

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No.435 of 2014**

- Lakeshwar Gond S/o Dhansai Gond Aged About 36 Years R/o. Vill.Gokulpur, Gutrapara, P.S. Ramanujnagar, Distt. Surajpur C.G., Chhattisgarh

---- Appellant**Versus**

- State Of Chhattisgarh Through SHO, P.S. Ramanujnagar, Distt. Surajpur C.G., Chhattisgarh

---- Respondent

For Appellant	:	Shri Vivek Kumar Shrivastava, Advocate
For Respondent/State	:	Shri S. K. Mishra, Panel Lawyer

D.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Rajani Dubey

Order on Board**Per Manindra Mohan Shrivastava, J.****02/04/2019**

1. This appeal is directed against the impugned judgment of conviction and order of sentence dated 24-02-2014 passed by the Sessions Judge, Surajpur in Sessions Trial No.105/2013, whereby and whereunder the appellant has been held guilty for commission of offence under Section 302 of IPC and sentenced, as described below-

Section-302 IPC	Life Imprisonment and fine of Rs.1,500/- and in default of payment of fine, he has to undergo additional rigorous imprisonment for six months.
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2. A morgue intimation in Ex.P-9 was given in the Police Station

Ramanujnagar, District Surajpur, by the appellant-Lakeshwar Gond. The prosecution story is that the appellant himself went to the police station and informed that there used to be frequent quarrel between him and his wife-Maniharo, in which, she used to threaten that she would kill his three children and eat them and further that she was willing to go for another marriage, due to this quarrel, the appellant picked up an axe lying in the veranda and assaulted the deceased on her head and neck one after the another and killed her. It was also recorded therein that when his daughter Suhano came to rescue, she was also assaulted, due to which, she sustained injury on her head. When the appellant was coming out of his house, Anil Gond, PW-3 saw him, from whom, he asked where Suhano had gone. This led to lodging of FIR against the appellant in Ex.P-10 that there used to be frequent quarrel between him and his wife(deceased) and on the date of incident, the appellant assaulted the deceased on neck and head, due to which, his wife sustained fatal injuries. Inquest over the dead body was prepared and thereafter, the dead body was sent for postmortem. Dr. D. K. Vishwakarma, PW-7 conducted postmortem and prepared report vide Ex.P-7, in which, it is stated that number of incised wound were found on the neck of the deceased and upon examination of the injuries sustained by the deceased, in his postmortem report, he opined that the cause of death was hemorrhage and it appeared to be homicidal in nature. Investigation resulted in filing of charge sheet. After filing of the charge sheet, the learned trial Court framed charges alleging commission of offence under Section 302 of IPC against the appellant for commission of offence of murder of his wife Maniharo Gond. The appellant abjured guilt and demanded trial. In order to prove its case, the prosecution examined as many as 9 witnesses. The appellant was then examined under Section 313 of Cr.P.C. in respect of incriminating circumstances and evidence appearing against him, in the

evidence led by the prosecution. The appellant denied all the circumstances and stated in his defence that he has not committed any offence and he has been falsely implicated. The appellant did not examine any defence witness. The prosecution came out with the eye-witness account of Suhano, PW-2, daughter of the deceased as also examined Anil Gond, PW-3, who stated that he saw the appellant coming out from his house holding an axe in his hand and enquiring about his daughter-Suhano. The trial Court relied upon the aforesaid evidence led by the prosecution, the postmortem report, the evidence of Dr. D. K. Vishwakarma, PW-7 and considering that death was homicidal in nature, held the appellant guilty for commission of offence of murder of his wife-Maniharo Gond and sentenced, as described above, giving rise to this appeal.

3. Assailing correctness and validity of the impugned judgment of conviction and order of sentence, learned counsel for the appellant argued that the prosecution case rests upon the evidence of eye-witness account of Suhano, PW-2, which is not credible, because Suhano has admitted in her cross-examination that she was sleeping in the house and could not see as to who assaulted her mother. He would next argue that merely because, the deceased died in the house, having sustained multiple injuries on her neck, on suspicion, the appellant has been involved in the alleged commission of offence. According to him, the prosecution story that the appellant himself had gone to the police station and gave morgue intimation as also confessing the crime, is highly improbable and morgue intimation is a concocted document. It is lastly submitted that the memorandum witnesses Sangal Sai, PW-1 and Ram Lakhan, PW-4 both have turned hostile and not supported the prosecution story. Therefore, in these circumstances, the appellant is entitled to be given benefit of doubt.

