



2026:CGHC:4024-DB



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NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

ACQA No. 98 of 2020

- Kamal Sai Kindo, S/o Bhajna Ram, aged about 62 Years, R/o Village - Dalkiya, Barpara, P.S. and Tahsil - Sitapur, District – Sarguja, Chhattisgarh. **...Appellant**

versus

1. The State of Chhattisgarh, Through P.S. - Sitapur, District - Sarguja, Chhattisgarh.
2. Ganesh Ram Paikara, S/o Ghurau Paikara, aged about 40 Years, R/o Village - Sur Kabristan Para, P.S. - Sitapur, District - Sarguja, Chhattisgarh **... Respondents**

For Appellant	:	Mr. Shrikant Kaushik, Advocate on behalf of Mr. Rishikant Mahobia, Advocate.
For Respondent No.1	:	Mr. Atanu Ghosh, Deputy Government Advocate.

Hon'ble Smt. Justice Rajani Dubey and

Hon'ble Shri Justice Radhakishan Agrawal

Judgment on Board

23.01.2026

Per Radhakishan Agrawal, J.

Heard on admission.

1. This acquittal appeal filed by the Appellant/Complainant arises out of the judgment dated 20.12.2019 passed by the First Additional Sessions Judge, Ambikapur, District Surguja, C.G. in Sessions Case No.35/2019, whereby the learned trial Court acquitted the accused/respondent of the charges under Sections 302 & 201 of Indian Penal Code (for short, "IPC").



2. Case of the prosecution, in brief, is that complainant/PW-7 Mahesh Kumar Kindo lodged a report at Police Station Sitapur stating that his brother/deceased- Dineshwar Prasad Kindo was residing on rent at Village Sur and was addicted to alcohol. On 10.01.2019, he left his house and did not return. On 11.01.2019, his dead body was found near the *Sur* graveyard with injuries on various parts of the body. On the basis of the report lodged by PW-7-brother of the deceased, an FIR (Ex.P-19) was registered against an unknown person. Thereafter, merg intimation was recorded vide Ex.P-14, inquest proceedings were conducted vide Ex.P-5 and the dead body of deceased was sent for post-mortem examination. PW-5 Dr. Amos Kindo conducted the post-mortem and opined that the deceased died due to respiratory arrest and hypovolemic shock caused by internal bleeding resulting from injury to the left ribs and the nature of death of deceased was opined to be homicidal and gave PM report vide Ex.P-11. During investigation, accused/respondent No.2 was taken into custody vide Ex.P-7 and his memorandum statement was recorded vide Ex.P-8. However, no seizure was effected pursuant to the said memorandum statement.
3. After completion of the investigation, a charge sheet was filed against the accused/respondent before the concerned trial Court. The accused/respondent No.2 abjured the guilt and prayed for trial.
4. The trial Court, after hearing counsel for the parties and appreciating the evidence on record, by the impugned judgment acquitted the accused/respondent No.2 of said charges leveled against him.
5. Learned counsel for the appellant submits that the impugned judgment of acquittal passed by the learned trial Court is illegal, erroneous, and



contrary to the evidence available on record. He further submits that there is sufficient and cogent evidence on record, particularly the testimony of PW-1 Prakash Paikra, to establish that respondent No.2 is the author of the crime in question. It is also contended that the circumstances proved by the prosecution form a complete chain pointing towards the involvement of the accused/respondent No.2. Therefore, the impugned judgment of acquittal suffers from perversity and illegality and is liable to be set aside.

6. Learned counsel for the respondent No.1/State supports the contention made by learned counsel for the appellant.
7. We have heard learned counsel for the parties and perused the material available on record.
8. The Supreme Court in the matter of *Jafarudheen and others vs. State of Kerala*¹ has considered the scope of interference in Appeal against acquittal, which reads as under:-

“25. While dealing with an appeal against acquittal by invoking Section 378 CrPC, the appellate court has to consider whether the trial court's view can be terms as a possible one, particularly when evidence on record has been analysed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the appellate court has to be relatively slow in reversing the order of the trial court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters.”

9. The question that now arises for consideration is whether the respondent No.2 is the perpetrator of the crime in question.
10. Admittedly, the present case rests on circumstantial evidence as there is no direct evidence available on record and that the homicidal nature of the death of the deceased is also not in dispute. The five golden principles, which constitute the *panchsheel* of proof in a case based on circumstantial

¹ (2022) 8 SCC 440



evidence, have been laid down by their Lordships of the Hon'ble Supreme Court in *Sharad Birdhichand Sarda v. State of Maharashtra*², wherein it was observed in paragraph 153 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.

