

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

BEFORE

HON'BLE SHRI JUSTICE VIVEK AGRAWAL

&

HON'BLE SHRI JUSTICE RAMKUMAR CHOUBEY

ON THE 10TH OF NOVEMBER, 2025

CRIMINAL APPEAL NO.11001/2024

PRATAP PATEL ALIAS PRATAP SINGH

VS.

STATE OF MADHYA PRADESH

Appearance:

Appellant by Ms Sarita Kochhal, Advocate.

Shri Ajay Tamrakar, Government Advocate for the respondent/State.

JUDGMENT

Per : Shri Ramkumar Choubey, J.

Albeit, the matter is listed for consideration of I.A.No.19365/2025, which is first application filed under Section 389(1) of the Code of Criminal Procedure, 1973 (for short "CrPC") for suspension of sentence and grant of bail to the appellant, however, rather pressing on the said application, the learned counsel for the parties concur to argue the matter finally. Thus, it is heard finally.

2. This criminal appeal has been filed under Section 374(2) of CrPC by the appellant assailing the impugned judgment dated 31.05.2024 passed by the learned Special Judge, Damoh in S.T. No.207/2017 thereby convicting the appellant under Section 302 of IPC

and sentencing him life imprisonment and fine of Rs.5000/- with default stipulation.

3. The encapsulated facts necessary to reach a decisive conclusion are that the first informant Kallu Patel on 27.09.2017 made a written report to the effect that his real brother Suraj Patel (hereafter referred to as 'deceased') was an auto-rickshaw driver. On 26.09.2017 at about 7.0'clock, deceased had gone to city for running auto-rickshaw. On 27.09.2017 at 8:00, he came to know that at Khajri Mohalla some unknown person has killed the deceased and his corpse is lying on the road. When he reached on spot, he found that the deceased was lying on the road and on scanning his body, he found that deceased had sustained an incised wound behind the neck measuring 7 inch long & 2 inch deep, caused by sharp-edged weapon and blood had sprawled on the road and it was assumed that some unknown person has committed the murder of the deceased by means of a sharp-edged weapon. On that basis, Sub Inspector R.P. Choudhary of Police Station Kotwali, District Damoh registered Dehati Nalishi and a inquest intimation No.0/17 under Section 174 of CrPC and thereafter an FIR bearing Crime No.696/2017 was registered against unknown person for the offence punishable under Section 302 of IPC and the investigation was set in motion.

3.1 During investigation, statement of witnesses living in vicinity namely Mukku alias Mukesh Yadav, Prem Kumar alias Pappu, Munna alias Butler, etc. were recorded under Section 161 of CrPC and also under Section 164 of CrPC. Thereafter, the appellant/accused was shackled and on the basis of his memorandum (Ex.P/17) recorded under Section 27 of the Evidence Act, an axe, used in the commission of offence, was recovered from his possession.

3.2 After completion of investigation, a final report was submitted to the Court of Chief Judicial Magistrate, Damoh, who vide order dated 13.12.2017 committed the case to the Court of Session, being exclusively triable by it.

3.3 At trial, the appellant abjured his guilt and pleaded fallacious implication. On the fulcrum of material gleaned by the prosecution and the evidence adduced, the learned Special Judge vide judgment 31.05.2024 convicted and sentenced the appellant/accused as mentioned above. Hence, the appellant/accused has filed the instant criminal appeal.

4. Learned counsel for the appellant/accused sanguinely propounds that the offence might have been committed by some unknown person and the appellant/accused has, without any foundation, been incriminated falsely. She asserts that in the absence of any incriminating material available on record against the appellant/accused, the learned trial court has convicted him on assumptions, based on uncorroborated evidence. On these premise, learned counsel for the appellant prays that the appellant/accused deserves to be acquitted.

5. In contrast, learned counsel for the respondent/State submits that the case rests on last seen theory inasmuch as it was the appellant, who was last seen with the deceased, which has been duly proved by the prosecution by way of evidence adduced before the trial court. Ergo, succouring the judgment of conviction and order of sentence, learned counsel for the respondent/State prays for dismissal of the criminal appeal.

6. Heard the learned counsel for the parties and perused the record of the trial court.

7. To bring home the charge, the prosecution has examined as many as 17 witnesses. Indubitably, there was no eyewitness of the occurrence as per the prosecution's portrayal. It is evident from the Dehati Nalishi (Ex.P/1A and 2/A) as also from the FIR (Ex.P/27) that the deceased was killed by some unknown person as reported by the first informant Kallu Patel (PW2).

