

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
Criminal Appeal No.183 of 2013

Maniram Manjharwar S/o Lori Ram Manjharwar Aged About 30 Years R/o Shrimar, Ps Kartala, Distt. Korba C.G. , Chhattisgarh

---- Appellant

Versus

State Of Chhattisgarh Through P.S Kartala, Distt. Korba C.G. , Chhattisgarh

---- Respondent

For Appellant: Shri Govind Ram Miri along with Shri Basant Kaiwartya, Advocates.

For Respondent/State: Shri Adil Minhaj, Panel Lawyer

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Sanjay Agrawal
Judgment on Board

Per Pritinker Diwaker, Judge

01/03/2018

1. This Appeal has been preferred against the judgment and order dated 04.01.2013 passed by the Sessions Judge, Korba, District Korba (CG) in Sessions Trial No.99/2011 convicting the accused/Appellant for the offence punishable under Section 302 IPC and sentencing him to life imprisonment and fine of Rs.1,000/- with usual default stipulations.

2. In the present case, name of the deceased is Samarin Bai, wife of the Appellant. On 17.09.2011, the accused/Appellant killed his wife Samarin Bai by causing several injuries to her. On the next day i.e. on 18.09.2011, the Appellant lodged merged intimation (Ex.P-11) informing the police that the deceased died due to epilepsy. Inquest on the dead body was prepared vide Ex.P-3 on 18.09.2011 and the body was sent for postmortem, which was conducted on the same day vide Ex.P-8 by Autopsy Surgeon Dr. Kumar Pushpesh (PW-4). As per autopsy, he noticed the following 13 injuries:-

(I) incised wound on just above the left eyebrow measuring 3 ½ x ½

cms,

- (II) stab wound just below the left eye measuring 1cm x $\frac{1}{4}$ x $\frac{1}{2}$ cm,
- (III) lacerated wound on the left side of the upper lateral lip measuring $\frac{1}{2}$ x $\frac{1}{2}$ cm x $\frac{1}{2}$ cm,
- (IV) Bruise over left eye,
- (V) Multiple linear abrasions on the left side of the chest,
- (VI) Redness on the left side of chest and on skin sternum region,
- (VII) Abrasion on both elbow joints posterior side measuring 1 cm x 1 cm,
- (VIII) two parallel contusions over below scapula and back of upper abdomen measuring 15 cm x $\frac{1}{2}$ cm,
- (IX) Two linear abrasions measuring 5 $\frac{1}{2}$ cms x $\frac{1}{2}$ cm on the back of lower abdomen,
- (X) Abrasion on the left side of upper buttock measuring 1 cm x 1 cm,
- (XI) Bruises over whole of back of abdomen,
- (XII) Bruises over right scapular region and
- (XIII) Abrasion on left knee joint measuring 1 $\frac{1}{2}$ cm x 1 cm in anterior aspect.

According to him, cause of death was coma due to shock as a result of intracranial haemorrhage and he further opined the death was homicidal in nature. On 22.09.2011, vide Ex.P-10, First Information Report was lodged against the Appellant under Section 302 IPC by Jot Singh (PW-5), the brother-in-law of the Appellant at the instance of police. On 22.09.2011 itself, memorandum of the accused/Appellant (Ex.P-6) was recorded on the basis of which, seizure of club (Ex.P-7) was made. After filing the charge sheet, the trial Judge has framed the charge against the Appellant under Section 302 IPC.

3. In order to establish the guilt of the accused/Appellant, prosecution has examined 10 witnesses. Statement of the accused/Appellant was recorded

under Section 313 Cr.P.C in which, he denied the charges levelled against him and pleaded his innocence and false implication in the case.

4. After hearing the parties, the trial Court, by the judgment impugned, has convicted and sentenced the accused/Appellant as mentioned in paragraph-1 of the judgment. Hence, the present Appeal.

5. Learned Counsel for the Appellant submits that :-

- (i) that there is no eyewitness to the occurrence and conviction of the Appellant is based on the circumstantial evidence but none of the circumstances from which the inference of guilt of Appellant can be drawn has been proved beyond reasonable doubt and therefore, there can be no inference that it was the Appellant, who has committed the murder,
- (ii) the witnesses of extra judicial confession namely Ram Singh (PW-1) and Jot Singh (PW-5) have not supported the case of the prosecution,
- (iii) that the injury found on the body of the deceased could not have been caused by the club,
- (iv) that the body has been found in the *verandah* of the house and thus, it cannot be said that it is the Appellant who could have killed the deceased,
- (v) that even accepting the prosecution case as it is, considering the nature of injuries, which were caused by the Appellant without there being any premeditation, at best, the Appellant is liable to be convicted under Section 304 Part-II or Part-I IPC.

