

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 903 of 2008**

- Mohan Ram Bhagat, S/o Keshwar Ram Bhagat, aged about 33 years, Occupation Service (Clerk), R/o Village – Bumtel, Tahsil and District Jashpur, (C.G.), present residence at Housing Board Colony, Jashpur, Tahsil and District, Jashpur (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh Through : District Magistrate, Jashpur, District Jashpur (C.G.)

---- Respondent

For Appellant	:	Smt. Indira Tripathi, Advocate.
For Respondent/State	:	Shri Adil Minhaj, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker**Hon'ble Shri Justice Ram Prasanna Sharma****Judgment on Board by Pritinker Diwaker, J****30/06/2017**

This appeal has been filed against the judgment of conviction and order of sentence dated 01.10.2008 passed by the Sessions Judge, Jashpur, in Sessions Trial No. 25/2007 convicting the accused/appellant under Section 302 IPC and sentencing him to undergo imprisonment for life.

2. In the present case name of the deceased is Smt. Suchita Bhagat, wife of the accused/appellant. As per the prosecution case, in the night intervening 27-28/09/2006 body of the deceased was found in her house and it is said that she died after sustaining gun shot injury. On 28.09.2006 in the morning when the accused/appellant returned to his house along with one Satyanarayan, he noticed his wife to be dead. On the very day at

8.30 am, at the instance of the accused/appellant FIR (Ex.P/9) was registered under Section 302 IPC against the unknown person. At the same time, mere intimation Ex.P/10 was also recorded. Inquest on the body of the deceased was conducted on 28.09.2006 vide Ex. P-3 and the dead-body was sent for postmortem examination which was conducted by Dr. (Smt) Kumud Kerketta (PW/5) vide report Ex. P/5 opining the cause of death of deceased to be shock and hemorrhage due to injury on vital part and death was homicidal in nature. After filing of charge sheet, the trial Court framed the charge against the accused/appellant u/s 302 IPC.

3. In order to prove the complicity of the accused/appellant in the crime in question, the prosecution examined 09 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. One court witness Ashish Bhagat (CW/1) and one defence witness Jagat Pal (DW/1) was also examined in this 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. Hence, this appeal

5. Counsel for the accused/appellant submits as under:

(i) That the accused/appellant has been convicted solely on the basis of circumstantial evidence but the nature of circumstantial evidence is not as such which can be made basis for his conviction.

(ii) That on the fateful night, the accused/appellant was not in his house and had gone to the house of Jagat Pal (DW/1), which was 17 km away from the house of the accused/appellant.

(iii) That the Ashish Bhagat (CW/1), son of the accused/appellant

and the deceased, has also supported the defence taken by the accused/appellant and has stated that on the fateful night the accused/appellant was not there in the house.

(iv) That it is the accused/appellant who lodged the FIR Ex.P/9.

(v) That in 313 Cr.P.C. statement the accused/appellant had stated that he would like to adduce defence witness and ultimately the defence witness has duly supported his version.

(vi) That the accused/appellant has been convicted simply because Dilip Kumar Ekka (PW/2) and Hermon Ekka (PW/8) have stated that relation between the accused/appellant and the deceased were not cordial. It has been argued that merely on the basis of suspicion the accused/appellant cannot be convicted especially when other evidence on record reflects that relation between the accused/appellant and the deceased were cordial. She placed reliance on the decision in the matter of **Nagaraj Vs. State represented by Inspector of Police, Salem Town, Tamil Nadu** reported in (2015) 4 SCC 739.

6. On the other hand, supporting the impugned judgment it has been argued by the State counsel that the conviction of the accused/appellant is strictly in accordance with law and there is no infirmity in the same.

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

8. Smt. Meena Bhagat (PW/1) is neighbour of the accused/appellant and the deceased, who has stated that on 28.09.2006 at about 6.00 am, the accused/appellant came to her house and informed that some incident had taken place in his house and when she reached there, she found the deceased lying

on the bed. She has further stated that both the accused/appellant and the deceased were Govt. servant. Deceased was posted at Jashpur, whereas the accused/appellant at Manora and that the accused/appellant used to commute from Jashpur to Manora. This witness has also stated that one orphan child was taken on supurdnama by them. Dilip Kumar Ekka (PW/2) is brother of the deceased who has stated that the marriage of the accused/appellant and the deceased was love marriage and that they had taken one orphan child on supurdnama from the Court of S.D.O. In para 14, he has further stated that he had informed the police that the accused/appellant was having illicit relation with some other lady. Smt. P. Bhagat (PW/3) is witness to inquest Ex.P/3. This witness has not stated anything specific against the accused/appellant. Govind Soni (PW/4) is the Patwari who prepared spot map Ex.P/4. Dr. (Smt.) Kumud Kerketta (PW/5) is the witness who conducted postmortem examination on the body of the deceased and gave her report Ex. P-5 noticing following injuries:-

