

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 870 of 2010**

1. Khorl @ Ramdhani, S/o Jageshwar, Caste – Korwa, aged about 32 years, Occupation-Agriculture (forming), R/o Village-Maheshpur, P.S. Sitapur, District Surguja (C.G.)

---- Appellant

Versus

1. State Of Chhattisgarh

---- Respondent

For Appellant.	-	Mr. Manoj Mishra, counsel.
For Respondent.	-	Mr. Neeraj Jain, Govt. Advocate.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Inder Singh Uboweja

Judgment On Board By**Pritinker Diwaker, J****03/07/2015**

This appeal arises out of the judgment of conviction and order of sentence dated 29.09.2010 passed by the Sessions Judge, Surguja (Ambikapur), in S.T.No.302/2008 convicting the accused/appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life and to pay a fine of Rs.2000/- with usual default clause.

02. In the present case, name of the deceased is Dhanmatiya Bai wife of accused/appellant. It is said that as the accused/appellant and deceased were not having any issue, they used to practice sorcery (तंत्रमंत्र) inside their room and for this purpose they used to perform pooja in naked condition. It is alleged that in the night intervening

8/9-08-2008, when the accused/appellant and deceased were performing sorcery and pooja and the deceased was naked, the accused/appellant caused injury on the head of the deceased by hammer as a result of which she died. At the instance of PW-2 Patar Sai, merg intimation (Ex.P/4) was recorded on 09.08.2008 and thereafter, F.I.R. (Ex.P/16) was registered on 10.08.2008 against the accused/appellant under Section 302 of IPC. Postmortem on the body of deceased was conducted by PW-1 Dr. S.N. Paikra vide Ex.P/1, who noticed multiple injuries on left side of shoulder, left thigh, left side of head, back side of head & mouth, incised wound on left side of thigh of 1½ cm x ½ cm and fracture of occipital bone. Doctor has opined that the cause of death of deceased was head injury and death was homicidal in nature. After investigation, charge sheet was filed against the accused/appellant under Section 302 of IPC and charge was framed accordingly.

03. So as to hold the accused/appellant guilty, the prosecution examined as many as 08 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, the appellant has stated that at the time of incident, he was not present in his house.

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. Hence, this appeal.

05. Learned counsel for the appellant submits as under:

- (i) that on the date of incident, the accused/appellant was not in his house, 10-15 days prior to date of incident he had gone to Ambikapur for his livelihood, which is 50 kms away from the village of the accused/appellant;
- (ii) that on the other side of house of accused/appellant, his parents and nephew were residing and therefore the possibility that some third person may have committed murder of the deceased cannot be ruled out;
- (ii) even if the entire prosecution case is taken as it is, the accused/appellant cannot be convicted under Section 302 of IPC, at best he can be convicted under Section 304 Part-I or Part-II of IPC as he had no intention to kill the deceased and the incident had taken place all of a sudden when the accused/appellant was provoked by the deceased;
- (iv) that the appellant is in jail since 10.08.2008, and therefore, after converting his conviction into Section 304 Part-I or Part-II of IPC, his sentence may be reduced to the period already undergone by him.

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

- (i) that the dead body of deceased has been found inside the house where she was residing along with the accused/appellant and therefore it was for the accused/appellant to explain as to how the said dead body has been found inside his house. However, no such explanation has been offered by the accused/appellant and therefore he has rightly been

convicted by the Court below.

(ii) that the brutality of the appellant can be seen by the manner in which he killed the deceased. It has been also argued that if the deceased was not having any issue then the accused/appellant ought to have been sympathetic to her rather than committing her murder.

07. We have heard learned counsel for the parties and perused the material available on record.

08. PW-1 Dr. S.N. Paikra conducted postmortem on the dead body of deceased vide Ex.P/1 and noticed multiple injuries on left side of shoulder, left thigh, left side of head, back side of head & mouth, incised wound on left side of thigh of 1½ cm x ½ cm and fracture of occipital bone. According to him, the cause of death was due to head injury and it was homicidal in nature.

