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CRA-301-2015

IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIJAY KUMAR SHUKLA

&amp;

HON'BLE SHRI JUSTICE PREM NARAYAN SINGH

CRIMINAL APPEAL No. 301 of 2015*NARMADABAI**Versus**THE STATE OF MADHYA PRADESH*

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Appearance:

*Shri Yogesh Purohit, Advocate for the appellant.*

*Shri Surendra Kumar Gupta, Government Advocate for the  
respondent/State.*  
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Heard on : 03.07.2025

Pronounced on : 15.07.2025

JUDGEMENT*Per. Justice Prem Narayan Singh:*

This criminal appeal is preferred under Section 374 of Cr.P.C. by the appellant, being aggrieved by the judgement of conviction and sentence dated 23.01.2015, passed by the 1st Additional Sessions Judge, Shujalpur, District Shajapur in S.T. No.38/2012, whereby the appellant has been convicted for the offence punishable under Section 302/120-B of Indian Penal Code, 1860 and sentenced to undergo Life imprisonment with fine of Rs.2,000/- and in default of payment of fine, to undergo additional R.I. for 06 months.



2. As per prosecution story, on 25.11.2011, at about 8.30 AM, a missing person's report (Exhibit-P/1) was filed at police station Tilawad by Hariom, father of the deceased that his son Ganesh, aged about 09 years went missing. Upon search, the dead-body of Ganesh was found in the stepwell (bavdi) of Dr. Devendra Kumar, situated at Village Pochner, Police Station Avantipur Badodiya. The allegation against the appellant Narmada Bai is that between 25.11.2011 at 1.30 PM to 27.11.2011 at 12.30 AM, she in conspiracy with co-accused Manoj (child in conflict with law) allured him of Rs.5,000/- and murdered son of the complainant Hariom by drowning him in the bavdi. Based on the said complaint filed by father of the deceased, the police registered merg No.37/2011 (Exhibit-P/24A) and later on registered the FIR bearing Crime No.170/2011 (Exhibit-P/25) u/S 302, 120-B and 34 of IPC. During investigation, it was found that on 25.11.2011 at 9.10 AM, the child in conflict went to the house of the appellant Narmada Bai and there was some dispute over water between the appellant and her brother-in-law i.e. Hariom. Thereafter, appellant told Manoj that he will get Rs.5,000/- for committing murder of Ganesh. On 25.11.2011, at 1.30 PM, deceased Ganesh went missing from Pragya High School, Pochner and the deceased Ganesh was seen going with Manoj and thereafter, Manoj came back frightened and it is alleged that Manoj had committed murder of the deceased by drowning him in the stepwell at the behest of the appellant due to family dispute. From mobile No.9617816388, a call came at



mobile No.9669922313 stating that Rs.5,000/- be kept in the Lalaji's Badiya and take the child. During search, it was revealed that mobile No.9617816388 belonged to Ghanshyam S/o Lakhanlal and upon enquiring him, he told that the SIM belonged to him but was used by Jitendra S/o Shivcharan. When Jitendra was asked about the same, he informed that between 23.11.2011 to 25.11.2011, Manoj S/o Goverdhan used his phone and had conversation over it. On 27.11.2011, dead-body of the deceased was found floating in the bavdi.

3. The police after following the due procedure of law, reached the spot, prepared dastyabi panchnama (Exhibit-P/3), lodged dehati nalisi (Exhibit-P/16), spot map (Exhibit-P/17) and naksha panchayatnama, recorded the statements of the witnesses and arrested the accused persons. After due investigation, charge sheet was filed.

4. After filing of the charge-sheet, the matter was committed before the learned Sessions Court by the Trial Court. Thereafter, charges were framed u/S 302/34 and 302/120-B of IPC.

