



2026:CGHC:12920-DB



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NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

ACQA No. 639 of 2019

- The State of Chhattisgarh, Through District Magistrate, District Janjgir–Champa, C.G.

...Appellant**versus**

- Jai Narayan @ Tikla Diwakar, S/o Laxman Diwakar, aged about 25 years, R/o Sendari, Police Station Baradwar, District Janjgir -Champa Chhattisgarh.

... Respondent

For Appellant	:	Mr. Rishiraj Pithwa, Deputy Government Advocate
For Respondent	:	Mr. Vimlesh Bajpai, Advocate.

Hon'ble Smt. Justice Rajani Dubey and**Hon'ble Shri Justice Radhakishan Agrawal****Judgment on Board****18.03.2026****Per Radhakishan Agrawal, J.**

1. This acquittal appeal filed by the Appellant/State arises out of the judgment dated 25.01.2018 passed by the learned Third Additional Sessions Judge, Janjgir (C.G.) in Sessions Case No. 29/2017, whereby the learned trial Court acquitted the accused/respondent of the charges under Sections 364/34, 302/34, 201, 120-B and 404 of



the Indian Penal Code (for short, 'IPC') by extending the benefit of doubt.

2. Case of the prosecution, in brief, is that father of the deceased- Raju Kumar Sahu, namely Chhattulal Sahu (PW-11), lodged a missing report (Ex.P-22C) at Police Station Janjgir on 02.07.2016 stating that his son/deceased, who was working as a driver of a Scorpio vehicle bearing registration No.CG/11/F/9577 owned by Isdor Minj (PW-13), had gone on 25.06.2016 in the morning after taking the vehicle to the taxi stand near Kachahari Chowk, Janjgir, and did not return thereafter. It was further stated that between 10:00 to 11:00 a.m. on the same day, four persons came to the taxi stand, hired the said vehicle, and the deceased left with them towards BTI Chowk, after which, his whereabouts became unknown. During inquiry, it was found that the mobile phone of the deceased was last located in the Baloda area on 25.06.2016, and no further location could be traced. Subsequently, on 10.07.2016, the said Scorpio vehicle was found abandoned in suspicious circumstances in village Judga under the jurisdiction of Police Station Sakti. During further investigation, the present respondent was implicated on the allegation that he was one of the persons who had taken the deceased in the said vehicle and thereafter caused his death and disposed of the body by burning it. Accordingly, FIR (Ex.P-30) was registered against the respondent.
3. During investigation, one Micromax mobile phone vide Ex.P-7 and the Scorpio vehicle along with its documents were seized vide Exs.P-8 & P-14. The burnt jeans cloth and slippers recovered by the Burla Police were also taken into possession vide Ex.P-13. A test identification parade of the respondent was conducted vide Exs.2, 5



& 6 and the wife of the deceased identified the burnt jeans cloth vide

Ex.P-15. Upon completion of the investigation, a charge-sheet was filed. The accused/respondent denied the charges and claimed to be tried.

4. The trial Court, after hearing counsel for the parties and appreciating the evidence on record, by the impugned judgment acquitted the accused/respondent of said charges leveled against him.
5. Learned counsel for the appellant/State submits that the impugned judgment of acquittal passed by the learned trial Court is illegal, erroneous and contrary to the evidence available on record. It is further submitted that although there is no direct eye-witness to the incident, but the prosecution has successfully established a complete chain of circumstantial evidence linking the respondent with the offence in question. It is contended that the witnesses present at the taxi stand identified the respondent as one of the persons who hired the vehicle; that the deceased was last seen in his company; and that the burnt jeans cloth recovered from the dead body was identified by the wife of the deceased, which clearly points towards the guilt of the respondent. It is, therefore, argued that the impugned judgment suffers from perversity and illegality and is liable to be set aside.
6. Learned counsel for the respondent supports the impugned judgment and submits that there is no eye-witness to the incident and the prosecution case rests solely on weak and incomplete circumstantial evidence. It is further submitted that the identity of the dead body has not been established, the test identification parade is defective, and the medical evidence does not support the prosecution case. It is, therefore, contended that the view taken by the learned trial Court is



a plausible and reasonable one based on the evidence on record and does not call for interference. Accordingly, it is prayed that the appeal filed by the appellant/State be dismissed. Reliance has been placed upon the decision of Supreme Court in the matter of *Padman Bibhar vs State of Odisha*¹.

