

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 935 of 2012**

Mandas, S/o Nakched Das, Aged About 46 Years, R/o Village - Bodesara,
 PS- Jaijaipur, Distt. - Janjgir-Champa C.G. P.O. Bodesara Pin Code
 495668, Chhattisgarh **---- Appellant**

Versus

State Of C.G. Through PS - Jaijaipur, Distt. - Janjgir-Champa C.G. P.O.
 Bodesara Pin No. 495668, Chhattisgarh **....Respondent**

For Appellant	:	Mr. Rajeev Kumar Dubey, Advocate
For State	:	Mr. K.K. Singh, Government Advocate

DB : Hon'ble Shri Justice Manindra Mohan Shrivastava

Hon'ble Smt. Justice Rajani Dubey

Judgment On Board by Manindra Mohan Shrivastava, J.

10.01.2019

Heard.

1. This appeal is directed against impugned judgment of conviction and order of sentence dated 04.10.2012 passed by Second Additional Sessions Judge Sakti, District Janjgir Champa (CG) in Sessions Trial No.101/2011, whereby and whereunder, the appellant has been held guilty of commission of offence and sentenced as described below :

Conviction	Sentence
Under Section 302 of IPC	Imprisonment for life and fine of Rs.5000/-, in default of which, additional R.I. for 2 months.

2. According to the prosecution story, Malikram (PW1) lodged morgue intimation and FIR both in the Police Station on 04.02.2011, wherein, it was alleged that wife of the appellant namely Shashi Mahant (the deceased) was found having murdered in her house and this offence was committed by the present appellant. After inquest over the dead body, postmortem was conducted and in the

postmortem, several injuries were found on the body of the deceased, particularly stab injuries found on the temporal part. Further, her tongue was found protruded and caught between the teeth and cause of death was opined to be asphyxia caused by strangulation. Certain bruises were also found over the dead body.

3. The appellant was arrested and investigation culminated in filing of charge-sheet against the appellant alleging that the appellant murdered his own wife. After committal of the case to the court of sessions, charges were framed and the appellant denied having committed offence and he was put to trial. Though there was no direct evidence, learned trial Court relied upon circumstantial evidence that the appellant and the deceased both resided in the same house, there was no other inhabitant, Shashi Mahant died homicidal death and the appellant failed to explain injuries and homicidal death of his own wife and that there was some dispute also between them, corroborated from the evidence of extra-judicial confession given by the appellant, held the appellant guilty of commission of offence and sentenced as described above.

4. Assailing correctness and validity of the impugned judgment of conviction and sentence, learned counsel for the appellant argued that the case of the prosecution has failed to travel beyond suspicion and translate into truth that in all probability, the appellant alone must have committed the offence. He would argue that overwhelming evidence has come on record that the appellant and the deceased were residing in separate room after settlement of their dispute under which the appellant had already given the deceased two acres of land and deceased was residing along with her son Narendra, whereas, the appellant was residing in a separate room, may be, in the same compound with his daughter. It is next contended that the prosecution evidence has also proved that on 04.02.2011 at about 9:10 p.m. in the night, the first husband of the deceased had come along with 2-3 persons which shows that on the date of incident, the appellant alone was not at home. Next submission of learned counsel for the appellant is that the extra-judicial confession of the appellant is liable to be disbelieved because Ashwani Kumar (PW3) has clearly deposed that in a murder trial against Bharatlal (PW2) appellant had appeared as witness. Learned counsel for the appellant would also argue that there is overwhelming evidence to show that dispute between the appellant and his wife (the deceased) was long back in the year 2008, under which, the appellant had given two acres of land to the deceased and thereafter, they were living peacefully and separately without any quarrel or dispute in two

different rooms. He would also argue that undue emphasis has been given to circumstances that the appellant was preparing for cremation which is quite natural conduct on account of death of his wife.

