2024:CGHC:30148-DB

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL APPEAL NO. 1884 OF 2018

(Arising out of Judgment dated 31.10.2018 passed by Sessions Judge, Jashpur, District Jashpur in Sessions Case No.30 of 2018)

- Beer Singh, S/o Fulchand Lohar, aged about 32 years, Sendrimunda, Police Station Narayanpur, District Jashpur (C.G.)

... Appellant(s)

Versus

- State of Chhattisgarh, through: Police Station Narayanpur, District Jashpur (C.G.)

... Respondent(s)

For Appellant	**:-**	Mr. Vikas Pandey, Advocate.
For Respondent/State	**:-**	Mr. Ashish Shukla, Additional Advocate General, along with Mr. Sharad Mishra, Panel Lawyer.

Division Bench

Hon'ble Shri Justice Sanjay K. Agrawal
Hon'ble Shri Justice Sanjay Agrawal

Judgment on Board
[09.08.2024]

Sanjay K. Agrawal, J.

1. Assail in the present criminal appeal, under Section 374(2) of the Code of Criminal Procedure, 1973 (CrPC, in brief) is to the Judgment dated 31.10.2018 passed by learned Sessions Judge, Jashpur, District Jashpur (Trial Court) in Sessions Case No.30 of 2018, by which the appellant has been convicted for offence under Sections 302 and 201 of the Indian Penal Code, 1860 (IPC, in brief) for committing murder of his wife Heeramuni (deceased) by assaulting her with axe (tangi) on 18.2.2018 and further for causing the evidence of her murder to disappear by hiding the axe used in the commission of murder of deceased Heeramuni in order to screen himself from legal punishment, and has been sentenced thereunder as mentioned in the chart given below:-

Conviction	**Sentence**
1.Under Section 302 IPC.	1. Imprisonment for Life. 2. Fine of Rs.1000/-. 3. Rigorous Imprisonment for 3 months, in default of payment of fine.
2.Under Section 201 IPC.	1. Rigorous Imprisonment for 5 years. 2. Fine of Rs.1000/-. 3. Rigorous Imprisonment for 3 months, in default of payment of fine.
With a direction to run both the sentences concurrently.	

2. A brief factual backdrop of the prosecution case is that the appellant, who used to work as Driver and live at Mumbai, often used to doubt the character of his wife, deceased Heeramuni, soon after their marriage and despite all efforts made by the deceased to live happily together with the appellant at Mumbai, the behaviour of the appellant did not change towards her which ultimately compelled her to stay at her uncle (fufa) PW-1 Dasru Ram's house. It is said that on 16.2.2018, the appellant had come to the house of PW-1 Dasru Ram and forced the deceased to come with him to which she did not ready. Subsequently, on the date of offence, i.e., on 18.2.2018, at about 4:00 pm, when the deceased Heeramuni was grazing cattle and her nephew PW-8 Shiva was playing nearby her, the appellant came armed with axe and assaulted the deceased with axe by which she suffered grievous injuries and died and thereafter the appellant ran away from the spot. The said incident of the assault made by the appellant to his wife, deceased Heeramuni, with axe was witnessed by PW-8 Shiva, who was along with her at that time, as well as by PW-2 Kripashankar, neighbour PW-1 Dasru Ram, who was also present at the place of incident at that point of time. PW-2

Kripashankar and PW-8 Shiva both immediately informed about the said incident to PW-1 Dasru Ram.

3. Immediately thereafter, on the information of PW-1 Dasru Ram, Merg Intimation (Exhibit P-1) was recorded and on that basis, FIR (Exhibit P-2) was registered against the appellant at Police Outpost Jashpur for offence under Section 302 of IPC. Crime details form/sketch map of the place of incident was prepared vide Exhibits P-3 & P-4. Vide Exhibit P-5, witnesses were summoned as required under the provisions of 175 of CrPC and the inquest proceeding was conducted vide Exhibit P-6. Dead-body of deceased Heeramuni was subjected to post-mortem examination which was conducted by PW-10 Dr. Usha Lakda vide Exhibit P-17 in which cause of her death was opined to be hemorrhagic shock due to head injury. After post-mortem examination of the deceased, her clothes were seized vide Exhibit P-16. Dead-body supurdnama proceeding was conducted vide Exhibit P-7. Seizure of blood mixed earth and control earth was made from the spot vide Exhibit P-8. Memorandum statement of the appellant was recorded vide Exhibit P-10 pursuant to which, an iron axe affixed with wooden handle was recovered vide Exhibit P-11. Arrest of the appellant was made vide Exhibit P-12. Subsequently, vide Exhibit

