

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 19-7-2017

Judgment delivered on 4-8-2017

CRA No. 84 of 2012

- Mohammad Nisar S/o Mohammad Alam Musalman , R/o Vishwa Bank Colony , Ghasidas Nagar Bhilai - 3 , P.S. Purani Bhilai , District- Durg C.G.

---- Appellant

Versus

- State of Chhattisgarh through District Magistrate, Durg, District Durg (CG).

---- Respondent

For Appellant : Mrs. Mala Dubey, Advocate.

For Respondent/State : Mr. Adil Minhaj, Panel Lawyer.

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

CAV JUDGMENT

Per Ram Prasanna Sharma, J.

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 30-12-2011 passed by the 2nd Additional Sessions Judge, Durg (CG), in Sessions Trial No. 48 of 2010 whereby the trial court after holding guilty for commission of offence punishable under Section 302 of the IPC., convicted the accused/appellant under Section 302 of the IPC and sentenced him to undergo life imprisonment and to pay fine of Rs.500/- with default stipulations.

2. The facts of the case, in brief, are that the deceased/victim Shahzadi Begam is wife of the appellant and both appellant and deceased were residing together at Vishwa Bank Colony, Ghasidas Nagar, Bhilai-3, District Durg. The appellant/husband of the deceased suspected about the character of the deceased because he had seen her in the company of some other person that grew bitterness between them. This leads to differences between the couple, resulting in quarrels during the period of incident. On 14-2-2010 there was an engagement ceremony of one Rani @ Annapurna in front of the house of the appellant and deceased and the deceased attended the said programme and returned in the night and thereafter the appellant closed the door of the house. On the next day morning dead body of the deceased was found inside the house. One Abrar Hussain, who is relative of the deceased and appellant lodged merger intimation on 15-2-2010 at Police Station old Bhilai.
3. After receiving the said information Police swung into action. Inquest report of the deceased was prepared and certain articles were seized. On discovery statement of the accused/appellant, his full-shirt, full-pant, Baniyan and one stone pestle (heavy stone for grinding spices) were seized by the Police and the same were sent for chemical examination to Forensic Science Laboratory, Raipur and as per report thereof blood was found in all the seized articles.
4. The statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 and after completion of

the investigation charge-sheet was filed against the appellant. The trial Court framed charges against the appellant but he did not plead guilty, therefore, trial was conducted and after completion of evidence of the prosecution side, statement of the appellant under Section 313 of the Cr.P.C., was recorded. After completion of trial, the trial Court considering the material available on record by the impugned judgment convicted and sentenced the accused/appellant as mentioned above.

5. In order to prove the complicity of the accused/appellant in commission of crime in question, the prosecution has examined 13 witnesses before the trial Court in support of its case and exhibited documents (P1 to P-25).
6. Learned counsel appearing for the accused/appellant submits as under:

(i)	Conviction on the basis of the appellant's memorandum is <i>per se</i> illegal, because the appellant being deaf and dumb person, the same is of no use;
(ii)	There is no eye-witness to the incident and the case of the prosecution rests on circumstantial evidence and the same is not sufficient to bring home the guilt of the accused/appellant.
(iii)	The appellant is a mentally retarded person though certificate could not be filed before the trial Court, but the same is filed in this Court along with the appeal, therefore, the judgment of the trial Court is not sustainable.

(iv)	The trial Court committed illegality in disbelieving the defence witness and even there is no medical report to show that there is human blood in articles seized from the spot. That the judgment of the trial Court is not in the fitness of factual matrix and legal aspect of the matter.

In support of her arguments, she placed reliance on the decisions of the Apex Court and High Courts in the matters of **Govindaraju @ Govinda vs. State by Sriramapuram PS and another¹**, **Kalyan Kumar Gagoli vs. Ashutosh Agnihotri and another²**, **Hanumant vs. The State of Madhya Pradesh³**, **Kadungoath Alavi vs. State of Kerala⁴** and **Sharad birdhi Chand Sarda vs. State of Maharashtra⁵**

7. *Per contra*, State counsel supporting the impugned judgment has submitted that the impugned judgment is strictly in accordance with law and there is no illegality or infirmity in it warranting any interference by this Court.
8. We have heard counsel for the parties and perused the material on record.
9. PW/1 Nizamuddin Khan, PW/2 Abrar Hussain, PW/3 Rustam Khan, PW/5 Loman Swami are the witnesses of inquest report. PW/8 Chandrashekhar Sahu is a Patwari, who prepared spot map upon direction of Naib Tahsildar. PW/9 R.S. Sahu is Sub-Inspector, who

¹ Reportable, (CRA No.984 of 2007) decided on March 15, 2012.

² Decided on 18th January, 2011.

³ CRA No.56 of 1951, decided on 23 January 1952.

