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HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 231 of 2008**

Moti Lal Sahu aged about 26 years S/o Chandu Lal Sahu Resident of village Siltara P.S. Bhakhara District Dhamtari (Chhattisgarh) at present R/o New Changora Bhata Raipur P.S. Deendayal Upadhyay Nagar Raipur Tahsil and District Raipur (Chhattisgarh)

---- Appellant

Versus

The State Of Chhattisgarh through P.S. Deen Dayal Upadhyay Nagar District Raipur (Chhattisgarh)

---- Respondent

For Appellant	: Shri Mirza Kaiser Baeg, Advocate.
For Respondent/State	: Smt. Madhunisha Singh, Panel Lawyer.

Hon'ble Shri Deepak Gupta, Chief Justice**Hon'ble Shri Justice P. Sam Koshy****Judgment on Board****Per Deepak Gupta, Chief Justice****07/09/2016**

1. This appeal by the convicted accused is directed against the judgment dated 18.2.2008 delivered by the 11th Additional Sessions Judge, F.T.C., Raipur, Chhattisgarh in Sessions Trial No.113 of 2007, whereby he has convicted and sentenced the accused as follows:-

<u>Conviction</u>	<u>Sentence</u>
U/s 376(1) of IPC	R.I. for 7 years and fine of Rs.1000/-, in failure of depositing fine, 6 months S.I.
U/s 302 of IPC	R.I. for life and fine of Rs.1000/- in default of payment of fine, further S.I. for 6 months.

2. The undisputed facts are that the accused Moti Lal Sahu alongwith Dulari and victim- G, daughter of Dulari Bai were residing in one room in village Changora Bhata, Raipur. The prosecution case is that Dulari had lost her husband a little more than one year before the date of occurrence. Moti Lal Sahu was known to Dulari and her husband and was in distant relationship, their grandson, He was residing with them. He used to work as a mason. On 25.1.2007 Dulari left her home at about 7.30 am to work in a Hotel. According to her, Moti Lal Sahu used to leave the house at 9.30 am and her daughter used to leave the house at 11.00 am to attend the school. G, at that time, was studying in Class-IX. It has also been established that there was one common key to the room which all these three persons used. The practice was that whoever left the house last, would leave the key above the frame of the door so that the others could use the key when they returned home.

3. The case of the prosecution which is reflected in the Dehati Nalishi (Exhibit P/1) recorded at the instance of Dulari at about 9.35 PM on 25.1.2007 is that when Dulari returned to her house at about 7.00 PM she found that door of the room was locked and the key was not in its usual place. Then, she went to the house of neighbours but did not find her daughter. Then, she went to the house of her elder daughter who lived in the same neighbourhood but did not find G. After some time, Moti Lal Sahu came there and she asked him to look for G at the house of some other relatives and also towards the school. After she had looked around her daughter for some time, she went to the house of her neighbour PW2 Shashi Kumar Sahu and asked him to break open the lock of the door. PW2 then broke the lock of the door. Thereafter Dulari entered the house and she found the body of her daughter was lying on the cot. It had become stiff i.e. rigour mortis had set in. The salwar which her daughter

was wearing was in an open condition and it had been pulled down. G had been strangled by using her Dupatta and the string attached to the mosquito net. She then raised, a hue and cry. According to her, she suspected that Moti Lal Sahu had committed the offence because he had an evil eye on her daughter and a month earlier, there had been some incident where Moti Lal Sahu had misbehaved with her daughter. On the basis of Dehati Nalishi (Exhibit P/1), First Information Report (Exhibit P/23) was lodged. Thereafter, the body of G was sent for postmortem. The postmortem was conducted by PW9, Dr. Vikas Kumar Dhruv. The police investigated the matter. After investigation, the accused was charged for having committed rape on the deceased and murdering her. After trial, he has been convicted and sentenced as aforesaid. Hence, this appeal.

4. We have heard Shri Mirza Kaiser Baeg, learned counsel for the Appellant and Smt. Madhunisha Singh, learned Panel counsel for the State.

