

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 979 of 2012**

- Dinesh Agrawal S/o Amarlal Agrawal Aged About 23 Years R/o Village Kharra, PS Gurur, Distt. - Balod C.G.

---- Appellant**Versus**

- State Of Chhattisgarh Through The PS Dhamtari, Distt. Dhamtari C.G.

---- Respondent

For Appellant	:	Shri Y.C.Sharma, Advocate
For State	:	Shri Suryakant Mishra, Panel Lawyer

D.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava**Hon'ble Smt. Justice Rajani Dubey****Judgment On Board****Per Manindra Mohan Shrivastava, J.****27/03/2019**

This appeal is directed against impugned judgment of conviction and order of sentence dated 06/10/2012 passed by the Additional Sessions Judge, Dhamtari, District - Dhamtari in Sessions Trial No.35/2012 whereby and whereunder, the appellant has been held guilty of commission of offence as described below -

	<u>Conviction</u>	<u>Sentence</u>
1	U/s 302 of IPC	Life imprisonment with fine of Rs.500/- (in default of payment of fine, additional R.I. of 2 months)
2	U/s 458 of IPC	R.I. for ten years with fine of Rs.500/- (in default of payment of fine, additional R.I. of 2 months)

2. According to the prosecution story, a morgue intimation was given in the police station by Ajit Kumar Lal (PW2) that his neighbour Premvati Anand was found

dead in her house and it appeared that she was strangled to death. After recording morgue, police proceeded to the scene of occurrence, inquest over dead body was prepared and it was sent for post mortem. The post mortem was conducted by Dr. R.K.Tripathi (PW14) who found bruises on the face and a wound around the neck of the deceased, causing injury, which was anti-mortem in nature. According to the doctor, cause of death was shock as a result of Asphyxia caused by strangulation by rope and body dragged which was homicidal in nature. Upon suspicion, the appellant was taken into custody and his memorandum statement was recorded in Ex.P/6 in which according to the prosecution, the appellant disclosed that he had murdered the deceased and stolen her jewelery. In the presence of witnesses, the jewelery said to have been recovered from the house of the appellant was identified by the prosecution witness to be that of the deceased. During trial, when the appellant was examined under Section 313 CrPC, the appellant failed to explain how he came in possession of the jewelery belonging to the deceased.

3. Learned Trial Court, relying upon the circumstances of incriminating nature that the jewelery of the deceased was found in possession of the appellant and the evidence that the appellant used to work in the house of the deceased as servant and further that the appellant failed to explain as to how he came in possession of the belongings of the deceased, held him guilty of commission of offence.

4. Learned counsel for the appellant would argue that the prosecution case rests on extremely weak circumstantial evidence of recovery of looted articles. He would argue that firstly, the prosecution has failed to prove that the appellant had given any memorandum of disclosure which led to seizure of incriminating articles. It is further submitted that the witnesses of seizure are concocted and not reliable. It is also argued that the identification of jewelery and other articles are not of clinching nature because the jewelery were not identified on the basis of any particular mark which

would prove that it belonged to the deceased only. Lastly, it is submitted that even if the appellant has not explained how he came in possession of the jewelery of the deceased, it would not lead to the presumption of appellant having killed the deceased.

According to learned counsel for the appellant, prosecution came out with a case that the appellant had come to the house of the deceased, a day before the date of incident and an attempt was made by him to commit theft of money whereafter, the appellant hid himself in the house of the deceased and then he was asked by the deceased to leave the house. But the prosecution has failed to prove this incident. Therefore, the prosecution case with regard to recovery should also be held doubtful.

5. On the other hand, learned State counsel would argue that even though, there is no direct evidence, there is clinching and strong circumstantial evidence of recovery of jewelery and other articles of the deceased found on the memorandum of the appellant. It is further argued that the appellant failed to explain how he came in possession of the jewelery of the deceased. In view of the evidence that the appellant was working as servant in the house of the deceased, conviction of the appellant does not warrant any interference.

6. We have heard learned counsel for the parties and perused the records.

7. The prosecution case is mainly based on circumstantial evidence.

8. As far as prosecution story that a day before the date of incident, the appellant had come to the house of the deceased and he hid himself and thereafter, he was asked to leave the house and that there was suspicion on him that he had stolen Rs.2700/- from the house of the deceased, the prosecution witnesses namely Jasvinder Kaur (PW1) and Ajit Kumar Lal (PW2) only say that this

incident was told to them by the deceased. They do not claim to have seen the appellant in the house hiding himself and then the deceased making allegations of theft and shunting the appellant out of her house. This is merely a hearsay evidence.