P-18, on a query sought for by the police in respect of the nature of death of deceased Heeramuni, PW-10 Dr. Usha Lakda opined the nature of death of the deceased to be homicidal and similarly vide query report (Exhibit P-19), Dr. Lakda opined that the injuries inflicted on the deceased resulting to her death could be caused by the seized axe and further advised for chemical examination of the seized axe for presence of blood/human blood. Spot Map was prepared by Patwari vide Exhibit P-9. Statement of the witnesses were recorded under Section 161 of CrPC and the statement of PW-2 Kripashankar was also recorded under Section 164 of CrPC. As per Forensic Science Laboratory (FSL) report, which is Exhibit P-28, on chemical examination of the seized articles, except for control earth (Article 'A') seized from the spot, human blood of 'O' group was found on the axe (Article 'C') seized pursuant to the memorandum statement of the appellant as well as on the blood mixed earth (Article 'B') seized from the spot and on the clothes (Articles 'D') of the deceased.

4. On completion of the investigation, the appellant was charge-sheeted before the concerned Magistrate who took cognizance on the charge-sheet and the case, being exclusively triable by the Sessions Court, was

committed to the court of Sessions for trial. The appellant appeared before the Trial Court where charges were framed against him for the offence punishable under Sections 302 and 201 of IPC to which he denied and claimed to be tried.

5. During the course of trial, in order to prove its case, the prosecution examined as many as 12 witnesses as PW-1 to PW-12 and exhibited 34 documents vide Exhibits P-1 to P-34. After closure of the prosecution evidence, statement of the accused appellant was recorded under Section 313 of CrPC in which he denied the circumstances appearing against him in the evidence of the prosecution, pleaded innocence and false implication and took a defence that it is PW-2 Kripashankar who had killed the deceased with axe and not him. In defence, statement of PW-1 Dasru Ram and PW-2 Kripashankar recorded under Section 161 of CrPC has been relied on vide Exhibits D-1 & D-2.

6. After conclusion of trial, the Trial Court, by impugned judgment dated 31.10.2018, on appreciation of the evidence available on record, held the appellant guilty of the offence punishable under Sections 302 and 201 of IPC and accordingly convicted and sentenced him thereunder as mentioned at the chart given in paragraph-1 of this judgment, which led to filing of the

present appeal by the appellant calling in question the legality, validity and correctness of the impugned judgment passed by the Trial Court.

7. Mr. Vikas Pandey, learned counsel appearing for the appellant, would submit as follows:-

(*i*) That PW-2 Kripashankar could not have been accepted by learned Trial Court as an eye-witness in view of the contradictory statement made by him in paragraphs 2 & 15 of his statement which has been clarified by the Court by putting question in exercise of its power under Section 165 of the Indian Evidence Act, 1872 (the Evidence Act, in brief) which is totally uncalled for and therefore the testimony of PW-2 Kripashankar is not reliable and trustworthy.

(*ii*) PW-8 Shiva, another alleged eye-witness in the instant case, has also not seen the incident and therefore his statement also cannot be said to be credible and authentic.

(*iii*) PW-1 Dasru Ram and his wife PW-4 Kamla Bai though are *res gestae* witnesses but in absence of corroboration, their statement also could not have been relied upon by learned Trial Court.

