

**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE**

**BEFORE**

**HON'BLE SHRI JUSTICE SUSHRUT ARVIND DHARMADHIKARI**

**&**

**HON'BLE SHRI JUSTICE HIRDESH**

**ON THE 13<sup>th</sup> OF JULY, 2023**

**CRIMINAL APPEAL No. 673 of 2013**

**BETWEEN:-**

**ANIL PATEL S/O SHRI RAMCHANDRA PATEL, AGED ABOUT 34 YEARS,  
OCCUPATION: DRIVER 34-A BRIJ VIHAR COLONY ANNAPURNA ROAD  
INDORE (MADHYA PRADESH)**

**.....APPELLANT**

**(MS SHARMILA SHARMA, LEARNED COUNSEL FOR THE APPELLANT)**

**AND**

**THE STATE OF MADHYA PRADESH GOVT. THRU.P.S.KISHANGANJ MHOW,  
DISTRICT-INDORE (MADHYA PRADESH)**

**.....RESPONDENTS**

**(SHRI K. K. TIWARI, LEARNED GOVERNMENT ADVOCATE FOR THE  
RESPONDENT/STATE)**

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*This appeal coming on for order this day, JUSTICE HIRDESH passed  
the following:*

**J U D G M E N T**

Appellant -Anil Patel has filed this appeal u/S. 374 of Cr.P.C. being

aggrieved by the judgment dated 20.03.2013 passed by 1<sup>st</sup> Additional Sessions Judge, (Shri Ashish Dixit), Mhow (now Dr. Ambedkar Nagar), Indore in S.T. No.349/2010 by which the trial court has convicted and sentenced the appellant as under:-

<b>Conviction</b>	<b>Sentence</b>		
<b>Section &amp; Act</b>	<b>Imprisonment</b>	<b>Fine imposed</b>	<b>Imprisonment in lieu of fine</b>
302 of IPC	Life imprisonment	2000	2 years' R.I.
394 of IPC	10 years	2000	2 months' R.I.
394/397 of IPC	10 years	2000	2 months' R.I.
25(1-B) B of Arms Act	3 years	1000	1 month' R.I.

(2) The case of the prosecution in brief is that on 18.12.2009, the dead body of the professor Amrata Pancholi of IIM College, Indore was found in Quarter No.32 of IIM College campus. On the information of the incident, SHO of Police Station-Kishanganj, Mhow, District-Indore reached the spot where one Sharda Bai- maid of the deceased-Amrata Pancholi informed that she has been working as a servant of the deceased since last two months and on the date 18.12.2009 at 07.30 a.m. she came for routine work at deceased's house but in spite of repeated ringing the call-bell the door was not opened then she went inside the house from back side door and found that body of the Professor Amrata Pancholi was lying in the bedroom then she called other persons who were residing nearby house of the deceased. They saw that blood oozed out due to injuries caused on the body of the deceased and the whole body was soaked in blood. There were marks of injuries on chest, stomach and thigh on

the body of the deceased. Some unknown person caused murder of Professor Amrata Pancholi. On the information of PW-1 Sharda Bai, police wrote Dehati Nalishi, Ex.P-1 thereafter, registered F.I.R. Crime No.501/2009 u/S. 302 of IPC against unknown person.

(3) During the investigation on the date 18.12.2009, FSL unit of investigation came on the spot and took photos, finger prints and foot prints from the spot. Police seized book, file, bed-sheet cotton, Chappal, sweater from the spot. During the investigation, on the basis of the call details, the mobile phone of the deceased, which was missing from the deceased's house, was seized by the police from co-accused 'Bhavesh Soni' and co-accused informed the police that he has received this mobile from appellant- Anil. The police arrested the appellant- Anil on 22.12.2009 and recorded his statements u/S. 27 of the Evidence Act and on the bases of the evidence and memorandum of the appellant the police seized ornaments, knife and the mobile of the deceased.

