

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1054 of 2015**

Paarasnath Ram Uranw S/o Maaghu Ram Uranw, Aged About 40
Years Occupation- Driver, R/o Tikaitganj, Police Station and District-
Jashpur (Chhattisgarh)

---- Appellant

Versus

State of Chhattisgarh Through- Police Station- Jashpur, District-
Jashpur (Chhattisgarh)

---- Respondent

For appellant	:	Mr. Gautam Khetrapal, Advocate.
For Respondent/State	:	Mr. Adil Minhaj, Panel Lawyer.

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

Judgment on Board by Justice Pritinker Diwaker**08/01/2016**

1. This appeal arises out of impugned judgment and order dated 31-12-2005 passed by Additional Sessions Judge, Jashpur, Distt. Jashpur in S.T. No. 108/2005 convicting the accused/appellant under Section 302 of the IPC and sentencing him to undergo imprisonment for life with fine of Rs. 1,000/- plus default stipulation.
2. As per prosecution case, on 3-9-2005 at about 3.00 am, the accused/appellant committed murder of his wife Gutiyari Bai by causing three injuries on her head by axe. The neighbour of the accused/appellant P.W. 1 Balkunwar after hearing the cries of the children of the appellant and the deceased went to the house of the appellant and saw the deceased in an injured condition and son of the appellant and the deceased P.W. 6 Bajrang informed him that it is the accused/appellant who had killed the deceased. At the instance of P.W. 6 Balkunwar, merg intimation Ex. P-1 was recorded on 3-9-2005 at about 8.00 am and thereafter the FIR Ex. P-2 was registered at 8.10

am under Section 302 of the IPC against the appellant. Post mortem on the body of the deceased was conducted on 3-9-2005 by Dr. R.N. Kerketta, however he was not examined as the PM report was admitted under Section 294 of Cr.P.C. As per post mortem report the deceased suffered following three injuries :

- i. Incised wound present over temporoparietal region right side. Size about 6 x 1 x .5 cm margin everted and spindle shaped directed longitudinal.
- ii. Incised wound just behind 1st wound over temporoparietal region right side size about 6 x 1 x 5 cm margin everted and spindle shaped directed longitudinal.
- iii. Lacerated wound present over front temporo zygomatic region right side size about 2 x 2 x .5 cm triangular shape. Margins inverted.

As per autopsy surgeon, the cause of death was hemorrhagic shock (brain Haemorrhage). Nature of death is ante mortem homicidal.

3. After investigation charge sheet was filed against the accused/ appellant under Section 302 of IPC.
4. So as to hold the appellant guilty, the prosecution has examined 6 witnesses. Statement of accused was also recorded under Section 313 of the Cr.P.C. in which he denied the charges levelled against him, pleaded innocence and false implication in the crime in question.
5. Learned counsel for the appellant submits that in fact only one injury was caused by the appellant and rest two injuries are the impact of the first injury. He submits that had the autopsy surgeon been examined in the court, the appellant could have cross-examined him and could have brought on record that in fact the injury was only one and rest two injuries were the impact of the first injury. He also submits that no formal application under Section 294 of the Cr.P.C. has been filed by the prosecution and the post mortem report Ex. P-16 has been admitted after framing of charge. He submits that considering this aspect of the case, at best the appellant is liable to be convicted under Section 304-I of IPC. He submits that as accused is in jail since last more than 10 years after conviction, in the interest of justice, after converting the offence into Section 304 Part I, IPC he may be

sentenced to the period already undergone by him.

6. On the other hand, counsel for the respondent/State supports the judgment impugned and submits that the conviction of the accused/appellant is strictly in accordance with law. He submits that once the document i.e. post mortem report filed by the prosecution is admitted by the appellant under Section 294, Cr.P.C. entire post mortem report becomes admissible and the appellant at this stage cannot take the ground that he did not have the opportunity to cross-examine the autopsy surgeon. He submits that from the post mortem report, it is apparent that three injuries were sustained by the deceased on her head. He submits that eye-witness P.W. 6 Bajrang is son of the accused and the deceased and has categorically stated as to the manner in which his mother was done to death. It has been further argued that the incident has taken place inside the house and no explanation has been offered by the appellant in his statement under Section 313 of the Cr.P.C. Considering the nature of injuries and the part of the body where the injuries are inflicted, the court below has rightly convicted and sentenced the accused/appellant under Section 302, IPC. His sentence also does not require any interference.
7. We have heard learned counsel for the parties and perused the record.
8. P.W. 1 Balkunwar is neighbour of the appellant and lodger of Ex. P-1 merg and Ex. P-2 FIR. He has stated that the deceased was wife of the appellant and on the date of incident, after hearing the cries from the house of appellant when he reached to his house he saw the deceased in injured condition. He has further stated that Bajrang P.W. 6, son of the accused and the deceased was standing there. He has further stated that arrangements were made to shift the deceased to the hospital but he succumbed to her injuries and then he lodged merg intimation Ex. P-1 and FIR Ex. P-2. In para 6 of his cross-examination he has stated that on the date of incident the deceased and the appellant were quarreling. P.W. 2 Sumati Bhagat also appears to be neighbour of the deceased and the appellant. After hearing the cries of the deceased, she had gone to the house of the appellant and saw the deceased in injured condition. P.W. 3 T.C. Malakar is

