

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1689 of 2019**

- Gade Sukraiya S/o Shri Lalaiya Aged About 36 Years R/o Village Reddipalli Thana Bhopalpatnam District Dantewada Chhattisgarh

---- Appellant**Versus**

- State Of Chhattisgarh Through Police Station House Bhopalpatnam District Da. Ba. Dantewada Chhattisgarh

---- Respondent

For Appellant	:	Shri Ashok Kumar Verma, Advocate
For State	:	Shri Rajendra Tripathi, Panel Lawyer

D.B.:- Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Vimla Singh Kapoor

Judgment On Board**26/07/2021****Per Manindra Mohan Shrivastava, J.**

This appeal is directed against impugned judgment of conviction and order of sentence dated 31/08/2006 passed by the Sessions Judge, South Bastar, District - Dantewada (CG) in Sessions Case No.63/04 whereby and whereunder, the appellant has been held guilty of commission of offence and sentenced as described below -

	<u>Conviction</u>	<u>Sentence</u>
1.	U/s 302 of IPC	Life imprisonment

2. The prosecution story is that the wife of the appellant was found dead in her house on 01/08/2003. The matter was reported to the police on the next day in which, it was stated at the instance of Talandi Ramchandram (PW2) that he is the Patel of the

village and at about 9 O' clock in the night on 01/08/2003, son of the appellant namely Chidiyam Neelaiyya came to him to inform that his father Sukraiya had assaulted and killed his mother Channu Bai and also threatened him to kill and he has come to inform the patel. Thereafter, Sarpanch, Ex-Sarpanch and other residents of the village gathered in the house of Kotwar and they reached the house of Sukraiya (the appellant) and found that the dead body was covered with blanket and when blanket was removed, they saw the wife of the appellant lying and seen with multiple stab injuries on the chest and abdomen and lying in pool of blood. After lodging of FIR in the police station in above details, inquest over dead body was prepared and was sent for post mortem and the post mortem report revealed homicidal death due to multiple stab injuries on vital parts of the body, leading to excessive bleeding. The appellant, named as an assailant right from the beginning, was taken into custody. Weapon is said to have been seized on the memorandum of the appellant. Upon completion of investigation, charge sheet was filed and the appellant was prosecuted for alleged commission of offence. The prosecution came out with the circumstantial evidence which were relied upon by the learned Trial Court holding the appellant guilty of commission of offence of murder giving rise to this appeal.

3. Learned counsel for the appellant would argue that the impugned judgment of conviction and order of sentence is unsustainable in law. He would argue that merely because the appellant happened to be the husband and his wife was found dead in the house, it being a case of homicidal death, it could not be assumed without proof by clinching circumstantial evidence beyond reasonable doubt that it is the appellant and the appellant alone, who killed his wife. It is argued that the evidence of extra judicial confession is a weak evidence. Chidiyam Neelaiyya (PW1), in view of what has been stated in his cross-examination, is not reliable witness of extra judicial confession. The other two witnesses Talandi Ramchandram (PW2) and Pedam Narsingh (PW3) are those who have come out with their statement long after the incident. Further argument is that the very lodging of FIR apart from being delayed, is otherwise doubtful because

Talandi Ramchandram (PW2) has clearly deposed that he only speaks Telugu and report was lodged in the police station in Telugu only and all those who had accompanied, did not know Hindi and he himself does not know Hindi. The Investigating Officer (PW5) in his evidence, has nowhere stated, on what basis he recorded FIR in Hindi. He has clearly stated that Talandi Ramchandram (PW2) does not understand Hindi as also evidence of Chidiyam Neelaiyya (PW1) himself that he does not know Hindi. Further submission is that though, one of the prosecution witnesses says that when he reached the house of the deceased, he saw the appellant holding a blood stained knife in his hand but the knife is said to be recovered by the police from nearby jungle / bushes. That is otherwise an open place and not in exclusive possession of the appellant. The witnesses of memorandum and seizure have turned hostile and not supported the case of the prosecution. The FSL report of knife stained with blood is inconclusive because the group and origin of the blood has not been stated. It is also contended that recording of memorandum on 03/08/2003 at 16:30 is doubtful because the appellant has been arrested two hrs. thereafter and the Investigating Officer has nowhere stated in his evidence as to when the appellant was taken into custody. Therefore, it is contended that the case of the prosecution is concocted with regard to recording of memorandum and alleged recovery of knife at the instance of the appellant. Even appellant's clothes have not been seized. Thus, chain of circumstances cannot be said to be complete so as to require the appellant to explain how his wife died homicidal death, as required under Section 106 of the Evidence Act, 1872. In support of his submission, learned counsel for the appellant relied upon **Smt. Gargi v. State of Haryana, 2020 CrLJ 173 SC, Mohd. Azad @ Samin v. State of West Bengal, 2009 AIR SCW 752 and Joydeb Patra & ors. v. State of West Bengal, 2013 AIR SCW 2744.**

