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IN

CRA-1578-2017, CRA-1637-2017 & CRA-1866-2017



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NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

[Arising out of a common impugned judgment of conviction and order of sentence dated 23.09.2017, passed in Sessions Trial No.69 of 2017 (State of Chhattisgarh v. Arjun Patle and others) by the 7th Addl. Sessions Judge, Raipur (CG)]

Criminal Appeal No. 1578 of 2017

Harish Kumar Navrangye @ Bablu, S/o Lt Bhikham Lal Navrangye, Wrongly Mention As Harish Kumar Naurangye @ Bablu, S/o Lt Shri Bhukhan Lal Naurangye, aged about 22 years, R/o Kondapa, Police Station Kurud, District Dhamtari (Chhattisgarh)

--- **Appellant**
(On Bail)

Versus

State of Chhattisgarh, through District Magistrate, Raipur, District Raipur, (Chhattisgarh)

--- **Respondent**

For Appellant : Mr. Maneesh Sharma, Advocate
For Respondent-State : Mr. Rahul Tamaskar, Govt. Advocate

WITH

Criminal Appeal No. 1637 of 2017

Komal Banjare @ Mukesh @ Raj, S/o Santram Banjare, aged about 24 years R/o Village Manikchouri, P.S. Abhanpur, District Raipur (Chhattisgarh)

--- **Appellant**
(On Bail)

Versus

State of Chhattisgarh, through P.S.- G.R.P. Raipur, District Raipur (Chhattisgarh)



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IN

CRA-1578-2017, CRA-1637-2017 & CRA-1866-2017

--- **Respondent**

For Appellant : Mr. CR Sahu, Advocate
For Respondent-State : Mr. Rahul Tamaskar, Govt. Advocate

WITH

Criminal Appeal No. 1866 of 2017

Arjun Patle, S/o Late Anjan Patle, aged about 20 years, R/o Indira Awas, Aspatal Para, Manikchouri, Post Office and Police Station Abhanpur, District Raipur (Chhattisgarh)

--- **Appellant**
(On Bail)

Versus

State of Chhattisgarh, through The District Magistrate, Raipur, District Raipur (Chhattisgarh)

--- **Respondent**

[Cause-title taken from Case Information System (CIS)]

For Appellant : Mr. Shrivendu Pandey, Advocate
For Respondent-State : Mr. Rahul Tamaskar, Govt. Advocate

Division Bench

Hon'ble Shri Justice Sanjay K. Agrawal and
Hon'ble Shri Justice Arvind Kumar Verma

Judgment on Board
(21.01.2026)

Sanjay K. Agrawal, J

(1) Regard being had to the similitude of the questions of fact and law involved and being arising out of a common impugned judgment dated 23.09.2017, all these criminal appeals are clubbed together, heard together and being disposed of by this common order.

(2) Invoking criminal appellate jurisdiction of this Court, total 03 accused/appellants, namely, Arjun Patle **(A-1)**, Komal Banjare @ Mukesh @ Raj **(A-2)** and Harish Kumar Navrangye @ Bablu **(A-3)**,



have preferred these 03 appeals being **CRA-1866-2017, CRA-1578-2017 & CRA-1637-2017** respectively, under Section 374(2) of Cr.P.C., calling in question the legality, validity and correctness of common impugned judgment of conviction and order of sentence dated 23.09.2017, passed in Sessions Trial No.69 of 2017 (State of Chhattisgarh v. Arjun Patle and others) by the 7th Addl. Sessions Judge, Raipur (CG), whereby they have been convicted and sentenced as under:

As regards accused/appellant- Arjun Patle (A-1):

Conviction	Sentence
U/s. 302 of IPC	Imprisonment for life with fine of Rs.500/- and, in default of payment of fine amount, additional rigorous imprisonment for 01 year.
U/s. 392/398 of IPC	Rigorous imprisonment for 07 years with fine of Rs.500/- and, in default of payment of fine amount, additional rigorous imprisonment for 01 year.

As regards accused/appellant- Komal Banjare @ Mukesh @ Raj (A-2):

Conviction	Sentence
U/s. 414 of IPC	Rigorous imprisonment for 03 years with fine of Rs.500/- and, in default of payment of fine amount, additional rigorous imprisonment for 03 months.

