



1

CRA-2795-2014

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE ATUL SREEDHARAN

&

HON'BLE SMT. JUSTICE ANURADHA SHUKLA

ON THE 19th OF MAY, 2025CRIMINAL APPEAL No. 2795 of 2014*MALKHAN @ MALLU**Versus**THE STATE OF MADHYA PRADESH*

.....
Appearance:

*Shri Khalid Noor Fakhruddin - Advocate for the appellant.**Shri Amit Sharma - Government Advocate for the State.*
.....

JUDGMENT

Per. Justice Smt. Anuradha Shukla

Appellant is challenging the judgment passed on 8.9.2014 in Sessions Trial No.118/2012 by First Additional Sessions Judge, Sehore, in this appeal, holding the appellant guilty of the offence of Sections 460 and 302 (on two counts) IPC and sentencing him to rigorous imprisonment of five years and life term respectively and fine amounts of Rs.5,000/- and Rs.10,000/- (on each count) respectively with default stipulations.

2. The facts of the case in brief are that Parmanand Rathore was living with his mother Gangabai and wife Dhapubai at Sehore in Chandbarh Chouraha locality Kalapipal Road, while his daughter-complainant Manju, who was married in 2011, was living in her matrimonial house in Indira Colony, Mandi, Sehore; Manju, in her dehati nalishi lodged on 10.12.2011 at



9:00 p.m., informed the police that on 8.12.2011 she received a phone call from her mother informing that she has left for Ujjain to attend the marriage in the family, which was scheduled on 9.12.2011, and asked the complainant to have conversation with father and tell him to go to sleep after latching the gate; according to complainant she could not contact her father, therefore she asked Vinod Verma on 8.12.2011 itself to put her on phone line with her father and recharge her father's phone; at around 8:30 p.m., Vinod informed her that he visited the house of Parmanand and knocked at the gate but nobody replied which made him to assume that inmates were asleep; on 9.12.2011, complainant Manju again gave a ring to Vinod Verma for updates but he replied that he could not visit Parmanand; on 10.12.2011, Manju again requested Vinod to visit her father's house and arrange a conversation with her father on phone call but, on account of being busy, Vinod Verma expressed his inability.

3. Complainant Manju then claims to have contacted neighbour Mahesh Verma on phone who after visiting the house of Parmanand informed her that house was latched from inside and nobody was responding from inside; by now, Vinod Verma too had visited the house of Parmanand and knocked at the door but there was no response from inside; complainant Manju then arrived at her parental house at around 5:45 p.m. along with her father-in-law Ramdayal; Vinod, Mahesh, Ishaq, Satish, Manju, Ramdayal and all those present decided to break open the window; upon entering the house it was found that both Parmanand and his mother Gangabai were lying dead in pools of blood having injuries on their persons; the door was then



unlatched from inside; it was found that the doors of almirah were unhooked and detached; complainant could not discover at that moment whether any item was removed from almirah or not; FIR was registered on the basis of information given in dehati nalishi and matter was investigated.

4. During investigation, it was revealed that some items were missing from the shop which was on the front side of the house and used to be run by Parmanand; after investigation, it was also revealed that appellant, who was a distant relative of Parmanand, had visited him in the late evening of 8.12.2011 and stayed there for the whole night; at around 10:30-11:00 p.m. he removed money from the almirah and, in this course, the gates of almirah got detached; it is further revealed that Parmanand became alarmed by noise and tried to stop accused but was given blows with knife by appellant and when Gangabai tried to intervene, appellant gave fatal blow with knife to Gangabai also; he then removed some items from the shop and picked up the mobile phone of deceased Parmanand.

5. During investigation, police put this mobile phone on surveillance and found out the location of appellant as he was using same mobile phone with a different SIM; appellant was arrested; stolen mobile phone and other items were recovered from him; the knife and the clothes used at the time of incident were recovered at his behest; the hair strand found in the hand of Gangabai were sent along with the hair strand of Gangabai and also of appellant for forensic examination to Forensic Science Laboratory (FSL) and other seized items like knife, clothes, etc. were also sent to FSL for chemical examination; chance fingerprint traced from a steel box found on the spot



was sent to fingerprint analyst. After completion of investigation, charge-sheet was filed and the case went for trial in which appellant was held convicted and sentenced as aforesaid.

6. The appeal has been argued on the grounds that the case is entirely based upon circumstantial evidence and despite examining 26 prosecution witnesses, the case against appellant could not be proved; the trial court gave an incorrect and illegal finding of conviction against the appellant; none of the prosecution witnesses had seen the incident and no evidence connecting the appellant with the alleged crime was proved; there were major contradictions, omissions and improvements in the testimony of prosecution witnesses who even failed to support the prosecution version; only relatives and interested witnesses were examined by prosecution and they too failed to give any clinching or convincing testimony against the appellant. A request has, therefore, been made to allow this appeal and acquit the appellant.

