

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 559 of 2011

- Ashok Kumar Sahu S/o Lakhan Lal Sahu, aged about 35 years, R/o Village Tendubhata (Bramhan), P.S. Saja, Distt.-Durg, C.G.

---- Appellant

Versus

- State Of Chhattisgarh through the Police Station Saja, Distt. Durg (CG)

---- Respondent

For Appellant : Shri RK Pali, Advocate with Shri PP Sahu, Advocate.

For Respondent/State : Shri OP Sahu and Shri Vivek Sharma, Govt. Advocates.

CRA No. 183 of 2012

- Smt. Dukal Bai W/o Lakhan Yadav, aged about 55 years, R/o Village Tendubhata (Brahman), P.S. Saja, Distt.-Durg, C.G.

---- Appellant

Versus

- State Of Chhattisgarh through SHO, Police Station Saja, Distt. Durg (CG)

---- Respondent

For Appellant : Shri Rakesh Sahu, Advocate.

For Respondent/State : Shri OP Sahu and Shri Vivek Sharma, Govt. Advocates.

CRA No. 944 of 2011

- Saraswati Bai, D/o Lakhan Yadav, aged about 35 years, R/o Village Tendubhata (Bramhan), P.S. Saja, Distt.-Durg, C.G.

---- Appellant

Versus

- State Of Chhattisgarh through SHO, Arakshi Kendra, Saja, Distt. Durg (CG)

---- Respondent

For Appellant : Shri Aman Kesharwani, Advocate.

For Respondent/State : Shri OP Sahu and Shri Vivek Sharma,
Govt. Advocates.

CRA No. 660 of 2012

- Lakhan Yadav, S/o Fagua Yadav, aged 58 years, R/o Village Tendubhata, P.S. Saja, Distt.-Durg, C.G.

---- Appellant

Versus

- State Of Chhattisgarh through Police Station Saja, Distt. Durg (CG)

---- Respondent

For Appellant : Shri Suresh Tandon, Advocate.

For Respondent/State : Shri OP Sahu and Shri Vivek Sharma,
Govt. Advocates.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Chandra Bhushan Bajpai,

Judgment On Board By Justice Pritinker Diwaker

23/09/2017

As these four appeals arise out of the common judgment of

conviction and order of sentence dated 19.7.2011 passed by the Additional Sessions Judge, Bemetara, Distt. Durg in ST No.04/2011, they are being disposed of by this common judgment. By the said judgment, the accused/appellants Ashok, Sarwati & Smt. Dukal Bai have been convicted under Sections 302/34, 120B/34, 201/34 & 318/34 of IPC and sentenced to undergo imprisonment for life, fine of Rs.500/-; imprisonment for life, fine of Rs.500/-; RI for five years, fine of Rs.300/- and RI for one year with default stipulations respectively whereas accused/appellant Lakhan Yadav has been convicted under Sections 201/34 & 318/34 of IPC and sentenced to undergo RI for five years, fine of Rs.300/- and RI for one year with default stipulation respectively.

02. Accused No.4 Lakhan Yadav and accused No.1 Dukalbai are husband and wife whereas accused No.2 Sarwati Bai is their daughter with whom accused No.3 Ashok was having illicit relation. According to the prosecution case, on account of this illicit relation accused/appellant Sarwati became pregnant and about 16 days prior to 28.9.2010 she had delivered a male child and as accused/appellant Ashok was not accepting the child to be his own, a village panchayat was called where complaint made by accused/appellant Sarwati was said to have been discussed. In the said meeting it was confessed by the accused persons that they in conspiracy with each other killed the newly born baby by strangulation and buried him. The village meeting was conducted on 27.9.2010 and minutes of the same were recorded vide Ex.P/2. FIR (Ex.P/1) was lodged on 28.9.2010 at 1.30 pm by PW-1 Sahebram Sahu, panch of the village, against the accused persons under Sections 302, 201, 318, 34 of IPC and immediately thereafter

