



2026 IN

**NON-REPORTABLE**

**IN THE SUPREME COURT OF INDIA**  
**CRIMINAL APPELLATE JURISDICTION**  
**CRIMINAL APPEAL NO. 1937 OF 2013**

**UPERNDRA KHARE**

**... APPELLANT**

**VERSUS**

**THE STATE OF MADHYA PRADESH**

**... RESPONDENT**

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

**PRASANNA B. VARALE, J.**

1. The present criminal appeal is directed against the final judgment and order dated 21.06.2012 passed by the Division Bench of the High Court of Madhya Pradesh at Jabalpur in Criminal Appeal No. 2330/2007. By the impugned judgment and order High Court dismissed the appeal filed by the appellant and upheld the order of First Additional Sessions Judge, Satna [hereinafter referred to as "Trial Court"] passed in Session Case

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Reason:

No. 405/2002 thereby convicting the accused-appellant under Section 302 of Indian Penal Code, 18603 and sentencing him to life imprisonment and pay a fine of Rs. 1,000/-, and in default of payment of fine, to further undergo R.I. for 1 year.

### **BRIEF FACTS**

- 2.** The factual matrix of the case is that on 20.07.2002, around 6:05 Hours in the morning, information was received at PS City Kotwali, Satna by one named Anupam Shukla [**hereinafter referred to as “informant”**] that his cousin brother Rajesh Shukla could not be reached out after he met him on 18.07.2002. Upon visiting the house of Rajesh Shukla on the morning of 20.07.2002, the informant found the back door of the house open and, on entering the premises, discovered Rajesh Shukla, his wife Madhu Shukla, his son Prabhanshu Shukla and his sister Vinita Shukla lying dead with injuries on their bodies [**hereinafter referred to as “deceased persons”**].
- 3.** It was in this background that the First Information Report Case No. 515/2002 was registered under Section 302 of Indian Penal Code, 1860 [**hereinafter referred to as “IPC”**]. On lodgement of the FIR, the criminal machinery was set into motion and the investigating agency proceeded to collect the evidence. By

conducting the usual formalities of investigation namely, visiting the scene of offence, seizure of various articles found on the scene of offence such as blood stained clothes, bedsheet and empty phials of calmose injections from the toilet seats was made and these articles were sealed. The dead bodies were sent for autopsy. The postmortem report received by the investigating officer revealed the cause of death is excessive haemorrhage due to injuries caused by the sharp object/weapon. Brothers and sisters of deceased Rajesh Shukla found that the jewellery worn by the deceased persons as well as jewellery kept in the almirah was stolen. Accordingly, the offences under Sections 382 and 404 IPC were added. In the process of investigation, it was further revealed that the accused Devendra Singh, neighbour of the deceased Rajesh Shukla had an evil eye over deceased Vinita and he used to tease Vinita. It was also revealed that accused Devendra Singh used to be in the company of the accused Upendra Khare (who is present Appellant) before this Court. In the investigation, it was revealed that the accused persons namely Devendra Singh, Upendra Khare, Gyanchand @ Chunni, Neeraj Kumar, Babua @ Abhishek Singh, all together entered the house of deceased Rajesh Shukla on 18.07.2007. The accused

persons were armed with country made pistol, cartridges and gupti. Initially, the accused persons administered calmpose injections to the deceased and caused their death by causing injuries to them. The arrest of the accused persons was effected by drawing arrest panchnama Ex P-55, 56, 57, 58, 59 and 60.

**4.** The investigating agency recovered certain articles from the accused persons namely 315 calibre country made pistol, three live cartridges, stolen jewellerys from the accused persons and to be more precise, jewellery was recovered at the instance of the accused Devendra Singh, empty phials of calmpose injection, clothes worn, one cotton rope and used syringes were recovered at the instance of the present appellant Upendra Khare.