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and "must be or should be proved" as was held by this Court in *Shivaji Sahabrao Bobade v. State of Maharashtra*³ where the following observations were made : [SCC para 19, p. 807 : SCC (Cri) p. 1047]

Certainly, it is a primary principle that the accused *must* be and not merely *may* be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.

(2)the facts so established should be consistent only with the hypothesis of the 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 proved, 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."

11. PW-2 Savita Kindo, wife of the deceased, has stated that in her deposition that her husband/deceased was addicted to alcohol and frequently visited the house of accused/respondent No.2. She has further stated that on 10.01.2019, at about 11:00 p.m., deceased left the house to consume liquor at the house of accused/respondent No.2 and did not return till about 7:00 p.m. on the following day. Thereafter, she called the accused and enquired about the whereabouts of the deceased, upon which, accused informed her that the deceased had not visited his house

2 (1984) 4 SCC 116

3 (1973) 2 SCC 793



for the last two to three days. In her cross-examination, she admitted that she had not witnessed the incident and had no personal knowledge as to how deceased died. Her statement that the accused/respondent No.2 might have murdered her husband is based on mere suspicion. She further admitted that she was at home on the date of the incident and that in her police statement recorded under Section 161 Cr.P.C., she had stated that some unknown person had committed the murder of the deceased. Thus, her evidence does not establish either the motive or the “last seen” circumstance against the accused/respondent No.2.

12. PW-7 Mahesh Ram Kindo, brother of the deceased and the informant, categorically admitted in his evidence that he did not see the deceased leaving the house on the date of the incident, did not witness any quarrel and also did not see the accused/respondent No.2 assaulting the deceased or disposing of the dead body. He further admitted that the police did not make any enquiry from him and that he does not know how his statement (Ex.P-9) was recorded by the police. Therefore, his testimony does not establish any incriminating circumstance against the accused/respondent No.2.
13. Further, PW-1 Prakash Paikra, who was projected by the prosecution as the sole eye-witness to the incident, did not support the prosecution case and was declared hostile. He categorically denied any knowledge of the incident and did not depose about any quarrel or assault by the accused/respondent No.2. Nothing material could be elicited from his cross-examination by the prosecution so as to support its case. Thus, the testimony of PW-1 does not advance the prosecution case and fails to establish any incriminating circumstance against the accused.



14. This apart, the prosecution has placed heavy reliance on the memorandum statement of the accused/respondent No.2 (Exhibit P-8). However, the said statement is purely confessional in nature, and any confession made to a police officer or while in police custody is inadmissible in evidence unless recorded before a Magistrate. In the present case, no recovery of any incriminating article nor discovery of any fact pursuant to the said memorandum has been proved so as to attract Section 27 of the Indian Evidence Act. Therefore, the memorandum statement is inadmissible and cannot be relied upon to sustain a conviction.
15. So far as the place of recovery of the dead body is concerned, the evidence of PW-4 Sudhir Kumar Singh, Patwari, clearly establishes that the dead body of the deceased was recovered from an open space near the graveyard, which admittedly does not belong to the accused/respondent No.2. Thus, the circumstance of recovery of the dead body does not connect the accused/respondent No.2 with the offence in question. That apart, the prosecution has also failed to prove any motive for the commission of the crime. There is no evidence of last seen together, no recovery of the alleged weapon and no medical or forensic evidence linking the accused/respondent No.2 with the injuries found on the body of the deceased. The circumstances relied upon by the prosecution are neither conclusive in nature nor do they form a complete and unbroken chain pointing towards the guilt of the accused/respondent No.2.
16. The learned trial Court has elaborately discussed the evidence led by the prosecution and upon a careful analysis of the entire material on record, came to the conclusion that there is no cogent and clinching evidence to



establish that accused/respondent No.2 is the perpetrator of the crime in question. Consequently, the learned trial Court acquitted the accused/respondent No.2 of the charges levelled against him as the prosecution failed to prove its case beyond reasonable doubt.

17. After considering the material available on record as well as the elaborate judgment impugned passed by the trial Court, we are of the considered opinion that the prosecution has failed to establish the five golden principles constituting the '*panchsheel*' for proof of a case based on circumstantial evidence, as enunciated by the Supreme Court in *Sharad Birdhichand Sarda* (supra). Accordingly, the impugned judgment acquitting the accused/respondent No.2 of the said charges is just and proper and does not call for any interference.
18. Accordingly, the acquittal appeal filed by the appellant against the acquittal of the accused / respondent No.2 is hereby dismissed at the admission stage.

Sd/-
(Rajani Dubey)
Judge

Sd/-
(Radhakishan Agrawal)
Judge