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CRA-1863-2024

IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK AGARWAL

&amp;

HON'BLE SHRI JUSTICE AVANINDRA KUMAR SINGH

ON THE 18<sup>th</sup> OF JUNE, 2026CRIMINAL APPEAL No. 1863 of 2024*SHIVA**Versus**THE STATE OF MADHYA PRADESH*

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Appearance:

*Shri Jagat Kumar Dehariya - Advocate for the appellant.*

*Shri Ajay Shukla - Government Advocate for the respondent/State.*

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JUDGMENT

*Per. Justice Avanindra Kumar Singh*

Learned counsel for the appellant prays for withdrawal of I.A.No.6791 of 2024, an application for suspension of sentence and grant of bail to the appellant.

2. Accordingly, I.A No.6791 of 2024 is dismissed as withdrawn.
3. With the consent of learned counsel for the parties, matter is heard finally.
4. The appellant has filed this appeal being aggrieved of the judgment dated 20/06/2023 passed by learned Additional Sessions Judge, Chaurai District Chhindwara (MP) in ST No.07/2022 (State of Madhya Pradesh through Police Station Chand vs. Shiva), whereby learned trial Court has convicted the appellant under Section 304-I of IPC and sentenced him to undergo Life Imprisonment and fine of Rs.1000/- and in default of payment



additional RI for 1 year.

5. As per the accused/appellant, he is innocent and he has been wrongly convicted for the offence as stated by the prosecution in the night of 18-19/07/2021 for causing death of his wife Kiran by assaulting her with stone(s) in the bed of kulbaheri river Kharra ghat.

6. Learned counsel for the appellant submitted that uncle of the deceased Kiran, Shivram Kahar (PW-1) gave information to the Investigation Officer (PW-11) and therefore, police registered the Dehati Marg Intimation (Ex.P/1) and *Dehati Nalishi* (Ex.P/2). It is the prosecution story that when accused informed the complainant about causing death of his wife Kiran by hitting her with a stone and on asking why he did so, accused stated that they were together near the river, the deceased said to accused that she can have thousands of husband like him, therefore he got angry and pelted her with the stone(s) causing her death.

7. It is submitted that prosecution evidence is not reliable and contradictory. It is further submitted that in Para-5 of the judgment, it is mentioned that Shivram Kahar (PW-1) has stated that he did not lodge the FIR against the appellant. Therefore, prayer is made to set aside the judgment passed by the trial Court and appellant be acquitted.

8. On the other hand, learned Government Advocate supports the impugned judgment and prays for dismissal of the appeal.

9. Heard learned counsel for the parties and perused the record.

10. The prosecution has produced the following prosecution witnesses :- Shivram Kahar (PW-1), Balram Kahar (PW-2), Ram Kahar (PW-3), Nishikant Kahar (PW-4), Kavita Kahar (PW-5) Bhojraj Singh Varma



Patwari (PW-6), P.L. Dehariya. S.I. (PW-7), Dr. Anukriti Pandey (PW-8), Rajesh Kumar Sanodiya Constable (PW-9), Nitin Singh (PW-10) and Deepak Dehariya S.I. (PW-11) and Court Witness No.1 Shyam Sundar Baghel, Suryoday Singh Baghel (CW-2), Durga Varma (CW-3), Ghanshyam Sahu (CW-4), Chandrashekhar Sahu (CW-5), Devendra Singh Parihar (CW-6), Nitin Singh (CW-7) and Rani Banvari (CW-8) and during trial 39 documents have been exhibited by prosecution. Accused has produced defence witness Ashok Kahar(DW-1).

