



2026:CGHC:23986-DB

NAFR

**HIGH COURT OF CHHATTISGARH AT BILASPUR****CRA No. 1156 of 2016**

Mukesh Agriya @ Guddu S/o Sadu Agriya Aged About 28 Years R/o Near Bus Stand Dipadihkala, Thana Shankargarh, District Balrampur Ramanujganj, Chhattisgarh.

... **Appellant****versus**

State Of Chhattisgarh Through Police Station Shankargarh, District Balrampur Ramanujganj, Chhattisgarh.

... **Respondent**

(Cause-title taken from Case Information System)

|                      |   |                                                                           |
|----------------------|---|---------------------------------------------------------------------------|
| For Appellant        | : | Mr. Deepak Jain, Advocate along with Mr. Sudhanshu Kumar Singh, Advocate. |
| For Respondent/State | : | Mr. H.A.P.S. Bhatia, Panel Lawyer                                         |

**Hon'ble Shri Ramesh Sinha, Chief Justice****Hon'ble Shri Ravindra Kumar Agrawal, Judge****Judgment on Board****Per Ramesh Sinha, Chief Justice****16/06/2026**

1. Mr. Deepak Jain, Advocate/Panel Lawyer appointed by Chhattisgarh High Court Legal Services Committee, present along with Mr. Sudhanshu Kumar Singh, Advocate, states that he has filed this present jail appeal on behalf of the appellant and as a

bailable warrant was issued vide order of this Court dated 23.04.2026, pursuant to which, the appellant is present in person before this Court today.

2. His presence be marked.
3. Mr. Sudhanshu Kumar Singh, Advocate, states that he has to file Vakalatnama on behalf of the appellant today itself, who is counsel on behalf of the appellant. He is allowed to do so and also permitted to appear on behalf of the appellant. Mr. Jain, is directed to supply the paper book of the case to Mr. Singh, who is counsel on behalf of the appellant.
4. This criminal appeal under Section 374(2) of the Code of Criminal Procedure, 1973 (for short, 'CrPC') is directed against the judgment of conviction recorded for offence under Section 302 of the Indian Penal Code, 1860 (for short, 'IPC') and sentence awarded i.e. imprisonment for life and fine of ₹500, in default of payment of fine to further undergo rigorous imprisonment for fifty days by the Additional Sessions Judge Ramanujganj, District - Balrampur-Ramanujganj vide impugned judgment dated 11.07.2016 in Sessions Case No.01/2012.
5. The case of the prosecution, in brief, is that the house of the accused/appellant Mukesh and deceased Kamla is adjacent to the house of the complainant Vinita (PW-3). The deceased's husband and the accused Mukesh were frequently involved in quarrels. On 06.10.2011, at about 8:30 pm, the complainant,

Vinita, was sitting in the shade in front of her house with Rajmaniya (PW-5) and Malli Agariya (PW-4). The sound of a quarrel between the accused and Kamla (now deceased) was heard. Accused Mukesh was dragging the deceased Kamla by her hair towards the complainant's house. When they reached the complainant's house, the complainant, Rajmaniya, and Malli, frightened, went inside and closed the door. After a short while, they opened the door and looked outside to find the deceased Kamla lying in front of the complainant's house, and Kamla was dead. That very night, the complainant went to Sarpanch Ramesh (PW-9) and told him about the incident. Further, the next morning, the complainant (PW-3) filed a report to this effect at Police Station Shankargarh. Based on this, the police registered Merg intimation (Ex.P-8) and FIR (Ex.P-9) against the accused and initiated an investigation. As part of the investigation, the Shankargarh police went to the spot and prepared a spot map (Ex.P-4). After summoning witnesses and preparing an inquest, postmortem examination (Ex.P-20) was conducted at the Government Hospital, Shankargarh. The accused/appellant's memorandum (Ex.P-5) was recorded in presence of witnesses. Subsequently, at the accused's instance, the clothing worn by the accused at the time of the incident was seized. Pieces of the bangle, blood-stained and plain soil, and a large stone weighing approximately ten kilograms were seized from the spot, as per seizure memo Ex.P-6 and Ex.P-7. Statements of the witnesses

were recorded. The accused was duly arrested (Ex.P-14), and his family was informed of his arrest. After completing the necessary investigation, a charge sheet was filed against the accused in the Court of Judicial Magistrate First Class, Ambikapur, on 02.12.2011, under Section 302 of the Indian Penal Code.

