

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 166 of 2013**

1. Ume Lal @ Bhurshu S/o Bhulau Bhariya, aged about 40 years, R/o Village Sadhwani, Police Station – Gourela, District Bilaspur, CG

---- Appellant**Versus**

1. State of Chhattisgarh through Station House Officer, Police Station Gourela, District Bilaspur, CG

---- Respondent

For Appellant	:	Shri N.K. Chaterjee, Advocate
For Respondent/State	:	Shri Adil Minhaj, PL

Hon'ble Shri Justice Pritinker Diwaker**Hon'ble Shri Justice Sanjay Agrawal****Judgment on Board by Pritinker Diwaker, J****03/01/2018**

This appeal has been filed against the judgment of conviction and order of sentence dated 29.01.2011 passed by Additional Sessions Judge (FTC) Pendra Road, District Bilaspur in Sessions Trial No. 36/2010 convicting the accused/appellant under Sections 302 and 201 IPC and sentencing him to undergo imprisonment for life with fine of Rs. 100/- u/s 302 and RI for seven years with fine of Rs. 100/- u/s 201 IPC, plus default stipulations.

2. Deceased Guddi Bai was none else but the wife of the accused/appellant herein. It remains undisputed that the house where the dead-body was found was in the occupation of the couple alone. As per the case of the prosecution, on 31.05.2010 at about 7 AM the accused/appellant had gone to the village pond where Sarpanch of the village namely Kripal Singh (PW-1) was

already taking bath. Accused/appellant is said to have informed PW-1 that in the preceding night while he was returning to his house on motorcycle along with the deceased – the pillion rider, on account of sudden application of brake, she fell down and suffered injuries on her body. Accused/appellant also informed PW-1 that after he took his injured wife inside the house, she breathed her last at about 3 AM. On 31.05.2010 at about 8.40 AM accused/appellant gave *merg* intimation Ex. P-10 disclosing that on the previous night while returning to his house, he suddenly pressed the brake of motorcycle as a result of which the deceased sitting as pillion rider thereon, fell down and suffered injuries which resulted in her unfortunate death. Thereafter, FIR Ex. P-2 was registered at the instance of PW-1 against the accused/appellant for the offences punishable under Sections 304-A and 279 IPC. After inquest, the dead-body was sent for postmortem examination which was conducted by Dr. M.S. Marko (PW-3) who gave his report Ex. P-8. Memorandum of the accused/appellant (Ex.P-3) was recorded and based thereon seizure of a wooden piece was made under Ex. P-4, though there is no FSL report on record. After investigation, charge-sheet was filed by the police under Sections 302 and 201 IPC followed by framing of charge by the Court below accordingly.

3. In order to prove the complicity of the accused/appellant in the crime in question, the prosecution has examined 07 witnesses. Statement of the accused/appellant under Section 313 Cr.P.C. was also recorded in which he denied his guilt and pleaded innocence and false implication in the case. One defence witness namely Bhulau Bhatiya (DW-1) has also been examined in this case.

4. After hearing the parties, the Court below has convicted and sentenced the accused/appellant as mentioned in paragraph No.1 of this judgment.

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

(i) That present is a case where the deceased died an accidental death but unfortunately the accused/appellant has been falsely roped therein.

(ii) That though the accused/appellant has taken a specific defence in his statement recorded under Section 313 of the Code of Criminal Procedure that the deceased died on account of the injuries suffered on account of fall from the motorcyel but even then the Court below has convicted him under Sections 302 and 201 and thus committed an apparent error.

(iii) That even if the entire case of the prosecution is taken as it is, the accused/appellant cannot be convicted under Section 302 and at the most his act would fall under Section 304 (Part-I or Part-II) IPC.

6. State counsel however supports the judgment impugned and submits that the findings recorded by the Court below are based on due appreciation of the evidence on record and there is no infirmity in the same.

