



2026:CGHC:3778-DB

NAFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****Criminal Appeal No. 634 of 2017**

Tika Ram Nishad @ Tikam S/o Chait Ram Nishad, Aged
About 22 Years R/o Village Atariya, Kukurmuda, Police
Station Khairagarh, District Rajnandgaon, Chhattisgarh.

---Appellant**Versus**

State Of Chhattisgarh Through Police Of Police Station
Kharsia, District Raigarh, Chhattisgarh.

---Respondent

For Appellant	:-	Mr. Govind Dewangan, Advocate
For State	:-	Mr. H.A.P.S. Bhatia, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal
Hon'ble Shri Justice Arvind Kumar Verma
Judgment on Board
22/01/2026

Sanjay K. Agrawal, J.

1. This criminal appeal under Section 374(2) of CrPC has been preferred by the appellant herein against the impugned judgment of conviction and order of sentence dated 27/02/2017 passed by learned 5th Additional

Sessions Judge, Raigarh in Sessions Case No. 124/2016 whereby he has been convicted for offence punishable under Section 302 of IPC and sentenced to undergo life imprisonment with fine of Rs. 2000/-, in default of payment of fine, further R.I. for 5 months.

2. Case of the prosecution, in brief, is that in the intervening night of 27-28/07/2016, the appellant herein assaulted Santosh Nishad, while he was sleeping in Truck bearing Registration No. CG 13 LA 4893, with a jackrod and caused his death and thereby, committed the aforesaid offence.
3. Further case of the prosecution is that Santkumar Yadav (P.W.-3), working at Jaibaba Transport Company, reported about the incident at Police Station Kharsiya pursuant to which zero dehati nalishi was registered vide Ex. P/30 and zero merg intimation was registered vide Ex. P/31. Thereafter, on 28/07/2016, merg intimation No. 64/16 was registered vide Ex. P/25. Nazri naksha was prepared vide Ex. P/3 and inquest was conducted vide Ex. P/5. First information report was registered against the appellant vide Ex. P/26. The dead body of deceased Santosh Nishad was subjected to postmortem which was conducted by Dr. Sajan Kumar Agrawal (P.W.-11) and as per the postmortem report (Ex. P/21), cause of death is said to be coma and shock due to injury over neck and brain and nature of death is said to be homicidal. Memorandum statement of the appellant was recorded

vide Ex. P/6 and his blood-stained shirt was seized vide Ex. P/7. Jackrod and a blood-stained towel were seized from the Trailer vide Ex. P/11. Though the seized articles were sent for forensic examination, but no FSL report has been brought on record. After due investigation, the appellant was charge-sheeted for offence punishable under Section 302 of IPC which was committed to the Court of Sessions for trial in accordance with law. The appellant abjured his guilt and entered into defence.

4. In order to bring home the offence, prosecution examined as many as 17 witnesses and brought on record 38 documents. Statement of the appellant was taken under Section 313 of CrPC wherein he denied guilt, however, he examined none in his defence and only brought one document on record.
5. Learned trial Court, after appreciation of oral and documentary evidence on record, finding the appellant to be author of crime in question, proceeded to convict him for offence punishable under Section 302 of IPC and sentenced him as aforesaid.
6. Mr. Govind Dewangan, learned counsel for the appellant would submit that the appellant has been convicted on extremely doubtful evidence of last seen together and except that, there is no other evidence on record to involve the appellant in the alleged commission of offence. He would further submit that the evidence of Khem Kumar

Sahu (P.W.-5) is that the deceased had come to purchase eatables in the dhaaba and he claims to have seen the appellant sitting inside the Truck parked about 60-70 feet away and the appellant and the deceased consuming liquor near the water tank about 80-90 feet away in the night, but thereafter, as per the evidence of Devram Yadav (P.W.-8), the deceased had come for loading the Truck in the plant and had left the plant with loaded Truck and there is nothing in the evidence of Devram Yadav (P.W.-8) that at that time, the appellant was also sitting with the deceased. Therefore, even though there is no specific evidence of last seen, the trial Court has convicted the appellant for the offence in question only on suspicion, which is absolutely illegal and bad in law. As such, the appellant is entitled to acquittal.

7. Per contra, Mr. H.A.P.S. Bhatia, learned State counsel would support the impugned judgment and submit that the evidence of Khem Kumar Sahu (P.W.-5) shows that at about 11 PM in the night, appellant and deceased were together and after consuming liquor, they left the dhaba and thereafter, the deceased was found dead on the road at about 70-80 kms away from the power plant and the appellant has failed to explain as to when he left the company of the deceased, as such, the trial Court has rightly convicted the appellant for the offence in question and the instant appeal is liable to be dismissed.

