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HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 581 of 2007**

Brijendra Singh, aged about 31 years, son of Shri Raj Singh Jat, Resident of Khanpur Khurd, Police Station Baroda, District Sonipat, Haryana, presently resident at village Sandi Khar, Police Station Bemetara, District Durg, Chhattisgarh

----Appellant**Versus**

State, Through the Police Station, Bemetara, District Durg, Chhattisgarh.

---Respondent

For Appellant : Shri P.K.C.Tiwari, Senior Advocate with Shri Shashi Bhushan, Advocate.
For Respondent/State : Ms. Madhunisha Singh, Panel Lawyer

Hon'ble Shri Deepak Gupta, Chief Justice
Hon'ble Shri Sanjay K. Agrawal, J.

Judgment on Board**Per Deepak Gupta, Chief Justice****29/08/2016**

1. This appeal by the accused/Appellant is directed against the judgment dated 30.06.2007 delivered by the learned Additional Sessions Judge, Bemetara, District Durg, in Sessions Trial No. 1 of 2007 whereby he convicted the accused/Appellant for having committed an offence punishable under Section 302 of the Indian Penal Code and sentenced him to undergo life imprisonment with fine of Rs. 1000/-. In default of payment of fine, he was required to undergo further two months imprisonment. The accused/Appellant was also convicted for the offence punishable under Section 201 IPC and sentenced to undergo rigorous imprisonment for three years with fine of Rs. 500/- and in default of payment of fine, he was required to undergo one month further imprisonment.

2. The police machinery was set in motion on the basis of FIR (Exhibit P-15) lodged by the accused/Appellant himself. In this FIR, he stated that he belonged

to Haryana but had purchased some land in Bemetara for the purpose of agriculture. In the FIR, it is stated that the informant (the accused) had gone to his fields on 07.01.2007 at about 9:45 pm alongwith his brother Surendra Singh to irrigate the fields. According to him, he resides in village Sandi Khar alongwith his father, Raj Singh and brother Surendra. His father resides in one room, his brother Surendra Singh in another room with his wife Suman, and in the third room, the informant Brijendra Singh resides with his wife Mogra Bai (the deceased). In the FIR, it is further stated that at about 11:00 pm, his *Chacha* (paternal uncle) Tilak Ram came to the field at village Rachkudi and informed him that his (Brijendra's) wife has been murdered. Thereafter, the accused went home and saw that his wife has been killed with a sharp edged weapon and then he went to the police station to lodge the FIR.

3. After the report was lodged, the police investigated the matter and on the basis of investigation, the police came to the conclusion that it is the informant who himself committed the murder of his wife and thereafter, charge-sheet under Section 173 CrPC was filed against him. The accused was charged with having committed murder of his wife and also charged with having created false evidence by lodging a false FIR. After the trial, he has been convicted and sentenced as aforesaid. Hence, this appeal.

4. We have heard Shri Tiwari, learned Senior Counsel for the Appellant and Ms. Singh, learned Panel Lawyer for the State.

5. Admittedly, there are no eye-witness to the case. In the house in which the deceased was killed, the accused was residing alongwith his father, brother and sister-in-law. None of the other occupants of the house nor any neighbours have been examined by the prosecution. It is true that the occurrence took place late in the night and we may have invoked Section 106 of the Evidence Act, but this is a case where the FIR has been lodged by the Accused himself and has stated that

he had gone to irrigate his fields at village Rachkudi which was 7 KMs away.

6. We are, at this stage, not commenting whether the aforesaid statement of the accused is correct or not but it was very easy for the police to verify the same. Some investigation should have been done at village Rachkudi itself to find out whether the fields in fact required any irrigation at that time; whether any crop was cultivated in the fields or whether there were any other persons from that area who were present in their fields at the relevant time. This, the police has not done. The main case of the prosecution is that the FIR filed by the Accused is false with a view to draw attention of the police away from him. If this is the case of the prosecution, then the prosecution should have proved by leading some evidence that something false was stated in the FIR. Other than saying that presumption should be drawn under Section 106 of the Evidence Act that the accused must have been with the deceased at about 10:00 to 10:30 pm, no evidence has been led to show that the statement of the accused is false.

7. People do irrigate their fields at night but one would only irrigate his fields if the crops are planted. Officials from the Revenue Department or the Agriculture Department could have been examined to find out whether there was any crops planted and whether these crops required any irrigation at that time. Irrigation can be done by various means. It is not clear that whether there was a tubewell in the field itself and it is not clear that some water was being shared with other villagers. If water was being shared, then other villagers would have been aware about this. All these facts could have been proved by the prosecution and if the prosecution does not prove these facts, it cannot rely on Section 106 of the Evidence Act to fasten the burden of proof upon the accused.

8. The burden of proof in a criminal case is always on the prosecution. It is true that if the prosecution shows that the accused and the deceased were alone in the room at a particular time, then under Section 106 of the Evidence Act, the

burden may shift on the accused to prove how the wife died within the four corners of the room. But this presumption cannot be drawn when he claims that he was 7 KMs away unless it is proved that the said statement is false.

9. The only reason given by the trial Court is that at 10:30 pm, he should have been at home and that, in our view, is not the correct approach. It is not for the accused to prove the case of the prosecution but the prosecution must prove the basic facts on the basis of which the burden may shift upon the accused but unless the prosecution discharges its initial burden which is cast upon it, the burden can never shift upon the accused.

10. As far as motive is concerned, there is no evidence on record with regard to it. Kejauwa (PW-3), father of the deceased has stated that about 1½ months prior to her death, she had complained that she was beaten by her husband and in-laws. However, this witness states that he was never examined by the police and there is no statement under Section 161 CrPC recorded. As far as Lacchni Bai (PW-5), mother of the deceased is concerned, she has not supported the prosecution case at all. She in fact states that the accused and the deceased were living happily and therefore, the circumstance of motive is not proved.

11. The next circumstance is recovery of *Gandasa* (weapon of offence) at the instance of the accused. There are two witnesses to the recovery namely Sona Das (PW-1) and Meenaram Sahu (PW-2). Both of them have turned hostile and not supported the prosecution story. They stated that the accused was merely asked to pick up the *Gandasa* from the open field. The Investigating Officer has not been examined. The *Gandasa* was never properly sealed after seizure. Though, in the FSL report, it was opined that it contains blood but it is not stated whether it was human blood or any other blood. In this view of the matter, the prosecution has miserably failed to prove its case beyond reasonable doubt.

12. In view of the above discussion, the appeal is allowed. The judgment dated 30.06.2007 delivered by the learned Additional Sessions Judge, Bemetara, in Sessions Trial No. 1 of 2007, is set aside and the Appellant/accused is acquitted of all the charges.

13. The Appellant is on bail. His bail bonds are not discharged at this stage and shall remain operative for a period of six months from today in view of Section 437-A of the CrPC.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE

Sd/-
(Sanjay K. Agrawal)
Judge