

IN THE HIGH COURT OF MADHYA PRADESH

AT JABALPUR

BEFORE

SHRI JUSTICE SUJOY PAUL

&

SHRI JUSTICE PRAKASH CHANDRA GUPTA

ON THE 9TH OF NOVEMBER, 2022.

CRIMINAL APPEAL NO.2912 OF 2011

Between :-

**MANISH S/O TANTU VERMA, AGED
ABOUT 30 YEARS, PIPARIYA, RAJGURU
THANA AMARWADA (M.P.)**

....APPELLANT

(BY SHRI J.K. DEHARIYA - ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH
THROUGH P.S. AMARWADA DISTRICT
CHHINDWARA (M.P).**

....RESPONDENT

**(BY SHRI YOGESH DHANDE –
GOVERNMENT ADVOCATE)**

This appeal coming on for final hearing this day, **JUSTICE SUJOY PAUL** passed the following :-

J U D G M E N T

This Criminal appeal filed under Section 374 (2) of Code of Criminal Procedure takes exception to the judgment dated 07.12.2011 passed in Sessions case No.347 of 2010 decided by learned Additional Sessions Judge, Amarwada, District Chhindwara, whereby appellant was held guilty for committing offence under Section 302 of IPC and directed to undergo sentence of life imprisonment with a fine of Rs.1000/- with default stipulation.

2. In short, the case of prosecution is that the complainant Kavita Bai (PW-1) lodged a report on 14.10.2010 that she, her mother Sukko Bai and younger sister Prita were working on their agricultural field. The elder sister Lalita was at home. After performing the agricultural work and after taking the material arising therefrom, she reached to her house. When the bundle of chaff placed in the Courtyard, Kavita Bai (PW-1) found that her brother-in-law Manish Verma (appellant) came out of the house and fled away towards Rajgurupipariya. Appellant was wearing white shirt and pant, while coming out of the house his sunglasses fell down in the courtyard. Kavita Bai (PW-1) with the aid of a lamp entered the 'manjhota' where her elder sister was lying and there was an injury on the right side of her head and she was bleeding profusely. 'Vasoola' and 'Hansiya' were found near her body. Kavita Bai (PW-1) called her mother and they found that Lalita is no more.

3. *Dehati Nalishi* (Exhibit P-2) was promptly recorded at 18:40 O'clock whereas incident was shown to be of 17:30 O'clock whereas *Dehati Marg* intimation was recorded 10 minutes thereafter on 14.10.2010 at 18:50 o'clock. On the basis of this prosecution story narrated in the *Dehati Nalishi*, the FIR was registered on 14.10.2010 at 22:10 hours (Exhibit P/12). In turn, the investigation commenced and appellant was arrested on 22.10.2010 at 01:00 O'clock in the noon.

4. As per the story, on 22.10.2010 at 12:15, O'clock blood stained 'gamchha' was allegedly recovered from the appellant. In due course, the matter travelled to the trial Court. The appellant abjured the guilt and prayed for conducting full fledged trial.

5. The trial Court framed a questions for its determination, recorded evidence of the parties and after hearing the parties came to hold that prosecution has established its case beyond reasonable doubt. The Court below placed reliance on the statement of Kavita Bai (PW/1) and the

recovery of '*gamchha*' from the appellant. The sentence as mentioned above is directed to be undergone by the appellant.

Submissions of appellant's counsel :-

6. Shri J.K. Dehariya learned counsel for the appellant submits that 'Hansiya' and 'Vasoola' allegedly used in commission of crime and found near the dead body were neither seized nor produced in the Court. Hence, Forensic Science laboratory report (abbreviated as : 'FSL') is silent about availability of blood stains etc, on the 'Hansiya' and 'Vasoola'.

