

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 273 of 2013**

- Piluram S/o Guddi Madiya, aged about 45 years, R/o village Mallapara Salepal, Police Station Badaji, District Bastar (C.G.)

---- Appellant**Versus**

- The State of Chhattisgarh Through : Station House Officer, Police Station Badaji, District Bastar (C.G.)

---- Respondent

For Appellant.	:	Shri Vipin Singh, Advocate.
For Respondent.	:	Shri Rahul Tamaskar, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Sanjay Agrawal

Judgment On Board

By Pritinker Diwaker, J
27/03/2018

This appeal arises out of the judgment of conviction and order of sentence dated 07.01.2013 passed by the Sessions Judge, Bastar at Jagdalpur, in S.T. No.147/2011 convicting the accused/appellant under Section 302 IPC & and sentencing him to undergo imprisonment for life with fine of Rs.2,000/-.

02. As per the prosecution case, on 10.09.2011 in between 3.00 and 4.00 pm, accused/appellant committed murder of his wife Somari Bai by causing club injuries on her vital part. The

incident was witnessed by Padma (PW/8), minor daughter of the appellant and deceased, aged about 13 years. Padma (PW/8) disclosed the incident to her brother Sudru (PW/1), who in turn, lodged mereg intimation (Ex.P/5) on 11.09.2011 at 01.30 pm followed by FIR (Ex.P/6) at 01.40 pm against the accused/appellant under Section 302 IPC. On 11.09.2011, inquest on the body of deceased was conducted vide Ex.P/7 and dead body was sent for postmortem examination to Community Health Center, Lohandiguda, where Dr. N.S. Nag (PW/5) conducted postmortem on the body of deceased and gave his report (Ex.P/15) noticing following injuries:-

- (i) Swelling on occipital region of skull approximately 2 x 2 inch.
- (ii) Abrasion on the left cheek in the size of 1 x 1 inch with blood stained.
- (iii) On internal examination, occipital bone of skull was found to be fractured.

The autopsy surgeon opined the cause of death of deceased to be internal hemorrhage due to head injury and death was homicidal in nature. It has been further opined that injuries were antemortem in nature and caused by hard and blunt object.

03. On 12.09.2011 memorandum of the accused/appellant (Ex.P/3) was recorded, based on which, one club was seized vide Ex.P/4, however, there is no FSL report on record to confirm presence of blood thereon.

04. After investigation, charge sheet was filed against the

accused/appellant under Section 302 IPC and accordingly charge was framed against him by the trial Court.

05. So as to hold the accused/appellant guilty, the prosecution examined as many as 09 witnesses. Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication.

06. 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.

07. Learned counsel for the appellant submits as under :

(i) That Padma (PW/8) is not a reliable witness as she has not fully supported the prosecution case.

(ii) That at the time of incident, the appellant was not in his house and it appears that some third person might have killed the deceased.

(iii) That even if the entire prosecution case is taken as it is, at best, the appellant is liable to be convicted under Section 304 Part-II IPC because on a sudden quarrel he appears to have caused injuries to the deceased. It has been argued that the appellant is in jail for last more than six years and after converting his conviction into Section 304 Part-II IPC, he be sentenced to the period already undergone by him.

08. On the other hand, supporting the impugned judgment it

has been argued by learned counsel for the State that conviction of the appellant is in accordance with law and there is no infirmity in the same. While referring illustration 'C' of Section 300 IPC, it has been argued that case of the appellant is covered within the definition of murder. Learned counsel further argued that present is a case of house murder where body of the deceased has been found inside the house of appellant and no satisfactory explanation has been offered by him in his statement recorded under Section 313 of Cr.P.C. He also argued that Padma (PW/8) is a reliable witness because she has not been confronted properly from her diary statement (Ex.D/3).