(*iv*) Though pursuant to the memorandum statement of the appellant, the alleged recovery of axe was made, but PW-2 Kripashankar and PW-9 Bhupendra Kumar Singh, who are memorandum and seizure witnesses, have turned hostile and not supported the case of the prosecution. In that view of the matter, even if human blood of 'O' group was found on the seized axe, the appellant could not have been convicted merely on the basis of recovery of a bloodstained weapon, particularly when there is no corroborative piece of evidence available on record.

8. Mr. Ashish Shukla, learned Additional Advocate General appearing along with Sharad Mishra, learned Panel Lawyer, for the Respondent/State, would submit that learned Trial Court is absolutely justified in putting question in order to clarify the confusion caused by PW-2 Kripashankar in paragraphs 2 & 15 of his statement and as such he has rightly been accepted as an eye-witness and not only PW-2 Kripashankar, PW-8 Shiva is also an eye-witness to the incident. Further, the FIR (Exhibit P-2) which was lodged by PW-1 Dasru Ram proves that Dasru Ram has stated that PW-2 Kripashankar had come to him and informed that the appellant had killed his wife Heeramuni, which is liable to be accepted in view of the decision of the

Supreme Court rendered in the matter of **Ram Kumar Pande** v. **The State of Madhya Pradesh**[1]. Furthermore, the seizure of axe has been proved by the Investigation Officer, PW-11 Jogendra Sahu, and as such the recovery of axe can be accepted as a corroborative piece of evidence in view of the fact that human blood of "O" group was found on the said axe as well as on the clothes of the deceased and blood mixed earth seized from the spot. In addition, motive of the offence is also found to be established as per the statement of PW-1 Dasru Ram that the appellant used to doubt the character of his wife, deceased Heeramuni, and for that reason Heeramuni did not want to live with the appellant in Mumbai and came back to stay at his (PW-1) house leaving the appellant. Thus, the conviction of the appellant for the said offences is absolutely justified and the appeal is liable to be dismissed.

9. We have heard learned counsel for parties, considered their rival submissions made herein-above and also perused the record carefully and thoroughly.

10. The primary question, as to whether the death of deceased Heeramuni was homicidal in nature, has been answered by learned Trial Court in affirmative

1 (1975) 3 SCC 815

relying upon the statement of PW-10 Dr. Usha Lakda who has conducted the post-mortem examination of deceased Heeramuni vide Exhibit P-17 and opined the cause of her death to be hemorrhagic shock due to head injury and the nature of her death to be homicidal, which, in our considered opinion, is correct finding of fact based on evidence available on record and which is neither perverse nor contrary to the record. We, therefore, affirm the said finding of the Trial Court, holding that the death of deceased Heeramuni was homicidal in nature.

11. Now, the substantive question is, as to whether the appellant is author of the crime and has caused murder of his wife, deceased Heeramuni?

Motive of the offence:-

12. Motive of the offence as per the prosecution and as also found to be established by learned Trial Court is that the appellant wanted to keep his wife, deceased Heeramuni, to live together with him but the deceased was not ready to live with him for the reason that the appellant used to torture and mistreat her doubting on her character and furthermore from the statement of PW-1 Dasru Ram also it is quite clear that the appellant and his wife, deceased Heeramuni, were

living together in Mumbai and she came back from Mumbai and was living at his (PW-1) house from 15 days prior to the date of incident. In his cross-examination also, PW-1 Dasru Ram has admitted that the appellant used to doubt on her character and had beaten her so many times. He has further admitted that two days prior to the incident, the appellant had come to his house and quarreled with Heeramuni and thereafter on the date of incident, the appellant killed her with axe. Thus, in our considered opinion, the motive of the offence has rightly been found to be established by the Trial Court and the said finding of learned Trial Court is hereby affirmed.

Testimony of eye-witness PW-2 Kripashankar:-

13. PW-2 Kripashankar has been projected as eye-witness by the prosecution and which learned Trial Court has accepted to which a strong objection has been raised on behalf of the appellant that in view of the contradictory statement made by PW-2 Kripashankar in his statement, the Trial Court could not have supported the case of the prosecution by putting clarificatory question in light of Section 165 of the Evidence Act.