(4) The police recorded the statements of the prosecution witnesses and after receiving the FSL report and other scientific report and after completion of the investigation, charge-sheet was filed before the Magistrate Court. After committal of the case to the Sessions Court, the trial court framed charges against the appellant. The appellant abjured his guilt and sought trial. In turn, the prosecution in order to prove its case examined 50 witnesses. After completion of the prosecution evidence the appellant was examined u/S. 313 of Cr.P.C. The appellant took defence that he has not committed the offence and he has been falsely implicated in the offence. The appellant further stated that when he went on duty on date 18.12.2009 then he knew that the deceased was murdered by unknown person. Thereafter, he went to the deceased's home

and saw that people nearby of the deceased's house are present in side and out side of the deceased's house. They stored the articles so he also helped on that work. He was not examined any where in his defence. The deceased- Amrata's father asked him as to why he did not come to station to receive him then he replied that madam (deceased) did not instruct him to go to station to receive her parents.

(5) Being aggrieved by the impugned judgment, the appellant filed this appeal and learned counsel for the appellant submitted that the trial court has committed grave error in not considering that the case of the prosecution is based on circumstantial evidence and it is settled law that without establishment of chain of circumstances, the appellant cannot be convicted. In this case, chain of circumstances has not been established by the prosecution evidence. He further submitted that initially the police registered case u/S. 302 of IPC against unknown person and after 3-4 days, father of the deceased PW-2 Shri Narayan Pancholi made a complaint of theft of ornaments. Thereafter, police registered the case of robbery, which is after thought, only with intention to falsely plant the appellant in this case. He further submitted that the mobile of Sony company of the deceased was stolen but the prosecution has not seized any bill by which it is proved that the mobile belongs to the deceased. He further submits that the independent witnesses of memorandum u/S. 27 of Evidence Act, the seizure of ornaments and knife in respect of appellant did not support the prosecution case and were declared hostile and the identification of the ornaments is also doubtful. He further submits that the trial court has committed grave error in holding the finger print of ring finger of right hand of the appellant correct found on the wooden almirah of the bedroom of the deceased. He further submits that the appellant was present on

the spot with other persons where police came so it may be possible that accidentally the almirah might have been touched by the appellant. He further submits that the FSL report is a weak type of evidence and prosecution failed to prove that the blood found on the knife and clothes of the appellant was matching with the blood of the deceased. He further submits that the evidence of inquiry officer is doubtful which is not corroborated by other evidence on the material points. So judgment of the trial court is erroneous and is liable to be set aside.

(6) Learned counsel appearing for the State supported the judgment passed by the trial court.

(7) We have heard the learned counsel for the parties and perused the records.

(8) Explaining the defence, the first question comes before this Court is whether the death of the deceased Amrata Pancholi was homicidal in nature or not.

(9) PW-45 'Dr. N.M. Unda', Demonstrator, Forensic Medical Department, Aurvindo Medical College, Indore conducted the post-mortem of the body of the deceased Amrata Pancholi has stated in his statement that on 18.12.2009, he along with Dr. H. Jharwade and Dr. Prashant Rajput conducted the postmortem of the deceased. He examined and found the following injuries on the body of the deceased. He further stated that in internal examination he found the following injuries:-

“(i) incised wound (abrasion) line slight curved 2x0.2 c.m.X superficial just lateral to mid line 1.0 c.m. anterior to hair margin on left side

(ii) Very faint contusion over the nose part 0.5x0.5 c.m.

(iii) Incised abrasion 0.3x0.1 c.m. over left chin; 0.5x3 c.m. over the

left angle of mouth in deep

(iv) Contusion present on the lower lip 0.5X0.5 c.m. size 2.0 c.m lateral to mid line.

(v) Incised wound present on the right forearm lateral part size 2.5x1 c.m. slight oblique proximal part/3.

(vi) Stab wounds 3 in numbers on left thigh antero lateral part size 2.5x1.5 cm. muscles deep with one end slight contused & rest margin sharp cut end narrow. One wound with tailing effect antero lateral part tailing 1-5 c.m. Total dept 6.0 c.m for each wound diameter. Anterior upper part in the middle/3part. Antero posteriorly and one wound with direction end to end.

(vii) Stab wounds on the thigh right side lateral ....2.8 c.m. x 1.5 c.m. muscle deep total depth 1.5 c.m. direction lateral to medial with slight posterior wound placed in its u/3 part.

