

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 129 of 2012

- Sita Ram Devdas, S/o. Pardesi Ram Devdas, aged about 27 years, R/o. Sakin Hospital, Sector Block No.1, Quarter No.14, Road No.8, Thana Bhilai Nagar, District Durg (CG)

---- Appellant

Versus

- State of Chhattisgarh, Through Police Station Bhilai Nagar, District Durg (CG)

---- Respondent

For Appellant : Shri Deepak Gupta & Shri Akhilesh Kumar, Advocates.
For Respondent/State: Shri Ravindra Agrawal, P.L.

HON'BLE SHRI JUSTICE PRITINKER DIWAKER
HON'BLE SHRI JUSTICE RAJENDRA CHANDRA SINGH SAMANT

Judgement on Board by Pritinker Diwaker, J.

04/11/2017

This appeal has been filed against the judgment of conviction and order of sentence dated 03.12.2011 passed by the Sessions Judge Durg, in Sessions Trial No. 142/2010 convicting the accused/appellant under Section 302 IPC and sentencing him to undergo imprisonment for life with fine of Rs. 500/-, plus default stipulation.

2. In the present case, name of the deceased is Pooja, wife of the appellant. Appellant and the deceased were residing in a house along with their daughter aged about 3 years. On 15.01.10, accused/appellant caused knife injury on the left side ventricle of heart of the deceased and thereafter he took her to the hospital where she was declared dead. Based on this information merger intimation Ex.P-13 was recorded

on 15.01.2010 and thereafter on 21.02.2010 FIR Ex.P-10 was registered against unknown person. Inquest Ex.P-4 was prepared and body was sent for postmortem examination which was conducted by Dr. Badrinarayan Dewangan (PW- 14) and he opined that the cause of death was shock and hemorrhage due to ante mortem sharp injury on the left side of chest with incised punctured wound and mode of death was syncope. Memorandum of the accused Ex. P-6 was recorded based on which recovery of knife was made vide Ex. P-7. However no blood was found in the FSL report and this could be because the appellant has stated that he had washed the knife with lemonade. It is not in dispute that at the time of commission of the offence, the accused and the deceased were there in the house in question and no other person was there. After filing of charge sheet, the trial Court framed the charge against the accused/appellant u/s 302 IPC.

3. In order to establish the guilt of the accused/appellant in the crime in question, the prosecution has examined 20 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 is not as such to connect the accused/appellant with

the crime in question.

- ii) That the death of the deceased could be accidental.
- iii) That possibility of some third person entering the house and committing the offence cannot be ruled out.
- iv) That only one injury is alleged to have been caused by the appellant and considering the nature of injury offence may fall under Section 304 Part I or Part II IPC.

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.

7. We have heard counsel for the parties and perused the material available on record.

8. Baliram Gond (PW-1) and Kewal Ram Markam (PW-2) brother in laws of the appellant have not stated anything specific against the appellant. Though PW-2 has stated that appellant used to quarrel with the deceased. Ram Prasad Patel (PW-3) neighbour of the appellant and the deceased has stated that after hearing the cries of their child, his wife had gone to the house of the appellant and saw the deceased in injured condition and immediately called her and information was passed on to other relatives. Meanwhile, appellant took her to hospital where she was declared dead. Gangotri (PW-4) has not stated anything against the appellant and has been declared hostile. Yashoda Bai (PW-5) wife of PW-3 who immediately after the incident had seen the deceased in the injured condition. Palturam Gond (PW-6) witness to inquest Ex.P-5 has not stated anything against the appellant and has been declared hostile. Jawahar Thakur (PW-7) is a witness to

memorandum of accused/appellant Ex.P-6 and seizure Ex.P-7 has turned hostile. Veerendra Bahadur Panchbhai (PW-8) is a witness to inquest Ex.P-4. Krishna Kumar Dixit (PW-9) is a hospital staff member. Kishore Pal (PW-10), Domar Singh Thakur (PW-15), Shiv Prasad Dewangan (PW-16), Raj Kumar Soni (PW-17) and Krisensiya Tirkey (PW-20) are the Constables who have assisted in the investigation. Smt. Rahi Bai (PW-11) has not stated anything against the appellant and has been declared hostile. Nand Kumar Chaturvedi (PW-12) is the patwari who prepared spot map. Dr. Badri Narayan (PW-14) is the doctor who conducted postmortem examination on the body of deceased and opined that the cause of death was shock and hemorrhage due to ante mortem sharp injury on the left side of chest with incised punctured wound and mode of death was syncope. Prakash Chand Shrivastava (PW-18) is the Investigating Officer who has duly supported the prosecution case. Sunil Kumar Kuldeep (PW-19) is a witness to memorandum Ex.P-6 and seizure made under Ex.P-7.

9. From the evidence it is clear that on 15.01.10 accused/appellant gave a knife blow on the chest of the deceased resulting her death. Admittedly, the appellant was residing along with the deceased in the house in question and even at the time of occurrence he was there. However there is no eyewitness account in the present case and the entire case is based on the circumstantial evidence. One of the strongest circumstance put down by the prosecution, in this case is that apart from the accused, deceased and their child, 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 child aged 3 years.

10. In a case where house murder is the issue, heavy burden is on 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 after committing the murder, he washed the knife with lemonade and he along with his neighbours took the deceased to hospital where she was declared dead. 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 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.”

12. If the facts of the present case are seen in the light of the aforementioned 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 child, 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 asserted 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.

13. We find no substance in the argument of the counsel for the appellant that he is liable to be convicted for the lesser offence because the injury on the vital part of the body clearly speaks about his act. 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. The Court below has 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.

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.C.S.Samant)
Judge