

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 957 of 2005

Devi Singh S/o. Mangluram Mandavi, Aged about 35 years, Occupation, Cultivator, R/o. Village Massu, Kokada, Police Station- Farasgaon, District Bastar(C.G.)

---- APPELLANT

Versus

State of Chhattisgarh, Through- Police Station- Farasgaon, District Bastar (C.G.)

---- RESPONDENT

For Appellant	:-	Mr. Prakash Tiwari and Mr. Palas Tiwari, Advocates
For Respondent /State	:-	Mr. Shashank Thakur. Govt. Advocate

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Anil Kumar Shukla

Judgment on Board By
Prashant Kumar Mishra, J.

17.10.2016

1. Assail in this appeal is to the judgment of conviction under Section 302 of Indian Penal Code and sentence of life imprisonment for having committed murder of his wife Itwarin Bai, at about 7.00 PM on 10.03.2005.
2. The appellant Devi Singh, was married with the deceased about 15 years back from the date of incident. His wife was unable to procreate child, therefore, there used to be dispute between them.

3. According to the prosecution, on the fateful day, there was quarrel between the appellant and the deceased on account of her failure to procreate child as also for not cooking fresh food. The deceased was allegedly assaulted on her forehead with a stone weighing about 5050 grams, thereafter, the deceased was pushed into the Well, which was situated at a distance of about 150 meters from their house (appellant's house).
4. It is said that when on the next day, the deceased failed to join the villagers for collecting *Mahua*, her mother enquired as to why she has not come for collecting *Mahua*. Lakhmuram(PW-1), the brother of the deceased, along with the other brothers went to the house of the appellant to enquire her whereabouts and in course of search, they looked into the well and found her green shawl floating in the well. The shawl was brought out and on suspicion that she might have fallen into the well, the water inside was taken out by means of *Tullupump*. However, the dead body could not be found immediately. On the next morning, on 12th March 2005, the villagers successfully located and took out the dead body with the help of anchor.
5. Morgue intimation Ex.P.-1 was lodged by Lakhmuram(PW-1). The register belonging to Panchayat was recovered from Lakhmuram (PW-1) wherein the proceedings of Panchayat

meetings were recorded when the dispute between the appellant and the deceased was reported to the Panchayat. During further investigation, memorandum statement of the appellant was recorded vide Ex.P.4, pursuant to which blood stained stone was recovered from inside the well and his blood stained *baniyan* was recovered from the appellant. The dead body was sent for autopsy which was performed by Dr. Manisha Netam (PW-7) who found one lacerated wound present vertically in midst of forehead measuring 4x 2 cm with 2 cm depth and clots present in it. It was caused by hard and blunt object. In the postmortem report Ex.P-1, it was further opined that the cause of death is asphyxia due to drowning and the duration of death was about 24 -36 hours.

6. The stone and *baniyan* recovered from the appellant were sent for FSL examination, for which FSL report was submitted vide Ex.P.-19 which found blood stains on both the articles. Case diary statements of the witnesses were recorded and the police completed the investigation and filed the charge sheet.
7. Mr. Prakash Tiwari, Advocate along with Mr. Palash Tiwari, Advocate learned counsel appearing for the appellant would argue that the chain of circumstantial evidence is not complete, therefore, the conviction of the appellant is not in accordance with the law. According to them, the prosecution has failed to prove

any motive for the appellant to commit the crime because such kind of dispute between husband and wife occurs in every house and the said domestic quarrel can not be treated as motive for commission of murder. It is also argued that there is absolutely no evidence in respect of extra judicial confession. Evidence of blood stains on the stone is highly unbelievable because the stone was recovered from inside the well and it is not possible that the blood stains would survive on the stone which was drowned in water for about 2 days.

8. Per contra, Learned State counsel would support the impugned judgment of conviction. He would further argue that the chain of circumstantial evidence is so complete that it points towards the guilt of the accused only.
9. We have heard learned counsel for the parties at length and perused the record.
10. It is not a case where the appellant and the deceased were not known to each other. They are husband and wife, therefore, they were residing under one roof and they were supposed to know the whereabouts of each other. The appellant has admitted in his accused statement that he used to bring back his wife after Panchayat meeting ,therefore, coupled with the statement wherein he has stated that there used to occur quarrel between

them, it is established that they had strained relation. Whether or not such strained relation would amount to *mens-rea* for commission of murder depends upon individual and it can not be put into a straitjacket.

