



2025:CGHC:47724-DB



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NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**CRA No. 995 of 2021**

1 - Punitram S/o Shri Budhram Sori Aged About 35 Years R/o Village Bhatadiggi Police Station Mainpur , District Gariyaband Chhattisgarh.

2 - Jaikumar S/o Shri Budhram Sori Aged About 27 Years R/o Village Bhatadiggi Police Station Mainpur , District Gariyaband Chhattisgarh.

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

State Of Chhattisgarh Through District Magistrate , Gariyaband , District Gariyaband Chhattisgarh.

... Respondent(s)

For Appellant(s) : Mr. Dheerendra Pandey, Advocate

For Respondent(s) : Mr. Sakib Ahmed, Panel Lawyer

Hon'ble Shri Ramesh Sinha, Chief Justice and
Hon'ble Shri Bibhu Datta Guru, Judge

Judgment on Board**Per Ramesh Sinha, C.J.****17.09.2025**

1. This criminal appeal filed by the appellants under Section 374(2) of Cr.P.C. is directed against the impugned judgment of conviction and order of sentence dated 26.07.2021 passed by the learned



Additional Sessions Judge, Gariyaband, District- Gariyaband (C.G.) in Sessions Trial No. 50/2019, whereby the appellants have been convicted for offence under Section 302/34 of the IPC and sentenced to undergo rigorous imprisonment for life and fine of Rs.1000/- (each), in default of payment of fine, to further undergo additional rigorous imprisonment for one year (each) and under Section 201/34 of the IPC and sentenced to undergo rigorous imprisonment for five years (each) and fine of Rs.1000/- (each), in default of payment of fine, to further undergo additional rigorous imprisonment for one year (each) (both the sentences were directed to run concurrently).

2. Case of the prosecution, in brief, is that on 29.03.2019, informant Bansingh Sori telephonically informed the Station House Officer, Mainpur, Basant Baghel, that at about 7:00 a.m., villagers had discovered the burnt body of an unknown man lying near Rasiya Nala, Bhatadighi village. Immediately, the informant along with Uderam Sori, Phool Singh, Anant Ram, Devi Singh and the village Kotwar Nokheshwar Jagat proceeded to the spot. On reaching, they found the body of an unknown male aged about 40–45 years, lying beneath a tree, badly burnt on his face, hands and legs, rendering him unidentifiable.
3. On the basis of this information, a rural inquest report (Ex.P-23) and a register of untimely and accidental death (Ex.P-33) were prepared. A Panchnama map (Ex.P-03) was drawn after issuing



notice (Ex.P-02) to the witnesses. For purposes of identifying the body, an Identification Panchnama (Ex.P-01) was prepared. About 500 grams of burnt ashes were collected from the spot and seized vide Ex.P-05. A site map (Ex.P-24) was also prepared in presence of witnesses. The body was then sent to District Hospital, Gariaband for postmortem via autopsy application (Ex.P-34), and the postmortem report (Ex.P-27) was obtained.

4. Subsequently, FIR (Ex.P-35) was registered at Mainpur Police Station against the accused persons under Sections 302, 201, 34 IPC. During investigation, on 02.04.2019, another site map (Ex.P-09) was prepared in the presence of witnesses. The memorandum statements of the accused (Ex.P-11 and Ex.P-12) were recorded under Section 27 of the Evidence Act.
5. Pursuant to the memorandum of accused Puneetram Sori, a black Bajaj Platina motorcycle (No. CG 05 E 3998) and a pair of blue-white plastic sandals of the deceased were seized and seizure memo (Ex.P-13) was prepared. From the memorandum of accused Jaikumar Sori, a yellow matchbox containing 27 matchsticks was recovered and seized vide Ex.P-14. The seized sandals were later identified in a Panchnama conducted before 10 witnesses.
6. Statements of the informant and witnesses were recorded. On finding sufficient evidence, both accused were arrested as per arrest warrants (Ex.P-15 and Ex.P-16), and their families were



duly informed (Ex.P-17 and Ex.P-36).