8. We have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.
9. The first question for consideration would be whether the death of deceased Santosh Nishad is homicidal in nature ?
10. Learned trial Court has answered this question in affirmative and held the death of Santosh Nishad to be homicidal in nature relying upon the expert medical opinion of Dr. Sajan Kumar Agrawal (P.W.-11) who has proved postmortem report (Ex. P/21) in which cause of death is said to be coma and shock due to injury over neck and brain and nature of death is said to be homicidal. Considering the postmortem report (Ex. P/21) as well as the statement of Dr. Sajan Kumar Agrawal (P.W.-11) and looking to the injuries suffered by the deceased on his neck and head, we are of the considered opinion that the trial Court has rightly recorded the finding that death of deceased Santosh Nishad is homicidal in nature. We hereby affirm the said finding recorded by the trial Court.
11. The next question for consideration would be whether the appellant is the author of the crime in question ?
12. There is no direct evidence available on record and the instant case is based on circumstantial evidence. The Supreme Court in the matter of **Sharad Birdhichand Sarda v. State of Maharashtra**¹ has laid down the five

¹ (1984) 4 SCC 116

golden principles that constitute the panchsheel of the proof of a case based on circumstantial evidence, which state as under :-

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established :

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

XXX

XXX

XXX

(2) the facts so established should be consistent only with the hypothesis of guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be prove, and

(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.”

13. The trial Court has found the following incriminating circumstances established and has culled them out in paragraph 78 of the impugned judgment, which states as under :-

“78. हालांकी वर्तमान प्रकरण में कोई प्रत्यक्षदर्शी साक्ष्य उपलब्ध नहीं, परन्तु इस संबंध में अभियोजन साक्ष्य पर विचार करने पर, प्रकरण में विद्यमान अभियोजक द्वारा प्रस्तुत उपयुक्त वर्णित परिस्थितियों को प्रमाणित करने में असफल रहा है - ”

> अभियोजन साक्ष्य से यह तथ्य स्थापित है की दुर्घटना दिनांक को मृतक संतोष निषाद की ट्रांसपोर्टर आशुतोष शर्मा (अ.सा. 10) का ट्रेलर क्र. सीजी 13 - एलए -4893 का चालक था और दुर्घटना को दिनांक 28.07.16 की रात में रेलवे रैक पाइंट खरसिया में कोयला लोड करने गया था |

> दिनांक 27 एवं 27 जुलाई 2016 की मध्य रात्रि 12.00 बजे से 1.45 बजे तक मृतक संतोष निषाद को उक्त वाहन में ड्राइवर चालक होकर मौजूद रहना और उक्त वाहन को चलाया जाना, उक्त वाहन को चलाया जाकर रैक पाइंट खरसिया में जाकर कोयला लोड करना और

उसके बाद उस पाइंट से श्यामजी धरमकांटा पर आकर वाहन खड़े किये जाने की मध्य अवधि में उसे जीवित देखा गया और अगली सुबह 5-5:30 बजे जब उक्त धरमकांटा के कर्मचारियों द्वारा उसे उठाने के लिए आवाज लगायी गई, तब उक्त वाहन के इस ड्राइवर संतोष निषाद या खलासी द्वारा उत्तर नहीं दिया और दरवाजा नहीं खोलने पर संतकुमार को सूचना दिया गया और संत कुमार के आने के बाद जब उसके द्वारा उक्त ट्रक के अंदर जाकर देखा गया, तो मृतक संतोष निषाद मृत अवस्था में पाया गया |

> अभियोजन के उपरोक्त साक्षी कृष्णा, मोनू उर्फ देवेन्द्र, संत कुमार के उपरोक्त साक्ष्य विश्लेषण से यह स्थापित है की दिनांक 28-07-2016 की सुबह 5-5:30 बजे मृतक संतोष निषाद का शव ट्रैलर क्र. सीजी 13 - एलए - 4893 के अंदर पाया गया था, जिसके शरीर पर चोट के निशान थे |

> चिकित्सक के साक्ष्य से भी इस तथ्य की पुष्टि होती है की मृतक संतोष निषाद के शरीर पर हत्या पूर्व के चोट के निशान थे और उसकी मृत्यु की प्रकृति आपराधिक मानव वध हत्या होने का भी निष्कर्ष चिकित्सक ने अपने साक्ष्य में दिया है |

