

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 249 of 2012**

1. Larha Ram, son of Thupu Ram Rajwade, aged about 45 years, Occupation Agriculturist, R/o Sulesa Chowki Pandrapath, PS Bagicha, District Jashpur, CG

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

1. State of Chhattisgarh through Police Station Bagicha, District Jashpur, CG

**---- Respondent**


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For Appellant : Raghvendra Verma, Advocate  
For Respondent/State: Shri Avinash K. Mishra, PL

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**Hon'ble Shri Justice Pritinker Diwaker****Hon'ble Shri Justice Sanjay Agrawal****Order On Board by Pritinker Diwaker, J****28/03/2018**

This appeal has been filed against the judgment of conviction and order of sentence dated 04.01.2012 passed by Sessions Judge Jashpur in Sessions Trial No. 76/2010 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. Case of the prosecution in short is that on 22.7.2010 there was some dispute between the accused and the deceased, who happened to be husband and wife, where the accused is said to have given a club blow on the neck and head of the deceased. As a result of assault, deceased became almost unconscious and on the second day i.e.

23.7.2010 in between 9 and 11 AM she died. Thereafter, accused narrated the incident to Sanal Ram (not examined) at whose instance un-numbered *merg* Ex. P-5 was recorded on 24.7.2010 followed by un-numbered FIR Ex.P-6. After carrying out Inquest vide Ex. P-9 the dead body was sent for postmortem examination which was conducted by Dr. R.N. Dubey (PW-9) who gave his report Ex. P-11-A. On the memorandum of accused Ex. P-12 seizure of club was made under Ex. P-13 which as per FSL report Ex.P-18 was stained with blood. Thereupon, numbered FIR (Ex.P-4) was also registered against the accused/appellant for the offence punishable under Section 302 IPC. After completion of investigation police filed the *challan* against him 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 09 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 which is very weak in nature.

(ii) That even if the accused/appellant could not give

satisfactory explanation about the death of the deceased in the house, on this ground alone his conviction cannot follow. Supporting this argument reliance is placed on the decision of the Supreme Court in the matter of **Anjan Kumar Sarma and others v. State of Assam** reported in **(2017) 14 SCC 359**.

(iii) That even Sanal Ram to whom the accused/appellant is said to have disclosed the entire incident has not been examined by the prosecution.

(iv) That even if the entire case of the prosecution is taken as it is, act of the accused cannot travel beyond section 304-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 Sudarshan Ram (PW-8) saw the deceased and the accused quarreling, and since the body of the deceased was found inside the house in occupation of the couple alone, he was the only person who could know the entire state of affairs but surprisingly he has not offered any satisfactory explanation in his statement recorded under Section 313 of the Code of Criminal Procedure. He further submits that on the memorandum of accused Ex. P-12, seizure of club was made under Ex. P-13 which as per FSL report was stained with blood

and therefore looking to all this, his active role in commission of murder of his wife cannot be doubted.

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

8. Sudarshan Ram (PW-8) has stated that on the date of incident at about 8 PM he met the accused on the way, accompanied him to his house and took the liquor offered by him. He has stated that the accused picked up quarrel with his wife (deceased) and catching her by hair started dashing her head against the wall. He has further stated that when tried to separate the two, accused bit his hand by teeth. According to this witness, the accused dashed the head of the deceased against the wall two three times and that on the next day he came to know through some Arjun Gupta about her murder. Statement of this witness about the deceased being beaten by the accused remained unchallenged as no relevant question in this respect was put to him in his cross examination. Dr. R.N. Dubey (PW-9) is the witness who conducted postmortem examination on the body of the deceased and gave his report Ex. P-11-A stating therein that on account of decomposition foul smell was emanating from the dead body; lacerated wound was there on her right leg in the size of 5 x 6 x 2 cm; hyoid bone was fractured; both lungs were congested, and that cause of death was asphyxia on account of injury on the neck wind pipe (throttling). Death has been opined to be homicidal in nature. Admon Xess (PW-6) is the investigating

officer who has duly supported the case of the prosecution. Tarshius Khalko (PW-4) is the witness who recorded numbered *merg* Ex. P-3 and FIR Ex. P-4. Robert Toppo (PW-5) is the witness who recorded un-numbered *merg* Ex. P-5 and un-numbered FIR Ex. P-6. Buddheswar (PW-1) has also stated that he was told by his brother Kaleshwar (not examined) that the deceased was killed by the accused, and that on hearing this he went to the house of the deceased and found her dead.

9. Having thus heard the arguments of counsel for both the sides and perused the material collected by the prosecution in particular the evidence of PW-8 and PW-1, this Court has no hesitation in holding the accused/appellant guilty for committing the murder of his own wife. From the evidence of PW-8 who just a day before the incident happened to visit the house of accused/appellant it is clear that there was a quarrel between the deceased and the accused and in furtherance of that accused had caught hold of hair of the deceased and dashed her head against the wall two-three times. Evidence of PW-8 further speaks that when he tried to save the deceased, accused bit his right hand with teeth and then on the next day he came to know about this tragic incident. This apart, Buddheswhar (PW-1) - son of the deceased has stated that on the date of incident he was in village Kamarima where his brother Kaleshwar (not examined) came and informed about the deceased being killed by the accused and that when he came to his village, his mother was found to be dead. This witness has stated that when he

reached his village, Sanal Ram - brother of the accused informed him that the accused had told him of killing the deceased. Record does not speak of any third person present in the house where the incident took place and being so it was for the accused to explain as to how his wife died but except going on the denial mode, he has not given any satisfactory explanation in his 313 Cr.P.C. statement as to how all that happened. Furthermore, on the memorandum of accused Ex. P-12, seizure of club was made under Ex. P-13 which as per FSL report Ex. P-18 was stained with blood.

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 Sernioir 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. In the case in hand, the death of the deceased 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. The judgment sought to be pressed into service by the counsel for the accused has no bearing on the case in hand as the facts of that case are quite distinguishable from that of the present ones.

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