

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 47 of 2008**

- Smt. Bhuneshwari Bai, W/o Toluram, aged 30 years, R/o village Dhangaon, P.S. Arjunda, District Durg (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh Through – The Station House Officer, P.S. Arjunda, District Durg (Chhattisgarh)

---- Respondent

For Appellant.	:	Shri Avinash Mishra, Advocate.
For Respondent.	:	Shri Avinash K. Mishra, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgment On Board**By Pritinker Diwaker, J****04/04/2017**

This appeal arises out of the judgment of conviction and order of sentence dated 06.12.2007 passed by the II Additional Sessions Judge, Durg, District Durg, in S.T. No.129/2007 convicting the accused/appellant under Sections 302 & 201 IPC and sentencing her to undergo imprisonment for life with fine of Rs.500/- for each section, plus default stipulations.

02. In the present case, name of the deceased is Karan Kashyap. Prosecution case is that mother of the deceased namely Yamini Bai (PW/2) used to throw garbage near appellant's house. It is alleged that five days prior to date of incident i.e. on 10.03.2007 there was some dispute between the appellant and said Yamini Bai (PW/2) on account

of throwing of garbage. Further case of the prosecution is that out of anger, on 15.03.2007 at about 5.00 pm the accused/appellant took the deceased Karan Kashyap, aged four years, inside her house and committed his murder by causing several injuries on his face by brick. After killing the deceased, she threw body of deceased in an open place near the house of Domanlal Deshmukh. When the deceased went missing on 15.03.2007, he was extensively searched and on the next morning i.e. on 16.03.2007 at about 6.30 am his body was found by one Lekhram Deshmukh, who in turn, informed about the same to Miluram (PW/1) - village Kotwar and grandfather of the deceased, at whose instance merg intimation (Ex.P/1) was recorded on 16.03.2007 at 8.30 am. On same day at about 02.45 pm dehati nalisi (Ex.P/17) was registered followed by F.I.R. (Ex.P/16) under Sections 302 and 201 of IPC against the unknown person. Inquest on the body of deceased was prepared vide Ex.P/5 and body was sent for postmortem to Govt. Hospital, Gunderdehi vide Ex.P/20. Postmortem examination on the body of deceased was conducted on 16.03.2007 by Dr. Harikant Singh (PW/11) who gave his report Ex.P/15 opining the cause of death to be asphyxia due to smothering and overlaying and death was homicidal in nature. On 17.03.2007 memorandum (Ex.P/8) of the accused/appellant was recorded, based on which, a brick was seized from her house, however, there is no F.S.L. report on record that any blood was found on the said brick. On completion of investigation, charge sheet for the offence punishable under Sections 302 and 201 of IPC was filed against the accused/appellant and accordingly the charge was framed against her by the trial Court.

03. So as to hold the accused/appellant guilty, the prosecution examined as many as 15 witnesses. Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C. in which she denied the circumstances appearing against her 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 has convicted and sentenced her as mentioned in para-1 of this judgment. Hence, this appeal.

05. Learned counsel for the appellant submits as under:

- (i) that the accused/appellant has been convicted solely on the basis of circumstantial evidence but the nature of circumstantial evidence is not as such which can be made basis for her conviction;
- (ii) that the main piece of evidence against the accused/appellant is her memorandum (Ex.P/8) pursuant to which one brick was seized vide Ex.P/9 from her house;
- (iii) that other piece of evidence against the accused/appellant is her so called extra-judicial confession made before the villagers but it is the prosecution case itself that when police was inquiring from the appellant in their presence (police), the so called statement was made by the accused/appellant which has subsequently been treated by the Court below as extra-judicial confession made by the accused/appellant.

06. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State that the conviction of the accused/appellant is strictly in accordance with law and there is no infirmity in the same.

07. We have heard learned counsel for the parties and perused the material available on record.

08. Miluram (PW/1) is village Kotwar and grandfather of the deceased. He has stated that on 15.03.2007 the deceased went missing; he was extensively searched and on the next day his dead body was found in an open field near the appellant's house. He has further stated that he lodged the merg intimation (Ex.P/1) and spot map was also prepared in his presence. In para 6, he has also stated that on 10.03.2007 there was some dispute between the accused/appellant and Yamini Bai (PW/2) - mother of the deceased for which a panchayat meeting was convened & fine of Rs.100/- and Rs.25/- was imposed upon Yamini Bai and the accused/appellant respectively. This witness has also stated that on 16.03.2007 police authorities came in the village and took the accused/appellant in the primary school where during inquiry it was told by her that out of anger it is she who has committed murder of the deceased.