7. During further investigation, constable Somnath Diwan (PW-14) produced sealed evidence collected from CHC Mainpur, which included burnt piece of a green towel from the neck region of the deceased, burnt piece of khaki-coloured floral shirt, and burnt piece of faded black pant, all of which were seized vide Ex.P-06.
8. For site verification, a Patwari map was sought from the Halka Patwari, and accordingly, Nazri map (Ex.P-21) and Panchnama (Ex.P-22) were obtained. For clarifications regarding the PM report, a curie report was sought via Ex.P-37 from CHC Mainpur.
9. Further, the statement of witness Sop Singh Sori (PW-5) was recorded before the JMFC, Rajim, through a written complaint (Ex.P-38) sent via the Superintendent of Police, Gariaband. The seized properties were forwarded to the Forensic Science Laboratory, Raipur, the acknowledgment of which is Ex.P-32. The FSL report (Ex.P-40) was thereafter received and placed on record.
10. On completion of investigation, it was found that the accused persons had committed the offence. Accordingly, on 28.06.2019, a charge-sheet under Sections 302, 201 read with Section 34 IPC was filed before the Chief Judicial Magistrate, Gariaband, where Criminal Case No. 561/2019 was registered. After committal of the case on 19.07.2019, the matter was received before the Sessions Court on 22.07.2019, and registered as Sessions Case No.



50/2019.

11. In order to bring home offence, prosecution examined as many as 19 witnesses and exhibited 40 documents. The accused were examined under Section 313 of the Cr.P.C. and the accused pleaded innocence and false implication, but did not produced any evidence on his behalf.
12. The trial Court upon appreciation of oral and documentary evidence on record, passed the judgment dated 26.07.2021 and thereby convicted and sentenced the appellants as mentioned in the opening paragraph of the judgment.
13. Learned counsel appearing for the appellants submits that the judgment and conviction recorded by the learned trial Court are unsustainable and liable to be set aside. The entire case of the prosecution rests on circumstantial evidence, but the circumstances brought on record do not form a complete chain pointing only towards the guilt of the appellants. It is settled law that in cases of circumstantial evidence, every link in the chain must be proved beyond reasonable doubt and must exclude all hypotheses consistent with the innocence of the accused. In the present case, several material links are missing.

Firstly, the identity of the deceased itself was doubtful. The body was found in a completely burnt condition, with the face and limbs unrecognizable. The so-called identification by villagers on the basis of partially burnt clothes and sandals cannot be treated



as reliable or conclusive proof.

Secondly, the medical evidence does not support the prosecution version. Though the prosecution alleged that the deceased was strangled and thereafter his body was burnt, the doctor who conducted the post-mortem did not give any clear or definite opinion about strangulation being the cause of death. In the absence of such medical opinion, the prosecution theory remains speculative.

Thirdly, the seizure and memorandum proceedings relied upon by the prosecution are extremely weak. Recovery of a matchbox or a pair of plastic sandals does not in any way establish the guilt of the appellants, particularly when such articles are common and not proved to be exclusively connected with the deceased or the incident. The memorandum and seizure proceedings are further doubtful as they lack independent corroboration and suffer from serious inconsistencies.

Fourthly, none of the prosecution witnesses have deposed to having actually seen the appellants committing the crime. The so-called "last seen" evidence is highly unreliable, as the deceased was allegedly last seen with the appellants several days before the recovery of the body, and such a long gap completely breaks the proximity required for last seen theory to apply. Even otherwise, the statements of prosecution witnesses suffer from material omissions and contradictions, which were overlooked by



the learned trial Court.

Fifthly, there was considerable delay in recording statements of key witnesses, which casts grave doubt on the truthfulness of their version. This delay was not explained by the prosecution and is fatal to its case. The investigation also appears tainted, as the alleged recoveries were made only after the arrest of the appellants and were planted to implicate them falsely. Thus, the conviction is based on conjectures and surmises rather than on solid evidence. The trial Court has erred in treating weak, unreliable and doubtful evidence as sufficient for conviction, whereas the law requires proof beyond reasonable doubt. In such circumstances, the appellants are entitled to benefit of doubt.

