

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 138 of 2015

- Chandrabhan Gond S/o Shri Amarsai Gond Aged About 36 Years
R/o Village- Biharpur, P.S. Jai Nagar, District- Surajpur C.G.

---- Appellant

In Jail

Versus

- State Of Chhattisgarh Through T.I., Police Station Jai Nagar,
District Surajpur C.G.,

---- Respondent

For Appellant	:	Shri Akhilesh Dalpati, Advocate.
For Respondent/State	:	Shri Rahul Tamaskar, Panel Lawyer.

Hon'ble Shri Ajay Kumar Tripathi, C.J.

Hon'ble Shri Pritinker Diwaker, J

Judgment on Board by Justice Pritinker Diwaker

11/07/2018:

This appeal arises out of the judgment of conviction and order of sentence dated 1.10.2014 passed by the Sessions Judge, Surajpur, Distt. Surajpur (CG) in Sessions Case No.71/2013, convicting the appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life and to pay a fine of Rs.1000/- with default stipulation.

02. As per the prosecution case, mother of the accused/appellant was not well, on 2.1.2012 the appellant after returning to his home tried to kill his mother, however, his wife Sulochanibai (since deceased)

intervened in the matter. Then the appellant instead of assaulting his mother first caused injury by battle-axe to his wife and after chasing her chopped off her head. Thereafter, the appellant threw the chopped off head and the decapitated body into well. After getting the dead body in the well, FIR (Ex.P/2) was lodged on 3.1.2012 by Shobhnath Singh, Sarpanch of the village, against the appellant under Section 302 of IPC. Immediately thereafter mereg intimation Ex.P/1 was recorded on 3.1.2012. Inquest on the dead body of the deceased was conducted on 3.1.2012 vide Ex.P/5 and thereafter, the dead body was sent for postmortem which was conducted on 4.1.2012 by PW-4 Dr. JS Saruta Ex.P/11. The autopsy surgeon noticed that the head was detached from trunk, rigor mortis was present, incised wound on her left ear of size 10 x 2 cm; incised wound on breast left side and on cutting thoracic ribs left side No.6, 7 & 8 were found fractured; incised wound present on left arm on the medial aspect of size 8 x 1.5 cm and lateral aspect of size 7 x 1.5 cm; all the muscles of the neck carotid artery, internal jugular vein, trachea, oesophagus cervical vertebra were cut off upto the level of 7th cervical vertebra. All the injuries were caused by hard and sharp edged weapon. In his opinion, the cause of death was shock due to cutting off the head and that the death was homicidal in nature. Memorandum of the appellant (Ex.P/6) led to seizure of battle-axe having stains like blood vide Ex.P/7. However, there is no FSL report. The appellant is also said to have made extrajudicial confession before PW-2 Shivnarayan Singh, PW-5 Chandrabhan and PW-7 Devasi and at the instance of the appellant only, the dead body was recovered from the well. While framing charge, the trial Judge framed charge u/s 302 of IPC against the appellant.

03. So as to hold the accused/appellant guilty, the prosecution examined 8 witnesses in all. Statement of the accused was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellant as mentioned in para-1 of this judgment.

05. Counsel for the appellant submits as under:

- that there is no eyewitness account to the incident and the appellant has been convicted solely on the basis of weak evidence of extrajudicial confession.
- though on the memorandum of the appellant (Ex.P/6) seizure of battle-axe has been made vide Ex.P/7 but in absence of FSL report, the seizure is of no significance.
- that the incident occurred while the appellant was trying to assault his mother, however, when his wife/deceased intervened in the matter, it appears that on a sudden quarrel in the heat of passion the appellant killed her and being so, the case of the appellant would fall under Exception 4 to Section 300 of IPC and at best, he can be held guilty under Section 304 Part-II of IPC and not 302 as has been done by the trial Court.
- that the appellant is in jail for the last more than 6 ½ years and therefore, after conversion of his conviction into Section 304 Part-II of IPC, he may be sentenced to the period already

undergone.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel that conviction of the appellant is strictly in accordance with law and as such, there is no scope for any interference in the judgment impugned. He submits that the appellant voluntarily made extrajudicial confession before PW-2 Shivnarayan Singh, PW-5 Chandrabhan and PW-7 Devasi and these witnesses have duly supported the prosecution case. Further, the dead body was recovered at the instance of the appellant and he has failed to offer any explanation in his statement u/s 313 of CrPC as to the incriminating circumstances appearing against him.

