

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 32 of 2015**

1. Sahdev Majhwar S/o Ransai Majhwar, aged about 31 years, R/o Village Suplaga, PS Kamleshwarpur District Sarguja, CG

---- Appellant**Versus**

2. State of Chhattisgarh through In-charge Police Station Kamleshwarpur, District Sarguja, CG

---- Respondent

For Appellant : Smt. Usha Chandrakar, Advocate
 For Respondent/State: Shri Anil Pillay, Dy. AG

Hon'ble Shri Justice Pritinker Diwaker**Hon'ble Shri Justice Gautam Chourdiya****Judgment On Board by Pritinker Diwaker, J****26/06/2018**

This appeal has been filed against the judgment of conviction and order of sentence dated 19.11.2014 passed by Additional Sessions Judge, Ambikapur (Sarguja) in Sessions Trial No. 05/2014 convicting the accused/appellant under Section 302 IPC and sentencing him to undergo imprisonment for life and pay fine of Rs. 500/-, plus default stipulation.

2. Name of the deceased in the present case is Rajkunwari - wife of the accused/appellant. Case of the prosecution in short is that on 28.10.2013 at about 2 PM the accused/appellant committed the murder of his wife by inflicting a hammer blow on her head, and after doing that he made extra-judicial confession before Chamru Ram (PW-2) and Juthan Majhwar

(PW-7). *Merg* Ex. P-16 was recorded at the instance of Arjun Majhwar (PW-1) on 29.10.2013 at 11 AM followed by registration of FIR at 11.10 AM against the accused/appellant under Section 302 IPC. After making inquest vide Ex. P-6 the dead-body was sent for postmortem examination which was conducted by Dr. Ashok Kumar Jaiswal (PW-9) who gave his report Ex. P-12. At the instance of accused/appellant a hammer made of iron was seized, though FSL report is not on record. After completion of investigation, police filed the *challan* against the accused/appellant u/s 302 IPC followed by framing of charge accordingly by the Court below.

3. In order to prove the complicity of the accused/appellant in the crime in question, the prosecution has examined 11 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.

4. After hearing the parties, the Court below has convicted and sentenced the accused/appellant 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.

(ii) That the circumstances relied upon by the prosecution do not form the complete chain on the basis of which the accused/appellant could be held guilty for commission of murder of his wife.

(iii) That Arjun Manjhwari (PW-1) who lodged the report has not supported the case of prosecution.

(iv) That extra-judicial confession made before PW-2 being a weak type of evidence is not reliable.

(v) That though the hammer has been seized at the instance of the accused, in the absence of FSL report such seizure is of no significance.

(vi) That even if the entire case of the prosecution is taken as it is, accused/appellant cannot be convicted under Section 302 and at best his act would fall under Section 304 (Part-I) or 304 (Part-II) IPC.

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 present is a case of house murder where the accused and the deceased used to live and therefore, it was the bounden duty of the accused to explain the things as to how the death of his wife took place but he has failed to offer any cogent and reliable explanation either in his statement recorded under Section 313 of the Code of Criminal Procedure or by adducing any evidence in this regard. According to the State counsel, conviction of the accused/appellant under Section 302 IPC is fully justified and that his act is squarely covered within the definition of murder contained in Section 300 IPC and does not

fall within any of its exceptions entailing the conviction for a lessor offence. According to him, had the accused/appellant stated anything about some quarrel with the deceased in his statement recorded under Section 313 of the Code of Criminal Procedure in furtherance of which he caused injuries to his wife, certainly the things would have been different. State counsel further submits that looking the nature i.e. fracture of left occipital bone speaks about the intensity of the hammer blow which the accused/appellant had dealt resulting in the death of his wife. He submits that (PW-2) before whom the accused/appellant made extra-judicial confession voluntarily has duly supported the case of the prosecution.

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

8. Arjun Majhwar (PW-1) - the lodger of the report has not supported the case of the prosecution and has been declared hostile. Chamru Ram (PW-2) - the witness before whom the accused/appellant made extra-judicial confession has stated that the accused/appellant came to his house and confessed before him to have committed the murder of the deceased by causing injuries with hammer. He has stated that the accused stayed with him for the night and in the morning he accompanied him to his house and saw the deceased lying dead with injuries on temple. He is also the witness to inquest Ex. P-6. Kamlakant Tiwari (PW-4) is the witness to memorandum (Ex.P-4) of the accused/appellant and seizure of

hammer made under Ex. P-7 who has duly supported the case of the prosecution. Prabhu Das (PW-5) has stated that on being informed by Arjun Majhwar (PW-1) about the incident he went to the house of the accused/appellant but he was not present there and ultimately he was found in the house of Juthan Majhwar (PW-7). Smt. Painki Majhwar (PW-6) has not supported the case of the prosecution and has been declared hostile. Juthan Majhwar (PW-7) though has stated in the examination-in-chief that the accused/appellant made extra-judicial confession before him to have killed his wife but in cross-examination he has resiled from his version and stated to the contrary. Manish Kumar Gupta (PW-8) is the *Patwari* who prepared spot map Ex. P-3. Dr. Ashok Kumar Jaiswal (PW-9) is the witness who conducted postmortem examination on the body of the deceased and gave his report Ex. P-12 stating that he noticed lacerated wound on occipital region and blood was coming out of the ear. Cause of death opined by this witness was coma due to head injury and the death was homicidal in nature. Ram Sewak (PW-10) is the witness who assisted in the investigation. Suresh Kumar Bhagat (PW-11) is the investigating officer who has duly supported the case of the prosecution.

9. Obviously there no eyewitness account in the present case and the entire case is based on the circumstantial evidence. One of the strongest circumstances put down by the prosecution in this case is that apart from the accused and the deceased, no third person was present in the house at the

relevant time. No satisfactory explanation has come from the accused as to how the deceased died when there was no other person except the two. Further, evidence of Chamru Ram (PW-2) - the witness before whom the accused/appellant made extra-judicial confession also appears to be trustworthy where he has stated that the accused/appellant came to his house and confessed before him to have committed the murder of the deceased by causing injuries with hammer and that he stayed with him for the night. PW-2 states that in the morning when he accompanied the accused to his house, deceased lying dead with injuries on temple. This apart, seizure of hammer made at the instance of the accused also speaks of his complicity in the killing of his wife, though there is no FSL report on record.

10. In a 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 but here no such explanation has come either in his statement recorded under Section 313 of the Code of Criminal Procedure nor did he take any defence to this effect by adducing any evidence. 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.”

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.

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/-
(Gautam Chourdiya)
Judge