

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No.800 of 2012**

- Umashankar Patel S/o Chhedu Ram Patel Aged About 24 Years R/o Village Khaparidih Ps Bilaigarh, Distt. Raipur Now Distt. Baloda Bazar/ Bhatapara C.G. , Chhattisgarh

---- Appellant**Versus**

- State Of Chhattisgarh Through The Ps House Office Bilaigarh Distt. Raipur Now Baloda Bazar/ Bhatapara C.G. , Chhattisgarh

---- Respondent/State

For Appellant	:	Shri S. P. Verma, Advocate
For Respondent/State	:	Shri Mateen Siddiqui, Dy.AG

D.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Vimla Singh Kapoor

Order on Board**Per Manindra Mohan Shrivastava, J.****01-09-2021**

1. This appeal is directed against the impugned judgment of conviction and order of sentence dated 07-07-2012 passed by the Second Additional Sessions Judge, Balodabazar, District Raipur in Sessions Trial No.57/2012, whereby and whereunder the appellant has been held guilty for commission of offence under Section 302 of IPC and sentenced him, as described below-

Section-302 IPC	Life Imprisonment and fine of Rs.1000/-, in default of payment of fine, additional imprisonment for six months.
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2. The prosecution story, as unfolded from the impugned judgment of conviction and order of sentence and records of the case, is that the merg intimation, Ex.P-12 was lodged in the police station by the appellant's brother- Krishno Ram on 26-07-2011 at 11 AM wherein it was disclosed that on 25-07-

2011, his father came at around 8 PM in the night to inform that his mother-Sukhmat Bai and his brother-Umashankar was not in the house and the house is locked and then he went to the house and in the presence of other persons, lock was broken, door opened and thereafter, he went inside and in the torch light, his mother Sukhmat Bai was seen lying dead and blood was oozing out from nostrils and there was swelling in her face. It was also stated in the merg intimation that his brother-Uma Shankar has eloped and not in the village and he does not as to how his mother died. After receipt of information, inquest over the dead body was prepared and deadbody was sent for postmortem. The postmortem was conducted by Dr. Chain Singh Painkra, PW-4, who prepared report in Ex.P-1. Dr. Chain Singh Painkra, PW-4 having examined the injuries on the deadbody, particularly the contusion over the chest with lower of neck, swelling on the cheeks, bleeding present on nose and mouth and also upon internal examination, it was opined that cause of death was stated to be traumatic asphyxia and time of death was reported to be 24-36 hours and according to the doctor, the manner, in which, the deceased died, appear to be homicidal death. Initially, at the time of lodging merg intimation, all that was stated was that the appellant was not present, but, later on, having found that the appellant was suspect of the crime as he eloped, though he was in the house with the deceased-mother, offence was registered against him and the investigation proceeded to culminate filing of charge sheet against the appellant on the allegation that it was the appellant, who murdered his mother. From the place of incident, the appellant ran away from the village. Memorandum statement of the appellant-accused was recorded, in which, he has stated that having murdered his mother, hidden the weapon/club in the house, door was locked from outside and thrown keys near canal. According to the police investigation authority, on such disclosure, hard object was found at the spot as stated by the appellant and two keys were also seized from the location, which was disclosed by the appellant in his memorandum statement. After completion of usual investigation, charge sheet was filed against the appellant for alleged commission of offence. The learned trial

Court framed charges against the appellant under Section 302 of the IPC. The appellant abjured guilt and he was put to trial. The prosecution examined as many as 11 witnesses to prove the allegation. The appellant was examined under Section 313 of Cr.P.C., in which, he pleaded innocence by stating that he has been falsely implicated. No defence witness was examined. The learned trial Court relying upon the evidence led by the prosecution, held the appellant guilty for commission of offence under Section 302 of the IPC and sentenced him, as described above, taking into consideration the circumstantial evidence to draw an inference regarding the guilt of the appellant.

