

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
Criminal Appeal No. 116 OF 2013

Reserved on : 28.02.2018
Pronounced on : 22.03.2018

Devdas Verma S/o Nandlal Verma aged about 33 years, Working as Mistri R/o
 Village Saliha Police Station Khairagarh District Rajnandgaon C.G.

----Appellant

Versus

State of Chhattisgarh through Police Station Khairagarh District Rajnandgaon
 C.G.

---- Respondent

For Appellant	: Dr. Rajesh Pandey, Advocate
For State/Respondent	: Mr. Vaibhav A. Goverdhan, Panel Lawyer

Hon'ble Shri Pritinker Diwaker &
Hon'ble Shri Sanjay Agrawal, JJ.

C A V Judgment

Per Sanjay Agrawal, J.

1. This criminal appeal has been preferred by the accused/appellant under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'CrPC') against the judgment dated 31/12/2012 passed by the learned Additional Sessions Judge, Khairagarh (C.G.) in Sessions Trial No. 21/2011, whereby the appellant has been convicted and sentenced as under :-

<u>Conviction</u>	<u>Sentence</u>
U/s 302 of IPC	Life imprisonment with fine of Rs.300/-, in default of payment of fine amount, additional R.I. for 2 months.
U/s 201 of IPC	R.I. for 3 years with fine of Rs.100/-, in default of payment of fine amount, additional R.I. for 1 month.

2. In the present case, it is not disputed that the appellant Devdas Verma is the husband of deceased Rajwantin Verma.

3. Briefly stated, the case of the prosecution is that on 18.7.2011, at about 17:35 hours, one Motiram, the Kotwar of the village Saliha intimated the Police Station Khairagarh that the dead body of the deceased Rajwantin Verma was lying in suspicious condition in the room of her husband/appellant Devdas Verma, and it appears that someone had killed her by throttling. It is alleged further that upon interrogation being made by the police, the appellant has disclosed in his memorandum that due to dispute, he committed murder of his wife by throttling by wrapping her up by means of a blouse and burnt the blouse thereafter in order to remove the evidence. It is further alleged that the father and brother of the deceased both were suspecting the appellant as both husband and wife were alone in the house at the relevant time when the alleged crime was committed.

4. Based upon the aforesaid incident, the merg intimation (Ex. P-10) was registered by one Motiram, the Kotwar of village Saliha on 18.7.2011 at 17:35 hours and on the strength of its enquiry, *Dehati Nalsi* (Ex. P-14) was registered by the Station House Officer, Khairagarh against an unknown

person, and accordingly, First Information Report (Ex. P-17) was registered on 18.7.2011 against an unknown person under Section 302 of IPC. Inquest was conducted on 18.7.2011 vide (Ex. P-6). After inquest, the dead body was sent for autopsy to Community Health Centre, Khairagarh, where Dr. Niranjana Singh Bhandari (PW-2) conducted the postmortem examination on 19.7.2011 and submitted its report (Ex. P-3) by opining that the cause of death is asphyxia and it could be due to strangulation. Investigating Officer has recovered the burnt blouse on 18.7.2011 vide seizure memo Ex. P-9 on the basis of the disclosure statement (Ex. P-8) of the appellant.

5. After usual investigation of the matter as such, the offence punishable under Sections 302 and 201 of IPC was registered against the appellant Devdas Verma by the concerned Station House Officer, who submitted its final report before the Additional Chief Judicial Magistrate, Khairagarh on 13.9.2011 and thereafter, it was committed to the Sessions Judge, Khairagarh for its trial.

6. After considering the *prima facie* materials available on record, charges under Sections 302 and 201 of IPC have been framed against the appellant, who has pleaded not guilty in connection with the aforesaid crime, as framed, and claimed to be tried.

7. In order to prove the guilt of the accused, the prosecution has examined as many as 9 witnesses, while none was examined by him in his defence.

