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CRA-12354-2023

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK AGARWAL

&

HON'BLE SHRI JUSTICE RAJENDRA KUMAR VANI

ON THE 9th OF FEBRUARY, 2026

CRIMINAL APPEAL No. 12354 of 2023

KAMLESH BAI KUSHWAHA AND OTHERS

Versus

THE STATE OF MADHYA PRADESH

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Appearance:

Shri Vineet Mishra - Advocate for the appellants.

Shri Ajay Tamrkar - Government Advocate for the respondent/ State.

Ms. Nandani Chheepa - Advocate for the objector.

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JUDGMENT

Dictated in Open Court

Per. Justice Vivek Agarwal

Learned counsel for the appellant prays for withdrawal of I.A. No.31323/2024, which is second application for suspension of sentence and grant of bail to appellant - Raju Kushwaha.

Accordingly, I.A. No.31323/2024 is dismissed as withdrawn.

With the consent of learned counsel for the parties, this appeal is heard finally.

This appeal is filed being aggrieved of the judgment dated 16.11.2022 passed by the learned First Additional Sessions Judge, District Panna whereby learned trial



Court has convicted appellants Kamlesh Bai Kushwaha and Raju Kushwaha under Section 302/34 and sentenced them to undergo life imprisonment along with fine of Rs.5,000/- with a default stipulation to undergo additional R.I. for six months and under Section 201 of IPC convicted and sentenced them to undergo R.I. for 1 year along with fine of Rs.1,000/- with a default stipulation to undergo additional R.I. for 1 month.

2. Learned counsel for the appellants submits that it is a case of circumstantial evidence. None of the chain of circumstances is complete. Firstly, the theory of the prosecution that an application of Kamlesh Bai Kushwaha was pending before the Women and Child Development Department, is not made out by examining any witness from that department though such witness was available in the form of Mr. Pradeep Kumar but prosecution failed to examine him. Secondly, the theory which has been imputed is that Kamlesh was having illicit relationship with Raju Kushwaha but that theory too has not been established.

3. Theory of last seen by Ramzan Khan (P.W.15) has not been proved in as much as Ramzan Khan (P.W.15) has turned hostile. It is further pointed out that memorandum (Exhibit P/16) was given by Raju Kushwaha at 8:30 A.M. on 05.04.2017 at Police Station Amanganj. Similarly, memorandum (Exhibit P/17) of Smt. Kamlesh Kushwaha was drawn on 9:00 A.M. on 5.4.2017 at Police Station Amanganj, whereas, as per Shri Chhotelal Kushwaha (P.W.7) brother of deceased Panthprakash, he has admitted that he had received the intimation in regard to notice (Exhibit P/8) at 6:30 A.M. on 05.4.2017. He has admitted in para 26 that he had reached Police Station, Amanganj where they had stayed for 05 minutes then they had gone to the spot. Police had parked its vehicle near nursery where 05-06 persons from the complainant party and 08-10 police personnel were present. He admits that he does not know as to what proceedings were drawn by the police but firstly they had obtained his signature on a seizure memo. He admits that he does not know as to which of the document was



made to sign by him.

4. In para 27 of his cross-examination, this witness states that skeleton of deceased was scattered and was not in a position to be identified. All the stray pieces of skeleton were collected and that he cannot say as to which proceedings were drawn because police has only obtained his signature. It is also pointed out that scene of crime unit report dated 5.4.2017 signed by Dr. Mahendra Singh, Scientific Officer, which has been uploaded by him on record, makes a mention of the fact that he had received information for inspection on 5.4.2017 at 7:00 A.M. from Police Control Room, Panna over phone. He had carried out inspection at 8:30 A.M. on 05.4.2017. He had reached the place of the incident along with SDOP Gunnaur Shri V. S. Dhurve, Inspector Shri D. K. Singh and Finger Print Head Constable 83 Anthony Pasana. It has also come on record that Inspector D. K. Singh who allegedly recorded memorandum (Exhibit P/16) given by Raju Kushwaha at 8:30 P.M. had recorded memorandum at Police Station Amanganj. Same is the status of memorandum given by Kamlesh at 9:00 A.M. which was recorded by D.K. Singh at Police Station Amanganj. Whereas, according to this scientific officer Shri Mahendra Singh, D. K. Singh was present at the scene of crime at 8:30 A.M. Thus, it is evident that memorandum is a fictitious document which was prepared subsequently to rope in the accused persons. Thus, it is submitted that chain of circumstances is not complete. The conviction has been made on the basis of surmises and conjectures. Even Chhotelal (P.W.7) in para 16 of his cross examination has admitted that he had never seen Raju Kushwaha staying in his house in absence of Panthprakash. This witness also admits that his brother Panthprakash had never informed him about illicit relationship between Raju and Kamlesh. This witness admits that when Panthprakash had gone to Gunnaur and Kamlesh had not gone along with him. He admits that there are several animals in the nursery adjacent to jungle and if animals would have dragged his brother and would have eaten him, he cannot say anything about that.