investigating officer. P.W. 4 Balram Dansena is Patwari and has prepared spot map Ex. P-14. P.W. 5 Suraj Kumar is brother-in-law of the appellant in relation and has turned hostile. P.W. 6 Bajrang, a child witness aged about 12 years and son of the deceased and the appellant has stated that at about 3.00 am he saw his father the appellant assaulting the deceased. He has stated that neighbours came there and shifted his mother to the hospital but there she was declared dead. In cross-examination, he remained very firm and has reiterated as to the manner in which his mother was done to death.

9. Close scrutiny of the evidence makes it clear that on 3-9-2005, it is the accused/appellant who killed the deceased by causing three injuries on her head. The incident was witnessed by P.W. 6 Bajrang, son of accused and the deceased. He has categorically supported the prosecution case and appears to be trustworthy. There is no reason for this court to doubt the credibility of this witness. It is settled law that in case of murder of house inmate, the burden lies on the accused to give a cogent explanation as to how the crime was committed. The inmates of the house 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 an accused to offer any explanation. The appellant was under an obligation to give a plausible explanation for the cause of death in his statement under Section 313 of the Code of Criminal Procedure, which he fails to do. These facts completely are inconsistent with the innocence, but consistent with the hypothesis that it is the appellant who has murdered his wife.
10. We find no substance in the argument of appellant that the appellant is liable to be convicted under Section 304-I of IPC because he caused only one injury and had no opportunity to cross-examine the autopsy surgeon. The appellant himself had admitted the post mortem report under Section 294, Cr.P.C. Once the appellant has admitted the document, meaning thereby that all the contents thereof are also admitted.

11. Section 294 of Cr. P.C. makes dispensation of formal proof dependent on the accused or the prosecutor not disputing the genuineness of the documents sought to be used against them. Such contemplated dispensation is not restricted to any particular category of documents as under Section 293, in which ordinarily authenticity is dependent more on the mechanical process involved than on the knowledge, observation or the skill of the author rendering oral evidence just formal. Nor it is made dependent on the relative importance of the document or probative value thereof. The documents being primary or secondary or substantive or corroborative, is not relevant for attracting Section 294 of Cr. P.C. Not disputing its genuineness is the only solitary test for dispensing with the formal proof of a document. Even the PM report is also a document as any other document. Primary evidence of such a document is the report itself. Section 294 of Cr. P.C. enables the accused to waive the mode of proof in respect of such documents also by admitting it or raising no dispute as to its genuineness when called upon to do so under Sub-section (1) of Section 294, Sub-section (3) of Section 294 enables the Court to read it in evidence without requiring the same to be proved in accordance with the Evidence Act. There is nothing in Section 294 to justify exclusion of the PM report from the purview of documents covered thereby. The mode of proof of it also is liable to be waived as of any other document. It is clear to us that the words, reading, using, receiving, giving or admitting in evidence cannot but have the same meaning and import and the words can only mean that a document can be used at the trial for the disposal of the case in the same manner as any other document, proof of which is not dispensed with and is proved in accordance with the provisions of the Evidence Act. No document with all its probative value can be received in evidence unless its genuineness is first established by the mode of proof prescribed under the Evidence Act. The mode of proof however is liable to be waived by virtue of Section 294 of Cr. P.C. In the situation therefore, the PM report also is receivable in evidence without the evidence of the doctor and can still furnish corroborative evidence to support other evidence in the case.

