

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 414 of 2011

Judgment reserved on 27.09.2017

Judgment delivered on 09.10.2017

1. Basant Pande S/o Motilal Pande, aged 37 years, Caste Pande, resident of Village Sonpuri, PS Dadhi, District Durg, CG

---- Appellant

Versus

1. State of Chhattisgarh through PS Dadhi, District Durg, CG

---- Respondent

For Appellant	:	Shri Shailendra Dubey, Advocate
For Respondent/State	:	Shri Bhaskar Pyasi, PL

Hon'ble Shri Justice Pritinker Diwaker &
Hon'ble Shri Justice R.P. Sharma

CAV Judgment

09.10.2017

This appeal has been filed against the judgment of conviction and order of sentence dated 30.04.2011 passed by the Additional Sessions Judge Bemetara, district Durg in Sessions Trial No. 41/2010 convicting the accused/appellant under Sections 302 and 201 IPC and sentencing him to undergo imprisonment for life with fine of Rs. 1000/- u/s 302 and RI for five years with fine of Rs. 500/- u/s 201 IPC, plus default stipulations.

2. Name of the deceased in the case in hand is Kanti Bai – wife of the accused/appellant. Their marriage was solemnized about six years prior to the date of incident i.e. 29.05.2010 and out of the wedlock one female child was also born. Case of the prosecution is that the accused/appellant used to doubt the fidelity of the

deceased and subject her to beating for that. On 30.05.2010 at about 6 AM one Beni Prasad Tiwari is said to have informed the father of the deceased namely Gaya Prasad Tiwari (PW-7) about receiving a telephonic information about her death. On receiving the said information father of the deceased along with his son Ashok Kumar Tiwari (PW-9), brother-in-law Kunj Bihari Tiwari (PW-8) and some other persons went to village Sonpuri where accused and the deceased resided, and by the time they reached there, body of the deceased was already taken to the cremation ground for the last rites. On seeing the blood coming out of her mouth and froth out of the nostrils and a mark on her neck, he and his relatives grew a suspicion that she might have been killed by throttling and therefore, he asked the people present there not to perform the last rites. He then informed the police about the death of the deceased vide Ex. P-6. On arrival of the police party to the cremation ground and nurturing the suspicion of some foul play, inquest was made vide Ex. P-8 and the body was sent for postmortem examination which was conducted by Dr. S.K. Sharma (PW-1) with the assistance of Dr. A.M. Shrivastava (PW-2) vide report Ex. P-1. As per query report Ex. P-3 given by PW-2 the cause of death was strangulation and the death was opined to be homicidal in nature. After *merg* inquiry, FIR Ex. P-16 was registered on 02.06.2010 against the accused/appellant and his mother Shakuntala Pandey for the offences punishable under Sections 302, 201 and 34 IPC. Vide seizure memo Ex. P-11 one nylon rope was seized from the house of the accused/appellant though there is no FSL report on record. After completion of investigation, charge-sheet was laid by the police against the accused/appellant and his mother Shakuntala Pandey for the offences punishable under Sections 302, 201, 34 IPC

followed by framing of charges accordingly.

3. To hold the accused persons guilty the prosecution has examined 15 witnesses in support of its case. Statements of the accused persons have also been recorded under Section 313 of the Code of Criminal Procedure in which they denied the allegations made against them and pleaded innocence and false implication in the case. Defence also examined two witnesses namely Kadanand Singh Verma (DW-1) and Bhagwan Das (DW-2) in support of its case.

4. After hearing the parties the Court below acquitted co-accused Shakuntala Pandey of the charges levelled against her but has convicted and sentenced the accused/appellant herein as detailed in paragraph No.1 of this judgment.

5. Counsel for the accused/appellant submits as under:

(i) That in the house in question, apart from the accused/appellant, his mother and father were also residing and therefore it cannot be said that it is the accused/appellant alone who has committed the offence alleged.

(ii) That, the house was accessible to one and all and being so the possibility of some third person gaining an entry therein and committing the murder of the deceased cannot be ruled out.

(iii) That on the date of incident the accused/appellant was not at home and had gone to Mungeli and only after his return he came to know about the death of the deceased.

(iv) That no motive has been proved by the prosecution to make him commit the crime in question.

(v) That on the same set of evidence the co-accused has already

been acquitted and therefore the accused/appellant also deserves the similar treatment.

(vi) That though a nylon rope has been seized from the house of the accused/appellant, in the absence of FSL report such seizure is of no help to the case of the prosecution. Moreover, the rope being a common article can be found everywhere.