**5.** The investigation concluded by filing charge sheet against the accused persons, namely Devendra Singh, Neeraj Kumar Verma, Gyanchand Yadav @ Chunni Yadav. They were charged for commission of offences under Sections 302, 382, 404 of IPC read with Sections 25 and 27 of the Arms Act. Accused Omprakash Soni was charged for offence under Section 411 IPC whereas accused Ramkaran Yadav was charged under Section 25 of the Arms Act. Accused Babua @ Abhishek Singh and Kunal

Singh were absconding and as such, no charge-sheet was filed against these absconding accused.

- 6.** The case namely, Sessions Case No. 405 of 2002 was committed to the Sessions Court on 19.12.2002. The Trial Court charged the present appellant for commission of offences punishable under Sections 302, 382, 404 read with Section 149 IPC.
- 7.** On appreciation of evidence, the Trial Court vide its judgment and order dated 15.10.2007 convicted the appellant under Section 302 IPC on four counts as there were four deceased persons read with Section 149 IPC and sentenced him to life imprisonment with fine of Rs.1000/- and in default to further undergo rigorous imprisonment for one year. The Trial Court, however, acquitted appellant under Sections 382 and 404 read with Section 149 IPC giving benefit of doubt.
- 8.** Being aggrieved by the judgment and order of the Trial Court, the accused (appellant) preferred an appeal before the High Court. Division Bench of the High Court of Madhya Pradesh vide its judgment and order dated 21.06.2012 dismissed the appeals sustaining the conviction. Needless to state that the High Court clarified that the sentence awarded to appellant on all four

counts shall run concurrently. Being aggrieved by the judgment and order of the High Court, the appellant approaches this Court by filing present appeal.

### **CONTENTIONS**

**9.** Learned counsel for the appellant namely, Mr. Amit Singh has made the following submissions:

**9.1.** Learned counsel for the appellant contended that the High Court and the Trial Court erred in convicting the appellant based on a chain of circumstantial evidence that was incomplete and failed to establish guilt beyond reasonable doubt. He further contended that the conviction was sustained despite the lower courts observing that the investigation was faulty.

**9.2.** Learned counsel for the appellant contended that no motive is assignable to the appellant. He argued that the alleged motive is attributed to accused Devendra Singh who was the neighbour of deceased Rajesh Shukla and allegedly harboured feelings towards deceased Vinita.

**9.3.** Learned counsel for the appellant further contended that no recovery of either the stolen property or any weapon of offence is alleged to have been made from the appellant which clearly

shows that the appellant had not shared any common object or intention with the other co accused.

**9.4.** Learned counsel for the appellant argued that the only incriminating material produced against the appellant is the alleged recoveries made at the instance of the appellant. The alleged recoveries were not legal and have not been proved before the Trial Court due to the following discrepancies, namely, that both the independent witnesses named in the property seizure memo have turned hostile; that the alleged recovery is made after 2 months of the alleged commission of offence, which is highly improbable and defies normal human conduct, as no offender would preserve incriminating items in his residence for such a duration; and that the alleged recovery is procured through force, as the record shows that the leg of the co-accused was fractured during police custody. On this point, learned counsel further argued that the alleged recoveries are not admissible under section 27 of Indian Evidence Act, 1872. He contended that Section 27 provides that when any fact is deposed to and discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not,

as, relates distinctly to the fact thereby discovery may be proved. Learned Counsel for the appellant relying on the judgment of this Hon'ble Court in **Prabhu v. State of U.P. in Criminal Appeal No. 50 of 1962 dated 03.05.1962** submitted that the High Court erred in upholding the conviction and sentence of the appellant as the case of the prosecution relied on circumstantial evidence and the chain of circumstances was incomplete as there were missing links. Learned counsel also placed reliance on the judgments of this Court in **Boby v. State of Kerala<sup>1</sup>** and in **Ashish Batham v. State of Madhya Pradesh.<sup>2</sup>**

**9.5.** Learned counsel for the appellant contended that there was no evidence to show that the alleged articles recovered at the instance of the appellant were used in the commission of crime. He further submitted that the High Court has convicted appellant on wrong facts as firstly, High Court has found that calmpose voil allegedly recovered from the appellant carry "diazepam" (tranquilizer) whereas these findings are based on Ex P-42 FSL Report which has only examined the voils recovered from the crime scene and the voils recovered from appellant was never sent for examination. Moreover, the voils recovered from crime

