

**HIGH COURT OF MADHYA PRADESH****BENCH: Vivek Rusia and Anil Verma, JJ.****Date of Decided on: 21-03-2024**

Criminal Appeal No. 917, 936, and 988 of 2013

**KAMMU @ KAMLESH S/O KAILASH MALI AND OTHERS****Vs.****THE STATE OF MADHYA PRADESH AND OTHERS****Legislation:**

Indian Penal Code, Sections 120-B, 302, 302/34

Section 364 of IPC

Section 311 of Cr.P.C.

**Subject:** Appeals in a murder case involving a criminal conspiracy and shooting of Ahsan, where the appellants were convicted by the Sessions Court and sentenced to life imprisonment. The High Court affirmed the convictions and sentences.

**Headnotes:**

Criminal Conspiracy and Murder - Conviction for Criminal Conspiracy under Section 120-B and Murder under Section 302 and 302/34 of IPC - Incident involving the murder of Ahsan through shooting after a criminal conspiracy - Accused Kammu @ Kamlesh, Sheju Mewati @ Shahjad Kha, Ansar, Rijwan @ Tinu, and Jafar convicted for their respective roles in the conspiracy and the murder. [Paras 1, 2, 22, 25]

Eye Witness Testimony and Investigation - Key witness Naushad (PW-2)'s testimony established the presence of accused at the scene and their participation in the crime - Independent witness turned hostile, but other evidence supported prosecution's case - Statements of Police Inspector R.D. Mishra (PW-15) and B.L. Charan (PW-27) corroborated the prosecution's case. [Paras 11-13, 17, 20, 21]

Medical Evidence - Postmortem report by Dr. D.K. Sharma (PW-8) confirmed the death of Ahsan was homicidal in nature due to a gunshot wound - The court found no reason to doubt the autopsy report. [Paras 7-9]

Challenges to Conviction - Appellants challenged the trial court's judgment, citing errors in evaluating evidence and witnesses, contradictions in statements, and wrongful rejection of a Section 311 Cr.P.C application - High

Court found these contentions unmeritorious, holding the trial court's judgment as based on credible evidence. [Paras 4, 14-19, 24, 25]

Confirmation of Conviction and Sentence - High Court affirmed the trial court's decision - Convictions and sentences of life imprisonment for all appellants upheld - Directed accused/appellants on bail to surrender within 15 days to serve remaining sentence. [Paras 25-27]

**Referred Cases:**

- Chandrasekar and another Vs. State reported in (2017) 13 SCC 583
- State of A.P. Vs. Pullugummi Kasi Reddy Krishna Reddy reported in (2018) 7 SCC 623
- State of M.P. Vs. Chhaakkilal and others and Ramveer and Chhaakki Lal and another reported in 2018 (4) Crimes 238 (SC)
- Darshan Singh Vs. State of M.P reported in 2016(3) MPLJ(Cri.) (SC) 410

**Representing Advocates:**

**Not Mentioned in the Judgment Summary.**

**JUDGMENT**

1. This judgment shall govern the disposal of Criminal Appeal no.917/2013 (Kammu @ Kamlesh Vs. State of M.P.), Criminal Appeal no. 936/2013 ( Sheju Mewati @ Shahjad Kha Vs. State of M.P.) and Criminal Appeal no. 988/2013 (Rijwan @ Teju Sheikh, Jafar and Ansar Vs. State of M.P.) as all these criminal appeals are arising out of common judgment dated 29/06/2013 passed in Sessions Trial no 100/2011 by 5th Additional Sessions Judge, Mandsaur, whereby the appellants have been convicted and sentenced as under :

No	Appellant's name	Conviction	Sentence	Fine	In default of fine
1	Kammu @ Kamlesh	120-B and 302/120-B	Life Imprisonment each	Rs.1000 /- each	Three months R.I.each
2	Sheju @ Shahjad	120-B and 302/120-B	Life Imprisonment each	Rs.1000 /- each	Three months R.I.each

3	Ansar	120-B and 302	Life Imprisonme nt each	Rs.1000 /- each	Three months R.I.eac h
4	Rijwan @ Tinu	120-B and 302/34	Life Imprisonme nt each	Rs.1000 /- each	Three months R.I.eac h
5	Jafar	120-B and 302/120- B	Life Imprisonme nt each	Rs.1000 /- each	Three months R.I.eac h

