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CRA-2499-2024

IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK AGARWAL

&amp;

HON'BLE SHRI JUSTICE AVANINDRA KUMAR SINGH

ON THE 11<sup>th</sup> OF AUGUST, 2025CRIMINAL APPEAL No. 2499 of 2024*PRAMOD KHUSWAHA**Versus**THE STATE OF MADHYA PRADESH*

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Appearance:*Shri Mohammad Siddeeque - Advocate for the appellant.**Shri Ajay Tamrakar - Government Advocate for the State.*

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WITHCRIMINAL APPEAL No. 5802 of 2024*THE STATE OF MADHYA PRADESH**Versus**RAJA KUSHWAHA AND OTHERS*

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Appearance:*Shri Ajay Tamrakar - Government Advocate for the State.*

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ORDER*Per. Justice Vivek Agarwal*

Criminal Appeal No.2499/2024 under Section 374(2) of the Code of Criminal Procedure, 1973 (for short "Cr.P.C") is filed being aggrieved of judgment dated 9.1.2024 passed by learned Additional Sessions Judge, Special Court No.8 (Electricity Act, 2003), Jabalpur in Sessions Case No.171/2019 convicting the appellant Pramod Kushwaha S/o.Kallu



Kushwaha for the offence under Sections 302 & 201 of the Indian Penal Code, 1860 (for short "I.P.C") and sentencing him to undergo imprisonment for life and rigorous imprisonment for two years with fine of Rs.2,000/- & Rs.500/- and in default of payment of fine to undergo additional imprisonment for two years and six months respectively with a further direction to run all the jail sentences concurrently.

2 Criminal Appeal No.5802/2024 under Section 378(1) of the Cr.P.C is filed by the State being aggrieved of judgment dated 9.1.2024 passed by learned Additional Sessions Judge, Special Court No.8 (Electricity Act, 2003), Jabalpur in Sessions Case No.171/2019 acquitting the respondent No.1 Raja Kushwaha and respondent No.2 Saurabh Sen from the charges under Section 302 and in the alternative Section 302/34 and Section 201 of the I.P.C.

3 Learned counsel for the appellant Pramod Kushwaha submits that it is a case of circumstantial evidence and the chain of circumstances is not complete, therefore, the judgment of conviction passed against the appellant Pramod Kushwaha be set aside and he be acquitted from the charges of Sections 302 & 201 of the I.P.C.

4 Learned Government Advocate for the State submits that not only the conviction of the appellant Pramod Kushwaha is made out from the testimony of last seen i.e. the deceased Vinay, who was last seen in the company of Pramod Kushwaha as deposed by PW.2 Manku Patel but also supported from the recovery etc made at the instance of the appellant Pramod Kushwaha. The memorandum of the appellant Pramod Kushwaha given



under Section 27 of the Indian Evidence Act, 1872 on 7.1.2019 as contained in Exhibit P/12 supported with Property Seizure Memo Exhibit P/13 reveals that the conviction of appellant Pramod Kushwaha is justified. The acquittal of two accused persons, namely, the respondent No.1 Raja Kushwaha and respondent No.2 Saurabh Sen from the charges under Section 302 and in the alternative Section 302/34 and Section 201 of the I.P.C is arbitrary and illegal and, therefore, the finding of acquittal recorded in favour of the respondent No.1 Raja Kushwaha and respondent No.2 Saurabh Sen be set aside.

5 We have heard learned counsel for the parties and gone through the record.

6 The brief chronology of events as narrated by learned Trial Court is that at Police Station Panagar, the Merg No.93/2018 under Section 174 of the Cr.P.C was registered. The statements of PW.1 Purshottam Lal, the father of deceased Vinay, his brother Shubham Patel, PW.2 Manku Patel, PW.7 Gulab Yadav and that of Govind Kachhi, Vikas Singh Thakur, Abhayraj Singh were recorded. The postmortem of the dead body of deceased Vinay was conducted vide Exhibit P/10 in which it is mentioned that the cause of death is asphyxia due to antemortem drowning. On investigation, it was found that Vinay was working in a Parle-G Factory Godown situated at Richhai. The appellant Pramod Kushwaha was also working there with him and they were friends. They had entered into a nexus whereby they were stealing cartons of Parle-G Biscuit and were selling them illegally to earn illegal gratification. It is alleged that in the night of 11/12th of August 2018, Vinay and Pramod



