

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 828 of 2010**

1. Sunil, s/o Ram Dhulere, aged about 35 years, R/o village Nadipar Keonchi, P.S. Gourella, Distt. Bilaspur (CG)

---- Appellant (in jail)

Versus

1. State Of Chhattisgarh, through P.S. Gourella, Distt. Bilaspur (CG)

---- Respondent

For Appellant:

Shri H.P. Agrawal, Advocate

For Respondent:

Shri V.A. Goverdhan, Panel Lawyer

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Chandra Bhushan Bajpai

Judgement on Board by Shri Justice Pritinker Diwaker

12/01/2016

1. This appeal has been filed against the judgment of conviction and order of sentence dated 20.8.2010 passed by the Additional Sessions Judge (FTC), Pendra Road, District Bilaspur in S.T. No.6/10 whereby the accused/appellant has been convicted under Section 302 of the Indian Penal Code (for short 'the IPC') and sentenced to undergo R.I. for Life and fine of Rs.100/-, in default to undergo additional R.I. for 01 month.
2. Accused/appellant is the husband of deceased Smt. Laxmin Bai. As per case of the prosecution, on 22.10.2009 the accused/appellant committed murder of his wife Smt. Laxmin Bai by causing injuries to her by belt and thereafter strangulated her by electric wire. On 24.10.2009 at the instance of village Kotwar Bisahin Bai (PW-1), dehati merg (Ex.P-1) was recorded at 10.40 a.m. and after about ten minutes, dehati FIR (Ex.P-2) was also recorded. Based on the Dehati Mergi (Ex.P-1) & Dehati FIR (Ex.P-2), FIR

(Ex.P-14) was recorded against the appellant under Section 302 of IPC. In the dehati merg (Ex.P-1), it has been alleged that after committing murder of the deceased on 22.10.2009, the accused/appellant kept her body inside the house till 24.10.2009 and on 24.10.2009 based on the disclosure made by the appellant that he has committed murder of his wife, the Sarpanch and other villagers had gone to the house of appellant and had seen the body of deceased lying in the room. Thereafter the information was given to the police. Inquest on the dead body was made on 24.10.2009 vide Ex.P-3. Dead body was sent for post-mortem which was conducted by Dr. M.S. Marko (PW-8) vide Ex.P-9. The doctor conducting the post-mortem examination noticed two contusions on the chin of 3 x 2 cm size, abrasions on the chest and opined the cause of death as asphyxia leading to cardio respiratory arrest. On completion of investigation, charge sheet for the offence punishable under Section 302 of the IPC was filed against the accused/appellant and accordingly the charge was framed against him by the trial Court.

3. The prosecution in order to bring home the charge levelled against the appellant had examined nine witnesses in all. Statement of appellant was recorded under Section 313 of Cr.P.C. in which he abjured his guilt and pleaded innocence & false implication. He has taken a defence that he does not know as to how his wife died because he had gone to the forest on 21st and on his return only he came to know that his wife has expired. Thereafter he informed about the said fact to the Sarpanch. His wife was not having enmity with anybody and she was mentally retarded. He has further stated that 1-2 week prior to the incident, his wife had sustained injuries due to fall. In support of his plea, he has examined DW-1 Rajeshwari Kachi who has stated that four days prior to the death of

deceased, the appellant had gone to the forest for collecting herbs and returned on the day when the foul smell started coming out from his house.

4. After hearing the parties, the Court below has convicted & sentenced the accused/appellant in the manner as described above.
5. Counsel for accused/appellant submits that;
 - there is absolutely no material to connect the appellant in any manner with the murder of the deceased.
 - Alleged admission made by the appellant before Smt. Bisahin Bai (PW-1) & Govind Singh (PW-3) being uncorroborated inspired no confidence and thus not acceptable.
 - Plea of alibi taken by the accused/appellant not only finds support from the defence witness but also from the evidence of the prosecution witnesses who have stated in categorical terms that when they reached the house of accused/appellant, the accused/appellant was not present there.
 - Apart from the accused, his mother was also residing in the house and thus it cannot be said that it is the accused/appellant who murdered the deceased.
 - Though the belt & electric wire are seized on the basis of the memorandum statement of accused/appellant but the prosecution has failed to prove that the same were used in commission of crime.
6. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of accused/appellant is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court. He further submits that dead body was found in the house of accused/appellant where admittedly the deceased was also living but no reasonable explanation has been offered

by accused/appellant regarding the same, therefore, his conviction under Section 302 of IPC is fully justified. He further submits that the accused/appellant has admitted before the prosecution witnesses that he has killed his wife.

7. We have heard counsel for the parties and perused the evidence available on record.
8. Bisahin Bai (PW-1) is the lodger of Dehati Merg (Ex.P-1) & Dehati FIR (Ex.P-2). She has stated that having been informed by Sarpanch Upendra that some quarrel has taken place in the house of accused/appellant, she had gone to the house of accused/appellant and saw the body of deceased lying in the room. At that time accused/appellant was not there and even she did not meet him on that day. At her instance, Dehati Merg & Dehati FIR were recorded. Inquest (Ex.P-3) was made by the police in her presence and likewise, spot map (Ex.P-4) was also prepared in her presence. She has further stated that she never had any talk with the accused/appellant and the accused/appellant never confessed before her that he killed the deceased. According to this witness, when she reached the house of accused/appellant, at that time mother of accused/appellant was present there but she did not talk to her. She has denied the fact the accused has made any statement to the police in her presence. Though in the diary statement and Dehati Merg recorded at the instance of this witness, she has stated that accused/appellant had confessed that it is he who committed murder of the deceased, but yet this witness has neither been declared hostile nor confronted with her diary statement or dehati merg.
9. Govind Singh Wakre (PW-2) is the witness of inquest (Ex.P-3), memorandum (Ex.P-5), seizure memos (Ex.P-6 & P-7). This witness has

admitted in the cross-examination that the accused/appellant had not disclosed anything to him in absence of the police.

