

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 26 of 2012**

1. Lalbahadur Singh, S/o Ram Prasad, aged about 31 years, Caste Gond, R/o Bhagwanpur, Thana Janakpur, District Korea, CG

---- Appellant**Versus**

1. State of Chhattisgarh through Police Station Janakpur, District Korea, CG

---- Respondent

For Appellant: Shri Alok Dewangan, Advocate

For Respondent/State: Shri Rahul Tamaskar, Panel Lawyer

Hon'ble Shri Justice Pritinker Diwaker**Hon'ble Shri Justice RCS Samant****Judgment on Board by Pritinker Diwaker, J****21/06/2017**

This appeal has been filed against the judgment of conviction and order of sentence dated 30.7.2011 passed by the Additional Sessions Judge Manendragarh, District Korea, in Sessions Trial No. 75/2010 convicting the accused/appellant under Section 302 IPC and sentencing him to undergo imprisonment for life with fine of Rs. 500/-, plus default stipulation.

2. As per the prosecution case, on 18.6.2010 in between 10.30 AM and 12 noon the accused/appellant committed the murder of his wife namely Vaijyanti by causing injuries to her with the help of axe. FIR Ex. P-4 was lodged on the same day at 5.30 PM by Ram Prasad (PW-1) against the accused/appellant under Section 302 IPC. Inquest on the body of the deceased was conducted on that very day vide Ex. P-14 and the dead-body was sent for postmortem

examination which was conducted by Dr. Rajiv Kumar Raman (PW-14) vide report Ex. P-20-A. On 1.7.2010 memorandum of the accused Ex. P-6 was recorded based on which recovery of axe was made vide Ex. P-7. It is not in dispute that at the time of commission of the offence, the accused and the deceased were there in the house in question along with their two small children and no other person was there. After filing of charge sheet, the trial Court framed the charge against the accused/appellant u/s 302 IPC.

3. In order to prove the complicity of the accused/appellant in the crime in question, the prosecution has examined 14 witnesses. Statement of the accused under Section 313 Cr.P.C. was also recorded in which he denied his guilt and pleaded innocence and false implication in the case.

4. After hearing the parties the Court below has convicted and sentenced the accused/appellant as mentioned above in paragraph No.1 of this judgment.

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

(i) That there is no eyewitness account in this case and the accused/appellant has been convicted solely on the basis of circumstantial evidence but the circumstances on which the prosecution has relied upon are not as such to connect the accused/appellant with the crime in question.

(ii) That possibility of some third person entering the house and committing the offence cannot be ruled out.

6. On the other hand, State counsel while supporting the judgment impugned has submitted that the findings recorded by the Court below convicting the accused/appellant under Section

302 are strictly in accordance with law and there is no infirmity in the same. He submits that at the time of incident except the appellant and the deceased no other person was there in the house and therefore it can safely be inferred that it is the accused/appellant alone who committed the murder of the deceased. He further submits that the accused/appellant has failed to give any explanation as to under what circumstances his wife has been killed and therefore also the presumption goes against him. State counsel submits that after committing the murder of the deceased, the accused/appellant moved away and was arrested on 1.7.2010 and on his memorandum the axe was recovered under Ex. P-7.

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

8. Ram Prasad (PW-1) is the father of the accused and lodger of the FIR Ex.P-4 who has stated that on the date of incident he had gone to the house of his daughter and at about 1 PM he was informed that his daughter-in-law had been murdered. Thereafter, the police came to his house and then FIR was registered. This witness has subsequently been declared hostile. Sushil Shukla (PW-2) is the witness to memorandum Ex. P-6 and seizure made under Ex. P-7 who though has been declared hostile but has admitted his signature thereon. Raj Bahadur (PW-3) – another witness to seizure, Shiv Charan (PW-4) and Mangal Kachhi (PW-6) – the witnesses to inquest and Umashankar – yet another witness to seizure, have not supported the case of the prosecution and have been declared hostile. Prem Bai (PW-7) – the mother of the deceased has stated

that the accused/appellant used to demand bicycle which was given to him but even thereafter he started making the demand for money. Basanti (PW-8) – the sister of the deceased is the witness to inquest Ex. P-14. Bikai (PW-9) – the father of the deceased has not stated anything specific against the accused/appellant. Ku. Rukmani (PW-10) is the Patwari who prepared spot map Ex. P-2. Dr. Nitesh Singh (PW-11) is the witness who medically examined the accused/appellant on 23.6.2010 and noticed some burn injuries on his body. He has stated that the appellant remained in the hospital till 1.7.2010. Virendra Kumar Singh (PW-12) is the witness to memorandum Ex. P-6 and seizure Ex. P-7. C. Lakdada (PW-13) is the investigating officer who has duly supported the case of the prosecution. Dr. Rajiv Kumar Raman (PW-14) is the witness who conducted postmortem examination on the body of the deceased and gave his report Ex. P-20-A stating that he noticed deep cut injury on the right temporal and occipital region with fracture of both the bones. He also noticed cut injury on the right shoulder and right arm. The injuries suffered by the victim, according to this witness, could have been caused by a sharp edged weapon. Cause of death has been opined to be shock due to pain and excessive bleeding from the skull.

