

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 508 of 2015

- Sanjay Singh S/o Late Nand Singh Aged About 40 Years R/o Janpad Government Qtr. Tahsilpara, Narayanpur, Police Station And District Narayanbpur (CG) --- **Appellant.**

Versus

- State Of Chhattisgarh S/o Through The Station House Officer, Police Station - Narayanpur, District Narayanpur Chhattisgarh (CG) --- **Respondent.**

For the Appellant	:-	Mr. Shubhas Yadav, Adv.
For the State	:-	Mr. Ravish Verma, GA.

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

Order on Board by Manindra Mohan Shrivastava, J.

07.07.2021

Heard.

2. This appeal is arises out of judgment of conviction and order of sentence dated 12.03.2015 passed by Additional Sessions Judge, Kondagaon in Sessions Trial No.85/2012 by which the appellant has been convicted under Section 302 IPC and sentenced to undergo Life Imprisonment with fine of Rs.1000/-, plus default stipulation.

3. A morgue intimation was given in Police Station Narayanpur on 17.03.2010 at 8:45 in the morning by one Manoj Chalki (PW-1) wherein it was informed regarding death of Smt. Asha Singh in the house. It followed registration of FIR vide Ex.P-2. The FIR informant PW-1 is said to have given information regarding commission of offence that the appellant had informed him that he has killed his wife and the dead body is lying in the courtyard of the house where-after neighbours were informed and incident reported. Inquest over dead body was thereafter prepared by the I/O in the presence of witnesses vide Ex.P-3 and the dead body was sent for postmortem. Doctor (PW-3) conducted postmortem and found multiple stab injuries on the chest and the

abdomen and opined that the cause of death was excessive bleeding because of the assault and according to him, death had taken place between 6 to 12 hours. Postmortem was conducted at 1:30 PM. The appellant being the suspect was taken into custody. His memorandum statement was recorded and it is said that on the basis of the said disclosure statement, the weapon and blood stained clothes were also seized. Upon completion of usual investigation, charge-sheet was filed before the Magistrate who, in turn, committed for trial to the Court of Sessions.

On the basis of the material contained in the charge-sheet, the trial Court framed charges against the appellant alleging commission of offence under Section 302 IPC which the appellant denied and abjured guilt. He was put to trial. The prosecution examined six witnesses to prove its case. Thereafter, appellant was examined under Section 313 Cr.P.C. He denied having committed offences and all the incriminating circumstances and evidence appearing against him in the evidence of the prosecution. No defence witness was examined.

4. Learned trial Court relying upon the circumstantial evidence of the deceased having been murdered in her own house and the appellant failing to explain the same, convicted him.

5. The submission of learned counsel for the appellant is that in the present case the prosecution has not come out with any evidence of motive as to why the appellant would kill his own wife. He would further submit that as per the evidence on record, the appellant was working at Jindal Steel company at Tamnar and therefore, the appellant was not present in his own house at the time of commission of offence. The witnesses of the prosecution have not supported the prosecution case

with regard to either they being eye witnesses or witnesses of extra judicial confession or even of recovery of clothes and the knife. No FSL report has been produced before the Court below. Therefore, only on the basis that the deceased died homicidal death because of stab injury and the appellant failed to explain, conviction could not be ordered.

6. On the other hand, learned State counsel would submit that the most incriminating circumstance of the case is that the wife of the appellant was found dead in her own house in the veranda attached to the kitchen which is a place inside the house of the appellant and the appellant has failed to explain. There is no evidence to show that in the house of the appellant there were many other residents nor the appellant has established any plea of alibi that on the date and probable time of incident, he was not at home.

7. We have heard learned counsel for the parties and perused the records as also the impugned judgment.

8. The only point arising for consideration in this case is that whether the appellant could be convicted on the basis of his failure to explain the circumstances in which his wife sustained multiple stab injuries and died homicidal death.

