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CRA-463-2016

IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK AGARWAL

&amp;

HON'BLE SHRI JUSTICE RATNESH CHANDRA SINGH BISEN

ON THE 25<sup>th</sup> OF FEBRUARY, 2026CRIMINAL APPEAL No. 463 of 2016*KALEEM**Versus**THE STATE OF MADHYA PRADESH*

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Appearance:

*Shri Siddharth Datt - Advocate for the appellant.*

*Shri Ajay Tamrakar - Government Advocate for the respondent/State.*

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Reserved on : 28.01.2026

Pronounced on: 25.02.2026

.....

J U D G M E N T

*Per. Justice Ratnesh Chandra Singh Bisen*

Heard on I.A. No.28207/2025, which is the ninth application under Section 430(1) of the Bhartiya Nagrik Suraksha Sanhita, 2023 for suspension of sentence and grant of bail to appellant Kaleem.

2. Learned counsel for the appellant after arguing at length and unable to convince this Court prays for withdrawal of the aforesaid application.
3. I.A. No.28207/2025 is accordingly dismissed as withdrawn.
4. With the consent of learned counsel for the parties, this appeal is finally heard.
5. The appellant has filed this criminal appeal under Section 374(2) of the



Code of Criminal Procedure challenging the judgment of conviction and order of sentence dated 17.10.2015 passed by the Second Additional Sessions Judge, Khandwa (M.P.) in Sessions Trial No. 13/2014, whereby he has been convicted under Section 302 of the Indian Penal Code and sentenced to life imprisonment with a fine of Rs. 5,000/-, with a default stipulation.

6. The prosecution case, in brief, is that on 06.11.2013 at about 7:40 p.m., Salim (son of Abbas) lodged an oral report at the concerned police station. He stated that he had a monetary dispute with Kaleem (son of Abdul Majeed), who had earlier abused and threatened him. On the same day at about 7:00 p.m., Salim was informed by a village boy, Lokendra, that his wife Najma was burning near the Delgaon–Dhangaon Road. He rushed to the spot and extinguished the fire. Najma informed him that Kaleem had called her there, abused her over the dispute, poured kerosene on her, and set her on fire before fleeing on a motorcycle. She sustained severe burn injuries.

7. Based on his report (Exhibit P-3), Crime No. 185/2013 was registered under Sections 294 and 307 of the Indian Penal Code. Najma was taken for medical treatment but succumbed to her injuries on 07.11.2013. An inquest (No. 171/2013) was conducted, and Section 302 IPC was subsequently added.

8. During investigation, statements of witnesses were recorded, the scene of offence was inspected, a dying declaration was recorded, the accused was arrested, the motorcycle allegedly used in the offence was seized, and the call detail records of the deceased's mobile phone were obtained. After



completion of the investigation, a charge sheet was filed against the accused under Sections 294, 307, and 302 IPC. The case was committed to the Court of Sessions for trial. A charge under Section 302 IPC was framed against the accused. He pleaded not guilty and claimed false implication. In his defence, he examined three witnesses.

9. Learned counsel for the appellant submitted that the judgment of conviction and sentence passed by the trial court is illegal, erroneous and contrary to the evidence on record. The appellant has been falsely implicated due to prior monetary enmity. He submitted that the prosecution case rests mainly on an alleged dying declaration, which is unreliable, contains material inconsistencies, and was not recorded in accordance with law and there is no proper certification of the deceased's mental fitness at the time of making the statement. It is further submitted that there are material contradictions in the prosecution evidence, no independent witness supports the case, the seizure of articles has not been duly proved, and the medical evidence does not conclusively support the prosecution version. It is therefore argued that the prosecution has failed to prove the charge beyond reasonable doubt, and the conviction under Section 302 of Indian Penal Code is liable to be set aside.