07. Heard learned counsel for the respective parties and perused the material available on record.

08. PW-1 Shobhnath, complainant, has not supported the prosecution case and has been declared hostile. PW-2 Shivnarayan Singh, cousin of the appellant, is the person before whom the appellant made extrajudicial confession. He states that in his presence the villagers had called the appellant and on being enquired, the appellant confessed commission of murder of his wife Sulochni and throwing of dead body into the well. He is also a witness to memorandum of the appellant (Ex.P/6), seizure (Ex.P/7) made in pursuance thereof, the dead body recovery panchanama (Ex.P/4) and inquest (Ex.P/5). In cross-examination he remained firm.

09. PW-5 Chandrabhan is also a villager before whom the appellant made extrajudicial confession. While supporting the prosecution case

he too has categorically stated that the appellant confessed commission of the offence and informed the villagers that after chopping off head of his wife, the chopped off head and the decapitated body were thrown by him into the well. PW-7 Devsai, who is also a witness to extrajudicial confession, has partially supported the prosecution case.

10. PW-3 Rambharos has turned hostile. PW-4 Dr. JS Saruta conducted postmortem on the body of the deceased on 4.1.2012 vide Ex.P/11 and noticed that the head was detached from trunk, rigor mortis was present, incised wound on her left ear of size 10 x 2 cm; incised wound on breast left side and on cutting thoracic ribs left side No.6, 7 & 8 were found fractured; incised wound present on left arm on the medial aspect of size 8 x 1.5 cm and lateral aspect of size 7 x 1.5 cm; all the muscles of the neck carotid artery, internal jugular vein, trachea, oesophagus cervical vertebra were cut off upto the level of 7th cervical vertebra. All the injuries were caused by hard and sharp edged weapon. In his opinion, the cause of death was shock due to cutting off the head and that the death was homicidal in nature. PW-6 Farhan Qureshi, investigating officer, has duly supported the prosecution case. PW-8 Suraj Singh, witness to memorandum and seizure, has turned hostile, however, admitted his signature on these documents.

11. We have gone through entire material collected by the prosecution. Conviction of the appellant is based mainly on the evidence of extrajudicial confession made before PW-2 Shivnarayan Singh, PW-5 Chandrabhan and PW-7 Devasi. Dealing with this legal aspect of the matter in the matter of **Sahadevan and another v. State**

of Tamil Nadu reported in **(2012) 6 SCC 403** 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.”

12. PW-2 Shivnarayan Singh, cousin of the appellant, has unequivocally stated that in his presence the villagers had called the appellant and on being enquired, the appellant confessed commission of murder of his wife Sulochni and throwing of dead body into the well. Nothing could be elicited by the defence from him to make his evidence on this point shaky or unreliable. PW-5 Chandrabhan, another witness to extrajudicial confession while supporting the

prosecution case too has categorically stated that the appellant confessed commission of the offence and informed the villagers that after chopping off head of his wife, the chopped off head and the decapitated body were thrown by him into the well. Though PW-7 Devsai, who is also a witness to extrajudicial confession, has partially supported the prosecution case but the other witnesses (PW-2 & PW-5) have remained firm with regard to making of extra-judicial confession by the appellant. There is nothing on record to suggest that such confession was made under threat, pressure or coercion, rather the evidence goes to show that on the next day of incident when the appellant was being searched by the villagers, he was found on the tree and then he moved to the terrace of a temple and on being enquired he confessed to have killed his wife by chopping off her head. Thus, considering the evidence of the witnesses to extra-judicial confession, especially PW-2 & PW-5, coupled with the conduct of the appellant subsequent to the incident his complicity in the crime in question stands proved.

13. This apart, on the memorandum of the appellant a battle-axe having blood like stains was seized and PW-2 who is one of the witnesses to such memorandum and seizure has duly supported the prosecution case. The prosecution case further gets support from the medical evidence according to which the injuries suffered by the deceased could be caused by the weapon so seized. In view of all this, it stands proved beyond all reasonable doubt that it is the accused/appellant who killed the deceased.

14. We find no substance in the argument of counsel for the

appellant that in the facts and circumstances of the case, the appellant can, at best, be held guilty under Section 304 Part-II and not 302 of IPC. Considering the manner in which the appellant killed the deceased by chopping off her head, by no stretch of imagination it can be said that while doing so he had no intention to kill the deceased but only had the knowledge that infliction of such injury would result in her death. Such act of the appellant definitely makes him liable for conviction u/s 302 of IPC and as such, the trial Court was fully justified in holding so.

15. Resultantly, the appeal being bereft of any substance is liable to be dismissed and is dismissed as such. Appellant is reported to be in jail, therefore, no further order regarding his arrest/surrender etc. is required to be passed.

Sd/

(Ajay Kumar Tripathi)

Chief Justice

Sd/

(Pritinker Diwaker)

Judge