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HIGH COURT OF CHHATTISGARH AT BILASPUR

ACQA No. 394 of 2018

- State of Chhattisgarh, Through- Police Station Lormi, District- Mungeli, Chhattisgarh. **...Appellant**

versus

- Nachkar Baiga, S/o Mousa Baiga, aged about 45 Years, R/o- Village Jhiriya, Police Station Lormi, District- Mungeli, Chhattisgarh.

... Respondent

For Appellant	: Mr. Atanu Ghosh, Deputy Government Advocate.
For Respondent	: None.

Hon'ble Smt. Justice Rajani Dubey and
Hon'ble Shri Justice Radhakishan Agrawal

Judgment on Board

24.02.2026

Per Radhakishan Agrawal, J.

1. This acquittal appeal filed by the Appellant/State arises out of the judgment dated 23.06.2017 passed by the Additional Sessions Judge, Mungeli, District Mungeli, C.G. in Sessions Case No.56/2013, whereby the learned trial Court acquitted the accused/respondent of the charge under Section 302 of Indian Penal Code (for short, "IPC").
2. Case of the prosecution, in brief, is that on 15.07.2013, informant / PW-8 - Birsu Singh lodged a report at Police Station Lormi stating that on 14.07.2013, accused- Nachkar Baiga, abused his father- Fagnu Baiga, in filthy language. When deceased- Fagnu Baiga objected the accused, he allegedly assaulted him on the head with a stick, causing

a grievous injury and threatened to kill him. Thereafter, the injured was first taken home and, on the next day, admitted to Community Health Centre, Lormi. Owing to the seriousness of the head injury, he was referred to Bilaspur and thereafter to Raipur for treatment. However, during the course of treatment, deceased- Fagnu Baiga succumbed to his injuries on 08.08.2013. After that, merg intimation (Ex.P-13) was lodged and the First Information Report (Ex.P-10) was registered against the accused/respondent. During the merg inquiry, it surfaced that the accused/respondent had assaulted the deceased on suspicion that deceased- Fagnu used to address him as “*Tonha*”.

3. Thereafter, inquest proceedings were conducted vide Ex.P-2 and the dead body of the deceased was sent for post-mortem examination. PW-6 Dr. S.K. Bagh conducted the post-mortem and opined that the death was caused due to cardiorespiratory failure as a result of head injury and its complications (septicemia) and gave post-mortem report (Ex.P-9). During investigation, accused/respondent was taken into custody and his memorandum statement (Ex.P-4) was recorded, pursuant to which, one iron *tangiya* was seized vide seizure memo (Ex.P-5). However, the seized articles were not sent to FSL for chemical examination.
4. After completion of the investigation, a charge sheet was filed against the accused/respondent before the concerned trial Court. The accused/respondent abjured the guilt and prayed for trial.
5. 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 charge leveled against him.

6. Learned counsel for the appellant 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 contended that there is sufficient and cogent evidence, particularly the testimonies of PW-7 Bajri Bai and PW-8 Birsu Singh, which clearly establish that the accused/respondent is the author of the crime in question. He further that the circumstances proved by the prosecution form a complete chain pointing towards the involvement of the accused/respondent in the commission of the offence. Therefore, according to the learned counsel, the impugned judgment of acquittal suffers from perversity and illegality and is liable to be set aside.
7. We have heard learned counsel for the appellant and perused the material available on record.
8. The Supreme Court in the matter of *Jafarudheen and others vs. State of Kerala*¹ 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 of the deceased was homicidal in nature. The learned trial Court has answered the said question in the affirmative, relying upon the post-mortem report (Ex.P/9) duly proved by PW-6 Dr. S.K. Bagh. The

¹ (2022) 8 SCC 440

said finding is a finding of fact based on the evidence available on record and is neither perverse nor contrary to the material available on record. Accordingly, we hereby affirm the said finding.

10. The question that now arises for consideration is whether the accused/respondent is the author and perpetrator of the offence in question.

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*², 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*³ 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

2 (1984) 4 SCC 116

3 (1973) 2 SCC 793

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. PW-1 Budharin Bai, wife of the deceased Fagnu Baiga, stated in her examination-in-chief that on the date of the incident, at about 8:00–9:00 PM, the accused Nachkar assaulted her husband on the head with a tangiya. She deposed that while the accused was assaulting the deceased, her children were requesting him not to beat him. On hearing the commotion, she and her daughter-in-law rushed to the spot and found her husband lying injured with a head injury. Thereafter, they brought him home and, on the advice of the villagers, took him to Lormi Hospital, from where he was referred to Bilaspur and thereafter to Raipur, where he died during treatment. However, in her cross-examination, she admitted that she had not actually witnessed the incident. She further admitted that it was dark and raining heavily at the time of the occurrence and, due to such darkness, she could not see anything. She also acknowledged that there had been a prior dispute between her family and the accused regarding the alleged theft of a plate.
13. Similarly, PW-2 Motilal, son of the deceased, and PW-7 Bajri Bai, daughter-in-law of the deceased, admitted in their cross-examinations that the incident occurred at night and that, due to darkness and rain, they did not actually see the assault and were deposing on the basis of assumption. PW-2 Motilal also admitted that there were 3–4 houses near the place of occurrence and that earlier in the day, his father/deceased had gone to the pond for fishing.
14. PW-8 Birsu Singh, informant and son of the deceased, stated that on the night of incident, he heard people shouting that his father/deceased

had been assaulted. He subsequently came to know that the accused/respondent had assaulted the deceased with a *tangiya*. However, in his cross-examination, he admitted that he was sleeping at the time of incident and came to know about the occurrence from others. He further admitted that he was stating for the first time before the Court that the accused had assaulted his father/deceased with a *tangiya*.

15. Thus, from the above evidence, it is clear that none of the family witnesses have actually seen the incident. Their evidence is based either on assumption or on information received from others. No independent eye-witness has been examined by the prosecution, despite the fact that there were houses situated near the place of occurrence. Further, PW-3 Hariram and PW-4 Bablu Yadav, who were cited as witnesses to the memorandum and seizure, stated that they had signed blank papers at the instance of the police and could not clearly state the exact place from where the alleged *tangiya* was seized. Such admissions cast serious doubt on the authenticity of the memorandum and seizure proceedings. Moreover, PW-5 Dr. Imendra Vasne admitted that the seized *tangiya* was neither sealed nor stained with blood, and that it was not sent to FSL for chemical examination. Therefore, the alleged recovery of the weapon does not conclusively connect the accused/respondent with the crime in question.

Besides above, PW-5 Dr. Imendra Vasne, who first examined the deceased at CHC Lormi and PW-6 Dr. S.K. Bagh, who conducted the post-mortem examination, admitted in their cross-examinations that similar head injuries could be caused if a person falls on a hard surface. In absence of reliable ocular evidence and when the medical evidence does not conclusively connect the seized weapon with the

injury found on the person of the deceased, the possibility of an accidental fall cannot be ruled out. If the case of the prosecution is taken as it is, then it appears that the entire case of the prosecution was made on the basis of mere suspicion, but, suspicion, however grave it may be, cannot take the place of proof.

16. Upon careful appreciation of the entire evidence on record, this Court finds that the prosecution has failed to establish beyond reasonable doubt that it was the accused/respondent who inflicted the fatal injury upon the deceased, which resulted in his death. In absence of cogent and clinching evidence, the accused/respondent cannot be held guilty of the aforesaid offence. Accordingly, the findings recorded by the learned trial Court acquitting the accused/respondent are based on proper appreciation of the oral and documentary evidence available on record.

17. 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."

18. 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 passed by the learned trial Court.
19. 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