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**(2018) 07 MP CK 0017**  
**In the Madhya Pradesh High Court**  
**Case No : Criminal Appeal No. 1289 Of 2007**

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| Sitaram Prajapat        | Vs | APPELLANT  |
| State of Madhya Pradesh |    | RESPONDENT |

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**Date of Decision :** 03-07-2018

**Acts Referred:**

Indian Penal Code, 1860 — Section 302  
Code Of Criminal Procedure, 1973 — Section 161

**Citation :** (2018) 07 MP CK 0017

**Hon'ble Judges :** VIVEK RUSIA, j;VIRENDER SINGH, j

**Bench :** Division Bench

**Advocate :** Sharmila Sharma, Rohit Mangal

**Final Decision :** Allowed

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## Judgement

The appellant â?" Sitaram Prajapat has filed the present appeal being aggrieved by the judgment dated 31.10.2007 passed by learned 17th Additional

Sessions Judge (Fast Track), Indore in Sessions Trial No.212/2006, whereby he has been convicted u/s. 302 of the IPC and sentenced to undergo life

imprisonment along with fine of Rs.500/- with default stipulation.

2. As per prosecution story, on 8.3.2006, near about at 6.30 pm., inside the factory of Banty Solanki, Banty, the deceased â?" Santosh and Daulat

were sitting and chatting. Near about at 7 pm., accused â?" Sitaram came there and took Santosh with him on his motorcycle. After 15 minutes,

Santosh came alone there with bleeding from his chest and said that Sitaram has stabbed him by knife and fell down. Daulat immediately called

Hemant and they both took Santosh to Royal Hospital and the Doctor who attended the deceased found him dead and referred him to the M.Y.

Hospital, whereby the deceased was declared as dead. On the report given by

Daulat, Dehati Nalisi was recorded and later on, First Information

Report was registered for the offence u/s. 302 of the IPC under Crime No.112/2006 against appellant.

3. Thereafter, the Police started investigation. The dead body of the deceased was seized and sent for postmortem. As per Doctor's opinion given in

the postmortem report, the deceased died due to excessive bleeding from the injuries. Blood-stained clothes of the deceased were seized. Statement

of Daulat, Tejpal Singh and Banti were recorded u/s. 161 of Cr.P.C. and thereafter, the accused was arrested and a knife was also recovered from

him vide Ex. P/5. Blood-stained soil, clothes of the deceased, knife and the clothes of accused were also seized and sent to the FSL, Rau vide Ex. P/8

and P/9. After completing the usual investigation, challan was filed before the competent Court, who committed the trial to the Sessions Court.

4. In order to prove its case, the prosecution examined Manoj as P.W.1 as a witness of dead body seizure memo Ex. P/1, Kamal (P.W.2) to prove the

arrest memo, but he has turned hostile. In cross-examination by the Public Prosecutor, he deposed that the accused was not arrested before him.

5. The prosecution further examined Pushpendra Singh (P.W.3), Hemant who stated that Daulat had informed him that Sitaram caused the injuries by

knife to Santosh and ran away. Bunti @ Mahendra was examined as P.W.7 who deposed in Court that Santosh went along with the accused and

after 10-15 minutes, Santosh came back and said that somebody has stabbed him by knife. Dr. Tejpal Singh of Royal Hospital was examined as P.W.8,

who stated that he checked the deceased who had already expired, then he referred him to the M.Y. Hospital. The prosecution examined Dr. Bharat

Prakash, Medical Officer as P.W.13 and according to him, the deceased received 8 injuries within 24 hours of postmortem and he died because of the

excessive bleeding from the injuries sustained by him. The prosecution examined Daulat as P.W.14 who stated that near about at 7 pm., Sitaram took

Santosh in his motorcycle and after half an hour, Santosh came back in an injured condition and stated that somebody has caused him stabbed injuries.

