

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Criminal Appeal No. 926/2005

State of Rajasthan

----Appellant

Versus

1. Deep Singh son of Chatar Singh
2. Kishan Singh son of Puran Singh
3. Arjun Singh son of Heera Singh
All r/o Balli Badiya Salema, Police Station Bheem, District
Rajsamand.

----Respondent

For Appellant(s) : Mr. Ramesh Dewasi,P.P.
For Respondent(s) : Mr. Kshitij Vyas (Amicus Curiae)

**HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI
HON'BLE MR. JUSTICE SUNIL BENIWAL**

Judgment

Reserved on 08/07/2025

Pronounced on 16/07/2025

Per Dr. Pushpendra Singh Bhati, J:

1. This criminal appeal has been preferred by the appellant-State laying a challenge to the judgment of acquittal dated 29.04.2005 passed by the learned Additional District & Sessions Judge, Fast Track, Rajsamand (in short, 'Trial Court'), in Sessions Case No.11/05 (13/05) (State of Rajasthan Vs. Deepsingh & Ors.), whereby the accused-respondents, were acquitted of the charges against them under Sections 365 & 302/34 IPC, while extending them the benefit of doubt.

2. The matter pertains to an incident which had occurred in the year 2005 and the present appeal has been pending since the year 2005 itself.

3. Brief facts of the case, as placed before this Court by the learned Public Prosecutor appearing on behalf of the appellant-State, are that on 02.01.2005, one Laxman Singh (complainant), while being in a Hospital at Bheem, submitted a *Parcha Bayan*, stating that at the given point of time (time not known), the complainant went to meet his aunt (*Mausi*) at her house, where the complainant's younger brother, namely, Madan Singh came to call him. Thereupon, the complainant alongwith his brother left the said house and went on their way. At that time, the accused-respondents came and took the complainant away towards Salema, and after reaching there, the accused-respondents made the complainant consume liquor, and while he was in an intoxicated state, the accused-respondents gave beatings to the complainant. As per the complainant, when still he tried to walk on his own, the accused-respondents pour petrol on the complainant and lit the fire. Immediately upon this, the complainant rushed and reached the house of her aunt, where at, the fire was put out, and the complainant was taken to the hospital.

3.1. As per the complainant, immediately prior to commission of the alleged crime, the accused-respondents firstly, used the abusive language against the complainant, and when the

complainant resisted such act of the accused-respondents, they committed the alleged crime.

3.2. On the basis of the aforementioned *Parcha Bayan*, a case bearing No.4/05 was registered at the concerned police station under Sections 365 & 307/34 IPC, and the investigation commenced accordingly. While the investigation was underway, the complainant expired during the treatment, and thus, offence under Section 302 IPC was also added in the said case. After investigation, as against the accused-respondents, a charge-sheet was filed under Sections 365 & 302/34 IPC before the learned Additional Chief Judicial Magistrate, Bheem on 08.02.2005; owing to the nature of crime involved, the case was committed for Sessions Trial, and the matter was transferred to the learned Trial Court for the necessary trial.

3.3. During the course of trial, the statements of 16 witnesses (PW 1 to PW. 16) were recorded, and documents (Ex.P.1 to Ex.P.24) were exhibited on behalf of the prosecution; in defence, only one witness was produced and documents (Ex.D.1 to Ex.D.6) were exhibited, for examination; whereafter, the accused-respondents were examined under Section 313 Cr.P.C., in which they pleaded innocence and false implication in the criminal case in question.

3.4. Upon conclusion of the trial, the learned Trial Court, having found that the prosecution failed to establish its case beyond all reasonable doubts, extended the benefit of doubt to the accused-respondents and consequently acquitted the accused-respondents

of the charges as against them, vide the impugned judgment of acquittal dated 29.04.2005, as mentioned above. Aggrieved thereby, the appellant-State has preferred the present appeal.

4. Learned Public Prosecutor appearing on behalf of the appellant-State submitted that the deceased, Laxman Singh, in his *Parchabayan* (Ex.P.1), which was recorded by the Investigating Officer, Mana Lal (PW.16), in the presence of Dr. Shaitan Singh, explicitly named the accused persons and provided a detailed account of the incident. It was further contended that the contents of the said *Parchabayan* stood duly corroborated by the testimonies of various prosecution witnesses, including Bhagwan Singh (PW.6, cousin of the deceased), Daulat Singh (PW.9, father of the deceased), Bhadu Singh (PW.10), Chaman Singh (PW.11), Mohan Singh (PW.12, brother of Bhagwan Singh), Heeri (PW.13, mother of the deceased), and Narmada (PW.14, wife of the deceased).

