

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 379 of 2012**

1. Vinod Kumar S/o Bisnath Nai, aged about 24 years, R/o Village Charbhata, PS Khairagarh, District Rajnandgaon, CG

**---- Appellant****Versus**

1. State of Chhattisgarh through District Magistrate, Rajnandgaon, CG

**---- Respondent**


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For Appellant : Dr. Kumaresh Tiwari, Advocate  
For Respondent/State: Shri Ravindra Agrawal, PL

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**Hon'ble Shri Justice Pritinker Diwaker****Hon'ble Shri Justice Sanjay Agrawal****Order On Board by Pritinker Diwaker, J****20/03/2018**

This appeal has been filed against the judgment of conviction and order of sentence dated 26.11.2011 passed by Additional Sessions Judge Khairagarh, District Rajnandgaon in Sessions Trial No. 30/2009 convicting the accused/appellant under Section 302 IPC and sentencing him to undergo imprisonment for life and pay fine of Rs. 1000/-, plus default stipulation.

2. Name of the deceased in the present case is Sarika Bai – wife of the accused/appellant. Their marriage was performed on 8.5.2009 i.e. about a month prior to the date of incident. By occupation, the accused was a barber. It is said that on 5.6.2009 he slit the neck of the deceased with the shaving

razor which resulted in her instantaneous death. On the basis of information given by village Kotwar, police made an entry in the *Rojnamcha* Ex. P-21-C followed by recording of *Dehati merg* Ex. P-13 about the information given by Satrupa Bai (PW-8) - the mother of the accused. *Dehati Nalisi* Ex. P-14 was recorded on 5.6.2009 and thereafter the dead-body was sent for postmortem examination which was conducted by Dr. P.S. Parihar (PW-5) who gave his report Ex. P-10. On the memorandum of accused (Ex.P-4) seizure of shaving razor, a shirt, a pant and the cell phone of father of the accused were seized under Ex. P-6 and P-7. FSL report Ex.P-30 goes to show that blood was present on the razor, shirt and pant. *Merg* intimation Ex. P-23 was recorded on 5.6.2009 followed by registration of FIR Ex.P-4 against the accused/appellant under Section 302 IPC. Court below however framed the charge against him under Sections 302, 304-B and 498-A IPC.

3. In order to prove the complicity of the accused/appellant in the crime in question, the prosecution has examined 14 witnesses. Statement of the accused/appellant under Section 313 Cr.P.C. was also recorded in which he denied his guilt and pleaded innocence and false implication in the case. This apart, one Hansu Ram Sahu (DW-1) has also been examined by the defence.

4. After hearing the parties, the Court below acquitted the accused/appellant of the charge under Sections 304-B and 498-A IPC but has convicted and sentenced him as mentioned

above.

5. Counsel for the accused/appellant submits as under:

(i) That there is no eyewitness to the incident and the entire case of the prosecution is based on circumstantial evidence which is very weak in nature.

(ii) That according to hostile witness Satrupa Bai (PW-8) she saw someone running from the room of the deceased and therefore possibility of some third person committing her murder cannot be ruled out.

(iii) That at the time of incident accused/appellant was not at home and had gone out in connection with his occupation.

(iv) That on the same set of evidence the accused/appellant has been acquitted of the charge under sections 304-B and 498-A and therefore, he is entitled for the same relief under section 302 IPC also.

6. State counsel however supports the judgment impugned and submits that the findings recorded by the Court below convicting the accused/appellant under Section 302 IPC are based on due appreciation of the evidence on record and there is no infirmity in the same. He submits that on the memorandum of accused, shaving razor, pant and shirt have been seized which as per FSL report Ex. P-30 contained blood. He further submits that though there is no serological report on record yet looking to the other material available the FSL report can be treated as additional evidence against the accused. According to the State counsel, no probable

explanation has been offered by the accused at the time of recording of his statement under Section 313 of the Code of Criminal Procedure as to how the dead body of his wife was found in the room where no third person was residing at the relevant time. Even as per the query report Ex. P-11 dated 22.6.2009 given by the doctor (PW-5) injuries present on the body of the deceased could be caused by the razor so seized.