10. Learned counsel for the State supported the trial court's judgment and submitted that the prosecution proved the case beyond reasonable doubt. The dying declaration was properly recorded, voluntary, and reliable, and clearly implicates the appellant. The medical evidence corroborates the case, the FIR was promptly lodged, and the motive arising from the monetary dispute is



established. Minor discrepancies in witness statements do not affect the substance of the prosecution case. It is therefore prayed that the appeal be dismissed and the conviction under Section 302 of the Indian Penal Code be upheld.

11. We have heard counsel for the parties and also perused the evidence available on record.

12. To bring home the charges, the prosecution examined as many as 16 witnesses.

13. Ibbu @ Imram (PW-2), the younger brother of the deceased Najma, stated that at about 7:00 p.m., he was sitting at his neighbour Sakharam's house when an unknown motorcyclist informed him that someone was burning on the road outside his house. He immediately ran to the spot and saw the accused, Kaleem, about 200 meters away, leaving on a motorcycle. He returned and asked Sakharam to bring a blanket and with the help of the blanket, he extinguished the fire and then realized that the injured person was his sister, Najma. Najma told him that there had been a dispute over money and that Kaleem had poured kerosene on her and set her on fire. He later showed the police the place of occurrence (Exhibit P-1). He further deposed that in his presence, the police seized a plastic can, burnt clothes, kerosene-soaked soil, plain soil, and a matchbox from the spot, and prepared a seizure panchnama (Exhibit P-2).

14. Saleem (PW-3), husband of the deceased Najma, stated that on the relevant day, after returning from work and while sitting outside his house, a village boy named Lokendra informed him that his wife was burning on



Delgaon Road. When he reached the spot, he saw that Imran had already extinguished the fire with a gudri (blanket). His sister-in-law Rubina, was also present there. He further deposed that Najma told him that Kaleem had set her on fire over a monetary dispute of Rs. 2,000/-. He then lodged a report (Ex. P-3) at Dhangaon Police Station. The police prepared a spot map of the place where the body was found (Ex. P-4) and a Safina form of the deceased (Ex. P-5). After the postmortem examination, the body was handed over to him, and the receipt is Ex. P-6. He also identified the photographs filed in the case as those of his wife. In paragraph 8 of his cross-examination, this witness admitted that Ibu @ Imran was present at the scene when he arrived, but Sakharam was not present.

15. Sakharam (PW-4) deposed that he knew the accused Kaleem, of the same village. His son is Lokendra. On the day of the incident, he saw a woman on fire about 20 feet from his house. Ibu, her brother, arrived, identified her as his sister Najma, and covered her with a blanket to extinguish the fire. He further stated that he did not know who set her on fire or how it occurred. The prosecution declared him hostile. He deposed that the police visited the spot the next morning and seized a green plastic can, burnt clothes, plain soil, and a matchbox (Exhibit P-2). During cross-examination, he admitted that Najma had a bad reputation in the village and was called "Lady Police," and frequently quarrelled with villagers and neighbours.

16. Lokendra (PW-12) stated in his examination-in-chief that the incident occurred at about 7:00 p.m., while he was having dinner at his house. At that time, a driver came and called him outside, informing him that someone was



on fire near the road. However, he did not go to the spot to see who was burning or who had extinguished the fire. Later, he came to know that Najma Bi of the village had been burnt. He did not support the prosecution's case and was therefore declared hostile.

17. Priyanka Mimroh (PW-16), Executive Magistrate, Sanawad, proceeded to Government Hospital, Sanawad, on information from Dhangaon Police Station, to record the dying declaration of Mrs. Najma on 06.11.2013. The Medical Officer briefed her on Najma's condition. Najma understood the questions and stated that Kaleem Punjabi had set her on fire. She further stated that Kaleem had been fighting with her for two or three days, extorting money, and verbally abusing her. She further deposed that the dying declaration was recorded in her own words.

18. Anguri Bi (PW-1), the mother of the deceased Najma, stated that the police prepared the Safina form and the Naksha Panchayatnama of her daughter's dead body. She further stated that at the time of preparation, witnesses Salim, Sultan, Aamin, and others were also present.

