

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 402 of 2012**

1. Shatrughan Sao son of Amritlal Sao aged about 29 years, resident of village Bunga, Police Station – Pusour, District Raigarh, CG

---- Appellant**Versus**

1. State of Chhattisgarh through the Police Station Pusour, District Raigarh, CG

---- Respondent

For Appellant	:	Shri Yogeshwar Sharma, Advocate
For Respondent/State	:	Shri Dhiraj Wankhede, GA

Hon'ble Shri Justice Pritinker Diwaker &**Hon'ble Shri Justice Sanjay K. Agrawal****Judgment on Board by Pritinker Diwaker, J****23/05/2017**

This appeal has been filed against the judgment of conviction and order of sentence dated 23.3.2011 passed by the Sessions Judge Raigarh, in Sessions Trial No. 99/2009 convicting the accused/appellant under Section 302 IPC and sentencing him to undergo imprisonment for life.

2. According to the case of the prosecution, the accused/appellant had illicit relation with his sister-in-law (Bhabhi) namely Rukmani (PW-10) and about two months prior to the incident he got married with deceased Parvati but as there used to be quarrelsome activities between the husband and wife because of the illicit relations of the accused/appellant with Rukmani, on several occasions the Panchayat meeting was called to resolve the dispute. It is said that even on the date of incident i.e. 31.8.2009

the said meeting was to be convened but before that at about 10 AM the accused/appellant killed his wife Parvati by inflicting as many as seven axe blows on her body including the vital parts leading to her instantaneous death. The entire incident is said to have been witnessed by Rukmani (PW-10). Thereafter, *merg* Ex. P-2 was registered at the instance of Bel Singh Maitri (PW-1) on that very day at 11.20 AM followed by FIR Ex. P-1 under Section 302 IPC. Having inquest been conducted vide Ex. P-3, body of the deceased was sent for postmortem examination which was conducted by Dr. Sunil Ratre (PW-12) who gave his report Ex. P-14-A. On *challan* being laid by the police, the Court below framed the charge against the accused/appellant under Section 302 IPC.

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. Hence this appeal.

5. Counsel for the accused/appellant submits that the sole eyewitness to the incident namely Rukmani (PW-10) has not supported the case of the prosecution and has been declared hostile. He submits that the incident appears to have taken place on account of the quarrel picked up by the deceased where after falling prey to the heat of passion, the accused/appellant could not

control himself and opened an assault on her. Counsel for the accused/appellant further submits that as none of the injuries suffered by the deceased has been opined to be grievous in nature and had there been any intention on the part of the accused/appellant to kill his wife, he would have chosen to cause the injuries as such. He submits that on the memorandum of the accused/appellant Ex. P-7 though seizure of certain articles has been made but in the absence of the FSL report the same has no value in the eye of law. According to him, looking to the overall evidence, the accused/appellant can, at the most, be convicted under section 304 (Part-I or Part-II) and not 302 IPC.

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 though Rukmani (PW-10) has not supported the case of the prosecution and has been declared hostile but from her statement it appears that the accused/appellant had illicit relations with her and that it is he who committed the murder of his wife. He further submits that the accused/appellant had made extra-judicial confession before Ganesh Gupta (PW-2) to have killed his wife. According to the State counsel, Ganesh Gupta (PW-2) and Sarju (PW-6) have clearly stated that when they reached the spot after the incident had taken place, the accused/appellant was seen by them holding axe in his hand. According to him, even the motive is also there against the accused/appellant for killing his wife i.e. the illicit relation of the accused with Rukmani and her objection over that.