5. The statement of PW1, Dulari is virtually identical to what she has stated in the Dehati Nalishi which has already been culled out above and therefore, it is not necessary to repeat the same. However, it is important to note that in this statement, she has stated that one month before the occurrence, accused Moti Lal Sahu had misbehaved with her daughter and thereafter he had apologize to her. According to her, this is the reason why she suspected Moti Lal Sahu. As far as this part of statement is concerned, there is no cross-examination whatsoever to this witness. The main defence of the accused before the Court below is that the deceased was involved with two other persons namely, Rakesh Dewangan and Thanu Dewangan who were interested in having relationship with the deceased. The suggestion is that either one of the two could have killed

the deceased and it is not the accused.

6. PW2, Shashi Kumar Sahu, the neighbour of Dulari, on material aspects had supported the prosecution case. His version is that on asking of Dulari, he broke open the lock of the door. Dulari saw that her daughter was dead and she started crying and became unconscious. Thereafter, he saw that body of G was lying on the cot. According to him, only his wife PW3 Shanti Bai, PW1 Dulari and PW8 Lilesh Patel were present. He also states that after some time, when they went out then they saw that accused Moti Lal Sahu had come and as soon as he got down from the cycle, he started crying. He has been cross-examined on the last part and a suggestion was put to him that Moti Lal Sahu started crying only after seeing that Dulari was crying. He had denied the suggestion.

7. PW3, Shanti Bai is wife of PW2. Her version is similar to PW2 and according to her, when Dulari did not find the key of her room, she came to the house of the witness, inquired about her daughter and went to the house of another neighbour to search for her daughter. When Dulari could not find her daughter she asked PW2 to break open the lock of the room. After the lock was broken, Dulari entered the house and started crying. Thereafter her husband PW2 and PW8 Lilesh Patel entered into the room asking what had happened then Dulari covered the body of her daughter which was lying on the cot in half naked condition. This witness asked her husband and other neighbour to leave the room. At that time, Moti Lal Sahu came to the spot and he started crying. In cross-examination, she denied the suggestion that Moti Lal Sahu started crying after he was told by the crowd which had gathered outside that Dulari's daughter has been murdered. She states that in fact at that time, Moti Lal Sahu could not even know that G was dead.

8. The statement of PW4 Sita Bai, sister of the deceased, is relevant to the limited purpose that her mother while searching for G, came to her house and she also states that the accused started crying as soon as he got down from cycle. Then she suspected that how the accused would even know that G was dead. She, in cross-examination denied the suggestion that Lilesh Patel had told Moti Lal Sahu that G was dead.

9. Statement of PW5 Maniram Sahu, PW6 Rakesh Dewangan and PW7 Vikram Dewangan are not relevant and cannot be relied upon because these witnesses turned hostile.

10. PW8, Lilesh Patel is the other neighbour. His version is similar to that of PW2 Shashi Kumar Sahu and PW3 Shanti Bai. He also stated that after PW2 broke open the lock of room, Dulari entered into the room and started crying. When they went inside the house, Shanti Bai told that school bag of G was lying inside the house and from inner room, they heard the cries of Dulari. They entered the room and saw that G was lying on the cot. Thereafter PW3, wife of PW2, directed him and PW2 to leave the room because body of G was lying in half naked condition. To this witness, no suggestion was put in cross-examination that he had told the accused that G was dead.

11. PW11, Narendra Kumar Yadav is a witness of recovery of the key of the lock. His statement is that he was sitting in tea stall when he was called by the police to the Police Station to be a witness. When he went to the Police Station, one fair boy was asked to make a statement. This boy disclosed his name to be Moti Lal Sahu. On further questioning, this boy stated that after committing the offence, he had locked the room and had thrown the key to the room in the kitchen garden attached to the rear side

of the house. Thereafter he alongwith police officials and accused went to the spot. There the Accused searched for 10-15 minutes and found the key and handed it over to the police. Nothing material has been extracted from this lengthy cross-examination and it is established that the key was recovered in terms of memorandum Exhibit P/12 and P/13.

12. There were two postmortem reports one is short report Exhibit P/10 and other is detailed report Exhibit P/9. These reports have been proved by PW9, Dr. Vikas Kumar Dhruv. We have perused the postmortem report as well as the statement of Dr. Vikas Kumar Dhruv. His statement as well as the postmortem report clearly establish that the deceased was strangled by use of a Dupatta and a string attached to the mosquito net.

