

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 505 of 2012

- Pahru Ram S/o Lodahram, aged about 40 years, occupation – Agriculture, R/o Village Dhodhagaon, P.S. Sitapur , Distt. Surguja C.G.

---- Appellant

Versus

- State Of Chhattisgarh Through - P.S. Sitapur , Distt. Surguja C.G.

---- Respondent

For Appellant	:	Shri AK Prasad, Advocate.
For Respondent/State	:	Shri Ashish Shukla, G.A.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board By Justice Pritinker Diwaker

22/05/2017

This appeal arises out of the judgment of conviction and order of sentence dated 28.12.2011 passed by the Sessions Judge, Surguja (Ambikapur) in ST No.347/2010 convicting the appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life and pay a fine of Rs.2000/- with default stipulation.

02. In the present case, name of the deceased is Salmetbai, wife of the appellant. Body of the deceased was found in the verandah of his house adjacent to the bedroom on 21.2.2010. After committing murder of the deceased, the accused/appellant went to his brother PW-1 Girbal and made extrajudicial confession before him that it is he who

has killed his wife/deceased. FIR (Ex.P/1) was lodged by PW-1 Girbal on 22.2.2010 at 9 pm against the appellant under Section 302 of IPC. At 9.15 pm merger intimation was also registered. Inquest on the dead body was conducted on 23.2.2010 vide Ex.P/12 and thereafter the body was sent for postmortem which was conducted on the same day by PW-2 Dr. Rajni Shanta Tigga vide Ex.P/7A wherein the doctor noticed multiple contusion on the body and on internal examination found subdural hematoma on the right parietal region of the head. In her opinion, the cause of death was hemorrhagic shock due to bleeding of the internal organ and that the death was homicidal in nature. After filing of charge sheet, the trial Court framed charge under Section 302 of IPC against the accused/appellant.

03. So as to hold the accused guilty, the prosecution examined 8 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.

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 the nature of circumstantial evidence is not as such which can be made basis for his conviction.

(ii) that the dead body has been found in the verandah of the house

and not in the bedroom and therefore, the appellant is not required to offer any explanation in his statement under Section 313 of Cr.P.C.

(iii) that the possibility of some 3rd person committing the offence cannot be ruled out.

(iv) that the witness to extra-judicial confession i.e. PW-1 Girbal has not supported the prosecution case and has been declared hostile.

(v) even assuming that it is the appellant who killed his wife, considering the nature of injuries suffered by the deceased, the part of the body where the injuries were allegedly inflicted, he can, at best, be convicted under Section 304 Part-I or II of IPC and not under Section 302 of IPC.

06. On the other hand, State counsel supporting the impugned judgment has submitted that the judgment impugned is strictly in accordance with law and there is no scope for any interference by this Court. He submits that as per FIR lodged by PW-1 dead body was found inside the bedroom lying on the floor. The appellant instead of offering any explanation in his statement under Section 313 of Cr.P.C. has given false explanation that after consuming liquor she fell down. PW-4 Kain and PW-5 Anil Kumar, who are sons of the appellant and the deceased, aged about 12 and 15 years respectively, have categorically stated that they slept in a separate room whereas the appellant and the deceased were sleeping in another room. Further, while answering to Question No.42 in his statement under Section 313 of Cr.P.C., the appellant has admitted that no 3rd person had entered their house on the date of incident. Lastly he submits that considering the nature of injuries suffered by the deceased and the manner in

which she was done to death, the appellant has rightly been convicted under Section 302 of IPC and no leniency is required to be shown to him.

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

08. PW-1 Girbal, brother of the deceased, who lodged the First Information Report (Ex.P/1), in his Court statement has given altogether different story wherein he has stated that the deceased had illicit relation with one Punairam and he and other villagers saw Punairam causing injury to the deceased by a club. At that time the appellant was sleeping in his house. He has stated that after assaulting the deceased, Punairam fled away from the spot, the deceased was brought to the house and information was given to the appellant who was sleeping. He states that he lodged the FIR (Ex.P/1) and merged intimation Ex.P/2. After being declared hostile, when he was confronted with the FIR and merged intimation, he states that though he signed these documents but the contents of the same were not read over to him and he merely signed the same as asked by the police. When he was further confronted with his diary statement Ex.P/6, he states that he never made any such statement that it is the accused/appellant who confessed about commission of murder of the deceased.

