

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
Criminal Appeal No. 140 of 2008

Pardesi Dhanuhar, Aged 32 years, S/o. Baisakhu Dhanuhar,
Occupation- Labour, R/o. Village Gudgud Nayak Tand, Police
Station Gharghoda, District Raigarh (C.G.)

---- APPELLANT

Versus

State of Chhattisgarh, Through- Police Station Gharghoda,
District Raigarh (C.G.)

---- RESPONDENT

For Appellant	:-	Mr. K.K. Singh, Advocate
For Respondent /State	:-	Mr. Avinash K Mishra, Panel Lawyer

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Ram Prasanna Sharma

Judgment on Board By
Prashant Kumar Mishra, J.

20.01.2018

1. The appellant would assail the legality and validity of the impugned judgment whereby the appellant has been held guilty of committing murder of his wife Sukhmat Bai.
2. According to the prosecution, about eight days prior to the date of incident the appellant and his wife had gone to stay in the house of PW-9 Bundari Bai and PW-10 Jandharu, who are his in-laws. The incident occurred at about 9 PM on

30.06.2007. The FIR was lodged by PW-10 Jandharu wherein it is stated that the appellant and the deceased were raising quarrel on everyday. At about 9.00 PM PW-10, Jandharu and his wife had gone to village basti in search of plough. When his wife reached first in point of time to her house, she screamed that the appellant is running away after killing her daughter. PW-10 Jandharu immediately came to his house along with Charandas, Bhikham Prasad and Chamarsingh.

3. During the course of investigation, the axe was recovered from the house of PW-9 Bundari Bai and PW-10 Jandharu consequent to the memorandum statement of the appellant. However, no FSL report is available to connect and prove that it was the same axe which was used for committing murder of the deceased.
4. The prosecution heavily relied on the statement of PW-9 Bundari Bai and PW-10 Jandharu, however, in their Court statement they have clearly admitted during the cross-examination that they have not seen the incident. The other eye-witnesses reached the place of occurrence on being informed by PW-9 Bundari Bai and PW-10 Jandharu, therefore, the other eye-witnesses have also not seen the incident.
5. The question may arise as to the applicability of section 106 of the Evidence Act because as per the FIR and other evidence, the appellant was residing in his in-law's house for about eight days prior to the incident and since the in-laws had gone out to village basti, the appellant and the deceased

were alone in the house, therefore, it was the duty of the appellant to offer explanation about the murder of his wife. We have considered the issue on the anvil of the entire gamut of evidence brought-forth by the prosecution. Even though, the basic prosecution case was that the appellant and the deceased stayed in the house. In their Court statement PW-9 Bundari Bai would state that there was no dispute between her son-in-law i.e. the appellant and the deceased. She says that her son-in-law may have murdered the deceased, however, there is no statement by this witness that at the time of occurrence no other person was present in the house except the appellant and the deceased. Similarly, neither PW-10 Jandharu has seen the incident nor would say that the appellant and the deceased were alone at the time of occurrence. Thus in absence of legally admissible evidence that the appellant and the deceased were alone in the house, the principle under Section 106 of the Evidence Act cannot be applicable.

6. In our considered opinion, in view of the fact that the eye-witnesses have not supported the case of the prosecution and the seizure of axe being insignificant as there is no FSL and serological report and even otherwise, the conviction is not possible only by applying the principle under section 106 of the Evidence Act unless there is strong corroborative evidence. Present is a case of no evidence against the

appellant. The appellant deserves to be and is hereby acquitted of the charges under Section 302 of the IPC.

7. The appeal succeeds and is hereby allowed. The judgment of conviction and sentence is set aside.
8. The appellant is reported to be on bail. His bail bonds are not discharged at this stage and shall remain operative for a further period of six months from today in terms of Section 437-A of the Cr.P.C.

Sd/-
Judge
Prashant Kumar Mishra

Sd/-
Judge
Ram Prasanna Sharma

santosh