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CRA-1457-2012

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 30th OF JULY, 2026

CRIMINAL APPEAL No. 1457 of 2012

TULSIRAM RAJPAL AND OTHERS

Versus

THE STATE OF MADHYA PRADESH

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Appearance:

Shri Ajay Kumar Jain - Advocate for the appellants.

Shri Abhishek Singh -Government Advocate for the respondent/State.

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JUDGMENT

Per. Justice Avanindra Kumar Singh

The appellant No.3 Mohan alias Bacchu S/o Chhakodi Gadariya has expired on 16/07/2014, therefore the appeal was abated on his behalf vide order dated 10/12/2014.

2. This appeal under Section 374(2) of Cr.P.C. is filed being aggrieved of the judgment dated 29/06/2012 passed by learned Special Sessions Judge, Damoh (M.P.) in S.T. No.418/2009, whereby the appellants Tulsiram Rajpal and Harprasad have been convicted and sentenced as under :-

Conviction u/s	Imprisonm	Fine amount	In lieu of payment
302 of IPC (appellant Tulsi)	Life Imprisonment	Rs.20,000/-	RI for 6 months
320/34 of IPC (appellant Harprasad)	Life Imprisonment	Rs.20,000/-	RI for 6 months
450 of IPC (both appellants)	RI for 2 years each	Rs.5000/- each	RI for 1 -1 month



3. As per prosecution case, on 25/08/2009 at about 08:45 PM deceased-Pyarelal Gadriya lodged a report in Police Station Madiyado District Damoh that he was doing Ganesh Pooja in his house along with his son Bhagirath, Kashiram and his wife Haribai and his daughter Prembai, at that time appellants entered in his house and abused in filthy language. Thereafter, Bacchu and Harprasad had caught the deceased Pyarelal and appellant-Tulsiram stabbed Pyarelal with knife on left side stomach, due to the said injury Pyarelal died after lodging FIR (Ex.P/21). Thus, the offence of murder was committed.

4. Learned counsel for the appellants submits that the appellants are innocent and have been wrongly convicted, therefore, prayer is made to acquit the appellants on the grounds that (i) at the time of incident, electricity supply was cutoff and no source of light was available at the place of incident, (ii) at the time of incident, Bhagirath (PW-1), Haribai (PW-3) and Suresh Gadariya (PW-4) were not together on the spot, these persons were busy in Pooja/arti of Lord Ganesha. Hence, they are planted eye-witnesses; (iii) the article-knife seized as per seizure memo (Ex.P/4) from the place of incident has no blood stain on the knife, as per FSL report (Ex.P/24); (iv) the deceased was assaulted by some other persons but appellants have been falsely implicated by the deceased/his family members, (v) Court committed error in considering the statements of witnesses Bahgirath (PW-1), Prembai (PW-6) and Ghanshyam (Pw-10) under Section 161 of Cr.P.C. which were recorded after 15-30 days from the date of incident, (vi) signature of the deceased on FIR (Ex.P/21) is doubtful because the deceased died immediately after the incident, (vii) Bhagirath (PW-1) stated in his cross-examination in Para-6 that his father always used to sign documents, therefore how thumb impression has been taken on the FIR, (viii) Haribai (PW-3) stated in Paras-15 & 16 of her cross-examination that dispute arose between other persons along with the



deceased, (ix) Investigating Officer-Ashok Kumar Nanama (PW-14) has admitted in his cross-examination that many important *Rojnamcha Sanha* entries were not made.

5. On the other hand, learned Government Advocate supports the impugned judgment and prays for dismissal of the appeal. Learned Government Advocate on the basis of custody report received from the Superintendent, Central Jail, Sagar vide letter No.4141/warrant/26 dated 31/07/2026 and No.1774/warrant/2026 dated 31/07/2026, according to which appellant No.1 Tulsiram Rajpal has undergone actual custody of 7 years 14 days and appellant No.2 Harprasad has undergone actual custody of 03 years 03 months 16 days.