2. Brief facts of the case are that on 29/01/2011, appellants Kammu @ Kamlesh, Sheju, Ansar, Rijwan @ Teju, Jafar hatched criminal conspiracy for murder of Ahsan and in furtherance of their criminal conspiracy, at about 9.00 pm at night, the accused persons came at the house of deceased Ahsan with white colored Indica car. They called Ahsan. When Ahsan came out of his house, accused Kammu and Sheju started talking with him. Thereafter, they took Ahsan with them in the aforesaid car. On the next day morning at about 7.00 am, one Nahru informed complainant Chand Kha that one dead body was lying near the boundary of Suresh Seth, then the complainant went there and saw that the dead body, which was lying there, was of his son Ahsan, who sustained gun shot injury on the head. Then, complainant Chand Kha went to police station- Kotwali, Mandsair and lodged FIR Accordingly, Crime no. 76/2011 under section 302/34 of IPC was registered against accused/appellant Kammu @ Kamlesh and Sheju. During investigation, Investigating Officer reached the spot, prepared spot map and recovered blood stained soil, simple soil, four empty shell of cartridges, two live cartridges, one cap and slipper (chappal) etc from the place of the incident. During investigation, it was gathered that appellant/accused Kammu and Sheju Mewati @ Shahjad Kha took deceased Ahsan towards Chhajukheda road with other persons. Appellant Kammu informed co-accused Ansar, Jafar and Rijwan, then Jafar, Ansar and Rijwan came there. Thereafter, Ansar fired gun shot at the head of Ahsan, due to which, he died on the spot. Police arrested all the accused persons and on the basis of their disclosure statements, Indica car and motorcycle were recovered and pistol was also

recovered from the possession of accused Ansar's brother Jafar. All the seized articles were sent to FSL, Sagar for its chemical and ballistic examination.

3. After completion of investigation, charge sheet was filed before JMFC, Mandsaur, who committed the case to the Court of Sessions, Mandsaur. Later on, matter was transferred to the Court of 5th ASJ, Mandsaur. Prosecution examined as many as 27 witnesses, while the defence did not examine any witness. The trial Court, after scrutinizing the evidence available on record, convicted and sentenced the appellants as stated herein above. Being aggrieved by the impugned judgment, the appellants have preferred present criminal appeals before this Court.

4. Learned counsel for the appellants in all the three criminal appeals contended that the judgment passed by the trial Court is contrary to the law and facts. It is neither legal, nor proper nor correct. The trial Court was wrong in believing the prosecution witnesses and discarding defence version and also wrong in drawing unwarranted influences. The trial Court has ignored material contradictions and omissions in the statements of the prosecution witnesses. The appellants have been acquitted from the offence under section 364 of IPC, therefore, at the same set of evidence, they cannot be convicted in other offences. Enmity between the appellants and the eye witness Naushad (PW-2) has been established. Independent witnesses have not supported the case of the prosecution. Jeevanlal has been examined twice as PW- 12 and PW-24 without any basis. An application under section 311 of Cr.P.C filed by the accused Sheju before the trial Court has wrongly been rejected Hence, learned counsel pray that the impugned judgment be set aside and all the appellants be acquitted from all the charges.

5. Per-contra, learned counsel for the respondent/State opposed the aforesaid prayer by submitting that the judgment passed by the trial Court is based upon the cogent evidence available on record, which does not call for any interference by this Court.

6. We have heard learned counsel for both the parties at length and perused the entire record of the trial Court with due care.

7. In order to appreciate merits of rival contentions in right perspective, it is necessary to first advert medical evidence available on record.

8. Dr. D.K. Sharma (PW-8), who conducted postmortem of deceased Ahsan on 30/01/2011, deposed that following injuries were found on the body of deceased Ahsan.

“शव परीक्षण में मैंने पाया था कि उसके शरीर पर मृत्यु पश्चात्

अकड़न मौजूद था, मृतक भूरे रंग का जेकेट, सफेद शर्ट, सफेद बनियान पहने हुए थे, तथा पेंट पहने हुए था, उसकी आंख बंद थी, जबान भीतर था। उसके शरीर पर निम्न बाहरी चोट पायी थी:-

(1) गोली घूसने का घांव, टेम्पल एरिया पर था, जो डेढ़ इंच बांये आंख के भोह से डेढ़ इंच दूर बायें तरफ, ब्लेकनिंग, चारीन घांव का तथा गन शाट के कारण आसपास के बाल जले हुए (सिजिंग) थे। घांव का आकार 1 से.मी. x 1 से.मी. गोलाकार था, मार्जिन्स किनारे इन्वरेट (अंदर मुड़े हुए)।

(2) बांये कान से रक्त निकला था। आंतरिक परीक्षण करने पर पाया था कि :- गोली लेफ्ट टेम्पोरेल बोन से होती हुयी खोपड़ी के अंदर पहुंची थी, तथा दिमांग के निचले हिस्से को चिरती हुयी गयी। तथा दिमांग को लेसेरेटेड कर दिया। तथा खोपड़ी के अंदर रक्त पाया गया। मिडलाईन क्रॉस करते हुए गोली राईट आक्सोपीटल बोन तक पहुंची, उससे छेदते हुए अंत में ऊपर के इस्काल के निचे के टिसू में पायी गयी। राईट कान के पिछले हिस्से पायी गयी। इस्काल में भीतरी उत्को में ब्लीडिंग पाया गया। गोली को निकाल लिया गया। गोली मैंने निकाला था। गोली बाहर निकलने का कोई घांव नहीं था। गोली का जो भी घांव था, अंदर था।

