

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 613 of 2012

Tulsaram Cherwa, S/o Ram Pyari Cherwa, Aged About 40 Years,
R/o Village Cherwa Para Parihat, Thana - Sonhat, District - Korea
Chhattisgarh

---- Appellant

Versus

State of Chhattisgarh Through SHO Sonhat, District Korea,
Chhattisgarh

---- Respondent

For the Appellant :- Mr. Akhil Agrawal, Advocate
For the Respondent :- Mr. Ravish Verma, Govt. Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Vimla Singh Kapoor,

Judgement on Board By
Manindra Mohan Shrivastava, J.

23.11.2020

This is an appeal from jail. The High Court Legal Aid Committee has engaged Mr. Akhil Agrawal, Advocate, for representing the appellant.

2. This appeal is directed against the impugned judgment of conviction and order of sentence dated 30.06.2012 passed by the First Additional Sessions Judge, Manendragarh, place Baikunthpur District Korla, in Sessions Trial No. 14/2012 wherein and whereunder the appellant has been held guilty for commission of

offence under Sections 302 IPC and sentenced him to undergo rigorous imprisonment for life imprisonment and to pay fine of Rs. 1000/- with default stipulations.

3. The prosecution case is that on 16.11.2011, a merg intimation was lodged in Police Station Sonhat by (PW-1) Jansai, who had been informed by one villager Rajkumar regarding death of Parvati, wife of appellant Tulsa, who went to the house of Tulsa, the appellant where he was disclosed by the appellant that his wife was complaining of pain in chest and abdomen and went to sleep after taking meals and when in the morning his wife did not get up then he checked up and found that she was dead. The informant was asked to inform the in-laws place at Jamgahna and also informed in the police station. Accordingly, merg (Ex.P-1) was lodged. Upon receipt of merg intimation at 8.30 PM in the night of 16.11.2011, the police arrived at the spot of the incident i.e. the house of the appellant on 17.11.2011 and prepared inquest on the dead body in Ex.P-8 after giving notice to witnesses. According to the prosecution, the dead body was found in the house of the appellant and according to inquest there were injuries seen on the dead body. The dead body was sent for postmortem which was conducted by Dr. R.P. Singh (PW-15) on 17.11.2011 itself. In the postmortem report (Ex.P-26), Doctor (PW-15) opined that the cause of death was head injury and hematoma. According to him, time which passed between death to postmortem was within one to two days and in his opinion, death was homicidal in nature. The appellant was subsequently

taken into custody, FIR was registered, investigation was carried out. A club alleged to be used in assaulting the deceased was also seized and then upon completion of investigation, charge sheet was filed against the appellant alleging that in the intervening night 15-16/11/2011, the appellant murdered his own wife.

4. In order to prove its case, the prosecution examined as many as 17 witnesses. The accused was thereafter examined under Section 313 CrPC. While denying the incriminating evidence and circumstances led against him in the evidence of the prosecution, the appellant took the defence of alibi that he was kept in the police station since 15.11.2011 meaning thereby that the accused sought to set up a plea of alibi that he was not at home in the intervening night 15-16.11.2011. No defence witness was examined.
5. Learned trial Court relying upon the circumstantial evidence led by the parties and particularly taking into consideration that appellant's wife died homicidal death in her own house and there is no explanation by the appellant as to how his wife sustained fatal injury and died homicidal death, held that it is the appellant who must have killed his wife and convicted him.
6. Assailing legality and validity of the impugned judgment of conviction and order of sentence, learned counsel for the appellant would argue that the prosecution case is based on only suspicion and there is no clinching circumstantial evidence to point towards the guilt of the appellant. His argument is that there are no eyewitnesses. Further submission is that though the

children of the appellant and deceased and many other witnesses have been examined, none of them have stated regarding any kind of strained relationship between them and everyone has stated that the appellant and the deceased were residing together happily and there was no dispute thus there is complete absence of motive as to why the appellant would kill his wife. It is next argued that the appellant in answer to question No. 14 during his examination under Section 313 CrPC has clearly stated that he was asked to sit in the police station since 15th November and there is no possibility of appellant being at home during the time when his wife is alleged to have been assaulted and died homicidal death because of head injury. He would further argue that merely because the dead body was found in the house and it is stated to be homicidal, one cannot jump to the conclusion that the appellant must have murdered his own wife as that by itself, does not meet the requirement of completing the chain of circumstances so as to say that the prosecution has proved the circumstances pointing only towards guilt of the appellant.

