

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 256 of 2012

- Kamleshwar Vishwakarma S/o Shri Milku Ram Vishwakarma, aged about 35 years, Caste – Vishwakarma, Occupation – Labour, R/o Village Nawagarh, P.S.- Ambikapur, Distt. Surguja C.G.

---- Appellant

Versus

- State Of C.G. Through - The Incharge Arakshi Grih Lakhanpur, Distt. Surguja C.G.

---- Respondent

For Appellant	:	Smt. Indira Tripathi, Advocate.
For Respondent/State	:	Shri Ravindra Agrawal, Panel Lawyer.

Hon'ble Shri Pritinker Diwaker,
Hon'ble Shri Ram Prasanna Sharma, JJ

Per P. Diwaker, J

05/07/2017

This appeal arises out of the judgment of conviction and order of sentence dated 15.4.2010 passed by the Sessions Judge, Surguja (Ambikapur) in ST No.11/2009 convicting the appellant under Section 302 of IPC for committing murder of his wife Durga Bai and sentencing him to undergo imprisonment for life and to pay a fine of Rs.1000/- with default stipulation.

02. Brief facts of the case are that for the last 5-6 months from the date of incident, the appellant and the deceased were living as husband and wife. Earlier they had married some other persons. In the night intervening 27th & 28th September, 2008 the appellant is said to

have committed murder of Durga Bai by pouring kerosene on her and setting her afire. Her dead body was found in front of house of the appellant. On 28.9.2008 at the instance of PW-1 Sukhan Ram, father of the deceased, merg intimation Ex.P/1 was recorded at 7.30 am. Immediately thereafter at 8.30 am Dehati Nalishi (Ex.P/16) was recorded by the police on the basis of merg enquiry. Inquest over the dead body was conducted on 28.9.2008 vide Ex.P/4 and thereafter the dead body was sent for postmortem which was conducted on the same day by PW-6 Dr. Prem Singh Marko vide Ex.P/13 and he noticed burn injuries over the body, burning of left thigh was of 3rd degree and in his opinion, the cause of death was asphyxia due to inhalation of smoke. On 28.9.2009 FIR (Ex.P/17) was also registered under Section 302 of IPC against unknown person. On 21.10.2008 the appellant was arrested vide Ex.P/15. In column No.7 of the arrest memo, it is mentioned that there is mark of burn injury on the right toe. On 21.10.2008 itself memorandum of the appellant was recorded vide Ex.P/2 wherein he has stated that he along with his wife-deceased was residing at Lakhanpur, Bhuiyyapara on rent and used to sell vegetables, on account of there being some dispute with the deceased on 27.9.2008 he out of anger poured kerosene on her, which was kept in a jerycan, gave a kick blow to her and then set her ablaze. When she tried to run away from there, he again kicked her as a result of which she fell down. He stated that in the said incident he also suffered burn injuries on his leg, he threw the jerycan and burnt *lungi* in the bushes behind his house. Based on his memorandum, seizure Ex.P/7 was effected whereby one jerycan containing 30 ml kerosene, lamp, matchbox and one *lungi* which was burnt from the corner were seized.

As per FSL report Ex.P/20, presence of kerosene on half burnt pieces of clothes seized from the spot (Article C) and the clothes of the deceased (Article D) was confirmed and likewise, kerosene was found in the seized jerycan. After filing of charge sheet, the trial Court framed charge under Section 302 of IPC against the appellant.

03. So as to hold the accused/appellant guilty, the prosecution examined 11 witnesses in all. Statement of the accused was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. He has stated that he had suffered burn injury on account of falling of starch on his foot; at the time of incident he was not in his house and about 15-16 days prior to the date of incident he had gone to attend his duties.

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 appellant as mentioned above.

05. Counsel for the appellant submits as under:

- (i) that the appellant has been convicted solely on the basis of circumstantial evidence but its nature is not as such which can be made basis for his conviction.
- (ii) that the chain of circumstantial evidence is not complete in the present case.
- (iii) that relations between the appellant and the deceased were cordial and therefore the question of committing her murder by the appellant does not arise.

(iv) the present is not a case of house murder, the dead body was found in front of house of the appellant and distance between the two is not as such where it could be presumed that she was killed by the appellant inside the house.