09. PW-2 Patar Sai is uncle of the accused/appellant at whose instance merger intimation (Ex.P/4) was recorded. He has stated that the deceased was found dead in the house of accused/appellant. He has been declared hostile as he has stated that on the date of incident the accused/appellant was not in the house. PW-3 Mangal Ram, neighbour of the accused/appellant, has stated that the deceased died in the house of the accused/appellant. He is also a witness of inquest (Ex.P/7). PW-4 Maheshwar Prasad, who appears to be a local villager has stated that when he had gone to the house of accused/appellant, he was informed by his parents that deceased died in the house and then he called PW-2 Patar Sai, thereafter, all of them had gone to the house of village Sarpanch. This witness has also been declared

hostile because he has stated that when he had gone to see the dead body of deceased, the accused/appellant was not there. He has also stated that the dead body of deceased was found in the naked condition. When he was confronted with his case diary statement, he has stated that father of the accused/appellant has not informed him that it is the accused/appellant who had killed the deceased. PW-5 Duhan Ram, who is also a local villager, has stated that he came to know about the incident from Mahesh and his brother Patar Sai and after reaching to house of the accused/appellant he saw the dead body of the deceased. He has stated that it is the accused/appellant who had removed the clothes from the dead body of his wife. He has further stated that the accused/appellant confessed before him and other villagers that he has killed his wife and thereafter the report of the incident was lodged. In his cross-examination, he reiterated that when the villagers gathered to see the dead body of deceased, the accused/appellant was there. PW-6 Niranjan Singh, Sarpanch of the village, has stated that the accused/appellant was residing in the house along with deceased and on the other side of the house, his mother, father and nephew were residing. He has further stated that he was informed by father and mother of the appellant that deceased has been killed and then he along with other villagers went to the house of the accused/appellant and saw the dead body of the deceased, but at that time accused/appellant was not there and his parents did not inform about the whereabouts of the appellant. This witness was also declared hostile because in his diary statement he has stated about the presence of the appellant in the house. He is

also a witness of memorandum (Ex.P/11) of the accused/appellant, seizure (Ex.P/12) and (Ex.P/13). PW-7 Sitaram Dewangan is Executive Magistrate under whose presence inquest (Ex.P/7) was prepared. PW-8 G.S. Kuruvanshi, Investigating Officer has duly supported the prosecution case. As per FSL report (Ex.P/19), blood was found on soil seized from the spot, full pant of the accused/appellant and the hammer.

10. Close scrutiny of the evidence makes it clear that the accused/appellant was residing along with the deceased in his house and in the night intervening 8/9-08-2008, dead body of deceased was found inside the house of the accused/appellant. Number of witnesses have turned hostile but PW-5 Duhan Ram has categorically stated that when he along with other villagers had gone to the house of the accused/appellant, the accused/appellant was there and it is he who removed the clothes from the dead body of the deceased. He has further stated that the accused/appellant made confessional statement before other villagers that it is he who had killed the deceased. There is no reason for this Court to disbelieve the statements of this witness.

11. Most important aspect of this case is that dead body of the deceased has been found inside the room of the accused/appellant, but no plausible explanation has been offered by him in his statement recorded under Section 313 of the Cr.P.C. Thus, it can be very well concluded that death of the deceased was within his special knowledge. In absence of sufficient or cogent explanation in that behalf, the Court below was justified in considering such circumstance

against the accused/appellant.

12. When an offence takes place inside the privacy of a house and in such circumstances where the assailant has all the opportunity to plan and commit the offence at the time and in circumstances of his 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 Ambikapur i.e. 50 kms away from his house for his livelihood, which has not been supported by any other evidence. This circumstance also goes against the accused/appellant.

13. We do not find any substance in the argument advanced by learned counsel for the appellant that the conviction of the accused/appellant may be altered into Section 304 Part-I or Part-II of

IPC. Taking into consideration the circumstances in which the incident took place, the manner in which the appellant assaulted the deceased with hammer on her vital part i.e. head with such a force that she died instantaneously, the trial Court was fully justified in holding him guilty under Section 302 of IPC. We find no illegality or infirmity in the judgment impugned warranting interference by this Court.

14. The appeal being without any substance is liable to be dismissed and it is dismissed as such.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(I.S. Uboweja)
JUDGE