



2026:CGHC:3514-DB



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NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

ACQA No. 659 of 2019

State of Chhattisgarh Through The In charge, Police Station Kawardha,
District : Kawardha (Kabirdham), Chhattisgarh

... Appellant

versus

Parmeshwar Dhurwey, S/o Prem Dhurwey, Aged About 19 Years, R/o Navin
Bazar, Kawardha, Police Station- Kawardha, District : Kawardha
(Kabirdham), Chhattisgarh

... Respondent

For State/Appellant : Mrs. Shubha Shrivastava, PL

For Respondent : None.

Hon'ble Smt. Justice Rajani Dubey, J.
Hon'ble Shri Justice Radhakishan Agrawal, J.

Judgment on Board

Per, Rajani Dubey, J.

21.01.2026

1. This acquittal appeal has been preferred by the State/Appellant against the impugned judgment of acquittal dated 15.03.2019 passed by learned Sessions Judge, Kabeerdham (Kawardha), District- Kawardha (C.G.) in Sessions Trial No. 45/2016, whereby the accused/respondent has been acquitted of the charge under Section 302 of IPC.
2. Brief facts of the case are that on 25.10.2017, Head Constable Rajkumar Yadav, posted on night duty at Police Post, District Hospital,



Kawardha, received information that Rupesh Kaushik, injured by a knife attack and he was admitted to District Hospital Kawardha for treatment by a doctor. On which, Head Constable Rajkumar Yadav prepared an application vide Ex.P/5 for medical examination of the injured Rupesh Kaushik and gave it to the doctor. On which Dr. P.C. Prabhakar has conducted the medical examination of the injured Rupesh Kaushik on 25.10.2017 and gave his report vide Ex.P/5. On 25.10.2017 at 9:50 pm, the complainant/informant Ashok Nirmalkar, lodged an F.I.R. vide Ex.P/1 at Police Station- Kawardha by saying that he runs utensils shop in Naveen Market Kawardha. On 25.10.2017, at around 8:30 pm, after closing his shop, he was sitting in front of his shop with his friends Rupesh Kaushik, Ajay Sahu and Jatin Thakur. At that very moment, some people in the market were quarreling and abusing each other, at that very moment his colleague Rupesh Kaushik went there and tried to intervene between them to settle the dispute and asked them as to why they were quarreling. Then, an unknown person with an intention to kill him, stabbed him on the right side of his neck with a sharp edged knife. The blood was gushing forth from his throat as the knife pierced in his throat and due to this, he fell unconscious. Immediately, the unknown person pulled the knife from his neck and fled. The injured Rupesh Kaushik was immediately taken from the spot by his friend Ajay Sahu and his motorcycle to the Government District Hospital, Kawardha. Golu Yadav, Manoj Sahu, and Jatin Singh Thakur were the witnesses of the said incident. Further as per the prosecution story, Assistant Sub-Inspector Gopal Singh Rajput lodged the F.I.R. (Ex.P/1) and registered Crime No. 339/2017 for offence under Section 307 IPC against unknown person and started investigation. On 25.10.2017, during treatment at District Hospital



Kawardha, injured Rupesh succumbed to injuries and Doctor P.C. Prabhakar, sent written information about the death of Rupesh to Police Station Kawardha vide Ex.P/19, on which case No. 75/17 was registered at Police Station Kawardha. During the inquest, ASI- Gopal Singh Rajput gave notice Ex.P/7 to the witnesses for conducting the panchnama of the dead body of deceased Rupesh Kaushik. After conducting the panchnama of the dead body in the presence of witnesses, inquest report was prepared vide Ex. P/8. In the postmortem report, a cut injury caused by a sharp-edged weapon was found on the left side of the neck of the deceased. As per the prosecution story, on 26.10.2017, at the District Hospital, Kawardha, Dr. Swadesh Jaiswal, conducted a postmortem examination of the body of the deceased Rupesh Kaushik and submitted the postmortem report vide Ex.P/15, wherein he stated that the nature of the deceased's death as homicidal. Consequently, the police added the offence under Section 302 of IPC to the investigation. During the investigation, articles were seized, the appellant Parmeshwar was taken into custody and his memorandum statement was recorded vide Ex. P/11. The appellant was arrested vide Ex. P/20. On 26.10.2017, the investigating officer gave an application form vide Ex.P/25 to Tehsildar Kawardha for identification proceedings of the accused. On which, Naib Tehsildar Siddhi Gabel presented the accused and three other boys of the same personality who were stood for identification proceedings in the *Karmachari Bhawan* Kawardha on 26.10.2017 at 02:55 pm and got the accused identified by witnesses Ashok Nirmalkar, Ajay Sahu and Jatin Thakur, in which the witnesses identified the accused by showing their fingers to him. Thereafter, test identification parade memo was prepared vide Ex. P/2 and the spot map was



prepared by the Patwari and all the blood stained articles were seized and the same were sent to F.S.L. for chemical examination. Statements of the witnesses were recorded. After completion of due and necessary investigation, charge-sheet was led before the concerned jurisdictional Magistrate who, in turn, committed the case for trial. On the basis of the material contained in the charge-sheet, learned trial Court acquitted the accused/respondent of charge punishable under Section 302 of IPC, against which the present appeal has been filed by the State/appellant.

