



2025:CGHC:44202-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Judgment Reserved on 12.08.2025

Judgment Delivered on 01.09.2025

CRA No. 373 of 2016

1 - Thakur Singh, S/o Kunni Singh, Gond Aged About 36 Years R/o Village Amarpur, P.S. Baikunthpur, District Korea, Chhattisgarh.

--- Appellant

versus

1 - State of Chhattisgarh, Through District Magistrate, District Korea, Chhattisgarh.

--- Respondent

CRA No. 412 of 2016

1 - Arjun Singh, S/o Bitanram Gond, aged about 24 Years,

2 - Prem Singh, S/o Of Hajarilal Gond, aged about 28 Years,

Both are resident of Village - Amarpur, Police Station - Baikunthpur, District - Korea Chhattisgarh,

---Appellants

Versus

1 - State Of Chhattisgarh Through Station House Office, Police Station Baikunthpur, District Korea, Chhattisgarh.

... Respondent

For Appellants : Mr. Maneesh Sharma & Mr. Anil Gulati,
Advocates

For Respondent/State : Mr. Afroz Khan, P.L.

Division Bench
Hon'ble Smt. Justice Rajani Dubey, J. &
Hon'ble Shri Justice Amitendra Kishore Prasad, J.

CAV Judgment

Per, Amitendra Kishore Prasad, J.

1. Since both these appeals arise out of the same impugned judgment of conviction and order of sentence, they are being heard together and are disposed of by this common judgment.

2. In these appeals filed under Section 374(2) Cr.P.C., the appellants have challenged the legality, validity and propriety of the judgment of conviction and order of sentence dated 03.02.2016 passed by the Sessions Judge, Baikunthpur, District Koriya, C.G. in Sessions Case No.57/2015, whereby and whereunder, the appellants stand convicted and sentenced as under:-

Conviction	Sentence
Under Section 302 of Indian Penal Code (for short, 'IPC')	Imprisonment for life and fine of Rs.500/-, in default of payment of fine amount to undergo additional rigorous imprisonment for three months
Under Section 120-B of IPC	Imprisonment for life and fine of Rs.500/-, in default of payment of fine amount to undergo additional rigorous imprisonment for three months
Under Section 201 of IPC	Rigorous Imprisonment for seven years and fine of Rs.500/-, in default of payment of fine amount to undergo additional rigorous imprisonment for three months.

(All sentences were directed to run concurrently)

3. Case of the prosecution, in brief, is that Smt. Janki Bai (PW-1) and her elder sister/Rambai (hereinafter called as 'deceased'), were residing in the same neighbourhood. On 02.03.2015, on the occasion of Holi festival, deceased- Rambai along with Sukhsen Panika, Prem Gond, Rajkumar and Arjun Gond, was playing Holi in the village by going door to door. It is alleged that after consuming liquor, deceased returned home in the afternoon. At about 6:00 p.m. on the same day, Rambai's brother-in-law, Ramdevan Singh (PW-14) informed that deceased had left the house stating that she was going to search liquor and that she would return shortly to take her meal, but she did not return home till late in the night. Thereafter, her family members made enquiries in the neighbourhood and among relatives, but deceased could not be traced. On 07.03.2015, at about 8:30 a.m., Janki Bai (PW-1), while going towards Ghutri hill for relieving herself, noticed a dog barking continuously in that direction. After returning home, she asked Rambai's son- Mahendra Singh (PW-2) to verify the place where the dog was barking. Thereupon, Mahendra Singh (PW-2) proceeded towards Ghutri hill and in an old pit, noticed that the chest, both hands, legs and clothes of a human body were visible, while the remaining portion was covered with soil. On close observation, he identified the body as that of his mother- Rambai. Thereafter, he

immediately raised alarm, upon which villagers of the village reached the spot and noticed the dead body lying in the pit, partly covered with soil with certain portions eaten by animals. It is further the case of the prosecution that deceased had previous enmity with one Sukhsen and a long-standing land dispute with the appellants- Prem Singh, Arjun and one Rajkumar. On the information of Janki Bai (PW-1), First Information Report was registered against the unknown person vide Exs.P-24 & 31. After that, Inspector- Anand Ram (PW-17) forwarded a written requisition (Ex.P-13) to the Tehsildar, Baikunthpur, for exhumation of the body. Pursuant thereto, Tehsildar- A.S. Paikra (PW-13) conducted the exhumation in presence of witnesses after due notice, and prepared the Exhumation Panchnama (Ex. P-1). Thereafter, mere intimation was recorded vide Ex.P-15 and inquest proceedings were conducted vide Ex.P-3 and dead body of deceased was sent for postmortem examination where Dr. Yogendra Chauhan (PW-9) and opined that cause of death of the deceased was asphyxia due to strangulation and mode of death of deceased was homicidal in nature and give his report vide Ex.P-8.

