

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 332 of 2011**

- Ramnath Sahu, S/o. Gajaram Sahu, Aged about 65 years, R/o.
Village Sindhupali, Police Station Pithora, District Mahasamund
(CG)

---- Appellant**Versus**

- State Of Chhattisgarh, Through Station House Officer, Police
Station Pithoura, District Mahasamund (CG)

---- Respondent

For Appellant	: Shri S.K.Dadsena, Advocate
For Respondent/State	: Shri Avinash K.Mishra, P.L.

HON'BLE SHRI JUSTICE PRITINKER DIWAKER
HON'BLE SHRI JUSTICE SANJAY K.AGRAWAL

Judgment On Board**25/05/2017****PRITINKER DIWAKER, J.**

This appeal has been preferred against the judgment and order dated 28.03.2011 passed by the Sessions Judge, Mahasamund in Sessions Trial No. 67/2010 convicting the accused/appellant for the offence punishable under Section 302 IPC and sentencing him to

undergo imprisonment for life with fine of Rs. 2,000 with default stipulation.

2. As per prosecution case, on 13.09.2010 at about 11.00 p.m. accused/appellant committed murder of his wife by inflicting knife injuries on her neck. Merg intimation Ex.P-11 was lodged on 14.09.2010 at about 8.10 a.m. by the appellant himself informing the police that after taking meals in the night, all the family members were asleep and at about 11.00 p.m., after hearing the rattling sound, he woke up and noticed knife injury on the neck of deceased Bundkunwar Bai. Immediately thereafter he called his brother Ram Ratan, Pyarelal and Sarpanch of the village and while they were making arrangement to shift injured to the hospital she succumbed to her injuries. After merg enquiry FIR Ex.P-14 was registered against the appellant on 18.09.2010 under Section 302 IPC. Meanwhile, inquest Ex.P-7 was prepared and dead body was sent for postmortem examination which was conducted by Dr. M.R.Chandrakar (PW-10) vide Ex.P-12 and according to him cause of death was shock due to injury sustained over neck trachea and blood vessels and death was homicidal in nature. After filing of the charge sheet, trial judge has framed charge against the accused/appellant under Section 302 IPC.

3. So as to hold the accused persons guilty, prosecution has examined 10 witnesses in support of its case. Statement of the accused was also recorded under section 313 of the Code of Criminal Procedure in which he denied the charge levelled against him and pleaded his innocence and false implication in the case.

4. After hearing the parties the trial Court has convicted and sentenced the accused/appellant for the offence as mentioned above.

Hence the present appeal.

5. Contention of counsel for the appellants is :

i) that there is no eyewitness count to the incident and the appellant has been convicted solely on the basis of circumstantial evidence.

ii) that the nature of circumstantial evidence is not as such which can be made basis for conviction of the appellant.

iii) that present is a case where the deceased committed suicide by inflicting knife injury on her neck but unfortunately the appellant has been falsely implicated.

iv) that the appellant committed suicide as she was suffering from knee pain.

6. On the other hand supporting the impugned judgment it has been argued by the State counsel that

i) present is a case of house murder and the appellant, husband of the deceased was sleeping in the nearby verandah and that no probable explanation has been given by the appellant in his statement under Section 313 Cr.P.C.

ii) a very improbable statement has been put forth by the appellant that his wife committed suicide by self-inflicting injury on her neck.

iii) considering the nature of injury as described by the autopsy surgeon, it is apparent that no such person can commit suicide in a manner as has been claimed by the appellant.

iv) the witnesses have stated that when they saw the injured Bundkunwar Bai, knife was stuck inside her neck which is highly improbable. Even if someone inflict such injury, out of pain he/she will immediately pull out the said weapon and no one would lay in that condition where the weapon had been stuck inside and that too, in the neck.

v) It is not a case of defence that someone else had entered the house and committed murder of the deceased and thus an improbable explanation given by the appellant is not acceptable.

vi) According to the autopsy surgeon death was homicidal in nature and therefore question of committing suicide by the appellant does not arise.

vii) in the merged intimation, appellant had admitted that before the incident, there was some dispute between him and his wife over sending certain eateries to the daughter on the occasion of *teeja*.

7. We have perused the judgment of the learned trial Judge and considered the arguments advanced by learned counsel for the appellants and learned State counsel on the basis of the evidence brought on record.

