

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 466 of 2018

- Kanwaldheer S/o Shri Javlal Aged About 35 Years R/o- Village Jatera (Jamtad) P.S. Balrampur, District- Balrampur- Ramanujganj, Chhattisgarh, Civil And Revenue District- Balrampur- Ramanujganj, Chhattisgarh.

---- Appellant

In Jail

Versus

- State Of Chhattisgarh Through- Police Station Balrampur, District- Balrampur- Ramanujganj, Chhattisgarh.

---- Respondent

For Appellant	:	Shri Ajay Mishra, Advocate
For Respondent/State	:	Shri Adil Minhaj, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Gautam Chourdiya

Judgment on board by Justice Pritinker Diwaker

12.09.2018:

This appeal arises out of the judgment of conviction and order of sentence dated 17.1.2018 passed by the Additional Sessions Judge, Ramanujganj, Distt. Surguja (Ambikapur) in S.T.No.162/2012 convicting the accused/appellant under Section 302 of IPC and sentencing him to undergo life imprisonment and pay a fine of Rs.1000/- with default stipulation.

02. As per prosecution case, on 8.3.2012, on the day of Holi, the appellant along with his wife/deceased Phoolbasia had gone to another

village in the house of one Tibhlu Uraon where they had liquor and meals. While returning on bicycle, on the way wife of the appellant being under the influence of liquor laid down. As the appellant was suspecting the character of his wife, he immediately rushed to his house from where he picked up a crowbar and returned to the place where she was lying down, however, she was not found there and on search, was found in the nearby agriculture field and there the appellant assaulted her with crowbar. Thereafter, the appellant considering her to have fallen unconscious brought her in his house, however, after about half an hour she died. In the next morning i.e. 9.3.2012 at 8.30 the appellant lodged merged intimation Ex.P/9 informing the police that it is he who killed the deceased. FIR (Ex.P/10) was also registered at the instance of the appellant under Section 302 of IPC. Inquest on the dead body was conducted on 9.3.2012 vide Ex.P/12. Thereafter, the dead body was sent for postmortem which was conducted on the same day by PW-7 Dr. RS Markam vide Ex.P/7. The autopsy surgeon noticed multiple abrasions over left eyebrow, left mid arm, fracture of left mid arm with crackling sound, rupture of lung, liver & spleen. In his opinion, the cause of death was shock due to hemorrhage as a result of injury to multiple organs and that the death was homicidal in nature. Memorandum of the appellant recorded on 9.3.2012 (Ex.P/15) led to seizure of one crowbar, his T-shirt & towel vide Ex.P/16. However, there is no FSL report on record. Further, case of the prosecution is that the appellant also made extrajudicial confession before PW-5 Ramsai. While framing charge, the trial Judge charged the appellant under Section 302 of IPC.

03. So as to hold the accused/appellant guilty the prosecution examined as many as 09 witnesses. Statement of the accused 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.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellant as mentioned in para-1 of this judgment.

05. Learned counsel for the appellant submits as under:

(i) that the entire case of the prosecution is based on circumstantial evidence but none of the circumstances from which inference of guilt of the appellant could be drawn has been proved beyond reasonable doubt.

(ii) that extrajudicial confession allegedly made by the appellant before PW-5 Ramsai is not specific and it appears that at that time police was also present.

(iii) that seizure of crowbar, T-shirt and towel are of no consequence in absence of FSL or serological report.

(iv) that body of the deceased was found outside the house and therefore, possibility of some third person committing her murder cannot be ruled out.

(v) that merged intimation and FIR lodged by the appellant cannot be used against him.

06. On the other hand, supporting the impugned judgment it has been

argued by the State counsel that dead body has been found in the house of the appellant house and as such present being a case of house murder, the appellant was required to offer probable explanation in his statement u/s 313 of CrPC whereas no such explanation has been offered by him. The trial Court considering all the facts and circumstances of the case has rightly convicted and sentenced the appellant and as such, there is no scope for interference in the judgment impugned.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-1 Baisakhi, PW-2 Tildev, PW-3 Smt. Mamta Devi and PW-4 Ku. Aarti have turned hostile. PW-5 Ramsai, father of the deceased, has stated that relations between the appellant and the deceased were cordial. On the date of incident he came to know that his daughter has been killed by the appellant, on which he went to the place of occurrence where police had already reached. The police asked him to enquire from the appellant as to how she died and when he asked the appellant about the same, he replied to have committed a mistake but did not disclose as to what mistake he had committed.