19. Irfan (PW-10) deposed that no vehicle was seized from Kaleem in his presence. He further stated that the police did not arrest Kaleem in his presence. However, the arrest memo, Exhibit P-14, bears his signature from Part A to Part A. Thus, he has not supported the prosecution's case and has turned hostile.

20. Dr. Narendra Mandloi (PW-11) stated that on 06.11.2013, he was posted as Medical Officer at the Government Hospital, Sanawad. On that date, Head Constable G.A. Patel of Dhangaon Police Station brought the



injured Najma for medical examination. Upon examination, he observed the following injuries:-

- (i) The victim's face, head, neck, chest, back, both thighs, legs, and genitals were all burned. Her hair had been burned.
- (ii) The body smelled of kerosene, and her clothes were stuck to her body at the joints. Her skin had been burned and peeled off. After first aid, she was immediately referred to M. Y. Hospital, Indore. The report is Exhibit P-16.
- (iii) On 06.11.2013, the dying declaration of the deceased Najma was recorded by the Executive Magistrate, Sanawad.

He stated that the deceased, Najma, was capable of giving a dying declaration. Subsequently, the injured Najma Bai was re-examined by him, and he found that she was also capable of giving a dying declaration."

21. Mahesh Golkar (PW-7) was posted as Head Constable at the Khandwa Police Station since 2013. He deposed that on 07.11.2013, at around 6:30 a.m., a ward boy named Salim Sufi from the District Hospital, Khandwa, brought the inquest intimation. Salim submitted a written report of the death, based on which Inquest No. 0171/13 was registered under Section 174 of the Criminal Procedure Code (Exhibit P/10).

22. Laxman Singh (PW-8) was posted as Head Constable at Police Station Dhangaon since 2012. He deposed that he received the diary of Merg No. 0/12 concerning the deceased, Najma, from the hospital, in which he had also conducted Inquest No. 45/13 under Section 174 of the Cr.P.C., at Dhangaon Police Station, which is marked as Ex. P/11.

23. Gopichand (PW-6) was posted as Outpost In-Charge at M.H. Khandwa



on 07.11.2013. On the same day, M.H. Khandwa received intimation from Moghat Police Station regarding MERG No. 0171/13 under Section 174 Cr.P.C. for investigation. Gopichand conducted the Panchayatnama of the deceased, Najma, and issued the postmortem form (Exhibit P/8). The body was sent for postmortem under the supervision of Constable No. 430, Kadwa Ram, to whom a duty certificate was issued.

24. Dr. Parvej Ahmed (PW-13) deposed that he conducted the post-mortem examination of the deceased, Najma. He opined that the cause of death was cardiac arrest, resulting from burns and burn shock. He further stated that the death likely occurred 4 to 12 hours before the post-mortem examination. The post-mortem report is marked as Exhibit P/8.

25. Kadwa Ram (PW-5) deposed that he was posted at the Khandwa Hospital Outpost on 07.11.2013. He stated that on that date, a woman named Najma had died. Her post-mortem examination was conducted, after which he prepared a receipt for the body. He further stated that the body was handed over to Salim, and the receipt of the same is marked as Ex. P/6.

26. Bhagwan (PW-9) was posted as Inspector at Dhangaon Police Station since 2013. He stated that he submitted the seized articles to Sagar FSL on 28/11/2013 in case No. 185/13 and received a receipt, marked as Ex. P/12, which he later filed at Dhangaon Police Station. In cross-examination, he admitted that the articles were sealed and he did not know their contents.

27. Sheikh Manzoor (PW-14), Assistant Computer Reader at Mundi Police Station, deposed that on 08.11.2013, the Station House Officer, Dhangaon, requested the call details of mobile number 8719878543 from 01.11.2013 to



07.11.2013 (Ex.P.18). On the Sub-Divisional Officer's instructions, he obtained the details from Idea Company, which were sent to his officer, R.K. Puri. The call details (Ex.P.19 to Ex.P.22) were then forwarded to the Station House Officer, Dhangaon (Ex.P.23). He admitted during cross-examination that he did not know the subscriber of the number.