3. Assailing legality and validity of the impugned judgment of conviction and order of sentence, learned counsel for the appellant argued that the conviction of the appellant is based on certain circumstantial evidence, which only raised strong suspicion, but, there is no clinching and reliable evidence to draw an inference that in all probability, the appellant and the appellant alone must have killed his own mother. There is evidence that the appellant, who was engaged in employment outside the village, had come to the village only five days before and on the date of incident, he again left. Therefore, presence of the appellant at the time of incident is doubtful. The evidence of Chheduram, PW-9, father of the appellant, shows that the conduct of the father is highly suspicious and doubtful, because, according to him, throughout the day, whenever he came back home, the door was locked and breaking the lock one after the other and last lock was broken in the night. This unusual behaviour on the part of the father and improbable story why he could not inform others in the morning, but calling people as late as around 8 PM in the evening, renders probable that it was not the appellant, but his father who killed his mother and that is why, he did not disclose the incident for long time and only on suspicion, when the appellant had already left the village in connection with his work outside, he has been roped in. He would further submit that the evidence has come that in the house, younger brother of the appellant was also residing, but neither his brother nor his father have stated regarding presence of Pawan at

house. He would further argue that the evidence of those witnesses with whom his father, Chhedu Ram-PW-9 spent day time having lunch and thereafter, taking dinner, have also not been examined and therefore, merely because the appellant alone was not found in the village, it could not be conclusively held that it is the appellant, who committed the offence. The chain of circumstance is not complete, hence, the appellant ought to be acquitted by giving him benefit of doubt.

4. On the other hand, learned State counsel argued that there is clinching evidence of Chhedu Ram, PW-9, father of the appellant that when he left the house in the morning, the appellant and his mother were left in the house and there was no other family member. He states that when he came back in the lunch hour, the door was locked. In the evening, when he again came, he saw door was locked, then after breaking the lock, the door was opened, dead body of mother of the appellant-Sukmat Bai was found and the appellant was missing since then. Finally, the appellant was arrested after 8 months. Presence of the appellant has been proved even by other witnesses. No specific evidence of appellant's presence at any other place has been led in defence nor revealed from the evidence of prosecution witnesses. The appellant's memorandum not only led to discovery of wooden club, which is said to be used in the commission of offence, but also, two keys, which were also found around the side of the canal from the spot indicated by the appellant. This incriminating circumstance have not been explained by the appellant and in the absence of any material evidence of presence of appellant at any other place and the medical evidence in the postmortem report stating probable time of death before 10 AM of the previous day, conviction of the appellant does not warrant any interference.

5. We have heard learned counsel for the parties and perused the record.

6. Prosecution case rests solely on circumstantial evidence, because nobody has seen the incident. Homicidal death of Sukmat Bai is not substantially in dispute, in view of the evidence of Dr. Chain Singh Painkra, PW-4, who has proved his report, Ex.P-1. In his evidence, he has stated that upon examination of the dead

body of the deceased-Sukmat Bai, he found that there was contusion in the chest and swelling on the right cheek and there was bleeding found in the nostril and mouth. Her wind pipe was congested, lungs were cut and congested, ribs broken and in the opinion, cause of death was traumatic asphyxia and homicidal in nature. Evidence of the Dr. Painkra, PW-4 has remained uncontroverted and admitted that traumatic means injury. Suggestion that if the person is badly weak and falls down, he may sustain injury, has been denied, though, he admits that the injury could be caused by other hard and blunt object, which was brought before him.

7. Chhedu Ram, PW-9, father of the appellant, has deposed that in the morning, at about 6-7 AM, he went towards nala for washing buffaloes, by that time, the appellant had not woken up, his wife was working in the house. When he again came back, his son got up, then, he was asked to take buffalo and give fodder, at that moment, the appellant keep quiet. It was around 8 AM in the morning. He further deposed that after taking meals, he went to the field leaving his wife and son alone in the house. His further evidence is that thereafter, when he came back, he found that the house was locked and then he again went to work. Thereafter, when he again came back, the house was found locked and it was enquired from the neighbours, then he broke one of the locks, he went inside and gave fodder to buffaloes, but he did not find his wife. At that moment, he had some doubt in his mind. Thereafter, he went to the house of his parents in the same village and again came back to his house at around 2 PM, lock of another room was broken and went inside, but nobody was found, it was around 3 PM in the afternoon. In the evening, he again fed buffaloes and went to the house of his parents and asked his mother to prepare food for him and after taking meals at around 8 PM in the night, called one of his son Krishno and other family members and then, he again went to the house and found that one of the rooms was still locked and that lock was broken, went inside and saw that dead body of Sukmat Bai was lying and it was bleeding and after that, the matter was reported to the police station. Chhedu Ram, PW-9 has admitted that after seeing deadbody of his

wife, he suspected murder, but he could not see anybody killing his wife. This witness states that he has some doubt on his son.