5. Shri Ajay Tamrakar, learned Public Prosecutor for the State and Ms. Nandani Cheepa, learned counsel for the objector opposes the prayer and submits that there is evidence of last seen as given by Ramzan Khan (P.W.15). Chotelal (P.W.7) has admitted that there was illicit relationship between Raju and Kamlesh Bai. There is a recovery of mobile vide memorandum (Exhibit P/28), which was given by Raju Kushwaha on 06.07.2017 at 7:30 A.M., on the basis of which mobile and Sim was recovered from *Nala* vide seizure memo (Exhibit P/29) and therefore, it is a fit case to maintain judgment of conviction.

6. After hearing learned counsel for the parties and going through the record, firstly, the evidence of last seen is not corroborated. Ramzan Khan (P.W.15) has turned hostile. He has not supported the prosecution case. P.W.15- Ramzan Khan has denied that on 22.3.2017 at about 3-4 P.M. under a Sheesham tree Raju Kushwaha, Panthprakash Kushwaha and his wife Kamlesh Bai were sitting. He denied that all three are known to him. He denied that later on he came to know of the fact that Panthprakash was murdered. He denied that Kamlesh and Raju were caught thereafter. He denied that they were consuming water under the tree and then stated that for the first time he saw the accused persons in the Court. Therefore, theory of last seen is not made out.

7. As far as recovery of dead body on the memorandum of accused persons is concerned, it is evident from the report of the scientific officer, scene of crime mobile unit FSL, Panna dated 5.4.2017, which has though not being exhibited by the prosecution but can be used by us in the light of the judgment of Hon'ble Division Bench of this High Court in the case of *Lallu Singh S/o Jagdish Singh Samgar Vs. State of M.P. 1996 MPLJ 452*, wherein the Hon'ble Division Bench has noted as under:-

"6. We deprecate method of prosecution of withholding the evidence collected during investigation. The prosecutor is a "State" and, therefore,



the prosecution should be fair enough to produce all the evidence collected during investigation and it should be left to the Court to come to its own conclusion on the facts proved before him or the Court concerned. But despite the absence of formal proof of document of dying declaration, the same can be made use of by the accused in his defence, accused can take the advantage of the document even without proof of the same. Similarly, the medical certificate showing the injuries on the body of the accused can also be made use of by the accused despite absence of the formal proof."

8. Thus, it is evident that if prosecution displayed intellectual dishonesty in not exhibiting the scene of crime report which was prepared at their instance by SHO Gunnaur, Panna in Crime No.66/2017, then when it was produced by the accused can be used by us in the light of judgment of Hon'ble Coordinate Bench in the case of **Lallu Singh** (supra).

9. This report prepared by the Scientific Officer Dr. Mahendra Singh reveals that he had received the intimation on 5.4.2017 for inspection of the scene of crime at 7 A.M. This intimation was received by him from Police Control Room, Panna. It is mentioned in the report that inspection was carried out at 8.30 A.M. on 5.4.2017. When he had reached the scene of crime in FSL Vehicle No. MP 03-0584. Officers who were present at the time of inspection were SDOP Gunnor, Shri P. S. Dhurve, Inspector Shri D. K. Singh, Fingerprint Head Constable 83 Anthony Pasana. Thus, when Inspector D. K. Singh was present at the scene of crime which is 4 kms away from Amanganj Tiraha, Baraj road towards the jungle then memorandum of Raju (Exhibit P/16) could not have been recorded at 8.30 A.M. on 5.4.2017 at Police Station Amanganj.

10. Similarly, memorandum (Exhibit P/17) of Kamlesh could not have been recorded at 9 A.M. at Police Station Amanganj when D. K. Singh was present at the



scene of crime and was not available in the police station as per the report of Dr. Mahendra Singh. Thus, these memorandums drawn on 5.4.2017 at 8.30 and 9.00 A.M. becomes inadmissible in evidence and are of no use. Similarly memorandum (Exhibit P/29) appears to be of no use because learned Government Advocate has failed to point out under which provision of law it is provided that multiple memorandums can be drawn as per the convenience of police officers.

11. Thirdly, Chhotelal Kushwaha (P.W.7) star prosecution witness who alone has been examined in support of these documents Exhibits P/16, P/17 and P/29, has admitted that his signatures were obtained on blank papers. This witness has admitted that he had never seen Kamlesh and Raju in a compromising position nor Panthprakash had ever informed him about said illicit relationship. This witness also admits that Raju never used to stay back in their home in absence of Panthprakash.

12. Another fact which is to be taken into consideration and should have been taken into consideration by the trial Court which in our opinion, grossly failed to do justice between the parties and has also failed to appreciate the evidence on record is that prosecution built up two theories simultaneously apart from that of illicit relationship that Kamlesh Bai Kushwaha one of the accused and convicted appellant had applied for a job in Mahila Bal Vikas Vibhag. They did not produce any evidence to show that such application was pending in Mahila Bal Vikas Vibhag. Though Ms. Nandani Cheepa, counsel appearing for the objector submits that Pradeep Kumar is the witness as he was working as Assistant Grade III but prosecution did not deem it proper to examine him to prove the most vital aspect of the case on which prosecution has tried to build its foundation, namely that Kamlesh Bai was an applicant and therefore, in the name of getting her appointment, Raju camouflaging his identity as an official of Mahila Bal Vikas Department called Panthprakash and Kamlesh Bai in front of office of Mahila Bal Vikas to get the application of Kamlesh cleared for appointment. Thus, first foundation of prosecution case is not made out.