6. In order to prove the prosecution case, the prosecution examined as many as 13 witnesses, namely: Phallu @ Kallu (PW-01), Shiv Lal (PW-02), Vinita (PW-03), Smt. Malli (PW-04), Smt. Rajmaniya (PW-05), Karinath (PW-06), Ramdhan Aarmi (PW-07), Ramgovind Pandey (PW-08), Ramesh Kumar (PW-09), M.L. Shukla (PW-10), Dr. Jagrani Lakara (PW-11), Jagjivan Bhagat (PW-12) and Govind Ram Rathiya (PW-13) and exhibited 24 documents as Exhibit P-01 to Exhibit P-24.
7. After completion of prosecution evidence, the accused was examined under Section 313 of the Cr.P.C. He was asked a total of 155 questions, in response to which he denied all allegations, claimed false implication, and asserted his innocence.
8. The learned trial Court, upon appreciation of oral and documentary evidence available on record, by its judgment dated 11.07.2016, held the appellant guilty for offence under Section 302 of the IPC finding the motive established for said offence and he has made extra-judicial confession to Ramgovind Pandey (PW-8) and further the learned trial Court found that on the night of 06.10.2011, the accused/appellant went to the house of the deceased Kamla, the accused started dragging Kamla by holding

her hand in front of witness Phallu @ Kallu (PW-1), Witnesses, Vinita (PW-3), Smt. Malli (PW-4) and Rajmaniya (PW-5) witnessed the accused dragging Kamla by her hair and accordingly, proceeded to convict the appellant for the aforesaid offence and sentenced him as aforementioned.

9. Mr. Sudhanshu Kumar Singh, learned counsel for the appellant, would submit that the prosecution has failed to bring home the offence under Section 302 of the IPC beyond reasonable doubt as the prosecution witnesses have not seen the appellant committing assault/murder of the deceased and the motive has not been proved. He would further submit that an extra-judicial confession is a weak piece of evidence, which is not admissible in evidence, as Ramgovind Pandey (PW-08) before whom the appellant has made extra-judicial confession, has turned hostile. He would also submit that though in the stone and clothes of the appellant, blood was found, but for want of FSL report, it cannot be held that it was human blood, and even blood found in the stone was the blood of the deceased, as such, the judgment of conviction recorded and sentence awarded deserve to be quashed.
10. On the other hand, Mr. H.A.P.S. Bhatia, learned Panel Lawyer for the respondent / State, would submit that Phallu @ Kallu (PW-01), Vinita (PW-03), Smt. Malli (PW-4) and Smt. Rajmaniya (PW-05) have seen the appellant dragging the deceased by holding her hair, and Ramgovind Pandey (PW-8) made the statement with regard to extra-judicial confession, and it has rightly been relied

upon by the trial Court, and as such, the appeal deserves to be dismissed.

11. We have heard the learned appearing for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
12. The first question for consideration would be, whether death of deceased was homicidal in nature, which the trial Court has returned the finding in affirmative.
13. Dr. Jagrani Lakara (PW-11) has examined the dead body of the deceased and submitted his report Exhibit P-20, in which she has clearly opined that the deceased died on account of hemorrhagic shock due to head injury as well as the death was reported to be homicidal in nature, and it can be caused by the seized stone.
14. After hearing learned counsel appearing for the parties and after going through the records, we are of the considered opinion that the finding recorded by the learned trial Court that death of deceased was homicidal in nature is the finding of fact based on evidence available on record, which is neither perverse nor contrary to record.
15. Now, the question is, whether extra-judicial confession made by the appellant to Ramgovind Pandey (PW-08) is admissible in evidence in view of proviso to Section 162(1) of the CrPC.
16. Ramgovind Pandey (PW-08) deposed in his evidence that the incident occurred about 4 years ago, on the day of Durga

Visarjan, at about 9.30 pm, the accused came to him in an intoxicated state and told him that he had murdered a person. On this, he said, " Okay, go and see in the morning". At about 8:00 am, the police came to the village, and then he came to know that Kamla had been murdered. The dead body of the deceased was lying in front of Bhikha Agariya's house. He had seen the dead body; there was an injury on the head of the dead body, there was a big stone there, and a lot of blood had come out. He knew Phallu, but he did not remember what he told him.