7. On the other hand, learned State counsel, supporting the judgment of conviction and order of sentence would argue that present is a case where deceased Parvati, appellant's wife was found dead in her own house. The prosecution witnesses have clearly stated that the dead body of Parvati found in her own house. It is next submitted that unimpeachable and uncontroverted evidence of PW-15, the doctor who conducted postmortem and who has proved his own postmortem report

clearly proved that deceased sustained multiple fatal injuries on her head caused by hard object due to which hematoma developed and the deceased succumbed to death, death being homicidal in nature. State counsel would further submit that an after thought ground of alibi is developed by the appellant while answering question No. 74 during his examination under Section 313 CrPC which is liable to be disbelieved in view of uncontrovered testimony of prosecution witnesses who have stated that it is the appellant who was present and he disclosed that his wife died in the intervening night of 15-16.11.2011. Therefore, on the face of uncontroverted evidence of the prosecution witnesses the plea of alibi is liable to be rejected. Lastly, it is submitted that the wife of the appellant having died in the matrimonial house, it being homicidal in nature and appellant having failed to establish alibi and there being in the house except the appellant, his wife and three minor children, it was burden of the appellant as enjoyed under section 106 of the Evidence Act to state regarding the fact within his special knowledge as to how his wife sustained fatal injuries resulting in her death. His failure on the part of the appellant in the most incriminating circumstance leading to the only inference of his guilt that it is the appellant and the appellant alone who killed his wife. Therefore, the conviction does not warrant any interference.

- 8.** We have heard learned counsel for the parties and perused the record.

9. The case of the prosecution is based on circumstantial evidence, though there are no eyewitnesses to state regarding assault made by the appellant on his wife. In a recent judicial pronouncement in the case of **Jayantilal Verma vs. State of MP (now Chhattisgarh)**, passed in Criminal Appeal No. 590 of 2015 on 19.11.2020, their Lordships in the Supreme Court discussed the legal position with regard to a situation where the husband is alleged to have killed his wife and the dead body of the wife is found in the house and homicidal death is proved. In the said judgment it has been held:-

“ We are confronted with a factual situation where the appellant herein, as a husband is alleged to have caused the death of his wife by strangulation. The fact that the family members were in the home some time before is also quite obvious. No explanation has been given as to how the wife could have received the injuries. This is a strong circumstance indicating that he is responsible for commission of the crime. The appellant herein was under an obligation to give a plausible explanation regarding the cause of the death in the statement recorded under Section 313 of the Cr.P.C. and mere denial could not be the answer in such a situation”.

10. Keeping in forefront the aforesaid principle laid down by the Hon'ble Supreme Court, the evidence led by the prosecution requires to be scrutinized to find out where the judgment of conviction is sustainable in the law.
11. Merg intimation is said to have been given by Jansai (PW-1), who has stated in his evidence that he is the resident of village.

Appellant and his wife are known to him. He has stated that he had gone to his agriculture land and when he was returning on the way he met the appellant and the appellant disclosed that his wife died in the house. When he went to the house of the appellant, he found that the wife of the appellant was laying dead in the room. The appellant asked him to inform the in-laws place Jamgahna whereafter this witness went to Jamgahna and while coming back, he lodged report in police station Sonhat. This particular piece of evidence led by PW-1 has remained uncontrovered. In his cross examination, a suggestion has been given from the accused side that which has been admitted that when the appellant met with this witness in the morning, he had stated that he had requested this witness to inform this fact to maternal place of the deceased. In the examination of the appellant under Section 313 CrPC, he has not denied this specific evidence which is clear from his answer to questions Nos. 05 to 13.