4. During investigation, spot map was prepared vide Ex.P-7 and appellants were taken into custody vide Exs.P-25 to 28 respectively. Vide Ex.P-4, memorandum statement of appellant-Arjun was recorded, pursuant to which, one club was seized vide Ex.P-5. From the spot, plain and blood stained soil were seized

vide Ex.P-23. Vide Ex.P-6, vaginal slide of deceased, her clothes, hair and soil were seized. Seized articles were sent to FSL for chemical examination and as per FSL report (Ex.P-30), blood has been found on the articles marked as 'A, D1 & D2'.

5. After due investigation, appellants were charge-sheeted before the jurisdictional criminal Court and the case was committed to the trial Court for hearing and disposal in accordance with law, in which appellants abjured their guilt and entered into defence by stating that they have not committed the offence.
6. The prosecution in order to bring home the offence, examined as many as 17 witnesses in support of its case and exhibited 31 documents Exs.P-1 to P-31. However, the appellants in support of their defence have examined none and not exhibited any document.
7. The trial Court, after completion of trial and upon appreciation of oral and documentary evidence, by its impugned judgment, convicted and sentenced the appellants as mentioned above, against which, they have preferred the instant appeals under Section 374(2) of the CrPC.
8. Learned counsel for the appellants would submit that the prosecution has completely failed to prove the guilt of the appellants beyond reasonable doubt. He would further submit that the FIR, inquest report and merg intimation did not name the

appellants as the same were recorded against unknown persons. He would also submit that the so-called eye-witness to the incident namely PW-3 Amar Singh's statement was recorded after 7 days of the incident, which is unreasonable and casts a serious doubt on his credibility. He would further contend that PW-3 admitted in cross-examination that police came to the village several times, he attended the inquest proceedings, accompanied the police during post-mortem, and even during funeral, yet did not disclose anything about the appellants until 08.03.2015, and for the first time in Court, he mentioned the said facts. He would also contend that PW-4 Raghuveer also posed himself as an eye-witness to the incident claiming that he saw the appellants throttling the deceased and carrying her away, but he too admitted in cross-examination that he never disclosed the incident to anyone, not even to police or family members, despite several opportunities. Therefore, such conduct of these witnesses is wholly unnatural and their evidence is unreliable. As such, the impugned judgment of conviction and order of sentence deserves to be set aside and the appellants be acquitted of the said charges. Reliance has been placed upon the decision of Supreme Court in the matter of **Karandeep Sharma Alias Razia Alias Raju vs State of Uttarakhand** reported in **2025 SCC Online SC 773**.

9. Learned State counsel would support the impugned judgment and submit that the prosecution has brought home the offence against the appellants and has proved the case beyond reasonable doubt and thus, the appellants have rightly been convicted and sentenced for the aforesaid offences.
10. We have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.
11. The first question, is as to whether the death of the deceased was homicidal in nature, has been answered by the trial Court in affirmative relying upon the postmortem report (Ex.P-8) proved by Dr. Yogendra Chauhan (PW-9) who has conducted postmortem and has clearly opined that the cause of death of deceased was asphyxia due to strangulation and the nature of death was homicidal. Thus, we are of the considered opinion that learned trial Court has rightly held the death of deceased to be homicidal in nature which is a correct finding of the fact and we hereby affirm the finding recorded by the trial Court.
12. Now, the question would be whether the appellants are the author of the crime in question?
13. The present case is solely based upon the statements of PW-3 Amar Singh and PW-4 Raghuveer who are said to be the