(v) had the deceased been burnt by the appellant, she would have raised hue and cry and somebody would have come to her rescue but no such evidence is there.

(vi) that seizure of jerycan is effected from an open place and more importantly, seizure witness (PW-1 Sukhan Ram) has not supported the prosecution case.

(vii) that the defence taken by the appellant has been duly proved by him where he has stated that for the last 15 days he was not in his house and likewise, the injury found on the person of the appellant has also been satisfactorily explained by him as also by other prosecution witnesses that it was caused due to fall of starch on his foot. Moreover, the prosecution ought to have examined him before admitting him to jail but that has not been done.

(viii) lastly it is argued that the appellant is a poor man, languishing in jail since 21.10.2008 and therefore, no useful purpose would be served in further keeping him behind the bars.

She has placed reliance on the judgment in the matters of ***Ramayan Vs. State of MP (Now CG)***, reported in ***2012(2) CGLJ 500 (DB)*** and ***Bhoklo @ Budhram Vs. State of MP***, reported in ***2013(3) CGLJ 205 (DB)***.

06. On the other hand, supporting the impugned judgment it has been submitted by the State counsel as under:

(i) that only the appellant and the deceased were living together in the house, in front of which her dead body was found in burnt condition.

(ii) that in the previous evening of the incident the appellant and the deceased were seen together by PW-8 Paran Sai and there is no reason for this Court to disbelieve his statement.

(iii) that from the arrest memo of the appellant, it is apparent that burn injury was found on his right toe and the explanation offered by him in this regard does not appear to be probable one. He has nowhere stated that as to on what date and in what manner exactly he suffered the said injury.

(iv) that at the instance of the appellant, seizure Ex.P/7 was effected by which a jerycan containing 30 ml kerosene, matchbox, lamp and one lungi which was burnt from the corner were seized from the bushes. This fact was within the special knowledge of the appellant, which he disclosed and thus, seizure is an important piece of evidence which points towards his guilt.

(v) that PW-9 Pooran Ram, witness of memorandum and seizure has duly supported the prosecution case and this apart, PW-10 RJ Kerketta, A.S.I., who recorded memorandum and effected seizure, has also supported the prosecution case.

(vi) that the appellant has adduced no evidence that the deceased was having any inimical relation with someone else and as such, she could have been killed by any 3rd person.

(vii) that appellant offered false explanation in his statement recorded under Section 313 of Cr.P.C., which also serves as an additional link in the chain of circumstances connecting him with the crime in question.

He has placed reliance on the judgments of the Supreme Court in the matters of ***Sidhartha Vashisht Vs. State (NCT of Delhi), (2010) 6 SCC 1*** and ***S. Govindaraju Vs. State of Karnataka, (2013) 15 SCC 315***.

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

08. PW-3 Daiyabai, landlord of the appellant and the deceased, has stated that the appellant and the deceased were residing in a room on rent @ Rs.150/- per month and that they used to sell vegetables. On the date of incident when early in the morning she was going to attend the nature's call, she found Durga Bai lying dead on the road side. She states that distance between the place where the dead body was lying and the room where both the appellant and the deceased were living is the same as is between the Court room and the shop outside the campus of the Court, which is about 150 ft. After seeing the dead body she went to inform about the same to mother and father of the deceased and then informed the father of the deceased Sukhan who came to the spot with her. She accompanied the father of the deceased to police station for lodging report. She has further stated that after informing Sukhan when she along with Sukhan went to the room of the appellant he was not there and had run away. Subsequently, she has been declared hostile.

