

(2025) 10 MP CK 1473

In the Madhya Pradesh High Court, Jabalpur Bench

Case No : Criminal Appeal No. 813 Of 2023

Prahlad Thakur

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 30-10-2025

Acts Referred:

Indian Penal Code, 1860 — Section 302

Citation : (2025) 10 MP CK 1473

Hon'ble Judges : Vivek Agarwal, J;Avanindra Kumar Singh, J

Bench : Division Bench

Advocate : Pradeep Batra, Mohammad Siddique, Ajay Tamrakar

Final Decision : Allowed

Judgement

Vivek Agarwal, J

1. This appeal is filed being aggrieved of judgment dated 17.08.2022 passed by learned Sessions Judge, Jabalpur in ST No.376/2020 whereby learned trial Court has convicted the present appellant Prahlad Thakur S/o Baishakhu Thakur (Gond) under Section 302 of IPC and has sentenced him to life imprisonment with fine of Rs.2,000/- with default stipulation of 3 months rigorous imprisonment.

2. Learned counsel for the appellant submits that prosecution case, in short, is that Vikrant Thakur (PW-1) gave this information to A.S.I., Dasai Ram Gotiya (PW-6) at Civil Hospital, Ranjhi, Jabalpur on 24.11.2019 at 22:00 hours to the effect that at around 9:00 pm Vikrant Thakur's younger brother Nishu @ Nishant (PW-4) informed him that when his brother Prashant @ Heera Thakur was walking in front of Prahlad Thakur's house, Prahlad Thakur pulled him inside his house due to old enmity and started beating him. After hearing the cries of his brother Vikrant along with Nishu @ Nishant rushed to the spot and they saw that accused Prahlad Thakur was causing injuries to their brother Heera @ Prashant with the stick and a brick.

3. It is submitted that prosecution has tried to build a case on the testimony of Vikrant Thakur (PW-1) and Nishu @ Nishant Thakur (PW-4), who both happened to be a real brothers of deceased Heera @ Prashant Thakur. There are no independent witnesses to the incident. They have been planted to falsely implicate the present appellant. There are major contradictions in the evidence of Vikrant Thakur (PW-1) and Nishu @ Nishant Thakur (PW-4). Despite there being acceptance of presence of other houses in the immediate neighbourhood of the so-called place of incident, as is evident from spot map (Ex.P-5). Yet no independent witness was examined as is admitted by Dasai Ram Gotiya (PW-6), I.O. of the case, and therefore, it is a case of appellant being planted as an accused with a view to complete investigation rather than finding the actual culprit.

4. It is also pointed out that Dr. Abhishek Singh (PW-7), who had conducted postmortem at Medical College, Jabalpur has admitted that if a person falls from a certain height, then the injury as was sustained by the deceased in his abdomen causing rupture of liver could have been contacted.

5. Shri Ajay Tamrakar, learned Public Prosecutor for the State, in his turn, submits that FSL report is the most vital document in the present case. Referring to FSL report (Ex.P-15), it is pointed out that in the FSL report, it is mentioned that Exhibit-D, which is the Danda, recovered at the instance of the appellant and the Brick recovered at the instance of the appellant both contained human blood. Thus, it is pointed out that being a most vital piece of evidence, conviction is required to be maintained and no indulgence is called for.

6. After hearing learned counsel for the parties and going through the record. Vikrant Thakur (PW-1) has stated that on 24.11.2019 he was inside his house at about 9:00 pm watching T.V., when his younger brother Nishu @ Nishant came to his house and informed him that Prahlad Patel dragged their brother Prashant inside his house and is beating him with stick and brick, when he and his younger brother Nishu had gone running towards the house of Prahlad where they had seen that Prahlad had taken their brother inside his room and was beating him with a stick and a brick. On seeing, these witness Vikrant Thakur (PW-1) and Nishu @ Nishant Thakur (PW-4), Prahlad had run away. They had called Dial 100 vehicle and had taken Heera @ Prashant to Victoria Hospital from where he was referred to Medical College.