11. Shivram Kahar (PW-1) has stated that deceased Kiran was the wife of Shiva Kahar (accused). On the relevant date at about 12:30 in the night, accused called him and stated that he (accused) has murdered his (PW-1-Shivram's) daughter-Kiran with a stone then he (PW-1) went to Kharra river ghat and found that Kiran was lying there as dead. Accused was present there and told him that Kiran had told him " तेरे जैसे हजार पति कर लूंगी " therefore he had hit Kiran with the stone. This witness further stated that police recorded Dehati merg intimation (Ex.P/1) and Dehati Nalishi (Ex.P/2). In cross-examination, this witness stated that deceased Kiran did not regularly lived with him (accused). Father of the deceased had expired about 10 years ago. It is further stated that mother of the deceased Kavita Kahar (PW-5) lived with deceased Kiran. He admitted that Kiran used to drink liquor. Mother of the Kiran namely Kavita(PW-5) also drank liquor. In Para-5 this witness has admitted that deceased and accused used to live separately. Earlier Kiran had stated that sometimes accused used to beat her. Kiran was married in a temple although he (PW-1) was not present. In Para-6 he further admitted that where the dead body was lying in the river there were big



stones having sharp edges as seen in the photographs (Article D/1 to D/5) and someone can fall on them and get injured.

12. Balram Kahar (PW-2) and Ram Kahar (PW-3) are the cousin brother of the deceased. They have supported the prosecution case as stated by PW-1 Shivram Kahar. Ram Kahar (PW-3) in Para-9 has stated that at the time of incident, Kiran (deceased) was pregnant.

13. Nishikant Kahar (PW-4) has stated that deceased was sister in relation to him and when he asked, accused why he killed Kiran, accused has stated that 'Kiran taunted the accused that she can have 1000 husbands like him' therefore, he got angry and pelted stones lying nearby on her which caused her death. In answer to question in Para-10, this witness stated that accused made a call to phone No.7067474238 of Shivram Kahar.

14. Kavita Kahar (PW-5) has also supported the prosecution case and stated that accused Shiva is her son-in-law in relation. Earlier also accused used to beat her. At the time of incident deceased was seven month pregnant. In Para-11, this witness stated that no report was made against the accused earlier about him beating Kiran.

15. P.L. Dehariya, A.S.I. (PW-7) has stated that as per his investigation accused called from his mobile No.9685037959 to mobile No.7067474238 of PW-1 Shivram Kahar. He further stated that as per information when Kiran made a taunt that "she can have 1000 husbands like accused' then he thrown stones on Kiran two or three times which caused her death.

16. Dr. Anukrati Pandey (PW-8) has stated that in postmortem, she found following injuries on the body of the deceased-Kiran :-

" चोट क्रं. 1- मृतक के चेहरे के दाहिने तरफ लेसरेटेड वुण्ड 3 से.मी. गुणा 2 से.मी.



गुणा 2 से. मी. था ।

चोट क्रं. 2 - एब्रेजन बांये हाथ की कोहनी में जिसका आकार 3 से.मी. गुणा 2 से.मी. गुणा 1 से.मी. था ।

चोट क्रं. 3 - एब्रेजन दांये हाथ की कोहनी में जिसका आकार 2 से.मी. गुणा 1 से.मी. गुणा 1 से.मी. था ।

चोट क्रं. 4 - नाक से खून बह रहा था ।

चोट क्रं. 5- शव को बाहर से छूने में प्रतीत हो रहा था कि उसका दाहिने तरफ का दूसरा, तीसरा, चौथा, पांचवा रिब्स फ्रेक्चर था ।

चोट क्रं. 6 - शव को बाहर से छूने में प्रतीत हो रहा था कि उसका बांये तरफ का तीसरा, चौथा, पांचवा रिब्स फ्रेक्चर था ।

चोट क्रं. 7 - स्टर्नम भी फ्रेक्चर था ।

She further stated that deceased was pregnant. The cause of death was cardiorespiratory failure due to severe injuries to vital organs. A query was made from the police, whether the above mentioned injuries would be caused to Kiran from the stone seized from there. In reply to letter (Ex.P/18) she had given an information that injuries could be caused by the stone seized by the police.

17. Nitin Singh, Constable (PW-10) has stated that the mobile number from which call was made is 9685037959 (Airtel) which was registered in the name of Shiva Kahar S/o Panchu Kahar (accused) and mobile No.7067474238 belongs to Shivram Kahar (PW-1).

