

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 253 of 2012**

- Man Singh S/o Bablu, Caste Gond, aged about 42 years, R/o Village Kurripara- Sarbahara , P.S. Gaurela, Distt. Bilaspur C.G.

----Appellant**Versus**

- State of C.G., through the District Magistrate, Bilaspur.

---- Respondent

For Appellant

Shri Ravindra Agrawal, Advocate.

For Respondent/State

Shri Avinash Choubey, P.L.

Hon'ble Shri Justice Prashant Kumar Mishra

Hon'ble Shri Justice Gautam Chourdiya

Judgment on Board by Shri Prashant Kumar Mishra J.

02/09/2019

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 18.10.2011 passed by the Additional District and Sessions Judge, Pendra Road, District Bilaspur, C.G. in S.T. No.46/10, whereby the appellant stands convicted under Sections 302 and 201 of IPC and sentenced to undergo R.I. for life and R.I. for 7 years respectively with fine of Rs.100/- for each of the offence, in default to undergo additional R.I. for three months for each of the offence.
2. Appellant has committed murder of his wife Budh Kunwar during the intervening night of 10th and 11th August, 2010 by beating her with a club and thereafter strangulating her by means of Saree. PW-1 Shiv Prasad Neti witnessed the dead body hanging with a Guava tree in his kitchen garden in the morning of 11th August, 2010, he informed his mother and two neighbours, however, before all of them could

reassemble, the dead body was found missing.

3. The merged intimation Ex.P-5 was lodged by the appellant himself at about 9:20 am informing the police that deceased had consumed liquor during celebration of Hareli festival for which he scolded her as to why she has consumed liquor because the amount spent could have been used for buying household articles. Thereafter, both of them retired to bed. At about 10 pm, he heard the sound of opening of door and thought that she might have gone to attend nature's call. He woke up his 15 years old son Shivam and both of them started searching the deceased through torch light and witnessed that the deceased had committed suicide by hanging herself through the Guava tree. She was brought down and was found dead. The dead body inquest was prepared vide Ex.P-6 and thereafter postmortem was conducted by PW-8 Dr. A.S. Sendhram, who found antemortem as well as postmortem injuries over the person of the deceased in his report vide Ex.P-15. Dr. Sendhram found the following external features and injuries over the person of the deceased.

“External finding

Body supine in position

Face- Bluish in colour

Eyes- Opened and pupil dilated

Nose- No body froth comes through both nostrils of nose

Mouth- Slightly open and teeth bitten

Rigor Mortis- Present

External Injuries:

(i) Abrasion and finer nail marks present in the both side of neck right, left and in front of neck contusion present L/E size no.11cm x 2 cm.

(ii) Ligature mark situated low down in the neck below the thyroid cartilage horizontally and not well marked L/E size right to left 13 cm.

(iii) Contusion present in the left side of back over upper border of left scapula bone transverse in direction L/E 9 cm x 3 cm.”

4. Dr. Sendhram also found the following features during postmortem.

“On dissection of ligature mark white glistening fascia not

showing, dribbling of saliva not present at angle of mouth.
(ii) Larynx and Trachea congested and contains frothy mucus.
(iii) Both lungs are markedly congested showing hemorrhagic patches and petechiae and exuding dark fluid blood of Section."

5. According to Dr. Sendhram injury no.1 may be caused by finger nail mark and thumb to strangle hold of neck and antemortem in nature. Injury No.2 may be caused using by soft cloth (rope) and postmortem in nature. Injury No.3 may be caused by hard and blunt object and antemortem in nature. Duration of death was 14 to 16 hours prior to autopsy and homicidal in nature. The mode of death was reported to be asphyxia due to injury no.1.
6. Having found the death to be on account of antemortem injury leading to asphyxia and being homicidal in nature, the appellant was taken into custody and during interrogation his memorandum statement Ex.P-1 was recorded on 14.08.2010 wherein he informed the police that for celebrating Hareli Festival PW-2 Sambhu and one Indel had come to his house and all of them consumed liquor. Thereafter, Sambhu returned to his house but Indel stayed back for having dinner. The appellant further disclosed that after taking meal he went to sleep and at that time Budh Kunwar was serving dinner to Indel. He suddenly woke up at 10 pm and saw that Indel was not present there. However, his wife was awake and on inquiry she started switching the electric bulb off and on, on which he became suspicious of her affair with Indel and gave one blow over her back by means of club. Indel was not available in the house but his children Shivam and Shiv Kumari were awake. His wife had gone towards kitchen garden and he and two children went asleep. After sometime he went towards the Kitchen garden and saw his wife sitting beneath the Guava tree in a state of intoxication, due to which he became enraged and strangulated her

and thereafter hanged her through the Guava tree. He brought back the dead body to his house at about 5:30 am with the help of his son Shivam. Pursuant to the memorandum statement, the club was recovered from the appellant's possession vide Ex.P-2.