He with the help of Hemant (P.W.4) took him to the hospital where he was declared as dead. The prosecution examined Ashok Rangshahi as P.W.15

who registered the FIR and arrested the accused. According to him, at the time of arrest, the accused was carrying the knife containing blood-stains

and he prepared the seizure memo (Ex. P/5) and during investigation, he was transferred and the remaining investigation was completed by another

Assistant Sub Inspector. In Para 12 of his cross-examination, he admitted that he prepared the spot map and seized the blood-stained soil from the

spot, but both the memos are not part of the challan. He has also admitted that there were several houses within 20-30 yards of place of incident and

he enquired about the incident, but they had no information about the said incident. He was not remembering the names of those persons. He has

further deposed that the distance between the place where the accused was sitting with his friends and the scene of crime is 30-35 steps.

6. The prosecution examined Rajesh as P.W.16 as a witness of arrest memo, who has also turned hostile by saying that the accused was not arrested

in his presence and no seizure was done. The accused/appellant did not examine any witness in his defence and simply pleaded that he has been

falsely implicated in the case.

7. The learned Sessions Judge has held that the entire incident is based on circumstantial evidence. The deceased had immediately disclosed the name

of the accused to his friends and before the incident, he went along with him, which establishes that the injuries were caused only by the appellant to

the deceased. Vide judgment dated 31.10.2007, the learned Sessions Judge has convicted and sentenced, as stated above. Hence, the present appeal

before this Court.

8. Smt. Sharmila Sharma, learned counsel for the appellant engaged by Legal Services Authority, submitted that Bunti @ Mahendra (P.W.7) and

Daulat (P.W.14) both did not mumble the name of the appellant. The deceased also did not disclose the name of the appellant to them. The

Investigating Officer did not visit the spot, he had not prepared the spot map ever. The statements of independent witnesses residing in the nearby

place to the scene of crime were not recorded. Therefore, the learned trial Court has wrongly convicted and sentenced the appellant. The appellant

cannot be convicted and sentenced on such a defective investigation and he is entitled for acquittal.

9. Shri Rohit Mangal, learned Govt. Advocate, on the other hand, argued in support of the impugned judgment of conviction and sentence. He

submitted that entire case is based on circumstantial evidence. The appellant

was the last person who was seen along with the deceased. Both the witnesses i.e. Banti (P.W.7) and Daulat (P.W.14) have categorically stated that the appellant took the deceased on his motorcycle and within 15 minutes, the deceased came back in injured condition and disclosed the name of the appellant which was sufficient to convict the appellant. It is settled that the defect in the investigation by itself cannot be a ground for acquittal.

10. We have heard the learned counsel for the parties and perused the record.

11. As per prosecution story, the deceased along with Banti (P.W.7) and Daulat (P.W.14) was sitting in the factory and the appellant came there and

took the deceased with him on his motorcycle. The deceased went along with him which shows that there was no prior enmity between them and they

were known to each other. The deceased came back there within 15 minutes with bleeding from his chest. Now the burden lies on the prosecution to

prove that what had happened between them in 15 minutes, due to which accused caused him 8 injuries. According to the prosecution, he disclosed

the name of the appellant about causing injuries to him, but in the statements recorded before the Court, neither Banti (P.W.7) nor Daulat (P.W.14)

have stated that the deceased had disclosed the name of the appellant. Both the said witnesses have categorically stated that the deceased came back

within 15 minutes and stated that somebody has stabbed him by knife. On the contrary, Daulat (P.W.14) has stated that the deceased told him to call

Sitaram i.e. the present appellant, who is having vehicle, to take him to the hospital. Therefore, both these two witnesses have not supported the prosecution case.

12. The prosecution did not examine any eye-witness or the witnesses who were available near the scene of crime. As per statement of the

Investigating Officer, he tried to get the information from the local residents, but they did not have any information about the incident. Though he has

stated that he prepared the spot map, but the same is not available in the challan. It means that he did not prepare the spot map. According to him, the

distance between the scene of crime and the factory of Banti (P.W.7) is 30-35 steps, which comes to 30 ft. approx., but Banti (P.W.7) and Daulat

(P.W.14) who were present there, but they did not hear sound of screaming otherwise they would have rushed there to save him.