8. In the cross-examination, omissions with regard to details regarding Chhedue Ram, PW-9 having again come back home, he having seen his wife collecting paddy, has been elicited. It has also come in the cross-examination that there is no dispute between his wife and son. He has further deposed that the appellant had come back from Jammu five days before and he doesn't know as to whether, on the date of incident, the appellant had again move out. He further stated that after taking meals, when he came back to his house, he did not find appellant and entire house was locked. He admits that the neighbours used to come to the house. He explained that lock of third room was not broken on the basis that his wife and son had gone somewhere. A suggestion that he himself had murdered his own wife and therefore, he did not break the lock of that particular room, where dead body was lying, has been denied.

9. The evidence of this witness, who is father of the appellant and husband of the deceased, is that the appellant used to reside with him and when he left for his work, the appellant was sleeping and when he came back at around 8 AM, by that time, the appellant was awake and present. He then instructed the appellant to perform certain work and left him and his wife alone in the house. This shows that in the house of Chhedu Ram, PW-9, his wife and son alone were in the house and no one else. In the cross-examination, there is no suggestion that there were any other family member or any other person present in the house. However, it is proved from the evidence that when he came back to his house, entire house was locked, which is quite unusual. It appears that this witness came back in the afternoon, house was locked, then he went to the house of his mother. According to this witness, there were two locks, which were broken, but, when he couldn't seen his wife, lock of 3rd room was also broken, calling other persons including his son at his house, then, deadbody of his wife found lying inside the house. This witness has stated that his son-Umashankar was not present.

10. The evidence of Krishno Ram, PW-8 is also to the effect that he was called by his father inquiring about his mother and then, he had gone to the house, lock was broken in the presence of others and deadbody of the mother was found. After that, he had gone to lodge merge intimation. He has stated that all of them suspected the appellant as accused, because, he was not found in the house and eloped and door was locked. In the cross-examination, it is admitted that the appellant was to again leave for place of work on that day.

11. After the incident, the appellant eloped, but, the evidence of Lambodar, PW-3 proved that the appellant was in the village at least till 10-11 AM. According to Lambodar, PW-3, the appellant met with him at about 10 AM and sought his help for sale of paddy. He also stated that after selling paddy, sale proceeds were given in the hands of the appellant. According to this witness, after taking money, the appellant went towards his house. On the next date, this witness came to know that mother of the appellant died. Suggestion that the appellant-Umashankar had told him that he is selling paddy as he is in need of money to go out, has been denied. The evidence of this witness would prove that at 10 AM in the morning, the appellant was present in the village.

12. The evidence of Lambodar, PW-3, Krishno Ram, PW-8 and Chhedu Ram, PW-9 read jointly, prove beyond doubt that the appellant was residing with his father Chhedu Ram, PW-9 and mother, the deceased. When father of the appellant-Chhedu Ram, PW-9 left for work in the morning, the appellant and his mother alone were present in the house. The presence of the appellant in the village around 10 AM in the morning is also proved from the evidence of Lambodar, PW-3. However, it is neither corroborated from the evidence of prosecution witnesses nor any defence evidence has been examined to prove that after about 11 AM, the appellant was seen in the village or in the house. According to Chhedu Ram, PW-9, when after first round of work in the morning, he came back to the house, in all probability, in the afternoon, the house was locked, that means, between the period from 8 AM in the morning up to around 12 PM.

