

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 27-9 -2017

Judgment delivered on 8-11-2017

CRA No. 293 of 2012

- Dilip Rathore s/o. Jagdish Rathore, aged abot 28 years, r/o. Putupara, P.s. Lormi, District Bilaspur, Chhattisgarh.

----Appellant

Versus

- State of Chhattisgarh through the District Magistrate, Bilaspur Chhattisgarh.

---- Respondent

For Appellant : Mr. Vivek Sharma, Advocate.

For Respondent/State : Mr. Rahul Tamaskar, 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 30-01-2012 passed by the Additional Sessions Judge, Sessions Division Bilaspur (CG), in Sessions Trial No. 15 of 2011 whereby the trial court after holding the appellant guilty for commission of murder of his wife namely Savita Bai, convicted him under Section 302 of the IPC and sentenced him to undergo life imprisonment and to pay fine of Rs.2000/- with default stipulations.

2. In the present case, name of the deceased is Savita Bai, who is wife of the appellant. As per prosecution case, the appellant lodged report regarding death of his wife Savita Bai mentioning that on 8-10-2010 he had gone to river along with his father Jagdish Rathore to bath and when they returned found smokes coming out from the room of the deceased and the door was closed and on his cries his brother Dharmendra came there and both have broken the door of the house and found that wife of the appellant Savita Bai was burning and she died. Upon the said intimation, Police proceeded to investigate the matter and the dead body of deceased Savita Bai was sent for post-mortem and after post-mortem it is revealed that cause of death of deceased is throttling and the same is homicidal in nature. On the basis of autopsy report, first information report (Ex.P/9) was registered against the appellant, his father Jagdish and mother Pancho Bai. During investigation certain articles were seized from the appellant.
3. 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, Lormi, 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 304-B of IPC against the appellant and other acquitted co-accused persons, 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.

4. Learned counsel appearing for the accused/appellant submits as under:

(i)	That it is not proved by the prosecution that at the time of commission of offence the appellant was present in the house and other circumstances are not such as to base the conviction of the appellant.
(ii)	That one Chandrasen Thakur is maternal uncle (moussa) of the deceased and he has influenced the Doctor who conducted the post-mortem and, therefore, post-mortem report is not a reliable piece of evidence and it is a case of death by burn injuries.;
(iii)	That the prosecution has not established any motive of the appellant to kill the deceased.
(iv)	That from the statement of Jamunia Bai, mother of the deceased and Satrugan brother of the deceased, it can be inferred that the deceased committed suicide and, therefore, the finding of the trial Court is bad in law and liable to be reversed.

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 **State of Rajasthan vs. Ramanand¹, State of Karnataka vs.**

¹(2017) 2 SCC (cri) 632

Hand Basha², Jose alias Pappachan vs. Sub-Inspector of Police , Koyilandy and another³, Sanni @ Satyanarayan vs. State of Madhya Pradesh⁴ and Subramaniam vs. State of Tamil Nadu and another⁵

5. 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.
6. We have heard counsel for the parties and perused the material on record.
7. In order to prove the complicity of the accused/appellant in commission of crime in question, the prosecution has examined 10 witnesses before the trial Court in support of its case and exhibited documents (P1 to P-10). To nullify the same defence side has examined two witnesses.
8. Dr. Ajay Pathak (PW/5) along with Dr. Chaw Singh Patle conducted post-mortem of deceased Savita Bai on 8-10-2010 at Government Hospital, Lormi and after post-mortem he noticed the following injuries/symptoms.

i)	Smell of kerosene present, body was kept on PM table in supine position, no burned clothes found in any part of body, both eyes were semi opened and congested, liquor blood from mouth and both nostril mouth opened and tongue was in between teeth, hair and head was not
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²(2016) 1 SCC 501

³(2016) 10 SCC 519

⁴201`1(2) MPHT 30 (CG)

