



A.F.R.

(20)

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**Cr. Appeal No. 824/1993**

**Brijmohan Cheek** <sup>Son of</sup> **Mukund Cheek**  
10.11.05

**Vs.**

**State of Madhya Pradesh (now Chhattisgarh)**

**JUDGMENT FOR CONSIDERATION**

Sd/-  
Dilip Raosaheb Deshmukh  
Judge

**Hon'ble Shri Fakhruddin, Acting Chief Justice**

Sd/-  
Ag. Chief Justice

Post for 28 -10-2005

Sd/-  
Fakhruddin  
Judge

(21)

**HIGH COURT OF CHHATTISGARH AT BILASPUR****Cr. Appeal No.824/1993**

*son of*  
Brijmohan Cheek *@* Mukund Cheek  
*10-15-05*  
Vs. *10-15-05*

State of Madhya Pradesh (now Chhattisgarh)

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**CORAM: - HON'BLE SHRI FAKHRUDDIN, ACTING CHIEF JUSTICE  
& HON'BLE SHRI DILIP RAOSAHEB DESHMUKH, J.**

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**PRESENT: -**

Shri H.P. Agrawal, Counsel for the appellant.

Shri G.K. Beriwal, Deputy Advocate General for the State.

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**J U D G M E N T**

(Delivered on 28-10-2005)

**Per Dilip Raosaheb Deshmukh, J.**

1. This appeal is directed against the Judgment dated 23-03-1993 delivered by Additional Sessions Judge, Jashpur Nagar, District-Raigarh in Sessions Case <sup>179</sup> No. 139/1992 whereby the appellant was convicted under Section-302 of I.P.C. for committing murder of his wife Mst. Khairi Bai and was sentenced to undergo imprisonment for life.
2. It is not disputed that the deceased Mst. Khairi Bai was the wife and Bodhan Ram PW-3 is the son of the appellant.
3. Briefly stated the prosecution story is that on 03-05-1992, the appellant along with Mst. Khairi Bai and his two minor daughters Budhmani and Maniyaro was going to pluck

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vegetables from the forest. On way, Mst. Khairi Bai told the appellant that she would marry another person. This annoyed the appellant to such an extent that he assaulted Mst. Khairi Bai by a sharp edged Tangia on the left side of Head near the ear lobule. Mst. Khairi Bai succumbed to the injury. Budhmani came to the house and informed Bodhan Ram PW-3 about the incident. Bodhan Ram PW-3 reached the place of occurrence and brought the injured Mst. Khairi Bai home. On being asked by Ghansai Ram PW-1, Rupa PW-2 and Ram Prasad PW-4, the appellant made an extra judicial confession that he had killed Mst. Khairi Bai since she wanted to marry another person. Bodhan Ram PW-3 lodged the F.I.R. Ex.P-5 in Police Station-Kangabel situated 25 kilometers from the place of occurrence i.e. Village-Nonapani. Dr. Y.K. Toppo PW-5 who conducted the postmortem examination on Mst. Khairi Bai found an incised wound over left side of head horizontal in situation extending from upper part of the left ear lobule towards the left eye  $1 \frac{1}{2}$  " x  $1 \frac{1}{2}$  " x  $\frac{1}{2}$ " on the left temporal and splenoid bone along with left parietal bone having got fractured. The wound was clotted with blackish brown blood. There was a depressed fracture on the left temporal splenoid and left parietal bone. Internal haemorrhage of brain was present. Dr. Toppo opined that the death was due to shock and caused by internal haemorrhage of brain resulting from incised wound over left side of the head within 24 to 36 hours of examination and was homicidal in nature. One Tangia left by the appellant was seized from Rupa PW-2. After completion of investigation, the appellant was prosecuted under Section-302 of the I.P.C. for committing murder of his wife Mst. Khairi Bai.

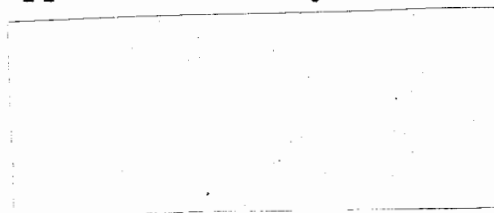
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4. The appellant abjured the guilt, pleaded innocence and led no evidence in defence. The trial Judge relied upon the evidence of Ghansai Ram PW-1, Rupa PW-2 and Ram Prasad PW-4 relating to extra judicial confession of the appellant, convicted the appellant under Section-302 of I.P.C. and awarded the sentence as aforesaid.
5. Learned counsel for the appellant has assailed the conviction of the appellant on the ground that there is no legal and reliable evidence on record for proving the guilt of the appellant under Section-302 of the I.P.C. So far as the evidence of Ghansai Ram PW-1, Rupa PW-2 and Ram Prasad PW-4 relating to extra Judicial confession made by the appellant is concerned, it shows that it was not voluntary and was made by the appellant on being scolded by the villagers. The evidence relating to extra judicial confession could not therefore be relied on. Learned counsel has placed reliance on **Jugla alias Ramdas Vs. State of Madhya Pradesh** reported in **2000 (1) M.P. High Court Today, 318** for above proposition. The weapon of offence was seized, not from the appellant but from Rupa PW-2. There was no evidence relating to presence of human blood either on the clothes of the appellant or on the weapon of offence alleged to have been seized from Rupa PW-2. Eye-witnesses Maniyaro aged 10 years and Budhmani aged 6 years who were with the deceased at the time of occurrence were not examined by the prosecution for which an adverse inference ought to have been drawn. Even the F.I.R. Ex.P-3 had not been proved since Bodhan Ram PW-3 the informant had denied to have made the same. Thus, there was no evidence to connect the appellant with the murder of Mst. Khairi Bai.

