CGHC010020832015 2026:CGHC:37303-DB

SAIFAN KHAN Digitally signed by SAIFAN KHAN

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 1110 of 2015

[Arising out of judgment dated 10.04.2015, passed in Sessions Trial No.23/2015 (State of Chhattisgarh v. Devprakash Yadav @ Dou and another) by the 3rd Addl. Sessions Judge, Janjgir-Champa (CG)]

Devprakash Yadav @ Dou S/o Banshilal Yadav Aged About 23 Years R/o Near Rail Line, Khokhsa Khar, Police Station - Janjgir, District - Janjgir- Champa Chhattisgarh

... **Appellant**

(On Bail)

Versus

The State of Chhattisgarh, through Station House Office, Police Station- Janjgir, District- Janjgir-Champa (Chhattisgarh)

... **Respondent**

[Cause-title taken from Case Information System (CIS)]

For Appellant : Ms. Priyanka Shukla, Advocate
For Respondent : Mr. Rahul Tamaskar, Government Adv.

Division Bench

Hon'ble Mr. Justice Sanjay K. Agrawal, and
Hon'ble Mr. Justice Radhakishan Agrawal

Judgment on Board
(20.08.2026)

Sanjay K. Agrawal, J

(1) Invoking criminal appellate jurisdiction of this Court, the sole appellant herein has preferred this criminal appeal under Section 374(2) of Cr.P.C., calling in question the legality, validity and

correctness of the impugned judgment of conviction and order of sentence dated 10.04.2015, passed in Sessions Trial No.23/2015 (State of Chhattisgarh v. Devprakash Yadav @ Dou and another) by the 3rd Addl. Sessions Judge, Janjgir-Champa (CG), whereby he has been convicted and sentenced as under:

Conviction	Sentence
U/s. 302 of IPC	Imprisonment for life with fine of Rs.500/- and, in default of payment of fine, additional rigorous imprisonment for 04 months.
U/s. 201 of IPC	Rigorous imprisonment for 03 years with fine of Rs.500/- each and, in default of payment of fine, additional rigorous imprisonment for 04 months.

[All the sentences are directed to run concurrently]

(2) The case of the prosecution, in short, is that between 15-21/09-2014, the accused-appellant herein alongwith his father- Banshilal Yadav (acquitted co-accused), in furtherance of their common objection, assaulted Mukesh Yadav (hereinafter referred to as the "deceased") by means of wooden stick, due to which, he suffered grievous injuries and died and, further, in order to screen themselves from the legal punishment, threw the dead-body of the deceased in pond (dabri) situated near the railway line and, thereby, said to have committed the aforesaid offence.

(3) It is further case of the prosecution that when the matter was reported to the police, merg intimation vide No.147/2014 and FIR (Ex.P/13) were registered and wheels of investigation started

running, in which, summons under Section 175 of CrPC were sent vide Ex.P/03 & Ex.P/04 and inquest proceedings were conducted vide Ex.P/05. Spot map was also prepared vide Ex.P/01. The dead-body of the deceased was sent for postmortem examination, which was conducted by Dr. HS Chandel (PW-09) and, as per PM report (Ex.P/06A), cause of death of the deceased is shock and hemorrhage due to head injuries and its complication and nature of death is homicidal. The appellant-accused was arrested vide Ex.P/10 and his memorandum statement was recorded vide Ex.P/07. Pursuant to the memorandum statement of the appellant, weapon of the offence i.e. wooden stick, ragzine purse and cycle frame were seized vide Ex.P/08. However, the seized articles were not sent for chemical examination for the reason best knonw to the prosecution. After statements of witnesses were recorded and due investigation, the police filed charge-sheet against the appellant and acquitted co-accused in the competent criminal court having jurisdiction and, thereafter, the case was committed to the Court of Sessions for hearing and trial in accordance with law, in which the appellant/accused abjured his guilt and entered into defence by stating that he is innocent and has been falsely implicated.

(4) The prosecution in order to prove its case examined as many as 11 witnesses and exhibited 16 documents, whereas the appellant-accused in support of his defence neither examined any witness nor exhibited any document.

(5) The learned trial Court after appreciating the oral and documentary evidence available on record, thought acquitted co-accused Banshilal Yadav for the same set of offence and proceeded to convict the appellant for offence under Sections 302 & 201 of IPC and sentenced him as mentioned herein-above, against which this appeal has been preferred by the appellant-accused questioning the impugned judgment of conviction and order of sentence.

