

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 214 of 2015**

- Fooldas Paradhi S/o Nathuram Paradhi, aged about 45 years, Resident of village Tarai-Ghotiya, Police Chowki Kachche, Police Station - Bhanupratappur, District Kanker, Civil & Revenue District - North Baster Kanker (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh Through : Police Station - Bhanupratappur, District Kanker (C.G.)

---- Respondent

For Appellant. : Shri Ravi Maheshwari, Advocate.
 For Respondent/State: Shri Vaibhav Goverdhan, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Gautam Chourdiya

Judgment On Board**By Pritinker Diwaker, J****08/08/2018**

This appeal arises out of the judgment of conviction and order of sentence dated 19.11.2014 passed by the Sessions Judge, North Bastar, Kanker, in S.T. No.86/2013 convicting the accused/appellant under Sections 302 and 309 IPC & sentencing him to undergo imprisonment for life with fine of

Rs.3000/- and S.I. for one year, plus default stipulation respectively.

02. As per the prosecution case, on 03.04.2013 at about 11.30 AM, the accused/appellant first killed his wife Sagni Bai by causing several axe injuries and then made an attempt to commit suicide by injuring himself. After the incident, injured Sagni Bai and the accused/appellant were lying in the courtyard and on seeing them in such condition, Siyabati (PW/2), niece of the accused/appellant, informed about the incident to villagers including Kunwar Singh Sarfe (PW/1). At the instance of Kunwar Singh (PW/1), FIR (Ex.P/1) was registered against the accused/appellant on 03.04.2013 at 05.45 PM under Sections 302 and 309 IPC followed by merger intimation (Ex.P/2). Inquest on the body of deceased was conducted on 04.04.2013 vide Ex.P/7 and body was sent for postmortem examination to Civil Hospital, Bhanupratappur, where Dr. S.S. Nag (PW/5) conducted postmortem on the body of deceased and gave his report (Ex.P/9) noticing following injuries:-

- (i) Incised wound of 4 x 2 x 4 inch x deep on back of right shoulder near roof of neck.
- (ii) Abrasion of 1.5 cm x 1/2 cm on left elbow region.
- (iii) 1st rib was found to be fractured.

The Autopsy Surgeon opined the cause of death of deceased to be excessive hemorrhage due to grievous injury

and death was homicidal in nature.

03. As per arrest memo (Ex.P/19), injury on abdomen of the accused/appellant was noticed. After investigation, charge sheet was filed against the accused/appellant under Sections 302 and 309 IPC & accordingly charges were framed against him by the trial Court.

04. So as to hold the accused/appellant guilty, the prosecution examined as many as 10 witnesses. Statement of the accused/appellant 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.

05. The trial Court after hearing counsel for the respective parties and considering the material available on record has convicted and sentenced the accused/appellant as mentioned in para-1 of this judgment. Hence, this appeal.

06. Learned counsel for the appellant submits as under :

- (i) That there is no eye-witness account to the incident and the conviction of the accused/appellant is based on circumstantial evidence but none of the circumstances from which the inference of guilt of appellant can be drawn has been proved beyond reasonable doubt and therefore there can be no inference that it was the appellant who committed the murder.
- (ii) That the possibility of assaulting the accused/appellant and the deceased by some third person cannot be ruled out

especially when the area where the incident took place is highly naxalite affected.

(iii) That on the knife and axe allegedly seized, no blood has been found.

(iv) That most of the important prosecution witnesses have turned hostile.

07. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State that conviction of the accused/appellant is strictly in accordance with law and there is no infirmity in the same. He further argued that present is a case of house murder where the body of the deceased was found in the verandah of his house and being an inmate he was under obligation to offer plausible and probable explanation but, except saying that he has been falsely implicated in the crime in question and is not aware as to how he sustained injury, no such explanation has been offered by him in his statement recorded under Section 313 Cr.P.C., which itself makes it clear that it is he who first committed murder of his wife and then injured himself. It has been also argued that immediately after the incident Siyabati Bai (PW/2) saw the appellant and the deceased in the injured condition and as per 161 Cr.P.C. statement, she was the eye-witness to the incident.