09. Yamini Bai (PW/2) is mother of the deceased. She has also stated that on 10.03.2007 there was some dispute between her and the accused/appellant on account of throwing of garbage and on the same day a panchayat meeting was convened in which fine upon both of them was imposed. According to this witness, on 15.03.2007 her son went missing and on 16.03.2007 dead body of her son was found in an open place near the appellant's house.

10. Suresh Bharti (PW/3) is witness to inquest, so called extra-judicial confession made by the appellant before the police in presence of the villagers and the seizure made under Ex.P/7 by which bloodstained soil

and plain soil was seized from the spot. He has stated that there was previous dispute between the accused/appellant and Yamini (PW/2)-mother of the deceased on account of garbage.

11. Budhelal Deshmukh (PW/4) has stated that he along with villagers had also searched the deceased and on 16.03.2007 the body of deceased was found in an open place just behind his (this witness) house. He has also stated that when the police had inquired from the appellant in presence of the villagers, the appellant has disclosed that it is she who had committed the murder of the deceased. Guman Singh (PW/5), Devnarayan Deshmukh (PW/6), Sewaram Pipariya (PW/7) and Domaar Singh (PW/8) have made almost similar statement that in the presence of police and the villagers it was informed by the appellant that it is she who has committed murder of the deceased. Romnath Nirmal (PW/9) is Patwari who prepared spot map vide Ex.P/3.

12. Dr. Harikant Singh (PW/11) conducted the postmortem on the body of deceased vide Ex.P/15 and found following injuries:-

- (i) Multiple small abrasions over forehead with dark red.
- (ii) Slight swelling over right frontal region - 2 inches in radius.
- (iii) Contusion, bluish black in colour over lower third of both side of nose covering nostril and upper lip in the size of 1 1/2 inches x 3/4 inches.
- (iv) Contusion, bluish black in colour over upper and lower lip in the size of 1 1/3 x 1/2 inch.
- (v) Contusion, dark red in colour over right mandibular region in the size of 2 1/2 x 1 1/3 inch.

The Doctor has opined that the cause of death of deceased was asphyxia due to smothering and overlaying and the death was homicidal in nature.

13. Roshan Lal Chandrakar (PW/12)-constable, Kumar Singh Sinha (PW/13)-Head Constable and K.C. Kadam (PW/15)-Inspector helped in

the investigation. Surendra Kumar Ukey (PW/14) is an Investigating Officer who has duly supported the prosecution case.

14. Close scrutiny of the evidence makes it clear that but for the memorandum of the accused/appellant (Ex.P/8) and seizure (Ex.P/9) by which brick was seized, there is no legally admissible evidence against the accused/appellant to bring home her guilt. Moreover, there is no FSL report on record to show that the brick seized from the house of appellant was used in commission of offence. The prosecution has utterly failed to prove that it is the same brick which has been used for commission of offence, thus, in absence of FSL report, the seizure of brick (Ex.P/9) is of no consequence. Likewise, other piece of evidence against the accused/appellant is so-called extra-judicial confession made before the villagers. Most of the witnesses i.e. PW/1, PW/3, PW/4, PW/5, PW/6, PW/7 and PW/8 have stated that the accused/appellant has made extra-judicial confession in presence of the villagers that it is she who killed the deceased but simultaneously these witnesses have also admitted the fact that this statement was made by the appellant when she was being questioned by the police in the village school meaning thereby that it was made in presence of police. That apart, statement of the accused/appellant marked as Ex.D/9 has also been recorded by the police in presence of the villagers which has also been signed by them wherein it is said by the police that the accused/appellant has admitted her guilt. This document, under the law, is also not admissible at all. It is settled position of law that in case the prosecution relies on extra-judicial confession, the Court has to examine the same with a greater degree

of care and caution. It is further settled legal position that extra-judicial confession is a weak type of evidence and if the entire case of the prosecution hinges upon it, a greater degree of care and caution is required to be taken by the Court while appreciating the evidence. PW/1, PW/3, PW/4, PW/5, PW/6, PW/7 and PW/8 in their evidence have categorically stated that the accused/appellant made extra-judicial confession before the villagers in presence of police. Extra-judicial confession made by the accused/appellant appears to be involuntary and she might have said the same on account of pressure of the police. There is no conclusive piece of evidence on record to hold the accused/appellant guilty beyond all reasonable doubts.

15. Thus considering the evidence collected by the prosecution, this Court is of the opinion that conviction of the accused/appellant under Sections 302 and 201 of IPC is not based on due appreciation of the evidence available on record and that being so she is entitled for benefit of doubt. This being the position, the judgment impugned convicting the accused/appellant under Sections 302 and 201 IPC is set aside and she is hereby acquitted of the charge levelled against her. The appellant is in jail, she be set at liberty forthwith if not required in any other case.

16. Appeal is thus allowed.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(R.C.S. Samant)
JUDGE