> इसी प्रकार अन्वेषण के साक्ष्य से यह स्पष्ट है की घटना के पश्चात सूचना मिलने पर उसी दिनांक 28-07-16 को घटनास्थल से ट्रैलर क्र. सीजी 13 - एलए - 4893 की सीट में पड़े प्रपी. 10 के जप्ती पत्रक के अनुसार मृतक संतोष निषाद के शव की जप्ती की वु उसी समय उसी घटनास्थल से प्रपी. 11 जप्ती पत्रक के अनुसार जैकरोड, एक टावेल व मृतक के कपड़े आदि की जप्ती गवाहों के समक्ष की गई मर्ग जांच व विवेचना के दौरान मृतक संतोष के शव पंचायतनामा कार्यवाही, शव परीक्षण कार्यवाही, घटना स्थल का नक्शा तैयार किया गया | विवेचना के दौरान विवेचक द्वारा घटना के अगले दिन उसको उसके व मृतक के गृह ग्राम कुकुरमुड़ा थाना खैरागढ़ जिला राजनांदगाव में उसके स्वयं के घर से बरामदगी पंचनामा के आधार पर अभिरक्षा में लिया जाना तथा आरोपी के दर्ज मेमोरण्डम कथन और उसकी सूचना पर से उसके शरीर से रक्त के रंग जैसे दाग सहित उतार कर उसके द्वारा पेश करने पर उक्त कमीज की जप्ती की कार्यवाही के संबंध में विवेचक का साक्ष्य सूक्ष्म विरोधाभास के साथ अखंडित रहा है |

> आरोपी का घटना के उपरांत घटनास्थल से फरार होने के उसका आचरण धारा 8 साक्ष्य अधिनियम के तहत आरोपी के दोषी होने को निर्दिष्ट करता है |

> आरोपी द्वारा अन्यत्र उपस्थिति की मिथ्या अभिवाक लिया जाना, जो स्वयं में अपराध कारित करने के लिये आरोपी को संबन्धित करते हुये एक अतिरिक्त कड़ी है |

> साक्षी आशुतोष, कृष्णा व सुरेश के कथन से मृतक संतोष निषाद के साथ घटना के पांच माह के पूर्व से मृतक के साथ हेल्पर के रूप खलासी का काम करना बताया गया है | साक्षी आशुतोष के कथन के अनुसार उक्त ट्रैलर सीजी 13 - एलए - 4893 के खलासी के रूप में आरोपी टीकम उर्फ टीकाराम कार्यरत रहने का कथन बचाव पक्ष द्वारा खंडित नहीं किया गया है और घटना दिनांक को अवकाश पर होने का बचाव नहीं लिया गया है और अभियोजन साक्ष्य से भी घटना दिनांक या उसके पूर्व से आरोपी का अवकाश होना कथित नहीं किया गया है | घटना दिनांक 27-07-2016 एवं दिनांक 28-07-16 की मध्य रात्रि में ट्रैलर क्र. 13 - एलए - 4893 में आरोपी को मृतक संतोष निषाद के साथ अंतिम बार एक साथ देखा गया था | तत्संबंध में अभियोजन द्वारा न्यायदृष्टांत **रविलाला लक्ष्मैयाह बनाम आंध्र प्रदेश राज्य, 2014 (1) CCSC, 56 (SC)** के अवलंब लिया है, जिसमें माननीय उच्चतम न्यायालय ने यह अवधारित किया है की ऐसे मामलों में, जहाँ अभियुक्त को अंतिम

बार मृतक आरोपी के साथ देखा गया हो, आरोपी का उन परिस्थितियों को स्पष्ट करने का कर्त्तव्य हो जाता है, जिनके अधीन पीड़ित की मृत्यु हुई थी |

14. So far as the first three circumstances recorded by the trial Court are concerned, they are correct finding of facts based on evidence available on record and they have not been disputed by learned counsel for the appellant. So far as the nature of death of deceased Santosh Nishad is concerned, we have already discussed above that the trial Court has rightly held the death of the deceased to be homicidal in nature.

Memorandum and Seizure :-

15. The next incriminating circumstance that has been recorded by the trial Court is that pursuant to memorandum statement of the appellant vide Ex. P/6, seizure of his blood-stained shirt has been made vide Ex. P/7 and seizure of jackrod has been made vide Ex. P/11. However, though the seized articles were subjected to forensic examination but the FSL report has not been brought on record for the reasons best known to prosecution, thus, seizure of the aforesaid articles would of no use to the prosecution.

Subsequent conduct under Section 8 of the Evidence

Act :-

16. It is the case of the prosecution that immediately after the incident, appellant is said to have absconded from the spot, as such, his conduct is relevant for proving his guilt

under Section 8 of the Evidence Act. However, mere absconding by itself does not necessarily lead to a firm conclusion of guilty mind. The act is a relevant piece of evidence to be considered along with other evidence, but its value would depend upon the circumstances of each case. Normally, evidence for sustaining a conviction can scarcely be held as a determining link in completing the chain of circumstantial evidence, which must admit of no other hypothesis than that of the guilt of the accused.

