

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 882 of 2011

- Ranvir Lahari S/o Shankar Lal Lahari, aged about 35 year, R/o Chhapora, P.S. Dharseeva, District Raipur (C.G.)

---- Appellant

Versus

- The State of Chhattisgarh Through : Police Station Khamtarai, District Raipur (C.G.)

---- Respondent

For Appellant.	:	Shri A.K. Prasad, Advocate.
For Respondent.	:	Shri Adil Minhaj, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Sanjay Agrawal

Judgment On Board

By Pritinker Diwaker, J

21/03/2018

This appeal arises out of the judgment of conviction and order of sentence dated 29.09.2011 passed by the Sessions Judge, Raipur, in S.T. No.275/2010 convicting the accused/appellant under Section 302 IPC & and sentencing him to undergo imprisonment for life with fine of Rs.1,000/-, in default of payment of fine amount to further undergo R.I. for two months.

02. In the present case name of the deceased is Shanti Bai,

wife of the accused/appellant. As per the prosecution case, on 25.10.2010 at early in the morning, body of the deceased was found inside her room. According to the prosecution, the appellant was a drunkard and after consuming liquor he used to beat deceased and suspect her chastity. After the death of the deceased, a complaint (Ex.P/2) was lodged on 25.10.2010 at 2.15 PM by Smt. Gautam Bai (PW/1), mother of the deceased, followed by FIR (Ex.P/1) at 2.20 PM against the accused/appellant alleging in it that after consuming liquor the accused/appellant used to beat his wife. On 25.10.2010, an inquest on the body of deceased was conducted vide Ex.P/3 and dead body was sent for postmortem examination to Dr. Ambedkar Hospital, Raipur, where Dr. Shivnarayan Manjhi (PW/8) conducted postmortem on the body of deceased and gave his report (Ex.P/6) noticing following injuries:-

- (i) Blackening effect present on left eye with conjunctival hemorrhage.
- (ii) Impacted abrasion present on maxillary region 3 cm diameter underneath red coloured ecchymosis.
- (iii) Contusion present on right breast with size of 17 x 10 cm transversely and same type of contusion also present at upper part of right chest with size of 17 x 20 cm including neck up to the mid-plane region and ribs were intact.
- (iv) Contusion of 4 x 3 cm transversely present on right elbow posterior aspect.
- (v) Contusion of 3 x 3.5 cm transversely present on left elbow posterior aspect.
- (vi) Contusion of 4 x 4.5 cm transversely present

on both side of scapular region.

(vii) Ecchymosis present on occipital region and both parietal eminence with size 3.5 x 3 cm transversely.

(viii) Contusion present on sacral region 6.5 x 5 cm transversely.

(ix) Ecchymosis present on suprasternal notch with size 5 x 3 cm transversely, group of neck muscle contused tracheal ring fractured at multiple site and all around red coloured ecchymosis present and trachea contain blood tinged froth present.

The autopsy surgeon opined the cause of death of deceased to be asphyxia due to throttling and death was homicidal in nature. It has been further opined that neck injuries were sufficient to cause death in ordinary course of nature and injuries were caused by hard and blunt object.

03. After investigation, charge sheet was filed against the accused/appellant under Section 302 IPC and accordingly charge was framed against him by the trial Court.

04. So as to hold the accused/appellant guilty, the prosecution examined as many as 11 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. In defence, three witnesses were also examined.

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 on the previous night of the incident i.e. on 24.10.2010, there was a liquor party in the house of appellant which was attended by as many as four friends of the appellant. Learned counsel submits that on that night the appellant had consumed excessive liquor and became unconscious and when he woke up on the next morning, he found the body of the deceased.

(ii) That the possibility of some third person killing the deceased cannot be ruled out.

(iii) That the prosecution has utterly failed to prove that but for the appellant nobody else could have killed the deceased.

07. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State that present is a case of house murder where accused/appellant was residing along with his wife in a room in question and being an inmate he was under obligation to offer probable acceptable explanation but no such explanation has been offered by him in his statement recorded under Section 313 Cr.P.C. as to how the deceased died. He further submits that the accused/appellant was a drunkard and used to beat his wife as he used to suspect her character. He also submits that as per Ashok Mirja (PW/9), at about 7-7.30 pm, all the so called friend of the deceased had left his house and at that time appellant was all alone along

with the deceased.

