the accused. In view of the above discussions, the appeal is allowed. Impugned judgment of conviction and order of sentence is set aside. The appellant is acquitted of the charges. He be set at liberty forthwith.

Sd/-
(Deepak Gupta)
Chief Justice

Sd/-
(Manindra Mohan Shrivastava)
Judge