9. Obviously there no eyewitness account in the present case and the entire case is based on the circumstantial evidence. One of the strongest circumstances put down by the prosecution, in this case is that apart from the accused, deceased and their two small children, no third person was present in the house at the relevant time. No satisfactory explanation has come from the accused as to how the deceased died when there was no other person except the two and their two small children. Evidence of some of the

witnesses, though fragile in nature, indicates that on 23.6.2010 the accused/appellant had made an attempt to commit suicide by climbing an electric pole and while doing so he suffered some burn injuries for which he was medically examined by Dr. Nitesh Singh (PW-11) and remained hospitalised till 1.7.2010. The investigating officer has also stated that he had recorded the panchnama in respect of appellant fleeing to jungle and receiving injuries on his right palm and left thigh by touching the live electric wire and after being collecting material against him in connection with the murder of the deceased, he arrested him on that very day. Defence, however, did not put any question to the prosecution witnesses as to how the injuries were suffered by the accused and under what circumstances he was kept in the hospital and was not formally arrested.

10. In case where house murder is the issue, heavy burden is on the shoulders of the accused to explain as to under what circumstances the deceased died. Here in this case the dead body was found in the house of the accused and as per the evidence of the witnesses, after the incident he remained missing till his arrest made on 1.7.2010 from the hospital where he was receiving treatment. 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.”

11. Further in the matter of **State of Rajasthan v. Thkur 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.

20. In *Jagdish v. State of MP* {(2009) 9 SCC 495} this Court observed as follows: (SCC 503, para 22)

“22... It bears repetition that the appellant and the deceased family members were the only occupants of the room and it was therefore incumbent on the appellant to have tendered some explanation in order to avoid any suspicion as to his guilt.”

21. More recently, in *Gian Chand v. State of Haryana* {(2013) 14 SCC 420} a large number of decisions of this Court were referred to and the interpretation given to Section 106 of the Evidence Act in *Shambhu Nath Mehra* was reiterated. One of the decisions cited in *Gian Chand* is that of *State of WB v. Mir Mohammad Omar* which gives a rather telling example explaining the principle behind Section 106 of the Evidence Act in the following words: (*Mir Mohammad Omar case* (2000) 8 SCC p 393 para 35)

“35. During arguments we put a question to the learned Sernioir Counsel for the respondents based on hypothetical illustration. If a boy is kidnapped from the lawful custody of his guardian in the sight of his people and the kidnappers disappeared with the prey, what would be the normal inference if a mangled dead body of the boy is recovered within a couple of hours from elsewhere. The query was made whether upon proof of the above facts an inference could be drawn that the kidnappers would have killed the boy. The learned Senior Counsel finally conceded that in such a case the inference is reasonably certain that the boy was killed by the kidnappers unless they explain otherwise.”

22. The law, therefore, is quite well settled that the burden of proving the guilt of an accused is on the prosecution, but there may be certain facts pertaining to a crime that can be known only to the accused, or are virtually impossible for the prosecution to prove. These facts need to be explained by the accused and if he does not do so, then it is a strong circumstance pointing to his guilt based on those facts.”

12. Now if the facts of the present case are seen in the light of the afore-quoted judicial pronouncements, picture which emerges is almost identical. The death of the deceased in this case undisputedly took place inside the privacy of a house where apart

from the accused, deceased and their two minor siblings, no other person was present at the relevant time. In the cases like the present one, the assailant has all the opportunity to plan and commit the crime at the time and in the circumstances of his choice and it is extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence is insisted upon. Furthermore, no explanation has come forth from the accused/appellant in his statement recorded under Section 313 of the Code of Criminal Procedure as to how the death of his wife occurred though being the sole adult inmate of the house in question it was his bounden duty to explain the things by leading cogent and pin-pointed evidence in his defence.

13. Thus in view of the aforesaid factual and legal position this Court is of the considered opinion that the prosecution has collected sufficient evidence to hold the accused/appellant guilty for committing the murder of his wife and that way the Court below has also been justified to arrive at a conclusion slapping conviction on the accused under Section 302 IPC. Accordingly, the judgment impugned calls for no interference in this appeal.

14. Appeal thus being devoid of any substance is liable to be dismissed and it is hereby dismissed. Judgment impugned is affirmed. Being already inside, no order in respect of arrest etc. of the accused is necessary.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(RCS Samant)
Judge

