

**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Appeal No.1021 of 2013**Judgment Reserved on : 25.11.2021Judgment Delivered on : 13.12.2021

1. Santram @ Konda Sarthi, S/o Harichand Sarthi, aged about 65 years,
2. Nanki Dai, W/o Santram Sarthi, aged about 47 years,
3. Kaushal @ Kushal @ Rentu Sarthi, S/o Santram Sarthi, aged about 22 years,

All R/o Village Junwani, Thana and Tahsil Kharsia, Civil & Revenue District Raigarh, C.G.

---- Appellants

versus

State of Chhattisgarh through Aarakshi Kendra Kharsia, District Raigarh, C.G.

--- Respondent

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| For Appellants | : | Shri Rajeev Kumar Dubey, Advocate      |
| For Respondent | : | Shri Ravish Verma, Government Advocate |

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**Hon'ble Shri Justice Sanjay K. Agrawal**  
**Hon'ble Shri Justice Arvind Singh Chandel**

**C.A.V. JUDGMENT**

**Per Arvind Singh Chandel, J.**

1. The instant appeal has been preferred against the judgment dated 4.9.2013 passed by the Additional Sessions Judge (FTC), Raigarh in Sessions Trial No.90 of 2012, whereby the Appellants have been convicted and sentenced as under:

| <u>Conviction</u>                           | <u>Sentence</u>                                                                                                               |
|---------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------|
| Under Section 120B of the Indian Penal Code | Rigorous Imprisonment for 10 years and fine of Rs.3,000; in default of payment of fine additional rigorous imprisonment for 6 |

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|--------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|
|                                            | months                                                                                                                              |
| Under Section 302 of the Indian Penal Code | Imprisonment for life and fine of Rs.10,000; in default of payment of fine additional rigorous imprisonment for 1 year              |
| Under Section 201 of the Indian Penal Code | Rigorous Imprisonment for 5 years and fine of Rs.3,000; in default of payment of fine additional rigorous imprisonment for 6 months |

2. Name of the deceased, in this case, is Bhoj Kumari. Appellant No.3, Kaushal is her husband and Appellant No.1, Santram and Appellant No.2, Nanki Dai are her father-in-law and mother-in-law. Her father, namely, Parmanand died one month before her birth and after few months of her birth her mother left her and went away. Her and her sister's upbringing was done by their uncle Satyanand (PW3). In the month of May, 2011, she and her younger sister Santoshi (PW4) visited the house of their *bua* (father's sister) Sadhmati (PW2). Appellant No.1, Santram is son-in-law of Sadhmati (PW2). Further case of the prosecution is that Appellant No.1, Santram took Bhoj Kumari (deceased) to his house at Village Junwani as a guest and there he performed her marriage against her will with Appellant No.3, Kaushal secretly. He did not inform about the marriage to the family members of Bhoj Kumari. After the marriage, when the Appellants did not send Bhoj Kumari back, first Sadhmati (PW2) and thereafter Satyanand (PW3) visited Junwani. There the Appellants created a dispute and did not send Bhoj Kumari back. Thereafter, on 24.6.2011 at about 7:30 p.m., the Appellants did a criminal conspiracy for committing murder of Bhoj

Kumari and poured kerosene on her and set her on fire. On 25.6.2011 at about 3 midnight, Bhoj Kumari was admitted in K.G. Hospital, Raigarh in burnt condition. Information (Ex.P16) regarding her admission in the hospital was sent to the police station by Dr. R.K. Agrawal (PW15). Bhoj Kumari was medically examined by Dr. R.K. Agrawal (PW15) himself. His report is Ex.P17 in which he found that the whole body of Bhoj Kumari was burnt and smell of kerosene was coming out from her body. Since her condition was not that her statement could be recorded, her dying declaration could not be recorded. During the course of treatment, she died on 30.6.2011. An unnumbered morgue was registered on receiving information of her death at Police Station Kotwali, Raigarh. Thereafter, on the basis of the unnumbered morgue, numbered morgue (Ex.P2) was registered at Police Station Kharsia, District Raigarh. Inquest proceeding (Ex.P4) was conducted. Post mortem examination over the dead body of Bhoj Kumari was conducted by Dr. Jayant Shrivastava (PW6). Post mortem report given by him is Ex.P1. On the basis of morgue inquiry report and the inquiry conducted into the written complaint submitted by Satyanand (PW3), First Information Report (Ex.P6) was registered. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure. On completion of the investigation, a charge-sheet was filed against the Appellants. The Trial Court framed charges against them under Sections 302 read with Section 120B IPC, alternatively under Section 304 IPC, alternatively under Sections 304A and 201 IPC.

