IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE GAJENDRA SINGH

CRIMINAL APPEAL No. 1432 of 2014

BABULAL

Versus

THE STATE OF MADHYA PRADESH

Appearance:

Ms.Indu Rajguru - Advocate for the appellant.

Shri Sudeep Bhargava, Dy.A.G for the respondent/State.

Reserved on 06.05.2025

Delivered on 14.07.2025

J U D G M E N T

Per. Justice Gajendra Singh

This criminal appeal under section 374 of the Cr.P.C, 1973 is preferred being aggrieved by the judgment dated 24.07.2014 in S.T. No.79/2013 by 2nd A.S.J, Dhar whereby the appellant has been convicted under section 302 of the IPC and section 25(1-b)(b) of the Arms Act, 1959 and has been sentenced to life imprisonment and fine of Rs.3,000/- with default stipulation of 2 months simple

imprisonment and one year RI and fine of Rs.1,000/- with default stipulation of one month's simple imprisonment respectively.

2. Facts in brief are that deceased Sukhram was working as agricultural labourer in village Karontiya, district Indore at the farm house of Dilshad Bi w/o late Mohd. Isa (PW/7). Sukhram moved from his house intimating his brother Sahebsingh (PW/1) that he is going to the local market and the whole night he did not return to home. Thereafter Sahebsingh (PW/1) received intimation that the dead body of Sukhram is lying beneath the mango tree situated at the field of Hindusingh R/o village Silotiya. Sahebsingh (PW/1) verified the intimation and thereafter intimation Ex.P/28 was given to police station, Pithampur and Marg No.102 of 2012 was registered at PS Pithampur on 14.10.2012 at 12.45 p.m. An offence under section 302 IPC in the form of crime no.32/12 was also registered against unknown persons vide Ex.P/1. Spot map Ex.P/3 was prepared. The simple soil and blood mixed soil were also seized vide Ex.P/6. Three bottles of beer and 3 corks of the beer bottles, one quarter of imperial blue wine were also recovered from the spot vide Ex.P/7 at 15:15 hrs. of 14.10.2012. The body of Sukhram was forwarded for autopsy. The statements were recorded. The chance finger print were collected from the beer bottles. The appellant/accused was taken nto custody at 12.30 of 21.10.2012 vide

Ex.P/20. The statement of his information Ex.P/12 was recorded and a faliya, a rexine purse, a mobile and full pant were recovered on the strength of Ex.P/20 vide seizure memo Ex.P/11 from the house of appellant Babulal. Further statement of Babulal was recorded vide Ex.P/9 at 11.00 a.m of 22.10.2012 and on the strength of Ex.P/9 a Hero Honda CD Delux motorcycle bearing registration no.MP-09-NH-6612 and registration certificate and insurance certificate were recovered vide Ex.P/10 from the back side of appellant's house. The finger prints of the appellant were obtained and the seized material were forwarded for examination vide memo Ex.P/22 and Ex.P/23 to RFSL, Indore from where report Ex.P/24 and Ex.P/25 were obtained. The report of finger print expert Ex.P/13 was obtained and final report was submitted to the Court of JMFC, Dhar.

3. Vide order dated 29.01.2013 in RCT No.51/13 by Additional Chief Judicial Magistrate, Dhar , the case was committed to the Court of Sessions.

4. Appellant/accused was put to trial for charges under section 302 of the IPC and section 25(1-b)(b) of the Arms Act, 1959. The appellant/accused abjured guilt and claimed for trial.

5. To bring home guilt, prosecution examined as many as 14 witnesses including younger brothr of the deceased Sahebsingh as PW/1, cousin of the decased Deepak as PW/2, Hemraj as PW/3,

finger print expert Inspector Kiran Sharma as PW/4, Mohd. Akil as PW/5, Ahsok Raghuwanshi as PW/6, Dilshad Bi as PW/7, medical officer Dr.NK Chari as PW/8, Gajendra Singh Soni as PW/9, sub inspector K.R Patil as PW/10, photographer Jitendra as PW/11, retired sub inspector S.C.Verma as PW/12, CSP V.S.Dwivedi as PW/13 and Mohd. Shakil as PW/14.

6. In examination under section 313 of the Cr.P.C appellant/accused either expressed ignorance or denied the facts appeared against him in the prosecution evidence. His defence is false implication.

7. Appreciating the evidence, trial court recorded the finding that the case is of circumstantial evidence and tested the circumstances mentioned in para-15 of the judgment on the strength of prosecution evidence and found proved that deceased was seen with the appellant last time. The identity card issued by Election Commission belonging to deceased and diary of the deceased was recovered from the possession of the appellant/accused. On one of the wine bottle recovered from the spot print of ring finger of right hand of the appellant/accused was matched. The same ethyl alcohol was detected in the viscera of the deceased. The injuries found on the body of the deceased were caused by faliya (article-A) and on the strength of those circumstances concluded that these circumstances

complete the chain connecting the appellant for committing the murder of deceased and convicted and sentenced the appellant as per para-1 of the judgment.

8. Challenging the conviction and sentence this appeal has been preferred on the ground that witnesses have changed the statements as and when it suits them, therefore, their statement should have been discarded. There is no complete chain of circumstances leading to the guilt of appellant. The group of blood found on faliya not matched with the blood group of the deceased. The evidence of last seen is not enough to convict the person. The prosecution did not prove the notification issued under section 4 of the Arms Act, 1959. Accordingly, the conviction cannot be recorded under the Arms Act, 1959. The trial court did not consider the fact that the faliya (article-A) was not recovered from the public place and the provisions of the Arms Act does not apply.

