



2025:CGHC:27198-DB

AFR

**HIGH COURT OF CHHATTISGARH AT BILASPUR****CRA No. 1706 of 2024**

Lata Bai Nishad Wd/o Late Kanhaiya Nishad Aged About 45 Years R/o  
Village - Champaran, P.S. Gobra-Nayapara, District Raipur (C.G.)

**... Appellant (s)****versus**

State of Chhattisgarh Through The P.S. Gobra-Nayapara, District  
Raipur (C.G.)

**.....Respondent(s)**

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For Appellant : Mr. Jameel Akhtar Lohani, Advocate

For Respondent-State : Mr. S.S. Baghel, Dy. G.A.  
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**Hon'ble Shri Ramesh Sinha, Chief Justice****Hon'ble Shri Bibhu Datta Guru, Judge****Judgment on Board****Per Bibhu Datta Guru, Judge****24.06.2025**

This criminal appeal filed by the appellant-accused under Section 374(2) of Cr.P.C. is directed against the impugned judgment of conviction and order of sentence dated 05/08/2024, passed by the learned 9<sup>th</sup> Additional Sessions Judge, Raipur, District:Raipur (C.G.) in Sessions Trial No. 58/2020, whereby the appellant-accused has been convicted and sentenced as under:-

Conviction	Sentence
Under Section 302 of the IPC	Life imprisonment & fine of Rs.1000/-, in default, additional R.I. for 1 year
Under Section 201 of the IPC	R.I. for 5 years & fine of Rs.1000/-, in default, additional R.I. for 1 year
Under Section 318 of the IPC	R.I. for 2 years & fine of Rs.1000/-, in default, additional R.I. for 1 year

All the sentences are directed to run concurrently

In the case at hand, there were two accused persons i.e. the appellant and Doman Sahu. The co-accused Doman has been acquitted from all the charges.

1. Brief facts of the case is that on 22.10.2018 at 08.00 a.m. at Village-Daganiya-Chowki-Champaran P.S.-Gobra-Nayapara Distt. Raipur, the appellant & co-accused Doman Sahu being alleged to commit murder of 'two days male infant' by causing injury over fore-head & neck region, thereafter, thrown the dead body of towards drain-canal area outside the village-Daganiya, thus causing disappearance of the dead-body in order to conceal the story of illegitimate child birth due to illicit relationship between them. In respect of the said offence, the father-in-law of the appellant namely; Amar Singh Nishad (PW-1) lodged the written report (Ex.P/2), which is undated, before the police. Thereafter, police registered an FIR on 17-1-2019 vide Ex.P-29 against the present appellant and co-accused Doman Sahu. Merg intimation was registered vide Ex.P-3 dated 22-10-2018. Spot map was

prepared vide Ex.P-5. After due investigation, police arrested the appellant vide Ex.P-23. The dead-body of deceased(child) was sent for postmortem examination and in the postmortem examination report (Ex.P/21), Dr. Shivnarayan Manjhi (PW-11) opined that the cause of death was due to head injury & neck injuries sufficient to cause death in ordinary course of nature. To identify the blood relation of child with the present appellant and co-accused namely Doman Sahu, DNA was conducted and marked as Ex.P/27. After completing the investigation, the final report was prepared.

2. The prosecution in order to prove its case examined as many as 13 witnesses and exhibited 29 documents. Statement of the appellant under Section 313 of the Cr.P.C. was recorded, wherein she has pleaded his innocence and false implication in the matter.
3. The learned trial Court after appreciating the oral and documentary evidence available on record proceeded to convict the appellant herein for the aforementioned offence and sentenced him as mentioned herein-above against which this appeal has been preferred by the appellant-accused herein questioning the impugned judgment of conviction and order of sentence.
4. Learned counsel for the appellant would submit that the appellant has been falsely implicated in the present case. He submits that

PW-1, father-in-law of the appellant, who lodged the written report (Ex.P/2) has turned hostile and has not supported the case of prosecution. Learned counsel submits that the incident took place on 22/10/2018 and FIR was registered on 17/01/2019 i.e. delay of more than three months. He further submits that the written report vide Ex.P-2, which was lodged by the PW-1, father-in-law of the appellant is undated. He further submits that there is no eye witness in the present case and hence, the conviction and sentence of the appellant is based on surmises and conjectures. Learned counsel would also submit that the Father-in-law of the appellant i.e. PW-1 has turned hostile and has not supported the case of the prosecution, but without appreciating the said fact, the impugned judgment has been passed by the trial Court. Hence, the present appeal deserves to be allowed and the impugned judgment deserves to be set aside.

