

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Appeal No.860 of 2009**

- Pyarilal, S/o Santram, Aged about 40 years, R/o Village Kanwalanjar, P. S. - Dabra, Distt. Jangir Champa (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh, Through Police Station – Dabra, District : Janjgir Champa – (C.G)

---- Respondent

For Appellant	:	Smt. Kiran Jain, Advocate.
For Respondent/State	:	Shri U.K.S.Chandel, Panel Lawyer.

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

CAV JUDGMENT**Delivered on 16-10-2015****Per I.S. Uboweja, J.**

1. The appellant stands convicted under Section 302 of the I.P.C and sentenced to life imprisonment with fine of Rs.200/-, failing which, he was required to undergo two months further rigorous imprisonment, as ordered by the Additional Sessions Judge, Sakti, in Sessions Trial No. 154 of 2009, dated 19th November, 2009.
2. As per case of the prosecution, the deceased Smt. Kenwrabai was the wife of the appellant; the appellant and his wife were residing in a house situated in village Kanwaljhar; on 17.05.2009 at about 6.00 pm, brother-in-law of the deceased lodged a merg report (Ex.P.1) in Dabra Police Station stating that some unknown person has assaulted the deceased with a sharp and hard object on her head, on the basis of which, F.I.R. (Ex.P.2) was registered against unknown person

3. Investigating Officer rushed to the place of occurrences and after summoning the witnesses vide Ex.P.3, inquest over the dead body of the deceased was prepared vide Ex.P.4. Spot map was prepared vide Ex.P.5. Dead body of the deceased was sent for autopsy to Community Health Center, Dabra, vide Ex.P.16. Dr. N.P. Mishra (P.W.15) conducted autopsy on the dead body of the deceased vide Ex.P.17 and found the following injuries:

- (1) Incised wound on right side of occipital region of 2 1/2" x 1/2" x depth to dipping of bone in obliquely vertical direction.
- (2) Incised wound of frontal area of skull of 1 1/2" x 1/2" x depth upto bone in vertical direction.
- (3) Incised wound on vertex of skull of 1 1/2" x 1/2" x depth upto skull.
- (4) Incised wound on right side of vertex of 1 1/2" x 1/2" x depth upto skull.
- (5) Incised wound on right parietal area of skull of 1 1/2" x 1/2" x depth upto dipping of skull bone
- (6) On dissection, it was found that there were blood clots; cutting and dipping of skull bone in relation to Injuries 1 & 5; rupture and cutting in relation to Injuries 1 & 5; brain tissue cross and lacerated in relation to Injuries No. 1 & 5; frothy clotted blood present and both chambers empty.

Cause of death was opined to be shock due to external and internal haemorrhage and death was homicidal in nature.

4. Accused/appellant was also taken into custody. He made disclosure statement of axe and cloths vide Ex.P.12 and the same were recovered at his instance vide Ex.P.13. Bloodstained soil and plain soils were recovered from the spot vide Ex.P.14. One sealed packet of cloths of deceased was seized vide Ex.P.15. Seized articles were sent for chemical examination to F.S.L. Raipur vide Ex.P.25.
5. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code'). After completion of investigation, charge sheet was filed before the Court of Judicial Magistrate First Class, Dabra, who in turn committed the case to the Additional Sessions Judge, Sakti, for its trial.
6. In support of its case, prosecution has examined as many as 17 witnesses. Statement of the accused was also recorded under Section 313 of the Code of Criminal Procedure, in which, he denied the charges levelled against him and pleaded innocence and false implication in the case.
7. After providing opportunity of hearing to the parties, learned Additional Sessions Judge has convicted and sentenced the appellant as mentioned in para 1 of the judgment.
8. We have heard learned counsel for both the parties and perused the judgment impugned including the record of court below.
9. Learned counsel appearing for the appellant argued that conviction is substantially based on the circumstantial evidence, but, there has to be a complete link in all the chain of circumstances leading to the only inescapable conclusion for the guilt of the appellant inconsistent with his

innocence, which the prosecution failed to prove. If the appellant has not offered any proper explanation, it does not mean to say that he is culprit and it cannot be made sole basis for his conviction. In support of his submissions, learned counsel for the appellant has placed reliance upon judgments in the cases of ***Mohan Singh vs. Prem Singh and another, 2003 Cri.L.J. 11*** and ***Subramaniam vs. State of Tamil Nadu, 2009 (1) C.G.L.J. 3002.***

