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HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1047 of 2012**

1. Naresh Baghel S/o Sampat Baghel, aged about 34 years, Caste Bhatra, Occupation – Farmer, R/o Village Kesharpal, Usriguda, PS Bhanpuri, District Bastar, CG.

---- Appellant**Versus**

1. State of Chhattisgarh through the Police Station Bhanpuri, District Bastar, CG

---- Respondent

For Appellant	:	Shri Ashok Dixit, Advocate
For Respondent/State	:	Shri Vivek Sharma, GA

Hon'ble Shri Justice Pritinker Diwaker**Hon'ble Shri C.B. Bajpai****Judgment on Board by Pritinker Diwaker, J****23/09/2017**

This appeal has been filed against the judgment of conviction and order of sentence dated 03.10.2012 passed by Sessions Judge Bastar at Jagdalpur in Sessions Trial No. 139/2011 convicting the accused/appellant under Section 302 IPC and sentencing him to undergo imprisonment for life and pay fine of Rs. 1,000/-, plus default stipulation.

2. Name of the deceased in the case in hand is Ramali Bai – wife of the accused/appellant. As per the case of prosecution, on 10.11.2008 after consuming liquor the accused/appellant first picked up quarrel with his wife and then committed her murder by pressing her neck. The next day i.e. on 11.11.2008 he met his brother Dinesh Baghel (PW-1) and made extra-judicial confession before him that he killed the deceased, and after so doing he

moved away and came to be arrested on 05.10.2011. On 11.11.2008 FIR Ex. P-1 was lodged by Dinesh Baghel (PW-1) against the accused/appellant for the offence punishable under Section 302 IPC. Immediately thereafter, *merg* Ex. P-2 was also recorded. After making inquest vide Ex. P-5, the dead-body was sent for postmortem examination which was conducted by Dr. Vashudev Rai (PW-5) who gave his report Ex. P-8. On completion of investigation, charge-sheet was filed by the police under Section 302 IPC followed by framing of charge by the Court below accordingly.

3. In order to prove the complicity of the accused/appellant in the crime in question, the prosecution has examined 08 witnesses. Statement of the accused/appellant 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 the statement of Dinesh Baghel (PW-1) the lodger of the FIR and the witness before whom the extra-judicial confession is said to have been made by the accused/appellant is not reliable and trustworthy.

(ii) That as per the report of the autopsy surgeon the injury received by the deceased could have been caused by fall also.

6. State counsel however supports the judgment impugned and submits that the findings recorded by the Court below are based on due appreciation of the evidence on record and there is no infirmity

in the same. He submits that in this case not only the accused/appellant made extra-judicial confession before PW-1 but at the same time it is a case of house murder and no explanation has come forth from the accused/appellant in his statement recorded under Section 313 of the Code of Criminal Procedure. On the contrary, after confessing his brutal act, he left the house and came to be arrested three years thereafter.

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

8. Dinesh Baghel (PW-1) - the brother of the accused and lodger of the report though has turned hostile, in the cross-examination he has stated that on the date of incident the accused came to him and informed that as the deceased had abused him after consuming liquor, he got angry and gave two-three slaps on her cheek. Accused/appellant is also stated to have informed this witness about pressing the neck of his wife, and that after some time when he went to the spot, deceased was lying dead. Bondka (PW-2) and Kamli Bai (PW-3) have not supported the case of the prosecution and have been declared hostile. Jayendra Lal Dewangan (PW-4) is the Patwari who prepared spot map Ex. P-4. Dr. Wasudev Rai (PW-5) is the witness who conducted postmortem examination on the body of the deceased and gave his report Ex. P-8 stating that he noticed a black colour wide mark on her neck above the clavicle bone and below thyroid cartilage. He also noticed abraded mark on the chest of the deceased and the external portion of right eye. Ram Singh Kashyap (PW-6) is the police constable who had taken the body of the deceased for postmortem examination. Tularam (PW-7) is the witness who

assisted in the investigation. K.N. Sharma (PW-8) is the investigating officer who has duly supported the case of the prosecution.

9. Having gone through the evidence available on record it is quite apparrant that in the night of 11.11.2008 the accused/appellant, may be, on being infuriated by the abusive words hurled at him by the deceased under the influence of liquor, pressed her neck and made her kick the bucket thereby. Though PW-1 before whom the extrajudicial confession was made by the accused has turned hostile, in cross examination he has stated that the accused informed him about his slapping the deceased and pressing her neck as she had misbehaved with him after consuming liquor. PW-1 has further stated that after being informed so by the accused when he went to his house, deceased was lying dead. Even the doctor (PW-5) who conducted postmortem examination on the body of the deceased has stated that he noticed a black colour wide mark on her neck above the clavicle bone and below thyroid cartilage. Furthermore, there is nothing on record to show that on the day when this horrendous incident took place, there was anyone else other than the accused and the deceased present in the house in question. In these circumstances, it was the bounden duty of the accused to offer satisfactory explanation as to how and under what circumstances the deceased died, but nothing of this sort has come forth from him. 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, which in this case, the appellant has failed to discharge.

10. 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. 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.

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.”

12. In the light of the aforesaid factual and legal position, this Court is of the considered opinion that the prosecution has succeeded in establishing its case that it is the accused/appellant who caused the death of his wife by pressing her neck. Case of the prosecution gets corroboration from the postmortem report Ex. P-8 which says that apart from other injuries, there was a black mark on the neck of the deceased - above the clavicle bone and below thyroid cartilage. Court below also appears to be justified in making appreciation of the evidence while recording the finding with respect to the guilt of the accused under Section 302 IPC. No legal error is noticeable in the same.

13. In the result, the appeal being without any substance is liable to be dismissed with the affirmation of the judgment impugned. It is done accordingly. Being already in jail, no order to send the accused in cellular confinement, is needed.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(C.B. Bajpai)
Judge