

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 2 of 2013**Judgment reserved on : 21.08.2018Judgment delivered on : 18.09. 2018

Reeta Bakhla D/o. Jagmohan Bakhla, Aged about 21 years, R/o. Village Dharampur, Police Station Pratappur, District Surajpur (C.G.)

---- Appellant**Versus**

State of Chhattisgarh, Through Station House Officer, Police Station Pratappur, District Surajpur (C.G.)

---- Respondent

For the Appellant :- Mr. D.N. Prajapati, Advocate

For the Respondent :- Mr. Avinash K. Mishra, Panel Lawyer

Hon'ble Shri Justice Pritinker Diwaker**Hon'ble Smt. Justice Vimla Singh Kapoor****CAV Judgment****Per, Vimla Singh Kapoor, J**

1. This appeal has been filed against the judgment of conviction and order of sentence dated 10.12.2012 passed by the 1st Additional Sessions Judge, Manendragarh, District Koriya (C.G.) in Sessions Trial No. 23 of 2012, convicting the accused /appellant under Section 302 of the IPC and sentencing her to undergo imprisonment for life with fine of Rs. 500/- with default stipulation.

2. In the present case, name of the deceased is Jeetram, aged about 25 years. It is said that the appellant was having affair with the deceased and they were living as husband and wife in the Barrack of Home guard, situated near office of C.G.M. of SECL. The appellant pressurized the deceased to marry with her but he refused to marry. On the date of incident, i.e. on 10.01.2012, both the appellant and the deceased went for visit, where the deceased assaulted her with stick. After returning from visit, the deceased went for sleeping in the barrack. The appellant being annoyed with the act of the deceased assaulted the deceased on his head with a spade lying in the barrack, as a result of which head of the deceased got fractured. After the incident, the appellant was under fear and informed to Sundar Singh that the deceased is lying in injured condition. Thereafter, the deceased was admitted in hospital with the help of Sundar Singh and Dayaram Rajwade. During treatment, on 11.01.2012 at about 2.20 o'clock, deceased Jeetram died in the hospital. After the death of the deceased at the instance of Indarpal Baiga (PW-7), merg intimation (Ex.P-11) was recorded in Police Station Baikunthpur, District Koriya. Based on which, FIR (Ex.P-23) was lodged on 11.01.2012 under Section 302 of the IPC against unknown person. On 11.01.2012, inquest on the body of the deceased was conducted vide Ex.P-10 and the dead body was sent for postmortem examination to District Hospital Baikunthpur, where Dr. G. S. Paikara (PW-8) conducted postmortem on the body of the deceased and gave his report (Ex.P. 13) noticing the following injuries.

- i. Lacerated wound of 2 ½ x 1 ½ cm bone deep present over left temporal region of scalp.

- ii. Contusion present over right fronto parietal region of scalp.
- iii. Bleeding from both nostril, mouth and ear.

The autopsy surgeon opined the cause of death to be cardio-respiratory arrest due to shock and subdural hemorrhage trauma and the death was homicidal in nature.

3. Memorandum of the appellant (Ex.P-4) was recorded on 12.01.2012, based on which one Spade, Kurta and Pajama of the appellant were seized vide Ex.P-6. However, as per FSL report no blood was found on spade. After filing of the charge sheet, the trial Judge framed the charge under Section 302 of IPC against the appellant.

4. In order to prove the complicity of the accused/appellant in the crime in question, the prosecution has examined 15 witnesses. To nullify the charge, the defence has examined two witnesses in their support. Statement of the accused under Section 313 Cr.P.C. was also recorded in which she denied her guilt and pleaded innocence and false implication in the case.

5. The trial Court after hearing counsel for the respective parties and considering the material available on record has convicted and sentenced the accused/appellant as mentioned in para-1 of this judgment. Hence, this appeal.

6. Learned counsel for the appellant submits as under:-

- (i). That there is no eye-witness account to the incident and the accused/appellant has been convicted solely on the basis of weak type of circumstantial evidence.
- (ii). That from the possession of the appellant, though one spade is said to have been seized, however, as per FSL report no blood was found thereon and as such, this circumstance has also not

been proved by the prosecution against the appellant as required under the law.

