



2025:CGHC:11391-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 1728 of 2019

1. Rajkumar S/o Late Salikram Marawi Aged About 22 Years
R/o Village Polmi Banjhi Aamapara, Police Station -
Kukdur, District - Kabirdham Chhattisgarh.
2. Rajesh S/o Late Salikram Marawi Aged About 19 Years R/o
Village Polmi Banjhi Aamapara, Police Station - Kukdur,
District - Kabirdham Chhattisgarh.
3. Fuleshwari Bai W/o Rajkumar Marawi (Wrongly Mentioned
As Rajkumari) Aged About 20 Years R/o Village Polmi
Banjhi Aamapara, Police Station - Kukdur, District -
Kabirdham Chhattisgarh.

... Appellants

versus

State Of Chhattisgarh Through The Police Station Kukdur,
District - Kabirdham Chhattisgarh.

... Respondent

For Appellants : Mr. Ashutosh Shukla, Advocate

For Respondent : Mr. Sharad Mishra, Panel Lawyer



(Division Bench)

Hon'ble Shri Justice Sanjay K. Agrawal

Hon'ble Shri Justice Sanjay Kumar Jaiswal

Judgment On Board

(07.03.2025)

Sanjay Kumar Jaiswal, J.

1. This criminal appeal preferred by the appellants under Section 374(2) of Cr.P.C. is directed against the impugned judgment dated 29.04.2019, passed by learned Additional Sessions Judge (FTC), Kabirdham, Chhattisgarh, in Session Trial No.26/2018, by which, the appellants herein have been convicted and sentenced as under:

Conviction	Sentence
u/s 302/34 of IPC	Life imprisonment and fine of Rs.1,000/-, in default of payment of fine, 2 months additional rigorous imprisonment.
u/s 201/34 of IPC	Rigorous imprisonment for 1 year and fine of Rs.500/-, in default of payment of fine, 1 months additional rigorous imprisonment.

2. The case of prosecution, in nutshell, is that on 06.03.2018 between 7:00 a.m. to 6:00 p.m., at Bhedagarh Khar Nainsingh's field, PS Kukdur, District Kabirdham, the Appellants herein, in furtherance of their common intention, committed murder of Phulesar Bai (now deceased) by assaulting with stick and strangulating her and knowing fully well that she is dead, in order to screen from the legal punishment, they hanged the dead body on a Mahua tree in Bhedagarh Khar (field) to demonstrate it to be a case of suicide, thereby the offence has been committed.



3. The further case of prosecution is that on 06/03/2018 Phulesar Bai left her house at around 07.00 a.m. and did not return. In the evening, Mahuram (PW-16), resident of village Dalamoha, while bringing his wife back from Anganwadi, saw a woman hanging from a tree in Bhedagarh Khar. Then his son Ramsing informed Johit Ram Baiga (PW-17)-resident of village Bhedagarh who informed Kotwar Mahesh Ram (PW-10) about the incident. Kotwar Mahesh Ram (PW-10) went to the spot and informed the relatives of the deceased and the appellants. Then appellant Rajkumar reported the matter to Police Station, Kukdur, District Kabirdham based on which Merg Intimation was recorded vide Exhibit P-20. Inquest report Exhibit P-10 was prepared by the Police. The dead body of deceased was subjected to postmortem which was conducted by Dr. V. L. Raj (PW-11), who proved the post-mortem report (Ex. P-18), according to which, mode of death was asphyxia due to strangulation and death was homicidal in nature. The Police prepared Panchnama of the place of occurrence vide Ex. P-6 & 7 and seized bags, Sarees, blouse, slippers etc. from the spot vide Ex. P-21. Spot map and spot Panchnama was prepared vide Ex.P-16 & P-17. The internal organs (Viscera) of the deceased were sent for chemical examination to FSL, in which, as per FSL report Ex.P-30, no poison was found. On the basis of Merg investigation, First Information Report (Exhibit P-22) was registered against unknown persons. Pursuant to the memorandum of appellant Rajkumar, a stick was seized vide Ex.P-4 and on the memorandum statement of appellant Rajesh, a Gerwa (rope) was seized vide Ex.P-5 which was sent for chemical examination to FSL. As per FSL report (Ex.P-31), no blood was found on the



Gerwa. After completion of investigation, appellants herein were charge - sheeted for the aforesaid offence.

