



2026:CGHC:17754-DB

NAFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****ACQA No. 178 of 2021**

1 - The State Of Chhattisgarh Through District Magistrate Balrampur
Ramanujganj Chhattisgarh, District : Balrampur, Chhattisgarh

... Appellant(s)**versus**

1 - Rajkumar S/o Late Shri Sukhdev, Aged About 31 Years R/o Village Karwa,
Kodakupara, P.S. Rajpur, District Balrampur Ramanujganj (Chhattisgarh),
District : Balrampur, Chhattisgarh

... Respondent(s)

For Appellant/State	: Mr. Atanu Ghosh, Dy. Govt. Advocate
For Respondent	: Mr. Hariom Rai and Mr. Mukul Chaturvedi, Advocates.

DB: Hon'ble Shri Justice Narendra Kumar Vyas &**Hon'ble Shri Justice Sanjay Kumar Jaiswal****Order On Board****20.04.2026****Per Hon'ble Shri Narendra Kumar Vyas J.**

- The State preferred CRMP No. 1141/2020 which has been converted into regular acquittal appeal vide this Court's order dated 18.08.2021. By way of this acquittal appeal the State has assailed the order dated 26.12.2019 passed by the learned 2nd Additional Sessions Judge, Ramanujganj, District – Balrampur- Ramanujganj by which the

accused has been acquitted from the charges punishable under Section 302 of the IPC.

2. The prosecution case, in brief, is that Merg Intimation No. 09/18 under Section 174 of the Cr.P.C. was registered on 17.01.2018 at the instance of Bade Bifna, father of the deceased. It was alleged that the deceased had solemnized marriage with the accused about 6–7 years prior to the incident. On 16.01.2018, the deceased informed her father over telephone that her husband (accused) had assaulted her on the head with a wooden stick, as a result of which blood was oozing from her head and ear. It was further alleged that thereafter the accused took her to the hospital, where she succumbed to her injuries. On the basis of the said merg intimation, FIR bearing Crime No. 17/2018 was registered at Police Station Rajpur for the offence punishable under Section 302 of the IPC. After completion of usual investigation and collection of evidence, the prosecution filed a charge-sheet before the Judicial Magistrate First Class, Rajpur, who committed the case to the Court of the 2nd Additional Sessions Judge, Balrampur on 30.04.2018 for trial, where it was registered as Sessions Trial No. 44/2018.
3. To bring home the charges against appellant, the prosecution examined PW/1 Shyamlal, Sarpanch, PW/2 Ramesh Kumar, Assistant Sub-inspector, PW/3 Dr. Asrita Kachhap, PW/4 Bade Bifna, father of the deceased, PW/5 Maheshwar, PW/6 Dinesh. The accused was examined under Section 313 of the Cr.P.C. wherein he denied the charges and taken plea of false implication.
4. The prosecution's star witness is PW/4, Bade Bifna, father of the deceased, who in his examination-in-chief reiterated the stand he has taken in the merg intimation. However, he subsequently turned hostile.

In his cross-examination, he admitted that upon visiting the hospital, he saw bleeding on the head and ear of the deceased. He further admitted that the deceased was in the habit of consuming liquor and denied that she had informed him over telephone that the accused had assaulted her with a wooden stick. He also admitted that, in an inebriated condition, the deceased had fallen on a wooden stool (Pidha). Additionally, he stated that the police has seized blood-stained soil from the spot. He denied having informed the police that the accused had assaulted the deceased with a stick. However, when confronted with the contradictions in his statements and questioned by the learned trial Court as to which statement is correct, he admitted that the statement to the effect that the accused had assaulted his daughter with a wooden stick is true.

5. From the evidence of PW/4, it is quite vivid that the alleged statement of the deceased was received by him telephonically. A careful scrutiny of the entire evidence reveals material contradictions and omissions. Further, the so-called dying declaration is of such a nature that it does not inspire the full confidence. The learned trial Court, while disbelieving the statement of PW/4, has assigned detailed reasons, which do not suffer from any perversity or illegality. It is a well-settled position of law that a dying declaration must be of such quality as to inspire full confidence of the Court as to its correctness. In the present case, the prosecution has failed to adduce any evidence to establish that the alleged telephonic communication was safe, reliable, and free from the possibility of tutoring, prompting, or imagination. Moreover, no material has been brought on record to satisfy the Court that the deceased was in a fit state of mind at the time of giving the statement

after a clear opportunity to identify the assailant. In the absence of such evidence, the so-called dying declaration does not inspire confidence so as to form the basis for conviction.