09. PW-2 Dr. Rajni Shanta Tigga conducted postmortem on the body of the deceased on 23.2.2010 vide Ex.P/7A and noticed multiple contusions over her person as also subdural hematoma on the right parietal region of the head. There was rupture in the uterus, blood clots were present in the peritoneum. In her opinion, the cause of death was

hemorrhagic shock due to bleeding of the internal organ and that the death was homicidal in nature. PW-3 Jeetan has turned hostile. PW-4 Kain, son of the appellant and the deceased, aged about 12 years, though has been declared hostile but has stated that after taking dinner he and his brother Anil slept in one room whereas the accused/appellant and the deceased were sleeping in another room and he is not aware as to what transpired in the night. He states that on the next morning he was informed by PW-1 Girbal that his mother has been killed.

10. PW-5 Anil Kumar is another son of the appellant and the deceased. He has also been declared hostile. However, he too has admitted the fact that on the date of incident apart from him, his brother, father and mother were only there in the house and no outsider was there. PW-6 Raturam, neighbour of the appellant, has turned hostile. He has stated that when he asked the appellant as to how the deceased died, he was talking irrelevant and informed that he himself had consumed liquor and therefore, is not aware about the same. PW-7 Silvanus is a witness of memorandum and seizure. However, he has also turned hostile. PW-8 CS Netam, investigating officer, has duly supported the prosecution case.

11. Admittedly, there is no direct evidence against the appellant to show his complicity in the crime in question and his conviction rests upon circumstantial evidence i.e. the dead body was found in the house where the appellant was residing with the deceased, no explanation was offered by him and rather he gave false explanation in his statement under Section 313 of Cr.P.C.

12. When 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 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. In such cases, 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 can not 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 the accused to offer any explanation.

In the matter of ***Swamy Shraddananda Vs. State of Karnataka, (2007) 12 SCC 288***, it was proved that the deceased died in an unnatural circumstance in her bedroom, which was occupied only by her and her husband, the appellant was required to offer an explanation in this behalf, however, instead of offering any plausible explanation, he tried to mislead by giving false explanation. Thus, it was held that absence of any explanation or false explanation by the accused would lead to an inference of guilt against the accused.

Further, in the case of ***Trimukh Maroti Kirkan Vs. State of***

Maharashtra, (2006) 10 SCC 681, it was observed that in case based on circumstantial evidence where no explanation or false explanation against the incriminating circumstances is given by the accused, then it can be treated as an additional link in the chain of circumstances against the accused to make it complete.

13. In the present case, it is established from the evidence of the prosecution witnesses, including the hostile witnesses, that the bedroom where the dead body of the deceased was found was shared by the appellant, at the relevant point of time he was present in the house and sleeping with the deceased and furthermore, in reply to question No.42 in his statement under Section 313 of Cr.P.C. the appellant has admitted that at the relevant time, no outsider was there in the house. As such, there was a corresponding burden on him to offer some plausible explanation as to how the deceased died but instead of offering such explanation he gave false explanation that the deceased fell down after consuming liquor.

14. The purpose of empowering the court to examine the accused under section 313, Cr.P.C is to meet the requirement of the principle of natural justice *audi alteram partem* (that no one should be condemned unheard). This means that the accused may be asked to furnish some explanation as regards the incriminating circumstances associated against him and the court must take note of such explanation. In a case of circumstantial evidence, the same is necessary to decide whether or not the chain of circumstances is complete. False denial made by the accused of established facts can be used as incriminating evidence against him. An adverse inference can be taken against the

accused only and only if the incriminating materials stood fully established and the accused is not able to furnish any explanation for the same.

15. Thus, from the overall facts and circumstances of the case, coupled with the conduct of the appellant, his complicity in the commission of the offence is established beyond all reasonable doubt. So far as argument of the appellant that in the given facts and circumstances of the case, the appellant can, at best, be convicted under Section 304 Part-I or II of IPC is concerned, we find no substance in this argument. Considering the manner in which the deceased was assaulted leading to subdural hematoma on the right parietal region of the head, rupture in the uterus and bleeding of the internal organ, it can safely be inferred that the appellant inflicted injuries on the deceased with intention to cause her death and further while causing such bodily injuries to her, he had every knowledge that it would result in her death. Being so, his conviction under Section 302 of IPC is just and proper, warranting no alteration.

16. In the result, the appeal fails and is, accordingly, dismissed. The appellant is reported to be in jail and therefore, no order regarding his arrest etc. is required.

Sd/

(Pritinker Diwaker)
Vacation Judge

Sd/

(Sanjay K. Agrawal)
Vacation Judge