merg Ex.P/3 was recorded. On 28.9.2010 memorandum of accused/appellant Lakhan Yadav was recorded at 3.50 pm vide Ex.P/15 wherein he has stated that he was informed by his wife accused Dukalbai that out of illicit relation of their daughter accused Sarswati with accused Ashok, Sarswati delivered a child who has been killed by her and she made a request to him for burying the dead body. In his memorandum it has been further stated that the dead child was lifted and after digging a pit the body was buried by him. Based on the said memorandum, dead body was of child was recovered and spot panchanama was prepared vide Ex.P/16. Inquest over the dead body was conducted on 28.9.2010 vide Ex.P/5 and thereafter postmortem was conducted on the dead body on 30.9.2010 by PW-12 Dr. Shivnarayan Manjhi vide Ex.P/22 who noticed that it was a male child, body was in the state of decomposition, umbilical cord was decomposed, there was reddishness (ecchymosis) over left cheek and a wound over occipital region. In his opinion, the cause of death was smothering, the injuries sustained by the deceased were caused by hard and blunt object and the death was homicidal in nature. Accused/appellant Sarswatibai was also medically examined vide Ex.P/23 by PW-16 Dr. Kalpana Sharma and in her opinion, Sarswatibai had delivered a child 3-4 weeks ago. After filing of charge sheet, the trial Court framed charges under Sections 302/34, 318/34, 201/34 and 120B/34 of IPC.

03. So as to hold the accused persons guilty, the prosecution examined 18 witnesses in all. Statements of the accused were also recorded under Section 313 of Cr.P.C. in which they denied the

circumstances appearing against them in the prosecution case, pleaded innocence and false implication.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellants as mentioned above.

05. Counsel for the appellants submit that there is no eyewitness account to the incident and they have been convicted solely on the basis of circumstantial evidence, which is very weak in nature and therefore, the appellants are entitled for acquittal by giving them benefit of doubt. They submit that the trial Court has erred in convicting the appellants merely on the basis of panchayat proceedings (Ex.P/2). In respect of accused/appellant Ashok, there is no evidence showing his involvement in burying the dead body of the deceased.

06. On the other hand, State counsel supporting the impugned judgment submits that conviction of the appellants is strictly in accordance with law and there is no illegality or infirmity in it warranting interference by this Court. State counsel submit that on complaint of accused/appellant Sarwatibai, a village panchayat was convened, minutes of the panchayat were recorded vide Ex.P/2, which reflect that in presence of number of villagers the complaint of Sarwatibai was considered and when accused Ashok refused everything, a decision was taken to lodge a report. They submit that in the village meeting the accused persons confessed that it is they who killed the deceased. They further submit that confession in the village meeting by accused Dukalbai involving other accused persons is admissible under Section 30 of the Evidence Act.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-1 Sahebram, panch of the village, who attended the meeting has stated that in the village meeting initially accused/appellant Lakhan disclosed about the incident and thereafter accused/appellant Sarswati confessed the offence by saying that illicit child was of Ashok and herself. He has further stated that Sarswati further informed that she was given Rs.2000/- by accused/appellant Ashok and they were asked to commit such offence by Ashok. He has stated that he lodged the FIR. He is also a witness to merg, seizure (Ex.P/7) whereby minutes of the village panchayat were seized and spot map Ex.P/8.

09. PW-2 Mithilesh Pandey is also a witness of village meeting Ex.P/2. He has stated that the minutes of the meeting were written by him. He has also stated that accused Sarswatibai disclosed in the meeting that it is accused Ashok who gave her Rs.2000/- and certain medicines for abortion. PW-4 Jethuram is another witness of village meeting Ex.P/2. He states that in the village meeting Sarswatibai and Dukal were called and Dukal confessed that she has committed murder of the deceased by strangulation. PW-5 Jagannath is also a witness of confession made by Dukalbai in the village meeting. He has stated that Sarswatibai also confessed that the child was of her and accused Ashok and that Ashok had given her Rs.2000/- for medicines.

10. PW-6 Bholaram, PW-7 Vijay Kumar Sahu, PW-11 Kishan Lal Sahu, PW-13 Smt. Poonam Thakur, PW-14 Shivraj Singh Rajput and PW-15 Sanjay Kumar Dilliwar, assisted in the investigation.