eye-witnesses to the incident. PW-3 Amar Singh has stated in his deposition that on the date of incident, at about 7:50 PM, when he was going to answer nature's call, he saw the appellants carrying away the deceased. He has further stated that appellant- Arjun Singh was holding the deceased from the head, while appellant- Prem Singh was holding her from the stomach and co-accused- Thakur Singh was holding her legs. He has also stated that when he raised an alarm, the accused persons threatened him with dire consequences and asked him to keep quiet. However, in cross-examination (in paras 19 and 20), this witness has made material admissions demolishing his own version. He has categorically admitted that the police had visited the village about 8 to 10 times and he was present during the inquest proceedings and also accompanied the police for the post-mortem of the deceased, but did not tell them anything about the incident. He further admitted that he was also present when the dead body was handed over for cremation and despite all this, the said witness candidly admitted that he did not disclose anything to the police or any other person till 08.03.2015, and has stated the alleged facts for the first time before the Court. This conduct of PW-3 Amar Singh renders his testimony highly unnatural, unreliable and unworthy of credence. When admittedly he was present throughout the investigation and even during the post-mortem and funeral, his silence for seven long days and disclosure for the first time before the Court makes it

evident that he is a got-up /planted witness and the conviction based solely on such testimony cannot be sustained.

14. Apart from PW-3 Amar Singh, the prosecution has also examined PW-4 Raghuveer, who is posing himself to be an eye-witness to the incident. He has stated before the Court that on the date and time of the incident, the accused persons allegedly throttled the neck of the deceased and thereafter carried her away. However, despite claiming to have seen such a serious incident, PW-4 Raghuveer has admittedly not disclosed this fact to anyone for a considerable time. In his cross-examination, this witness has categorically admitted that he never narrated the alleged incident either to the villagers, or to the police, or even to the family members of the deceased at the relevant time. Such unnatural conduct renders his testimony highly doubtful and untrustworthy.

15. The Hon'ble Supreme Court has consistently held that when a witness claims to be an eye-witness of a grave crime, but keeps silent for an unreasonable period without explanation, his evidence cannot be safely relied upon. In the matter of **Karandeep Sharma (supra)**, the Supreme Court has held in paras 33 to 35 which reads as under:-

“33. The incident took place on the intervening night of 25th/26th June, 2016. The witnesses of the last seen theory, i.e., Jasweer Singh (PW-2), Anand Pal Singh (PW-3), Smt. Rashmi Devi (PW-5), Munesh

Singh (PW-6), Brajesh Kumar(PW-8) and Shiva Asthana (PW-11) categorically stated that they saw the appellant who was doing the job of sound and light in the Jagran function, taking away the child-victim with him. If at all, there was an iota of truth in this version of the witnesses of last seen theory, then there was no reason as to why they kept silent and failed to give this vital information to the police officers who arrived at the spot to investigate the matter in the early morning hours of 26th June, 2016. Manifestly, going by the evidence of the Investigating Officer(PW-14), no witness came forward with this theory till 27th June, 2016.

34. Furthermore, the witnesses of the last seen theory testified that they were already present at the site where the dead body of the child-victim was found, and police had also reached there in the early hours of 26th June, 2016. The FIR in respect of the incident came to be registered around 10:00 AM and the said FIR does not contain a whisper that anyone from the village had seen the child-victim in the company of the appellant, any time prior to her dead body being found.

35. Hence, in our considered opinion, the conduct of these witnesses in remaining silent and not disclosing to the police regarding they having seen the appellant taking away the child-victim with himself, completely

demolishes the prosecution case regarding the theory of last seen.”

16. Likewise, in the matter of **Thulia Kali vs The State Of Tamil Nadu** reported in **AIR 1973 SUPREME COURT 501**, has held in para 12 which reads as under:-

“12. It is in the evidence of Valanjiaraju that the house of Muthuswami is at a distance of three furlongs from the village of Valanjiaraju. Police station Valavanthi is also at a distance of three furlongs from the house of Muthuswami. Assuming that Muthuswami PW was not found at his house till 10.30 p.m. on March 12, 1970 by Valanjiaraju, it is, not clear as to why no report was lodged by Valanjiaraju at the police station. It is, in our opinion, most difficult to believe that even though the accused had been seen at 2 p.m. committing the murder of Madhandi deceased and a large number of villagers had been told about it soon thereafter, no report about the occurrence could be lodged till the following day. The police station was less than two miles from the village of Valanjiaraju and Kopia and their failure to make a report to the police till the following day would tend to show that none of them had witnessed the occurrence. It seems likely, as has been stated on behalf of the accused, that the villagers came, to know of the death of Madhandi deceased on the evening of March 12, 1970. They did not

then know about the actual assailant of the deceased, and on the following day, their suspicion fell on the accused and accordingly they involved him in this case. First information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the above report can hardly be overestimated from the standpoint of the accused: The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as names of eye witnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story As a result of deliberation and consultation. It is, therefore, essential that the delay in the lodging of the first information report should be satisfactorily explained. In the present case, Kopia, daughter-in-law of Madhandi deceased, according to the prosecution case, was present when the accused made murderous assault on the deceased.