28. Jitendra Bhaskar (PW-15) deposed that he was posted as Inspector at Police Station Dhangaon on 06.11.2013. On that day, Salim Khan lodged FIR No. 185/13 (Ex.P/3) against the accused Kaleem under Sections 307 and 294 IPC for setting his wife, Najma B, on fire. The victim was sent to Government Hospital, Sanawad for medical examination, and statements of the complainant, the victim, and witnesses were recorded. On 07.11.2013, the spot was inspected, a spot map prepared, and items including a kerosene can, half-burnt cloth, soil with kerosene, and a matchbox were seized (Ex.P/2). The accused was arrested (Ex.P/14), and his motorcycle was seized (Seizure Report No. 13). The inquest was conducted on 08.11.2013 (Ex.P/24), mobile call details obtained (Ex.P/8), and all material was sent to FSL Sagar (Ex.P/28) with reports received as Ex.P/29 and Ex.P/30. Following the victim's death, the offense was upgraded to Section 302 IPC, and challan proceedings were filed.

29. If the statements of the prosecution witnesses presented are analyzed in this manner, it becomes clear that at the time when the accused poured kerosene on the deceased Najma and set her on fire, there was no eyewitness present at the spot. An unknown person informed the deceased's brother, Ibbu alias Imran (PW-2), that someone was burning near the road; then Ibbu



alias Imran (PW-2) reached the spot and, after asking Sakharam (PW-4) for a quilt, extinguished the fire with the quilt and found that the said woman was his sister Najma. Najma told Ibbu alias Imran (PW-2) that the accused Kaleem had poured kerosene over her and set her on fire due to a dispute over money. The deceased Najma's husband, Salim (PW-3), also reached the spot on the basis of information given by Lokendra, and by that time the fire had already been put out by Imran. The deceased Najma also told her husband, Salim (PW-3), that it was the accused Kaleem who had set her on fire, and she further stated that the accused Kaleem had set her on fire by pouring kerosene due to a dispute of two thousand rupees. From the statement of Dr. NarendraMandloi (PW-11), it is proved that the deceased Najma was brought in a burnt condition to the Government Hospital, Sanawad, and that on 06.11.2013 her dying declaration was recorded by the Executive Magistrate, Sanawad. This witness's statement also proves that the deceased was in a condition to give a statement. Similarly, from the statement of Priyanka Mimroh, Executive Magistrate (PW-16), it is proved that the deceased Najma stated that Kaleem Punjabi had set her on fire; i.e., this witness recorded the deceased's dying declaration in writing.

30. Thus, from the statements of the above witnesses, it is proved that Najma immediately after the incident on the date of occurrence itself, stated that the accused Kaleem had poured kerosene on her and set her on fire due to a monetary dispute. In the cross-examination of these witnesses, nothing emerged on the basis of which their statements could be disbelieved. Here it is also necessary to mention that on the date of the incident, i.e. 06.11.2013



itself, the First Information Report (Exhibit P-3) was recorded, and it also contains the fact that the accused Kaleem set her on fire due to a transaction of two thousand rupees. Therefore, there is no basis to disbelieve the dying declaration (Exhibit P-16). Hence, where the dying declaration is reliable, conviction can be sustained on its basis; in this regard, the Hon'ble Supreme Court in case of Purshottam Chopra and another Vs.State (Government of NCT of Delhi), reported in (2020) 11 SCC 489, has held that a dying declaration could be the sole basis of conviction even without corroboration, if it inspires confidence of the court. The court should be satisfied that the declarant was in a fit state of mind at the time of making the statement; and that it was a voluntary statement which was not the result of tutoring, prompting or imagination.