6. On the other hand, supporting the impugned judgment, it has been argued by learned State Counsel that:-

- (i) present is a case of house murder and no probable explanation has been offered by the Appellant in his statement recorded under Section 313 Cr.P.C or by examining any independent witness,
- (ii) the Appellant though killed the deceased by causing number of injuries to her, but while lodging the merg intimation, he offered false explanation that the deceased died due to epilepsy attack,
- (lii) that as per the postmortem report, the deceased died homicidal death and offering a false explanation by the Appellant can be treated as an additional link to the circumstantial evidence,
- (iv) that the place where the body has been found is the house of the Appellant,
- (v) that Ram Singh (PW-1), though has been declared hostile, is a witness of extra judicial confession made before him by the Appellant. But in paragraph-4 of his deposition, he has admitted the fact that he did made the statement before the police (Ex.P-1) about the extra judicial confession being made by the Appellant.

7. We have heard learned Counsel for the parties and perused the material available on record.

8. Ram Singh (PW-1) and Lekhram (PW-2) have not stated anything and have been declared hostile. Rathram (PW-3) and Mohit Ram (PW-7) are the witnesses of inquest. Dr. Kumar Pushpesh (PW-4) is the Autopsy Surgeon, who conducted the postmortem examination and opined that the cause of death was coma due to shock as a result of intracranial haemorrhage. Jot Singh (PW-5), the witness of extra judicial confession has also not stated anything and has been declared hostile. He however supported the case of the prosecution by lodging First Information Report. Sukh Singh (PW-6), who is a witness of arrest memo (Ex.P-4), spot map (Ex.P-5), memorandum (Ex.P-6) and seizure (Ex.P-7), has not stated anything and has been declared hostile. Kedarnath Singh (PW-8) is the Investigating Officer. Sahukar Khandekar (PW-9) and Ashwani Rathore (PW10) have assisted in the investigation. On the memorandum of the accused/Appellant (Ex.P-6), club was recovered vide seizure memo (Ex.P-7). However, there is no FSL report in this regard to confirm the origin of blood.

9. Close scrutiny of the evidence makes it clear that on 17.9.2011, Appellant committed murder of his wife by causing several injuries on her body. As per the autopsy report, as many as 13 injuries were found on the body of the deceased. According to Autopsy Surgeon Dr. Kumar Pushpesh (PW-4), cause of death of deceased was coma due to shock as a result of intracranial haemorrhage.

10. Instead of informing the police that it is he who caused the injuries to the deceased while lodging the merg, the Appellant offered false explanation to the police by stating that the deceased died due to epilepsy attack. It is settled position of law that offering a false explanation by the Appellant can be treated as an additional link to the circumstantial evidence. Furthermore,

present is a case of house murder, where the dead body of the deceased has been found in the *verandah* of the house where both the Appellant and his wife were residing and in the statement of the Appellant recorded under Section 313 Cr.P.C, no probable and plausible explanation has been offered by him.

11. In a case where house murder is the issue, heavy burden is on the 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 after committing the murder, the Appellant offered false explanation to the police by stating that the deceased died due to epilepsy attack. The death of the deceased in this case undisputedly took place inside the privacy of a house where apart from the accused, his wife/deceased was also residing 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 explanation has come forth from the accused/Appellant in his statement recorded under Section 313 Cr.P.C 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. While dealing with the matter involving the murder committed inside the house, it has been held by the Apex Court in the matters of Trimukh Maroti Kirkan vs. State of Maharashtra reported in **(2006) 10 SCC 681**, State of Rajasthan vs. Thakur Singh reported in **(2014) 12 SCC 211**, Jagdish vs. State of M.P reported in **[(2009) 9 SCC 495]** and Gian Chand vs. State of Haryana reported in **[(2013) 14 SCC 420]** 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. We find no substance in the argument of the learned counsel for the Appellant that he is liable to be convicted for lesser offence because the Appellant has failed to adduce any evidence as to in what manner, the incident occurred. Instead of adducing such evidence, the Appellant offered false explanation that the deceased died after suffering epilepsy attack. In absence of any positive evidence that the incident occurred all of a sudden without there being any premeditation, it is difficult for us to convert the offence of murder into some lesser offence.

13. Though the witnesses of extra judicial confession namely Ram Singh (PW-1) and Jot Singh (PW-5) have not supported the case of the prosecution, but Ram Singh (PW-1) in paragraph-4 of his deposition has admitted the fact that he did made the statement before the police (Ex.P-1) about the extra judicial confession being made by the Appellant. Further, considering the fact that present is a case of house murder and in view of the settled position of law, we are of the view that the trial Court was justified in convicting the Appellant under Section 302 IPC. Accordingly, the judgment impugned calls for no interference in this Appeal.

14. The Appeal thus being devoid of any substance, is liable to be and is hereby dismissed. Judgment impugned is affirmed. Being already in jail, no order regarding arrest etc. of the accused/Appellant is needed.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(Sanjay Agrawal)
JUDGE