

**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR  
BEFORE**

**SHRI JUSTICE SUJOY PAUL**

**&**

**SHRI JUSTICE PRAKASH CHANDRA GUPTA**

**ON THE 19<sup>th</sup> OF DECEMBER, 2022**

**CRIMINAL APPEAL NO. 1622 OF 2010**

**BETWEEN :-**

**MANOJ ALIAS GUDDU, S/O KHAIR  
SINGH, AGED ABOUT 28 YEARS, R/O  
KHAIRA PALARI, TEHSIL KEOLARI,  
DISTRICT-SEONI (M.P.)**

**....APPELLANT**

**(BY MS. GAYATRI LADHIYA – ADVOCATE)**

**AND**

**THE STATE OF MADHYA PRADESH  
THROUGH P.S. KEOLARI, DISTRICT-  
SEONI (MADHYA PRADESH)**

**....RESPONDENT**

**(BY SHRI AJAY SHUKLA - GOVERNMENT ADVOCATE )**

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

**J U D G M E N T**

In this criminal appeal filed under Section 374 (2) of the Criminal Procedure Code, 1973 the appellant has questioned the judgment dated 30.07.2010 passed in Session Trial No. 99/2009 decided by the learned First Additional Sessions Judge, Seoni, whereby the appellant was held guilty for

committing offence under Section 302 of IPC and directed to undergo life imprisonment with fine of Rs.1,000/- with default stipulation. The appellant was acquitted from committing offence under Section 304-B of IPC.

**Facts :-**

2. In short, the case of prosecution is that appellant solemnized marriage with Sangeeta before three years from the date of incident which had taken place on 12.05.2008. As per the prosecution story, after marriage for sometime the appellant lived with his wife peacefully but thereafter started demanding money to buy a motor-cycle.

3. As per 'marg' intimation dated 13.05.2008, on 12.05.2008 at midnight, the appellant approached Balram (PW-4) and informed him that Sangeeta has set herself ablaze. Balram along with appellant reached the house of appellant and found that the room inside the house is covered by flame and the door was broke open and it was found that Sangeeta is lying on the bed in dead condition. Appellant fled away from the place of incident. The complainant Balram (PW-4) had doubt on appellant and, accordingly, lodged 'marg' intimation report in Police Chowki, Khaira Palari, Police Station, Keolari.

4. The Investigating Officer Laxmi Singh (PW-9) started the investigation. The lock put on the broken door of the room where dead body of Sangeeta was found and seized through (Ex.P/7). The *panchayatnama* of body was prepared by Executive Magistrate Shri P. K. Shukla (PW-5) through (Ex.P/2). A 'site map' was prepared by Investigating Officer Laxmi Singh (PW-9). Apart from that, the burnt material etc. were collected from the scene of crime. After completion of investigation, while registering

Crime No.119 of 2008, the First Information Report (FIR) (Ex.P/11) was recorded. The ruptured trachea of deceased and her clothes were sent for examination to Forensic Science Laboratory (FSL), Sagar through the draft of Superintendent of Police, Seoni (Ex.P/12). FSL report (Ex.P/14) & (Ex.P/15) were received in due course.

5. After committal of matter to the Sessions Court, the case was registered where appellant has abjured his guilt. In due course, defence witnesses 'D.W.1' to 'D.W.4' recorded their statement. The Court below framed two questions for its determination. After recording evidence of parties and hearing the parties, the impugned judgment was passed whereby the appellant was acquitted from Section 304-B of the IPC whereas, as noticed above, he was held guilty for committing offence under Section 302 of the IPC. This judgment is subject matter of challenge before us.

**Appellant's contention :-**

6. Ms. Gayatri Ladhiya, learned counsel for the appellant submits that star witness of the prosecution is Balram (PW-4). Balram is uncle (Mausa) of deceased Sangeeta. By placing reliance on the statement of Balram (PW-4), it is submitted that the appellant allegedly approached him on the date of incident at around 12:00 at night. Appellant was only wearing undergarments. Along with the appellant, he approached the place of incident and found that door of the house was locked from inside. He cried for help and called the neighbour. When neighbours reached to the place of incident, they broke open the door and entered the house and used water to control the fire. They found that Sangeeta is no more. In Para-9 of his deposition, Balram (PW-4) deposed that broken door was locked from inside which was opened with a key available at the place of incident. A

*panchnama* of lock and key (Ex.P/7) was prepared. He again deposed that door was locked from inside and it was opened by breaking it by means of a '*Sabbal*'. Learned counsel for the appellant submits that if door was locked from inside which is evident from the statement of this witness, there was no likelihood that appellant would murder the deceased and can put the lock from inside. It is submitted that various prosecution witnesses have stated that there was only one door in the house. For this purpose, she placed reliance on the 'spot map' (Ex.P/9) which was proved by Laxmi Singh (PW-9). It is submitted that the spot map clearly shows that there is only one entry point in the house and said door was broke open and was lying in the courtyard. A specific finding is given in the spot map mentioning that *zamin par pada darwaja*. In other words, it is argued that since there was only one door which was locked from inside, there was no possibility of assault by appellant on the deceased and then scope to leave the place. For this purpose, the statement of Gopal Prasad (PW-1) was relied upon, who in answer to question No.13 specifically deposed that house had only one door and front door was broke open in order to enter the house.

