

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on: 08/09/2017

Judgment delivered on: 25/09/2017

CRA No. 450 of 2008

- Manharan Rajwade, S/o Shri Tipuram Rajwade, aged about 22 years, R/o Village – Parsa, P.S. Ambikapur, Distt. Surguja (CG)

---- Appellant

Versus

- State Of Chhattisgarh through SHO, Police Station – Ambikapur, Distt. Surguja (CG)

---- Respondent

For Appellant	:	Smt. Meena Shastri, Advocate.
For Respondent/State	:	Shri V. Goverdhan, P.L.

Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Shri Justice Ram Prasanna Sharma

CAV Judgment

Per Pritinker Diwaker, J

This appeal arises out of the judgment of conviction and order of sentence dated 31.3.2008 passed by the Sessions Judge, Surguja (Ambikapur) in ST No.278/2006 convicting the appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life and to pay a fine of Rs.500/- with default stipulation.

02. In the present case, name of the deceased is Geeta, wife of the accused/appellant. Her dead body was found in the house of the

appellant at about 5 pm and allegation against the appellant is that after quarrel with her he strangled her. On 30.4.2006 mereg intimation Ex.P/7 was lodged at 12.30 noon at the instance of one Rajendra. Inquest over the dead body was conducted vide Ex.P/3 on 30.4.2006. FIR (Ex.P/10) was registered at the instance of Rajendra on 1.5.2006 at 5.20 pm. Postmortem was conducted on the body on 1.5.2006 by PW-7 Dr. Uttam Singh vide Ex.P/4 who noticed mark of contusion on neck above the thyroid cartilage, trachea congested, thyroid cartilage was broken, congestion of lung, liver, spleen, kidney, brain, heart and all vital organs. In his opinion, the cause of death was asphyxia due to throttling and the death was homicidal in nature. While framing charge, the trial Court framed charge under section 302 of IPC against the appellant.

03. So as to hold the accused/appellant guilty, the prosecution examined 10 witnesses in all. Statement of the accused was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. In defence, he examined one witness.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellant as mentioned above.

05. Counsel for the appellant submits as under:

(i) that there is no eyewitness account to the incident and the conviction rests on circumstantial evidence but nature of the same is not as such which could be made basis for conviction.

(ii) that at the time of occurrence of incident, the appellant was not present in the house and had gone to his workplace and this has been duly proved by PW-1 Sonamati, PW-2 Hirmaniya Bai and DW-1 Jainandan Ram Rajwade.

(iii) that the appellant is a rustic villager and if in his statement under Section 313 of Cr.P.C. he has disclosed some incorrect timing, the same cannot be used against him.

She has placed reliance on the judgments in the matters of ***Joydeb Patra and others Vs. State of West Bengal, (2014) 12 SCC 444; Ajay Singh Vs. State of Maharashtra, (2007) 12 SCC 341*** and ***Nagaraj Vs. State, (2015) 4 SCC 739***.

06. On the other hand, State counsel supporting the impugned judgment has submitted that conviction of the accused/appellant is strictly in accordance with law. He submits that as per PW-1 & PW-2 at about 5 pm they saw the deceased inside the house whereas according to accused/appellant himself he left the house early in the morning for his workplace and returned at 4 pm and as such, the appellant was very much present in between 4-5 in the evening when the deceased died and as such, he was required to explain the circumstances under which she died, however, no such explanation is there. He submits that in a case like the one in hand where the death takes place inside the privacy of a house, law is well settled that there is a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed and they can not 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.

Reliance has been placed on the judgments in the matters of ***Gajanan Dashrath Kharate Vs. State of Maharashtra, AIR 2016 SC 1255*** and ***Harijan Bhala Teja Vs. State of Gujarat, AIR 2016 SC 2065***.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-1 Sonamati has stated that the accused/appellant is her brother-in-law (*Devar*). On the date of incident at about 5 pm, PW-2 Hirmaniya Bai had gone to the house of the deceased Geeta to get stabilizer and there she found Geeta sleeping, she tried to wake her up but she did not and then she called her (PW-1) and both of them made all efforts to wake her up but she did not. Thereafter, they called in the doctor who declared her dead. According to this witness, the appellant returned at about 7 pm in the evening. Considering her Court statement contrary to her diary statement she was declared hostile. However, she has admitted the fact that at about 4 pm it started raining.

09. PW-2 Hirmaniya Bai has stated that on the date of incident she went to the house of deceased Geeta for getting stabilizer, she found Geeta sleeping and tried to wake her up but when she did not wake up, she raised hue and cry, called her neighbour and the doctor and then the doctor declared her dead. However, she has expressed her

ignorance about the presence of the accused/appellant at the relevant time. She has admitted the fact that in the evening at about 3-4 it started raining. PW-3 RN Pandey, Naib Tehsildar, conducted inquest Ex.P/3. PW-4 Ganesh Prasad, Patwari, prepared the spot map Ex.P/5. PW-5 Ganjharam Thakur a witness to inquest has turned hostile. PW-6 Jitendra Singh assisted in the investigation. PW-7 Dr. Uttam Singh conducted postmortem on the body of the deceased vide Ex.P/4 and noticed mark of contusion on neck above the thyroid cartilage, trachea congested, thyroid cartilage was broken, congestion of lung, liver, spleen, kidney, brain, heart and all vital organs. In his opinion, the cause of death was asphyxia due to throttling and the death was homicidal in nature. PW-8 is a witness of seizure Ex.P/8. PW-9 Jaggulal, father of the deceased, has stated that after coming to know about the death of his daughter he went to her house and found her dead with marks of nail on her cheek and neck. He is a witness to inquest notice Ex.P/2. PW-10 RD Pandey, investigating officer, has duly supported the prosecution case.

