



2026:CGHC:30834-DB



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NAFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****CRA No. 367 of 2017**

Kewal Singh S/o Ram Bharos Gond, Aged About 60 Years R/o Village Dhapnipani, Pateratola, Katra, Police Station Marvahi, District Bilaspur, Chhattisgarh.

... Appellant**versus**

State Of Chhattisgarh Through Police Of Police Station Marvahi, District Bilaspur, Chhattisgarh.

... Respondent

For Appellant :- Mr. Govind Dewangan, Advocate.
For State-Respondent :- Mr. H.A.P.S. Bhatia, Panel Lawyer.

DB: Hon'ble Shri Justice Sanjay K. Agrawal
Hon'ble Shri Justice Sanjay Kumar Jaiswal

Judgment on Board
(21.07.2026)

Sanjay Kumar Jaiswal, J.

1. This criminal appeal filed by the appellant-accused, under Section 374(2) of Cr.P.C., is directed against the impugned judgment of conviction and order of sentence dated 03.01.2017, passed by the Additional Sessions Judge,



Pendraroad, District - Bilaspur (C.G.) in Sessions Case No. 23/2016, whereby the appellant herein has been convicted for offence punishable under Section 302 of the IPC and sentenced as under:-

Conviction	Sentence
U/s 302 of IPC	Imprisonment for life and fine of Rs. 500/-, in default of payment of fine amount additional rigorous imprisonment for 2 months.

2. The case of the prosecution, in brief, is that the deceased, Shivshankar, had visited the house of his relative (samdhi), the accused/appellant Kewal Singh, situated at Village Dhapanipani, Pateratola, Katra, within the jurisdiction of Police Station Marwahi, District Bilaspur, Chhattisgarh. The deceased's daughter-in-law, Son Kunwar (P.W.-8), who is the daughter of the accused Kewal Singh was staying there at the relevant time. She has a their three-year-old son. Owing to a matrimonial dispute arising from her husband Dhani Ram's (P.W.-5) suspicion of her character, Son Kunwar had been residing at her parental home with the appellant for about 25 days. The deceased, Shivshankar, had gone there to mediate and bring her back. On the date of the incident, i.e., 11.07.2016, at around 02:00 PM, while consuming food and liquor, a sudden altercation ensued between the accused Kewal



Singh and the deceased. In a fit of anger, the appellant assaulted Shivshankar with a wooden stick (danda), causing him to fall unconscious. He was subsequently placed on a bed, where he succumbed to his injuries. Upon information being conveyed to the relatives of the deceased, a Marg Intimation (Ex. P-2) was registered at P.S. Marwahi, following which the inquest report (Ex.P-4) was prepared, the body was sent for postmortem examination (Ex.P-7-A), FIR (Ex.P-12) was registered, the spot map (Ex.P-1) was prepared, and statements of the witnesses were recorded. Thereafter, pursuant to the memorandum statement (Ex. P-5) of the appellant, the weapon of offence (wooden stick) was seized vide seizure memo (Ex. P-6). Upon completion of the investigation, a charge-sheet (final report) was filed against the accused.

3. During the course of trial, in order to bring home the offence, the prosecution has examined as many as 10 witnesses and exhibited 13 documents. The statement of the appellant / accused was recorded under Section 313 of the CrPC in which he denied the circumstances appearing against him in the evidence brought on record by the prosecution, pleaded innocence and false implication. However, appellant-accused in support of his defence has exhibited only two documents (Ex.D-1 & Ex.D-2).



4. After conclusion of trial, the trial Court, on appreciation of the oral and documentary evidence available on record, convicted the appellant for the offence punishable under Section 302 of I.P.C. and sentenced him as mentioned above in the opening para of this judgment against which the present appeal has been preferred by the appellant.
5. Learned counsel for the appellant submits that the prosecution has failed to prove the case beyond reasonable doubt, and that the appellant's conviction is based solely on the statement of Son Kunwar (PW-8), the deceased's daughter, who is said to be an eyewitness to the incident. However, she has not supported the prosecution's case and has been declared hostile, and her evidence is not found reliable and trustworthy. He also submits that it is not proved that the seized wooden stick was used in the alleged incident. As such, the impugned judgment is liable to be set aside, and the appellant is entitled to acquittal.
6. Learned State counsel supports the impugned judgment and submits that the prosecution has been able to bring home the offence beyond reasonable doubt, and the conviction of the appellant for the offence under Section 302 of I.P.C. is well merited, as such, the appeal deserves to be dismissed.



