



2026:CGHC:12369-DB



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NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

ACQA No. 40 of 2018

- State of Chhattisgarh, Through Station House Officer, Police Out Post Korbi, Police Station- Pasan, District Korba, Chhattisgarh.

...Appellant

versus

- Jagdeo Dhanuhaar @ Ghosariha, S/o Ram Sai Dhanuhaar, Caste Dhanuhaar, aged about 37 Years, R/o Ghonsara, (Mahadeopara), Out Post- Korbi, Police Station Pasan, District Korba, Chhattisgarh.

.... Respondent

For Appellant	: Ms. Shubha Shrivastava, Panel Lawyer.
For Respondent	: None.

Hon'ble Smt. Justice Rajani Dubey and

Hon'ble Shri Justice Radhakishan Agrawal

Judgment on Board

16.03.2026

Per Radhakishan Agrawal, J.

1. This acquittal appeal filed by the Appellant/State arises out of the judgment dated 27.07.2017 passed by the Additional Judge to the Court of Additional Sessions Judge, Katghora, District Korba, C.G. in Sessions Case No.60/2016, 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 on 10.03.2016, at about 3:00 pm, complainant/PW-5- Amrit Lal lodged a *merg* intimation (Ex.P-13) at



Police Outpost Korbi stating that PW-8 Smt. Raj Kumari Dhanuhaar, wife of the deceased Naihar Lal Dhanuhaar, had informed in the morning that on the previous day, i.e., 09.03.2016, the deceased had gone to *Amahwa Nala* for catching fish, but did not return home thereafter. Upon receiving this information, the family members and villagers went towards *Amahwa Nala* in search of him and found a dead body lying in the water, which was identified as that of deceased-Naihar Lal Dhanuhaar. Thereafter, inquest proceedings were conducted vide Ex.P-7 and the dead body was sent for post-mortem examination. PW-13 Dr. Deepak Singh conducted the post-mortem examination and opined that the cause of death was asphyxia due to drowning in water and that the nature of death was accidental and gave post-mortem report vide Ex.P-14.

3. During the course of investigation, suspicion was raised against the present accused/respondent that he had assaulted the deceased and thereafter caused his death by drowning him in water. Thereafter, FIR (Ex.P-12) was registered against the accused/respondent and he was taken into custody vide Ex.P-21. Memorandum statement of accused/respondent was recorded vide Ex.P-2, pursuant to which, one stick, one plastic bottle containing liquor and one *tangi* were seized vide Exs.P-3 to P-5. However, the seized articles were not sent to FSL for chemical examination.
4. After completion of investigation, charge sheet was filed against the accused/respondent before the concerned trial Court. The accused/respondent abjured the guilt and prayed for trial.



5. The trial Court, after hearing counsel for the parties and appreciating the evidence on record, by the impugned judgment acquitted the accused/respondent of said charge leveled against him.
6. Learned counsel for the appellant/State submits that the impugned judgment of acquittal passed by the learned trial Court is illegal, erroneous and contrary to the evidence available on record. She further submits that the learned trial Court has not properly appreciated the testimony of Dileram (PW-7), who, according to the prosecution, had witnessed the incident and clearly stated that the accused/respondent assaulted the deceased and thereafter threw him into the water. She also submits that recovery of alleged articles, pursuant to memorandum statement of the accused, also supports the prosecution case. Therefore, the impugned judgment of acquittal suffers from perversity and illegality and is liable to be set aside.
7. We have heard learned counsel for the Appellant 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.”

¹ (2022) 8 SCC 440



9. The first question that arises for consideration is whether the death of the deceased- Naihar Lal Dhanuhaar was homicidal in nature.
10. Dr. Deepak Singh (PW-13), who conducted the post-mortem examination on 10.03.2016, clearly opined that the cause of death of the deceased was asphyxia due to drowning and that the nature of death was accidental. The inquest report (Ex.P-7) also supports the medical evidence, wherein it is recorded that the deceased appeared to have drowned while catching fish and that no visible injury was found on his body. PW-14 Harishankar Sahu, Investigating Officer, has also admitted that the *merg* was initially registered only on the information that a dead body was lying in the water and there was no allegation that the accused/respondent had murdered the deceased. Thus, the medical evidence as well as the earliest version clearly indicate that the death of the deceased occurred due to drowning and was accidental in nature.
11. The question that now arises for consideration is whether the respondent is the perpetrator of the crime in question.
12. The prosecution mainly relies on the testimony of Dileram (PW-7), who has been projected as an eye-witness. He stated that he, deceased and the accused/respondent had gone together for fishing and had consumed liquor before going there. According to him, accused/respondent demanded Rs.100/- from the deceased for purchasing liquor and when the deceased refused, he assaulted him with a wooden stick, due to which, deceased became unconscious and thereafter accused/respondent tied both legs of the deceased and threw him into *Amahwa Nala*. However, in his cross-examination, PW-7 Dileram made material admissions which create serious doubt about his presence at the time of the incident. He admitted that he reached the



spot only after the deceased had already been pushed down and also stated that after becoming intoxicated, he sat on a stone. These admissions render his testimony doubtful and unreliable as that of an eye-witness.