As regards accused/appellant- Harish Kumar Navrangye @ Bablu (A-3):

Conviction	Sentence
U/s. 411 of IPC	Rigorous imprisonment for 03 years with fine of Rs.500/- and, in default of payment of fine amount, additional



	rigorous imprisonment for 03 months.
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(3) The case of the prosecution, in short, is that on 04.10.2016, in the afternoon between 12:00 to 17:00 hours, in the middle of passenger waiting room of railway station, Manikchouri, which comes within the ambit of Police Station- CRPF, Raipur (CG), the accused-appellant- Arjun Patle (A-1) firstly assaulted Abhay Kumar on his neck time and again by means of axe, due to which, Abhay Kumar (hereinafter referred to as the “deceased”) suffered grievance injuries and died and, thereafter, committed loot of deceased’s mobile phone and wallet and ultimately sold the said mobile phone of the deceased to accused-appellant Komal (A-2), who later on again sold the said mobile phone to accused-appellant Harish (A-3) and, thereby, the appellants herein are said to have committed the aforesaid offences in question.

(4) It is further case of the prosecution that initially dehati merg and dehati nalisi were registered vide Ex.P/01 and Ex.P/02 respectively and, thereafter, merg intimation (Ex.P/23) and FIR (Ex.P/24) were registered and wheels of investigation started running, in which, spot map was prepared vide Ex.P/22. Summons under Section 175 of CrPC were sent vide Ex.P/03 and inquest proceedings were conducted vide Ex.P/04. The dead-body of the deceased was sent for postmortem examination, which was conducted by Dr. S.K. Bagh (PW-18) and, as per PM report



(Ex.P/46), it has been opined that cause of death of the deceased is shock and hemorrhage as a result of cut throat and nature of death is homicidal. The accused/appellants were arrested and their memorandum statements were recorded vide Ex.P/8 to P/14 & P/12 respectively. Thereafter, pursuant to the memorandum statement of accused-appellant- Arjun Patle weapon of the offence i.e. axe and wallet (purse) was seized vide Ex.P/09 & Ex.P/10, whereas pursuant to the memorandum statement of appellant- Harish (A-3) mobile phone, alleged to be that of the deceased, was seized vide Ex.P/13. Blood stained clothes of the deceased were also seized vide Ex.P/25. Further, one micromax mobile, one box of samsung galaxy grand prime and one purchase receipt were also seized from Pawan Sharma (PW-05) vide Ex.P/07. The seized articles were sent for chemical examination and, as per FSL report (Ex.P/39), it has been opined that stains of blood were found on the axe seized pursuant to the memorandums statement of appellant- Arjun (A-1). After statements of witnesses were recorded and due investigation, the police filed charge-sheet against the appellants/accused persons in the competent criminal court having jurisdiction and, thereafter, the case was committed to the Court of Sessions for hearing and trial in accordance with law, in which the appellants/accused abjured their guilt and entered into defence by stating that they are innocent and have been falsely implicated.



(5) The prosecution in order to prove its case examined as many as 18 witnesses and exhibited 47 documents, whereas the appellants-accused in support of their defence, though not examined any witness, but exhibited 04 documents.

(6) The learned trial Court after appreciating the oral and documentary evidence available on record, proceeded to convict appellant- Arjun (A-1) for offence under Section 302 & 392/398 of IPC, whereas convicted appellants- Komal (A-2) and Harish (A-3) for offence under Section 414 & 411 of IPC respectively, and sentenced them as mentioned in the opening paragraph of this judgment, against which these appeals have been preferred by the appellants-accused questioning the impugned judgment of conviction and order of sentence.

(7) Mr. Shivendu Pandya, Mr. C.R. Sahu and Mr. Maneesh Sharma, learned counsel appearing for the accused/appellants in CRA-1866-2017, CRA-1637-2017 & CRA-1578-2017 respectively submit that the learned trial Court is absolutely unjustified in convicting the appellants for the aforesaid offences, as the prosecution has failed to prove the same beyond reasonable doubt. They vehemently argued that the ownership of the mobile phone seized from appellant- Harish (A-2) vide Ex.P/13, alleged to be that of the deceased, has not been established at all. There is no evidence available on record to prove that the appellant- Arjun (A-1)



assaulted the deceased on the date of offence. Even otherwise, on the basis of memorandum statements of Komal (A-2) and Harish (A-3) the appellants cannot be convicted. As such, all the appeals deserves to be allowed and the appellants are liable to be acquitted of the said charges on the basis of benefit of doubt.