(6) Learned counsel appearing for the appellant submits that the learned trial Court is unjustified in convicting the appellant for the aforesaid offence, as the prosecution has failed to prove the offence beyond reasonable doubt. Learned counsel argued that the conviction of the appellant is totally based on perverse finding. There is no evidence available on record to show that the appellant has caused murder of the deceased. Phulbai (PW-02), Ramnihor (PW-03), Ramashray (PW-04) and Mankibai (PW-05) have only stated that the deceased had gone to the house of the appellant, but nobody has seen that whether actually the deceased had visited the house of the appellant or not and, the learned trial Court presumed that the deceased must have visited the house of the appellant and, the appellant might have caused death of the deceased. Neither there is any eye-witness to the incident of appellant assaulting the deceased in the present case nor there is any other evidence available on record to demonstrate the said fact. Furthermore, so far recovery of wooden stick, pursuant to the memorandum statement of

the appellant is concerned, there is no evidence to show that whether the appellant has used the said wooden stick in commission of the offence in question, therefore, recovery of aforesaid is of no help to the prosecution and, even, there is no FSL report available on record to show that whether any stains of blood are present on it or not. Hence, the present appeal deserves to be allowed and the appellant is liable to be acquitted of the said charges on the basis of benefit of doubt.

(7) *Per-contra*, learned State counsel supported the impugned judgment of conviction and order of sentence and submits that the prosecution has proved the offence beyond reasonable doubt by leading evidence of clinching nature. In view of the statements of prosecution witnesses coupled with other material available on record, the learned trial Court has rightly convicted the appellant for offence under Sections 302 & 201 of IPC. Thus, the present 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 first and foremost question is as to whether the death of the deceased was homicidal in nature, which the learned trial Court has recorded in affirmative by taking into consideration the postmortem report (Ex.P/06A), wherein it has been opined that

cause of death of the deceased is shock and hemorrhage due to head injuries and its complication and nature of death is homicidal, which is duly proved by the statement of Dr. HS Chandel (PW-09). Accordingly, taking into consideration the postmortem report (Ex.P/06A) and the statement of Dr. HS Chandel (PW-09), who has conducted the postmortem of the dead-body of the deceased, we are of the considered opinion that the death of the deceased is homicidal in nature, as the same is correct finding of fact based on evidence and same is neither perverse nor contrary to the record. We hereby affirm the said finding.

(10) Now, the next question for consideration would be whether the appellant herein is the author of the crime or not ?

(11) In the case at hand, it is also the case of the prosecution that the appellant was arrested on the report lodged by one Ravi Yadav and he was charge-sheeted for offences under Section 454 & 427 of IPC and, subsequently after releasing from bail, the appellant demanded money from the father of the deceased and, due to non-payment of the money, the appellant took the bicycle of the deceased. Thereafter, on the date of incident i.e. on 15.09.2014, the deceased went to the house of the appellant for getting his bicycle back, whereby it is alleged that the appellant alongwith his father-Banshilal (acquitted co-accused) kill the deceased and threw the dead-body near railway line. After one week from the incident, on

21.09.2014, the dead-body of the deceased was recovered near railway line and the matter was reported to the police, upon which, merg No.147/014 was registered and on the basis of merge investigation, the appellant and co-accused- Banshilal Yadav were arrested. In this regard, the learned trial Court has relied upon the testimonies of Phulbai (PW-02), Ramnihor (PW-03), Ramashray (PW-04) and Mankibai (PW-05).

(12) However, a careful perusal of the statement of Phulbai (PW-02), who is mother of the deceased, would show that she has only stated that on the date of offence i.e. on 15.09.2014 the deceased informed her that he is going to the house of Banshilal (co-accused) for bringing back his cycle, but he did not came back and thereafter on 21.09.2014 the dead-body of the deceased was recovered and, upon which, he had doubt that the appellant and his father (Banshilal) might have killed him. However, in the cross-examination, she has clearly stated that she did not visit the house of the appellant to enquiry whether his son (deceased) had actually visited his house or not. Similar statement has been made by Ramnihor (PW-03), who is father of the deceased, that his son (deceased) informed that he is going to the house of Banishlal (co-accused) to get back his cycle and thereafter did not return back and later on 21.09.2014 his dead-body was noticed and recovered. Ramnihor (PW-03) also did not visit the house of the appellant to enquiry whether his son (deceased) has actually visited his house to

get back his cycle or not. Further, in the cross-examination he has also admitted that nobody has seen the appellant herein taking his cycle from his house. Furthermore, Ramashray (PW-04), who is uncle of the deceased, has clearly stated that he was informed about the incident by Phulbai (PW-02) and Ramnihor (PW-03) and he personally have no knowledge about it. He further expressed his apprehension that the deceased must have been killed by the appellant herein. But, he has not seen that any cycle was taken by the appellant from the house of the deceased. Similarly, Mankibai (PW-05) another uncle of the deceased has also stated that he was informed about the incident by Phulbai (PW-02) and Ramnihor (PW-03) and he personally have not knowledge about it. As such, there is no evidence available on record to show that any of the prosecution witness has seen the deceased actually going to the house of the appellant before the incident of his death. It is only on the basis of assumption and apprehension that the deceased might have been killed by the appellant, as prior to his death, the deceased informed that he is going to the house of the appellant to bring his cycle and did not return back to the house and later on his dead-body was found near the railway line, which the learned trial Court has relied upon to hold the appellant guilty for the offence. However, it is settled law that suspicion howsoever great may be, but it cannot take place of legal proof (**See**: **Sharad Birdhichand Sarda v State of**

