

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 662 of 2011

- Lochan Singh Verma S/o Ganpat Verma, aged 40 years, resident near Kabirkuti, Ward No.2, Bemetara, P.S. Bemetara, Distt. Durg (CG)

---- Appellant

Versus

- State Of Chhattisgarh through PS Bemetara, Distt. Durg (CG)

---- Respondent

For Appellant	:	Shri Sameer Singh, Advocate.
For Respondent/State	:	Shri Adhiraj Surana, Dy. G.A.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Ram Prasanna Sharma

Judgment on Board by Pritinker Diwaker, J

31/07/2017

This appeal has been filed against the judgment of conviction and order of sentence dated 19.8.2011 passed by the Additional Sessions Judge, Bemetara, District-Durg, in Sessions Trial No. 12/2011 convicting the accused/appellant under Section 302 IPC and sentencing him to undergo imprisonment for life with fine of Rs. 1000/- plus default stipulation.

2. In the present case, name of the deceased is Kumari Bai Verma, wife of the appellant. The appellant, deceased Kumari Bai and their two minor children Sonu @ Nagesh (PW-1) and Manish Verma (PW-3) were residing together in a house where on 8.1.2011 dead body of deceased Kumari Bai was found. On 8.1.2011 at about 1.55 pm merged intimation (Ex.P/4) was lodged by PW-2 Rajendra Kumar Verma, brother of the deceased and immediately thereafter at 2.05 pm FIR (Ex.P/5) was lodged at his instance under Section 302 of IPC against the appellant. After conducting inquest over the dead body on 8.1.2011

vide Ex.P/7, it was sent for postmortem which was conducted on the same day by PW-11 Dr. Pawan Kumar Dhritlahre vide Ex.P/17 and he noticed congestion over front portion of neck and face, contusion mark around the neck, brain membrane, skull, both lungs were congested and trachea filled with blood. In his opinion, the cause of death was strangulation due to asphyxia and that the death was homicidal in nature. On 8.1.2011 itself memorandum of the appellant was recorded vide Ex.P/13 and in pursuance thereof one gamchha stained with blood was seized vide Ex.P/14. As per FSL report (Ex.P/24) blood was found on Article C i.e. gamchha seized at the instance of the appellant. Though in their statements recorded under Section 161 of Cr.P.C., two minor children of the appellant claimed themselves to be eyewitnesses to the incident but in the Court they have not supported the prosecution case. PW-10 Domanpuri Goswami is a witness of extrajudicial confession made by the appellant before him. While framing charge, the trial Court framed charge under Section 302 of IPC against the appellant.

3. In order to prove the complicity of the accused/appellant in the crime in question, the prosecution has examined 15 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) though on the memorandum of the appellant, gamchha is said to have been seized and as per FSL report, there was blood on it, but there is no serological report confirming the origin of the blood. Even otherwise, seizure witnesses PW-7 Nemichand Verma and PW-10 Domanpuri Goswami have not supported the prosecution case.

(iii) that evidence of extrajudicial confession allegedly made before PW-10 is a weak link in the case of the prosecution case and merely on the basis of his statement, the appellant cannot be convicted.

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

(v) that in his statement u/s 313 of Cr.P.C. the appellant has stated that it is PW-7 Nemichand and PW-10 Domanpuri Goswami who have committed murder.

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 the appellant was residing with the deceased and his minor children in the house in question 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. Further, memorandum of the appellant led to recovery of bloodstained gamchha, though witnesses to memorandum and seizure have turned hostile but they have admitted their signature on the documents and according to postmortem report of the deceased, it is a case of strangulation.

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

8. PW-1 Sonu and PW-3 Manish Kumar, minor sons of the appellant and the deceased, have turned hostile. PW-2 Rajendra Kumar Verma, brother of the deceased, has stated that on coming to know through telephonic information that his sister/deceased has died, he reached the house of the appellant along with his family, found his sister lying dead on the bed and on being asked his nephew Sonu and Montu disclosed to the police that it is their father/appellant who killed their mother/deceased. He lodged mereg intimation and FIR. PW-4 Vedram Verma is a hearsay witness. PW-5 Smt. Tameshwar Verma and PW-6 Surendra Verma have turned hostile. PW-7 Nemichand Verma, a witness to memorandum and seizure, has though turned hostile but admitted his signature on the documents. PW-9 Ku. Durgeshwari Verma has stated that upon receiving information regarding death of deceased when she reached the house of the appellant, she found the deceased lying dead on the bed and that Rajendra (PW-2) informed her that the children of the appellant had disclosed to the police that it is the appellant who killed the deceased.

PW-10 Domanpuri Goswami, is a witness to extrajudicial confession made by the appellant before him. He has stated that on being asked as to how the deceased died, the appellant admitted his mistake and confessed to have killed her by means of gamchha. He is also a witness to memorandum and seizure, though he has been declared hostile but has admitted his signature on these documents. PW-11 Dr. Pawan Kumar Dhritlahre conducted postmortem on the body of the deceased vide Ex.P/17 and noticed congestion over front portion of neck and face, contusion mark around the neck, brain membrane, skull, both lungs were congested and trachea filled with blood. In his opinion, the cause of death was strangulation due to asphyxia and that the death was homicidal in nature. PW-12 Lakeshwar Singh Kashyap, Patwari, prepared the spot map Ex.P/18. PW-14 A.S. Khan, investigating officer, has duly supported the prosecution case.

09. Obviously there is 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 minor 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. On the memorandum of the appellant, one gamchha has been seized and as per FSL report, blood has been found on the said gamchha. Though witnesses to memorandum and seizure (PW-7 & PW-10) have not supported the prosecution case on the point of memorandum and seizure but have admitted their signature on these documents. In his statement under Section 313 of

Cr.P.C. the appellant has failed to explain as to how blood was found on the gamchha seized at his instance. As per postmortem report, the cause of death strangulation due to asphyxia. Apart from this there is extrajudicial confession of the appellant before PW-10 Domanpuri Goswami where he confessed to have strangled his wife/deceased to death by means of gamchha.

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. 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 Senior 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. In his statement, the appellant has made only bald denial of all the incriminating circumstances. He has though stated that it is Doman (PW-10) and Nemichand (PW-7) who committed murder, but this statement is also vague as he has not stated that they have committed murder of his wife/deceased and therefore, it may be presumed that these persons might have committed murder of someone else about which the appellant stated so.

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 in arriving 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/
(R. P. Sharma)
Judge