13. It has been urged by Shri Baeg that there is no evidence of rape. As far as this submission is concerned, we are in total agreement with him. The postmortem report does not indicate that rape was committed. In fact, Dr. Vikas Kumar Dhurv in his cross-examination has clearly stated that as per his examination, he could not say that any rape was committed. In fact what to talk of rape, there is no whisper in the postmortem report or the statement of this witness that victim had been subjected to intercourse whether forcible or consensual. Even in the FSL report (Exhibit P/26), it has not been established that there were any seminal stains on the items and therefore, rape is not proved.

14. However, coming to the main offence of murder, there are four strong circumstances against the accused. The first circumstance is that the accused alongwith deceased were residing in one house. The theory of last seen may not be strictly relevant because the persons were residing

in the same house. According to the statement of PW1 Dulari, the accused used to leave the house at 9.30 AM and her daughter used to leave the house for school at 11.00 AM. Admittedly, on the date of incident, her daughter had not gone to school. Therefore, occurrence took place probably during this period. This room is part of a Basti and it is not very easy for any stranger to remain unnoticed. Therefore, the crime must have been committed by a person belonging to the locality.

15. The second circumstance is suspicion raised against the accused because the mother PW1 Dulari in her statement has stated that about one month earlier, she had found that the accused had misbehaved with her daughter. She told that “घटना के एक महीना पहले आरोपी मोती ने मेरी पुत्री गीता के साथ छेड़छाड़ किया था तब उसने मुझसे माफी भी मांगी थी इसलिए मुझे शक हुआ कि आरोपी ने मेरी लड़की को मारा है।” This is itself a strong ground for the mother to be suspicious that the Accused had an evil eye on her daughter. In fact this suspicion has not been created at a later stage but is reflected in Dehati Nalishi which was lodged on 9.30 PM on the same day. Therefore, this suspicion did not come out after some pre-planned conference but the mother was suspicious immediately after she saw the body of her daughter.

16. The third circumstance relied upon by the prosecution is the conduct and behaviour of the accused, inasmuch as he immediately started crying as soon as he reached the house. According to the prosecution, nobody had told the accused that G was dead. However, he immediately on getting down from his cycle started crying. The suggestion was given to PW-3 that the accused was told by PW8 Lilesh Patel that G was dead. However, no such question or suggestion was put to PW-8 that it was he, who had informed the accused that G was dead. In this behalf, it

would also be pointed out to mention that PW8 in his statement itself clearly stated that after they came out of the room, Dulari Bai sent him to call her brother. This may not be a very strong circumstance in itself but as a corroborative circumstance, it can be used against the accused.

17. The most important circumstance relied upon by the prosecution is the recovery of the key at the instance of the accused. From the facts proved on record, it is established that there was one key of the lock of the room. This key was being used by the accused, deceased as well as PW1 Dulari to operate the lock. It has also been proved that practice was that the last person leaving the house would lock the room with the help of this key, which was then placed above the frame of the door so that any one of the occupants of the room who came later could take the key from there and open the lock of the room. PW11, Narendra Kumar Yadav as pointed out above has fully proved the fact that key was recovered at the instance of the accused. This key had been thrown in the kitchen garden. It was recovered by the accused himself after searching it for 15-20 minutes. It may be true that the place where the key was thrown was an open place but only the person who threw the key at that particular place could know that the key was in the kitchen garden. The key was recovered at the instance of the accused. This circumstance by itself is sufficient to hold that he was the last person who locked the house and if he was the last person to lock the house then he knew that G was inside and her body was lying inside. This could only be done by the person who had committed the murder.

18. In a case of circumstantial evidence, the prosecution is required to prove each and every circumstance and thereafter link all the circumstances in such a fashion that all the circumstance when linked

together, leads to the only conclusion, i.e. the guilt of the accused. If there is any chance of the offence having been committed by some other person, then the accused has to be given the benefit of doubt. In the present case, we are clearly of the view that all the circumstances have been proved and they lead to only one conclusion that the murder has been committed only by the accused Moti Lal Sahu and none else.

19. Therefore, we are clearly of the view that the trial Court has rightly convicted the accused for having committed the offence under Section 302 IPC.

20. In view of the above discussion, we partly allow the appeal and set aside the conviction and sentence of the accused for the offence under Section 376(1) IPC but uphold the conviction and sentence of the accused for the offence under Section 302 IPC for having committed murder of G.

21. This Court placed on record its appreciation for the valuable assistance rendered by Shri Mirza Kaiser Baeg, Advocate, Legal Aid Counsel.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE