

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 115 of 2015**

1. Sandeep Pawar son of Bal Kishan, aged about 32 years, Occupation - Driver, R/o Irrigation Colony, Jagdalpur, District Bastar, CG

---- Appellant**Versus**

1. State of Chhattisgarh through Police Station Darbha, District Bastar, Jagdalpur, CG

---- Respondent

For Appellant : Shri Rajiv Shrivastava, Advocate
For Respondent/State: Shri Ravindra Agrawal, GA

Hon'ble Shri Justice Pritinker Diwaker**Hon'ble Shri Justice Gautam Chourdiya****Judgment On Board by Pritinker Diwaker, J****04/07/2018**

This appeal has been filed against the judgment of conviction and order of sentence dated 03.12.2014 passed by Additional Sessions Judge (FTC) Bastar at Jagdalpur, in Sessions Trial No. 25/2013 convicting the accused/appellant under Sections 376 (1) and 302 IPC and sentencing him to undergo rigorous imprisonment for 10 years with fine of Rs. 500/- u/s 376 (1) and imprisonment for life and pay fine of Rs. 1000/- u/s 302 IPC, plus default stipulations. Both the sentences have been made to run concurrently.

2. Facts of the case in brief are that on 08.12.2012 one unknown dead-body was found in the jungle in a half naked position and subsequently it was identified to be that of the

prosecutrix/deceased aged in between 12 and 15 years. As per the case of the prosecution, she was subjected to forcible sexual intercourse also. *Merg* Ex. P-1 was recorded on the same day by Gadru Baghel (PW-1) who had gone to the police station along with Sarpanch of the village. After drawing inquest vide Ex. P-2 on 08.12.2012 dead-body was sent for postmortem examination which was conducted by Dr. Ramesh Wasnik (PW-14) vide report Ex. P-19. On 10.12.2012 after conducting *merg* inquiry FIR Ex. P-23 was registered against an unknown person for the offence punishable under Sections 376 and 302 IPC. On 15.12.2012 memorandum of the accused/appellant Ex. P-11 was recorded based on which cot, mattress, pillow and nylon rope were seized under Ex. P-12, P-13 and P-16. However, there is no FSL report on record. After completion of investigation, police filed the *challan* against the accused/appellant u/s 376 and 302 IPC followed by framing of charge by the Court below u/s 376 (1) and 302 IPC.

3. In order to prove the complicity of the accused/appellant in the crime in question, the prosecution has examined 19 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. Defence has also examined four witnesses in support of its 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 entire case of the prosecution is based on circumstantial evidence.

(ii) That the only evidence against the accused/appellant is the extra-judicial confession made by him before Ramesh Kumar Punjabi (PW-8) but there is nothing on record to show that said confession was made by the accused/appellant voluntarily and therefore, it is not worthy of credence.

(iii) That the extra-judicial confession made by the accused/appellant before the Collector and Superintendent of Police is inadmissible in evidence as it was made when the accused/appellant was questioned by these two highly placed officers. Even otherwise, the extra-judicial confession was in respect of murder only and not in connection with rape.

(iv) That it is a settled legal position that unless the extra-judicial confession gets support from the other evidence, it cannot be made a basis for conviction.

(v) That present is a case where inquest appears to have been made in the police station after dead-body was brought there by some of the witnesses. In other words, no investigation was done on the place where the dead-body was found which is clear from the evidence of PW-1, PW-2, PW-3 and PW-19.

(vi) That in respect of the arguments advanced, counsel for the accused/appellant placed reliance on the decision of the Apex Court in the matter of **Sahadevan and another v. State of Tamil Nadu** reported in **(2012) 6 SCC 403**.

6. State counsel however supports the judgment impugned and submits that the findings recorded by the Court below convicting the accused/appellant under Sections 376 (1) and 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. Ramesh Kumar Punjabi (PW-8) is the main witness of the prosecution with whom the accused/appellant herein was working as driver. This witness has stated that as he was to go to Raipur by catching Kanker Roadways bus at 11 PM, he at 8 PM asked the accused/appellant to drop him at the bus stand at 10 PM. On this, the accused/appellant told him to get back within an hour from the market but as he did not come till 10 PM, this witness rang him up but then also he told him to be there within 10-15 minutes therefrom. Since the accused/appellant did not turn up even thereafter, this witness rang him up many a time but he did not attend the phone. When this witness made one more call to the accused, he attended it but expressed his inability to come as his vehicle got punctured, and by that time it was 10.30 PM. Ultimately he took the help of one of his relatives to go to the bus stand to catch the Raipur bound bus. According to this witness, on his return from Raipur when he asked the accused/appellant as to where he had gone taking the vehicle, he told him to disclose the same later. A week thereafter at