4.1. Learned Public Prosecutor further submitted that the prosecution witnesses have consistently narrated the same sequence of events pertaining to the incident, specifically stating that they saw the deceased in a burnt condition and that the deceased informed them that the accused-respondents had abducted him and set him ablaze. It was urged that the testimonies of the said witnesses are in substantial conformity with one another and suffer from no material contradictions or discrepancies, thereby lending strong corroborative value to the prosecution's version. Thus, it was contended that in the present

case, the chain of evidence is complete and cogent, and the prosecution has successfully discharged the burden of proving the guilt of the accused-respondents beyond all reasonable doubts.

4.2. Learned Public Prosecutor also submitted that the circumstantial evidence, including the recovery of a kerosene jar at the instance of accused-respondent Deep Singh (Ex.P.20), and disclosure of the place of incident by accused-respondents Kishan Singh (Ex.P.21) and Arjun Singh (Ex.P.22), clearly indicate their involvement in the crime in question. It was contended that the said recoveries, form part of a consistent chain of evidence that supports the prosecution case and establishes the guilt of the accused-respondents beyond all reasonable doubts.

4.3. Learned Public Prosecutor thus submitted that the learned Trial Court, while passing the impugned judgment of acquittal, failed to properly appreciate the evidence on record and did not apply the settled principles of law in their correct perspective. It was thus contended that the impugned judgment suffers from serious legal infirmities and warrants interference, and consequently, deserves to be quashed and set aside.

5. Per Contra, Mr. Kshitij Vyas, learned Amicus Curiae for the accused-respondents while opposing the aforesaid submissions made on behalf of the appellant-State, submitted that the prosecution case was having serious legal infirmities, in the light of which the learned Trial Court has rightly passed the impugned judgment of acquittal by granting benefit of doubt to the accused-respondents.

5.1. It was further submitted that although the deceased, in his *Parchabayan* (Ex.P.1), and the prosecution witnesses, in their respective depositions, have alleged that three individuals—namely Deep Singh, Kishan Singh, and Arjun Singh—were responsible for the commission of the crime in question, none of them has disclosed the parentage of the said individuals. It was contended that such omission creates ambiguity regarding the precise identity of the accused persons and their alleged involvement in commission of the crime in question. It was also submitted that no dying declaration was recorded before the Magistrate concerned.

5.1.1. It was further submitted that the Sarpanch List (Ex.D.5) reflects that the village has 14 individuals named “Deep Singh,” 16 named “Kishan Singh,” and 5 named “Arjun Singh,” which is corroborated by the Voter List (Ex.D.6) and the statements of the accused-respondents under Section 313 Cr.P.C. It was thus contended that in view of the disputed identity, fastening criminal liability upon the accused-respondents would be contrary to the settled principles of criminal jurisprudence.

5.2. It was also submitted that the FIR, based on the deceased’s dying declaration, does not disclose any motive for the alleged act, and even Narmada (PW.14), wife of the deceased, admitted to having no knowledge of any enmity between the deceased and the accused-respondents.

5.3. Learned counsel further submitted that the kerosene jar allegedly recovered at the instance of accused-respondent Deep

Singh was neither sent for forensic examination nor subjected to fingerprint analysis, thereby diminishing its evidentiary value and rendering it insufficient to conclusively establish the involvement of the accused.

5.3.1. Learned counsel further submitted that the recovery witnesses, Amar Singh (PW.7) and Rathod Singh (PW.8), turned hostile, thereby further weakening the evidentiary value of the alleged recoveries.

5.4. Learned counsel also submitted that both the Injury Report (Ex.P.14) and the Postmortem Report (Ex.P.15) confirm that the deceased sustained burn injuries and that resultantly the death was caused after 5 days during the treatment; however, neither report conclusively connects the accused-respondents to the infliction of those injuries or establishes the precise manner in which the burns were caused.

5.4.1. Learned counsel further submitted that the prosecution has failed to examine Dr. Shaitan Singh, in whose presence the dying declaration of the deceased was recorded by Mana Lal (PW. 16).

