

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1756 of 2019**

- Kanhaiya Satnami S/o Mangalu Satnami Aged About 45 Years R/o Damkadih (Nagari) P.S - Sihawa District- Dhamtari Chhattisgarh

---- Appellant**Versus**

- State Of Chhattisgarh Through The Station House Officer - Sihawa District - Dhamtari Chhattisgarh

---- Respondent

For Appellant	:	Shri A.N.Pandey, Advocate
For State	:	Shri Anurag Verma, Panel Lawyer

D.B.:- Hon'ble Shri Justice Manindra Mohan Shrivastava**Hon'ble Smt. Justice Vimla Singh Kapoor****Judgment On Board****08/07/2021****Per Manindra Mohan Shrivastava, J.**

This appeal is directed against impugned judgment of conviction and order of sentence dated 05/05/2007 passed by the Additional Sessions Judge, Dhamtari, Sessions Khand, District - Dhamtari (CG) in Sessions Trial No.24/06 whereby and whereunder, the appellant has been held guilty of commission of offence and sentenced as described below -

	<u>Conviction</u>	<u>Sentence</u>
1.	U/s 302 of IPC	Life imprisonment and fine of Rs.500/-
2.	U/s 201 of IPC	R.I. for 3 years and fine of Rs.200/- (In default of total fine amount of Rs.700/-, additional R.I. of 2 months.)

Both the sentences to run concurrently
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2. Rajesh (PW1), son of the appellant and deceased Seema @ Sukaro Bai gave information in the police station on 22/01/2006 which was taken in *rojnamcha sanha* No.894 by Panchuram Kashi (PW17). In the information, it was stated that the mother of informant namely Seema @ Sukaro Bai went missing since 01/01/2006 after she had gone to another village with his father and despite all efforts made, her whereabouts are not known. In the information, it was also stated that despite repeated query, the father was not giving clear and satisfactory answer and was evading. After taking that information, the police started enquiring about his mother. The appellant being suspect, was taken into custody and his memorandum in Ex.P/5 was recorded wherein, according to the information, the appellant disclosed that he doubted the character of his wife and having seen his wife entangled and in sexual intercourse with Gautam (PW5) at 10 AM on 02/01/2006, he caught hold of his wife and strangulated her to death and thereafter, the dead body was buried in the *baadi* of his house. After recording his memorandum, the higher authorities were informed and the Executive Magistrate (PW12) was deputed to conduct recovery proceedings of the dead body. Further case of the prosecution is that in presence of the witnesses, the place, where the appellant had disclosed as having buried the dead body of his wife, was excavated and the dead body was exhumed. The dead body was, later on, identified as that of Seema @ Sukaro Bai. The body was sent for post mortem and Dr. G.R.Agrawal (PW16) conducted post mortem and according to him, mode of death was Asphyxia due to strangulation stated to be homicidal in nature. The duration of death was stated to be about 15 days. Having already recorded spot identification and FIR, followed by numbered merg intimation in the police station, investigation was proceeded. The police also seized soil from the place of burial of the dead body and also one shovel and one pick axe, which according to the prosecution, was used by the accused for digging

and burial of the dead body. The axe and pick axe are said to be seized from the appellant. The samples of soil as well as soil stains found in the shovel and pick axe were examined in the FSL and it was reported that the soil collected from the burial place and that found in the pick axe and shovel was one and the same. Upon usual investigation, finally charge sheet was filed.

3. On the basis of material contained in the charge sheet, learned Trial Court framed charges against the appellant that the appellant murdered his wife. The appellant abjured guilt and was put to trial.

4. In order to prove its case, the prosecution examined as many as 18 witnesses. Thereafter, the appellant was examined under Section 313 CrPC in respect of the incriminating material and circumstances appearing against him in the evidence led by the prosecution. The appellant claimed to be innocent and stated that he has been falsely implicated. No defence witness was examined.

5. Learned Trial Court, relying upon the incriminating circumstantial evidence, recovery of dead body at the instance of the appellant, motive, extra judicial confession and soil reports, held the appellant guilty of commission of offence and sentenced as described above.