(See: Matru v. State of Uttar Pradesh²)

17. The absconding by itself is not conclusive of either guilt or guilty conscience **(See: Rahman v. State of Uttar Pradesh³)**. Absconding may lend weight to other evidence establishing the guilt of an accused, but by itself, is hardly any evidence of guilt. Absconding is a weak link in the chain of circumstances and is not conclusive either of the guilt or guilty conscience.

Plea of Alibi :-

18. The plea of alibi, though has been taken by the appellant but it has not been established by him and it has thus been taken by the prosecution as an additional link to the chain of circumstances, however, false plea of alibi, if any, would only be an additional link to the chain of circumstances if the prosecution has been able to bring home the offence beyond reasonable doubt, which they

² AIR 1971 SC 1050

³ AIR 1972 SC 110

have failed to do till now in the instant case, as such, false plea of alibi, if any, would not be sufficient to implicate the appellant for any offence that too, for a serious offence under Section 302 of IPC.

Theory of Last Seen Together :-

19. The last and final incriminating circumstance recorded by the trial Court is that appellant was last seen together with the deceased on the date of offence by Krishna Singh (P.W.-2), Khemkumar Sahu (P.W.-5), Ashutosh Sharma (P.W.-10) and Suresh Nishad (P.W.-15).
20. A careful statement of Krishna Singh (P.W.-2) would show that he has only stated that at the time of the incident, helper/khalasi was not present in the Truck and he was informed by Sant Kumar (P.W.-3) that the helper has absconded. This witness has not stated anything about the appellant having been seen together with the deceased on the date of the incident.
21. Similarly, Sant Kumar (P.W.-3), who works at Jai Baba Baijnath Transport Company, has stated that he does not as to who was working as a helper in the Truck on the date of offence as their Transport Company does not employ helpers in the Trucks.
22. Khemkumar Sahu (P.W.-5), who is the owner of Abhilasha dhaba, has stated in his examination-in-chief that on the date of offence, deceased Santosh Nishad came to his dhaba to buy eatables and thereafter, he along with the

appellant went a bit far and consumed liquor, however, in the cross-examination, he has admitted that the deceased and the appellant were at a distance of 80-90 feet. He has further admitted that in his statement under Section 161 of CrPC, though he had mentioned that helper was present along with the deceased but he had not named the appellant to be the helper. As such, there is omission in his statement under Section 161 of CrPC, therefore, this witness cannot be held to be reputable to establish the theory of last seen together.

23. Ashutosh Sharma (P.W.-10), who is the owner of the transport company, has stated that deceased was working in his company as Driver and he has clearly stated that he does not know as to who was working as a helper on the date of the offence. After being declared hostile and being subjected to leading questions in paragraph 4, he has stated that for five months, appellant was working as a helper in the Truck, however, in his cross-examination in paragraph 9, he has again stated that it was not within his knowledge that the appellant used to work as a helper and he has never before seen the appellant.

24. Suresh Nishad (P.W.-15), brother of deceased Santosh Nishad, has though stated in paragraph 4 of his statement that appellant used to work as helper in the Truck which was being driven by his brother, however, in cross-examination in paragraph 11, he has admitted that he has not seen the appellant working as helper in the Truck with

his brother and appellant's brother Gautam Nishad had told him about the said fact that appellant worked as a helper in the Truck with the deceased.

25. Thus, the theory of last seen together has not at all been established from the statements of the aforesaid witnesses and the trial Court is absolutely unjustified in holding that theory of last seen together has been found established. Even otherwise, though the evidence of last seen together could point to the guilt of the accused, but this evidence alone cannot discharge the burden of establishing the guilt of the accused beyond reasonable doubt and requires corroboration, as has been held by the Supreme Court in the matter of **Navneethakrishnan v. State of Inspector of Police**⁴.

26. In sum and substance, we are of the considered opinion that the prosecution has miserably failed to bring home the offence in question beyond reasonable doubt as the five golden principles that constitute the panchsheel of the proof of a case based on circumstantial evidence as held by the Supreme Court in **Sharad Birdhichand Sarda** (supra) has not at all been established. As such, the trial Court is absolutely unjustified in convicting the appellant for offence punishable under Section 302 of the IPC. The impugned judgment of conviction and order of sentence is hereby set aside on the basis of benefit of doubt. The appellant is acquitted of the charges levelled against him.

4 (2018) 16 SCC 161

Since he is already on bail, he need not surrender, however, his bail bonds shall remain in operation for a period of six months in view of qthe provision contained under Section 437-A of CrPC.

27. Accordingly, this criminal appeal stands allowed.

Sd/-
(Sanjay K. Agrawal)
Judge

Sd/-
(Arvind Kumar Verma)
Judge

Harneet