Kushwaha had stolen 12 cartons of Parle-G biscuit etc and they had kept them outside. The appellant Pramod Kushwaha with a view to transport those cartons had taken a bike of Ranjeet, which was a red colour Pulsar Motorcycle-150 bearing registration No.MP20-MN-8278. When in the night of 12.8.2018, Pramod Kushwaha, Vinay, Raja Kushwaha, Bhola Kushwaha and Saurabh Sen were taking stolen Parle-G biscuit cartons then at about 2:30 AM, Vinay got entangled with the fencing of Sugarcane crops of Prahlad Sengar, which was having a flowing electric current. As a result of such entanglement, Vinay had fallen down and became unconscious. All the four persons retrieved Vinay and took him on a Motorcycle, which was being driven by the appellant Pramod Kushwaha where near Jalgaon, on way, they had pushed him in a Canal through a Culvert. PW.4 Dr.P.N.Dixit, Chief Medical Officer, Medical College, Jabalpur reported that the cause of death of deceased Vinay is asphyxia due to antemortem drowning.

7 The allegation on the appellant Pramod Kushwaha in Criminal Appeal No.2499/2024 and the respondent No.1 Raja Kushwaha and respondent No.2 Saurabh Sen in Criminal Appeal No.5802/2024 is that they had pushed an unconscious alive Vinay into a water body, as a result of which, he died due to antemortem drowning. Thereafter, upon merged investigation and registration of the FIR etc, a case was registered. The charges were framed. The trial was conducted. The appellant Pramod Kushwaha has been convicted for the offence under Sections 302 & 201 whereas the respondent No.1 Raja Kushwaha and respondent No.2 Saurabh Sen in the State Appeal have been acquitted from the charges under Section 302 and in the



alternative Section 302/34 and Section 201 of the I.P.C.

8 It has come on record that a missing person report was lodged by the father of Vinay, namely, Purshottam Lal (PW.1) on 13.8.2018. The Property Seizure Memo was prepared on 13.8.2018 vide Exhibit P/24. The FIR Exhibit P/41 was registered on 6.1.2019. Now the prosecution is basing its case mainly on the testimony of PW.1 Purshottam Lal, the father of deceased Vinay, who is also the author of the missing person report, PW.2 Manku Patel, the brother of deceased Vinay, who claims himself to be a witness of last seen and states that the appellant Pramod Kushwaha had called Vinay on his phone and thereafter Pramod Kushwaha had taken Vinay in the night of 11.8.2018, PW.5 Dharmendra Patel is the brother-in-law of the deceased Vinay whereas PW.6 Virendra Patel is a witness of memorandum of seizure.

9 PW.1 Purshottam Lal admits that the incident took place on 11.8.2018. He was informed by PW.2 Manku Patel on the other day that Pramod Kushwaha had called Vinay at night between 9-10 PM. When PW.2 Manku Patel asked Vinay as to who had called him then Vinay had taken the name of Pramod. Vinay had gone in the company of Pramod, who had called him outside. There were three other persons, who could not be seen by PW.2 Manku Patel. He states that Vinay had gone in the company of Pramod and then he never returned. On 12.8.2018, PW.2 Manku Patel had called him to inform that Vinay had gone in the company of Pramod and had not returned and thereafter they had lodged a missing person report.

10 It is pertinent to mention here that the missing person report is neither exhibited by the learned Public Prosecutor for the State nor the learned Trial



Court has bothered to exhibit the missing person report but it is available on record of the learned Trial Court.

11 We have perused the missing person report bearing No.154/2018 dated 13.8.2018. It was given orally by PW.1 Purshottam Kurmi S/o. Karan Prasad Kurmi (Patel), R/o.Kola Thana, Manjholi, Jabalpur with regard to Vinay Kumar Kurmi S/o.Purshottam Kurmi (Patel) mentioning therein that on 12.8.2018 at 8.00 hours, a person went missing from Richhai Parle-G Depot and the height of that person was 5 feet 5 inch and his complexion was whitish. He is 10th pass Hindi speaking person wearing pant and shirt and having mobile number 918871103294. Thereafter, it is mentioned in the description that the aforesaid missing person was working in the Depot of Parle-G at Richhati, who on 12.8.2018 left the place at about 8.00 hours without informing anybody and he be searched for. Nowhere in the missing person report, the name of the accused persons including Pramod Kushwaha etc are mentioned. It is nowhere mentioned that Vinay had gone in the company of Pramod Kushwaha.

