

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

**BEFORE
JUSTICE SUJOY PAUL
&
JUSTICE AVANINDRA KUMAR SINGH**

CRIMINAL APPEAL No.1232 of 2015

BETWEEN :-

**ALTAF AHMAD ANSARI SON OF SHRI FAYAZ
ANSARI, AGED ABOUT 35 YEARS, R/O
MANJHOLI, POLICE STATION MANJHOLI,
DISTRICT JABALPUR (M.P.)**

.....APPELLANT

**(BY SHRI ABHINAV DUBEY – ADVOCATE WITH SHRI SHIVAM
CHHLOTRE- ADVOCATE)**

AND

**STATE OF MADHYA PRADESH, THROUGH
POLICE STATION MANJHOLI, DISTRICT
JABALPUR (M.P.)**

.....RESPONDENT

(BY SHRI A. N. GUPTA- GOVERNMENT ADVOCATE)

Reserved on	:	11/05/2023
Pronounced on	:	15/05/ 2023

*This Criminal Appeal having been heard and reserved for judgment, coming on for pronouncement this day, **Justice Sujoy Paul** pronounced the following :*

J U D G M E N T

This appeal filed under Section 374(2) of Criminal Procedure Code, 1973 (Cr.P.C.) takes exception to the judgment dated 25/03/2015

passed in Sessions Trial No.297/2012 by learned Additional Sessions Judge, Sihora District Jabalpur, whereby learned Court below convicted and sentenced the appellant as under :-

Convicted under Sections	Sentenced to undergo
302 of I.P.C.	R.I. for Life with fine of Rs.2,000/-, in default, to undergo additional R.I. for six months.

Factual background :-

2. The story of prosecution is that on 23/01/2012 at around 12 O'clock, the appellant, a relative of deceased Tanveer, reached the house of deceased and assaulted her by means of a sharp edged weapon. After causing injuries, he fled away from the scene of crime but the neighbours could caught hold of him and a sharp edged weapon 'Khurpi' was recovered from him. Two buttons of his shirt were missing when appellant was caught hold by certain persons.

3. Tanveer was immediately taken to Sihora Hospital. Considering her serious condition, Tanveer was referred for treatment to Medical College, Jabalpur but she was taken to Narmada Hospital, Jabalpur where she died.

4. Sajid Ansari (PW-5) lodged the FIR (Ex.P/3) in Police Station Sihora. The 'merg' intimation was given to Kotwali, Jabalpur through Ex.P/30.

5. Since the appellant was caught hold by certain persons, police upon reaching the scene of crime, took him in custody and a memorandum under Section 27 of Indian Evidence Act (Evidence Act)

was prepared. The weapon '*Khurpi*' was recovered through Ex.P/8. The shirt which appellant was wearing at that time was seized through Ex.P/10. Spot Map (Ex.P/4) was prepared. Another Spot Map (Ex.P/5) was prepared by Tahsildar. Blood stained soil, plain soil, broken pieces of bangles, ply-board, cushion, buttons, slippers and earrings were recovered through Ex.P/9.

6. The post mortem was conducted by Dr. Mukesh Agrawal (PW-20) and the Post Mortem Report is Ex.P/22. During post mortem, Dr. Mukesh Agrawal (PW-20) sealed the nails and clothes of the deceased which were sent to Forensic Science Laboratory (FSL) through Ex.P/38. During the course of investigation, the blood sample of appellant was taken through Ex.P/20. The sample was sealed through Seizure Memo (Ex.P/21). The slippers of appellant were recovered through Ex.P/12. The seized material was sent through letter of Superintendent of Police (S.P.) through Ex.P/31 and Ex.P/32 to FSL. In turn, report of FSL (Ex.P/36 & Ex.P/37) were received. After completion of investigation, *chalan* was filed and in due course, matter came up for trial before Sessions Court. The appellant abjured his guilt and prayed for full fledged trial.

7. 34 witnesses entered the witness box and deposed their statements on behalf of the prosecution. Furthermore, 38 documents were exhibited before the Court below by the prosecution. The defence did not lead any evidence. In his statement recorded under Section 313 of Cr.P.C., the appellant stated that he has been falsely arraigned.

8. The Court below framed four points for its determination and after recording the evidence and hearing both the parties, passed the impugned judgment of conviction and sentence.

Contention of appellant :-

9. Shri Abhinav Dubey, learned counsel for the appellant by taking this Court to the statements of prosecution witnesses one by one submits that the Court below erroneously convicted the appellant. The first and foremost reliance is on the statement of Akram Raja Ansari (PW-1) who deposed that he had seen that deceased received several injuries and it appears that such injuries were caused by means of a *Khurpi*. Several persons assembled at the scene of crime and stated that the appellant caused these injuries. The injured was taken to Sihora hospital and from there she was referred to Jabalpur for treatment but she died in midway. It is submitted that this witness is not an eye-witness.

10. Shahjad Ansari (PW-2)'s statement is relied upon to submit that he came to know that his *Bhabhi* was assaulted by somebody but he pleaded ignorance as to who has actually assaulted her. However, in the line PW-1 deposed, this witness also deposed that appellant assaulted the deceased as per the discussion going on amongst the persons present at the scene of crime. It is submitted that this witness is also not an eye-witness.

11. Archana Yadav (PW-3) is a neighbour but this witness has not stated anything significant. She has not seen anybody assaulting the deceased and pleaded ignorance about the name of assailant.

12. Similarly, Virendra Kumar Jaiswal (PW-4) deposed that he has no acquaintance with appellant. Somebody assaulted the wife of Anwar Bhaijan but expressed his inability to state as to who was the assailant.