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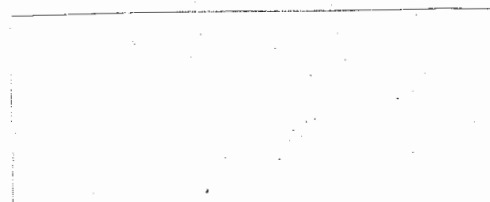
On the other hand, the Deputy Advocate General for the State has argued in support of the judgment of the Trial Court.

6. We have considered the rival contentions and have also perused the record. So far as the evidence of Ghansai Ram PW-1, Rupa PW-2 and Ram Prasad PW-4 relating to extra judicial confession made by the appellant is concerned, it has to be tested on the touchstone of the principles laid down by the Hon'ble Apex Court in the Case of **Gura Singh Vs. State of Rajsthan** reported in (2001)-2-SCC-205 wherein it was held by the Apex Court that if extra judicial confession was made voluntarily and not obtained by coercion, inducement or promise of favour it could form the sole basis of conviction and corroboration would be required only by way of abundant caution.
7. We have scanned the prosecution evidence in the light of above principle. Ghansai Ram PW-1, Rupa PW-2 and Ram Prasad PW-4 have deposed that on being asked the appellant had made an extra judicial confession that since his wife Khairi Bai wanted to marry another person, he killed her. Their testimony is consistent, trustworthy and wholly unrebutted in cross-examination. It has emerged in cross-examination of Ram Prasad PW-4 that on being scolded the appellant had without hesitation stated that he killed Khairi Bai because she wanted to re-marry. There is not even an iota of evidence which would be suggestive of any undue influence or promise of favour or any threat given to the appellant for making the confession. Thus, the mere fact that the villagers had scoldingly asked the appellant as to why



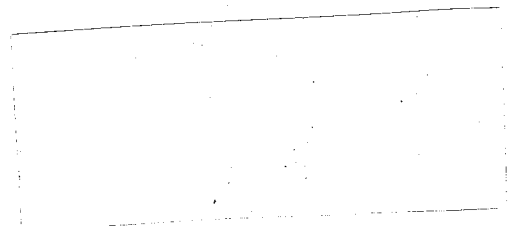
did he kill Mst. Khairi Bai would not render their testimony unworthy of credit. The case of **Jugla alias Ramdas Vs. State of Madhya Pradesh** reported in **2000 (1) M.P. High Court Today, 318** cited by learned counsel for the appellant would therefore be of no assistance to the appellant.

8. Bodhan Ram PW-3 testified that the appellant along with his mother Khairi Bai and sisters had proceeded to Koinar for plucking vegetables and Budhmani had soon after returned to inform that his mother was lying unconscious. It also clearly shows that the appellant was with Mst. Khairi Bai at the time of occurrence. The F.I.R. lodged by Bodhan Ram PW-3 has been proved by Sub-Inspector A.K. Khan PW-7 which implicates the appellant in the murder of Mst. Khairi Bai. We have described the injuries found by Dr. Toppo PW-5 on the deceased Mst. Khairi Bai during postmortem examination and the medical opinion in para-3 (Supra). It clearly establishes that death of Mst. Khairi Bai was homicidal in nature.
9. During arguments, it was also contended by the learned counsel for the appellant that the appellant was drunk and had inflicted the fatal blow on Mst. Khairi Bai by means of a tangia upon grave and sudden provocation by Mst. Khairi Bai who expressed a desire to marry another person. In support of this learned counsel for the appellant has placed reliance on **Virsa Singh Vs. State of Punjab** reported in **A.I.R. 1958 Supreme Court -465**, **Victor @ Kaloo Vs. State** reported in **1966-JLJ-587** and **Thankachan Vs. State of Kerala** reported in **A.I.R.-2005-S.C.W.-4577**. However, in the entire evidence led by the prosecution, we do not find that Mst. Khairi Bai had expressed a desire to



remarry while she along with the appellant was going to pluck vegetables at the time of occurrence. We do not find any such fact even in the statements of Budhmani and Maniyaro recorded under Section-161 of Cr.P.C. Thus, the citations relied on do not apply to the facts of the present case and the arguments advanced by the learned counsel for the appellant cannot be sustained. The appellant has also not given any explanation in his examination under Section 313 of Cr.P.C. regarding the injury sustained by Mst. Khairi Bai. No motive has been imputed by the appellant to Ghansai Ram P.W. 1, Rupa P.W. 2 and Ram Prasad P.W. 4 to make an attempt to falsely implicate him.