14. On the other hand, learned counsel for the respondent/State supports the impugned judgment and submits that all the evidences and witnesses goes to show that the appellants have brutally murdered the deceased and therefore, conviction of the appellants for offence under Section 302 of the IPC is well merited and the appeal deserves to be dismissed. He further submits that the learned trial Court has come to the conclusion regarding involvement of the accused / appellants in the crime in question under the concluding paras of the judgment in which the the learned trial Court has observed all incriminating circumstances against the accused / appellants, which connect them with the instant crime and chain of circumstances are fully linked and



completed with each other. Thus, the prosecution has proved its case beyond reasonable doubt and the judgment of the trial Court is just and proper and does not call for any interference by this Court and as such, criminal appeal deserves to be dismissed.

15. We have heard learned counsel appearing for the parties, considered their rival submissions made herein-above and also went through the records with utmost circumspection.
16. **The first question for consideration would be, whether death of deceased Sukhdev Soni was homicidal in nature ?**
17. In this regard, the prosecution story rests on the allegation that deceased Sukhdev Sori was first strangulated and thereafter his body was set ablaze near Rasiyanala, village Bhatadighi. The postmortem examination of the body was conducted by Dr. Gajendra Kumar Dhruv (PW-10), who found that the body was extensively burnt, almost 99%, with limbs, skull bones and most of the internal organs destroyed. According to the doctor, the body was in a highly decomposed and charred condition and the estimated time since death was 7–8 days prior to the postmortem.
18. Significantly, the doctor did not give any conclusive opinion that the cause of death was strangulation. No ligature mark, fracture of hyoid bone, or other definite ante-mortem injuries suggesting strangulation were proved. The medical officer simply recorded the condition of the burnt body and preserved remnants for forensic examination but refrained from declaring the exact cause



of death. This absence of medical certainty weakens the prosecution's claim that the death was homicidal.

19. It is settled law that the burden lies on the prosecution to prove beyond reasonable doubt that the death was homicidal. In ***Kali Ram v. State of Himachal Pradesh, (1973) 2 SCC 808***, the Hon'ble Supreme Court observed that when medical evidence does not conclusively support the prosecution's case, the accused is entitled to benefit of doubt. Similarly, recently in the case of ***Jagdish Gond v. The State of Chhattisgarh, 2025 INSC 460***, the Supreme Court restored an acquittal, finding that the postmortem findings were inconclusive regarding the cause of death. The Court reiterated that suspicion is not a substitute for legal proof and that the prosecution must prove its case beyond a reasonable doubt.
20. In the present case, though the body was admittedly found burnt, the prosecution has failed to establish whether the burning was ante-mortem or postmortem. The doctor has not given a clear finding on whether the deceased was alive when set ablaze, or whether he was already dead. Without such evidence, the inference of homicidal death becomes speculative.
21. This Court therefore finds that the medical evidence is inconclusive and does not establish that the deceased died as a result of homicidal violence. At the most, it proves that a human body, in a completely burnt condition, was found. But in absence



of a definite medical opinion, the theory of strangulation followed by burning cannot be accepted beyond reasonable doubt.

22. Accordingly, this Court holds that the prosecution has failed to prove conclusively that the death of the deceased was homicidal in nature. The benefit of doubt on this aspect must go to the appellants.

23. **The next question for consideration is whether the circumstantial evidence adduced by the prosecution establishes the guilt of the appellants.**

24. The Supreme Court in the matter of ***Suresh and Another v State of Haryana, (2018) 18 SCC 654*** has observed that cases of circumstantial evidence, the courts are called upon to make inferences from the available evidence, which may lead to the accused's guilt. The court at paras 41 and 42 has observed thus :

“41. The aforesaid tests are aptly referred as Panchsheel of proof in Circumstantial Cases (refer to Prakash v. State of Rajasthan). The expectation is that the prosecution case should reflect careful portrayal of the factual circumstances and inferences thereof and their compatibility with a singular hypothesis wherein all the intermediate facts and the case itself are proved beyond reasonable doubt.

