



2026:CGHC:3237-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 1708 of 2019

Dhaneshwar Sahu S/o Shiv Ram Sahu Aged About 25
Years R/o Village Khajhri, P.S. Sarangarh, District
Raigarh Chhattisgarh.

----Appellant (in Jail)

Versus

State Of Chhattisgarh Through S.H.O. Police Station
Sarangarh, District Raigarh Chhattisgarh.

---- Respondent

For Appellant :- Mr. B.P. Singh, Advocate

For Respondent/State :- Mr. Sharad Mishra, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal

Hon'ble Shri Justice Sachin Singh Rajput

Judgment on Board

20/01/2026

Sanjay K. Agrawal, J.

1. This criminal appeal under Section 374(2) of CrPC has been preferred by the appellant against impugned judgment of conviction and order of sentence dated 31/08/2019 passed by learned Additional Sessions Judge, Sarangarh, District Raigarh in Sessions Trial No.

04/2018 whereby the appellant has convicted for offence punishable under Sections 302 and 201 of IPC and sentenced to undergo life imprisonment with fine of Rs. 2,000/- and in default of payment of fine, additional R.I. for six months and to undergo R.I. for 2 years with fine of Rs. 1,000/- and in default of payment of fine, additional R.I. for 3 months, respectively.

2. Case of the prosecution, in brief, is that in the intervening night of 9-10/12/2017 in between 12-1 AM at village Khajri within the ambit of Police Station Sarangarh, the appellant herein along with co-accused Shivram Sahu, in furtherance of their common intention, strangled Ku. Chanda Yadav, with whom the appellant was having an affair, and caused her death and in order to screen themselves from the offence, buried her dead body inside a pit in the canal and thereby, committed the aforesaid offence.
3. Further case of the prosecution is that on account of the information given by Deepak Sahu (P.W.-16), after taking permission from the SDM, Sarangarh on 11/12/2017, the dead body was exhumed from the spot and dead body exhumation panchnama was prepared vide Ex. P/8 and it was identified by father of the deceased namely Kedar Yadav (P.W.-17) vide Ex. P/9. Dehati merg intimation was registered vide Ex. P/13, inquest was conducted vide Ex. P/4 and pursuant to recording memorandum statement of the appellant vide

Ex. P/5, seizure of spade and shovel was made vide Ex. P/6 and P/7. Statements of the witnesses were recorded and the dead body was subjected to postmortem which was conducted by Dr. Ritesh Sen (P.W.-9) and as per the postmortem report (Ex. P/11), the cause of death is said to be asphyxia due to throttling and nature of death is said to be homicidal. After due investigation, the appellant herein was charge-sheeted for offence punishable under Sections 302, 201/34 of IPC and co-accused Shivram Sahu was charge-sheeted for offence punishable under Section 201/34 of IPC, which were committed to the Court of Sessions for trial in accordance with law. The appellant as well as the co-accused abjured their guilt and entered into defence.

4. In order to bring home the offence, prosecution examined as many as 24 witnesses and brought on record 30 documents. Statements of the appellant and the co-accused were recorded under Section 313 of CrPC wherein they denied guilt and they neither examined any witness nor brought any document on record.
5. Learned trial Court, after appreciation of oral and documentary evidence on record, though acquitted co-accused Shivram Sahu for offence punishable under Section 201/34 of IPC but proceeded to convict the appellant for offence punishable under Section 302, 201/34 of IPC.

6. Mr. B.P. Singh, learned counsel for the appellant, would submit that the three incriminating circumstances cataloged by the trial Court in paragraphs 23-28 are not at all established and therefore, appellant is entitled for acquittal from the offence in question.
7. Per contra, Mr. Sharad Mishra, learned State counsel, would support the impugned judgment and would submit that prosecution has been able to bring home the offence beyond reasonable doubt and there is sufficient oral as well as documentary evidence available on record to convict the appellant, as such, the conviction of the appellant for the aforesaid offence is well-merited and the instant appeal is liable to be dismissed.
8. We have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.
9. The case of the prosecution is not based on direct evidence and is rather based on circumstantial evidence, which has been cataloged by the trial Court in paragraph 22 of the impugned judgment as under :-

“(22) अब इस तथ्य पर विचार किया जाना है की क्या आरोपी धनेश्वर साहू, मृतका चंदा यादव की मृत्यु उसके गला को घोटकर कारित किया है ? इस संबंध में प्रकरण में प्रत्यक्षदर्शी साक्ष्य का अभाव है। अब यह देखना है की अभियोजन द्वारा अभिकथित निम्नलिखित परिस्थिति को अभियोजन प्रमाणित करने में सफल रहा है या नहीं ?

- 1 - क्या आरोपी धनेश्वर साहू को मृतका चंदा यादव के साथ अंतिम बार देखा गया है ?
- 2 - क्या आरोपी धनेश्वर साहू ने न्यायिकेतर संस्वीकृति कर मृतका चंदा यादव की हत्या करने की बात कबूला है ?

3 - क्या प्रार्थी दीपक साहू को आरोपी धनेश्वर साहू के द्वारा दिये गये घटना की जानकारी के आधार पर पुलिस को दिये गये सूचना एवं आरोपी धनेश्वर साहू के द्वारा किये गये निशानदेही पर मृतका चंदा यादव की शव बरामद की गई थी ?”