Maharashtra[1]). Consequently, reliance placed by the learned trial Court on the testimonies of Phulbai (PW-02), Ramnihor (PW-03), Ramashray (PW-04) and Mankibai (PW-05) in order to hold appellant guilt for the offence is totally bad and illegal and, therefore, the same is hereby discarded. We hereby hold accordingly.

(13) The next piece of evidence that has been relied upon by the learned trial Court is recovery of wooden stick, cycle frame and purse vide Ex.P/08 pursuant to the memorandum statement of appellant recovered vide Ex.P/07, however, the same is also not free from doubt for the reason there is no evidence available on record to show that it is the appellant herein has used the said wooden stick in commission of the offence in question and, therefore, the recovery aforesaid is not a reliable piece of evidence in the present case (**See**: **Mustkeem alias Sirajudeen vs. State of Rajasthan**[2]. Moreover, there is no evidence available on record to demonstrate the ownership of said the cycle frame and purse, therefore, the recovery of same is also of no help to the prosecution. As such, recovery aforesaid is also of no help to the prosecution and cannot be relied upon to hold the appellant guilty for the offence in question. We hereby hold accordingly.

(14) Before parting with the record, it would be necessary to consider one legal aspect cropped up in this matter, as the appellant

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1 (1984) 4 SCC 116

2 (2011) 11 SCC 724

and co-accused (his father- Banshilal) both were charged for offence under Section 302/34 & 201 of IPC on 30.10.2015 on the allegation that the appellant and his father- Banshilal, in furtherance of their common object, committed murder of the deceased and threw the dead-body near railway line, however, co-accused- Banshilal was acquitted by the leaned trial Court vide impugned judgment dt. 10.04.2015 on the ground that there is no evidence available on record to convict him for the aforesaid offence, whereas the appellant herein has been convicted for the offence under Section 302 & 201 of IPC.

(15) In this regard, the Supreme Court in the matter of **Krishna Govind Patil v. State of Maharashtra**[3] may be noticed, in which, four accused persons were charged for offence under Section 302/34 and, out of whom, 03 were acquitted, their Lordships have clearly held that the fourth accused cannot be convicted for having committed the offence jointly with the acquitted persons and observed in Para-06 & 08 as under:

> "**6.** …. It is well settled that common intention within the meaning of the section implied a pre-arranged plan and the criminal act was done pursuant to the prearranged plan. The said plan may also develop on the spot during the course of the commission of the offence; but the crucial circumstance is that the said plan must precede the act constituting the offence. If that be so, before a court can convict a person under s. 302, read with s. 34, of the Indian Penal Code, it should come to a definite conclusion that .the said person, had

3 AIR 1993 SC 1413

a prior concert with one or more other persons, named or unnamed, for committing the said offence. A few illustrations will bring out the impact of s. 34 on different situations.

8. But the present case falls outside the said three illustrations. The High Court gave conflicting findings. While it acquitted accused 1, 3 and 4 under s. 302, read with s. 34 of the Indian Penal Code, it convicted accused 2 under s. 302, read with s. 34, of the said Code, for having committed the offence jointly with the acquitted persons. That is a legally impossible position. When accused were acquitted either on the ground that the evidence was not acceptable or by giving benefit of doubt to them, the result in law would be the same : it would mean that they did not take part in the offence. The effect of the acquittal of accused 1, 3 and 4 is that they did not conjointly act with accused 2 in committing the murder. If they did not act conjointly with accused 2, accused 2 could not have acted conjointly with them. Realizing this mutually destructive findings of the High Court, learned counsel for the State attempted to sustain the findings of the High Court by persuading us to hold that if the said finding was read in the context of the whole judgment, it would be clear that the learned judges meant to hold that persons other than the acquitted accused conjointly acted with the convicted accused. We have gone through the entire judgement carefully with the learned counsel. But the observations of the learned judges ;is regards the "'other participants" in the Grime must in the context refer only to the "'one or other of the said three acquitted accused participated in the offence committed by accused 2. There is not a single observation in the judgment to indicate that persons other than the said accused participated in the offence, nor is there any evidence in that regard. We, therefore, hold that the judgment of the High Court cannot stand. We are satisfied that on the findings arrived at by the High Court, the conviction of accused 2 is clearly wrong."