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1 (2023) 15 SCC 760

2 2002 (7) SCC 317.

scene did not test positive for diazepam. Secondly, blood-like stains on the recovered clothes could not be ascertained to be of human origin much less the ascertainment of blood group of deceased to connect to the appellant. High Court had categorically recorded that recovery of the blood stained clothes cannot be taken against the appellant as the same was not put to the appellant in his statement under section 313 Cr.P.C. Thirdly, usage of the rope also finds no corroboration from the prosecution story as neither of the post mortem report says that the cause of death is strangulation nor any mark has been found on the neck of any of the deceased.

**9.6.** It was further contended that the conviction under Section 302 read with Section 149 of the IPC is legally unsustainable because the total number of persons convicted in the case was less than five, thus failing to satisfy the legal requirement for an “unlawful assembly”.

**9.7.** In the alternative, learned counsel appearing for the appellant has submitted that the appellant has already undergone a substantial period of incarceration and does not have any criminal antecedents; it is, therefore, prayed that the

sentence imposed upon him be reduced to the period already undergone.

**10. *Per Contra*,** learned counsel appearing on behalf of the respondent, namely, Mr. Bhupendra Pratap Singh, D.A.G. has contended that the prosecution successfully proved its case by placing on record overwhelming circumstantial evidence and the same has rightly found favour of acceptance with both the trial court as well as the High Court. He argued that merely because panch witness has turned hostile does not make alleged recovery doubtful. To support this, learned counsel has relied upon the full bench judgment of this Hon'ble court in ***Goverdhan & Anr. v. State of Chhattisgarh***<sup>3</sup> wherein this Hon'ble Court has observed that merely because the witnesses have turned hostile does not prove that no seizure was affected as the IO had already proved the seizure memos.

### **ANALYSIS**

**11.** Heard Learned Counsel for the appellant as well as Ld. Counsel for the respondent. We have also perused relevant

documents on record and the judgments passed by the Courts below.

**12.** Admittedly, the case of the prosecution rests on circumstantial evidence. The learned Trial Court on appreciation of evidence held the accused persons guilty. At the cost of repetition, as stated above, we may state that it is the case of the prosecution that the accused Devendra Singh was having an evil eye over the deceased Vinita. The present appellant Upendra Khare used to be in company of the accused Devendra. Devendra and the present appellant along with other accused persons armed with various weapons entered in the house of the deceased Rajesh Shukla. Initially, by administering the calmpose injection and subsequently by causing the injuries to the accused committed murder of four members of the family.

**13.** Insofar as, the case of the prosecution that accused Devendra was teasing Vinita on occasions and on certain occasions also threw liquor bottles at the door of her house is supported by ocular evidence i.e. the testimony of PW1 Kamta Prasad Shukla and PW 18 Kumari Sangeeta Shukla. As per the record, accused Devendra preferred an appeal against the judgment and order of the High Court by filing Special leave

petition (Crl) No. 8364 of 2012. Record reveals that accused Devendra Singh was on parole from August 2012, however he has failed to appear before this Court and accordingly, his appeal was dismissed vide order dated 13.07.2016 for non-prosecution.

**14.** The other accused persons have not challenged the judgment and order of the High Court as such we may consider the case of the appellant who is before us.

**15.** As stated above, the very important material evidence against present appellant is in the form of a glaring circumstance namely, the recovery of articles. As per the prosecution case, the incident took place between 18.07.2002 to 20.07.2002. The appellant was arrested on 21.09.2002 The articles namely phial, the clothes worn by him and a rope was recovered at the instance of the present appellant.

