

IN THE HIGH COURT OF MADHYA PRADESH

AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH

AHLUWALIA

&

HON'BLE SHRI JUSTICE RAJEEV KUMAR

SHRIVASTAVA

CRIMINAL APPEAL NO. 111 of 2012

Between:-

**VIKRAM AHIRWAR, SON OF
SHRI GIRDHARI AHIRWAR,
AGED 27 YEARS, OCCUPATION
LABOUR, RESIDENT OF
VILLAGE TEVRI, POLICE
STATION KHURAI, DISTRICT
SAGAR, MADHYA PRADESH**

.... APPELLANT

***(SHRI D.S. RAGHUVANSHI- ADVOCATE FOR
THE APPELLANT)***

AND

**STATE OF MADHYA PRADESH
THROUGH POLICE STATION KURWAI,**

DISTRICT VIDISHA

....RESPONDENT

***(SHRI AK NIRANKARI- PUBLIC PROSECUTOR
FOR THE RESPONDENT/STATE***

Reserved on : 29-06-2022
Delivered on : 7th July, 2022

*This appeal coming on for final hearing, Hon'ble Shri
Justice Rajeev Kumar Shrivastava, passed the following:*

JUDGMENT

Being aggrieved by judgment of conviction and sentence dated 21st September, 2011 passed in Sessions Trial No.86 of 2011 by Sessions Judge, Vidisha (MP) convicting sole appellant Vikram Ahirwar for commission of offence under Section 302 of IPC and sentencing him to undergo life imprisonment with fine of Rs.1,000/- with default stipulation, present appeal is preferred under Section 374(2) of CrPC.

(2) Prosecution case, in brief, is that complainant Gubre Ahirwar (PW6) lodged an FIR on 19-11-2010 alleging therein that his daughter was married with appellant- accused Vikram Ahirwar since eight years ago. After marriage, his son-in-law

appellant-accused and daughter used to reside with him. His son-in-law doubted on the character of his daughter due to which, he used to harass her and on the date of incident, at 09:00 O'clock, his son-in-law appellant Vikram took his daughter Ramkali to perform offerings at Jhapret Baba. At near about 11:00 O'clock, he reached Jhapret Ghat and kept articles near the Temple but his daughter Ramkali and son-in-law appellant accused Vikram did not found there. Thereafter, he searched here and there and at the bank of river near to the bushes, appellant-accused Vikram was seen killing his daughter and thereafter, he rushed towards the place from where on seeing him, accused appellant Vikram fled away towards Kethora. When he reached near his daughter Ramkali, he found that blood was oozing out from her head and face and grievous injuries were on the head and face of her daughter and found that his daughter is already dead. It is alleged that accused appellant Vikram has committed murder of his daughter Ramkali of smashing stone and corpse of his daughter

was lying near the bank of the river. On the basis of mere intimation Ex. P13, given by the complainant, a crime bearing FIR at Crime No.389 of 2010 was registered against the appellant-accused vide Ex.P14 at Police Station Kurwai, District Vidisha. Thereafter, the dead body of the deceased was sent for postmortem to Community Health Centre, Kurwai. Matter was investigated and accused was arrested. The incriminating articles were seized from the spot vide seizure memo Ex. P10. Statements of the witnesses were recorded. The seized articles were sent to FSL, Sagar for examination and the report is Ex.P18. After completion of other formalities, a charge sheet was filed before the Court of JMFC, Kurwai, from where the case was committed to the Sessions Court. The statement of the accused was recorded under Section 313 of CrPC and the appellant-accused pleaded that he has been falsely implicated in the case. In support of his defence, the appellant did not examine any witness. The prosecution in support of its case, has examined as many as seven witnesses.

(3) The trial Court after appreciating the entire evidence led by the prosecution and relying on the same, found charge against appellant as proved and accordingly, convicted and sentenced him for the offence as mentioned above in paragraph 1 of this judgment.

(4) The main points come up for consideration of present appeal are as under:-

"(1) Whether the death of deceased was homicidal in nature ?

(2) Whether act of accused appellant points towards his innocence and entitles him for acquittal or not; and the evidence is sufficient to establish guilt of appellant-accused?

(3) Whether present case is a fit case to apply "last seen theory" to establish the guilt of appellant accused?