(iii). That the Court below has committed gross error in overlooking the fact that the appellant herself had taken the deceased to hospital for treatment along with Dayaram Rajwade (PW-10) and Sundar Singh. It has been further submitted that the appellant was also carrying two months' pregnancy.

(iv). That the Court below has committed error in believing the Statement of PW-2 Ramnath, which itself is false mischievous statement to implicate the appellant in the case. This witness has disclosed the fact that he used to visit Baikunthpur to meet his brother or appellant.

(v). In support of his arguments, he has placed reliance on the judgments of Hon'ble Apex Court in the matters of **Kala @ Chandrakala Vs. State through Inspector of Police (2016) 9 SCC 337, Nagaraj Vs. State Represented by Inspector of Police (2015)4 SCC 739.**

7. 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 at the time of incident except the appellant and the deceased, no other person was there in the house and, therefore, it can safely be inferred that it is the accused/appellant alone who committed the murder of the deceased.

8. We have heard counsel for the parties and perused the material on record.

9. Ramnath (PW-2) is the witness of dead body supurdnama (Ex.P-2) and seizure momo (Ex.P-5). He has duly supported the prosecution case.

10. Ajeet Kumar Bade (PW-3) is the witness of memorandum (Ex.P-4), seizure memos (Ex.P-5, Ex.P-6) and Crime Details Form(Ex.P-8). However, this witness has not supported the prosecution case and therefore, he has been declared hostile.

11. Sunil Kumar Bhagat (PW-4) is the witness of inquest (Ex.P-10) and Spot Map (Ex.P-11). He has not supported the prosecution case.

12. Dayaram Rajwade (PW-10) has deposed that he along with Sundar Singh went to the Barrack of Jeetram where deceased was groaning and that the appellant was present there. Thereafter, they took the deceased to hospital. He has further deposed that deceased Jeetram and appellant were residing together in the same barrack as husband and wife.

13. R. N. Singh (PW-15) deposed that deceased Jeetram was residing behind his barrack. He has further deposed that on the date of incident deceased Jeetram and the appellant were present in the barrack and both of them were living together as husband and wife. He has also deposed that on the date of incident apart from the accused and the deceased no third person was present in the room where the incident took place.

14. The appellant has been examined as (DW-2). In her deposition she deposed that after the marriage the appellant and the deceased were living as husband and wife. She further

deposed that on the date of incident she was two months pregnant and she was present in the barrack with the deceased.

15. Mahaveer (PW-1) father of the deceased, has been declared hostile. Bishunlal (PW12) is the witnesses to seizure made under (Ex.P-5),(Ex.P-6) and (Ex.P/7). Farid Khan (PW-9) is the Patwari who prepared spot map vide Ex.P-3. Manak Ram Kashyap (PW-6), Investigating Officer, has duly supported the prosecution case. K.P. Gupta (PW-14) Assistant Sub Inspector. S. G. Ekka (PW-5) constable, Ram Bhagat (PW-11) constable and Dineshwar Prasad (PW-13) Head constable, assisted in the investigation. Dr. G.S. Paikara (PW-8) conducted postmortem on the body of the deceased and gave his report (Ex.P. 13) opining the cause of death to be cardio-respiratory arrest due to shock and subdural hemorrhage trauma and the death was homicidal in nature.

16. Admittedly, there is no eyewitness account to the incident and the entire case is based on the circumstantial evidence main being that the accused and the deceased were residing together in a barrack and no third person was there at the time of incident. In his statement, recorded under Section 313 of the Cr.P.C, the appellant has not offered any plausible explanation as to how the deceased died, except making bald denial of all the circumstances.

17. 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 manner involving the murder committed inside the house it has been held by the Apex Court in the matter **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.”

18. Further, in the matter of **State of Rajasthan v. Thkur 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 circumstances which indicates that he is responsible for commission 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."

19. 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 apart from the accused, 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 probable acceptable explanation has come forth from the accused/appellant in her statement recorded under Section 313 of the Code of Criminal Procedure as to how the death of deceased occurred though being the sole adult inmate of the house in question it was her bounden duty to

explain the things by leading cogent and pin-pointed evidence in her defence.

20. 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 her husband 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.

21. 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.

22. A copy of this judgment be forwarded to the concerned trial Court forthwith for its compliance.

Sd/-

(Pritinker Diwaker)
JUDGE

Sd/-

(Vimla Singh Kapoor)
JUDGE