

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on 11.10.2017****Judgment delivered on 17.11.2017****Criminal Appeal No.328 of 2008**

Rajjo Satnmai Son of Govindram Satnami, aged about 40 years, cultivator and resident of Village Barbaspur, PS Lalpur, District Bilaspur (CG)

---- Appellant**Versus**

The State of Chhattisgarh, Through P.S. Lalpur, District Bilaspur (CG)

---Respondent

For Appellant	: Shri Ravindra Sharma, Advocate
For respondent/State	: Shri Vaibhav Goverdhan and Smt. Smita Ghai, Panel Lawyers

Coram : Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT**Per Ram Prasanna Sharma, J.**

1. This appeal is directed against the judgment of conviction and order of sentence dated 28.02.2008 passed by the Second Additional Sessions Judge (FTC) Mungeli, Session Division Bilaspur (CG) in Session Trial No.72/2007, convicted the accused/appellant under Section 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life and to pay fine of Rs.200/- with default stipulation.

2. In the present case, name of the deceased is Usha Bai who was the wife of the accused/appellant. As per the case of the prosecution, wife of the accused/appellant went to the house of one Karan Singh to live with him as his wife and that caused

annoyance to the accused/appellant. On 15.11.2006 at about 6.00 pm the accused/appellant assaulted the deceased and the deceased ran away from the house of the accused/appellant and reached to the house of her brother-in-law (Jeth Anand Kumar). Again the accused/appellant caught hold the deceased and dragged her to his house and assaulted brutally by sword and other articles and committed her murder. Body of the deceased was seen by the villagers in the courtyard of the house of the accused/appellant and Kotwar Bedan Das reported the matter to the Police Station Lalpur on 15.11.2006 at about 8.30 pm. Sub Inspector namely Pitambar Gilhare (PW-17) recorded First Information Report and merged information report and on the next day certain articles were seized from the spot. Body of the deceased was sent for postmortem on 20.11.2006, the accused/appellant was arrested and upon his recovery statement one sword was seized from him and his dress were also seized. Statement of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1908 (for short 'the Code').

3. After completion of investigation, charge sheet was filed against the accused/appellant. The trial Court framed charges against the accused/appellant as aforementioned upon which he did not plead guilty and the trial was conducted. After completion of the trial, the trial Court convicted and sentenced the accused/appellant as aforementioned.

4. Learned counsel appearing for the accused/appellant submits as under:

(i) that from the evidence of the prosecution witnesses it is not established that the accused/appellant was at village Barbaspur(Jarha) at the relevant time and when he was not in the house, he is not under obligation to explain about the dead body of the deceased found in his house.

(ii) that as per postmortem report, which was conducted on 16.11.2006 at 2.00 pm, duration of death is before 12 hours of the examination and therefore, the deceased died between 2.00 pm of 15.11.2006 and 2.00 am of 16.11.2006 and at that time the accused/appellant was not present in the house and from the evidence of the prosecution witnesses, it is established that he was at village Junwani.

(iii) that the articles seized from the accused/appellant are of no help to the prosecution as there is no serological report regarding blood group.

(iv) that no prosecution witnesses has stated before the trial Court that the accused/appellant has absconded, therefore, the story of absconding from village Barbaspur is not acceptable.

5. Per Contra, learned counsel for the State supporting the impugned judgment has submitted that the judgment of the trial Court is strictly in accordance with the law and well founded and there is no illegality or infirmity in it warranting any interference by this Court.

6. We have heard learned counsel for the parties and perused the material on record.

7. To substantiate the charge, the prosecution has examined as many as 17 witnesses. To nullify the charge, the accused/ appellant produced one defence witness.

8. Dr. Sagar Shukla (PW-11) conducted postmortem of deceased Usha Bai on 16.11.2006 at about 1.30 pm and noticed following injuries:-

- (1) incised wound of 3 x 1 x 2 cm at the nose bridge-root
- (2) incised wound on left side of nose, nostril of 1 x 1 ½ x ½ cm
- (3) incised wound on right side of neck of 8 x 2 x 3 cm, major vessels, nerves cut
- (4) incised wound of epigastric region of 7 x 2 x 2 cm
- (5) abrasion on right iliac region of 3 x 2 x 1 cm
- (6) incised wound of 7 x 2 x 2 cm on the back of the neck
- (7) incised wound of 7 x 2 x 1 cm on inter scapular region
- (8) incised wound of 1 x ½ x ½ cm on the right scapular region
- (9) abrasion of 10 x .5 x .5 cm on left upper arm
- (10) abrasion of 10 x 1 x ½ cm on post armpit left arm

As per the opinion of the doctor, cause of death is due to excessive hemorrhage as a result of injury to major vessels of the neck. He opined that the death is homicidal in nature and time since death is about 12-24 hours of the examination. Version of this witness is not rebutted in the cross examination and there is

no other expert opinion to rebut the same and there is no reason to disbelieve his version. It is established that the deceased died homicidal death.

