

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1021 of 2012

Raghunath @ Bhagat @ Mandipiha, S/o. Danu @ Dani Bariha, aged about 66 years, R/o. Maluha, Police Station Bilaigarh, District Raipur (C.G.)

---- Appellant

Versus

State of Chhattisgarh Through Police Station Bilaigarh, District Raipur (C.G.)

---- Respondent

For Appellant : Mr. Mirza Kaiser Baeg, Advocate.

For Respondent/State : Mr. Avinash K Mishra, Panel Lawyer.

**Coram: Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Shri Justice Ram Prasanna Sharma**

Judgment on Board by Ram Prasanna Sharma, J.

16.09.2017

- 1) This appeal is preferred against the judgement of conviction and order of sentence dated 14.09.2012 passed by the First Additional Sessions Judge, Baloda Bazar, Session Division, Raipur (C.G.), in Sessions Trial No. 06 of 2011, convicting the accused/appellant under Sections 302 and 201 of the IPC and sentencing him to undergo imprisonment for life and to pay fine of Rs. 500/-; rigorous imprisonment for three years and to pay fine of Rs. 200/- with default stipulation, for committing murder of his wife Pancho Bai and causing disappearance of the evidence of the said offence.

- 2) Name of deceased is Pancho Bai, who was wife of the accused/ appellant. Both were living in the house situated at village Malaha, Police Station Bilaigarh, District Raipur.
- 3) As per the prosecution case, that on 12.10.2010 at about 10 PM, in the night, the appellant assaulted his wife brutally and caused her murder, thereafter the appellant took her corps to forest area and burnt the same to cause disappearance of evidence. On the report of village Kotwar Budheswar Chauhan, First Information Report Ex.P-2 was registered in Police Station Bilaigarh and Police swung into action. During the investigation, statements of the witnesses were recorded under Section 161 of the Cr.P.C and the same reveals that the appellant and his wife were seen together at previous night thereafter some quarrel took place between them and then both went to their house. Upon confession of the appellant it revealed that the appellant assaulted his wife with the club and done to death, thereafter the appellant dragged the deadbody of the deceased $\frac{1}{2}$ KM away from his house and burnt her dead body near bushes. Postmortem of the deceased was conducted. After completion of the investigation, charge sheet was filed against the accused/ appellant in the Court of Judicial Magistrate First Class, Bilaigarh, who, in turn, committed the case to the Court of Sessions Judge, Balodabazar. The appellant was charge sheeted under Sections 302 and 201 of the IPC to which he did not plead guilty, therefore, trial was conducted. After completion of evidence of the prosecution side, statement of the appellant under Section 313 of the Cr.P.C. was recorded and after completion of trial, the trial Court considering the material available on record by the impugned

judgement convicted and sentenced the accused/appellant as mentioned above.

4) Learned counsel appearing for the accused/appellant submits as under:

- (i) That there are contradictions in the statement of prosecution witnesses and the same is suspicious and on the basis of that no conviction can be recorded.
- (ii) That the case of the prosecution is based on the circumstantial evidence but the circumstances are not such as to complete the chain and therefore the judgement of conviction is bad in law.
- (iii) That last seen theory is full of suspicion and the same cannot be taken into account to bring home the guilt of the accused/appellant.

5) *Per contra*, learned State counsel supporting the impugned judgement has submitted that the judgement of the trial Court is strictly in accordance with the law and well founded and there is no illegality or infirmity in it warranting any interference by this Court.

6) We have heard counsel for the parties and perused the material on record.

7) To substantiate the charge prosecution has examined as many as 10 witnesses. The appellant did not examine any witness in his defence.

8) Dr. Chain Singh Paikara (PW-4) conducted the postmortem of Pancho Bai on 14.10.2010 at 4 PM, the body of the deceased was

brought by constable No. 2097, Chandrasekhar Patel, Police Station Bilaigarh, after examination he noticed the following injuries.

Deep burn on chest anteriorly with both arm right side more burn on posterior of chest superficially burn. Deep burn on abdomen and burst on right side with intestinal part seen out. Burn on genital part. Deep burn on both thigh anterior and posterior right more severe.