7. Vikrant Thakur (PW-1) in cross-examination admits that Prashant was his younger brother and was consuming alcohol. He also admitted that there was some money dispute between the appellant and Prashant. He has stated that distance between the house of PW-1 and that of the accused is about 200 meters but unfortunately the investigating officer has not shown house of the complainants in the spot map (Ex.P-5).

8. In para 7, Vikrant Thakur (PW-1) has admitted that when incident took place he was inside his house. He further stated that his brother Nishu had shouted

and called him stating that Prahlad had dragged Heera to his house at that time he was watching T.V. This witness further admits that though there are several houses between his house and the house of the appellant but has no idea as to who are the neighbours of Prahlad.

9. This witness further admits that nobody had come out of their house and accept for he himself and Nishu (PW-4), who had reached the house of Prahlad in 5-6 minutes, nobody else was available.

10. In para 8, Vikrant Thakur (PW-1) stated that they had first taken the injured to Victoria Hospital. They had taken about one and a half hours to reach Victoria Hospital and, thereafter from Victoria, injured was taken to Medical Hospital. That duration was about 1 hour. During this period he and Nishu were throughout with the injured. Thereafter, this witness stated that he had travelled on his motorcycle from Medical College to Ranjhi Police Station and had given intimation about the incident at about 12:00 hours. Nishu had not accompanied him to the police station.

11. In para 12 of his cross-examination, this witness admits that he was born at Jabalpur and he is aware of the places at Jabalpur because he has stayed in the Ranjhi area from his childhood till the date of the incident. He is also aware of the fact that Victoria Hospital is at Ghantaghar and he is also aware of the fact that there is a Civil Hospital at Ranjhi.

12. Ramesh Vishwakarma (PW-2) turned hostile. He stated that no interrogation was made in front of him nor he has any information about the incident. When leading questions were put to him, this witness Shri Ramesh Vishwakarma (PW-2) admits that he had received information from Dinesh Thakur but he is neither an eye witness nor he has supported any of the proceedings including the memorandum, Ex.P-10.

13. Nishu @ Nishant Thakur (PW-4) is another younger brother of the deceased. In his examination-in-chief, he stated that the incident took place on 24th in 2019 probably in the month of September. He has stated in examination-in-chief that at about 9:00 pm, he was inside his house when he had heard cries of his brother Heera @ Prashant, then he had called his brother Vikrant and they had reached house of the accused person. They had witnessed the incident and found Prashant lying on a floor when they had called Dial 100. Thereafter, they had taken their brother to Chhoti Victoria Hospital at Ranjhi from where he was referred to Medical. This witness states that he had stayed back at the hospital but Vikrant had gone to the Police Station to lodge report. On next day at about 9.00 am, Heera @ Prashant died.

14. In para 3 of his examination -in-chief, this witness states that he has no intimation as to who got the seizure memo made. He clearly stated that police had seized brick and danda from the spot. In para 4, after he being declared hostile, he stated that it is wrong to say that stick and brick was seized by the police at the instance of Prahlad vide Ex.P-8. Thus, witness of seizure namely,

Nishu @ Nishant has turned hostile.

15. In his cross-examination, in para 6, this witness admits that the distance between his house and that of Prahlad is about 100 meters. In between there are several shops and residences of others persons. He admits existence of house of Chourasiya, Bablu Sen and Veeru Choudhary adjacent to the house of Prahlad. He admitted availability of Vishal, Nagesh and Phuntu Bhaiya in the surrounding locality of his house.

16. In para 7, this witness has though corroborated evidence of PW-1 that he was watching T.V. inside his house but has further stated that when he had gone out he had heard cries, but he could not decipher as to what was being said. Then, he stated in para 7 itself, that after hearing cries he had gone in the direction from where cries were heard. Thereafter, from the spot he had called his elder brother Vikrant on phone. This witness has clearly denied that he had come to house to take Vikrant along with him. This is first major contradiction in the testimony of Vikrant Thakur (PW-1) and Nishu @ Nishant Thakur (PW-4).