11. PW-8 Bhulendra is also a witness of village meeting Ex.P/2. He states that in the meeting it was confessed by accused Dukalbai that the newly born baby was killed by her and accused Sarawatibai also confessed that everything was done at the instance of accused Ashok. PW-9 Rajesh Sharma is also a witness of village meeting Ex.P/2. He is also a witness to memorandum of the appellant Ex.P/15 and spot panchanama Ex.P/16. He has also proved the document Ex.P/7 by which minutes of the village meeting (Ex.P/2) were seized. PW-10 Girsih Tiwari is also a witness of village meeting. He has stated that in the said meeting accused Sarawatibai confessed that the child was born alive and accused Ashok gave her money and medicines for killing the child. She further disclosed that the child was strangled to death by accused Dukalbai and was buried by accused Lakhan in the kitchen garden. PW-12 Dr. Shivnarayan Manjhi conducted postmortem on the body of the deceased on 30.9.2010 vide Ex.P/22 and noticed that it was a male child, body was in the state of decomposition, umbilical cord was decomposed, there was reddishness (ecchymosis) over left cheek and a wound over occipital region. In his opinion, the cause of death was smothering, the injuries sustained by the deceased were caused by hard and blunt object and the death was homicidal in nature. In his cross-examination he has denied all the adverse suggestions and stated that it is incorrect to say that on account of decomposition of the body, no opinion could be given regarding the cause of death. PW-16 Dr. Alpana Sharma medically examined accused/appellant Sarawatibai vide Ex.P/23 on 1.10.2010 and in her opinion, Sarawatibai had delivered a child 3-4 weeks ago. PW-17 Surendra Shrivastava, investigating officer, has duly supported the

prosecution case. PW-18 BP Jatwar, Naib Tehsildar who conducted inquest vide Ex.P/5 and prepared spot panchanama Ex.P/16 has proved the same.

12. Close scrutiny of the evidence makes it clear that accused/appellant Ashok was having illicit relation with accused/appellant Sarawatibai, who was living with her parents i.e. accused/appellants Lakhan and Smt. Dukalbai since last three years after deserting her husband. Out of their illicit relation, a male child was born which was refused to be accepted by accused Ashok and therefore, at the instance of accused Ashok the child was strangled to death by accused/appellant Smt. Dukalbai and buried in the kitchen garden. Thereafter, on the complaint being made by accused Sarwati, a village panchayat was called on 27.9.2010 where accused/appellants Sarawatibai and Smt. Dukalbai confessed their guilt by stating as to the manner in which the child was done to death and thereafter buried. PW-1 Sahebram, PW-2 Mithilesh Pandey, PW-4 Jethuram, PW-5 Jagannath, PW-8 Bhulendra, PW-9 Rajesh Sharma and PW-10 Girish Tiwari have duly supported the prosecution case and consistently stated that accused Lakhan, Smt. Dukalbai and Sarwati confessed before the panchayat as to the manner in which the offence was committed. Further, confession of accused/appellants Sarawatibai and Smt. Dukalbai can also be considered as against other accused persons as per provisions of Section 30 of the Evidence Act as all the accused persons have been tried jointly for the same offence.

13. It is a settled principle of law that such a confession can be relied upon and conviction can be founded thereon if the evidence about the

confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused. In the present case also, the defence has utterly failed to elicit anything from these witnesses to confession to make their evidence untrustworthy or doubtful. There is nothing on record to suggest the accused persons have been falsely implicated due to there being any ill-will or enmity of these witnesses with them.

14. The confession of the accused/appellants stands corroborated from the evidence of Rajesh Sharma (PW-9) and PW-10 Girish Tiwari who are also witnesses to the memorandum of accused/appellant Lakhan and spot panchanama Ex.P/16 of the place from where dead body was recovered. Further, medical evidence also supports the prosecution case. As per postmortem report, the cause of death was smothering and the death was homicidal in nature. The autopsy surgeon has categorically denied the suggestion that on account of decomposition of the dead body, no opinion could be given regarding the cause of death. This apart, evidence of PW-16 Dr. Alpana Sharma also corroborate the prosecution case, who examined accused/appellant Sarswatibai vide Ex.P/23 on 1.10.2010 and found her to have delivered a child 3-4 weeks ago.

15. On the basis of aforesaid discussion, we are of the considered opinion that the prosecution has successfully proved its case on the basis of evidence adduced by it against the appellant beyond all reasonable doubt. Being so, the findings of guilt recorded by the trial

Court need no interference by this Court and the same are hereby affirmed. Resultantly, all the four appeals fail and are, accordingly, dismissed. Accused/appellant Lakhan is said to have served the entire sentence and therefore, no order is required in respect of this appellant whereas the other accused/appellants are reported to be already in jail and as such, no order regarding their arrest/surrender etc. is required.

Sd/

(Pritinker Diwaker)

Judge

Sd/

(C.B. Bajpai)

Judge