

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 256 of 2008**

1. Chitrekha Bai W/o Chandu Singh, Aged about 28 years, R/o village Beharakala, PS Bemetara, District Durg, CG

---- Appellant**Versus**

1. State of Chhattisgarh through Station House Officer, Police Station Bemetara, District Durg, CG

---- Respondent

For Appellant	:	Shri R.K. Tiwari, Advocate
For Respondent/State	:	Shri Ravindra Agrawal, PL

Hon'ble Acting Chief Justice, and
Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board by Acting Chief Justice

17/03/2017

This appeal has been filed against the judgment of conviction and order of sentence dated 19.2.2008 passed by the Additional Sessions Judge Bemetara, District Durg in Sessions Trial No. 36/2007 convicting the accused/appellant under Section 302 IPC and sentencing her to undergo imprisonment for life with fine of Rs. 100, plus default stipulation.

2. As per the case of prosecution, in the intervening night of 14/15.7.2007 the accused/appellant committed the murder of her husband Chandu Singh Verma by throttling. On 15.7.2007 *merg* intimation (Ex. P-1) was recorded at the instance of Nand Kumar Verma (PW-3) - the brother of the deceased, stating therein that the deceased and the accused had gone to Lucknow for earning livelihood and returned home on 14.7.2007. *Merg* intimation further states that on 15.7.2007 at about 5 AM accused came to him and

disclosed that after getting back from outside at 10 PM the deceased had gone to sleep after taking dinner and in the next morning when she saw him, he was dead. Thereafter, he also went to the house of the accused where deceased was lying dead. Inquest on the dead-body was conducted on the same day vide Ex. P-3 and the body was sent for postmortem examination which was conducted by Dr. A.M. Shrivastava (PW-12) who gave his report Ex. P-11. On the basis of mere inquiry, FIR Ex. P-16 was registered against an unknown person under Section 302 IPC, but after completion of investigation charge sheet was filed against the accused/appellant under the same section with the allegation against her that on 14.7.2007 it is she who committed the murder of the deceased. Court below then also framed the charge against her under Section 302 IPC.

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/appellant under Section 313 Cr.P.C. was also recorded in which she denied her 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.

5. Counsel for the accused/appellant submits that neither there is any eyewitness nor the circumstantial evidence directly connecting the accused/appellant with the crime in question but even then the Court below has convicted her for commission of murder of her own husband. He submits that in the night of 14.7.2007 after taking dinner the accused had gone to the betel shop to chew betel leaf in the company of some third person and

after returning home he fell asleep and did not wake up in the morning. Counsel for the appellant further submits that at the relevant time, apart from the accused herein, Nand Kumar Verma (PW-3) along with his family members as also the daughters of the accused and the deceased were also living in the house where the body of the deceased was found and therefore it cannot be said conclusively that it is the accused/appellant only who was the author of crime in question. He submits that no question has been put to the accused in her statement recorded under Section 313 of the Code of Criminal Procedure whether she was all alone in the house and how the body of the deceased was found there and therefore in the absence of such question it cannot be said that the accused/appellant has failed to offer any explanation in support of her innocence. He further submits that though the blood was found in the sari seized from the accused, but as there is no serological report to ascertain its origin, the FSL report Ex. P-20 has no decisive value in the eye of law. The other submission of the counsel for the accused regarding presence of blood on the sari is that the accused being a lady it could have been for other natural reason including of being in her period etc. cannot be turned a blind eye.

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.

7. Smt. Parvati (PW-1) – the elder sister-in-law (Jethani) of the accused and wife of Nand Kumar (PW-3) who lodged the *merg* intimation (Ex. P-1) has stated that in the night hours when she got up to answer the call of nature, utterances of accused “*Kahne wale ko kahne do*” were heard but taking it to be formal conversation,

she again went to sleep. According to her, in the morning when the accused informed her that the deceased was not waking up, she went to her house and tried to wake him up but there was no response from his side. Meanwhile, her father-in-law also came there but his efforts to wake the deceased up went in vain. Thereafter the matter was reported to the police. According to her, on being inquired by her and also by the police people as to how all that happened, the accused expressed her ignorance. Then she states that the accused had informed the police to have killed the deceased by throttling him. In cross-examination this witness has stated that accused and the deceased returned from Delhi on 14.7.2007 and had taken lunch in her house. On being confronted with her case diary statement Ex. D-1, this witness has stated that she informed the police that she had heard the voice of the accused “ *Kahne wale ko kahne do*” but if they are not written in the same, she could not tell the reason for that. She has further stated that after arrest, the accused confessed her guilt before the police. Pooja Verma (PW-2) – the daughter of the deceased and accused has stated that her parents had gone to Delhi for livelihood on two occasions, and first time she also accompanied them but in their second visit she did not. According to this witness, as her mother (accused herein) had assaulted her father (deceased), he died. She has further stated that when her sister tried to wake up her father, he was not responding and at that time her mother (accused) was weeping. In the cross-examination she however has admitted that on hearing from the villagers that the accused killed the deceased, she has stated like this. She has further admitted that the relations between her mother and father were cordial. Nand Kumar Verma (PW-3) – the brother of the deceased and the