11. The prosecution has rested its case against the appellant and has brought home the charges on the basis of (1) extra judicial confession (2) recovery of blood stained stone and baniyan from the appellant.
12. The nature of evidence and degree of proof required to sustain the conviction on the basis of circumstantial evidence has been dealt by the Supreme Court in the matter of **Sharad Birdhichand Sarda Vs. State of Maharashtra**¹, wherein the Supreme Court has underlined the conditions, which must be fulfilled for convicting the accused on the basis of circumstantial evidence and held in para-152 as under:

“152. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned ‘must or should’ and not ‘may be’ established. There is not only a grammatical but a legal distinction between ‘may be proved’ and ‘must be or should be proved’ as was held by this Court in *Shivaji Sahebrao Bobade Vs. State of Maharashtra*, (1973) 2

¹ AIR 1984 SC 1622

SCC 793 : (AIR 1973 SC 2622) where the following observations were made:

“certainly, it is a primary principle that the accused must be and not merely may be guilty before a Court can convict and the mental distance between ‘may be’ and must be’ is long and divides vague conjectures from sure conclusions.”

(2)the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

(3)the circumstances should be of a conclusive nature and tendency.

(4)they should exclude every possible hypothesis except the one to be proved, and

there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

13. The circumstantial evidence is evidence which is not direct but consists of evidence of various other facts which are so closely associated with facts and circumstance and issue that taken together to form a chain of circumstances from which the existence of the principle fact can be legally informed or presumed. The inference of guilt would be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused. The circumstances from which the conclusion of guilt is drawn should be fully proved, and conclusive in nature so that it is consistent

only with the hypothesis of guilt and inconsistent of the innocence.

14. When the evidence available in the case is examined on the touchstone of the extent and nature of proof required, it is to be seen that PW-1 Lakhmuram is the brother of deceased who lodged the FIR. According to him, on one day her mother asked from one Sundarbati, neighbour of deceased Itwarinbai as to why the deceased is not attending for collection of *Mahua*. Elder brother of the deceased went towards the well and saw one green colour shawl floating on the water which was taken out through a bamboo. At this stage, an enquiry was made from the accused about the whereabouts of the deceased on which he feigned ignorance. Other relatives in the village were also not aware about the deceased. At about 8 PM in the night, some water was removed from the well with the help of *Tullupump*, however, the dead body was not seen. It was recovered on the next day with the help of anchor. Soon thereafter the police was informed. This witness has proved morgue intimation Ex.P-1, seizure of Panchayat register vide Ex.P.-2, seizure of stone and *baniyan* vide Ex.P.-3 and the memorandum statement vide Ex.P-4. He has also proved the dead body inquest vide Ex.P.-6 and the dead body Supurdnama vide Ex.P5 and Naksha Panchayat vide Ex.P 7.

15. The other important witnesses around whom the entire prosecution case is revolving is PW-2 Somaru, he is the witness to the extra judicial confession. In the examination in chief he spoke about extra judicial confession to say that in the meeting the appellant denied his involvement in the murder of his wife. However, when he was declared hostile and cross-examined he fully supported the prosecution case by stating that the appellant informed the villagers present in the Panchayat meeting that on account of not preparing fresh food and not begotten any child, he had slapped twice his wife and assaulted her by the stone and pushed her into well. When further cross-examined by defence he denied that at the time of Panchayat meeting, the police personnel were present. He stated of his own that police was not present in the meeting and only villagers were present.
16. Manshukh (PW-3) is the villager, who had gone to the place of occurrence, after the dead body was recovered. He speaks about the enquiry made from the accused by the Police. He also speaks about the appellant's statement leading to recovery of stone. Thus, this witness appears to be present at the time of recording of memorandum statement. He is also a witness to the dead body inquest vide Ex.P-7.