13. Sajid Ansari (PW-5) is an important witness submits Shri Abhinav Dubey, learned counsel for the appellant. It is argued that this witness received a call from a boy namely Zafar that his *Bhabhi's* throat is cut by somebody. He rushed to the house of his brother. His brother was taking the injured to the hospital. He accompanied the injured and his brother to the hospital. The injured informed him that the appellant Altaf Ahmad has assaulted her. However, the injured did not inform him about the nature of weapon used for such assault. Learned counsel for the appellant submits that this oral dying declaration allegedly given to Sajid Ansari (PW-5) is not trustworthy. To establish this, heavy reliance is placed on Para-5 of cross-examination where this witness admitted that in Ex.P-6, it is mentioned that accused Fayaz Ahmed by means of a deadly weapon assaulted Tanveer Ansari because of which she died. He admitted that Fayaz Ahmed is the name of father of present appellant. He further admitted that appellant is a practical person who has no bad habits.

14. Riyaz Ahmad Ansari (PW-6)'s statement is relied upon for the same purpose by contending that this witness also deposed that when he reached the place of incident, he found that the injured was lying there and when he inquired, she informed this witness that Altaf of Majhauri has assaulted her. He further deposed that when injured was

taken to hospital and also when she was taken out of the vehicle, she informed that Altaf has assaulted her. Learned counsel for the appellant submits that this statement does not inspire confidence and, therefore, oral dying declaration is not acceptable.

15. Mukhtar Ahmad (PW-7)'s statement is relied upon to show that this witness has not seen the incident happening and, therefore, is not an eye-witness. However, he is witness to the seizure of blood stained *Khurpi* and clothes of the appellant. Criticizing his statement, it is submitted that Anwar's father did not inform him that Altaf is the accused person. This person is also eye-witness to the seizure of blood stained *Khurpi* from the appellant.

16. The husband of deceased Anvar Ahmad Ansari (PW-8) stated that he is an employee of Vehicle Factory, Jabalpur. At around 12 O'clock, he received an information through phone call that his wife was assaulted by somebody by means of a sharp edged weapon. After five minutes, another phone came that his nephew, Altaf Ansari had cut the throat of his wife. He was further informed that his wife is now taken to Narmada Hospital but by the time he reached there, his wife was no more. This witness identified slippers of the appellant.

17. The father-in-law of deceased Rasheed Ahmad Ansari (PW-9) stated that he is a photographer and came to know that somebody has assaulted his '*Bahu*' and fled away. In the agricultural field behind the house of deceased, a huge gathering was there and appellant was lying in the mustard field. The people caught hold of appellant and brought

him on the road. This witness clearly stated that when he enquired from the appellant, he informed that he assaulted his *Mami Anjum Ansari*. He took out '*Khurpi*' from his pocket and handed over to the Police.

18. Rasheed Ahmad Ansari (PW-9) further stated that he visited the scene of crime with Police personnel. The blood was spread in the entire room. Two buttons of the shirt of appellant were seized from the scene of crime apart from the other incriminating material. The appellant's shirt which he was wearing at the time of commission of crime was recovered through Ex.P/10. Learned counsel for appellant submits that this witness candidly admitted that appellant had no animosity with Riyaz Anwar etc. Indeed, there was complete harmony between them. He further stated that the seizure etc. had taken place in the Police Station. On this part of statement, heavy reliance is placed to show that recovery/seizure of aforesaid material is doubtful.

19. Mohd. Aadil (PW-10) is father of deceased Tanveer Anjum. He deposed that his deceased daughter informed him that Altaf has bad intention towards her. The appellant wanted to grab the house of deceased is another information given to her father. In turn, Mohd. Aadil informed the father of his son-in-law namely Rafiq Ansari and expressed his anxiety about the welfare of her daughter. Rafiq Ansari realised the same and spent few days with deceased Tanveer Anjum. However, later-on, because of his ill-health, Rafiq Ansari shifted to his house in Khitola, Sihora. In cross-examination, this witness admitted

that he previously never stated that appellant used to demand money from the deceased.

20. Saroj Bai (PW-11) turned hostile and, therefore, this witness is of no assistance to the prosecution. Deepak Mishra, Constable (PW-12) is the witness who stated about seizure of '*Khurpi*' when appellant was taken into custody. In cross-examination, he admitted that except taking the appellant in custody, no other proceeding had taken place at the scene of crime. This witness further deposed that the appellant's clothes were mud stained.

21. Zafar @ Guddu's (PW-13) statement is of no use to the prosecution because this witness is not an eye-witness. He is a hearsay witness and therefore his statement will not strengthen the case of the prosecution.

22. Dr. Manish Patel (PW-14) examined the appellant on 24.01.2012 at 4:30 PM. During examination of appellant, no injury was found on his body. This statement was again reiterated in Para-2 of the cross-examination.

23. Sana Ansari (PW-15) is daughter of deceased who was in the school when incident had taken place and, therefore, this witness is of no assistance to the prosecution.

24. Sheikh Shabbir Mansuri (PW-16) stated that an injured woman was lying in-front of the house of Guddu. He could not identify the woman. Later-on, he came to know that the woman is wife of Abrar and was murdered by Altaf. The prosecution tried to establish by introducing Raju (PW-17) that he had seen appellant knocking the door

of house of deceased at around 11-12 O'Clock on the date of incident. It is submitted that this statement does not inspire confidence at all.

25. Parvez Khan (PW-22) is a seizure witness. His statement is not trustworthy submits Shri Dubey because in para-3 of his cross-examination, he admitted that he was made witness by police because of his close relation with the family of deceased.

26. Vimla Jaiswal (PW-23) pleaded ignorance about the person who has assaulted the deceased and hence her statement is of no use for the prosecution. Son of deceased Mohsin Ansari (PW-24) is a child witness. He stated that at the time of incident, he was in school but came to know that appellant assaulted his mother by means of *Khurpi*.

27. Arjun Jaiswal (PW-25) turned hostile and did not support the prosecution story.

28. Devendra Uikey (PW-26) is a witness in whose presence blood sample of appellant was taken and the same was sealed. It is argued that no documentary evidence was produced before the Court below to show that any formal permission to take the appellant from jail to the hospital for collection of blood sample was taken. In absence of any such documentary evidence, the presence of appellant in the hospital for collection of blood sample is highly doubtful.

29. Rajkumar Chawla (PW-27) and Asif Ansari (PW-28) are seizure witness in whose presence slippers of appellant were allegedly recovered.

