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CRA-306-2024

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK AGARWAL

&

HON'BLE SHRI JUSTICE AVANINDRA KUMAR SINGH

ON THE 30th OF JULY, 2025

CRIMINAL APPEAL No. 306 of 2024

NEIN SINGH DHURVE AND OTHERS

Versus

THE STATE OF MADHYA PRADESH

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Appearance:

Shri Devendra Kumar Shuka - Advocate for the appellants.

Shri Ajay Tamrakar - Government Advocate for the State of M.P.
.....

JUDGMENT

Per. Justice Vivek Agarwal

At the outset, learned counsel for the appellants prays for withdrawal of I.A. No. 5918/2024, which is first application under Section 430 of BNSS/389 of Cr.P.C. for suspension of remaining jail sentence and grant of bail.

Accordingly, I.A. No. 5918/2024 is dismissed as withdrawn.

With the consent of learned counsel for the parties, this appeal is heard finally.

2. The appellants are aggrieved of the judgment dated 11.12.2023 passed by learned Ist Additional Sessions Judge, Mandla District Mandla (M.P.) in S.T. No.37 of 2022, whereby learned trial court has convicted and sentenced the appellants as under :-



Conviction	S e n t e n c e			
Section	Act	Imprisonment fine	Fine if deposited details	Imprisonment in lieu of Fine
302 r/w Section 34	IPC	Life Imprisonment	Rs.500/-	R.I. for one month.
201	IPC	R.I. for three years	Rs.500/-	R.I. for one month.

3. Shri Devendra Kumar Shukla, learned counsel for the appellants submits that its a case of no evidence. Learned trial court has convicted the appellants on the basis of wrong appreciation of evidence of Chain Singh (PW-6), who claimed himself to be the eye witness of the incident when one of the appellants, namely, Nain Singh Dhurve had given him shelter in his house as motorcycle of Chain Singh had developed certain snag and had kept him in his house, then Chain Singh (PW-6), appeared before the Police after being brought from Kerala to state that at night he had heard certain noises in the house of his host- Nain Singh and he had seen that Nain Singh and Sandeep were beating one person alleging that person was involved in teasing daughter of Nain Singh and sister of Sandeep. It is submitted that this evidence is totally inadmissible and there is no completion of chain of circumstances so as to uphold the case of the prosecution. Therefore, it is a fit case where benefit of doubt should be extended in favour of the appellants and appeal should be allowed.

4. Shri Ajay Tamrakar, learned Government Advocate, in his turn,



submits that memorandum of the accused persons says that they had chopped up private part of the deceased - Rajendra. It is submitted that this memorandum is dully corroborated. It is further submitted that as far as delay in recording statements of Chain Singh (PW-6) is concerned, it has come on record and admitted by Chain Singh (PW-6) that he had left for Kerala State in search of some work and, therefore, when Police had brought him back then his statements were recorded and he is a vital link in the chain of circumstances, therefore, his evidence cannot be discarded.

5. It is also submitted that telephone call details as proved by Suresh Bhatere (PW-12), showing call details, between Rajendra Pandhre having mobile number 9301579738 and that of Sonkali, daughter of Nain Singh bearing number 7489034959 are sufficient to prove the motive of the accused persons, in as much as, Rajendra Pandhre was involved with daughter of the appellant - Nain Singh and that enraged him to bring that relationship to an end by eliminating Rajendra Pandhre. Thus, it is submitted that since motive and chain of circumstances are complete, no indulgence is required in the matter of conviction recorded by the learned trial court.

6. After hearing learned counsel for the parties and going through the record, prosecution case in short is that complainant Lakhan Pandhre had recorded a report at P.S. Bichhiya, District Mandla on 23.9.2021 informing that on 20.9.2021 they had food alongwith their family members when his son Rajendra Pandhre stated that he is going to his house for sleeping but did not return till next date. He was searched in the neighbourhood, village and amongst the relatives, but when he could not be traced then a missing person



report 50/21 was registered. It is also mentioned in the missing person report that Rajendra was carrying his mobile 9301579738 with him but that is switched off.