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

8. Kripal Singh (PW-1) has stated in his evidence that on the date of incident when he had been to the pond for taking bath, accused/appellant came there and informed that his wife died an accidental death after falling from the motorcycle. Thereupon, he

accompanied the accused to his house and saw the deceased lying on the ground covered with blanket. Father of the accused is stated to have told him that she was dead. He is also the witness to memorandum of the accused (Ex. P-3) and seizure of blood stained wooden pieces made under Ex. P-4. Panne Lal Uraon (PW-2) has stated that on the fateful night father of the accused/appellant came to him and asked to pacify the quarreling parties. According to this witness, father of the accused did not disclose to him as to between whom the quarrel was going on. He however has been declared hostile at this stage. Dr. M.S. Marko (PW-3) is the witness who conducted postmortem examination on the body of the deceased and gave his report Ex. P-8 stating that number of injuries – abrasions, lacerations and contusions were noticed by him all over her body including forehead and scapular region. Cause of death, according to this witness, was coma due to head injury with multiple fracture of bones. Evidence of this witness further discloses that the death was homicidal in nature. Shankh Ram (PW-4) is the witness to memorandum Ex. P-3 and seizure of wooden pieces, blood stained soil and clothes of the accused made under Ex. P-4, P-5 and P-6 who has duly supported the case of the prosecution. Anand Kunwar Bhaina (PW-5) is the witness to inquest Ex. P-5. M.P. Tandon (PW-6) is the police official who recorded FIR (Ex. P-2). Mohd. Safi (PW-7) is the investigating officer who has duly supported the case of the prosecution. Bhulau Bhatiya (DW-1) – the father of the accused/appellant has stated that on the fateful night the accused/appellant had come to his house and woken him up. According to this witness, on being asked by the accused he offered water to the deceased but she could not drink it. He has further stated that the deceased died after falling from the motor

bike, but he has not stated anything as to whose motor bike it was.

9. From perusal of the evidence of the witnesses it is abundantly clear that the house where the dead-body was found was in possession and occupation of the accused and the deceased alone. Deceased, as the record indicates, died in the night of 30.05.2010 but the accused/appellant does not appear to have informed anyone about the same immediately thereafter. Court statement of Kripal Singh (PW-1) however goes to show that on 31.05.2010 at about 7-8 AM the accused/appellant met him near the village pond and informed about the accidental death of his wife after falling from the motorcycle. On being so informed, PW-1 accompanied the accused to his house and found the deceased lying on the ground covered with blanket and then was informed by the father of the accused that she was no more. If evidence of Panne Lal Uraon (PW-2) is seen, it is apparent that on the fateful night father of the accused had come to him and asked him to pacify the quarrel. This indicates that in furtherance of the quarrelsome activities between the two, the accused picked up the wooden piece which has been seized under Ex. P-4 and assaulted her. The defence taken by the accused that the deceased died an accidental death after fall from the motorcycle does not appear to be worth acceptance because not even a single witness has corroborated the same. None of the witnesses has even stated that the accused and the deceased were seen riding the motorcycle on the preceding night of incident. On the contrary, the stand of accidental death taken by the accused stands falsified in view of the evidence of the doctor (PW-3) conducting postmortem examination as he has categorically stated

the death of the deceased to be homicidal in nature. Furthermore, on the memorandum of the accused seizure of blood stained wooden pieces has been made though there is no FSL report on record to substantiate the fact that it was human blood or not. As already stated, since the couple alone was in the house at the relevant time, it was the bounden duty of the accused to explain as to how the death of the deceased took place but in stead of explaining the things properly, he has chosen to give an altogether false explanation that the deceased died an accidental death after falling from the motorcycle. 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.”

10. 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.

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.”

11. 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 no person other than the accused and the deceased 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, the accused has offered a false explanation that the deceased died an accidental death by falling from the motorcycle whereas the doctor (PW-3) has categorically stated that the death was homicidal in nature. It has time and again been held by the Apex Court that where an accused furnishes false answers as regards proved facts, the Court ought to draw an adverse inference qua him and such an inference shall become an additional circumstance to prove the guilt of the accused - **{Sidhartha Vashisht Vs. State (NCT of Delhi), (2010)**

6 SCC 1}. Likewise, the seizure of wooden pieces effected on the memorandum of the accused/appellant even though there is no FSL report on record, becomes an additional link to inculcate the accused for killing his wife.

12. In view of the aforesaid factual and legal discussion, the trial Court does not appear to be at fault in appreciating the evidence before it and arriving at the conclusion of holding the accused guilty as described above. Accordingly, the appeal being devoid of

any substance is liable to be dismissed and it is dismissed as such with the affirmation of the judgment under challenge. As the accused/appellant is already in jail, no order to arrest him etc is necessary.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Sanjay Agrawal)
Judge