



2026:AHC:28210-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 2537 of 2015

Pankaj Jain

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	:	Devendra Mohan Singh, Ram Prakash, Ram Tiwari, Seema Pandey, Vivek Shukla
Counsel for Respondent(s)	:	Abhishek Tripathi, G.A., Govt.Advocate

Court No. - 42

HON'BLE SIDDHARTHA VARMA, J.

HON'BLE MANISH KUMAR NIGAM, J.

1. The present criminal appeal has been filed against the judgment and order dated 18.5.2015 passed by the Additional Sessions Judge, Court No. 1, Kanpur Nagar, in Sessions Trial No. 1070 of 2005, convicting the appellant under Sections 302/34, 394 and 411 IPC and sentencing him under Section 302/34 IPC for life imprisonment, a fine of Rs. 10,000/- and in the case of default an additional rigorous imprisonment of 1 year under; under Section 394 IPC for 10 years of rigorous imprisonment, a fine of Rs. 10,000/- and in the event of default an additional rigorous imprisonment of 1 year; and under Section 411 IPC for 2 years of rigorous imprisonment, a fine of Rs. 5,000/- and in event of default an additional 6 months rigorous imprisonment. All the sentences were to run concurrently.

2. When the first informant found his wife Vishalakshi dead in his house on 16.8.2005 then he lodged an FIR on that very date at 1:15 PM and it was stated that the incident might have occurred in between 9:00AM and 1:15 PM. Thereafter the investigation commenced and a panchayatnama was drawn in the presence of 5 witnesses, namely, P.W.-1 K.A. Venkatchalam, P.W.-2 Anand Venkatchalam, Abhishek Tiwari, Jitendra Pandey and one Sri SL Almera. With the completion of the panchayatnama along with the first information report, the body was sent for post mortem. In the meantime, the Police collected a pestle (musal), a stone and a blade from the spot. This recovery was exhibited as Exhibit

Ka-15. From the search which the police made, certain stolen articles, namely, CD/VCD Player, 4800 Watt Charger, Battery, Mouse, Pant and Shirt were also recovered from the house of Vimal Shukla @ Rajan Shukla, the co-accused. From the spot, the blood laden soil and plain soil were collected. Thereafter, the Police submitted its charge sheet and the Court upon the receipt of the charge sheet framed charges on 1.9.2007 against the appellant Pankaj Jain under Section 302/34 IPC. For proving the case of the prosecution as many as 7 prosecution witnesses were produced.

3. P.W. -1, K.A. Vekatchalam, was the first informant and the husband of the deceased. He had stated as to how he had discovered the dead body and how he had lodged the first information report. He has also stated in his examination in chief that the stolen articles of his house were recovered from the house of the co-accused Vimal Shukla. He has, in his cross-examination, stood firm with what he had stated in his examination in chief.

4. P.W.-2, Anand Venketachalan, was the son of the first informant and the deceased. He had stated somewhat the same facts as were stated by the P.W.-1. He has also stood firm with what he had stated in the examination in chief while he was being cross examined on behalf of the accused Pankaj Jain. The P.W.-2 in his cross-examination had further stated that he had known the accused for the past 5 years and that he also knew that the accused had a transport company in the Transport Nagar. He had also known him as he used to get his vehicle fueled from the petrol station which was situate near his company. He had stated that he believed that Pankaj Jain was the person who had killed his mother along with Vimal Shukla.

5. P.W.-3 is the Constable Rajvir Singh who had proved the chik FIR.

6. P.W.-4, Sripal, used to sell various articles on a Thela near the house of the deceased and had in the Court identified the victim in the dock and had stated that he was having his Thela in front of the house of the deceased and was selling kheera on the relevant date and that he had seen Pankaj Jain coming out of the house at around 10:30am. The co-accused Vimal Shukla was also accompanying him. He had stated in his cross-

examination that the house where the deceased had died was around 300 meters away from the Thela on which he was selling kheera. He had stated that even though he used to sell kheera to the deceased but on that particular date he had not sold any kheera to her. He had stated further in his cross-examination that he had known Pankaj Jain since a very long time and that Pankaj Jain was running a transport company in Transport Nagar. He had further stated that he had on various other occasions also seen Pankaj Jain entering in and coming out of the house.