6. Assailing correctness and validity of impugned judgment of conviction and order of sentence, learned counsel for the appellant argued that the circumstantial evidence relied upon by the Trial Court are doubtful. The evidence of recovery of dead body on the disclosure statement of the appellant does not incriminate because it was not found inside the house, but from the *baadi* / courtyard which was in open place outside the premise where appellant resided. Therefore, it cannot be said that the appellant killed his own wife. As far as motive part is concerned, learned counsel argued in this regard that the evidence of the prosecution witnesses states regarding appellant doubting

character of his wife but that is not enough to involve the appellant in the alleged commission of offence, in the absence of there being any eye witness. It is next submitted that the evidence of extra judicial confession, does not appear to be voluntary and is otherwise weak evidence. Lastly, it is submitted that even if it is accepted that the appellant killed his wife, what has been stated in his memorandum of statement, is a plausible story, as has been stated by other prosecution witnesses regarding doubting character of his wife and number of quarrels between them. Therefore, in any case, it is a case of sudden and grave provocation and as such, conviction of the appellant would only fall under Section 304 IPC, it being culpable homicide, not amounting to murder. The appellant, by now, has undergone more than 14 years of jail sentence. Therefore, his conviction may be altered to Section 304-I or 304-II IPC and sentence him for a period already undergone by him.

7. On the other hand, learned State counsel would argue that the memorandum of the appellant, recovery of dead body at the instance of the appellant from his own *baadi* / courtyard, identification of the dead body and cause of death are proved by reliable and substantial evidence of Rajesh (PW1) which clearly proves that the appellant had killed his wife. As far as argument of alteration of conviction to that under Section 304 IPC is concerned, learned State counsel would submit that what has been stated by the appellant in his memorandum and the evidence of other prosecution witnesses only shows that there was some doubt on the character and even if the appellant had seen his wife in compromising situation, he could have taken other remedial measures rather than killing his own wife. Strangulating his wife clearly shows intention to cause death and as the incident cannot be said to have happened in sudden and grave provocation, conviction does not warrant any interference.

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

9. Rajesh (PW1), son of the deceased and the appellant has clearly deposed in his

evidence that after his father and mother left for home from their work place, his mother was not traceable and he had repeatedly asked his father but he was not giving any satisfactory answer and evading and therefore, he informed the police regarding missing of his mother. It is proved from the evidence of Panchuram Kanshi (PW17) who recorded in *Rojnamcha Sanha* (Ex.P/15), information given by Rajesh. Both Rajesh (PW1) and Panchuram Kanshi (PW17), the police officer, stated regarding lodging of report that Seema was missing and information to that effect was given in the police station. As far as memorandum of the appellant is concerned, there is overwhelming evidence on record which is proved from the evidence on record. The Investigating Officer (PW18) has clearly deposed that he recorded memorandum of the appellant wherein the appellant disclosed the incident of burial of the dead body in the courtyard / *baadi*. Recording of memorandum by the Investigating Officer has been fully corroborated and supported from the evidence of memorandum witness Rohit Kumar (PW7) and Ghasiyaram (PW15) and both of them have clearly stated in their statement regarding memorandum statement of the incident and the place where the dead body was buried. Nothing could be elicited in the cross-examination of these witnesses to doubt the veracity of their version of they being witness to the disclosure statement of the Investigating Officer (PW18). Recovery of the dead body from the place indicated by the appellant is also proved from reliable evidence of prosecution witnesses. In this regard, evidence of Executive Magistrate (PW12) regarding he having conducted recovery proceedings of the dead body by exhumation of the same in the presence of the independent witnesses has remained uncontroverted and opinion of Executive Magistrate - J.R.Bariha (PW12) and witness of recovery of dead body in presence of Rohit Kumar (PW7), Shyam Kumar (PW8), Parasram (PW9) and Ghasiyaram (PW15) in addition to evidence of Rajesh (PW1), son of the appellant, all these witnesses have clearly stated that when digging was carried out, the dead body was exhumed. The identification of dead body by her son is beyond dispute as clearly stated by him. Thus, proceedings of recovery of dead body and identification conducted by Executive

Magistrate – J.R.Bariha (PW12) in the presence of independent witnesses as also son of the appellant and the deceased, are proved beyond doubt.

