

CRA No. 843 of 2015



2026:CGHC:2976-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 843 of 2015

[Arising out of judgment dated 18.05.2015 passed in Sessions Trial No.37/2014 by the Sessions Judge, Dhamtari, Chhattisgarh.]

- Beerbal Korram S/o Santuram Korram, aged about 36 years, R/o Village - Kasawahi, Post Office & Police Station - Rudri, District - Dhamtari, Chhattisgarh.

... Appellant

versus

- State of Chhattisgarh through the District Magistrate, Dhamtari, District- Dhamtari, Chhattisgarh.

... Respondent

For Appellant :- Mr. Dinesh Yadav, Advocate.

For State-Respondent :- Mr. H.A.P.S. Bhatia, Panel Lawyer

Division Bench

Hon'ble Shri Justice Sanjay K. Agrawal &

Hon'ble Shri Justice Amitendra Kishore Prasad

Judgment On Board

(19.01.2026)

Sanjay K. Agrawal, J

1. Feeling aggrieved and dissatisfied with the judgment of conviction and order of sentence dated 18.05.2015 passed by the Sessions Judge, Dhamtari, Chhattisgarh, in

Sessions Trial No.37/2014 by which the appellant herein has been convicted for offence under Section 302/34 of the IPC and sentenced thereunder to suffer imprisonment for life with fine of ₹100/-; in default of payment of fine amount he has to undergo rigorous imprisonment for 1 month.

Prosecution story:-

2. The prosecution projected the case during the course of trial is that on 08.11.2013 between 4:00 am to 6:00 am near agricultural field Subhash Rao at village Boridkhurd, in furtherance of their common intention, the appellant herein along with absconded co-accused Pitambar Uikey, tightened the legs of Kumari Bitwan Yadav, with the help rope and pushed her head into the mud, by which she suffered grievous injuries and died. Against the said incident, merg and FIR were registered vide Exs. P/1 & P/20, respectively. Crime details for was prepared vide Ex.P/2. Inquest proceedings (Ex.P/17) were conducted and the dead body of the deceased was subjected to postmortem. As per postmortem report (Ex.P/13) proved by Dr. T.R. Dhruw (PW-12), mode of death was asphyxia, cause of death was smothering and homicidal in nature.

Wheels of investigation started running and the appellant was arrested. Pursuant to memorandum statement of the appellant (Ex.P/4), micromax mobile and rope were seized vide Exs.P/6 & P/7, respectively.

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 his guilt and entered into defence.
4. In order to bring home the offence, prosecution has examined as many as 14 witnesses and exhibited 34 documents, whereas, defence, in support of its case, has not examined any witness however, exhibited 1 document. 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.
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. Dinesh Yadav, 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 confessional statement made by the accused in his memorandum statement has wrongly been relied by the trial Court to hold him guilty and even the seized rope and mobile pursuant to memorandum statement of the appellant do not connect the appellant with the offence in question. 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. H.A.P.S. Bhatia, learned State counsel, would oppose the prayer made by learned counsel for the appellant and submit that the trial Court has rightly convicted the appellant for the offence in question relying upon the confessional statement made by the appellant and also on the seizure of rope and mobile pursuant to his

memorandum statement, 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 postmortem report (Ex.P/13) proved by Dr. T.R. Dhruw (PW-12), 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 v. State of Maharashtra**¹. 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 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.”

¹ (1984) 4 SCC 116

² (1973) 2 SCC 793

12. The trial Court has found following circumstances proved against the appellant to base the conviction:-

- (i) appellant made confessional statement in his memorandum statement;
- (ii) pursuant to memorandum statement of the appellant rope was seized, which was used in crime in question;
- (iii) pursuant to memorandum statement of the appellant deceased's mobile was seized.

Appellant made confession statement in his memorandum statement:-

13. The trial Court in para 23 of its judgment has relied upon confessional statement of the appellant which was made in the memorandum statement (Ex.P/4) in which he has admitted the guilt of murder of Bitawan Yadav. However, their Lordships of the Supreme Court in the matter of **Babu Sahebagouda Rudragoudar and others v. State of Karnataka**³ have held that the confessional statement made by the accused in the memorandum is inadmissible in law and observed in para 61 as under:-

“61. The statement of an accused recorded by a police officer under Section 27 of the Evidence Act is basically a memorandum of confession of the accused recorded by the investigating officer during interrogation which has been taken down in writing. The confessional part of such statement is

³ (2024) 8 SCC 149

inadmissible and only the part distinctly leads to discovery of fact is admissible in evidence as laid down by this Court in *State of U.P. v. Deoman Upadhyaya*⁴.”

14. In view of the aforesaid principle of law laid down by their Lordships of the Supreme Court in the above-stated judgment, the confessional part of the memorandum statement of the appellant is of no use to the prosecution and the trial Court has wrongly relied upon the confessional statement to base the conviction of the appellant as the same is inadmissible in law.

Pursuant to memorandum statement of the appellant rope was seized:-

15. To base the conviction of the appellant, the trial Court has relied upon the seizure of rope pursuant to memorandum statement of the appellant which was, according to prosecution, used in crime in question. However, it is well settled law that the disclosure alone would not automatically lead to conclusion that offence was also committed by the accused and, therefore, the burden lies on prosecution to establish a close link between the discovery of material object and its use in commission of offence. In this regard, their Lordships of the Supreme

⁴ 1960 SCC OnLine SC 8 : AIR 1960 SC 1125

Court in the matter of **Mustkeem alias Sirajudeen v State of Rajasthan**⁵, have held in paragraphs No.25 to 27 which states 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 object 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.”

26. If the recovery memos were prepared at the police station itself then the same would lose their sanctity as held by this Court in *Varun Chaudhary v. State of Rajasthan*⁶.

27. The scope and ambit of Section 27 were also illuminatingly stated in *Pulukuri Kotayya v. King Emperor*⁷ reproduced hereinbelow: (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

⁵ (2011) 11 SCC 724

⁶ (2011) 12 SCC 545

⁷ (1946-47) 74 IA 65 : AIR 1947 PC 67

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."

The same were thereafter restated in another judgment of this Court in *Anter Singh v. State of Rajasthan*⁸."

16. Coming to the facts of the present case in light of the principles of law laid down by their Lordships of the Supreme Court in the above-stated judgment, it is quite vivid that the rope was recovered pursuant to memorandum statement of the appellant, but the prosecution has failed to establish the fact that the said rope was used in the commission of the offence, as such, the seizure of rope pursuant to memorandum statement of the appellant is of no use to the prosecution in light of the decision of the Supreme Court in the matter of **Mustkeem alias Sirajudeen** (supra).

Pursuant to memorandum statement of the appellant deceased's mobile was seized:-

17. The trial Court has relied upon the fact that pursuant to memorandum statement of the appellant deceased's mobile

⁸ (2004) 3 SCC 657

was seized. However, nothing has been produced on record to prove that the said seized mobile was of the deceased and even the SIM, which was insert into the mobile, was issued in the name of the deceased or the said mobile was purchased by the deceased. Therefore, it is also of no use to the prosecution and only on that basis, the appellant could not be convicted that too for offence under Section 302 of the IPC. As such, the appellant is entitled for acquittal on the basis of benefit of doubt.

Conclusion:-

18. In view of the aforesaid discussion and analysis, the appeal is allowed and the impugned judgment of conviction and order of sentence dated 18.05.2015 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, he need not surrender. However, his bail bond shall remain in

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operation for a period of six months as per provisions contained in Section 437-A of the CrPC.

19. 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/-
(Amitendra Kishore Prasad)
Judge

Ankit