⁴ 1982 CRLJ 94

⁵ 1984 AIR 1622

recorded merged intimation (Ex.P/3) and is a witness of inquest report also. PW/10 R.K. Joshi, is Police Inspector and as per his statement, he arrested the appellant and recorded discovery statement of the accused/appellant and upon his discovery statement he seized one yellow full shirt, slati full pant, sando baniyan and grinding stone (Lahda) from the appellant. As per his version, seized articles were sent for chemical examination to FSL Raipur as per Ex.P/18, acknowledgement thereof was received as per Ex.P/19 and report of the FSL was received as per EX.P/21 which shows that blood was found in the seized articles from the appellant as per his discovery statement. Dr. B.A. Dewangan (PW/12), who conducted post-mortem of deceased on 17-2-2010 at about 1.30 pm, found the following injuries.

i)	Abrasion 8x4 cm lower neck present;
ii)	Abrasion 3 ½ x 2 cm front neck over thyroid caubic left side neck.
iii)	Abrasion 8x2 cm upper neck part
iv)	Abrasion 1x1/2 cm inside chin
v)	Abrasion 8 x 3 cm left side mandible.
v)	Left eye scale exhausted 1½ x ½ x ½ cm with clotted blood present.
vii)	Abrasion 3 x ½ cm left eye lid upper with sub conjunctival haemorrhage present;
viii)	Abrasion 1 x ½ cm left index finger lateral present;

ix)	Lacerated wound 6 x 1 x 1 cm left parietal region head present.

10. As per report of Dr.B.A. Dewangan, (PW/12), all the injuries were ante-mortem and there was fracture in left side frontal bone and left parietal bone with subdural and infratentorial haemorrhagic with clotted blood present and he opined that death was homicidal in nature.
11. As per statement of Nirmala Singh (PW/13), she has attended the engagement ceremony of Rani @ Annapurna where deceased Shahzadi was also present and she returned at 8.00 pm from the said ceremony. She further deposed that appellant was also present in front of her house and when she returned to her home, she saw the appellant closing the door of his house. Version of this witness is unshaken during lengthy cross examination. Version of this witness is also supported by version of Ranjeeta Pardhi (PW/4) and Dani Sahu (PW/6) regarding presence of the deceased in engagement ceremony. As per version of Dani Sahu (PW/6), he has stated before the Police that one John Mahammad was frequent visitor of the house of the deceased and some other persons also visited to Shahzadi Begam. Version of Dani Sahu (PW/6) is duly supported by the evidence of Smt. Shanta N. Acharya, (PW/7) who is working as a teacher in Prayas Shravan Disabled Institution, Supela Bhilai. As per version of this witness, she is specially trained for teaching the disabled persons having problem of deaf and dumb. She deposed that she talked with the

appellant in sign language and appellant replied to her that deceased was having illicit relation with other person and made discovery statement before her and the same was truly informed to Police by her. On discovery statement of the appellant, articles were seized by Police as mentioned above. Version of this witness is unshaken during cross examination at length.

12. Close scrutiny of the evidence adduced by the prosecution makes it clear that though the appellant is a disabled person being hearing complained, but his sign language was transmitted by specially trained teacher and there is nothing on record to disbelieve the same. When the evidence of Smt. Shanta N. Acharya (PW/7) is totally reliable, it cannot be said that the memorandum by deaf person is not legally acceptable. It is clear from the evidence that deceased was in the house with the appellant and her dead body was found in the house and the door of the house was closed by the appellant and there is nothing to suggest that anyone entered into the house of the appellant during night. When any crime is committed in complete secrecy inside house, nature and amount of evidence required to establish charge cannot be of same degree as required in other cases of circumstantial evidence. We are fortified by the judgment of Hon'ble the Apex Court in the matter of **Trimukh Maroti Kirkan vs. State of Maharashtra**⁶ wherein Hon'ble the Apex Court has held as under:

“If an offence takes place inside the privacy of a house and in such circumstances where the

⁶ 2006 AIR SCW 5300

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. 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. In case of no explanation or false explanation it would be an additional link in chain of circumstances”.

13. There is no evidence before the trial Court to suggest that the appellant is a mentally retarded person and was incapable of knowing the nature of the act. From the statement of Smt. Shanta N. Acharya (PW/7), it is clear that the appellant was capable of

knowing the nature of his act and committed the crime because his wife/deceased had developed illicit intimacy with other person. From the statement of the appellant recorded under Section 313 of the Cr.P.C., he admitted that he was in the house with the deceased and offered no explanation regarding homicidal death of his wife.

14. Considering all the facts and circumstances of the case and looking to the series of the fact that the death was homicidal in nature and the appellant and deceased were in the house and dead body of the deceased was found in the house and door of the house was closed by the appellant at night and deceased was having illicit relation with other person, it is clearly established that the appellant had motive to eliminate his wife and irresistible and inescapable conclusion is that the appellant is guilty of committing the murder of his wife. The case laws cited by learned counsel for the appellant are distinguishable from the facts of the present case.
15. Considering all the facts and circumstances of the case, evidence available on record and as role of accused/appellant is established in commission of murder of Shazadi Begam, this Court is of the considered opinion that the findings recorded by the Court below do not suffer from any legal flaw warranting inference in this appeal. Resultantly, the appeal being without any force is liable to be dismissed and it is dismissed as such with the affirmation of the judgment impugned.

16. Appellant/accused is reported to be on bail. He is directed to surrender before the trial Court within a period of 15 days, failing which the trial Court will issue non-bailable warrant of arrest against him to send him to jail for serving out the remaining part of the jail sentence.

Sd/-

(Pritinker Diwaker)
JUDGE

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju