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HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 495 of 2012**

{Arising out of judgment dated 29.03.2012 in Sessions Trial No. 77 of 2009 by the learned Sessions Judge, Korla (Baikunthpur)}

Jangalsai Pando S/o Munda Pando, aged about 55 years, R/o village Bhandarpara, PS Baikunthpur, District Korla, Chhattisgarh.

---- Appellant

Versus

State of Chhattisgarh, Through Police Station, Baikunthpur, District Korla, Chhattisgarh.

---- Respondent

For Appellant	: Shri M.K.Sinha, Advocate.
For Respondent	: Smt. Madhunisha Singh, Panel Lawyer.

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Pritinker Diwaker, Judge

Judgment on Board**Per Pritinker Diwaker, J.****09/09/2017**

1. This appeal by the accused is directed against the judgment dated 29.03.2012 passed by the learned Sessions Judge, Korla (Baikunthpur), in Sessions Trial No. 77 of 2009. Vide the said judgment, the accused has been convicted of having committed an offence punishable under Section 302 Indian Penal Code (for short 'the IPC') and sentenced to undergo rigorous imprisonment for life with fine of Rs. 1000/-. In default of payment of fine, the appellant was required to undergo further rigorous imprisonment for three months.

2. The prosecution story, briefly stated, is that on 28.04.2009, the accused and the deceased Sonmati @ Shivbatari, wife of the accused-appellant had gone to Patwari to collect certain documents. While returning, they consumed liquor in the

house of Shobhnath (PW-5). There was some quarrel between the accused and the deceased over some document and it is alleged that out of anger, the accused-appellant caused number of injuries to the deceased by club and stone. The injured-Sonmati @ Shivbatari was brought back to her house by the accused-appellant and it is said that in the night at about 9 pm, she succumbed to the injuries.

3. The First Information Report (Exhibit P/14) and merg intimation (Exhibit P/13) were recorded on 29.04.2009 at the instance of Dullu Pando (PW-9) against the accused-appellant under Section 302 IPC. Inquest on the dead body was conducted vide Exhibit P-7 on 29.04.2009. The body was sent for postmortem which was conducted by Dr. O.P.Kashyap (PW-7), who gave his report vide Exhibit P-10.

4. While framing the charges, the learned trial Judge framed the charge against the accused under Section 302 IPC.

5. So as to hold the accused-appellant guilty, the prosecution examined 16 witnesses in all. The statement of the accused-appellant was also recorded under Section 313 CrPC in which he denied the circumstances appearing against him in the prosecution, pleaded innocence and false implication.

6. The learned Trial Court, after hearing the counsel for the parties and considering the material available on record, by the impugned judgment convicted and sentenced the accused appellant, as mentioned above.

7. Learned counsel for the accused-appellant submitted that there was no intention of the accused-appellant to cause death of the his wife. Both the accused-appellant and his wife had gone to the house of Patwari to collect certain documents and while returning, they consumed liquor in the house of Shobhnath (PW-5) and it appears that there was some quarrel between them and in a heat of passion on a sudden quarrel, the accused-appellant caused certain injuries to the deceased resulting into her death. Even if the entire prosecution story is believed, at best, the accused-appellant is liable to be convicted for the offence punishable under Section

304 Part II or 304 Part I of the IPC. It has been further argued that the accused-appellant is in jail since 30.04.2009 and therefore, after converting his conviction into one under Section 304 Part I or Part II IPC, he may be sentenced to undergo imprisonment for the period already undergone by him.

8. On the other hand, learned counsel for the State/Respondent supports the judgment impugned. It has been argued by the State counsel that the conviction of the accused-appellant is in accordance with law and there is no infirmity in the same. She submits that undisputedly, there was a quarrel between the accused and the deceased and in the said quarrel, the deceased sustained injuries and succumbed to the same.

9. We have heard the learned counsel for the respective parties and perused the evidence on record.

10. Jagdish @ Jagjit (PW-1), Babu Lal (PW-2), Tejilal(PW-4) , Shobhnath (PW-5), Kundan (PW-8) and Kadam Kunwar (PW-14) have turned hostile and have not supported the prosecution case.

11. Tapeswar (PW-3) is the child witness, has not stated anything specific against the accused-appellant. Shiv Kumar (PW-6) is a witness of inquest (Exhibit P/7).

12. Dr. O.P.Kashyap (PW-7) is the doctor who conducted postmortem (Exhibit P9) and found the following injuries on the body of the deceased:

- "1. Contusion right thigh anteriomedial aspect in lower 1/3 obliquely situated 10 cmx4cm in size bluish in colour.
 2. Contusion over left thigh anteriolateral aspect 10cmx6cm size, obliquely situated, bluish in colour.
 3. Contusion over the whole back 18 inchesx13 inches, bluish black in colour.
 4. Contusion over the abdomen on epigastric region left hypocondrium 8cmx4cm in size obliquely situated.
 5. Contusion over the right periorbital region. 8cmx5cm in size.
 6. Bleeding from both the nostrils present.
- All the injuries are antermortem in nature. Duration within 24 hours. Injuries may be caused by hard and blunt object. Scalp shows subcutaneous haemorrhage over the whole scalp on the right side-reddish (cherry red) in colour.

Ribs fractured left side 3rd, 4th, 5th, 6th, 7th. Left plural cavity contains about 150 ml blood. Right lung ruptured lower lobe with plural cavity. Ruptured upper lobe filled with blood. "

The cause of death was opined to be shock due to haemorrhage due to multiple injury and the duration of death was within 24 hours and homicidal in nature."

13. Dullu Pando (PW-9) is the lodger of the FIR (Exhibit P/14) and the merg (Exhibit P/13). Rajju Lal (PW-10) is the son of the deceased, has stated that he was informed by the accused-appellant that his mother is sleeping being sick on account of diarrhoea and cold. He states that when he reached to his mother's house, he found her lying on the ground and that the accused-appellant was also sitting. He states that he did not notice any injury on the body of the deceased nor the accused-appellant confessed anything before him. At this stage, this witness was declared hostile. In his diary statement, this witness has stated that when the deceased and the accused-appellant were returning after collecting some documents from the Patwari, on the way they consumed liquor, there was some quarrel between them and then the appellant caused injuries to the deceased by club and stone.

14. Dr. D.K.Chikanjuri (PW-11) is the witness to whom the club was shown, has stated that the injuries sustained by the deceased could have been caused by the said club. Shiv Prasad, (PW-12) is the witness to the inquest (Exhibit P/7). Prakash Soni (PW-16) is the Station House Officer and the Investigating Officer of the case.

15. Close scrutiny of the evidence makes it clear that the body of the deceased was found inside the house of the accused-appellant and he gave a false explanation in this regard. The accused-appellant informed Dullu Pando (PW-9) that his wife was suffering from fever and cold and when he reached his house, he found her wife dead.

16. In the matter of ***Sidhartha Vashisht Vs. State (NCT of Delhi)***, (2010) 6 SCC 1, 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) *Crl.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, 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.”

17. In the matter of **S. Govindaraju Vs. State of Karnataka**, (2013) 15 SCC 315, 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.”

18. As per appellant's own version, he was with the deceased at the relevant time. The explanation offered by him is found to be false as discussed above. In these circumstances, it was for the accused/appellant to offer some plausible explanation as to how the deceased sustained those injuries which resulted in her death. This fact was within the special knowledge of the appellant. In the matter of

State of West Bengal Vs. Mir Mohammad Omar and others, (2000) 8 SCC 382,

it has been observed by the Supreme Court as under:

“31. The pristine rule that the burden of proof is on the prosecution to prove the guilt of the accused should not be taken as a fossilised doctrine as though it admits no process of intelligent reasoning. The doctrine of presumption is not alien to the above rule, nor would it impair the temper of the rule. On the other hand, if the traditional rule relating to burden of proof of the prosecution is allowed to be wrapped in pedantic coverage the offenders in serious offences would be the major beneficiaries, and the society would be the casualty.

33. Presumption of fact is an inference as to the existence of one fact from the existence of some other facts, unless the truth of such inference is disproved. Presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above principle has gained legislative recognition in India when [Section 114](#) is incorporated in the [Evidence Act](#). It empowers the court to presume the existence of any fact which it thinks likely to have happened. In that process court shall have regard to the common course of natural events, human conduct etc. in relation to the facts of the case.

37. The section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. But the Section would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the court to draw a different inference.”

19. The same view has been reiterated by the Supreme Court in the matter of ***State of Rajasthan Vs. Thakur Singh***, (2014) 12 SCC 211.

20. From the evidence as adduced by the prosecution, it appears that while returning from the house of Patwari, on the way accused-appellant and the deceased consumed liquor and there was some quarrel between them. It is further clear that out of anger, the accused-appellant assaulted the deceased with club. Considering the nature of evidence, it is clear that the incident occurred in a heat

of passion on a sudden quarrel and there was no premeditation on the part of the accused. Taking the entire evidence as it is, act of the accused-appellant would fall under Exception 4 of Section 300 IPC.

21. Next question which arises for consideration of this Court is as to what offence has been committed by the accused-appellant. Looking to the nature of injury caused by the appellant, we are of the considered view that the accused-appellant is liable to be convicted under Section 304 Part I IPC instead of Section 302 IPC as has been done by the trial Court. In view of the above, conviction of the accused-appellant is altered from Section 302 IPC to one under Section 304 Part I IPC and he is sentenced to undergo rigorous imprisonment for a period of 10 years. As the appellant is in jail, no further order is required.

22. In the result, the appeal is partly allowed.

Sd/-

(Thottathil B. Radhakrishnan)
CHIEF JUSTICE

Sd/-

(Pritinker Diwaker)
JUDGE