(8) *Per-contra*, Mr. Rahul Tamaskar, learned State counsel supported the impugned judgment of conviction and order of sentence and submits that the prosecution has proved the offence beyond reasonable doubt by leading evidence of clinching nature. In view of the statements of prosecution witnesses coupled with other material available on record, the learned trial Court has rightly convicted all the appellants for the offences in question. Thus, all the appeals deserve to be dismissed.

(9) We have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.

(10) The first and foremost question is as to whether the death of the deceased was homicidal in nature or not, which the learned trial Court has recorded in affirmative by taking into consideration the postmortem report (Ex.P/46), wherein it has been opined that cause of death of the deceased is shock and hemorrhage as a result of cut throat and nature of death is homicidal, which is duly proved by the statement of Dr. SK Bagh (PW-18). Accordingly, taking into



consideration the postmortem report (Ex.P/46) and the statement of Dr. SK Bagh (PW-18), who has conducted the postmortem of the dead-body of the deceased, we are of the considered opinion that the death of the deceased is homicidal in nature, as the same is correct finding of fact based on evidence and same is neither perverse nor contrary to the record. We hereby affirm the said finding.

(11) Now, the next question would be whether the accused-appellants herein are the author of the crime in question or not which the learned trial Court has recorded in affirmative by relying upon following incriminating circumstances, as projected by the prosecution:

“1. Mobile Phone having IMEI No.351714/07/187412/8351715/07/187412/5 was purchased by the deceased from one Pawan Mobile Repairing Shop on 17.10.2015, which was allegedly looted by appellant- Arjun (A-1) and, thereafter, sold to appellant- Komal (A-2), who in turn further sold the same to appellant- Harish (A-3) and said mobile phone was seized pursuant to the memorandum statement of appellant- Harish (A-3) vide Ex.P/13;

2. Recovery of wallet and axe pursuant to the memorandum statement of appellant- Arjun (A-1) and, as per FSL report (Ex.P/37) stains of blood were found on the said axe;

3. Appellant- Arjun (A-1) has previous criminal antecedents”

(12) Since, the present case is based on above-stated circumstantial evidence, therefore, it is profitable here to note following five golden principles laid down by their Lordships of the Supreme Court in the



matter of **Sharad Birdhichand Sarda vs. State of Maharashtra**¹

which constitute the 'panchsheel' of proof of a case based on circumstantial evidence and same read as under:

"153. (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 & Anr. v. State of Maharashtra, (1973) 2 SCC 793* 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



(13) We shall now consider the above-mentioned incriminating circumstances in light of the above-quoted principles of law laid down by their Lordships of the Supreme Court as also in light of the evidence available on record, in order to ascertain whether the appellant herein has rightly be held guilty for offence in question by the learned trial Court or not.

As regards incriminating circumstance No.1:

(14) So far as the first incriminating circumstance is concerned, it is the case of the prosecution that Mobile Phone having IMEI No.351714/07/187412/8351715/07/187412/5 was purchased by the deceased from one Pawan Mobile Repairing Shop on 17.10.2015, which was allegedly looted by appellant- Arjun (A-1) and, thereafter, sold to appellant- Komal (A-2), who in turn further sold the same to appellant- Harish (A-3) and said mobile phone was seized pursuant to the memorandum statement of appellant- Harish (A-3) vide Ex.P/13. Therefore, the question is as to whether the ownership of the said mobile phone has been proved or not? In order to prove the same, one Pawan Sharma (PW-05), worker in railways, has been examined and he has proved seizure of mobile receipt and mobile box vide Ex.P/7. However, he did not say that the said mobile receipt and mobile box was having IMEI No.351714/07/187412/8351715/07/187412/5, which belongs to the deceased. Even otherwise, the mobile receipt has neither been



marked as exhibit nor brought to the record. Therefore, merely on the statement of Pawan (PW-05), who is friend of the deceased, it could not be proved that the said Mobile Phone having IMEI No.351714/07/187412/8351715/07/187412/5 was owned by the deceased. Further, it is also an evidence on record that said mobile phone, which was seized vide Ex.P/13, was having SIM bearing No.7692824789, which was in the name of Khumeshwar Sahu (PW-08) and not in the name of the deceased or the appellant herein. The prosecution was duty bound to examine the shopkeeper from whom the deceased is said to have purchased the said mobile having IMEI No.351714/07/187412/8351715/07/187412/5, but the same has not been done in the present case and, in absence of which, it could not be established that the said mobile phone having IMEI No.351714/07/187412/8351715/07/187412/5 was owned by the deceased only and nobody else.