7. We have heard learned counsel for the parties and perused the material available on record.
8. The Supreme Court in the matter of *Jafarudheen and others vs. State of Kerala*² has considered the scope of interference in Appeal against acquittal, which reads as under:-

“25. While dealing with an appeal against acquittal by invoking Section 378 CrPC, the appellate court has to consider whether the trial court's view can be terms as a possible one, particularly when evidence on record has been analysed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the appellate court has to be relatively slow in reversing the order of the trial court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters.”

9. The first question for consideration is whether the death was homicidal in nature. The learned trial Court has answered this issue in the affirmative on the basis of the post-mortem report and the query of PM report (Exs. P-9 and P-10), wherein the cause of death was found to be burn injuries, as proved by Dr. Seema Perai (PW-7). This finding is based on the evidence available on record and is neither perverse nor contrary to the record. Accordingly, the same is hereby affirmed.
10. The question that now arises for consideration is whether the respondent is the perpetrator of the offences in question.

1 2025 LiveLaw (SC) 613

2 (2022) 8 SCC 440



11. Admittedly, the present case rests on circumstantial evidence as there is no direct evidence available on record. The five golden principles, which constitute the *panchsheel* of proof in a case based on circumstantial evidence, have been laid down by their Lordships of the Hon'ble Supreme Court in *Sharad Birdhichand Sarda v. State of Maharashtra*³, wherein it was observed in paragraph 153 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*⁴ where the following observations were made : [SCC para 19, p. 807 : SCC (Cri) p. 1047]

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.”

12. The primary issue in the present case is whether the dead body recovered was that of the deceased- Raju Kumar Sahu.

3 (1984) 4 SCC 116

4 (1973) 2 SCC 793



13. Rahul Sharma (PW-16), who first informed the Burla police, stated that a burnt and mutilated body was found near Jhankarani Temple, Hirakud Dam, with pieces of jeans cloth attached and a pair of slippers lying nearby. Triveni Pradhan (PW-17), Assistant Sub-Inspector, stated that the body recovered on 27.06.2016 was of an unidentified male aged about 40 years, whereas the deceased- Raju Kumar Sahu, was about 24 years old as per the prosecution case. Wife of the deceased (PW-15) also stated that the deceased was only two to three years older than her and she was about 20 years of age. Thus, the age difference of nearly 16 years creates serious doubt and remains unexplained by the prosecution. Further, no family member identified the dead body from photographs. The prosecution relies only on identification of burnt jeans cloth by the wife; however, such identification was conducted by PW-24 Bhawani Shankar Khuntiya, Investigating Officer, after about seven months, without following proper procedure, such as conducting it before a Magistrate or mixing similar articles. Moreover, PW-16 Rahul Sharma, who first saw the dead body, could not clearly state the colour of the jeans cloth. It is also pertinent to note that jeans is a common article easily available in the market and the said fact is also admitted by PW-14 Manoj Kumar and that no distinctive mark was shown to connect it with the deceased. The seized slippers were also not identified by any family member of deceased. In these circumstances, it cannot be held that the prosecution has proved beyond reasonable doubt that the body recovered was that of the deceased and the learned trial Court has rightly held that the identity of the dead body remained doubtful.



14. The prosecution next relies on the evidence of Karan Yadav (PW-1), Narayan Yadav (PW-2) and Dheeraj Devangan (PW-3), who were present at the taxi stand and stated that the respondent was one of the persons who hired the said vehicle. However, their evidence is not reliable, as the test identification parade suffers from serious defects. PW-19 Shashi Kumar Choudhary, Executive Magistrate stated that the witnesses identified the respondent by placing a hand on his head, whereas the witnesses stated that they identified him by pointing a finger. Further, all identification memos (Exs.P-2, 5 & 6) show the same time, which suggests that the witnesses were not examined separately. There are also differences in the description of the person given earlier and during identification, and no special feature of the respondent was shown to enable identification after several months. Therefore, the identification of the respondent is doubtful and the learned trial Court rightly found it unsafe to rely on such evidence.
15. Another circumstance relied upon by the prosecution is the recovery of the alleged scorpio vehicle. Inspector R.A. Chatre (PW-21) stated that the alleged vehicle was found abandoned in suspicious condition on 10.07.2016 in village Judga and was seized. However, the seizure witnesses, Dhaneshwar Jaiswal (PW-12) and Shatrughan Jaiswal (PW-18), did not identify the respondent as being in possession of the said vehicle. Neither witness stated that the respondent was driving or was present in the vehicle. Thus, the recovery only shows that the said vehicle was abandoned and does not connect the respondent with it. The toll records only show movement of the alleged vehicle and do not establish who was driving it. No scientific or forensic evidence has been produced to link the respondent with the alleged vehicle.



16. It is argued by the learned State counsel that the 'last seen' theory is established, as per the statements of PW-1 Karan Yadav, PW-2 Narayan Yadav and PW-3 Dheeraj Dewangan, who stated that the deceased left the taxi stand with certain boys including the respondent and did not return thereafter.

17. The Supreme Court in the matter of *Padman Bibhar (supra)* relying on its own judgment observed that the evidence of last seen is a very weak type of evidence and only on that basis, the conviction of the accused persons are very difficult without corroboration with other circumstances pointing towards guilt of the accused persons and held in paras 20 & 21 as under:

"20. This Court in *Kanhaiya Lal vs. State of Rajasthan* reported in (2014) 4 SCC 715 has held that evidence on 'last seen together' is a weak piece of evidence and conviction only on the basis of 'last seen together' without there being any other corroborative evidence against the accused, is not sufficient to convict the accused for an offence under Section 302 IPC. The following passage from the judgment in paras 12 and 15 can be profitably referred:

"12. The circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who committed the crime. There must be something more establishing connectivity between the accused and the crime. Mere nonexplanation on the part of the appellant, in our considered opinion, by itself cannot lead to proof of guilt against the appellant.

15. The theory of last seen—the appellant having gone with the deceased in the manner noticed hereinbefore, is the singular piece of circumstantial evidence available against him. The conviction of the appellant cannot be maintained merely on suspicion, however strong it may be, or on his conduct. These facts assume further importance on account of absence of proof of motive particularly when it is proved that there was cordial relationship between the accused and the deceased for a long time. The fact situation bears great similarity to that in *Madho Singh v. State of Rajasthan*, (2010) 15 SCC 588"

21. Similarly, this Court in *Rambraksh @ Jalim vs. State of Chhattisgarh* reported in (2016) 12 SCC 251 has reiterated above legal position in the following words in paras 12 and 13:



“12. It is trite law that a conviction cannot be recorded against the accused merely on the ground that the accused was last seen with the deceased. In other words, a conviction cannot be based on the only circumstance of last seen together. Normally, last seen theory comes into play where the time gap, between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead, is so small that possibility of any person other than the accused being the perpetrator of the crime becomes impossible. To record a conviction, the last seen together itself would not be sufficient and the prosecution has to complete the chain of circumstances to bring home the guilt of the accused.

13. In a similar fact situation this Court in *Krishnan v. State of T.N.* (2014) 12 SCC 279 held as follows: (SCC pp. 284-85, paras 21-24)

“21. The conviction cannot be based only on circumstance of last seen together with the deceased. In *Arjun Marik v. State of Bihar* (1994) Supp (2) SCC 372 this Court held as follows: (SCC p. 385, para 31)

‘31. Thus the evidence that the appellant had gone to Sitaram in the evening of 19-7-1985 and had stayed in the night at the house of deceased Sitaram is very shaky and inconclusive. Even if it is accepted that they were there it would at best amount to be the evidence of the appellants having been seen last together with the deceased. But it is settled law that the only circumstance of last seen will not complete the chain of circumstances to record the finding that it is consistent only with the hypothesis of the guilt of the accused and, therefore, no conviction on that basis alone can be founded.’

22. This Court in *Bodhraj v. State of J&K*, (2002) 8 SCC 45 held that: (SCC p. 63, para 31)

‘31. The last seen theory comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible.’

It will be hazardous to come to a conclusion of guilt in cases where there is no other positive evidence to conclude that the accused and the deceased were last seen together.