7. Bel Singh Maitri (PW-1) - the witness at whose instance *merg*

and FIR were recorded and inquest was conducted, has duly supported the case of the prosecution. That apart, he is also the witness to memorandum of the accused/appellant Ex. P-7, seizure based thereon vide Ex. P-8, P-9 and arrest made under Ex. P-10. Ganesh Gupta (PW-2) has stated that after hearing the cries emanating from the house of the accused/appellant he rushed to the spot and saw him carrying an axe in his hand. According to this witness, on being asked, the accused/appellant told him to have committed the murder of his wife. In cross-examination also, this witness has just expanded the version made by him in the examination-in-chief and nothing new has been put-forth by him by which the accused could derive some benefit. Natthulal (PW-3) is the witness to inquest Ex. P-3. Kshirsagar Sao (PW-4) is the witness to memorandum of the accused Ex. -7 and seizure made under Ex. P-8 and P-11 has duly supported the case of the prosecution. Bhuvneshwar Giri (PW-5) is the witness who recorded *merg* and the FIR. Sarju (PW-6) has stated that after hearing the cries coming out from the house of the accused/appellant, he went to the spot and saw him getting out of his house carrying a blood stained axe in his hand and the deceased was lying in the kitchen with injuries on her temple bleeding profusely. This witness however has stated that he did not see the accused/appellant assaulting the deceased. Sakun Bai (PW-7) – the aunt of the deceased has stated that the deceased was killed by the accused/appellant and that it is the deceased herself who had informed her that the accused/appellant had illicit relations with Rukmani (PW-10). According to this witness, when she reached the house of the accused/appellant, he fled away. She is stated to have noticed injuries on the temple, head and neck of the deceased with profuse bleeding. M.L. Sarve (PW-9) is the

Patwari who prepared spot map Ex. P-15. Smt. Rukmani (PW-10) – the witness with whom the accused/appellant is said to have illicit relations, has not supported the case of the prosecution and has been declared hostile. Usha Sondiya (PW-11) is the investigating officer who has duly supported the case of the prosecution. Dr. Sunil Ratre (PW-12) is the witness who conducted postmortem examination on the body of the deceased and gave his report Ex. P-14-A stating therein that he noticed seven lacerated wounds on nose – size 2 x 3 cm; left cheek – size 2 x 2 cm; neck – size 2 x 3 cm, right shoulder – size 5 x 3 cm; right cheek – size 3 x 4 cm; right hand – size 1 x 2 cm and chest – size 1 x 1 cm. Cause of death, according to this witness, was hemorrhagic shock.

8. This Court has gone through the entire evidence of the witnesses very minutely and having done so it becomes clear as broad day light that it is the accused/appellant who eliminated the deceased who happened to be his wife on account of the very fact that she did not like the extramarital relations of her husband (accused/appellant herein) with Rukmani (PW-10). This is what appears to be the motive on the part of the accused/appellant which impelled him to remove the deceased from the way and get rid of the routine skirmishes between the two. That apart, there is a witness namely Ganesh Gupta (PW-2) who has categorically stated that on the date of incident after hearing the cries emanating from the house of the accused/appellant he went to the place of occurrence and saw him holding a blood stained axe in his hand and on being asked he made a disclosure to have committed the murder of the deceased. Of course, the extra-judicial confession is a very weak type of evidence but 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 nothing to the contrary to cast a doubt on the veracity of statement of PW-2 before whom the extra-judicial confession was made by the accused/appellant himself. More importantly, on the memorandum of the accused/appellant Ex. P-7 seizure of blood stained axe and blood stained *lungi* and shirt has been made and though the prosecution has not obtained the FSL report, there is no explanation by the accused/appellant as to how the blood appeared on the articles so seized. There is another witness namely Sarju (PW-6) who too has stated that after hearing the cries coming forth from the house of the accused/appellant he reached the spot and saw him coming out from the house carrying a blood stained axe in his hand and the deceased was lying in the kitchen with injury on her temple which was bleeding profusely. Brutality of the accused/appellant is further manifest from the medical evidence showing as many as seven injuries on the body of the deceased including the vital parts like chest, neck, nose, shoulder etc. which makes this Court unable to concede to the argument of the counsel for the appellant regarding conviction of the accused under Section 304 (part-I or Part-II) in place of 302 IPC. Looking to the severity of blows, seven in number, the parts of the body chosen by the accused for rendering such blows and the weapon like axe used for doing so, it is a clear cut case of conviction under Section 302 and therefore the submission of the counsel for the appellant that the act of the accused/appellant falls within the purview of section 304 (Part-I or Part-II) is outrightly

rejected. Material collected by the prosecution is well enough to hold the accused/appellant guilty under section 302 IPC for committing the murder of his own wife. The appreciation of the evidence by the Court below while writing the judgment impugned appears to be well weighed and there is no legal flaw in the same warranting dislodgment in this appeal.

9. In the result, the appeal is held to be without any substance and being so it is hereby dismissed with the affirmation of the judgment under challenge. Being already behind the bars, the accused/appellant does not need any order regarding his arrest and dispatch to jail etc.

Sd/-

(Pritinker Diwaker)
Vacation Judge

Sd/-

(Sanjay K. Agrawal)
Vacation Judge