

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 198 of 2014**

- Sukru Lakda S/o Lundra Lakda Aged About 45 Years R/o Village Dahidand, Ps Dharamjaigarh, Distt. Raigarh C.G. ,

---- Applicant**Versus**

- State Of Chhattisgarh Through The SHO, Dharamjaigarh, Distt. Raigarh C.G.

---- Respondent

For Applicant	: Shri Ashish Surana, Advocate
For Respondent/State	: Shri Avinash Singh, PL

Hon'ble Shri Justice Sanjay K. Agrawal**Hon'ble Smt. Justice Rajani Dubey****Judgement on Board****Sanjay K.Agrawal, J.****29/09/2018**

1. Sole appellant Sukru Lakda was tried by the trial court for the offence punishable under Section 302 IPC and after full trial, he was convicted and sentenced for the said offence with imprisonment for life and fine of Rs. 2,000/-, and in the event of not making payment of fine, he was also sentenced to undergo RI for six months in S.T. No. 162/2010. Feeling aggrieved by this judgment the appellant herein (in jail) has preferred this appeal under Section 374(2) of the Cr.P.C.

2. Case of the prosecution, in brief, is that on 18.07.2010, at 7.00 p.m. appellant caused death of his wife Puni Bai by causing injury with wooden stick. Further case of the prosecution is that on the date of offence, appellant and the deceased were alone in their house as their son Sunder Lakda (PW-3) had gone to village Kotwalipara to see rath yatra and other two children (another son and daughter) had also gone to another village. On the date of incident, when Sundar Lakda (PW-3) came back in the evening, he saw his father assaulting his mother Puni Bai and tried to interfere, but the appellant threatened him to kill and therefore he came out from the house. Later on, when he came back at about 9.00 p.m., the appellant was not present at the spot (home), then he went inside the house and saw his mother lying dead and she had injury on her head and leg. His father (appellant) was intoxicated and he was having love affair with his sister-in-law. He immediately informed about the incident to Bajrang and Shankar (not examined) and thereafter on the next day i.e. 19.07.2010, son of appellant Sunder Lakda lodged the report (Ex.P-4) at police station Dharamjaigarh against the appellant for the offence under Section 302 IPC. Inquest vide Ex.P-2 was prepared and dead body was sent for post mortem examination on the same day which was conducted by Dr. S.K.Paikara (PW-7) vide Ex.P-13 and according to him, cause of death was coma as a result of head injury caused by hard and blunt object and the death was homicidal in nature.

3. The Station House Officer Dharamjaigarh completed the investigation and submitted the charge sheet to the jurisdictional criminal court for prosecution of the appellant for offence under Section 302 IPC in which the appellant abjured the guilt and entered

into defence.

4. In order to bring home the offence, the prosecution has examined 9 witnesses in support of its case and exhibited 21 documents to support the prosecution. In the statement recorded under Section 313 Cr.P.C. the accused denied charges as alleged against him and did not explain the adverse incriminating circumstances brought on evidence against him.

5. Trial court after appreciating oral and documentary evidence on record, sentenced the appellant to undergo imprisonment for life and also with fine sentence as mentioned in the opening paragraph of this judgment against which this appeal has been preferred.

6. Mr. Ashish Surana, learned counsel for the appellant would submit that the prosecution has failed to bring home the offence and there is no substantive piece of evidence in the shape of ocular and circumstantial evidence to bring home the offence against the appellant particularly when the appellant's son Sunder Lakda (PW-3) and Nanhe Ram (PW-6) have been declared hostile and have not supported the prosecution case. In fact it is a case of no evidence and therefore the trial court has committed a grave legal error in convicting the appellant on the basis of inadmissible evidence, therefore conviction recorded and sentence awarded is liable to be set aside.

7. On the other hand, Mr. Avinash Singh, learned PL appearing on behalf of the State/respondent would submit that the prosecution has clearly brought legal evidence of clinching nature to bring home the offence under Section 302 IPC. As such the conviction recorded and sentence awarded by the trial court is based on evidence available on

record and as such the appeal has no merit and deserves to be dismissed.

8. We have heard learned counsel for the parties, given thoughtful consideration to the submissions made herein above and also gone through the record with utmost circumspection.

9. It is not in dispute that deceased Puni Bai was the wife of appellant Sukru Lakda and on the date of incident i.e. 18.07.2010, appellant and the deceased were alone in the house and their son Sunder Lakda (PW-3) had gone to another village to see rath yatra whereas other son and daughter had gone to another village to meet their relative. It is the case of prosecution that appellant has caused the death of his wife Puni Bai.

10. The question for consideration would be whether the death of Puni Bai is homicidal in nature and secondly, whether the murder of deceased Puni Bai was caused by the appellant.

