

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 581 of 2011

1. Samaru Ram Nirmalkar S/o Mangluram Nirmalkar, aged about 20 years, R/o Keshla Ward No.20, PS Kharora, Distt. Raipur (CG)

---- Appellant

In Jail

Versus

1. State Of Chhattisgarh, Through District Magistrate, Raipur Distt. Raipur (CG)

---- Respondent

For appellant	: Smt. Indira Tripathi, Advocate.
For Respondent/State	: Shri Roshan Dubey, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Inder Singh Uboweja
Order On Board

26/06/2015

Per P. Diwaker, J

This appeal arises out of the judgment of conviction and order of sentence dated 21.7.2011 passed by the Sessions Judge, Raipur in S.T.No.10/2010 convicting the accused/appellant under Section 302 of IPC and sentencing him to undergo life imprisonment, to pay a fine of Rs.1000/- and in default thereof to suffer additional RI for two months.

02. In the present case, name of the deceased is Koushalyabai. wife of the accused/appellant. As per the prosecution case, on 10.11.2009 the accused/appellant and the deceased slept together, they had some quarrel as the deceased had refused to have sex with the accused/appellant. On 11.11.2009 when PW-4 Ku. Barkha, minor daughter of the appellant and the deceased, returned from school, she found her house bolted from inside and when she peeped through the hole she saw her mother in injured condition near the veranda. She immediately rushed to her neighbour PW-1 Fanendra Dewangan and

narrated the fact to him. Then Fanendra (PW-1) immediately went to the house of the accused/appellant and after jumping the wall entered the house of the accused/appellant, opened the door and saw Koushalyabai in injured condition. He has stated that Koushalyabai was drenched in blood and he noticed crushed injuries on her body. When she was being shifted to hospital, on the way she expired. Dehati Nalishi Ex.P/4 was recorded at the instance of PW-4 Ku. Barkha and thereafter, merg intimation Ex.P/3 was recorded and then FIR Ex.P/4 was registered on 11.11.2009. Postmortem on the body of the deceased was conducted on 12.11.2009 vide Ex.P/9 by PW-9 Dr. B. Kathoutiya who noticed eight lacerated wounds on the body of the deceased and opined that the cause of death was injury to vital organ head leading to hemorrhage and shock. On 12.11.2009 the appellant surrendered himself before Police Station-Ganj, Distt.Raipur, his memorandum was recorded and after investigation, challan was filed under Section 302 of IPC against him and charge was framed accordingly.

03. So as to hold the accused/appellant guilty, the prosecution examined as many as 14 witnesses. Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. In defence, he has stated that the police have made him to sign certain paper after committing marpeet with him, his relations with his father-in-law were tense and therefore, his father-in-law has deposed against him. Further, he has stated that on the date of incident he had gone to

market for selling pulse, he is innocent and has been falsely implicated.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the accused/appellant as mentioned in para-1 of this judgment.

05. Learned counsel for the appellant submits as under:

(i) that there is no evidence on record to show as to who had killed the deceased.

(ii) statement of Ku. Barkha (PW-4), aged about 10 years, is not reliable because her Court statement does not tally with her diary statement. While improving in the Court she has stated that when she reached near her mother she informed her that it is the accused/appellant who caused her injuries whereas no such statement was made by her before the police. Likewise, before the Court she has deposed that in the previous night of the date of incident the accused/appellant had threatened her mother for life whereas no such statement was made by her before the police.

(iii) PW-2 Rajkumar, son of the accused/appellant and the deceased, has also improved while deposing in the Court where he has stated that when he (PW-2) came in the afternoon to take lunch, his father was sleeping in the house whereas no such statement was made by him before the police.

(iv) while deposing in the Court, PW-2 Rajkumar and PW-4 Ku. Barkha have falsely implicated the accused/appellant as they were tutored by their maternal grand-father.

(v) that in none of the articles seized by the police which includes clothes of the accused/appellant, blood has been found and there is also no FSL report.

(vi) that the trial Court has completely ignored the defence taken by the accused/appellant in his statement recorded under Section 313 of Cr.P.C. wherein he has categorically stated that the date of incident he was not present in the house.

(vii) the possibility that the deceased might have been killed by someone else cannot be ruled out especially when no one was present in the house as the accused/appellant, his daughter and son had left the house.

(viii) the memorandum of the accused/appellant makes it clear that conduct of the deceased was totally uncalled for and she behaved in a very rude and erratic manner.

06. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State as under:

(i) that dead body of the deceased was found in the house of the accused/appellant, no third person was living in the said house and therefore, it was for the accused/appellant to explain as to how dead body was found inside the house but no such explanation has been offered by him.