42. Circumstantial evidence are those facts, which the court may infer further. There is a stark contrast between direct evidence and circumstantial evidence. In cases of circumstantial evidence, the courts are called upon to make inferences from the available



evidence, which may lead to the accused's guilt. In majority of cases, the inference of guilt is usually drawn by establishing the case from its initiation to the point of commission wherein each factual link is ultimately based on evidence of a fact or an inference thereof. Therefore, the courts have to identify the facts in the first place so as to fit the case within the parameters of "chain link theory" and then see whether the case is made out beyond reasonable doubt. In India we have for a long time followed the "chain link theory" since Hanumant case, which of course needs to be followed herein also."

25. The Supreme Court in the matter of ***Sailendra Rajdev Pasvan and Others vs. State of Gujarat Etc., AIR 2020 SC 180*** observed that in a case of circumstantial evidence, law postulates two-fold requirements. Firstly, that every link in the chain of circumstances necessary to establish the guilt of the accused must be established by the prosecution beyond reasonable doubt and secondly, all the circumstances must be consistent pointing out only towards the guilt of the accused. We need not burden this judgment by referring to other judgments as the above principles have been consistently followed and approved by this Court time and again.
26. Reverting the facts of the present case, memorandum statements Ex.P-11 and Ex.P-12 allegedly made by the appellants resulting in production of (a) the deceased's plastic sandals seized by Ex.P-13 and (b) a matchbox (Ex.P-14). Seizure witnesses [Gautam



Singh Nagesh (PW-10), Sop Singh Sori (PW-5), Somnath Diwan (PW-14), Vijay Mishra (PW-13)] deposed to the recoveries.

27. Seized articles were sent to the State FSL, Raipur. The FSL report (Ex.P-40) reportedly stated no oily liquid was found in the cloth pieces and in the ash i.e., the report did not detect petroleum-based accelerant.
28. Recoveries made at the instance of accused persons can be important evidence if the recoveries are shown to be genuine and the chain of custody is intact. However, recoveries must be scrutinized for possibility of planting, after-the-fact fabrication, or taint, particularly where the items are ordinary (matchbox, sandals) and could be ubiquitous in the community.
29. As regards the seizure of the motorcycle and sandals, it is noteworthy that no independent or neutral witness has corroborated the recovery proceedings. The sandals allegedly identified as belonging to the deceased were ordinary plastic sandals, available in the market, and no distinctive feature was shown to connect them exclusively with the deceased. The identification panchnama of such common articles, in absence of scientific corroboration, cannot be considered reliable.
30. The FSL negative for oily liquid does not negate the fact of burning, it only shows that no petroleum-type accelerant was detected. This is consistent with burning by wood/leaves with a matchstick (which would not necessarily show oily residue). Thus,



while FSL negative weakens any contention that petroleum accelerant was used, it does not by itself exonerate the accused or prove innocence. The prosecution's version that the body was burned with leaves and a matchstick (matchbox recovery) remains a feasible explanation of the FSL outcome.

31. Nevertheless, the matchbox is a common article and sandals, unless uniquely marked or proved beyond reasonable doubt to belong to the deceased and to have been in the custody of the appellants, do not conclusively connect the appellants to the commission of homicidal violence.
32. Further, the memorandum statements of the accused under Section 27 of the Evidence Act cannot be treated as substantive evidence of guilt. At best, they are admissible only to the extent of recovery of articles, and where the recovery itself is doubtful, such statements lose significance.
33. At this stage, it would be appropriate to notice Section 27 of the Indian Evidence Act, 1872, which states as under: -

“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.”