13. The deceased has received as many as 8 injuries. According to Banti (P.W.7)

and Daulat (P.W.14), the deceased went along with the appellant on his motorcycle, but the prosecution has failed to establish as to what had happened within 15 minutes between them and because of which he assaulted him by knife. No motive has been ever pleaded and proved by the prosecution. There is no evidence that there was any enmity between the appellant and the deceased. The prosecution did not examine any local resident of the area where the crime took place which is at a distance of 30 fts. Approx.

14. The apex Court in the case of V.K. Mishra V/s. State of Uttarakhand : (2015) 9 SCC 588 has held that even if the investigation is illegal or suspicious, the rest of the evidence must be scrutinized independently of the impact of it. Para 34 of the aforesaid judgment is reproduced below :

“34. Refuting the contention of the appellants on the lapses in the investigation and contending that any lapse in the investigation does not affect the

core of the prosecution case, the respondents have placed reliance upon the judgment of this Court in State of Karnataka vs. K. Yarappa Reddy,

(1999) 8 SCC 715, wherein this Court held as under : (SCC p. 720, para 19)

“19. It can be a guiding principle that as investigation is not the solitary area for judicial scrutiny in a criminal trial, the conclusion of the court in

the case cannot be allowed to depend solely on the probity of investigation. It is well-settled that even if the investigation is illegal or even

suspicious the rest of the evidence must be scrutinized independently of the impact of it. Otherwise the criminal trial will plummet to the level of the

investigating officers ruling the roost. The court must have predominance and preeminence in criminal trials over the action taken by investigating

officers. Criminal justice should not be made a casualty for the wrongs committed by the investigating officers in the case. In other words, if the court

is convinced that the testimony of a witness to the occurrence is true the court is free to act on it albeit the investigating officer's suspicious role in

the case.”

15. Similar view has been reiterated by the apex Court in the case of Ganga Singh V/s. State of M.P. : (2013) 7 SCC 278, wherein it has been held

that the Court cannot acquit the accused on the ground that there are some defects in the investigation. But the prosecution is required to establish the

guilt of the accused beyond reasonable doubt. The Court cannot acquit the accused on the ground that there are some defects in the investigation, but

if the defects in the investigation are such as to cast a reasonable doubt in the prosecution case, then of course the accused is entitled to acquittal

because of such doubt. Para 17 of the aforesaid judgment is reproduced below :

17. We are also unable to accept the submission of Mr. Mehrotra that the investigation by the police is shoddy and

hasty and there are defects in the investigation and therefore benefit of doubt should be given to the appellant and he should be acquitted of the charge

of rape. The settled position of law is that the prosecution is required to establish the guilt of the accused beyond reasonable doubt by adducing

evidence. Hence, if the prosecution in a given case adduces evidence to establish the guilt of the accused beyond reasonable doubt, the court cannot

acquit the accused on the ground that there are some defects in the investigation, but if the defects in the investigation are such as to cast a reasonable

doubt in the prosecution case, then of course the accused is entitled to acquittal because of such doubt. In the present case, as we have seen, the

evidence of PW-5 as corroborated by the evidence of PW-2 and the FIR establish beyond reasonable doubt that the appellant has committed rape on

PW-5 and thus the appellant is not entitled to acquittal.

16. In the present case, Banti (P.W.7) and Daulat (P.W.14) have not supported the prosecution case and apart from these two witnesses, there is no

evidence to the effect that the applicant has committed murder of the deceased Santosh. Therefore, the contention of Shri Mangal, learned Govt.

Advocate is rejected as apart from the defective investigation, there is no material against the appellant to uphold his conviction and sentence.

17. In view of the foregoing discussion, in the considered opinion of this Court, this appeal deserves to be and is hereby allowed. The impugned

judgment of conviction and sentence is hereby set aside and the appellant is acquitted from the charge u/s.302 of the IPC. The appellant is in jail, he

be set at liberty forthwith, if not required in any other cause. A copy of this judgment be sent to the trial Court for information and compliance.

Order accordingly.