**16.** As stated above, it is the case of the prosecution that the accused persons including the present appellant initially administered calmpose injection to the deceased persons and thereafter the weapons were used for commission of the murder of the deceased persons. The perusal of the postmortem report which is proved by the witness namely

medical officer Dr. B.L. Gupta/ P.W.17, would show that the cause of death is shock due to external and internal injuries on the vital parts and excessive blood loss has caused the death of the deceased persons within 24 to 36 hours. Then it refers to the traces of calmpose injection. Perusal of the record further shows that Dr. B.G. Hinduja, Dr. H.K Pandey and Dr. Rekha Tripathi conducted postmortem. The report was prepared by the team of doctors which was duly signed by them along with P.W. 17 Dr. B.L. Gupta who was working as M.D. (Medicine) Assistant Surgeon/Clinical Associate at the relevant time. P.W.17 Dr. B.L. Gupta in his testimony before the Court stated that:

*“8. [PW17] Dr. B.L. Gupta has stated that on examining the dead bodies it was found that there was stiffness on the upper part of the bodies. The witness has not stated about the external examination of the bodies. He has further stated that this was the condition of the bodies of the deceased and on external examination following things were found:*

- (i) Cut wound on right wrist 7 cm x 2.5 cm x bone deep causing the cutting of all the veins of pulse, tender and blood. The blood was present all around the wound.*
- (ii) Penetrative wound on the right side lower part of chest 1.5 cm x 1 cm x bone deep*

- (iii) Penetrative wound below the second wound 1.5 cm x 1 cm x bone deep*
- (iv) Penetrative wound below A. P. Gasitic 1.5 cm x 1 cm x stomach deep*
- (v) Penetrative wound on A. P. Gasitic 1 x 3 x stomach deep*
- (vi) Penetrative wound on A. P. Gasitic 2 x 1 x stomach deep*
- (vii) Penetrative wound above Amlyc in vertical shape 1.5 x 1 x stomach deep*
- (viii) Penetrative wound above Amlyc 1.5 cm x 1 cm x stomach deep. This injury was harzanal place.*
- (ix) Penetrative wound on right side of Amlyc of vertical shape 2.5 x 1.5 x bone deep.*
- (x) Penetrative wound on right side of Amlyc. 1.5 x 1 x stomach deep.*
- (xi) Penetrative herzanal wound on the right side of Amlyc 1.5 cm x 1 cm x stomach deep.*
- (xii) Penetrative wound on the left side of Amlyc 1 cm x 1 cm x bone deep.*
- (xiii) Penetrative wound on lately lax region 1 cm x 1 cm.... (illegible) deep.*

*Further the witness has deposed that on internal examination it was found that*

- (i) There were many Incised wounds on liver and intestine*
- (ii) Blood was filled in the peritorium of the stomach*
- (iii) Stomach was empty*

*(iv) The hymen of vagina was torn but was appearing as old. The slide was prepared of the discharge from the vagina and was handed over to the constable after sealing it for further examination.*

*(v) Stomach was empty wherein there was some green liquid present which was like a mixture of Boyle and Gasting.*

*(vi) Both the chambers of heart were empty*

*(vii) The list of the clothes worn by the deceased: Khaki pajama which was worn inside out, [2] brown t-shirt which had blood stains, were sealed and given to the constable. The Visra along with the dead body was backed in three bottles and given to constable for chemical examination.*

*9. Thereafter the witness has opined that according to medical opinion that shock due to external and internal injuries on the vital parts and excessive blood loss has caused the death of the deceased persons within 24 to 36 hours. In this respect the report Exb. P-36 has been proved.”*

**17.** The viscera report/Exhibit P-52 was forwarded for chemical analysis which showed analytical reasons and the same reads *‘Diazepam is present in Article A, B, C, D, E, G, H and JK.*

