



2026:CGHC:13114-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 1140 of 2019

*{Arising out of judgment dated 29.05.2019 passed in Sessions Trial
No.24/2018 by the learned Second Additional Sessions Judge,
Manendragarh, District Korea}*

Ben Singh @ Pappu, S/o. Shri Phoolchandra Gond, Aged About 19 Years,
R/o. Village - Lakhantola, Police Station Janakpur, District Korla, Civil
And Revenue District Korla, Chhattisgarh.

... Appellant

versus

State Of Chhattisgarh, Through Police Station Janakpur, District Korea,
Chhattisgarh.

... Respondent

For Appellant	:	Mr. Manoj Kumar Sinha, Advocate
For Respondent	:	Mr. Rahul Tamaskar, Govt. Advocate

(Division Bench)

Hon'ble Shri Justice Sanjay K. Agrawal
Hon'ble Shri Justice Sachin Singh Rajput

Judgment on Board
(19.03.2026)

Sanjay K. Agrawal, J.

1. This criminal appeal preferred by the appellant under Section 374(2) of Cr.P.C. is directed against the impugned judgment of conviction and order of sentence dated 29.05.2019, passed by the learned Second Additional Sessions Judge, Manendragarh, District Korea, in Sessions Trial No.24/2018, by which, the sole appellant herein has been convicted for the offence under Section 302 of Indian Penal Code and sentenced to undergo life imprisonment and fine of Rs.2000/-, in default of payment of fine, six months simple imprisonment.
2. Case of the prosecution, in brief, is that on 03.10.2017 at about 11:00 - 12:00 A.M. at village Lakhantola, Police Station- Janakpur, District Korea, the appellant herein assaulted Rambai Gond (now deceased) by iron axe, by which she suffered grievous injuries and died; thereby, the offence has been committed. The matter was reported to the police, pursuant to which, Merg Intimation was registered vide Ex.P-1, FIR was registered vide Ex.P-2, Inquest was conducted vide Ex.P-5CA and dead body of deceased Rambai was subjected to post-mortem, which was conducted by Dr. R.K.Raman (PW-9), who proved the post-mortem report vide Ex.P-11A, according to which, cause of death was stated to be shock due to head injury and death was homicidal in nature. Pursuant to

memorandum statement of the appellant (Ex.P-6), axe & shirt were seized vide Ex.P-7, which were sent for chemical examination to FSL and as per the FSL report (Ex.C-1), human blood was found on the seized axe & shirt. After due investigation, the appellant was charge-sheeted for the aforesaid offence before the jurisdictional criminal court, which was ultimately committed to the Court of Sessions for hearing and disposal in accordance with law, in which, the appellant abjured his guilt and entered into defence stating that he has not committed any offence and he has been falsely implicated.

3. In order to bring home the offence, prosecution examined as many as 12 witnesses and exhibited 15 documents along-with FSL report (Ex.C-1) and the appellant-accused in support of his defence has neither examined any witness nor exhibited any document.
4. The trial Court, after appreciation of oral and documentary evidence on record, convicted the appellant herein for the offence under Section 302 of I.P.C. and sentenced him for life imprisonment against which the present appeal has been preferred.
5. Mr. Manoj Kumar Sinha, learned counsel for the appellant, would submit that the theory of last seen together has not been established at all and the weapon of offence was seized in an open place on 04.10.2017, which was sent for chemical examination to FSL on

27.10.2017. Since there is delay of 23 days in sending the seized articles to FSL for chemical examination, the chances of fabrication and manipulation cannot be ruled out; therefore, the appellant is entitled for acquittal on the basis of benefit of doubt and the appeal deserves to be allowed.

6. Mr. Rahul Tamaskar, learned State counsel, would support the impugned judgment and submit that the prosecution has been able to bring home the offence beyond reasonable doubt and the trial Court has rightly convicted the appellant for the aforesaid offence and, as such, the appellant is not entitled for acquittal and the appeal deserves to be dismissed.
7. We have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.
8. The first question, for consideration, as to whether the death of deceased was homicidal in nature has been answered by the trial Court in affirmative relying upon the post-mortem report Ex.P-11A, proved by Dr. R.K.Raman (PW-9), according to which, cause of death was stated to be shock due to head injury and death was homicidal in nature, which in our considered opinion is a correct finding of fact based on evidence available on record, it is neither

perverse nor contrary to the record and accordingly, we hereby affirm the said finding.

