

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 497 of 2012**

1. Ravi Kumar alias Golu Yadav S/o Punit Ram Yadav, aged about 24 years, R/o Village Sargaon, PS Hirri, District Bilaspur, CG.

---- Appellant**Versus**

1. State of Chhattisgarh through the District Magistrate, Bilaspur

---- Respondent

For Appellant	:	Shri Shiv Kumar Guha, Advocate
For Respondent/State	:	Shri Vaibhav Goverdhan, PL

Hon'ble Shri Justice Pritinker Diwaker &**Hon'ble Shri R.P. Sharma****Judgment on Board by Pritinker Diwaker, J****27/09/2017**

This appeal has been filed against the judgment of conviction and order of sentence dated 07.03.2011 passed by Additional Sessions Judge (FTC) Mungeli, District Bilaspur, in Sessions Trial No. 23/2010 convicting the accused/appellant under Sections 302 and 201 IPC and sentencing him to undergo imprisonment for life and pay fine of Rs. 2000/- u/s 302 and RI for three years and pay fine of Rs. 500/- u/s 201 IPC, plus default stipulations.

2. Name of the deceased in this case is Reena yadav – wife of the accused/appellant. As per the case of prosecution, on 20.03.2010 accused/appellant caused injuries to the deceased with the help of club as a result of which she met an instantaneous death. Merg Ex. P-3 was recorded at the instance of accused/appellant himself on that very day at 11 AM to the effect that in the night his wife had slept along with him. Merg further

states that in the night hours itself she went out and while getting back fell down and suffered injuries on her face. It then states that in the early morning the deceased went to the toilet and while getting back she again fell down. Thereafter, he shifted her to the bed, gave her water to drink but at about 6 AM she breathed her last. Inquest was made vide Ex. P-10 on that day itself and the dead-body was sent for postmortem examination which was conducted by Dr. Manmit Thawait (PW-11) who gave his report Ex. P-14. After receiving postmortem report and conducting *merg* inquiry, FIR Ex. P-8 was registered against the accused/appellant for an offence under Section 302 IPC. After investigation, charge-sheet was filed by the police under Sections 302 and 201 IPC followed by framing of charge by the Court below accordingly.

3. In order to prove the complicity of the accused/appellant in the crime in question, the prosecution has examined 11 witnesses. Statement of the accused/appellant 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 the entire case of the prosecution rests on the circumstantial evidence but the circumstances so relied upon being too fragile in nature and forming an incomplete chain, can not be made a basis for convicting the accused/appellant.

(ii) That though on the memorandum of accused Ex. P-1, seizure

of club was made but in the absence of FSL report it is of no value in the eye of law.

(iii) That the deceased died on account of the injuries suffered on account of fall but the doctor has given an entirely incorrect report.

6. On the other hand, counsel for the State supports the judgment impugned and submits that the findings recorded by the Court below convicting the accused/appellant under Sections 302 and 201 IPC are based on due appreciation of the evidence on record and there is no infirmity in the same.

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

8. Darash Ram (PW-1) – the father of the deceased has stated that 3-4 months after marriage of his daughter (deceased) when he took her back to his house, she informed about her subjection to beating by the accused/appellant and that he too noticed injury on her eye and hand. After staying in his house for about 15 days, he sent her back to the house of the accused/appellant as was asked by him on phone. Thereafter, on being asked by the father-in-law of the deceased, he sent his son and nephew to the house of the accused/appellant to take her back but after reaching there they informed him on phone that the accused persons were beating her and that when they asked them as to why they were doing so, they (accused persons) tried to beat them also. Next day thereto, one Santosh Yadav is said to have informed this witness on phone about the death of the deceased. On coming to know about the death of deceased, this witness went to the house of the accused/appellant and saw injuries on her entire body including face. Cross-examination of this witness also carries complete consistency to