7. State has vehemently and fervently opposed the submissions advanced by the learned counsel for appellant and has urged that in this case of double murder, the guilt of appellant is proved by unimpeachable testimony of witnesses and also the supportive circumstantial evidence. On these grounds, learned counsel for the State has requested for dismissal of appeal.

8. We have given our thoughtful consideration to the submissions advanced by counsel for the two sides and have also gone through the impugned judgment as well as the record of trial court for the purpose of appreciation of evidence.



9. There is no dispute that the case of prosecution is based entirely upon circumstantial evidence and if we analytically examine the nature of this evidence, then we can make out that prosecution case rests upon the following premises:-

(a) memorandum statements of appellant;

(b) recovery of blood-stained knife and clothes at the behest of appellant.

(c) recovery of hair strand from the fist of deceased Gangabai and the FSL report received regarding comparison of this hair strand with that of appellant;

(d) recovery of mobile phone and other items removed from the house/shop of deceased and recovered at the behest of appellant;

(e) call details record; and

(f) recovery of chance fingerprint and its comparison report.

10. The approach of prosecution reflects that a comprehensive investigation was attempted, collecting all relevant pieces of evidence in this case which did not have any direct testimony to prove the guilt of appellant. We need to examine all these aspects holistically to arrive at a finding about the guilt or innocence of appellant.

11. Prosecution, on the basis of memorandum of statement of appellant, is claiming that the incident occurred on the night of 8.12.2011 at



around 10:30-11:00 p.m. Exs.P-32 and P-35 are the post-mortem reports of Gangabai and Parmanand respectively, whose post-mortem examination was conducted on 11.12.2011 and in the opinion of doctor, both these persons were murdered within a period of 48 hours to five days from the time of examination. Thus, in the opinion of doctor, Parmanand and Gangabai died somewhere between 6th and 9th December, 2011. The fact that both these persons died of homicidal death has not been challenged.

12. On the basis of probability of facts it can be argued that the date of incident, as revealed in the memorandum statement of appellant, goes along with the opinion of doctor regarding the plausible time of death, but this fact alone is not sufficient to prove the guilt. Further, it is only in the nature of possibility and not any definite or certain fact revealed from the information given by appellant. The significant revelation made by him was the information regarding recovery of knife and blood-stained clothes, but FSL report (Ex.P-39) and statements of Dr. Mahendra Pratap Singh (P.W.26) prove that no blood was found on the shirt recovered from appellant. Although blood was there on the knife but it could not be established that it was human blood. Human blood of group "B" was found on the trouser of appellant and this category of blood matched with blood sample recovered from Exs.D, E and H but incidentally, prosecution has not proved that blood group of either of the deceased persons was of group "B". Dr. Mahendra Pratap Singh (P.W.26) has admitted in his cross-examination that he did not forward the items marked by Exs.D, E, H and K1 for DNA analysis. Thus, recovery of alleged blood-stained items at the behest of appellant overall,



does not indict him in the crime.

13. Hair strands were allegedly recovered from the fist of deceased Gangabai and they along with the hair strand of Gangabai and also of appellant were sent to FSL for analysis and Dr. Mahendra Pratap Singh (P.W.26) has given report of Ex.P-40 regarding this analysis. He has admitted that hair article recovered from the source of appellant was marked as “L” and morphologically as well as on the basis of microscopic characteristics, this article was found dissimilar to the hair articles, marked as “A”, “B” and “C” which were recovered from the source of deceased Gangabai. Thus, this forensic analysis too has failed to establish the involvement of appellant in the alleged crime.

14. According to prosecution, complainant Manju was receiving information from Vinod and Mahesh that her parental house was latched from inside since 8.12.2011 and nobody was responding the call even if the door was being knocked at. According to prosecution, on 10.12.2011 Manju went to her parental house along with father-in-law and found that the door of the house was still latched from inside. The statements of Manju (P.W.1) and her mother Dhapubai (P.W.16) reveal that the house has a front door in the form of shutter and alone this gate was in use for entry and exit. Manju (P.W.1) has although admitted in para 20 of her statements that there are five more doors in the house, but her statements reveal that all the doors were latched from inside when she arrived at the house on 10.12.2011. The entry into the house was, therefore, secured through window after breaking it open.

