

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 73 of 2010

1. Mehtab Singh @ Munna, S/o Ramlal Bisen, aged about 58 years, R/o Mahadev Ghat, Opposite Gas Pump, Raipura, Raipur, Distt. Raipur (CG), Permanent Address: Behind Pooja Lodge, Gulab Rai Para, Police Station Kotwali, Chindwara, Distt. Chindwara (MP)
2. Munni Bai @ Salma W/o Mehtab Singh, aged about 45 years, R/o Mahadev Ghat, Opposite Gas Pump, Raipura, Distt. Raipur (CG) Permanent Add.-Near Mosque, Saja, P.S. Thaan, Khamharia, Distt.-Durg, C.G.
3. Shakir S/o Shabir Khan, aged about 22 years, R/o Mahadev Ghat, Opposite Gas Pump, Raipura, Raipur, Distt. Raipur (CG) Permanent Add.-Village Mohgaon, Malajkhand, P.S.-Malajkhand, Distt.-Balaghat, M.P.
4. Zakir Khan S/o Shabir Khan, aged about 22 years, R/o Mahadev Ghat, Opposite Gas Pump, Raipura, Raipur, Distt. Raipur (CG) Permanent Add.-Village Mohgaon, Malajkhand, P.S.-Malajkhand, Distt.-Balaghat, M.P.

---- Appellants

Versus

- State Of Chhattisgarh through Station House Officer, Police Station DD Nagar, Raipur, Distt. Raipur (CG)

---- Respondent

For Appellants No.1 & 2	:	Shri Janak Ram Verma, Adv.
For Appellants No. 3 & 4	:	Shri Sandeep Shrivastava, Adv.
For Respondents No.3 & 4	:	Smt. Madhunisha Singh, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Arvind Singh Chandel

Judgment On Board By Justice Pritinker Diwaker

07/11/2017

This appeal arises out of the judgment of conviction and order of

sentence dated 20.11.2009 passed by the 1st Additional Sessions Judge, Raipur in S.T.No.63/2009 convicting the accused/appellants under Section 302/34 of IPC and sentencing them to undergo imprisonment for life and fine of Rs.1000/- with default stipulation and appellants No. 1 & 2 have also been convicted under Section 201 of IPC and sentenced to undergo RI for three years and fine of Rs.500/- with default stipulation.

02. As per prosecution case, accused/appellant No.1 Mehtab Singh had two wives, first was the deceased Baby @ Rajeshwari whereas appellant No.2 Munnibai @ Salma was his second wife. Accused/appellant No.3 Shakir and appellant No.4 Zakir Khan are sons of appellant No.2 Munnibai from her first husband. Further case of the prosecution is that deceased Baby @ Rajeshwari and appellant No.1 Mehtab Singh had two issues namely Altaf (PW-9) and Sana, who were aged 8 years and 2 ½ years respectively at the time of incident. According to the prosecution, all the family members were residing under one roof and they were running a hotel opposite to their house. As per prosecution case in the night intervening 23/24th February, 2009 the accused/appellants committed murder of Baby @ Rajeshwari by throttling her and as the deceased passed stool, they cleaned it and her clothes and her dead body was found near the stairs. Merg intimation Ex.P/18 was lodged on 24.2.2009 at 9.30 am by accused/appellant No.1 Mehtab Singh. Inquest over the dead body was conducted vide Ex.P/15 on 24.2.2009 and the body was thereafter sent for postmortem which was conducted on the same day by PW-5 Dr. Shivnarayan Manjhi vide Ex.P/12, who noticed multiple contusions,

abrasions, impacted abrasions on various parts of the body and tracheal cartilage was broken. In his opinion, the cause of death was due to asphyxia as a result of strangulation and that the death was homicidal in nature. Short PM report is Ex.P/13. After merging inquiry and receiving PM report, FIR (Ex.P/21) was registered against unknown person under Section 302 of IPC. On 26.2.2009 memorandum of appellant No.2 Munnibai was recorded vide Ex.P/4 based on which sari, petticoat of the deceased were seized vide Ex.P/5. However, there is no FSL report on record. After filing of charge sheet, the trial Court framed charges under Sections 302, 34 and 201 of IPC against the accused persons.

03. So as to hold the accused/appellants guilty, the prosecution examined as many as 12 witnesses. Statements of the accused were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication.

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 appellants as mentioned above.

05. Learned counsel for the appellants submit as under:

- (i) that there is no eyewitness to the occurrence and conviction of the appellants is based on circumstantial evidence but none of the circumstances, from which inference of guilt could be drawn against the appellants, has been proved beyond reasonable doubt.
- (ii) though the dead body of the deceased was found inside the

house, but in the house in question apart from the appellants two minor children of the deceased and one servant were also living and therefore, in absence of any cogent and reliable evidence it cannot be said with certainty as to who committed murder of the deceased.

(iii) even if no explanation has been offered by the appellants in their statements under Section 313 of CrPC, it cannot be presumed that all of them together committed murder of the deceased.

(iv) though on the memorandum of appellant No.2 (Ex.P/4) seizure of clothes of the deceased has been made but in absence of FSL report, it is of no consequence.