what has come in his examination-in-chief. Manoj Yadav (PW-2) – cousin of the deceased has stated that in the month of March 2010 he along with one Ram Sheetal went to the house of the accused/appellant to take the deceased where in their presence the accused beat the deceased and after taking out axe and club he threatened to beat them also in case they took her with them. This witness has further stated that while he was to get back, deceased insisted him to take her along or else the accused would finish her. This witness however got back leaving Ram Sheetal there itself, and on the next day received a telephonic information from someone that the accused/appellant had killed the deceased. On receiving this information when this witness went to the house of the accused/appellant, he saw number of injuries on the body of the deceased. In cross-examination too this witness maintains conformity to the things stated in his examination-in-chief. Khorbahra (PW-3) – the village Kotwar has not supported the case of the prosecution and has been declared hostile. Ashok Kumar Rajput (PW-4) is the Patwari who prepared spot map Ex. P-3. Shyam Das (PW-5) – the witness to memorandum of the accused Ex. P-1 and seizure made under Ex. P-2 has not supported the case of the prosecution and has been declared hostile. Sawant Ram Koshle (PW-6) is the police constable who assisted in the investigation. Laxmi Bai (PW-7) – the mother of the deceased while supporting the case of prosecution has stated that the accused/appellant herein in connivance of his parents killed the deceased. Rest of things stated by her are quite similar to that of Darash Ram (PW-1). Ajay Shankar Tripathi (PW-8) is the investigating officer who has duly supported the case of the prosecution. Shriniwas Pandey (PW-9) is the witness who assisted in the investigation. A.K. Soni (PW-

10) is the witness who conducted inquest vide Ex. P-10. Dr. Manmit Kumar Thawait (PW-11) is the witness who conducted postmortem examination on the body of the deceased and gave his report Ex. P-14 stating that haematoma was seen above both upper eyelids and lower eyelids; multiple contusions all over the face, both cheeks, chin and forehead and upper limbs; lacerated wound in the size of 2 x 1 cm in lower lip vertically placed; multiple contusions in both upper and lower limbs – size 3 x 4 cm; multiple abrasions in both forearms and hairline fracture in left tempo-parietal area. Cause of death has been opined to be haemorrhagic shock due to injury to vital organ – brain and that all the injuries were antemortem in nature. As per the evidence of this witness, the death was homicidal in nature.

9. We have gone through the material on record including the evidence of the witnesses very minutely, and having done so it comes to the fore that in the preceding night of mysterious killing, accused/appellant and the deceased alone slept together in a room and then in the next morning at 11 hours the *merg* Ex. P-5 came to be recorded at the instance of none else but the accused/appellant himself assigning the reason of death to be fall and resultant injuries on her face. Looking to the circumstances under which the death of the deceased took place, it is the accused/appellant who is supposed to know the cause thereof because in the entire night they remained together without there being any third person. However, except taking a highly improbable stand in the *merg* that while getting back from the toilet she fell down, suffered injury on her face and died, the accused/appellant has not offered any plausible and palatable explanation in his statement recorded

under Section 313 of the Code of Criminal Procedure. His *merged* version referring to injury on face alone does not correspond to the postmortem report Ex. P-14 where number of contusions, abrasions, lacerations, haematoma etc. are stated to be noticed by the autopsy surgeon. The accused/appellant has thus not only failed to explain the things pertaining to the death of his wife as per the requirement of law but has chosen to bring forth an absolutely false and fictitious explanation to cover up himself. 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.”

10. Further in the matter of **State of Rajasthan v. Thakur 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.”

11. This apart, it has come in the evidence of PW-1, PW-2 and PW-7 that the accused/appellant used to beat the deceased who once had expressed her apprehension that if not removed from her matrimonial home, the accused/appellant would not leave her alive. Evidence of these witnesses further goes to show that when they went to the village of the accused after receiving the information about the death of the deceased, they noticed number of injuries on her body. Further, on the memorandum of the accused/appellant, seizure of club was also made.

12. In the aforesaid factual and legal discussion, this Court is of the considered opinion that the prosecution has proved its case beyond all reasonable doubt connecting the accused/appellant with the crime in question. So also the Court below has been fully

justified in appreciating the evidence collected by the prosecution and then arriving at a conclusion holding the accused guilty of murdering his wife. No scope of interference with the well reasoned findings given by the Court below is in sight and therefore they are hereby maintained. Appeal thus being without any substance is liable to be dismissed and it is dismissed as such. No direction to arrest the accused and send him to jail is necessary as he is already inside.

13. Appeal dismissed.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(R.P. Sharma)
Judge