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

09. Smt. Gautam Bai (PW/1) is an informant and mother of the deceased. She has stated that the accused/appellant was a drunkard and used to beat her daughter. In cross-examination, she has stated that she never lodged report with regard to beating as it was domestic issue.

10. Smt. Chhunni Bai (PW/2) is aunt of the deceased who reached the place of occurrence after the incident.

11. Ku. Gunja Baghel (PW/3) is sister of the deceased. She has stated that the accused/appellant was in a habit of consuming excessive liquor and that he used to suspect character of the deceased.

12. Lakhani Bai (PW/4) is aunt of the deceased and was residing near the house of accused/appellant. She has stated that after consuming liquor the accused/appellant used to quarrel with the deceased and that she noticed number of injuries on her body.

13. P.L. Sahu (PW/5) is the Patwari who prepared spot map vide Ex.P/5.

14. Dev Vrat @ Viccky (PW/6), son of the deceased, has stated that his father (appellant), after consuming liquor, used to quarrel with his mother and that is why he started living with his maternal grand father. In cross-examination, he has stated that when he went to his mother, he saw his father consuming

liquor with his friends.

15. Smt. Janki Turkane (PW/7), sister of the deceased, has stated that the accused/appellant after consuming liquor used to beat the deceased and that he used to suspect her character. In cross-examination, she states that she came to know that on the date of incident there was some liquor party in the house of appellant with his friends.

16. Dr. Shivnarayan Manjhi (PW/8) conducted postmortem examination on the body of deceased and gave his report (Ex.P/6) opining the cause of death to be asphyxia due to throttling and death was homicidal in nature. It has been further opined that neck injuries were sufficient to cause death in ordinary course of nature and injuries were caused by hard and blunt object.

17. Ashok Mirza (PW/9) is friend of the accused/appellant who on 24.10.2010 had consumed liquor with the appellant. He has further stated that he slept in the house of appellant as he was under high intoxication and at about 7.00 pm he woke up and had gone to his house. On this point, he has been declared hostile. In para 2, this witness has also stated that when he woke up, he saw the appellant and his wife deceased sleeping. He has also stated that he and the appellant had consumed excessive liquor and that his other friends also there.

18. V. Chaturvedi (PW/11) - Investigating Officer has duly supported the prosecution case.

19. Dr. T.K. Sahu (Dw/1) has stated that on the next day of the

incident at about 9.00 am, the accused/appellant came to his house and informed that his wife is not well. He states that he had gone to the house of appellant but without entering his house he advised him to take the deceased to some big hospital. He has further stated that he noticed reddish mark on the head of the deceased.

20. Billu @ Hemant (DW/2) is friend of the appellant who, prior to the date of incident, consumed liquor along with him (appellant).

21. Appellant has examined himself as DW/3 and has stated that on the previous night he consumed liquor along with his friends and thereafter he became unconscious.

22. Close scrutiny of the evidence makes it clear that on the fateful night of 24.10.2010 the accused/appellant was there in his house along with his wife and that he was enjoying liquor party with his friends. On the next morning, body of the deceased was found inside the house. According to PW/9, he enjoyed liquor party in the house of appellant and as he was under high intoxication, he slept in his house. At 7.00 pm, when his intoxication level came down, he woke up and saw the appellant and the deceased sleeping there and thereafter he (this witness) went to his sister's house. Furthermore, according to prosecution witnesses, the appellant, after consuming liquor, used to beat the deceased and suspect her character. That apart, according to postmortem report (Ex.P/6), as many as nine injuries were noticed on her body, cause of

death was asphyxia due to throttling and death was homicidal in nature. It has also come in the postmortem report that neck injury was sufficient to cause death in ordinary course of nature. Undisputedly, the body of deceased found inside the house where accused/appellant was residing along with his wife deceased Shanti Bai.

23. 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 recovered from the house of accused/appellant. The house of the accused/appellant was in the occupation of the two only (deceased Shanti Bai and the accused) & but for saying that he consumed excessive liquor and became unconscious no probable acceptable explanation has been offered by him in his 313 Cr.P.C. statement as to how the deceased died and her body was found inside his house.

24. 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.”

25. Further in the matter of **State of Rajsthan 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.”

26. 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 a house where apart from the accused, deceased was also residing and 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 probable acceptable 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.

27. 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 that way the Court below has also been justified to arrive at a conclusion slapping conviction on the accused under Section 302 IPC. Accordingly, the judgment impugned calls for no interference in this appeal.

28. 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