

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 104 of 2013**

1. Kanshi Ram Nishad, son of Rajman Nishad, aged about 40 years, R/o Village Andi, Police Station Korar, District Kanker, CG

---- Appellant**Versus**

1. State of Chhattisgarh through Station House Officer, Police Station Korar, District Kanker CG

---- Respondent

For Appellant : Shri Santosh Sahu, Advocate
 For Respondent/State : Shri Arun Sao, Deputy AG

Hon'ble Shri Justice Pritinker Diwaker &
Hon'ble Shri R.C.S. Samant

Judgment on Board by Pritinker Diwaker, J
04/11/2017

This appeal has been filed against the judgment of conviction and order of sentence dated 01.12.2012 passed by Additional Sessions Judge North Bastar, Kanker in Sessions Trial No. 52/2012 convicting the accused/appellant under Section 302 IPC and sentencing him to undergo imprisonment for life and pay fine of Rs. 100/-, plus default stipulations.

2. Name of the deceased in this case is Chandrika Bai - wife of the accused/appellant. It is alleged that on 2.3.2012 at 12.30 afternoon, the accused/appellant committed the murder of the deceased by causing grievous injuries on her head with the help of handle of the pick-axe and after doing that he made extra-

judicial confession before his brother Radhelal Nishad (PW-1), villager Shantaram (PW-4) and his son Umendra (PW-11). On coming to know about the incident when PW-11 and other villagers went to the spot and found the body of the deceased lying in a pit with bleeding injury on her head. Thereafter, merged Ex. P-1 was recorded at the instance of PW-1 followed by registration of FIR Ex. P-2 against the accused/appellant for the offence punishable under Section 302 IPC. After drawing inquest Ex. P-4, the dead-body was sent for postmortem examination which was conducted by Dr. Neeraj Sharma (PW-7) who gave his report Ex. P-12. 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 13 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 in paragraph No.1 of this judgment.

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

(i) That the entire case of the prosecution rests on the extra-judicial confession made by the accused/appellant before PW-1, PW-4 and PW-11 which is a very weak type of evidence.

(ii) That the so-called eyewitness to the incident namely

Mathura Bai (PW-5) who claims to have seen the accused assaulting the deceased with club from the kitchen garden of her son-in-law with 300 meter distance in between, is not at all reliable because she being an old lady could not have seen the occurrence from such a distance.

(iii) That even if the entire case of the prosecution is taken as it is, accused can, at the most, be convicted under Section 304 (Part-I) or 304 (Part-II) and not u/s 302 IPC.

6. On the other hand, counsel for the State 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. Mathura Bai (PW-5) - the eyewitness to the incident supporting the case of the prosecution has stated that on the date of incident at about 12 noon she by standing in the kitchen garden of her son-in-law saw the accused/appellant assaulting the deceased with club. She is also stated to have asked the accused/appellant not to assault the deceased but he did not listen to her. Thereafter, according to this witness, she offered water to the deceased but she died in the meanwhile. According to her, there was injury on the head of the deceased and blood was coming out of it. Barring certain minor discrepancies in the cross-examination, she stood firm to what has been stated by her in the examination-in-chief. Radhelal Nishad (PW-1), Shanta

Ram (PW-4) and Umendra (PW-11) - the witnesses to extra-judicial confession have stated that the accused/appellant came and informed them about killing the deceased. After being so informed when PW-11 went to the spot, he saw the body of the deceased lying in a pit with injury on her head and the blood was oozing therefrom. In cross-examination this witness has further stated that more often the accused used to abuse and beat the deceased after consuming liquor. He has further stated that as the deceased used to retort the accused of not doing any work, he caused her death by assaulting with the handle of pick-axe. Umeshwari Nishad (PW-10) - the daughter of the deceased and accused has though been declared hostile, in cross examination she has stated that her father used to quarrel with her mother after consuming liquor and for that he committed her murder. Dr. Neeraj Sharma (PW-7) is the witness who conducted postmortem report on the body of the deceased and gave his report Ex. P-12 stating that he noticed small abrasions on her hand and lacerated wound over occipital region of scalp, square in shape, size 12 cm x 3cm x 5 cm bone deep, fracture of occipital bone which got fragmented in small pieces and brain material was coming out. Cause of death, according to this witness, was acute haemorrhagic cardio vascular shock and the mode as homicidal in nature. In query report Ex. P-16 this witness has further clarified that the death could be possible with the pick-axe produced before him for examination. Savita Bai (PW-2) is the witness of inquest has supported the case of the prosecution. Satma Ram (PW-3) has not stated anything specific against the accused/appellant. He however has stated that the distance in

