

2025 LiveLaw (SC) 1182

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

VIKRAM NATH; J., SANDEEP MEHTA; J.

SLP (Crl.) No(s).13533 of 2025; December 08, 2025

GOVIND MANDAVI *versus* STATE OF CHATTISGARH

Indian Penal Code, 1860 – Section 302/34 & Section 460 – Murder and House trespass – Evidence Act, 1872 – Section 11 – Credibility of Eyewitness – Omission in FIR – Supreme Court set aside the conviction of the appellant, holding that the omission of the accused’s name in the FIR, despite the informant having received a detailed account from the sole eyewitness immediately after the incident, is a material lacuna that goes to the root of the matter - Supreme Court observed that the eyewitness (PW-2) provided minute details of the assault to the informant (PW-1) but omitted the name of the accused, who was her own brother-in-law and well-known to her - The subsequent explanation that she was "unwell" or that the accused's "mask fell off" during the incident was viewed as a "subsequently cooked up" story and a "clear manipulation" to implicate the appellant due to prior enmity - Held that if the eyewitness had actually identified the accused by name in her initial statement, there was no justification for conducting a TIP - The conduct of a TIP for a known person indicates that the witness could not identify the assailants at the time of the incident - **Appeal allowed.** [*Relied on Ram Kumar Pandey v. State of M.P.*, AIR 1975 SC 1026; Paras 41-48]

For Petitioner(s): Mrs. Pragya Baghel, AOR Mr. Azad Bansala, Adv.

For Respondent(s): Mr. Abhishek Pandey, Adv. Mr. Prashant Kumar Umrao, AOR

J U D G M E N T

Mehta, J.

1. Heard.
2. Leave granted.
3. The appellant-Govind Mandavi¹, along with co-accused Narender Nag and Mansingh Nureti (both of whom stand acquitted by the High Court of Chhattisgarh at Bilaspur²), were put to trial before the learned Special Judge, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, North Bastar, Kanker³, in Special Penal Case No. 65 of 2021. Upon conclusion of the trial, *vide* judgment and order dated 28th January, 2023, the accused-appellant and co-accused Mansingh Nureti were convicted for the offences punishable under Sections 302/34 and 460 of the Indian Penal Code, 1860⁴, and were sentenced in the following manner:

Sections	Sentence	Penalty/Fine	Sentence in default of payment of fine
Section 302 r/w 34 IPC.	Life Imprisonment	Rs.10,000/-	Six months RI

¹ Hereinafter, referred to as the “accused-appellant”.

² Hereinafter, referred to as the “High Court”.

³ Hereinafter, referred to as the “trial Court”.

⁴ For short, ‘IPC’.

Section 460 IPC.	Ten Years RI	Rs.5000/-	Three months RI
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4. Accused Narender Nag was held guilty of the offences punishable under Section 302/34 IPC and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989⁵, and was sentenced as follows:

Sections	Sentence	Penalty/Fine	Sentence in default of payment of fine
Section 302 r/w 34 IPC.	Life Imprisonment	Rs.10,000/-	Six months RI
Section 3(2)(v) of SC/ST Act.	Life Imprisonment	Rs.10,000/-	Six months RI

5. In appeal, the High Court set aside the conviction of the two co-accused, Narender Nag and Mansingh Nureti, whilst upholding the conviction and sentence of the present accused-appellant, *vide* the common judgment and order dated 14th January, 2025, passed in the clubbed criminal appeals, including Criminal Appeal No. 1298 of 2023 preferred by the accused-appellant.

Factual Background

6. Succinctly stated, facts germane for adjudication of the present appeal are set out hereinbelow.

7. Heeralal Hidko (PW-1) submitted a *merg intimation*⁶ (oral report) to the SHO, Police Station Bhanupratappur, District Kanker, Chhattisgarh, on 18th April, 2021, at about 7:25 a.m., alleging *inter alia*: -

"I am a Native resident of Village Iragoon, Durgupara, I work in Farming sector. Like every day routine, on 17/04/2021, my son Bivan and daughter-in-law Sukmai Hidko both (*sic*) were sleeping inside the Farm hut around 11:30 my daughter-in-law Sukmai came home and told me that "2 unknown masked persons came at around 11:00 one of whom was tall and another was short-heighted and thin and held sickle In his hand. They called and woke up my husband Bivan and took him away from the farm hut, I followed them and stood on the door. After a while, my husband screamed "Aye Daayi! O Daayii" I got scared and ran away." As soon as I got this news, I took Sahdev Kadiyam, Kushal Kawde and Dhannaram Anchala, and others with me to my field and in the light of my torch, I found my son Bivan lying dead, soaked in blood. My son is dead, some unknown person has killed my son with a sharp weapon. Due to the midnight and it being a forest area, I took care of the dead body of my son, and in the morning, I came here to report."