about 9/9.30 AM when this witness again asked the accused the same question, he told him about some murder taken place at his hands, but at the same time he requested him not to disclose it to anyone. On further being asked by this witness regarding whereabouts of the vehicle, the accused/appellant told him to have used the same for transporting the dead-body for being dumped. On hearing all that, this witness got tense and sought an appointment with the District Collector to meet him. However, the Collector being busy in his official work asked this witness to meet him later. Sometime thereafter this witness apprising of the urgency again requested the Collector for appointment to meet him, and this time he permitted him for the same. This witness then went to the Collector office taking one Executive Engineer along and incidentally Superintendent of Police was also present there. When this witness apprised the Collector and the SP of the act of the accused/appellant, they asked to call him there. After the accused/appellant came to the Collector Office, the Superintendent of Police already present there asked him as to where he had gone taking the vehicle of this witness but initially he gave equivocating answers to him, and ultimately on being asked about the act as was disclosed by him to this witness, he admitted his guilt of committing the murder of the deceased-prosecutrix by pressing her neck. In paragraph No. 30 of his deposition, this witness has admitted the fact that when approached the Superintendent of Police, he was informed by him that some persons in connection with

this case were apprehended and then he (this witness) told him the things disclosed to him by the accused/appellant. The suggestion put to this witness by the defence that it is he who raped and murdered the deceased/prosecutrix and then went to Raipur to conceal the evidence, has been denied.

Gadru (PW-1) is the witness who saw the dead-body lying near Teerathgarh turning and then informed the police about the same on the basis of which *merg* Ex. P-1 came to be recorded. He has further stated that the police never came to the place where the dead-body was lying, rather it is they who took the same to police station in a vehicle. Mangluram Kashyap (PW-2) is the witness who accompanied PW-1 to police station for lodging the *merg*. He has stated that when they informed the police about the dead-body lying near Teerathgarh turning, the police people expressed their inability to rush to the spot and asked them to bring the dead-body to the police station, and they did accordingly. Dabhru Singh (PW-3) has also stated that on information being given to the police about the dead-body lying in the jungle, instead of going to the spot, the police people asked them to get the same to the police station and then it was done accordingly. Somaru Ram (PW-4) is the witness to inquest notice Ex. P-4. Kartik (PW-5) has stated that inquest on the dead-body was done in the police station. Ramu (PW-6) and Chimri (PW-7) – the parents of the deceased-prosecutrix have not stated anything specific against the accused/appellant. Krishna Kumar (PW-9), Raghuvir Dongre (PW-10), Vijay (PW-11) and

V.R. Mandavi (PW-13) have not supported the case of the prosecution and have been declared hostile. Kailash Bhaskar (PW-12) is the witness who assisted in the investigation. Dr. Ramesh Wasnik (PW-14) is the witness who conducted postmortem examination on the body of the deceased-prosecutrix and gave his report Ex. P-19 stating that he noticed reddish three old tears over front of neck, each in the size of 0.5 x 0.5 cm. Cause of death as opined by this witness was strangulation with the evidence of sexual assault, and the death was homicidal in nature. Uday Bhan Singh (PW-15) and Shiv Kumar Salam (PW-16) - both posted as Patwari at the relevant time had prepared spot maps Ex. P-21 and P-22 respectively. Amit Shukla (PW-17) is the investigating officer who has duly supported the case of the prosecution. Pravin Michel Das (PW-18) is the witness who assisted in the investigation. Smt. Archana Nag (PW-19) - the police constable has stated that she saw the dead-body in the police station and that in the pocket of the deceased one paper mentioning some phone numbers was found. Rameshwar Singh (DW-1) has not stated anything specific in relation to the accused/appellant. Anbalagan (DW-2) - Collector, Jagdalpur at that time has stated that on 14.12.2012 Ramesh Kumar Punjabi (PW-8) who was working as Executive Engineer, Water Resources Department came to his office and informed that his driver committed the murder of someone. Thereafter, this witness called the Superintendent of Police to his office and that when SP put certain questions to the accused, he

confessed about the commission of crime in question. B.N. Meena (DW-3) – posted as SP at Jagdalpur at the relevant time has also stated that on being questioned, the accused/appellant had confessed the commission of crime in question. Santosh Kumar Das (DW-4) has not stated anything specific.