(v) that appellant No.1 Mehtab Singh has expired while he was in custody on 16.9.2016 and appellant No.2 is in jail for the last more than 7 years.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel that conviction of the appellants is strictly in accordance with law and as such, there is no scope for any interference in the judgment impugned by this Court. Once the accused/appellant - inmates of the house have failed to offer any explanation in their statements under Section 313 of CrPC, presumption goes against them and all of them are liable to be convicted for committing murder of the deceased. There is enough evidence on record to show that the deceased was being subjected to torture by the appellants. Once homicidal death has been proved by the prosecution, the burden lies on the accused persons being the inmates of the house in question to explain as to how the deceased died. However, State counsel confirms the factum of death of appellant

No.1 Mehtab Singh during custody.

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

08. PW-1 Pritesh Sahu, neighbour of the appellants, has stated that appellant No.1 Mehtab Singh had two wives, one is accused/appellant No.2 Munnibai whereas other was the deceased Baby @ Rajeshwari. He further states that accused/appellants No. 3 & 4 are the sons of appellant No.2 whereas deceased had two issues namely Altaf and Sana, aged 8 years and 2 ½ years, respectively. On the date of incident he was informed by his fellow shopkeeper about the death of the deceased. When he enquired from accused/appellant No.2 she informed him that dead body of the deceased was lying near the stairs and the deceased had also passed stool, after cleaning her and changing her clothes, the body of the deceased was kept in the hall. Subsequently, this witness has been declared hostile.

09. PW-2 Nirendra Singh, brother of the deceased, has stated that the deceased was being subjected to cruelty by the accused persons. He is also a witness to memorandum (Ex.P/4) of appellant No.2 Munnibai and seizure Ex.P/5. He has duly supported the prosecution case. PW-3 Bhagwat Prasad Choudhary is a resident of same village where the deceased was residing. He has turned hostile. PW-4 Shahnaz Khan was also residing as tenant in the same premises on the first floor. She has stated that accused/appellant No.2 Munnibai came to her at 5.30 am on the date of incident and informed her that the deceased had gone somewhere and later on, at about 7.30 am she

came to know about death of the deceased. She has further stated that quite often there used to be dispute between appellant No.2 and the deceased and that deceased was being subjected to torture. This statement of PW-4 remained unchallenged in cross-examination. PW-5 Dr. Shivnarayan Manjhi conducted postmortem of the deceased and noticed multiple contusions, abrasions, impacted abrasions on various parts of the body, tracheal cartilage was broken. In his opinion, the cause of death was due to asphyxia as a result of strangulation and that the death was homicidal in nature. PW-6 Saleem @ Naththu Khan husband of PW-4 in para-3 has stated that on the previous night of the incident at about 9 pm when he returned from his work place he saw accused/appellants beating and abusing deceased and while he was going upstairs the accused persons were still beating and quarreling with the deceased. On the second day he came to know about death of the deceased. In cross-examination statement of this witness remained unchallenged. PW-7 Deepak Tiwari, Patwari, prepared spot map Ex.P/3. PW-8 Gangadhar has turned hostile. PW-9 Altaf, child witness, aged 8 years, son of the deceased has not stated any specific against the appellants. PW-10 Lalla Singh Rajput, ASI, is the investigating officer. PW-11 Indra Bahadur Singh, Head Constable helped in the investigation. PW-12 RN Singh Sengar recorded merged intimation and FIR.

10. In their statements under Section 313 of CrPC no specific defence has been taken by the accused persons except making bald denial of all the incriminating circumstances. They have failed to offer any explanation as to how the dead body has been found inside their

house and under what circumstances she died.

11. 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.”

12. 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 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.”

13 If the principles laid down in the above case are applied in the present case, it emerges as follows:

(i) the dead body has been found inside the house where the appellants were also residing.

(ii) according to the accused persons the dead body was lying near the stairs and as the deceased had passed stool, they washed it off, changed her clothes and kept the dead body in the hall. This conduct of the appellants does not appear to be natural one,

(iii) in the night in question there was quarrel between the accused persons and the deceased, PW-6 Saleem @ Naththu saw the appellants beating and abusing the deceased and on the next morning dead body was found with multiple injuries as mentioned in the postmortem report,

(iv) according to the medical evidence, the deceased had a homicidal death, the cause of death was due to asphyxia as a result of strangulation and the injuries found on her persons appeared to have been caused by hard and blunt object,

(v) the accused/appellants have offered no explanation in their statements under Section 313 of CrPC as to how and under what circumstances the deceased died,

(vi) that accused/appellant No.2 gave false information to PW-4 Shahnaz Khan at 5.30 am that the deceased has gone missing and at around 7.30 am this witness came to know about death of the deceased.

14. Considering the above facts and circumstances of the case in light of principles of law relating to house murder, in particular the conduct of the appellants, we are of the view that it is the appellants who committed murder of the deceased. Accordingly, the appeal fails and is hereby dismissed.

As appellant No.1 Mehtab Singh has expired, no further order is required in respect of him. Appellant No.2 Munnibai is reported to be already in jail and therefore, no order regarding her arrest etc. is required. However, appellants No.3 Shakir and No.4 Zakir Khan are reported to be on bail, therefore, their bail bonds stand cancelled and they be taken into custody forthwith to serve out the remaining part of the sentences.

Sd/

(Pritinker Diwaker)

Judge

Sd/

(Arvind Singh Chandel)

Judge