9. However, as far as the other strong circumstance is concerned, it has been fully proved by the prosecution beyond doubt. The memorandum statement (Ex.P/6) of the appellant is to the effect that he had gone to the house of the deceased and murdered and thereafter, stolen mobile phone by removing the sim, a pair of golden bangles, one golden chain and three silver coins. It was also recorded therein that he had stolen Rs.1500/-. In the memorandum statement, it was recorded that these articles were kept in an iron box kept in the shop of the appellant.

10. The memorandum statement of the appellant relating to disclosure of theft of gold ornaments, mobile, silver coins kept in his own shop, has been proved from the evidence of witnesses of memorandum namely Ajit Kumar Lal (PW2) and R.Peter (PW10). Both have clearly stated in their evidence that the appellant was called in the police station and his disclosure statement was recorded in which he stated that he had stolen a pair of golden bangles, one golden chain, three silver coins and one Nokia mobile.

11. The seizure of aforesaid articles from the shop of the appellant is also proved from the evidence of the aforesaid two witnesses. Both of them have clearly stated that after disclosure statement was given by the appellant, on his disclosure, the police had taken the appellant along with these witnesses to the ration shop of the appellant and all these articles were found in the ration shop which were duly seized vide seizure memo (Ex.P/7) which has been proved by these witnesses. The investigating officer-Satyendra Singh (PW18) has also proved seizure in the presence of this witness by clearly stating that after recording memorandum, the aforesaid articles were seized from the house of the appellant in the presence of

prosecution witnesses - Ajit Kumar Lal (PW2) and R. Peter (PW10).

12. The prosecution also proved seizure of receipt given by Alok Jewelers towards purchase of chain, three silver coins and a pair of golden bangles in the name of Ms. Premvati vide Ex.P/9. The prosecution has also proved recovery of Rs.1500/- vide Ex.P/7 from the possession of the appellant.

13. The identification of the seized jewelery, silver coins and mobile was conducted by R.K.Sahu (PW8), Executive Magistrate who has deposed that upon receiving memo dated 05/05/2012 for conducting identification, he had conducted proceedings of identification on 24/05/2012 in Tahsil office – Dhamtari in the presence of witnesses Ajit Kumar Lal and Punamchand Nirmalkar. He has deposed that in his presence, Ku. Reena Masih (PW6) identified the articles of the deceased. The witness states that for the purpose of identification, other articles like golden chain, golden bangles, silver coins and mobile phone were also mixed. He deposed that at the time of identification, no police personnel was present. He had reduced the identification proceedings in writing in Ex.P/11 proved by him. This witness has been subjected to detailed cross examination but nothing could be elicited to doubt the proceedings of identification conducted by him and that Reena Masih (PW6) had identified the articles. Reena Masih (PW6) is the niece of the deceased and she has deposed that she was called for identification of the stolen articles in Tahsil office where she had identified a pair of golden bangles, one golden chain, three silver coins and one Nokia mobile belonging to her Aunt. In the cross-examination, she has stated that as she used to frequently visit the deceased, she was familiar with the jewelery used by the deceased. Nothing has been elicited in her cross-examination to doubt her testimony with regard to identification.

14. Thus, the prosecution has succeeded in proving that on the basis of memorandum of the appellant, the belongings of the deceased were seized from the

house of the appellant which was duly identified also as that of the deceased. The appellant, however, has failed to explain as to how he came in possession of these valuable belongings of the deceased. In his examination under Section 313 CrPC, he has also denied and has said nothing about such articles found in his possession.

15. Jasvinder Kaur (PW1) has stated in her evidence which has remained uncontroverted that the appellant was working in the house of the deceased and he used to come to the house of the deceased.

16. True it is that the other part of the prosecution case that a day before the date of incident, the appellant was seen in the house of the deceased is only a hearsay, in the considered opinion of this Court, a strong circumstantial evidence of belongings of the deceased found in possession of the appellant, having remained unexplained and there being evidence that the appellant used to come to the house of the deceased and worked there as servant, leave no manner of doubt that it is the appellant and the appellant alone who has murdered Premvati Anand.

17. Therefore, we are not inclined to interfere with the impugned judgment of conviction and order of sentence. The appeal is accordingly dismissed.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Rajani Dubey)
Judge