6. We have heard learned counsel for the parties and perused the record.

7. Prosecution have examined 15 witnesses namely Bhagirath Gadriya-son of deceased (PW-1), Jeet Singh @ Jittu (independent hostile witness PW-2), Haribai Rajpal - wife of deceased (PW-3), Suresh Gadriya (independent hostile witness PW-4), Post Mortem Dr. Prabhudayal Kargaiya (PW-5), Prembai - daughter of deceased (PW-6), Gyanii (hostile witness PW-7), Ramsewak (PW-8), Balram Dahayak- Head-Master (PW-9), Ghanshyam Gadar- son of deceased (PW-10), Bhajman Lodhi (hostile witness PW-11), Munna Lal Patwari (PW-12), Jahar Singh-Head Constable (PW-13), Ashok Kumar Nanama Sub-Inspector (PW-14) and Dr. Khemchandra Arya (PW-15). Defence has examined DW-1 Vikesh Agrawal.

8. As per Dr. Prabhudayal Kargaiya (PW-5), on 26/08/2009 he had examined dead body of Pyarelal and found single injury which is as under :-

चोट क्रमांक-1 एक कटा हुआ घाव 7x 3 से.मी. x पेट की केविटी की गहराई तक, यह चोट पेट के बायें तरफ 5 सेमी आखरी रिब्स के नीचे तथा 7 से. मी. मिड एग्जरी लाईन तथा 15 से.मी. अमलाईकस से दूर थी, उक्त चोट लम्बवत थी, इसके मार्जिन शार्प थे और इरवरटेड थे तथा चोट के चारों ओर सूखा रक्त जमा हुआ था इस बावत मैंने अपने प्रतिवेदन में डायग्राम बना कर उसे लाल इंक से दर्शाया है ।



This doctor opined that the injury was caused by hard and sharp object. Spleen was cut in two parts. Small and large intestine were also injured, Mesentery RT was also cut. Death of the deceased was due to the injury on Mesentery RT and spleen and blood loss and that injury was caused within 18 to 24 hours of the examination. The injury was homicidal in nature. Post mortem report is Ex.P/11. He also stated that on 12/10/2009 police had made a query whether injury could have been caused by the said knife produced for examination then he had given a report (Ex.P/12) that injury was dangerous to life caused by the knife produced. In Para-11 of his cross-examination, Doctor has stated that death was due to the injury caused in Mesentery RT and spleen.

9. In FSL report (Ex.P/24) it is mentioned that on Article-'D-Knife' seized from the accused-Tulsi, there is no human blood.

10. During writing of this judgment, we have noticed that Court has exhibited FSL report Ex.P/25 but it is regarding sickle seized from the accused-Motilal, lathis seized from accused-Rajendra and Mathura, and the injured persons are Jahar and Sitarani. It is further seen that learned trial Court has sought explanation in question No.88 about FSL report (Ex.P/25) from the appellants in examination under Section 313 of Cr.P.C. but FSL report (Ex.P/25) is not concerning this case. Learned trial court has further used this piece of evidence in its judgment in Para-4 & 24. We are really surprised as to how this negligence was caused by the learned trial Court. It is surprising that neither party at the time of final arguments or any stage of trial, argued this point, therefore we find that judgment of the trial Court was not written carefully and only on this ground alone judgment can be set aside but we propose to evaluate the other evidence on merit also.

11. Jeet Singh @ Jeetu (PW-2) is not an eye-witness. he stated that he was informed about the incident on the next day. Prosecution has declared this witness



hostile.

12. Suresh Gadriya (PW-4), Gyani (PW-7) and Bhajman Lodhi (PW-11) have also been declared hostile by the prosecution. They have not supported the case of the prosecution.