9. The postmortem report and the evidence of doctor (PW-3) proving postmortem report regarding the manner and extent of injury found on the body of the deceased has not been substantially disputed. The evidence of the doctor and the postmortem report proved by him, proves that the deceased was subjected to brutal killing and multiple stab injuries caused to her in her chest on either side as also in the abdomen. The doctor's opinion that the cause of death was excessive bleeding because of stab injury has also not been controverted. Death

of Asha Singh was clearly a homicidal death and not a death because of any accident much less any normal death. It could not even be said to be a case of suicide because of the nature and extent of the injury and the weapon used. The postmortem report and the evidence of the doctor is to the effect that the death had taken place 8-12 hours before the time of postmortem. Postmortem was conducted at 1:30 PM that means, according to the medical evidence, death had taken place sometimes between 1:30 AM to 5:30 AM in the morning.

The appellant had also sustained injuries which is proved by the doctor in his evidence and in the cross-examination, it has come that the injury sustained by the appellant was 4-8 hours before the examination.

10. Though it has come that the appellant was employed with Jindal Steel Company at Tamnar, no evidence was produced by the appellant to prove his alibi that in the night up-till morning of 17.03.2010, he was working in the plant or had stayed in some other house with someone else so as to raise a doubt that on the date of incident, he was present in the house.

In the present case FIR has been lodged by others and not by the appellant himself.

11. Though the prosecution could not succeed in proving any other circumstance like motive or recovery of blood stained clothes, the aforesaid circumstances by itself are sufficient to prove the guilt of the appellant. The FIR was instantaneously lodged in which it was recorded that the appellant killed his wife. Though the witness of extra judicial confession have not supported the case of the prosecution, present is a case where right from the beginning the appellant was involved in the

alleged commission of offence. The spot map prepared and proved by the I.O. shows that the place where the dead body was found was inside the house and not that the dead found was found outside the house in an open place. The spot map (Ex.P-11) shows that the place where dead body was found was inside the house.

12. An argument has also been raised that in the present case, evidence has come that the appellant and the deceased has 3 children but non-examination of any of them raises serious doubt on the prosecution story. Firstly, in this regard no question was put to the I.O. Secondly, non-examination perhaps could have made some difference if the appellant would have come out with any explanation with regard to he being present at some other place.

13. In one of the recent decisions in the case of **(2020) 2 SCC 736, Nawab Vs. State of Uttarakhand**, conviction was ordered by the Supreme Court on the basis of the circumstantial evidence that the wife was found dead in her own house in the midnight when the accused husband was alone with her and he failed to explain. It was held:-

“9. The wife of the appellant met a homicidal death in her own house past mid night when the appellant was alone with her. His defence has completely been disbelieved with regard to the intruders and we find no reason not to uphold the same. The prosecution had therefore established a prima facie case and the onus shifted to the appellant under Section 106 of the Evidence Act,1872 to explain the circumstances how his wife met a homicidal death. The appellant failed to furnish any plausible defence and on the contrary tried to lead false evidence which is an additional aggravating factor against him.

10. In Trimukh Maroti Kirkan vs. State of Maharashtra, (2006) 10 SCC 681, it was observed as follows :

“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. The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or 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....

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."

Defects of the investigation were also noticed by the Supreme Court but the Supreme Court held that the defective investigation on certain aspects could not be made a basis to disbelieve the case of the prosecution, it was held as below:-

"11. The deceased had only one entry and exit wound. The bullet apparently exited her body and thus the likelihood of its recovery from the place of occurrence with the round end damaged after it was fired. The pistol was recovered on the confession of the appellant from under the earth in the courtyard, the earth was freshly dug. The High Court disbelieved the recovery because the independent witness PW2 went hostile. But the High Court missed the reasoning by the trial court that PW-2 did not deny his signature on the recovery memo nor did he state that his signature was obtained by threat, duress or coercion. The absence of any FSL report may at best be defective investigation."

14. We find that the learned trial Court has convicted the appellant mainly on the ground of the dead body of the appellant's wife found in her own house and the time of death being sometime in the midnight to early morning and the appellant failing to explain as to how his wife

sustained homicidal death with so many number of stab injuries in the house. No plea of alibi was also found to have been pleaded, much less, proved.

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

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge

Ajay