

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 686 of 2008

1. Timal Prasad S/o Shivcharan Rajwar, aged about 28 years, R/o Sakalpur, Chowki – Bhatgaon, Police Station Pratappur, District Sarguja, CG

---- Appellant

Versus

1. State of Chhattisgarh through Chowki Bhatgaon, Police Station Surajpur, District Sarguja, CG

---- Respondent

For Appellant	:	Shri Gautam Khetrapal, Advocate
For Respondent/State	:	Shri Rahul Tamaskar, PL

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

Judgment on Board by Pritinker Diwaker, J

30/03/2017

This appeal has been filed against the judgment of conviction and order of sentence dated 28.2.2008 passed by the Additional Sessions Judge (FTC) Surajpur, District Sarguja in Sessions Trial No. 368/2007 convicting the accused/appellant under Section 302 IPC and sentencing him to undergo imprisonment for life with fine of Rs. 100/-, plus default stipulation.

2. Case of the prosecution in brief is that accused/appellant had a son Devraj aged about three and a half years and a daughter Priti aged about fourteen months. Accused was residing in his house along with his wife Pawaro Bai (PW-13A) and two afore-named children. On 30.7.2007 Pawaro Bai had gone to the agriculture field leaving the accused and her two children in the house. It is alleged

that as her daughter Priti was crying inconsolably the accused got angry and chopped off her head with sickle. Further case of the prosecution is that when Hemnarayan (PW-1) – the brother of the accused was in the field, he was informed by his neighbour about some noisy scene in his house and then he rushed back thereto and saw the body of the deceased child lying in a room with her head severed from the trunk. Thereafter, he informed the villagers as well as the police about the same and ultimately FIR Ex.P-1 was lodged by him against the accused/appellant. After inquest being conducted vide Ex. P-2, the dead-body was sent for postmortem examination which was conducted by Dr. J. Ekka (PW-12) who gave his report Ex. P-15. Accused/appellant was taken into custody on 30.7.2007, his memorandum Ex. P-10 was recorded and based thereon sickle was seized from the accused under Ex. P-12. However, there is no FSL report on record. After completion of investigation, challan was laid by the police against the accused under Section 302 IPC followed by framing of charge accordingly.

3. To hold the accused/appellant guilty the prosecution has examined 14 witnesses in support of its case. Statement of the accused/appellant has also been recorded under Section 313 of the Code of Criminal Procedure in which he denied the allegations made against him and pleaded innocence and false implication in the case. He, however, has failed to give any satisfactory explanation as to how the death of the minor child took place.

4. After hearing the parties the Court below has convicted and sentenced the accused/appellant as detailed in paragraph No.1 of this judgment.

5. Counsel for the accused/appellant submits as under:

- (i) That the accused/appellant has been convicted solely on the basis of circumstantial evidence though none of the circumstances is there which could conclusively lead to his guilt.
- (ii) That most of the witnesses to extra-judicial confession before whom the accused is said to have disclosed the commission of offence have not supported the case of the prosecution and have been declared hostile.
- (iii) That though wife of the accused namely Pawaro Bai (PW-13A) has deposed against the accused, but if her entire evidence is seen it comes out that she had been totally inconsistent in her stand and being so her statement is not good enough to convict the accused/appellant.
- (iv) That even otherwise, Pawaro Bai (PW-13A) was living separately and therefore if she has made any allegation against the accused, that is not reliable at all.
- (v) That even assuming that the accused and Pawaro Bai (PW-13A) were living in the same house, it cannot be said that the accused/appellant alone has committed the murder of the deceased child, because there is every possibility about involvement of Pawaro Bai in the same but the prosecution has not carried out the investigation from this angle.
- (vi) That though the appellant has not offered any explanation in his statement recorded under Section 313 of the Code of Criminal Procedure, it cannot go against him in the light of the fact that his wife Pawaro Bai was residing in the said house where the body of the deceased child was found.

6. On the other hand counsel for the respondent/State supports

the judgment impugned and submits that the Court below has been justified in recording the conviction on the basis of material available on record and there is no infirmity in the same. He submits that the statement of Pawaro Bai (PW-13-A) is good enough to convict the accused/appellant and minor contradictions and omissions, if any, in her statement are required to be ignored keeping in mind the fact that she is a rustic villager. He submits that at the relevant point of time it is the accused/appellant who alone was in the house and his wife had gone to the field, and since no explanation has been offered by him as to how this tragic incident took place, it can safely be said that it is he alone who has committed the murder of the deceased child. Moreover, there is extra-judicial confession made by the accused, at his own volition, before number of villagers. Thus according to the State counsel considering the brutal act of the accused/appellant where he killed his own minor daughter, no sympathy can be extended to him. State counsel further points out the conduct of the accused where even after seeing the body of his minor daughter, he did not show any natural reaction expected from a normal father and chose to keep quiet throughout.