23. There is unexplained delay of six days in lodging the FIR. As per prosecution story the deceased Manikandan was last seen on 4-4-2004 at Vadakkumelur Village during Panguni Uthiram Festival at Mariyamman Temple. The body of the deceased was taken from the borewell by the fire service personnel after more than seven days. There is no other



positive material on record to show that the deceased was last seen together with the accused and in the intervening period of seven days there was nobody in contact with the deceased.

24. In *Jaswant Gir v. State of Punjab*, (2005) 12 SCC 438, this Court held that in the absence of any other links in the chain of circumstantial evidence, the appellant cannot be convicted solely on the basis of "last seen together" even if version of the prosecution witness in this regard is believed."

18. In the present case, the identity of the dead body itself is doubtful.

There is no evidence to show that the respondent remained in the company of the deceased after leaving the taxi stand and there is a considerable time gap between the alleged last seen and the recovery of the burnt dead body. In the absence of any supporting evidence such as reliable recovery, forensic evidence, or proof of exclusive possession of the alleged vehicle by the respondent, the 'last seen' circumstance does not form a complete link against him.

19. So far as the seizure of the mobile phone from the accused/respondent is concerned, PW-4 Budhram Das, a witness to the seizure memo (Ex.P-7), clearly admitted that when he reached the house of the accused, the mobile phone was already in the possession of the police. He further admitted that he was not informed from where the mobile phone was recovered or who had found it. In such circumstances, the seizure of the mobile phone becomes doubtful and cannot be safely relied upon.

20. On an overall assessment of the evidence on record, this Court finds that the prosecution has failed to establish a complete and reliable chain of circumstances. The key links in the prosecution case, namely identification of the dead body and the respondent, the 'last seen' circumstance, recovery of the alleged vehicle, and seizure of the mobile phone, all suffer from serious doubts and inconsistencies.



These circumstances do not conclusively point towards the guilt of the respondent. The learned trial Court has elaborately discussed the evidence led by the prosecution and after analyzing the entire evidence led by the prosecution, came to the conclusion that there is no cogent and clinching evidence on record to show that accused/respondent is the perpetrator of the crime in question and as such, acquitted the accused/respondent of the said charges, extending the benefit of doubt, as the prosecution has failed to prove its case beyond reasonable doubt.

21. The Hon'ble Apex Court in its judgment dated 12.02.2024 passed in Criminal Appeal No.1162 of 2011 in case of *Mallappa and Ors. Versus State of Karnataka*, has held in para 36 as under:-

"36. Our criminal jurisprudence is essentially based on the promise that no innocent shall be condemned as guilty. All the safeguards and the jurisprudential values of criminal law, are intended to prevent any failure of justice. The principles which come into play while deciding an appeal from acquittal could be summarized as:-

- "(i) Appreciation of evidence is the core element of a criminal trial and such appreciation must be comprehensive inclusive of all evidence, oral and documentary;
- (ii) Partial or selective appreciation of evidence may result in a miscarriage of justice and is in itself a ground of challenge;
- (iii) If the Court, after appreciation of evidence, finds that two views are possible, the one in favour of the accused shall ordinarily be followed;
- (iv) If the view of the Trial Court is a legally plausible view, mere possibility of a contrary view shall not justify the reversal of acquittal;
- (v) If the appellate Court is inclined to reverse the acquittal in appeal on a re-appreciation of evidence, it specifically address all the reasons given by the Trial Court for acquittal and must cover all the facts;
- (vi) In a case of reversal from acquittal to conviction, the appellate Court must demonstrate an illegality, perversity or error of law or fact in the decision of the Trial Court."



22. Considering the facts and circumstances of the case and the law laid down by the Hon'ble Supreme Court in *Jafarudheen & Mallappa* (supra), the view taken by the learned trial Court appears to be a plausible and possible view. In the absence of any patent illegality or perversity, this Court is not inclined to interfere with the impugned judgment of acquittal passed by the learned trial Court.
23. Accordingly, the acquittal appeal filed by the appellant/State against the acquittal of accused/respondent is hereby dismissed.

Sd/-
(Rajani Dubey)
Judge

Sd/-
(Radhakishan Agrawal)
Judge