(viii) Four stab wounds present on the abdomen

(a) 3 cm lateral 3 cm above pubic symphysis (left)

(b) 2 cm above the eliacem crest part.

(c) right iliac crosse.

(d) 6 cm lateral to umblicus on left side same place.

All wounds size 2.5 to 2.7 cm X 1.0 cm and 5.5 cm maximum depth is outer to the peritorial part direction of wounds are antero posteriorly with slight upward threst.

(ix) Stab wound present on the chest anteriorly 5<sup>th</sup> inter-costal 3.0 cm lateral mid line size of wound is 2-5 cm X 1.5 cm depth the heart inside total depth 11.0 cm. direction of wound is antero-pasteriorly lateral midline on from right lateral. It had deep cut mark inside 1.3 c.m. cut on the wall of heart across out mark 0.8.X0.5. In side wall of heart part endocardial.

Cause identical and in one end of the wound clean cut narrowest and other end contusion and lacerated last margin clean cut wound deep to the heart cutting.

(10) PW-45 'Dr. N.M. Unda' further stated in his statements that the all stab wounds are identical and caused by hard sharp edged weapon and stab wounds are caused with hard sharp penetrating object. Injuries on the body are sufficient to cause death in ordinary course of nature. Injuries were caused within 12 hours prior to death of the person. Injuries are fresh as per postmortem report (Ex.P-51). He further stated that police station-Kishan Ganj sent sealed weapon with a letter for query then after the examination he found that injuries found on the deceased's body could be caused with weapon under examination with respect to its make and style (Report Ex.P-52).

(11) The witnesses opined that the injuries found on the body of the deceased were the cause of the death in ordinary course of nature and the death was homicidal in nature. No amount of cross examination could cause scratch on the statement of this witness. Statements of PW-45 'Dr. N.M. Unda' are unrebutted so this witness appears to be reliable. Hence from the statement of this witness (PW-45), it is proved that there were 9 ante-mortem incised wounds present on the body of the deceased and she died due to those injuries. So it is proved that the death of the deceased was homicidal in nature.

(12) After perusal of the evidence produced by the prosecution it is found that there is no direct evidence of the incident so it is crystal clear that this case is based on circumstantial evidence. The Apex Court has held that when the case is based on circumstantial evidence, the Panchsheel principles laid down in AIR 1984 SC 1622 (**Sharad Birdhi Chand Sarda Vs. State of Maharashtra**) must be fulfilled:-

- (i) The circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must or should' and not 'may be' established.
- (ii). 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,
- (iii) the circumstances should be of a conclusive nature and tendency.
- (iv) they should exclude every possible hypothesis except the one to be proved, and
- (v) 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.

**13.** The first agreement rendered by the learned counsel for the appellant is that initially police registered a case under Section 302 of IPC against unknown person and after three or four days of the murder, father of the deceased gave a list of theft ornaments then police registered the case of robbery which is after thought. In our view, this agreement has no substance because it is undisputed that the parents of the deceased did not live with the deceased and they came Indore on the date of the incident so they did not know at the time of the incident what ornaments were missing. PW-2 clearly stated in para 12 of his statement that he asked his wife in respect of the ornaments of the deceased then mother of the deceased prepared a list of the

ornaments and same was supplied to the police.

**14.** In this case, the evidence of investigating officer is very important. He stated in para 17 that he arrested the appellant on the basis of the information rendered by co-accused and memorandum u/S. 27 of the Evidence Act (Ex.P-14) was prepared. On the information rendered by the appellant, he recovered three rings of gold metal and two earrings of gold metal and one old broken chain of silver metal from the bush at IIM premises. He further stated that he recovered full sleeve shirt with blood spot, black colour pant with blood spot, sky blue torn shocks with blood spot, black color Chappal with blood spot and Nokia mobile 7210 without SIM (IMEI No.355231035447400) and Rs.440/- recovered out of his house and prepared seizure memo Ex.P-20 and Ex.P-21. He further stated that on the basis of the memorandum u/S. 27 of Evidence Act of the appellant, the blood stained knife was recovered from under the stone along with boundary wall of IIM campus and seizure memo 23 was prepared by him.