8. The trial Court, after considering the evidence led by the prosecution, has convicted the appellant Devdas Verma, the husband of the deceased Rajwantin Verma and sentenced him as aforesaid in relation to the crime in question.

9. Being aggrieved, the appellant has preferred this appeal. Dr. Rajesh Pandey, learned counsel appearing for the appellant submits that the judgment under appeal as passed by the trial court is apparently contrary to law as the same has been passed without considering the evidence in its proper perspective. He submits further that once it has been held by the trial Court at Paragraph - 20 of its impugned judgment that there might have been some altercation between them which led to the commission of alleged crime, then at the most, the trial Court ought to have convicted the appellant under Section 304 Part-II of IPC instead of convicting him under Section 302 of IPC. In support, Mr. Pandey has placed his reliance in the matter of **State of Punjab v. Jagtar Singh & Ors.** reported in **AIR 2011 SC 3028**.

10. On the other hand, Mr. Vaibhav A. Goverdhan, learned Panel Lawyer appearing for the State/respondent has supported the impugned judgment by submitting *inter alia*, that it has been passed upon due and proper appreciation of the evidence of the prosecution witnesses, and therefore, does not require to be interfered. He submits further that, both, the husband and wife, were found in the house on the date of incident and in absence of any explanation offered by the appellant as required under Section 106 of the Indian Evidence Act, 1872, the trial Court has not committed any illegality in convicting him under Sections 302 and 201 of the IPC.

11. We have heard the learned counsel appearing for the parties and perused the entire record carefully.

12. Rikhiram (PW-3) is the father of the deceased Rajwanti Verma and has stated in his evidence that he received the information from a person of his daughter's village that her condition is serious and he was, therefore, called. He rushed to the spot and saw the dead body of his daughter

Rajwantin Verma lying at the place of incident and he had seen the injuries on her face and neck. According to his further statement, his daughter has died because of strangulation. Similar is the statement of deceased's brother Dinesh Janghel (PW-4).

13. Ramji Sahu (PW-1) is the *Patwari* who has prepared the spot map vide Ex. P-1. Dr. Niranjana Singh Bhandari (PW-2) has conducted the postmortem on the dead body of the deceased Rajwantin Verma, and submitted his postmortem report (Ex. P-3) by opining that the cause of death is asphyxia, which could be due to strangulation.

14. Motiram (PW-5) is a village Kotwar, and said to have furnished the information regarding the death of the deceased Rajwantin Verma and based upon which, the merger intimation (Ex. P-10) was registered on 18.7.2011 at 17:35 hours. Chumman (PW-6) is the witness of inquest (Ex. P-6) and also the witness of appellant's disclosure statement (Ex. P-8) and thus, has assisted the prosecution. Sahdev (PW-7) is a formal witness and has turned hostile without supporting the prosecution case. Dashru (PW-8) is the witness of inquest (Ex. P-6) and has assisted the prosecution. Shri G. C. Pati (PW-9) is the Investigating Officer who assisted the prosecution.

15. Perusal of the entire aforesaid evidence would show that the death of deceased Rajwantin Verma is unnatural and there is no eyewitness to the incident and, the entire case of the prosecution is based upon the circumstantial evidence. Pertinently to be noted here further that both the appellant and the deceased were found together in the house where the alleged incident took place and no explanation was offered by the appellant as to how his wife had died. In such an eventuality, the burden was heavily upon the appellant to explain the manner, in which, his wife had died as this

material fact was within his special knowledge and it was not possible to be known to anyone else. However, no explanation whatsoever was offered by him to throw some light on this material fact as to how his wife had died when both were present together in the house.

16. Section 106 of the Indian Evidence Act, 1872 is material at this juncture to examine, which reads as under:-

“106. Burden of proving fact especially within knowledge.-When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.”

