



2026:CGHC:3165-DB

CRA No. 850 of 2015



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HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 850 of 2015

[Arising out of judgment dated 08.06.2015 passed in Sessions Trial No.10/2015 by the Sessions Judge, North Bastar, Kanker Chhattisgarh.]

- Champabai Amila W/o Chabiram Amila, aged about 40 years, R/o Village Mode, Thana Korar, District Kanker, Chhattisgarh.

... Appellant

versus

- The State of Chhattisgarh Through Police Station Korar, District Kanker, Chhattisgarh.

... Respondent

For Appellant :- Mr. Parag Kotecha, Advocate.

For State-Respondent :- Mr. Sharad Mishra, Panel Lawyer.

Division Bench

Hon'ble Shri Justice Sanjay K. Agrawal &

Hon'ble Shri Justice Sachin Singh Rajput

Judgment On Board

(20.01.2026)

Sanjay K. Agrawal, J

1. Feeling aggrieved and dissatisfied with the judgment of conviction and order of sentence dated 08.06.2015 passed by



the Sessions Judge, North Bastar, Kanker, Chhattisgarh, in Sessions Trial No.10/2015 by which the appellant herein has been convicted for offence under Section 302 of the IPC and sentenced thereunder to suffer imprisonment for life with fine of ₹3,000/-; in default of payment of fine amount he has to undergo rigorous imprisonment for 1 year.

Prosecution story:-

2. The prosecution projected the case during the course of trial is that on 08.12.2014 at village Mode, Police Station Korar, District Kanker, Chhattisgarh, the appellant strangled her husband Chhabiram with the help of neck towel (गमछा) by which he suffered grievous injuries and died and thereby committed the offence in question. Against the said incident merg intimation was registered vide Ex.P/9. FIR was registered vide Exs.P/7 & P/8. Spot map and crime details forms were prepared vide Exs.P/6 & P/11, respectively. Inquest proceedings (Ex.P/1) were conducted and the dead body of the deceased was subjected to postmortem. As per postmortem report (Ex.P/5) proved by Dr. A.K. Jena (PW-5), cause of death was asphyxia due to throttling. Wheels of



investigation started running and the appellant was arrested. Pursuant to memorandum statement of the appellant (Ex.P/2) neck towel was seized vide Ex.P/3.

3. After due investigation, appellant herein was charge-sheeted for the aforesaid offence and the case was committed to the Court of Sessions for trial in accordance with law. The appellant / accused abjured her guilt and entered into defence.
4. In order to bring home the offence, prosecution has examined as many as 9 witnesses and exhibited 14 documents, whereas, defence, in support of its case, has not examined any witness however, exhibited 2 documents. The statement of the appellant / accused was recorded under Section 313 of the CrPC in which she denied the circumstances appearing against her in the evidence brought on record by the prosecution, pleaded innocence and false implication.
5. The learned trial Court after appreciating the oral and documentary evidence available on record, convicted the appellant / accused for the offence as mentioned in the opening paragraph of the judgment, against which the instant



appeal has been preferred by the appellant herein questioning the impugned judgment of conviction and order of sentence.

Submission of the Parties:-

6. Mr. Parag Kotecha, learned counsel for the appellant, would submit that the trial Court is absolutely unjustified in convicting the appellant for the offence in question. He would also submit that the incriminating circumstances that have been culled out by the trial Court in para 16 of the impugned judgment for convicting the appellant for the offence punishable under Section 302 of the IPC are not established at all on the basis of evidence available on record, even otherwise the same would not constitute the chain to base the conviction of the appellant for offence in question in light of decision of the Supreme Court in the matter of **Sharad Birdhichand Sarda v. State of Maharashtra**¹. Therefore, the appellant is entitled for acquittal on the basis of benefit of doubt and the appeal deserves to be allowed.

7. *Per contra*, Mr. Sharad Mishra, learned State counsel, would oppose the prayer made by learned counsel for the appellant

¹ (1984) 4 SCC 116



and submit that the trial Court has rightly convicted the appellant for the offence in question relying upon the incriminating circumstances found proved against the appellant and, therefore, the appeal deserves to be dismissed.

8. We have heard learned counsel for the parties, considered their rival submission made herein above and gone through the records minutely.