30. S.K. Mishra, S.I. (PW-29) admitted that he received three sealed packets from Forensic Science Laboratory. He did not prepare any *Panchanama* of sealed packets but sent the sealed packets to Police Station, Sihora. Proper procedure was not followed by the prosecution is the contention based on the statement of this witness.

31. Jag Jahar Singh, S.I. (PW-30) admitted that Ex.P/30 is ditto copy of 'marg' intimation (Ex.P/27) which does not include the name of appellant Altaf. Iqbal Ahmad Ansari (PW-31) is a hearsay witness, therefore, his statement is of no assistance to the prosecution. The statement of Prabal Kumar Ekka, S.I. (PW-32) is also of no use to the prosecution. A.R. Choudhary, S.I. (PW-33) is the Investigating Officer. He stated that the appellant handed over the blood stained *Khurpi* by taking out the same from his trouser. However, his trouser was not seized. It is submitted that the statement of I.O. if examined alongwith the statements of other seizure witnesses, will show that it is full of contradictions. D.N.A. report is relied upon to submit that in the nail cuttings of deceased Tanveer, the blood of appellant was found and DNA report supports the case of prosecution. However, the DNA report dated 15.3.2014 does not support the case of prosecution so far availability of footprint of appellant at the scene of crime is concerned.

32. The statement of Investigating Officer (PW-33) was read in juxtaposition to statement of another police officer Deepak Mishra (PW-12) to highlight that Deepak Mishra (PW-12) stated that in the shirt of appellant there were mud stains whereas A. R. Choudhary, I.O. (PW-33) talks about existence of blood stains. During cross-

examination, when he was apprised about the above statement of Deepak Mishra, he stated that it is his thought process where he deposed that stains were of mud. The statement of I.O. (PW-33) is highlighted for yet another purpose i.e. he admitted that appellant was not seen by anybody fleeing away from the place of incident.

33. It is urged that the appellant was arrested on 23.01.2012 but his medical examination was conducted on the next day i.e. 24.01.2012. There is no explanation of delay of almost one day. The Superintendent of Police (S.P.) by communication dated 12.03.2012 (Ex.P/31) sent the blood sample of appellant and other samples of deceased to FSL whereas blood sample of appellant was taken on 13.03.2012. Thus, an impossible act has been done whereby blood sample was sent a day before it was collected which is humanly impossible. However, Shri Dubey, learned counsel for the appellant fairly submitted that in para-44 of cross-examination, Investigating Officer has given explanation of the discrepancies in dates highlighted hereinabove. He explained that the blood sample needs to be sent to FSL within 24 hours of its collection. In order to ensure promptitude and avoid delay, the covering letters are prepared in advance. In this process and for this reason, the letter dated 12.03.2012 (Ex.P/31) was prepared a day before but the samples and letter were actually sent only after its collection on 13.03.2012. This is evident from Entry No.2 which relates to blood sample in front of which the date of seizure of sample is left blank whereas month and year were mentioned as ‘.../3/12’. Shri Dubey,

learned counsel for the appellant submits that the explanation is not trustworthy.

34. The next contention relates to question No.18 of the cross-examination of A.R. Choudhary, I.O. (PW-33), it is submitted that the note below this question is appended by the Court that the size of seized *Khurpi* is 5-6 inches which is an iron weapon in which blood stains are still visible. By placing reliance on FSL report dated 23.07.2012, Shri Abhinav Dubey, learned counsel for the appellant submits that *Khurpi* was marked as Article 'I'. Although blood stains and human blood was found on Article 'I', as per the said FSL report, the result of blood grouping is inconclusive. In absence of matching of blood group, it cannot be said that the blood stains found on *Khurpi* was of the deceased person. He placed reliance on the judgment of Supreme Court in **AIR OnLine 2021 SC 517 (Madhav vs. State of Madhya Pradesh.)**

35. The FIR dated 23.01.2012 (Ex.P/3) was referred to show that the complainant Sajid Ansari (PW-5) reported that when his *Bhabhi* was assaulted, Arshad Malik and other persons present at the spot tried to save her. However, neither Arshad Malik nor any other person present there was introduced as witness.

36. Shri Dubey, learned counsel for the appellant submits that pieces of nails of deceased were collected on 23.01.2012 whereas blood sample of appellant was taken on 13.03.2012. There is a long gap between collection of nail pieces and sending the same to FSL along with blood sample of appellant.

37. The MLC (Ex.P/15) which was proved by Dr. Raj Kumar Jain (PW-18) was relied upon to submit that said MLC shows that patient was brought for MLC by Majid Ansari. However, Majid Ansari was not examined by prosecution. Indeed, Riyaz Ansari (PW-6) was examined.

38. So far seizure is concerned, one such seizure witness Mukhtar Ahmad (PW-7) did not support the prosecution story. Shri Dubey, learned counsel for the appellant fairly submitted that other seizure witness and Investigating Officer have supported the story relating to seizure of incriminating material.

39. To summarise his arguments, Shri Dubey submits that 'no motive' could be established by the prosecution, in the FSL draft, there exists discrepancy about dates, there is delay in sending the nails of deceased after its collection to FSL. As per FSL report, blood group could not be matched. For MLC, one Majid had brought the injured/victim but he was not examined, footprint of appellant did not match with the sample as per FSL report. There is a delay of one day in medical examination of appellant after his arrest, there are two contradictory reports about injuries on the appellant which are not matching with each other, in MLC, 10 injuries were found whereas as per autopsy report there were total 21 injuries found on the person of deceased. Furthermore, the cutting of nails of deceased, as per prosecution story, was at Medical College, Jabalpur whereas in FSL report it is mentioned that samples were collected in Medical Hospital, Sihora.

40. Lastly, it is submitted that father of deceased (PW-10) deposed about the improper motive towards the deceased but the Court in para-79 of impugned judgment disbelieved such statement.