5. *Per-contra*, learned State counsel supported the impugned judgment of conviction and order of sentence and submits that the prosecution has proved the offence beyond reasonable doubt by leading evidence of clinching nature. The learned trial Court has rightly convicted the appellant for the aforesaid offence, thus, the present appeal deserves to be dismissed.

6. We have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the

records with utmost circumspection.

7. The first and foremost question is as to whether the death of the deceased was homicidal in nature, which the learned trial Court has recorded in affirmative by taking into consideration the oral and documentary evidence available on record and particularly considering the postmortem report (Ex.P/21) which is duly proved by the evidence of Dr. Shivnarayan Manjhi (PW-11). Accordingly, taking into consideration the postmortem report (Ex.P/21) and the statement of Dr. Shivnarayan Manjhi (PW-11) that the nature of death of deceased was due to head injury & neck injuries, head injury sufficient to cause death in ordinary course of nature and homicidal in nature, we are of the considered opinion that the learned trial Court is absolutely justified in holding that the death of the deceased is homicidal in nature, as the same is correct finding of fact based on evidence and same is neither perverse nor contrary to the record. Accordingly, we hereby affirmed the said finding.
8. Now the next question would be whether the accused-appellant herein is the author of the crime in question ?
9. Amar Singh Nishad (PW-1), father-in-law of the appellant has stated in his statement that Lata Bai Nishad/appellant is his daughter-in-law. He stated that the husband of Lata Bai died 15-20 years back. According to this witness, the appellant had given

birth to a newborn child, after whose death, Lata Bai Nishad had buried the child near the lake and covered with mud. It has been stated that he along with other people of the village/society had gone to the place of incident and on the second day, the police had recovered the dead body of deceased/child. In paragraph-04 of his evidence, he stated that a meeting of his society was held in his house, in which, Lata Bai Nishad/appellant was also called and the people of the society questioned to Lata Bai Nishad about the child, to which, she told that due to relationship between her and co-accused Doman Sahu the child was born with her and when the appellant asked the co-accused to keep the child, he refused to accept, therefore, the appellant killed the child.

10. Baliram Nishad (PW-2), stated in his statement that he is the president of the Nishad community. Amar Singh(PW-1) of the village had informed him that his daughter-in-law has delivered a baby. In the meeting of their community, Amar Singh PW-1, Lata Bai Nishad/appellant were present and when Lata Bai Nishad was questioned, she stated that the child was kept in a bag in the *Khar* and the child was dead because the child was kept in the bag and thereafter, police went to the place of incident and opened the bag.

11. Dr. Shivnarayan Manjhi (PW-11), who conducted the postmortem of deceased and he stated that he received in a

unsealed with illegible seal on 23.12.2018 in the department and after opening, it contains a male foetus, naked attached with umbilical cord, UC length 63 cm. Foetal Length - 49 cm. Head Circumference-32 cm. Few scalp hair present 2.5 cm long, black available area full dense. Weight 1500 grams. Epidermis has peeled off at places, Skin & soft tissues missing at chin & left side cheek rest all skin intact. Early stage of decomposition, Eyes collapsed, mouth open. All internal organs collapsed. Centre of ossification present at the lower end of Femur present. In the postmortem, he found the following Injuries:-

*(1) Scalp shows red Haematoma at vertex region caused with hard & blunt object within 24 hours prior to death, subdural haemorrhage present mostly at base.*

*(2) Red color echhymosis present on neck anterior aspect. 3 x 2 cm. transvers.*

*(3) Red color echhymosis present on both scapular region all over transvers.*

*Antemortem blunt injury present on head & neck.*

*Injuries are sufficient to cause death in ordinary course nature.*

**12. Opinion given by the Doctor PW-11:-**

*1. Death was due to Head injury & Neck injuries, head injury sufficient to cause death in ordinary course of nature.*

*2. Dead body of a male Infant.*

*3. Viable age group & Live born.*

*4. Umbilical cord found uncut & untied.*

*5. Duration of death is between 01 to 03 days prior to post mortem examination.*

13. In the DNA report vide Ex.P-27, it is mentioned that the Article-B (880) is the blood sample of appellant and Article-A (879) is the femur bone of the deceased/child whereas Article-C (881) is the blood sample of co-accused. After examination, it reflects from the DNA report that Article-B (880) is the biological mother of Article-A (879). It further stated that Article-C (881) is not the biological father of Article-A (879).