12 It is evident from the testimony of PW.1 Purshottam Lal that Vinay had gone missing and he was last seen in the company of Pramod Kushwaha and three others as also deposed by PW.2 Manku Patel is not made out. If Vinay would have left on 11.8.2018 in the company of Pramod Kushwaha and others as is deposed by PW.1 Purshottam Lal and PW.2 Manku Patel then since PW.1 Purshottam Lal was already informed by PW.2 Manku Patel on the next date of the incident, there was no reason for him to not to mention the names of the persons in the missing person report that in whose



company, Vinay was last seen.

13 PW.1 Purshottam Lal admits that he had not mentioned the age of the victim. He admits that on 5.1.2019, he had received intimation as to the death of his son when persons from Crime Branch had shown him the photograph of his son. He admits that his son was not shown but his photograph was shown. He states that when he had lodged the missing person report, the police had not gone in search of the boy alongwith him. He admits that he was in search of his son for two months at 20 different places but could not search for his son.

14 PW.1 Purshottam Lal admits that there is difference in the age of a 22 years young boy and a 35 years old man. He admits that he had given a photograph of his son while recording the missing person report. In Paragraph No.25 of his cross-examination, he admits that while recording the missing person report, he had not expressed any doubt on anybody. He admits that actually the missing person report was lodged by his brother and it does not contain his signatures. He admits that Pramod Kushwaha and other accused persons were not residing in Depot whereas his sons were residing in the Depot and they used to move together. He admits that his nephew Satyendra was also working in the same Depot. He states that when the accused persons had come to call Vinay, at that time, Satyendra was also present in the Depot. In cross-examination, he admits that he does not know Raja Kushwaha and he had never seen his son in the company of Raja Kushwaha. He also states that he does not know Saurabh Sen and he had not seen Saurabh Sen in the company of his son.



15 PW.2 Manku Patel is the brother of deceased Vinay. He claims that he had seen the accused persons in the company of Vinay. He states that Pramod Kushwaha had called his brother and when he asked Vinay as to who called him then he had taken the name of Pramod Kushwaha. He states that Pramod, Saurabh Sen and Raja Kushwaha had come to their room where both brothers were residing and had taken his brother. When his brother did not return, he had gone to sleep. On the next day, when he asked the Contractor Govind and other persons about his brother then Govind stated that Vinay will return in 3-4 days and no report is necessary. Thereafter, he had called his father and they were searching for Vinay. PW.2 Manku Patel states that his father had informed him that his brother Vinay had met with an accident. PW.2 Manku Patel was declared hostile and leading questions were put to him.

16 PW.2 Manku Patel in his cross-examination admits that he had no information as to whether Pramod had come to his room or not. He states that Govind is the Contractor and both the brothers were working under Contractor Govind but Pramod Kushaha was not working under Contractor Govind. He states that whosoever used to enter in the Depot, his name used to be recorded in the register. In cross-examination, this witness states that he did not ask Vinay to accompany him. He does not know as to for how many days, Vinay was missing and all information is with his father. He admits that he never met the police and he does not know as to what proceedings were drawn by the police. PW.2 Manku Patel states that his age is 19 years and that of his brother Vinay was 20 years.





17 PW.4 Dr.P.N.Dixit states that a person, whose dead body was brought to him for postmortem, was aged about 35-40 years. The body was identified by Constable Diwakar. There were no external injury marks on the body of the deceased. His skin was like washerwoman and had swollen. On internal examination, his brain was congested. There was muddy water in trachea and larynx. Both the lungs were swollen. On pressing, the blood mixed froth was coming out. The doctor had given his opinion that the deceased died because of drowning in the living state causing asphyxia. The death had occurred between 2-3 days since postmortem. The postmortem report is Exhibit P/10 and the time of postmortem is 1:45 PM on 13.8.2018. PW.4 Dr.P.N.Dixit states that there were no burn marks on the hands and feet of the deceased. In cross-examination, it was reiterated by PW.4 Dr.P.N.Dixit that the person, whose postmortem was performed, was aged between 35-40 years and not 20-22 years and if a person falls on his own in a Canal then due to drowning, he can die.

18 PW.5 Dharmendra Patel is the witness of memorandum and spot map etc. The Spot Map is Exhibit P/11 and the Memorandum is Exhibit P/12. This witness in cross-examination admits that Vinay was his real brother-in-law. He is his real 'Jija'. He states that he had gone with his father-in-law PW.1 Purshottam Lal to Ranjhi Police Station to lodge the missing person report. He admits that the age of his brother-in-law was 20-21 years. The police had never called him for identification of the dead body of Vinay. He admits that PW.2 Manku Patel is also his brother-in-law but he cannot state as to whether he is staying in the Depot or not. The distance between



Panagar to Ghughari is 20-25 Kilometer. He admits that he cannot state as to what was written on which paper. He states that he had visited the Depot once and he cannot state whether it is equipped with Camera or not. This witness in cross-examination denies that PW.2 Manku Patel and Vinay were staying together in the Depot.

19 PW.6 Virendra Patel is another witness of memorandum. He was declared hostile and leading questions were put to him. This witness in cross-examination admits that on Documents Exhibits P/3 & P/4, when he had put his signatures, what was written, is not known to him. He admits that the age of Vinay was 18 years. He admits that on Exhibit P/21, which was signed by him, age of the person was mentioned as 35 years. He states that on Exhibits P/19 & P/20, the photos were not clear. It was appearing to be that of Vinay. What was written on Exhibit P/12, when he signed it, is not known to him. He states that on Exhibit P/12, he and PW.5 Dharmendra Patel had signed at Police Station. He admits that neither any Adhar Card was seized in front of him nor any Election Voter ID Card or the SBI Card. He had signed at the instance of the police personnel on Exhibits P/13, P/14 & P/15. He states that the accused persons were not arrested in his presence. Thus, PW.6 Virendra Patel, a witness of seizure, has not proved the seizure memo in accordance with law.

20 Thus, it is evident that it is not a case of last seen as is sought to be made by the prosecution. PW.1 Purshottam Lal, PW.2 Manku Patel, PW.5 Dharmendra Patel & PW.6 Virendra Patel have admitted that they had not taken names of any of the accused persons in the missing person report to



suggest that the deceased Vinay had left his room situated at the campus of Godown/Depot in the company of Pramod Kushwaha and the other accused persons. Thus, it will become a case of circumstantial evidence.

21 As far as the circumstances are concerned, two circumstances appear to have been put forth by the prosecution. The first circumstance is that PW.2 Manku Patel states that Vinay had received a phone call from Pramod Kushwaha at night of 11.8.2018 and when PW.2 Manku Patel asked Vinay as to who had called him then it was stated by Vinay that the call was received from Pramod Kushwaha. The prosecution has though issued a letter Exhibit P/26 with regard to preparation of search report of CDR, tower location and vide Exhibit P/27 had seized a mobile of Spice Company from the possession of Shubham Patel and then again wrote a letter Exhibit P/28 on 23.2.2023 seeking CDR IMEI Proform for the mobile phone but it is evident from record that none of these are available on record. Thus, the prosecution has failed to corroborate the testimony of PW.2 Manku Patel that any phone call was made by Pramod Kushwaha to Vinay on his mobile phone to take him away in the night of 11.8.2018.

22 The second circumstance is recovery of personal papers of the deceased Vinay from the possession of the appellant Pramod Kushwaha. This recovery is dated 7.1.2019 vide Exhibit P/13. One of the signatories of the documents Exhibits P/13, P/14 & P/15 has not supported the prosecution case as is evident from the testimony of PW.6 Virendra Patel.

23 As far as the testimony of PW.5 Dharmendra Patel is concerned, he admits that the police had obtained his signatures but he cannot state as to



what was written on those papers. This witness too has not been able to substantiate recovery of items like Pulsar Motorcycle, Adhar Card, SBI Card etc from the possession of the appellant Pramod Kushwaha.

24 PW.4 Dr.P.N.Dixit states that there were no external injury marks on the body of deceased Vinay. He admits that the death was caused due to drowning. He states that if a person falls in a Canal then he can die because of drowning. Thus, firstly, whether the death was accidental or homicidal has not been stated by the PW.4 Dr.P.N.Dixit.