- 12.** Inquest report (Ex.P- 8) has been duly proved by the I O (PW-17). On this aspect of preparation nothing could be elicited in his cross examination to doubt preparation of inquest by him on 17.11.2011.
- 13.** Heerawati (PW-4), Santu (PW-5), Harihar (PW-6), Rameshwar (PW-7), Munna Ram (PW-8), Brij Kumar (PW-9) all have stated that the dead body of Parvat was found in her own house. Thus, from the evidence of aforesaid witnesses including that of Jansai (PW-

1), it is clearly proved that the dead body of Parvat was found of laying in the room of her own house.

- 14.** Doctor (PW-15) who conducted the postmortem and authored postmortem report has clearly proved the injury and cause of death which led to death of Parvati. In his uncontroverted testimony in para-2, 3,4,5 and 6 the doctor has clearly stated that upon examination there was fracture injury found on the parietal part of the head and it was suppressed wound and there was hematoma in the brain. In para seven of his testimony, he opined that the cause of death was due to head injury and it was homicidal in nature. Though, this Doctor has been subjected to cross examination, nothing could be elicited to doubt the nature an extent of injury and the cause of death. Though he has stated that the injury on the head could possibly be caused due to core and hard object, as far as abrasions are concerned, he has clearly denied that such abrasion could be caused due to fall, while such injury could be caused due to slip in the agriculture field. The overall evidence of this doctor leaves no manner of doubt that the cause of death was homicidal in nature and there is nothing on record to suggest that the deceased sustained injury due to fall because it is not even the case of the accused nor stated by any of the prosecution witnesses that in any incident the deceased fell down.
- 15.** Learned counsel for the appellant has argued that the appellant has come out with the plea of alibi because in answer to question No. 74 in his examination under Section 313 CrPC, he has clearly

stated that he was taken into custody and remained in police station since 15.11.2011. This defence is not at all acceptable in view of unconverted testimony of PW-1 as well as PW-10. PW-1 the merg informant has clearly stated in his evidence, which we have discussed above, that the accused met him on the way and stated that his wife died. That means at the time of death of his wife, the appellant was very much in the village. This particular piece of evidence has not been controverted. (PW-10) Rajkumar has also stated that he met with the appellant and he informed that his wife died. This particular piece of evidence of PW-10 has also not been disputed by the accused in his examination under Section 313 CrPC, as is evident from his response to question No. 58. Therefore, the defence of the accused trying to set up a plea of alibi hardly stands on the ground.

- 16.** In the house of the appellant, apart from the appellant and his wife, his children were residing and there is no evidence led by the defence nor emerging from the evidence of the prosecution that in the said house of the appellant, apart from appellant, wife and children, any other person was also residing. There is no evidence to show that the house of the appellant was broken from any side or doors were found broken to make out a case of an outsider entering the house and possibility of committing the murder of the appellant's wife. True it is, that there is no evidence of any quarrel between husband and wife, but on the totality of the establish circumstance proved from the evidence of the prosecution, it is clearly proved without any pale of doubt that the

wife of the appellant died in her own house and the dead body was found in the room of the house. It is proved that she died homicidal death and further, the appellant has failed to prove alibi. There was no other person except children in the house. The appellant has failed to explain how his wife sustained fatal injuries. The burden clearly rested on the appellant in view of provision contained in section 106 of the Evidence Act. Therefore, taking cumulative view of the aforesaid established circumstance, in our opinion, learned trial Court has rightly come to the conclusion that it is the appellant alone who must have killed his wife. Even though, there is no direct evidence, in the light of the judgment of the Supreme Court referred to above evidence led by the prosecution meets the legal requirement to come to a conclusion that the appellant is guilty of commission of offence.

- 17.** In the result, we do not find any good ground to interfere with the impugned judgment of conviction and order of sentence, appeal is therefore, dismissed.

Sd/-

Manindra Mohan Shrivastava
Judge

Sd/-

Vimla Singh Kapoor
Judge