17. Nishu @ Nishant Thakur (PW-4) admits that in his case diary statement (Ex.D-1), he had not mentioned that firstly he had travelled in the direction from where noises were coming and then he had called his brother Vikrant over his phone to call him. Even no call details have been brought on record to corroborate this evidence of PW-4.

18. Another contradiction is that in para 9 this witness states Nishu @ Nishant (PW-4) that after Dial 100 had reached the place of the incident, they had taken the injured to Ranjhi Chhoti Victoria Hospital at about 9:30 pm. Vikrant was accompanying him in the Dial 100 vehicle. After staying at Victoria Hospital for 15 minutes, they had reached Medical College for which they had taken about half an hour time. Thereafter Vikrant, who was travelling in the ambulance had left him and had taken an auto to report the matter to Police Station, Ranjhi. Though PW-4 says that PW-1 had hired an auto to visit Police Station Ranjhi whereas, PW-1 states that he had travelled on his motorcycle to Police Station, Ranjhi.

19. PW-6, I.O. of the case, namely Shri Dasai Ram Gotiya, ASI, states that he had received a requisition from Civil Hospital Ranjhi over telephone that an injured person is admitted in the hospital for treatment as brought by his relatives. On receiving such intimation, Dasai Ram Gotiya had reached Civil Hospital, Ranjhi where he had recorded the intimation i.e. Dehati Nalishi, given by Vikrant Thakur. Dehati Nalishi is Ex.P-1 which contains his signatures. This witness, PW-6, has categorically denied that PW-1 never visited police station to lodge any report. Thus, there is material contradiction in the evidence of PW-1, PW-4 and PW-6. In fact, record reveals that Dehati Nalishi was recorded at Civil Hospital, Ranjhi and not at police station. Thus, it is clear that PW-1 and PW-4 are not the real eye witnesses but they have been planted by the police to make a case.

20. A suggestion has been given to PW-4 that Prashant was lying injured in front of the house of the Prahlad and on the basis of suspicion Prahlad has been made an accused but this suggestion is denied.

21. Dasai Ram Gotiya (PW-6) has admitted that all the witnesses namely Nishu @ Nishant Thakur, Dinesh Thakur, Triveni Bai and Vikrant Thakur are related to the deceased.

22. In para 11, Dasai Ram Gotiya (PW-6), I.O. of the case, admits that who all are residing in the neighbourhood of the deceased are not known to him. He admits that he had not interrogated any of the neighbourers of the appellant Prahlad. He categorically states in para 11 that no intimation was given by brother of the injured at police station nor he had recorded any such intimation at police station but on his own stated that intimation was received at Civil Hospital, Ranjhi.

23. In para 12, PW-6 admits that he had arrested accused from his house at Kanchipura. In para 13, he states that he had taken staff and witnesses along with him. In para 14, I.O. of the case, states that place of the incident is about 50 to 60 steps away from the house of the accused. This is the third contradiction in the testimony of so-called eye witnesses Vikrant Thakur (PW-1) and Nishu @ Nishant Thakur (PW-4). Inasmuch as according to Vikrant Thakur (PW-1) and Nishu @ Nishant Thakur (PW-4), Prahlad had dragged deceased Prahsant inside his house and they had seen Prahlad beating Prashant inside his house, whereas as per the I.O., place of incident is 50-60 steps away from the house of the accused.

24. Dr. Abhishek Singh (PW-7) has stated that surgical operation was performed and there were stitched wounds available on the body of the injured, there were bruising inside the wounds, cause of death was on account of excessive loss due to internal bleeding on account of grievous injury cause to the liver. In cross-examination, this Doctor has admitted that if a person falls from a height by side of stomach, then such injuries as were found on the body of the deceased could have been contacted.

25. Appellant had examined his brother, Tiger Thakur, as a defence witness. The only relevance for the present purpose as far as testimony of DW-1 is concerned, is his un rebutted evidence that size of their house is 20 feet long and 15 feet wide i.e. about 300 sqft, on which there is a room constructed measuring 15x10 feet and remaining portion is in rambles. There is no gate, as a result of which outsiders often use their roof and open area for the purpose of consumption of alcohol. This aspect of the evidence of defence witness has not been rebutted and appears to be factual to the case.