8. On the basis of the aforesaid statement, First Information Report⁷ No. 106 of 2021, dated 18th April, 2021, came to be registered at the Police Station for the offence punishable under Sections 302/34 IPC against unknown assailants.

9. Evidently, a perusal of the FIR (Exh. P/2) makes it clear that the informant Heeralal Hidko (PW-1) was not an eyewitness to the incident; rather, his knowledge of the

⁵ For short, 'SC/ST Act'.

⁶ (Exh P/1).

⁷ For short, 'FIR'; Exh. P/2.

occurrence was entirely based on the information furnished to him by Smt. Sukmai Hidko (PW-2), his daughter-in-law and wife of the deceased Bivan Hidko.

10. The statement of Smt. Sukmai Hidko (PW-2), wife of the deceased and daughter-in-law of Heeralal Hidko (PW-1), under Section 161 of the Code of Criminal Procedure, 1973⁸ came to be recorded on 21st April, 2021, i.e., after four days of the incident and at that point of time, for the first time, it was alleged by the lady that during the assault being made on her husband, the mask of one of the assailants came off and thus, she was able to identify the said assailant as being the appellant-Govind Mandavi.

11. Acting upon the material collected during the course of investigation, the Investigating Officer, Shri Damon Lal Bhuarya (PW-14), apprehended the accused-appellant as well as the two co-accused on 22nd April, 2021, as per duly prepared arrest memoranda⁹. Acting in furtherance of the respective disclosure/memorandum statements¹⁰ furnished by all the three accused, the police effected the recoveries attributed to them as per the following table: -

Accused	Exhibit(s)	Description of Articles
Govind Mandavi (accused appellant)	P/15	1. One Mobile Phone. 2. One Axe, which has been used in the commission of the offence having bloodlike stains. 3. One half T-shirt having blood-like stains. 4. One lower having blood-like stains. 5. One black towel having blood-like stains. 6. One pair of shoes having blood-like stains. 7. Rs.500/- cash.
Mansingh Nureti	P/17	1. One motorcycle, which is used in the offence. 2. One T-shirt having blood like stains. 3. One towel having blood-like stains. 4. Rs.200 cash.
Narendra Nag	P/19	1. One full shirt having blood like stains. 2. One half jeans pant having blood-like stains. 3. One towel having blood-like stains. 4. Rs.500/- cash.

12. The prosecution alleged that all recovered articles were forwarded to the Regional Forensic Science Laboratory, Jagdalpur (Bastar), for chemical and serological

⁸ For short, 'CrPC'.

⁹ Exh. P/21-23.

¹⁰ Exh. P/14, 16, and 18.

examination. As per the FSL report¹¹, human blood was detected on the axe recovered from the accused-appellant (Article-C), the shoes seized from him (Article-E), the T-shirt and full pant of coaccused Mansingh Nureti (Articles F-1 and F-2), the full pant and towel attributed to co-accused Narender Nag (Articles G-1 and G-3), as well as the shirt and half-pant of the deceased (Articles H-1 and H-2). However, the blood group could not be determined as the serology report noted that the samples had disintegrated and the result was, therefore, inconclusive.

13. The accused–appellant was subjected to a Test Identification Parade¹² conducted by Moksha Dewangan, Tahsildar (PW-16), on 22nd April, 2021, during which he is alleged to have been identified by the purported eyewitness, Smt. Sukmai Hidko (PW-2).

14. Pursuant to the filing of the chargesheet, the trial Court proceeded to frame charges against all the three charge-sheeted accused.

15. The accused denied the charges and claimed trial.

16. To bring home the charge against the accused persons, the prosecution examined as many as sixteen witnesses and exhibited certain documents and material objects. The incriminating material emerging from the prosecution evidence was put to the accused persons in their examination under Section 313 CrPC, wherein they denied the allegations *in toto*, asserting that they had been falsely implicated. No evidence was adduced in defence.

17. Upon appreciation of the oral and documentary evidence brought on record, and after considering the submissions advanced on behalf of the prosecution and the defence, the learned trial Judge proceeded to convict and sentence all the three accused persons as aforesaid, *vide* judgment dated 28th January, 2023.

18. In appeal, the High Court affirmed the conviction of the accused-appellant while setting aside the conviction of the remaining two co-accused, *vide* judgment dated 14th January, 2025. The High Court principally relied upon the testimony of Smt. Sukmai Hidko (PW-2); her identification of the accused-appellant in the TIP, which was proved by the Executive Magistrate (*Tahsildar*) Moksha Dewangan (PW-16) and the dock identification. The Court further drew support from the FSL report, noting that human blood was detected on the axe and shoes recovered pursuant to the memorandum statement of the accused-appellant, duly proved through the testimony of Sahdev Kadyam (PW-7).