41. In support of the aforesaid submissions, learned counsel for the appellant placed reliance on the judgments of Supreme Court reported in **AIR 1993 SC 2644 (State of A.P. vs. Punati Ramulu and others)**, **AIR 2003 SC 1620 (Ghapoo Yadav and others vs. State of M.P.)**, **2002 Cri.L.J. 3558 (Thangavelu vs. State of T.N.)** and the Bombay High Court judgment in the case of **2017 ALL MR (Cri) 245 (Syed Amin Syed Nabi vs. The State of Maharashtra)**.

Contention of Govt. Counsel :

42. Per *contra*, Shri A.N. Gupta, learned Government counsel for the State submits that statement of father of deceased (PW-10) shows that appellant had ill-intention towards deceased and this constitutes 'motive'. As per statement of Deepak Mishra (PW-12), the appellant was arrested immediately after the incident which provides credibility to the prosecution story. Since he was found lying on an agricultural field, there was every possibility that his clothes will gather mud marks and, therefore, the statement of Deepak Mishra (PW-12) cannot be doubted. In addition, in his shirt blood stains were found which were proved by seizure witnesses.

43. Shri A.N. Gupta, learned Government counsel for the State submits that a conjoint reading of statements of Sajid Ansari (PW-5) and Riyaz Ahmed Ansari (PW-6) shows that both clearly stated about oral dying declaration given by the deceased. Dr. Mukesh Agrawal

(PW-20) clearly stated in his cross-examination that nature of injuries on the throat of victim indicates that possibility and capability of speaking can be either way. In other words, the victim could have been or could not have been in a position to speak. He submits that this expert evidence makes it clear that she was in a position to speak is not ruled out.

44. Shri A.N. Gupta, learned Government Advocate for the State further submits that the Mukhtar Ahmad (PW-7) and Rasheed Ahmed Ansari (PW-9) are seizure witnesses.

45. In the manner statement of Dr. Manish Patel (PW-14) is projected, it cannot be accepted for the simple reason that limited role assigned to him was to examine the private part of the appellant and not the entire body of the appellant and thus there exists no discrepancy in two reports of doctors relating to examination of the appellant.

46. Raju (PW-17) is the 'last seen' witness who found appellant knocking the door of the house of deceased. The query reports (Ex.P/16 and Ex.P/18A) makes it crystal clear that injuries on the body of appellant could have been caused by means of nails. Ex.P/16 is the query report about '*Khurpi*' and expert opinion is that such injuries could be caused by the weapon seized i.e. '*Khurpi*'.

47. Heavy reliance is placed on FSL report to show that the buttons of shirt recovered from the scene of crime matches with the other buttons found on the shirt of the appellant. There is no reason to disbelieve the expert report. Non-examination of Majid will not cause

any dent to the prosecution story submits learned Government Advocate for the simple reason that the prosecution's case that victim was taken to Sihora Hospital for MLC and from there to Jabalpur is not called in question.

48. Parties confined their arguments to the extend indicated above.

49. We have heard the parties at length and perused the record.

Findings :

50. It was strenuously contended that as per the MLC (Ex.P/15), one Majid has brought the injured/victim but prosecution did not produce him as a witness. In our opinion, merely because Majid has not been produced, it cannot be said that the injured/victim had not undergone the medical examination at Sihora Hospital. Moreso, when no such cross-examination of concerned Dr. Rajkumar Jain (PW-18) was conducted to demolish the case of prosecution that victim was taken to Sihora Hospital.

51. So far oral dying declarations are concerned, PW-5 and PW-6 categorically deposed about said oral dying declarations given to them by the deceased. No amount of cross-examination could demolish the case of prosecution in this regard. Learned counsel for the appellant has made an effort to create doubt whether victim was in a position to speak in view of injuries on her neck. Pertinently, Dr. Mukesh Agrawal (PW-20) was examined on this aspect and he in clear terms stated after examining the nature of injuries that the possibility and capacity to speak could very well be there. In view of this expert evidence, we find no reason to doubt the evidence relating to oral dying declarations.

52. Mukhtar Ahmad (PW-7) stated that the victim in an injured condition was found lying in front of her house (where she was assaulted) and she was crying and stating that appellant had caused injuries. Thus, we find no reason to disbelieve the oral dying declarations.

53. The eyebrows were also raised by stating that there are two different medical reports regarding injuries on the body of appellant. On the first blush, the argument appeared to be attractive but lost much of its shine when the evidence of both the Doctors were examined minutely. Dr. Manish Patel (PW-14) made it clear in his cross-examination that singular role assigned to him was to examine the private part of the appellant and in view of this statement, the question of comparing the number of injuries on the whole body and contradictions etc. fades into insignificance.

54. So far cutting of nails of deceased and sending them belatedly to FSL is concerned, suffice it to say that nails are not like blood which get spoiled if not send to FSL with quite promptitude. No amount of cross-examination was made to establish that nails were not kept in proper custody before sending to FSL. The singular argument advanced was that in Ex.P/36, it is mentioned that nails were taken from Sihora Hospital. This entry, in our considered opinion, is a typographical error because indisputably, the victim died at Jabalpur and Autopsy Surgeon clearly established that her nails cutting were taken at Jabalpur. Thus, this technical mistake will not cause any dent on the prosecution story.

55. The blood sample of appellant was taken by Dr. Sanjay Jain (PW-19) and his testimony shows that it was duly sealed. The sample was promptly sent to FSL which is evident from a plain reading of Ex.P/31. Shri Dubey, learned counsel for the appellant, on more than one occasion argued that blood sample of appellant was taken on the next day of his arrest but was unable to show how this causes any prejudice to him or creates any doubt on the prosecution story. Another limb of argument of Shri Dubey was that in the recovery memo dated 12/03/2012 (Ex.P/31) by which S.P. sent the samples to FSL, date of sending blood sample is kept vacant. On a specific question in cross-examination, Investigation Officer explained the same and made it clear that the blood samples needs to be sent to FSL for examination promptly otherwise the sample gets spoiled / contaminated. In order to ensure that the said exercise of taking sample and sending it to FSL is undertaken swiftly, the covering letters are prepared in advance so that no time is consumed in this ministerial activity. For this reason, Ex.P/31 was prepared in advance on 12.03.2012 but due to clerical error the date of taking blood sample could not be filled up. Letter was although prepared on 12/03/2012, it was actually sent to FSL with blood sample on 13/03/2012. The Court below in para-51 of judgment, accepted the said explanation. It is trite that if Court below has taken a plausible view, this Court should not disturb the same merely because another view is possible. Applying this principle in the instant case, in our considered judgment, the explanation given by the I.O. was proper and Court below has taken a plausible view while accepting it. Thus, the said finding does not require any interference in this appeal.