7. The next contention of learned counsel for the appellant is that statement of Gopal Prasad (PW-1), father of deceased, shows that on the date of incident, his son Manoj and wife were residing in the house of Balram (PW-4). Similarly, mother of deceased Smt. Shanti Bai (PW-2) deposed that door of house of deceased was broken with the help of *Sabbal* and when they entered the house, it was found that Sangeeta is dead. In reply to question No.13, she further deposed that there was only one door in the house which is in the front side of the house and there is no window in the house. She clearly deposed that door was locked from inside but stated

that appellant fled away from the back side of the room by removing the bricks of the wall.

8. Learned counsel for the appellant further submits that there is no indication in the 'site map' regarding removal of bricks or creating a way for fleeing from the scene of crime. Therefore, any such statement of mother and father of deceased are of no assistance. The Autopsy report (Ex.P/8) which was proved by Dr. Ajaytosh Maravi (PW-6) is referred. It is submitted that no doubt, as per the said report, the cause of death is due to rupture of trachea but there is no legal evidence to connect the appellant from the said incident.

9. Furthermore, it is urged that the appellant was not available in the village on the date of incident. For this purpose, statement of defence witnesses were heavily relied upon. Learned counsel for the appellant submits that appellant is in custody since 09/04/2009. He has been falsely arraigned. Considering the aforesaid evidence led by prosecution, it cannot be said that they have proved the case against the appellant beyond reasonable doubt. Thus, impugned judgment may be interfered with.

10. The report of Forensic Science Laboratory dated 11.02.2009 (Ex.P/5) is heavily relied upon to contend that the lock and key of the door which was broke open to enter the room of the deceased was sent for examination to the laboratory. As per report Ex.P/15, which was duly proved by Smt. Laxmi Singh (PW-9), it is clear that the lock was openable by use of key recovered from the scene of crime. Thus, there is no manner of doubt that door was locked from inside of the room where deceased was found dead.

There is no *iota* of clinching evidence to show that it was appellant who locked the room from inside, murdered his wife and fled away from the said room. In absence thereof, the impugned judgment may be set-aside.

**Stand of prosecution :-**

11. Shri Ajay Shukla, learned Government Advocate for State has also drawn our attention to the statement of parents of deceased viz Gopal Prasad (PW-1) and Smt. Shanti Bai (PW-2) and also the statement of Balram (PW-4), he submits that the Court below has not committed any error of law in relying on the statement of these witnesses. The autopsy report in no uncertain terms makes it clear that Sangeeta died because of rapture of trachea and not because of burnt injuries. Therefore, no carbon particles were available in the lungs of the deceased. Considering the heinous nature of crime and evidence available on record, no case is made out for interference.

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

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

14. As rightly pointed out by learned counsel for the parties, Balram (PW-4) is an important witness of the prosecution. He is the person to whom appellant allegedly approached at 12:00 in the night and informed him that Sangeeta is caught by fire. The appellant allegedly fled away after reaching the scene of crime. A careful and comparative reading of the statements of parents of deceased i.e. Gopal Prasad (PW-1) and Shanti Bai (PW-2) and uncle (PW-4), it is clear like noon-day that all these important prosecution witnesses clearly deposed that door of the room in which Sangeeta was lying was locked from inside. All these witnesses candidly deposed that said

door was broken with the help of a *sabhal* and door was lying on the courtyard of the house when spot map was prepared. This story is clearly reflected in the 'site map' (Ex.P/9). However, a careful reading of 'site map' clearly shows that it indicates only one door in the house. There is no *iota* of indication in the 'site map' that any wall of the room where deceased was found was a *kachcha* wall or its bricks were removed in order to make a place for fleeing. Thus, apart from oral statement of Gopal Prasad (PW-1) and Shanti Bai (PW-2) and uncle (PW-4), there is no other material to substantiate that appellant fled away from the room after murdering the deceased by removing the bricks. Pertinently, Ex.P/4 is a map prepared by Patwari Rekharam (PW-3). Importantly, this 'site map' also does not indicate about removing of bricks or creation of any place to flee from the scene of crime. In absence thereof, we find substance in the arguments of Ms. Ladhiya, learned counsel for the appellant that it will not be safe to uphold the conviction. Putting it differently, the prosecution could not establish it with necessary clarity that the room in which body of Sangeeta was found had another exit point. The only exit point shown was the door which was locked from inside and was open for entering into the same. A Division Bench of this Court in **2004 (4) MPLJ 543 Vijay Singh vs. State of M.P.**, ruled thus :-

