

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Appeal No. 113 of 2013**

Ramsingh Baghel S/o Somaru @ Gover Aged About 25 Years R/o
 Icchhapur Bawangudapara, Ps - Bhanpuri, Distt. - Bastar C.G.

---- Appellant**Versus**

State Of Chhattisgarh Through PS Bhanpuri, Distt. - Bastar C.G.

---- Respondent

For Appellant	: Shri Ashok Swarnkar, Advocate.
For Respondent/State	: Shri Arvind Dubey, Panel Lawyer.

Hon'ble Shri Prashant Kumar Mishra and**Hon'ble Shri Sanjay Agrawal, JJ****Judgment On Board****17.02.2018****Per Sanjay Agrawal, J.**

1. This criminal appeal has been preferred by the appellant under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Cr.P.C') against the judgment dated 01.12.2012 passed by Sessions Judge, Bastar, place-Jagdalpur (C.G.) in Sessions Trial No. 97/2011, whereby the appellant has been convicted for having committed an offence punishable under Section 302 of the Indian Penal Code (hereinafter referred to as IPC) and sentenced him to life imprisonment with fine of Rs.2,000/- without imposing any default clause.

2. In the present case, appellant Ramsingh Baghel is the husband of deceased Heeramati.

3. The case of the prosecution is that on 29.04.2011, appellant Ramsingh Baghel had come along with his deceased wife Heeramati

to the house of his brother-in-law, the complainant Pachman Kashyap for attending his sister-in-law's marriage and in the night he returned to his house, while his deceased wife Heeramati stayed at her brother's house. It is alleged further that on the next day, i.e. 30.04.2011, the appellant came again at about 11.30 A.M. in drunken condition and took his wife to his house and after sometime at about 12.00 P.M., his elder brother's daughter Kumari Shobha came and informed the complainant that the deceased was being beaten up by her husband after closing the door. Immediately upon hearing so, the complainant rushed to the place of the incident along with his brother and saw that deceased Heeramati was lying dead on the floor and blood was spread over on the spot.

4. On the basis of aforesaid incident, the First Information Report (Ex.P.-1) was lodged by the complainant Pachman Kashyap on 30.04.2011 at 17.15 hours against the appellant Ramsingh Baghel under Section 302 of IPC and thereafter, merg intimation (Ex.P.-2) was registered and inquest was conducted on the dead body of the deceased vide Ex.P.-8 on 01.05.2011. After inquest, the dead body of the deceased was sent for autopsy to the Government Medical College, Jagdalpur, where Pawan Tekade (PW-13), Assistant Professor in Medical College, Jagdalpur, has conducted the postmortem examination and submitted his report (Ex.P.-15) by opining that the cause of death had occurred because of shock and haemorrhage due to head injury and mode of death is homicidal in nature. Disclosure statement of Bhagwati (PW-4) which was recorded by the Investigating Officer led to the recovery of used weapon "*musa*" (made of log), with blood stain from his house i.e. the place of incident on 06.05.2011 vide seizure memo Ex.P.-5.

5. After usual investigation of the matter as such, the offence punishable under Section 302 of IPC has been registered against the appellant by the concerned Station House Officer, who submitted his final report before the Additional Chief Judicial Magistrate, Jagdalpur on 25.06.2011. The matter was therefore, committed to the Sessions Judge, Bastar, place-Jagdalpur (C.G.) for its trial.

6. After considering the *prima facie* materials available on record, charge under Section 302 of IPC has been framed against the appellant on 24.02.2012. The appellant 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 appellant the prosecution has examined as many as fourteen witnesses, while none was examined by the appellant in his defence.

8. The trial Court, after considering the evidence led by the prosecution, has convicted the appellant by its impugned judgment and sentenced him as aforesaid.

9. Being aggrieved, the appellant has preferred this appeal. Shri Ashok Swarnakar, learned counsel 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 none of the prosecution witnesses have supported the prosecution story and even the appellant's niece Kumari Shobha (PW-12), the informer of the alleged incident to the complainant, has turned hostile without supporting the case of the prosecution. Therefore, under such circumstances, the trial Court, in absence of any cogent and reliable

evidence, ought not to have convicted the appellant as such. He further submits that the judgment under appeal may be set aside and instead, the appellant be acquitted in relation to the charge as framed against him.

10. On the other hand, Shri Arvind Dubey, learned State counsel has supported the judgment impugned by submitting, *inter alia*, that it has been passed after due and proper appreciation of the evidence of the prosecution witnesses and therefore, the same does not require to be interfered.