18. Deepak Dehariya, Sub-Inspector (PW-11) has supported the investigation and stated that besides recording Ex.P/1 and Ex.P/2 Dehati Marg Intimation and Dehati Nalishi respectively, he prepared Spot Map (Ex.P/3), recorded memorandum statement (Ex.P/5) of the accused and at his



instance, seized stone from the spot as per seizure memo Ex.P/7. In Para-11 of his cross-examination, he stated that accused had informed him on phone how he murdered the deceased-Kiran.

19. Court Witness No.1 Shyam Sunder Baghel has stated that in police control room information was received from Dial 100 Van from mobile no. 7587609118, that a person had called and stated that he had killed his wife. He also stated that on receiving the information from Dial 100 Van he had called from his own mobile phone no. 8839356204 to Mobile no. 9685037959.

20. Court Witness No.2 Suryodaya Singh Baghel in Para-6 of his cross-examination admitted that the person who called to control room from mobile No.9685037959 has stated his name as Shiva.

21. Court Witness No.3 Durga Verma has stated that accused had called him from mobile No.9685037959 to his mobile No.8349252262.

22. Court Witness No.6 Devedra Singh Parihar also stated that a person from mobile No.9685037959 called him and stated that he has murdered his wife and that mobile number belonged to Shiva Kahar.

23. The appellant/accused has produced Defence Witness Ashok Kahar who has stated that Shiva and deceased-Kiran had married in a temple and Shiva had informed the police that Kiran has died.

24. After considering the overall evidence available on record, we find that there is ample evidence to hold that under influence of intoxication when the deceased taunted the accused that 'she can keep 1000 husbands like him' he threw a stone on her when they were together in the vicinity of river Kulbaheri kharra ghat. At the time of incident, deceased-Kiran was pregnant.



After the incident, appellant/accused made calls to police and other person that he had killed his wife-Kiran.

25. In view of the aforesaid, it seems that if the intention of the accused was to cause murder of the Kiran then he would be the last person to inform the police and other person like PW-1 on phone that he has killed his wife-Kiran. In fact, on appreciation of facts, we find that it was a case of grave and sudden provocation which is as below:-

*Exception-I of Section 300 of IPC*

**"Exception 1.— When culpable homicide is not murder.—** Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos:—

*First* — That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

*Secondly* — That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

*Thirdly* — That the provocation is not given by anything done in the lawful exercise of the right of private defence.

*Explanation.—* Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact."

26. The present case also does not fall to any other proviso which are reproduced below :-

**"Exception 2.—** Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such



right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

**Exception 3.**— Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

**Exception 4.**— Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

**Exception 5.**— Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent."

**Explanation.**—Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

27. Considering the facts and circumstances of the case, we find that it was not a pre-meditated offence, the stone lying nearby was used to cause injury(s) to Kiran which resulted in her death and after the incident, he (accused) himself informed the incident to the police and relatives of the Kiran such as PW-1 Shivram kahar.

28. Dr. Anukrati Pandey (PW-8) has stated that injury No.1 was a lacerated wound on the face, injury No.2 is abrasion of left elbow, injury No.3 was abrasion of right elbow, there was bleeding from nostril and her 3<sup>rd</sup>,4<sup>th</sup> and 5<sup>th</sup> ribs and sternum were fractured. The fatal injuries No. 6 & 7 would be caused by single blow of a stone as other injuries would be caused simply by sharp edged stone as reflected from the photographs Article D/1 to D/5, which shows that there were multiple stones laying in the river bank.



Therefore, this Court does not find that there is no reliable evidence to hold that accused had again and again thrown same or different stones on the deceased as it is seen that only one stone was sent for query report (EX.P/18) by the police.

29. Hon'ble Supreme Court in the case of *Nawaz vs. State represented by Inspector of Police, (2019) 3 SCC 517*, has held that there was grave and sudden provocation by deceased calling his accused wife (appellant no. 1) and daughter prostitute, appellant no.2 came and slapped deceased, Everything occurred in fraction of a minute, depriving accused no. 1 (wife) of power of self control accused persons throttled the deceased. There was extra-judicial confession of accused wife implicating herself and other accused. Hence, conviction of accused was altered from Section 302 and 201 of IPC to Section 304 Part-I and 201 of IPC and sentenced to 10 year R.I..

