

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 694 of 2011**

1. Amarlal Bharti, son of Kejuram Bharti, aged about 24 years, resident of village Hathlewa, PS Kabirdham, District Kabirdham, CG

---- Appellant**Versus**

1. State of Chhattisgarh through Police Station Rajnandgaon, District Rajnandgaon, CG

---- Respondent

For Appellant	:	Smt. Renu Kochar, Advocate
For Respondent/State:		Shri Vaibhav Goverdhan, PL

Hon'ble Shri Justice Pritinker Diwaker**Hon'ble Shri Justice I.S. Uboweja****Judgment On Board by Pritinker Diwaker, J****09/05/2016**

This appeal has been filed against the judgment of conviction and order of sentence dated 19.8.2011 passed by Sessions Judge Rajnandgaon, in Sessions Trial No. 53/2009 convicting the accused/appellant under Section 302 IPC and sentencing him to undergo imprisonment for life with fine of Rs. 3000, plus default stipulations.

2. Name of the deceased in the present case is Savita Bai - wife of Mohan (PW-2). It is alleged that marriage of the deceased was first solemnized with one Rajesh and after being deserted by him she started living with Mohan (PW-2) as his wife and out of their relations three children were born to her. Further case of prosecution is that accused/appellant had

affair with the deceased and in the absence of her husband Mohan, he used to visit her house and stay there. Deceased is said to have asked the accused/appellant to take her away and on number of occasions they both had a talk on cell phone and also met at Jharimkasa Chowk. Thereafter, they came to Rajnandgaon by bus and after consuming liquor in a school ground, the accused took her behind Railway cabin and after having sex he committed her murder by causing injuries on her head with a brick. On 20.3.2009 Afjal (PW-20) saw the dead body and lodged Dehati *merg* intimation Ex. P-19 at 9.15 AM. *Dehati Nalisi* Ex. P-21 was recorded at 10.15 AM; numbered *merg* Ex. P-18 at 1.45 PM and thereafter FIR Ex. P-22 was registered for the offence u/s 302 IPC against unknown person. After inquest, body was sent for postmortem examination on 20.3.2009 itself which was conducted by Dr. Rajesh Sadani (PW-5) who gave his report Ex. P-11 (to be seen later). In the query report Ex. P-14 it has been opined by the doctor that death could have been caused by the brick seized from the spot. During investigation, memorandum of the accused/appellant Ex. P-8 was recorded on 20.3.2009 (date as shown in the memorandum); seizure of ornaments, blood stained clothes of the accused, cash of Rs. 2,000/- was made on 22.3.2009 under Ex. P-9 and that of mobile phone on which accused made call to deceased, was made under Ex. P-10 in presence of Tirthraj Yadav and Arun Gupta (PW-4 and PW-13 respectively). Ornaments so seized are said to have been identified by Mohan Kumar Medam (PW-2) – the husband

of the deceased. After investigation, charge sheet was filed by the police u/s 302 IPC followed by framing of charge accordingly.

3. In order to prove the complicity of the accused/appellant in the crime in question, the prosecution has examined 22 witnesses. Statement of the accused/appellant under Section 313 Cr.P.C. was also recorded in which he denied his guilt and pleaded innocence and false implication in the case.

4. After hearing the parties, the Court below has convicted and sentenced the accused/appellant as mentioned above.

5. Counsel for the accused/appellant submits as under:

- (i) that the accused/appellant has been convicted simply on the basis of recovery of certain articles made under Ex. P-9 and P-10 based on his memorandum Ex. P-8, which is not sufficient to uphold the same;
- (ii) that memorandum of accused is dated 20.3.2009 but till that time he was not in custody and therefore the same becomes doubtful;
- (iii) that considering different dates mentioned in the memorandum, seizure memo and the statements of PW-4 and PW-13, it is apparent that entire case has been cooked up by the prosecution;
- (iv) that PW-4 and PW-13 were present in the police station on 19.3.2009 whereas memorandum of the accused/appellant is said to be recorded on 20.3.2009;

- (v) that seizure has been made on 22.3.2009 whereas accused/appellant was already arrested on 21.3.2009;
- (vi) that statements of the witnesses are self contradictory and even the investigating officer has admitted that memorandum of the accused/appellant was recorded on 20.3.2009;
- (vii) that the mobile call details between the accused and the deceased have not been proved by the prosecution as per Section 65-B of the Evidence Act;
- (viii) that in absence of serological report, FSL report Ex. P-36 is of no consequence;
- (ix) that the prosecution has not obtained finger prints in the brick said to have been used in commission of the offence; and
- (x) that the prosecution has failed to prove that the death was homicidal in nature.
- (xi) In support of her submission, she relied upon the decisions of the Supreme Court in the matter of **Mahabir Singh and others v. State of Haryana** reported in **(2001 AIR SCW 2757)**, in the matter of **Vijay Thakur v. State of HP** reported in **(2014) 14 SCC 609** and in the matter of **Dhan Raj alias Dhand and another v. State of Haryana** reported in **{(2014) 6 SCC 745}**.

