

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 564 of 2012**

1. Gajanand Rawat S/o Madan Rawat, aged 50 years, resident of Village Sarifabad, Police Station Saankha, District Mahasamund, CG

---- Appellants**Versus**

1. State of Chhattisgarh through Police Station Saankra, District Mahasamund, CG

---- Respondent

For Appellants : Smt. Shubha Shrivastava, 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****31/07/2017**

This appeal has been filed against the judgment of conviction and order of sentence dated 05.05.2012 passed by Sessions Judge Mahasamund, in Sessions Trial No. 49/2011 convicting the accused/appellant under Section 302 IPC and sentencing him to undergo imprisonment for life and pay fine of Rs. 1,000/-, plus default stipulation.

2. Name of the deceased in the present case is Kunti Bai - wife of accused/appellant herein. It is alleged that two month before the incident there was some quarrel between the two and for that the deceased left her house and went to the house of her brother. On 28.5.2011 when the couple was returning from the jungle, there was again a quarrel between them over the longer period of her

stay in the house of her brother where out of anger the accused/appellant dealt an axe blow on her neck and threw her body under a tree. Thereafter, he informed his daughter-in-law Smt. Kuntala (PW-1) that the deceased had fallen down at a particular place, and also asked her to go there and give water to her. When Kuntala (PW-1) went to the spot, she found the deceased in the pool of blood. On that very day at 8 PM *Dehati merg* Ex. P-3 was recorded at the instance of PW-1 followed by *Dehati Nalisi* Ex. P-1 and *merg* intimation Ex. P-21. FIR Ex. P-22 was also registered on the same day at 11.55 PM at the instance of PW-1 against the accused/appellant under Section 302 IPC. After conducting Inquest vide Ex. P-4, the body of the deceased was sent for postmortem examination which was conducted by Dr. Tara Agrawal (PW-6) who gave her report Ex. P-11. On the same day memorandum of the accused/appellant Ex. P-6 was recorded based on which seizure of axe was made under Ex. P-7. 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 12 witnesses. Statement of the accused/appellant under Section 313 Cr.P.C. was also recorded in which he denied his guilt and pleaded innocence and false implication in the case.

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 there is no eyewitness to the incident and the conviction of the accused/appellant is based only on the circumstantial

evidence though the chain of circumstances relied upon is not complete.

(ii) That the trial Court has recorded a finding that the accused/appellant made extra-judicial confession before PW-2 and PW-3 but in fact no such confession was made before PW-2, and likewise the statement of PW-3 is shaky on material particular.

(iii) That though on the memorandum of the accused/appellant seizure of axe has been made but in the absence of FSL report such seizure is not sufficient to hold the accused/appellant guilty for the commission of murder of his wife.

6. State counsel however supports the judgment impugned and submits that the findings recorded by the Court below are based on due appreciation of the evidence on record and there is no infirmity in the same. He submits that at the place of occurrence the accused and the deceased were together and therefore it can safely be said that it is he alone who has committed the crime in question. State counsel further argued that it is not even the defence of the accused/appellant that some third person is responsible for the murder of his wife and therefore, in the absence of any satisfactory explanation as to how the deceased was killed, law operates against the accused and none else. According to him, since at the relevant time there was none else on the place of occurrence and as the offence was committed in complete isolation, it is the accused alone who could have explained the killing of his wife and no third person occupies the scene until and unless some explanation comes out of him.

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

8. Kuntala (PW-1) – the daughter-in-law of the accused and the deceased has stated that in the evening when she was getting home after answering the call of nature, accused/appellant met her on the way and asked her to go and give water to the deceased as she had fallen down at a particular place. This witness has stated that after she went to the place disclosed by the accused/appellant, the deceased was no more and there was an axe injury on her neck with profuse bleeding. She however is stated to have not seen anyone killing the deceased, and that after returning home she disclosed the incident to the villagers. In cross-examination also she has reiterated that nobody was seen by her doing away the deceased with. Virendra Nayak (PW-2) is the witness to memorandum Ex. P-6 and seizure of axe made under Ex. P-7. Though in paragraph No.3 this witness has stated that the accused/appellant informed him about the quarrel between him and the deceased and also about killing her but if the examination-in-chief of this witness is seen, it appears that by that time the police had reached the village and therefore the possibility of such disclosure being made in the presence of police cannot be ruled out. Indumati (PW-3) – another important witness has not supported the case of the prosecution and has been declared hostile. At one place, she however has stated that the accused/appellant informed her about killing his wife by causing injuries with axe but in paragraph No.3 she has resiled from the same that the accused/appellant did not make any disclosure as such. Dr. Tara Agrawal (PW-6) is the witness who conducted postmortem examination on the body of the deceased and gave her report Ex. P-11 opining the cause of death as shock due to injuries sustained over neck region and the death was homicidal in

nature. Premlal Notiyal (PW-7) is the investigating officer who has duly supported the case of the prosecution. Rishikesh Manjhi (PW-8), Mohan Lal Sahu (PW-10) and Kamal Narayan (PW-11) are the witnesses who assisted in the investigation. Dr. Sadanand Dadsena (PW-9) is the witness who gave query report Ex. P-15. Mukesh Kamle (PW-12) is the Patwari who prepared spot map Ex. P-23.

9. We have gone through the material on record carefully and having done so it emerges that the case of the prosecution fully rests upon the circumstantial evidence, though not forming a complete legally mandated inter-linking chain. Two witnesses (PW-2 and PW-3) before whom the accused/appellant purportedly made extra-judicial confession of killing his wife have been examined by the prosecution. However, if the statement of PW-2 is seen attentively, it becomes apparent that at the relevant time, the police people were already there and in these circumstances confession made by him, if any, that too in the police sight cannot be termed as voluntary and therefore rendered quite insignificant and loses its value in the eye of law. As regards (PW-3) – another witness to extra-judicial confession made by the accused/appellant, at one place she has stated that accused/appellant disclosed before her that he killed his wife by causing injury with axe but just thereafter in the cross-examination part she has retracted from her stand and fell in a complete denial mode. Thus the extra-judicial-confession part resorted to by the prosecution leaves the arena. Now according to the case of prosecution, on the memorandum of accused/appellant Ex. P-6 an axe was seized under Ex. P-7 but here also the prosecution felt satisfied and did not bother to obtain the FSL report to strengthen its stand by way of some linking beads it

would have provided pushing the accused towards the killing in question. All this apart, nothing else has been pressed into service by the prosecution calling for our attention to lean by its side. Rather whatever material is there on record makes the accused receive benefit of doubt, and we have to give that.

10. Court below's conclusion being not well-reasoned loses its hold making the appeal succeed. Evidence has not been appreciated by the Court below as effectively as it could be while declaring the accused guilty by the judgment under assail. Then of course it cannot prevail and is set aside accordingly. Acquittal follows.

11. Appeal allowed. Consequent post-judgment formalities to be undertaken by the Court below keeping in mind the present-day placement status of the accused – inside or outside.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(R.P. Sharma)
Judge