4. On the other hand, learned State counsel would support the impugned

judgment of conviction and order of sentence by submitting that in the present case, there is eye-witness account as also circumstantial evidence, which fully support and proved the prosecution case that it is the appellant, who murdered his wife and if there is any doubt on the testimony of Suhano, PW-2, having seen the incident of assault, there is evidence of other witness i.e. Anil Singh, PW-3 that the appellant coming out from his house holding an axe in his hand and enquiring about his daughter-Suhano, coupled with the proved facts and circumstances of the case that the deceased was found dead in her house, having sustained multiple injuries on her neck and no explanation was offered by the appellant as to how the deceased sustained multiple injuries. It is lastly submitted that looking to the proved facts and circumstances of the case as also considering the fact that the appellant has failed to come out with either plea or the evidence of alibi, the conviction of the appellant does not warrant any interference.

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

6. We find from the impugned judgment of conviction and order of sentence passed by the learned trial Court that reliance is placed on the evidence of Suhano, PW-2 and Anil Singh, PW-3 and the evidence of Dr. D. K. Vishwakarma, PW-7, proving homicidal death of the deceased-Maniharo. In this case, the prosecution has come out with morgue intimation, Ex.P-9, which is said to be given in the police station by none other than the appellant. The contents of the same, however, to the extent it relates to intimation of death of Maniharo, only would be admissible and rest of the part which amounts to confession of guilt, would not be admissible as it was stated before the Police Officer.

7. There is considerable force in the argument of learned counsel for the appellant that the evidence of Suhano, PW-2 is doubtful, because, though this

witness in her examination-in-chief states that she had seen the appellant (her father) assaulting her mother, but, in the cross-examination, this witness could not remain firm and it has been elicited that she was sleeping in the house and could not see as to who assaulted her mother. Therefore, in our opinion, the finding of the learned trial Court that the evidence of this witness is reliable to hold that she had seen the appellant assaulting the deceased, is not correct.

8. But, then, there are circumstantial evidence proved by the prosecution, which otherwise lay credence to the prosecution story that it is the appellant, who murdered his wife. Anil Singh, PW-3 has stated in his evidence that on the date of incident, the appellant was seen coming out from his house holding an axe in his hand. This witness has also stated that the appellant also enquired about his daughter-Suhano. This witness has remained firm and nothing could be elicited in his cross-examination to doubt this part of the evidence. This proves not only the presence of the appellant in the house, but also holding an axe in his hand. Suhano, PW-2 has stated in her examination-in-chief that she had gone to the house of her sister. Suhano is the daughter of the appellant and the deceased. Therefore, if the evidence of Suhano, PW-2 and Anil Singh, PW-3 is read in juxtaposition, it can be safely inferred that Suhano had run away from her house and the appellant came out of his house and enquiring about his daughter as to where she had gone and at that time, he was holding an axe in his hand.

9. From the aforesaid evidence, what we find is that the deceased-Maniharo was found dead in her house, which is proved from the evidence available on record and there is no dispute that the dead body of Maniharo was found in her own house. The evidence of Dr. D. K. Vishwakarma, PW-7 was very specific and very categorical with regard to nature and extent of multiple injuries, which the deceased had sustained on her neck by a sharp-edged weapon, which

clearly proves the intention of the appellant.

10. The appellant has not come out with any plea of alibi, much less, led any evidence, which shows that at the time of commission of offence and assault given to his wife, he was not at home. Therefore, when we connect the evidence on record, it is proved that the appellant's daughter, Suhano, PW-2 had run away from the house, the appellant was seen coming out from his house holding an axe in his hand and enquiring about his daughter-Suhano, the appellant's wife was found dead in her house and had sustained multiple injuries/incised wound on her neck and the appellant has failed to prove any plea of alibi. Even if, the evidence of Suhano, PW-2 is not found reliable, the established circumstantial evidence on record clearly proves that it is the appellant and the appellant alone, who himself killed his wife. Therefore, though the finding of the learned trial Court, placing reliance upon the evidence of Suhano, PW-2, is not held in accordance with law, on the basis of other circumstantial evidence on record, we are inclined to uphold conviction.

11. In view of foregoing, we do not find any reason to interfere with the impugned judgment of conviction and order of sentence passed by the learned trial Court. In the result, the appeal is dismissed.

SD/-
(Manindra Mohan Shrivastava)
Judge

SD/-
(Rajani Dubey)
Judge