19. The High Court additionally held that the motive attributed to the accused-appellant stood firmly established on the basis of the evidence of PW-1, PW2, PW-4, PW-6, PW-7, PW-8, and PW-9, who consistently deposed that the accused-appellant is the brother of Binda Bai (PW-6), the second wife of the deceased. The record reflected that the deceased had contracted a second marriage with Binda Bai (PW-6), as his first wife, Smt. Sukmai Hidko (PW-2), was unable to conceive. A son was born from the second wedlock, giving rise to frequent quarrels between the two wives over taking the child in the lap. Owing to these disputes, Binda Bai (PW-6) began residing at her parental home, and community panchayat meetings were convened on multiple occasions, during which altercations also ensued. The High Court concluded that, as the accusedappellant supported his sister and shared her grievances against the deceased and his family, a strong motive existed for him to commit the offence.

¹¹ Exh. P/40.

¹² For short, 'TIP'.

20. The said judgment now forms the subject matter of challenge in the present appeal by special leave.

Submissions on behalf of the accused-appellant

21. Learned counsel appearing for the accused-appellant advanced the following submissions in assailing the conviction recorded by the trial Court and consequently affirmed by the High Court:

(i) That the accused-appellant was not named in the FIR¹³ (Exh. P/2) lodged by Heeralal Hidko (PW-1). It stands admitted that PW-1 lodged the report purely on the basis of the information furnished to him by the alleged eye-witness Smt. Sukmai Hidko (PW-2). Thus, omission to mention the name of the accused in the very first version, despite such claimed knowledge, is a material lacuna which, according to learned counsel, goes to the root of the matter and gravely undermines the credibility of the prosecution case.

(ii) That the explanation tendered by the prosecution for the omission of identity of the accused in the FIR (Exh. P/2), that the informant, Heeralal Hidko (PW-1), was not an eye-witness, and that Smt. Sukmai Hidko (PW-2) allegedly fell ill upon witnessing the assault, is wholly implausible. Learned counsel submitted that in the earliest version narrated by Smt. Sukmai Hidko (PW-2) to her father-in-law immediately after the incident, it was pertinently stated that the assailants had covered their faces with masks. However, in stark contrast, her statements recorded after significant gap, under Sections 161 CrPC and 164 CrPC on 21st April, 2021 and 21st April, 2024 respectively, contain substantial and material improvements, including her claim of having identified the accused-appellant as his mask moved during the incident. Such embellished version, introduced after an unexplained delay, is inherently unreliable and wholly unworthy of credence.

(iii) That the conduct of the witness belies the prosecution story. Smt. Sukmai Hidko (PW2) was indeed conscious and capable of narrating the incident, as is evident from the fact that the informant Heeralal Hidko (PW1), could lodge the *merg* intimation (Exh P/1) on the basis of her version; thus, there was no reason for her to omit the names of the assailants at that very earliest point of time. Learned counsel submitted that the contents of the *merg* intimation (Exh P/1) unmistakably demonstrate that Smt. Sukami Hidko (PW-2) had provided a detailed information of the incident to her father-in-law; hence, had she actually identified any of the perpetrators, she would not have omitted to disclose their names to him. Consequently, the absence of the name of the accused-appellant in the *merg* intimation (Exh. P/1) strikes at the root of the prosecution case.

(iv) That the prosecution's attempt to justify the delayed disclosure of the names of the assailant on the pretext of the illness of Smt. Sukmai Hidko (PW-2) is wholly unconvincing. There is no such corroborative evidence in form of any medical report etc. to support the assertion that Smt. Sukmai Hidko (PW-2) was in such a debilitated state as to be incapable of naming her husband's assailant for three consecutive days. It stands admitted on record that the accused-appellant is the brother of Smt. Binda Bai (PW-6), the second wife of the deceased-Bivan Hidko, and that there existed palpable animosity between the two branches of the family, an aspect borne out from the testimonies of Heeralal Hidko (PW-1) and Smt. Sukmai Hidko (PW-2). In this backdrop, the assertion made by Smt. Sukmai Hidko (PW-2), that the accused-appellant's mask purportedly fell off during the assault, enabling her to identify him, at a belated point in time when her statements under Sections 161 and 164 CrPC were recorded, is a clear embellishment. This belated story, according

¹³ Exh. P/2.

to learned counsel, reflects a deliberate attempt by the witness to falsely implicate the appellant owing to the pre-existing enmity.

(v) That as the accused-appellant was well known to Smt. Sukmai Hidko (PW-2) from the prosecution's attempt to establish his complicity by conducting a TIP indicates that Smt. Sukmai Hidko (PW-2) could not identify any of the assailants at the time of the incident. Once the accused had been named by the witness, there would be no rationale for holding a TIP of the same accused.