9. We have gone through entire material collected by the prosecution including the evidence – led by prosecution and also by the defence and while doing so the sole evidence on which the conviction of the accused/appellant rests appears to be that of Ramesh Kumar Punjabi (PW-8) before whom the accused/appellant made the so-called extra-judicial confession of committing the murder of someone that too when asked for repeatedly. Thereafter, PW-8 rushed to the Collector office where Superintendent of Police was already present, and informed them about the act of the accused/appellant as was disclosed to him. As per the evidence of this witness, the accused/appellant was then called to the office of Collector and there also he is said to have confessed the commission of murder one lady. It is relevant to note here that as per the medical evidence the deceased-prosecutrix was subjected to sexual assault also, but PW-8 nowhere states that the confessional statement made before him by the accused/appellant was in this regard. Evidence of PW-8 is also not specific as to where and by whom the deceased-prosecutrix was subjected to sexual assault and how her dead-body was found in the jungle. As already noted, the so-

called extra-judicial confession was first made by the accused/appellant before PW-8 that too on being asked by him repeatedly. Thereafter, for the second time the accused/appellant confessed before the Superintendent of Police on being asked by him persistently to make the specific disclosure. However, at all places the accused/appellant appears to have disclosed in respect of murder only. As regards value of extra-judicial confession the settled legal position is that it should be made voluntarily. Further, it attains greater credibility and evidentiary value only if supported by a chain of cogent circumstances and corroborated by other prosecution evidence. Dealing with this legal aspect of the matter in the matter of **Sahadevan and another v. State of Tamil Nadu** (supra) the Apex Court has held as under:

“16. Upon a proper analysis of the aboveresferred judgments of this Court, it will be appropriate to state the principles which would an extra-judicial confession an admissible piece of evidence capable of forming the basis of conviction of an accused. These precepts would guide the judicial mind while dealing with the veracity of cases where the prosecution heavily relies upon an extra-judicial confession alleged to have been made by the accused:

- (i) The extra-judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution.
- (ii) it should be made voluntarily and should be truthful.

- (iii) It should inspire confidence.
- (iv) An extra-judicial confession attains greater credibility and evidentiary value if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.
- (v) For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.
- (vi) Such statement essentially has to be proved like any other fact and in accordance with law."

Thus if the extra-judicial confession made by the accused/appellant first before PW-8 and then before the Collector and SP that too on being subjected to grilling questioning, is tested on the touchstone of aforesaid judicial pronouncement, it is rendered unworthy of credence, and being so does not inspire the confidence of this Court.

10. Another important factor to be noted here is that though one cell phone was seized from the place where the dead-body was found, but no investigation in this respect was made by the prosecution. Likewise one paper was also found in the pocket of the deceased-prosecutrix mentioning certain mobile numbers but this aspect also did not undergo any investigation. Yet another glaring lacuna on the part of the prosecution is that on receiving the information about the dead-body lying in the jungle the police did not bother to proceed to the spot, rather it made the witnesses to bring the same to the police station and it is where the inquest was conducted. This shows the casual approach of the prosecution

in carrying out the investigation. Though on the memorandum of the accused/appellant certain articles were seized but the FSL report is not on record which makes the seizure of no significance.

11. Thus in view of the aforesaid factual and legal position this Court is of the considered opinion that the prosecution has not been able to prove its case beyond all reasonable doubt. Even the Court below has not properly appreciated the evidence adduced by the parties and has arrived at an abrupt conclusion holding the accused/appellant guilty of commission of rape and murder on the deceased-prosecutrix. Above noted indifferent approach of the prosecution in proving its case as per the requirement of law makes the accused/appellant have the benefit of doubt.

12. In the result, the appeal is allowed, judgment impugned is set aside and the accused/appellant is acquitted of the charges levelled against him. Since the accused/appellant is already on bail, no order to set him free etc, is needed.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(Gautam Chourdiya)
Judge