(3) मस्तिष्क में लेसेरेटेड, ब्रे चोट था, सीने, पसली, फेफड़े हृद्यदय, एवं वृहद वाहिका सही पाया था। हृद्यदय का दाहिने चेम्बर में खून भरा हुआ था, तथा बांया चेम्बर खाली था। आंतो की झिली, मुंह, क्रॉस नली, सही पाया गया। छोटी आंत बड़ी आंत, सही पायी गयी, तथ गेसेस और तरल पदार्थ पाया गया। लीवर, मिलीहा, गुदरा सही पाया था। खोपड़ी का जो चोट पाया था, वह मृत्यु पूर्व की थी, सभी चोटे मृत्यु पूर्व की थी।

(4) शरीर से निकाली गयी गोली सिलबंद करके और पक करते हुए पुलिस आरक्षक न. 298 नसीरउद्दीन को दिया था। तथा पहने हुए कपड़े भी सिलबंद करे उक्त आरक्षक को दिया था। “

Dr, D.K. Sharma opined that death of the deceased was homicidal in nature and as per the postmortem Ex.-P11, cause of death is acute head injury due to gun shot fire from close distance and mode of death is COMA.

9. However, on the issue of aforesaid injuries, no cross-examination was done by the accused persons and in absence of any serious challenge to the

autopsy report on the aforesaid injury, we have no option, but to accept the postmortem report and oral evidence of Dr. D.K. Sharma (PW-8) that death of deceased Ahsan was homicidal in nature.

10. Now, it is to be considered that whether the accused persons have committed murder of the deceased in furtherance of the criminal conspiracy hatched by them?.

11. In the instant case, prosecution has examined Naushad (PW-2) as sole eye witness. Naushad deposed that on 29/01/2011 at about 9 -9.30 pm, while he along with Firoz was returning to their home, nearby Kanchan Hotel, they saw accused Rijwan, Ansar and Jafar. They were talking "Do not leave Ahsan. He should be killed". Thereafter, he saw that behind the farmhouse, accused Ansar and Rijwan caught hold of Ahsan and Ansar fired 3-4 gun shots by revolver upon Ahsan. One bullet hit upon his temple (kanpatti), due to which, he died on the spot.

12. Although Firoz (PW-7) has been also examined by the prosecution as eye witness, but he has turned hostile and not supported the case of the prosecution. He categorically stated in his statement that about 5-6 months ago, he found that deceased Ahsan was lying dead on the way of Khilchipur, but he did not know anything about his death. He did not witness the said incident. Accordingly, Firoz (PW-7) did not corroborate the statement of eye witness Naushad (PW-2).

13. Learned counsel for the appellants contended that conviction of the appellants is based upon the evidence of Naushad (PW-2), who claims to be eye witness, but his conduct is very suspicious. According to him, he and Firoz (PW-7) had witnessed the incident in night, but they had not immediately informed about the incident to Chand Kha (PW-1), who happens to be father of the deceased Ahsan, therefore, statement of Naushad cannot be relied upon.

14. But statement of Nausad is well corroborated by Chand Kha, who categorically stated that Naushad and Firoz informed him that accused Sheju, Kammu and Ansar along with other person had murdered his son and they informed him that when they were coming from Kanchan hotel, at that time, 4-5 persons fired gun shot upon Ahsan, due to which, they hid towards fencing and the killer ran away towards Kanchan hotel. Except Kammu and Sheju, name of other accused were not found in the FIR, but Naushad informed him about the incident after lodging of FIR Ex.-P/1..



15. Learned counsel for the appellants further submits that there are material contradictions and omissions in the statement of Naushad (PW-2) and his police statement and similar with the court statement of Chand Kha (PW-1) and his police statement Ex.-D/1. Chand Kha is the father of deceased Ahsan and Naushad is their family member, therefore, statements of Naushad and Chand Kha cannot be relied upon, but Hon'ble Supreme Court in the case of **Chandrasekar and another Vs. State reported in (2017) 13 SCC 583** has held as under:

"Witness being related to deceased, not a ground to reject his testimony just requiring greater scrutiny and caution in considering the same. False implication negated"

16. The Hon'ble Apex Court in the case of **State of A.P. Vs. Pullugummi Kasi Reddy Krishna Reddy reported in (2018) 7 SCC 623** has held as under:-

"Discrepancies which do not shake the credibility of the witnesses and the basic version of the prosecution case to be discarded. If the evidence of the witnesses as a whole contains the ring of truth, the evidence cannot be doubted. "

17. From close scrutiny of the statement of testimony of all these witnesses, this court is of the considered view that the trial court has rightly held that such contradictions and omissions are trivial in nature and same is neither material nor sufficient to discard their testimony which are duly corroborated by statement of each other.