**18.** Scene of the offence *panchnama* show that the syringes were found near the toilet seats. Though an attempt is made by the learned counsel for the appellant to submit before this Court

that the recovery at the instance of the present appellant is not proved because the panch witnesses to the recovery *panchnama* turned hostile. We are unable to accept this submission of the learned counsel for the simple reason that this Court had consistently taken a view that merely on account of the panch witnesses turning hostile cannot be a ground to discard this important piece of evidence, if the recovery is proved through the investigating officer. On the backdrop of this fact, perusal of the record shows that the recovery at the instance of the present appellant is proved through the testimony of the investigating officer Arun Singh/PW 24. We may refer to the judgment of this Court in ***Rameshbhai Mohanbhai Koli v. State of Gujarat***<sup>4</sup>, wherein this Court has reiterated the settled principle that recovery is not vitiated merely because the panch witnesses have turned hostile. The judgment read as follows:

*“33. In Modan Singh v. State of Rajasthan [(1978) 4 SCC 435 : 1979 SCC (Cri) 56] it was observed (at SCC p. 438, para 9) that where the evidence of the investigating officer who recovered the material objects is convincing, the evidence as to recovery need not be rejected on the ground that seizure witnesses did not support the prosecution version. Similar view was expressed in Mohd. Aslam v.*

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4 (2011) 11 SCC 111

*State of Maharashtra [(2001) 9 SCC 362 : 2002 SCC (Cri) 1024] .*

34. *In Anter Singh v. State of Rajasthan [(2004) 10 SCC 657 : 2005 SCC (Cri) 597] , it was further held that: (SCC p. 661, para 10)*

*“10. ... even if panch witnesses turn hostile, which happens very often in criminal cases, the evidence of the person who effected the recovery would not stand vitiated.”*

35. *This Court has held in a large number of cases that merely because the panch witnesses have turned hostile is no ground to reject the evidence if the same is based on the testimony of the investigating officer alone. In the instant case, it is not the case of defence that the testimony of the investigating officer suffers from any infirmity or doubt. (Vide Modan Singh case [(1978) 4 SCC 435 : 1979 SCC (Cri) 56] , Krishna Gopal case [(1988) 4 SCC 302 : 1988 SCC (Cri) 928] and Anter Singh case [(2004) 10 SCC 657 : 2005 SCC (Cri) 597] .*

36. *In view of the above principles and in the light of the discussion about the recovery as stated and concluded earlier, those materials produced by the prosecution are relevant, acceptable and rightly connected these circumstances with the appellants.”*

**19.** This position was further reiterated by this Court in ***Mallikarjun v. State of Karnataka***<sup>5</sup>, observing as under:

*“23.....On behalf of the accused, the learned Senior Counsel contended that the evidence of PW 17 PSI as to the recovery of MO 1 dagger at the behest of Accused 1 is*

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5 (2019) 8 SCC 359

*doubtful and when PWs 8 and 9 have turned hostile, no weight could be attached to the alleged recovery of MO 1 dagger. There is no merit in the contention that merely because the panch witnesses turned hostile, the recovery of the weapon would stand vitiated. It is fairly well settled that the evidence of the investigating officer can be relied upon to prove the recovery even when the panch witnesses turned hostile.....”*

**20.** As the Trial Court acquitted the appellant of the charges under Sections 382 and 404 IPC by assigning justifiable reasons on appreciation of evidence as such it may not be necessary for us to consider this aspect of the matter. It is true that the investigation in the present matter is not up to the mark and it was expected of the investigating agency to conduct the investigation with more sensitivity as it was the case of four persons losing their lives. But merely the fact that the investigation was not up to the mark cannot be the reason for this Court to discard the other material evidence brought by the prosecution in support of its case, particularly, the evidence against the present appellant in the form of recovery of the phial of the injection at the instance of the present appellant supported by the postmortem report duly proved by substantial evidence of Dr. B.L. Gupta.

**21.** Accordingly, in our opinion, the judgment of the Trial Court holding the appellant guilty and awarding the sentence as upheld and maintained by the High Court is based on a just and proper appreciation of evidence. We see no reason to show any interference in both the judgments. Appeal thus being devoid of merits deserves to be dismissed and the same is accordingly dismissed.

.....**J.**  
**[PANKAJ MITHAL]**

.....**J.**  
**[PRASANNA B. VARALE]**

**NEW DELHI;**  
**MAY 25, 2026**