7. Learned counsel for the appellant submits that the appellant is mainly convicted on the basis of statement of Kavita (PW-1), recovery of sunglasses of appellant and recovery of blood stained '*gamchha*'. The statement of Gali (PW-3), brother of deceased is relied upon who deposed that he is unable to state with clarity whether sunglasses belong to his brother-in-law/appellant. It is further argued that other witnesses who allegedly seen the appellant coming to the house were not examined.

8. The statement of Kavita (PW-1) does not inspire confidence because as per her statement her sister Lalita was already sitting in the courtyard when she came back from agricultural field to her own house. As per her statement, appellant was arrested from Sagar. In Para- 6 of her deposition, she stated that when she kept the bundle of chaff in the courtyard, she found that appellant came out of the house and started running towards his house at Rajgurupipariya. She further deposed that while returning from agricultural farm with mother and sister, she first entered the house. The mother and sister were following her. In Para-9 of the cross-examination, she deposed that while running out of house, Manish's head dashed with the door because of which his sunglasses fell down. She was unable to depose whether Manish suffered any injury because of said dash. In cross-examination, she further deposed that she

could see a glimpse of Manish when he was coming out of the house and she had seen her brother-in-law from his backside. Shri Dehariya, learned counsel for the appellant submits that this statement is not sufficient to believe the story of the prosecution.

9. The statement of Shivbagas (PW-2) is criticized by contending that he is not an eyewitness. He is a hearsay witness. Similarly, statement of Gali (PW-3) is relied upon which shows that he is narrating the story as stated to him by his sister Kavita (PW-1). Thus, this statement is also of no help to the prosecution.

10. It is argued that Kedar Singh Rahangdale (PW-4) is a witness who has prepared the site map whereas S.S. Rajput (PW-5) is an Assistant Sub-Inspector who deposed that appellant was arrested from Sagar. It is argued that the arrest memo Ex.P-21 shows that appellant was arrested from Amarwara on 22.10.2010 whereas this witness deposed that he was arrested from Sagar.

11. The next witness is Nandan (PW-7) who only deposed that aforesaid sunglasses were identified by Kavita (PW-1) and Gali (PW-3). Veer Singh (PW-8) is a person who took the dead body of Lalita Verma for postmortem to the hospital. The Statement of Noora Bai (PW-9) is relied upon who clearly deposed that Gali could not depose about ownership of aforesaid sunglasses. Thus, it is not clearly established by prosecution evidence that sunglasses so recovered from the courtyard were of the present appellant. No doubt, as per statement of Dr. C.M. Gedam (PW-11) certain injuries were found on the person of the deceased and the cause of death is excessive bleeding and shock because of said assaults. The death had taken place between 12-36 hours. The post mortem report is exhibited as Ex.P-20.

12. Shri Dehariya, learned counsel for the appellant further argued that Uma Shankar Niadu (PW-12) was the Investigating Officer. The Investigating Officer allegedly recovered 'Gamchha' through Ex.P-8 at 12:15 o'Clock on 22.10.2010 whereas appellant was formally arrested on the same day at 1 o'Clock. Nothing is on record to show that at the time of disclosure through Ex.P-8 and consequential recovery of 'Gamchha', appellant was already in custody of the police. Lastly, criticizing his statement, it is canvassed that this witness stated that appellant was not arrested from Sagar District. This witness further deposed that no witness during investigation informed him that appellant was seen by him / her while entering the house where incident had taken place. It is further stated by this witness that nobody informed him during investigation that appellant dashed with the door and sustained an injury on his head.

13. In view of aforesaid statements of prosecution witnesses, learned counsel for appellant submits that prosecution could not establish its case beyond reasonable doubt. The defence witnesses namely; Vijay Nema (DW-1) and Chhedami (DW-2) categorically deposed that appellant was not at the place of incident when incident had taken place. The Court below has not given sufficient weightage to their statements. As per the FSL report, blood group of appellant could not be traced and in absence thereof, the case of prosecution deserves to be discarded.

