

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 625 of 2011**

1. Keshwar Ram Bhagat S/o Ghunju Ram Bhagat, aged about 32 years, Occupation Agriculturist, R/o Village Harradeepa, Bardand, Police Station and Tahsil Jashpur, District Jashpur, CG

---- Appellant**Versus**

1. State of Chhattisgarh through Station House Officer, Police Station Jashpur, District Jashpur, CG.

---- Respondent

For Appellant	:	Shri A.N. Bhakta and Shri Vivek Bhakta, Advocates
For Respondent/State	:	Smt. Smitha Ghai, PL

Hon'ble Shri Justice Pritinker Diwaker &
Hon'ble Shri Justice A.S. Chandel

Judgment on Board by Pritinker Diwaker, J

08/11/2017

This appeal has been filed against the judgment of conviction and order of sentence dated 11.05.2011 passed by Additional Sessions Judge Jashpur in Sessions Trial No. 04/2011 convicting the accused/appellant under Section 302 IPC and sentencing him to undergo imprisonment for life and pay fine of Rs. 100/-, plus default stipulation.

2. As per the case of prosecution, body of the deceased namely Rajmait Bai - wife of the accused/appellant was found inside his house and it is alleged that in the intervening night of 19.7.2010 and 20.7.2010 the accused/appellant committed her murder by causing axe injuries on her vital part. *Merg* Ex. P-2 was recorded at the instance of Ram Kumar (PW-1) - the husband of the village

Sarpanch. Immediately thereafter, FIR Ex. P-1 was registered against the accused/appellant for the offence under Section 302 IPC. After drawing inquest Ex. P-4 the dead-body was sent for postmortem examination which was conducted on 21.7.2010 by Dr. R.N. Kerketta (PW-4) who gave his report Ex. P-6. After investigation, charge-sheet was filed by the police under Section 302 IPC followed by framing of charge by the Court below accordingly.

3. In order to prove the complicity of the accused/appellant in the crime in question, the prosecution has examined 12 witnesses. Statement of the accused/appellant 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 to the incident and the entire case of the prosecution is based on circumstantial evidence which is very weak in nature.

(ii) That the circumstances relied upon by the prosecution do not form a complete chain but even then the Court below has made it a basis for conviction which is erroneous.

(ii) That not even a single specific question was put to the accused while recording his statement under Section 313 of the Code of Criminal Procedure to the effect that at the relevant time he was in the house where the incident took place.

(iii) That though from the spot seizure of axe has been made and FSL report confirmed the presence of blood thereon but as there is no evidence that at the relevant time the accused carried the same and used it for executing the crime, such seizure is of no value.

6. On the other hand, counsel for the State supports the judgment impugned and submits that the findings recorded by the Court below convicting the accused/appellant under Section 302 IPC are based on due appreciation of the evidence on record and there is no infirmity in the same. She submits that present is a case of house murder where the accused was residing with the deceased and two small children but no plausible explanation has been offered by him as to how the deceased died. She further submits that from the statement of Baleshwar Bhagat (PW-6) it is apparent that the accused/appellant was present in the house where the incident occurred.

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

8. Ram Kumar (PW-1) has stated that on the date of incident one Chaituram had informed him about the accused/appellant herein committing the murder of the deceased – his own wife. On being so informed this witness went to the house of the accused/appellant and found the deceased lying there with bleeding injury on her head. Accused/appellant, at that time, was sitting outside the house and was then taken to police station where FIR Ex. P-1 and Merg Ex. P-2 were recorded at the instance of this witness. Anil Bhagat (PW-2) – the witness to inquest has not supported the case of the prosecution and has been declared hostile but has admitted his signature thereon. Sarojani (PW-3) – a

child witness aged about 12 years has also not supported the case of the prosecution and has been declared hostile. She however has stated the accused/appellant had gone to the house of Anil Bhagat (PW-2) for watching TV but has expressed her ignorance about the the deceased being assaulted by him with axe. She however has nowhere stated that the accused/appellant was not in the house throughout the night. Dr. R.N. Kerketta (PW-4) is the witness who conducted postmortem examination on the body of the deceased and gave his report Ex. P-6 stating that he noticed incised wounds over left side mastoid region and left side of neck; and small part of lateral border of left pinna was absent. Cause of death, according to this witness, was excessive haemorrhagic shock due to injury over head and neck by hard and sharp object, and it was homicidal in nature. Alek Siyus (PW-5) – the witness to extra-judicial confession and seizure made under Ex. P-5 has not supported the case of the prosecution and has been declared hostile. Baleshwar Bhagat (PW-6) has stated that in the midnight Anil Bhagat (PW-2) came to his house and informed that someone had killed the deceased and when he went to the house of the accused/appellant the deceased was lying in the bed room with injury on her neck and the blood was present nearby. According to him, he did not come to know as to who killed the deceased. Accused/appellant, according to this witness, was present at the doorstep but he did not tell him anything. J.L. Sisodia (PW-7) is the witness who did initial investigation. P.S. Khutia (PW-8) is the investigating officer who has duly supported the case of the prosecution. Gopal Vaisya (PW-10) is the witness who recorded the FIR Ex. P-1 and *merg* Ex. P-2. Budhram Bhagat (PW-11) is the Patwari who prepared spot map Ex. P-15. Vijay Khoonte (PW-12) is the witness who assisted in the

investigation.

9. This Court has made a careful perusal of the evidence of the witnesses which makes it clear that in the intervening night of 19.7.2010 and 20.7.2010 the accused/appellant committed the murder of his own wife by causing axe injuries on her vital part like neck. Though PW-1 and PW-6 have been declared hostile but if their evidence is seen as a whole, it is apparent that after they went to the house of the accused/appellant, he was very much present there. Further, while answering question No. 7 put to him in his statement recorded under Section 313 of the Code of Criminal Procedure, the accused/appellant has admitted that the deceased was living with him. None of the witnesses has stated to the contrary that at the relevant time the accused/appellant was not in the house. This apart, the axe seized at the instance of the accused/appellant was also stained with blood which is evident from FSL report Ex. P-11. In the cases where an offence like murder is committed inside the privacy of a house, it is a settled legal position that in such circumstances where the assailant had 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 is insisted upon by the courts. Supreme Court goes on to hold that 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, rather the duty cast on it 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. **Trimukh Maroti Kirkan v. State of Maharashtra** reported in **(2006) 10 SCC 681**. This position has been fortified in the matter of **State of Rajsthan v. Thakur Singh** reported in **(2014) 12 SCC 211**.

10. 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 apart from the accused, deceased and their two minor siblings, no other person was present at the relevant time. 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.

11. 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 slapping conviction

on the accused under Section 302 IPC. Accordingly, the judgment impugned calls for no interference in this appeal.

12. 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/-

(A.S. Chandel)
Judge