

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 26-9-2017

Judgment delivered on 8-11-2017

CRA No. 13 of 2012

- Durga Das Mahant s/o. Shatrughan Das Mahant aged about 45 years r/o. Valmiki Awas Ravi Shankar Shukla Nagar, Quarter No. 53 PS Kotwali, District Korba, Chhattisgarh.

----Appellant

Versus

- State of Chhattisgarh through the Police Station Kotwali, District Korba, Chhattisgarh.

---- Respondent

For Appellant : Mr. Hanuman Prasad Agrawal, Advocate.

For Respondent/State : Mrs. Madhunisha Singh, Panel Lawyer.

**Coram: Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Ram Prasanna Sharma**

CAV JUDGMENT

Per Ram Prasanna Sharma, J.

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 27-12-2011 passed by the Sessions Judge, Sessions Division Durg, (CG), in Sessions Trial No. 123 of 2010 whereby the trial court after holding the appellant guilty for commission of murder of his wife namely Sukhmati Bai, convicted him under Section 302 of the IPC and sentenced him to undergo life imprisonment and to pay fine of Rs.1000/- with default stipulations.

2. In the present case, name of the deceased is Sukhmati Bai, who is second wife of the appellant. As per prosecution case, the appellant was married to deceased Sukhmati Bai prior to five years of the date of incident i.e., on 6-8-2010 and Sukhmati Bai was his second wife. Kuldeep @ Raju Das Mahant was son of first wife of the appellant and certain quarrels took place between the appellant and deceased regarding keeping the first wife's son Kuldeep in the house. On 6-8-2010 at about 8.00 – 9.00 am quarrel took place between the deceased and Kuldeep and at the same time appellant and Kuldeep strangled the deceased by means of saree and dead body of the deceased was found in the house of the appellant.
3. Brother-in-law of the deceased namely Basant Das (PW/1) lodged the report at Outpost Manikpuri where mere intimation without number was registered and thereafter mere No. 60/10 was registered at Police Station Korba and first information report was also registered. After receiving the said information Police swung into action. Inquest report of the deceased was prepared vide Ex.P/9 and body was sent for post-mortem. After post-mortem Dr. Sandeep Agrawal (PW/2) opined that cause of death is asphyxia due to anti-mortem strangulation. During the course of investigation seizure of saree used in commission of offence, bangles of the deceased, blood-stained soil and other articles were seized and the same were sent for chemical examination to Forensic Science Laboratory, Raipur.

4. The statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 and after completion of the investigation charge-sheet was filed before the Judicial Magistrate First Class, Korba, who in turn committed the case to the Court of Sessions (trial Court). The trial Court framed charges under Sections 302 read with Section 34 and Section 201 of IPC against the appellant and against acquitted co-accused Kuldeep, to which they did not plead guilty, therefore, trial was conducted and after completion of evidence of the prosecution side, statement of the appellant under Section 313 of the Cr.P.C., was recorded. After completion of trial, the trial Court considering the material available on record by the impugned judgment convicted and sentenced the accused/appellant as mentioned above.
5. In order to prove the complicity of the accused/appellant in commission of crime in question, the prosecution has examined 14 witnesses before the trial Court in support of its case and exhibited documents (P1 to P-25).
6. Learned counsel appearing for the accused/appellant submits as under:

(i)	That there is no eye-witness account to the incident and the case of the prosecution is solely based on circumstantial evidence, but the evidence adduced by the prosecution is not such as to warrant conviction of the appellant;
(ii)	That the so-called extra judicial confession made before Basant Das (PW/1) is a weak type of evidence and no conviction can rest on such evidence;

(iii)	That the appellant was not present in the house at the time of incident and he had gone to work in a club situated at another locality of the city named T.P. Nagar where one marriage ceremony was organised and when he returned to home in the morning he found the dead body of the deceased in his house and some other person has committed the crime for which liability cannot be fastened on the appellant.
(iv)	That the seizure of saree, bangles and blood-stained soil is not connecting piece of evidence with the commission of the offence and the same is not incriminating against the appellant.
(v)	That even if the entire prosecution case is accepted as it is, the case does not fall within the ambit of Section 302 of the IPC and at best it may be an offence under Section 304 Part II of the IPC.

In support of his arguments, he placed reliance on the decisions of the Hon'ble Apex Court and Hon'ble High Courts in the matters of **Kojja Sreenu vs. State of AP¹**, **Baldev Singh vs. State of Punjab²**, **Shiva Karam Payaswami Tewar vs State of Maharashtra³** **Ashok Dewangan vs. State of CG⁴**, **K.M. Nanavati vs. State of Maharashtra⁵**, **Sanjib Sardar vs. State**

¹ 2003 AIR SCW 7219
² 2009 AIR SCW 3730
³ 2009 AIR SCW 1226
⁴ 2014(1) CGLJ 53
⁵ AIR 1962 SC 605 (V 49 C 93)

of West Bengal⁶, Shanti Bai vs. State of MP⁷, Kaluram vs. State of Rajasthan⁸ and Maniben vs. State of Gujarat⁹