5.5. Learned counsel also submitted that the prosecution's star witness, Madan Singh (PW.3), brother of the deceased—who, according to the prosecution, had gone to call the deceased from their aunt's residence and accompanied him on the way back—has been declared hostile. Thus, as per learned counsel, the foundational basis of the prosecution's case stands considerably weakened.

5.6. Learned counsel relied on the following judgments in support of his case:

(1) *Smt. Kalawati vs State of Rajasthan* (1994(3)WLC 224)

(2) *Sharad Birdhichand Sarda vs State of Maharashtra*, (1984)4 SCC 116.

5.7. Learned counsel thus submitted that in the absence of any eyewitnesses or last seen evidence, coupled with significant gaps and inconsistencies in the prosecution case, the benefit of doubt was rightly extended to the accused-respondents by the learned Trial Court. Hence, no interference by this Hon'ble Court is warranted in the present appeal.

6. Heard learned counsel for the parties as well as perused the record of the case.

7. This Court observes that the foundation of the prosecution case primarily rests upon the *Parchabayan* (Ex.P.1) of the deceased Laxman Singh, which was recorded by the Investigating Officer (PW.16) in the presence of Dr. Shaitan Singh. In the said statement, the deceased has named the accused-respondents and described the events that allegedly led to his being set ablaze. However, the prosecution failed to examine Dr. Shaitan Singh, an essential witness whose testimony could have lent authenticity to the recording and voluntariness of the *Parchabayan*. The absence of such corroboration raises a question on the evidentiary sanctity of the alleged dying declaration.

7.1. This Court further observes that the identity of the accused-respondents, as alleged in the *Parchabayan* and the testimonies of prosecution witnesses, has not been established beyond doubt. Notably, none of the witnesses, including the deceased, disclosed the parentage or distinguishing identification of the alleged accused persons. The defence has placed on record the Sarpanch List (Ex.D.5) and the Voter List (Ex.D.6), which reflect that multiple individuals bearing the names "Deep Singh," "Kishan Singh," and "Arjun Singh" reside in the same village. This raises substantial doubt regarding the exact identity of the perpetrators, thereby affecting the credibility of the prosecution's case.

8. This Court also notes that the prosecution's own star witness, Madan Singh (PW.3)—the brother of the deceased, who was allegedly last seen with him—turned hostile. His testimony could have been pivotal in connecting the sequence of events between the time the deceased left his aunt's house and the alleged assault. The failure of this crucial witness to support the prosecution version has materially shaken the core of the prosecution's case.

9. This Court further observes that the prosecution case is devoid of any eyewitness account to the actual incident, and that the prosecution witnesses have uniformly deposed to having seen the deceased in a burnt condition, but none have witnessed the act of setting him ablaze or identified the person(s) responsible for causing the burns. Thus, the prosecution case rests entirely on circumstantial evidence, and the guilt of the accused-respondents

must, therefore, be established by a chain of circumstances so complete and conclusive that it excludes every reasonable hypothesis other than the guilt of the accused.

9.1. In this regard, this Court is conscious of the judgment rendered by the Hon'ble Apex Court in the case of ***Sharad Birdhichand Sarda v. State of Maharashtra (1984) 4 SCC 116***, wherein the Hon'ble Apex Court laid down the five golden principles, which constitute the *Panch-Sheel* of the proof of a case based on circumstantial evidence; the same reads as follows:

"(1) The circumstances from which the conclusion of guilt is to be drawn should be fully established. It may be noted here that this [2024:RJ-JD:41779-DB] (10 of 16) [CRLA-296/1998] 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 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,

(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."

10. This Court also observes that while the Injury Report (Ex.P.14) and the Postmortem Report (Ex.P.15) confirm that the deceased suffered burn injuries leading to death after five days, neither report establishes a link between the burn injuries and the accused-respondents. Further, the prosecution failed to lead medical or scientific evidence demonstrating the manner of infliction or the cause of such injuries with forensic certainty.

11. This Court further observes that the recovery of the kerosene jar, allegedly made at the instance of accused-respondent Deep Singh (Ex.P.20), was not substantiated through forensic analysis or fingerprint examination. Moreover, the recovery witnesses, Amar Singh (PW.7) and Rathod Singh (PW.8), turned hostile, thereby casting serious doubt on the reliability and admissibility of the said recovery as incriminating evidence.