(vi) That the recoveries on which the trial Court as well as the High Court relied heavily are inconsequential, because mere detection of human blood on the articles does not, by itself, provide any corroboration to the otherwise flimsy evidence of the witnesses. The prosecution has neither proved the blood group on the articles allegedly recovered at the instance of the accused nor the blood group of the deceased, and hence, the recoveries are rendered inconsequential. Furthermore, the link evidence essential to prove the sanctity of the material objects was not proved by leading credible evidence.

On these grounds, learned counsel implored the Court to accept the appeal, set aside the conviction of the accused-appellant, and direct his release from prison.

Submissions on behalf of the respondent-State

22. *Per contra*, learned standing counsel for the State of Chhattisgarh supported the impugned judgment. He submitted that the accused-appellant was named in the first statement under section 161 CrPC of the wife of the deceased, Smt. Sukmai Hidko (PW-2), which was recorded immediately after she regained strength. He urged that it was entirely natural for a woman from a rural background, having witnessed a brutal assault on her husband, to be in a state of deep shock, and hence, her inability to immediately disclose the names of the assailants to her father-in-law, Heeralal Hidko (PW-1), was not unusual or unnatural. He further urged that the accused-appellant, having been named and identified by the eyewitness Smt. Sukmai Hidko (PW-2) in her sworn testimony, coupled with her identification of the accused-appellant in the TIP and the plausible explanation furnished for the delayed disclosure, renders her testimony wholly reliable.

23. Thus, learned counsel urged that the conviction of the accused-appellant as recorded by the trial Court and affirmed by the High Court based on concurrent findings of fact does not warrant any interference.

Discussion and Analysis

24. We have given our thoughtful consideration to the submissions advanced by learned counsel for the parties and have carefully re-analysed the evidence available on record.

25. At the outset, we may observe that the factum of the death of Bivan Hidko being homicidal is not in dispute, which stands established from the testimony of the medical jurist Dr. A.K. Dhruw (PW-11). Hence, we need not burden the judgment by dwelling further on this aspect of the prosecution case.

26. It is also undisputed that the FIR (Exh. P/2) was lodged on the basis of the *merg* statement (Exh. P/1) of Heeralal Hidko (PW-1), given at Police Station Bhanupratappur, District Kanker, Chhattisgarh on 18th April, 2021 at 7:25 a.m., wherein he categorically stated that his daughter-in-law came to him at about 11:30 p.m. and informed him that **two unknown masked persons** came at around 11:00 p.m., one of whom was tall, while the other was short-heighted and lean, and was holding a sickle in his hand. They called out to Bivan, woke him up, and took him away from the farm hut. Smt. Sukmai Hidko (PW-2)

followed them and stood at the door, and upon hearing her husband scream, she got scared, and ran away.

27. On receiving this information, the informant Heeralal Hidko (PW-1), accompanied by Sahdev Kadiyam (PW-7), Kushal Kawde (PW-3), Ramprasad Netam, and Ghana Anchala, proceeded to the field where, in the light of a torch, they found Bivan Hidko lying dead in a pool of blood. It was specifically alleged in the *merg* information (Exh P/1) that some unknown persons had assaulted and killed Bivan with a sharp-edged weapon.

28. A very significant fact which remains undisputed is regarding the prior enmity between the prosecution witnesses (PW-1 and PW-2) and the accused-appellant herein. It is an admitted position that during the subsisting marriage of Smt. Sukmai Hidko (PW-2) with the deceased Bivan Hidko, he married Smt. Binda Bai (PW-6), the sister of the present accused-appellant, and serious differences had arisen between the parties owing to this relationship. Panchayats were convened, wherein quarrels flared up between them. It is in this backdrop of prior enmity that we shall proceed to appreciate the evidence of the two star witnesses, Heeralal Hidko (PW-1) and Smt. Sukmai Hidko (PW2), on whose testimony the entire prosecution case hinges.

29. Heeralal Hidko (PW-1) testified as below: -

“(1) I know the three accused (Govind Mandavi, Narendra Nag, Mansingh Nureti) in the Court. Bivan Hidko was my son who has died. Our caste is Gond.

(2) I live in Durgupara village of Iragaon. I have a big Farm hut in my field at Imlipara. My son Bivan Hidko and his wife Sukmai Hidko lived in the Farm hut built in the field. On 17.04.2021, at around 11:00 pm, my daughter-in-law Sukmai Hidko came to my house and told me that Govind and Mansingh came with sickle, at that time, I and my husband were sleeping on separate cots. Govind and Mansingh took my husband Bivan to the store room and hit him on the face with the sickle. On being told the above by my daughter-in-law, I, Sahdev Kadiyam, Kushal Kauda, Ramprasad Netam, Ghana Anchala went to the spot and saw that my son Bivan Hidko was lying on his back on the floor in the store room and there was an injury on his face near his right eye and blood was oozing from there.