34. Section 27 of the Indian Evidence Act is applicable only if the confessional statement relates distinctly to the fact thereby discovered.
35. The Supreme Court in the matter of ***Asar Mohammad and others v. State of U.P.***¹ with reference to the word “fact” employed in Section 27 of the Evidence Act has held that the facts need not be self-probatory and the word “fact” as contemplated in Section 27 of the Evidence Act is not limited to “actual physical material object”. It has been further held that the discovery of fact arises by reason of the fact that the information given by the accused exhibited the knowledge or the mental awareness of the informant as to its existence at a particular place and it includes a discovery of an object, the place from which it is produced and the knowledge of the accused as to its existence. Their Lordships relying upon the decision of the Privy Council in the matter of ***Pulukuri Kotayya v. King Emperor***² observed as under: -

“13. It is a settled legal position that the facts need not be self-probatory and the word “fact” as contemplated in Section 27 of the Evidence Act is not limited to “actual physical material object”. The discovery of fact arises by reason of the fact that the information given by the accused exhibited the knowledge or the mental awareness of the informant as to its existence at a particular

¹ AIR 2018 SC 5264

² AIR 1947 PC 67



*place. It includes a discovery of an object, the place from which it is produced and the knowledge of the accused as to its existence. It will be useful to advert to the exposition in the case of **Vasanta Sampat Dupare v. State of Maharashtra** reported in (2015) 1 SCC 253, in particular, paragraph 23 thereof. The same read thus:*

*“23. While accepting or rejecting the factors of discovery, certain principles are to be kept in mind. The Privy Council in **Pulukuri Kotayya v. King Emperor** (supra) has held thus: (IA p. 77)*

“... it is fallacious to treat the ‘fact discovered’ within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that ‘I will produce a knife concealed in the roof of my house’ does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to



the statement the words be added 'with which I stabbed A', these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant.

xxx xxx xxx
xxx xxx xxx
xxx xxx xxx”

36. The recoveries provide some circumstantial support for the prosecution story but are neither exclusive nor impregnable. Given the presence of inconsistencies in testimony about how the recoveries were effected, and the common nature of the seized articles, recoveries cannot be treated as wholly decisive. They amount to incomplete corroboration which, in the absence of a clear cause of death and stronger independent linkage, is insufficient to close the gap in prosecution case.
37. So far as last-seen evidence and the gap between last-seen and recovery is concerned, several witnesses stated the deceased was last seen on the day of Holi (21.03.2019) in company of persons who included or shortly thereafter connected to the appellants. Sop Singh's statement under Section 164 CrPC is also relied upon to show a quarrel and the deceased's presence with the appellants on the day. The body was recovered on 29.03.2019 i.e. roughly eight days after the alleged last-seen incident.
38. “Last-seen” evidence is a recognized species of circumstantial evidence, but its probative force depends on the closeness in time



and circumstances between the last sighting and the recovery of the body. If a considerable gap intervenes, the inference that those last seen with the deceased caused his death weakens because other intervening events or persons could have caused death.

39. Reverting to the facts of the present case, the gap is eight days. While not necessarily fatal to a last-seen inference, such a gap imposes a higher burden on the prosecution to fill intervening links. Further, the court must consider whether the last-seen testimony was reliable and consistent. Cross-examination revealed omissions and some inconsistencies in testimony about who saw the deceased and at which precise moment. Sop Singh's (PW-5) Section 164 statement supports portions of the last seen story, but his court testimony did not fully replicate every aspect and some denials in cross-examination weaken his ocular force.
40. Therefore, last-seen evidence in this case is faint in proving direct participation in the homicidal act; by itself it is insufficient to convict.
41. The trial Court placed substantial reliance on the evidence of the Investigating Officer and the seizure/memorandum witnesses. It is correct as a legal proposition that police witnesses are competent and their evidence can be accepted if it is reliable. However, police evidence must be tested on the same yardstick as other evidence. Where the police evidence is corroborated by



independent witnesses and contemporaneous documents, it gains strength but, where such corroboration is shaky, caution is required.