(ii) that PW-2 Rajkumar and PW-4 Ku. Barkha have clearly stated as to the manner in which the incident had taken place.

(iii) from the memorandum of the accused/appellant it is clear as to how the incident had taken place and even if the deceased had refused to have sex with the appellant, it does not give him a right to commit her

murder. The circumstances of the case are as such which clearly indicate that it is the accused/appellant who had killed the deceased.

07. Heard learned counsel for the parties and perused the material available on record.

08. PW-1 Fanendra Dewangan, neighbour of the accused/appellant, has stated that on the date of incident when he was in his house, daughter of the accused/appellant Barkha (PW-4) along with Ashsa (PW-3) came to him and informed that her house is bolted from inside and her mother is writhing with pain. He went to the house of the accused/appellant and also heard the same noise. Then after crossing the wall he entered the house, opened the door and saw the deceased lying in injured condition. He noticed crushed injury on her face. He has further stated that he immediately called son of the accused/appellant Rajkumar (PW-2). On the next day, he was informed by the police that the accused/appellant had surrendered before the police station and then he went to police station along with father-in-law of the accused/appellant. He has further stated that memorandum (Ex.P/1) of the accused/appellant was recorded wherein he stated that he had left stone-grinder (Sil-lodha) in the veranda of the house itself and then the accused/appellant was taken to his house from where stone-grinder was seized vide Ex.P/2 and the seizure memo was signed by him.

09. PW-2 Rajkumar, son of the deceased, has stated that on the date of incident at about 12-12.30 in the afternoon after returning from his work he took lunch with his mother. At that time his father was sleeping. After taking lunch he (PW-2) returned to his work and at about 2.30 pm

he was informed by his sister Barkha who came along with PW-1 Fanendra that her mother is lying drenched in blood and when he saw his mother he noticed head injury and she was drenched in blood. While she was being taken to hospital on the way she expired. In cross-examination he has stated that in his case diary statement Ex.D/1 he did not inform the police about the fact that on the date of incident at about 12-12.30 he had taken lunch with his mother and at that time, his father-accused/appellant was sleeping at home. He has further stated that on the date of incident when he left his house at about 8-8.30 am at that time the accused/appellant was not there.

10. PW-3 Smt. Asha, neighbour of the accused/appellant and the deceased, was informed about the incident by Barkha. She has stated that along with PW-1 Fanendra and PW-2 Barkha she had gone to the house of the accused/appellant, Fanendra jumped the wall and opened the door and then they saw the deceased drenched in blood. PW-4 Ku. Barkha, daughter of the accused/appellant and the deceased, aged about 10 years, has stated that on the date of incident at about 8 am she left for her school and returned at around 2 in the afternoon and found her house bolted from inside. When she peeped through the hole, she saw her mother writhing with pain, she immediately informed about this incident to Ashabai (PW-3) and Fanendra (PW-1) and then PW-1 jumped the wall and opened the door and they saw the deceased drenched in blood. She has further stated that when she reached near her mother she told her that it is the accused/appellant who did all this. She has stated that on the previous night there was quarrel between her mother and the accused/appellant. In the cross-examination, she has stated that

she did inform the police that it is the accused/appellant who had killed her mother but if this fact is not recorded by the police she could not tell the reason. She also informed the police that on the previous night the accused/appellant had threatened the deceased for her life but even if this fact is not recorded by the police she could not tell the reason. She admitted that she did not inform her brother about the quarrel between her mother and father. She has categorically denied the suggestion that she is making incorrect statement in the Court at the instance of her maternal grand-father. She has further categorically denied that on the date of incident in the morning her father had left for work and clarified that her father was not working anywhere.

11. PW-5 Dandiram is a witness to seizure Ex.P/5 whereby certain articles were seized from the place of occurrence. PW-6 Manrakhan Nirmalkar, father-in-law of the accused/appellant, has stated that on 11.11.2009 his daughter was murdered and on the second day the accused/appellant surrendered before Police Station Ganj where his memorandum Ex.P/1 was recorded in his presence and then the accused/appellant was brought to his house and Sillodha was seized and likewise, other articles were seized including clothes of the accused/appellant (Ex.P/6). PW-7 Dr. B. Kathoutiya conducted postmortem on the body of the deceased vide Ex.P/9 and noticed the following injuries on her person:

1. LW above left eyebrow 1 x ½ inch x 4 mm.
2. LW forehead 1 inch x 4 mm x 4 mm.
3. 2 LW left side forehead (i) 2 inch x 1 inch x 4 mm
(ii) 3 inch x 1 inch x 4 mm
4. LW right side above eyebrow 3 inch x 1 inch x 4 mm.
5. Right side forehead 3 inch x ½ inch x 4 mm.
6. LW scalp 3 inch x 2 inch x 6 mm.
7. LW right and depressed fracture parieto temporal region 4 inch x 3

inch x ½ cm.