(3) I reported the incident on 18.04.2021. When the *Merg* intimation was read out to the witness, he said that he had written such a report. The *Merg* intimation was marked ExP/01, and when the FIR was read out to the witness, he said that he had written such a report. The FIR was marked ExP/02.”

The witness was declared hostile by the Public Prosecutor and was confronted with leading questions:

“(8). It is correct to say that my son Bivan Hidko has two wives, his first wife is Sukmai Hidko and his second wife is Bindabai. It is correct to say that Bindabai was staying with her son at her maternal home in village Ghotha two months before the incident. I do not know that there was a quarrel between my son Bivan and his wife Bindabai. It is correct to say that a meeting was held in village Ghotha regarding Bivan and his wife Bindabai. It is correct to say that in the said meeting Bindabai had threatened Bivan.

(9). It is correct to say that Sukmai Hidko told me that a person was wearing a mask, mask opened and he saw him who was Govind. It is correct to say that Govind used to visit his sister Bindabai's house, so Govind knew that Bivan sleeps in the Farm hut. It is correct to say that Sukmai told that Govind came to the store room Farm hut with his two other companions as per the plan on the night of 17.04.2021 and Govind along with one of his companions went inside the shed with a sickle and his other companion hid in the cowshed. It is correct to say that Sukmai told that when Govind came out with Bivan, all the three companions together took Bivan to the store room about 50 meters away and hit him with a fatal stick with the sickle They attacked and killed him. **It is correct to say that my daughter-in-law Sukma had told that there were two masked men. It**

is correct to say that my daughter-in-law Sukmai was not well at that time and she told that she had gone to sleep due to her ill health. It is correct to say that after the last rites of the deceased, on 21.04.2021, Sukmai Bai had told that there were not two but three unknown masked men. It is correct to say that my daughter-in-law Sukmai Bai had told the names of the three accused. It is correct to say that Sukmai Bai told that the above three persons together killed Bivan. I had told the above things to the police while giving the statement of ExP/03 and ExP/04.

(13). I do not know about the incident myself but my daughter-in-law Sukmai told me about it. It is incorrect to say that I did not go to the spot.

(14). It is incorrect to say that the police did not read out to me what was written in the FIR and the and the merg intimation. The witness himself says that they read it out to me. It is correct to say that at the time of writing the merg intimation and the First Information Report, I had mentioned two unknown masked men. It is correct to say that at that time my daughter-inlaw had told about two unknown masked men. It is correct to say that when the police interrogated me, I had told about two unknown masked men.

(16) It is correct to say that Bivan made Bindabai wear bangles, as Sukmai did not give birth to a child. It is correct to say that Bivan has a son from Bindabai. It is incorrect to say that after Bindabai gave birth to a son, since then there used to be quarrels between Bivan and Bindabai. The witness himself says that Bindabai did not allow Sukmai to touch her son, therefore, there used to be quarrels between Bindabai and Sukmai. It is correct to say that many social meetings were held regarding the quarrel between Bindabai and Sukmai. The witness himself says that Bindabai and Sukmai were counselled in the social meetings. It is correct to say that due to this quarrel, Bindabai was living at her maternal home.”

[Emphasis supplied]

30. The sole eye-witness Smt. Sukmai Hidko (PW-2) testified as follows:

“(2). I lived with my husband Bivan in a store room Farm hut situated in Imalipara of village Iragaon. On the date of incident, I was with my husband in the Farm hut. On the night of incident, I and my husband were sleeping in store room Farm hut when both the accused present in Court including Govind were standing near the door of our store room Farm hut. They opened the door of the Farm hut and entered the house and Govind asked my husband to go outside. My husband refused to go outside then Govind caught him and took him to store room and Govind hit my husband with sickle. My husband called out saying 'Aye Dai O'. After this, I went to my father-in-law and told him the above incident. After this, my father-in-law came to store room Farm hut with some people. After this, he went to the police station to report the same night.

(3). When the police interrogated me, I told them what I had seen. The police interrogated me twice.

.....

(6). I went to the Tehsil office of Bhanupratappur. After the identification proceedings were conducted there, I identified Govind and the other two accused present in the Court.”

The public prosecutor declared the witness to be hostile and put her leading questions.

“(7). It is correct to say that I was not able to have a child, so my husband, Bivan, made Bindabai wear bangles and married her. It is correct to say that Bindabai has a son from Bivan. I do not know that Bivan doubted Bindabai's character. The witness herself says that both Bivan and Bindabai lived well. It is incorrect to say that Bivan doubted Bindabai's character, so she used to go to her maternal home. The witness herself says that Bindabai used to go to her maternal home without informing, so two-three social meetings were held and Govind beat up the wife in the social meeting. It is correct to say that in the social meeting, Govind had threatened my husband Bivan that he will take care of him/he brought Binda Bai back after three social meetings. Bindabai went to her maternal home for the fourth time and did not return after that. The witness himself

says that when the fourth social meeting was held, Govind bad said that he would take care of my husband. (8). The date of the incident was Saturday, 17th. I cannot say that the date was 17.04.2021. it is correct to say that on the date of the incident, my health was not good, so I was sleeping after taking medicine. It is correct to say that I had told my father-in-law about the incident and my health was not good, so I went to sleep after telling my father-in-law about the incident.