Valanjiaraju, stepson of the deceased, is also alleged to have arrived near the scene of occurrence on being told by Kopia. Neither of them, nor any other villager, who is stated to have been told about the occurrence by Valanjiaraju and Kopia, made any report at the police station for more than 20 hours after the occurrence, even though the police station is only two miles from the place of occurrence. The said circumstance, in our opinion, would raise considerable doubt regarding the veracity of the evidence of those two witnesses and point to an infirmity in that evidence as would render it unsafe to base the conviction of the accused-appellant upon it.”

17. In the matter of **Kunchan Lavanya And Others vs. Bajaj Allianz General Insurance Co. Ltd. And another** reported in **2025 SCC OnLine SC 749**, the reliance was placed in another matter of **Goutam Joardar vs. State of West Bengal (2022) 17 SCC 549**, wherein the Hon’ble Supreme Court has opined that delay in recording testimony alone does not discredit the witness.

18. Further, the Hon’ble Supreme Court, in the matter of **Firoz Khan Akbarkhan vs. State of Maharashtra** reported in **2025 SCC OnLine SC 627**, has held as under:-

“21.Insofar as the delay of 2/3 days in recording the statements of the eye-witnesses under Section 1612 of the Criminal Procedure Code, 1973 (hereinafter

referred to as the 'Code') is concerned, the said delay has been thoroughly explained by the witnesses, including the Investigating Officer, to the effect that there were riots in the area. On this score, the Investigating Officer was involved in maintaining law and order in the affected area. In the attendant facts and circumstances, the course of action adopted by the police cannot be termed unjustified and no adverse inference can be drawn on this count. No doubt that Court has laid down that an inordinate delay in recording witness statements can prove to be fatal for the prosecution, as pointed out by three learned Judges in Ganesh Bhavan Patel v. State of Maharashtra, (1978) 4 SCC 371; however, therein, the delay in recording statements of the material witnesses was accompanied by a delay in registering of the FIR and the surrounding circumstances, which led the Court to hold that there was a 'a cloud of suspicion on the credibility of the entire warp and woof of the prosecution story. In Jagjit Singh v. State of Punjab, (2005) 3 SCC 689 and State of A.P. v. S Swarnalatha, (2009) 8 SCC 383, the Court held in favour of the convict/accused, as the inordinate delays therein could not be sufficiently explained. Delay of about 27 days, in a case where communal violence had broken out, was held not fatal, in Lal Bahadur v. State (NCT of Delhi), (2013) 4

SCC 557. Delay of over 2 years in recording witness statements was deemed not fatal, when explained, in *Baldev Singh v. State of Punjab*, (2014) 12 SCC 473. Delay in recording witness statements was held not fatal per se in *Sunil Kumar v. State of Rajasthan*, (2005) 9 SCC 283 and *VK Mishra v. State of Uttarakhand*, (2015) 9 SCC 588. Delay in recording statements of witnesses was held to have cast serious doubts on the prosecution version in *Shahid Khan v. State of Rajasthan*, (2016) 4 SCC 96 and *Jafarudheen v. State of Kerala*, (2022) 8 SCC 440. It was, held, in *Goutam Joardar v. State of W. B.*, (2022) 17 SCC 549, by a Coordinate Bench that 'there was some delay in recording the statements of the eyewitnesses concerned but mere factum of delay by itself cannot result in rejection of their testimonies. Per our understanding, *Ganesh Bhavan Patel* (supra) is not an authority to contend that delay in recording witness statements is always fatal to the prosecution's case. Thus, *stricto sensu*, delay in recording witness statements, *moreso* when the said delay is explained, will not aid an accused. Of course, no hard-and-fast principle in this regard ought to be or can be laid down, as delay, if any, in recording statements will have to be examined by the Court concerned in conjunction with the peculiar facts of the case before it. Our reading

of the above shall apply on all fours to delays in the context of Section 164 of the Code.”