7. P.W.-5 is the statement of one Ram Bahadur Singh who, it has come on record, had given an application before the Police Station narrating all the facts. This application is annexed at page 4 of the paper book and also is to be found in the record. However, it is an undated application. He has stated in the application that he was a security guard in the Swadeshi Cotton Mills and that on 16.8.2005 his duty was from 8:00am to 4:00pm and he had been doing his duty at the relevant place from 8:00am to 4:00pm and because there was some illegal possession etc. near the place where the house of the deceased was situate, he had gone to get the possession removed on that date and therefore he had seen the accused coming out along with the co-accused from the house in question. This P.W.-5 who had given the undated application before the police was produced in the court and he has stated that he was a security guard in the Swadeshi Cotton Mill campus situate in Juhi Kanpur Nagar and he also recognized the accused Pankaj Jain in the court itself. He had again stated the reason why he had gone near the house and had, therefore, seen the accused coming out of the house. He had stated that when he had seen the accused coming out of the house, he had also seen him carrying all the stolen articles in his hands. He had thought that the accused had taken the articles after taking permission from the deceased. This witness even though had taken the name of the accused in his statement in chief does not reveal as to how he had been knowing the name of the appellant - accused. In his cross-examination, he has stood firm with what he had stated in the examination in chief but again he only sticks to what he had stated therein that he had seen the accused coming out. He had stated that when the accused had come out of the house he was carrying certain stolen articles. He has in his cross-examination once again reiterated as to how he was present at the relevant place at the relevant time as he was

assisting the removal of certain encroachments.

8. P.W.-6, Dr. Piyush Mishra, is the physician who had proven the post mortem and had given his reason for the death. He had stated in his examination in chief that the death might have taken place at 1:15PM. However, in his cross-examination he had clearly stated that the injury might have been inflicted by a blunt heavy object.

9. P.W. 7, Madhusudan Singh, is the investigating officer who had appeared in the witness box and had stated that the site plan was prepared by him and that all the articles which were collected i.e. the soil etc. and the clothes were collected by him. He had also stated that he had taken the statements of Anand Venket Chalam and of the other persons living in the neighborhood, namely, Prithvi Raj Singh and Manju Singh. He had also stated that he was the one who had collected the musal and the blade from the spot in question. He had, thereafter, in his statement in chief narrated the manner in which he had conducted the investigation. He had stated that the recovered articles along with Pant, Jeans, Belan, musal and blade were sent for forensic examination to the forensic laboratory and he had also stated that he had also found the finger prints of the accused. In the cross-examination, he also had proved the recovered articles which were displayed in the court room. In his cross-examination, he has also, upon being put a specific question, as to when the statement of Ram Bahadur Singh who had given the application before the police was taken then he had replied that it was so taken on the next day i.e. on 17.8.2005. In the cross-examination he stood firm with what he had stated in the examination in chief. However, he had mentioned that the forensic science laboratory report was never produced as evidence before the court and was never proved in the court.

10. Thereafter, questions were put to the accused under Section 313 Cr.P.C. To those questions answers were given which were recorded.

11. Learned counsel for the appellant has further submitted that there was no motive for the appellant to have had committed the crime. He has submitted that if the articles were stolen in the manner as had been narrated then the deceased before the stealing of the articles would have shown some resistance but it was not evident from the injuries which

were there on the body of the deceased. He submitted that the murderer had only murdered the deceased for which no reason was evident. Also, he submits that an owner of a company would not indulge in such small thefts.

12. Upon the trial having been completed and upon the judgement having been passed on 16.5.2015 convicting the appellant under section 302/34, 394 and 411 IPC, the instant criminal appeal has been filed.

13. Learned counsel for the appellant Sri Ram Tiwari argued that when the case was of circumstantial evidence and there was absolutely no eye witness account then as per the judgment of **Sharad Birdhichand Sarda v. State of Maharashtra** reported in **AIR 1984 SC 1622** the links ought to have been completed. He categorically pointed out to the five principles which had to be adhered before completing the link. The five principles are being reproduced here as under:

"1. The circumstances from which the conclusion of guilt is to be drawn should be fully established.

2. The fact so established should be consistent only with the hypothesis of the guilt of the accused.

3. The circumstances should be of conclusive nature and tendency.

4. They should exclude every possible hypothesis except one to be proved.

5. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

14. In the instant case, he has submitted that even though the P.W.- 4 and 5 Sri Pal and Ram Bahadur Singh had stated that they had seen the accused coming out of the house, they had never at any point of time stated that there were evidence enough to come to a conclusion that the appellant had committed the crime and thereafter he came out of the house. It has further been submitted that the pestle(musal) which was

recovered was even though sent to the forensic science laboratory, the report of the FSL was never produced as evidence in the Court and was never proved and, therefore, the only connecting evidence with the musal(pestle) as was used by the murderer to commit the murder never saw the light of the day. He further submitted that on the basis of pure suspicion no conviction could take place.