14. True it is that that in paragraph-2 of his statement, PW-2 Kripashankar has stated that he had seen that the appellant had assaulted his wife, deceased Heeramuni, with axe on her head and thereafter he immediately ran to inform about the incident to PW-1 Dasru Ram on which PW-1 Dasru Ram and his wife PW-4 Kamla Bai had come to the spot and found Heeramuni in an injured condition and taken her to the hospital where she was declared brought dead. Though in paragraph-15 of his statement, PW-2 Kripashankar has stated that he had not seen the appellant assaulting his wife, deceased Heeramuni, but on a question asked by the Court in exercise of its powers under Section 165 of the Evidence Act, PW-2 Kripashankar has clarified that he had seen the appellant assaulting the deceased. For ready reference, paragraph-15 of the statement of PW-2 Kripashankar is being reproduced herein under:-

> **"15/ यह कहना सही है कि अभियुक्त और उसकी पत्नी हीरामुनि जहां बात कर रहे थे वहां और कोई नहीं था। यह कहना सही है कि मैं अभियुक्त द्वारा अपनी पत्नी हीरामुनि को मारते हुये नहीं देखा हूं। मैं फोन में बात कर रहा था फिर वहां से चले गया।**
>
> **<u>न्यायालय द्वारा प्रश्न</u>:–**
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> **प्रश्नः– मुख्य परीक्षण में आपने अभियुक्त द्वारा अपनी पत्नी हीरामुनि को मारते हुये देखना बतलाया है और अब उपर कंडिका–15 में मारते हुये नहीं देखा हूं ऐसा कहा है। दोनों में से कौन सी बात सच है?**

> उत्तरः— मैं डर गया था इसलिये मारते हुये नहीं देखा हूं ऐसा कह दिया हूं लेकिन मैं मारते हुये देखा था। गांव में कुछ लोग मुझे डराकर बोले थे कि मारते हुये नहीं देखा हूं ऐसा न्यायालय में बोलना इसलिये मैं डरकर ऐसा बोल दिया था।''

15. Section 165 of the Evidence Act came up for consideration before the Supreme Court in the matter of **Ram Chander** v. **The State of Haryana**[2] and on the scope of Section 165 of the Evidence Act, the power of the Court to ask question has been dealt with in paragraphs 2 & 3 as under:-

> **"2.** *The adversary system of trial being what it is, there is an unfortunate tendency for a judge presiding over a trial to assume the role of a referee or an umpire and to allow the trial to develop into a contest between the prosecution and the defence with the inevitable distortions flowing from combative and competitive element entering the trial procedure. If a criminal court is to be an effective instrument in dispensing justice, the presiding judge must cease to be a spectator and a mere recording machine. He must become a participant in the trial by evincing intelligent active interest by putting questions to witnesses in order to ascertain the truth. As one of us had occasion to say in the past:*
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> > *"Every criminal trial is a voyage of discovery in which truth is the quest. It is the duty of a presiding Judge to explore every avenue open to him in order to discover the truth and to advance the cause of justice. For that purpose he is expressly invested by section 165 of the Evidence Act with the right to put questions to witnesses. Indeed the right given to a Judge is so wide that he may 'ask any question he pleases, in any form, at any time, of any witness, or of the*

2 AIR 1981 SC 1036

> *parties about any fact, relevant or irrelevant. Section 172 (2) of the Code of Criminal Procedure enables the Court to send for the police diaries in a case and use them to aid it in the trial. The record of the proceedings of the committing Magistrate may also be perused by the Sessions Judge to further aid him in the trial. (Sessions Judge, Nellore v. Intna Ramana Reddy, ILR (1972) Andh Pra 683)."*
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> **3.** *With such wide powers, the Court must actively participate in the trial to elicit the truth and to protect the weak and the innocent. It must, of course, not assume the role of a prosecutor in putting questions. The functions of the counsel, particularly those of the Public Prosecutor, are not to be usurped by the judge, by descending into the arena, as it were. Any questions put by the judge must be so as not to frighten, coerce, confuse or intimidate the witnesses. The danger inherent in a judge adopting a much too stern an attitude towards witnesses has been explained by Lord Justice Birkett: ...***"**

