

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 905 of 2011

- Balram Yadav, S/o. Arjun Yadav, Aged about 35 years, R/o. Village Telnbandha, Polie Station Baghmadi District Rajnndgaon (CG)

---- Appellant

Versus

- State Of Chhattisgarh through Station House Officer, Police Station Baghnadi, District Rajnandgaon (CG)

---- Respondent

For Appellant	: Smt. Indira Tripathi, Advocate
For Respondent/State	: Shri Ravindra Agrawal, G.A.

Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Shri Justice Sanjay Agrawal

Judgement on Board

21/02/2018

This appeal has been preferred against the judgment and order dated 15.11.2011 passed by the Additional Sessions Judge, Rajnandgaon in Sessions Trial No. 19/2011 convicting the accused/appellant for the offence punishable under Section 302 IPC for committing murder of his wife Chameli Bai and sentencing him to undergo imprisonment for life with fine of Rs. 3,000/- plus default stipulation.

2. As per prosecution case, in the night intervening 14-15.01.2011, appellant killed his wife Chameli Bai by causing injuries to her with a pick-axe. FIR (Ex.P-2) was lodged on 15.01.2011 at 8.00 a.m. by Prabhu Ram (PW-1) brother of the appellant. Immediately thereafter

merg intimation Ex.P-1 was recorded. Inquest (Ex.P-4) was prepared and body was sent for postmortem examination which was conducted by Dr. Milind Kumar Bhuarya and according to him, cause of death was excessive bleeding and congestion of brain and death was homicidal in nature. After filing of charge sheet, the trial judge has framed charge against the appellant under Sections 302 IPC.

3. In order to establish the guilt of the accused/appellant, prosecution has examined 13 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 there is no eyewitness account in this case and the accused/appellant has been convicted solely on the basis of circumstantial evidence but the circumstances on which the prosecution has relied upon is not as such to connect the accused/appellant with the crime in question.

6. On the other hand, State counsel while supporting the judgment impugned has submitted that the findings recorded by the Court below convicting the accused/appellant under Section 302 are strictly in accordance with law and there is no infirmity in the same.

7. We have heard counsel for the parties and perused the material

available on record.

8. Dewarin Bai (PW-4) is the mother of the appellant. She has stated that on the date of incident she was sleeping in another room whereas the accused/appellant and his wife were sleeping in a separate room. At about 5.00 a.m. she woke up after hearing the cries of younger son of the deceased, entered the room and saw that Chameli Bai lying on the cot and was dead. Thereafter this witness has been declared hostile. She has stated that the accused/appellant was not there in the room. Prabhu Ram (PW-1) is the brother and lodger of FIR has also been declared hostile. Gautam (PW-2) is the village kotwar has been declared hostile. Chait Ram (PW-3) has not stated anything and has been declared hostile. Ram Narayan (PW-5) brother of the appellant has also not stated anything and has been declared hostile. Kunti Bai (PW-6) mother of the deceased has not stated anything and has been declared hostile. Manoj Kumar (PW-7) brother of the deceased has not stated anything against the appellant and has been declared hostile. Sandeep Kosma (PW-8) is the patwari who prepared spot map Ex.P-12. Padmumlal (PW-9) is the Constable who assisted in the investigation. Dr. Milind Kumar Bhuarya (PW-11) is the autopsy surgeon who conducted postmortem examination on the body of the deceased and according to him, cause of death was excessive bleeding and congestion of brain and death was homicidal in nature. Bharat Notiya (PW=13) is the Investigation officer who has duly supported the prosecution case.

9. Close scrutiny of the evidence makes it clear that on the fateful night accused/appellant slept in a separate room along with the deceased and in the morning at 5.00 a.m. dead body of the deceased

was found inside the room. Dewarin Bai (PW-4) has categorically stated that on the fateful night accused/appellant and the deceased slept together. Though on material particulars this witness has been declared hostile but her statement that on the fateful night accused/appellant and the deceased slept in a separate room is intact and no probable explanation has been offered either by accused or by any other witness. Certain other important witnesses have also been declared hostile but this fact remains unchallenged that on the fateful night appellant and the deceased slept together and the dead body of the deceased was found inside her bed room. Admittedly, the appellant was residing along with the deceased in the house in question. However there is no eyewitness account in the present case and the entire case is based on the circumstantial evidence. One of the strongest circumstance put down by the prosecution, in this case is that apart from the accused, deceased and their two children, no third person was present in the house at the relevant time. No satisfactory explanation has come from the accused as to how the deceased died when there was no other person except the two and their children aged 11 years and a infant.

10. In a case where house murder is the issue, heavy burden is on the accused to explain as to under what circumstances the deceased died. Here in this case the dead body was found in the house of the accused and after committing the murder, he left the house. 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 children, 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. While dealing with the matter involving the murder committed inside the house it has been held by the Apex Court in the matters of **Trimukh Maroti Kirkan v. State of Maharashtra** reported in **(2006) 10 SCC 681**, **State of Rajasthan v. Thakur Singh** reported in **(2014) 12 SCC 211**, **Jagdish v. State of MP** reported in **{(2009) 9 SCC 495}** and **Gian Chand v. State of Haryana** reported in **{(2013) 14 SCC 420}** that the burden of proving the guilt of an accused is on the prosecution, but there may be certain facts pertaining to a crime that can be known only to the accused, or are virtually impossible for the prosecution to prove. These facts need to be explained by the accused and if he does not do so, then it is a strong circumstance pointing to his guilt based on those facts.

11. We find no substance in the argument of the learned counsel for the appellant that he is liable to be convicted for lesser offence because in a heat of passion if some injury has been caused by the appellant that will not attract Section 302 IPC. We further do not find any substance to the argument that after causing injury to the deceased appellant also caused injury to himself and this shows that the appellant was not in a fit state of mind. All these pleadings raised by the counsel for the appellant has not been proved as required under the law. What

had transpired inside the room was within the knowledge of the appellant and the deceased and the court cannot presume anything which is not there on record.

12. Thus in view of the aforesaid factual and legal position this Court is of the considered opinion that the prosecution has gathered sufficient evidence to hold the accused/appellant guilty for committing the murder of his wife and 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.

13. 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/-

(Sanjay Agrawal)
Judge