8. LW right frontal scalp 2 inch x ½ cm x ½ cm.

In his opinion, the cause of death was injuries to vital organ head leading to hemorrhage and shock.

Upon internal examination, the doctor found depressed fracture in the scalp, brain material exposed, hemorrhage in spleen, blood clotted in windpipe, both the lungs congested, heart empty, liver and spleen were also congested.

12. PW-8 G.R. Patre, Assistant Sub Inspector, did the initial part of investigation. PW-9 Kamal Chandrakar, Head Constable, recorded merged intimation on the basis of Dehati Nalishi Ex.P/4. PW-10 Veer Singh Raj, Head Constable of PS-Ganj has stated that on 12.11.2009 when he was on duty at about 9 am the accused/appellant came to police station and informed that he is resident of Kharora and has committed murder of his wife and then he surrendered himself by saying that if he would not surrender the villagers would kill him. When he (PW-10) enquired from Police Station Kharora he came to know that after committing murder of his wife, the accused/appellant was absconding. PW-11 Sanjay Mishra Head Constable, recorded numbered merged intimation. PW-12 Shiv Kumar Sinha, Patwari, prepared the spot map Ex.P/14. PW-13 Kesri Sahu, Police Constable, made seizure Ex.P/16. PW-14 F.D. Sahu, Sub Inspector, is the investigating officer and has duly supported the prosecution case.

13. In his statement recorded under Section 313 of Cr.P.C. it has been stated by the accused/appellant that after committing murder by the police he was made to sign on papers at several places; his relation with

his father-in-law is tense; his father-in-law always used to provoke his children against him and therefore, his father-in-law has deposed against him. On the date of incident he had gone to market in the morning for selling pulse. He is innocent and has been falsely implicated.

14. True it is that in his statement under Section 313 of Cr.P.C. the accused/appellant has taken the defence that on the date of incident he had gone to several places to sell pulse but no such evidence has been adduced by him to substantiate this defence. Not a single person has been examined by the appellant to establish the fact that on the date of incident he left his house for market. It is also true that there is some improvement in the Court statements of PW-2 Rajkumar and PW-4 Ku. Barkha i.e. son and daughter of the deceased and the accused/appellant. However, if the Court statement of PW-4 Ku. Barkha is seen along with her diary statement Ex.D/2, it is apparent that she has categorically stated that at about 10.30 am she and her brother had left their house and at that time her mother and father were alone in the house. She is also very firm in saying that the accused/appellant used to suspect the character of her mother, he always used to quarrel with her mother and on the previous night also the accused/appellant had quarreled with her mother and was also abusing her mother. There is no reason for this Court to disbelieve the statement of this witness despite minor improvement being made by her in her Court statement.

15. When an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it is extremely difficult for the prosecution to lead evidence to establish

the guilt of the accused if the strict principle of circumstantial evidence is insisted upon. In such cases, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house can not get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on the accused to offer any explanation. In the present case, no such explanation has been offered by the accused/appellant except making bald statement that on the date of incident he had gone to market for selling pulse, which has not been supported by any other evidence. This circumstance also goes against the accused/appellant.

16. There is no substance in the arguments of the appellant that in the memorandum, the accused/appellant has stated that as the deceased had refused to have sex with him, out of anger he killed the deceased. Even if a wife refuses to have sex with her husband, it does not give right to any husband to kill his wife. There is no evidence on record that on the date of incident any theft had taken place in the house of the accused/appellant, on the basis of which it can be presumed that some third person had entered the house and committed murder of the deceased.

17. Another circumstance which goes against the accused/appellant is that on 12.11.2009 he himself surrendered before Police Station Ganj and at his instance, Sillodha was seized from his house. Both the witnesses of memorandum and seizure have duly supported the prosecution case. Though FSL report is not available, but the other circumstances indicate that it is the accused/appellant who killed the deceased. Thus, taking into consideration the totality of the case and the evidence adduced by the prosecution, we are of the view that the trial Court was fully justified in holding the appellant guilty under Section 302 of IPC for committing murder of his wife.

18. In the result, the appeal fails and is hereby dismissed. The accused/appellant is already in jail, therefore, no further order is required.

Sd/-

(Pritinker Diwaker)

J U D G E

Sd/-

(I.S. Uboweja)

J U D G E