

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 275 of 2012

- Somaruram Baghel S/o Mundara, aged about 55 years, Caste Muriya, R/o Village Takraguda , P.S. Badaji, Distt. Bastar C.G.

---- Appellant

Versus

- State Of C.G. through P.S. Badaji, Distt. Baster (CG)

---- Respondent

For Appellant	:	Shri BM Rao, Advocate.
For Respondent/State	:	Shri Vivek Sharma, Govt. Advocate.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Ram Prasanna Sharma

Judgment on Board by Pritinker Diwaker, J
31/07/2017

This appeal has been filed against the judgment of conviction and order of sentence dated 7.1.2012 passed by the Additional Sessions Judge, Bastar at Jagdalpur in Sessions Trial No. 3/2011 convicting the accused/appellant under Section 302 IPC and sentencing him to undergo imprisonment for life with fine of Rs. 300/- plus default stipulation.

2. In the present case, name of the deceased is Aasmati, wife of the appellant. As per prosecution case, the appellant was residing with his wife Aasmati and on 1.11.2010 at about 8.30 am the appellant demanded silver anklet from his wife as he wanted to purchase liquor and when she refused he gave two axe blows on her head. Information was given to PW-1 Jhitru, son of the appellant, who immediately

returned to his house and found Aasmati lying on the floor with injury on her head and the appellant was sitting there. On being asked, the appellant confessed before him to have caused injuries to her. Aasmati succumbed to her injuries in the house itself at about 3 pm. FIR (Ex.P/2) was lodged on 1.11.2010 at 7.30 pm by PW-1 Jhitru against the appellant under Section 302 of IPC and immediately thereafter merger intimation was also recorded vide Ex.P/1 at the instance of PW-1. After conducting inquest over the dead body on 2.11.2010 vide Ex.P/9, it was sent for postmortem which was conducted on the same day by PW-5 Dr. Smt. Rita Gedam vide Ex.P/11 and she noticed incised wound over left upper temporal region of skull and incised wound over occipital region, both caused by sharp and heavy object. In her opinion, the cause of death was internal and hemorrhagic shock due to head injury and that the death was homicidal in nature. On 2.1.2011 memorandum of the appellant was recorded vide Ex.P/5 and in pursuance thereof one axe stained with blood was seized vide Ex.P/6. However, there is no FSL report on record. According to the prosecution case, the appellant confessed his guilt before PW-1 Jhitru, PW-3 Bagga Ram Baghel, PW-4 Hadmo Ram Mandavi and PW-6 Chherka Baghel. While framing charge, the trial Court framed charge under Section 302 of IPC against the appellant.

3. In order to prove the complicity of the accused/appellant in the crime in question, the prosecution has examined 9 witnesses. Statement of the accused 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 there is no eyewitness account in this case and the accused/appellant has been convicted solely on the basis of circumstantial evidence but the circumstances on which the prosecution has relied upon are not as such to connect the accused/appellant with the crime in question.

(ii) though on the memorandum of the appellant, axe is said to have been seized, however, both the witnesses to memorandum and seizure have turned hostile and further there is no FSL report on record.

(iii) that witnesses of extrajudicial confession PWs-1, 3, 4 & 6 are not reliable and have falsely implicated the appellant.

(vi) that the deceased was alive till 3 pm and once PW-1 Jhitru reached the place of occurrence he ought to have immediately taken the deceased for treatment and therefore, it is PW-1 who is responsible for death of the deceased.

(v) that considering the nature of injuries and the manner in which the incident took place, offence under Section 302 of IPC is not made out against the appellant and at best, he can be convicted under Section 304 Part-I or II of IPC.

6. On the other hand, State counsel while supporting the judgment impugned has submitted that the findings recorded by the Court below convicting the accused/appellant under Section 302 are strictly in

accordance with law and there is no infirmity in the same. He submits that at the time of incident the appellant was residing with the deceased only and therefore it can safely be inferred that it is the accused/appellant alone who committed the murder of the deceased. He further submits that the accused/appellant has failed to give any explanation as to under what circumstances his wife has been killed and therefore also the presumption goes against him. Further, memorandum of the appellant led to recovery of weapon of offence axe and the witnesses to memorandum and seizure have though been declared hostile but have admitted their signature on the documents. No explanation has been offered by the appellant in his statement under Section 313 of Cr.P.C. in respect of the incriminating circumstances appearing against him. Furthermore, the appellant made extrajudicial confession before PW-1 Jhitru, PW-3 Bagga Ram Baghel, PW-4 Hadmo Ram Mandavi and PW-6 Chherka Baghel and they remained firm in their cross-examination and their evidence also find due corroboration from the medical evidence.

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

8. PW-1 Jhitru Baghel, son of the appellant, has stated that deceased Aasmati was his mother's sister who was married by his father. On the date of incident he was going to Jagdalpur in connection with some work and on the way when he received phone call that his aunt/deceased has suffered some head injury, he returned to his house and found both the appellant and deceased inside the house, appellant was sitting whereas deceased was lying on the floor with injury on her

head from where blood was oozing profusely. He has stated that on being asked the appellant disclosed that he has assaulted the deceased by axe on her head and that after some time she expired. He has proved lodging of merged intimation and FIR. In cross-examination he also reiterated that his father confessed to have assaulted the deceased on her head by axe. PW-2 Anant Ram, a witness to memorandum and seizure, has though turned hostile but admitted his signature on the documents. PW-3 Baggaram Baghel, a witness to memorandum and seizure, though supported the memorandum but denied effecting of seizure. However, after being declared hostile when he was put to cross-examination by the prosecution he has supported the seizure also. He is also a witness of extrajudicial confession and remained firm on this point even in cross-examination by the defence.

