

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1116 of 2012**

- Pramod @ Golu S/o Rameshwar Sahu, aged about 22 years, R/o village Mau, P.S. - Nandghat, District Bemetara (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh Through : Police Station Nandghat, District Bemetara (CG)

---- Respondent

For Appellant	:	Shri C.R. Sahu, Advocate
For Respondent/State	:	Shri Vaibhav Goverdhan, Panel Lawyer

Hon'ble Shri Justice Pritinker Diwaker**Hon'ble Shri Justice Sanjay Agrawal****Judgment on Board by Pritinker Diwaker, J****26/02/2018**

This appeal arises out of the judgment of conviction and order of sentence dated 19.10.2012 passed by the Additional Sessions Judge, Bemetara, Civil District Durg, in Sessions Trial No. 54/2011 convicting the accused/appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life with fine of Rs. 1000/-, plus default stipulation.

02. As per the prosecution case, deceased Madhuri Sahu, aged about 18 years, was having affair with the accused/appellant for the last three years prior to the date of incident i.e. 07.05.2011. On 07.05.2011, when family members of accused/appellants had gone to attend some marriage, deceased Madhu Sahu came to the house of accused/appellant where they had some hot talk as deceased informed the accused/appellant that her marriage is going to be

solemnized with someone else. It is alleged that feeling annoyed with the decision of the deceased, accused/appellant strangled her. When deceased Madhuri Sahu did not return, in the night and in the morning also she was contacted on her telephone by Nand Kumar Sahu (PW/16), brother of the deceased, and the deceased informed him that she is with her friend at village Jhiria and would come at morning. When in the morning also the deceased did not return, Parmila Sahu (PW/15), mother of the deceased, had gone to the house of the accused/appellant and during search she found the body of deceased lying in the courtyard of the accused/appellant. At the instance of Ankalaha Ram Sahu (PW/14), father of the deceased, merg intimation (Ex.P/14) was recorded on 07.05.2011 followed by dehati nalisi (Ex.P/15) under Section 302 of IPC. Based on said dehati nalisi, FIR (Ex.P/18) was registered against the accused/appellant on 08.05.2011 under Section 302 of IPC. On 07.05.2011, inquest on the body of deceased was conducted vide Ex.P/2. Body was sent for postmortem examination which was conducted on 08.05.2011 by Dr. Shashikant Swarnkar (PW/11) and Dr. T.N. Mahingleshwar (PW/12) who gave their report (Ex.P/12) noticing following injuries:-

- (i) Contusion with abrasion of 6 cm x 1 cm on right shoulder on anterior aspect, bluish black in colour due to hard and rough surface object.
- (ii) Linear abrasion of 3 cm on left anterior aspect of upper part of left arm.
- (iii) Abrasion of 4 cm x 1/2 cm over middle of left arm on anterior aspect.
- (iv) strangulation mark of 20 cm x 4.5 cm over the throat and both side of neck. On dissection subcutaneous tissue found to be congested.

- (v) Multiple abrasion of 1 cm x 0.5 cm, 1.3 cm x 0.3 cm, 0.75 cm x 0.5 cm over right side of neck.
- (vi) Contusion of 6 cm x 1 cm on lower 3rd of right leg on lateral aspect, bluish and transverse in direction.
- (vii) Bruise of 9 cm x 1 1/2 cm on lateral aspect of lower 3rd of right thigh.
- (viii) Injury No.6 and 7 were caused by hard and blunt object.

The autopsy surgeon opined the cause of death of deceased to be asphyxia due to throttling and smothering and death was homicidal in nature. Autopsy surgeon further opined that injury No.6 and 7 were caused by hard and blunt object. After filing of charge sheet, the trial Court framed the charge against the accused/appellant u/s 302 IPC.

03. In order to prove the complicity of accused/appellant in the crime in question, the prosecution has examined 20 witnesses. Statement of the accused under Section 313 Cr.P.C. was also recorded in which he denied his guilt and pleaded innocence and false implication in the case.

04. After hearing the parties the Court below has convicted and sentenced the accused/appellant as mentioned above in paragraph No.1 of this judgment.

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

- (i) That there is no eyewitness account in this case and the accused/appellant has been convicted solely on the basis of circumstantial evidence but the circumstances on which the prosecution has relied upon are not sufficient to connect the accused/appellant with the crime in question.

(ii) That the place where the body of deceased has been found was accessible to anyone and, therefore, possibility of the deceased being killed by some third person cannot be ruled out.

(iii) That on the memorandum of the accused/appellant (Ex.P/6), cell phone of the deceased has been seized vide Ex.P/7 but the witnesses to the said memorandum have not supported the prosecution case.

06. On the other hand, supporting the judgment impugned it has been argued by the State counsel that undisputedly, at the time of occurrence, accused/appellant and the deceased were alone in the house as other family members of the appellant had gone to other village to attend wedding ceremony and the dead body has been found inside the house of the accused/appellant. It has been further argued that in a case of house murder it was the bounden duty of the appellant to offer plausible explanation but no such explanation has been offered by the accused/appellant and, therefore, in view of provision of Section 106 of the Evidence Act, the conviction of the accused/appellant is strictly in accordance with law.

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

08. Tikaram Sahu (PW/1) is a witness to inquest Ex.P/2, memorandum of accused/appellant (Ex.P/6) and seizure made vide Ex.P/7.

