



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 23rd OF APRIL, 2026

CRIMINAL APPEAL No. 2011 of 2012

MADHU YADAV

Versus

THE STATE OF MADHYA PRADESH

.....
Appearance:

Shri Jagat Dehariya - Advocate for the appellants.

Shri Abishek Singh - Govt. Advocate for respondent State.

.....
WITH

CRIMINAL APPEAL No. 2021 of 2012

MANISH YADAV

Versus

THE STATE OF MADHYA PRADESH

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Appearance:

Shri Jagat Dehariya - Advocate for the appellants.

Shri Abishek Singh - Govt. Advocate for respondent State.

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CRIMINAL APPEAL No. 2050 of 2012

RAJKUMAR PATEL

Versus

THE STATE OF MADHYA PRADESH

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Appearance:

Shri R.S. Patel - Advocate and Shri Jagat Dehariya - Advocate for the appellants.

Shri Abishek Singh - Govt. Advocate for respondent State.

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CRIMINAL APPEAL No. 2139 of 2012



BABU @ RAJENDRA THAKUR AND OTHERS

Versus

THE STATE OF MADHYA PRADESH

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Appearance:

Shri R.S. Patel - Advocate and Shri Jagat Dehariya - Advocate for the appellants.

Shri Abishek Singh - Govt. Advocate for respondent State.

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CRIMINAL APPEAL No. 2410 of 2012

NITESH @ JATTU VANSHKAR

Versus

THE STATE OF MADHYA PRADESH

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Appearance:

Shri Jagat Dehariya - Advocate for the appellants.

Shri Abishek Singh - Govt. Advocate for respondent State.

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JUDGMENT

Per. Justice Vivek Agarwal

These appeals are filed on behalf of the convicted appellants, viz., Santosh Ahirwar S/o Santu Ahirwar, Sohil @ Bhuru @ Amit S/o Hidayat Khan, Monu Uike (Thakur) S/o Dhunu Uike (Thakur), Mohan Patel S/o Tarapad Patel, Madhu Yadav S/o Prahlad Yadav, Manish Yadav S/o Thamman Singh Yadav, Rajkumar Patel S/o Ravishankar Patel, Nitesh @ Jattu Vanshkar S/o Prakash Vanshkar, Kalyan Patel S/o Komal Singh Patel and Ramji Patel S/o Tikaram Singh Patel who are aggrieved by the judgment dated 31.08.2012 passed by I Additional Judge to the Court of I Addl. Sessions Judge, Narsinghpur in Session Trial No. 40/2010 convicting the appellants under Sections 120-B, 147, 364 read with 149, 302 read with 149 of Indian Penal Code and sentenced them to Life Imprisonment, R.I. for two years, Life Imprisonment and Life Imprisonment and fine of Rs.1,000/-, nil,



Rs.1,000/- and Rs.1,000/- with default stipulations. It is submitted by Shri Jagat Dehariya that in Cr.A No. 2139/2012 Appellant No. 1 Babu @ Rajendra Thakur S/o of Durga Prasad Thakur died on 17.4.2025, for which a death certificate is issued by the Netaji Subhash Chandra Bose Medical College, Jabalpur. Same is taken on record. Cr.A No. 2139/2012 stands abated qua Appellant No. 1 Babu @ Rajendra Thakur. It is also submitted that Appellant No. 6 Kalyan Patel and Appellant No. 7 Ramji Patel have been deleted vide order dated 9.1.2024 as they completed their sentence.

2. It has come on record that one of the appellants, viz., Babu @ Rajendra Thakur is dead and, therefore, his name was already directed to be deleted. It has also come on record that Kalyan Patel and Ramji Patel have completed their Life Imprisonment and have been released from jail.

3. It is submitted by learned counsel for the appellants that prosecution case in short is that on 31.10.2009 at about 10:50 p.m. Ward Boy Kamal Singh, Community Health Centre, Gotegaon had approached Police Station, Gotegaon with a written complaint that at about 10:20 p.m. Ajay Rai S/o Narendra Rai aged about 24 years was brought to Govt. Hospital Gotegaon where on examination he was found dead. On the basis of said information merg intimation was registered and investigation was started.

4. It is not in dispute that on the basis of such merg investigation F.I.R (Ex. P-35) was registered on 1.11.2009 at the instance of Constable Ramkishan Choudhary No. 251 against three persons, viz., Mohan Patel, Kalyan Patel and Arti Patel. It has come on record that Arti Patel committed suicide and is no more. Kalyan Patel has already undergone his sentence.