4. On the other hand, learned State counsel would argue that, though, there may be some doubt with regard to recording of FIR in Hindi, Talandi Ramchandram (PW2), the FIR informant and other witnesses clearly say that when they reached the house of the

appellant, the appellant gave extra judicial confession in the evening itself and the FIR was lodged next day in the police station regarding this incident which means that whatever was stated by the witnesses, was correctly recorded in the police station. Therefore, merely because, the FIR was in Hindi, version of the prosecution may not be doubted. Learned State counsel would further argue that the evidence of Chidiyam Neelaiyya (PW1) with regard to all aspects except extra judicial confession is uncontroverted that when he left the house of the appellant in the morning, the appellant was in the house and when he came back, the appellant threatened him to kill, due to which, he had run away. One of the prosecution witnesses also says that when he reached the house of the appellant, the appellant was holding a knife in his hand. This was the incident of 01/08/2003 in the evening, FIR was lodged next day in the morning and post mortem was conducted on 03/08/2003 and only when report of homicidal death was received, the police came in action and took the appellant in custody. By that time, the appellant had already hidden the knife in the jungle / bushes, nearby / behind his house. That explains how on 01/08/2003, the appellant was seen with a knife in his hand which was later on recovered by the police on 03/08/2003 and there is no discrepancy in this regard. Further submission is that the recovery of knife was made from a place known to the accused alone. The knife was found having contained blood and in these circumstances, the appellant ought to have atleast explained how blood was found on the knife. Though independent witnesses have not supported the case of the prosecution, they have admitted their signature on the memorandum and seizure memo and in any case, the Investigating Officer has clearly deposed regarding he having prepared memorandum and effected seizure of knife at the instance of the appellant and there is no reason why Investigating Officer would falsely implicate him. The knife having been found stained with blood also supports the evidence of the Investigating Officer regarding recovery. According to learned State counsel, the appellant gave false explanation in his examination under Section 313 CrPC regarding the manner in which his wife died. As the deceased sustained number of injuries including stab injuries, caused by knife like object, the explanation offered by the

appellant in his examination that the deceased sustained injuries due to fall, is a false explanation providing an additional link in the case against the appellant. It is also submitted that this false explanation itself shows that the appellant was at home with his wife and thereafter, there is no evidence to show that the appellant was not in his house at the relevant time of commission of offence.

5. As there is no eye witness, conviction of the appellant is founded only on circumstantial evidence. Talandi Ramchandram (PW2) had deposed regarding lodging of FIR. He states that when he went to the house of the appellant, the appellant confessed that as his wife used to go outside frequently and was not staying at home, he killed her with the help of knife whereafter, he, along with Kotwar and Sarpanch went to the police station and he lodged report in the police station and has also proved his signature in FIR (Ex.P/1). In his cross-examination, however, it has been elicited that this witness does not know Hindi and only knows Telugu and that he had given report in Telugu. He has also admitted that the SHO did not know Telugu and all those, who had accompanied him to lodge FIR, were also Telugu speaking and did not understand Hindi. On this discrepancy, learned counsel for the appellant has stressed that the very lodging of FIR itself is doubtful and smacks of false implication.

