

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 386 of 2007**

1. Smt. Savitri Bai Paikra, Wd/o Late Shri Jageshwar Sai Paikra, aged about 39 years, resident of village Simda, PS Kunkuri, District Jashpur (CG) at present residing at Near Pathak Bagicha, house of Amrit Lal Chandra, Jabadapara, Thana Sarkanda, District Bilaspur, CG

---- Appellant**Versus**

1. State of Chhattisgarh through Police Station Sarkanda, Bilaspur, District Bilaspur, CG

---- Respondent

For Appellant	:	Smt. Hamida Siddiqui, Advocate
For Respondent/State	:	Shri Rahul Tamaskar, PL

Hon'ble Shri Justice Pritinker Diwaker**Hon'ble Shri R.P. Sharma****Judgment on Board by Pritinker Diwaker, J****24/08/2017**

This appeal has been filed against the judgment of conviction and order of sentence dated 30.04.2007 passed by Additional Sessions Judge Bilaspur, in Sessions Trial No. 418/2005 convicting the accused/appellant under Section 302 IPC and sentencing her to undergo imprisonment for life and pay fine of Rs. 2,00/-, plus default stipulation.

2. Name of the deceased in the present case is Brajesh Singh. As per the case of the prosecution the deceased left his house on 19.06.2005 and as he did not return home till

21.06.2005, his brother Vinay Singh (P-1) started searching him. Having an idea of the illicit relations between the accused and the deceased, Vinay Singh went to her house and knocked the door but having not received any response from inside, he pushed open the door and made an entry inside, he saw the body of the deceased lying on the floor in the pool of blood with injury on head. On being asked as to what had happened, the accused/appellant told him to have committed the murder of the deceased and also asked him to go and call police. This extrajudicial confession was made by the deceased to Vinay Singh (PW-1) in presence of Pankaj Chaturvedi (PW-2). On 21.06.2005 FIR Ex. P-2 was lodged at 10.40 AM by PW-1 against the accused/appellant under Section 302 IPC followed by recording of *merg* intimation Ex. P-1. After inquest the dead-body was sent for postmortem examination which was conducted on 21.06.2005 itself by Dr. Ashutosh Tiwari (PW-8) who gave his report Ex. P-16. After investigation, charge-sheet was filed by the police under Section 302 IPC followed by framing of charge by the Court below accordingly.

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 she denied her guilt and pleaded innocence and false implication in the case. This apart, four witnesses namely Dr. M.A. Jivani (DW-1), A.K.S.

Chandel (DW-2), S.B. Singh Rana (DW-3) and Abhishek Painkra (DW-4) have also been examined by the defence.

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 the deceased being a man of notorious mindset used to harass the accused/appellant demanding money which was received by her as *ex gratia* for the death of her husband, and that from the evidence it appears that she caused injuries to him while exercising her right of private defence.

(ii) That even if the entire case of the prosecution is taken as it is, the accused/appellant cannot be convicted under Section 302 and at best her act may fall under Section 304 (Part-I or Part-II) IPC.

(iii) That in the incident accused/appellant also suffered injuries which has been duly proved by the doctor (DW-1) who medically examined her in jail.

6. State counsel however supports the judgment impugned and submits that the findings recorded by the Court below convicting the accused/appellant under Section 302 IPC are based on due appreciation of the evidence on record and there is no infirmity in the same.

7. Heard counsel for the parties and perused the material available on record.

8. Vinay Parihar (PW-1) - the brother of the deceased has stated that on 19.06.2005 his brother (deceased) had been to his shop and after dropping his wife he went away on the pretext of getting shaved and thereafter when he did not return home even on 20.06.2005 they started searching him. On 21.06.2005 an idea clicked his mind that the deceased used to visit the house of the accused/appellant and acting upon that he along with one Pankaj Chaturvedi (PW-2) went to her house, knocked the door and having received no response from inside, they entered therein by pushing open the door and saw the deceased lying on the floor in the pool of blood. Immediately thereafter the deceased came from another room and disclosed to them to have committed the murder of deceased and also asked them to call the police. From the inquest report Ex. P-3 also it is apparent that on 20.06.2005 at 8 PM the deceased had been to the house of the accused/appellant in a drunken condition, started demanding money and when she refused to fulfil his demand, he started breaking and throwing the household articles including almirah and when he did not stop doing all that in spite of her requests, she picked up the grinding stone from the kitchen and killed him by causing injuries with it on his head. Pankaj Chaturvedi (PW-2) is the witness who had accompanied (PW-1) to the house of the deceased has also stated almost the same thing like PW-1 including that fact that the accused made a disclosure to have caused head injury to the deceased

