

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 432 of 2013**

Judgment Reserved On : 27/01/2020

Judgment Delivered On : 20/03/2020

- Teekamchand S/o Shri Phoolsingh Sahu Aged About 40 Years R/o Dhaneli, P.S. Gurur Revenue Distt. Distt. Balod Civil Distt. Durg C.G.

---- Appellant

Versus

- State Of Chhattisgarh Through - SHO, P.S. Gurur, Revenue Distt. Balod, Civil Distt. Durg C.G.

---- Respondent

For Appellant : Shri S.D. Singh, Advocate.
For Respondent/State : Shri Aditya Sharma, Panel Lawyer.

**Hon'ble Shri Prashant Kumar Mishra &
Hon'ble Shri Gautam Chourdiya, JJ**

C A V JUDGMENT

The following judgment of the Court was delivered by **Prashant Kumar Mishra, J.**

1. Challenge in this Appeal is to the judgment of conviction and sentence dated 7.3.2013 passed by the Additional Sessions Judge, Balod, District Durg, in ST No.48/2012 convicting the accused for offence under Section 302 of the IPC for committing murder of his two years old son Devendra and sentencing him to undergo imprisonment for life and to pay a fine of Rs.50/-, in default of payment of fine to further undergo RI for 3 months.
2. Prosecution case, briefly stated, is that on 14.9.2012, the appellant

and his son (deceased Devendra, aged 2 years) were alone in the house. The appellant's wife had gone to work in the agricultural field. When she returned home in the evening, she found the door latched from inside. When the accused did not open the door, she called villagers Vidyadhar, Chimanlal & Bhikham Sahu in whose presence the accused opened the door. The appellant's wife went inside and started doing the household work. At this point of time, the deceased's elder brother Avant touched the body of the deceased and felt that the body is cold. He informed his mother (appellant's wife), who immediately came and found nail and strangulation marks over the neck of the deceased. The appellant's brother Vishnu lodged a complaint (Ex.-P/3) and FIR (Ex.-P/4) informing the police that he resides separate from his brother (appellant) in an adjoining house. The appellant has 3 sons and 2 daughters. Since he is not engaged in any work, he stays at home and takes care of the youngest child Devendra, aged 2 years. At 12 noon and at 2 pm in the afternoon, he found the door of the appellant's house latched from inside and tried to get it opened, but the appellant did not open the door. When the appellant's wife reached back home and she too did not succeed, she called the villagers. The remaining information is the same as is stated in the earlier part of this paragraph.

3. In course of investigation, spot map was prepared vide Ex.-P/1 and Panchnama was prepared vide Ex.-P/2. Naksha Panchayatnama was prepared vide Ex.-P/7 in which the Panchas found the injury marks over the neck and upper part of the back. The appellant was arrested on the next day i.e. 15.9.2012. In the postmortem examination

conducted by Dr. Tushar Kant (PW-6), cause of death was found to be throttling and mode of death was asphyxia. Duration within 18 hours from the time of postmortem. He opined that the death is homicidal in nature.

4. In course of trial, the prosecution examined 7 witnesses to bring home the charges. The appellant abjured the guilt, pleaded innocence and false implication. However, he did not examine any defence witness. On the basis of material available on record, the trial Court has convicted and sentenced the appellant as mentioned in paragraph-1 of this judgment.
5. Learned counsel for the appellant has argued that in the absence of any direct evidence against the appellant, conviction is not sustainable. He submitted that there are no symptoms that asphyxia was due to throttling.
6. Per contra, learned State Counsel has supported the impugned conviction on submission that the appellant and the deceased were alone in the house and there were injuries on the person of the deceased, therefore, the appellant has rightly been convicted.
7. We shall first examine as to whether there is evidence to the effect that the appellant and the deceased were alone in the house at the time of incident.
8. Anusuiya Bai (PW-3) is the wife of the appellant whereas Avant Kumar (PW-4), aged 15 years, is the son of the appellant. In the deposition of these two witnesses, there is clear statement that the appellant and the deceased were alone in the house. Anusuiya Bai states that her

elder daughter had gone to another village whereas Avant Kumar and Rahul had gone to school. Youngest daughter and the deceased were in the house with the appellant. She would further state that when she returned after the work from agricultural field, the door of the house was latched from inside and the appellant refused to open the door. When the village Kotwar Vidhyadhar Jagdalle (PW-1) and other villagers reached and persuaded the appellant, he opened the door. His son Avant Kumar (PW-4) touched and felt that the deceased's body is cold and is not talking. When the appellant was enquired, he did not speak anything, which created doubt in their mind. In cross-examination, this witness states that the appellant was mentally disturbed earlier, but at the time of occurrence, he was mentally fit but bodily weak. She stoutly refuted the suggestion that the appellant has not committed the murder or that the deceased died natural death. Her evidence is fully supported by the evidence of Avant Kumar (PW-4), who had first touched the body of the deceased and felt it cold. He also speaks about the presence of injuries over the neck of the deceased with further categorical statement that his brother has been murdered by his father.

9. The above evidence of Anusuiya Bai (PW-3) and Avant Kumar (PW-4) would clearly establish that the appellant and the deceased were alone in the house at the time of occurrence. It is settled law that when close relatives are alone in the house and the death has taken place on account of certain injuries, which have not been explained by the person present in the house, the same is strong circumstance against the person who is accused of committing murder inside the

house. In such cases, it is always difficult to find direct evidence and the principle enshrined under Section 106 of the Evidence Act is usually applied in the absence of any plausible explanation by the accused as to the special facts within his knowledge.

10. In the matter of **Trimukh Maroti Kirkan Vs. State of Maharashtra** {(2006) 10 SCC 681}, it has been held that 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.
11. Yet again in the matter of **Suresh & Another Vs. State of Haryana** {(2015) 2 SCC 227}, the Supreme Court has held that under Section 106 of the Evidence Act it is for the person concerned to prove any especial fact within his knowledge and if such especial fact is not disclosed, an adverse inference can be drawn.
12. The evidence of Anusuiya Bai (PW-3) and Avant Kumar (PW-4) is fully supported by the Village Kotwar Vidyadhar Jagdalle (PW-1) and

Vishnu (PW-2). These two witnesses were called by Anusuiya Bai (PW-3) to persuade the appellant to open the door. They are fully supporting and corroborating the prosecution case.

13. Dr. Tushar Kant (PW-6) has found abrasion over left upper side of left eye together with multiple abrasions on right and left side of neck anteriorly and posteriorly on neck. He also found abrasions over center of chin. He also found abrasions over neck anteriorly and posteriorly and superimposed on echymosis. He found that neck and trachea was congested with frothing of saliva. Similar symptoms were found in the mouth and Oesophagus. Thus there is clear evidence that the injuries were caused to the deceased prior to his death and the same were sufficient to cause asphyxia due to throttling. In the absence of any explanation from the appellant as to how the injuries were found on the person of the deceased when the appellant and the deceased were alone in the house, the presumption flowing from the applicability of Section 106 of the Evidence Act has not been dislodged by the appellant.
14. On the basis of aforesaid discussion, we are of the opinion that the appellant has rightly been convicted by the trial Court and the Appeal being devoid of any substance deserves to be and is hereby dismissed.

Sd/-
(Prashant Kumar Mishra)
Judge

Sd/-
(Gautam Chourdiya)
Judge

Barve