(16) Similarly, in the matter of **Baul and another v. The State of UP**[4], where two accused persons were convicted for offence under Section 302/34 of IPC and acquittal of one in an appeal by the High Court and where the nature of actual injuries caused by the accused is not proved, their Lordships have held that remaining accused person cannot be convicted for offence under Section 302 and observed in Para-7 as under:

> "7. No doubt the original prosecution case showed that Sadhai and Ramdeo both hit the deceased on the head with their lathies. One is tempted to divide the two fatal injuries between the two ,assailants and to hold that one each was caused by them. If there was common intention established in the case the prosecution would not have been required to prove which of the injuries was caused by which assailant. But when common intention is not. proved the prosecution must establish the exact nature of the injury caused by each accused and more so in this case when one of the accused has got the benefit of the doubt and has been acquitted. It cannot, therefore, be postulated that Sadhai alone caused all the injuries on the head of the deceased. Once that position arises the doubt remains as to whether the injuries caused by Sadhai were of the character which would bring his case within S. 302. It may be that the effect of the first blow became more prominent because another blow landing immediately after it caused more fractures to the skull than the first blow had caused. These doubts prompt us to give the benefit of doubt to Sadhai. We think that his conviction can be safely rested under S. 325 of the Indian Penal Code, but it is difficult to hold in a case of this type that his guilt amounts to murder simpliciter because he must be held responsible for all the injuries that were caused to the deceased. We convict him instead of S. 302 for an offence under S. 325, Indian Penal Code and set aside the

4 AIR 1986 SC 728

sentence of imprisonment for life and instead sentence him to rigorous imprisonment for seven years."

(17) The *dicta* of the above-mentioned judgments has further been followed with approval in the matter of **Sukhram v. State of MP**[5], wherein it has been held that where two accused persons were convicted for offence under Section 302/34 of IPC by the trial Court and one of them is acquitted by the High Court on the basis of benefit of doubt the conviction of another accused cannot stand and observed in Para-10 as under:

"10. There is another aspect of the matter which has also escaped the notice of the High Court when it sustained the conviction of the appellant under Section 302 read with Section 34 and Section 436 read with Section 34 I.P.C. while acquitting accused Gokul of those charges. Though the accused Gokul and the appellant were individually charged under Sections 302 and 436 I.P.C., they were convicted only under the alternative charges under Section 302 read with Section 34 and Section 436 read with Section 34 I.P.C. by the Sessions Judge. Consequently, the appellant's convictions can be sustained only if the High Court had sustained the convictions awarded to accused Gokul also. Inasmuch as the High Court has given the benefit of doubt to accused Gokul and acquitted him, it follows that the appellant's convictions for the two substantive offences read with Section 34 I.P.C. cannot be sustained because this is a case where the co-accused is a named person and he has been acquitted and by reason of it the appellant cannot be held to have acted conjointly with anyone in the commission of the offences. This position of law is well settled by this Court and we may only refer to a few decisions in this behalf vide Prabhu Babaji v. State of Bombay (AIR 1956 SC 51), Krishna Govind Patil v. State of Maharashtra (AIR 1963 SC 1413)and Baul v. State of U.P. (AIR

5 1989 Supp (1) SCC 214

1968 SC 728."

(18) In view of the above legal position, since in the present case one the accused person, namely, Banshilal (A-2), who has been charged for the same offence alongwith the appellant and, he acquitted by the learned trial Court for ofence under Section 302 & 201 of IPC, the conviction of the appellant for the same offence is also illegal and unsustainable and, on this count also, the the conviction of the appellant is liable to be set aside. We hereby hold accordingly.

(19) In view of foregoing analysis, we are unable to hold that the prosecution has been able to prove its case beyond all reasonable doubt, in absence of which, the learned trial Court is unjustified in convicting the appellant for offences under Sections 302 & 201 of IPC being the author of the crime in question in light of the findings culled out in the impugned judgment and same are liable to be set aside.

(20) Accordingly, we hereby set aside the conviction so recorded and the sentence so awarded by the trial Court to the appellant vide the impugned judgment dated 10.04.2015. The appellant is acquitted of the charges under Sections 302 & 201 of the IPC on the basis of benefit of doubt. The appellant is reported to be on bail, therefore, he need not to surrender. However, his bail bonds shall remain in force for a further period of six months in view of the provision contained

in Section 437-A of the CrPC.

(21) This criminal appeal is **allowed.**

(22) Let a certified copy of this judgment alongwith the original record be transmitted to the trial Court concerned for necessary information and action, if any.

Sd/-
(Sanjay K. Agrawal)
Judge

sd/-
(Radhakishan Agrawal)
Judge

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