5. On the other hand, learned State counsel opposes and submits that even though the appellant and deceased were residing in separate two rooms, those two rooms form part of one and the same house within the common compound. He would further argue that extra-judicial confession given by the appellant to Bharatlal (PW2) could not be disbelieved because even if the evidence has come that the appellant was the prosecution witness in murder trial against Bharatlal (PW2), there is nothing to show that the appellant deposed against him and there is no suggestion given either to Bharatlal (PW2) or Ashwani Kumar (PW3) that to be a reason why she should speak against the appellant. It is next contended that the conduct of the appellant clears the doubt because though apparently his wife was found dead in the room having seen without clothes on her upper parts and in bloodstained condition, her tongue protruded, the appellant did not inform anybody but attempted to prepare for cremation at the earliest and he also resisted the suggestion of the villagers in sending the dead body for postmortem. He would further submit that though evidence has come that first husband of the deceased had come, that by itself, would not create any doubt because the appellant has failed to establish any plea of alibi meaning thereby that he was very much present in the house. Doubt if any, it is argued, is resolved in view of corroborative evidence in the form of extra-judicial confession and blameworthy conduct of the appellant.

6. We have heard learned counsel for the parties and perused the records.

7. Present is a case based only on circumstantial evidence. Before proceeding further in the matter, we remind ourselves of the settled legal position in this regard that where the case of the prosecution is based on circumstantial evidence, the circumstances which are required to be proved must exclude all the hypothesis other than that of the guilt and must lead to reasonable inference that in all probability, the accused must have committed the offence and not merely may have committed the offence.

8. The prosecution case is based on the circumstantial evidence of the appellant and deceased residing in one house, deceased found dead in her

house, medical evidence of homicidal death, extra-judicial confession, conduct of the appellant.

9. The prosecution witnesses have deposed and there is no doubt that the deceased was the second wife of the appellant and further that earlier there used to be some dispute between the parties. This has been stated by Malikram (PW1), Bharatlal (PW2), Ashwani Kumar (PW3), Meena Mahant (PW4) as also by Smt. Sita Mahant (PW5). However, these witnesses have also stated that later on, they had settled their dispute. The evidence of these witnesses also proves that after settlement, the appellant and the deceased were residing in two separate rooms forming part of one and the same house in a common compound. For this purpose, we would refer to the evidence of the daughters of the appellant namely Meena Mahant (PW4) and Smt. Sita Mahant (PW5). Meena Mahant (PW4) has stated in her evidence that her father had contacted second marriage with deceased Shashi Mahant. However, 5-6 years thereafter when first husband used to come frequently, the relationship between the appellant and the deceased were strained, due to which, her father and deceased started residing in separate room in the same house though with common veranda. She has deposed that Shashi Mahant used to reside with her son Narendra, whereas, the appellant used to reside with his own son and daughter. She has further deposed that there is a common door and another door as approach to kitchen and kitchen garden and both the doors were put to common use by them. Smt. Sita Mahant (PW5) has also deposed regarding the appellant and deceased initially residing together but, later on, separated and residing in two different rooms in the same house. The other witnesses of the prosecution particularly Malikram (PW1), Bharatlal (PW2) & Ashwani Kumar (PW3) have also deposed on similar lines. The spot map (Ex.P/5) is in line with the oral evidence brought in record discussed herein showing that the appellant and deceased were residing in two different rooms side by side in the same compound.

10. The postmortem report and the evidence of Dr. S.L. Banjare (PW11) leaves no doubt that present was not a case of natural death but it was homicidal in nature because the deceased had sustained number of abrasions on her body. The tongue was found protruded and caught between teeth. Hyoid bone was found fractured. There were injuries on the temporal part. The opinion of the doctor was that cause of death was asphyxia on account of strangulation and according to him, it was homicidal in nature. In his cross-examination, doctor has

stated that the marks found on the neck were not likely to be caused by rope but because of a hard object. This much of evidence, in our considered opinion, fully proved beyond doubt that deceased was murdered by strangulation with so much of force that the hyoid bone was also fractured. There are certain injuries caused on the temporal part which were apparent and blood was oozing out. There were many minor abrasion on the body showing signs of resistance.

11. There is another strong feature which was noticed according to Ramji Swarnkar (PW13), the Investigating Officer, who reached the spot after receiving information. The dead body was found in the house and blood was oozing out from the temporal part. Mouth were open. Tongue was protruded. There were injury seen and she was only wearing lower appraisal and the upper part of the body was completely naked. All these circumstances clearly prove that the deceased did not dead natural death but she was murdered.