56. The appellant was arrested soon after the incident. The site map shows that he was arrested from an agricultural field situated just behind the house of deceased where incident had taken place. Although no witness has entered the witness-box to depose that he had seen the appellant leaving the scene of crime and reaching to the said agricultural field, fact remains that Mukhtar Ahmad (PW-7) and Rasheed Ahmad Ansari (PW-9) clearly deposed that when appellant was handed-over to police, he was carrying a blood stained *Khupri* in his pocket. Rasheed Ahmad Ansari (PW-9) deposed that he was lying in the said agricultural field. Merely because trouser pant of appellant is not seized, it will not disturb the chain of events because it could be very well established that he was lying in the agricultural field while wearing blood stained / mud marked clothes. It is a matter of common knowledge that if a man is lying on the agricultural field, his clothes may get mud stained. Thus, there is no contradiction amongst the statements of Deepak Mishra(PW-12) and A.R. Choudhary, I.O. (PW-33) on this aspect.

57. The nail cuttings of deceased, blood sample of appellant and other incriminating material collected from the scene of crime, such as broken buttons of shirt of appellant were sent for examination to FSL.

58. The said scientific evidence (DNA report) leaves no room for any doubt that from the shirt of the appellant seized by A.R. Choudhary, I.O. (PW-33) buttons were missing. The FSL has taken pains to examine the buttons available on the shirt with the buttons found from the scene of crime and the report opines that missing buttons found at the scene of crime are of the same shirt.

59. The relevant portion of DNA report reads as under:-

अभिमत

उपरोक्त परीक्षण के आधार पर :-

1. रंग, बनावट, डिजाईन तथा माप में प्रदर्श E1 व E2 में पाये गये प्लास्टिक बटन, शर्ट प्रदर्श J पर टंके प्लास्टिक बटनों के समान तथा प्रदर्श E1 व E2 में पाये गये धागे के टुकड़े रंग, बनावट व रेशों की प्रकृति में शर्ट प्रदर्श J पर बटन टॉकने के धागे के टुकड़ों के समान पाये गये।

D.N.A. Report further contains important findings -

क्र.	पैकेट	अंदर पाये गये प्रदर्श	किसका / किससे जप्त	यही अंकित
1.	Q	Nail	Tanveer Anjum	ID 4697
2.	R	Blood Sample	Altaf Ansari	ID 4698

Table -1 Amp F/STR आइडेन्टीफाइलर किट से प्राप्त परिणाम

Genetic Markers	Article Q ID 4697 DNA Profile from Nail of from Unknown Deceased Tanveer	Article R ID 4698 DNA Profile from Blood Sample of Accused Altaf Ansari
D8S 1179	<u>14,15,16</u>	<u>15,16</u>
D21S11	<u>30,32,2,33.</u>	<u>30,32,2.</u>
D7S820	<u>9,10,11</u>	<u>9, 11</u>
CSF1PO	<u>12,12</u>	<u>12,12</u>
D3S1358	<u>15,16,17</u>	<u>17,17</u>
THO1	<u>8,9,9,3</u>	<u>9,9</u>
D13S317	<u>8,9,11,12</u>	<u>11,12</u>
D16S539	<u>8,11,12,13</u>	<u>11,12</u>
D2S1338	<u>19,20,22,23</u>	<u>19,20</u>
D19S433	<u>12, 13, 13.2</u>	<u>12, 13.2</u>
vWA	<u>15,16</u>	<u>15,16</u>
TPOX	<u>8,11,12</u>	<u>8,12</u>
D18S51	<u>11,12</u>	<u>11,12</u>
D5S818	<u>10, 11,12</u>	<u>11,12</u>
FGA	<u>20,21,23</u>	<u>20,21</u>

AMELOGENI	XY	XY
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60. The report dated 15.3.2014 is relevant which reads thus :

परीक्षण प्रतिवेदन

प्राप्त प्रदर्श – निम्नलिखित छै: प्रदर्श प्रयोगशाला की बॉयोलाजी शाखा के प्रकरण क्र. बी. आई./446/12 द्वारा सीलबन्द हालत में दिनांक 11.07.12 को प्राप्त हुए जिन पर लगी चपड़ा सीलें संगत सील नमूना से मिलती हुई पाई गई।

प्रदर्श ई – इसमें दो बटन प्राप्त हुए, जिन्हें यहाँ प्रदर्श E1 व E2 अंकित किया गया। इनके टॉकने के छिद्रों में धागे के छोटे-छोटे टुकड़े फँसे पाये गये। इन्हे घटनास्थल से जप्त होना कहा गया है।

प्रदर्श आई – इसमें एक बिना मूठ की धातु की खुरपी प्राप्त हुई, जिसे यहाँ प्रदर्श I अंकित किया गया। इसे आरोपी अल्ताफ के पेश करने पर जप्त होना कहा गया है।

प्रदर्श जे – इसमें एक शर्ट प्राप्त हुई, जिसे यहाँ प्रदर्श J अंकित किया गया। इसे आरोपी अल्ताफ के पेश करने पर जप्त होना कहा गया है।

प्रदर्श के – इसमें एक सलवार, एक कुर्ता, एक स्वेटर व एक ब्रा प्राप्त हुए, जिन्हे यहाँ प्रदर्श K1 से K4 अंकित किया गया। इन्हें आरक्षक रामकुमार के पेश करने पर जप्त मृत्तिका के कपड़े होना कहा गया है।

प्रदर्श ओ – इसमें फुटप्रिन्ट के दस फोटोग्राफ प्राप्त हुए, जिन्हे यहाँ प्रदर्श O1 से O10 तक अंकित किया गया। इसे घटनास्थल से जप्त होना कहा गया है।