10. There is abundance of evidence regarding appellant's extra judicial confession to number of witnesses, not only to other relatives but also to his sons Rajesh (PW1) and Ravi (PW2), who have very categorically stated that when they asked regarding whereabouts of their mother, the appellant disclosed to them that he murdered Seema and buried in the courtyard / *baadi* of the house.

Similar statement has been given by Anusuiya Bai (PW3) and Mangluram (PW6) who are sister-in-law and brother-in-law respectively. There is no reason why appellant's own sons and brother-in-law and sister-in-law would falsely implicate him. The evidence of these witnesses are reliable. Even Ghasiyaram (PW15) has also stated regarding the appellant having given extra judicial confession before his son in his presence that he had killed his wife, buried the dead body in the courtyard.

11. An argument has been raised by learned counsel for the appellant that the place where the dead body was recovered, is an open place. This argument is not acceptable because Rajesh (PW1) and Mangluram (PW6) have clearly stated that the place where the dead body was exhumed, is an enclosed premise and it is attached to the house of the appellant and there is no other house in that vicinity. The evidence of witnesses of recovery of dead body namely Rohit Kumar (PW7), Shyam Kumar (PW8), Parasram (PW9) and Ghasiyaram (PW15) do not leave any manner of doubt that the dead body was recovered from the courtyard of appellant's house which is an enclosed place. In any case, the recovery of dead body was from the spot as was disclosed by the appellant in his memorandum. Therefore, this clearly connect the appellant with the alleged commission of offence. Shovel and pick axe were also seized from the appellant in presence of the witnesses. The evidence of investigating officer – M.D.Tiwari (PW18) supported by seizure witness also proves seizure of shovel and pick axe and when sample soil seized from the burial place and soil scratched out from the

pick axe, were sent for FSL report, both samples were found one and the same. The evidence as aforesaid, prove beyond reasonable doubt that it is the appellant and the appellant alone, who killed his wife.

12. As far as nature of death is concerned, the evidence of the doctor, who has conducted post mortem, proves that Seema @ Sukwaro Bai died of strangulation. Therefore, apparently, the death was homicidal in nature.

13. Having rejected all other contentions of learned counsel for the appellant, finally we need to consider the last submission of learned counsel for the appellant that present is a case where conviction would not travel beyond the ambit and scope of Section 304 IPC.

14. In the memorandum of the appellant, which has been recorded by the investigating officer – M.D.Tiwari (PW18) in the presence of prosecution witnesses, it has been disclosed that the appellant was doubting the character of his wife and on 02/01/2006, at about 10 AM, he saw his wife engaged in sexual intercourse with one Gautam and having seen this, Gautam ran away and the appellant, out of anguish and anger, strangled his wife at the spot.

15. Rajesh (PW1), son of the appellant and the deceased, who is one of the star witness of the prosecution, has deposed in his cross-examination that his father was doubting the character of his mother that she is having some illicit relation with one Gautam who used to come to his aunt's home once in every month. He stated that whenever he used to come to his aunt's home, he used to come to their house also and his father used to quarrel with his mother. He further stated that Gautam's aunt was their neighbour and whenever Gautam visited his aunt's house, he used to come to their house also. This witness has further stated that his father used to take strong objection on Gautam's visit to his house and there used to be serious quarrel between his father

and mother. Importantly, this witness states that on this issue, his father used to assault his mother.