09. Smt. Chameli Nishad (PW/2) is a witness to inquest (Ex.P/2).

10. Rameshwar Sahu (PW/3) is also a witness to inquest made under Ex.P/2. He has stated that he saw the body of deceased in the courtyard of the accused/appellant, however, the place where body of deceased was found, was accessible to anyone.

11. Onkar Sahu (PW/4) and Arjun Sahu (PW/5) are the witnesses to seizure (Ex.P/10) by which ear ring of the deceased was seized.

12. Mithilesh Sahu (PW/6) is a witness from whose cell phone call was made by brother of the deceased.

13. Mahesh Kumar (PW/7), witness to memorandum of the accused/appellant (Ex.P/6) and seizure made under Ex.P/7, has turned hostile.

14. Ku. Mithilesh @ Puniya (PW/8), sister of the appellant, has stated that on 06.05.2011, a day prior to the incident, she along with her parents had gone to village Kuwa to attend marriage ceremony in the house of her aunt and that the appellant was alone in the house. She has further stated that when she along with her parents came back to their house, mother of the deceased had also come to their house and inquired about the deceased, on which, the accused/appellant showed his ignorance. Thereafter, mother of the deceased went towards courtyard searching her daughter and found dead body of the deceased.

15. Rameshwar Prasad Sahu (PW/9), father of the appellant, has also stated that on the fateful day he had gone to other village along with his family members and accused/appellant was all alone in the house. He has further stated that when he returned back to home, mother of the deceased also came there and inquired about her daughter from appellant, and appellant shown his ignorance. Thereafter, mother of the deceased searched her in his house and found dead body of her daughter in the courtyard.

16. Dr. Shashikant Swarnkar (PW/11) and Dr. T.N. Mahingleswar (PW/12) conducted postmortem examination on the body of deceased and gave their report (Ex.P/12) opining the cause of

death of deceased to be asphyxia due to throttling and smothering and death was homicidal in nature.

17. Ankalram Sahu (PW/14), father of the deceased, has stated that a day prior to the incident, deceased had left the house and did not return. Thereafter, his son Nand Kumar (PW/16) talked to her on cell phone and the deceased informed him that she would come after some time. He has further stated that when deceased did not come at night, his son again made a call to her and he was informed by her that she is coming but she did not. Next morning also she was contacted over telephone by his son but despite assurance she did not return and in the afternoon her body was found lying in the house of accused/appellant. This witness has also stated that marriage of the deceased was to take place within 2-3 days.

18. Smt. Parmila Sahu (PW/15), mother of the deceased, has made almost similar statement as has been made by PW/14. This witness has stated that when the deceased did not return house, she had gone to the house of appellant and found the body of deceased.

19. Nand Kumar Sahu (PW/16), brother of the deceased, has made almost similar statement as has been made by PW/14 and PW/15.

20. Anup Kumar Bajpai (PW/17) - Investigating Officer, has duly supported the prosecution case.

21. Sunil Kumar Singh (PW/18) - Constable, assisted in the investigation.

22. Nehram Khare (PW/19) is the Patwari who prepared spot map vide Ex.P/11. According to him, there was 25 feet long wall to the

thrashing field having a door and the height of the same was about 10 feet.

23. Dr. G.S. Thakur (PW/20) medically examined the accused/appellant vide Ex.P/28 and found him capable of performing sexual intercourse.

24. Admittedly, there is no eyewitness account in the present case and the entire case is based on the circumstantial evidence.

25. Close scrutiny of the evidence makes it clear that on 06.05.2011, deceased had left her house and when she did not return after considerable period, she was contacted over cell phone by her brother PW/16 and it was informed by the deceased that she would come after some time. When she did not return at night, she was again contacted and it was again informed by her that she would come in morning. When in the morning also deceased did not return, Parmila Sahu (PW/15), mother of the deceased, had gone to the house of the accused/appellant and during search she found the body of the deceased lying in the courtyard of the accused/appellant. Further, it is admitted fact that since 06.05.2011 the accused/appellant was all alone in his house as his family members had gone to other village to attend the marriage ceremony and the body of deceased was found in the courtyard of his house. Though, it has come in the evidence that the place where body of deceased has been found, was accessible to everyone, but according to evidence of Patwari (PW/19), there was 25 feet long wall near thrashing field having door and the height of wall was about 10 feet, meaning thereby it was not easily accessible to anyone. In para 4 of his cross-examination, he has stated that he is not aware whether the door of thrashing field used to remain open or not and anyone can get access easily for taking

water from bore-well. On 07.05.2011, body of deceased was found in the house of appellant and no third person was present in the house at the relevant time. No satisfactory explanation has come from the accused in his statement recorded under Section 313 Cr.P.C. as to how the deceased died when there was no other person except the two.

26. In case where house murder is the issue, heavy burden is on the shoulders of 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 as per the evidence of the witnesses, the marriage of the deceased was to take place within 2-3 days with someone else and as per memorandum of the accused/appellant (Ex.P/6), he was having affair with the deceased for the last few years. 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.”

12. Further in the matter of **State of Rajasthan v. Thajkkur 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.”

27. 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 accused/appellant and the deceased were alone and family members of the accused/appellant had gone to some other village to attend marriage ceremony 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 deceased occurred when there was no third person available at the relevant time and it was his bounden duty to explain the things by leading cogent and pin-pointed evidence in his defence.

28. 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 deceased 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.

29. 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