13. The postmortem report, which has been proved by Dr. Chain Singh Painkra, PW-4, records that time since death is 24 hours to 36 hours. Postmortem was conducted on 26-07-2011 at 10 AM, that means, Sukmat Bai died before 10 AM in the morning of the previous day. This was the time, around which, Chhedu Ram, PW-9 was not at home. He had left his son and wife at about 8 AM in the morning and probably, between the period 10 AM to 11 AM, the appellant met with Lambodar, PW-3. When Chhedu Ram, PW-9 came to house, it was found locked. The appellant, thereafter, was not seen in the village, nor anybody has seen him. When all these facts are taken together, it is proved that the mother of the appellant died between 8 AM to 10 AM in the morning and during that period, the appellant was inside the house and thereafter, the house was locked and the appellant eloped.

14. Memorandum statement has been recorded in Ex.P-6 which has been proved by two witnesses, Rajesh, PW-5 and Basant Kumar, PW-10. One of important thing, which has been discovered is that two keys have been recovered from a jungle like place near nala, that is the spot, which was disclosed by the appellant in his memorandum. This connects the appellant with the incident as the house was found locked. The appellant in his examination under Section 313 of Cr.P.C. failed to explain as to how at his instance, two keys were recovered from the place known only to him.

15. The argument has been raised that three locks were opened, but only two keys were recovered, in our opinion, that does not help the appellant-accused, because, according to the evidence of Chhedu Ram, PW-9, three locks were there. Recovery of two keys at the instance of the appellant, connects the appellant with the incident.

16. Doubt has been raised with regard to complicity of the husband of the deceased-Sukmat Bai, Chhedu Ram, PW-9 by submitting that his conduct is quite unusual as he came back to house and then, he went to other place and thereafter, again came back to the house, but without breaking the lock of that particular room,

where deadbody of his wife was lying, he again left the house. Chhedu Ram, PW-9 has broken the lock of that particular room, after calling others, therefore, it is argued that the conduct of Chhedu Ram makes the prosecution story doubtful and his conduct is also not free from doubt. Therefore, in such circumstances, it becomes highly doubtful that the appellant must have killed his mother, when Chhedu Ram, PW-9 admits that there was no dispute between the appellant and his mother.

In the present case, once the appellant has failed to establish his plea of alibi in the morning around 10 AM, when his mother died, his conduct of leaving the village without informing his father and not coming back until he was arrested, renders probable involvement of the appellant in the offence rather than his father, Chhedu Ram, who didn't try to open the door and call others to open the door as the appellant and his wife did not come back and the house remained locked. There is nothing in the evidence of prosecution witnesses that Chhedu Ram, PW-9 was having any strained relations with his wife-Sukmat Bai, the deceased. Argument has been raised that the appellant has younger brother-Pawan, but no witness, particularly his father and brother have stated regarding younger brother-Pawan, which shows that something is being suppressed by Chhedu Ram, PW-9. We have noticed that Daras Ram, PW-1, resident of the same village has deposed that Pawan resided elsewhere. This has not been controverted in the cross-examination of Krishno Ram, PW-8 and Chhedu Ram, PW-9 and nothing has been elicited with regard to presence of younger brother-Pawan. In the house, apart from Chhedu Ram, PW-9, the deceased-wife and the appellant, other person was also residing, when Chhedu Ram, PW-9 left the house around 8 AM, the appellant and his mother was in the house.

17. The conduct of the appellant is also indicative of his involvement. He did not come back to his house until he was arrested after 8 months of the incident from another place. This story of the defence that the appellant had gone to some place, cannot be accepted, in view of the evidence of Chhedu Ram, PW-9 that he left the

deceased and the appellant alone in the house as also the postmortem report showing cause and duration of death. Recovery of club and two keys on the basis of recording memorandum statement of the appellant also add to the incriminating circumstance.

18. In view of the circumstantial evidence of the present case, which form a complete chain to draw an inference that in all probability, the appellant and the appellant alone must have killed his own mother-Sukmat Bai, the deceased. The conclusion drawn by the learned trial Court does not warrant interference.

19. In the result, the appeal has no merit and is accordingly dismissed.

SD/-
(Manindra Mohan Shrivastava)
Judge

SD/-
(Vimla Singh Kapoor)
Judge