

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 612 of 2012**

(Arising out of judgment dated 30/06/2012 in Session Case No.15/2012 of the learned First Upper Sessions Judge, Manendragarh Place Baikunthpur, District Koriya (C.G.)

Lal Ji S/o Heera Singh, Aged About 38 Years, R/o Village Madanpur, Thana Baikunthpur, Distt. Korea C.G.

---- Appellant

Versus

State Of Chhattisgarh S/o Through SHO Baikunthpur, Distt. Korea C.G

---- Respondent

For Appellant	: Shri A.D. Kuldeep, Advocate
For State	: Shri Arvind Dubey, Panel Lawyer

Hon'ble Shri Prashant Kumar Mishra &

Hon'ble Shri Sharad Kumar Gupta, JJ.

Judgment on Board by

Prashant Kumar Mishra, J.

11/11/2017

1. Appellant stands convicted under Section 302 of Indian Penal Code and has been sentenced to undergo Rigorous Imprisonment for life for causing murder of his wife Santra Bai during the intervening night of 18th -19th December of 2011.
2. The appellant lodged merg intimation Ex.P/22 at about 3.00 p.m. on 19/12/2011 informing the Police that at about 08.00 p.m. on 18/12/2011 his wife, deceased Santra Bai, was drunk and retired to bed without having meals. He also retired to bed without having dinner. When he got up in the morning and tried to awake the deceased, she was found dead. According to him, the

deceased died because of excessive consumption of liquor. During postmortem conducted by PW-9 Dr. A.K. Singh the death was found to be homicidal; cause of death being coma resulting in CRA (Cardiac Respiratory Arrest) due to head injury. On this opinion of the doctor the FIR Ex.P/26 was registered at 16.20 hours on 24/12/2011.

3. In course of the further investigation the statement of witnesses were recorded wherein PW-5 Ramkishun and PW-6 Chhatrapal Singh informed the Investigating Officer that the appellant had made extra judicial confession of quarrel between him and the deceased, pursuant to which, he slapped the deceased 3-4 times. The appellant also gave his memorandum statement Ex.P/13 on 25/12/2011 pursuant to which the wooden bar (*Hatka*) was recovered from him vide Ex.P/14 on 25/12/2011 itself. The memorandum and seizure were prepared in the presence of witnesses PW-8 Ram Singh and PW-11 Shivratan Singh.
4. In course of trial PW-1 Ramesh Kumar (Kotwar), PW-2 Manmati (aunt of the appellant), PW-3 Rambai (sister of the appellant) and PW-4 Nano Bai (sister of the appellant) have turned hostile, however, PW-5 Ramkishun and PW-6 Chhatrapal Singh being the witnesses of extra judicial confession have fully supported the prosecution. PW-7 Shivmangal Singh (uncle of the appellant) has proved the arrest memo Ex.P/6. On other aspect he has been declared hostile. PW-8 Ram Singh is a witness to the memorandum and seizure, however, he has not supported the prosecution case.

5. PW-9 Dr. A.K. Singh has conducted the postmortem and submitted the report Ex.P/8. In the postmortem report he has found extensive multiple injuries divided over three different parts of the body. Over the head and neck region he found six injuries whereas in the trunk and buttock region he found seven injuries and over hands and legs he again found three injuries. The deceased had thus suffered multiple contusions, abrasions, hematoma etc. over practically the entire body.
6. It is argued by the learned counsel for the appellant that the wooden bar (*Hatka*) recovered from the appellant was sent for Forensic Science Laboratory Examination, but no such report is available, therefore, there is no evidence that the wooden bar (*Hatka*) was the weapon used by the appellant to cause injuries over the person of the deceased. He would also submit that merely on the basis of extra judicial confession wherein the appellant has allegedly confessed to inflict 3-4 slaps to the deceased would not conform to the injuries found over the body of the deceased, therefore, the extra judicial confession cannot form the basis for conviction.
7. Per contra, learned State counsel would submit that the appellant and the deceased being husband and wife living together in the house at the time of incident and there being no other member available in the house, the burden lies on the appellant to explain the circumstances in which the deceased died, but no such explanation has been offered by the appellant, therefore, coupled with other evidence the prosecution has fully established the guilt of the appellant.

8. We have perused the entire record and heard learned counsel for the parties at length.
9. In the merg intimation the appellant has not disclosed to the Police the fact that he had given 3-4 slaps to the deceased or that he had repeatedly struck the deceased by means of wooden bar (*Hatka*). Instead, the appellant feigned innocence as if he is not aware as to the exact reason for the death of the deceased. He lied to the Police that the deceased died out of excessive consumption of liquor. There is evidence to the effect that before informing the Police, the appellant had made extra judicial confession before PW-5 Ramkishun and PW-6 Chhatrapal Singh. Thus, even before lodging of merg intimation the villagers were made aware by the appellant by making extra judicial confession yet he concealed to the Police about the real incident.
10. There is evidence on record, duly proved by the prosecution, about the appellant's disclosure statement and the consequent seizure of wooden bar (*Hatka*). If the chain of circumstantial evidence is connected with each other by joining them with the false information submitted by the appellant to the Police, it clearly appears that the appellant has caused repeated injuries over the person of the deceased by means of wooden bar (*Hatka*) otherwise the autopsy surgeon would not have found such extensive multiple injuries over the entire body of the deceased.
11. We are not impressed with the argument advanced by the learned counsel for the appellant also for the reason that the appellant and the deceased being husband and wife living

together in the same house, the burden to explain the circumstances concerning death of his wife lies heavily on the appellant.

12. The fact of the death of the deceased after suffering injuries was within the special knowledge of the appellant, but he failed to offer any explanation as is required under Section 106 of the Evidence Act. In the matter of **Suresh and Another vs. State of Haryana** reported in **2015 (2) SCC 227**, it is held that when the wife has died in the house under extraordinary or unusual circumstances the explanation should be submitted by the husband as to the event which led to her death and held in para 9 as under :-

“Apart from the above, this is a case where Section 106 of the Evidence Act is clearly attracted which requires the accused to explain the facts in their exclusive knowledge. No doubt, the burden of proof is on the prosecution and Section 106 is not meant to relieve it of that duty but the said provision is attracted when it is impossible or it is proportionately difficult for the prosecution to establish facts which are strictly within the knowledge of the accused. Recovery of dead bodies from covered gutters and personal belongings of the deceased from other places disclosed by the accused stood fully established. It casts a duty on the accused as to how they alone had the information leading to recoveries which was admissible under Section 27 of the Evidence Act. Failure of the accused to give an explanation or giving of false explanation is an additional circumstance against the accused as held in number of judgments, including *State of Rajasthan vs. Jaggu Ram (2008) 12 SCC 51*”

13. Considering the entirety of the evidence, we are of the clear

view that the prosecution has proved the guilt of the appellant beyond reasonable doubt. The conviction and sentence imposed on the appellant by the impugned judgment does not suffer from any infirmity. It deserves to be and is hereby affirmed.

14. The appeal is dismissed.

Sd/-

Judge
Prashant Kumar Mishra

Sd/-

Judge
Sharad Kumar Gupta