

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 996 OF 2013**

Anita Sasane W/o Bala Sabeh Sasane age 30 year village Singori, police station Shegaon distt. Ahmadnagar Maharastra, Civil and Revenue distt. Ahmadnagar (M.H.).

----Appellant**Versus**

State of Chhattisgarh through Arang Police Station Raipur (C.G.)

---- Respondent

For Appellant	:	Mr. Ajay Mishra, Advocate
For State/Respondent	:	Mr. Rajendra Tripathi, 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 accused/appellant under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') against the judgment dated 31/07/2013 passed by the learned Sessions Judge, Raipur (C.G.) in Sessions Trial No. 75/2012, 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 to undergo imprisonment for life with fine of Rs.2000/-, in default of payment of fine amount, she has to undergo additional imprisonment for two

months.

2. In the present case, it is not disputed that the appellant Anita Sasane is the wife of deceased Bala Saheb Sasane.

3. Briefly stated, the case of the prosecution is that in the intervening night of 29-30/03/2011, wife of the deceased, namely, Anita Sasane with the help of her brother-in-law, i.e. Arjun Sasane has given the blow of Sickle (*Hasiya*) on the head of her husband Bala Saheb Sasane with an intention to kill him, as a result of which, he expired instantaneously. It is alleged further that the deceased Bala Saheb Sasane had come from his village Singori along with his cousin Arjun Sasane and wife, the present appellant, to the village Ugetara and started living in a rented premises for the purposes of construction of their new house. They called their relative Amol Mohide also in order to help them and, during the course of construction work, an illicit relationship between the wife of the deceased and said Amol Mohide had developed and the deceased- Bala Saheb Sasane came to know about the said fact, which led to commission of alleged crime in question on the said fateful day.

4. Based upon the aforesaid incident, the merg intimation (Ex. P-5) was registered by one Khelawan Sahu on 30/03/2011 at 8.10 a.m. by saying that the accused Arjun Sasane informed him regarding the murder of his cousin Bala Saheb Sasane. After holding an inquiry on the basis of said merg intimation, First Information Report (Ex. P-18) was registered on the same day by the concerned Station House Officer Arang, District Raipur (C.G.) against the appellant Anita Sasane and Arjun Sasane under Section 302 read with Section 34 of the IPC. Inquest was conducted on 30/03/2011 vide (Ex. P-3). After inquest, the dead body was sent for autopsy to Medical College Raipur, where Dr. Saket Agrawal (PW-7) conducted the postmortem on the same day and submitted its report (Ex.

P-6) by opining that the cause of death is syncope due to injuries on vital organs of the body and it might be homicidal in nature. Investigating Officer has seized the used weapon Sickie (*Hasiya*) from the spot vide seizure memo (Ex. P-4) on 30/03/2011 at 14.05 hours.

5. After usual investigation of the matter as such, the offence punishable under Section 302 read with Section 34 of the IPC was registered against the appellant Anita Sasane and co-accused Arjun Sasane by the concerned Station House Officer, and submitted its final report before the Judicial Magistrate First Class, Raipur on 23/02/2012 and thereafter, it was committed to the Sessions Judge, Raipur for its trial.

6. After considering the *prima facie* materials available on record, charge under Section 302 read with Section 34 of the IPC has been framed against the appellant and one Arjun Sasane on 28/03/2012. They 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 persons, the prosecution has examined as many as 13 witnesses, while none was examined by them in their defence.

8. The trial Court, after considering the evidence led by the prosecution, has convicted the appellant Anita Sasane, the wife of the deceased Bala Saheb Sasane and sentenced her as aforesaid, while acquitting the other co-accused Arjun Sasane in relation to the crime in question.

9. Being aggrieved, the appellant has preferred this appeal. Mr. Ajay Mishra, 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 after disbelieving the extra-judicial confession as alleged to have been made by the appellant before the village *Panchayat* by way of consent letter (Ex. P-2), the trial Court ought not to have convicted the appellant in relation to the crime in question.

10. On the other hand, Mr. Rajendra Tripathi, 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 her under Section 302 of the IPC.

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

12. Kalu Yavhan Sasane (PW-1) is the elder brother of deceased Bala Saheb Sasane, who has stated in his evidence that his brother had come to know about the alleged illicit relationship of his wife Anita Sasane with his brother-in-law namely Amol Mohide. He has stated further that although his deceased brother came to know about this fact, but he has not disclosed to me. He has stated further that on the fateful day at about 00.30 hours (half past of 12 O'clock), he received the telephonic information from Nain Deo, the relative of co-accused Arjun Sasane, who informed him that deceased has inflicted himself with a Sickle (*Hasiya*). According to this witness, the appellant has confessed her guilt before the village *Panchayat* and has reduced in writing all the facts on the stamp paper, styled as consent letter (Ex. P-2).

13. Bhujang Jano (PW-2) is the witness to the alleged consent letter (Ex. P-2). He stated that the appellant has confessed her guilt before the village *Panchayat* by saying that she has killed her husband Bala Saheb Sasane. He stated further that the consent letter in this regard was written by one Madan Chhagan Shirsath (PW-9). However, the said Madan Chhagan Shirsath (PW-9) has turned hostile and not supported the said version.