The relevant paras reads as under :-

*"10. Be that as it may, both the Courts below on facts have relied upon the extra-judicial confession and we find that the extra-judicial confession in all probability might have been made by Accused No. 1 implicating herself and other accused. In other words, we also subscribe to the views of the Trial Court as well as by the High Court that such a confession was made by Accused No.1.*

*11. Material on record also reveals that Accused No.1 tried to hide the offence for about 40 days by giving false explanation about the whereabouts of her husband. Be that as it may, on going through the extrajudicial confession carefully, we find that the case may fall under Section 304 Part I of IPC inasmuch as the offence may fall under explanation 1 of Section 300. Immediately, after hearing the deceased calling the Accused No. 1 and her daughter as prostitutes, the Accused No. 2 suddenly slapped the cheek of the deceased. Immediately, after receipt of said assault, the deceased fell down unconscious and thereafter he was throttled to death. Everything has occurred in the fraction of a minute.*



*Since the accused, because of the aforesaid conduct of the deceased calling accused No. 1 and her daughter as prostitute, was deprived of the power of self-control. The sudden provocation by the deceased has resulted in the incident in question.*

*12. The deceased provoked the accused No.1 by uttering the word 'prostitute'. In our society, no lady would like to hear such a word from her husband. Most importantly, she would not be ready to hear such a word against her daughters. The incident is a result of a sudden and grave provocation by the deceased. Since the body came to be transported by the accused to a different place in order to hide the offence, the accused are rightly convicted for offence under Section 201 of IPC.*

*13. Having regard to the totality of the facts and circumstances of the case, the following orders are made:*

*13.1. The judgments of the Trial Court in S.C. 10/2005 and the High Court in Criminal Appeal Nos. 563/2007 and 599/2007 convicting the accused for offence punishable under Section 302 of IPC stands modified and the accused are hereby convicted under Section 304 Part I of IPC and sentenced to rigorous imprisonment for a term of ten years. Sentence imposed on the accused under Section 304 Part I and Section 201 IPC shall run. The accused will have the benefit of set off of the period already undergone in prison.*

*13.2 The appeals are accordingly allowed in part"*

30. In the case of *Nandu Dada Survase vs. The State of Maharashtra* (Criminal appeal No.1106 of 2012) judgment dated 03/02/2022, wherein the accused was convicted under Section 302 of IPC and sentenced as per law. On facts, in which accused was in custody for 12 years. The Division Bench found that the deceased wife with whom the appellant/accused had parted their ways about four years ago, suddenly met him, On the unfortunate day, the deceased wife had not just obstructed his way by holding his neck, by pulling his shirt but had started hurling abuses and called him impotent. The



Division Bench held that it was quite natural for the man to feel ashamed upon being referred as impotent. Looking to the facts and circumstances of the case, the Division Bench convicted the appellant under Section 304(II) of IPC to the period already undergone in custody.

31. Similarly, when a wife refers to her husband that 'she can keep thousand husbands like him' it is indirect/oblique reference to worthlessness of the husband, meaning he has no value as a human being or a husband. Therefore, it can be turned as a sudden and grave provocation.

32. Considering the over all facts and circumstances of the case, while maintaining the conviction for culpable homicide not amounting to murder, we find that case would not fall under 304 Part-I of IPC but would fall under Section 304 Part-II of IPC. Accordingly, the appellant/accused is convicted under Section 304 Part-II for causing death of his wife-Kiran. The appellant is directed to undergo RI for seven years with fine of Rs.1000/- and in default of payment of fine amount, additional RI for 1 year.

33. Accordingly, appeal is partly allowed and disposed of.

(VIVEK AGARWAL)  
JUDGE

(AVANINDRA KUMAR SINGH)  
JUDGE