प्रदर्श पी – इसमें कागज पर स्याही से लिए गये दस फुटप्रिन्ट प्राप्त हुए, जिन्हे यहाँ प्रदर्श P1 से P10 अंकित किया गया। इन्हें आरोपी अल्ताफ के लिए गये फुटप्रिन्ट होना कहा गया है।

परीक्षण –

1. प्रदर्श E1 व E2 दो सफेद रंग के अपारदर्श, चार छिद्र वाले, प्लास्टिक सद्रश बटन हैं जिन पर वृत्ताकार में दो बार COTTON अंकित है। इनका औसत व्यास 1.15cm, व औसत मोटाई 0.24cm पाई गई। इनके टॉकने के छिद्रों में सफेद धागे

के छोटे-छोटे टुकड़े फँसे पाये गये टाइप की ऐंठन युक्त तीन बेलनकार स्ट्रेण्ड्स से बने हैं।

2. प्रदर्श J एक पूरी बॉहों की शर्ट है। इस पर सामने बटन-पट्टी पर ऊपर से दूसरे तीसरे व छठे क्रम पर एक-एक तथा दोनों बॉहों के कफ पर दो-दो सफेद रंग के अपारदर्शी, चार छिद्र वाले, प्लास्टिक सद्रश बटन, जिन पर वृत्ताकार में दो बार COTTON अंकित है, सफेद धागे से टंके मिले।

बटन-पट्टी तथा दोनों बॉहों के कफ पर टंके बटनों/टांकने के सफेद धागे का प्रदर्श E1 व E2 से तुलनात्मक परीक्षण करने पर बटनों के रंग, पराबैगनी प्रकाश में प्रतिदीप्ती, बनावट व डिजाईन, व्यास, मोटाई तथा भार में समानता पायी गयी तथा **इन्हें टांकने के सफेद धागे भी रंग, बनावट व रेशों की प्रकृति में समान पाये गये।**

3. प्रदर्श I एक बिना मूठ की धातु की खुरपी है जिसके फल की धारयुक्त चौड़ाई लगभग 4.5cm है। प्रयोगशाला में इसके फल के प्रहार से कटने के नमूना निशान बनाकर देखे गये।
4. प्रदर्श K1 एक सलवार है। इस पर पीछे की तरफ ऊपरी हिस्से में दाहिनी ओर एक एक कटने का निशान पाया गया। **सूक्ष्मदर्शी द्वारा परीक्षण करने पर इस कटने के निशान में धागे/रेशे धारदार हथियार के प्रहार से कटे पाये गये।**
5. प्रदर्श K2 एक आधी बॉहों का लेडीज कुर्ता है जिस पर सामने की तरफ ऊपरी हिस्से में बाईं ओर एक कटने का निशान, दाईं बाँह पर एक कटने का निशान तथा पीछे की तरफ ऊपरी हिस्से में दाईं ओर तीन कटने के निशान व बाईं बाँह पर एक कटने का निशान पाये गये। सूक्ष्मदर्शी द्वारा परीक्षण करने पर इन कटने के निशानों में धागे/रेशे धारदार हथियार के प्रहार से कटे पाये गये।
6. प्रदर्श K3 एक पूरी बॉहों की स्वेटर (लेडीज कार्डीगन) है। इस पर सामने की तरफ ऊपरी हिस्से में बाईं ओर एक, बीच के हिस्से में दाईं ओर एक, दाईं बाँह पर एक व बाईं बाँह कटने का निशान पाये गये। इस पर पीछे की तरफ ऊपरी हिस्से में फेले हुए तीन कटने के निशान तथा बाईं बाँह पर तीन कटने के निशान पाये गये।

सूक्ष्मदर्शी द्वारा परीक्षण करने पर इन कटने के निशानों में धागे/रेशे धारदार हथियार के प्रहार से कटे पाये गये।

7. प्रदर्श K4 एक ब्रा है जिस पर सामने की तरफ दाँई ओर एक व बाँई ओर एक कटने का निशान पाया गया। सूक्ष्मदर्शी द्वारा परीक्षण करने पर इन कटने के निशान में धागे/रेशे धारदार हथियार के प्रहार से कटे पाये गये।
8. प्रदर्श P1 से P5 कागज पर स्याही से लिए गये दाँयें पैर के फुटप्रिन्ट है। प्रदर्श P1 व P2 के फुटप्रिन्ट में अँगूठे के साथ सिर्फ तीन अँगुलियों की छाप दिखाई दी तथा P3 व P5 के फुटप्रिन्ट में भी चौथी अँगुली की छाप अपूर्ण / अस्पष्ट दिखाई दी।
9. प्रदर्श P6 से P10 कागज पर स्याही से लिए गये बाँयें पैर के फुटप्रिन्ट हैं। प्रदर्श P6 से P10 के फुटप्रिन्ट में अँगूठे के साथ सिर्फ तीन अँगुलियों की छाप दिखाई दी।
10. प्रदर्श O1 से O5 तक पाँच रंगीन फोटोग्राफ (प्रिन्ट) हैं जिनमें दाँयें पैर का एक फुटप्रिन्ट दिखाया गया है। प्रदर्श O1 से O5 तक में अँगूठे के साथ सिर्फ तीन अँगुलियों की छाप दिखाई दे रही है। इनमें स्पष्ट स्केल तथा निश्चितता से मापन हेतु स्पष्ट परिसीमाओं का अभाव पाया गया। इनमें निर्णायक मिलान हेतु वैयक्तिक अभिलाक्षणिकों का पर्याप्त डाटा उपलब्ध नहीं पाया गया।
11. प्रदर्श O6 से O10 तक पाँच रंगीन फोटोग्राफ (प्रिन्ट) हैं जिनमें बाँयें पैर का एक फुटप्रिन्ट दिखाया गया है। प्रदर्श O6 से O10 तक में अँगूठे के साथ सिर्फ तीन अँगुलियों की छाप दिखाई दे रही है। इनमें स्पष्ट स्केल तथा निश्चितता से मापन हेतु स्पष्ट परिसीमाओं का अभाव पाया गया। इनमें निर्णायक मिलान हेतु वैयक्तिक अभिलाक्षणिकों का पर्याप्त डाटा उपलब्ध नहीं पाया गया।