This report was lodged by P.W.-15 Shri R.K. Dubey Sub Inspector. In this report it is clearly mentioned that how on receiving intimation from hospital about death of Ajay Rai, merg intimation was registered and thereafter investigation was carried out and on the basis of that investigation first information report was lodged.

5. As per the story of prosecution, Ajay Rai was having a fruit-cart. He was present at his fruit cart which was situated at Bhagatram Chouraha, Gotegaon. It is alleged that Ajay Rai had an affair with niece of Rajkumar Patel, viz. Arti Patel for the last 1 and a half - 2 years. Later on Arti Developed affection for somebody else. On 31.10.2009, at about 4 p.m. Akash Rai was going to have his meals at home when Rajkumar Patel and Arti Patel came to his shop on a motorcycle and were talking to him. They asked Ajay Rai to come with them, when Ajay had informed his neighbouring shop owner Chandrika Rai and Vikki Tiwari to look-after his shop and he had followed Rajkumar and Arti Patel on his motorcycle. Though Chandrika Rai has not been examined but Vikky Tiwari has been examined as P.W-8.

6. Prosecution case is that at about 6:15 p.m. Vikky Tiwari and Dharam Chand Gupta had gone to the house of Akash and informed that Ajay had not returned back to the shop and there is nobody to attend his shop. When his family members tried to contact him on his mobile phone then it was found to be switched off. Search of Ajay Rai was made at various places.

7. Thereafter, it is further stated that on 31.10.2009 itself at about 8:30



p.m. 8-10 people had come to the shop of Thakur Singh Patel (P.W.-17) in a white colour Sumo Car. These persons were accompanied by Mohan Patel and they had taken out Ajay Rai and made him sit on a bench in front of shop of Thakur Singh Patel and thereafter they had gone towards Narsinghpur. On questioning, Ajay Rai informed Thakur Singh, that he was beaten by Mohan Patel, Kalyan Patel and their accomplices. He complained of pain in his chest and requested Thakur Singh to arrange to send him to Gotegaon to his home. When Thakur Singh had given intimation to his relative Monu Patel and on request of Monu Patel, Thakur Singh had taken Ajay Rai to Bahoripar Toll Naka where Thakur Singh had taken him in his Scorpio Vehicle and thereafter Akash, Monu Patel, Sanjay Neeraj etc. had taken Ajay Rai to the Hospital in the Scorpio vehicle of Thakur Singh to the hospital.

8. It is submitted that though Akash has stated that Ajay Rai had given an oral dying declaration to him, taking names of Mohan Patel, Kalyan Patel, Ramji Patel, Rajkumar Patel and boys of Dhanare Colony saying that he was beaten in the house of Mohan Patel at Baghpondi after denuding him with kicks, fists and Lathi. Firstly this oral dying declaration is not admissible inasmuch as Akash Rai never informed the Police about this fact at the time of recording of merg intimation or during the merg investigation otherwise F.I.R would have been lodged against all the aforesaid persons. Secondly, it is submitted that as per Shav Panchayatnama (Ex. P-3) since Shirt and Pant along with vest and undergarments were found on the body of deceased Ajay Rai, contention that he was denuded and beaten appears to be incorrect



because looking to the nature of injuries proved by postmortem doctor P.W.-22 - Dr. S.S. Thakur deceased would not have been in a position to wear his cloths after such severe beating.

9. It is thus submitted that present is a case where accused have been planted only on the testimony of P.W.-3 Rajaram Mehra who had identified the accused persons vide Ex. P-5 and one Chaitanya Tiwari who had identified some of the accused persons vide Ex. P-34.

10. It is also submitted that the Executive Magistrate (P.W.-19) has only proved Ex. P-5 given by Rajaram but has not proved Ex. P-34 given by Chaitanya Tiwari, therefore, on this account and also on account of the fact that that P.W.-3 Rajaram Mehra admitted that he was in police custody for about 15 days and had seen all the accused persons while he was in police custody for 15 days and also looking to the fact that Chaitanya stated that he had seen the incident on 30.10.2009 when he had gone to attend the birthday party of his friend whereas the incident actually took place on 31.10.2009 reveals that both these so called witnesses of T.I.P are planted witnesses and, therefore, T.I.P carried out at their instance is of no use. It is thus pointed out that T.I.P if discarded, there is no other evidence to implicate the accused persons. Thus prayer is made to record acquittal in favour of accused persons/appellants. It is submitted that Shri Rizvi P.W.-24 lodged false report.