17. Ramgovind Pandey (PW-8) stated that the accused himself did not reveal the name of the deceased. Phallu had indeed said that he had seen the accused dragging Kamla away. He himself stated that the accused and Phallu had consumed alcohol together, and when the accused started dragging Kamla, Phallu went to his home. In the Court statement, he clearly stated that the appellant was in an intoxicated state and he had not disclosed the name of the deceased, yet the trial Court has accepted the fact of extra-judicial confession and proceeded to rely upon it as incriminating evidence against the appellant/accused. The statement recorded during investigation is not a substantive piece of evidence, and it can only be used to contradict the maker. True, it is that the statement made to the police is not admissible in evidence in view of Section 162(1) of the CrPC. We are of the considered opinion that it would not be safe to rely merely upon extra-judicial confession as extra-judicial confession is a weak piece of

evidence, as such, the plea of extra-judicial confession set up by the prosecution and found proved by the learned trial Court is unsustainable in law, and an alleged extra-judicial confession cannot be used as incriminating evidence against the accused / appellant.

18. The Supreme Court in the matter of **State of Rajasthan v. Raja Ram**<sup>1</sup> has held that an extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. It was observed as under:-

*“19. An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. The value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. It is not open to any court to start with a presumption that extra-judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession. Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom*

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1 (2003) 8 SCC 180

*nothing is brought out which may tend to indicate that he may have a motive for attributing an untruthful statement to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it. After subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, the extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility.”*

19. Now, the next circumstance that the trial Court has found proved and which has also been made the basis for the conviction of the appellant is that Phallu @ Kallu (PW-1), Vinita (PW-3), Smt. Malli (PW-4) and Smt. Rajmaniya (PW-5) have seen the appellant dragging the deceased by holding her hair, but nowhere have these witnesses stated seeing the appellant assaulting the deceased or committing the murder.
20. Now, the next circumstance that the trial Court has found proved and which has also been made the basis for the conviction of the appellant is that a stone was recovered from the spot, on which blood was found and pursuant to the memorandum (Ex.P-5) of the appellant, blood-stained clothes of the appellant were recovered. True, it is that pursuant to memorandum of the appellant (Ex.P-5), clothes of the appellant was seized vide Ex.P-7 and from the spot, stone was seized vide Ex.P-6, in which blood like stains have been found, and the same was sent for chemical

examination to the State Forensic Science Laboratory, Raipur vide Ex.P-19, but no report is available on record to connect the appellant that blood found in stone and his clothes was human blood and that of deceased. The said circumstance cannot be held to be found proved against the accused / appellant, whereas it has been taken as an adverse circumstance and incriminating evidence by the trial Court.

- 21.** Furthermore, the trial Court has also held that since the deceased died due to bleeding and shock caused by head injury, which has been caused by the accused / appellant, we are of the considered opinion, unless it is proved that the appellant has caused injuries, it cannot be taken as adverse incriminating circumstance to convict the appellant / accused for offence under Section 302 of the IPC.
- 22.** Finally, reverting to the facts of the present case, it is noted that the motive for the aforesaid offence has not been proved in the case, the statements of the witnesses, namely, Phallu @ Kallu (PW-01), Vinita (PW-03), Smt. Malli (PW-4) and Smt. Rajmaniya (PW-05), who deposed that they have seen the appellant dragging the deceased by holding her hair, but they have not seen the accused assaulting the deceased, and extra-judicial confession, which is a weak type of evidence allegedly made by the accused to Ramgovind Pandey (PW-08) has not been found to be established and blood found on stone and clothes of the appellant was not further established to be human blood in

absence of FSL report and that too of deceased. As such, it would be unsafe to convict the appellant for offence under Section 302 of the IPC, and the learned trial Judge has committed an error in convicting the appellant under Section 302 of the IPC, as the prosecution has failed to prove the offence under Section 302 of the IPC beyond reasonable doubt.

- 23.** For the foregoing reasons, the criminal appeal is **allowed**. The impugned judgment dated 11.07.2016, passed by the Additional Sessions Judge Ramanujganj in Sessions Case No.01/2012, convicting the accused/appellant for the offence under Section 302 of the IPC and sentencing him for life imprisonment and fine of ₹500/-, cannot be sustained and the same is accordingly set aside. The appellant is acquitted of the charge levelled against him. The appellant is stated to be on bail. He is not required to surrender. His bail bonds shall remain in force for a period of six months in view of the provisions contained in Section 437-A of the CrPC (now Section 481 of BNSS).
- 24.** The trial Court record along with a copy of this judgment be sent back immediately to the trial Court concerned for compliance and necessary action.

**Sd/-**  
**(Ravindra Kumar Agrawal)**  
**Judge**

**Sd/-**  
**(Ramesh Sinha)**  
**Chief Justice**