- (i) Open fracture on both parietal bone just above forehead.
- (ii) Bone loss left side measuring 7x4cm parietal bone and right side 5x3cm.
- (iii) Lacerated wound on right cheek below the eye in the size of 4x1x1cm.
- (iv) Lacerated wound on right side of mandible in the size of 2x1x1cm.
- (v) Lacerated wound on right side of mandible in the size of 3x1½x1 cm.
- (vi) Abrasion on back of left shoulder. Dislocation of 3 teeth right side on lower jaw and abrasion on gum. All burn post mortem burn rigor mortis on both limb.

He opined that the cause of death is injury on head and the same is homicidal in nature and the death caused since 36 to 46 hours of the examination. The witness remain firm and there is no other opinion of the expert in rebuttal, we are satisfied that the deceased died homicidal death.

- 9) Budheshwar (PW-1) deposed that he received information of murder of appellant's wife, he along with the persons of village namely Sarkar, Kumar and Ramanuj went to the house of appellant there

appellant confessed that he committed murder of his wife. As per the statement of this witness when they asked the appellant to show his wife then appellant informed them that he dragged his wife to forest region and when they reached to the backyard/garden of the appellant situated near forest with him, they saw the appellant concealed the body of his wife in bushes and when they saw the body of the deceased it appeared that body was burnt. Evidence of this witness is supported by the evidence of Rameshwar (PW-2), Kumar Dadsena (PW-5), Sarkar (PW-6), Arjun (PW-7) and Ramanuj Chandra (PW-8). These witnesses have been subjected to searching in cross-examination but nothing could be elicited from their testimony and from their evidence it is established that appellant has made confession voluntarily and in a fit statement of mind. The words of the confession are clear and established it is the appellant who has committed murder of his wife and he is the perpetrator of the crime. There is nothing on record to show that all the witnesses as mentioned above have any grudge against the appellant to rope him in the false charge and therefore the statements inspire confidence of this Court.

- 10) Raghunath (PW-9) is the resident of same village that of the appellant i.e. village Maluha. He deposed that on previous night of the incident deceased Pancho Bai came to him and told that there had been quarrel between the appellant and her and on the next date the deceased went with the appellant from his house. From the evidence of this witness it is established that it is the appellant who was last seen in the company of the deceased.

- 11) In the peculiar circumstances of this case, fact pertains to crime of murder of his wife was specially within his knowledge and this fact needs to be explained by the appellant. As per Section 106 of the Indian Evidence Act 1972, the appellant has not explained the fact regarding murder of his wife and the same is unerringly pointed to his guilt and in the instant case there is no evidence that anybody else has committed crime.
- 12) From the statement of A.K. Dwivedi (PW-10) who is the Investigation Officer it is established that he seized a club and as per memorandum of the appellant (Ex.P-10) and its seizure vide Ex.P-18 the same was sent for opinion of doctor Chain Singh Painkara (PW-4) and he opined that the injury of the deceased can be caused by this club.
- 13) Looking to the injury it is clearly established that deceased Pancho Bai was brutally assaulted with the club and as per opinion of expert the death is homicidal in nature. We have undertaken an arduous exercise of going through the entire material collected by the prosecution as also the evidence of the witnesses while deciding the fate of this appeal. Testimony of the witnesses makes it explicit that the extra-judicial confession made by the appellant is convincing and again when the appellant has not explained about the death of his wife even though he was in the company of his wife at the time of incident and the recovery of club is additional evidence support to the other evidence adduced by the prosecution. Again from the statement of the witnesses it is established that the body of the deceased was found on the statement made by the appellant before the witnesses and on the

basis of statement of the appellant, the witnesses went to the forest area where the body was found in the bushes. As the appellant has not made any explanation for incriminating circumstances, over all assumption of the evidence it is clearly established the involvement of the appellant in killing of his wife.

- 14) Thus in the aforesaid view of the matter this Court is of the considered opinion that the findings recorded by the Court below do not suffer from any legal flaw warranting inference in this appeal. Resultantly, the appeal being without any force is liable to be and is hereby dismissed as such with the affirmation of the judgment impugned. As the appellant is already reported to be behind the bars, no further order for arrest etc is necessary.

(Manindra Mohan Shrivastava)
JUDGE

(Ram Prasanna Sharma)
JUDGE

Santosh