4. During the course of trial, in order to bring home the offence, the prosecution has examined as many as 17 witnesses and exhibited 31 documents. The statements of appellants / accused were recorded under Section 313 of the CrPC in which they denied the circumstances appearing against them in the evidence brought on record by the prosecution, pleaded innocence and false implication. However, the appellants in support of their defence have neither examined any witness nor exhibited any document.
5. The learned trial Court, after appreciating the oral and documentary evidence available on record, convicted the appellants / accused for the offence as mentioned in the opening paragraph of the judgment, against which this appeal has been preferred by the appellants questioning the impugned judgment of conviction and order of sentence.
6. Mr. Ashutosh Shukla, learned counsel for the appellants, would submit that the case is said to be based on circumstantial evidence but the prosecution has failed to establish any such circumstance which lead to the conclusion that the appellants have committed the alleged offence. He submits that the decision in question of the trial Court is based only on presumptions. The seizure and memorandum have not been supported by independent witnesses. No chemical examination of the allegedly seized stick was conducted nor was any blood found in the seized Gerwa (rope) as per the FSL report. He submits that the conviction of the appellants is not based on clear, sufficient and reliable evidence beyond doubt but on presumptions



which have no legal basis. Hence, the impugned judgment of conviction is not Maintainable and the same is liable to be set aside and the appellants deserves to be acquitted on the basis of benefit of doubt.

7. On the other hand, Mr. Sharad Mishra, learned State counsel, would support the impugned judgment and submit that the prosecution has been able to bring home the offence beyond reasonable doubt and the trial Court has rightly convicted the appellants for the aforesaid offence. As such, the appeal deserves 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 any direct evidence. It is based solely on circumstantial evidence. The five golden principles which constitute the Panchsheel of the proof of a case based on circumstantial evidence have been laid down by their Lordships of the Supreme Court in the matter of **Sharad Birdhichand Sarda v. State of Maharashtra**¹ which must be fulfilled for convicting an accused on the basis of circumstantial evidence. The relevant paragraph 153 of the said judgment reads 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. (1984) 4 SCC 116



(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*² 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."

2. (1973) 2 SCC 793



10. Now we will consider the incriminating circumstances recorded by the trial Court in the light of the principles of law laid down by the Hon'ble Supreme Court in the case of **Sharad Birdhichand Sarda (supra)**.
11. The first and foremost circumstance for consideration is as to whether the death of deceased Phulesar Bai was homicidal in nature?
12. Learned trial Court has recorded an affirmative finding in this regard relying upon the postmortem report Ex. P-18 proved by Dr. V. L. Raj (PW-11), according to which, mode of death was asphyxia due to strangulation and death was homicidal in nature, which is a finding of fact based on evidence available on record, it is neither perverse nor contrary to the record and we hereby affirm the said finding.
13. As regards other circumstances, as per the judgment of the trial Court itself, the prosecution has failed to prove any motive of the appellants. The trial Court itself has held in paragraph-29 of its judgment that the memorandum statements of appellants Rajkumar (Ex.P-1) & Rajesh (Ex.P-2) and the seizure of Stick and Gerwa (rope) made from their possession vide Exhibits P-4 & P-5 respectively, have not been supported by independent witnesses Ramkumar Baghel (PW-3) and Tilakram (PW-6). Thus, the said seizure from the possession of appellants Rajkumar and Rajesh has not been proved. Since the stick has not been chemically examined, its use in the offence has not been established. Similarly, according to FSL report (Ex.P-31), no blood was found on the Gerwa, due to which, the use of that Gerwa in the offence, which has been the main basis of the prosecution, has not been proved. Thus, the main ground has not been found proved by the trial Court.