(5) Learned counsel for the appellant contended that the judgment passed by the Trial Court is contrary to law. The trial Court has not properly appreciated the evidence available on record. There are material contradictions and omissions in the

statements of prosecution witnesses which were not considered by Trial Court. There is vital contradiction in the statements of witnesses as there is no eye witness to the incident and only on the basis of doubt, appellant has been made an accused and convicted by the trial Court which is a grave error committed by the trial Court and the impugned judgment is liable to set aside. The witnesses who have been examined before trial Court, did not support prosecution version and the medical evidence is also incomplete. It is further contended that appellant is the first offender and there is no previous criminal antecedent against him and there is no such evidence available against him regarding commission of alleged crime and the learned Trial Court has passed the impugned judgment by not overlooking to the said fact. There is no overt act on the part of accused if evidence of only witness Gubre Ahirwar, who is the father of deceased by whom FIR was lodged is considered in its entirety. Therefore, appellant is entitled for acquittal and the impugned judgment of conviction and sentences deserves to be

set aside.

(6) *Per contra*, learned Counsel for the State supported the impugned judgment of conviction and sentence and submitted that there being no infirmity in the impugned judgment of conviction and sentence and the findings arrived at by Trial Court do not require any inference by this Court. Hence, prayed for dismissal of this appeal.

(7) Heard learned counsel for the parties and perused the impugned record.

(8) Julfa (PW1) in his evidence deposed that three days before the death of Ramkali she had come to her house to watch television at 08:00 pm and it is denied by this witness that accused Vikram came to her house and abused in filthy languages and threatened the deceased Ramkali to kill. This witness has further stated that accused present in the Court asked to deceased Ramkali on third day to go to Jhapret Ghat and they will have to take *Dal-bhati* there. This witness denied that accused appellant Vikram had gone alone to Ramkali at

Jhapet Ghat and nobody was accompanied. This witness stated that accused appellant Vikram had killed deceased Ramkali by smashing with stone. This witness also denied that she had colluded with the accused and making a false statement in the Court to save the accused. From the statement of this witness, it is apparent that this witness has become turned hostile by prosecution.

(9) Udhet Singh (PW2) in his evidence denied about the date and time of incident. This witness also denied that no incident had occurred before him. This witness also admitted that accused Vikram and deceased Ramkali used to live in one room in the house of father of deceased prior to her death. This witness also stated that the accused doubted the character of her wife Ramkali and also made some allegations. This witness denied that the accused used to beat deceased Ramkali and Ramkali had gone to watch television at the residence of Julfa three days before incident. This witness also denied that accused Vikram had assaulted and abused Ramkali before him

and it is also denied by this witness that he is making a false statement in collusion with accused. From the evidence of this witness, it apparent that this witness has become turned hostile by the prosecution.

(10) Dr. PK Jain (PW3) in his evidence deposed that on 29-11-2010 at around 09:30 he had conducted the postmortem of deceased Ramkali Bai. According to doctor, brown coloured blouse, green sari and green petticoat strained with blood were found. Five broken-damage present in left hand. Face is disfigured left-mid of skull. Face and scalp region became strained with blood highly. Lacerated wound size 4"x2"x bone deep to clavicle cavity with fracture of frontal bone was not temporal with rupture of gain material left mid-facial form also fractured. The said doctor in para 6 of his cross-examination deposed that that if any patient is suffering from disease of dizziness and headache and thereafter, falls down from high place, then it is likely to cause the said injury. This witness also denied that if any patient suddenly collides with floor by falling

down from high place due to dizziness, then it is likely to cause such injury. This witness further stated that he found only one injury on the body of deceased and also denied that if timely treatment is proved to such patient, then the patient can be saved. According to the opinion of doctor, the cause of death of deceased was shock due to hemorrhage and injury to vital organ.

(11) Kishore Kumar (PW4) in his evidence deposed that he was called by Patwari, who asked him that a corpse of woman is lying in the river and to see as to whether the corpse falls under territory of District Vidisha or District Sagar. Thereafter, he had gone to see and afterwards, he informed the Patwari on telephone that the corpse is lying within the territory of District Vidisha. Thereafter, the police of Kurwai Police Station arrived the spot. There was injuries on the head of deceased and the police had recovered stone from the spot along with other incriminating articles. A lash *Panchnama* was prepared which is Ex.P5. This witness further stated that a *safina form* Ex.P6

was prepared. The police had seized the stone along with other articles vide Ex.P7. The police had arrested accused before him and prepared arrest memo Ex.P8. This witness admitted that there were injuries on the head and face of deceased. This witness denied that the father of deceased and other witnesses told him regarding murder of deceased. This witness further stated that a triangle stone is the same which was marked as Article "A". This witness further denied that the accused was arrested before him and further denied that he is making a false statement in collusion with the accused.

(12) Kishore Singh (PW5) who was posted as Sainik at Police Station Kurwai, in his evidence admitted that on 15-12-2010 the Head Constable had not opened sealed packet before him as it was seized and this witness shown his inability as to depose about the contents of sealed packet.