42. In the present case, although there is some corroboration, there are material inconsistencies and omissions in the court testimony of certain seizure witnesses, and some denials arose in cross-examination. Moreover, the recoveries were made after the accused were produced and the memorandum were recorded, circumstances which, absent clear corroboration, can raise suspicion of after-thought recoveries. The trial Court appears to have accepted the Investigating Officer's narrative with insufficient critical analysis of these aspects.
43. It is well settled that in a case resting on circumstantial evidence, each link in the chain must be firmly proved and all links, taken together, must unerringly point to the guilt of the accused, excluding any hypothesis of innocence. In the present case, the links relied upon are: (i) last-seen evidence, (ii) recovery of sandals and matchbox, (iii) identification of body by clothes, and (iv) post-mortem report. On close scrutiny, none of these links is conclusive, and collectively they do not form an unbroken chain. The absence of medical confirmation of homicidal death, the long gap in the last-seen evidence, and the doubtful nature of the recoveries prevent the prosecution from establishing guilt beyond reasonable doubt.



44. On a careful appraisal of the record in the light of the law summarized above, this Court records the following findings:

1. The body recovered at Rasiyanala, Bhatadighi on 29.03.2019 is, on the preponderance of evidence, the body of Sukhdev Sori. Identification was effected by relatives and villagers and contemporaneous inquest papers corroborate identity, however, this identification rests largely on partially burnt clothes and sandals and is not unassailable.

2. The post-mortem establishes that the body was extensively burnt and that death occurred roughly 7–8 days prior to the post-mortem. The medical evidence does not conclusively establish that the cause of death was strangulation. The absence of a clear medical opinion on cause of death is a material gap in the prosecution's case.

3. The last-seen evidence and the statements under Section 164 CrPC provide some support to the prosecution's narrative of disappearance and an altercation on 21.03.2019; however, the temporal gap to recovery and inconsistencies in witness testimony substantially weaken this link.

4. The memorandum statements and recoveries (matchbox, sandals) afford partial corroboration of the



prosecution story. Nevertheless, the recoveries are of common articles and the testimony of seizure witnesses contains contradictions in parts, therefore, recoveries cannot be treated as compelling proof of the appellants' participation in the homicidal act.

5. Taken cumulatively, the circumstances led to competing inferences. The prosecution has not established beyond reasonable doubt the essential link that the death was caused by homicidal strangulation inflicted by the appellants. The chain of circumstances is thus incomplete and does not exclude every reasonable hypothesis consistent with innocence.

45. From the foregoing discussion, it is evident that the prosecution has failed to prove its case against the appellants beyond reasonable doubt. The medical evidence is inconclusive and does not establish that the death of the deceased was homicidal. The circumstantial evidence projected by the prosecution is weak, incomplete and unreliable, and does not form a complete chain so as to point unerringly to the guilt of the appellants.
46. The Trial Court, in convicting the appellants, committed grave error in relying on recoveries of ordinary articles such as sandals and a matchbox, which by themselves have no probative value. It also overlooked the vital contradictions, omissions and delays in the prosecution evidence. The conviction thus rests on suspicion



and conjecture rather than on legally admissible and cogent proof.

47. It is trite law that suspicion, however strong, cannot take the place of proof, and when two views are possible, one pointing to guilt and the other to innocence, the benefit must always go to the accused. Applying this principle, this Court has no hesitation in holding that the appellants are entitled to acquittal.
48. In the result, the appeal stands **allowed**. The judgment of conviction and order of sentence passed by the learned trial Court dated 26.07.2021, is hereby set aside. The appellants are acquitted of all the charges.
49. It is stated that appellants **Punitram** and **Jaikumar** are in jail. They be released forthwith, if not required in any other case.
50. Keeping in view the provisions of Section 437-A of Cr.P.C. (now Section 481 of BNSS), appellants- **Punitram** and **Jaikumar** are directed to forthwith furnish a personal bond in terms of Form No. 45 prescribed in the Code of Criminal Procedure of sum of Rs. 25,000/- each with two reliable sureties in the like amount before the Court concerned which shall be effective for a period of six months along with an undertaking that in the event of filing of Special Leave Petition against the instant judgment or for grant of leave, the aforesaid appellants on receipt of notice thereof shall appear before the Hon'ble Supreme Court.



51. The trial Court record alongwith the copy of this judgment be sent back immediately to the trial Court concerned for compliance and necessary action.

Sd/-
(Bibhu Datta Guru)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice

Manpreet