Submission of the Government Counsel :-

14. Shri Yogesh Dhande, learned Government Advocate for the State submits that the incident had taken place on 14.10.2010 at around 17:30 PM and Kavita (PW-1) promptly recorded the dehati nalishi on the same date at 18:40 PM in Police Station Amarwara, which was 06 Kms. away from the house of the deceased. The story mentioned in the dehati nalishi is exactly the same which was reduced in writing in the shape of FIR. The

prompt report lodged by Kavita (PW-1) cannot be disbelieved. Moreso, when there is no enmity or any other reason because of which she would like to falsely arraign the appellant.

15. Takdir Samsuddin Sheikh vs. State of Gujarat; (2011) 10 SCC 158 is relied upon by learned Government Advocate to contend that if the quality of deposition of single prosecution witness is sufficient, conviction can be recorded based on such singular statement. It is the quality of deposition which matters and not the quantity. **Vikram Singh vs. State of Punjab; (2010) 3 SCC 56** is cited to contend that if appellant was already in custody at the time of disclosure and recovery of ‘*gamchha*’, it was not necessary to show that he was arrested prior thereto. Even if arrest is subsequent to the recovery, it will not vitiate the recovery.

16. The parties confined their arguments to the extent indicated above.

17. We have heard the parties at length and perused the record.

Findings:-

18. In view of the rival contentions of learned counsel for the parties, it is clear like noon day that conviction of appellant is solely founded upon the statement of Kavita (PW-1), recovery of sunglasses of appellant and recovery of ‘*gamchha*’. We find no difficulty in accepting the legal principle that in view of section 134 of Indian Evidence Act, the statement of single eye witness can form basis for conviction. In principle, there is no reason to discard this contention of learned Government counsel. However, the entire legal journey on this aspect shows that such single eyewitness must be of sterling quality. If eyebrows can be raised on such statement, it is not safe to record or confirm conviction based thereupon. In this backdrop, we deem it proper to examine the statement of Kavita (PW-1) minutely. As per her statement, she came back to her house with her mother and sister at around 5 P.M.

While putting the bundle of chaff in the courtyard, she found the appellant coming out of the room while wearing white clothes. This witness did not depose that appellant was wearing any 'gamchha'. Pertinently, during cross-examination, she deposed that appellant was arrested from Sagar. It is further stated that appellant came out of the house and fled away towards Rajgurupariya. In Para -8, she candidly deposed that 'Hansiya' and 'Vasoola' were not recovered from the scene of crime. It is important to note that she deposed in Para-9 of the cross-examination that head of appellant dashed with the door because of which his sunglasses were dropped. This witness has seen glimpse of appellant, from backside of appellant. This statement, in our considered judgment, does not inspire confidence for the simple reason that as per her narration, she was entering the house with her mother and sister whereas appellant was coming out of the house. In that situation, it would have been the front portion of appellant which could have been seen by Kavita (PW-1) and not back portion of appellant. Merely because she lodged the report promptly does not mean that she had witnessed the incident. In our opinion, her statement is not of sterling quality and is sufficient to record conviction solely based on it.

19. So far sunglasses of appellant allegedly recovered from scene of crime is concerned, although Kavita (PW-1) and Gali (PW-3) deposed about it, Noora Bai (PW-9) deposed that Gali (PW-3) could not identify the said sunglass. Mohbe (PW-10) took a diametrically opposite stand by contending that Gali indeed identified the said sunglasses. Thus, the recovery of sunglass is also doubtful. The investigating officer Uma Shankar Naidu (PW-12) Stated that no witness during investigation informed him that they had seen the appellant entering the house of the deceased. Similarly, no prosecution witness informed him that appellant dashed with the door while coming out of the house of the deceased.

20. The recovery of '*gamchha*' is another aspect on which the case of prosecution is based. As noticed above, the '*gamchha*' was recovered by Ex.P-8 at 12:15 hrs on 22.10.2010 whereas the appellant was arrested on the same day at 1 O'Clock. We find substance in the argument of learned counsel for the appellant that there exists nothing on record to show that at the time of preparation of Ex.P-8 and recovery of '*gamchha*', the appellant was under the custody of police.