(9). It is correct to say that after my husband's funeral, I told my father-in-law, bother-in-law and other family members that there were not two masked men but three men. It is correct to say that I asked the masked men where they were taking my husband. It is correct to say that one of the masked men called me 'didi' and I tried to escape his voice. I had recognised him and his mask had also fallen off. It is correct to say that he was Govind. The witness herself says that I recognised Govind when he said 'Chal Didi' to me.

(10). At the time of the incident, Bindabai was staying at her maternal home. Govind must have killed Bivan, thinking that Bivan would not keep Bindabai. It is correct to say that I had told all the above facts to the police while giving the statement of ExP/05 and ExP/06."

Cross-examination by Shri B.N. Nishad Advocate on behalf of the accused Govind Mandavi and Narendra Nag

"12. It is incorrect to say that two people came wearing masks. The witness herself says that two people came in the shade of the house, and one person was standing near the shade door. It is correct to say that the people who came were wearing masks. It is incorrect to say that I could not recognize any of them because they were wearing masks. The witness herself says that I recognized Govind. It is incorrect to say that those people took my husband out of the house, and then I went to tell my father-in-law. The witness herself says that those people took my husband out of the house and beat my husband, then my husband shouted 'Aye Dai O' and after that I went to tell my father-in-law. It is incorrect to say that I did not see who killed my husband. The witness herself says that I came out of the house and was standing near the door and saw my husband being beaten. It is correct to say that the store room where the incident took place is as far from the Farm hut as the main entrance of the Court campus from the witness box (the distance from the witness box to the main entrance of the court campus would be about 40 meters). It is correct to say that the store room was dark. It is correct to say that after hearing my husband's voice, I went to call my father-in-law. It is correct to say that my father-in-law and other people went to the police station at night after their arrival.

.....

14. It is correct to say that I told my father-inlaw that two people were wearing masks. **It is incorrect to say that I did not tell my fatherin-law the name of Govind. It is also incorrect to say that I did not mention the name of Govind while giving a statement to the police.**

15. It is correct to say that I have not had any child since my marriage. It is correct to say that, as I did not have any child, my husband Bivan made Bindabai his wife by making her wear bangles. It is correct to say that Binda Bai has given birth to a son from Bivan. It is incorrect to say that after Binda Bai had a son, my husband used to have disputes with me. The witness herself says that Binda Bai did not let her son touch me. It is correct to say that Binda Bai did not let her son touch me; therefore there used to be disputes between Binda Bai and me. It is incorrect to say that because of disputes between Binda Bai and me, she used to go to her maternal home. The witness herself says that Binda Bai used to go to her maternal home on her own. It is correct to say that three-four social meetings were held because of Binda Bai going to her maternal home. It is incorrect to say that it was our fault; therefore the society separated my father-inlaw, my husband and me from the society. The witness herself says that the people of our society have not ostracized us. It is incorrect to say that I used to have a dispute with Binda Bai and hence I am taking her brother Govind's name to implicate him. It is incorrect to say that we were angry with Binda Bai and her brother Govind because Binda Bai did not return. It is correct to say that in the social meeting, the accused Govind had taken his sister Binda Bai's side."

(16). It is correct to say that the police brought me to the tehsil office. It is incorrect to say that at the time of identification proceedings only the three accused present in the court were present. The witness herself says that there were four-five more people with him and he made me identify each of the accused present in the court three times. After coming to the tehsil office, the police talked to me and said that you have to identify them. It is incorrect to say that the police told me the names of the three accused present in the court and said that I have to identify them. It is correct to say that the accused Govind is Bindabai's brother. It is correct to say that Govind had been visiting his sister Bindabai earlier, and hence I knew him earlier.”

[Emphasis supplied]

31. A close analysis of these statements reproduced *supra*, in context of the allegations made in the FIR (Exh. P/2), would highlight the following facts:

- i) The FIR (Exh. P/2) contains no assertion that the mask of any of the assailants fell off during the incident, or that the eye-witness (deceased's wife), Smt. Sukmai Hidko (PW-2) was thereby able to identify any of the assailants.
- ii) There is no assertion in the FIR (Exh. P/2) that Smt. Sukmai Hidko (PW-2) had fallen ill or was not in a position to speak after the incident.
- iii) The FIR (Exh. P/2) discloses no material to suggest that, at the time when Smt. Sukmai Hidko (PW-2) informed Heeralal Hidko (PW-2) about the occurrence, she was aware that her husband had already died.