(15) Furthermore, the learned trial Court has relied upon the memorandum statement of appellant- Arjun (A-1) recorded vide Ex.P/8 to hold that he looted the said mobile phone from the deceased. However, it is well settled that confessional statement made by the accused is inadmissible in evidence in light of Section 27 of the Indian Evidence Act, 1872. In this regard, in the matter of **State of U.P. v. Deoman Upadhyaya**², the Constitution Bench of the Supreme Court has held that confessional part of the statement is

2 AIR 1960 SC 1125



inadmissible under Section 27 of the Evidence Act and only part which leads to discovery of facts is admissible in evidence.

(16) The aforesaid decision of Deoman Upadhyaya (supra) has been followed with approval by the Supreme Court in the matter of Babu Sahebagoada Rudragoudar & Others v. State of Karnataka³ and observed in paragraph 60 & 61 held as under :

“60. We would now discuss about the requirement under law so as to prove a disclosure statement recorded under Section 27 of the Evidence Act and the discoveries made in furtherance thereof.

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 inadmissible in evidence as laid down by this Court in *State of U.P. v. Deoman Upadhyaya* (supra).”

(17) Coming to the facts of this case in light of the decisions rendered by the Supreme Court in Deoman Upadhyaya (supra) followed in Babu Sahebagoada Rudragoudar (supra), it is quite vivid that the part of the appellant’s confessional statement that he looted the mobile phone of the deceased is inadmissible in evidence, as only the information given by the accused/appellant leads to recovery of incriminating material from a place solely and exclusively within the knowledge of the maker thereof would be

3 (2024) 8 SCC 149



admissible in evidence. Therefore, the reliance placed by the trial Court on the confessional part of the statement of accused/appellant, admitting his guilt, is inadmissible in evidence and cannot form basis for his conviction.

(18) Moreover, the learned trial Court relied upon the confessional statements of appellant- Komal (A-2) and Harish (A-3) recorded vide Ex.P/14 & Ex.P/12 respectively, whereby they have stated that firstly Komal (A-2) has purchased the mobile phone from appellant- Arjun (A-1) and, thereafter, Harish (A-3) has purchased the said mobile phone from appellant- Komal (A-2) and, on the basis of which, the learned trial Court held that since Arjun (A-1) looted the said mobile phone, which was firstly purchased by Komal (A-2) and, thereafter, by Harish (A-3), the said article comes within the meaning of looted property and, therefore, Sections 414 & 411 of IPC would be attracted.

(19) The Supreme Court in the matter of Haricharan Kurmi and another v. State of Bihar⁴ has held confession of a co-accused person cannot be treated as substantive evidence and can be pressed into service only when the Court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of its conclusion deducible from the said evidence and observed in Para-16 as under:

“16. It is true that the confession made by Ram Surat is

⁴ AIR 1964 SC 1184



a detailed statement and it attributes to the two appellants a major part in the commission of the offence. It is also true that the said confession has been found to be voluntary, and true so far as the part played by Ram Surat himself is concerned, and so, it is not unlikely that the confessional statement in regard to the part played by the two appellants may also be true; and in that sense, the reading of the said confession may raise a serious suspicion against the accused. But it is precisely in such cases that the true legal approach must be adopted and suspicion, however grave, must not be allowed to take the place of proof. As we have already indicated, it, has been a recognised principle of the administration of criminal law in this country for over half a century that the confession of a co-accused person cannot be treated as substantive evidence and can be pressed into service only when the court is inclined to 'accept other evidence and feels the necessity of seeking for an assurance in support of its conclusion deducible, from the said evidence. In criminal trials, there is no scope for applying the principle of moral conviction or grave suspicion. In criminal cases where the other evidence adduced against an accused person is wholly unsatisfactory and the prosecution seeks to rely on the confession of a co-accused person, the presumption of innocence which is the basis of criminal jurisprudence assists the accused person and compels the Court to render the verdict that the charge is not proved against him, and so, he is entitled to the benefit of doubt. That is precisely what has happened in these appeals.”