14. In view of above submission made by PW-1, father-in-law of appellant, PW-2/Baliram Nishad, President of Nishad Society, that a meeting was held in the village with regard to the child born by the appellant and in the said meeting, the appellant made confession in front of all villagers and people of their community that she has committed the murder of the newly born child and the dead body of child was kept in a bag in the *khar*.



15. According to the postmortem report, Doctor (PW-11) opined that the death of deceased/child was due to head injury & neck injuries and looking to the DNA report, by which, the appellant is the biological mother of deceased/child, it is proved that the injuries sustained to the deceased/child, were caused by the appellant/biological mother, which is a heinous crime.

16. As far as the contention of the appellant that the father-in-law of the appellant i.e. PW-1 is turned hostile is concerned, it is well settled preposition of law that the entire statement of a hostile witness is not to be discarded and such part which is consistent with the prosecution case is admissible in evidence. Even if major portion of the evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, it is the duty of the Court to separate grain from the chaff.

17. The Supreme Court in the matter of **Paulmeli and Another Vs. State of Tamil Nadu through Inspector of Police reported in 2014 (13) SCC 90** held thus at para 27:-

*“In Sucha Singh v. State of Punjab, AIR 2003 SC 3617, this Court had taken note of its various earlier judgments and held that even if major portion of the evidence is found to be deficient, in case residue is sufficient to prove guilt of an*

*accused, it is the duty of the court to separate grain from chaff. Falsity of particular material witness or material particular would not ruin it from the beginning to end. The maxim falsus in uno falsus in omnibus (false in one thing, false in everything) has no application in India and the witness cannot be branded as a liar. In case this maxim is applied in all the cases it is to be feared that administration of criminal justice would come to a dead stop. Witnesses just cannot help in giving embroidery to a story, however, truth is the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of credence, and merely because in some respects the court considers the same to be insufficient or unworthy of reliance, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well."*

18. In the case at hand, the accused herself made an extra judicial confession with regard to committing murder of her 2 days male infant child before the PW-1, who is her father-in-law and before the villagers voluntarily and without any inducement. Moreover, the confessional statement was corroborated by other evidence in the form of medical evidence and deposition of other witnesses.

19. It is the trite law that a truthful extra judicial confession made voluntarily and without any inducement can be made a basis for recording a conviction against person making confession. (see; **R. Kuppusamy Vs. State represented by Inspector of Police Ambeiligai reported in 2013 3 SCC 322**).

20. The appellant being the mother of the two days male infant child has committed his murder with an ulterior motive, which has been proved by the prosecution beyond reasonable doubt and as such, her confession made before the PW-1 and other villagers cannot be stated to be a weak piece of evidence.

21. It is also the trite law that the obligation to put material evidence to the accused under Section 313 CrPC is upon the Court. One of the main objects of recording of a statement under this provision of CrPC is to give an opportunity to the accused to explain the circumstances appearing against him as well as to put forward his defence, if the accused so desires. In the case at hand also, the appellant has not stated/objected to the charge levelled against her.

22. In view of foregoing discussion, we are of the considered opinion that the learned trial Court has rightly convicted the appellant for offence under Section 302 of IPC.

23. The appellant is stated to be in jail and she shall serve out the remaining period of jail sentence as awarded to her by the learned trial Court. Registry is directed to send a copy of this judgment to the concerned Superintendent of Jail where the appellant is undergoing the jail sentence to serve the same on the appellant informing him that she is at liberty to assail the present judgment passed by this Court by preferring an appeal before the Hon'ble Supreme Court with the assistance of High Court Legal Services Committee or the Supreme Court Legal Services Committee.

24. Accordingly, the Criminal Appeal is **dismissed**.

25. Let a certified copy of this judgment along with the original record be transmitted forthwith to the trial Court for information and necessary action.

SD/-

**(Bibhu Datta Guru)**  
**Judge**

SD/-

**(Ramesh Sinha)**  
**Chief Judge**

### **Headnote**

- The entire statement of a hostile witness is not to be discarded and such part which is consistent with the prosecution case is admissible in evidence.
- A truthful extra judicial confession made voluntarily and without any inducement can be made a basis for recording a conviction against person making confession.