7. As against the aforesaid submission, learned State counsel supporting the impugned judgment has submitted that the impugned judgment is strictly in accordance with law and there is no illegality or infirmity in it warranting any interference by this Court.
8. We have heard counsel for the parties and perused the material on record.
9. Dr. Sandeep Agrawal (PW/2) conducted post-mortem of deceased Sukhmati Bai on 7-8-2010 at Primary Health Centre, Korba vide Ex.P/5 and after post-mortem he noticed the following injuries/symptoms.

i)	Body lying in supine position.
ii)	Nose bleeding.
iii)	Tongue protruded.
iv)	Neck – chain mark present (4cm).
v)	Cynosis present all over body well defined mark present around the neck, below the thyroid cartilage more marked in front and sides.
v)	Eyes closed.
vii)	Nails blue in colour.

⁶ 2017 Cri.LJ. 2816
⁷ 2003 (I) MPJR SN 61
⁸ 2000 SCC(Cri) 86
⁹ (2009) 3 SCC (Cri) 952

viii)	Vagina leakage.

10. He opined that cause of death of deceased is asphyxia due to anti-mortem strangulation and died since 24 hours from the examination. Version of this witness is unshaken during cross examination and there is no other expert's opinion in this regard to rebut the same and there is no reason to disbelieve the same.
11. Basant Das (PW/1), Kanchan (PW/6), Rajwanti Bai (PW/7) and Jai Prakash (PW/10) are the persons who reached in the house of the accused/appellant after incident and saw the dead body of the deceased in his house. Krishna Kumar (PW/13) is an Assistant Sub-Inspector who conducted investigation of the incident and as per version of this witness, he seized the cloth from the appellant by which the deceased was strangled and further he seized bangles, soil and bed sheet from spot/from the place where dead body of the deceased was found. Basant Das (PW/1) deposed that he reached in the house of appellant Durga Das and asked him as to what happened to deceased and then the appellant confessed that there was quarrel between him and the deceased on previous day of the incident and that is why he committed murder of his wife Sukhmati and fled away. Version of this witness is firm after searching cross examination and nothing could be elicited to disbelieve his version. As per the statement of the appellant recorded under Section 313 of the Cr.P.C., he had gone to the other locality of the city namely T.P. Nagar where one marriage

ceremony was organised in a club, but there is nothing on record to show that the appellant was working in the said club in the night. In this way, the appellant took plea of *alibi*.

12. Hon'ble the Supreme Court in the matter of **Dudh Nath Pandey vs. State of U.P**¹⁰, regarding plea of alibi has observed as under:

“The plea of alibi postulates the physical impossibility of the presence of the accused at the scene of offence by reason of his presence at another place. The plea can therefore succeed only if it is shown that the accused was so far away at the relevant time that he could not be present at the place where the crime was committed”.

13. As there is no iota of evidence in the record that the appellant had worked in some club of the city version of Basant Das (PW/1) that the appellant made voluntarily confession just after the incident seems to be reliable and it can be safely inferred that the appellant was present in his house at the time of commission of offence.
14. From the evidence adduced by the prosecution it is established that the deceased was in the house of the appellant and her dead body was found in the house and there is nothing on record to suggest that any one entered into the house of the appellant and committed crime. When any crime is committed in complete secrecy inside house, nature and amount of evidence required to establish charge cannot be of same degree as required in other cases of circumstantial evidence. We are fortified by the judgment of Hon'ble the Apex Court in the matter of **Trimukh Maroti**

¹⁰AIR 1981 SC 911

Kirkan vs. State of Maharashtra¹¹ wherein Hon'ble the Apex Court has held as under:

“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. 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. In case of no explanation or false explanation it would be an additional link in chain of circumstances”.

15. When the offence is committed inside the privacy of house, naturally there will be no eye witness account to the incident. When theory of alibi failed it can be safely inferred on the basis of extra judicial confession that appellant was present in the house at the time of commission of offence and he is the author of the crime. When deceased is strangled in a cruel manner till her death, there is no scope for falling the case under any of the exception of Section 300 of IPC and thus argument of defence is without substance.
16. Looking to the series of the facts that the death of the deceased is by strangulation and it cannot be committed by self, we are of the view that death of the deceased is homicidal in nature and the appellant and the deceased were in the house and dead body was found in the house of the appellant and the appellant has not offered any explanation, it is clearly established that the appellant had intention to eliminate his wife and irresistible and inescapable conclusion is that the appellant is guilty of committing the murder of his wife. The case laws cited by learned counsel for the appellant are distinguishable from the facts of the present case.
17. Considering all the facts and circumstances of the case, evidence available on record and as role of accused/appellant is established in commission of murder of Sukhmati Bai, this Court is of the considered opinion that the findings recorded by the Court below do not suffer from any legal flaw warranting inference in this appeal. Resultantly, the appeal being without any force is

liable to be dismissed and it is dismissed as such with the affirmation of the judgment impugned.

18. Appellant/accused is reported to be in jail, therefore, no fresh order of his arrest etc., is required.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(Ram Prasanna Sharma)
JUDGE

Raju