

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 214 of 2013

- Sahdev Manjhi S/o Shri Nanki Ram Manjhi Aged About 44 Years
R/o Village Tumidih, PS Punjipathra, Distt. Raigarh C.G.

---- Appellant

In Jail

Versus

- State Of Chhattisgarh Through In-Charge Station House Officer,
Thana - Punjipathra, Distt. Raigarh C.G.

---- Respondent

For Appellant	:	Shri Vivek Shrivastava, Advocate.
For Respondent/State	:	Shri Ravindra Agrawal, P.L.

Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Smt. Justice Rajani Dubey

Judgment on Board by Pritinker Diwaker, J

31/08/2018:

This appeal has been filed against the judgment of conviction and order of sentence dated 3.8.2012 passed by First Additional Sessions Judge, Raigarh (CG) in Sessions Trial No.94/2010 convicting the accused/appellant under Section 302 IPC and sentencing him to undergo imprisonment for life with fine of Rs.500/- plus default stipulation.

2. As per the prosecution case, on 9.6.2010 there was quarrel between the appellant and the deceased as the deceased had not gone to her agriculture field. It is said that the appellant caused multiple injuries to the deceased with axe resulting in her instantiates death. Dead body of the deceased was found in the veranda of the house.

PW-2 Manoj Kumar, PW-3 Vilas Kumar and PW-6 Purnima Manjhi, minor children of the appellant and the deceased, were present in the home, but they have not fully supported the prosecution case. PW-7 Abhimanyu, eldest son of the appellant and the deceased, when returned from his work place, found dead body of the deceased lying in the house and at his instance merger intimation (Ex.P/9) and FIR (Ex.P/10) were registered against the appellant u/s 302 of IPC. Inquest over the dead body was conducted on 9.6.2010 vide Ex.P/2. The dead body was sent for postmortem which was conducted on the same day by PW-16 Dr. Dhansingh Painkra vide Ex.P/9 who noticed homicidal wounds on chin, neck, cut of mandible bone, cutting of trachea and jugular vein, wounds over right arm and left shoulder joint. In his opinion, the cause of death was shock (excessive bleeding) caused by hard and sharp object leading to cardio-respiratory arrest and that the death was homicidal in nature. On 9.6.2010 itself memorandum of the accused/appellant (Ex.P/15) was recorded which led to recovery of bloodstained axe and shirt of the appellant (Ex.P/16) and as per FSL report (Ex.P/22) blood was found on the aforesaid articles. While framing charge, the trial Judge charged the appellant under Section 302 of IPC.

3. In order to prove the complicity of the accused/appellant in the crime in question, the prosecution has examined 16 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.

4. After hearing the parties and appreciation of the material

available on record, the Court below has convicted and sentenced the accused/appellant as mentioned above in paragraph No.1 of this judgment.

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

(i) that there is no eyewitness account to the incident and conviction of the appellant 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 and therefore, there can be no inference that it was the appellant who committed murder of the deceased.

(ii) that from the possession of the appellant, though axe and his shirt are said to have been seized and the FSL report is also positive, however, in absence of serological report confirming the origin and group of the blood so found, this circumstance cannot be taken against the appellant.

(iii) that one of the circumstances heavily relied upon by the trial Court for convicting the appellant is recovery of dead body of the deceased from the house of the appellant whereas this itself is not sufficient to uphold his conviction and in the given facts and circumstances of the case, the possibility of deceased being killed by some other person cannot be ruled out.

(iv) even if the entire prosecution case is taken as it is, it appears that out of anger the appellant caused some injuries to the deceased which unfortunately led to her death and therefore, at best the appellant can be held guilty under Section 304 Part-I of II of IPC and not 302 of IPC as has been held by the trial Court.

6. On the other hand, State counsel while supporting the judgment impugned has submitted that the findings recorded by the Court below convicting the accused/appellant under Section 302 are strictly in accordance with law and there is no infirmity in the same. He submits that present is a case of house murder as the dead body of wife of the appellant was found inside the house where the appellant was residing with her and the accused/appellant has failed to give any explanation in his statement u/s 313 of CrPC as to under what circumstances his wife has been killed and therefore presumption goes against him. Further, on the memorandum of the appellant, axe and his shirt were seized which had blood stains as per FSL report. Though there is no serological report in respect of the said blood, however, in the facts of the present case, this circumstance can be safely taken as an additional evidence against the appellant.