8. The witness Kallu Patel (PW2) in his examination-in-chief has categorically stated that he came to know that the deceased was murdered and when he reached the spot, he saw the body of deceased lying on the road and he had sustained injuries by means of sharp-edged weapon on his neck. He further stated that the police personnel came on spot and then Dehati Nalishi was recorded and mag intimation was registered. This witness has not stated anything against the appellant/accused, rather he stated that he was not acquainted with him.

9. The witness Munna Thakur (PW9), in his evidence, stated that he recognises the appellant/accused as he lives in the same locality and at the time of occurrence, he was at his house along with Pappu, Mukesh and Hemendra, who were watching a movie on television. At about 1.0'clock in the night, Pratap (appellant) came with one Suraj (deceased) and disclosed about an altercation took place between them. When this witness, asked Mukesh to go out and see with whom Pratap had quarrel, then Mukesh went out and asked the deceased about the bone of contention, at which, deceased told that the quarrel is about the auto-rickshaw fare and thereafter the appellant went out of Munna Thakur's house saying that he would settle the dispute and pay the fare and then the appellant and deceased had gone. He further stated that on the next morning, he came to know that at a distance of around one kilometer from his house, a dead body was lying, then they reached the

spot between 8:30 & 8:45 am where they found that the dead body was of auto-rickshaw driver Suraj Patel (deceased) and nearby the auto-rickshaw was stationed. In cross-examination, this witness Munna has admitted that he did not know the deceased prior to incident by name, nor did he see him earlier. In the night when deceased came to his house, at that time, this witness did not see him and it was Mukesh who went out of the house and saw the auto-rickshaw driver (deceased). On a query made that 'what Mukesh informed about auto-rickshaw driver when he talked to him in night', this witness answered that Mukesh told him that auto-rickshaw driver had told him that there was no fighting between him and appellant, but there was only a discussion about fare.

10. The witness Mukku alias Mukesh Yadav (PW15) has stated in his evidence, that he was well-acquainted with the appellant/accused and also auto-rickshaw driver Suraj Patel. In the yesternight of incident, the appellant came to the house of Pappu and when knocked the door, this witness had opened the doors and said to the appellant to go his home as they were sleeping. When this witness got out of the house, he saw that the appellant and deceased were going in auto-rickshaw from that place. He further stated that next morning, Hemendra told him that a dead body of auto-rickshaw driver was lying on the road, but this witness did not see the deceased. This witness in his cross-examination has stated that when the appellant came to the house of Pappu, he was not allowed to enter as they were sleeping. He further stated that he had no discussion with the appellant with respect to altercation with deceased and also had no discussion with deceased in that regard. He has denied about mentioning of name of deceased in his police statement (Ex.D/1). He admitted that the name of deceased was told to him by the police personnel. He stated that after the incident, when the

police personnel showed a photograph of deceased and disclosed his name, then only he came to know about the name of deceased. On that basis, this witness has disclosed the name of deceased as Suraj.

11. Another witness Pappu alias Premkumar (PW16), in his evidence, stated that he along with Hemendra, Munna and Mukesh were sleeping and at about 3.0'clock, the appellant knocked the door, at which, Mukku opened the door and then appellant came in and asked for Rs.20/- then Munna denied to have small-change of Rs.20/- and then the appellant went out and Munna had sent Mukesh to go out and see the appellant, thereafter, Mukesh told that the appellant has left with auto-rickshaw driver. He further stated that after some time he went out of the house to smoke and saw that the appellant was chatting with auto-rickshaw driver and they were arguing on some issue and then he came back and slept. He further stated in the morning, Hemendra told him that a dead body and auto-rickshaw were lying near their house. Thereafter, this witness had gone to take tea at the tea-stall, where he saw the appellant taking breakfast and when he asked the appellant that he saw him with auto-rickshaw driver, then the appellant told him to keep such talk secret, which he would tell later. This witness has also stated that Mukesh had told him that the auto-driver, with which the appellant was, was the one who had died. This witness in his cross-examination was confronted with his police statement (Ex.D/2), then it has been found that his statements are contradictory. Further, this witness admitted in his cross-examination that he did not know the auto-rickshaw driver and in the previous night of incident, he saw auto-driver from a distance and he admitted that who was that auto-driver, he could not say.