3. In support of its case, the prosecution examined as many as 15 witnesses. In examination under Section 313 of the Code of Criminal Procedure, the Appellants denied the guilt and pleaded innocence. No witness was examined in their defence.
4. On completion of the trial, vide the impugned judgment, the Trial Court convicted and sentenced the Appellants as mentioned in first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellants argued that without there being any sufficient and clinching evidence on record, the Appellants have been convicted by the Trial Court. There is no eyewitness in this case. The conviction is based only on circumstantial evidence. Though Santoshi (PW4), sister of the deceased deposed that an extra judicial confession was made by Appellant No.3, Kaushal before her, in her statement under Section 161 of the Code of Criminal Procedure she did not disclose this fact. Thus, she improved her statement and, therefore, her statement regarding extra judicial confession of Appellant No.3, Kaushal is not acceptable. It was further argued by Learned Counsel that as stated by Dr. R.K. Agrawal (PW15), Bhoj Kumari was admitted in the hospital on 25.6.2011 and she died on 30.6.2011, but her dying declaration was not recorded. It was further argued that there is no conclusive evidence on record on the basis of which it could be said that all the Appellants were present in the house, i.e., the place of incident. Therefore, the finding of the Trial Court that all the Appellants did the criminal conspiracy of

murder of Bhoj Kumari and committed her murder is only based on presumptions. Since there is no legal evidence available on record, conviction of the Appellants is not sustainable. The impugned judgment of the Trial Court suffers from material illegality and deserves to be set aside.

6. Opposing the above arguments, Learned Counsel appearing for the State submitted that though there is no eyewitness in this case, from the circumstantial evidence available on record, the case of the prosecution is proved beyond reasonable doubt. From the evidence adduced by the prosecution, it is well established that the deceased was residing with the Appellants in their house. The incident took place at 7:30 p.m., but Bhoj Kumari was admitted in the hospital at 3 midnight and till then the Appellants did not inform about her burn to any of her family members. From the evidence adduced by the prosecution, it is also established that the deceased was admitted in the hospital in 95% burnt condition and except her private part her whole body was burnt. Therefore, the defence taken by the Appellants that the incident took place due to fall of chimney on the deceased while burning *chulha* has rightly not been accepted by the Trial Court. In their statements under Section 313 of the Code of Criminal Procedure also, the Appellants have not been able to give any explanation regarding the incident. Therefore, looking to the entire evidence adduced by the prosecution, the Trial Court has rightly convicted the Appellants.
7. We have heard Learned Counsel appearing for the parties and

perused the statements of the witnesses and other evidence available on record with utmost circumspection.

8. It is not in dispute that deceased Bhoj Kumari's father died before her birth and her mother Nanki Noni left her and her sister in their childhood and went away. It is also not in dispute that thereafter both Bhoj Kumari and her sister's upbringing was done by their uncle Satyanand (PW3).
9. In his Court statement, Satyanand (PW3) deposed that 8 days prior to the incident, Bhoj Kumari and her sister had gone to the house of his sister Sadhmati (PW2). When none of the girls returned for 4 days, he went to the house of Sadhmati (PW2). She told him that her son-in-law Appellant No.1, Santram took Bhoj Kumari to his house as a guest. She also told that on her going to the house of the Appellants and asking to send Bhoj Kumari back, they did not send her back and quarreled with her. The above statement of Satyanand (PW3) is duly corroborated by Sadhmati (PW2). The above statements of both these witnesses have not been duly rebutted during their cross-examination.
10. Satyanand (PW3) further deposed that thereafter he and Fulsai (PW8) went to the house of the Appellants to take Bhoj Kumari back, but they did not send her back and quarreled with them. According to Satyanand (PW3), at that time, Appellant No.1, Santram told them that marriage of Bhoj Kumari was performed with Appellant No.3, Kaushal and, therefore, they will not send her

back. He further deposed that on being asked, Bhoj Kumari told them that they had kept her there deliberately by performing *churi* marriage. Sadhmati (PW2) also deposed that despite being refused by Bhoj Kumari, her marriage was performed with Appellant No.3, Kaushal. Fulsai (PW8) also corroborated the above statement of Satyanand (PW3). The above statements of these three witnesses have not been duly rebutted during their cross-examination. Thus, it is clear that the Appellants took Bhoj Kumari with them from the house of Sadhmati (PW2) as a guest. They performed her marriage with Appellant No.3, Kaushal against her will secretly. Thereafter, Bhoj Kumari was living at the house of the Appellants.