08. We have heard learned counsel for the parties and perused the material available on record.

09. Kunwar Singh Sarfe (PW/1) is the informant at whose

instance FIR (Ex.P/1) and merger intimation (Ex.P/2) were recorded. He has stated that when he was returning to his house at about 12.00 in the afternoon, Siyabati (PW/2), niece of the accused/appellant, came to him running and informed that the accused/appellant has killed the deceased and injured himself. He has further stated that the incident was informed to villagers including village Kotwar and all of them had gone to the house of the accused/appellant where they saw the deceased lying dead and the appellant in unconscious condition in pool of blood. He has also stated that after killing the deceased, accused/appellant made suicidal attempt.

10. Siyabati (PW/2) is niece of the accused/appellant. Though, as per her diary statement, she had seen the incident and was eye-witness to the incident but in the Court she has turned hostile. She, however, has stated that when she reached the house of accused/appellant, she saw both of them in the injured condition in the courtyard and that axe and knife were also lying there. This witness has also stated that at the instance of village Kotwar FIR was lodged.

11. Shyam Lal (PW/3) is the witness to inquest made under Ex.P/7 and was informed about the incident by PW/2.

12. Sahdev Ram (PW/4) is also a witness to inquest (Ex.P/7).

13. Dr. S.S. Nag (PW/05) conducted postmortem examination on the body of deceased and gave his report (Ex.P/9) opining the cause of death of deceased to be excessive hemorrhage due to grievous injuries.

14. Ramji Patel (PW/6) - Inspector, recorded FIR (Ex.P/1) and merged (Ex.P/2).
15. Jageshwar Lal (PW/7) is the Patwari who prepared spot map vide Ex.P/16.
16. Ravindra Mandavi (PW/8) - Investigating Officer, has duly supported the prosecution case.
17. A. Kiro (PW/9) - Inspector, did part of investigation.
18. Chandravati (PW/10) is mother of Siyabati (PW/2), who came to know about the incident from her daughter (PW/2). She has stated that when she reached the place of occurrence, she saw the deceased lying dead in the courtyard and the accused/appellant in injured condition.
19. As per the arrest memo of accused/appellant (Ex.P/19), injury was noticed on his abdomen and finding has been recorded that an attempt has been made by him to commit suicide.
20. Close scrutiny of the evidence makes it clear that on 03.04.2013 body of the deceased Sagni Bai, wife of accused/appellant, was found inside the house where he was residing along with her. The evidence further reveals that after committing murder of the deceased, the accused/appellant made an attempt to commit suicide and injured himself. According to postmortem report (Ex.P/9), one incised wound on the back of right shoulder and one abrasion on left elbow region were noticed on her body and cause of death of deceased was excessive hemorrhage due to grievous injuries and the death

was homicidal in nature, whereas accused/appellant himself caused injury on his abdomen which is evident from his arrest memo (Ex.P/19). As per inquest made under Ex.P/7, dead body was found inside the house in courtyard where undisputedly the accused/appellant was residing along with his wife and this fact has duly been proved by PW/1, PW/3 and PW/10 whom the incident was immediately informed by PW/2 and all of them have duly supported the prosecution case. Thus from the material collected by the prosecution it is proved that the death of the deceased was homicidal in nature and the dead body was found inside the house of accused/appellant where he was residing along with deceased but still no reasonably convincing explanation has been offered by him in his 313 Cr.P.C. statement as to how the deceased died. The accused/appellant had even not bothered to say that he and his wife were assaulted by some third persons. All that apart, there is absolutely no substantive piece of evidence on record to suggest that any third person had entered the house of the deceased and caused injury to her and the appellant.