11. It is submitted that Shri A.H. Rizvi (P.W.-24) has forged the evidence inasmuch as Shri Rizvi has stated in paragraph 10 of his Examination in Chief that on 3.11.2009 he had recovered one shirt and one



pant from the house of Mohan Patel belonging to Ajay Rai.

12. Shri Abhishek Singh, learned Public Prosecutor submits that blood was found in the F.S.L report (Ex. P-16), which reveals that the *Danda* recovered from Jattu @ Nilesh, i.e., Article 'H' contained human blood apart from Article 'A' shoes recovered from the Tata Sumo on 3.11.2009, Article 'C', i.e., scraping from internal portion of Tata Sumo and Articles 'F-1' and 'F-2', pant and shirt of the deceased. It is submitted that Ragzine purse of Ajay along with motorcycle was recovered from Kalyan vide Ex. P-28. Similarly his silver bracelet was recovered from Ramji Patel which according to the prosecution was that of Ajay Rai. Thus, it is submitted that no indulgence is required to be shown in the matter.

13. After hearing learned counsel for the parties and going through the record; as far as recovery memos of Ragzine Purse allegedly belonging to Ajay and motor cycle of Ajay from Kalyan Patel and Silver Bracelet from Ramji are incriminating circumstances but as mentioned above both have completed their sentence and have been released from jail. Therefore, we are not taking into consideration their innocence or otherwise. As far as other accused persons are concerned, except for the deceased Babu @ Rajendra Thakur, this appeal is being considered for other convicted accused persons.

14. As far as other accused persons are concerned, prosecution has not made any recovery of any incriminating material so to connect them except for Lathi which are usually found in each household in a rural set up. Thus, the main thrust of argument on behalf of the State is based on two documents, i.e., Ex. P-5 T.I.P carried out by P.W.-3 Rajaram and Ex. P-34



T.I.P carried out by Chaitanya. On the basis of these T.I.Ps prosecution has tried to say that since Rajaram was the driver of the Sumo vehicle in which accused had travelled his evidence is most trustworthy and clinching inasmuch he was in company of accused for considerable time and had an occasion to closely watch them. Therefore, it is submitted that on the basis of evidence of Rajaram alone conviction can be recorded. It is also the case of the prosecution that evidence of Rajaram is duly supported with evidence of P.W.-12 Chaitanya, i.e., an additional ground to not to show indulgence and appeal should be dismissed according to the State.

15. After hearing learned counsel for the parties and going through the record. P.W.-1 Deepak Chourasiya was declared hostile. He has not supported the prosecution case.

16. P.W.-2 stated that Ajay Rai had given him an oral dying declaration. P.W.-22 Dr. S.S Thakur had conducted postmortem on 1.11.2009. His postmortem report is Ex. P-43. He has mentioned in postmortem report that deceased died within 24 hours of his postmortem. As per the report Ex. P-43, postmortem was carried out at 12:25 p.m on 1.11.2009. P.W.-21 Ward Boy Kamal Singh Thakur stated that on 31.10.2009 he was posted as Ward Boy at Community Health Centre, Gotegaon. He had given written Tahrir of Dr. Garg to the Police Station Gotegaon at 10:20 p.m. in regard to death of Ajay Rai. Dr. Garg has not been examined to bring on record as to whether Ajay Rai was brought dead or not. Even otherwise, if oral dying declaration was given to Akash Rai then it was his responsibility to have informed the Police at the time of



recording of Merg Intimation that Ajay Rai had given him an oral dying declaration giving names of the accused persons. However, there is no such mention in the merg intimation and even in the F.I.R that any oral dying declaration was given by the deceased Ajay Rai to Akash Rai. In fact statement of Akash Rai is not supported by P.W.-5 Neeraj Kumar Rai. P.W.-5 Neeraj has not supported this contention of PW-2 though his presence is shown in the vehicle of Thakur Singh P.W. 17 that he was present in the Scorpio vehicle of Thakur Singh. Similarly Monu (P.W.-26) has also not supported the factum of Ajay Rai giving any oral dying declaration though he accompanied Akash Rai from the Toll Plaza where he was brought by Thakur Singh P.W.-17. Similarly P.W.-17 Thakur Singh who had brought Ajay Rai in his Scorpio Vehicle has clearly stated in paragraph 1 that Ajay Rai was lying unconscious in front of his shop. He had taken him to Gotegaon hospital in his vehicle where he was declared dead. Thus, it is evident that Ajay Rai was not in a position to give any oral dying declaration. Thus, first circumstance arising from the evidence of P.W.-2 Akash Rai that deceased Ajay Rai had given any dying declaration stands discarded.