26. When all these facts are taken into consideration, then firstly looking to the material contradictions in the evidence of Vikrant Thakur (PW-1) and Nishu @ Nishant Thakur (PW-4) where Vikrant Thakur (PW-1) states that Nishu @ Nishant Thakur (PW-4) had called him personally and both had gone to the house of the

Prahlad together, Nishu @ Nishant Thakur (PW-4) states that he had called Vikrant Thakur (PW-1) over his mobile phone. Absence of independent witnesses, not reporting the matter to the neighbours and also there being a contradiction that witnesses saying that injured was taken in vehicle brought by Dial 100 and further stating that PW-1 had gone to the police station to lodge report whereas Dasai Ram Gotiya (PW-6) stating that report was taken at Civil Hospital, Ranjhi, it is evident that neither Vikrant Thakur (PW-1) nor Nishu @ Nishant Thakur (PW-4) are eye witnesses to the incident. They have been planted. Once, this Court comes to a conclusion that they are planted witnesses, then this case will be not of an eye witness account but that of circumstantial evidence.

27. In the postmortem report (Ex.P-19), which was conducted on 25.11.2019 at 3.00 pm, duration of death is mentioned as 24 hours. Dr. Abhishek Singh (PW-7) has admitted that the injuries found on the body of Prashant could have been contacted if he would have fallen flat on his stomach. Dasai Ram Gotiya, I.O. of the case, has clearly stated that place of incident is 50-60 steps away from the house of the appellant. Appellant was arrested from his house, all the proceedings were drawn in his house. Thus, theory of the prosecution that appellant had run away is also not probabalized and proved, otherwise, on very next day of the incident appellant would not have been arrested from his own house.

28. Thus, when all the facts and circumstances of the case are taken into consideration and in view of evidence of PW-4, who has discredited the seizure of lathi and brick vide Ex.P-8, it is evident that mere presence of the human blood is not a sufficient circumstance to complete the chain of circumstances. We are aware of the fact that enmity is a double edged sword and therefore, mere statement that there was some enmity on account of financial transaction is not a sufficient circumstance to prove the commission of offence in the hands of the present appellant and, therefore, in the light of the judgment of Hon'ble Supreme Court in Sharad Birdhichand Sarda Vs. State of Maharashtra, (1984) 4 SCC 116 , we are of the opinion that since chain of circumstance is not complete and prosecution has failed to provide sufficient material to point out towards the guilt of the appellant alone. Coupled with the fact that postmortem doctor did not mention the death to be homicidal in nature and on the other hand accepts that injuries found on the body of the injured could have been sustained on account of fall on an irregular surface which is corroborated by DW-1 that there is rubble outside his house and people unauthorizedly climb his roof as there is no gate to the roof, we are of the opinion that as chain of circumstances is not complete, testimony of eye witnesses is doubtful and they appears to be planted witnesses, benefit of doubt needs to be accrued in favour of the appellant and, therefore, impugned judgment dated 17.08.2022 having been passed on surmises and conjectures without appreciating the totality of facts and circumstances specially the contradictions in the evidence of Vikrant Thakur (PW-1) and Nishu @ Nishant Thakur (PW-4), said judgment cannot be sustained in the eyes of law, therefore, impugned judgment dated 17.08.2022 deserves to be set aside.

29. Accordingly, this criminal appeal is allowed. Impugned judgment of conviction is hereby set aside and the appellant is acquitted of all the charges. Appellant is in jail, he be released immediately, if not required in any other case.

30. Case property be disposed of as per the orders of the learned trial Court. Record of the trial Court be sent back immediately.

31. Being a Amicus Curiae Shri Mohammad Siddique, Advocate will be entitled to receive fees from the High Court Legal Services Committee or M.P. State Legal Services Authority on production of copy of the order-sheet and the judgment being passed today.

32. Certified copy as per rules.