17. Duklibai (PW-4) is the elder sister of the deceased. She speaks about the dispute and quarrel between the appellant and the deceased. She has also stated that when the shawl of the deceased was recovered from the well her brother raised suspicion that the appellant might have pushed the deceased into the well. The dead body was searched thereafter.
18. Irfanul Huqe (PW-5) is the Patwari who has prepared the Nazri Naksha vide Ex.P.-8 and Panchanama vide Ex.P.- 6, whereas Arvind Dwivedi (PW-6), is the I.O.
19. In the matter **Rumi Bora Dutta Vs. State of Assam** reported in (2013)7 SCC,417, **Suresh and Another Vs. State of Haryana** reported in 2015(2) SCC 227. The Supreme Court has held that under Section 106 of the Evidence Act it is for the person concerned to prove any especial fact within his knowledge and if such especial fact is not disclosed, an adverse inference can be drawn. Thus, the said principle under section 106 of the Evidence Act is applied, one of the inmates of the house has been murdered and other inmates do not offer any explanation.
20. In the case at hand, the appellant and the deceased were the only persons residing in the house. The well was at a distance of 150 meters in the kitchen garden of the house. Although the Nazri Naksha Ex.P-8 shows existence of two other houses and

there is no clear evidence about the ownership of the well, however, in the dead body Panchanama Ex.P.-6, the well has been referred to be situated in the kitchen garden of the appellant Devi Singh. Similar is the mention in the Naksha Panchanama vide Ex.P.-7. Thus, there is evidence to suggest that the well was the part of kitchen garden belonging to the appellant. In view of this evidence, it was for the appellant to have searched for his wife when she was missing after 7 PM from 10th March, 2005. The appellant's conduct was highly surprising and unusual when he did not make any efforts to locate his wife, nor inform this fact to his relative or in-laws, who are residing in the same village. It was only when the mother of the deceased enquired the villagers about the deceased as to why she is not joining for collection of Mahua that her brothers including Lakhmuram(PW-1) came to the house of the appellant and found the green colour shawl belonging to the deceased floating in the well.

21. Evidence of (PW-2) Somaru, concerning extra judicial confession is found reliable despite the fact that the witness has turned hostile. It is settled law that the entire statement of a hostile witness is not to be discarded and such part which is consistent with the prosecution case is admissible in evidence. {See : State of Rajasthan Vs. Bhawani & Another : (2003) 7 SCC 291, Lella Srinivasa Rao Vs State of A.P. : (2004) 9 SCC 713}.

22. Somaru (PW-2) has clearly spoken about extra judicial confession made by the appellant in the presence of the villagers in the Panchayat meeting and further that no Police personnel were present in the said meeting. Coupled with this there is scientific evidence in the nature of availability of blood stains on the stone and baniyan recovered at the instance of the appellant. Even, if we leave out the stone which was lying inside the well for about 2 days, there is no explanation from the appellant as to how the blood stains are present on the baniyan recovered from him.
23. We are least impressed with the argument that the deceased might have committed suicide on account of domestic dispute between the husband and the wife. There are twin reason for this, *firstly*, there is no evidence or suggestion given to any of the witnesses nor any statement of the appellant to this effect in his examination under Section 313 of Cr.P.C and *secondly*, if the domestic dispute was of such magnitude that it might have compelled the deceased to commit suicide, in the same manner it might have enraged the appellant constituting motive to assault the deceased and push her into the well.
24. In our considered opinion, apart from the evidence of extra judicial confession and existence of blood stains on the baniyan,

the missing link in the chain of circumstantial evidence, if any, is provided by the appellant's silence soon after 7PM on the date of incident till her shawl was recovered and he made extra judicial confession. It was highly unusual for a husband to remain quiet, despite his wife not being available in the house for about 2 days. The date and time of commission of offence perfectly fits to the time line shown in the postmortem report after the death i.e. 24 to 36 hours.

25. For the foregoing, we are of the considered opinion that learned Sessions Judge has not committed any illegality in convicting the appellant under section 302 of IPC. The appellant has rightly been held guilty for committing offence punishable under Section 302 of the IPC.
26. As an upshot, the appeal fails and is hereby dismissed. The appellant is on bail. His bail bonds are cancelled and he be taken into custody forthwith to serve out the remaining period of sentence imposed upon him.

Sd/-

Judge
Prashant Kumar Mishra

Sd/-

Judge
Anil Kumar Shukla