31. From the appellant's side, the main argument has been that in her dying declaration (Exhibit P-16) the deceased Najma stated that "Kaleem Punjabi" set her on fire, whereas the appellant's name is Kaleem, not Kaleem Punjabi; rather, Kaleem Punjabi is some other person. In this regard, the appellant examined defence witnesses Shaukat Hussain (DW-1) and Naimuddin (DW-2), and through both witnesses an attempt was made to prove that the accused Kaleem is not a Punjabi muslim and that the accused is not known by the name Kaleem Punjabi. The above two witnesses produced by the appellant are not reliable. This is because, in the cross-examination of the prosecution witnesses Ibbu alias Imran (PW-2), Salim (PW-3), and Sakharam (PW-4), no suggestion was given that the accused is not called Kaleem Punjabi and that there is another person in the locality named



Kaleem Punjabi. Moreover, in the First Information Report (Exhibit P-3), the accused is mentioned as Kaleem s/o Majid, Muslim, resident of Dhangaon, and similarly, in the spot map/panchanama (Exhibit P-4) also, Kaleem s/o Abdul Majid is mentioned. Therefore, the said argument has no merit.

32. From the defence side, Saleem (DW-3) was again examined as Defence Witness No. 3, and he was made to give a statement contrary to what he had stated earlier in support of the prosecution. In such a situation, his statement recorded as a defence witness cannot be accepted. It is appropriate to mention here that once a witness has been examined by the prosecution, he should not be examined again as a defence witness; rather, if the court finds it necessary to re-examine the witness for the ends of justice, it may allow re-examination or cross-examination, but it cannot allow the witness to be examined as a defence witness. In this regard, the principle laid down in the Supreme Court in case of **State of Madhya Pradesh v. Badri Yadav and another (2006) 9 SCC 549** is worth noting, which is as follows-

“11. In our view, the reasoning recorded by the High Court, itself would have been sufficient to reject the testimony of DW 1 and DW 2. However, having said so the High Court reversed the order of conviction and recorded the order of acquittal, which is perverse.

12. In this case the application under Section 311 CrPC for recalling PW 8 and PW 9 and re-examining them was rejected by the court on 2-9-1994. Therefore, the question with regard to recalling PW 8 and PW 9 and re-examining them stood closed. There is no provision in the Code of Criminal Procedure that by filing affidavit the witnesses examined as PWs (PW 8 and PW 9 in this case) could be juxtaposed as DW 1 and DW 2 and be examined as defence witnesses on behalf of the accused.

13. Mr A.T.M. Rangaramanujam, learned Senior



Counsel for the respondent, however, contended that the accused is entitled to enter upon defence and adduce evidence in support of his case as provided under Section 233 CrPC particularly sub-section (3) of Section 233. Sub-section (3) of Section 233 reads:

“233. (3) If the accused applies for the issue of any process for compelling the attendance of any witness or the production of any document or thing, the Judge shall issue such process unless he considers, for reasons to be recorded, that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice.”

(emphasis supplied)

14. Section 233 itself deals with entering upon defence by the accused. The application for recalling and re-examining persons already examined, as provided under Section 311 CrPC, was already rejected. The power to summon any person as a witness or recall and re-examine any person already examined is the discretionary power of the court in case such evidence appears to it to be essential for a just decision of the case. Under Section 233 CrPC the accused can enter upon defence and he can apply for the issue of any process for compelling the attendance of any witness in his defence. The provisions of sub-section (3) of Section 233 cannot be understood as compelling the attendance of any prosecution witness examined, cross-examined and discharged to be juxtaposed as a defence witness. In the present case PW 8 and PW 9 were juxtaposed as DW 1 and DW 2. This situation is not one what was contemplated by sub-section (3) of Section 233 CrPC.

15. When such frivolous and vexatious petitions are filed, a judge is not powerless. He should have used his discretionary power and should have refused relief on the ground that it is made for the purpose of vexation or



delay or for defeating the ends of justice. In the present case, the witnesses were examined by the prosecution as eyewitnesses on 18-12-1990, cross-examined and discharged. Thereafter, an application under Section 311 CrPC was rejected. They were recalled purportedly in exercise of power under sub-section (3) of Section 233 CrPC and examined as DW 1 and DW 2 on behalf of the accused on 17-7-1995. This was clearly for the purpose of defeating the ends of justice, which is not permissible under the law.