(vii) That the Court below has committed an error in not considering the evidence of two defence witnesses while slapping conviction on the accused/appellant.

6. On the other hand counsel for the respondent/State supports the judgment impugned and submits as under:

(i) That the body of the deceased was found in the bed room of the accused/appellant and as his parents were residing in the other portion of the house with separate kitchens, they cannot be said to be the inmates of the house where the incident took place.

(ii) That in a case of house murder, of course, the initial burden lies on the prosecution to reach near the truth but since such an offence is committed in complete privacy inside the house where no other person except the accused and the deceased inhabited, he is also obliged to furnish a probable and satisfactory explanation as to how all that happened, and his failure in doing so itself provides an additional link in the chain of circumstances proved against him.

(iii) That though the information was given by the accused/appellant to his in-laws about the death of the deceased but without waiting till their arrival they took the dead-body to the cremation ground and had her parents and relatives not reached

there for some more time, they would have done her cremation also.

(iv) That if the accused/appellant was really innocent, he should have informed the police about the death of the deceased but he has not taken any such step in this regard.

7. Heard counsel for the parties and perused the material on record.

8. Dr. S.K. Sharma (PW-1) is the witness who along with Dr. A.M. Shrivastava (PW-2) conducted postmortem examination on the body of the deceased and gave the report Ex. P-1 which shows the presence of blisters on breasts; vagina, rectum and eyes were protruded, tongue was compressed between teeth, ligature mark was present between the chin and the vocal cord having resemblance with the rope. Cause of death has been opined to be asphyxia due to strangulation. Though the postmortem report does not indicate whether the death was homicidal or otherwise, query report Ex. P-3 clearly mentions the same to be homicidal in nature. Satish Kumar Sahu (PW-3) and Aishwarya Singh (PW-4) are the witnesses who assisted in the investigation. Devi Prasad Jangde (PW-5) is the Patwari who prepared spot map Ex. P-5. According to this witness, he did not make mention in the map about there being any cot in the bed room where accused/appellant and his wife used to sleep. He has expressed his ignorance about the presence of beat or panel in the exit point situate in the west portion of the house. He however has stated that in the west portion of the house there was a 3-4 ft. high boundary wall and one can cross the same by jumping. Sanat Kumar (PW-6) - the village Kotwar has not supported the case of the prosecution and has been declared

hostile. Gaya Prasad Tiwari (PW-7) – the father of the deceased has stated that after receiving the telephonic information on 30th May 2010 about the death of his daughter, he along with his son, brother-in-law as well as other villagers went to village Sonpuri but by the time they reached there, dead-body was already taken to the cremation ground. Thereafter, they too went to the cremation ground and on removing the cloth saw black spots on her neck which could be as a result of pressure applied with hands or the string. According to him, blood was coming out from her mouth, teeth were compressed and the white colour froth was coming out of her nostrils. Looking to the condition of the deceased, a suspicion grew in his mind that his daughter was killed by throttling and therefore he along with the Kotwar and other villagers went to the police station and disclosed about what he came across. This witness has further stated that on the basis of information provided by him to the police, *merg* Ex. P-6 was recorded. On inquest being made vide Ex. P-8, the dead-body was sent for postmortem examination. According to this witness, the villagers had told him that the accused quarreled with the deceased and also subjected her to beating. In paragraph No. 12 of his deposition he has reiterated that 2-4 days before the incident the members of the matrimonial house of the deceased had subjected her to beating, and has further expressed his apprehension about their involvement in her killing. Kunj Bihari Tiwari (PW-8) – cousin of the deceased has fully supported the case of the prosecution making almost similar statement to that of PW-7. Ashok Kumar Tiwari (PW-9) – brother of the deceased has also supported the case of the prosecution stating the things quite similar to that of PW-7 and PW-8. Mom Singh (PW-10) has not supported the case of the