17. The aforesaid provision clearly provides that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him/her. Here in the case in hand, the prosecution has established the fact that both the husband and wife were together in the house at the relevant time. Therefore, by virtue of the aforesaid provision, the appellant/husband was required to explain as to how his wife had died because it was not possible to be known to anyone else.

18. In the matter of **State of Rajasthan v. Kashi Ram** reported in **AIR 2007 Supreme Court 144**, the Supreme Court in such circumstances, has held at para-23 as under:-

“23.The provisions of Section 106 of the Evidence Act itself are unambiguous and categoric in laying down that when any fact is especially within the knowledge of a person, the burden of proving that fact is upon him. Thus, if a person is last seen with the deceased, he must offer an explanation as to how and when he parted company. He must furnish an explanation which appears to the Court to be probable and satisfactory. If he does so he

must be held to have discharged his burden. If he fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by Section 106 of the Evidence Act. In a case resting on circumstantial evidence if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him. Section 106 does not shift the burden of proof in a criminal trial, which is always upon the prosecution. It lays down the rule that when the accused does not throw any light upon facts which are specially within his knowledge and which could not support any theory or hypothesis compatible with his innocence, the Court can consider his failure to adduce any explanation, as an additional link which completes the chain.....”

19. Likewise, in the matter of **State of Rajasthan v Parthu** reported in **AIR 2008 Supreme Court 10**, where the deceased and her husband were together in their home at the time when the incident has taken place in the night, the Supreme Court has held at para-12 as under:-

“12.Apart from the fact, as noticed hereinbefore, that the homicidal nature of death was not disputed by the respondent herein and furthermore as he in his statement under Section 313 had raised a positive defence that she died of an accident, we are of the opinion the High Court adopted a wrong approach. It is not disputed that the deceased and the appellant were living separately from their family. It has also not been disputed that at the time when the incident occurred, the respondent was in his house together with the deceased. It is furthermore not in dispute that after the incident took place, the respondent was not to be found. He was arrested only on 20.06.1995. If the deceased and the

respondent were together in their house at the time when the incident took place which was at about 10 O'clock in the night, it was for the respondent to show as to how the death of the deceased took place.”

20. Reverting back to the present case, admittedly the appellant Devdas Verma and his wife Rajwantin Verma both were found together in their house at the time when the alleged incident took place on the fateful day. The burden of proof based upon the aforesaid principles was therefore certainly upon the appellant to explain as to how the death of his wife had taken place on the fateful day. However, he failed to offer any explanation in this regard. Having failed to offer as such would therefore lead to an irresistible conclusion that the appellant Devdas Vema alone was responsible for the commission of alleged crime occurred on 18.7.2011. The contention of Mr. Pandey, learned counsel for the appellant that once having held that there might have been some altercation between the appellant and his deceased wife and which led to the commission of alleged crime, the trial Court under such circumstances ought to have convicted the appellant under Section 304 Part -II of IPC is, therefore, liable to be and is hereby rejected.

21. So far as his further contention based upon the principles laid down in the matter of **State of Punjab v. Jagtar Singh** (supra) is concerned, the same is also noted to be rejected as the facts involved in the said case are distinguishable from the present one. That is the case where two dead bodies, i.e., Gurnam Singh and Paramjit Kaur, the sister of the accused persons, were found in the courtyard of the accused persons. Upon analyzing the evidence and that by considering the postmortem report of deceased Paramjit Kaur, it was found that the deceased Gurnam Singh had

sexual intercourse with the sister of the accused persons by entering into their house on the fateful day and both the deceased persons might have been seen by the accused persons which led to commission of alleged crime in a heat of passion. However, the facts involved in the present case are entirely on a different footing, therefore, it would not be of any help to the appellant.

22. Consequently, we do not find any substance in this appeal. The appeal is therefore, liable to be and is hereby dismissed. The judgment under appeal as passed by the trial Court convicting and sentencing the appellant for the offence punishable under Sections 302 and 201 of IPC is hereby affirmed.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Sanjay Agrawal)
Judge