

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 453 of 2015

- Charan Sai Dhobi S/o Sukhram Dhobi Aged About 32 Years R/o Village Sarbanja Patrapara, P.S. Kamlesharpur, District Surguja, Chhattisgarh, Civil And Revenue District Surguja, Chhattisgarh,

---- Appellant

In Jail

Versus

- State Of Chhattisgarh Through Police Station Kamleshwarpur, District Surguja, Chhattisgarh.

---- Respondent

For Appellant	:	Shri CJK Rao, Advocate.
For Respondent/State	:	Shri Adil Minhaj, P.L.

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

Judgment on Board by Pritinker Diwaker, J

14/08/2018:

This appeal has been filed against the judgment of conviction and order of sentence dated 30.1.2015 passed by the V Additional Sessions Judge, Ambikapur, Distt. Surguja in Sessions Trial No. 47/2014 convicting the accused/appellant under Section 302 IPC and sentencing him to undergo imprisonment for life with fine of Rs.1000/-, plus default stipulation.

2. As per the prosecution case, on 9.2.2014 dead body of deceased Fulkunwari Bai, wife of the appellant, was found in her bedroom where she was residing along with the appellant. Merg

intimation Ex.P/1 was lodged on 9.2.2014 by PW-1 Sukhram Dhobi, father of the appellant. Soon thereafter FIR (Ex.P/9) was registered against the appellant on the same day under Section 302 of IPC. Inquest over the dead body was conducted on 9.2.2014 vide Ex.P/6. The dead body was sent for postmortem which was conducted on the same day by PW-5 Dr. RS Singh vide Ex.P/16 who noticed multiple contusions over forehead, chick, chin, forearm, left leg and left thigh, fracture of proximal phalanx of right ring finger and intra-cranial hemorrhage at right frontal lobe antero-lateral side. In his opinion, the cause of death was coma due to intra-cranial hemorrhage of head injury and the death was homicidal in nature. On the memorandum of the appellant (Ex.P/10) recorded on 9.2.2014, one club and T-shirt of the appellant were seized vide Ex.P/11 & P/12. However, as per FSL report no blood was found on these articles. While framing charge, the trial Judge framed charge under Section 302 of IPC against the appellant.

3. In order to prove the complicity of the accused/appellant in the crime in question, the prosecution has examined 13 witnesses. Statement of the accused 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 and appreciation of the material available on record, 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 account to the incident and conviction of the appellant is based on circumstantial evidence but none of the circumstances from which inference of guilt of the appellant could be drawn has been proved beyond reasonable doubt and therefore, there can be no inference that it was the appellant who committed murder of the deceased.

(ii) that from the possession of the appellant, though one club is said to have been seized, however, as per FSL report no blood was found on it and as such, this circumstance has also not been proved by the prosecution against the appellant as required under the law.

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. He submits that present is a case of house murder as the dead body of wife of the appellant was found inside the house where the appellant was residing with her and the accused/appellant has failed to give any explanation in his statement u/s 313 of CrPC as to under what circumstances his wife has been killed and therefore presumption goes against him.

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

8. PW-1 Sukhram Dhobi is father of the appellant at whose instance merg intimation and FIR were registered. He has stated that on the date of incident the appellant and the deceased slept in one room and he slept with his grand-children in another room and in the next morning his grand-children informed him that their

mother/deceased is lying dead in her room. PW-2 Raghunath Majhi and PW-4 Budhan Manjhi, witnesses to memorandum and seizure, have not supported the prosecution case and have been declared hostile. However, they have admitted their signature on the documents. PW-3 Karam Sai, witness to inquest Ex.P/6, has turned hostile.

9. PW-5 Dr. RS Singh conducted postmortem on the body of the deceased on 9.2.2014 and noticed multiple contusions over forehead, chick, chin, forearm, left leg and left thigh, fracture of proximal phalanx of right ring finger and intra-cranial hemorrhage at right frontal lobe antero-lateral side. In his opinion, the cause of death was coma due to intra-cranial hemorrhage of head injury and the death was homicidal in nature.

10. PW-6 Vikesh Dhobi, son of the appellant and the deceased, has also stated that on the date of incident he along with his brother and sister had slept in the room of his grand-father whereas his mother/deceased and father/appellant slept together in another room. He states that in the next morning when he went to the room of his mother to wake her up, he found her dead and at that time, his father/appellant was not there. PW-7 Ankesh Dhobi, son of the appellant and the deceased, has also stated that on the date of incident he along with his brother Vikesh and sister Priti had slept in the room of his grand-father and that his father was also present in the house. PW-8 Dhaneshwar Paikra, Patwari, prepared the spot map Ex.P/2. PW-9 Shivbrat Tirky, investigating officer, has duly supported the prosecution case. PW-10 Manmohan, Village Kotwar, went to the place of occurrence with the police and saw the dead body of the

deceased lying on the cot. PW-11 Manorath Yadav and PW-12 Ramsevak, police personnel, assisted in the investigation. PW-13 Kuldeep Kujur, Scientific Officer in Regional FSL, Ambikapur, has proved FSL report (Ex.P/27), according to which no blood was found on the articles seized and sent for examination.

11. Obviously there is no eyewitness account in the present case and the entire case is based on the circumstantial evidence. One of the strongest circumstances against the appellant in this case is that on the date of incident apart from the accused and the deceased no third person was present in the room where the dead body of the deceased was found with number of injuries on her person. In his statement under Section 313 of CrPC the appellant has not offered any explanation as to how the deceased died when there was no other person except the two in the room, except making bald denial of all the circumstances.

12. 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.”

13. Further in the matter of **State of Rajasthan v. Thakur 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.”

14. 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 room of the house where apart from the

accused and deceased, 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 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. Postmortem report of the deceased also supports the prosecution case according to which there were number of injuries on the person of the deceased and her death was homicidal in nature.

15. Thus in view of the aforesaid factual and legal position this Court is of the considered opinion that the trial Court was fully justified in holding the appellant guilty of committing murder of his wife based on house murder theory. Accordingly, the judgment impugned calls for no interference in this appeal.

16. 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