prosecution and has been declared hostile. Pusau (PW-11) – another village Kotwar has stated that on 30.5.2010 at about 6 AM the accused/appellant came to his house and informed about the death of his wife on account of stomachache. Thereafter, he went to the house of the accused and asked the villagers to collect firewood and dung cakes for cremation of the deceased. He has further stated that on strangulation mark being noticed by the father of the deceased who was present in the cremation ground last rites did not go ahead and the information to that effect was given to the police. This witness too is stated to have noticed a black mark on the neck of the deceased. According to this witness, in one portion of the house two rooms were occupied by the parents of the accused whereas the other westward portion falling after the courtyard was in the occupation of accused and the deceased. Kitchen of the accused and his parents was not the same. The room where the deceased used to sleep, according to this witness, did not have the panels and that the 3-4 ft. boundary wall separating the houses of Kashyap family and that of the accused/appellant could be jumped over to go either side. Though this witness is stated to have been informed by the accused and his mother about being threatened and beaten by the Kashyap family over construction of house, but he did not see anyone hurling such threats. He has further stated that the only bus by which the villagers go to Mungeli for marketing leaves Sonpuri at 7 AM and returns at 6-7 PM and no other bus is available therefor. Smt. Sita Bai (PW-12) is the witness to inquest Ex. P-8. Shobha Singh Rajput (PW-13) has stated that he knew the accused and his wife and that on 29.5.2001 at about 9 PM the accused came to him and informed that on account of stomachache his wife had become unconscious

and asked him to go along. When he went to the house of the accused, the pulse of the deceased had stopped and she was dead. He has stated that on that particular day he did not see the accused going to Mungeli or even boarding the bus. He however is stated to have just heard the same. The distance of Mungeli from Sonpuri has been stated by this witness to be 27 Kilometers and by every route one can reach there in one and a half hour. As stated by this witness, one can go there and get back on bicycle or motorcycle also but he did not see the accused or his brother doing so. Ashok Kumar Tiwari (PW-14) is the Nayab Tehsildar who conducted the inquest. G.D. Singh (PW-15) is the investigating officer who has duly supported the case of the prosecution. Khadanand Singh Verma (DW-1) has stated that he knew the accused and his family members and that on the fateful day the accused, his brother and he himself had gone to Mungeli by bus which left Sonpuri at 8 AM and reached Mungeli at 10 AM. Thereafter, he and the accused/appellant boarded the bus for Sonpuri at 5 PM and reached there at 7 PM. Half an hour thereafter, the accused/appellant is stated to have come to this witness and informed about the illness of his wife. In cross-examination, he has stated that he and the accused had gone to Mungeli by bus but no ticket was issued to them. This witness has further stated that he did notice any injury or mark on the body of the deceased including neck. Bhagwan Das (DW-2) has been examined to prove the entries made in the *Rojnamcha*.

9. Having closely scrutinized the evidence adduced by the prosecution as well as the defence it becomes apparent that Kanti Bai – the wife of the accused/appellant herein died an un-natural death at her matrimonial home in the night of 29.05.2010. This fact

finds complete corroboration from the testimony of Shobha Singh Rajput (PW-13) – a physician employed in the village Primary Health Center itself who has categorically stated that on 29.5.2010 at about 9 PM when he accompanied the accused/appellant to his house to see his wife reportedly suffering from some stomach related ailment, her pulsation had stopped and she was no more. PW-13 further states that the body of the deceased was already covered with a piece of cloth and he had noticed her pulse without removing it. There is nothing on record to show that soon after the death of his wife, the accused/appellant did anything to inform her parents or relatives about the same. As per the evidence of PW-7 – the father of the deceased, he received this sad telephonic message from the accused/appellant only on 30.5.2010. PW-7 further states that before he along with his family members could reach the village of the accused, the body of his daughter was already carried to the crematorium for the last rites. He too hurried to the cremation ground to have a last glimpse of his beloved daughter and as soon as he removed the cloth from her body, he was stunned to notice black marks around her neck seemingly on account of pressure applied by hands or with the help of a string; effusion of blood from mouth and froth from nostrils, teeth gnashed. Suspecting some foul play, PW-7 asked the accused and the people from his side not to carry forward the cremation and reported the matter to the police by way of *merg* Ex. P-6, on which the police official (PW-15) who was entrusted the matter rushed to the spot and he too noticed the symptoms stated by PW-7 while making inquest on the dead-body. The apprehension stated to be lurking in the mind of PW-7 regarding the possibility of cremation being over if some more time was consumed by them in reaching

the spot, does not appear to be a hollow one because all the preparations for the last rites were in full swing in the cremation ground.