- 14.** It is an undisputed fact that appellants Rajkumar and Rajesh are brothers who are sons of deceased Phulesar Bai. Appellant Fuleswari Bai W/o appellant Rajkumar is the daughter-in-law of deceased Phulesar Bai.
- 15.** On the basis of evidence available on record, it has been held by the trial Court that the accused persons and the deceased belong to the same family and were residing together. Despite this, between the time the deceased Phulesar Bai left the house at 07.00 in the morning and the time her dead body was found in the evening, the appellants did not give any information about her missing anywhere which shows that their conduct was that they had committed the offence themselves, hence they did not inform anyone nor did they give any information about missing of deceased Phulesar Bai before her dead body was found. Apart from this, the trial Court has held in paragraph-37 of its judgment that as per the postmortem report (Ex.P-18), the death was caused between 35 to 50 hours prior to the PM examination, therefore, it has been held that deceased Phulesar must have died between 04-05 am on 06/03/2017, whereas in the case lodged by appellant Rajkumar to the Police, it has been informed that deceased Phulesar Bai left the house at 07.00 a.m. and did not return. On this basis, the trial Court has presumed that the appellants killed Phulesar Bai in the house itself by tying her neck with a rope and hanged the dead body on a tree outside their house. Later, when the villagers saw the body, they gave false information to the Police that deceased Phulesar had left the house at 07.00 am and did not return.
- 16.** The above inference of the trial Court is based only on the medical opinion that the death had occurred about 35 to 50



hours before the PM examination. This inference cannot be termed as legal evidence and apart from this, no other incriminating circumstances/inference have been proved by the prosecution on the basis of which it can be concluded that deceased Phulesar Bai was killed in the house itself. No such weapon or evidence has been collected from the house of the appellants on the basis of which it can be presumed that death of Phulesar Bai was caused in the house. The body of Phulesar Bai was also found hanging from a tree outside the house. Her body was not found in the house where the appellants lived. Hence, no such explanation can be expected from the appellants to say as to when, how and under what circumstances Phulesar Bai died. Phulesar Bai is said to have left the house at 07.00 in the morning and her dead body was found in the evening. In the above situation, it cannot be held on the basis of the medical opinion alone that Phulesar Bai died in her house and later her dead body was taken away and hanged on a tree.

17. In view of the aforesaid discussions, we find that as per the principle of 'Panchsheel' laid down by the Honorable Supreme Court in the case of **Sharad Birhichand Sarda** (Supra), the chain of circumstances is not so complete in which the appellants can be held guilty for the offence. The prosecution has failed to produce evidence to prove the guilt of the appellants beyond the shadow of doubt on the basis of the circumstantial evidence. Consequently, we are unable to uphold the conviction of the appellants for offence punishable under Sections 302/34 & 201/34 of IPC and the appellants are entitled for acquittal on the basis of the principle of benefit of doubt.



- 18.** Accordingly, the impugned judgment dated 29.04.2019 passed by the Trial Court convicting and sentencing the appellants for offence under Sections 302/34 & 201/34 of IPC is hereby set aside/quashed on the basis of benefit of doubt and the appellants are acquitted of the said charges.
- 19.** Appellants Rajkumar and Rajesh are reported to be in jail. They be released from jail forthwith, if their detention is not required in connection with any other offence. Appellant Fuleshwari Bai is on bail. She need not surrender in this case. However, her bail bonds shall remain in force for a period of six months in view of the provisions contained in Section 437-A of the CrPC.
- 20.** This criminal appeal, accordingly, stands **allowed**.
- 21.** Let a certified copy of this judgment along with the original record be transmitted forthwith to the concerned trial Court for necessary information & action, if any. A copy of the judgment may also be sent to the concerned Jail Superintendent wherein the Appellants 1 & 2 are suffering the jail sentence.

Sd/-
(Sanjay K. Agrawal)
Judge

Sd/-
(Sanjay Kumar Jaiswal)
Judge