8. Ram Ratan (PW-1) is the younger brother of the appellant. He has stated that on the date of incident he was sleeping in the verandah of his house when the appellant came to him and took him to his house where the deceased was lying in the cot. He has stated that the knife was stuck in her neck and she was alive. Immediately thereafter his nephew Jageshwar and Tara Bai, daughter-in-law also came there and pulled out the knife, Sarpanch and other villagers were called and within

a hour and half deceased died. He has stated that at the time of incident accused/appellant was sleeping in the verandah whereas he was sleeping in his verandah and that he had not heard any sound. Jageshwar (PW-2) son of the appellant has stated that on the date of incident when he heard his father calling his uncle Ramratan, he woke up and went along with them and saw his mother lying on the cot, her neck was cut and at that time she was alive. He has stated that his parents never used to quarrel and therefore he was declared hostile. Jagat Devdas (PW-3) Sarpanch of the village has stated that at 12.00 midnight he received the telephonic call from one Pyare Lal about the condition of deceased and when he reached the house of appellant, he found her dead. He is also a witness to inquest Ex.P-7 and seizure Ex.P-6 by which knife was seized. Rewa Ram (PW-4) is a villager who reached the place of occurrence after the incident. Tara Bai (PW-6) daughter-in-law of the deceased and accused/appellant has stated that the relation between her in-laws was cordial. Raghunath Sao (PW-7) is the patwari who prepared spot map Ex.P-3. Dev Narayan Singh Bisen (PW-8) and Gaurav Tiwari (PW-9) Constable and SI, have helped in the investigation. Dr. M.R.Chandrakar (PW-10) is the autopsy surgeon who conducted postmortem examination on the body of deceased vide Ex.P-12 and according to him cause of death was shock due to injury sustained over neck trachea and blood vessels and death was homicidal in nature. After chemical examination of the knife, he opined that the injuries could have been caused by the said knife. In the last para he has stated that if some body would make an attempt to commit suicide with knife by cutting his or her throat, injury would be superficial and that it would be above thyroid cartilage and cannot be so deep as it

was in the present case. According to him, the death was homicidal in nature. In statement recorded under Section 313 Cr.P.C. the appellant has stated that the deceased committed suicide as she was having pain in her knee.

9. Close scrutiny of the evidence makes it clear that on the date of incident i.e. 13.09.09 it is the accused/appellant who killed his wife by giving a blow with knife and immediately called his brother Ramratan, son Jageshwar and informed them that deceased has self-inflicted the knife and when all the witnesses reached there they noticed that the knife was stuck in her neck, thereafter they pulled out the knife. As per autopsy surgeon the death was homicidal in nature and even if somebody commits suicide, in such a condition, the injury would be superficial and injury would not be so deep as in the present case.

10. It is not a case of the appellant that deceased might have been killed by someone else and the defence has been taken by the appellant that the deceased died after self-inflicting injury on her neck. It is a settled legal position of law that in case of such murder, the accused/appellant has to explain as to how the body of the deceased was found inside the house. If a 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 the accused to offer any explanation. In this case, it appears to be improbable and it has been opined by the doctor in his statement that even otherwise the appellant was sleeping in the verandah and after hearing the rattling sound coming out from the room of his wife he entered the room and saw deceased lying in the cot in injured condition whereas son and daughter-in-law were sleeping in the adjacent room but they have not heard any sounds. The defence taken by the appellant appears to be highly improbable and therefore considering all the facts and circumstances the court below was fully justified in convicting the accused/appellant for the offence under Section 302 of the IPC. If it is proved that the deceased died in an unnatural circumstance in her room which was occupied only by her and her husband, law requires the husband to offer an explanation in this behalf. We, however, do not intend to lay down a general law in this behalf as much would depend upon the facts and circumstances of each case. Absence of any explanation by the husband would lead to an inference which would lead to a circumstance against the accused.

11. 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, at night when after taking meals all the family members were asleep, he heard some rattling sound coming from inside the room, woke up and found knife

injury on the neck of his wife. 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.”

12. 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 *Dyaneshwar 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.”

13. 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, only the deceased was there and 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.

14. 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 of convicting the accused under Section 302 IPC. Accordingly, the judgment impugned calls for no interference in this appeal.

15. 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
Vacation Judge

Sd/-

Sanjay K.Agrawal
Vacation Judge