Discussion & Analysis:-

9. The first question, as to whether the death of the deceased was homicidal in nature, has been answered by the trial Court in affirmative relying upon the statement of Dr. A.K. Jena (PW-5) and postmortem report (Ex.P/13) proved by Dr. A.K. Jena (PW-5), which, in our considered opinion, is a correct finding of fact based on evidence available on record and which is neither perverse nor contrary to the record. Accordingly, we hereby affirm the finding of the trial Court holding that the death of the deceased was homicidal in nature.



10. Now, the question for consideration would be whether the appellant has assaulted the deceased?

11. The case of the prosecution is based on the circumstantial evidence and the trial Court has found incriminating circumstances established. The five golden principles which constitute panchsheel of the proof of a case based on circumstantial evidence have been laid down by their Lordships of the Supreme Court in the matter of Sharad Birdhichand Sarda (supra) in paragraph 153 which state as under:-

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established :

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and “must be or should be proved” as was held by this Court in *Shivaji Sahabrao Bobade v. State of Maharashtra*² where the following observations were made:

Certainly, it is a primary principle that the accused *must* be and not merely *may* be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is

² (1973) 2 SCC 793



to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

12. In order to convict the appellant, the trial Court has culled out the three incriminating circumstances in para 16 of the judgment which, for ready reference, are being reproduced herein under:-

1. घटना दिनांक को मृतक एवं अभियुक्ता में लड़ाई-झगड़ा हुआ था।
2. अभियुक्ता के पुत्र हिरेन्द्र ने गांव के लोगों द्वारा पूछताछ करने पर उन्हें अभियुक्ता द्वारा मृतक का गला घोटना बताया था तथा मृतक की मृत्यु गला घोटना परिणामस्वरूप हुई थी।
3. गांव के लोगों द्वारा अभियुक्ता से पूछताछ करने पर अभियुक्ता ने घटना के संबंध में अपनी गलती स्वीकार की थी तथा संस्वीकारात्मक कथन किया था।

13. Now, we will discuss each of the circumstances one by one which has been culled out by the trial Court and on which appellant's conviction is based.

14. First incriminating circumstance that the quarrel took place between the appellant and deceased is found established on



the basis of statement of Hirendra Kumar (PW-9), son of the appellant and deceased. However, the effect of this circumstance has to be considered along with other circumstances.

15. Since circumstances No.1 & 2 are interlinked to each other, therefore, they have been considered together. The case of the prosecution is that Hirendra Kumar (PW-9), son of the appellant and deceased, has witnessed the incident and informed about the incident to Ratan Singh (PW-4) and Prakash (PW-8). However, Hirendra Kumar (PW-9) has turned hostile and not supported the case of the prosecution except the fact of quarreling which was taken place between the appellant and deceased. As such, it would be inappropriate and unsafe to rely upon this incriminating circumstance to base the conviction of the appellant that too for offence under Section 302 of the IPC.

16. Last incriminating circumstance found proved by the trial Court is that the appellant accepted her guilt of murder. However, acceptance of guilt, if any, would not sustainable in law and even otherwise, the same is not true and voluntary as



on being asked by the villagers, the appellant is said to have accepted her guilt of murder. As such, it would be unsafe to convict the appellant only on the basis of this incriminating circumstance in absence of other incriminating/supportive circumstances which constitute the chain of circumstances in light of decision of the Supreme Court in the matter of **Sharad Birdhichand Sarda** (supra). Therefore, the appellant is entitled for acquittal on the basis of benefit of doubt.

Conclusion:-

17. In view of the aforesaid discussion and analysis, the appeal is allowed and the impugned judgment of conviction and order of sentence dated 08.06.2015 passed by the trial Court convicting and sentencing the appellant for the offence in question, is hereby set aside and the appellant is entitled for acquittal on the basis of principle of benefit of doubt as the prosecution has also failed to complete the chain of circumstances in light of decision of the Supreme Court in the matter of **Sharad Birdhichand Sarda** (supra). Since the appellant is stated to be on bail, she need not surrender. However, her bail bond shall remain in operation for a period



of six months as per provisions contained in Section 437-A of the CrPC.

18. 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/-
(Sachin Singh Rajput)
Judge

Ankit