15. The nature of injuries described in post-mortem reports reveals



that they could not have been self-inflicted and this leads to the conclusion that besides the two victims, there was at least one more person inside the house who committed the crime. The question arises how this person secured his exit while all the doors and windows of the house remained bolted from inside. It seems obvious that this became possible by bolting the exit point by inserting the hand inside from some functional gap. Who could have the knowledge of this functional defect. Obviously, a distant relative visiting the house seldomly could not have knowledge of any such defect in the construction of house. It may be mentioned here that during investigation, no efforts were made to get the scene recreated in the presence of appellant and to discover how he managed his exit from the house leaving the inside bolts intact.

16. Ex.P-2 is the spot-map which was prepared on 11.12.2011 at 2:00 p.m. and it reveals that the door on the rear side of the house, marked by an arrow, was found open and it is claimed that this door was used by assailant for escape. This fact is in sharp contradiction with what has been stated by Manju (P.W.1) and other witnesses, including Ramdayal (P.W.5) and Mahesh (P.W.14). It is against natural setup of things that Manju, who was the daughter of deceased Parmanand, was not aware of this rear side door and did not check whether this door was open for entry before getting the window broken. Munish Rajoriya (P.W.25) had prepared this spot-map and has admitted in para 7 of his statements that the window was broken open for the reason that the house was bolted from inside. Admittedly, the entry in the house through the window was secured on 10.12.2011 and the



spot-map was prepared next day at 2:00 p.m. Investigating Officer Munish Rajoriya in para 11 admits that no document was produced to show that the place of incident was sealed between these two dates. Thus, we find significant discrepancy in the statements of prosecution witnesses from which door and how the assailant escaped from the house.

17. In Dehati Nalishi (Ex.P-1) complainant Manju could not give any detail about the items stolen from the house or shop. In her police statements recorded on 11.12.2011 and marked as Ex.D-1 it is revealed that cash amount of Rs.5,000/-, two gold bangles, two gold rings and a black colour mobile phone of Gild company were missing from the house and some artificial chains and other items of general merchandise were missing from the shop. The gold items allegedly stolen were never recovered from the appellant. According to seizure memo (Ex.P-13), one mobile phone of Gild company, cash amount of Rs.230/-, a number of artificial chains and some bottles of powder, hair oil, etc. were recovered from the appellant. To establish that these very items were stolen from the house of Parmanand, prosecution has relied upon the identification memo which claims that these items were correctly identified by complainant Manju and her mother Dhapubai. It is notable that identification memo does not give details of the features of these items for enabling the witnesses to identify them.

18. Manju (P.W.1) claims that she had written the price on these items, which helped in the identification process, however, Dhapubai (P.W.16) claims that some of these items had price tags in the handwriting of her husband and on that basis she was able to identify them correctly.



Clearly, there is contradiction in the testimony of these two witnesses on the fact in whose handwriting the rates were mentioned on these items. Interestingly, these items were produced in evidence and were given exhibits marks but no note was affixed by the trial court price tags affixed thereon.

19. From the statements of prosecution witnesses it is established that victim Gangabai was having gold tops in her ears, silver anklet on her legs and a gold ring was lying besides her when she was found dead. It is beyond comprehension why the assailant was removing artificial chains from the shop, while real gold and silver jewelry were easily available and he had all the time to remove them from the body of deceased Gangabai. It is admitted in evidence that the artificial chains and the items of general merchandise were easily available in the market, therefore without any disclosure about the special features of these items the evidence on identification of items is not found of credibility to connect appellant with the crime. This finding becomes more convincing as Manju (P.W.1) has admitted in para 21 of her cross-examination that appellant too runs a shop of artificial jewelry and items of general merchandise in village Jhadla.

20. A mobile phone of Gild company was recovered from the appellant under seizure memo (Ex.P-13) and IMEI number of it was mentioned in the seizure memo. Admittedly, this mobile phone was never subjected to identification proceedings to establish that it belonged to deceased. It is already discussed that in dehati nalishi no disclosure was made about the theft or removal of mobile phone from the house of Parmanand. The police statements (Ex.D-1) of Manju do not disclose the



IMEI number of the mobile phone stolen in the crime. Thus, neither on the basis of IMEI number nor from evidence regarding identification proceedings, the prosecution was able to prove that the mobile phone recovered from appellant originally belonged to deceased Parmanand.

21. Rajesh Kumar Singh (P.W.24) has stated that call details record (CDR) regarding SIM No.8120853887 issued by IDEA Cellular Limited was generated by him, which is Ex.P-36, and according to this witness for the relevant period this mobile number was registered in their office in the name of Makhan Singh, S/o Madanlal. This piece of evidence leads us to nowhere. It can be observed that by connecting the SIM number issued in the name of Parmanand with the IMEI number of mobile phone recovered from appellant, the prosecution could have easily established link between the two and showed that the mobile phone having a particular IMEI number, which was originally being used by Parmanand, was now recovered from the possession of appellant but here too, prosecution has failed to collect credible evidence.