11. It was the prosecution story that on the date of incident, son of the appellant Sunder Lakda (PW-3) had returned home and saw his father/appellant assaulting his mother Puni Bai and on noticing his presence, the appellant threatened him to kill and on account of fear, he left the place. When he came back home at 9.00 p.m., he saw his mother lying dead and there were injuries on her head and leg and that he lodged FIR Ex.P-4 on the next day i.e. on 19.07.2010 at Police Station Dharamjaigarh. The dead body of deceased Puni Bai was subjected to postmortem vide Ex.P-13 and in order to prove the same, Dr. S.K.Paikara (PW-7) was examined and according to him cause of

death was coma due to head injury. He has noticed several injuries on the head and there were lacerated wounds on the left leg, ankle joint and lacerated wound bone deep on the right leg. The findings recorded by the doctor conducting postmortem examination clearly indicate that the death was on account of head injury and it was homicidal in nature. Even otherwise the nature of homicidal death is not seriously disputed by the appellant.

12. Now the question is whether the appellant has caused the death of his wife Puni Bai. It is the submission of learned counsel for the appellant that there is no evidence on record to hold that the appellant has caused the death of Puni Bai, as the son Sunder Lakda (PW-3) has turned hostile. Son of the appellant has lodged the FIR vide Ex.P-4 on 19.7.2010 and he was also the eyewitness but in the statement before the court though he has admitted the fact of lodging the FIR and proved the contents of FIR, but has not supported the case of prosecution and has stated that he has not witnessed the incident. FIR vide Ex.P-4 has been written by Indrapal Singh Paikara (PW-9) who has stated before the court that as per the report made by Sunder Lakda (PW-3), he has written the FIR wherein Sunder Lakda (PW-3) has clearly stated that on the date of incident his mother and father (appellant) were all alone and he was the first person to reach home at 9.00 p.m. as such the place of incident is the house of the appellant and by this it is established that on 19.07.2010 at 7.30 p.m. deceased Puni Bai was in the house along with the appellant and her death was homicidal in nature as held herein above. Appellant was her husband and he was required to explain as to how the deceased, his wife has suffered serious head injury, as he was the only person in

his house at the time of incident which he (appellant) has not explained at all.

13. In the matter of **Harijan Bhala Teja Vs. State of Gujarat** reported in **AIR 2016 SC 2065**, the Supreme Court held that where the postmortem report established homicidal nature of death and where the accused only was staying with his wife at the time of her death, it is for the accused to show as to in what manner she died and relying upon Section 106 of the Indian Evidence Act in paragraph 19 of the report, it was held as under:-

“19. Section 106 of the Indian Evidence Act provides that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Since it is proved on the record that it was only the appellant who was staying with his wife at the time of her death, it is for him to show as to in what manner she died, particularly, when the prosecution has successfully proved that she died homicidal death.”

14. Likewise, in the matter of **Gajanan Dashrath Kharate Vs. State of Maharashtra** reported in **AIR 2016 SC 1255**, where the accused (Gajanan Dashrath Kharate) alleged to have killed his father and accused has not offered any explanation for homicidal death of his father, conviction was affirmed by Hon'ble Supreme Court by holding as under in paragraph 14:-

“14. Upon appreciation of oral evidence and the circumstance of the recovery of blood stained clothes of the accused and the conduct of the accused in not offering any explanation for the homicidal death of his father, by concurrent findings, the trial court and the High Court rightly convicted the appellant-accused under Section 302 IPC and we do not find any reason to interfere with the impugned judgment.”

15. Similarly, in the matter of **State of Andhra Pradesh Vs. Patchimala Vigneswarudu @ Vigganna alias Ganapathi** reported in **(2016) 4 SCC 611**, the Supreme Court having found that there is an evidence of last seen and where the motive and homicidal death are proved by medical evidence, restored the conviction.

16.. In the present case, in our opinion, the prosecution has proved the homicidal nature of death and it has also been proved by the evidence on record that the deceased was wife of the appellant/accused and on the date of incident i.e. 18.07.2010 they were all alone in the house where her dead body was found at 7.30 p.m. and FIR was lodged by his son Sunder Lakda (PW-3) who has also informed about the incident to Nanhe Ram (PW-6) though has been declared hostile but in cross examination made on behalf of prosecution has clearly stated that Sunder Lakda (PW-3) has informed him that his father has killed his mother Puni Bai and he is also stated to have seen the injuries on the body of deceased.

17. Not only this, Nanhe Ram (PW-6) is also the witness to memorandum vide Ex.P-10 in whose presence the wooden stick by which the appellant had assaulted the deceased, was recovered at the instance of accused. Though blood stains were found on the wooden stick and it was sent for chemical examination but the FSL report was not brought on record. However, in our considered opinion the prosecution has been able to establish the fact that the death was caused by the appellant and it was the accused/appellant who caused the murder of deceased. The appellant has also failed to explain the

incriminating circumstances brought on record against him. The view taken by the learned trial court that the chain of circumstances is complete, is correct and the trial court has properly analyzed the medical evidence and circumstantial evidence to come to a conclusion that the death of deceased Puni Bai was homicidal in nature and it was the appellant who alone had committed the murder of his wife Puni Bai. We are of the opinion that in the present case the only view possible was the one taken by the trial court.

18. On the basis of above stated discussion we are of the view that the appeal deserves to be dismissed and as such the appeal is dismissed.

Sd/-

(Sanjay K.Agrawal)
Judge

Sd/-

(Rajani Dubey)
Judge