

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1038 of 2013**

(Arising out of judgment dated 21.8.2013 in ST No. 256/2011 of the learned Sessions Judge, Surguja (Ambikapur))

- Sukhram @ Dhaku Routiya S/o Chamar Sai Raoutiya Aged About 27 Years R/o. Village Routiya Para, Taraju, Thana-Lakhanpur, Distt. Surguja, Chhattisgarh

---- Appellant

Versus

- State Of C.G. Through P.S. Lakhanpur, Distt. Surguja, Chhattisgarh

---- Respondent

For Appellant : Shri Gajendra Sahu, Advocate.
For Respondent : Shri Vinod Tekam, Panel Lawyer.

**Hon'ble Shri Prashant Kumar Mishra &
Hon'ble Shri Ram Prasanna Sharma, JJ**

Judgment On Board By Ram Prasanna Sharma, J

12/05/2018

1. This appeal is preferred against the judgment dated 21st August, 2013 passed by the Sessions Judge, Surguja at Ambikapur in ST No.256/2011 wherein the said Court convicted the appellant for commission of offence under Section 302 of the IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs.1,000/-, with default stipulation for committing murder of his

wife namely, Subaso Bai on 12.2.2011 at about 12 noon at village Taraju (Routiyapara), PS Lakhanpur, District Sarguja.

2. In the present case, name of the deceased is Subaso Bai, who was the wife of the appellant. As per the version of the prosecution, father of the appellant went to work under the Rojgar Guarantee Scheme and returned at about 10 am. At that time, the deceased sought permission to go with her husband to her parental house. On this, altercation took place between the deceased and the appellant and the appellant assaulted the deceased by Kudari (Spade) causing multiple injuries on her head. The deceased fell down on the spot and succumbed to the injuries. The matter was reported and investigated and after completion of trial, the trial Court convicted the appellant as mentioned above.

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

- So called eyewitness Chamar Sai (PW-1) has not supported the version of the prosecution, therefore, the finding recorded by the trial Court on the basis of his evidence is erroneous. All other witnesses came to the spot after hearing the cries of Chamar Sai and at the same time, Chamar Sai did not narrate regarding causing of injuries by the appellant. Corroborative piece of evidence regarding seizure of articles is also doubtful and no chemical analyser proved the

origin of the blood group in seized articles.

4. On the other hand, learned State Counsel supporting the impugned judgment submits that the finding arrived at by the trial Court is based on proper marshalling of evidence and the same is not liable to be interfered with invoking jurisdiction of appeal.
5. To substantiate the charge, the prosecution examined as many as 8 witnesses. Dr. Premsingh Marco (PW-7) conducted autopsy of the deceased on 13.2.2011 at CHC, Lakhanpur and noticed the following injuries:-

'(i) lacerated wound on right temporal region of size 2.5" x 0.5" x bone deep

(ii) lacerated wound on left parietal region of size 03" x 0.5" x bone deep

(iii) lacerated wound on left parietal region of size 01" x 1"x muscle deep. Blood clots present over all wounds."

6. The expert found fracture of skull bone leading to brain damage causing death. It is opined by the expert that the death is homicidal in nature. This witness remained firm during cross-examination and there is no other expert's opinion contrary to the opinion of this expert, therefore, it is established that the death of the deceased is homicidal.
7. Chamar Sai (PW-1) is the father of the appellant. As per version of this witness, he went to work near pond of village Taraju and

the appellant and the deceased together were in the house. He further deposed that when he returned at about 11 am, he found the dead body of the deceased on the floor of the house and the appellant was not present. This witness has lodged FIR (Ex.-P/1) on the date of the incident in which the appellant is named as culprit. Witness Chamar Sai deposed before the trial Court that it is the appellant who caused injuries to the deceased. The version of this witness is supported by the version of (PW-2) Savitri Bai, (PW-3) Parma Ram, (PW-5) Kajano Bai and (PW-6) Kabutari Bai. All these witnesses have stated that the dead body of the deceased was lying on the floor of the house. From the evidence of these witnesses, it is established that the incident took place within four corners of the house and from the evidence of Chamar Sai (PW-1), it is established that only two persons i.e. the appellant and the deceased were present in the house. When the offence is committed in the house where the presence of the appellant is established, the appellant is under obligation to explain as to how murderous assault was made against the deceased.

8. From the autopsy report, it is clear that the assault was brutal causing fracture on temporal bone and dislocation was also found on skull.
9. In the matter of **Trimukh Maroti Kirkan Vs. State of**

Maharashtra {(2006) 10 SCC 681}, it has been held that 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. Yet again in the matter of **Suresh & Another Vs. State of Haryana** {(2015) 2 SCC 227}, the Supreme Court has held that under Section 106 of the Evidence Act it is for the person concerned to prove any especial fact within his knowledge and if such especial fact is not disclosed, an adverse inference can be drawn.
11. The appellant has not explained anything and as per his statement under Section 313 CrPC, he has denied all the facts incriminating him with the crime. In the absence of any

explanation, Section 106 of the Evidence Act, 1872 would apply and on the basis of evidence adduced by the prosecution, it is established that it is the appellant who committed murder of his wife. The evidence against the appellant is clinching. The argument advanced on behalf of the appellant regarding evidence of Chamar Sai (PW-1) and other witnesses is not going to help the appellant. It is not a case where the offence is committed outside the four corners of the house, therefore, the defence has very limited scope.

12. The finding of the trial Court is based on proper marshalling of the evidence and it would not be proper for us to disturb the finding recorded by the trial Court. For commission of offence under Section 302 of the IPC, the trial Court awarded minimum sentence and the same is also not required to be interfered with.
13. The Appeal being devoid of any substance deserves to be and is hereby dismissed.

Sd/-
Judge
(Prashant Kumar Mishra)

Sd/-
Judge
(Ram Prasanna Sharma)