22. The final report of Section 173 Cr.P.C. claims that cyber tracking was ensured through SIM No. 8120853887 belonging to deceased Parmanand and IMEI number of his stolen mobile phone and it was discovered by Constable Santosh Kumar Soni that said mobile phone was in use with a SIM No.9754461573 issued in the name of appellant. This indeed was the prime evidence to connect appellant with the crime, but Investigating Officer Munish Rajoriya (P.W.25) is silent in his examination-in-chief on this important piece of evidence. No effort was made by



Investigating Officer to disclose how he came to know about the IMEI number of the mobile phone that was being used by deceased Parmanand. In para 18 he has admitted that no information was received by him regarding the identity of person in whose favour the SIM with number 9754461573 was issued. Constable Santosh Kumar Soni (P.W.17) is also a relevant witness on this point who has claimed that he collected the call details from the concerned service provider and these call details are Exs.P-19, P-20, P-21 and P-22. It appears that he did not personally recover any call details and he was merely collecting them from some other source. The person who actually retrieved this data has not been examined by prosecution. Further, the CDR is a reproduction of electronic data for which certificate of Section 65B of the Indian Evidence Act, 1872 is required to ensure admissibility of evidence. Here, the prosecution has filed no such certificate. Thus, the testimony of Constable Santosh Kumar Soni (P.W.17) is inasmuch as inadmissible.

23. The last link in the chain of circumstances is the recovery of chance fingerprint which, according to report of Ex.P-30 given by Dayashankar Upadhyay (P.W.19), has matched with the fingerprint of appellant. According to this witness, the fingerprint was lifted by him from a steal box, which was round in shape. Exs.P-28 and P-29 are the specimen fingerprints of appellant, which were allegedly taken by Ratan Singh Negi, but both these documents are silent about the details of the person whose specimen fingerprints were received on these two documents. Both these documents do not even bear the signature of appellant. Ratan Singh Negi



would have been a very important witness to establish that the fingerprints available on Exs.P-28 and P-29 belonged to appellant, but this witness was never examined. Thus, it can be made out that Dayashankar Upadhyay (P.W.19) was comparing the chance fingerprint with the specimen fingerprints available in Exs.P-28 and P-29 without verifying whether they actually belonged to appellant or not.

24. The courts in India have, indeed, relied on fingerprint evidence but they have done so only on the basis of expert opinion, duly corroborated by other evidence. Even Hon'ble Apex Court in **Mahmood v. State of U.P.**, (1976) 1 SCC 542, has observed that it would be highly unsafe to convict on a capital charge without any independent corroboration of the opinion of fingerprint expert. In **Musheer Khan alias Badshah Khan and another v. State of M.P.** 2010 (2) SCC 748, it has been held that evidence of fingerprint expert is not substantive evidence and this piece of evidence can only be used to corroborate the other substantive evidence already available on record. In case on hand, we evidently do not have any independent corroborative evidence about the opinion of fingerprint expert. Besides this, the prosecution has also not been able to establish the sanctity of evidence regarding collection of specimen fingerprints from the appellant. Neither the person who took specimen fingerprints nor any witness has appeared in witness-box to claim that these specimen fingerprints actually belonged to appellant. Therefore, comparison report has no probative value.

25. Ex.P-23 is the letter received by Dayashankar Upadhyay in which he was requested to examine and give comparison report regarding the



chance fingerprint and the fingerprints of appellant, but this forwarding letter would not itself establish that the specimen fingerprints actually belonged to appellant. Dayashankar Upadhyay (P.W.19) has accepted the fact that the specimen fingerprints of accused require certification by Thana Prabhari to the effect that they were taken in his presence, but no such certification is available in Exs.P-28 and P-29. Unless the source of specimen fingerprints is established beyond doubt, their comparison with chance fingerprint only ridicules the intent to establish the guilt and this ostentatious exercise inherently lacks evidentiary value.

26. After carefully analyzing all the probable links to the chain of circumstances, we have no doubt that prosecution has failed miserably to establish its case even to the slightest degree through any of these links. Therefore, we hold that the trial court failed to appreciate evidence in correct perspective. The judgment of trial court, deserving indulgence, is, accordingly, set aside and, allowing the appeal, appellant is acquitted of all the charges.

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

28. The fine amount deposited by the appellant, if any, be refunded to him.

29. The property of the case be disposed of in terms of the directions of the trial court.

30. A copy of this judgment along with its record be send to the trial court for information and necessary compliance. A copy of the same be also



15

CRA-2795-2014

send to the concerned jail authorities for ensuring immediate release of
appellant.

(ATUL SREEDHARAN)
JUDGE

(ANURADHA SHUKLA)
JUDGE

ps