16. Principles of law laid down in **Ram Chander** (supra) has been followed with approval by Supreme Court in the matter of **State of Rajasthan** v. **Ani alias Hanif and Others**[3] in which their Lordships have held in paragraphs 11 & 12 as under:-

> **"11.** We are unable to appreciate the above criticism. Section 165 of the Evidence Act confers vast and unrestricted powers on the trial court to put "any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant" in order to discover relevant facts. The said section was framed by lavishly studding it with the word "any" which could only have been inspired by the legislative

3 (1997) 6 SCC 162

> intent to confer unbridled power on the trial court to use the power whenever he deems it necessary to elicit truth. Even if any such question crosses into irrelevancy the same would not transgress beyond the contours of powers of the court. This is clear from the words "relevant or irrelevant" in Section 165. Neither of the parties has any right to raise objection to any such question.
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> **12.** Reticence may be good in many circumstances, but a Judge remaining mute during trial is not an ideal situation. A taciturn Judge may be the model caricatured in public mind. But there is nothing wrong in his becoming active or dynamic during trial so that criminal justice being the end could be achieved. Criminal trial should not turn out to be a bout or combat between two rival sides with the Judge performing the role only of a spectator or even an umpire to pronounce finally who won the race. A Judge is expected to actively participate in the trial, elicit necessary materials from witnesses in the appropriate context which he feels necessary for reaching the correct conclusion. There is nothing which inhibits his power to put questions to the witnesses, either during chief examination or cross-examination or even during re-examination to elicit truth. The corollary of it is that if a Judge felt that a witness has committed an error or a slip it is the duty of the Judge to ascertain whether it was so, for, to err is human and the chances of erring may accelerate under stress of nervousness during cross-examination. Criminal justice is not to be founded on erroneous answers spelled out by witnesses during evidence-collecting process. It is a useful exercise for trial Judge to remain active and alert so that errors can be minimised.**"**

Thereafter, their Lordships have said that the Trial Court is justified in interjecting during cross-examination of the concerned witness with a view to ascertain the correct position.

17. Furthermore, very recently in the matter of **Rahul** v. **State of Delhi, Ministry of Home Affairs and Another**[4], the principles of law laid down in **Ram Chander** (supra) and **Ani alias Hanif** (supra) have been followed with approval.

18. Thus, in view of the principles of law down in **Ram Chander** (supra), **Ani alias Hanif** (supra) and **Rahul** (supra), learned Trial Court, in view of the contradictory statement made by PW-2 Kripashankar in paragraphs 2 & 15 of his statement, has asked the question to ascertain as to whether he had seen the appellant assaulting the deceased or not, which was immediately clarified by PW-2 Kripashankar stating that he had seen the appellant assaulting the deceased. The appellant was also given an opportunity to further cross-examination PW-2 Kripashankar in this regard but he has not questioned the said part in which PW-2 Kripashankar has clarified that he had seen the incident wherein the appellant had assaulted his wife, Heeramuni, with axe. As such, the Trial Court has rightly accepted the statement of PW-2 Kripashankar as eye-witness and we endorse the said stand taken by learned Trial Court.

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4 (2023) 1 SCC 83

Testimony of eye-witness PW-8 Shiva:-

19. So far as the next eye-witness PW-8 Shiva is concerned, he is son of deceased's sister, who at the time of incident was along with the deceased who had gone to grazing cattle. As per the said witness, at the time of incident, deceased Heeramuni was sitting on the ground and he was playing nearby and all of a sudden the appellant came and assaulted the deceased with axe. In his cross-examination also he has clearly stated that he had witnessed the incident and has stated before Court as seen by him. Not only this, he has also established the presence of PW-2 Kripashankar at the place of incident during the relevant point of time and has also clearly refuted the question put to him that he was tutored by his grandfather PW-1 Dasru Ram. As such, PW-2 Kripashankar and PW-8 Shiva both are the eye-witnesses to the incident.