11. As regards the incident, as per the case of the prosecution, on the date of incident, doing a criminal conspiracy, the Appellants burnt Bhoj Kumari at about 7:30 p.m. and thereafter she was taken to the hospital in burnt condition by Appellant No.3, Kaushal at about 3:10 midnight. During the course of treatment, she died on 30.6.2011.
12. Supporting the case of the prosecution, Dr. R.K. Agrawal (PW15) deposed that on 25.6.2011 at about 3:10 midnight, Bhoj Kumari was brought to the hospital in burnt condition by Appellant No.3, Kaushal. At that time, she was conscious. Regarding her admission in the hospital, he sent intimation (Ex.P16) to the Station House Officer, Police Station, City Kotwali, Raigarh. According to this witness, on examination, he found that there were burn injuries on the whole body of Bhoj Kumari and smell of kerosene was

coming out from her body. It is the case of the prosecution that during the course of treatment, Bhoj Kumari died on 30.6.2011. Unfortunately, her dying declaration could not be recorded. Dr. Jayant Shrivastava (PW6) conducted post mortem examination on her dead body and gave his report (Ex.P1) in which he found that except her private part her whole body was burnt and hair of her head were half burnt. Pus was found in the burn injuries. She had suffered burn injuries to the extent of 95%. Cause of the death was shock, toxemia, septicemia and hypovolemia which took place due to extensive (95%) burn injuries. According to this witness, during post mortem examination also, smell of kerosene was coming out from the dead body.

13. From the statements of Dr. R.K. Agrawal (PW15) and Dr. Jayant Shrivastava (PW6), it is well established that Bhoj Kumari was brought to the hospital in 95% burnt condition by Appellant No.3, Kaushal. During the course of treatment, she died on 30.6.2011. At the time of bringing her to the hospital and also at the time of post mortem examination, smell of kerosene was coming out from her body. From the statement of Dr. Jayant Shrivastava (PW6), it is also established that except her private part, her whole body was burnt.
14. Admittedly, there is no direct evidence in this case and it is a case of circumstantial evidence. It is well settled that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first

instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis, but the one proposed to be proved. In other words, there must be a chain of circumstances so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

15. In the case in hand, one of the circumstantial evidence is the extra judicial confession made by Appellant No.3, Kaushal before Santoshi (PW4), sister of the deceased. In her Court statement, for the first time, Santoshi (PW4) deposed that when they went to collect the dead body of Bhoj Kumari, Appellant No.3, Kaushal told her that “मैं जला दिया हूँ जो करना है जाओ कर लो”. But, this fact is not mentioned in her case diary statement (Ex.D3). Thus, it is well established that she developed her statement on this point. Therefore, her statement in this regard is not acceptable.
16. According to the case of prosecution, all the Appellants did a criminal conspiracy for committing murder of Bhoj Kumari and in furtherance thereof they committed her murder. It is not in dispute that all the Appellants are close relatives to each other and were residing together under the same roof. The alleged incident took place at about 7:30 p.m. There is nothing on record to show that at the time of alleged incident, all the Appellants were present inside

the house, i.e., the place of occurrence. As stated by Dr. R.K. Agrawal (PW15), Bhoj Kumari was brought to the hospital by Appellant No.3, Kaushal at 3:10 midnight. Meaning thereby, Appellant No.3, Kaushal was aware of the fact that Bhoj Kumari was burnt. Therefore, at the time he brought Bhoj Kumari to the hospital, he had opportunity to disclose the circumstances in which she burnt, but he did not disclose. Thereafter, at the time of recording of his statement under Section 313 of the Code of Criminal Procedure also, he had opportunity to disclose the circumstances of incident, but again he did not disclose.

17. While dealing with the matter involving a murder committed inside the house, it has been held by the Supreme Court in **Trimukh Maroti Kirkan v. State of Maharashtra, (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 to at any rate extremely difficult to be led. 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.”

18. Also, in **State of Rajasthan v. Thakur Singh**, (2014) 12 SCC 211, it has been held by the Supreme Court thus:

“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 resides, 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.”

18. Reliance was placed by this Court on *Ganeshlal v. State of Maharashtra*, (1992) 3 SCC 106, in which case the appellant was prosecuted for the murder of his wife inside his house. Since the death had occurred in his custody, it was held that the appellant was under an obligation to give an explanation for the cause of death in his statement under Section 313 of the Code of Criminal Procedure. A denial of the prosecution case coupled with absence of any explanation was held to be inconsistent with the innocence of the accused, but consistent with the hypothesis that the appellant was a prime accused in the commission of murder of his wife.

19. Similarly, in *Dnyaneshwar v. State of Maharashtra*, (2007) 10 SCC 445, this Court observed that since the deceased was murdered in her matrimonial home and the appellant had not set up a case that the offence was committed by somebody else or that there was a possibility of an outsider committing the offence, it was for the husband to explain the grounds for the unnatural death of his wife.

20. In *Jagdish v. State of M.P.*, (2009) 9 SCC 495, this Court observed as follows: (SCC P. 503, para 22)

“22. ... It bears repetition that the appellant and the deceased family members were the

only occupants of the room and it was therefore incumbent on the appellant to have tendered some explanation in order to avoid any suspicion as to his guilt.”