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

8. Manrakhn Sahu (PW-1) - the neighbour of accused/appellant and witness of inquest, spot map, memorandum and seizure has partly supported the case of prosecution by admitting his signature on all these documents. Ram Charan (PW-2) - the father of the deceased has stated that the accused/appellant had demanded Rs. 5000/- which he could not give on account of his poor financial condition and then a week thereafter he received the information regarding the death of his daughter. Arjun Das (PW-3) - the witness to inquest has admitted his signature on the same. Radhika Bai Sen (PW-4) is the mother of the deceased and she too has made the identical allegation against the accused/appellant as her husband (PW-2) has made. Dr. P.S. Parihar (PW-5) is the witness who conducted postmortem examination on the body of the deceased and gave his report Ex. P-10 stating that there was a cut wound in the thyroid cartilage, trachea muscles and dry blood was

present there. Incised wound in the lower part of larynx was also there. Cause of death has been opined to be haemorrhage which was due to cutting of major structure and blood vessels, and the death was homicidal in nature. This witness has further given query report Ex. P-11 dated 22.6.2009 clarifying that the injuries present on the body of the deceased could be caused by the shaving razor so seized. Ravi Sen (PW-6) - the brother of the deceased has stated that the accused had demanded Rs. 5000/- asking him not send the deceased to his house if the amount was not given. Ishwar Sahu (PW-7) - the witness to memorandum, inquest and seizure has admitted his signatures on these documents. Satrupa Bai (PW-8) - the mother of the accused was originally the witness to extrajudicial confession made by the accused before her but in the Court she has resiled from her statement and stated that she saw one person running from the room of the deceased. Pratima Sen (PW-9) - the sister-in-law of the deceased has stated that on hearing the shrieks of her mother-in-law Satrupa Bai (PW-8) she went to the kitchen and saw her lying unconscious. Harsh Nath Yadav (PW-10) is the police constable who assisted in the investigation. Sukh Chand Das (PW-11) is the village Kotwar and witness to seizure of one sealed packet made under Ex. P-19. Sharmaram (PW-12) - another village Kotwar has not supported the case of the prosecution and has been declared hostile. Ramesh Mishra (PW-13) is the investigating officer who has duly supported the case of prosecution. Manish Thakur (PW-14) is the judicial

magistrate who recorded the statement of PW-8 under Section 164 of the Cr.P.C. Hanshu Ram Sahu (DW-1) has stated that at the time of incident the accused was busy in his occupation of shaving in the Panchayat Bhavan and at that time one boy came there and asked the accused to reach home as someone was calling him.

9. Having given thoughtful consideration to the arguments of the counsel for both the sides and minutely gone through the evidence of the witnesses, this Court does not see any factor attributable to the death of the deceased other than his own act of eliminating his newly wed life partner by slitting her neck with the help of shaving razor. Record hints that at the relevant time there was no third person in the house other than the couple. Even parents of the accused were out at the relevant time in connection with their livelihood. Strengthening the case of prosecution, PW-8 – the mother of the accused at the time of recording of *Dehati merg* Ex. P-13, has stated that after she returned from her workplace, her son (accused) had disclosed to her about killing his wife by causing injuries with the help of shaving razor. However, while deposing the things in the Court she resiled from all that and brought in an altogether different picture of having seen some third person getting out of the room of the deceased, which is not at all digestable to this Court keeping in mind the other things on record such as seizure of blood stained shaving razor on his own memorandum. Though the serological report could not be obtained by the prosecution yet looking to other

material pointing a finger at the accused, FSL report stating presence of blood on shaving razor, pant and shirt become an additional evidence against the accused. That apart, postmortem report Ex. P-10 and query report Ex. P-11 dated 22.6.2009 given by the doctor (PW-5) also supports the case of the prosecution which state that the injuries present on the body of the deceased could be caused by the razor so seized.

10. 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.”

11. 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.”

12. 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 and the 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 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. Statement of DW-1 that at the relevant time the accused was somewhere else in connection with his occupation as a barber is not acceptable because even if his version is accepted the fact remains that he (accused) was in the same village. It is not his case that on the date of incident he had gone to some far off place which could not make it possible for him to get back for days together.

13. 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.

14. 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