09. PW-5 Dayaram, uncle in relation of the appellant, has stated that earlier the appellant married to one Lavangobai, from whom he had four issues but for the last seven years the appellant was not living with Lavangobai. He states that about 6-7 months prior to recording of his

statement i.e. 9.6.2009 the appellant came to his house, had food with him and stayed there in the night and at that time he noticed that the appellant had tied handkerchief on his toe. On being asked, the appellant told him that he had sustained some injury and thereafter, in the next morning at about 9 he left his house for Mainpat. This witness was also subsequently declared hostile. PW-7 Dirjodhan has stated that last year the appellant had come to his house and stayed there for five days. At that time he noticed burn injury on his foot and on being asked about the same, the appellant told that he had sustained this injury due to fall of starch while cooking food. He has stated that the police came to his house and arrested the appellant and at that time, he (this witness) was not present in the house. This witness has also been declared hostile. PW-8 Paran Sai, son of PW-3, has stated that the appellant and the deceased were residing as tenant in his house. Deceased Durga Bai had two children but they were residing separately with mother and father of the deceased. Dead body of the deceased was found about 4-5 yards away from his house on the road which was noticed by his mother (PW-3) who informed him and then he saw the dead body. The appellant was searched in the room where he was living with the deceased but he was not found there whereas in the previous evening he had seen both the appellant and the deceased together. He has stated that the deceased used to sell vegetables and sometimes the appellant would help her in selling vegetables.

10. PW-1 Sukhanram, father of the deceased, who is a witness of merger intimation Ex.P/1, memorandum of the appellant Ex.P/2, inquest Ex.P/4, spot maps P/5 & P/6, seizure Ex.P/7 & P/8, has also not

supported the prosecution case. PW-9 Pooran Ram, though has been declared hostile but in para-7 has stated that the appellant took out the jerycan, lamp and matchbox from the bushes and got it seized. In para-16 he has stated that he heard that in the previous night of the incident there was some quarrel between the appellant and the deceased and thereafter the appellant came to his house and told that he would do something with Durga Bai but he (this witness) thought that such quarrels do take place between husband and wife and therefore, it being night they did not go to the house of the appellant to see Durga.

11. PW-4 Arvind Kumar Singh, Patwari, prepared the spot map Ex.P/6. He has admitted that in the said map he has not shown the house of the appellant. However, as per spot map (Ex.P/5) prepared by PW-11 AS Tripathi, investigating officer, the place where dead body was lying was about 8-10 yards from the house of appellant and the deceased.

12. PW-6 Dr. Prem Singh Marko conducted postmortem on the body of the deceased on 28.9.2008 vide Ex.P/13 and noticed burn injuries over both the thighs, chest, hand upto elbow and that burning of left thigh was of 3rd degree, meaning thereby muscles under the skin were also burnt, there were blisters in the burnt area and it had ruptured. Smoke mixed mucus was found in the wind and food pipe. In his opinion, the cause of death was asphyxia due to inhalation of smoke and the death was homicidal in nature.

13. Close scrutiny of the evidence makes it clear that it is the accused/appellant and the deceased who were residing as tenant by

taking a room in the house of PW-3 Daiyabai and PW-8 Paran Sai. On the early morning of 28th September, 2008 dead body of the deceased was found in burnt condition in front of house of the appellant on the road which was noticed by PW-3 Daiyabai, who in turn immediately informed about the same to her son PW-8 Paran Sai and father of the deceased PW-1 Sukhan Ram, who lodged merg intimation Ex.P/1.

14. The appellant has taken a plea of alibi. According to him, he was not present in his house on the date of incident and about 15-16 days prior to the date of incident he had gone out to attend his duties.

15. At this juncture, we think it apt to deal with the plea of alibi that has been put forth by the appellant. As is demonstrable, the trial court has discarded the plea of alibi. When a plea of alibi is taken by an accused, burden is upon him to establish the same by positive evidence, after onus as regards presence on the spot is established by the prosecution. In this context, we may profitably reproduce a few paragraphs from ***Binay Kumar Singh V. State of Bihar, (1997) 1 SCC 283:***

“22.We must bear in mind that an alibi is not an exception (special or general) envisaged in the Indian Penal Code or any other law. It is only a rule of evidence recognised in Section 11 of the Evidence Act that facts which are inconsistent with the fact in issue are relevant. Illustration (a) given under the provision is worth reproducing in this context:

“The question is whether A committed a crime at Calcutta on a certain date; the fact that on that date, A was at Lahore is relevant.”