Apart from this, PW-5 Amrit Lal, who lodged the *merg* intimation, admitted in his evidence that on the next day after the death of the deceased, he had gone to the police station and PW-7 Dileram had also accompanied him. However, in the *merg* intimation (Ex.P-11) lodged at that time, there is no mention that PW-7 Dileram had witnessed the incident. This omission creates further doubt regarding the prosecution version and indicates that PW-7 Dileram was not an eye-witness to the incident.

13. That apart, the prosecution has relied on the memorandum statement of the accused and the seizure of a liquor bottle, wooden stick and tangi. However, the recovery of such ordinary articles, commonly available in rural areas, cannot be treated as incriminating evidence in the absence of any forensic link with the alleged offence. No blood stains were found on the seized articles and there is no scientific evidence connecting them with the incident. Further, the medical evidence does not support the allegation of assault, as no injury matching the seized stick or *tangi* was found. The doctor (PW-13) has clearly opined that no injuries caused by assault were present. Hence, the alleged recovery does not support the prosecution case.
14. Thus, from the above evidence, it is clear that the prosecution has failed to establish the guilt of the accused/respondent beyond reasonable doubt. The medical evidence shows that the deceased died due to drowning and not because of any assault, as the doctor did not



find any injury or rope mark on the body of the deceased. The *merg* intimation (Ex.P-11) and the inquest report (Ex.P-7) also support the case of accidental drowning. Further, the testimony of Dileram (PW-7), the main prosecution witness, is inconsistent and is not supported by the medical evidence, while the other witnesses have also made contradictory statements on material aspects. Moreover, the seizure of the alleged articles at the instance of the accused/respondent has no evidentiary value in the absence of any forensic or reliable supporting evidence. If the case of the prosecution is taken as it is, then it appears that the entire case of the prosecution was made on the basis of mere suspicion, but, suspicion, however grave it may be, cannot take the place of proof.

15. The Hon'ble Apex Court in its judgment dated 12.02.2024 passed in Criminal Appeal No.1162 of 2011 in case of *Mallappa and Ors. Versus State of Karnataka*, has held in para 36 as under:-

"36. Our criminal jurisprudence is essentially based on the promise that no innocent shall be condemned as guilty. All the safeguards and the jurisprudential values of criminal law, are intended to prevent any failure of justice. The principles which come into play while deciding an appeal from acquittal could be summarized as:-

- "(i) Appreciation of evidence is the core element of a criminal trial and such appreciation must be comprehensive inclusive of all evidence, oral and documentary;
- (ii) Partial or selective appreciation of evidence may result in a miscarriage of justice and is in itself a ground of challenge;
- (iii) If the Court, after appreciation of evidence, finds that two views are possible, the one in favour of the accused shall ordinarily be followed;
- (iv) If the view of the Trial Court is a legally plausible view, mere possibility of a contrary view shall not justify the reversal of acquittal;
- (v) If the appellate Court is inclined to reverse the acquittal in appeal on a re-appreciation of evidence, it specifically



address all the reasons given by the Trial Court for acquittal and must cover all the facts;

(vi) In a case of reversal from acquittal to conviction, the appellate Court must demonstrate an illegality, perversity or error of law or fact in the decision of the Trial Court."

16. Considering the facts and circumstances of the case and the law laid down by the Hon'ble Supreme Court in *Jafarudheen & Mallappa* (supra), and in the absence of any cogent and reliable evidence on record, it cannot be held that the accused/respondent is the author of the crime in question. The view taken by the learned trial Court appears to be a plausible and possible view. In the absence of any patent illegality or perversity, this Court is not inclined to interfere with the impugned judgment.

17. Accordingly, the acquittal appeal filed by the appellant/State against the acquittal of accused/respondent is hereby dismissed.

Sd/-
(Rajani Dubey)
Judge

Sd/-
(Radhakishan Agrawal)
Judge