12. Other witnesses produced by the prosecution were Shivshankar Patel (PW1), Head Constable Hamid Khan (PW3), Ram

Patel (PW4), Sub Inspector Rubi Chouhan (PW5), Saurabh Tandon (PW12), Head Constable Deepak Karosiya (PW17), have not given any evidence which can suffice to establish the guilt of the appellant. Witnesses Hemendra Patel (PW6) and Pankaj Shrivastava (PW7) have been declared hostile as they did not support the prosecution case. Witnesses Purushottam Patel (PW10) and Rinku Vishwakarma (PW11) stated about memorandum (Ex.P/17) and recovery of axe vide seizure memo (Ex.P/18). Witness Sub Inspector R.P. Choudhary (PW14) was Investigating Officer, who investigated the matter and Dr.Deepak Vyas (PW13) had conducted the autopsy and found that the deceased had sustained incised wound in size 5x4x5 cm near left ear, which was cut till occipital region and blood was oozing and an incised wound in size 3x1x2 cm on the right side of neck and spinal cord was found torn and cervical vertebrae was found crushed. As per the doctor's opinion the death was homicidal in nature and he proved his postmortem report (Ex.P/24) and also the query report about the axe (Ex.P/25).

13. So far as the recovery of axe from the possession of the appellant is concerned, it was sent to the State Forensic Laboratory, Sagar for examination and vide its report, it is revealed that the blood stains found on the axe could not be concluded as was human blood or not. Thus, mere fact of recovery of axe on the basis of memorandum of appellant, in the light of FSL report (Ex.P/13), the same does not corroborate the prosecution case.

14. The whole theory of last seen together was based on the evidence of Munna Thakur (PW9), Mukku alias Mukesh (PW15) and Pappu alias Premshankar (PW16). On a close scrutiny of the statements of these witnesses, it is amply clear that they are untrustworthy as there are contradictions and omissions of serious nature. Their statements are

not fully corroborated with each other and thus these witnesses cannot be termed genuine so far as the last seen together theory is concerned. There is a complete failure of these witnesses in proving that they had seen the appellant along with deceased together with reasonable proximity.

15. It is a settled principle of criminal jurisprudence that prosecution is under obligation to prove the criminal charge against the accused beyond all reasonable doubts. Thus, when there is no eye-witness to the incident, the forensic evidence being inconclusive and the chain of circumstances is not complete then in the light of the judgment of the Supreme Court in **Sharad Birdhichand Sarda v. State of Maharashtra (1984) 4 SCC 116** wherein it is observed that "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" and 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 taking into consideration the five golden principles then the theory of last seen propounded by the witnesses could not be established by the prosecution in the case at hand.

16. In the case of **State of U.P. v. Satish (2005) 3 SCC 114**, it has been held that last seen together theory is applied only when the time - gap between the accused being seen with the deceased and the discovery of the death is so small that the possibility of anyone else being the author of the crime becomes impossible. It has been further held that mere last seen evidence, without corroboration by other

circumstances (e.g. recovery, motive, conduct, medical findings) is insufficient for conviction.

17. In the case of **Ramreddy Rajesh Khanna Reddy v. State of A.P. (2006) 10 SCC 172**, it has been held that even when the time gap is small, the prosecution must establish the entire chain and in such a case the Court should look for some corroboration. In the case of **Digamber Vaishnav v. State of Chhattisgarh (2019) 4 SCC 522**, it has been categorically held that the last seen evidence does not inspire the confidence or is not trustworthy, there can be no conviction. A Division Bench of this Court in the case of **Meghpal @ Trigpal v. State of M.P., Criminal Appeal Nos.2/2008 & 111/2008 dated 14.02.2019**, in which one of us (Vivek Agrawal, J) was the member, it has been observed that the Court analysed last – seen together as part of the circumstantial chain; if last – seen evidence and discovery are proximate, it may be relied on, but the Court scrutinised the completeness of the chain and material contradictions in witnesses.

18. Thus, in the case at hand, when there is neither any eye-witness account nor any evidence of last seen or any scientific evidence is available to connect the appellant with the alleged murder then conviction of the appellant merely on the basis of surmises and conjectures cannot be allowed to sustain in the eyes of law.

19. In view of the above discourse, this Court is of the opinion that the conviction of the appellant recorded by the learned trial court cannot be sustained in the eyes of law.

20. Accordingly, this appeal is allowed. The impugned judgment dated 31.05.2024 passed by learned Special Judge, Damoh, in S.T.No.207/2017 is hereby set aside and the appellant/accused is acquitted from the charge of offence under Section 302 of IPC.

21. The appellant is in jail. He be set at liberty forthwith if not required in any other case.
22. The case property be disposed of as per the direction of the learned trial court.
23. Record of the trial court be sent back forthwith.

(VIVEK AGRAWAL)
JUDGE

(RAMKUMAR CHOUBEY)
JUDGE