6. PW/1 Shyamlal, a seizure witness, in his examination-in-chief supported the prosecution case and stated that the police had seized a wooden stick from the accused in his presence, and that he had put his signature on the Memorandum Statement (Ex. P/3) as well as the Seizure Memo (Ex. P/4). But, in his cross-examination, the said witness has deposed that the accused had not made any statement either to him or in his presence before the police. He further admitted that the wooden stick was seized by the police from the courtyard of the house of the accused. The witness also stated that the police personnel had asked him to sign certain documents which were not read over to him, and he further admitted that the police had not recorded his statement. In view of the contradictions and omissions in his testimony, the trial Court put certain questions to the witness for clarification. In response thereto, the witness stated that the police had indeed made inquiries from the accused in his presence, wherein the accused disclosed that he had assaulted his wife with a stick and committed her murder, and this statement is true.
7. PW/6 Dinesh, who is also a seizure witness, has turned hostile. In his cross-examination, he admitted that the documents on which he put his signature were not read over to him and that he had signed the same on the instruction of the police. He further stated that the police had not explained or read over any document before him. The witness also admitted that, at the place of occurrence, no one had stated that the accused had assaulted the deceased with a wooden stick. Thus, it is

quiet vivid that he has also not supported the seizure.

8. The learned trial Court, while analyzing the testimony of PW/1, has recorded a finding that, in terms of Section 27 of the Evidence Act, the recovery of an incriminating article from an open and accessible place does not lend credence to the prosecution case. When a weapon of offence is found lying in an open place, it cannot be conclusively held that the same was discovered solely on the basis of the information furnished by the accused. Moreover, the seizure witness, PW/1, has contradicted himself and has not fully supported the prosecution case. In such circumstances, the learned trial Court was justified in not placing reliance upon his testimony. Thus, the finding recorded by the learned trial Court in disbelieving the seizure witnesses cannot be said to be illegal or perverse, rather, it is in conformity with the settled position of law governing Section 27 of the Indian Evidence Act, 1872, as reiterated by the Hon'ble Supreme Court in its latest judgment in case of **Nilu @ Nilesh Koshti vs. State of Madhya Pradesh** reported in **2026 INSC 173** and in paragraphs 20 to 22 has held as under:

“20) It is trite that Sections 25 and 26 of the Evidence Act stipulate that confession made to a Police Officer is not admissible. However, Section 27 is an exception to Sections 25 and 26 and serves as a proviso to both these sections. Section 27 of the Evidence Act reads as follows:

“27. How much of information received from accused may be proved.— Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.”

The scope and ambit of Section 27 have been examined by this Court in *Delhi Administration vs. Bal Krishan and Others*.

21. Elucidating on what constitutes “discovery of fact” under Section 27 of the Evidence Act, this Court in *Udai Bhan vs. State of Uttar Pradesh* observed as follows :

“11. Thus it appears that Section 27 does not nullify the ban

imposed by Section 26 in regard to confessions made by persons in police custody but because there is the added guarantee of truthfulness from the fact discovered the statement whether confessional or not is allowed to be given in evidence but only that portion which distinctly relates to the discovery of the fact. A discovery of a fact includes the object found, the place from which it is produced and the knowledge of the accused as to its existence.” (Emphasis supplied)

22. The aforesaid legal position was comprehensively reiterated and elaborated upon by this Court in *Bodhraj Alias Bodha and Others vs. State of Jammu and Kashmir*⁴, wherein the question of whether evidence relating to recovery is sufficient to fasten guilt on the accused was examined at length. This Court held that for evidence under Section 27 to be admissible, the information must emanate from an accused who is in police custody. The Court elucidated that the basic idea embedded in Section 27 is the doctrine of confirmation by subsequent events - when a fact is discovered on the strength of information obtained from a prisoner, such discovery serves as a guarantee of the truthfulness of the information supplied. The Court further observed that whether the information is confessional or non-inculpatory in nature, if it results in the discovery of a fact, it becomes reliable information. Significantly, it was held that the mere recovery of an object does not constitute the discovery of fact envisaged in the section. Relying on the Privy Council's decision in *Pulukuri Kottayya and Others vs. King Emperor*, the Court held that the "fact discovered" embraces not merely the object recovered, but the place from which the object was produced and the knowledge of the accused as to its existence, and that the information given must relate distinctly to that effect.”

9. Accordingly, from a bare perusal of the evidence adduced by the prosecution, it is evident that the star witness, PW/4 and other witnesses PW/1 and PW/6 have not supported the prosecution case. The alleged dying declaration does not inspire confidence, lacks legal sanctity and evidentiary value. Thus, learned Trial Court, upon due appreciation of the evidence on record, including the infirmities in the investigation and the testimonies of the prosecution witnesses, has rightly acquitted the accused.
10. Even otherwise, it is a well settled position of law that this Court, while exercising appellate jurisdiction in an appeal against acquittal, has limited powers of interference. Unless the findings recorded by the trial

court are perverse, manifestly illegal, or based on a gross misappreciation of evidence, the appellate court ought not to disturb the order of acquittal. It is equally well settled that if two views are possible on the basis of the evidence on record, the view favourable to the accused must be adopted. Therefore, we are of the opinion that no good ground has been made out by the appellant State to interfere in the impugned order of acquittal passed by the learned trial Court.

11. Accordingly, the acquittal appeal sans merit and it is dismissed.

Sd/-
(Narendra Kumar Vyas)
JUDGE

Sd/-
(Sanjay Kumar Jaiswal)
JUDGE