- (i) Entry wound in the size of 1 cm present in left side of face at the lower border of angle of left mandible. Wound was horizontal 6 cm below and medial to the left ear. Blackening around the entry wound, achieved star shaped. Cartridge cap (copper made) in the size of 2.5 cm x ½ cm diameter in entry wound. There was laceration of surface skin and destruction of deeper tissues and fragmentation of mandible bone and tooth.
- (ii) Exit wound and irregular edges. Exit wound in the size of 4 cm x 2 cm present at the right occipital temporal juncture, compound fracture of occipital and temporal bones. Subdural hematoma present at the right side of scalp. Brain matter came from the exit wound and more bleeding occurred from

exit wound.

The cause of death has been opined to be shock and hemorrhage due to injury on the vital organs and death was homicidal in nature.

9. Obed Minj (PW/6) witness to seizure Ex.P/6 turned hostile. Jageshwar Das (PW/7) also turned hostile. He, however, has stated that when he met the accused/appellant, he informed him that his uncle is not well. Hermon Ekka (PW/8) is uncle of the deceased. He has stated that about two days prior to the incident he came to know that deceased was not happy. He has further stated that the marriage of the deceased and the accused/appellant was a love marriage. In cross-examination, he however, has stated that he was not aware as to why the deceased was not happy. Ashish Bhagat (CW/1), son of the deceased and the accused/appellant, has supported the plea of alibi taken by the accused/appellant. He has stated that on the date of incident his father was not there and had gone to some other village. On the fateful night he (this witness) was there in the house along with his mother and one child, and on the next morning he saw his father at about 6.00 am. He has further stated that in the night he slept with his mother on same cot and in the next morning when he woke-up, he noticed blood on the said cot. He has also stated that in the next morning his father tried to wake her up but she did not wake up and that his father was crying and her mother was taken to hospital. Jagatpal (DW/1) has stated that he is resident of village Kharsota. On 27.09.2006 at about 6.30 – 7.00 pm, the accused/appellant along with Shankar and Satyanarayan had come to his house to see his (this witness) father, who was not well. He has further stated that the accused/appellant had dinner in his house and when he was leaving

for his village (Jashpur), he (this witness) asked him to stay here and then the accused/appellant, Satyanarayan and he slept in one room, whereas Shankar in the adjacent room. This witness has also stated that early in the morning at 5.30 the accused/appellant left his (this witness) house even without taking tea and that he (this witness) received information at 10.30 am about the death of the deceased. In cross-examination, he remained firm and nothing could be elicited from him by the prosecution to discredit his testimony.

10. Close scrutiny of the evidence makes it clear that though the accused/appellant was residing in his house at village Jashpur along with his wife and children but on the fateful day he was not present there and had gone to other village i.e. Kharsota and stayed there in the house of DW/1 at night and in the next morning when he reached his house, the dead body of his wife was found in the house. The prosecution has arrayed the appellant as accused merely on suspicion without making effort to seize the weapon used in the commission of offence. It is the case of the prosecution that deceased died after sustaining gun shot injury and as per postmortem report Ex.P/5, one cartridge cap (copper made) in the size of 2.5 cm x 1/2 cm was found in her body but nothing incriminating has been seized from the possession of the accused/appellant showing his involvement in the commission of the offence. True, it is that in the case of house murder burden heavily lies on the accused to prove his innocence, however, in the present case, not only defence witness Jagat Pal (DW/1) has stated that on the fateful night the accused/appellant was in his house but also the court witness Ashish Bhagat (CW/1) has categorically stated that the accused/appellant was not there in the house and

CW/1 had slept along with the deceased in the night on same cot and in the next morning the dead body of the deceased was found. In 313 Cr.P.C. statement no specific defence has been taken by the accused/appellant but he has categorically stated that he would like to adduce defence witness and the defence witness has duly proved the case of the appellant and his version further finds corroboration from the evidence of CW/1.

11. Thus, considering this factual and legal position, defence taken by the accused/appellant, and the statement of CW/1, we are of the view that there is no conclusive piece of evidence proving the guilt of the accused/appellant in the commission of offence beyond reasonable doubt and the benefit, of course, has to go to the accused/appellant.

12. Accordingly, the appeal is allowed, judgment impugned is hereby set aside and the accused/appellant stands acquitted of the charge levelled against him. As the appellant is reported to be on bail, his bail bonds stand discharged.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Ram Prasanna Sharma)
Judge