अभिमत

उपरोक्त परीक्षण के आधार पर :-

1. रंग, बनावट, डिजाईन तथा माप में प्रदर्श E1 व E2 में पाये गये प्लास्टिक बटन, शर्ट प्रदर्श J पर टंके प्लास्टिक बटनों के समान तथा प्रदर्श E1 व E2 में पाये गये धागे के टुकड़े रंग, बनावट व रेशों की प्रकृति में शर्ट प्रदर्श J पर बटन टॉकने के धागे के टुकड़ों के समान पाये गये।

2. प्रदर्श K1 से K4 – सलवार, कुर्ता, स्वेटर व ब्रा पर कटने के निशानों की उपस्थिति पाई गई जो धारदार हथियार, जैसे कि धातु की खुरपी—प्रदर्श I के प्रहार से आना संभव है।
3. फोटोग्राफ—प्रदर्श O1 से O5 तक में दिखाये गये दाँयें पैर के फुटप्रिन्ट तथा प्रदर्श P1 से P5 के दाँयें पैर के फुटप्रिन्ट में अँगूठे के साथ सिर्फ तीन अँगुलियों की छाप बनने की प्रवृत्ति इनकी समानता की संभावना को इंगित करती है परंतु निर्णायक मिलान हेतु वैयक्तिक अभिलाक्षणिकों के पर्याप्त डाटा के अभाव में वैज्ञानिक निश्चितता से यह बताना संभव नहीं है कि फोटोग्राफ—प्रदर्श O1 से O5 तक में दिखाये गये दाँयें पैर के फुटप्रिन्ट, प्रदर्श P1 से P5 के दाँयें पैर के फुटप्रिन्ट से एकसमान हैं अथवा नहीं।
4. फोटोग्राफ—प्रदर्श O6 से O10 तक में दिखाये गये बाँयें पैर के फुटप्रिन्ट तथा प्रदर्श P6 से P10 के बाँयें पैर के फुटप्रिन्ट में अँगूठे के साथ सिर्फ तीन अँगुलियों की छाप बनने की प्रवृत्ति इनकी समानता की संभावना को इंगित करती है परंतु निर्णायक मिलान हेतु वैयक्तिक अभिलाक्षणिकों के पर्याप्त डाटा के अभाव में वैज्ञानिक निश्चितता से यह बताना संभव नहीं है कि फोटोग्राफ —प्रदर्श O6 से O10 तक में दिखाये गये बाँयें पैर के फुटप्रिन्ट, प्रदर्श P6 से P10 के बाँयें पैर के फुटप्रिन्ट से एकसमान हैं अथवा नहीं।

61. We will be failing in our duty, if argument of Abhinav Dubey, learned counsel for the appellant is not considered about non- matching of blood group. In other words, the arguments of Shri Dubey, learned counsel for the appellant was that there is no finding in the FSL report that blood stains found on the *Khurpi* were of the deceased and in absence of matching of blood group, it cannot be presumed that the *Khurpi* contains human blood of the deceased/victim. We do not see any merit in this contention in view of the recent judgment of the

Supreme Court in **Madhav Vs. State of Madhya Pradesh** reported in **AIR 2021 SC 4031**.

The relevant portion reads as under:-

26. In *R. Shaji vs. State of Kerala* [(2013) 14 SCC 266], this Court took note of almost all previous decisions starting from *Prabhu Babaji Navle vs. State of Bombay* [AIR 1956 SC 51] and including those in *Raghav Prapanna Tripathi (supra)*; *Teja Ram (supra)*, *Gura Singh (supra)*, *John Pandian vs. State* [(2010) 14 SCC 129]; *Sunil Clifford Daniel vs. State of Punjab* [(2012) 11 SCC 205] and came to the conclusion that once the recovery is made in pursuance of a disclosure statement made by the accused, the matching or non-matching of blood groups loses significance.

27. Therefore, as pointed out by this Court in *Balwan Singh vs. State of Chhattisgarh* [(2019) 7 SCC 781], **there cannot be any fixed formula that the prosecution has to prove, or need not prove that the blood groups match. But the judicial conscience of the Court should be satisfied both about the recovery and about the origin of the human blood.**

(Emphasis supplied)

62. The prosecution could establish with sufficient accuracy and precision about collection of blood sample of appellant, sending it to FSL promptly and also the fact that the seal of hospital on the sealed packets were found intact by the FSL laboratory. Thus, the origin and recovery of blood sample satisfies our judicial conscience and in view of *ratio decidendi* of judgment of **Madhav (supra)**, the appellant's contention cannot be accepted that FSL report regarding existence of human blood on *Khurpi* deserves to be ignored. Indeed, in our opinion, the prosecution could establish beyond reasonable doubt that

human blood of appellant's origin was found on the weapon used namely *Khurpi*.

63. In view of foregoing analysis, in our opinion, the prosecution could establish the entire chain of events meticulously. The statements of Sajid Ansari (PW-5) and Riyaz Ahmad Ansari (PW-6) regarding oral dying declaration cannot be disbelieved. It was also established with sufficient clarity that the injured victim was first taken to Sihora Hospital and thereafter to Narmada Hospital, Jabalpur where she died. The factum of conducting of autopsy at Medical College, Jabalpur is duly established. The death was homicidal in nature. The Autopsy Surgeon had taken nail samples of deceased, which were sent for examination to FSL in due course. Delay in sending the nails aforesaid did not contaminate/spoil the nail sample.

64. Blood sample of appellant was duly taken, sealed and sent to FSL and DNA report makes it clear that it is against him. In addition, the broken buttons of appellant's shirt found from the scene of crime matches with other buttons of the shirt seized by the prosecution. Thus, entire chain of events are established by the prosecution by leading credible evidence. By applying the *Panchseel Principles* as per judgment of Supreme Court in **Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116**, we find no reason to disbelieve the story of prosecution.