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

8. PW-1 Usritlal is a witness to inquest. PW-2 Manoj Kumar & PW-3 Vilas Kumar, minor children of the appellant and the deceased, have turned hostile. PW-4 Karam Singh Rathia, Patwari, prepared the spot map Ex.P/3. PW-5 Jagannath Prasad Sahu, Police Constable, assisted in the investigation. PW-6 Poornima Manjhi, daughter of the appellant and the deceased, has also turned hostile. However, on further cross-examination by the prosecution she states that on the fateful day her mother had not gone to jungle for collecting wood and was quarelling with the appellant. She states that she and her brother were asked by her father/appellant to go away from the house and when they returned

alongwith her another brother, they saw the appellant leaving the house and immediately thereafter when she along with her brothers entered the house, her mother/deceased was found lying dead in the veranda. She states that it is her father who killed her mother/deceased and after some time her another brother PW-7 Abhimanyu also reached there. However, in cross-examination by the defence she has denied the above facts.

9. PW-7 Abhimanyu Manjhi, son of the appellant and the deceased, is the lodger of FIR and merg intimation. He has also turned hostile. PW-8 Ramnath Manjhi, neighbour, has also turned hostile. However, in para-6 he states that after being informed by children of the appellant that the appellant is sitting near the house of one Suga when he went there, the appellant had fled from there. PW-9 Kartikeshwar Manjhi, Sarpanch, is a witness to memorandum and seizure. He has turned hostile. PW-10 Jagatram is a witness to inquest Ex.P/2. PW-11 Sandeep Kumar and PW-12 Ranjit Tirky, Police Constables, assisted in the investigation. PW-13 Kanhaiyalal Gupta is a witness to inquest Ex.P/2. PW-14 H.P. Singh, Inspector, did part of investigation. PW-15 Koushal Kishore Vasnik investigating officer has duly supported the prosecution case. PW-16 Dr. Dhansingh Painkra conducted postmortem on the body of the deceased and noticed homicidal wounds on chin, neck, cut of mandible bone, cutting of trachea and jugular vein, wounds over right arm and left shoulder joint. In his opinion, the cause of death was shock (excessive bleeding) caused by hard and sharp object leading to cardio-respiratory arrest and that the death was homicidal in nature.

10. Obviously there is no eyewitness account in the present case and the entire case is based on the circumstantial evidence. PW-2 Manoj Kumar, PW-3 Vilas Kumar, PW-6 Poornima Manjhi & PW-7 Abhimanyu Manjhi, are children of the appellant and the deceased. They have not fully supported the prosecution case and have turned hostile. However, PW-2 Manoj Kumar states that on the fateful day while he was returning to his home after playing, he met his sister Poornima (PW-6) and brother Vilash (PW-3) on the way and then all of them went to their home and found their mother lying dead in the veranda. He states that at that time his father/appellant was sitting near the house of one Suga. PW-8 Ramnath Manjhi, neighbour of the appellant, also states that after being informed by children of the appellant that the appellant is sitting near the house of one Suga when he went there, the appellant had fled from there. According to PW-6 Poornima Manjhi, both the appellant and the deceased were present in the house on the date of incident, the appellant asked the deceased that they both would go to jungle for collecting wood and would not quarrel, and when she (PW-6) along with her siblings came back to their home, the appellant was not seen there.

11. From the overall oral evidence on record it emerges that on the date of incident, the appellant and the deceased were only there in the house in question where the dead body of the deceased was found in the veranda with multiple wounds. According to the autopsy surgeon she had suffered wounds on chin & neck, cut of mandible bone, cutting of trachea and jugular vein, wounds over right arm and left shoulder joint and her cause of death was shock (excessive bleeding) caused by hard and sharp object leading to cardio-respiratory arrest and the

death was homicidal in nature.

12. In 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. 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.”

13. 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.”

14. 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 the house where apart from the accused and 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 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. Postmortem report of the deceased also supports the prosecution case according to which there were number of injuries on the person of the deceased and her

death was homicidal in nature. The conduct of the appellant is also relevant to be taken note of. It has come in the evidence, as discussed above, that when the dead body of the deceased was noticed by the witnesses in the house, at that time the appellant was sitting near the house of one Suga; after some time he fled from there and did not come back home on that day and returned home next day only.

Yet another circumstance against the appellant is recovery of axe and his shirt pursuant to his disclosure statement (Ex.P/15) which were found to be stained with blood as per FSL report (Ex.P/22). The appellant has also not offered any explanation in this regard in his defence statement.

15. Thus in view of the aforesaid factual and legal position this Court is of the considered opinion that the trial Court was fully justified in holding the appellant guilty of committing murder of his wife on the basis of circumstantial evidence adduced by the prosecution, more particularly based on house murder theory. Accordingly, the judgment impugned calls for no interference in this appeal.

16. 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/
(Rajani Dubey)
Judge