(20) As such, since the ownership of mobile phone having IMEI No.351714/07/187412/8351715/07/187412/5 has not been established by the prosecution to be that of the deceased, the learned trial Court is committed grave legal error in relying upon the confessional statement of appellants- Komal (A-2) and Harish (A-3) to hold that the said mobile phone was firstly looted by appellant- Arjun (A-1)



from the deceased, which was purchased by Komal (A-2) and thereafter by Harish (A-3). The finding in this regard is perverse and liable to be and is hereby quashed. It is held accordingly.

As regards incriminating circumstance No.2:

(21) So far as recovery of wallet (purse) and axe vide Ex.P/9 & P/10 respectively pursuant to the memorandum statement of appellant- Arjun (A-1) is concerned, Pawan Sharma (PW-05) has specifically stated that no Test Identification Parade (TIP) was conducted by the police with regard to the purse/wallet. From perusal of the statement of IO- RK Borjha (PW-16) it is further clear that no TIP with regard to the said purse seized vide Ex.P/10 was conducted to prove that the same belongs to the deceased only. Even otherwise, it is also not the case of the prosecution that said purse is of such a unique design or quality or workmanship, which belongs to the deceased or same is not easily available in the market (See: Digamber Vaishnav and another v. State of Chhattisgarh⁵ [Para- 37]). As such, the recovery of aforesaid purse from appellant- Arjun (A-1) vide Ex.P/10 is of no help to the prosecution and same cannot be relied upon to hold the appellant guilty for the offences in question. It is held accordingly.

(22) With regard to seizure of axe vide Ex.P/9 pursuant to the memorandum statement of appellant- Arjun (A-1), in which, as per FSL report (Ex.P/37) stains of blood were found. The Supreme Court
5 (2019) 4 SCC 522



in the matter of **Raja Nayka v. State of Chhattisgarh**⁶ by relying upon its earlier decision rendered in the matter of **Mustkeen @ Sirajudeen v. State of Rajasthan**⁷ has held that sole circumstance of recovery of blood-stained article cannot form the basis of conviction unless the same is corroborated with other piece of incriminating circumstances. As such, the recovery of axe vide Ex.P/09 is also of no help to the prosecution and same cannot be relied upon to hold the appellant guilty for the offences in question. It is held accordingly.

As regards incriminating circumstance No.3:

(23) The last circumstance that has been relied upon by the prosecution is that appellant- Arjun (A-1) has previous criminal antecedents. However, there is nothing available on record to show that appellant- Arjun (A-1) has previous criminal antecedents, accept letter Ex.P/40, whereby information with regard to previous criminal antecedents of appellant- Arjun was sought by the police. Even otherwise, merely on the basis of criminal antecedents, the appellant cannot be held guilty for an offence that too under Section 302 of IPC. It is held accordingly.

(24) In view of the aforesaid discussion, we are unable to hold that the prosecution has been able to prove the five golden principles to constitute the ‘panchsheel’ of proof of a case based on circumstantial evidence, as laid down by the Supreme Court in the matter of

6 2024 SCC Online SC 67

7 (2011) 11 SCC 724



Sharad Birdhichand Sarda (supra) and, in absence of which, the appellants are entitled to get benefit of doubt. Since offence under Section 392 of IPC has not been found established against appellant- Arjun (A-1), consequently, offence under Section 414 & 411 of IPC are also not established against appellants- Komal (A-2) and Harish (A-3). As such, the learned trial Court is unjustified in convicting all the appellants for offences under Section 302, 392/398, 414 & 411 of IPC respectively in light of the above-mentioned incriminating circumstances. Accordingly, the conviction and their respective sentences of all the appellants for the aforesaid offences, as imposed upon them by the learned trial Court, are hereby set aside. They are acquitted of the said charge on the basis of benefit of doubt. Since the appellants are already on bail, they need not to surrender. However, their bail bonds shall remain in force for a period of six months in view of the provision contained in Section 437A of the CrPC.

(25) Consequently, all the criminal appeals are **allowed** to the extent indicated herein-above.

(26) Let a certified copy of this order alongwith original record be transmitted to the trial Court for necessary information and action, if any.

sd/-
(Sanjay K. Agrawal)
Judge

sd/-
(Arvind Kumar Verma)
Judge