

NAFR

HIGH COURT OF CHHATTISGARH, BILASPURCRA No. 239 of 2014

- Stanislas S/o Bhukhal Uraon Aged 35 Years, Profession Agriculture, R/o Village Boki, PS Dharamjaigarh, Distt. Raigarh Chhattisgarh

---- Petitioner

Versus

- State Of Chhattisgarh Through Station House Officer, Police Station Pathhalgaon, Revenue District Jashpur, Civil District Jashpur (CG)

---- Respondent

For Appellant	Mr. Hari Agarwal, Advocate
For Respondent /State	Mr. KK Singh, Government Advocate

**DB: Hon'ble Mr. Justice Prashant Kumar Mishra &
Hon'ble Mr. Justice Gautam Chourdiya**

Judgement On Board by Prashant Kumar Mishra, J.

18/5/2020

1. Heard.
2. The appellant has called in question his conviction under Section 302 of IPC and sentence to undergo life imprisonment awarded by the Sessions Judge, Jashpur District Jashpur vide judgment dated 28.6.2006 passed in ST No.69/2005, for committing murder of his wife Guleria Bai on 19.4.2005.
3. The prosecution case, in short, is that the appellant, his wife

(deceased Guleria Bai) and daughter, had gone to the house of his relative PW-2 Jubel. At about 11:45 a.m, on 19.4.2005, PW-2 Jubel had gone outside for bathing leaving his mother PW-6 Saniyar Bai and deceased Guleria Bai in the house. When Jubel returned at about 12:15 p.m, PW-6 Saniyar Bai informed that the appellant has committed murder of his wife Guleria Bai. The appellant was enquired about the incident, on which, he disclosed that his wife Guleria Bai (deceased) wanted to marry some other person, therefore, he murdered her. The merger intimation -Ex.P/2 was lodged by PW-2 Jubel, whereas, the FIR-Ex.P/3 was registered on the basis of information supplied to the Police by PW-2 Jubel. In both the documents, Jubel (PW-2) informed the Police that it was PW-6 Saniyar Bai, who had informed about the incident. The axe used for causing murder was recovered from the place of occurrence vide Ex.P/5. In the postmortem report-Ex.P/10 submitted by PW-8 P. Suthar, the cause of death was mentioned as 'due to cut injury of neck and spinal cord', duration since death was within 24 hours and the death was homicidal in nature'.

4. In the course of trial, the prosecution examined 8 witnesses to bring home the charges. The trial Court has convicted the appellant on the basis of evidence of PW-2 Jubel and PW-6 Saniyar Bai.
5. We have heard learned counsel for the parties at length and perused the record.

6. The incident happened in the house of PW-2 Jubel and PW-6 Saniyaro Bai. PW-2 Jubel would depose that his mother had informed him that the appellant has committed murder of his wife Guleria Bai and that he has not seen the incident. He deposed that the appellant has made extra judicial confession.
7. On the other hand, PW-6 Saniyaro Bai has stated in examination-in-chief that the appellant has assaulted the deceased by means of axe. However, this witness admits that she is aged about 80-85 years and her eyesight is weak and she further admits that if his son would stand in front of her, she would not recognize him unless he speaks. In para 12, she would admit that at the time of the incident, she was sleeping and when she awoke, she found the deceased lying dead on the floor and thereafter, all the members of the house started suspecting the appellant. She also admits that the appellant was not available in the house, therefore, he was searched and later on traced in the village *Basti* and thereafter, the report was lodged against him on the basis of suspicion.
8. It is thus apparent that PW-6 Saniyaro Bai, who is aged about 80-85 years and an infirm lady having weak eyesight, is not firm in making the statement about seeing the incident. She being the sole eye-witness, her evidence has to be beyond suspicion, but having seen her statement, it appears unsafe to base the conviction on her sole testimony. Moreover, the weapon has been recovered at the place of the incident and not at the instance of the appellant.

9. Initially, PW-2 Jubel informed the Police that the appellant made extra judicial confession, but in the Court, he deposed that the appellant did not make any statement about the incident. Other witnesses namely PW-3 Dudheshwar is a hearsay witness, whereas, PW-4 Ramkumar Das is a Constable, PW-5 Saniyaram Tirki is the Patwari and PW-7 Ashok Wadegaonkar is the IO.
10. Considering the quality of evidence on record, we are of the considered view that the prosecution has not been able to establish 'guilt' of the appellant beyond reasonable doubt.
11. For the foregoing, the appeal is allowed. The impugned judgment of conviction and sentence is set-aside and the appellant is acquitted of the aforementioned charge.
12. The appellant is presently in jail. He be released forthwith if not required in any other case, on his furnishing a personal bond for a sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the trial Court. The bail bond shall remain in operation for a period of 6 months as required under Section 437-A of Cr.PC. The appellant shall appear before the higher Court as and when directed.

Sd/-**(Prashant Kumar Mishra)**
Judge**Sd/-****(Gautam Chourdiya)**
Judge