3. Learned counsel for the appellant submits that the impugned judgment of acquittal is bad in law and facts, hence the same is liable to be set aside. The Learned Trial Court has failed to appreciate the evidence recorded in its true and correct perspective and the prosecution proved its case beyond all reasonable doubts against the respondent, but despite the same, the accused respondent has been acquitted. The prosecution case is based upon the circumstantial evidence, which has been proved by the memorandum statement of the accused vide Ex. P/11, where the accused had caused assault on the deceased and thereafter, fled from the spot and also the weapon of offence has been seized from the possession of the accused. As per postmortem report, the cause of death of the deceased was due to excessive bleeding due to injury caused on his neck and nature of death is homicidal, but the trial court utterly failed to consider the aforesaid facts. Therefore, looking to the facts and circumstances of the case, the judgment and finding of the learned trial Court is perverse and is liable to be set aside.
4. None present for the respondent, despite service of notice.



5. We have heard learned counsel for the State/appellant and perused the material available on record.
6. It is clear from the record of the learned Trial Court that it framed charge under Section 302 of IPC against the accused/respondent and after appreciation of oral and documentary evidence available on record, the learned Trial Court acquitted the accused/respondent of the aforesaid charge on this ground that the prosecution has failed to prove its case beyond reasonable doubt against the accused.
7. PW-1 Ashok Nirmalkar has stated that on 25.10.2017 at 08.30 pm, he had closed his shop and was sitting with his friends viz., Jatin Singh Thakur, Ajay Sahu and Rupesh Kaushik. Some people were quarreling at a distance of about 10-20 meters, so Rupesh Kaushik went there to pacify them. Suddenly, the accused came with a knife and without saying anything, stabbed Rupesh in the neck and then took out the knife and fled from there. Due to the assault by the knife, a lot of blood started oozing from Rupesh's neck and Rupesh fainted there itself. Then, he lodged an F.I.R. vide Ex. P/1, wherein he admitted his signature on A to A part.
8. It is clear from F.I.R. (Ex. P/1) that it was lodged against the unknown person.
9. PW-1 has admitted this suggestion of defence in para 11 as under:-

" रूपेश के मृत्यु की खबर मिलने के करीब डेढ़ घंटे बाद पुलिस आरोपी को पकड़कर थाना लायी थी। मैंने आरोपी के विरुद्ध नामजद प्रथम सूचना रिपोर्ट नहीं लिखाया था और ना ही रिपोर्ट हमलावर आरोपी का कोई हुलिया बताया था। पुलिस आरोपी को स्वयं पकड़कर थाना लायी थी ।..."

He denied the suggestion that " रात में पुलिस ने आरोपी को दिखाकर मुझे यह बोला था कि इसी लड़के ने रूपेश को चाकू मारा है आप इसकी पहचान



करो। स्वतः कहा कि पुलिस ने आरोपी को दिखाकर मुझसे पूछा था कि क्या

इसी ने रुपेश को मारा है ? तब मैंने थाना में आरोपी की पहचान कर पुलिस को

बताया था कि इसी ने रुपेश को चाकू मारा था। स्वतः समाप्त ।

10. PW-1 had identified the accused/respondent in T.I.P. before the Executive Magistrate and he stated that he identified the accused on 26.10.2017 in T.I.P. and admitted his signature in T.I.P. memo (Ex. P/2) on A to A part, but it is clear from para 11 of this witness that he identified the accused at the instance of police.
11. PW-4 ASI- Gopal Singh Rajput has stated that he lodged an F.I.R. (Ex. P/1) as per information given by the complainant Ashok Kumar and the F.I.R. was lodged against the unknown person and he admitted this suggestion of defence that in Ex. P/1, the complainant- Ashok failed to provide any description regarding the physical features, personality or traits of the unknown accused.
12. PW-5 Sarju Sahu and PW-9 Ajay Sahu both were present at the time of incident, PW-5 has stated that the accused Parmeshwar assaulted the deceased Rupesh with the knife.
13. PW-11 Mukesh Kumar Kaushik, brother of the deceased Rupesh has stated that Ashok Nirmalkar apprised this fact to him that the accused Parmeshwar Dhurve assaulted his brother Rupesh with the knife.
14. PW-12 Manoj Sahu has stated that it was about a year ago, at around 8-8:30 pm, he was sitting with three or four persons in Naveen Bazaar, Kawardha. Then, he heard a commotion that a murder had taken place, therefore, they went to see and saw Rupesh Kaushik was lying on the ground near the vegetable shop, surrounded by the crowd. They asked the people present there what had happened, but no one told us anything. Then, Rupesh Kaushik's friend Ashok Nirmalkar and another



boy took Rupesh Kaushik to the hospital on a motorcycle. After that they left from there.

