

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1232 of 2013

- Boddaram S/o . Paklu Aged About 50 Years R/o. Vill. Parapur, Ghumar Konta Para, P.S. Usaribeda/lohandiguda, Civiil And Rev. Distt. Bastar C.G., Chhattisgarh

---- Appellant

Versus

- State Of Chhattisgarh Through SHO, P.S. Lohandiguda, Civiil And Rev. Distt. Bastar C.G., Chhattisgarh

---- Respondent

For Appellant	: Shri G.R.Mirri, Advocate
For Respondent/State	: Shri Ravindra Agrawal, G.A.

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

Judgement on Board by Pritinker Diwaker J.

10/04/2018

This appeal arises out of judgment and order dated 26.10.2013 passed by the Sessions Judge, Bastar at Jagdalpur in S.T. No. 43/2013 convicting the accused/appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life with fine of Rs. 2,000/- plus default stipulation.

2. In the present case name of the deceased is Kawasi Bukko Bai, wife of the appellant. As per prosecution case, relation between the appellant and the deceased were not cordial and quite often they used to quarrel. It is said that on 09.03.13 accused/appellant and the deceased were at home whereas their son Dhobi Ram, daughter-in-law

Chameli and daughter Bode Bai @ Sunita had left the house for their work place and while returning at about 11.00 a.m. he heard the cries of his mother to save her as his father is beating her and then he towards her and saw his father has stabbed the deceased and killed her. On seeing this, he raised cries whereupon his wife Chameli Bai, sister Sunita came and thereafter informed about the incident to the villagers, went to police station for lodging the FIR Ex. P-6 at about 2.20 p.m. against the appellant under Section 302 IPC. Merg intimation Ex. P-13 was registered at the instance of dhobi Ram PW-4. Inquest Ex.P-17 was prepared and body was sent for postmortem examination which was conducted by Dr. N.S.Nag (PW-09) and according to him, cause of death was internal and external hemorrhagic shock due to stab wound on the abdomen region and the death was homicidal in nature. On the memorandum of accused/appellant Ex.P-3 dated 09.03.2013 seizure Ex.P-1 of knife and T-shirt ere made however there is no FSL report. After filing of charge sheet, the trial judge has framed charge against the appellant under Section 302 IPC.

3. In order to establish the guilt of the accused/appellant, prosecution has examined 10 witnesses. Statement of the accused/appellant was recorded under Section 313 of the Cr.P.C. in which he denied the charges levelled against him and pleaded his innocence and false implication in the case.

4. After hearing the parties, the trial Court by judgment impugned, has convicted and sentenced the accused/appellant as mentioned in paragraph 1 of the judgment. Hence the present appeal.

5. Contention of counsel for the appellant is as under :

i) that all the important witnesses including the informant has not supported the prosecution case and have turned hostile.

ii) that the appellant has been convicted solely on the basis of statement of Bode Bai (PW-6) daughter of the appellant and deceased but the said witness is not trustworthy.

iii) that even the principle of house murder will not apply in the present case.

iv) on the memorandum of accused/appellant seizure of knife and clothes of the appellant were made but there is no FSL report and thus the said seizure is of consequence.

6. On the other hand supporting the impugned judgment it has been argued by the State counsel that

i) at the time of occurrence appellant and the deceased were alone in the house and once dead body of the deceased was found inside the house it was incumbent on the part of the appellant to explain as to how the deceased died and no such probable explanation has been forwarded by him in his statement under Section 313 Cr.P.C.

ii) that the daughter of the accused/appellant saw the incident from the spot and then immediately saw the deceased in a pool of blood and thus the statement of this witness is good enough to uphold the conviction of the appellant.

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

8. Sriram (PW-1) and Sanjay (PW-2) has not stated anything

against the appellant and has turned hostile. Dhobi Ram (PW-4) is the informant and son of the deceased and appellant has turned hostile. Smt. Chamli (PW-5) is the daughter in law of the appellant and deceased, has not stated anything against the appellant and has turned hostile. Bode Bai (PW-6) has stated that the deceased was her mother whereas accused/appellant is her father. She has stated that on the date of incident she along with her brother and sister-in-law had gone to excavate the sand from the river and at about 10.00 a.m. when they returned home to take meals, they saw her father had stabbed the deceased with knife and was fleeing away from the spot. In cross-examination she has clarified that she did not see the appellant assaulting the deceased but saw him fleeing away from the spot. In para 7 she has categorically stated that the accused/appellant and the deceased were alone in the house. Pradeep Pandey (PW-7) is the patwari who prepared spot map. Premprakash Bada (PW-8) is the constable who assisted in the investigation. Dr. N.S.Nag (PW-9) is the doctor who conducted postmortem examination on the body of the deceased and according to him cause of death was internal and external hemorrhagic shock due to stab wound on the abdomen region and the death was homicidal in nature. Prakash Shukla (PW-10) is the Investigating Officer who has done the investigation.

9. Close scrutiny of the evidence makes it clear that at the time of occurrence of the incident appellant and the deceased were alone at home and that dead body of the deceased was found inside the house. When the family members of the appellant reached there the appellant was fleeing from the spot. Bode Bai (PW-6) daughter of the deceased has duly supported the prosecution case in this respect. She has clarified that she had not seen the appellant assaulting the deceased

but she saw the appellant fleeing away from the spot and in para 7 she has stated that at the time of occurrence of the incident appellant and the deceased were all alone in the house. In a 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. Here in this case the dead body was found in the house of the accused and as per the evidence of the witnesses, son of the appellant heard the cries of his mother to save her as his father i.e. the appellant was beating her and when he reached there, he saw the his mother (since deceased) lying in a pool and blood and his father was fleeing away from the spot. 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 *Dyaneshwar 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.”

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 apart from the accused, only the deceased was there and 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 adult 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.

12. 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 of convicting the accused under Section 302 IPC. Accordingly, the judgment impugned calls for no interference in this appeal.

13. 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