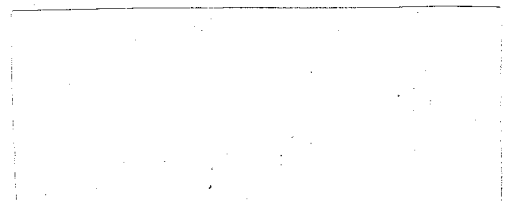
10. On a careful consideration of the evidence adduced by the prosecution, we find that the evidence regarding the extra judicial confession made by the appellant before Ghansai Ram P.W. 1, Rupa P.W. 2 and Ram Prasad P.W. 4 is consistent, wholly trustworthy and was rightly relied on by the learned trial Judge for convicting the appellant under section 302 of IPC. It was also argued by the learned counsel for the appellant on the basis of narrations in the F.I.R. Ex.P-3 that the appellant was heavily drunk at the time of occurrence and was unable to understand the consequences of his act. However, although in the F.I.R. Ex.P-3, the factum of the appellant consuming liquor at home before proceeding to Koinar with the deceased is mentioned yet there is no evidence on record to corroborate it. On the contrary during cross-examination of Ram Prasad P.W. 4 it has emerged that the appellant was not drunk at the time of making the extra judicial confession. Thus, the arguments advanced by the learned counsel for the appellant cannot be accepted.





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11. Having considered the prosecution evidence in its entirety, in our considered opinion the weapon used by the appellant, the vital part of the deceased on which the fatal injury was inflicted and the manner in which the sharp side of the Tangia was struck on the vital part, leave no doubt that the appellant had intentionally committed murder of Mst. Khairi Bai in cold blood. Learned counsel for the appellant placed reliance on Hemraj Vs. State of Haryana reported in **A.I.R.-S.C.W.-2005-1885** while contending that non-examination of independent eye-witnesses Budhmani and Maniyaro gives rise to an adverse inference against the prosecution and creates a serious doubt upon the prosecution case. It is true that Budhmani & Maniyaro who were child witnesses were not examined by the prosecution but that by itself would not be sufficient to discard the reliable evidence of Ghansai Ram PW-1, Rupa PW-2 and Ram Prasad PW-4 relating to the extra judicial confession made by the appellant. In case of Seeman vs. State By Inspector of Police reported in **2005 A.I.R. SCW 2705**, the Apex Court has held that non-production by the prosecution of independent witnesses named in the F.I.R. by itself cannot be a circumstance to discredit other reliable evidence led by the prosecution.
12. Learned counsel for the appellant also placed reliance on Sukh Lal Vs. State of Madhya Pradesh reported in **1998(2) Vidhi Bhaswar-257**, K.M.Nanavati Vs. State of Maharashtra reported in **A.I.R.-1962-Supreme Court-605** and Shivappa Buddappa Kolkar Vs. State of Karnataka and others reported in **Supreme Court case-2005(Criminal) 1993** in support of the arguments that the



appellant had caused the death of Mst. Khairi Bai upon grave and sudden provocation. However, in the facts and circumstances of the case, there is nothing on record to show that the appellant acted upon grave and sudden provocation. There is nothing on record to show that the deceased had while accompanying the appellant to Koinar for plucking vegetables had mentioned that she wanted to re-marry another person. No explanation whatsoever has been offered by the appellant in his examination under section-313 of Cr.P.C. for the injuries sustained by Mst. Khairi Bai. Thus, the citations relied on do not come to the aid of the appellant at all.

13. Having thus scanned the evidence led by the prosecution in its entirety, we are of the considered opinion that the conviction of the appellant under Section 302 of IPC for committing murder of Mst. Khairi Bai and the sentence awarded thereunder are well founded.
14. In the result, the appeal which has no substance, fails and is accordingly dismissed.

Sd/-  
Ag. Chief Justice

Sd/-  
Dilip Raosaheb Deshmukh  
Judge

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

Cr-A-824/93

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## आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
Gowri	<p><b><u>Division Bench :</u></b></p> <p><b><u>Hon'ble Shri Fakhruddin, Ag.C.J. &amp;</u></b> <b><u>Hon'ble Shri Dilip Deshmukh, J</u></b></p> <p><b><u>10-11-2005</u></b></p> <p>None appears for the appellant.</p> <p>Shri Akhil Mishra and Shri Ravindra Agrawal, Panel Lawyers for the State.</p> <p>It is noted that there are some typographical errors in cause title and paragraph 1 of the judgment delivered by this Court on 28-10-2005 in Cr.A.No.824/1993.</p> <p>Accordingly, in the cause title of the judgment the word "@" is omitted and in place of "@", words "Son of" be read. In paragraph 1 also sessions case No. "139/1992" is omitted and in place of "139/1992" the sessions case number be read as "179/1992". Necessary corrections are made and read by us.</p> <p>Corrected certified copy of this judgment be supplied and copy of the same be also forwarded to all the concerned.</p> <p>Sd/- Ag. Chief Justice</p>	<p>Sd/- Dilip Raosaheb Deshmukh Judge</p>

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