15. PW-7 Dr. P.C. Prabhakar had examined the injured Rupesh on 25.10.2017 at District Hospital, Kawardha and found three injuries on his neck and left eyebrow and he advised for X-Ray and treatment by a Surgeon. He opined that all injuries are grievous in nature, gave his report vide Ex. P/5. He further stated on the the same day, he sent a written information of the injured Rupesh to Police Station- Kawardha vide Ex. P/19, wherein admitted his signature on A to A part. He admitted during cross-examination that the injured Rupesh, was brought for medical treatment by his relatives rather than the police on 25.10.2017.

In para 5 of his cross-examination, he admitted the suggestion of defence as under:-

" यह कहना सही है कि मैंने आहत रूपेश की चोटों का रात 10.40 बजे मेडिकल मुलाहिजा किया था। यह कहना सही है कि मेडिकल परीक्षण में आहत रूपेश की हालत गंभीर देखकर उसे इलाज के लिए रायपुर रिफर किया था। यह कहना सही है कि मेरे रिफर करने पर आहत रूपेश के परिजन आहत रूपेश को जिला अस्पताल कवर्धा से ले गये थे। यह कहना सही है कि अस्पताल से ले जाने के करीब 10-15 मिनट बाद आहत रूपेश के परिजन आहत को लेकर वापस जिला अस्पताल कवर्धा मेरे पास आये थे। यह कहना सही है कि वापस लाने पर रात्रि लगभग 11 बजे मैंने आहत रूपेश का पुनः परीक्षण किया तो उसे मृत पाया था।

In para 6 of his cross-examination, he admitted the suggestion of defence as under:-

" यह कहना सही है कि लिखित सूचना प्र०पी० 19 में मैंने मृतक रूपेश की मृत्यु का समय 10.20 पी०एम० उल्लेखित किया है। यह कहना सही है कि हो सकता है



कि मैंने प्र०पी० 19 में मृतक रूपेश की मृत्यु का समय 10.20 गलत उल्लेखित किया हो और वास्तव में रूपेश की मृत्यु वास्तव में 11.00 बजे हुई हो। यह कहना सही है कि प्र०पी० 19 में मैंने दस्तावेज तैयार करने का समय 10.36 पी०एम० उल्लेखित किया है। यह कहना सही है कि हो सकता है कि मैंने प्र०पी० 19 में दस्तावेज तैयार करने का समय 10.36 पी०एम० गलत उल्लेखित किया हो और वास्तव में दस्तावेज रात्रि करीब 11.00 बजे तैयार किया हूँ।"

16. The learned trial Court minutely appreciated the statement of the complainant, the medical officer and the investigating officer and finds that the F.I.R. (Ex. P/1) was lodged against the unknown person and in the same nowhere, the name of the accused was mentioned and in a very short period, the police caught someone and shown to the complainant by saying that he is the accused, later he was identified by the complainant in T.I.P. before Executive Magistrate at the instance of police.
17. PW-7 has also admitted that firstly the injured Rupesh was brought for medical treatment to the hospital by his relatives on 25.10.2017. Then, he referred the injured to Raipur for better treatment after seeing his critical condition and just after 10-15 minutes, relatives of the injured came back to the hospital, Kawardha and he examined the injured Rupesh again at about 11:00 pm and in Ex. P/19, he written the time of death of the injured Rupesh as 10:20 pm and he also admitted this fact that he may have wrongly mentioned the time of death of the deceased Rupesh as 10:20 pm and further stated that in reality Rupesh may have died at 11:00 pm.
18. Thus, the learned trial Court finds that T.I.P. is not admissible against the accused/respondent as he was shown to the complainant prior to the T.I.P. and the complainant only identified him at the behest of the



police and the statement of complainant and other witnesses are not reliable and also statement of PW-7 Dr. P.C. Prabhakar is not reliable. The learned Trial Court minutely appreciated the oral and documentary evidence, rightly found that the prosecution has failed to prove its case beyond reasonable doubt against the respondent/accused, as such by giving him benefit of doubt, the learned trial Court acquitted the respondent/accused.

19. The Hon'ble Apex Court vide its judgment dated 12.02.2024 (Criminal Appeal No 1162 of 2011) passed in **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 vidence, 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 must 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.”

20. Considering the facts and circumstances of the case and the law laid down by the Hon'ble Supreme Court in **Mallappa** (supra) and the view which has been taken by the learned trial Court appears to be plausible and possible view and in the absence of any patent illegality or perversity this Court is not inclined to interfere with the impugned judgment.
21. Accordingly, the acquittal appeal is liable to be and is hereby **dismissed**.

Sd/-
(Rajani Dubey)
Judge

Sd/-
(Radhakishan Agrawal)
Judge