between his house and the place of occurrence is about 300 meter. Jaguram (PW-6) has not supported the case of the prosecution and has been declared hostile. S.S. Penkra (PW-12) is the investigating officer who has duly supported the case of the prosecution. Atmaram (PW-13) is the Patwari who prepared spot map Ex. P-18. Pick-axe was also seized by the police under Ex. P-7.

9. We have gone through the evidence on record very minutely. There is an eyewitness Mathura Bai (PW-5) who has categorically stated that on the date of incident while standing in the kitchen garden she saw the accused/appellant assaulting the deceased with club and that she also asked him not to assault but he paid no heed to her words. She even offered water to the deceased but by that time she was already dead. She also noticed bleeding injury on the head of the deceased. In addition to this, after executing the crime, the accused made extra-judicial confession before Radhelal Nishad (PW-1), Shanta Ram (PW-4) and Umendra (PW-11). All the three witnesses to extra-judicial confession have clearly stated that the accused/appellant came to them and informed about eliminating the deceased. On being informed about the incident, son of the deceased (PW-11) rushed to the spot and saw the body of the deceased lying in a pit with injury on her head and the blood was oozing therefrom. Out of three witnesses to extra-judicial confession, two are brother and son of the accused who have stated against their own brother and father and therefore, their testimony appears to be quite natural and there is no room for

any falsity in the same. So is the position with eyewitness (PW-5) – an independent witness. As regards evidentiary value of extra-judicial confession, it is a settled legal position that if such confession passes the test of (i) voluntariness; (ii) truthfulness; (iii) corroboration, it is admissible in evidence and can be acted upon to form conviction - {**Aloke Nath Dutta v. State of W.B. (2007) 12 SCC 230**}. Further, while explaining the dimensions of the principles governing the admissibility and evidentiary value of an extra-judicial confession, this Court in the case of **State of Rajasthan v. Raja Ram (2003) 8 SCC 180** has held that an extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court and conviction can be founded thereon. In the case in hand, there is nothing on record to show that the extra-judicial confession so made was not voluntarily or in the fit state of mind. Rather, two of the witnesses to extra-judicial confession (PW-1 and PW-11) being the brother and son of the accused cannot be expected to state something untrue. Furthermore, the doctor (PW-7) who conducted postmortem on the body of the deceased has found lacerated wounds over occipital region of scalp and fracture of occipital bone which got fragmented in small pieces and brain material had come out. Answering the query vide Ex. P-16 he has further clarified that the injuries resulting in death of the deceased could be possible with the pick-axe produced before him for examination.

10. In view of the discussion made above, this Court is of the considered opinion that the findings recorded by the Court below

holding the accused guilty of commission of murder of his own wife are based on due appraisal of the evidence collected by the prosecution. Evidence clearly makes out the case in hand to be of conviction u/s 302 and therefore, the submission of the counsel for the accused that it is hardly a case of conviction under Section 304 (Part-I) or 304 (Part-II) has no force and it is hereby turned down accordingly. No illegality or infirmity in the judgment impugned is visible and therefore it is hereby maintained. As the accused is already inside, no order to that effect is necessary.

11. Appeal is therefore dismissed.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(RCS Samant)
Judge