32. In his examination-in-chief, Heeralal Hidko (PW-1) clearly stated that his daughter-in-law, Smt. Sukmai Hidko (PW-2) came to his house and informed him that Govind Mandavi and Mansingh Nureti had arrived armed with a sickle, taken Bivan into a store room, and assaulted him with the said weapon.

33. In his cross-examination by the Public Prosecutor, Heeralal Hidko (PW-1) attempted to modulate his stance and claimed that Smt. Sukmai Hidko (PW-2) told him that the mask worn by one of the assailants had fallen off, enabling her to identify the person as Govind Mandavi.

34. The witness Heeralal Hidko (PW-1), further admitted, in response to the Public Prosecutor's suggestion, that Smt. Sukmai Hidko (PW-2) had told him that Govind Mandavi, along with his companions, came to the store room, took the deceased-Bivan Hidko away, and thereafter the assault occurred.

35. Heeralal Hidko (PW-1) further deposed that while Smt. Sukmai Hidko (PW-2) had initially mentioned the presence of two accused; she later stated on 21st April, 2021, that the assailants were three in number. Heeralal Hidko (PW-1) also admitted that his daughter-in-law, Smt. Sukmai Hidko (PW-2) had disclosed to him the names of all the three accused. These answers were elicited in response to the leading questions put by Public Prosecutor.

36. Smt. Sukmai Hidko (PW-2), in her examination-in-chief, stated that while she and her husband were sleeping in the store room at the farm, she saw two persons, one of whom was Govind Mandavi, standing near the store room. In this initial version, she did not allege that any of the assailants was wearing a mask. She further deposed that she identified the accused-appellant Govind Mandavi and the other two accused persons present in Court.

37. It was only after the Public Prosecutor declared her hostile and put leading questions that she stated she had informed her father-in-law and other family members, after her husband's funeral, that the assailants were not two masked men but three men,

and that one of the masked persons had addressed her as *didī*, enabling her to identify him by his voice to be the accused-appellant. She further claimed that his mask had also fallen off.

38. A very important answer was elicited during the cross-examination of Smt. Sukmai Hidko (PW-2), on behalf of the accused-appellant and co-accused Narendra Nag. In response to question No. 14, she admitted that it was incorrect to say that she had not told her father-in-law the name of accused-appellant Govind Mandavi.

39. Analysis of these facts leads to the irrefutable conclusion that the two star prosecution witnesses (PW-1 and PW-2) have attempted to modulate and improve their versions while deposing on oath. Their testimonies are full of embellishments and contradictions.

40. A holistic overview of the evidence would make it clear that Smt. Sukmai Hidko (PW-2) shared with her father-in-law Heeralal Hidko (PW-1), the entire sequence of events, which she had seen and observed during the incident involving assault on her husband. It is not the case of the prosecution that when the witness Smt. Sukmai Hidko (PW-2) came rushing to her father-in-law Heeralal Hidko (PW-1) and gave him the details of the assault, she was so ill or otherwise incapacitated from disclosing the complete details of the incident to Heeralal Hidko (PW-1).

41. As a matter of fact, going by the *fardbeyan* (Exh. P/1), the only omission in what the witness conveyed to Heeralal Hidko (PW-1) was the name of accusedappellant Govind Mandavi. This was far too crucial a fact for the witness to have forgotten or omitted while narrating the details of the assault on her husband, to her father-in-law Heeralal Hidko (PW-1). It is clear that the witness Smt. Sukmai Hidko (PW-2) described every other minute aspect such as the arrival of the masked men, the time at which they came, their physical features (one tall, one short and lean), the weapons they carried, the manner in which they awakened her husband, took him away from the farm hut, and the cries she heard thereafter. It is therefore completely unbelievable that she would have omitted to mention the name of the accused to her father-in-law on the ground that she was unwell. This omission strikes at the very foundation of the prosecution's case, and it appears that, to overcome the same, a story was subsequently cooked up and introduced in the belated police statement of Smt. Sukmai Hidko (PW-2) suggesting that she had fallen ill and was therefore prevented from disclosing the name of Govind Mandavi to her father-in-law even though she had identified him by his voice and as his mask had fallen off.

42. Furthermore, we are of the considered view that a serious doubt arises with respect to the genuineness of the statement given by Smt. Sukmai Hidko (PW-2) under Section 161 CrPC on 21st April, 2021. If Smt. Sukmai Hidko (PW-2) had, actually, named the accused-appellant in that statement, there was absolutely no justification for conducting a TIP of the accused-appellant Govind Mandavi at her instance, particularly as she admittedly knew the accused from earlier, the accused-appellant being the brother of Binda Bai (PW-6), the woman whom the deceased had betrothed during the subsistence of his marriage with Smt. Sukmai Hidko (PW-2).