17. As far as testimony of P.W.-3 Rajaram is concerned, his conduct is important when on 3.9.2010 he was brought to the witness box he stated that he does not wish to give his evidence as he was feeling unwell. Evidence of this witness who has stated that in the vehicle of Bharat Bhushan Soni (P.W.-11) he had taken accused persons who had met Ajay Rai and had made him sit in his vehicle and then had taken him to the house



of Mohan Patel where he was beaten is an exaggeration. We say so because, firstly in paragraph 9 this witness has stated that his owner Bharat Bhushan Soni maintains a copy on which he not only notes meter reading when the vehicle is given on rent but also notes meter reading when it is returned. He also notes names of the persons to whom the vehicle is given on hire. He also notes the amount etc. and the time of outward movement and inward movement. But P.W.-11 Bharat Bhushan Soni denied all these facts that means the factum of Sumo vehicle being given on hire itself becomes doubtful circumstance. Second doubtful conduct of P.W.-3 Rajaram is that though he admits that his mobile phone was returned at 9-10 p.m. on 31.10.2009 but he never thought it proper to inform his owner about the incident. We also say that this witness is planted because he states that he had never gone to the house of the accused persons but on the contrary he states that the incident took place in the house of Mohan Patel where in front of house of Mohan Patel there is a godown to keep husk where Ajay Rai was taken and beaten by accused persons. He has given contradictory statements by saying that Kalyan Patel and Ramji Patel were already known to him as he had seen them in local market.

18. Most important and vital contradiction in his evidence is noted by us in paragraph 12 which admittedly escaped the notice of the trial court that this witness has admitted that he was in the police lock-up for a period of 15 days. Admittedly, seizure memo of his vehicle is Ex. P-4 that vehicle was seized on 3.11.2009. When Ramji was in police lockup for 15 days as admitted by him then there was no occasion for him to have given a



statement under Section 161 Cr.P.C on 3.11.2009. Therefore, Ex. D-2 is an antedated document prepared by the Investigation Officer of the case Shri A.H. Rizvi, Dy. Superintendent of Police. This witness in paragraph 12 has admitted that after he had given his statement to the Magistrate, he was released and he was not made an accused. This witness also admitted that during movement of a vehicle from Narsinghpur to Gotegaon, there is a Toll Plaza but they had not deposited any toll tax. This exposes another flaw of investigation that when there was a toll plaza then police was obliged to investigate movement of the Sumo Vehicle through that toll plaza. Payment of tax becomes inconsequential because movement of every vehicle whether paying tax or not is registered at toll plaza. Thirdly, credibility of this witness gets exposed when he says that when he was waiting and heard cries of Marpeet he had not raised any alarm and had not reacted. He had not even gone to the spot to save Ajay Rai. Thus, when this witness admits that he had seen the accused person who were also in the lock up then T.I.P on 17.11.2009 vide Ex. P-5 loses its sanctity.

19. Similarly, P.W.-12 Chaitanya has stated that on 30.10.2009 he was going to attend his friend's birthday at Pindrai. He was passing through Gochar Kuliya. Ajay Rai was known to him. He was accompanied with Balram Vishwakarma. They were going to attend birthday party of his friend Sarvesh Patel. He had seen a Sumo Vehicle parked, number of which could not be recollected by him. Colour of Sumo was white. He had seen 8-10 persons coming down from Sumo Vehicle, some altercation was going on. This witness thought that it may be a case of accident. He slowed his