True it is that there is discrepancy as stated above, However, the evidence of Talandi Ramchandram (PW2) is that when he went to the house of the deceased, there the appellant was present and the appellant confessed that he had killed his wife. This evidence of this witness has remained uncontroverted. What has been recorded in the FIR is that this witness was informed by Chidiyam Neelaiyya (PW1) that his mother Channu Bai was murdered by her husband, whereafter, this witness along with Ex-Sarpanch and Kotwar came to the house of the appellant and there, they saw that dead body was covered with a blanket. According to him, report was lodged in the police station regarding death of Channu Bai based on the information given to this witness by Chidiyam Neelaiyya (PW1), son of the deceased. If this witness, prior to lodging of report, had met with the appellant in his house and the appellant had confessed before

him that he killed his wife, this fact ought to be stated by him in the FIR but it is not there. The only basis for lodging of report in the police station is the information given by Chidiyam Neelaiyya (PW1), son of the deceased and the appellant. Therefore, what appears is that though Talandi Ramchandram (PW2) went to the police station and gave certain information, the police recorded the information in Hindi on their own understanding which has not been explained by him. Investigating Officer (PW5) states that he recorded FIR as stated to him by Talandi Ramchandram (PW2)

It is, however, important to note that when after the incident, the villagers gathered in his house, Talandi Ramchandram (PW2) was informed regarding the incident and thereafter, Sarpanch, Kotwar and others had gone to police station to lodge report.

6. One of the important circumstances of the case that dead body of Channu Bai was found lying in her own house which is clearly proved from the inquest report Ex.P/3 proved by witnesses of inquest who have clearly stated regarding recovery of dead body in the house itself. It is not a case that dead body was found elsewhere. On this aspect, there is no doubt that Channu Bai was found dead in her own house.

7. Homicidal death of Channu Bai is not substantially in dispute because the evidence of the Dr. J.K.Badariya (PW6) clearly proves that the deceased died due to excessive bleeding as a result of as many as four injuries caused by sharp object in the chest as also on the back near the spine.

8. Presence of the appellant in the house is an important circumstance. Chidiyam Neelaiyya (PW1), appellant's own son, has stated that after death of his biological father, the appellant (his uncle) married his mother and there used to be quarrel between the appellant and his mother. He has deposed that the date on which, his mother sustained injury and died, on that day, he had taken his cattle for grazing and that time, the appellant and the deceased were staying in the house. When he came in the evening and was about to enter the house, the appellant stated that he killed his

mother and he would also be killed and chased him, so he ran away and went to the house of Sarpanch and informed about the incident whereafter kotwar, patel were also informed and then, all of them came to see the dead body. However, in his cross-examination, it has been elicited that the appellant had not disclosed to him regarding he having killed his mother but later on, when he was taken to the police station and assaulted, then he confessed. However, the evidence of this witness except the aspect of extra judicial confession has remained uncontroverted and that is when this witness left the house, the appellant and the deceased were staying in the house and when he came back, the appellant threatened him to kill this witness due to which, he ran away. Thus, presence of the appellant in the house is firmly established. Moreover, the conduct of the appellant is that when Chidiyam Neelaiyya (PW1) was about to enter the house, he was threatened to kill and even chased. The doubtful evidence of extra judicial confession by the appellant, in any case, is corroborated from the statement of Chidiyam Neelaiyya (PW1) from which the appellant having made extra judicial confession that he had killed his wife has been proved. Talandi Ramchandram (PW2) has stated that when he went to the house and enquired, the appellant stated that he was aggrieved by the conduct of his wife that she was not staying in his house and remaining outside due to which, he killed her. In so far as the evidence of extra judicial confession is concerned, the witness has remained firm and suggestion that the appellant informed some other persons having killed his wife, is not correct.

Pedam Narsingh (PW3) is another witness who has also clearly stated that when he went to the house of the appellant, the appellant stated that he had killed his wife with the help of knife. He had denied suggestion that upon being enquired, he had stated that he had not killed his wife.

9. From the evidence of the aforesaid witnesses, the prosecution has proved beyond reasonable doubt that the appellant confessed before Chidiyam Neelaiyya (PW1), Talandi Ramchandram (PW2) and Pedam Narsingh (PW3) that he had killed his wife. There is nothing in the evidence of these witnesses that such confession was

involuntarily extracted by any threat. The confession, therefore, was voluntary.

10. As far as recovery of knife is concerned, the prosecution case appears to be doubtful but what is important is that Talandi Somaiyya (PW4) has clearly stated that when he went to the house of the deceased, soon after the incident in the evening, he, not only saw dead body in the house with injury apparent, villagers were also present and at that time, the appellant was holding a knife in his hand. The evidence of Pedam Narsingh (PW3), however, shows that when the police came, the appellant disclosed that he had kept the knife near the dead body. He has also admitted suggestion that the knife was lying near the dead body.