9. There is no eyewitness account to the incident. All the witnesses of the prosecution have turned hostile. Case of the prosecution is based on circumstantial evidence and as per the law laid down by the Hon'ble Supreme Court in the case of **Jaharlal Das Vs. State of Orissa, (1999) 3 SCC 27**; circumstantial evidence in order to sustain the conviction must satisfy three conditions:

- (i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
- (ii) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accuse;
- (iii) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else, and it should also be incapable of explanation on any other hypothesis than that of the guilt of the accused.

In case depending largely upon circumstantial evidence there is always a danger that conjecture or suspicion may take the place of legal proof. The court must satisfy itself that the various circumstances in the chain of evidence should be established clearly and that the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused. When the main link goes, the chain of circumstances gets snapped and the other circumstances cannot in any manner establish the guilt of the accused beyond all reasonable doubts. It is at this juncture the Court has to be watchful and avoid the danger of allowing the suspicion to take the place of legal proof for sometimes unconsciously it may happen to be a short step between moral certainty and legal proof. At times it can be a case of 'may be true'. But there is a long mental distance between 'may be true' and 'must be true' and the same divides conjectures from sure conclusions.

10. Pancho Bai (PW-1) is the mother of the accused/ appellant. She deposed that on hearing the information by Ku. Chaina and Sajan, who are the daughter and son of the accused/appellant and the deceased, she rushed to the house of the accused/appellant and found that Usha Bai was lying in the courtyard of the said house. She deposed that at that time the accused/appellant was not present in the village and he was in some other village. Ku. Chaina (PW-2), Sajan (PW-3), Tularam (PW-4), Santosh (PW-5), Uthara Bai (PW-6), Vedan Das (PW-15), Nisha Bai (PW-16) deposed in the same line. All the witnesses have stated in the same line that the accused/appellant was not present during the relevant period.

11. Only circumstance which is established by the prosecution is that body of the deceased was found in the courtyard of the house of the accused/appellant, but from the evidence, it is not established that the accused was present in the village during the period i.e. on 15.11.2006 and 16.11.2006 and the witnesses have stated that he had gone to some other village at the same time.

12. Legal principle embodied in Section 106 of the Evidence Act which reads as under:

“ When any fact is especially within the knowledge of any person, burden of proving that fact is upon him.”

13. This section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but the section would apply to cases where the prosecution

has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the court to draw a different inference. Section 106 of the Evidence Act is designed to meet certain exceptional cases in which it would be impossible for the prosecution to establish certain facts which are particularly within the knowledge of the accused. This lays down the general rule that in a criminal case the burden of proof is on the prosecution and section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult for the prosecution to establish facts which are 'especially' within the knowledge of the accused and which he/she could prove without difficulty or inconvenience. The word 'especially' stresses that it means facts that are pre-eminently or exceptionally within his knowledge."

14. In the present case, as per the postmortem report the deceased died between 2.00 pm of 15.11.2006 to 2.00 am of 16.11.2006 and from the statement of the prosecution witnesses it is established that the accused had gone to some other village Junwani and he did not return, therefore, it cannot be said that the circumstances was within the knowledge of the appellant.

15. There is no such evidence before the trial Court that the accused/appellant absconded after the incident because there is

no evidence that the appellant was present at the time of the incident. So no inference can be drawn against him to treat him as absconder.

16. In the matter of **Jose Alias Pappachan v. Sub-Inspector of Police, Koyilandy and Another**, reported in **2016 (10) Supreme Court Cases 519**, it is held by Hon'ble Apex Court that in absence of any persuasive evidence to hold that at the relevant time the appellant was present in the house, it would also be impermissible to cast any burden on him as contemplated under Section 106 of the Evidence Act. It would be, in our view, wholly unsafe to hold the appellant guilty of the charge of murder. It is a trite proposition of law, that suspicion howsoever grave, it cannot take the place of proof and that the prosecution in order to succeed on a criminal charge cannot afford to lodge its case in the realm of "may be true" but has to essentially elevate it to the grade of "must be true". In a criminal prosecution, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof and in a situation where a reasonable doubt is entertained in the backdrop of the evidence available, to prevent miscarriage of justice, benefit of doubt is to be extended to the accused.

17. The circumstances brought forth by the prosecution do not rule out in absolute terms the hypothesis of the innocence of the appellant. We thus consider it to be wholly unsafe to maintain his conviction as recorded by the court below. We are therefore,

inclined to extend benefit of doubt to him. The conclusions drawn by the court below are not tenable on the basis of the evidence available.

18. Accordingly, the appeal is allowed and the conviction and sentence recorded by the court below is hereby set aside and he is acquitted of charge framed. The appellant is reported to be on bail. His bail bonds stand discharged.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(Ram Prasanna Sharma)
JUDGE