9. PW-4 Hadmo Ram Mandavi is another witness of extrajudicial confession. He is also a witness of inquest Ex.P/9 and spot map Ex.P/10. PW-5 Dr. Smt. Rita Gedam conducted postmortem on the body of the deceased vide Ex.P/11 and apart from congestion of internal organs, noticed incised wound over left upper temporal region of skull and incised wound over occipital region, both caused by sharp and heavy object. In her opinion, the cause of death was internal and hemorrhagic shock due to head injury and that the death was homicidal in nature. According to the doctor, the injuries suffered by the deceased were sufficient to cause death in the ordinary course of nature. She had also examined the weapon of offence axe and opined that the injuries sustained by the deceased could be caused by the said weapon. PW-6 Chherka Baghel is also a witness of extrajudicial confession of the appellant. He has stated that on being enquired from

the appellant, he admitted before the villagers that it is he who killed his wife/deceased by axe. PW-8 Raghunath Kashyap, Police Constable, helped in the investigation.

10. Admittedly, there is no eye witness to the incident and the conviction is based on circumstantial evidence being house murder, extrajudicial confession of the appellant and recovery of axe at his instance coupled with his non-explanation of the incriminating circumstances in his statement u/s 313 of Cr.P.C.

11. Close scrutiny of the evidence makes it clear that on the date of incident the appellant and the deceased were alone in the house where she was found dead with injuries on her head. In these circumstances, it was obligatory on the part of the accused to offer some plausible explanation as to how the deceased died when there was no other person except the two at the relevant point of time. 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. Now if the facts of the present case are seen in the light of the afore-quoted judicial pronouncements, picture which emerges is almost identical. The death of the deceased in this case undisputedly took place inside the privacy of a house where at the relevant time the accused/appellant and deceased were living only. In the cases like the

present one, the assailant has all the opportunity to plan and commit the crime at the time and in the circumstances of his choice and it is extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence is insisted upon. Furthermore, no explanation has come forth from the accused/appellant in his statement recorded under Section 313 of the Code of Criminal Procedure as to how the death of his wife occurred though being the sole adult inmate of the house in question it was his bounden duty to explain the things by leading cogent and pin-pointed evidence in his defence. In his statement, the appellant has made only bald denial of all the incriminating circumstances.

Apart from this, on the memorandum of the appellant, one axe has been seized. Though one of the witnesses to memorandum and seizure i.e. PW-2 Anant Ram has not supported the prosecution case but another one PW-Baggaram Baghel has supported the same. Even PW-2 has admitted himself to be the signatory of these documents. In this regard also the appellant failed to offer any explanation. Yet another important piece of evidence against the appellant is his extrajudicial confession before PW-1 Jhitru, PW-3 Bagga Ram Baghel, PW-4 Hadmo Ram Mandavi and PW-6 Chherka Baghel. According to these witnesses on being enquired the appellant confessed before them to have killed his wife/deceased by assaulting on her head by axe. Defence has utterly failed to elicit anything from them to render their evidence untrustworthy or doubtful. Even there is no suggestion by the defence that they are stating so on account of there being any previous enmity or animosity with the appellant. We have no reason to disbelieve the evidence of these witnesses. Furthermore, as per

postmortem report corresponding injuries were noticed on the person of the deceased. The autopsy surgeon has stated that the injuries suffered by the deceased could be caused by weapon so seized and were sufficient in the ordinary course of nature to cause death.

14. We find no substance in the argument of the appellant that in the given facts and circumstances of the case, the appellant can at best be held guilty of culpable homicide not amounting to murder and as such is liable for conviction under Section 304 Part-I or II of IPC and not 302. Considering the manner in which assault was made on vital part of the deceased with a lethal weapon axe leading to her on-the-spot death and further considering conduct of the appellant where he instead of taking the deceased to hospital for treatment remained there idle, we are of the opinion that he inflicted injuries on the deceased with intention to cause her death and at the same time was also having knowledge that such injuries would result in her death. As already discussed above, according to the autopsy surgeon the injuries suffered by the deceased were sufficient in the ordinary course of nature to result in her death. Being so, his conviction under Section 302 of IPC is strictly in accordance with law and needs no alteration by this Court.

15. Thus in view of the aforesaid factual and legal position this Court is of the considered opinion that the prosecution has collected sufficient evidence to hold the accused/appellant guilty for committing the murder of his wife and that way the Court below has also been justified in arriving at a conclusion slapping conviction on the accused under Section 302 IPC. Accordingly, the judgment impugned calls for no

interference in this appeal.

16. Appeal thus being devoid of any substance is liable to be dismissed and it is hereby dismissed. Judgment impugned is affirmed. Being already inside, no order in respect of arrest etc. of the accused is necessary.

Sd/-
(Pritinker Diwaker)
Judge

Sd/
(R. P. Sharma)
Judge