12. Though the evidence has come in that the house, where the deceased resided with her son Narendra in one room and the appellant with his daughter in another room, Meena Mahant (PW4) has stated in her evidence that a month prior to the date of incident, Narendra had already gone elsewhere and a day before the incident, she and another brother Vijay had proceeded to meet their sisters Sita Mahant in another village and further that sister Gita had also gone to matrimonial house. She has stated that when they went to Dabra, at that time, the appellant and deceased were alone residing in the house. This evidence has not been controverted. It is, therefore, proved that on the date of incident, the appellant and the deceased alone were residing in the house.

13. We have also noticed the complaint written by the deceased in the police station, against the appellant, which related to earlier dispute between them. Though, it is argued that later on, dispute was settled, we find that approximately, two months before the date of incident, the deceased had lodged a report in the police station that the appellant had locked the house, which was closed by the police finding that it was a kind of dispute between the husband and wife. This shows that everything was not going well between the appellant and the deceased. Moreover, the appellant has failed to establish any case of alibi and that on the date of incident, he was not present in his own room. The lodging of report on 05.02.2011, mentioning the name of the appellant as the accused supports the evidence of extra judicial confession that on account of such confession having

already been given by the appellant, his name was mentioned while lodging FIR and was also mentioned in the morgue intimation.

14. A doubt, however is sought to be raised on the prosecution case on the submission that evidence has come that one of the prosecution witness Ashwani Kumar (PW3) has stated that on the date of incident at about 9-10 in the night, the first husband of the deceased had come along with 2-3 persons in the motorcycle. We have carefully perused the evidence of this witness. This witness has been put question by the Court, in which, the Court has asked that as he has given two kind of statement; one is that he had seen the first husband Ramdas and others going inside the house and other is that he did not see them coming inside the house and as to which of the two is the correct version, the said witness responded by saying that he had not seen Ramdas and others going inside the house of the deceased. Though, he saw them going towards the house of the deceased. The aforesaid evidence certainly required some other corroborative circumstantial evidence to bring whom the guilt of the appellant. We find that the corroboration comes from the extra judicial confession of the appellant given before Bharatlal (PW2), who has stated that on the date of the incident in the house, the appellant bent at the feet of Kotwar and started crying saying that he committed mistake. According to learned counsel for the appellant, this evidence of extra judicial confession is liable to be disbelieved because Ashwani Kumar (PW3) has stated that in a murder trial against Bharatlal (PW2), the appellant is stood as witness. But then, we did not find that any such suggestion was given to Bharatlal (PW2) that for that reason, he had a motive to falsely implicate the appellant. Moreover, no such suggestion has been given even to Ashwani Kumar (PW3). As to whether the present appellant gave a statement in favour or against the witness Bharatlal (PW2) also not known. In his examination under Section 313 Cr.P.C. also the appellant has not come out with any such case that Bharatlal (PW2) had a motive to falsely implicate him because of the reason that he appeared as witness in a murder trial against this witness. In response to the question put to him in examination under Section 313 Cr.P.C., the appellant has only said that it is false and nothing more.

15. Further, we find that the conduct of the appellant also point towards his guilt as is seen from the evidence of prosecution witness particularly Ramji Swarnkar (PW13) that the dead body was found in a very unusual condition where the body was half naked and having sustained injury abrasion, apparently showing that it

could be a case of murder, the conduct of the appellant is that he did not inform either to the police or to the neighbours. Bharatlal (PW2) has stated in his evidence that when the villagers and this witness suggested that it appears to be a case of murder, therefore, a report should be lodged in the police station, the appellant refused to go to the police station and lodge report and on his refusal to lodge report, finally report had to be lodged by Malikram (PW1) in the police station. This conduct of the appellant provides an additional link to the circumstance of incriminating nature pointing towards the guilt of the appellant. On the face, the natural conduct would have been to immediately report the matter to police to find out, who murdered the appellant's wife but the conduct of the appellant points only towards his guilt.

16. In view of the above considerations, we are of the view that learned Trial Court has not committed any illegality in convicting the appellant on the incriminating circumstantial evidence which lead to inference that in all probability, the appellant must have committed the murder of his wife.

17. Therefore, the appeal is dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Rajani Dubey)
Judge