with a grinding stone which resulted in his death. Shiv Shankar (PW-3) and Kalyan Singh (PW-6) are the police constables who assisted in the investigation. Pawan Kumar (PW-4) is the Patwari who prepared spot map Ex. P-7. Buddhi Prakash Chaturvedi (PW-5) is the witness to memorandum Ex. P-11 and seizure based thereon made under Ex. P-12 and P-13. Dr. Ashutosh Tiwari (PW-8) is the witness who conducted postmortem examination on the body of the deceased and gave his report Ex. P-16 stating that he noticed number of contusions and lacerated wounds in and around the subcutaneous tissues, mastoid bone parallel to temporal bone, hematoma and linear fracture of frontal bone of skull. The cause of death has been opined to be coma due to cerebral edema and subdural hematoma. Rajesh Tiwari (PW-9) - the witness to memorandum of seizure has not supported the case of the prosecution and has been declared hostile. A.S. Khan (PW-10) is the investigating officer who has duly supported the case of the prosecution. As per the FSL report blood was found in the scraps of the floor, grinding stone and the clothes of the deceased. However, serological report is not on record. Dr. M.A. Jivani (DW-1) is the witness who medically examined the accused/appellant and gave his report Ex. D-3 stating that he noticed abrasion on her wrist in the size of 3 x 1/6 inch. Another abrasion was in between the 2nd and 3rd toes of her right foot. Defence witnesses Nos. 2 and 3 have not stated anything relevant. DW-4 - the son of the

accused/appellant has however stated that on the previous night of the incident the deceased had come to his house in a drunken condition and demanded the key of the almirah from and when his mother refused to give the same he picked up the hammer kept on the cooler and started breaking it open. According to this witness, the said man also dismantled the household articles like TV, fridge etc and threw away the other household articles. He has further stated that when the deceased did not get anything in the almirah, he picked up the grinding stone and threatened his mother to do away with her and also this witness in case she did not give money to him and that when his mother (accused/appellant) was trying to save herself, in the scuffle he got slipped and fell down on the ground with the grinding stone held by him and suffered injury on his head which started bleeding. In the scuffle the accused/appellant is also stated to have suffered injuries on her left hand.

9. We have heard counsel for the parties and gone through the material available on record carefully and having done so it has become apparent that the entire case of the prosecution is based on the extrajudicial confession made by the accused/appellant before PW-1 and PW-2 that it is she who had killed the deceased. True it is that the extra-judicial confession is a very weak type of evidence but at the same time if it is voluntary, made in a fit state of mind and gets corroboration from the other evidence on material particulars,

can be relied upon by the Court - **(2009 AIR SCW 752 - Mohd. Azad @ Samin v. State of West Bengal & 2009 AIR SCW 3730 - Baldev Singh v. State of Punjab)**. In the case in hand, there is no other evidence which could lend support to the extrajudicial confession made by the accused/appellant. On the contrary, the evidence speaks volumes that in the previous night the deceased himself came to the house of the accused in a drunken condition and started demanding money from her which she had received as *ex gratia* for the death of her husband and on her refusal to obey his commands, he picked up the grinding stone and threatened to kill her. Refusal by the accused made the deceased furious to such an extent that he dismantled TV, fridge etc. belonging to her and threw away the other household items here and there. Evidence also speaks that having been under the influence of liquor the deceased could not control himself and got slipped carrying the grinding stone with him and suffered injuries on his head. Autopsy surgeon (PW-8) in paragraph No. 12 of his deposition has categorically stated that if someone carrying a stone falls on the ground, the injuries as suffered by the deceased could be caused. The fact that the deceased got slipped holding grinding stone and suffered injuries on his head also gets corroboration from the evidence of defence witness No.4 who has categorically stated that when the deceased picked up the grinding stone, his mother (accused/appellant) tried to save herself and in

that process the deceased being uncontrollably under the influence of liquor, got slipped on the floor with the stone held by him and suffered injuries on his head which ultimately led to his death. Though as per the FSL report blood has been found on the grinding stone yet in the absence of serological report it is of no help to the case of the prosecution. Defence of the accused/appellant that she also suffered injury while trying to save herself from the aggressive advances of the deceased is manifest from the medical report Ex. D-3 which shows two injuries on her wrist and toes. Merely on the basis of extrajudicial confession made by the accused/appellant before PW-1 and PW-2 which remains uncorroborated by any other legally admissible evidence like in the case in hand the accused/appellant cannot be held guilty under Section 302 IPC for the death of the deceased.

10. Thus taking in to consideration the overall evidence on record and the settled legal position referred to above, this Court is of the opinion that in the absence of any other corroborative evidence the accused/appellant cannot be convicted solely on the basis of extrajudicial confession made by her before PW-1 and PW-2. The findings recorded by the Court below are not based on due appreciation of the evidence of the witnesses and being so they are liable to be set aside giving benefit of doubt to the accused/appellant. Accordingly, the appeal is allowed, judgment impugned is hereby set aside and the accused/appellant is acquitted of the

charge levelled against her. As she is already on bail, no order to set her free etc. is required to be passed.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(R.P. Sharma)
Judge

Jyotishi