43. Thus, the belated introduction of the accusedappellant's name in Smt. Sukmai Hidko's (PW-2) 161 CrPC statement dated 21st April, 2021, appears to be a clear manipulation, devised to implicate the accused-appellant in the crime owing to prior enmity.

44. In an identical fact situation, the effect of such a vital omission in the first information report was considered by this Court in the case of ***Ram Kumar Pandey v. State of M.P.***¹⁴ The relevant observations from the said judgment are quoted hereinbelow:-

“8. The abovementioned first information report was lodged at Police Station Ganj on March 23, 1970 at 9.15 p.m. The time of the incident is stated to be 5 p.m. The only person mentioned as an eye-witness to the murder of Harbinder Singh is Joginder Singh. The two daughters Taranjit Kaur, PW 2, and Amarjit Kaur, PW 6, are mentioned in the FIR only as persons who saw the wrapping of the chadar on the wound of Harbinder Singh. What is most significant is that it is nowhere mentioned in the FIR that the appellant had stabbed Harbinder Singh at all. It seems inconceivable that by 9'15 p.m. it would not be known to Uttam Singh, the father of Harbinder Singh, that the appellant had inflicted one of the two stab wounds on the body of Harbinder Singh.

9. No doubt, an FIR is a previous statement which can, strictly speaking, be only used to corroborate or contradict the maker of it. But, in this case, it had been made by the father of the murdered boy to whom all the important facts of the occurrence, so far as they were known up to 9-15 p.m. on March 23, 1970, were bound to have been communicated. If his daughters had seen the appellant inflicting a blow on Harbinder Singh, the father would certainly have mentioned it in the FIR We think that omissions of such important facts, affecting the probabilities of the case, are relevant under Section 11 of the Evidence Act in judging the veracity of the prosecution case.

10. Even Joginder Singh, PW 8, was not an eyewitness of the occurrence. He merely proves an alleged dying declaration. He stated that Harbinder Singh (described by his pet name as “Pappi”) rushed out of his house by opening its door, and held his hand on his chest with blood flowing down from it. He deposed that, when he asked Pappi what had happened, Pappi had stated that Suresh and Pandey had injured him. It is clear from the FIR that Joginder Singh had met Uttam Singh before the FIR was made. Uttam Singh did not mention there that any dying declaration, indicating that the appellant had also injured Harbinder Singh, was made by Harbinder Singh. The omission to mention any injury inflicted on Harbinder Singh by the appellant in the FIR seems very significant in the circumstances of this case. Indeed, according to the version in the FIR, Joginder Singh, who was in the lane, is said to have arrived while Harbinder Singh was being injured. Therefore, if this was correct, the two injuries on Harbinder Singh must also have been inflicted in the lane outside.

.....

17. As regards the second and third points, we are unable to give credence to the version of the three alleged eyewitnesses as they were not mentioned as eyewitnesses in the FIR made in the circumstances indicated above.

18. Lastly, the alleged dying declaration is also not mentioned in the FIR On the other hand, the FIR, mentions Joginder Singh who tried to prove the dying declaration only, as an eyewitness.

.....

21. Consequently, we allow this appeal and set aside the conviction and sentence of the appellant under Section 302/34, IPC If the appellant has already served the sentence awarded under Section 324 IPC, as it stated on his behalf, he will be released forthwith.”

[Emphasis supplied]

45. Hence, we are of the firm view that the omission of the names of the accused in the FIR (Exh. P/2), which was lodged on the basis of the information provided by Smt. Sukmai

¹⁴ AIR 1975 SC 1026.

Hidko (PW-2) to Heeralal Hidko (PW-1) is fatal as it goes to the very root of the matter. The said omission completely impeaches the credibility of the prosecution's case.

46. Once the fact of identification of the accused-appellant by the witness Smt. Sukmai Hidko (PW-2) is eschewed from consideration, there remains no credible evidence on record to connect the appellant with the crime.

47. The other incriminating circumstance is the purported recovery of the blood-stained articles said to have been effected pursuant to the disclosure/memorandum statement(s) of the accused. As has been mentioned above, none of the recovered articles tested positive for any particular blood group, and hence, the same cannot be connected with the crime.

48. Consequently, we are of the firm view that the trial Court as well as the High Court committed grave errors in facts as well as in law while appreciating the evidence available on record and convicting the accused-appellant for the offences alleged.

49. The impugned judgments do not stand to scrutiny and are hereby set aside. The accused-appellant is acquitted of the charges. He shall be released forthwith from custody, if not required in any other case.

50. The appeal stands allowed accordingly.

51. Pending application(s), if any, shall stand disposed of.

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