21. Shri Dhande, learned Government Advocate relied on the judgment of Supreme Court in **Vikram Singh(Supra)**. The said judgment, in absence of establishing that at the time of recovery the accused is in police custody, does not help the prosecution at all.

22. In the cases of **Onkar v. State of M.P. [1974 Cri LJ 1200.]**, **Umed v. State of M.P., 1978 SCC Online M.P. 229** and **Kadori v. State of M.P. [1978 JLJ 347]**, the Division Benches of this Court held that if accused is shown to be in the custody of police at the time of recovery, merely because he was arrested at a later point of time will not cause any dent on the story of prosecution.

23. Section 27 of the Indian Evidence Act became subject matter of interpretation in catena of judgments of Supreme Court. In **Suresh Chandra Bahri case [1995 Supp (1) SCC 80 : 1995 SCC (Cri) 60]**, **State of A.P. v. Gangula Satya Murthy [(1997) 1 SCC 272 : 1997 SCC (Cri) 325]**, **Vikram Singh v. State of Punjab (2010) 3 SCC 56**, **Mohd. Arif v. State (NCT of Delhi) (2011) 13 SCC 621**, **Dharam Deo Yadav v. State of U.P. (2014) 5 SCC 509** and **Chandra Prakash v. State of Rajasthan, (2014) 8 SCC 340** it was poignantly held that as per Section 27 aforesaid, a person must be accused of any offence and in addition, he must be in the custody of police officer. It is not at all essential that such an accused must be under formal arrest. The judgment of **Vikram Singh (supra)** on which reliance is placed by learned Government Advocate

was also considered by the Supreme Court in the case of **Mohd Arif (supra)**. Since prosecution has miserably failed to establish that at the time of recovery of '*gamchha*' the appellant was in custody, the recovery cannot be said to be in consonance with Section 27 of the Indian Evidence Act. At the cost of repetition, sole eye witness Kavita (PW-1) did not depose that when she had seen the appellant coming out of her house, he was wearing any '*gamchha*'. Since recovery of '*gamchha*' is not proved, the availability of blood stains on it fades into insignificance.

24. It is noteworthy that even place of arrest of appellant is highly doubtful. The arrest memo shows that the appellant was arrested from Amarwara whereas Kavita (PW-1) and S.S. Rajput, Sub Inspector (PW-5) deposed that ASI Tiwari arrested the appellant from Sagar.

25. The Apex Court in **2021 SCC Online SC 613 Madhav v. State of Madhya Pradesh** considered the previous judgment on the point and opined as under :-

“33. Therefore, as pointed out by this Court in *Balwan Singh v. State of Chhattisgarh*, there cannot be any fixed formula that the prosecution has to prove, or need not prove that the blood groups match. **But the judicial conscience of the Court should be satisfied both about the recovery and about the origin of the human blood**”.

[Emphasis supplied]

26. In the instant case, the recovery and origin of human blood could not be established by the prosecution with Forensic clarity. In other words, the recovery of '*gamchha*' is doubtful which creates doubts about origin of human blood. Consistent with the judgment of **Madhav (supra)**, the conviction of appellant cannot be given a stamp of approval based on defective recovery in the instant case.

27. During the course of hearing, both the parties informed that appellant is in actual custody since 22.10.2010. Thus, he remained in actual custody for more than 12 years till date.

28. In view of foregoing analysis, it is clear that the prosecution could not establish its case beyond reasonable doubt. Resultantly, we deem it proper to acquit him by giving him benefit of doubt.

29. Accordingly, the judgment passed in Session Trial No.347/2010 dated 07.12.2011 is set-aside. The criminal appeal deserves to be and is hereby **allowed**.

(SUJOY PAUL)
JUDGE

(PRAKASH CHANDRA GUPTA)
JUDGE

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