10. Now we will consider each of the aforesaid circumstances one-by-one in order to find out whether they have been established to convict the appellant for offence punishable under Section 302 and 201 of IPC.

I. Theory of last seen together :-

11. The trial Court, after going through the statements of Kishan Jaiswal (P.W.-13), Kismat Prajapati (P.W.-13) and Deepak Singh (P.W.-15), has clearly held in paragraph 27 of the impugned judgment that the fact of the appellant and the deceased, having been seen together before the death of the deceased, has not been found established, which is a correct finding of fact based on evidence available on record. Therefore, we do not find any perversity or illegality in this finding and hereby affirm the said finding that theory of last seen together has not been established.

II. Extra-judicial confession :-

12. It is the case of the prosecution that appellant has given extra-judicial confession to Deepak Sahu (P.W.-16) but since he has turned hostile, the trial Court has relied upon the statement of Maharati Bakawle (P.W.-6), who is the witness to dead body exhumation panchnama (Ex. P/8) and a careful perusal of his statement would show that it cannot be concluded that appellant, at any point

of time, has made extra-judicial confession before him that he has caused the death of deceased Chanda Yadav. As such, the incriminating circumstance of extra-judicial confession has also not been found established by the prosecution.

III. Exhumation of the dead body pursuant to memorandum statement of the appellant :-

13. It is the case of the prosecution that the dead body of Chanda Yadav was exhumed and recovered from the spot pursuant to the memorandum statement of the appellant. In this regard, it would be appropriate to notice that as per dead body exhumation panchnama (Ex. P/8), the dead body of deceased Chanda Yadav was exhumed on 11/12/2017 at 11 PM in the presence of two witnesses namely Manharan Yadav (P.W.-8) and Maharati Bakawle (P.W.-6) whereas the memorandum statement of the appellant (Ex. P/15) has been recorded on 12/12/2017 i.e. after the exhumation of the dead body. As such, the finding recorded by the trial Court holding that dead body of deceased Chanda Yadav was recovered at the instance of the appellant is not a correct finding of fact based on evidence available on record. The dead body was already exhumed and recovered on 11/12/2017 whereas the memorandum statement of the appellant was recorded on 12/12/2017. As such, the whereabouts of the dead body, though may be within the knowledge of the appellant, but it cannot be held that it

was recovered at the instance of the memorandum statement given by the appellant.

14. The Supreme Court in the matter of **Boby v. State of Kerala**¹ has held in paragraphs 33, 40 and 41 as under :-

“33. In the present case, leave aside the recovery panchnama being in accordance with the aforesaid requirement, there is no statement of Bobby (Accused 3-appellant herein) recorded under Section 27 of the Evidence Act. We are, therefore, of the considered view that the prosecution has failed to prove the circumstances that the dead body of the deceased was recovered at the instance of Bobby (Accused 3-appellant herein).

40. A perusal of para 71 of Suresh Chandra Bahri case² would reveal that the Court has reiterated that the two essential requirements for the application of Section 27 of the Evidence Act are that (1) the person giving information must be an accused of any offence and (2) he must also be in police custody. The Court held that the provisions of Section 27 of the Evidence Act are based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true and consequently the said information can safely be allowed to be given in evidence.

41. In the facts of Suresh Chandra Bahri case (supra), the Court found that there was, in fact, a confessional statement of the disclosure made by the appellant Gurbachan Singh which was confirmed by the recovery of the incriminating articles. As such, the Court believed the disclosure statement and the evidence led in that behalf. As already stated hereinabove, in the present case, there is no confessional statement of Bobby (Accused 3 – appellant herein) recorded with regard to recovery of the dead body of the deceased.”

15. Similarly, in the matter of **Suresh Chandra Tiwari v. State of Uttarakhand**³, it has been held by the Supreme

1 2023 LiveLaw (SC) 50

2 Suresh Chandra Bahri v. State of Bihar, 1995 Supp (1) SCC 80

3 2024 SCC Online SC 3531

Court that disclosure statement is not admissible in evidence because alleged discovery was not made pursuant to that statement.

16. In the instant case as well, the dead body was already exhumed and recovered vide Ex. P/8 on 11/12/2017 and thereafter, on 12/12/2017, memorandum statement (Ex. P/5) was recorded, as such, the dead body cannot be said to have been recovered at the instance of the appellant. Therefore, in light of the decisions rendered by the Supreme Court in the matters of **Boby** (supra) and **Suresh Chandra Tiwari** (supra), it can safely be held that the trial Court has erred in convicting the appellant for the offence punishable under Sections 302 and 201 of IPC holding that the dead body of the deceased was recovered pursuant to the memorandum statement of the appellant. Thus, we are of the considered opinion that the prosecution has miserably failed to bring home the offence in question against the appellant and as such, we hereby set aside the impugned judgment of conviction and order of sentence recorded by the trial Court convicting the appellant for offence punishable under Section 302 and 201 of IPC. Since the appellant is already on bail, he need not surrender, however, his bail bonds shall remain in operation for a period of six months in view of the provisions contained under Section 437A of CrPC.

17. Accordingly, this criminal appeal stands allowed.

18. Office is directed to transmit the lower court record along with the certified copy of this judgment to the court concerned forthwith for necessary information and compliance.

Sd/-
(Sanjay K. Agrawal)
Judge

Sd/-
(Sachin Singh Rajput)
Judge

Harneet