7. We have heard learned counsel for the parties, considered their rival submissions made herein-above and gone through the records with utmost circumspection.
8. The first question for consideration is, whether the death of deceased was homicidal in nature?
9. Learned trial Court has recorded an affirmative finding in this regard relying upon the postmortem report Ex.P-7(A) proved by Dr. K.K. Dhruw (PW-9) that the death of the deceased was homicidal in nature, which is a finding of fact based on evidence available on record, it is neither perverse nor contrary to the record and we hereby affirm the said finding.
10. Now, the question would be whether the appellant is the author of the crime in question?
11. According to the prosecution case, the sole eyewitness to the incident was Son Kunwar (P.W.-8), who turned hostile and failed to support the prosecution case. In her evidence, she merely stated that the statement previously given by her to the police was made out of fear. However, the trial court held that Son Kunwar had refrained from deposing truly in order to protect her father, the appellant, noting that she had admitted to making the police statement and that her statement had also been recorded before the Judicial Magistrate under Section 164 of the Code of



Criminal Procedure. On this premise, relying upon her police statement, as well as the seizure of the wooden stick (*danda*) vide Seizure Memo (Ex. P-6) effected pursuant to the memorandum statement (Ex. P-5) of the appellant, the trial court concluded that the offence was committed by the appellant and accordingly recorded his conviction.

12. It is a well-settled principle of law that a statement recorded under Section 164 of the Code of Criminal Procedure or a police statement under Section 161 thereof can only serve as corroborative piece of evidence and does not constitute substantive evidence; hence, a conviction cannot be based solely thereon. It is only the testimony recorded before the Court that constitutes substantive piece of evidence, and in the present case, the sole eyewitness to the incident, Son Kunwar (P.W.-8) has turned hostile and failed to support the prosecution case. Under these circumstances, the prosecution case stands unproven by direct evidence.

13. It is also noteworthy that according to the postmortem report (Ex. P-7A) and the testimony of Dr. Krishna Kumar Dhruw (P.W.-9), who proved the same, injuries were found only on the head region of the deceased. Furthermore, as per the prosecution's own case, it was mentioned in the Inquest Report (Ex. P-4) that after the appellant and the



deceased had taken meal, the deceased slipped while going towards the street, thereby sustaining injuries, and subsequently passed away while resting. Dr. Krishna Kumar Singh (P.W.-9) admitted in paragraph 3 of his cross-examination that the injuries found on the deceased could also be sustained if a person, under the influence of alcohol, stumbles and falls onto a stone. In view of this position as well, the finding recorded by the trial court that the eyewitness Son Kunwar (PW-8) resiled from supporting the prosecution case merely to save her father, the conclusion cannot be held to be proper and is, therefore, unsustainable in law.

14. The second ground of conviction has been that the Investigating Officer, Inspector S.R. Sahu (P.W.-10), stated that he recorded the statement of the appellant, pursuant to which Memorandum (Ex. P-5) was prepared, and upon the appellant's disclosure, a wooden stick (*danda*) was produced from a heap of husk (*saar*), leading to the preparation of Property Seizure Memo (Ex. P-6). However, the attesting witness to the memorandum and seizure, Bal Singh, was not examined by the prosecution. The other witness, Gauri Shankar (P.W.-6), supported and corroborated the said memorandum statement and the seizure.



15. According to the query report of Dr. Krishna Kumar Singh

(P.W.-9), the injuries found on the deceased could have been caused by the said wooden stick (*danda*). However, it is noteworthy that the stick alleged to have been seized was not sent for chemical examination; thus, there is no conclusive evidence to establish that the very same stick was used in the commission of the offence.

16. Furthermore, though a wooden stick (*danda*) has been seized pursuant to memorandum statement of the appellant, but it is well settled law that disclosure alone would not automatically lead to conclusion that offence was also committed by accused and burden lies on prosecution to establish a close link between discovery of material object and its use in commission of offence. In this regard, Their Lordships of the Supreme Court in matter of **Mustkeem alias Sirajudeen vs. State of Rajasthan**¹, has 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

¹ (2011) 11 SCC 724



leading to discovery and not any opinion formed on it by the prosecution.

27. The scope and ambit of Section 27 were also illuminatingly stated in **Pulukuri Kotayya v. King**

Emperor² reproduced herein below:-

".....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."

17. In view of the above judgment, the recovery of the weapon of offence i.e. wooden stick vide Ex.P-6, which was recovered pursuant to the memorandum statement (Ex.P-5) of the appellant, cannot be relied upon as the incriminating circumstance to base the conviction of the accused.

² AIR 1947 PC 67



18. In that view of the matter, we are of the considered opinion that the trial Court is absolutely unjustified in convicting the appellant for offence punishable under Section 302 of IPC.
19. Accordingly, we are of the considered opinion that the appellant is entitled for acquittal. The conviction of the appellant for the offence under Section 302 of I.P.C is hereby set aside and he is acquitted of the said charge.
20. It is reported that the Appellant is on bail. He need not to surrender in this case. His bail bonds shall remain in force for a period of six months in view of the provisions contained in Section 437-A of the Cr.P.C.
21. In the result, this Criminal Appeal is **allowed**.
22. Let a certified copy of this judgment along with the original record be transmitted to the trial Court concerned forthwith, for information and necessary action, if any.

Sd/-
(Sanjay K. Agrawal)
Judge

Sd/-
(Sanjay Kumar Jaiswal)
Judge