It is, however, to be noted that the appellant seen with knife and knife lying near the dead body, is an incident of the evening of 01/08/2003 whereas the appellant was taken into custody and his memorandum is said to have been recorded only on 03/08/2003 followed by recovery of knife from nearby bushes / jungle near the house of the appellant. The independent witnesses have not supported the case of the prosecution regarding recording of memorandum and recovery of knife, though Investigating Officer has stated regarding the same but then, recovery of knife at the instance of the appellant becomes doubtful. But there is incriminating circumstance proved against the appellant that while Talandi Somaiyya (PW4) reached his house in the evening after the incident, the appellant was found holding a knife in his hand.

11. The appellant has given false explanation in his statement under Section 313 CrPC that his wife sustained injuries because of fall. The nature and number of injuries which have been found on the body of the deceased, completely rule out death by mere fall. It is not a case of simple injury but multiple stab injuries. Nothing has been elicited in the cross-examination of the doctor that such injury, as stated under Section 313 CrPC statement of the accused, could be caused by a simple fall on the ground.

12. Learned counsel for the appellant laid stress on the aspect that there is no specific evidence as to at what time, the appellant was taken into custody and therefore,

recording of memorandum before arrest becomes doubtful. Since we have already held that recovery of knife has become doubtful, we need not go into this issue any further. Moreover, though there is also some doubt with regard to recording of FIR at the instance of Talandi Ramchandram (PW2), at the same time, nothing has been elicited in the evidence of Talandi Ramchandram (PW2) that without any basis, report was lodged by him to falsely implicate the appellant.

Though recovery of knife from the bushes at the instance of the appellant is found doubtful, the evidence of Talandi Somaiyya (PW4) that the appellant was holding a knife in his hand and that it was lying near the dead body and the knife seized by the police having been sent to FSL, it contained blood, is relevant and cannot be ignored.

Learned counsel for the appellant has relied upon decision of the Supreme Court in the case of Smt. Gargi (**supra**) highlighting that fault and defect in the present case, is fatal to the case of the prosecution and the appellant may be released by giving him benefit of doubt. It is not that fault or defect in the investigation so as to grant benefit of doubt. What is required to be seen is whether the evidence led by the prosecution, if proved, leads to conviction.

Though learned counsel for the appellant is correct in submitting that the accused would be called upon to explain only those facts which are within his special knowledge as required under Section 106 of the Evidence Act, in the present case, number of incriminating circumstances forming complete chain have been found proved and therefore, the appellant was required to explain how his wife died homicidal death, having sustained multiple stab injuries on vital parts of the body which the appellant has failed to explain. For that reason, the decisions in the case of **Mohd. Azad @ Samin** (*supra*) and **Joydeb Patra** (*supra*) are distinguishable on facts.

13. In view of the above consideration, circumstantial evidence which are proved against the appellant by the prosecution are as below -

- a) The appellant and the deceased were in the house.
- b) The deceased was found dead in the house having sustained multiple stab

injuries which was homicidal in nature.

- c) The appellant was found holding a knife in his hand soon after the incident.
- d) The appellant gave false explanation providing an additional link.
- e) Extra judicial confession made to Chidiyam Neelaiyya (PW1), Talandi Ramchandram (PW2) and Pedom Narsingh (PW3).
- f) When Chidiyam Neelaiyya (PW1), his son, entered the house, the appellant threatened to kill him and chased him.
- g) Blood stains found in the soil collected from the spot and the knife.

In the considered opinion of this Court, the aforesaid chain of circumstances fully supports the case of the prosecution and sufficient to draw an inference that in all probability, it is the appellant and the appellant alone who must have killed his wife.

14. At the end, learned counsel for the appellant argued that in the present case, the appellant has undergone more than 18 years of jail sentence by now and therefore, in view of the provisions contained in Rule 4 of MP / CG Prisoners' Release on Probation Rules, 1964 (for short 'the Rules of 1964') as amended in the year 2021, the appellant ought to be given benefit thereof having completed more than 14 years of jail sentence and release.

In this regard, we would not like to comment whether the appellant is entitled to be released under Rule 4 of the Rules of 1964 but taking into consideration the submission and the provisions contained in Rule 4 of the Rules of 1964 as amended in the year 2021, the appellant's claim for release shall be considered expeditiously by the competent authority and decision thereof shall be taken at the earliest.

15. In the result, the appeal is dismissed. A copy of this order be forwarded to Superintendent, Central Jail, Jagdalpur.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge