



IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE
HON'BLE SHRI JUSTICE VIVEK AGARWAL
&
HON'BLE SHRI JUSTICE AVANINDRA KUMAR SINGH

ON THE 8th OF OCTOBER, 2025

CRIMINAL APPEAL No. 3618 of 2025

DEEPAK @ GOLU

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

.....
Appearance:

Shri Sanjay Sharma, Advocate and Shri Irfan Khan, Advocate for the appellant.

Shri Ajay Tamrakar, Government Advocate for State.
.....

WITH

CRIMINAL APPEAL No. 5236 of 2025

RIKESH URF GUDDU

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

.....
Appearance:

Smt.Archana Tiwari, Advocate for the appellant.

Shri Ajay Tamrakar, Government Advocate for State.
.....

ORDER

Per. Justice Vivek Agarwal

Heard on I.A.No.15469/2025 and I.A.No.12906/2025, which are first applications filed under Section 389(1) of the Code of Criminal Procedure, 1973 (for short "Cr.P.C") for suspension of sentence and grant of bail to the



appellant Deepak @ Golu in Criminal Appeal No.3618/2025 and the appellant Rikesh @ Guddu in Criminal Appeal No.5236/2025.

2. Shri Sanjay Sharma, Advocate and Smt.Archana Tiwari, Advocate for the appellants pray for withdrawal of the aforesaid applications.

3. I.A.No.15469/2025 and I.A.No.12906/2025 are accordingly dismissed as withdrawn.

4. With the consent of learned counsel for the parties, these appeals are finally heard.

5. These appeals are filed being aggrieved of judgment dated 12.3.2025 passed by learned Special Judge, SC/ST (Prevention of Atrocities) Act, Balaghat in SCATR No.129/2019 convicting the appellants, namely, Deepak @ Golu and Rikesh @ Guddu Padwar for the offence under Sections 302/34 & 201 of the Indian Penal Code, 1860 (for short "I.P.C") and sentencing them to undergo imprisonment for life and rigorous imprisonment for one year with fine of Rs.1,000/- & Rs.500/- each and in default of payment of fine to undergo additional rigorous imprisonment for one year and rigorous imprisonment for three months respectively with a further direction to run both the jail sentences concurrently.

6. The prosecution case in brief is that on 10.10.2019, a dead body was found in a minor canal situated at Village Dadiya which on investigation was found to be the dead body of Subhash Ladhiya. The Dehati Merg Intimation No.0/2019 was recorded by the complainant Ruplal Ladhiya S/o.Mohanlal Ladhiya at Police Station Bhedaghat, District Jabalpur for the offence under Sections 302 and 201 of the I.P.C. On reaching the police station, the actual



Merg No.66/2019 under Section 174 of the Cr.P.C was registered.

7. In Dehati Nalisi, the complainant Ruplal had informed that he is resident of Village Sahajpur under Police Station Bhedaghat, District Jabalpur. He is having vocation of preparation of brooms. Every year, they visit Lalbarra area to collect "*Chhind Ki Patti*" which is used in preparation of the brooms. On 7.10.2019, Ruplal, Sumit Jharia, Subhash Ladhiya had visited Lalbarra from Jabalpur. At about 7:00 PM, when they were proceeding to Village-Dadiya, at that time, they had met Golu Narbode and his relative Rohit Meshram at Amoli, who had dropped them on their motorcycle upto Dadiya Potiyapat Temple. Subhash and Golu had stayed back together. Next day, Sumit had some work at Jabalpur, therefore, he went back to Jabalpur. Ruplal came to the house of Golu and asked for whereabouts of Subhash Ladhiya when he informed him that he had dropped Rohit and Subhash Ladhiya upto the Village-Bamhni and thereafter he has no idea about the whereabouts of Subhash. According to Ruplal, he had tried to search for Subhash at Villages-Dadiya, Bamhni & Lalbarra but he could not trace him and on 10.10.2019 at about 10:30 AM, the villagers had informed him that a dead body was lying near the culvert of minor canal and when he had gone there, he found the body to be that of his nephew Subhash Ladhiya, which was having injuries on the head and private parts. The neck of the dead body was tied with a "*Sutli*" and he was in a naked condition. A report of the incident was lodged that Subhash was murdered through strangulation by some unknown person and to suppress the death, the dead body was thrown in the minor canal.



8. It has come on record that during investigation on the basis of suspicion, Deepak @ Golu Narbode and Rohit Meshram were interrogated, who had accepted their guilt and then it was stated that Deepak, aged about 25 years, Juvenile Rohit, aged about 16 years and Rikesh Padwar, aged about 39 years had met Subhash Ladhiya to consume alcohol and with an intend to Loot him, they had defrayed Rs.1,800/- and thereafter Subhash Ladhiya was put to death as per the memorandum statement.

9. On the basis of the memorandum statement, the spot map was prepared. the dead body of Subhash Ladhiya was sent for postmortem. The caste certificate of Subhash Ladhiya was obtained. On the basis of memorandum of Deepak @ Golu, a Lathi used in commission of the offence and a motorcycle were recovered. A sum of Rs.220/- was also recovered. The juvenile had produced Rs.110/-, a truncated towel and the blood stained clothes used in commission of the offence. Rikesh Padwar handed over a cable wire, the clothes which were worn by him at the time of the incident and a sum of Rs.200/-.

10. The accused persons were arrested. The charge sheet was filed. When the accused persons abjured their guilt & pleaded complete innocence, the trial was conducted and the learned Trial Court has convicted and sentenced them for the offence as mentioned in Paragraph No.5 of this judgment. However, the accused persons have been acquitted from the charges under Section 302 read with Section 120B of the I.P.C, Section 394 read with Section 397 of the I.P.C and in the alternative Section 394/397 read with Section 120B of the I.P.C and Section 3(2)(v) of the SC/ST (Prevention of



Atrocities) Act.

11. Shri Sanjay Sharma and Smt.Archana Tiwari, learned counsel appearing for the appellants submit that present is a case of no evidence. The evidence of last seen is very weak and feeble. The chain of circumstances is not complete so to record guilt of the present appellants. The evidence of last seen is not of the recent origin but looking to the time gap when the deceased was last seen in the company of the accused persons and the time of death as written in the postmortem report, the theory of last seen will not be applicable in the present case. They also point out that though the Cable Wire Article-A and "*Rassi*" Article-B, recovered from the place of the incident and the dead body of deceased Subhash Ladhiya respectively were subjected to the F.S.L examination and on visual or microscopic examination, it was found that the skin was available on both the articles but thereafter no DNA testing was performed to point out that the skin was either that of the deceased or the accused persons. No finger prints were obtained and it is a case of hearsay evidence, which cannot be a basis for recording conviction against the appellants, therefore, the impugned judgment dated 12.3.2025 passed by learned Special Judge, SC/ST (Prevention of Atrocities) Act, Balaghat in SCATR No.129/2019 be set aside.

12. Shri Ajay Tamrakar, learned Government Advocate for the State submits that there is evidence of last seen and that evidence is quite reliable, therefore, on the basis of such reliable piece of evidence, conviction of the appellants as recorded by the learned Trial Court needs to be maintained.

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



record.

14. The prosecution has produced the DNA report (Exhibit P/36), which says that the Lathi, which was recovered on the memorandum of Deepak i.e. Exhibit-A revealed very low and uninterpretable autosomal STR DNA profile. Same is the fate of the T-shirt Exhibit-E recovered on the memo of Deepak. Exhibit-F clothings of the juvenile also revealed very low and uninterpretable autosomal STR DNA profile. Clothings of the deceased Exhibit-H revealed very low and uninterpretable autosomal STR DNA profile. The towel Exhibit-B recovered at the instance of the juvenile and clothings of Rikesh Padwar Exhibit-G revealed autosomal STR DNA profile and it was found that the alleles were common on both the Exhibits i.e. Exhibit-B and Exhibit-G. However, Exhibit-H clothings of the deceased and Exhibit-G clothings recovered on the memo of Rikesh Padwar revealed very low and uninterpretable autosomal STR DNA profile, therefore, it is not possible to match the DNA profile with the towel seized from the juvenile i.e. Exhibit-B. Similarly, the DNA profile of Exhibit-H could not be matched with the DNA profile obtained from Exhibit-G, which are clothings of Rikesh Padwar. Thus, it is evident that the scientific evidence too is not conclusive.

15. Ruplal (PW.1) states that Deepak @ Golu and Rohit had met them at Lalbarra. They were on a Passion Pro Motorcycle. Rohit had taken Ruplal and Sumit on his motorcycle to Potiyaghat. Subhash Ladhiya was in the company of Deepak @ Golu at Lalbarra. Rohit after dropping Ruplal and Sumit had returned back to pick Subhash Ladhiya and Deepak @ Golu. This



was at about 6:00 PM. Subhash Ladhiya had not reached them. Next day, Ruplal had sent Sumit to the house of Deepak @ Golu. Deepak @ Golu had pleaded his ignorance. For three days, Ruplal was in search for Subhash Ladhiya and thereafter he had gone to Bamhni. When Rikesh had informed him that a dead body was lying near the Dadiya canal. This witness was declared hostile and leading questions were put to him. Ruplal (PW.1) categorically states that the police had not interrogated Rohit Meshram i.e. the juvenile in front of him. He also states that Deepak was not interrogated in front of him. This witness has denied preparation of the memorandum Exhibit P/6 obtained from Rikesh in front of him. He has denied that Rikesh had given his clothings and Rs.200/- from his pocket, which were in the denomination of Rs.100/- note and two notes of Rs.50/- each in front of him. He has also denied seizure of the caste certificate of Subhash Ladhiya.

16. Ruplal (PW.1) in his cross-examination admits that the accused persons are not known to him. He states that even he does not know as to which place the accused persons belong to. He further states that he had never met the accused persons. Ruplal (PW.1) in Paragraph No.13 states that on 7.10.2019, when they had reached Lalbarra, the deceased Subhash Ladhiya had left their company for some personal work. Subhash had gone alone. When Subhash Ladhiya did not return, they had gone to Potiyaghat. He also admits that Subhash Ladhiya and Deepak @ Golu had never met. He further admits that from 7.10.2019 and 10.10.2019, no missing person report was lodged. He admits that after the discovery of the dead body, no report was lodged and no proceedings were drawn by the police personnel in front of



him. The police had obtained the signatures on a blank paper 4-5 days after discovery of the dead body. At the time of the incident, Subhash Ladhiya was under the influence of alcohol and he cannot state as to whether Subhash Ladhiya died because of consumption of alcohol or he was put to death by an unknown person. Rikesh is not known to him. The police had not carried out any proceedings in front of him.

17. Rinku @ Hari Ladhiya (PW.2) states that his brother Shubham was put to death by the accused persons but in Paragraph No.13, he admits that he cannot state as to which of the material was recovered from which of the accused persons while preparation of the seizure memo. He admits that the police had not prepared the spot map of the places where he had visited alongwith the police. He admits that in Exhibit D/1, he had given a statement that when he had reached Lalbarra Police Station alongwith his mother Sunita and Phupha Ashok Ladhiya then his uncle Ruplal had met them and had informed that some unknown person had caused the death of his brother Shubham @ Subhash Ladhiya. Thus, it is evident Rinku @ Hari Ladhiya (PW.2) is neither a witness of last seen nor he has supported the seizure memo.

18. Prabhu Uikey (PW.3) is a hearsay witness. He has denied all the suggestions given by the prosecution after being declared hostile.

19. Mahendra (PW.4) too was declared hostile when he stated that he does not know anything about the incident.

20. Dr.T.C.Meshram (PW.5) had conducted the postmortem on the dead body of Shubham @ Subhash and had found that there was a lacerated



wound on the rear part i.e. occipital region of the head measuring 2.5 inch X 1 inch X 0.5 inch. There was a second lacerated wound measuring 1.5 inch X 1 inch X 1 inch, which was oblique in nature. A rope was tied around the neck of the dead body but no ligature marks were observed. His report is Exhibit P/20 and according to the doctor, the death occurred because of excessive blood loss and rupture of vital organ i.e. brain. The death had taken place between 60 to 72 hours since postmortem.

21. Shyamabai Kawde (PW.6) states that she has no information about the incident. She was declared hostile and nothing substantial has come out of her testimony.

22. Sunita (PW.10) admits in her cross-examination that she had not seen the incident and she was saying that her son was murdered by the accused persons as per the statement given by Ruplal to the police. This witness also admits that she had not seen the incident taking place in front of her.

23. Assistant Sub Inspector Razik Siddiqui (PW.12) states that as per the statement of Ruplal, he had lodged Dehati Nalisi at 0/19 against the unknown person. In cross-examination, he admits that in the Dehati Nalisi and Merg so also in the Lash Panchayatnama, unknown person is mentioned.

24. Preetam (PW.13), Assistant Secretary of Gram Panchayat Jamuniya, states that Shubham and Subhash Ladhiya are one and the same person.

25. Sumit Jharia @ Satish (PW.14) has turned hostile and has not even supported the theory of the last seen.

26. The appellants have taken a defence of false implication in the present case as the deceased was not known to them.



27. Thus, when all the testimonies of the prosecution witnesses are taken into consideration then it is evident that except for Ruplal, there is no other witness of last seen so also there is no eye-witness to the incident. Ruplal (PW.1) in his cross-examination admits that the accused persons are not known to him. He also admits that he cannot say as to where the accused persons are living. He states that he had never met the accused persons. On 7.10.2019, when they had reached Lalbarra then Subhash Ladhiya had left their company for some work. He further states that Subhash Ladhiya had gone alone. Thus, the theory of last seen propounded by the star prosecution witness Ruplal (PW.1) is not made out.

28. Thus, when there is no eye-witness to the incident, the forensic evidence as contained in the DNA report vide Exhibits P/36 and P/39 being inconclusive and the chain of circumstances is not complete then in the light of Paragraph No.153 of the judgment of the Apex Court in **Sharad Birdhichand Sarda versus 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 Ruplal (PW.1) could not be established by the prosecution in the present case. The prosecution could not prove the connection of the



accused persons through Exhibit-B and Exhibit-G, which were subjected to the DNA finger printing.

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

30. Same is the ratio of law laid down by the Three Judges Bench of the Apex Court in **Santosh @ Rajesh @ Gopal versus State of Madhya Pradesh 2024 SCC Online SC 2606**.

31. When all these facts are taken into consideration then we have no hesitation to hold that the conviction of the appellants recorded by the learned Trial Court only on the basis of surmises and conjectures cannot be sustained in the eyes of law.

32. Accordingly, these appeals are allowed.

33. The impugned judgment dated 12.3.2025 passed by learned Special Judge, SC/ST (Prevention of Atrocities) Act, Balaghat in SCATR No.129/2019 is hereby set aside.

34. The appellant Deepak @ Golu in Criminal Appeal No.3618/2025 and the appellant Rikesh @ Guddu in Criminal Appeal No.5236/2025 are in jail. They be set at liberty forthwith if not required in any other case.

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

36. Record be sent back forthwith.



(VIVEK AGARWAL)
JUDGE

(AVANINDRA KUMAR SINGH)
JUDGE

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