7. It has come on record that on 25.9.2021 during search younger brother of the complainant namely Matte Singh, Ramesh and Santram found dead body of Rajendra at Dobhan Wale Jangal, Raniganj, Bhilwani. Then complainant had gone to the place of the incident alongwith the villagers and identified his body. Body was lying without pant and underwear. Private part was missing. There were maggots on the body and body was emitting foul smell. On the basis of such discovery of dead body FIR was lodged at P.S. Bichhiya, District Mandla against unknown persons under Section 302 and Section 201 of IPC. After investigation, Marg No.00/21 was registered and thereafter actual Merg No.100/21 was registered. Dead body was subjected to postmortem. Spot map etc., were prepared. Recovery of Khoon Aluda Mitti was made. Scene of crime was photographed and was seized alongwith a certificate under Section 65-B of the Evidence Act and then from the possession of the accused perrons an iron knife, gamchha, clothes and mobile of the deceased were seized on the basis of memorandum and on 1.2.2022 the accused persons were arrested, Section 34 of IPC was added, charge sheet was filed in the court of JMFC, matter was committed and then on committal the case was tried by learned Sessions Court.

8. Learned counsel for the appellant's has pointed out that Priyanka Pandhre (PW-1) is the sister of the deceased - Rajendra. She has stated that on 20.9.2021 at 8.00 PM deceased - Rajendra had gone for keeping the new



house which is under construction. Her brother - Rajendra was going to the new house on daily basis. When he did not return, then they tried to trace him. She also stated that on 25.9.2021 his dead body was recovered. She has further stated that lower and underwear of the victim were not available at the place of the incident. She further stated that Rajendra had love affair with daughter of the appellant - Nain Singh namely Sonkali, therefore, it was alleged that Nain Singh murdered Rajendra. This witness admitted in cross-examination that the distance of the place where dead body was recovered from her house is such that it will take two hours to reach there. She has also admitted that they had no doubt on anybody. She also admitted that several wild animals are living in the jungle and at many times the leopard visits their village taking away their goats and dogs. She also admitted in para-6 that when villagers had collected then they had opined that some wild animal had killed her brother. In para-5 she admitted that villagers go to the jungle for 'Nistar', i.e. to answer call of nature and also to collect dry and firewood. She also admitted that Police kept on visiting her village for about one and a half months and on each occasion, they used to catch hold of one or the other person and used to take them to the Police Station.

9. Lakhan Pandhre (PW-2) is the father of the deceased - Rajendra. He is also the author of the missing person report (Ex.P-1). He has signed the Dashtayabi Panchnama (Ex.P-2). He is also signatory of dead body identification panchnama (Ex.P-3) and stated that on his instance unnumbered marg (Ex.P-9 and Ex.P-10) was prepared. He further admits that underwear and lower of the deceased - Rajendra were recovered from



the house of Nain Singh and that was identified by him by Ex.P-12. In Raniganj Forest mobile SIM and danda were searched but they were not recovered from the jungle.

10. In cross-examination Lakhan Pandhre (PW-2) admits that his son was wearing a blue colour lower and in his report Ex.P-1 black colour is wrongly mentioned. Infact the recovery memo of lower Ex.P-18 drawn on 1.2.2022 makes a mention of recovery of blue colour lower at the instance of appellant - Nain Singh. It also makes a mention of recovery of blue colour underwear. Thus, it is evident that in report Ex.P-1 colour of the lower is different than what was recovered at the instance of the appellant - Nain Singh. In para-8 this witness admits that he had never made any complaint in regard to relationship of his son with daughter of Nain Singh and Police was visiting their village for two months and was troubling the villagers on one or the other count.