23. The Latin word alibi means “elsewhere” and that word is used for convenience when an accused takes recourse to a defence line that when the occurrence took place he was so

far away from the place of occurrence that it is extremely improbable that he would have participated in the crime. It is a basic law that in a criminal case, in which the accused is alleged to have inflicted physical injury to another person, the burden is on the prosecution to prove that the accused was present at the scene and has participated in the crime. The burden would not be lessened by the mere fact that the accused has adopted the defence of alibi. The plea of the accused in such cases need be considered only when the burden has been discharged by the prosecution satisfactorily. But once the prosecution succeeds in discharging the burden it is incumbent on the accused, who adopts the plea of alibi, to prove it with absolute certainty so as to exclude the possibility of his presence at the place of occurrence. When the presence of the accused at the scene of occurrence has been established satisfactorily by the prosecution through reliable evidence, normally the court would be slow to believe any counter-evidence to the effect that he was elsewhere when the occurrence happened. But if the evidence adduced by the accused is of such a quality and of such a standard that the court may entertain some reasonable doubt regarding his presence at the scene when the occurrence took place, the accused would, no doubt, be entitled to the benefit of that reasonable doubt. For that purpose, it would be a sound proposition to be laid down that, in such circumstances, the burden on the accused is rather heavy. It follows, therefore, that strict proof is required for establishing the plea of alibi.

The said principle has been reiterated in ***Gurpreet Singh v. State of Haryana, (2002) 8 SCC 18*** and ***S.K. Sattar v. State of Maharashtra, (2010) 8 SCC 430*** and ***Jitender Kumar v. State of Haryana, (2012) 6 SCC 204***.

16. In the present case, as per the statement of PW-8 Paran Sai in the previous evening of the incident he had seen both the

accused/appellant and the deceased together in his house and on the next morning, on being informed by his mother PW-3 Daiyabai, after seeing the dead body when he went to the house of the appellant, the appellant was not there and he had run away. This apart, PW-9 Puran Ram has also stated that in the previous evening of the incident the appellant had come to his house and said that he (appellant) would do something with his wife/deceased. The appellant has not led any sufficient and cogent evidence in support of plea of alibi. Thus, from the un rebutted evidence of the aforesaid witnesses (PW-8 and PW-9) the prosecution has proved beyond reasonable doubt that a day prior to the date of incident the appellant was very much available in his house with the deceased. As such, the plea of alibi taken by the appellant that about 15-16 days prior to the date of incident he had gone out to attend his duties, stands proved to be a false one and in the facts and circumstances of the case, raises a strong suspicion against him.

17. Death of Durga Bai after suffering burn injuries has been duly proved by the witnesses and has also been confirmed by the autopsy surgeon. The prosecution has further led evidence (PW-5 Dayaram and PW-7 Dirjodhan) that burn injury was also found on the right toe of the appellant. Though the appellant has not been medically examined but his arrest memo (Ex.P/15) and statements of the witnesses make it clear that burn injury was there on his right toe. Although the appellant has tried to give explanation for the said injury that he suffered it due to fall of starch while cooking food but has failed to give details of the said incident and falsely stated that for about 15 days he was not there in his house and had gone out to his workplace. In these circumstances, it can safely be inferred that the said burn injury was suffered by the

appellant while setting his wife Durga Bai on fire. In his statement under Section 313 of Cr.P.C. the appellant has offered false explanation.

18. In the matter of ***Sidhartha Vashisht*** (supra) the Supreme Court observed as under:

“274. This Court has time and again held that where an accused furnishes false answers as regards proved facts, the Court ought to draw an adverse inference qua him and such an inference shall become an additional circumstance to prove the guilt of the accused. In this regard, the prosecution seeks to place reliance on the judgments of this Court in *Peresadi vs. State of U.P.*, (1957) Cr.L.J. 328, [State of M.P. vs. Ratan Lal](#), AIR 1994 SC 458 and [Anthony D'Souza vs. State of Karnataka](#) (2003) 1 SCC 259 where this Court has drawn an adverse inference for wrong answers given by the appellant under [Section 313](#) Cr.P.C. In the present case, the appellant-Manu Sharma has, inter alia, has taken false pleas in reply to question nos. 50, 54, 55, 56, 57, 64, 65, 67, 72, 75 and 210 put to him under [Section 313](#) of the Code.”

