SAIFAN KHAN Digitally signed by SAIFAN KHAN

CGHC010031732019 2026:CGHC:36512-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 191 of 2019

[Arising out of judgment dated 11.01.2019, passed in Sessions Trial No.77/2018 (State of Chhattisgarh v. G. Vikrant Koshley) by the 8th Addl. Sessions Judge, Bilaspur (CG)]

G. Vikrant Koshley, S/o Gokul Prasad Koshley, aged about 25 years, R/o Sarvan Devari, Police Station- Ratanpur, District- Bilaspur, (Chhattisgarh)

... **Appellant**
(On Bail)

Versus

State of Chhattisgarh, through Aarakshi Kendra, Ratanpur, District- Bilaspur, (Chhattisgarh)

... **Respondent**

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

For Appellant : Mr. Rishi Rahul Soni, Advocate
For Respondent : Mr. HAPS Bhatia, Panel Lawyer

Division Bench

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

Judgment on Board
(17.08.2026)

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 11.01.2019, passed in Sessions Trial No.77/2018 (State of Chhattisgarh v. G. Vikrant Koshley) by the 8th Addl. Sessions Judge, Bilaspur (CG), whereby he has been convicted for offence under Section 302 of IPC and sentenced to undergo imprisonment for life with fine of Rs.500/- and, in default of payment of fine, additional rigorous imprisonment for 02 months.

(2) The case of the prosecution, in short, is that on 01.05.2018 between 11 PM to 12 AM, at Village Sarvan Devari, which comes within the ambit of Police Station Ratanpur, District Bilaspur (CG), the accused-appellant herein assaulted his father, namely, Gokul Prasad (hereinafter referred to as the "deceased") by means of stick, due to which, he suffered grievous injuries and died 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 (Ex.P/06) and FIR (Ex.P/03) were registered and wheels of investigation started running, in which, summons under Section 175 of CrPC were sent vide Ex.P/08 and inquest proceedings were conducted vide Ex.P/09. Spot map was also prepared vide Ex.P/05. The dead-body of the deceased was sent for postmortem examination, which was conducted by Dr. Anand Shrivastava (PW-08) and, as per PM report (Ex.P/13), cause of death

of the deceased is shock and hemorrhage and nature of death is homicidal. The appellant-accused was arrested vide Ex.P/18 and his memorandum statement was recorded vide Ex.P/16. Pursuant to the memorandum statement of the appellant, wooden stick was seized vide Ex.P/17. Thereafter, the seized articles were sent for chemical examination, in which, as per FSL report (Ex.P/27) it has been opined that stains to blood were found on the wooden stick seized from the appellant. After statements of witnesses were recorded and due investigation, the police filed charge-sheet against the appellant 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 14 witnesses and exhibited 21 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, proceeded to convict the appellant for offence under Section 302 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) Mr. Rishi Rahul Soni, learned counsel appearing for the appellant submits that the learned trial Court is unjustified in convicting the appellant for the aforesaid offences, as the prosecution has failed to prove the offence beyond reasonable doubt. There is no direct evidence available against the appellant and case of the prosecution is based on circumstantial evidence. The learned trial Court wrongly applied Section 106 of the Indian Evidence Act, 1872 (for short the "IE Act") against the appellant and the same is no applicable in the facts and circumstances of the present case, as in the house of the deceased, apart from the appellant and the deceased, appellant's mother, namely, Shyam Bai (PW-04) and appellant's sister, namely, Rajni (not examined) were also present. Furthermore, though pursuant to the memorandum statement of the appellant, wooden stick has been seized, in which, as per FSL report (Ex.P/13) stains of blood were found, however, there is no evidence available on record to show that the said stick has been used by the appellant in commission of the offence in question. 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 Section 302 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/13), wherein it has been opined that cause of death of the deceased is shock and hemorrhage and nature of death is homicidal, which is duly proved by the statement of Dr. Anand Shrivastava (PW-08). Accordingly, taking into consideration the postmortem report (Ex.P/13) and the statement of Dr. Anand Shrivastava (PW-08), 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, the learned trial Court have relied upon Section 106 of the IE Act to hold the appellant guilty for the offence, therefore, it would be first appropriate to notice Section 106 of the IE Act, which reads as under:

> "**106. Burden of proving fact especially within knowledge.** When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.
>
> Illustrations
>
> (a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.
>
> (b) A is charged with traveling in a railway without a ticket. The burden of proving that he had a ticket is on him."