"21. .... At this juncture we have also perused the site plan Ex. P-4 and we find that the place from where it is alleged that appellant fired the gun and the place where the deceased received the gun shot injury, are not shown. The submission of Shri Gupta, learned senior counsel is that it was incumbent upon the investigating officer who has enquired the facts from the witnesses on these material points, should have been mentioned in the spot map. To buttress his contention the learned counsel has placed heavy reliance on (2003) 12 SCC

758 AIR 2004 SC 124, *Shingara Singh v. State of Haryana* in which the Apex Court has thrown sufficient light in this regard and has laid down the law that the essential features should have been shown in the site plan and the omission to show them in the site plan cannot be said to be a mere lapse on the part of investigating agency. For better understanding it would be apposite to rely para 29 of the said decision which reads thus :-

“So far as the ladder is concerned, PW-5, Balbir Singh stated that the ladder was in the same position when the investigating officer came to the place of occurrence but he could not explain why it was not shown in the site plan prepared by the police. Even PW-10 the investigating officer had to admit that in the site plan the position of the ladder was not shown. These features of the prosecution case also support the conclusion reached by the trial Court that the occurrence must have taken place in a manner different than the one deposed to by the alleged eyewitness. The evidence on record with regard to the existence of cots in the courtyard of Gurdeep Singh, the existence of a bicycle, as also about the existence of a ladder is rather unsatisfactory and creates a serious doubt as to whether the prosecution witnesses are telling the truth. The omission to show them in both the site plans cannot be attributed to a mere lapse on the part of the Investigating agency. In fact so far as the site plans are concerned, the case of the prosecution is that they were prepared in the presence of PW-5 and another witness and on their pointing. However, PW-5 denied that the plans were prepared in his presence. The other witness was not examined.”

It would be fruitful to rely on other decision of the Apex Court *Baldev Singh v. State of M.P.*, AIR 2003 SC 2098 on this point. Thus on the basis of the above said decisions of the Apex Court, we can safely say that preparation of site plan is not a mere formality, but, it is an essential feature in order to reach the firm conclusion by the Court in order to ascertain whether



the offence has been committed by accused or not. Since there is a serious infirmity in the site plan as it does not indicate that from which place the accused/appellant fired the gun and the place where the deceased was standing, therefore, in view of the aforesaid decisions of the Apex Court the benefit would go to the accused.”

**(Emphasis supplied)**

The Apex Court in **(2003) 12 SCC 758 Shingara Singh vs. State of Haryana and another**, opined that :-

“29. .... The omission to show them in both the site plans cannot be attributed to a mere lapse on the part of the investigating agency.”

**(Emphasis supplied)**

We find support in our view from the said judgments.

**15.** So far ocular evidence of Gopal Prasad (PW-1) and Shanti Bai (PW-2) is concerned wherein they deposed that appellant fled away from the room where his wife was found dead, it is apposite to note that it is nobody's case that they were present at the time of commission of crime and they had seen the appellant fleeing away from the scene of crime. In this backdrop, the prosecution must have produce some evidence to corroborate their oral evidence. In absence thereof and in view of defective 'site map', we are unable to hold that factum of escaping from scene of crime by appellant is satisfactorily established by the prosecution.

**16.** The prosecution, no doubt, could establish its case that cause of death of Sangeeta is rupture of trachea and not the burn injuries. However, unless it is established with accuracy and precision that it was appellant, who has committed the said murder. Appellant cannot be held guilty merely on the

basis of suspicion. It is trite that suspicion however, strong it may be, cannot take the place of proof.

17. Four defence witnesses entered the witness box to support the case of defence and to show that appellant was not in the village on the date of incident. The Court below disbelieved it merely on the ground that at 12:00 in the night, there was no likelihood of appellant's presence in a *fate (Mela)* where he allegedly opened a temporary betel shop.

18. Apart from this, it is gathered that in the statement recorded under Section 313 of Cr.P.C., no relevant question was framed by Court below to confront him with incriminating material relating to removal of bricks and possibility of his fleeing away from the said place. Thus, in our opinion, it is not safe to give stamp of approval to the impugned judgment.

19. In view of foregoing analysis, it is clear that prosecution could not establish its case beyond reasonable doubt. Hence, the appellant is entitled to get the benefit of doubt.

20. As a consequence, the impugned judgment dated 30/07/2010 is set-aside. The appellant is acquitted by giving him the benefit of doubt. If presence of appellant is not required in the prison for any other offence, he be released forthwith.

21. The appeal is **allowed**.

(SUJOY PAUL)  
JUDGE

(PRAKASH CHANDRA GUPTA)  
JUDGE

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