motorcycle he had seen that Ajay Rai, who runs a fruit shop at Bhagatram Chouraha, Gotegaon. Some people were beating him. One person who was having good height asked him to leave the place. Then he had gone to Pindrai. Two facts are important, one this witness claims that Ajay Rai was known to him but he did not bother to report this fact to anybody. He has given a very meek explanation that since he was under fear he did not report this matter to anybody. Second fact is that in paragraph 2 this witness after stating that out of fear he had not narrated the incident for 1 - 2 days he had visited the house of Ajay Rai and had given complete details of the story but this is contrary to statement of P.W.-2 Akash Rai, because Akash Rai has nowhere said that Chaitanya Tiwari P.W.-12 ever visited their family to narrate the incident and give names of the assailants. There is another contradiction that this witness admits in paragraph 7 that while giving case diary statements he had not informed the police that he had gone to the house of Ajay Rai and had informed them about the incident. This witness in paragraph 8 of examination admits that birthday of Sarvesh Patel was on 30.10.2009. Thus, when birthday was on 30.10.2009 then he could not have seen an incident which took place on 31.10 that means that he had no time machine like vision to travel forward in time and see an incident which had not yet taken place and which was to take place on 31.10.2009. This witness also admits in paragraph 11 that he had informed Police that he can see the faces of the accused and identify them but he also admits that prior to the incident he had not seen any of the accused person. Another fact is that this witness states that he had stayed at the scene of crime for five minutes.



There is contradiction as to whether he had seen the incident from the front or from the back and then he states that Police had made him carry out T.I.P in front of S.D.M madam but interestingly S.D.M madam (P.W. 19) Smt. Vandana Jaat has not proved Ex. P-24 in her testimony. Therefore, there is no independent corroboration of second T.I.P carried out by P.W.-12 Chaitanya in the hands of the S.D.M Vandana Jaat who was the Executive Magistrate, responsible for carrying out said T.I.P.

20. Thus, we are of the opinion that this matter has been victim of botched up investigation. Investigation Officer became an interested parts in investigation and botched up investigation. He gave false testimony. He prepared forged documents as is evident from seizure memo of clothing of deceased Ajay Rai from the house of Mohan Patel vide Ex. P-24 whereas as per Naksha Panchayatnama Ex. P-3, which was prepared at Community Health Centre, Gotegaon it is clearly mentioned that there was full sleeves shirt of black and yellow colour with checks under which there was a Baniyan with sticker of Ganeshji and a full sleeves checked blue colour pant with Badami colour underwear on the dead body. When these cloths were available on the body of Ajay Rai in the Community Health Centre, there was no occasion for Shri Rizvi to seize them from the house of Mohan Patel.

21. In this case while hearing arguments we came across a very contradictory piece of evidence. Shri A.H. Rizvi (P.W.-20), Dy. Superintendent of Police stated in paragraph 10 that during investigation he had seized from the house of Mohan Patel on 3.11.2009 a shirt of deceased Ajay Rai and a pant which was torn and full of blood with particles of husk.



But this is contrary to Naksha Panchayatnama (Ex. P-3) in which it is clearly mentioned under the heading of Nirikshan Shav that during the examination of dead body of Ajay Rai, he was wearing a black and yellow check full shirt beneath which there was a white dusty colour vest on which a sticker of Ganesh Ji was made and it was mentioned www.ganesha.com. and a blue colour check full pant and Badami colour Lux underwear was seen on the dead body. Therefore, when under garments as well as upper garments were available on both the upper and lower limbs of the body, then how Mr. Rizwi (P.W.-26) was justified in mentioning that he had recovered the clothing of deceased Ajay Rai from the house of Mohan Patel. Thus, there is no eye-witness account. Chain of circumstances is not complete, evidence is planted and forged. Thus, we do not find any ground to maintain conviction.

22. This points out serious lapses in investigation so also into the conduct of I.O. Shri Rizvi, Dy. S.P. as we cannot allow Police to be partisan which it appears to be in the present case to play with the innocence of the accused persons.

23. Let inquiry be conducted by Director General of Police against Shri Rizvi for which he can call for the certified copy of the record from High Court and examine for himself (Ex. P-3), Shav Panchayatnama and statement of Shri Rizvi as given in paragraph 10 on the basis of which it appears that in F.S.L report (Ex. P-16) it is mentioned that clothing of deceased were recovered from the house of the accused. Therefore, we direct that D.G.P should register an F.I.R against Shri Rizvi and conduct investigation for creating false evidence and thus committing Criminal



Contempt of the Court by fabricating the evidence on record and producing it to believe the Court to be correct.

24. Appeals are allowed. Conviction of Santosh, Sohil, Monu, Mohan Patel, Madhu Yadav, Manish Yadav, Rajkumar Patel and Nitesh is set aside. They be released forthwith if not required in any other case.

(VIVEK AGARWAL)
JUDGE

(AVANINDRA KUMAR SINGH)
JUDGE

VKT