

**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CRA No. 794 of 2015**

- Nanka Ekka S/o Konda Ekka, Aged About 46 Years, Caste – Uraon, R/o Village - Sahanpur, Beejadandpara, Police Station - Lundra, District - Surguja Chhattisgarh, Chhattisgarh

**---- Appellant**

**Versus**

- The State Of Chhattisgarh Through Station House Office, Police Station - Lundra, District - Surguja Chhattisgarh., Chhattisgarh

**---- Respondent**

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For Appellant – Shri Sanjeev Verma, Advocate.

For Respondent – Shri Anil S. Pandey, Govt. Advocate

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**Hon'ble Shri Justice Rajendra Chandra Singh Samant**

**Order on Board**

**30-06-2018**

1. This criminal appeal has been preferred against the judgment dated 04-03-2015 in Sessions Trial No.309/2013 passed by the Sessions Judge, Surguja convicting the appellant under Section 304 Part II and Section 201 of the IPC and sentencing him to undergo rigorous imprisonment for 10 years and to pay fine of Rs.1000/- and to undergo rigorous imprisonment for 6 months and to pay fine of Rs.200/-, with default stipulations, and both the jail sentences have been directed to be run concurrently.
2. Conviction is impugned on the ground that without there being any iota of evidence the Court below convicted and sentenced the appellant as aforementioned and thereby committed illegality.
3. Undisputed facts of the case are that, the appellant and deceased Illisiba Ekka were husband and wife and the deceased has died on 01-07-2013 because of the axe injury suffered by her on her head. The prosecution case, in brief, is that Suleman Kujur (PW-4) gave merg intimation in P.S. Lundra, Distt. Surguja about the death of the deceased. On merg enquiry and the postmortem examination vide Ex.-P/9, finding was given that the death was due to injury

caused on her head by an axe and the death was homicidal in nature. The FIR (Ex.-P/17) was lodged and after completion of the investigation, charge sheet was filed.

4. The appellant was charged for the offence under Section 302, 201 of the IPC to which he denied and prayed for trial. On completion of the trial the appellant was examined under Section 313 of the Cr.P.C. in which he denied the incriminating evidence against him on record and pleaded that on the date of incident he was not present in his place of residence and he was present in Ambikapur, hence the death of his wife was caused when the appellant was not present and thus pleaded innocence. No witness was examined in defence. The impugned judgment was passed wherein the appellant has been convicted and sentenced as aforementioned.

5. It is submitted by learned counsel for the appellant that the judgment of conviction and sentence passed by the trial Court is erroneous and without support of any believable evidence of prosecution. The appellant has taken plea of alibi, which has been supported by one witness namely Robert Lakda (PW-2) in his cross-examination by admitting that on the date of incident the appellant was not present at his place residence, hence, the defence has proved its case, which was not at all taken into consideration by the trial Court. Hence, it is prayed that the appellant may be acquitted.

6. Per contra, learned counsel for the respondent/State opposes the submissions made and grounds raised in the appeal. It is submitted that the prosecution has proved its case beyond reasonable doubt. There is sufficient evidence to show that the appellant and his wife, the deceased, were present and residing in the house which is place of incident and it was in the privacy of the house the deceased was done to death. Hence, under these circumstances, under the provisions of Section 106 of the Evidence Act, it was the burden of appellant/accused to prove and establish that if he had not caused death of his

wife, the deceased, then who else had done that, which he has not proved. Hence, no case is made out for acquittal.

7. Heard learned counsel for the parties and perused the record of the trial Court.

8. Leaving aside the undisputed facts, the relevant evidence is taken into consideration. Suleman Kujur (PW-4) stated that on the date of incident the deceased was living with her husband, the appellant. This witness received information about the death of the deceased on telephone. In cross-examination he has denied the suggestions regarding alibi pleaded by the appellant. Smt. Reshma Kerketta (PW-6) is daughter of the deceased and she has stated that the appellant, her father and her mother were living together when her mother died. Brijmohan Ravi (PW-7) has also stated that the appellant was living with his wife in his place of residence, the place of incident, which is unchallenged statement. Smt. Anjila Ekka (PW-8) has stated that on the date of incident it was the appellant who called her and informed that his wife Illisiba has died, then she saw the dead body who had injuries over her body, this is also unchallenged statement. All the statement given by these witnesses clearly establish that the appellant was living with his wife at the time of incident and he was present when it was discovered that his wife had died.

9. The death of the deceased was homicidal is the opinion of the Doctor Y.K. Kindo (PW-3) vide Ex.-P/9 postmortem report according to the injuries found on her body. In the cross-examination he has denied the suggestions regarding this that the death of the deceased could have been accidental. Apart from that, there is no other evidence led by the defence or brought in the statement of any other witnesses that the deceased could have died accidental death. Hence, the prosecution has successfully established this fact that the deceased died homicidal death.

10. As the incident has taken place in the privacy of the house of the appellant, there is no such witness to state that anybody else was also present at the time of incident; neither defence has taken any such ground to show regarding presence of anybody else, the only defence taken by the appellant is alibi that he was not present and was in Ambikapur at the time of incident, regarding which no witness was examined in defence. Reliance on the statement of Robert Lakda (PW-2) in his cross-examination has been taken, who has admitted that at the time of incident the appellant was not in his house, which is a vague and unrelated statement as this witness is resident of different village and through what source of information he has come to know about the absence of the appellant in his house at the time of incident is not disclosed. Further, regarding the other evidence for which Robert Lakda (PW-2) was examined by the prosecution, he has been declared hostile by the prosecution. Hence, admission statement by this witness does not support the defence and there is no other evidence on that point. For these reasons, the ground in defence taken has failed, apart from that, the plea of alibi has to be proved beyond reasonable doubt according to the established principle of law. Hence, the finding is given that the appellant has failed in defence.

11. After findings heard above, it appears to be clearly a case under Section 106 of the Evidence Act. The appellant had exclusive knowledge about what had happened in the privacy of his house and for what reasons the deceased had died, for which, he has given no explanation and no parallel story has been developed as to who else has caused death of the deceased. Hence, the circumstances are directly against the appellant and there are strong reasons to believe that it was the appellant who has assaulted the deceased with axe and caused her death. The Court below has given the finding of conviction under Section 304 Part II, there is no need to interfere with this finding.

12. Learned counsel for the appellant prayed for reduction of the sentence.

13. Considering on the facts and circumstance of this case and the long detention of this appellant so far in jail, it appears to be appropriate to allow the prayer for reduction of sentence. Hence, the appeal is allowed in part. The conviction of the appellant recorded by the trial Court is maintained in this appeal. In the sentence part, the sentence imposed for the offence under Section 304 Part II of the IPC is reduced from 10 years rigorous imprisonment to 7 years rigorous imprisonment along with fine as ordered by the trial Court with default stipulation.

14. The appeal stands disposed off.

Sd/-

**(Rajendra Chandra Singh Samant)**  
**Judge**