10. Upendra Singh Uikey (PW-3) is the person at whose instance the village Kotwar had visited the house of accused/appellant and saw the deceased lying in dead condition. He is witness to the documents Ex.P-6 & Ex.P-7 by which wire, belt, bloodstained soil & plain soil respectively were seized. In the cross-examination this witness has stated that accused/appellant used to go to outside the village to collect herbs and stay there for some days. He has further stated that house of accused/appellant consists of two rooms, one being occupied by accused/appellant and other by his mother which was being used as kitchen also.
11. Rajeshwari (PW-4) is the mother of the deceased. This witness has stated about the cruelty meted out to the deceased by the accused/appellant in connection with the demand of money.
12. Chandrapal Kashyap (PW-5) appears to be the friend of the brother of deceased. He has also stated that the deceased was treated cruelly by the accused/appellant for demand of money.
13. Vikas (PW-6) is the 07 years old son of the deceased and the accused. He has not stated anything against the accused/appellant.
14. Ramdayal Kashyap (PW-7) is the brother of the deceased and he also deposed about the ill-treatment of the deceased by the accused and his demand for money.
15. Dr. M.S. Marko (PW-8) conducted post-mortem on the body of the deceased and noticed injuries as stated above. He has opined that nature of death was asphyxia leading to cardio respiratory arrest.
16. M.P. Tandon (PW-9) is the Investigating Officer and he has duly supported the prosecution case.

17. Present is case of death of a housewife inside the house and the prosecution case against the accused/appellant is based on the circumstantial evidence. Indisputably, in a case of house murder there is a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed and the inmates cannot 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.
18. In the case in hand, the accused/appellant has pleaded alibi by stating in his statement recorded under Section 313 Cr.P.C. that he does not know as to how his wife died because he had gone to the forest on 21.10.2009 for collecting herbs and on his return to home on 24.10.2009, he came to know that his wife has expired. He informed about the death of his wife to the Sarpanch and thereafter the matter was reported to the police by the village Kotwar. Supporting the plea of alibi taken by the accused/appellant, Rajeshwari Kachi (DW-1), mother of accused, has stated that four days prior to the death of the deceased, the accused/ appellant had gone to the forest for collecting herbs and returned on the day when the body of deceased started giving rotten smell. It has come in the evidence of prosecution witnesses also that accused/appellant used to go out of the village for collecting herbs and return after some days. There is no whisper in the evidence of prosecution witness that any of them had seen the accused/appellant in the village. Thus, the stand taken by accused/appellant that on the fateful day he was not in the village and had gone to the forest for collecting herbs appears to have some substance because the prosecution has not made any effort to show to the contrary.

On the other hand, the plea of alibi taken by accused/appellant gets corroboration from Rajeshwari Kachhi (DW-1) who at the relevant time was very much in the village. Thus, the prosecution has utterly failed to discharge its onus to falsify the plea of alibi taken by accused/appellant by leading substantive evidence to this effect. Since all these have not been done, the accused/appellant is entitled to get the benefit of doubt. Moreover, it is settled law that even if a doubt is raised in the mind of the Court that the accused may have been present or may not have been present at the time of the occurrence, then the accused is entitled to the benefit of doubt.

Though certain articles like belt & electric wire are said to have been seized by the prosecution on the basis of disclosure statement of the accused/appellant, but the prosecution has not been in a position to prove that these articles were used in commission of crime in question. Apart from the appellant, the other inmate of the house during the crucial period was mother-in-law of the deceased who was not even suspected and charge sheeted.

So far as the diary statements of Smt. Bisahin Bai (PW-1) & Govind Singh (PW-3) are concerned, though Smt. Bisahin Bai (PW-1) has stated in her diary statement that the accused/appellant was saying in the village that he has killed his wife, but she has not uttered a single word in this regard in her examination-in-chief, rather admitted in her cross-examination that the accused had not made any such statement before her. Similarly, Govind Singh (PW-3), who too has stated in his diary statement that on being asked, the accused/appellant told him that he has killed his wife, has specifically admitted in his cross-examination that the accused/appellant did not disclose anything to him in absence of the

police. Being so, the so-called statement made by the accused/appellant before the aforesaid witnesses have no evidentiary value in the eye of law.

19. Thus, having given our anxious and careful consideration to the facts and circumstances of the case, we feel that the prosecution has failed to bring home the guilt of the accused/appellant beyond reasonable doubts and therefore he is entitled to be acquitted of the charge under Section 302 of IPC by extending him benefit of doubt.

20. In the result, the appeal succeeds and the impugned judgment of conviction and order of sentence is hereby set aside. The appellant is acquitted of the charge levelled against him by extending him benefit of doubt. The appellant is reported to be in jail, therefore, he be set at liberty forthwith if not required to be detained in any other case.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(C.B. Bajpai)
Judge

roshan/-