

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 692 of 2011

- Netram Sahu, S/o. Basti Ram Sahu, Aged about 35 years, R/o. Bajar, Police Station Amanaka, Raipur Present Address Tilai, P.S.Berla, district Durg

---- Appellant

Versus

- State Of Chhattisgarh, Through Station House Officer, Amanaka, District Raipur (CG)

---- Respondent

For Appellant	:	Shri Y.C.Sharma, Advocate
For Respondent/State	:	Shri Avinash Mishra, P.L.

HON'BLE SHRI JUSTICE PRITINKER DIWAKER
HON'BLE SHRI JUSTICE SANJAY K.AGRawal

Judgment On Board

26/05/2017

PRITINKER DIWAKER J.

This appeal arises out of judgment and order dated 18.05.2011 passed by Sessions Judge, Raipur in S.T. No. 213/2010 convicting the accused/appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life with fine of Rs. 500/- with default stipulation.

2. As per prosecution case, accused/appellant was residing in his house along with his wife Lata Bai and children and on 23.06.2010, accused committed murder of his wife Lata Bai by strangulation. FIR

Ex.P-1 was lodged at 9.30 a.m. by Rakesh Kumar, against the accused/appellant. Based on which offence under Section 302 IPC was registered. Immediately thereafter mereg intimation Ex.P-2 was recorded at the instance of Rakesh Kumar (PW-1). Inquest was prepared vide Ex.P-4 and body of deceased was sent for postmortem examination vide Ex.P-9 which was conducted by Dr. Shiv Narayan Manjhi (PW-6) and according to him cause of death was asphyxia due to strangulation by sari and death was homicidal in nature. After investigation, charge sheet was filed against the accused/appellant under Section 302 IPC and accordingly charge was framed.

3. In order to establish the guilt of the accused/appellant, prosecution has examined 9 witnesses. Statement of the accused/appellant was also recorded under Section 313 of the Cr.P.C. in which he denied the charges levelled against him and pleaded his innocence and false implication in the case.

4. After hearing the parties, the trial Court by judgment impugned, has convicted and sentenced the accused/appellant as mentioned in paragraph 1 of the judgment. Hence the present appeal.

5. Contention of counsel for the appellant is as under :

- i) that there is no eyewitness account of the case.
- ii) that the 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 the said conviction.
- iii) he submits that at the time of commission of the offence appellant was of unsound mind and therefore even if the entire prosecution

case is taken as it is, at best, he is liable to the convicted under Section 304 Part I or Part-II IPC.

iv) that the appellant is in jail since about last seven years and therefore after converting his conviction, he be set free forthwith.

6. On the other hand supporting the impugned judgment it has been argued by the State counsel that

i) at the time of framing the charge, appellant had admitted his guilt by making a categorical statement that as he was suffering from psychopathy, he committed the offence.

ii) that the accused/appellant cannot take the defence that at the time of commission of the offence he was of unsound mind. The burden of proving the existence of circumstances bringing the case within the purview of Section 84 IPC lies on the accused under Section 105 of the Evidence Act but he has failed to discharge the said burden as required under the law.

iii) present is a case of house murder and undisputedly the appellant was residing with his wife and children and therefore it was for him to explain as to how his wife died and no such explanation has been offered by the appellant in his statement under Section 313 Cr.P.C.

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

8. In the present case, learned trial judge has framed charge on 06.10.2010 and at that time the appellant had admitted the fact that he killed the deceased as he was suffering from mental ailment.