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

8. Hemnarayan (PW-1) - the younger brother of the accused/appellant and lodger of the FIR has not supported the case of the prosecution and has been declared hostile. He however has stated that the accused/appellant was residing with his wife, son and the deceased daughter in another house situated about 200 meters away from his house. He is also the witness to inquest and the spot map. Rukmani (PW-2), Shivcharan (PW-3), Trilochan Prasad

(PW-4), Harinandan (PW-7) and Rajnath (PW-10) - the witnesses to extra-judicial confession have not supported the case of the prosecution and have been declared hostile. Biphalram (PW-5) is the witness to memorandum of the accused/appellant Ex. P-10 and seizure made under Ex. P-11 has though been declared hostile, he has admitted his signature on the seizure memo. In paragraph No. 6 he has admitted that in his presence sickle was seized from the accused. He has also admitted that the accused/appellant and his brothers were living separately. Laljit (PW-6) - another witness to memorandum and seizure has also been declared hostile but has admitted his signature thereon. R.N. Yadav (PW-8) is the investigating officer who has duly supported the case of the prosecution. Sanjay Singh (PW-11) is the Patwari who prepared spot map and *Panchnama* Ex. P-5. Dr. J. Ekka (PW-12) is the witness who conducted postmortem examination on the body of the deceased and gave his report Ex. P-15 stating that her head and trunk were separated from each other by cutting on the middle of the neck, the wounds were antemortem and the cause of death was asphyxia, peripheral and circulatory failure and severe haemorrhage. Firmin Lakda (PW-13) is the Head Constable who assisted in the investigation. Pawaro Bai (PW-13-A, wrongly mentioned as PW-13 in the deposition sheet) is the wife of the accused/appellant. On account of some typographical error Pawaro Bai has been mentioned as witness No. 13 but in fact, witness No. 13 is the Head Constable namely Firmin Lakda and therefore, in this judgment she is being mentioned as witness No. P-13-A. This witness has stated that she had two children - son Devraj aged about three and a half years and daughter Priti aged about fourteen months. According to her, she was residing with the

accused/appellant and two children, and that it is the accused/appellant who has killed her deceased daughter. She has further stated that on the date of incident in the afternoon she had gone to the agriculture field leaving the accused and her two children in the house, and at about 5 in the evening when she returned home, her sister-in-law Rukmani and mother-in-law were weeping. After she entered the house, she saw the body of the deceased with her head severed from the trunk. This witness has further stated that at the relevant time her husband who had killed her daughter was there in the house. According to her, she noticed blood on his lungi, shirt, hand and leg, and she was informed by Rukmani that it is the accused/appellant who killed the deceased by causing injuries over her neck. In paragraph No. 5 this witness has however stated that on the date of incident number of villagers had come to her house but neither they asked anything from her husband regarding the murder of her daughter nor he himself disclosed anything to them. When she was again cross-examined by the public prosecutor, she stated that when the villagers asked the accused as to why he killed the deceased, he confessed that as the deceased was crying non-stop, out of anger he chopped off her head. In paragraph No. 9, this witness has reiterated that while leaving for the agriculture field, she had asked her husband (accused herein) to take care of the children. She has clarified that brother of the accused was residing separately. She however has denied the fact that the accused was suffering from insanity.

9. Minute examination of the material available on record including the evidence of the witnesses thus goes to show that on 30.7.2007 it is the accused/appellant who has committed the murder of his own tender aged daughter by chopping off her head

with the help of sickle in a barbaric manner. Though in the statements recorded under Section 161 of the Code of Criminal Procedure number of witnesses have stated that the accused/appellant had made extra-judicial confession before them but in the Court except Pawaro Bai (PW-13A) all have turned hostile. True it is that the evidence of extra-judicial confession is a weak type of evidence but at the same time it is not a thumb rule that one cannot be held guilty on the basis of such evidence. The requirement for this Court is to see the evidence of extra-judicial confession with greater degree of caution if there is no other evidence available on record. Pawaro Bai (PW-13-A) – the wife of the accused/appellant whose court statement was recorded on 15.2.2008 i.e. about seven months after the incident but yet she remained absolutely firm while deposing against her own husband. She has categorically stated that the accused/appellant made extra-judicial confession before her and other family members that he killed the deceased out of anger as she was crying non-stop. Further, there is no evidence at all to show that the accused/appellant was suffering from insanity etc on the fateful day. Moreover, in the cases where ground of insanity is taken, the person taking such plea has to prove the same beyond all reasonable doubt by adducing incontrovertible evidence. The evidence further indicates that the accused/appellant was residing with his wife and two minor children and on the date of incident his wife had left for the agriculture field asking the accused to take care of the children and when she returned home, body of the deceased was lying with her head severed from the trunk. Thus as at the relevant point of time there was none other than the accused and his two minor children in the house, it is he who is supposed to

know as to how such gory incident took place involving the death of minor deceased but no explanation of any sort has been offered by him in his statement recorded under Section 313 of the Code of Criminal Procedure. He however has made a brazen attempt to state therein that on that particular day he was not in the house and had gone to Mahadev Para. Such unsubstantiated plea taken for the first time at the fag end of the trial need not be looked into in the light of the fact that number of witnesses including his wife have categorically stated that he was very much present in the house on the fateful day. She has further clarified that on being asked by the villagers as to how all that occurred, he disclosed to have chopped off her head with the sickle. All this apart, conduct of the accused in keeping quiet without exhibiting any reaction after looking at the dead body of his minor daughter also smacks of his involvement in this tragic incident. Thus the appellant being the only person present in the house at the relevant time who was called upon to take care of the two little children by Pawaro Bai (PW-13A), is supposed to have the knowledge of the fact regarding the death of his minor daughter and therefore the burden of proving the same is upon him only. However, he has utterly failed discharge the said burden cast upon him by law.

10. Prosecution has thus proved its case beyond all reasonable doubt against the accused/appellant. So also the Court below has been fully justified in appreciating the evidence of the witnesses and ultimately arriving at the conclusion that it is the accused/appellant who committed the murder of the deceased, and holding him guilty accordingly. Findings so recorded by the trial Court convicting the accused under Section 302 IPC do not suffer from any illegality or infirmity and therefore they deserve to be

maintained. Accordingly, the appeal fails and is dismissed as such. Judgment impugned is maintained. As the accused/appellant is already in jail, no order to arrest him and send inside is needed.

Sd/-

(Pritinker Diwaker)

Judge

Sd/-

(RCS Samant)

Judge

Jyotishi