13. Secondly, prosecution tried to built up a case that in a bottle of water pesticides/ insecticide was administered to the deceased Panthprakash which became cause of his death and thereafter dead body was taken on a motorcycle and was left in the jungle. However, this theory of administration of pesticide/ insecticide is not completed. Despite recovery of bottle of a pesticide allegedly at the instance of Kamlesh, there is no material on record to show that what was the odor, smell, pungency, colour of the said pesticide/ insecticide so as to bring on record that it was odorless, colorless and would have been administered innocuously as is alleged by the prosecution. These physical attributes of the chemical could have been brought on record by simple test but prosecution failed to do that for which prosecution itself is to be blamed.

14. As discussed above, since recovery of skeleton cannot be said to be at the instance of the accused or on the basis of memorandums Exhibit P/16 and P/17 as alleged by the prosecution as this theory get rebutted from the evidence of P.W.7 Chhotelal who has stated that he had received the notice in regard to recovery of dead body at 6.30 A.M. on 5.4.2017 vide Exhibit P/8 and then there is evidence of Dr. Mahendra Singh, Scientific Officer that he had received the notice in regard to inspection of the scene of crime at 7 A.M. and had reached the scene of crime at 8.30 A.M. along with the so called author of memorandum, it is evident that memorandum Exhibit P/16 and P/17 when tested are fictitious document. Even Chhotelal Kushwaha has admitted that his signatures were obtained on blank papers. It will be for the prosecution to order departmental enquiry against Inspector D. K. Singh for creating a fictitious document as discussed above and is evident from the evidence which has come on record. We leave it to the discretion and wisdom of the Director General of Police that if D. K. Singh who was Inspector at Police Station Gunnor, District Panna, on 5.4.2017 is still in service then they may conduct a departmental enquiry after giving him an opportunity of hearing because prosecution cannot be allowed to fictitiously create documents so as to seek conviction of innocent citizens of this



country. Thus, when tested then none of chain of circumstances is complete. Judgment of conviction cannot be sustained in the eyes of law.

15. Even call details could not be substantiated in absence of proper Section 65B of the Evidence Act Certificate as it was not obtained from the concerned service provider but has been given by the Constable who had taken out the call details. There is another intriguing aspect of the case that there is no telephone call location in regard to Kamlesh to show that she was also present either in front of Women and Child Development Department, Panna or in the jungle where dead body was allegedly dropped by Raju and Kamlesh on a motorcycle. Similarly prosecution has not brought any call details of Raju showing his tower location on 22.3.2017 or thereafter at the place where dead body was recovered which is admittedly about 4 kms in east from Amanganj Tiraha, Baraj road in a jungle by the side of nursery.

16. When law laid down by the Supreme Court in the case of *Sharad Birdhichand Sarda vs State Of Maharashtra (1984) 4 SCC 116*, is taken into consideration, then in a case of circumstantial evidence five circumstances needs to be proved as is also held in the case of *Shivaji Sahebrao Bobade & Anr vs State Of Maharashtra, (1973) 2 SCC 793* and they being as under:

"153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in *Shivaji Sahabrao*



Bobade & Anr. v. State of Maharashtra where the following observations were made: [SCC para 19, p.807: SCC (Cri) p. 1047]

Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.

(2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say. they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

Same is the ratio of law in *Padam abhar vs. State of Orissa, 2025 SCC Online SC 1190*; *Ramu Appa Mahapatra Vs. State of Maharashtra - 2025 LiveLaw (SC) 155*; *MD. Bani Alam Mazid @ Dhan Vs. State of Assam - 2025 LiveLaw (SC) 251* and judgment of Supreme Court in *Nandu Singh Vs. State of Madhya Pradesh (Now Chhatisgarh) - Cr.A. No.285/2022*.

17. We are of the opinion that chain of circumstances is not complete. There is no evidence of last seen, conviction at the behest of the police personnel who have conducted not only faulty investigation but malicious investigation as is evident from memorandums Exhibit P/16 and P/17 drawn by Inspector D.K. Singh so also the fact that memorandum were drawn as per the convenience of Investigating Officer,



impugned judgment cannot be sustained in the eyes of law.

18. In the result, appeal is allowed. Appellants, if not required in any other case, be released forthwith.

19. Record of the learned trial Court be sent back.

20. Copy of the judgment be supplied to Government Advocate who may request the Director General of Police to do the needful within his discretion and at least Director General of Police is requested to circulate this judgment amongst all police personnel that if any of the act of the police person is found to be fictitious on creation of forged documents then departmental enquiry can be initiated against them. This will be a warning to a police person to be careful while carrying out an investigation.

(VIVEK AGARWAL)
JUDGE

(RAJENDRA KUMAR VANI)
JUDGE

mrs. mishra