12. This Court also observes that the prosecution has not established any motive behind the alleged act. The FIR, based on the dying declaration, is silent on motive, and even the deceased's wife, Narmada (PW.14), admitted in her testimony that she was unaware of any enmity between the deceased and the accused-respondents. In criminal jurisprudence, although motive is not always essential, its absence becomes material when the

prosecution's case hinges on circumstantial evidence and lacks direct testimony.

13. This Court also observes that the circumstantial evidence relied upon by the prosecution—such as the disclosures under Section 27 of the Evidence Act (Ex.P.21 and Ex.P.22)—do not form a complete and unbroken chain conclusively pointing to the guilt of the accused-respondents.

13.1. Thus, in the present case, this Court finds that the prosecution has failed to establish a complete and unbroken chain of circumstances that would irresistibly point towards the guilt of the accused-respondents. The absence of direct evidence, lack of conclusive identification, non-examination of key witnesses, and the presence of material contradictions and omissions collectively prevent the case from meeting the rigorous standards laid down under the Panchsheel doctrine. Accordingly, the benefit of doubt must operate in favour of the accused-respondents.

14. At this juncture, this Court deems it appropriate to reproduce the relevant portions of the judgments rendered by the Hon'ble Apex Court in the cases of ***Mallappa & Ors. Vs. State of Karnataka (Criminal Appeal No. 1162/2011***, decided on 12.02.2024) and ***Babu Sahebagouda Rudragoudar and Ors. Vs. State of Karnataka (Criminal Appeal No. 985/2010***, decided on 19.04.2024), as hereunder-:

Mallappa & Ors. (Supra):

"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 or 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.”

Babu Sahebagoada Rudragoudar and Ors. (Supra):

“38. Further, in the case of H.D. Sundara & Ors. v. State of Karnataka (2023) 9 SCC 581 this Court summarized the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 of CrPC as follows:

“8.1. The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible

view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible."

39. Thus, it is beyond the pale of doubt that the scope of interference by an appellate Court for reversing the judgment of acquittal recorded by the trial Court in favour of the accused has to be exercised within the four corners of the following principles:

(a) That the judgment of acquittal suffers from patent perversity;

(b) That the same is based on a misreading/omission to consider material evidence on record;

(c) That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record."

14. This Court further observes that the learned Trial Court passed the impugned judgment of acquittal which in the given circumstances, is justified in law, because as per the settled principles of law as laid down by the Hon'ble Apex Court in the aforementioned judgments, to the effect that the judgment of the Trial Court can be reversed by the Appellate Court only when it demonstrates an illegality, perversity or error of law or fact in arriving at such decision; but in the present case, the learned Trial Court, before passing the impugned judgment had examined each and every witnesses at a considerable length and duly analysed the documents produced before it, coupled with examination of the oral as well as documentary evidence, and thus, the impugned

judgment suffers from no perversity or error of law or fact, so as to warrant any interference by this Court in the instant appeal.

15. This Court also observes that the scope of interference in the acquittal order passed by the learned Trial Court is very limited, and if the impugned judgment of the learned Trial Court demonstrates a legally plausible view, mere possibility of a contrary view shall not justify the reversal of acquittal as held by the Hon'ble Apex Court in the aforementioned judgment, and thus, on that count also, the impugned judgment deserves no interference by this Court in the instant appeal.

16. Thus, in light of the aforesaid observations and looking into the factual matrix of the present case as well as in light of the aforementioned precedent laws, this Court does not find it a fit case warranting any interference by this Court.

17. Consequently, the present appeal is ***dismissed***.

17.1. Keeping in view the provision of Section 437-A Cr.P.C./481 B.N.S.S., each of the accused-respondents are directed to furnish a personal bond in a sum of Rs. 25,000/- and a surety bond in the like amount, before the learned Trial Court, which shall be made effective for a period of six months, to the effect that in the event of filing of Special Leave Petition against this judgment or for grant of leave, the accused-respondents, on receipt of notice thereof, shall appear before the Hon'ble Supreme Court as soon as they would be called upon to do so.

17.2. All pending applications stand disposed of. Record of the learned Trial Court be sent back forthwith.

18. This Court is thankful to Mr. Kshitij Vyas, who has rendered his assistance as an Amicus Curiae, on behalf of the accused-respondents, in the present adjudication.

(SUNIL BENIWAL), J.

(DR.PUSHPENDRA SINGH BHATI), J.

SKant/-