5. The appellant abjured her guilt and pleaded for trial. In turn, the prosecution on its behalf has examined as many as 29 witnesses namely, Hariom (PW-1), Bhojraj (PW-2), Ghanshyam (PW-3), Kailash Chandra Chouhan (PW-4), Pankaj @ Rinku (PW-5), Rakesh Parmar (PW-6), Ramesh (PW-7), Hanumat Singh (PW-8), Prakash Chandra (PW-9), Anar Singh (PW-10), Dr. Ashish Dubey (PW-11), Jitendra Malviya



(PW-12), Bhupendra (PW-13), Hiralal (PW-14), Durga Prasad (PW-15), Rajesh Kumar Singh (PW-16), Lalsingh (PW-17), Mahendra (PW-18), Deepak (PW-19), Ambaram (PW-20), Vikram Singh Parmar (PW-21), Santosh (PW-22), Kamal Singh (PW-23), Harishankar (PW-24), Chandrakalabai (PW-25), Shankarlal (PW-26), Anandilal (PW-27), Lalita Rathore (PW-28) and B. R. Solanki (PW-29). After completion of prosecution witnesses, the appellant was examined under Section 313 of Cr.P.C. Appellant took defence that she did not commit any offence and she was falsely implicated in the offence. She did not examine any witness in her defence.

6. Learned Trial Court, on appreciation of the evidence and arguments adduced by the parties, pronounced the impugned judgement on 23.01.2015 and convicted and sentenced the appellant for commission of the said offence as mentioned in para-1 above.

7. Being aggrieved by the impugned judgement, appellant has filed this appeal and submitted that Trial Court has committed grave error of law in not considering the facts and circumstances that prosecution story is based on circumstantial evidence and it is settled law that without establishment of chain of circumstances, appellant cannot be convicted. It is further submitted that the Trial Court has not considered the material omissions and contradictions in the statements of the witnesses and convicted the appellant wrongly. He has argued that the prosecution story is based on two stories firstly, that the main offender Manoj has



committed murder of the deceased Ganesh at the behest of the appellant. Secondly, the child in conflict with law has demanded Rs.5,000/- from father of the deceased and when the money was not received by him, he has drowned the deceased in the stepwell. It is further argued that appellant has been made accused on the basis of memorandum statement of Manoj whereas, there is no evidence available against the present appellant. Learned counsel for the appellant submits that chain of circumstances has not been established by the prosecution and conviction is based on last seen theory. As such, the appellant cannot be convicted as there is no motive and only simple quarrel has adverted between Hariom, father of deceased and the appellant, on the basis of the said quarrel, motive of murder cannot be inferred. Under these circumstances, counsel for the appellant prays for setting aside the impugned judgement of conviction and prays for acquittal of the appellant.

8. Learned counsel further submitted that only on the basis of last seen theory, the conviction of the appellant cannot be maintained. In this regard, he has placed reliance upon the judgement delivered by the Apex Court in the case of **Padman Bibhar V. State of Odisha** arising out of SLP (Cri.) No.17440/2024 decided on 21.05.2025 and **Kanhaiya Lal V. State of Rajasthan** (Criminal Appeal No.595/2014 decided on 13.03.2014). The arguments advanced by counsel for the appellant is that the Trial Court has committed error in holding that the deceased and appellant were present and seen together before the death of the



deceased. He further submitted that conviction is based on last seen theory but in this regard prosecution examined Hariom (PW-1), the informant and father of the deceased and the witness of last seen Durga Prasad (PW-15) and Kamal Singh (PW-23). The testimony of Ramesh (PW-7) and Kamal Singh (PW-23) is also indicating that appellant was busy in conversation with Manoj.

9. Per contra, counsel for the State has opposed the prayer by submitting that the Trial Court has convicted the appellant rightly after considering the evidence available on record. It is rightly evinced that there was a scuffle between the appellant and father of the deceased due to which the appellant conspired with the child in conflict with law, who committed murder of the deceased by drowning him in the stepwell. The prosecution has submitted that testimony of Durga Prasad (PW-15) is clearly establishing the fact that the appellant herself was stating Manoj that she will give him Rs.5,000/- for drowning the deceased in the stepwell. The testimony of this witness has not been confronted in his cross-examination. The sole testimony of this witness is sufficient to prove the fact that appellant had made a conspiracy by abetting Manoj for committing the murder of the deceased. It is also adverted that testimony of Hariom (PW-1), Pankaj @ Rinku (PW-5) and Kamal Singh (PW-23) are also supporting the prosecution case. Therefore, in such a heinous crime, the appellant does not deserve any leniency and prays for dismissal of the appeal.



10. We have heard the counsel for the parties and perused the record.

11. 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 V. 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.