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

12. Pachman Kashyap (PW-1) is the brother of the deceased Heeramati and is said to have lodged the First Information Report (Ex.P.1) and Merg Intimation (Ex.P.2). He has stated that on the fateful day, about 9.00 to 10.00 A.M., the appellant Ramsingh Baghel came and dragged his wife towards his house. He stated further that on the same day, the daughter of the appellant's elder brother namely Kumari Shobha came and informed him that her uncle Ramsingh Baghel is beating her aunt. Upon hearing so, he rushed to his house and saw that Ramsingh Baghel was not at home and his wife was lying on the floor in pool of blood and there was injury on her head. Similar is the statement of Bhagwati (PW-4), Kating Chand (PW-5) and Sadhu Ram (PW-6), who are the mother, brother and father of the deceased Heeramati respectively. Sukru (PW-2) is a farmer and has turned hostile without supporting the case of the prosecution. Lakhmu Ram (PW-3) is also a farmer and came to know about the commission of alleged crime from Pachman

Kashyap, the brother of the deceased. He has stated that appellant Ramsingh Baghel has informed the police in his presence that he has assaulted his wife with the alleged weapon, which was seized in his presence from the appellant vide Ex.P.-5.

13. Tek Singh Thakur (PW-7) is a Patwari, who has prepared the spot map (*Nazari Naksha*) vide Ex.P.-6 and is thus a formal witness. Likewise, Sheet Kumar Salam (PW-8), Jagannath (PW-10) and Sushila (PW- 14) are also the formal witnesses. S. N. Shukla (PW-9) and Ramakant Tiwari (PW-11) are the Investigating Officers and have assisted the prosecution.

14. Kumari Shobha (PW-12,) who is the daughter of appellant's elder brother and the informer of the commission of alleged crime to the parents of the deceased, has turned hostile without supporting the prosecution's case. Pawan Tekade (PW-13) is the Assistant Professor in Medical College, Jagdalpur, who has conducted the postmortem of the dead body of the deceased Heeramati and supported his postmortem report (Ex.P-15) by opining that death has occurred due to head injury and is homicidal in nature.

15. None of the prosecution witnesses, as reflected from their aforesaid evidence, have seen the commission of alleged crime. Even the informer Kumari Shobha (PW-12) has not supported the prosecution's case as she turned hostile. The case is, thus, based upon the circumstantial evidence.

16. Although there is no eyewitness in the present case, but admittedly, the dead body of the deceased Heeramati was found in the house of her husband/appellant, who brought her from her brother's house on the fateful day at about 10.00 to 11.00 A.M. and,

immediately thereafter the alleged crime was committed in his house. In such circumstances, the burden was heavily upon the appellant/husband to explain the manner, in which his wife has been found dead in the house. However, no explanation, whatsoever was offered by him in this regard.

17. Section 106 of the Indian Evidence Act 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.

18. The aforesaid provision clearly provides that when the fact is especially within the knowledge of any person, the burden of proving that fact is upon him/her. In the instant case, dead body of the deceased Heeramati was found in her husband's house and, as per the postmortem report (Ex.P.-15), her death was homicidal in nature and the used weapon “*musal*” (made of log) was also recovered from the place of the incident. Therefore, in such circumstances, by virtue of the aforesaid provision, the appellant/husband was required to explain the fact as to how his wife Heeramati has died.

19. 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 paragraph-23 of its judgment 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.....”

20. 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 house at the time when the incident has taken place, the Supreme Court has held at paragraph-12 of its judgment 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.....”

21. Reverting back to the present case, the dead body of the deceased Heeramati was found in her husband's house when he was with her. The burden of proof, in view of the aforesaid principles, was certainly upon the appellant/husband to explain as to how the unnatural death of his wife had taken place at home. Having failed to offer any explanation whatsoever, would, therefore, lead to an irresistible conclusion that the appellant Ramsingh Baghel alone was responsible for the commission of alleged crime occurred on 30.04.2011 at his house. We, therefore, do not find any infirmity in the impugned judgment as passed by the trial Court convicting the appellant Ramsingh Baghel in relation to the offence punishable under Section 302 of IPC.

22. Consequently, the appeal being devoid of any merit, is accordingly dismissed.

Sd/-

(Prashant Kumar Mishra)
Judge

Sd/-

(Sanjay Agrawal)
Judge