19. Furthermore, the Hon’ble Supreme Court in **Firoz Khan (Supra)** has relied on its own judgment passed in the matter of **State of Himachal Pradesh vs. Lekh Raj** reported in **(2000) 1 SCC 247**, wherein the following observations were made:-

“7. In support of the impugned judgment the learned counsel appearing for the respondents vainly attempted to point out some discrepancies in the statement of the prosecutrix and other witnesses for discrediting the prosecution version. Discrepancy has to be distinguished from contradiction. Whereas contradiction in the statement of the witness is fatal for the case, minor discrepancy or variance in evidence will not make the prosecution's case doubtful. The normal course of the human conduct would be that while narrating a particular incident there may occur minor discrepancies, such discrepancies in law may render credential to the depositions. Parrot-like statements are disfavoured by the courts. In order to ascertain as to whether the discrepancy pointed out was minor or not or the same amounted to contradiction, regard is required to be had to the circumstances of the case by keeping in view the social status of the witnesses and environment in which such witness was

making the statement. This Court in [Ousu Varghese v. State of Kerala](#) [(1974) 3 SCC 767 : 1974 SCC (Cri) 243] held that minor variations in the accounts of the witnesses are often the hallmark of the truth of their testimony. In [Jagdish v. State of M.P.](#) [1981 Supp SCC 40 : 1981 SCC (Cri) 676] this Court held that when the discrepancies were comparatively of a minor character and did not go to the root of the prosecution story, they need not be given undue importance. Mere congruity or consistency is not the sole test of truth in the depositions. This Court again in [State of Rajasthan v. Kalki](#) [(1981) 2 SCC 752 : 1981 SCC (Cri) 593] held that in the depositions of witnesses there are always normal discrepancies, however, honest and truthful they may be. Such discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence, and the like. Material discrepancies are those which are not normal and not expected of a normal person.”

- 20.** Reverting back to the facts of the present case at hand, in the light of aforesaid decision of Supreme Court, it is quite vivid that in the present case, the silence of PW-3 Amar Singh & PW-4 Raghuveer, despite claiming to have witnessed the throttling and carrying away the deceased by the appellants, creates a grave

suspicion about their presence at the scene of occurrence. Their delayed statements, made for the first time in Court and without any supporting evidence, appear to be a reconsideration. It seems they were falsely introduced as eye-witnesses to strengthen a weak prosecution case. Their testimonies contain serious inconsistencies and seem unlikely. If they had genuinely witnessed the murder, it would have been natural for them to immediately inform the deceased's family or the Police. However, both PW-3 Amar Singh and PW-4 Raghuveer admitted during cross-examination that, even though the police visited their village 8 to 10 times for investigation, they never mentioned the involvement of the appellants. In fact, they accompanied the Police during the inquest, post-mortem, and while handing over the deceased's body to her family, yet chose to remain silent at every important stage. This unnatural behaviour shows that they are not real eye-witnesses, but were added later as made-up witnesses to support a weak prosecution case. This apart, the entire case of the prosecution is full of material contradictions and improbabilities. In the FIR, inquest report as well as in the merger intimation, the names of the present appellants were not mentioned at all, as the report was initially lodged against unknown persons. This fact itself goes to show that there was no immediate suspicion against the appellants.

- 21.** In such circumstances, conviction of the appellants solely on the basis of such doubtful and unreliable testimony cannot be

sustained in law. The trial Court, in our considered opinion, erred in placing implicit reliance on such evidence without appreciating the inherent improbabilities and contradictions.

22. Accordingly, the conviction and sentence awarded to the appellants by the learned trial Court are hereby set aside. Both the criminal appeals are thus **allowed**. The appellants are acquitted of the charges framed against them.

23. The appellants are reported to be on bail. Keeping in view the provision of Section 437-A of CR.P.C., the appellants are directed to forthwith furnish personal bond in terms of Form No.45 prescribed in the Cr.P.C. of sum of Rs.25,000/- each with one surety each in the like amount before the trial Court concerned which shall be effective for a period of six months along with an undertaking that in the event of filing of Special Leave Petition against the instant judgment or for grant of leave, the aforesaid appellants on receipt of notice thereof shall appear before the Hon'ble Supreme Court.

24. Registry is directed to transmit the lower Court record along with a copy of this judgment to the trial Court forthwith for information and necessary compliance.

Sd/-
(Rajani Dubey)
Judge

Sd/-
(Amitendra Kishore Prasad)
Judge

HEAD-NOTE

Where the conduct of eye-witnesses are doubtful and they are not trustworthy, they cannot be relied upon for conviction as the Court does not inspires confidence in relying their version.