12. From bare perusal of the record, it is clear that the prosecution case is based on following circumstances to set up its case:-

*i) Firstly, circumstances of motive wherein the appellant and father of deceased have quarreled with each other;*

*ii) Secondly, appellant Narmada Bai was found in conversation with Manoj with regard to conspiracy to commit murder of the deceased;*

*iii) Thirdly, Manoj/child in conflict with law was seen with the deceased at the spot just before the incident;*



*iv) Fourthly, a voice of drowning was heard and after that Manoj/child in conflict with law was found nervous. On the fateful day, Manoj/child in conflict with law reached the classroom of the school belatedly after lunch;*

*v) Fifthly, Manoj/child in conflict with law made planning to kidnap the deceased in front of Deepak (PW-19);*

*vi) Lastly, the corpse of deceased was found in the stepwell.*

13. So far as first circumstance is concerned, Hariom (PW-1), who is father of the deceased in para-1 of his examination-in-chief has stated that 15 days prior to the incident, there was scuffle between him and the appellant and in altercation, appellant has threatened him for killing his son. Bhojraj (PW-2) has also supported the incident of quarrel between the appellant and father of the deceased in para-1 of his examination-in-chief. Chandrakalabai (PW-25), who is mother of the deceased has also stated in her examination-in-chief that there was a quarrel between her husband and the appellant, and her husband has slapped the appellant. The testimony of these witness about the quarrel has not been rebutted in their cross-examination. Although, there are some omissions with regard to the statement of Hariom (PW-1) but it is a trivial point and not touching root of the case. In this way, it is well proved by the prosecution that there was a quarrel between the appellant and father of the deceased 15 days prior to the incident. Counsel for the appellant has submitted that there was simple scuffle between the family members and





it cannot be assumed as the motive to such type of heinous offence. Certainly, the contention of counsel for the appellant is having importance. However, in this regard, law is well settled that in such type of cases, lack of motive could not be fatal for the prosecution case.

14. In so far as the value of motive is concerned, following verdict of the Apex Court rendered in **Amitava Banerjee V. State of West Bengal**, AIR 2011 SC 2913, is relevant to this case, which is as under:-

*"27. Motive for the commission of an offence no doubt assumes greater importance in cases resting on circumstantial evidence than those in which direct evidence regarding commission of the offence is available. And yet failure to prove motive in cases resting on circumstantial evidence is not fatal by itself. All that the absence of motive for the commission of the offence results in is that the court shall have to be more careful and circumspect in scrutinizing the evidence to ensure that suspicion does not take the place of proof while finding the accused guilty....."*

15. Similarly, in the case of **Anil Kumar V. State**, 2011 (5) AD (Delhi) 351, it was held as under:-

*"Motive always locks up in the mind of the accused and some time it is difficult to unlock. People do not act wholly without motive. The failure to discover the motive of an offence does not signify its non-existence. The failure to prove motive is not fatal as a matter of law. Proof of motive is never an indispensable for conviction. When facts are clear it is immaterial that no motive has been proved."*

16. In view of the aforesaid pronouncements, it is well settled that in the cases related to strong circumstantial evidence, the absence of motive would not be enough to obviate the accused from the clutches of law. However, in the instant case, there is perfect evidence of family dispute available on record. Under such condition, contention of counsel for the appellant regarding motive has no force.



17. Now turning to the second circumstance, the appellant was found talking with Manoj with regard to conspiracy of murder of the deceased. Durga Prasad (PW-15) graphically stated in para-1 of his examination-in-chief that he has heard the conversation between the appellant and Manoj. At that time, appellant was stating that she would give Rs.5,000/- to Manoj if he will kill the deceased in the stepwell. On this point, this witness was profoundly cross-examined but he has not been shaken about the same in his cross-examination. In this regard, Ramesh (PW-7) has also supported the prosecution case to some extent wherein, he has stated that when he reached near the Bodhi tree at about 10.00 AM., he had seen that appellant and Manoj were talking with each other. However, he has not tried to listen their conversation. Be that as it may, statement of Durga Prasad (PW-15) finds support from the testimony of Ramesh (PW-7).