6. State counsel however supports the judgment impugned

and submits that the findings recorded by the Court below are based on due appreciation of the evidence on record and there is no infirmity in the same. He submits that on the memorandum of accused/appellant, seizure of ornaments of the deceased, cash of Rs. 2000/-, clothes of the accused was made and that the mobile and ornaments have been identified by Mohan (PW-2) - the husband of the deceased. He submits that on the pant and shirt of the accused blood was found which is clear from FSL report Ex. P-36. On the basis of original case diary, he submits that in the memorandum an incorrect date has been recorded as 20.3.2009 which in fact should have been 21.3.2009. He submits that the accused/appellant was arrested on 22.3.2009 in the night and not on 21.3.2009 as shown in the arrest memo. According to the State counsel, there is some confusion in the statement of investigating officer regarding the dates and it appears that at the time of recording of his statement, the original case diary was not there otherwise he could have given the correct dates.

7. Heard counsel for the parties and perused the evidence on record.

8. Satish Kumar Yadav (PW-1) is the witness to inquest Ex. P-3. Mohan Kumar Medam (PW-2) - the husband of the deceased has stated that on 19.3.2009 after returning home from village Salhevara he asked his niece about the whereabouts of the deceased who told him that she had gone

towards Irimkala. He has stated that when the deceased could not be located, he went to his mother-in-law who told him that the accused/appellant used to visit his house and the deceased had accompanied him. According to him, on being asked by his mother-in-law he tried to talk to the accused on his cell phone but he used to disconnect his calls. Afterwards, this witness is also stated to have been informed by his mother-in-law that the deceased had run away with the accused despite being forbidden by her. According to him, on 19.3.2009 when he asked to accused on his cell phone whether his wife was with him, he just started laughing and did not talk to him. He is stated to have identified the slippers, clothes and photograph shown to him by the police to be of his wife vide Ex. P-4 which he received under Ex. P-5. He has stated that as the body of his wife was buried by the police, he made an application for exhuming the same and after exhumation he identified it to be of his wife and there were number of injuries on it. Exhumed body is stated to have been identified by this witness under identification memo Ex. P-6. He also identified the ornaments of his wife and daughter vide Ex. P-7. Except few minor contradictions, this witness stood firm in his cross-examination to what stated in the examination-in-chief. Alalkhor (PW-3) is the witness to identification memo Ex. P-7 by which certain articles including ornaments of the deceased were identified by Mohan (PW-2). Tirthraj Yadav (PW-4) is the witness to memorandum of accused Ex. P-8 and seizure made under Ex. P-9 and P-10. At some places this

witness has stated that seizure was made on 21.3.2009 but at some places he has given the date of seizure as 20.3.2009. However, if the statement of this witness is read as a whole it is apparent that on 20.3.2009 he had gone to police station in connection with impounding of his cattle, but memorandum of the accused was recorded on 21.3.2009. Dr. Rajesh Sadani (PW-5) is the witness who conducted postmortem examination on the body of the deceased and gave his report Ex. P-11 stated that he noticed number of lacerated wounds on her forehead, cheek, eyebrows and contusion over occipital region, and cause of death was head injury sustained by hard and blunt object. To a query whether the articles seized contained human blood, this witness advised for chemical examination of the same. To another query whether the death could be caused by the brick shown to him, he replied the same in the affirmative. Rajendra Prasad Tiwari (PW-6) - the witness to identification memo Ex. P-7 has duly supported the case of the prosecution. Budharu Ram (PW-7) is the witness who identified the body of the deceased after exhumation. Prakash Kumar Medam (PW-8) has stated that his brother Mohan (PW-2) had informed him on cell phone about the deceased being killed by someone. Manju Bai (PW-9) - wife of (PW-8) has not stated anything specific. Manoj Khoonte (PW-10) is the police constable who recorded the merger intimation and submitted the call details. Arun Gupta (PW-13) is the witness to memorandum of the accused Ex. P-8 and seizure made under Ex. P-9 and Ex. P-10 who has supported

