

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No.773/2002

APPELLANT
(In jail)

Ghasiram s/o Manglu aged about
30 years, R/o Tumdiguda, PS
Bartur, District Dantewada (CG)

VERSUS

RESPONDENT

State of Chhattisgarh, Through PS
Bartur

**CRIMINAL APPEAL U/S 374 (2) OF THE CODE OF CRIMINAL
PROCEDURE**

Appearance:

Shri Vinod Kumar Sharma, counsel for the appellant.

Shri Sandeep Yadav, Dy. Government Advocate for the
State.

Division Bench:-

Hon'ble Shri T.P. Sharma &

Hon'ble Shri R.L.Jhanwar, JJ

ORAL JUDGMENT

(30.11.2010)

Per T.P.Sharma, J.

Challenge in this appeal is to the judgment of conviction and order of sentence dated 23.5.2002, passed by the Second Additional Sessions Judge, Bastar at Jagdalpur (CG) in S.T.No.78/2002, whereby and whereunder the learned Additional Sessions Judge, after holding the appellant guilty for commission of culpable homicide amounting to murder of Jhunkibai and concealing the evidence of criminal case, convicted the appellant under Sections 302 and 201 of the IPC and sentenced for life imprisonment and R.I. for 1 year respectively.

2. The conviction is impugned on the ground that without there being any iota of evidence sufficient for conviction of the

appellant, the learned Second Additional Sessions Judge has convicted and sentenced the appellant as aforementioned and thereby committed illegality.

3. As per case of prosecution, on fateful day of 2.1.2002, at about 10.00 am, appellant was working in his field along with his wife- Jhunkibai. Kopebai (PW-8) was also working near the field of the appellant. Appellant assaulted his wife by spade and caused her death and thereafter, he dragged dead body of Jhunkibai and buried it after digging a ditch. On 4.1.2002 appellant was going to Police Station at that time, Banshilal was also going to Police Station then on the way, the appellant made extra judicial confession before Banshilal that he has killed his wife and now is going to Police Station. Banshilal (PW-4) narrated the incident to father of the deceased Madvi Nehru (PW-5), who lodged the FIR vide Ex. P/9 and merged intimation vide Ex. P/8. The Investigating Officer left for the scene of occurrence and after summoning witnesses vide Ex. P/13, inquest over the dead body was prepared vide Ex. P/14. Dead body was sent for autopsy to P.H.C. Gidam vide Ex. P/15, where Dr. H.L. Thakur (PW-1) conducted autopsy vide Ex. P/1 and found following injuries :

- i. One abrasion over abdomen of 5 x ½"
- ii. One incised wound over nose of 3 x 1"
- iii. Left eye was badly damaged.
- iv. Nasal bone was found fractured.
- v. Temporal bone was found fractured.

Mode of death was shock due to excessive external and internal bleeding and death was homicidal in nature. Patwari prepared spot map vide Ex. P/3. During the course of investigation, appellant was taken into custody. He made disclosure statement of spade vide Ex. P/11; same was recovered at the instance of the

appellant vide Ex. P/10. Plain soil and blood stained soil was recovered from the spot vide Ex. P/12. Sealed clothes of the deceased were seized vide Ex. P/7. Seized articles were sent for chemical examination vide Ex. P/19. Statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (in short the Code).

4. After completion of investigation, charge sheet was filed before Chief Judicial Magistrate, Dantewada, who in turn committed the case to the Court of Sessions, Jagdalpur, from where, the learned Second Additional Sessions Judge received the case on transfer for trial.

5. In order to prove the guilt of the accused/appellant, prosecution examined as many as 12 witnesses. Accused was examined under Section 313 of the Code, in which, he denied the circumstances appearing against him, innocence and false implication in crime in question was claimed.

6. After affording opportunity of hearing to the parties, the learned Second Additional Sessions Judge has convicted and sentenced the appellant as aforesaid mentioned.

7. We have heard Shri Vinod Kumar Sharma, learned counsel for the appellant and Shri Sandeep Yadav, learned Dy. Government Advocate for the State, perused the judgment impugned and record of the trial Court.

8. Learned counsel for the appellant vehemently argued that evidence of Kopebai (PW-8) does not inspire confidence and is trustworthy on the ground that she has not seen the incident and she has not stated the incident to any other person, which was not possible and natural. Likewise, evidence of Banshilal (PW-4) also does not inspire confidence relating to extra judicial

confession made by the appellant to him. Therefore, in absence of any other evidence, conviction of the appellant under Section 302 and 201 of the IPC is not sustainable under the law.

9. On the other hand, learned counsel for the State opposed these arguments and submitted that conviction of the appellant is based on direct evidence of Kopebai (PW-8) and the extra judicial confession made by the appellant before Banshilal (PW-4); evidence of both the witnesses inspires confidence and is trustworthy. He submitted that evidence of Kopebai (PW-8) cannot be discarded only on the ground that she has not stated the incident to any other person. She has explained that after the incident she was in fear, therefore, she has not narrated the incident to anybody, which appears to be reasonable.

10. In order to appreciate the arguments advanced on behalf of the parties, we have examined the evidence adduced on behalf of the prosecution.

11. In the present case, homicidal death as a result of fatal injury found over the body of the deceased has not been substantially disputed on behalf the appellant, on the other hand, it is established by the evidence of Dr. H.L. Thakur (PW-1) and autopsy report, Ex. P/1 and death was homicidal in nature.

12. As regards complicity of the accused/appellant in crime in question is concerned, conviction of the appellant is based on direct evidenced of Kopebai (PW-8) and the extra judicial confession made before Banshilal (PW-4). Kopebai (PW-8) has deposed in her evidence that at the time of incident she was working near the place of incident. The appellant assaulted his wife by a spade and when she died, appellant dragged the dead body in his field and dug a ditch and buried the dead body of

Jhunkibai in the ditch. After the incident she was in fear, therefore, she has not narrated the incident to anybody.

13. Defence has cross examined this witness at length and she has specifically deposed that she has seen the incident, but due to fear she has not narrated the incident to any other person. She further deposed that she has stated the incident to Police. Her conduct is obvious natural. Banshilal (PW-4) has deposed that while he was going to Police Station for recording the name of his children, the appellant met him on the way and made extra judicial confession before him that he has killed his wife. He also deposed that the appellant told him that he shall intimate the incident to his father in law i.e. Madvi Nehru then he narrated the incident to Madvi Nehru, father of the deceased, and appellant went to Police Station. In cross examination he has admitted that firstly the appellant went to Police Station. He denied the suggestion that the appellant has not made any extra judicial confession to him. FIR Ex. P/9 recorded at the instance of Madvi Nehru (PW-5) revealed that the factum of extra judicial confession was narrated to him by Banshilal (PW-4) and on the basis of such information, he has lodged the FIR. Evidence of Kopebai (PW-8) and Banshilal (PW-4) inspires confidence and is trustworthy. After appreciating the evidence available on record, the learned Second Additional Sessions Judge has convicted and sentenced the appellant as aforesaid mentioned. Evidence of Kopebai (PW-8) clearly revealed that the appellant has committed culpable homicide amounting to murder of his wife and has concealed the evidence by burying it in a ditch, therefore, conviction and sentence of the appellant under Section 302 and 201 of the IPC is sustainable under the law.

14. On close scrutiny of the evidence, we do not find any illegality or infirmity in the judgment impugned. Consequently, the appeal being devoid of merits is liable to be dismissed and it is hereby dismissed.

sm
Sd/-
T.P. Sharma
Judge

Sd/-
R.L. Jhanwar
Judge