11. Matte Singh (PW-3) is the uncle of the deceased, who stated that at the instance of Sandeep a green colour gamchha, a mobile of VIVO Company was recovered from the jungle of Raniganj, vide Ex.P-17. Thus, it is evident neither the mobile of the deceased nor Gamchha was recovered from the house of Sandeep or Nain Singh but it was recovered from an open place and, therefore, that recovery has a little or no meaning.

12. This witness admitted that till February 2022 no clue was available as to the cause of death of Rajendra. In para-10 he admits that if in the FIR it is mentioned that Rajendra was wearing black colour lower then reason for mentioning such thing is not known to him. He admitted that after four



months Police had recovered certain items and on the basis of recovery he is taking the names of appellants as assailants.

13. Manno Bai (PW-4) is the mother of the deceased - Rajendra. She admitted that on the date of the incident Nain Singh and Sandeep were kept in the Police Station for the whole night and then they were released. This sequence continued for about four months then a person named Chain Singh came. He was called to the Police Station and then he stated that he had stayed in the house of Kunwar Singh at some distance from the house of Nain Singh and, therefore, at his instance Police had arrested Nain Singh and Sandeep. She had admitted that during investigation for a period of four months no recovery was made and later on after four months recovery was made.

14. Ramli Bai (PW-5) has turned hostile.

15. Chain Singh (PW-6) who is the star prosecution witness stated that he had visited house of Rakesh on a motorcycle. On return his motorcycle developed certain snag. It was not starting. On the way, he met Nain Singh. When complained, Nain Singh tried to start his motorcycle and even when he too could not repair it, then it was 7.00 7.30 PM. Nain Singh asked him to stay with him. This witness stated that he had stayed in the house of Nain Singh and after having food he had slept with Sandeep. This is contrary to the statement of Manno Bai (PW-4) who stated that Chain Singh (PW-6) had stayed in the house of Kunwar Singh which is at some distance from the house of Nain Singh.

16. In cross - examination Chain Singh (PW-6) admits that he had



gone to Kerala State but it is interesting that prosecution did not produce any ticket of Chain Singh being brought from Kerala as is made out by the Police. He admits that he had not informed anybody during 3-4 days when he was present in the village. However, in the last three lines of his cross - examination he admits that when Police had brought him back from Kerala State and had informed him about the incident then he gathered information about the incident. Thus, it is evident Chain Singh (PW-6) is not a witness of last seen or an eye witness. He was planted by the Police for which we shall be ordering a separate enquiry against the I.O. to be conducted by the Senior Police Official for making false accusation and planting false witnesses. The prosecution did not re-examine this witness to extract any contradiction on the last statement that he came to know about the incident when Police brought him from Kerala. Thus, it is a gross failure on the part of the concerned Public Prosecutor who conducted the trial.

17. As far as Suresh Bhatele (P-12) is concerned, he is the person, who had collected Call Details Tower Location/C.D.R./Cafe and also 65-B Certificate. These C.D.R. details contained in Ex.P-31, P-32, P-33, P-34 and P-35. It is mentioned that phone of Rajendra was in contact with the mobile number of daughter of accused-Nain Singh from 19.9.2021 to 25.9.2021. However, in cross-examination this witness admits that mobile numbers which are mentioned on Ex.P-29 are the one in regard to which he had collected information from the Cafe but he cannot say that as to who were using those mobile numbers.

18. Interesting aspect is that postmortem doctor namely Dr. Dinesh



Kumar Taksande (PW-16) has opined in Para-4 that he had conducted postmortem on 25.9.2021 and opined that death had occurred within 4-6 days of conducting of the postmortem. Thus, evidence of Manno Bai (PW-4) and Suresh Bhatele (PW-12) that the deceased was in constant touch with the daughter of the accused person from 19.9.2025 to 25.9.2025 is falsified in terms of the postmortem report because as we understand in the common parlance, science has yet not so developed to enable a deceased person to connect through mobile phone and talk to daughter of the accused person. This is another lacuna which reveals that how dishonest is the status of investigation in the State of Madhya Pradesh and all the prosecution witnesses including Police officials resorts to lies to just complete investigation and file charge sheet rather than carrying out honest, transparent and independent investigation.