18. As regards third circumstance of last seen evidence, Anar Singh (PW-10) specifically stated that at the time of incident, between 1.30 PM to 2.00 PM, when he was going for work, he had seen Manoj with the deceased behind Pragya School going towards bavdi and both of them were in school uniform. He further stated that after one hour rest, he has also seen that Manoj was returning from that place in a nervous condition and his face was reddish. This statement finds support from the statement of Jitendra Malviya (PW-12), who in para-2 of his examination-in-chief deposed that at the time of rest, he had gone out



and Manoj was also out of the school. He further stated that Manoj had gone with the deceased and thereafter, only Manoj returned back. Kamal Singh (PW-23) has also stated that at 2.30 PM, when he was going to the site of bavdi of Dr. Devendra Kumar, he has seen son of Goverdhan. The statement of these witnesses to the extent of last seen have not been controverted in their whole cross-examination. On this aspect, counsel for the appellant has contended that only on the basis of last seen, appellant cannot be convicted. In support of his contention, he has relied upon the judgement of the Apex Court in the case of **Kanhaiya Lal V. State of Rajasthan (Criminal Appeal No.595/2014 decided on 13.03.2014)**, wherein, it is held that only on the single piece of evidence of circumstantial evidence of last seen, conviction cannot be maintained. Para-21 of the judgement is relevant, which reads as under :-

"21. The theory of last seen – the appellant having gone with the deceased in the manner noticed hereinbefore, is the singular piece of circumstantial evidence available against him. The conviction of the appellant cannot be maintained merely on suspicion, however strong it may be, or on his conduct. These facts assume further importance on account of absence of proof of motive particularly when it is proved that there was cordial."

19. Counsel for the appellant has also relied upon the judgement of the Apex Court in the case of **Padman Bibhar V. State of Odisha arising out of SLP (Cri.) No.17440/2024 decided on 21.05.2025** wherein, conviction was based only on the basis of last seen evidence and no other incriminating material was available therefore, the judgement of conviction was set aside. Certainly, the evidence of last seen is not



sufficient for conviction but when other circumstances are fortifying the incident, the evidence of last seen evidence would be taken into account.

20. Now moving towards the fourth circumstance where some witnesses have heard the noise of drowning just at the time of incident. In this regard, statement of Kamal Singh (PW-23) is very significant wherein, he has stated that he heard the noise with regard to drowning of some object in the water and thereafter, when he asked son of Goverdhan, he stated that he has dropped a stone in the water. It is pertinent to mention that this witness has not named as Manoj in his examination-in-chief but after declaring hostile, he has conceded that Manoj was son of Goverdhan. That apart, Prakash Chandra (PW-9), Principal of the school specifically stated that when Manoj came after rest, his face was abnormal with nervousness. Antar Singh (PW-10) has also stated that when Manoj returned back alone, he was nervous and his face was reddish. Jitendra Malviya (PW-12) has also stated that when Manoj returned back after rest, his face was reddish. Likewise, Bhupenda (PW-13) has also stated in para-2 of his examination-in-chief that Manoj was nervous and his face was reddish. The statement of these witnesses with regard to said noise of drowning and nervousness of Manoj has not been controverted in their cross-examination.

21. The statement of Mahendra (PW-18) is also very pivotal, who in para-2 of his examination-in-chief has deposed that in the said month i.e. November, his period usually commences at 1.45 PM. However, due



to visit of some persons from the health department, he reached his class five minutes late and thereafter, Manoj came late in that class and when he asked about belatedness, he stated that there was some work due to which he got late.

22. Now moving towards the fifth circumstance of extra-judicial confession with regard to kidnapping of the deceased is concerned, the statement of Deepak (PW-19) is significant wherein, he has clearly stated that Manoj has told him that he has kidnapped the deceased and he will get Rs.5,000/- after killing him. The statement of this witness also finds corroboration from the statement of Pankaj @ Rinku (PW-5). In this regard, some CDR has also been produced by the prosecution. The statement of these witnesses is also not controverted by the prosecution.

23. Now adverting to the last circumstance pertaining to the finding of corpse in the stepwell is also poignant to point out. Almost all the witnesses have admitted in their examination-in-chief that they have seen the dead-body of the deceased in the stepwell. Here, the nature of death and medical evidence is required to be ruminated by this Court. Dr. Ashish Dubey (PW-11), who has conducted the post-mortem has stated that on 27.11.2011, he has conducted the post mortem (Ex.P/14) of the deceased Ganesh, who opined the cause of death is asphyxia due to antemortem drowning and the time elapsed since death is between 24-48 hours at the commencement of post-mortem examination.