9. Heard.

10. State has opposed the appeal and supported the conviction and sentence and prayed that no interference is required in the appeal.

11. Now we are testing the findings recorded by the trial court in the light of grounds raised in the appeal. For this purpose, we are reappreciating the prosecution evidence.

12. Trial court has discussed the last seen theory in para-16 to 25 of the judgment as circumstances no.1 and for this purpose appreciated the testimony of Deepak (PW/2), Hemraj (PW/3), Ashok Raghuwanshi (PW/6), Dilshad Bi (PW/7) and Mohd. Shakil (PW/14) and found the testimony of Deepak (PW/2), Hemraj (PW/3) as reliable and on the basis of these two testimonies trial court recorded the find that on 13th of October, 2012 at 6 p.m deceased was seen with the appellant.

13. Deepak (PW/2) has stated in examination in chief that appellant has taken the deceased Sukhram on his motorcycle CD Delux towards market and next day Sukhram was not found and he intimated about non availability of Sukhram to Sahibsingh (PW/1) and dead body of Sukhram was found in the field of village Silotiya. This witness in para-6 of his statement has stated that appellant/accused has dropped deceased Sukhram on the cattle shed and in para-6 it has stated that on the date of incident on 13.10.2012 the deceased has gone to unknown place alone. Accordingly, this witness is not consistent regarding his examination in chief and it cannot be relied. Hemraj (PW/3) has stated that at 6 p.m he saw that appellant has picked the deceased from the house of Shahwaj Seth on his motor cycle and was going to Pithampur and next day the dead body of Sukhram was found beneath a mango tree situated in

the outskirts of village Silotiya and his face was injured with sharp edged weapon. There some beer bottles and blood was also present. This witness was confronted with his statement Ex.D/2 recorded under section 161 of the Cr.P.C in which it is not mentioned that he himself has seen the appellant/accused with deceased at 6 p.m on Hero Honda motorcycle. Accordingly, the fact of last seen is omissioned in his statement and this omission has been proved. Accordingly, these witnesses cannot be relied to prove the last seen theory. Accordingly, circumstance no.1 that deceased was seen at 6 p.m of 13.10.2012 is not proved. Now come to other circumstances on which the trial court has found proved. Witnesses of Ex.P/11 and Ex.P/12 are also Deepak (PW/2) and Hemraj (PW/3). Deepak (PW/2) has denied the fact that purse, mobile or pant were recovered from the appellant/accused. He in para-8 of his cross examination denied the fact that any faliya was recovered from the appellant/accused. First time Hemraj (PW/3) did not mention the fact that appellant/accused has given any information and the memorandum was prepared or there was any recovery on the strength of the information. Thereafter when reexamination was conducted then he deposed regarding Ex.P/11 and Ex.P/12 but in para-8 he stated that the purse that was recovered belonged to the appellant himself and in that purse the photo of appellant was

present. During evidence the property mentioned in column no.2, 3 & 4 of Ex.P/11 were not produced before the court. Accordingly, it is not proved that any property belonging to the deceased was found in possession of the appellant/accused. The only circumstance that is available on the record is the presence of human blood on article-A faliya, the blood group of which could not be ascertained as the result is inconclusive and the presence of mark of ring finger of right hand of the appellant on the beer bottle found on the spot. In **Sharad Birdhichand Sarda vs. State of Maharashtra - (1984) 4 SCC 116,** the apex Court has crystalized the law with regard to conviction on the basis of circumstantial evidence which is reproduced as under:

> "152. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is Hanumant v. State of Madhya Pradesh [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129] . This case has been uniformly followed and applied by this Court in a large number of later decisions up-to-date, for instance, the cases of Tufail (Alias) Simmi v. State of Uttar Pradesh [(1969) 3 SCC 198 : 1970 SCC (Cri) 55] and Ramgopal v. State of Maharashtra [(1972) 4 SCC 625 : AIR 1972 SC 656] . It may be useful to extract what Mahajan, J. has laid down in Hanumant case [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129] :

> "It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

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 Crl LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]
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> "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.
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> 154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.

14. In **Raja Naykar vs. State of Chhattisgarh - 2024 INSC 56**, the Apex Court has held in para-8 & 9 as under:

> 8. It can thus clearly be seen that it is necessary for the prosecution that the circumstances from which the conclusion of the guilt is to be drawn should be fully established. The Court holds that it is a primary principle that the accused 'must be' and not merely 'may be' proved guilty before a court can convict the

> accused. It has been held that there is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved'. It has been held that the facts so established should be consistent only with the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty. It has further been held that the circumstances should be such that they exclude every possible hypothesis except the one to be proved. It has been held that 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 probabilities the act must have been done by the accused.
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> 9. It is settled law that the suspicion, however strong it may be, cannot take the place of proof beyond reasonable doubt. An accused cannot be convicted on the ground of suspicion, no matter how strong it is. An accused is presumed to be innocent unless proved guilty beyond a reasonable doubt.

15. In the light of these above guiding principles, prosecution case does not satisfy the test of circumstantial evidence and does not complete the chain of circumstance to convict the appellant/accused for the murder of Sukhram, hence the conviction and sentence of the appellant under section 302 of the IPC and section 25(1-b)(b) of the Arms Act, 1959 cannot be sustained and are hereby set aside and the appellant is acquitted.

16. The appellant is in custody. He be released forthwith, if not required in any other case.

17. The record be remitted back to the trial court for information and compliance.

(VIVEK RUSIA)
JUDGE

(GAJENDRA SINGH)
JUDGE

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