

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 745 of 2014**

- Smt. Agunteen Bai W/o Siyaram Salaam Aged About 24 Years
R/o Khetarpaal Thana - Farasgaon, Distt. Kondagaon C.G. ,

---- Appellant**Versus**

- State Of Chhattisgarh Through Sho, Ps Farasgaon, Distt.
Kondagaon C.G.

---- Respondent

For Appellant	: Shri Sanjay Patel, Advocate
For Respondent /State	: Shri S.K.Mishra, PL

Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Rajani Dubey

Judgment On Board By Manindra Mohan Shrivastava, J.**08/03/2019**

This appeal is directed against the impugned judgment of conviction and order of sentence dated 27.06.2014 passed by the Additional Sessions Judge, Kondagaon, district Kondagaon in S.T. No. 135/2012 whereby the appellant has been convicted and sentenced as described below:

Conviction	Sentence
Under Section 302 IPC	Imprisonment for life and fine of Rs. 1,000/- with default stipulation.

2. According to the prosecution case, PW-1 Siyaram, husband of the appellant, lodged a report in the police station that his infant child was assaulted with the help of a brick by his wife when she found that the child was continuously crying. It was stated in the FIR that the appellant disclosed to the FIR informant that dead body was kept under a culvert wherefrom, he took out the body and he kept before the villagers and then lodged the report. On such report, investigation was carried out and memorandum of the appellant is said to have been recorded on the basis of which, it is said, a piece of brick, allegedly used to assault the child and a shawl containing spots looking like blood stains were recovered from the place, where from the dead body was found. Coupled with the diary statement of the husband PW-1, the appellant had confessed before him that she had assaulted her own child, appellant was charged and tried for commission of offence under Section 302 IPC for murdering her own child. Learned trial court relied mainly upon the extra judicial confession of the appellant and recovery of a shawl and a piece of brick from the place where the dead body was found and convicted the appellant.

3. Learned counsel for the appellant argued that the case of the prosecution cannot travel beyond strong suspicion and much more weighty evidence was required to translate suspicion into truth. He would argue that the evidence of so called extra judicial confession given by the appellant to her own husband PW-1 is quite shaky because there are contradictory statements made in the examination-in-chief and cross-examination. PW-2, brother of the appellant has

admitted in his cross-examination that the story of extra judicial confession is being stated as told by the appellant's husband PW-1. It is next submitted that according to the husband, even when the FIR was lodged, by that time, dead body was already recovered by him and given in the custody of villagers and then FIR was lodged. The shawl and piece of brick is said to have been recovered from the same spot, where from the dead body was taken out by the husband and recovery of shawl and brick does not establish any live link between the commission of the offence and the appellant. Except this, there is no evidence to connect the appellant with the commission of offence therefore, in these circumstances, appellant ought to be acquitted by giving her benefit of doubt. Alternative submission of counsel for the appellant is that in any case, even if the prosecution case is accepted as it is, the appellant cannot be said to nurture an intention to kill her own child. According to the prosecution, her child was crying, appellant is said to be annoyed and in that state of mind, gave him an assault with a brick, it was singular injury, which, unfortunately proved to be fatal. Both PW-1 and PW-2 have stated that the appellant is a habitual of drinking and also of unsound mind, therefore, in these circumstances, the conviction of the appellant may be altered to that under Section 304 Part II IPC. Appellant has already undergone almost 9 years of imprisonment therefore, the sentence may be reduced to the period already undergone by the appellant.

4. On the other hand, State counsel, supporting the impugned judgment of conviction and order of sentence, would argue that the child was an infant, and therefore it is for the mother i.e. the appellant

to explain as to how the child in the lap sustained fatal injury. He would argue that the extra judicial confession made by her before her own husband PW-1 is fully reliable and according to PW-1, he recovered the dead body from under the culvert, only upon disclosure made by the appellant. Blood stained shawl and the brick was also recovered from the same place on the memorandum of the appellant. Therefore, the circumstantial evidence point only towards the guilt of the appellant.

5. We have heard counsel for the parties and perused the records.

6. The conviction of the appellant is based on extra judicial confession and recovery. We are also to keep in our mind that the deceased was an infant child aged about 5 months only.

PW-1 Siyaram, husband of the appellant has deposed that the appellant/wife came to him and informed that she killed her son Jitendra but she did not disclose as to why she killed the child. He further deposed that she disclosed that the dead body was kept under the culvert whereafter he lodged the report in the police station. In the cross-examination he admits that his wife is mentally sick and that she is habitual to drinking everyday. He then admits that in the night, his wife was sleeping with the child in the hut situated in the field. He further deposes that his wife had also disclosed that when she got up in the morning she did not see the child around. In next breath, suggestion given to her that no such confession was made that she killed the child, has been denied.

7. Though PW-2 brother of the appellant talks of extra judicial

confession, in his cross-examination, he states that the appellant had not disclosed anything to him and the story of the appellant having killed the infant child has been informed to him by the complainant i.e. PW-1. If we look into the evidence of these two witnesses, as far as PW-2 is concerned, he could not be described as a witness to extra judicial confession. As far as PW-1 is concerned, in view of what has been stated by him in his cross-examination that his wife disclosed that when she got up in the morning she did not find her child, the evidence of extra judicial confession is clouded with suspicion and it would require a strong corroboration to bring home the guilt because the evidence of extra judicial confession, in itself, is a weak circumstantial evidence.

8. But then we do not find that the prosecution has come out with any other clinching evidence regarding involvement of the appellant in the alleged commission of offence. The dead body was already recovered because the husband, while lodging the FIR, stated that he had taken out the dead body from under the culvert. This evidence cannot be used against the appellant in the manner that the dead body was recovered at the instance of the appellant. Where recovery of dead body is said to be made by a witness on the so called disclosure of the accused, it does not carry any evidentiary value.

9. We thus, find that the prosecution has failed to come out with a strong and legally admissible evidence to prove beyond reasonable doubt, the involvement of the appellant in the alleged incident. Recovery of shawl and piece of brick is said to have been made from the same spot wherefrom the dead body was already taken out.

Therefore, the memorandum of the appellant to the incident of disclosure of the spot wherefrom shawl and piece of brick was recovered, loses its significance and cannot be used as a piece of incriminating evidence against the appellant.

10. What then is left is the doubtful extra judicial confession given to PW-1, finding no corroborative evidence. This leads to conclusion that it will not be safe to convict the appellant with the said weak and doubtful extra judicial confession alone. Appellant, therefore, must be given benefit of doubt and acquitted. Impugned judgment of conviction and sentence is set aside. She is acquitted of the charges levelled against her and be set free forthwith.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Rajani Dubey)
Judge