09. We have heard learned counsel for the parties and perused the material available on record.

10. Sudru (PW/1) is son of the deceased and the appellant before whom the extra-judicial confession was made by the appellant. He has stated that he was not present in the house when his mother was done to death by his father and when he was returning his house, he saw his father fleeing. On being asked his father confessed before him that he has killed his (this witness) mother. In para 12 of his cross-examination, he has categorically stated that he had disclosed the fact of killing his mother by his father and if the same is not mentioned into his statement (Ex.D/1), he cannot tell the reason.

11. Sundar (PW/2) is another son of the deceased and appellant. He has stated that after hearing cries of his mother, he reached the place of occurrence and saw his father

(appellant) fleeing from the spot carrying crowbar (सबल) in his hand. In cross-examination, this witness has stated that at the time of incident except his father nobody was present there and he has disclosed the fact of killing his mother by the appellant to police and if the same is not written in his statement, he cannot tell the reason.

12. Pandru (PW/3), witness to memorandum of the accused/appellant (Ex.P/3) and seizure of club made under Ex.P/4, though turned hostile, but has admitted his signature thereon.

13. D.S. Diwan (PW/4) - Investigating Officer, has duly supported the prosecution case.

14. Dr. N.S. Nag (PW/5) conducted postmortem examination on the body of deceased and gave his report (Ex.P/15) opining the cause of death of deceased to be internal hemorrhage due to head injury and death was homicidal in nature.

15. Ravind Kumar Mishra (PW/6) - Constable, assisted in the investigation.

16. Kishore Nandanwar (PW/7) - Patwari who prepared spot map vide Ex.P/16.

17. Padma (PW/8) is daughter of the appellant and the deceased aged 13 years. She has stated that on the date of incident her mother was done to death by the appellant and she saw him assaulting the deceased by rod. In cross-examination, though she has stated that she returned from school at about 5.00 pm but has categorically denied the fact

that when she returned from school she saw her mother dead. She has further stated that she disclosed the fact to police that her mother was assaulted by the appellant by rod but if the same is not written in her statement, she cannot tell the reason. This witness has not been confronted properly from her diary statement (Ex.D/3) wherein she has categorically stated that she returned from school at 4.00 pm. Furthermore, considering the background of this witness, who is not only a child witness but also a rustic villager, unless she has been properly cross-examined, minor variation in her statement will not falsify her statement.

18. 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.”

19. Further in the matter of **State of Rajsthan 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 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 Senior 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."

20. 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."

20. Close scrutiny of the evidence makes it clear that on the fateful day i.e. 10.09.2011, body of deceased Somari Bai was found inside the house of accused/appellant where he was residing along with her. The incident was witnessed by Padma (PW/8), minor daughter of the appellant and the deceased. According to PW/8, she saw the appellant assaulting the deceased by rod, and in cross-examination, but for minor contradiction she has duly supported the prosecution case. That apart, the accused/appellant made extra-judicial confession before PW/1, son of the accused/appellant and the deceased, who has categorically stated that at the time of

incident when he was returning his house, he saw the appellant fleeing from the spot and on being asked, the appellant made extra-judicial confession before him that he has killed the deceased. Furthermore, according to postmortem report (Ex.P/15), two injuries were noticed on skull and cheek including fracture of occipital bone of skull and cause of death was internal hemorrhage due to head injury and death was homicidal in nature. Thus, from the postmortem report (Ex.P/15) it is established that the death of the deceased was homicidal in nature.

21. Undisputedly, the body of deceased was found inside the house which was in the occupation of the two only (deceased Somari Bai and the accused) and no probable acceptable explanation has been offered by him in his 313 Cr.P.C. statement as to under what circumstances the deceased sustained injuries and died.

22. We further find no force in the argument of counsel for the appellant that the accused/appellant is liable to be convicted under Section 304 Part-II of IPC.

The evidence of PW/1, before whom extra-judicial confession was made by the appellant and PW/8, eye-witness to the incident, clearly demonstrate the intention of the appellant which brings his case within the ambit of Section 300 (3rdly) of IPC, which reads as under:-

“3rdly. - If it is done with the intention of causing

bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death.”

23. 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 his wife 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.

24. 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/-

(Sanjay Agrawal)
JUDGE