7. Based on the circumstantial evidence, the appellant has been convicted by the trial Court.
8. Shri Ravindra Agrawal, learned counsel for the appellant would submit that the chain of circumstantial evidence is not so complete to conclusively prove the guilt of the appellant and there being gaps in the prosecution story, the appellant deserves to be acquitted.
9. Per contra, Shri Avinash Choubey, learned State counsel would support the impugned conviction and sentence. He would submit that the appellant made false statement to the police in his mere intimation and has further made disclosure statement bringing to the notice of the police certain facts which were within his exclusive knowledge, therefore, present being a case of house murder, the appellant has rightly been convicted by the trial Court.
10. We have heard learned counsel for the parties at length and perused the record.
11. From the statements of PW-1 Shiv Prasad Neti and PW-2 Pardeshi, it is established that the dead body was found hanging through a Guava tree in the morning of 11th August, 2010. When PW-1 went back to his house to inform his mother and other villagers and returned back to the place, the dead body was found missing as it was already removed from the Guava tree. During this time, the villagers had assembled at the place and they saw the appellant and his son bringing the body to their house. Since this has happened in the early morning at about 5:30 am, the appellant was supposed to inform the police the true facts

leading to the death of his wife but in the merged intimation lodged by him at about 9:20 am, he narrated a story as if the death by suicide had already taken place at about 11 pm and he brought the dead body to his house at the same time. This is in complete contradiction to the statements made by the witnesses PW-1 Shiv Prasad Neti and PW-2 Pardeshi. The appellant would not give any explanation as to the reason, if his story narrated to the police in the merged intimation is correct, why the dead body was retained in the house throughout the night without informing the villagers. Similarly, if there was some dispute between him and his wife in the night and she went towards the kitchen garden, why the appellant did not make search of his wife. He would also not explain as to by what means and through whom, he received the information about the hanging of the dead body through the Guava tree, if he was not aware of the death.

12. In view of the false statement by the appellant to the police, the findings in the postmortem report regarding antemortem injuries and death by asphyxia as a result of injury over the neck being homicidal in nature, the principle assigned under Section 106 of the Evidence Act would apply in full force against the appellant. It is settled that any fact within the exclusive knowledge of person concerned has to be satisfactorily explained failing which the presumption would be drawn against him.

13. 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.”

14. 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."

15. Although, the memorandum statement Ex.P-1 and the consequent seizure Ex.P-2 has not been supported by independent witnesses PW-2 Pardeshi and PW-3 Shambhu, however, both the witnesses have admitted their signatures over the documents and the Investigating Officer has proved that it is the appellant who made disclosure statement.
16. The fact disclosed to the police in the memorandum statement concerning assault by club over the back of the deceased finds support and corroboration from the findings in the postmortem report wherein injury over the back of the deceased has been found. Since it was not known to any other person that the deceased was given beating by club over her back and this fact was within the exclusive knowledge of the appellant, disclosure of this fact in his memorandum statement finding corroboration from the PM report would be additional circumstance against the appellant that it is he who assaulted the deceased and thereafter strangled her and hanged the dead body through a Guava tree for concealing the evidence of crime. It is also to be seen that the appellant has used a saree for hanging the dead body after committing murder and it is for this reason, injury no.2 caused by soft cloth (rope) over the neck of the deceased has been found in the postmortem.
17. In view of the evidence available against the appellant and applying the principle set forth by the Hon'ble Supreme Court in the matter of ***Sharad Birdhichand Sarda Vs. State of Maharashtra***, reported in

AIR 1984 SC 1622, as to when the conviction on the basis of circumstantial evidence is permissible, we are of the considered view that the prosecution has been able to establish the guilt of the appellant on the basis of circumstantial evidence.

18. Accordingly, the appeal sans substance is liable to be and is hereby dismissed.

Sd/-
Prashant Kumar Mishra
Judge

Sd/-
Gautam Chourdiya
Judge

Akhilesh