9. Rakesh Kumar (PW-1) has lodged the FIR and merged intimation. He has stated that on 23.6.2010 in the night he received a telephonic call from the appellant that some quarrel took place between him and his wife and therefore requested him not to come to his house for two days. He has stated that in the next morning when he reached there to enquire from the accused/appellant about the quarrel, accused/appellant told him that he had committed the murder of his wife and had locked the house. The appellant further told him that if he wish to see the body of deceased he can break open the lock. This witness has further stated that when he reached the house of appellant, the door was locked and when it was broke open, dead body of the deceased was lying on the cot and sari was tied to her neck. He is also a witness to inquest Ex.P-5 and seizure Ex.P-2 by which broken bangles, *mangalsutra and broken lock was seized*. Smt. Sarita Sahu (PW-3) is the neighbour of the appellant to whom the incident was informed by Rakesh Kumar (PW-1). Anil Patel (PW-5) is the police constable who produced the call details Ex.P-8. Dr. Shiv Narayan Manjhi (PW-6) conducted postmortem examination on the body of the deceased vide Ex.P-9 and opined that cause of death was asphyxia due to strangulation by sari and death was homicidal in nature. Vijay Kumar Bhate (PW-7) is the police constable who helped in the investigation. Deepak Tiwari (PW-8) is the patwari who prepared spot map. S.R.Kunjam (PW-9) is the Investigating Officer who has done the investigation.

10. In the statement under Section 313 Cr.P.C. the accused/appellant has not taken any specific defence but for the fact that he was innocent. While answering to question No.10 he has

admitted the fact that he was residing in the house along with his wife and two children.

11. Close scrutiny of the evidence makes it clear that in the house in question appellant was residing with the deceased and two children and on 23.06.2010, dead body of the deceased was found inside the room. The post mortem report also shows that death was due to asphyxia due to strangulation and it has been opined by the doctor that the death was homicidal in nature. In the present case the appellant has failed to offer any explanation on the basis of facts within his special knowledge, he has failed to discharge the burden cast upon him by Section 106 of the Evidence Act. In a case resting on circumstantial evidence if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him. Furthermore, accused/appellant has failed to offer any explanation in his 313 Cr.P.C. statement and he has merely stated that he was innocent and has been falsely implicated.

12. Yet another aspect of the case before us is the extra judicial confession made before Rakesh Kumar (PW-1). Further at the time of framing charge, appellant had admitted the fact that it is he who had killed his wife/deceased.

13. As regards the argument of the counsel for the appellant that at the time of commission of the offence, he was suffering from insanity or unsoundness of mind, this Court could not lay its hand even on a single substantive piece of evidence which is suggestive of the same. In the entire trial, this point though has been raised but not established by leading any reliable evidence. There are no medical papers to

show that the appellant was suffering from any such mental ailment or the opinion of the medical expert has been brought on record. While leading with the point of insanity or unsoundness of mind and the Apex Court has in many cases-some of them being-***Surendra Mishra Vs. State of Jharkhand (2011) 11 SCC 495; Mariappan Vs. State of Tamil Nadu (2013) 12 SCC 270; Sheralli Wali Mohammed Vs. State of Maharashtra (1973) 4 SCC 79; Oyami Ayatu Vs. State of M.P. (1974) 3 SCC 299 and Bhikari Vs. State of Uttar Pradesh, AIR 1966 SC 1*** has unequivocally held that unless pleaded and proved during trial, the accused/appellant is not entitled to derive the protection of Section 84 IPC simply by raising the issue at a belated stage. Here also, the defence has not been taken in a position to prove in accordance with law that the cognitive faculties of the accused were so impaired that he was not in a position to see the repercussions of his act and since it has not been done, the accused/appellant cannot disown his guilt of murdering the deceased. Further, the act of the accused/appellant in denying the charges, pleading trial and innocence in his statement under Section 313 Cr.P.C. makes this Court to draw an inference that his mental faculties were not so impaired to provide him the strength to wriggle out of the rigor of law. Thus, in these circumstances and keeping in mind the aforesaid legal position, the appellant is held to be dis-entitled to have the protection of Section 84 of the IPC.

14. Thus, on the basis of the discussion in the aforesaid discussion, we are of the considered opinion that the findings recorded by the Court below are based on due appreciation of the evidence available on record. That being so, the judgment impugned

does not call for any interference. Accordingly, the appeal being without substance is liable to be dismissed and it is dismissed as such. he appellant is in jail and therefore no further order for his surrender or arrest is required.

Sd/-

Sd/-

Pritinker Diwaker
Vacation Judge

Sanjay K.Agrawal
Vacation Judge