25 Secondly, the first chain of circumstance of last seen has not been proved by PW.1 Purshottam Lal or PW.2 Manku Patel. There is a major omission in the missing person report lodged on 13.8.2018 that it does not make a mention of the name of any of the accused persons.

26 Thirdly, the prosecution has failed to recover the Call Detail Record showing conversation between the appellant Pramod Kushwaha and the deceased Vinay in the night of 11.8.2018. Thus, the third chain of circumstance is also missing.

27 PW.1 Purshottam Lal, PW.2 Manku Patel, PW.5 Dharmendra Patel & PW.6 Virendra have admitted that the appellant Pramod Kushwaha and deceased Vinay were friends. They have failed to establish any motive. Even other chain of circumstances that the deceased Vinay left in the company of the appellant Pramod Kushwaha is not established by producing the record from the Depot of Parle-G Factory situated at Richhai to show the movement of the accused persons and the deceased Vinay in or out from that Depot as is admitted by PW.2 Manku Patel that registers are maintained in this regard



by the Depot. The prosecution has also failed to prove the aspect of electrocution.

28 It is evident that the prosecution has failed to complete the chain of circumstances so to uphold the conviction with the aid of various events becoming a part of the circumstantial evidence. Thus, when the chain of circumstantial evidence is not complete, there is no eye-witness to the incident and the so called witness of last seen PW.2 Manku Patel is not reliable then in the light of the judgments of the Apex Court in **Sharad Birdhichand Sarda versus State of Maharashtra (1984) 4 SCC 116** and **Laxman Prasad Alias Laxman versus State of Madhya Pradesh (2023) 6 SCC 399**, we are of the opinion that the prosecution has failed to prove the guilt of the appellant Pramod Kushwaha beyond all reasonable doubts and has failed to do justice between the parties and in a casual manner and on the basis of surmises & conjectures has recorded a finding of conviction against the appellant Pramod Kushwaha. Hence, the conviction of appellant Pramod Kushwaha cannot be sustained in the eyes of law.

29 As the chain of circumstances is not complete to point out towards the guilt of the appellant Pramod Kushwaha alone and there are many latches in the investigation including identification of the dead body of deceased, the difference in the age of the person, who was subjected to postmortem and the age of the deceased missing Vinay as was given by his relatives, we are of the considered opinion that present is a case where the learned Trial Court has failed to apply itself to the fact situation and has recorded the finding of conviction in a mechanical manner.



30 Accordingly, Criminal Appeal No.2499/2024 is allowed. The impugned judgment of conviction dated 9.1.2024 passed against the appellant Pramod Kushwaha by the learned Additional Sessions Judge, Special Court No.8 (Electricity Act, 2003), Jabalpur in Sessions Case No.171/2019 for the offence under Sections 302 & 201 of the Indian Penal Code, 1860 is hereby set aside. The appellant Pramod Kushwaha is in jail. He be set at liberty forthwith if not required in any other case.

31 As far as Criminal Appeal No.5802/2024 filed by the State is concerned, PW.2 Manku Patel admits that he had not seen either Raja Kushwaha or Saurabh Sen in the company of the deceased Vinay. There is a categorical admission made by PW.2 Manku Patel, a Star Prosecution Witness that Raja Kushwaha is not known to him and he had never seen deceased Vinay in the company of Raja Kushwaha or in the company of Saurabh Sen. Similarly, PW.2 Manku Patel admits that he had not seen Saurabh Sen. In Paragraph No.6 of his cross-examination, PW.2 Manku Patel admits that he has no information about the incident and, therefore, he cannot be believed to be a witness of last seen.

32 Criminal Appeal No.5802/2024 filed by the State fails and is dismissed as in our considered opinion, the learned Additional Sessions Judge, Special Court No.8 (Electricity Act, 2003), Jabalpur vide impugned judgment dated 9.1.2024 in Sessions Case No.171/2019 has rightly recorded a finding of acquittal in favour of respondent No.1 Raja Kushwaha and respondent No.2 Saurabh Sen from the charges under Section 302 and in the alternative Section 302/34 and Section 201 of the I.P.C.



33 Let record of the Trial Court be sent back forthwith.

34 The case property be disposed of as per the direction of the learned Trial Court.

**(VIVEK AGARWAL)**  
**JUDGE**

**(AVANINDRA KUMAR SINGH)**  
**JUDGE**

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