19. In the matter of ***S. Govindaraju*** (Supra) the Supreme Court held as under:

“29. It is obligatory on the part of the accused while being examined under [Section 313](#) Cr.P.C., to furnish some explanation with respect to the incriminating circumstances associated with him, and the Court must take note of such explanation even in a case of circumstantial evidence in order to decide whether or not the chain of circumstances is complete. When the attention of the accused is drawn to circumstances that inculcate him in relation to the commission of the

crime, and he fails to offer an appropriate explanation, or gives a false answer with respect to the same, the said act may be counted as providing a missing link for completing the chain of circumstances. (Vide: *Munish Mabbar v State of Haryana*, AIR 2013 SC 912).

31. The prosecution successfully proved its case and, therefore, provisions of [Section 113](#) of the Evidence Act 1872 come into play. The appellant/accused did not make any attempt, whatsoever, to rebut the said presumption contained therein. More so, Shanthi, deceased, died in the house of the appellant. He did not disclose as where he had been at the time of incident. In such a fact-situation, the provisions of [Section 106](#) of Evidence Act may also be made applicable as the appellant/accused had special knowledge regarding such facts, though he failed to furnish any explanation thus, the court could draw an adverse inference against him.”

20. True it is that the dead body has not been found inside the room where the appellant and the deceased were residing together but as per the evidence on record, the same was found in front of house of the appellant. Evidence of PW-3 Daiyabai with respect to distance between the house of the appellant and the place where the body was lying, does not appear to be reliable. According to this witness, the distance between the two places was about 150 ft. However, considering the map (Ex.P/5) prepared by PW-11 Arvind Kumar Singh, I.O., his evidence as also the evidence of PW-8 Paron Sai, (son of PW-3), the said distance is found to be hardly 10-15 ft. In the overall facts and circumstances of the case, their evidence on the point of distance inspires confidence of this Court and there is no reason to doubt their

authenticity.

21. In his memorandum (Ex.P/2), the appellant has stated that on account of there being some dispute with the deceased on 27.9.2008 he out of anger poured kerosene on her, which was kept in a jerycan, gave a kick blow to her and then set her ablaze and when she tried to run away from there, he again kicked her as a result of which she fell down. He further stated that in the said incident he also suffered burn injuries on his leg, threw the jerycan and burnt *lungi* in the bushes behind his house. Pursuant to his memorandum, seizure Ex.P/7 was effected whereby one jerycan containing 30 ml kerosene, lamp, matchbox and one lungi which was burnt from the corner were seized. Though PW-1 Sukhan Ram, one of the witnesses to memorandum and seizure, has turned hostile but another witness PW-9 Pooran Ram has stated that it is the accused/appellant who got the jerycan, lamp and matchbox seized from the bushes behind his house and the police officer (PW-10 RJ Kerketta) who recorded memorandum and effected said seizure has also supported the prosecution case. Defence has failed to elicit anything from these witnesses which could render their evidence shaky or doubtful. Therefore, there is no reason to disbelieve them and consequently, the memorandum and seizure stand proved beyond any doubt. As per FSL report Ex.P/20, presence of kerosene on half burnt pieces of clothes seized from the spot (Article C) and the clothes of the deceased (Article D) was confirmed and likewise, kerosene was found in the seized jerycan.

22. Thus, all the circumstances, if taken together, make it clear that the appellant and the deceased were living together; on the date of

incident i.e. in the night intervening 27th and 28th September, 2008, there was some quarrel between the two and then out of anger the appellant poured kerosene on her and set her ablaze; when she tried to run away from there he kicked her as a result of which she fell down and the appellant also suffered some burn injury on his right toe. In the facts and circumstances of the case, the judgments relied upon by the appellant are of no help to him for being distinguishable on facts.

23. For the reasons stated above, we are of the opinion that the prosecution has been successful in proving the guilt of the appellant on the basis of circumstantial evidence and as such, the trial Court has committed no illegality in convicting and sentencing him under Section 302 of IPC for committing murder of his wife Durga Bai. The appeal has no substance, the same is liable to be dismissed and is, accordingly, dismissed. As the appellant is already in jail, no further order regarding his arrest etc. is required.

Sd/

(Pritinker Diwaker)

Judge

Sd/

(R.P. Sharma)

Judge