10. DW-1 Jainandan Ram Rajwade has stated that that appellant was working as labour in a crusher and in summer season his working hours were from 7 am to 11 am and 3 pm to 6 pm. He has nowhere stated that on the date of incident the appellant was working in the evening shift as well. He has admitted the fact that if it rains, work does not take place in the crusher.

11. In his statement under Section 313 of Cr.P.C. the appellant has categorically stated that on the date of incident at about 9 am he had left his house for his workplace and at about 4-5 in the evening

returned and then only he was informed by PW-1 & PW-2 that there is no movement in her body and thereafter he called in the doctor who declared her dead.

12. Admittedly, there is no direct evidence in this case and its a case of circumstantial evidence. It is well settled that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should be in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

13. In the present case, it is not in dispute that the dead body was found inside the house where the appellant was also residing with the deceased. Though PW-1 Sonamati has stated that the appellant returned to his house at 7 pm on the date of incident but this witness has been declared hostile. PW-2 Hirmaniya Bai has also been declared hostile. However, both these witnesses have admitted that they saw the dead body inside the house at about 5-6 pm and that at about 3-4 it started raining. Most importantly, in his statement under Section 313 of Cr.P.C. the appellant has categorically stated that on the date of incident at about 9 am he had left his house for his workplace and at

about 4-5 in the evening returned and then only he was informed by PW-1 & PW-2 that there is no movement in her body and thereafter he called in the doctor who declared her dead. Thus, according to the appellant himself he was present in his house in between 4 & 5 pm. As per medical evidence there was mark of contusion on neck of the deceased above the thyroid cartilage, trachea was congested, thyroid cartilage was broken and the cause of death was asphyxia due to throttling and that the death was homicidal in nature. In these circumstances, it stands proved that at the relevant point of time, the appellant was very much present in his house with the deceased and as such, he was required to explain the circumstances in which she died.

14. When 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 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. In such cases, 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 can not 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.

15. In the present case, the appellant has admitted his presence in the house in question at the relevant time but did not offer any explanation as to the circumstances leading to homicidal death of his wife/deceased. Apart from the appellant's own version, his presence in the house can also be inferred from the fact that on the fateful day at about 3-4 it was raining, as has come in the evidence of PW-1 and PW-2, and when there is rain, no work is done in the crusher, as has been stated by DW-1 with whom the appellant was working in the crusher. Furthermore, according to DW-1 house of the appellant is only at a distance of about 5 km from his workplace and therefore the possibility of the appellant returning to his house from his workplace and resuming his work in between 9 am and 5 pm cannot be ruled out.

16. It is a settled principle of law that in case the statement of the accused under Section 313 CrPC consists of inculpatory part accompanied by the exculpatory part, then two parts cannot be dissected or separated. Either the two parts have to be accepted as a whole or to be rejected. It is not permissible to rely upon the inculpatory part and ignore the exculpatory part. However, apart from the inculpatory and exculpatory parts, if there is an admission of the accused in his statement under Section 313 CrPC in relation to other facts and circumstances, they can be acted upon as his admission within the parameters of Section 58 of the Indian Evidence Act, 1872. To say in other words, that part of the statement of the accused under

Section 313 can be taken note of which makes admission in respect of certain facts other than inculpatory part and exculpatory part. In case the contrary view is taken that the entire statement of the accused under Section 313 CrPC is to be ignored, then the very purpose of such statement beneath Section 313 would be nugatory and meaningless. (See ***Parsadi Vs. State of UP, 2004 CriLJ 104***)

17. In the matter of ***Smt. Rukshana Bee @ Durga Vs. State of CG, 2007 CriLJ 3668***, it has been held as under:

“12. ...But it cannot be said that the admissions made by the accused regarding incriminating circumstances appearing in evidence against him, that means inculpatory admissions, shall altogether be ignored. The Apex Court held in the matter of *State of UP Vs. Lakhmi, Manu/SC/0126/1998* that “the need of law for examining the accused with reference to incriminating circumstances appearing against him in prosecution evidence is not for observance of a ritual in a trial, nor is it a mere formality. It has a salutary purpose. It enables the Court to be apprised of what the indicated person has to say about the circumstances pitted against him by the prosecution. Answers to the questions may sometimes be flat denial or outright repudiation of those circumstances. In certain cases accused would offer some explanations to incriminating circumstances. In very rare instances accused may even admit or own incriminating circumstances adduced against him perhaps for the purpose of adopting legally recognized defences. In all such cases, the Court gets the advantage of knowing his version about those aspects and it helps the Court to effectively appreciate and evaluate the evidence in the case. If an accused admits any incriminating circumstance appearing in evidence against him there is no warrant that those admissions should

altogether be ignored merely on the ground that such admissions were advanced as a defence strategy.”

18. Thus, in light of the above principles of law, considering the overall facts and circumstances of the case, the fact that the deceased had a homicidal death due to strangulation in her house where the appellant was the only inmate whose presence at the relevant time stands established from his own admission apart from the other evidence as discussed above, for which there is no plausible explanation on his part, we are of the opinion that the trial Court was justified in holding him guilty under Section 302 of IPC based on circumstantial evidence. As regards the judgments cited by the appellant, the same being related to cases distinguishable on facts from the present case are of no help to the appellant. Conviction of the appellant in the present case is not based solely on the admission of the appellant in his statement about his presence at the spot at the relevant time but is based on the other proved incriminating circumstances also as discussed above.

19. In the result, the appeal fails and is, accordingly, dismissed. The appellant is reported to be on bail, therefore, his bail bonds stand cancelled and he is directed to be taken into custody forthwith to serve out the remaining part of the sentence.

Sd/
(Pritinker Diwaker)
Judge

Sd/
(R.P. Sharma)
Judge