13. Bhagirath Gadriya (PW-1) has stated that the incident is of 08:30 - 08:45 PM. He has supported the prosecution case and stated that after the offence he took his father on cycle to Madhiyado Police Station and after lodging the report when he was being taken to hospital his father died. In cross-examination in Para-8 he stated that earlier to this incident there was a quarrel between Ghanshyam and Tulsi about a theft case against his younger brother Kashiram. In Para-10 he further stated that on the date of incident, there was darkness as it was raining earlier. In Para-13 he further stated that when his father was hit by knife then he (PW-1) was standing near the statue of Lord Ganesha and his face was towards the statue as he was praying with folded hands but his eyes were open. His father Pyarelal was standing beside him. Due to the Arti near the lamp there was light otherwise it was dark, *Dibbi* (lamp) was kept at a distance of about 4 feet. In Para-22 he stated that after the incident his father was not unconscious, he was speaking and understanding also. He further stated that "मैं साईकिल चला रहा था और एक हाथ से अपने पिता को पकड़े था मेरा भाई, मां, बहिन भी पिता को पकड़े थे। चोट लगने के बाद मेरे पिता को चलने या साईकिल में बैठने की हिम्मत नहीं थी।"

In Para-23 he stated that after his father made a report and came out of the police station, his father died, his father put thumb impression on the report because he did not had the energy to hold a pen. He denied that his father expired before reaching the police station. This witness further stated that his father was moving his hands and legs but did not have the energy to lift his hands. Therefore, police man caught his (Pyarelal) hand and affixed his thumb impression on the



FIR.

14. Haribai Rajpal (PW-3) has supported the prosecution case. In examination in Para-1 she stated that Tulsi had made an allegation of theft against Kashiram . The deceased-Pyarelal, had counselled them not to fight but Laxmirani had lodged the report. In Para-2, 3 and 4 she stated that on the day of incident, Pyarelal was worshipping Lord Ganesha doing *Arti* along with Suresh, Bhagirath and Kashiram. She herself and her daughter Prembai was also there and doing *Arti*. Harprasad came there and started abusing at that time Mohan and Tulsi also came there and *lipadgy* (entangle). Tulsi was carrying a knife. Tulsi made a assault on Pyarelal and caused an injury on the left side of his stomach with a knife and then ran away from the spot. Thereafter, he (PW-3) and Bhagirath (PW-1) tied a towel around the stomach of Pyarelal and took him to the police station where Pyarelal lodged a report.

In para-5 of her cross-examination, Haribai (PW-3), who is the wife of the deceased, stated that her husband was literate and used to sign. In Para-9, she further stated that on the date of incident, there was heavy rain and there was power cut, therefore there was darkness in the village, but her house was lightened by a *dibbi* (small lamp). In Para-27 she stated that after the incident her son took Pyarelal on cycle, Pyarelal was speaking. Pyarelal had affixed his thumb impression on the report. In Para-30 she stated that in police station they stayed about half an hour. Thereafter, they took Pyarelal to Hospital, he was alive in hospital also but Pyarelal did not give any statement to doctor. In Para-35, she denied that due to the darkness at the time of incident she did not see anything.

15. Prembai (PW-6) has deposed on the same lines as per the prosecution story and statement of his brother Bhagirath (PW-1) and her mother Haribai (PW-3). She stated that while two persons caught hold of her father. One accused stabbed



his father on the left side of his stomach by a knife. In Para-4 of her cross-examination, she stated that at the time of incident, there was darkness as there was a storm earlier, there was much darkness outside but she saw three persons. In Para-13 she stated that police station is about one kilometer from her house. They took her father on cycle to police station.

16. Ramsewak (PW-8) has stated that at the time of incident he was not present on the spot. In fact, he was informed about the incident by the wife of Pyarelal that Tulsi had assaulted Pyarelal by a knife and caused injury on his stomach.

17. Ghanshyam Gadar (PW-10) has stated in Para-31 of his examination-in-chief that when he went to see his father, he had already died. He was informed about the incident by his brother, sister and mother.