the case of the prosecution on material particulars. C.L. Kosre (PW-14) is the witness who recorded FIR (Ex. P-22). Umendi alias Konda (PW-15) is the witness who was enquired by the husband of the deceased (PW-2) about the whereabouts of his wife during the search made for her. Afjal Khan (PW-20) is the witness who recorded Dehati Merg Ex. P-19 and Dehati Nalisi (Ex. P-21). Anita Sagar (PW-21) is the investigating officer who has duly supported the case of the prosecution on material particulars. Though there are minor contradictions in the statement of this witness but the reason for the same appears to be that at the time of examination and cross examination of this witness she had not taken the help of original case diary. From her statement it appears that the call details between the accused and the deceased made on their cell phones have not been proved by the prosecution as per the requirement of Section 65-B of the Evidence Act. She has categorically stated that memorandum of the accused was not recorded on 20.3.2009. Even from the original case diary produced by the State counsel at the time of hearing of this appeal it is apparent that in fact the memorandum of the accused was recorded on 21.3.2009, but there is some mistake in Ex. P-8 in showing its date as 20.3.2009. From her Court statement it is also apparent that it was made on the basis of her memory and not on the basis of original case diary. Though in paragraph No. 22 this witness has stated that the accused was arrested on 21.3.2009 but this appears to be incorrect because in the original case diary shown by the State counsel

date of arrest is mentioned as 22.3.2009. Likewise, in arrest memo Ex. P-24 also the date of arrest is incorrectly shown as 21.3.2009. Ku. Lalita (PW-22) - niece of the deceased has stated that on the date of incident at 4 PM the deceased had left her house after informing her that she was going to village Irimkasa. She has also stated that the accused/appellant used to visit the house of the deceased.

9. Perusal of the material available on record including the evidence of the witnesses thus makes it clear that on the memorandum of the accused (Ex. P-8), seizure of ornaments of the deceased, cash of Rs. 2,000/-, clothes of the accused, cell phone of the deceased was made under Ex. P-9 whereas seizure of cell phone of the accused was made under Ex. P-10 and as per the FSL report Ex. P-36 presence of blood was confirmed in the clothes of the accused for which no satisfactory explanation has been given by him in his statement recorded under Section 313 of the Code of Criminal Procedure. Further, the articles seized under Ex. P-9 have duly been identified by Mohan (PW-2) to be of his deceased wife vide identification memo Ex. P-7.

10. True it is that there is some discrepancy in the statement of the investigating officer (PW-21) regarding the date of arrest of the accused, his memorandum and seizure made thereupon but when original case diary produced by the State counsel was referred to by this Court, it became apparent that memorandum of the accused was recorded on 21.3.2009,

seizure was made on 22.3.2009 and likewise arrest was also made on 22.3.2009. This Court finds substance in the argument of the State counsel that had the original case diary been seen by the investigating officer, correct dates must have been mentioned by her. Yet another important piece of evidence is that on the slides (articles E-1 and E-2) spermatozoa was found and thus case of the prosecution that before committing murder the accused had physical relations with the deceased gets fortified to some extent. True it is that entry of case diary cannot be used for contradiction but it can very well be used for aiding the Court to decide on a point. It is a settled legal position that a defective investigation or wrong mentioning of dates in certain documents itself cannot be a ground for acquittal of the accused. We find no substance in the argument of the counsel for the appellant that merely on the basis of mentioning certain incorrect dates in a document, benefit should be given to the accused particularly when in the original case diary correct dates have been mentioned and only on account of a technical mistake of the investigating officer in making certain incorrect entries in a document, the appellant cannot be acquitted when there is other material available on record against the accused. This Court further finds no force in the argument of the counsel for the appellant that the brick used in the commission of the offence has not been sent to FSL because all the seized articles are not required to be sent for chemical examination and it is the discretion of the investigating officer to collect

relevant evidence and ensure chemical examination wherever required. It is relevant to note that the doctor conducting postmortem examination on the body of the deceased has categorically answered the query saying that the death could be caused by the brick shown to him.

11. Thus in view of the discussion made above, this Court arrives at the conclusion that there is no legal flaw in the findings recorded by the Court below convicting the accused/appellant under Section 302 IPC and they are strictly based on due appreciation of the evidence of the witnesses. Accordingly, the appeal being devoid of any substance is liable to be dismissed and it is dismissed as such. Appellant is already in jail and therefore no further direction regarding his surrender etc. is required to be given.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(I.S.Uboweja)
Judge