

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1190 of 2013

- Nandu Pahadi Korva S/o Late Thakur Pahadi Korwa Aged About 30 Years R/o. Vill. Ghatgaon-Sattivevra, Out Post Bariyon, P.S. Dhourpur, Distt. Surguja C.G., Chhattisgarh

---- Appellant

Versus

- State Of Chhattisgarh Through Out Post Bariyon, Ps. Dhourpur, Distt. Surguja C.G., Chhattisgarh

---- Respondent

For Appellant	:	Shri KK Singh, Advocate.
For Respondent/State	:	Smt. Madhunisha Singh, PL.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board by Pritinker Diwaker, J

27/01/2018

This appeal has been filed against the judgment of conviction and order of sentence dated 9.10.2013 passed by the Sessions Judge, Surguja (Ambikapur) in Sessions Trial No. 71/2012 convicting the accused/appellant under Section 302 IPC and sentencing him to undergo imprisonment for life with fine of Rs.1000/-, plus default stipulation.

2. As per the prosecution case, in the night intervening 9/10.1.2012 the accused/appellant caused several injuries to his wife Dhaneshwari Bai with axe resulting in her instantaneous death. Unnumbered merged Ex.P/13 was lodged on 10.1.2012 at 11.35 AM by PW-6 Munnaram,

younger brother of the appellant. Soon thereafter unnumbered FIR (Ex.P/12) was also recorded against the appellant under Section 302 of IPC. Inquest over the dead body was prepared on 10.1.2012 vide Ex.P/9. Numbered merged Ex.P/11 and numbered FIR (Ex.P/10) were registered on the same day. The dead body was sent for postmortem which was conducted on the same day by PW-1 Dr. K. Kachhap vide Ex.P/1 who noticed incised wound on forehead with fracture of frontal bone and abrasions on both knees, hematoma was present on right side of head. In his opinion, the cause of death was shock due to excessive hemorrhage as a result of head injury and the death was homicidal in nature. The clothes of the appellant worn by him at the time of incident were seized vide Ex.P/6 and as per FSL report Ex.P/22, blood was found on his lower. While framing charge, the trial Judge framed charge under Section 302 of IPC against the appellant.

3. In order to prove the complicity of the accused/appellant in the crime in question, the prosecution has examined 8 witnesses. Statement of the accused under Section 313 Cr.P.C. was also recorded in which he denied his guilt and pleaded innocence and false implication in the case.

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

5. Counsel for the accused/appellant submits that there is no eyewitness account in this case and the accused/appellant has been convicted solely on the basis of circumstantial evidence but the circumstances on which the prosecution has relied upon are not as

such to connect the accused/appellant with the crime in question. He submits that even as per case of the prosecution itself, on the fateful night the appellant expressed his desire to have sex with his wife/deceased, but first she refused and then left the bedroom saying that she would be coming back after attending the call of nature and when she did not return for some time, the appellant went in search of her and found her in objectionable position with one person in the field and thus being enraged by the act of the deceased, if some injuries were caused by the appellant, he cannot be held guilty of murder and can at best be held guilty of culpable homicide not amounting to murder making him liable to conviction under Section 304 Part-I or II of IPC.

6. On the other hand, State counsel while supporting the judgment impugned has submitted that the findings recorded by the Court below convicting the accused/appellant under Section 302 are strictly in accordance with law and there is no infirmity in the same. She submits that at the time of incident except the appellant and the deceased no other person was there in the house and therefore it can safely be inferred that it is the accused/appellant alone who committed the murder of the deceased. She further submits that the accused/appellant has failed to give any explanation as to under what circumstances his wife has been killed and therefore also the presumption goes against him. State counsel submits that bloodstained clothes of the appellant were seized and as per FSL report (EX.P/22) blood was found on it. Though serological report is not there on record, but in the facts and circumstances of the case, the FSL report can be treated as an additional link in the chain of

circumstances.

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

8. PW-1 Dr. A. Kachhap conducted postmortem on the body of the deceased on 10.1.2012 vide Ex.P/1 and noticed incised wound on forehead with fracture of frontal bone and abrasions on both knees, hematoma was present on right side of head. In his opinion, the cause of death was shock due to excessive hemorrhage as a result of head injury and the death was homicidal in nature. He also examined the axe seized from the spot and opined that the injuries suffered by the deceased could be caused by it. PW-2 Dhanukdhari, brother of the appellant, has turned hostile. However, he admits that he saw the dead body of the deceased lying in the house of the appellant. PW-3 Roopsai has turned hostile. PW-4 Vifanram, a witness to spot map Ex.P/6, seizure of axe Ex.P/7 and inquest Ex.P/9 has supported the prosecution case. PW-5 Shankar Kashyap recorded numbered FIR and merg. PW-6 Munnaram is brother of the deceased at whose instance merg and FIR were registered. He has also turned hostile. PW-7 Moharsai, Patwari, prepared the spot map Ex.P/17. PW-8 Jitendra Singh, investigating officer, has duly supported the prosecution case.

In his statement under Section 313 of CrPC, the accused/appellant has failed to offer any explanation as to how his wife/deceased was found dead in the house where they were the only inmates. Rather he admits in reply to Question No.23 that he returned to his house at 11 PM.

9. Obviously there no eyewitness account in the present case and the entire case is based on the circumstantial evidence. One of the strongest circumstances put down by the prosecution, in this case is that apart from the accused and the deceased no third person was present in the house at the relevant time. No satisfactory explanation has come from the accused as to how the deceased died when there was no other person except the two. From the evidence on record it also comes to the fore that relations between the two were strained and there used to be quarrel between them.

10. 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.”

11. 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.

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.”

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.”

12. 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 apart from the accused and deceased, no other person 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, no explanation

has come forth from the accused/appellant in his statement recorded under Section 313 of the Code of Criminal Procedure as to how the death of his wife occurred though being the sole inmate of the house in question it was his bounden duty to explain the things by leading cogent and pin-pointed evidence in his defence.

13. This apart, in reply to Questions No.17 & 18, the appellant has admitted seizure of his bloodstained clothes and as per FSL report, blood was found on the lower of the appellant. Though serological report is not there on record, but in the given facts and circumstances of the case, presence of blood on the clothe of the appellant coupled with his admission regarding such seizure and failure to explain as to how blood was found on his clothes, non-production of serological report is not of much consequence and the FSL report can safely be taken as an additional circumstance against the appellant.

We find no force in the argument of the appellant that in the facts and circumstances of the case, he is liable to be convicted either under Section 304 Part-I or II of IPC. Considering the manner in which the crime was committed, the part of the body where the assault was made with such a force which led to on-the-spot death of the deceased, it can safely be inferred that while making such assault the appellant was not only having intention to kill his wife but also had the knowledge that infliction of such injury would result in her death. Being so, his conviction under Section 302 of IPC cannot be faulted with.

14. 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.

15. 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/
(A.S. Chandel)
Judge