18. Ashok Kumar Nanama, Sub Inspector (PW-14) has stated that Pyarelal has lodged the report (Ex.P/21) and on 'B to B' part there are his signature and on 'A to A' part there is thumb impression of Pyarelal. This witness has further stated about the investigation, seizure of the knife. In Para-11 of his cross-examination, this witness stated that in the stomach of the complainant, a knife was there. (He has not stated that there was a knife injury). Family members of the complainant had come with him. In Para-12 he stated that the report (Ex.P/21) was not written in his writing by him, the report was written by some other police staff but the person who had written the report had not signed the same. When asked, which police officer/police staff had written the FIR, case was adjourned and on the next day i.e. on 06/08/2011, this witness stated that FIR (Ex.P/21) was written by a Constable but he does not remember that which Constable recorded the FIR (Ex.P/21). In para-14 of his cross-examination, this witness stated that he had filled the medical examination form regarding the injured but he died on the way to hospital, therefore, the information about death was received from the hospital.



He admitted that the medical form which was sent has not been included in this case in charge-sheet. He further stated that "thumb impression of Pyarelal" was not written by him, the police staff who wrote the report (Ex.P/21) must have made this note. In Para-15 he stated that he cannot say as to why he did not write the report in his own writing.

19. Dr. Khemchand Arya Medical Officer (PW-15) stated that on 25/08/2009 Pyarelal was brought in dead condition to Primary Health Center at 09:00 PM. His body was cold as he had died. Therefore, he sent an information (Ex.P/23) to Police Station. He further stated that injury caused to the deceased could have been caused by the article produced in the Court i.e. article '1' knife.

20. This Court has to evaluate the rival case of both the parties. Certain serious anomalies have come on the basis of evaluation which are as below :- (i) FIR (Ex.P/21) has not been recorded in hand writing of the Investigating Officer Ashok Kumar Nanama (PW-14). In fact, in spite of giving opportunity, this witness failed to name the person (officer) who had written the report, this is a serious lapse because statement of the person who wrote the report has to be recorded before the trial Court but in an unusual manner some other police staff wrote FIR (Ex.P/21) and only signed by PW-14 Ashok Kumar Nanama. This lapse become important because in this case an important consideration is whether at the time of recording FIR, Pyarelal was alive or not because while Bhagirath (PW-1) says that after coming out from the police station, his father Pyarelal died whereas his mother Haribai (PW-3) says that Pyarelal was alive till he reached the hospital but it is important to note that if after till the lodging of FIR (Ex.P/21) Pyarelal was alive and sent to Hospital then police/prosecution has not filed requisition for medical examination of Pyarelal by police which is a mandatory document on the basis of which medical examination of the deceased was to be conducted by the



doctor. Non-filing of the said document along with the charge-sheet again lends credibility to this argument of defence that Pyarelal did not lodge the FIR and had already died and perhaps it was lodged by any member of his family but thumb impression of Pyarelal was obtained by some unknown police officer. Dr. Khemchand Arya (PW-15) says that he was brought dead to hospital.

21. The trial Court has wrongly relied on some unrelated document (Ex.P/25) carelessly and it is one of the piece of evidence on the basis of which, accused persons have been convicted.

22. Since, it has become highly doubtful as to who recorded the FIR (Ex.P/21) whether it was lodged by the deceased Pyarelal or he had died before lodging of FIR (Ex.P/21) and some police staff who is unknown in this case, simply affixed the thumb impression of the deceased on FIR. Even otherwise, looking to the evidence available on record, it is not proved that on FIR (Ex.P/21) it is actually, the thumb impression of Pyarelal and none other person.

23. For the reasons mentioned above, this Court is of the view that conviction and sentence of the appellants cannot be maintained due to the serious lapses in investigation and prosecution evidence. Therefore, the appeal is liable to be allowed and is hereby allowed. The appellants-Tulsiram and Harprasad are acquitted from the charges under Sections 450, 302 and 302/34 of IPC.

24. A copy of this order be sent to the concerned Court for necessary compliance. Case property be disposed of as per the direction of the trial Court.

25. Accordingly, the criminal appeal is **allowed and disposed of.**

(VIVEK AGARWAL)
JUDGE

(AVANINDRA KUMAR SINGH)
JUDGE