18. The Hon'ble Apex Court in the case of **State of M.P. Vs. Chhaakkilal and others and Ramveer and Chhaakki Lal and another reported in 2018 (4) Crimes 238 (SC)** has observed that finding recorded by trial Court is entitled to great weight. The same cannot be interfered with unless vitiated by serious error. It is also observed that the evidence as a whole having a ring of truth cannot be discarded merely because the maker is a related witness. Conviction can be based on evidence of solitary eye witness. It is further observed that omissions or lapses in investigation cannot be a ground to discard the prosecution case which is otherwise credible and cogent. Ocular testimony of eye witness cannot be discarded lightly [see : **Darshan Singh Vs. State of M.P reported in 2016(3) MPLJ(Cri.) (SC) 410**]

19. Therefore, in view of the law laid down by Hon'ble Apex Court, we are not inclined to accept the contentions of learned counsel for the appellants to disbelieve the statements of eye witness Naushad (:PW-2) and Chand Kha (PW-1) It is true that Chand Kha is the father of the deceased, but his presence on the spot is quite natural. His statement is well supported by Ex.-P/1, which is duly proved by Inspector R.D. Mishra (PW-15), who recorded the FIR at the instance of complainant, therefore, there is no cogent reason to disbelieve the testimony of these witnesses and the trial Court has not committed any error in considering it as trustworthy and reliable witness.

20. Inspector R.D. Mishra categorically deposed that he went at the place of incident and prepared spot map and seized blood stained soil, two live cartridges, four empty shell cartridges, cap, gamcha, chappal etc from the spot Although independent witnesses of these proceedings turned hostile and not supported the case of prosecution, but there is not reason to disbelieve the statement of Police Inspector R.D. Mishra.

21. B.L.Charan (PW-27) deposed that during the incident, he interrogated accused Ansar and on the basis of his discovery statement Ex.-P/28, a pistol was recovered from the possession of accused Jafar, who happens to be brother of accused Ansar. Although no other pistol was recovered from the possession of other accused persons, but it had been recovered at the instance of appellant Ansar and appellant Jafar, who is the real brother of Ansar, therefore, recovery of pistol from the possession of Jafar is also sufficient to prove the chain of circumstantial evidence. Although statement of this police officer is not supported by independent witness, they have been turned hostile and not supported the case of prosecution, but the statement of this witness is well corroborated by documentary evidence available on record and there is no reason to disbelieve the cogent documentary evidence, furthermore, looking to the statement of eye witness Naushad and well corroborated statement of Chand Kha (PW-1) and postmortem report.

22. On the basis of aforesaid evidence, this Court is of the considered opinion that the appellants were assailants and they hatched the conspiracy to murder the deceased and have committed murder of Ahsan in furtherance of their conspiracy, they have actively participated in the incident with deadly fire arm.

23. Apart from the above, it is also proved that seized articles were sent for chemical examination and ballistic examination. FSL report proved by the



prosecution is Ex.-P/25. After examination of the seized articles, it was found that the cartridges found from the spot are possible to use by the seized gun (Article-A) which was later on recovered from the possession of accused Jafar.

24. So far as motive of the incident is concerned, although the prosecution did not produce any cogent evidence regarding motive of the incident, but the prosecution has successfully proved its case beyond reasonable doubt, therefore, mere non-proving the factum of motive is fatal to the entire case of prosecution.

25. In view of the impeachable evidence of Naushad (PW-2), FSL report, seizure of pistol from the possession of appellants, the trial Court has not committed any error in holding that due to previous enmity of the appellants hatched their conspiracy with other other accused persons and committed murder of Ahsar by means of fire arm, therefore, this Court is not inclined to take different view that has been taken by the trial Court. We hold that the trial Court has rightly convicted and sentenced the aforesaid appellants.

26. For the reasons stated above, all the criminal appeals being devoid of merit and substance are hereby dismissed.

27. As a result, the order of conviction and sentence passed by the trial Court is hereby affirmed. The accused/appellants who are on bail, are directed to surrender themselves before the trial Court within a period of 15 days from today to undergo the remaining jail sentence and their bail bonds and surety bonds shall stand cancelled. The accused. appellants, who are in jail, shall undergo their jail sentence as awarded by the trial Court. The order of disposal of the property shall be as per the order of the trial Court.

28. A copy of this judgment along with the trial Court's record be sent to the concerned trial Court for necessary information and compliance.

29. A copy of this judgment be placed in the record of connected criminal appeals.

CC as per rules.

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