65. Appellant faintly argued that no permission of the Court could be produced by the prosecution to show that appellant was permitted to be taken to Sihora Hospital from Jail for obtaining his blood sample. In our view, I.O. (PW-33) deposed that their existed such permission but

did not bring it to the Court. Dr. Sanjay Jain (PW-19) and another witness Devendra Uikey (PW-26) proved beyond reasonable doubt in their testimony about presence of appellant in Sihora Hospital and taking of his blood sample. Thus, non-production of any such Court order is of no consequences.

66. During the course of argument, it was also argued that complainant Sajid Ansari (PW-5) reported that when his deceased-*Bhabhi* was assaulted, Arshad Malik and other persons were present at the spot. Sajid Ansari (PW-5) is not an eye-witness to the incident. He lodged the F.I.R. as per information gathered. Since, entire chain of circumstances could be established with accuracy and precision, non-production of Arshad Malik will not provide any brownny point to the appellant.

67. Shri Abhinav Dubey, learned counsel for the appellant alternatively argued that in view of exception 4 of Section 300 IPC, in a case of this nature, where a sudden quarrel had taken an ugly shape and appellant allegedly assaulted the deceased, the conviction may be modified to Section 304 Part-I or Part-II of I.P.C. Exception 4 reads thus :-

“Exception 4. - Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.”

(Emphasis Supplied)

We are unable to persuade ourselves with this line of argument because the autopsy report shows following injuries on the person of the deceased, which are reproduced below.

- (1) One stab wound on right cheek region cutting right ear pinna 4 cm x 1/4 x 5 cm, bone deep.
- (2) Three incised wound on mandibular (chin region) from right to left 6 cm, 4 cm and 2 cm long, muscle deep.
- (3) Two incised wounds on left maxillary region 4 cm each, muscle deep.
- (4) Four incised wound on left cheek, just below ear, 4 cm long each, muscle deep.
- (5) One incised wound just below nose left side 3 cm long muscle deep.
- (6) Three stab wound on right side of neck 4½ x 1/4 x 5 cm, 3½ x 1/4 x 5 cm and 3 x 1/4 x 4 cm of sizes, cutting muscle and blood vessels of neck.
- (7) Multiple stab wound intermingling with each other on center anterior aspect of neck. Cutting trachea, oesophagus muscles and blood vessels of neck and going to cervical vertebrae.
- (8) One stab below injury No.(7) 3 cm x 1/4 x 6 cm.
- (9) Incised wound on left pectoral region – vertical 11 cm x 1/4 cm, muscle deep.
- (10) Incised wound on left iliac region transverse 4 cm x 1/4 x 2 cm tailing medially.
- (11) Incised wound on 5 cm below umbilicus, transverse 5 cm long x 1/4 x 2cm.
- (12) Two to three small superficial scratches present on abdomen around injury No.(11).

- (13) Incised wound on right hand dorsal aspect 4 x 1/4 x 2 cm, muscle deep.
- (14) Stab wound on right palm, bone deep proximal to index finger 5 x 1/4 x 3 cm.
- (15) On back of left thigh stab wound mt. 4 x 1/4 x 6 cm, muscle deep.
- (16) On back of left waist stab wound mt. 4 x 1/4 x 5 cm, muscle deep.
- (17) On upper back three incised wound, one towards side transverse and two vertical, transverse is 8 x 1/4 x 2 cm and vertical are 5 cm x 1/4 x 1 cm incise, all muscle deep.
- (18) Incised wound on right lateral wall of chest 4 x 1/4 x 1 transverse, muscle deep.
- (19) Two stab wounds on left forearm one just above wrist in medial aspect vertical 4 cm x 1/4 x 6 cm. Bone deep other one is 6 inch above this wound oblique 4 x 1/4 x 6 cm of size both bone deep.
- (20) Stab wound on left labia major 3 x 1/4 x 5 cm.
- (21) Incised wound on left temporal region in sagittal plane 5 x 1/4 cm scalp deep.

68. The appellant brutally committed a heinous crime. We are unable to hold that he had not taken undue advantage or not acted in a cruel or unusual manner. Admittedly, victim was relative of the appellant. In good faith, she permitted the appellant to enter her house. Appellant caused multiple injuries by means of a sharp edged weapon to the victim. Thus, in the above factual backdrop, the conviction cannot be modified as prayed by learned counsel for the appellant. In view of this analysis, the judgment of **Ghappu (Supra)** is not applicable in the instant case.

69. The judgment of Bombay High Court (Nagpur Bench) in **Syed Amin Syed Nabi (Supra)** cannot be pressed into service for the simple reason that in the said case, Doctor was unable to state up to what time the injured could be in a position to talk after receiving grievous injuries whereas in the instant case, the Doctor opined that the victim could have been in a position to talk and, therefore, we have accepted the evidence relating to oral dying declaration.

70. So far the judgment of Apex Court in **Punati Ramulu (Supra)** is concerned, suffice it to say that relatives of the victim who entered the witness box as prosecution witnesses by no stretch of imagination can be said to be 'interested witnesses'. Importantly, the relatives of victim are relatives of appellant as well. It could not be established that prosecution witnesses had any interest in falsely arraigning the appellant and, therefore, this judgment is also of no help to the appellant.

71. The counsel for appellant has also placed reliance on the judgment of Supreme Court in **Thangavelu (Supra)**. We are only inclined to observe that as per Section-134 of Evidence Act and settled law what matters is quality of evidence and not their quantity. We have already recorded our satisfaction about quality of evidence, thus, this judgment does not improve the case of appellant.

72. In view of foregoing analysis, in our opinion, the Court below has appreciated the evidence on permissible parameteres and taken a plausible view. The prosecution could establish its case beyond

reasonable doubt. Thus, we find no reason to interfere in the impugned judgment. Resultantly, this appeal fails and is hereby **dismissed**.

(SUJOY PAUL)
JUDGE

(AVANINDRA KUMAR SINGH)
JUDGE

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