**15.** Learned counsel for the appellant submitted that witnesses of memo 14, seizure memo Ex.P-21, memo-22 and seizure 23 have become hostile and recovery of the knife from open place and recovery of the shocks and clothes of the appellant was not duly proved by the prosecution. It is true that the independent witnesses of seizure memo and memorandum are hostile and they have not supported the prosecution story but, they have admitted their signatures on these documents. The Apex Court in the case of **Krishna Mochi and others Vs. State of Bihar, AIR 2002 SC 1965** has held that in recent times there has been sharp decline of ethical values in public life even in developed countries much less developing one, like ours, where the ratio of decline is higher. Even in ordinary cases, witnesses are not inclined to depose

or their evidence is not found to be credible by courts for manifold reasons. One of the reasons may be that they do not have courage to depose against an accused because of threats to their life, more so when the offenders are habitual criminals or high-ups in the Government or close to powers, which may be political, economic or other powers including muscle power. A witness may not stand the test of cross-examination which may be sometime because he is a bucolic person and is not able to understand the question put to him by the skillful cross-examiner and at times under the stress of cross-examination, certain answers are snatched from him. These days it is not difficult to gain over a witness by money power or giving him any other allureances or giving out threats to his life and/or property at the instance of persons, in/or close to powers and muscle men or their associates. So, if Panch witnesses are hostile, it does not mean that such documents are unreliable.

**16.** The Apex Court in the case of **Karamjeet Singh Vs. State (Delhi Administration), 2003 (5) 5 SCC 291** has held that the evidence of the police officers can be treated as a common witness. It is presumed that the police officers perform their duties with honesty and impartiality. There is no rule of law that the evidence of the police officers cannot be reliable if they are not supported by independent witnesses. It is not a good culture. If a police officer investigates the matter honestly and without prejudices and he has no malafide against the appellant then his evidence are reliable without corroboration of the independent witnesses.

**17.** In this case, on perusal of the evidence of the investigating officer PW-50, it is found that he was unrebuted in his cross-examination so his evidence is reliable and on the basis of the evidence of PW-50, it is proved that such articles were recovered from the possession of the appellant.

18. Learned counsel for the appellant submits that the knife was recovered from the open place so recovery of the knife was not proved. The Apex Court in the case of **State of Himachal Pradesh Vs. Jeet Singh, 1999 (4) SCC 370** has held that there is nothing in Section 27 of the Evidence Act which renders the statement of the accused inadmissible if recovery of the articles was made from any place which is "open or accessible to others". It is a fallacious notion that when recovery of any incriminating article was made from a place which is open or accessible to others. It would vitiate the evidence under Section 27 of the Evidence Act. Any object can be concealed in places which are open or accessible to others. For Example, if the article is buried on the main roadside or if it is concealed beneath dry leaves lying on public places or kept hidden in a public office, the article would remain out of the visibility of others in normal circumstances. Until such article is disinterred its hidden state would remain unhampered. The person who hid it alone knows where it is until he discloses that fact to any other person. Hence the crucial question is not whether the place was accessible to others or not but whether it was ordinarily visible to others. If it is not, then it is immaterial that the concealed place is accessible to others. So the Apex Court's verdict is that the discovery of fact referred in Section 27 of the Evidence Act is not the object recovered but the fact embraces the place from which the object is recovered and the knowledge of the accused as to it.

19. In this case, the facts discovered by the police with the help of the disclosure statements and recovery of the incriminating articles on the strength of such statements are that it was the accused who concealed the knife at hidden place. So arguments advanced by the counsel for the appellant that the knife was recovered from open place has no substance.

**20.** Learned counsel for the appellant further submits that so far as the finger prints of the ring finger of right hand of the appellant found on the wooden almirah placed in the bedroom of the deceased is concerned, it may be possible that occasionally the almirah might have been touched by the appellant when he arranged the articles in almirah. For this arguments, after perusal of the statements of the prosecution witnesses, it is found that none of the prosecution witness has stated that they tried to arrange the scattered articles before coming the police on the spot of crime. In the crime detail form (*Naksha Mouka Ex.-67*), it is mentioned (See: it was a place where wooden almirah was found with open door and articles were scattered), therefore, it means no one arranged the scattered articles in the almirah so this submission is also not tenable.