9. Now, the first piece of evidence is that Ramkumar (PW-3), who is nephew of the deceased, has only stated that he had seen the appellant coming from same direction to which deceased had gone half an hour ago. As such, it has not been stated by Ramkumar (PW-3) that, at any point of time, he had seen the appellant & deceased together with the company of each other. Therefore, merely on the statement of PW-3 that he had seen the appellant with an axe coming from the same direction after a gap of half an hour where deceased had gone, he cannot be said to be a witness of last seen together; therefore, we are unable to hold that PW-3 is the witness of last seen together.
10. Furthermore, pursuant to memorandum statement of the appellant, the weapon of offence i.e. axe has been seized. However, the axe was seized from an open place and the memorandum & seizure witness Matiraj Singh (PW-6) has turned hostile and he has not supported the case of the prosecution except admitting his signature on the memorandum statement Ex.P-6 and seizure memo Ex.P-7. The trial Court has further proceeded to rely upon the statement of T.S.Paikra (PW-8) which is of no use to the prosecution unless the recovery of weapon of offence from the possession of appellant has

been proved. Furthermore, the weapon of offence i.e. axe was seized on 04.10.2017, whereas it was sent for chemical examination to FSL on 27.10.2017 after a delay of 23 days and there is no explanation to show that whether it was kept in safe custody or not from 04.10.2017 to 27.10.2017, as the chances of manipulation and fabrication cannot be ruled out. Even otherwise, as per the FSL report (Ex.C-1), human blood was found on the axe, but blood group could not be ascertained and, as such, only on the basis of recovery of weapon, the appellant could not have been convicted that too for the offence under Section 302 of I.P.C.

11. In this regard, Their Lordships of the Supreme Court in the matter of **Mustkeem Alias Sirajudeen v. State of Rajasthan**¹, held as under :

25. With regard to Section 27 of the Act, what is important is discovery of the material object at the disclosure of the accused but such disclosure alone would not automatically lead to the conclusion that the offence was also committed by the accused. In fact, thereafter, burden lies on the prosecution to establish a close link between discovery of the material objects and its use in the commission of the offence. What is admissible under Section 27 of the Act is the information leading to discovery and not any opinion formed on it by the prosecution.

¹ (2011) 11 SCC 724

27. The scope and ambit of Section 27 were also illuminatingly stated in **Pulukuri Kotayya v. King Emperor**² reproduced hereinbelow:-

".....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."

12. Furthermore, in the matter of **Raja Naykar v. State of Chhattisgarh**³ the Supreme Court has clearly held that only on the basis of sole circumstance of recovery of blood-stained weapon, it cannot be said that the prosecution has discharged its burden of proving the case beyond reasonable doubt. In that view of the matter, the appellant could not have been convicted mainly on the basis of recovery of blood stained weapon without establishing the fact that it was used for commission of offence, as the weapon was

² AIR 1947 PC 67

³ 2024 SCC Online SC 67

recovered on 04.10.2017 and sent for chemical examination to FSL on 27.10.2017 and there is no document on record to hold that it was kept in safe custody. As such, the appellant is entitled for acquittal on the basis of benefit of doubt.

13. In view of the above, the impugned judgment of conviction and order of sentence dated 29.05.2019 is set aside. The appellant stands acquitted giving him benefit of doubt from the charge framed against him for the offence under Section 302 of I.P.C. The appellant is already on bail, he need not surrender; however, his bail bond shall remain in force for a period of six months in view of the provision contained in Section 437-A of the Cr.P.C.
14. In the result, this criminal appeal is allowed.
15. Let a certified copy of this judgment along-with the original record be transmitted to the concerned trial Court forthwith for necessary information & action, if any.

Sd/-
(Sanjay K. Agrawal)
Judge

Sd/-
(Sachin Singh Rajput)
Judge