lodger of the *merg* intimation has stated that after the death of his uncle the deceased and the accused had come back from Delhi where they had gone for earning livelihood, and after staying for about 15 days the accused again left therefor. Thereafter, he along with deceased and one Panchram Verma also went to Delhi in search of the accused and brought her back. He has stated that on the date of incident appellant, deceased and their daughters slept in the house and in the morning he came to know about the death of deceased. Panchram (PW-4) has not supported the case of the prosecution and has been declared hostile. Nem Singh (PW-5) and Ramanuj Verma (PW-6) – the witnesses to inquest Ex. P-3 and seizure of certain articles made under Ex. P-7 and Ex. P-8 have not stated anything specific against the accused/appellant. Bheem Verma (PW-7) has stated in his evidence that the accused and the deceased used to go outstation for earning livelihood. He however has not stating anything regarding the involvement of the deceased in the commission of crime in question and has been even declared hostile. Ashok (PW-8) has not stated anything against the accused/appellant. Ram Bai (PW-9) – the mother-in-law of the accused/appellant has stated that on being inquired by her, the accused/appellant disclosed in the presence of the police that after quarrel between her with the deceased, he (deceased) went to sleep and while he was sleeping, she killed him by throttling. Sundar (PW-10) – the owner of the betel shop has stated that at about 8 in the night the deceased along with one Manharan Yadav had come to his shop and after chewing betel leaf, they both got back, and thereafter in the morning he came to know about his death. Baatran (PW-11) has stated that the deceased and the accused had two children and that they used to go to Delhi for

earning livelihood. Dr. A.M. Shrivastava (PW-12) is the witness who conducted postmortem examination on the body of the deceased and gave his report Ex. P-11 stating that there were crescentic abrasions in front of right side of the neck, concavity was medially diffuse with swelling over neck, and the cause of death was asphyxia due to throttling and the death was homicidal in nature. Mehattar Ram Sahu (PW-13) is the Patwari who prepared spot map Ex. P-4A. He has stated that three families were residing in the house where the dead-body was found and it was surrounded by a boundary wall having common courtyard and single passage opening to the main road. Brijlal Markam (PW-14) is the police constable who assisted in the investigation. R.P. Sahu (PW-15) is the investigating officer who has duly supported the case of the prosecution.

8. Heard counsel for the parties and perused the material on record.

9. In the statement of the accused recorded under Section 313 of the code of Criminal Procedure, no question was put to her that on the date of incident she alone was living in the house in question; that she and the deceased slept in the same room, and that no third person was there at the relevant time. Further, no question was put to her whether in the said house other inmates were also there at the relevant time. Thus, she has been deprived of the valuable opportunity of explaining the facts and circumstances appearing against her in the evidence.

9. Evidence of the witnesses reflects that the accused and her daughter were sleeping in the cot whereas body of the deceased was found lying on the floor. Evidence further reflects that in the

house where the body of the deceased was found, three families were residing including that of Nand Kumar Verma (PW-3). There is nothing on record to show that the deceased and the accused used to sleep after bolting the door from inside. From the evidence of Patwari (PW-13) also it is apparent that in the house in question three families were residing and the said house was surrounded by a boundary wall having common courtyard and single passage opening to the main road and therefore, it cannot be said that anybody else could not have gained entry therein. Though daughter of the deceased and accused has said at one place that her mother (accused) had assaulted the deceased but in the cross examination she has clarified that she has stated so on the basis of information provided by the villagers. Secondly, though the FSL report shows presence of blood on the sari seized at the instance of the accused, there is no serological report on record to prove that the said blood was of the blood group of the deceased. Furthermore, the accused/appellant being a woman, there may be other reason also including that of the menstrual cycle for the sari being stained with blood. Thus, on the basis of the evidence collected by the prosecution, it cannot be said with certainty that it is the accused/appellant who has committed the murder of the deceased. Since as per the evidence, the house in question was in the occupation of three families, the possibility of involvement of someone else in the incident cannot be ruled out. In these circumstances where the evidence adduced is not conclusive, the accused cannot be held guilty under Section 302 IPC and the benefit of doubt should go to her.

10. In the result, the appeal is allowed, judgment impugned convicting the accused/appellant under Section 302 IPC is set aside

and she stands acquitted of the charge levelled against her. As the accuse is already on bail, no further order to set her free is needed and the bail bonds furnished by her stand discharged.

Sd/-

(Pritinker Diwaker)
Acting Chief Justice

Sd/-

(Sanjay K. Agrawal)
Judge