10. On the other hand, learned State counsel opposed the appeal and argued that as per prosecution evidence the appellant was present in his house on the date of incident; the deceased died inside the house of the appellant and for that the appellant had not offered any plausible explanation that how his wife came to be died inside the house and he was under obligation to prove his innocence. The evidence adduced by the prosecution is sufficient to prove that only the appellant is the perpetrator of the crime and none else.
11. In the present case, homicidal death of deceased Kenwarabai as a result of fatal injuries found on her dead body has not been substantially disputed on behalf of the appellant. Even otherwise, it is also established from the evidence of Jaharilal (P.W.1), Dilchand Sidar (P.W.6), Kumari Lalita (P.W.12), Dr. N.P.Mishra (P.W.15), autopsy report Ex.P.17, merg Ex.P.1 and F.I.R. Ex.P.2 that death was homicidal in nature.
12. As regards the complicity of the appellant in crime in question, conviction is substantially based on the circumstantial evidence. As per case of the prosecution, the appellant and deceased were residing in the same house and were present inside the house on the date of incident also, which fact

has specifically been admitted by the prosecution witness Jaharilal (P.W.1), who is elder brother of the accused/appellant and has also lodged the merg intimation and F.I.R. vide Ex.P.1 & Ex.P.2. Jaharilal (P.W.1) stated in his evidence that on the date of incident, accused/appellant was present in his house; at about 2.00 pm, his granddaughter informed him that elder mother Kenwarabai (deceased) is lying on the floor and blood was oozing from her head whereupon he rushed to the accused house and saw the same and informed the Sarpanch and thereafter went to Police Station and lodged the merg intimation vide Ex.P.1 and F.I.R. (Ex.P.2). The other prosecution witnesses, namely, Kumari Sunita (P.W.2), Kumari Anita (P.W.3) and Kumari Lalita (P.W.12), who are the daughters of the accused appellant, have turned hostile as they did not support the prosecution story but tried to defend their father that he was all along with them in the house of one Mansingh where they were watching T.V. at the time of incident. The evidence adduced by them in Court runs contrary to the statement recorded under Section 161 of the Code in which they have not stated that their father was all along present with them watching T.V. It appears that they are trying to save their father from punishment for commission of the crime in question. Therefore, their statements cannot be relied upon in view of the judgment rendered by the Apex Court in the case of ***Bhagwan Dass vs. State (NCT of Delhi)***, (2011) 6 SCC 396 wherein the Supreme Court held that “no doubt a statement to the police is ordinarily not admissible in evidence in view of Section 162 (1) CrPC, but as mentioned in the proviso to Section 162 (1) CrPC it can be used to contradict the testimony of a witness”.

13. Rukhmani Bai (P.W.4), who is the neighbour of the accused/appellant, stated that at about 2.00 pm, she saw the accused/appellant coming towards lane. Her statement clearly shows that daughters of the accused/appellant are making false statements that their father was all along present with them watching T.V. in the house of one Mansingh. It also shows that when the daughters of the appellant were indulged in watching T.V., meantime the accused/appellant was absent from T.V. room and was found in village lane. Another hostile witness, namely, Ku. Sudhar @ Babli (P.W.5) stated in her evidence that accused/appellant and his daughters visited her house for watching T.V. but after some time she went to her bed room for sleeping, which goes to show that she was not aware of the fact as to when did the accused leave her house. Dilchand (P.W.6) had also been declared as hostile witness. In his statement, he stated that one Ghurwa informed him that Kenwarabai has died whereupon he went to her house and saw her dead body. Another witness (P.W.7) Rukhmani stated that after hearing sounds, she also went to the house of the accused and saw dead body of deceased. Sahasram Gond (P.W.8), who has also turned hostile, stated that daughter of deceased called him by telephone and informed that her mother is dead, upon which, he rushed to the spot with his sister and son-in-law. Smt. Mehtarin Bai (P.W.13), who is neighbour of the appellant, stated that after watching T.V. accused along with his three daughters left her house and thereafter she heard some screams that somebody killed Kenwara Bai.
14. Investigating Officer R.C.Sandilya (P.W.17) stated that accused was taken into custody. He made disclosure statement vide Ex.P.12 and at his

instance one axe, towel, T-Shirt and one *Gamcha* were recovered. Seizure memo Ex.P.13 was prepared. This was not supported by independent witnesses Reshamlal (P.W.9) and Ghurwa (P.W.14) but they admitted their signatures on those documents, however, no explanation has been offered by them as to how their signatures appeared on those documents. It shows that they did not support the prosecution story intentionally. Therefore, the evidence of R.C.Sandilya (P.W.17) remain intact and reliable in so far as the documents Ex.P.12 & Ex.P.13 are concerned.

15. On close scrutiny of the evidence adduced by the prosecution, it reveals that as per medical evidence death was homicidal in nature, that the appellant and the deceased were present in the same house on the date of incident; thereafter the deceased was found dead; the offence was committed in secrecy; the appellant was under obligation to offer an explanation in terms of Section 106 of the Evidence Act that who has caused homicidal death of the deceased, but, the appellant failed to offer such explanation. In these circumstances, the only inference is possible that the appellant had caused homicidal death of the deceased and it also excludes the possibility of the appellant being innocent. The case law cited by the counsel for the appellant does not help the appellant in any manner since the facts and circumstances of those cases are distinguishable to the facts of the present case.
16. After appreciating the evidence available on record, the trial Court has rightly convicted and sentenced the appellant as above. On close scrutiny

of the evidence, we do not find any illegality or infirmity in the judgment impugned convicting and sentencing the appellant as above.

17. Consequently, the appeal, being devoid of merit is liable to be and is hereby dismissed.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(I.S. Uboweja)
JUDGE