21. More recently, in *Gian Chand v. State of Haryana*, (2013) 14 SCC 420, a large number of decisions of this Court were referred to and the interpretation given to Section 106 of the Evidence Act in *Shambhu Nath Mehra v. State of Ajmer*, AIR 1956 SC 404 was reiterated. One of the decisions cited in *Gian Chand* is that of *State of W.B. v. Mir Mohammad Omar*, (2000) 8 SCC 382, which gives a rather telling example explaining the principle behind Section 106 of the Evidence Act in the following words: (*Mir Mohammad Omar case*, SCC p. 393, para 35)

“35. During arguments we put a question to the learned Senior Counsel for the respondents based on a hypothetical illustration. If a boy is kidnapped from the lawful custody of his guardian in the sight of his people and the kidnappers disappeared with the prey, what would be the normal inference if the mangled dead body of the boy is recovered within a couple of hours from elsewhere. The query was made whether upon proof of the above facts an inference could be drawn that the kidnappers would have killed the boy. The learned Senior Counsel finally conceded that in such a case the inference is reasonably certain that the boy was killed by the kidnappers unless they explain otherwise.”

22. The law, therefore, is quite well settled that the burden of proving the guilt of an accused is on the prosecution, but there may be certain facts pertaining to a crime that can be known only to the accused, or are virtually impossible for the prosecution to prove. These facts need to be explained by the accused and if he does not do so, then it is a strong circumstance pointing to his guilt based on those facts.”

19. Looking to the observations made by the Supreme Court, as stated above, if we consider the evidence in this case, it is well established that the incident took place at about 7:30 p.m. Thereafter, Bhoj Kumari was brought to the hospital by Appellant No.3, Kaushal at 3:10 midnight. At that time, he did not disclose the circumstances in which she burnt. Furthermore, at the time of recording of his statement under Section 313 of the Code of Criminal Procedure, again he had opportunity to disclose the circumstances, but he did not disclose. Therefore, an adverse inference can be drawn against him. Furthermore, according to the statement of Investigating Officer Jagjeet Singh (PW14), after the death of Bhoj Kumari, Appellant No.3, Kaushal had absconded. He was arrested on 21.6.2012. His this conduct again goes against him. From the statements of Sadhmati (PW2) and Satyanand (PW3), it is also established that the marriage of Bhoj Kumari was performed with Appellant No.3, Kaushal against her will and, therefore, she was unhappy with the marriage and, therefore also, Appellant No.3, Kaushal had a motive to commit her murder.
20. On appreciation of the evidence available on record, it is well established that the death of Bhoj Kumari was homicidal in nature and it was none other than but Appellant No.3, Kaushal who committed her murder.
21. Regarding involvement of rest of the Appellants, there is nothing on record to show that at the time of incident, they were present at the house, i.e., the place of incident. There is also nothing on record

on the basis of which it could be said that for committing murder of Bhoj Kumari, a criminal conspiracy was done by them. Therefore, the prosecution has not been able to establish that they did any criminal conspiracy for commission of murder of Bhoj Kumari and in furtherance thereof they committed her murder. Since they were residing with Appellant No.3, Kaushal under the same roof and after the incident Appellant No.3, Kaushal took Bhoj Kumari to the hospital, it can be presumed that the act committed by Appellant No.3, Kaushal was in their knowledge, but, despite that, they did not inform about the incident and the death of Bhoj Kumari to any of her family members, namely, Sadhmati (PW2), Satyanand (PW3), Santoshi (PW4) and Kanhaiya Sarthi (PW10). Rather, information of death of Bhoj Kumari was received by her above-named relatives from one Kanhaiya, a resident of Village Turri. Therefore, it is well established that Appellants No.1 and 2 were aware of the fact that murder of Bhoj Kumari was committed by Appellant No.3, Kaushal, but, with an intention of screening him from legal punishment, they concealed the fact and thereby committed the offence punishable under Section 201 of the Indian Penal Code.

22. As an outcome of the aforesaid discussion, Appellant No.3, Kaushal is acquitted of the charge under Section 120B of the Indian Penal Code, but, his conviction under Sections 302 and 201 of the Indian Penal Code is affirmed. The sentences of jail and fine imposed upon him for the offence under Sections 302 and 201 of the Indian Penal Code are also affirmed. Appellants No.1 and 2 are acquitted of the charges under Sections 302 and 120B of the Indian

Penal Code, but, their conviction under Section 201 of the Indian Penal Code is affirmed. Since both have already served the jail sentence of 5 years awarded for the offence under Section 201 of the Indian Penal Code, they are directed to be released immediately, if not required in any other case. The sentence of fine imposed upon them for the offence under Section 201 of the Indian Penal Code is affirmed.

- 23.** In the result, the appeal is allowed in part to the extent shown above.

Sd/-

**(Sanjay K. Agrawal)**  
**Judge**

Sd/-

**(Arvind Singh Chandel)**  
**Judge**