24. In this case, Manoj and the deceased were not only last seen



together but also when Manoj returned, the boy was not seen alive and in this regard, no explanation has been offered by the defense. On this aspect, the law laid down by the Apex Court in **Ram Gulam Chaudhuary and others V. State of Bihar, 2001 (8) SCC 311** is relevant, wherein it has been held that accused after brutally assaulting the boy, carried him away and thereafter, the boy was not seen alive nor his body was found. The accused, however, offered no explanation as to what they did after they took away the body. It was held that in absence of any explanation from the side of the accused/defense about the boy, there was every justification for drawing the inference that they had murdered the boy. In the case in hand, when Manoj was returning from the stepwell, the said child was not with him and thereafter, corpse of the child was found in the stepwell therefore, the last seen evidence adduced by the prosecution is also material circumstance against the appellant.

25. Virtually, all the aforesaid six circumstances adduced by the prosecution are found convincing and trustworthy. In this regard, the enunciation on the law of circumstantial evidence stood the test of time since **Hanumant V. State of Madhya Pradesh, 1952 AIR (SC) 343** wherein, the Apex Court has ordained as under:-

*"10. It is well to remember that in cases where the evidence in 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 pendency 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....."*

26. In light of the aforesaid proposition and enunciation of the facts, it is established that in the instant case, the aforesaid circumstances are well proved by the prosecution and the accused could not explain the incriminating circumstances. In a recent decision rendered by the Apex Court in the case of **Wazir Khan V. State of Uttarakhand, 2023 (8) SCC 597**, it is specifically stated that when incriminating circumstances that inculpated accused in the crime and the accused either offers no explanation or offers explanation, which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete. In the case in hand, the accused could not explain the incriminating circumstances produced by the prosecution against her.

27. In view of the aforesaid analysis and entirety, we are of the considered opinion that all the aforesaid circumstances have completed the chain of offence and they are consistent with the hypothesis of the guilt of the appellant, as she has conspired with Manoj by abetting him to drown the deceased in the stepwell so that he may be killed. Hence, we are convinced that the circumstances presented in evidence of this case meets the ingredients, which are required to be established. So this Court is of the considered opinion that the appellant and only the appellant is guilty and the prosecution has successfully proved its case beyond



reasonable doubt that the accused conspired with the child in conflict with law, who murdered the deceased by drowning him in the stepwell. Therefore, the conviction under Section 302 r/w 120-B of IPC is found infallible in the eyes of law and fact. As a consequence thereof, the conviction of the appellant u/S 302/120-B of IPC, as held by the Trial Court is found immaculate and no interference is called for.

28. So far as the sentence of the appellant is concerned, learned counsel has entreated that during trial, appellant was in custody from 30.11.2011 to 14.04.2012 and thereafter, she is in custody since the date of judgement i.e. 23.01.2015 and she has already completed the incarceration period of more than 10 years, hence, lenient view is desired from the Court. Since the offence of murder punishable under Section 302 of IPC has been provided with minimum sentence of imprisonment of life with fine, this Court is not expected to minimize the sentence in anyway. Accordingly, the sentence imposed by the Trial Court is hereby affirmed.

29. Resultantly, the appeal filed by the appellant is **dismissed** and the conviction and sentence passed by the Trial Court is hereby upheld. Here, it is clarified that the appellant shall undergo imprisonment for life under Section 302/120-B of IPC with fine of Rs.2,000/-. In case of default of payment of fine amount, she shall further undergo rigorous imprisonment for a period of six months, if the life imprisonment is commuted u/S 433 r/w 433-A of Cr.P.C./Section 474 r/w 475 of BNSS,





2023 by the appropriate government.

30. A copy of this judgment alongwith the record of the Trial Court be sent to the Trial Court for information and necessary action. The appellant is serving jail sentence, she be intimated about the outcome of this appeal through Superintendent of Jail and a copy of the judgement be also supplied to her through Superintendent of Jail.

31. With the aforesaid, the criminal appeal stands **dismissed**.

Certified copy, as per Rules.

(VIJAY KUMAR SHUKLA)  
JUDGE

(PREM NARAYAN SINGH)  
JUDGE

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