⁵2009 CRI L.J 3002

	totally burned (singe). All four limbs were semi flexed and rigor mortis was present.
ii)	Ante-mortem red-line and blister was absent.
iii)	Contusion (redness) under burned skin. Palm area of both hand.
iv)	Multiple contusions middle side of wrist joint right hand, size all 3 cm x 0.2cm approx.
v)	Multiple contusion over the little finger and lacerated wound in size of 1cm x0.2cm upper area.
vi)	Contusion over upper part in the size of 10x8 cm over the upper part gluteal region of left buttock
vii)	Contusion over left iliac region in size of 7 cm x 5 cm
viii)	Pubic hair present signing condition, extra genital part was unburned, fecal material from anus, contusion compression mark seen, front of neck red part transverse direction slight oblique upwards to right side neck in the size of 2.5 cm x 7cm, one round shape contusion seen left middle region on neck.

9. Doctors opined that cause of death of deceased is asphyxia due to strangulation and the same is homicidal in nature and death is caused since 20-24 hours from examination i.e., on 8-10-2010 at 4.00 pm it means, deceased died between 4.00 pm on 7-10-2010 and 2.00 pm on 8-10-2010. 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.

10. Arguments of the defence counsel has no substance that both doctors have been influenced by Dr. Chandrasen Thakur who is maternal uncle of the deceased. From the statement of Dr. Ajay Pathak (PW/5), it is clear that the said Doctor has never been posted at Lormi and it is presumed under law that all official acts have been performed regularly. As there is nothing on record to disbelieve the post-mortem report, we are of the view that death of deceased Savita Bai is homicidal in nature.
11. Dead body of the deceased was found in the house of the appellant and murder is committed inside the privacy of the house. From the evidence of Dr. Ajay Pathak (PW/5), it is clear that burns found on the body of the deceased were post-mortem burns. It means, after throttling the deceased, her body is burnt. It is impossible to assume that the deceased could have strangled herself and when she died after strangulation, it is impossible that she set herself afire and, therefore, it is a case of murder committed by the inmate of the house.
12. From the merg intimation lodged by the appellant, it is clear that he left the house to bath in river in the morning hours, it means he was present in the house with the deceased before leaving for bath and as per his merg intimation, when he returned to home smokes were coming from the house of the deceased and door was opened with the help of his brother Dharmendra, but the said Dharmendra has not been examined in defence. In Ex.P/7 it is

mentioned that father of the appellant namely Jagdish Rathore went to river with him but Jagdish Rathore has also not been examined. Again, defence witness DW/1 Ram Swaroop deposed that Dharmendra never informed about the incident at river and that is not the story put-forth by the appellant in merg intimation (Ex.P/7). DW/1 Ram Swaroop and DW/2 Ashok deposed that that the door was opened by cutting it through small Saw but that is also not the version of the appellant in his merg intimation. Looking to the evidence adduced by the defence side and looking to the merg intimation lodged by the appellant, theory of going to river is falsified and therefore, it can be easily inferred that the appellant was in the house with the deceased at the time of commission of offence.

13. Hon'ble the Supreme Court in the matter of **Dudh Nath Pandey vs. State of U.P⁶**, regarding plea of alibi, 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”.

14. Sunderlal (PW/1), Kanhaiya (PW/2), Arun Kumr Sonkar (PW/4) are the witnesses of inquest. Bhanu (PW/6) is father of the deceased who had seen the dead body of his daughter in the house of the appellant. S.S. Dubey (PW/9) is Assistant Sub-Inspector who conducted investigation.

⁶AIR 1981 SC 911

15. From the evidence adduced by the prosecution, it is established that the appellant was residing in the company of his wife Savita Bai (deceased), her dead body was found in the house of the appellant and theory of *alibi* is falsified by the mere intimation (Ex.P/7) and defence witnesses 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 Kirkan vs. State of Maharashtra**⁷ 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

⁷ 2006 AIR SCW 5300

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”.

16. 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 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.
17. 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.

18. 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 Savita Bai, this Court is of the considered opinion that the finding 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.
19. 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