21. In case where house murder is the issue, heavy burden is on the shoulders of the accused to explain as to under what circumstances the deceased died. While dealing with the matter involving the murder committed inside the house it has been held by the Apex Court in the matter of **Trimukh Maroti Kirkan v. State of Maharashtra** reported in **(2006) 10 SCC 681** as under:

“ 14. If 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 will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the courts. A judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties. (See *Stirland v. Director of Public Prosecutions* (1944 AC 315) – quoted with approval by Arijit Pasayat, J in *State of Punjab v. Karnail Singh* (2003) 11 SCC 271). 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. The duty on the prosecution 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. Illustration (b) appended to this section throws some light on the content and scope of this provision and it reads:

“(b) A is charged with travelling on a railway without ticket. The burden of proving that he had a ticket is on him.”

15. Where an offence like murder is committed in secrecy inside a house, 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 cannot 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 an accused to offer any explanation.”

22. Further in the matter of **State of Rajasthan v. Thkur Singh** reported in **(2014) 12 SCC 211** it has been held by the Apex Court as under:

“17. In a specific instance in *Trimukh Maroti Kirkan v. State of Maharashtra* (2006) 10 SCC 681) this Court held that when the wife is injured in the dwelling home where the husband ordinarily resides, and the husband offers no explanation for the injuries to his wife, then the circumstances would indicate that the husband is responsible for the injuries. It was said: (SCC p. 694, para 22)

“22 Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime.”

18. Reliance was placed by this Court on *Ganeshlal v. State of Maharashtra* {(1992) 3 SCC 106} in which case the appellant was prosecuted for the murder of his wife inside his house. Since the death had occurred in his custody, it was held that the appellant was under an obligation to give an explanation for the cause of death in his statement under Section 313 of the Code of Criminal Procedure. A denial of the prosecution case coupled with absence of any explanation was held to be inconsistent with the innocence of the accused, but consistent with the hypothesis that the appellant was a prime accused in the commission of murder of his wife.

19. Similarly, in *Dnyaneshwar v. State of Maharashtra* {(2007) 10 SCC 445} this Court observed that since the deceased was murdered in her matrimonial home and the appellant had not set up a case that the offence was committed by somebody else or that there was a possibility of an outsider committing the offence, it was for the husband to explain the grounds for the unnatural death of his wife.

20. In *Jagdish v. State of MP* {(2009) 9 SCC 495} this Court observed as follows: (SCC 503, para 22)

“22... It bears repetition that the appellant and the deceased family members were the only occupants of the room and it was therefore incumbent on the appellant to have tendered some explanation in order to avoid any suspicion as to his guilt.”

21. More recently, in *Gian Chand v. State of Haryana* {(2013) 14 SCC 420} a large number of decisions of this Court were referred to and the interpretation given to Section 106 of the Evidence Act in *Shambhu Nath Mehra* was reiterated. One of the decisions cited in *Gian Chand* is that of *State of*

WB v. Mir Mohammad Omar which gives a rather telling example explaining the principle behind Section 106 of the Evidence Act in the following words: (Mir Mohammad Omar case (2000) 8 SCC p 393 para 35)

“35. During arguments we put a question to the learned Senior Counsel for the respondents based on hypothetical illustration. If a boy is kidnapped from the lawful custody of his guardian in the sight of his people and the kidnappers disappeared with the prey, what would be the normal inference if a mangled dead body of the boy is recovered within a couple of hours from elsewhere. The query was made whether upon proof of the above facts an inference could be drawn that the kidnappers would have killed the boy. The learned Senior Counsel finally conceded that in such a case the inference is reasonably certain that the boy was killed by the kidnappers unless they explain otherwise.”

22. The law, therefore, is quite well settled 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.”

23. 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 for attempting to commit suicide and that way the Court below has also been justified to arrive at a conclusion slapping conviction on the accused under Sections 302 and 309 IPC. Accordingly, the judgment impugned calls for no interference

in this appeal.

24. 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/-

(Gautam Chourdiya)
JUDGE