**21.** After perusal of the evidence of FSL report 71 and 72, it is found that the foot-prints with the shocks found on the spot are matching with the shocks recovered from the appellant and the blood found on the knife and clothes recovered from the appellant were having human blood whereas the learned counsel for the appellant submits that the blood found on the shocks, knife and clothes did not match with the deceased's blood. He further submits that the burden is upon the prosecution to prove that the blood on the knife, clothes and shocks matches with the deceased blood. It is true that the prosecution has not produced any evidence on this point but, the knife, clothes and shocks recovered from the appellant were duly proved by the evidence of investigating officer PW-50 which were having human blood stains so burden lies upon the accused to explain as to how and why the human blood was present on the shocks and clothes recovered from the possession of the appellant.

22. The Apex Court in the case of **Karnel Singh Vs. State of M.P., AIR 1995 SC 2472** has held that in cases of defective investigation the court has to be circumspect in evaluating the evidence but it would not be right in acquitting an accused person solely on account of the defect and to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective. It is the duty of the investigating officer to send such clothes and deceased's blood to FSL for matching each other but he did not send it. It means his investigation is not proper and the same is in defective manner, hence, it is not the sole ground which may give benefit to the appellant.

23. After perusal of FSL report and finger print report, it is found that finger prints of the appellant are matching with the finger prints found on the wooden almirah placed on the spot. The human blood was also found on the knife, clothes and shocks recovered from the accused/appellant and he failed to prove as to why and how the human blood was found on the clothes, shocks and knife recovered from him.

24. The accused was well known to the deceased and after perusal of the evidence of PW-16 'K.P. Radhakrishnan', it is proved that on 17.12.2019 the appellant was present in IIM premises. PW-20 who was the driver of the bus of Ajanta Travels has stated in his evidence that on 17.12.2009 at 05.40 in the evening he took the employees of IIM from Rau to Indore by bus but on the said date only the appellant did not come by bus from IIM, Indore. After perusal of the statements of PW-16, PW-20, PW-34 and PW-47, it is proved that the appellant was present in IIM premises in the evening of 17.12.2009 and he did not go out side of IIM premises on 17.12.2009. The appellant was present in the morning of 18.12.2009 in the premises of IIM campus.

**25.** Considering the facts and circumstances of the case as well as the arguments advanced by the learned counsel for the parties and in view of the statements of the prosecution witnesses and the evidence as well as the reports available on record, it is found that the chain of the circumstantial evidence is complete against the accused persons on the following grounds:-

(i) The appellant was the driver in IIM, Indore.

(ii) The appellant was well known to the deceased and was having knowledge that the deceased is living alone at her house in IIM Campus, Indore.

(iii) The appellant's finger prints were found on the almirah placed in the bedroom on the spot of crime.

(iv) Knife recovered from him was with human blood.

(v) Clothes recovered from him were with human blood.

(vi) The stolen ornaments of the deceased recovered from the appellant were identified by the deceased's mother.

**26.** After taking into consideration all the grounds mentioned above and looking to the fact that the chain of circumstances is complete against the accused and the accused was unable to rebut the evidence adduced against him. So this Court is of the considered opinion that the appellant and only the appellant is guilty. So on the basis of the foregoing discussion it is clear that the learned trial court has properly assessed the evidence available on record and has rightly convicted and sentenced the appellant under the aforesaid sections of the Indian Penal Code and Arms Act. The learned trial court has not committed any error by convicting the appellant for the aforesaid offences. Hence, the conviction and sentence deserve to be maintained. Resultantly, the appeal filed by the appellant is dismissed and; conviction and sentence passed

by the trial court is hereby upheld.

27. Copy of this judgment along with the record of the trial court be sent to the trial court for information and necessary action. The appellant is serving jail sentence, he be intimated about the outcome of this appeal through Superintendent of Jail and a copy of the judgment be also supplied to him through Superintendent of Jail.

**(S. A. DHARMADHIKARI )**  
**JUDGE**

**(HIRDESH)**  
**JUDGE**

N.R.