

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 421 of 2012

- Sukhram Sori S/o Mangal Singh , R/o Village Jarandi, P.S. Mainpur , Distt. Raipur C.G.

---- Appellant

Versus

- State Of Chhattisgarh Through - P.S. Mainpur , Distt. Raipur C.G.

---- Respondent

For Appellant	:	Shri Ajay Mishra, Advocate
For Respondent/State	:	Smt. Madhunisha Singh, P.L.

Hon'ble Shri Thottathil B. Radhakrishnan, CJ
Hon'ble Shri Pritinker Diwaker, J.

Judgement on Board

Per Pritinker Diwaker, J.

09/09/2017

This appeal arises out of judgment and order dated 22.12.11 passed by the Additional Sessions Judge, Gariyabandh, district Raipur in S.T. No. 17/2011 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. In the present case, name of the deceased is Koushila Bai, wife of accused/appellant. It is alleged that on 15.12.2010 in between 9-10 p.m. accused/appellant committed murder of his wife Koushila Bai by causing two knife injuries on her stomach. Merg intimation Ex.P-1 was

registered on 16.12.2010 at the instance of Vishram Sori (PW-1) father of the deceased. Thereafter FIR Ex.P-2 was registered against the appellant at 11.45 a.m. on 16.12.2010 under Section 302 IPC. Inquest on the body of the deceased was prepared vide Ex.P-6 and body was sent for postmortem examination which was conducted by Dr. R.K.Shrimali (PW-7) vide Ex.P-5 on 16.12.2010 and according to him, mode of death may be shock caused by excessive hemorrhage due to cut of femoral vein and death was homicidal in nature. After filing of charge sheet, the trial judge has framed charge against the appellant under Section 302 IPC.

3. In order to establish the guilt of the accused/appellant, prosecution has examined 12 witnesses. Statement of the accused/appellant was 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 that

i) the accused/appellant has been convicted solely on the basis of circumstantial evidence but the nature of circumstantial evidence collected by the prosecution is very weak and the chain of circumstantial evidence is not complete.

ii) even if the entire prosecution case is taken as it is, at best the offence under Section 304-I IPC would be made out because the

incident occurred when the deceased refused to give food to the appellant and it appears that the accused/appellant had no prior intention to commit the murder of the deceased and in a spur of moment the said incident had taken place.

iii) the knife which has been used in the commission of the offence is a kitchen knife and it is thus clear that the incident occurred in a spur of moment.

iv) though on the memorandum of accused/appellant Ex.P-10 seizure Ex.P-11 of knife has been made and FSL report is positive but in absence of serological report, FSL report loses its significance.

6. On the other hand it has been argued that in the house in question, the appellant was residing with the deceased and the body was found in the verandah in a pool of blood. She submits that Bisahin Bai PW-2) has stated that there was quarrel between accused/appellant and the deceased. She further submits that even Vishram Sori (PW-1) has also supported the prosecution case. State counsel further submits that considering the injuries sustained by the deceased, his act would not fall under any exception of Section 300 IPC and therefore the trial judge has rightly convicted him under Section 302 IPC.

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

8. Vishram Sori (PW-1) father of the deceased has stated that upon receiving the information about the death of his daughter he went to her house and saw the dead body of the deceased lying in the verandah and accused/appellant was also present there. He is the lodger of FIR

and mereg intimation. Smt. Bisahin Bai (PW-2) aunt of the deceased has stated that she was residing near the house of deceased and upon hearing the cries, she had gone there and saw the accused/appellant killing the deceased. In cross-examination she however admits that she had not seen the appellant killing the deceased. Gopal Singh (PW-3) and Ramlal (PW-4) reached the place of occurrence after the incident. Devi Singh (PW-5) is a witness to memorandum Ex.P-10 and seizure (Ex.P-11) of knife, has duly supported the prosecution case. Manesar Singh Thakur (PW-6) is the patwari who prepared spot map. Dr.R.K.Shrimali (PW-7) conducted postmortem examination on the body of the deceased vide Ex.P-5 and according to him, mode of death may be shock caused by excessive hemorrhage due to cut of femoral vein and death was homicidal in nature. Lakshmilal (PW-8) has stated that when he had gone to the house of the appellant he found her dead and the appellant informed him that as the deceased had refused to offer him food, he slapped her. He is also a witness to memorandum Ex.P-10 and seizure (Ex.P-11) of knife. Purushottam Yadav (PW-9), Nakul Sori (PW-10) and Ramadhar Verma (PW-11) assisted in the investigation. B.Ekka (PW-12) is the Investigating Officer who has done the investigation.

9. On the memorandum of accused/appellant Ex.P-10 seizure (Ex.P-11) of knife was made and as per FSL report (Ex.P-19) blood was found on the said knife (article C). In his statement under Section 313 Cr.P.C. accused/appellant has failed to offer any explanation and has simply denied the commission of the offence by saying that he has been falsely implicated in the crime in question.

10. Close scrutiny of the evidence makes it clear that the accused/appellant was residing in his house along with the deceased and on the date of incident i.e.15.12.2010, dead body of the deceased was found inside the house. No reasonable explanation has been offered by the appellant in his statement made under Section 313 Cr.P.C. Further there is evidence that on the fateful day, the accused/appellant and the deceased had a quarrel. This apart, on the memorandum of accused/appellant seizure of knife Ex.P-11 was made and as per FSL report blood was found on the knife. The death of the deceased in this case undisputedly took place inside the privacy of a house where apart from the accused, deceased and their sibling, no other person was present at the relevant time. It is settled legal position that in case of such murder, the accused/appellant has to explain as to how the body of the deceased was found inside the house. If a 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. 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.

13. 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 to arrive at a conclusion of convicting the accused under Section 302 IPC. Accordingly, the judgment impugned calls for no interference in this appeal.

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

Sd/-

(Thottathil B.Radhakrishnan)
Chief Justice

Sd/-

(Pritinker Diwaker)
Judge