19. Dr. Dinesh Kumar Taksande (PW-16) has stated that the death had occurred on account of severing of the private part and also on account of fracture in the hyoid bone which may be due to strangulation. He stated that the death was homicidal in nature. However in cross-examination he admitted that body had decomposed. He admitted that it cannot be said as to whether first injury was caused to the thyroid gland and then private part was severed or vice versa. No DNA was conducted for identification of a decomposed body.

20. Thus, it is evident that the prosecution has failed to complete the chain of circumstances. Though they have attached a motive that daughter of Nain Singh and sister of appellant no.2- Sandeep was in live contact with



deceased - Rajendra and that enraged the family resulting in motive to eliminate Rajendra but interestingly the prosecution did not deem it proper to examine Sonkali to take her version as to whether Rejendra was in relationship with her and whether he was teasing her or was in serious relationship and also to find as to whether the family members were not approving their relationship resulting in discord in the family. No such evidence has been produced by the prosecution to substantiate the motive.

21. As Chain Singh (PW-6) has stated that he came to know of the incident on coming back from Kerala and Police had brought him, leaves no iota of doubt that he is a planted witness. He has been planted by the Police in their zeal to complete the investigation without maintaining the integrity of investigation.

22. Priyanka Pandhre (PW-1) sister of the victim- Rajendra admitted that the Police was harassing her villagers and nobody had expressed any doubt over the appellants. If the theory of the prosecution is to be believed that victim was in relationship with the daughter of appellant no.1- Chain Singh and sister of appellant no.2- Sandeep, then there was no reason for them to not to express their doubt on the appellants. It is not a new discovery which came to their notice after Chain Singh (PW-6) was brought from Kerala. Secondly Priyanka Pandhre (PW-1), Lakhan Pandhre (PW-2) and Matte Singh (PW-3) have admitted that they had not expressed any doubt on anybody. For the long duration the Police was regularly visiting their village and were harassing the villagers and in their zeal to complete the investigation they had said that anybody who helps the Police in recovery



will be suitably rewarded. It has also come on record that none of the Telecoms Companies which had provided connection to Rajendra and Sonkali have been examined, who had provided certificate under Section 65-B of Evidence Act.

23. Suresh Bhatele (PW-12) admitted that he had not investigated as to who were the actual users of the two mobile numbers mentioned above and, therefore, we are of the opinion that prosecution has utterly failed to complete the chain of circumstances. Thus, in the light of the law laid down by Supreme Court in **Sharad Birdhichand Sarda v. State of Maharashtra**, (1984) 4 SCC 116 where Hon'ble Supreme Court has observed as under:-

"153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in *Shivaji Sahabrao Bobade v. State of Maharashtra* [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 CrLJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

"Certainly, it is a primary principle that the accused *must* be and not merely *may* be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human



probability the act must have been done by the accused."

24. Therefore, since the prosecution has failed to complete chain of circumstances and they have stooped down to implant witnesses which erodes the presumption of Police carrying out investigation in good faith, chain of circumstances is not complete and, therefore, impugned judgment of conviction dated 11.12.2023 passed by learned Ist Additional Sessions Judge, Mandla District Mandla, in S.T. No.37 of 2022 is set aside. Appellants be set free immediately if not required in any other offence.

25. The Director General of Police State of M.P. is directed to issue appropriate guidelines for proper investigation and institute proper departmental enquiry against the I.O. and other Police Personnel who were involved in the case, list of which shall be furnished by Shri Ajay Tamrakar, Government Advocate to the Director General of Police alongwith the certified copy of this judgment. Let enquiry be conducted as to what makes them to implant false witnesses to take away life and liberty of innocent citizens and the report be furnished within thirty days thereafter.

26. Record of the trial court be sent back.

(VIVEK AGARWAL)
JUDGE

(AVANINDRA KUMAR SINGH)
JUDGE