Now the question is who killed the deceased – whether the accused/appellant himself or someone other than him? Evidence goes to show that the house where the incident took place is in two parts with the courtyard lying in between. In one portion thereof two rooms were occupied by the parents of the accused whereas the other westward portion was in the occupation of accused and the deceased with separate kitchens. In other words, the accused and his wife lived separately in one portion of the house, and there was no third person except the two at the relevant time. The defence taken by the accused that the house in question was accessible to one and all and since there was already a dispute between some Kashyap family and that of his own, possibility of someone else other than him being behind the gory incident appears to be wholly unrealistic and unsubstantial as none of the witnesses has stated so. Likewise, another defence taken by the accused that on the fateful day he had gone to Mungeli and came to know about the death of his wife only after returning therefrom does not appear to be of any help to him. This is for the reason that none of the witnesses has seen him going to Mungeli either by bus or by motorcycle. Even assuming that he had gone to Mungeli, looking to the distance being minimal and time consumable for making to and fro journey i.e. not beyond two hours either side, he cannot derive any benefit out of it. As per the evidence of DW-1 himself, the accused returned from Mungeli at 7 PM. Thus it is clear as a broad day light that on the date and at the time of incident it was the accused/appellant and his wife (deceased) alone were in

the house, and since his parents were residing in another portion of the house lying across the courtyard they cannot be said to be the inmates of the house where the dastardly killing of a helpless woman was executed, obviously by none else but the accused/appellant himself. Of course, the duty on the prosecution is to lead such evidence which it is capable of leading having regard to the facts and circumstances of the case but keeping in mind the legal requirement contained in Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him too. Furthermore, it is a settled legal principle that when the wife is injured in the dwelling home where the husband ordinarily resides but he offers no explanation for the injuries to his wife, then the circumstances would indicate that the husband alone is responsible for such injuries. While dealing with the matter involving the murder committed inside the house it has been held by the Apex Court in the matter of **Trimukh Maroti Kirkan v. State of Maharashtra** reported in **(2006) 10 SCC 681** as under:

“ 14. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the courts. A judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties. (See *Stirland v. Director of Public Prosecutions* (1944 AC 315) – quoted with approval by Arijit Pasayat, J in *State of Punjab v. Karnail Singh* (2003) 11 SCC 271). The law does not enjoin

a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be held. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (b) appended to this section throws some light on the content and scope of this provision and it reads:

“(b) A is charged with travelling on a railway without ticket. The burden of proving that he had a ticket is on him.”

15. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house 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.”

10. Further in the matter of **State of Rajasthan v. Thakur Singh** reported in **(2014) 12 SCC 211** it has been held by the Apex Court as under:

“17. In a specific instance in *Trimukh Maroti Kirkan v. State of Maharashtra* (2006) 10 SCC 681) this Court held

that when the wife is injured in the dwelling home where the husband ordinarily resides, and the husband offers no explanation for the injuries to his wife, then the circumstances would indicate that the husband is responsible for the injuries. It was said: (SCC p. 694, para 22)

“22 Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime.”

18. Reliance was placed by this Court on *Ganeshlal v. State of Maharashtra* {(1992) 3 SCC 106} in which case the appellant was prosecuted for the murder of his wife inside his house. Since the death had occurred in his custody, it was held that the appellant was under an obligation to give an explanation for the cause of death in his statement under Section 313 of the Code of Criminal Procedure. A denial of the prosecution case coupled with absence of any explanation was held to be inconsistent with the innocence of the accused, but consistent with the hypothesis that the appellant was a prime accused in the commission of murder of his wife.

19. Similarly, in *Dnyaneshwar v. State of Maharashtra* {(2007) 10 SCC 445} this Court observed that since the deceased was murdered in her matrimonial home and the appellant had not set up a case that the offence was committed by somebody else or that there was a possibility of an outsider committing the offence, it was for the husband to explain the grounds for the unnatural death of his wife.

11. In addition, the postmortem report Ex. P-1 also shows number of injuries such as blisters on breasts; vagina, protrusion of rectum

and eyes, compression of tongue between teeth, presence of ligature mark between the chin and the vocal cord having resemblance with the rope, and the cause of death has been stated to be asphyxia due to strangulation. Though the postmortem report does not indicate the death being homicidal or otherwise, query report Ex. P-3 clearly states that it was homicidal in nature. Seizure of a nylon string was also made on the basis of memorandum of the accused though the FSL report could not be obtained by the prosecution. In the midst of material in plenty establishing the guilt of the accused, mere absence of FSL report cannot be fatal to the case of the prosecution.

12. Thus in view of the extensive discussion on facts and law this Court has no hesitation to hold that it was the accused/appellant alone who has committed the murder of his wife. The prosecution has been successful in establishing its case beyond all reasonable doubt and so also the Court below has undertaken the optimum exercise of appreciating the evidence collected by the prosecution. No scope of interference with the well written judgment under challenge is visible and being so it is hereby maintained. Appeal being without any force is hereby dismissed. As the accused/appellant is already in jail, no consequential direction is needed.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(R.P. Sharma)
Judge