

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 954 of 2012

- Ramnath

Versus

- State Of Chhattisgarh
-

Judgment for consideration

**JUDGE
10.09.2018**

Hon'ble Shri Justice Pritinker Diwaker

**JUDGE
24.09.2018**

Post for pronouncement of the judgment on 25.09.2018

**JUDGE
25.09.2018**

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HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on : 06.09.2018****Judgment delivered on : 25.09.2018****CRA No. 954 of 2012**

- Ramnath S/o Muneshar Aged About 55 Years R/o Malam Dafai , P.S. Chirmiri, Post Office Haldibadi, distt. Korea C.G. Pin 497451, Chhattisgarh

---- Appellant**Versus**

- State Of Chhattisgarh S/o Through - Chowki Korea Through Police Of P.S. Chirmiri, Post Office Haldibadi, P.S. Chirmiri, Distt. Korea C.G Pin 497451 , Chhattisgarh

---- Respondent

For Appellant	:	Shri Anil Gulati, Advocate
For Respondent/State	:	Shri Ravindra Agrawal, G.A.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Smt. Justice Rajani Dubey

Per Rajani Dubey, J**C A V Judgment****25/09/2018**

This appeal has been preferred against the judgment and order dated 21.09.2012 passed by the First Additional Sessions Judge, Manendragarh, Baikunthpur, district Koriya in Sessions Trial No. 33/2012 convicting the accused/appellant for the offence punishable under Section 302 IPC and sentencing him to undergo imprisonment for life with fine of Rs. 5,000/- with default stipulation.

2. As per prosecution case, FIR (Ex.P-13) was lodged by Ajay Ram son of appellant and the deceased that on 16.12.2011 at about 5.00 p.m. after consuming liquor, his parents came home and started quarreling and at that time he went outside. It is further alleged that at about 7.00 p.m. after taking meals in the house of Vijay Panika, he came home, knocked the door and when nobody opened the door he jumped down the wall, went inside the verandah and knocked the door and his father opened the door and when he went inside, his mother was lying on the floor and blood was coming out from her mouth and nose, her bangles were lying broken. He has further stated that when he tried to waggle her body she was dead. He called the villagers Vijay Uday Bhan and Babulal. Further case of the prosecution is that the accused/appellant told him that as his mother used to quarrel with him after consuming liquor, he assaulted her with hand, fist and kicks and then hit her head on the floor and committed her murder. Merg intimation Ex.P-14 was lodged on 17.12.2011 by son of the appellant informing the police that after consuming liquor there was some quarrel between his mother and father and in anger his father assaulted the deceased and committed murder. Thereafter he called the villagers and they saw that his mother was lying dead. Merg enquiry was registered against the appellant on 17.12.2011 under Section 302 IPC. Meanwhile, inquest Ex. P-4 was prepared and dead body was sent for postmortem examination which was conducted by Dr. Suendra Paikara (PW-07) vide Ex.P-5 and according to him cause of death was shock due to external and internal hemorrhage and death was homicidal in nature. After filing of the charge sheet, trial judge has framed charge

against the accused/appellant under Section 302 IPC.

3. So as to hold the accused guilty, prosecution has examined 15 witnesses in support of its case. Statement of the accused was also recorded under section 313 of the Code of Criminal Procedure in which he denied the charge levelled against him and pleaded his innocence and false implication in the case.

4. After hearing the parties the trial Court has convicted and sentenced the accused/appellant for the offence as mentioned above. Hence the present appeal.

5. Contention of counsel for the appellant is :

i) that the judgment impugned is bad in the eye of law as well as the facts available on record.

ii) the court below has failed to appreciate the evidence and documents available on record and there are major contradictions and omissions in the statement of the prosecution witnesses. None of the witnesses has supported the prosecution case and turned hostile.

iii) the questions framed under Section 313 Cr.P.C. are not properly explained or specifically asked to the appellant which has caused great prejudice to the appellant.

iv) the prosecution has failed to prove the motive because the relation between the husband and wife were cordial.

ii) that the nature of circumstantial evidence is not as such which can be made basis for conviction of the appellant.

6. On the other hand supporting the impugned judgment it has been argued by the State counsel that :

- i) present is a case of house murder and the appellant and the deceased had a quarrel after consuming liquor and out of anger the appellant assaulted and caused her death.
- ii) a very improbable statement has been put forth by the appellant that he has been falsely implicated in the crime in question.
- iii) the witnesses have stated that when they saw the deceased she was dead.
- iv) It is not a case of defence that someone else had entered the house and committed murder of the deceased and thus an improbable explanation given by the appellant is not acceptable.
- v) According to the autopsy surgeon death was homicidal in nature.
- vi) in the merg intimation, appellant had admitted that before the incident, there was some dispute between him and his wife.

7. We have perused the judgment of the learned trial Judge and considered the arguments advanced by learned counsel for the appellants and learned State counsel on the basis of the evidence brought on record.

8. Ku. Deep Shikha Sai (PW-1) is the patwari who prepared spot map. Bhuneshwar (PW-2) and Vijay Kumar Manikpuri (PW-3) are the

witnesses to inquest Ex.P-4 and inquest notice Ex.P-4. Ashok Ekka (PW-5) and Tubiyanus Kujur (PW-6) are the constables who assisted in the investigation. Dr.Surendra Paikara (PW-7) is the autopsy surgeon who conducted postmortem examination on the body of deceased vide Ex.P-5 and according to him cause of death was shock due to external and internal hemorrhage and death was homicidal in nature. Abhas Minj (PW-8) is the constable who had registered the numbered FIR in the police station. Ajay (PW-10) is the son of the deceased and appellant has stated that on the date of incident, his parents went to the market at 4.00 p.m. and he went to the house of his brother Vijay. He has stated that at about 6.00 p.m. he had his meals and at 7.00 p.m. he came home and saw the gate was closed. He jumped down the wall and went inside, pushed the door and saw his mother was lying on the floor and her body was turned upside down, her nose and mouth were bleeding. He has stated that he got scared and went outside and called his brother Vijay, Dilip, neighbour Babulal and others and thereafter ambulance was called, the doctor examined the deceased and informed that she was already dead and then the report was lodged at police station. Merg intimation Ex.P-13 was recorded at his instance. He has stated that on his report, FIR Ex.P-12 was lodged, inquest was prepared. In cross-examination he denied the allegations as has been made against the appellant and has turned hostile. Udaybhan (PW-12) is a witness to inquest Ex.P-4 and inquest notice Ex.P-3. A.R.Manikpuri (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 date of incident it is the accused/appellant who killed his wife by assaulting

with hand, fist, kicks and hitting her head on the floor and informed his son that he had committed the said murder. It is not a case of the appellant that deceased might have been killed by someone else and the defence has been taken by the appellant that when the deceased died he was not present in the house and that he has been falsely implicated.

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. Even the son of deceased (Ajay PW-10) and appellant, who lodged FIR has mentioned in it that on being asked as to how his mother died, appellant informed that some quarrel took place and out of anger he committed murder of his mother (the deceased) but in the court he has turned hostile. Further he has admitted his signature in the FIR and it has been proved by the Investigating Officer. No satisfactory explanation has come from the accused as to how the deceased died when there was no other person inside the house except the two.

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 was inside the house and when his son knocked the door he opened it and on being asked by his son, he told him that after consuming liquor there was some quarrel and out of anger he committed her murder. The death of the deceased in this case undisputedly took place inside the privacy of a 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. 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 Rajsthan 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.

The defence taken by the appellant appears to be highly improbable and therefore considering all the facts and circumstances the court below was fully justified in convicting the accused/appellant for the offence under Section 302 of the IPC. If it is proved that the deceased

died in an unnatural circumstance in her room which was occupied only by her and her husband, law requires the husband to offer an explanation in this behalf. We, however, do not intend to lay down a general law in this behalf as much would depend upon the facts and circumstances of each case. Absence of any explanation by the husband would lead to an inference which would lead to a circumstance against the accused. 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/-

(Rajani Dubey)
Judge