15. Learned counsel for the first informant Sri Abhishek Tripathi and Sri C.B.Dhar Dubey learned AGA opposed the appeal and submitted and if there was evidence with regard to the fact that the accused person was coming out with the other co-accused, namely, Vimal Shukla then there was evidence enough of the fact that they had killed the deceased inside the house and thereafter they came out after committing the offence. They submitted that it mattered little that the forensic science laboratory report of the pestle(musal) etc. was never produced before the Court. They submitted that if the musal which was found was produced in the Court and was also proved to have been found therein it was an evidence which had been taken into account by the Trial Court. No interference was, therefore, warranted. Learned counsel for the first informant submitted that when the accused was faced with all the incriminating evidence at the trial then also he had all the opportunity to have stated that he had not committed the crime.

16. Learned counsel for the informant and the learned AGA specifically relied upon the question no. 12 and 14 along with their answers which are being reproduced here asunder:

प्रश्न नं०12 अभियोजन पक्ष की ओर से निरीक्षक मधुसूदन सिंह को पी०डब्लू०-7 के रूप में परीक्षित कराया गया है जिसने ने घटनास्थल के निरीक्षण के दौरान एक अदद मूसल पत्थर व एक ब्लेड कब्जा पुलिस लेकर उसकी तैयार कराये जाने व उस पर अपने हस्ताक्षर होने की पुष्टि की है, जिस पर प्रदर्शक-15 डाला गया व रामबहादुर का बयान पेपर नं० 26 को सिद्ध किया है, जिस पर प्रदर्शक-16 डाला गया ? इस संबंध में आपको क्या कहना है?

उत्तर- जी गलत है।

प्रश्न नं०14 अभियोजन साक्षी सं० 7 मधुसूदन सिंह ने बड़े बण्डल को न्यायालय में खोलने पर उसके कपड़े पर वस्तु प्रदर्श-22, खाकी रंग के कागज के गत्ते वस्तु प्रदर्शक -23, बड़े बण्डल के अंदर से निकले छोटे सीलकवर बण्डल के कपड़े वस्तु प्रदर्श-24, पत्थर के ठोस मूसल पर वस्तु प्रदर्श-25 तथा लकड़ी के बेलन पर वस्तु प्रदर्श-5, खाकी रंग के लिफाफे पर वस्तु प्रदर्श-6, अखबारी कागज पर वस्तु प्रदर्श-7, ब्लेड पर वस्तु

प्रदर्श-8, कपड़ा पर वस्तु प्रदर्श-9, शर्ट पर वस्तु प्रदर्श-10, शैन्डो बनियाइन पर वस्तु प्रदर्श-11. सादा फर्श पर वस्तु प्रदर्श-12. डिब्बी टीन परी वस्तु प्रदर्श-13 कपड़े पर वस्तु प्रदर्श-14, खूलआलूदा फर्श पर वस्तु प्रदर्श-15, टीन की डिब्बी पर वस्तु प्रदर्श-16, कपड़े के बण्डल पर वस्तु प्रदर्श-17, मृतका के कपड़े पर वस्तु प्रदर्श-18, हाफ ब्लाउच पर वस्तु प्रदर्श-19, पेटीकोट पर वस्तु प्रदर्श-20 व साड़ी पर वस्तु प्रदर्श 21 को सिद्ध किया है। इस संबंध में आपको क्या कहना है?

उत्तर- जी गलत सिद्ध कराया गया है।

17. Having heard Sri Ram Tiwari the learned counsel for the appellant, Sri Abhishek Tripathi learned counsel for the informant and Sri C.B. Dhar Dubey learned AGA, we are of the view that the accused could not, in fact, be found guilty after having had seen the evidence. When the evidence led could not be linked with each other then the guilt could not be established. Even if the accused were seen coming out of the house, their using the musal to kill the deceased was not established. Howsoever much the P.W. - 4 and 5 might have seen the accused coming out of the house where the offence had taken place it could not with any certainty be said that he was the person who had committed the crime and thereafter had come out of the house. The only evidence which would have connected the accused with the musal with which the crime was committed was the forensic science laboratory report and this forensic science laboratory report was never produced in the Court and was thus never proved.

18. Under such circumstances, we are of the view that when the link which would have proved that the accused was the person who was responsible for having killed the deceased was missing then the appeal had to be allowed. The appeal is, thus, allowed. The judgement and order dated 18.5.2015 passed by the Additional Sessions Judge, Court No. 1, Kanpur Nagar, is quashed and is set aside. The appellant if is not required in any other case be released forthwith.

19. The criminal appeal is, accordingly, allowed.

(Manish Kumar Nigam,J.) (Siddhartha Varma,J.)

February 9, 2026

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