16. In *Yakub Ismailbhai Patel v. State of Gujarat* [(2004) 12 SCC 229 : 2004 SCC (Cri) Supp 196] in which one of us Dr. Ar. Lakshmanan, J. was the author of the judgment, in somewhat similar case to the facts of the present case, it was held that once a witness is examined as a prosecution witness, he cannot be allowed to perjure himself by resiling from the testimony given in court on oath by filing affidavit stating that whatever he had deposed before court as PW was not true and was done so at the instance of the police. In that case the evidence of PW 1 was relied upon by the trial court and also by the High Court. He was examined by the prosecution as an eyewitness. He also identified the appellants and the co-accused in the court. After a long lapse of time he filed an affidavit stating that whatever he had stated before the court was not true and had done so at the instance of the police. In those facts and circumstances this Court in paras 38 and 39 at SCC pp. 240-41 held as under:

“38. Significantly this witness, later on filed an affidavit, wherein he had sworn to the fact that whatever he had deposed before court as PW 1 was not true and it was so done at the instance of the police.

39. The averments in the affidavit are rightly rejected by the High Court and also the Sessions Court. Once the witness is examined as a prosecution witness, he cannot be allowed to perjure himself by resiling from the testimony given in court on oath. It is pertinent to note that during the intervening period between giving of evidence as PW 1 and filing of affidavit in court later, he was in jail in a narcotic case and that the accused persons were also fellow inmates there.”



17. In the present case, both PW 8 and PW 9 are related to the deceased. PW 8 is the elder brother of the deceased and PW 9 is the friend of the deceased. Being the close relative and friend of the deceased there is no rhyme and reason to depose falsely against the accused and allowing the real culprit to escape unpunished. On 21-9-1989, their statements were recorded under Section 164 CrPC before the Magistrate. On 18-12-1990, their depositions were recorded before the Sessions Judge. In both the statements they have stated that they were eyewitnesses and witnessed the occurrence. Both of them have stated that they saw the accused assaulting the deceased with knives and swords. They were subjected to lengthy cross-examination but nothing could be elicited to discredit the statement-in-chief. Their examination as defence witnesses was recorded on 17-7-1995 when they resiled completely from the previous statements as prosecution witnesses. It, therefore, clearly appears that the subsequent statements as defence witnesses were concocted well an afterthought. They were either won over or were under threat or intimidation from the accused. No reasonable person, properly instructed in law, would have acted upon such statements.”

33. On careful consideration of the entire evidence, it is evident that although no eyewitness saw the accused set the deceased Najma on fire, the dying declaration recorded by the Executive Magistrate, Sanawad (Exhibit P-16), is reliable, voluntary, and corroborated by the First Information Report (Exhibit P-3). The statements of PW-2 (Ibbu alias Imran) and PW-3 (Saleem) consistently support that Najma identified the appellant Kaleem as the perpetrator, citing a monetary dispute as motive. The appellant's contention that the deceased referred to “Kaleem Punjabi” is unsubstantiated, as no evidence suggests another individual by that name, and the FIR and



spot panchanama clearly identify the accused. Defence witnesses attempting to contradict this identification were found unreliable. Other factors regarding seizure of articles, hostile witnesses, and minor contradictions in evidence do not weaken the prosecution case. Medical evidence confirms the cause of death due to burns caused intentionally, and procedural compliance regarding the dying declaration is established. So far as the case of Radhelal vs State of MP (Criminal Appeal 422/1996, Judgment dated on 17-04-2025) which has been relied by counsel for the appellant/accused is concerned, the same is of no assistance to the appellant on the basis of the principle propounded in the said case because the facts and circumstances of this case are different

34. In view of the above, we are of the considered opinion that the prosecution has proved the charge beyond reasonable doubt. Accordingly, the appeal fails and is hereby **dismissed**. The conviction under Section 302 of the Indian Penal Code and the sentence of life imprisonment with fine are upheld.

35. Record of the trial Court be sent back immediately.

(VIVEK AGARWAL)  
JUDGE

(RATNESH CHANDRA SINGH BISEN)  
JUDGE