12. But this cannot be true of each and every case. Whether the doctor's evidence is necessary or not depends on the facts and circumstances of each case. Raising no dispute to the genuineness of any document implies the considered decision on the part of the person against whom the said document is sought to be used. The Court has ordinarily to accept this decision and refrain from entering into the arena itself unless miscarriage of justice is apprehended. This Section also invests the Court with a discretion to examine the doctor or any such witness in that case. Therefore Section 294 of Cr. P.C. itself furnishes an in built protection to the defence or to the prosecutor against all possible lapses. It is open to the Court in its such discretion to examine the doctor or any other witness when it apprehends miscarriage of justice.
13. Section 294 is based on the rule of evidence that facts admitted need not be proved contained in Section 58 of the Evidence Act. Section 58 of the Evidence Act exactly corresponds to Section 294 of Cr. P.C. An admission by an accused or his counsel for the purpose of dispensing with the further proof of disputed facts is binding on the party unless of course circumstances are shown which would justify the Court in requiring proof under the proviso. Both under Section 58 of the Evidence Act and Section 294 of Cr. P.C. the Court has a discretion to require proof of such signature. The object underlying the provisions contained in Section 294 of Cr. P.C. is to avoid the time of the Court being wasted by examining the signatory of the document filed by the prosecution or the accused under Sub-section (1) of Section 294, Cr. P.C. to prove his signature when the correctness of its contents and the genuineness thereof is not disputed by the opposite party. If the signature and the correctness of the contents of a document filed by the prosecution or the accused under Sub-section (1) of Section 294, Cr. P.C. whose genuineness is not disputed by the opposite party are still required to be proved by examining the signatory of the document, the very object of enacting Section 294, Cr. P.C. will be defeated.
14. All documents filed by the prosecution or the accused under Sub-section (1) of Section 294, Cr. P.C. whose genuineness is not disputed by the opposite party may be read as substantive evidence under

Sub-section (3) of Section 294, Cr. P.C. The PM report filed by the prosecution is obviously a document as defined in Section 29 of IPC as well as in Section 3 of the Evidence Act. Under Sub-section (3) of Section 294, Cr. P.C. the Post Mortem report filed by the prosecution under Sub-section (1) of Section 294, Cr. P.C. may be read as substantive evidence in place of or in substitution of the testimony of the doctor who prepared or issued it, if its genuineness is not disputed by the accused.

15. The proviso to Section 294 of Cr. P.C, specifically gives a discretion to the Court to require such signature to be proved notwithstanding the fact that the genuineness of such document is not disputed by the prosecution or the accused. It is thus clear that the Court at no stage can act blindly or mechanically. Thus there is an inbuilt safeguard both for the accused and the prosecution. The proviso to Section 294 of Cr.P.C. makes it very clear that even if the genuineness of a document filed by the prosecution or the accused under Sub-section (1) of Section 294, Cr. P.C. is not disputed by the opposite party, the Court may require the proof of the signature of the person by whom it purports to be signed. In such a case the signatory of the document must appear in Court and prove his signature and the document will thereafter be read as substantive evidence.
16. We are not in agreement fully with the submission made by the learned counsel for the appellants that they had no opportunity to examine the doctor to prove that only one injury was caused to the victim and rest of the injuries are the impact of that injury. Once the defence admits the PM report, meaning thereby the contents of the same including the nature and extent of the injuries, the opinion as to cause of death etc. are not disputed, no formal proof of execution thereof is required. The said document can be read in evidence for all purposes though the author is not examined before the Court. Such document is not only admissible in evidence only to the execution of the document but also admissible to the contents of the document also. When document is admitted in evidence before trial court without any objection it would not be open to raise objection on such document in appeal. This being the legal position, we hold that this

document is a genuine one and it can be read in evidence for all purposes.

17. In view of above discussion, the argument that the appellant had no opportunity to cross-examine the autopsy surgeon to prove that only one injury was caused to the deceased has no force as the PM report has been admitted by him under Section 294, Cr.P.C.
18. We further find no substance in the arguments that the prosecution was required to file an application under Section 294, Cr.P.C. and that after filing of challan, the document cannot be admitted. Section 294, Cr.P.C. nowhere provides that any application is required to be filed. It only provides that the pleader for the prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document. In the present case, order sheet dated 29-12-2005 reflects that the counsel for the accused had admitted the post mortem report which was marked as Ex. P-16. Further it is a settled position of law that document under Section 294, Cr.P.C. can be admitted at any stage and it is not that it has to be admitted only before the trial.
19. In view of the aforesaid discussion, in the considered opinion of this court, it can be safely held that it is the accused/appellant who has committed the murder of the deceased. While going through the evidence on record, this Court could not lay hand on even a single document which could speak in negative making this Court to form an opinion other than the conviction. There appears to be no reason for this Court to differ from the view taken by the Court below while passing the judgment impugned and that being so it is hereby confirmed.
20. Appeal thus being without any merit is liable to be dismissed and it is dismissed as such. As the appellant is reported to be in jail therefore no further order regarding his surrender etc. is required.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Chandra Bhushan Bajpai)
Judge