09. PW-6 Goutamram and PW-9 Dr. Banso Nuruti are formal witnesses. PW-7 Dr. RS Markam conducted postmortem on the body of the deceased on 9.3.2012 and noticed multiple abrasions over left eyebrow, left mid arm, fracture of left mid arm with crackling sound, rupture of lung, liver & spleen. In his opinion, the cause of death was shock due to hemorrhage as a result of injury to multiple organs and that the death was homicidal in nature. PW-8 Anup Ekka, investigating

officer, has duly supported the prosecution case.

10. Admittedly, there is no direct evidence against the appellant showing his complicity in the crime in question and the entire case rests upon circumstantial evidence.

11. Close scrutiny of the evidence makes it clear that it is the appellant who lodged the complaint and FIR stating therein that it is he who killed his wife suspecting her character. Though in his statement u/s 313 of CrPC he denied to have lodged the complaint and FIR and stated that the complaint was lodged by his father-in-law (PW-5 Ramsai) but no suggestion was given to PW-5 in this regard to prove the said fact. The aforesaid fact further stands proved from the evidence of PW-8 Anup Ekka, investigating officer, who recorded the complaint and FIR and stated that the same were lodged by the appellant. His evidence on this point remains unchallenged in the cross-examination. Thus, the first circumstance which goes against the appellant is that he has denied the circumstance duly proved by the prosecution, in his defence statement.

12. In the complaint (Ex.P/9) the appellant has stated that on 8.3.2012 at about 8.30 pm, on the day of Holi, he along with his wife/deceased Phoolbasia had gone to another village in the house of one Tibhlu Uraon where they had liquor and meals and while returning on bicycle to their house, on the way wife of the appellant being under the influence of liquor laid down. As he was suspecting the character of his wife, he immediately rushed to his house from where he picked up a crowbar and returned to the spot where she had laid down, however, she was not found there and on search he found her lying in the

nearby agriculture field, then at about 9 pm assaulted her with the crowbar and considering that she had fallen unconscious brought her in his house where she died after about half an hour. In the FIR (Ex.P/10) almost similar statement has been made by the appellant.

It is settled position in law that confessional part of FIR cannot be used at all against the accused in evidence in view of ban under Section 25 of the Evidence Act but the non-confessional part of FIR can be used against accused to consider his conduct under Section 8 of the Evidence Act. In the present case, as per contents of the FIR lodged by accused/appellant, at the relevant point of time the deceased was in his company. This portion of FIR is non-confessional in nature and therefore the same is admissible in evidence as it come within the sweep of Section 8 of the Evidence Act. As per postmortem report of the deceased, postmortem was conducted on 9.3.2012 at 3.30 pm and the time of death has been opined to be 12-18 hours prior thereto and according to the appellant the deceased died at around 9.30 pm on 8.3.2012. Thus, the timing of death as opined in the autopsy report correspond with the version the appellant.

Further, in the FIR the appellant has also stated that he was suspecting the fidelity of his wife and as such, there was a strong motive with the appellant to do away with his wife. In **Bheru Singh vs. State of Rajasthan** reported in **(1994) 2 SCC 467**, it was held that if motive is possible to be culled out from FIR filed by accused, then such statement of motive is admissible.

13. Apart from the above, the body of the deceased was found in the house of the appellant with number of injuries on her person and

her death has been duly proved by the prosecution to be homicidal in nature. In this view of the matter, as per provisions of Section 106 of the Evidence Act the appellant being the sole inmate of the house in question was required to explain as to how and under what circumstances his wife died because this fact was within his special knowledge. In a case like this when 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 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. In such cases, 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 can not 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 the accused to offer any explanation. However, in the case in hand, no explanation whatsoever has been offered by the appellant in his statement under Section 313 of Cr.P.C. except making bald denial of all the incriminating circumstances.

14. So far as making of extra-judicial confession by the appellant before PW-5 Ramsai is concerned, the same cannot be taken into

consideration against the appellant for the reasons that it appears to have been made in presence of police and further, from the evidence of PW-5 it is not clear as to what mistake the appellant confessed to have committed. It is a settled principle of law in respect of admissibility of extra-judicial confession that it must be voluntary, without any coercion or pressure, and specific whereas in this case, the extrajudicial confession so made by the appellant suffers from the vice of ambiguity and does not appear to have been made voluntarily.

15. Thus, considering the overall evidence on record, the conduct of the appellant during the commission of the offence and subsequent thereto, we are of the opinion that it is the appellant who committed murder of his wife and as such, the trial Court was fully justified in convicting him u/s 302 of IPC.

16. In the result, the appeal fails and is, accordingly, dismissed. The appellant is reported to be in jail, therefore, no order regarding his arrest/surrender etc. is required to be passed.

Sd/

(Pritinker Diwaker)
Judge

Sd/

(Goutam Chourdiya)
Judge