(13) Gubre Ahirwar (PW6) who is the complaint as well as father of the deceased, deposed that his daughter Ramkali and accused Vikram used to live happily after marriage. This

witness further stated on the date of incident, accused Vikram along with deceased Ramkali had gone to platform of Matabai Mandir. This witness deposed that thereafter, he came to know about the death of his daughter Ramkali. This witness deposed that in his presence, nobody had killed her. This witness further stated that when he saw the corpse of his daughter Ramkali, it was found covered. He did not inform the police about the death of Ramkali. In para 04 of his cross-examination, this witness deposed that appellant- accused Vikram used to harass his daughter and beat her. This witness deposed that on the date of incident, accused took away his daughter from his residence to perform offerings at *Jhapret Ghat Bale Ghatoriya Baba*. This witness further denied that he had entered into a compromise with accused and accused will look after children of deceased Ramkali so that he is making a false statement to save the accused.

(14) Manohar Singh Thakur (PW7) who is the Investigating Officer of the matter in his evidence deposed that he had

recorded a *merg* intimation on the basis of information given by complainant Gubre Ahirwar vide Ex.P13. On the basis of Ex.P13, he had registered an FIR vide Ex.P14. On the date of incident he had prepared a spot map vide ExP16. This witness also deposed that he had prepared *safina* form vide Ex.P6 and also prepared *lash pachnama* of deceased vide Ex.P5. A triangle stone containing blood was seized by him with one pair of slippers of deceased. A plain stone, a piece of broken bangles of deceased, a shirt of cream colour of Vikram and steel utensil were seized vide seizure memo Ex.P7. A requisition form regarding conduction of postmortem of the deceased was prepared. On 20-11-2010, the accused was arrested and his memorandum was recorded and on the same day, an arrest memo of accused was prepared vide Ex.P8. This witness further deposed that complainant had made his police diary statement. This witness further deposed that he did not get conducted of bloodstained banian for blood group and further deposed that he had not recorded statement of witnesses

Lararam and Anil. This witness denied that he has filed a false charge-sheet against accused by implicating him and further stated that there was any ill-will with accused so that he has falsely implicated accused by registering a case against him.

(15) The crux of present matter depends on "last seen theory". Undoubtedly, "last seen theory" is an important link in the chain of circumstances that would point towards the guilt of accused with some certainty. The "last seen theory" holds the Courts to shift the burden of proof to the accused and the accused to offer a reasonable explanation as to the cause of death of the deceased. From the facts and evidence available on record, the prosecution has succeeded in proving the facts by definite evidence that the deceased was last seen alive in the company of accused- appellant and, therefore, a reasonable inference can be drawn against the appellant accused. As per opinion of Dr.P.K. Jain (PW3), the the death of the deceased was homicidal in nature and the injuries were caused by means of hard and blunt object on the head and face of the deceased,

so also multiple fractures were also found on her body. It is true that in the present case, most of the prosecution witnesses have not supported the prosecution case but PW6 Gubre Ahirwar who is father of deceased as well as author of FIR has specifically deposed in para 2 of his examination in chief that "उस दिन विक्रम और रामकली माता बाई के चबूतरे के लिये गये थे। उसक बाद मुझे पता चला कि रामकली खत्म हो गई है....." that means he had seen his daughter Ramkali (deceased) with accused appellant Vikram just prior to incident. The aforesaid "last seen evidence" remained unrebutted in his cross-examination. It is undisputed that the appellant-accused Vikram was the husband of Ramkali and on the alleged date of incident, accused appellant Vikram along with wife had gone to *Matabai Mandir* for offering prayer and thereafter, Ramkali was found dead near bushes adjacent to the bank of river. Therefore, the burden/onus was on the part of appellant accused Vikram to prove that neither he had caused any injury nor committed murder of his wife Ramkali but on this aspect,

the defence remained silent. Therefore, the act of accused appellant points towards his guilt and he could not be entitled for acquittal and the evidence available on record is sufficient to establish him guilty.

(16) In view of forgoing discussion, this appeal *sans* merit, is hereby **dismissed**. The impugned judgment of conviction and sentence dated 21st September, 2011 passed in Sessions Trial No.86 of 2011 by Sessions Judge, Vidisha (MP) is **affirmed**. The appellant is in jail, therefore, he is directed to serve out the remaining jail sentence awarded by Trial Court.

A copy of this judgment be sent to the Jail Authorities as well as a copy of this judgment along with record be sent to the trial Court concerned.

(G. S. Ahluwalia)
Judge

(Rajeev Kumar Shrivastava)
Judge