14. Dhabubai (PW-3) is the mother of deceased and has stated in her evidence that her son informed her regarding the alleged illicit relationship of his wife with one Amol Mohide. She has stated further that she came to know about the death of her son from the father of the co-accused Arjun Sasane. According to her, the appellant confessed the commission of alleged crime before the village *Panchayat*. However, from perusal of her further statement would show that she was not present in the said *Panchayat* meeting.

15. Faguva Ram (PW-4) is the witness of inquest (Ex. P-3). Tomanlal Sahu (PW-5) is also the witness of said inquest. He has stated in his evidence that the deceased Bala Saheb Sasane has taken his house on rent where he used to live along with his wife and one Arjun Sasane and stated further that in the night of the fateful day, said Arjun Sasane had come to him and informed that deceased Bala Saheb Sasane has committed suicide. According to him, the alleged used weapon i.e. Sickie (*Hasiya*) was recovered from the spot vide seizure memo (Ex. P-4). Khelawan Sahu (PW-6) is said to have lodged the merger intimation (Ex. P-5), who rushed to the place of incident immediately upon knowing the commission of alleged crime and found the dead body of the deceased inside the room and, the accused Anita Sasane told him that her husband i.e. Bala Saheb Sasane has committed suicide. At the relevant time, he has seen the blood spots on her face.

16. Dr. Saket Agrawal (PW-7) has conducted the postmortem of the body of the deceased Bala Saheb Sasane, and submitted his postmortem report (Ex. P-6) by opining that the cause of death is syncope due to injuries on his vital organs. According to him, the death might be homicidal in nature. He has stated further that some of the injuries which were caused to the body, particularly the injury caused on the left temporal bone of the back side of the head, could not have been inflicted by self with the alleged used weapon i.e. Sickel (Hasiya).

17. S. R. Ratre (PW-8) is a Patwari, who has prepared the spot map (*Nazri Naksha*) (Ex. P-8) and Patwari *Naksha* (Ex. P-9). Vijay Kumar Sahu (PW-12) is a witness of seizure memo (Ex. P-15), by which, underwear and *gamchha* was seized in his presence. Both these witnesses are thus the formal witnesses. Madan Chhagan Shirsath (PW-9), said to have written the alleged consent letter (Ex. P-2) of the appellant on the stamp paper has turned hostile without supporting the prosecution case. Likewise, Ranjit Kumar Vishwakarma (PW-10) and Krishna Kumar Sahu (PW-11) have also turned hostile without supporting the prosecution case. L. C. Mahile (PW-13) is the Investigating Officer and has assisted the prosecution.

18. Perusal of the entire aforesaid evidence would show that there is no eyewitness to the incident and the entire case of the prosecution is based upon the circumstantial evidence. The evidence adduced by the prosecution would show further that the extra-judicial confession as alleged to have been made by the appellant Anita Sasane before the village *Panchayat* by way of consent letter (Ex. P-2) cannot be held to be sustainable as Madan Chhagan Shirsath (PW-9), who had written the same, has turned hostile without supporting the prosecution case.

19. Pertinently to be observed here that the appellant Anita Sasane was alone

with her husband in a house when the alleged incident took place in the intervening night of 29-30/03/2011. It was rather the admitted fact as visualized from her statement recorded under Section 313 of the Cr.P.C., wherein she has admitted very specifically while giving the answer to query No.41 that “it is true that she was inside the house and Arjun Sasane the other co-accused was sleeping in the Verandah.”

20. Moreover, Dr. Saket Agrawal (PW-7) has opined in its query report (Ex. P-7) that some of the injuries particularly, the injury caused on the left temporal bone of the back side of the head could not have been inflicted by self with the alleged used weapon i.e. Sickle (Hasiya).

21. Under the aforesaid circumstances, it cannot be held that the deceased had committed suicide. Since it was not a suicidal case and the appellant Anita Sasane alone was with her deceased husband Bala Saheb Sasane inside the house, then in such an eventuality, the burden was heavily upon her to explain the manner, in which, her husband had died as this material fact was alone within her knowledge and it was not possible to be known to anyone else. However, no explanation whatsoever was offered by her to throw some light on this material fact as to how her husband had died when both were present in the house.

22. 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.”

23. 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

the deceased has not committed suicide and in fact, the death was homicidal in nature and the used weapon i.e. Sickle (*Hasiya*) was also recovered from the place of incident where the appellant was found with her husband at the relevant time. Therefore, by virtue of the aforesaid provision, the appellant/wife was required to explain the fact as to how her husband had died at the time when it was not possible to be known to anyone else.

24. 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 categorical 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.....”

25. 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.”

26. Reverting back to the present case, admittedly the appellant Anita Sasane and her husband Bala Saheb Sasane both were found together in their home at the time when the alleged incident took place at about 00.30 hours, i.e. half past of 12 O'clock in the night, then in view of the aforesaid principles, the burden of proof was certainly upon the appellant to explain as to how the death of her husband had taken place. Having failed to offer any explanation whatsoever, would therefore lead to an irresistible conclusion that the appellant Anita Sasane alone was responsible for the commission of alleged crime in question occurred in the intervening night of 29-30/03/2011.

27. 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 Section 302 of the IPC is hereby affirmed.

Sd/-

(Prashant Kumar Mishra)
Judge

Sd/-

(Sanjay Agrawal)
Judge

Yogesh