20. Furthermore, as soon as PW-2 Kripashankar reported the matter to PW-1 Dasru Ram, he (PW-1) immediately lodged FIR on 18.2.2018 at 5:30 pm in which he has informed that PW-2 Kripashankar came running and informed him that the appellant had assaulted the deceased Heeramuni with axe. Though an FIR is a

previous statement which can, strictly speaking, be used to corroborate and contradict the maker of it, but in the instant case immediately after the incident, PW-2 Kripashankar had informed about the incident to PW-1 Dasru Ram. At this stage, relevant part of paragraph-9 of **Ram Kumar Pande** (supra) may be noticed herein:-

> **"9.** …"No doubt, an FIR is a previous statement which can, strictly speaking, be only used to corroborate or contradict the maker of it. But, in this case, it had been made by the father of the murdered boy to whom all the important facts of the occurrence, so far as they were known up to 9-15 p.m. on March 23, 1970, were bound to have been communicated. If his daughers had seen the appellant inflicting a blow on Harbinder Singh, the father would certainly have mentioned it in the FIR We think that omissions of such important facts, affecting the probabilities of the case, are relevant under Section 11 of the Evidence Act in judging the veracity of the prosecution case.**"**

21. The name of the appellant also finds place in the FIR lodged by PW-1 Dasru Ram to whom PW-2 Kripashankar had immediately informed about the incident. As such, the testimony of PW-2 Kripashankar also stands corroborated by the FIR lodged, which is as per the decision of the Supreme Court rendered in the matter of **Ram Kumar Pandey** (supra) followed in **Ram Chander** (supra).

Recovery of axe pursuant to the memorandum statement of the appellant:-

22. Though pursuant to the memorandum statement of the appellant recorded vide Exhibit P-10, a blood stained axe was seized from the possession of the appellant as per recovery memo Exhibit P-11, but PW-2 Kripashankar and PW-9 Bhupendra Kumar Singh have turned hostile and not supported the case of the prosecution. However, learned Trial Court has rightly accepted the version of the Investigating Officer PW-11 Jogendra Sahu as a corroborative piece of evidene which we find to have a sufficient merit as the two memorandum and seizure witnesses in the instant case both have turned hostile and the testimony of the Investigating Officer cannot be discarded merely because he is a police officer. Even otherwise, as per FSL report (Exhibit P-28), human blood of 'O' group was found on the axe (Article 'C') seized pursuant to the memorandum statement of the appellant as well as on the blood mixed earth (Article 'B') seized from the spot and on the clothes (Articles 'D') of the deceased, which further fortifies the case of the prosecution. Apart from that, the query report (Exhibit P-19) submitted by PW-12 Dr. Usha Lakda also opined that the injuries

inflicted on the deceased Heeramuni resulting to her death could be caused by the axe seized pursuant to the memorandum statement of the appellant.

Conclusion:-

23. Thus, from the oral evidence of PW-2 Kripashankar and PW-8 Shiva who have clearly seen the incident wherein the appellant had assaulted his wife, deceased Heeramuni as well as from the testimony of two *res gestae* witnesses, PW-1 Dasru Ram and his wife PW-4 Kamla Bai, which finds support from the recovery of bloodstained axe, i.e., the weapon of offence, on which human blood of 'O' group was found as also has been found on the blood mixed earth and bloodstained clothes of the deceased, supported with medical and forensic evidence available on record including the strong motive found established against the appellant, we are of the considered opinion that it is none other than the appellant who is the author of the crime and has committed murder of his wife, deceased Heeramuni. Therefore, the conviction and sentence of the appellant for offence under Sections 302 as well as 201 of IPC is absolutely justified and well-merited which deserves to be and is hereby upheld, affirming the impugned judgment passed by learned Trial Court.

24. As a consequence, finding the appeal of the appellant meritless, we hereby dismiss the appeal.

Sd/-
(Sanjay K. Agrawal)
Judge

Sd/-
(Sanjay Agrawal)
Judge

Sharad

SHARAD KUMAR YADAV

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