16. Sumitra (PW14), aunt of Gautam has admitted in her cross-examination that her nephew Gautam used to visit her house 10-12 times every year. Though Gautam (PW5) denied any such relationship, obviously, he would not be interested to be involved in such allegation of illicit relationship with any woman. We find it to be a plausible story of defence which has been disclosed in the memorandum statement of the appellant that there existed illicit relationship of his wife with Gautam (PW5) who used to visit his aunt's house residing next to the house of the appellant 10-12 times every year and whenever he used to come to his aunt's house, he used to come to appellant's house also. There is also evidence that the appellant did not like Gautam coming to his house and there used to be quarrel between the appellant and his wife regarding her relationship with Gautam and at times, the appellant used to assault his wife only on this issue. In this background of the evidence led by the prosecution witnesses, we are inclined to hold that in all probability, the appellant killed his wife in the circumstances which has been stated by him in his own memorandum statement wherein he has stated that when he saw his wife and Gautam in compromising situation, out of anguish, he killed her by strangulating.

17. Though not in all cases, in a given case, adulterous behaviour or conduct of the wife may not only amount to provocation but may also satisfy the requirement of it being sudden in nature. In such a case, 1st Exception to Section 300 would be attracted and then it would be a case of sudden and grave provocation punishable under Section 302 IPC but under Section 304 IPC either in part - I or part – II thereof depending upon proof of intention or knowledge.

In **Ganesan v. State, 2007 CrLJ (NOC) 10 (Mad)**, the accused caused the death of paramour of his wife due to sustained provocation which he harboured in his mind on account of illicit intimacy between the deceased and his wife. The conviction in

that case was upheld under Section 304-I IPC.

In the case of **Uttam Kumar Devnath v. State of U.P., 2003 CrLJ 2725**, conviction under Section 304-I IPC was held appropriate as the accused suspected fidelity and on a given day, by sudden impulse, lost his self control and strangled his wife.

In **Re Govindan, 1975 CrLJ 114**, the accused found his wife lying with his brother in the same bed. It was held that it was a case of sudden and grave provocation and the accused would be liable for conviction under Section 304-I IPC as the exception of sudden and grave provocation was found proved.

In the case of **Ramchandra Pangi v. State of Orissa, 1984 CrLJ (NOC) 12**, the accused having found his wife in compromising position with another man hit her by a stick to death. He was held guilty of culpable homicide not amounting to murder.

Similarly, in the case of **Sukka v. State, 1998 CrLJ 3118 (MP)**, the accused saw his wife committing sexual intercourse with another man which led to killing the wife with axe. It was held that exception of grave and sudden provocation was available to the accused and his conviction was altered from under Section 302 IPC to under Section 304 IPC. In yet another case, **Sukh Lal v. State, 1998 CrLJ 3187 (MP)**, the accused having found killed his wife in sudden and grave provocation, conviction was upheld under Section 304 IPC.

These are all cases where murder of the wife was done for her adulterous act in the mental background created, the wife was taken into consideration in ascertaining whether such act caused grave and sudden provocation. The common thread in all such cases with fatal blow was clearly traced to the influence of passion arising from suddenness provocation and grave in nature.

Significant time gap and distance between provocation and assault causing death may render Exception I to Section 300 IPC inapplicable. Thus, defence will not avail the accused, where accused is well aware of immoral relationship of wife and when there is no evidence or even a faint suggestion as to what happened on the

particular morning or night which might account for the madness with which the accused flew into rage and started assaulting wife, it would not be a case of applicability of Exception 1 and plea of sudden and grave provocation would not be applicable to the accused as held in **Panchu Kumar Sardar v. State of W.B., 1984 CrLJ NOC 142 (Cal.)**

The element of provocation is not enough to attract exception but it should also be coupled with suddenness which is fully proved from the evidence on record of the case in hand. Thus, present is a case of sudden and grave provocation.

18. In the final conclusion, we are of the view that present is a case where 1st Exception to Section 300 IPC is squarely attracted that the appellant, under sudden and grave provocation, killed his wife. In that view of the matter, conviction of the appellant is altered to that under Section 304-I IPC. The appellant has undergone more than 14 years of jail sentence. In our opinion, the period undergone by him is adequate sentence looking to the criminal overt act committed by him.

19. In the result, this appeal is partly allowed. Conviction of the appellant is altered to that under Section 304-I IPC and sentenced for a period already undergone by him. The appellant be released forthwith.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge