

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 260 of 2012

- Teshuram Sinha S/o Ram Lal Sinha, aged about 40 years, R/o Jamgaon, P.S. Fingeshwar, erstwhile District Raipur, present District Gariyaband (C.G.)

---- Appellant

Versus

- State of Chhattisgarh Through : Police Station Fingeshwar, erstwhile District Raipur, present District Gariyaband (C.G.)

---- Respondent

For Appellant.	:	Shri Vimlesh Bajpai, Advocate.
For Respondent.	:	Shri Anil Pilley, Dy. A.G.

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

Judgment On Board

By Pritinker Diwaker, J

05/03/2018

This appeal arises out of the judgment of conviction and order of sentence dated 19.01.2012 passed by the Additional Sessions Judge, Gariyaband, in S.T. No.27/2011 convicting the accused/appellant under Section 302 IPC & and sentencing him to undergo imprisonment for life with fine of Rs.500/-, in default of payment of fine amount to further undergo R.I. for 10 days.

02. In the present case name of the deceased is Kesar Bai, wife of the accused/appellant. It is alleged that the accused/appellant used to suspect fidelity of his wife Kesar Bai and in the night intervening 11-12/02/2011, he committed her murder by causing several injuries on her head by iron rod. On 12.02.2011 at 7:15 AM, at the instance of Bhuwaneshwar Sinha (PW/6), brother of the deceased, mere intimation (Ex.P/7) was recorded followed by FIR (Ex.P/6) against the accused/appellant under Section 302 IPC. On 12.02.2011, inquest on the body of deceased was conducted vide Ex.P/8 and dead body was sent for postmortem examination to Govt. Hospital, Fingeshwar, where Dr. P. Kudesiya (PW/16) conducted postmortem on the body of deceased and gave his report (Ex.P/17) noticing following injuries:-

- (i) All the skull bones i.e. parietal, occipital and frontal bones were fractured. Face soiled with blood, brain matter protruded which was soiled with blood. Neck, chest and clothes were soiled with blood.
- (ii) Left index finger was fractured. Rigor mortis present in lower limbs. Tongue was between teeth and carina hazy.

The autopsy surgeon opined the cause of death of deceased to be intracerebral hemorrhage due to head injury, mode of death was syncope and death was homicidal in nature.

03. On 12.02.2011, memorandum of the accused/appellant was recorded vide Ex.P/24, based on which, one iron rod and

clothes of accused/appellant and deceased were seized vide Ex.P/25, however, there is no FSL report on record.

04. 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.

05. So as to hold the accused/appellant guilty, the prosecution examined as many as 20 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.

06. 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.

07. Learned counsel for the appellant submits as under :

(i) That there is no eye-witness to the occurrence 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 though on the memorandum of the accused/appellant (Ex.P/24), certain seizures have been affected but there is no FSL report on record.

(iii) That even the motive has not been proved by the

prosecution and the relation between the appellant and the deceased were cordial.

08. 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 accused/appellant was residing along with his wife in the house in question and being an inmate he was under obligation to offer plausible and probable 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.

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

10. Bhewan Singh Dhruv (PW/1) is a Patwari who prepared spot map vide Ex.P/1.

11. Krishna Kumar Gilhare (PW/2) - Constable, assisted in the investigation.

12. Chandrika Bai (PW/3) is neighbour of the deceased to whom Pinky (PW/8) informed that her mother is lying in the injured condition.

13. Dukhiya Bai (PW/4), Tetku Ram (PW/5), Khelan (PW/7) and Keshav Sinha (PW/9) have been declared hostile.

14. Bhuwaneshwar Sinha (PW/6) is brother of the deceased at whose instance merg intimation (Ex.P/7) and FIR (Ex.P/6) was recorded.

15. Pinky (PW/8) is daughter of the deceased aged 9 years and at the time of incident she was 8 years old. Though she has been declared hostile but has admitted the fact that in the night in question, the accused/appellant was there along with the deceased inside the house and in the morning he was not there.

16. Devki Bai (PW/11) is a witness whom the accused/appellant had informed that the deceased was having illicit relation with his brother Tikeshwar (PW/13).

17. Kunjlal Sinha (PW/12), husband of Devki Bai (PW/11), has made almost similar statement as has been made by PW/11.

18. Tikeshwar @ Tiku (PW/13) has been declared hostile.

19. Kumari Bai (PW/14) is a witness to inquest made under Ex.P/8.

20. Motiram Sinha (PW/15) has been declared hostile.

21. Dr. P. Kudesiya (PW/16) conducted postmortem examination on the body of deceased and gave his report (Ex.P/17) opining the cause of death of deceased to be intracerebral hemorrhage due to head injury, mode of death was syncope and death was homicidal in nature.

22. Ramesh Markam (PW/18)-Inspector did part of investigation.

23. Khom Sinha (PW/19) is a witness to memorandum of the accused/appellant (Ex.P/24) and seizure (Ex.P/25).

24. Daksh Kumar Sahu (PW/20) - Investigating Officer, has duly supported the prosecution case.

25. Close scrutiny of the evidence makes it clear that on 12.02.2011 body of the deceased Kesar Bai, wife of accused/appellant, was found inside the house where he was residing along with her. PW/8-daughter of the deceased, has stated that at night her mother Kesar Bai, brother Lucky and father (appellant) were present in the house and in the morning she noticed injuries on the head of her mother Kesar Bai and that his father was not present. After the incident, she went to PW/3 and informed the incident. On the memorandum of accused/appellant (Ex.P/24), iron rod, clothes of deceased and appellant stained with blood were seized, however, there is no FSL report on record. That apart, according to postmortem report (Ex.P/17), skull bones were found to be fractured and cause of death was head injury and death was homicidal in nature. Undisputedly, the body of deceased found inside the house where accused/appellant was residing along with his wife deceased Kesar Bai.

26. 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 in presence of PW/8-minor daughter of the accused/appellant and the deceased. The house of the accused/appellant was in the occupation of the two only (deceased Kesar Bai and the accused) but still no reasonably convincing explanation has been offered by him in his 313 Cr.P.C. statement as to how the dead body of deceased was

found inside his house.

27. 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.”

28. 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.”

29. 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 plausible 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.

30. 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.

31. 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