(12) The Supreme Court in the matter of **Nagendra Sah v. State of Bihar**[1] has been held that Section 106 of the IE Act will be apply to those cases where the prosecution has succeeded in establishing the facts from which a reasonable inference can be drawn regarding the existence of certain other facts which are within the special knowledge of the accused and observed in Para-19, 22 & 23 as under:

> "**19.** In this case, as mentioned above, neither the prosecution witnesses have deposed to that effect nor any other material has been placed on record to show that the relationship between the appellant and the deceased was strained in any manner.

1 (2021) 10 SCC 725

Moreover, the appellant was not the only person residing in the house where the incident took place and it is brought on record that the parents of the appellant were also present on the date of the incident in the house. The fact that other members of the family of the appellant were present shows that there could be another hypothesis which cannot be altogether excluded. Therefore, it can be said that the facts established do not rule out the existence of any other hypothesis. The facts established cannot be said to be consistent only with one hypothesis of the guilt of the appellant.

*** *** *** ***

22. Thus, Section 106 of the Evidence Act will apply to those cases where the prosecution has succeeded in establishing the facts from which a reasonable inference can be drawn regarding the existence of certain other facts which are within the special knowledge of the accused. When the accused fails to offer proper explanation about the existence of said other facts, the Court can always draw an appropriate inference.

23. When a case is resting on circumstantial evidence, if the accused fails to offer a reasonable explanation in discharge of burden placed on him by virtue of Section 106 of the Evidence Act, such a failure may provide an additional link to the chain of circumstances. In a case governed by circumstantial evidence, if the chain of circumstances which is required to be established by the prosecution is not established, the failure of the accused to discharge the burden under Section 106 of the Evidence Act is not relevant at all. When the chain is not complete, falsity of the defence is no ground to convict the accused."

(13) Reverting to the facts of the present case in light of the

principles of law laid down by their Lordships of the Supreme Court in the above judgment, it is quite vivid that Shrikant Koshley (PW-01) brother of the deceased viz-a-viz son of the deceased has clearly stated that at the time of the incident, in the house where the incident took place, apart from his brother (appellant) and father (deceased), his mother (Shyam Bai [PW-04]) and sister (Rajnai [not examined]) were also residing therein together and, the said un-controverted statement of Shrikan Koshley (PW-01) is available on record. Though the Shyam Bai (PW-04) has clearly stated that she was not present in the house at the time of incident and had gone to her parental house and on being informed by Dilip Pal (PW-03) about the incident she came back to her house, but there is nothing available on record to establish that Rajni (sister of the appellant/daughter of the deceased) was not present in the house at the time of incident. Rajni has not been examined, nor she has been cited as a witness. Neither she has been brought to the witness box nor her statement under Section 161 of CrPC is available on record for the reasons best known to the prosecution. Therefore, it could not be established that on the date of incident, apart from the appellant and the deceased, non less was present in the house. As such, the fact that other member of the family of the appellant was present shows that there could be another hypothesis which cannot be altogether excluded. Therefore, it can be said that the facts

established do not rule out the existence of any other hypothesis and, consequently, the fact established cannot be said to be consistent only with one hypothesis of the guilt of the appellant. Even otherwise, though the prosecution has came out with a case that some unknown person has committed murder of the deceased and the appellant used to quarrel with the deceased, but a named FIR has been registered vide Ex.P/03 in the present case. Accordingly, for the aforesaid reasons, in light of the decision of the Supreme Court in **Nagendra Sah** (supra), no *prima facie* case is made out for invoking Section 106 of IE Act and the learned trial Court is absolutely unjustified in doing so under the facts and circumstances of the present case. Hence, the same is liable to be and is hereby set aside. We hereby hold accordingly.

(14) One more circumstance that has been relied upon by the trial Court to hold the appellant guilt for the offence in question is the recovery of wooden stick vide Ex.P/17 pursuant to the memorandum statement of the appellant, in which, as per FSL report, stains of blood were found. However, there is no evidence available on record to show that it is the appellant herein who has used the said wooden stick in commission of the offence in question and, therefore, the recovery aforesaid it not a reliable piece of evidence in the present case (**See**: **Mustkeem alias Sirajudeen vs. State of Rajasthan**[2].

2 (2011) 11 SCC 724

Furthermore, the Supreme Court in the matter of **Raja Nayka v. State of Chhattisgarh**[3] by relying upon its earlier decision rendered in the matter of **Mustkeen** (supra) has further held that sole circumstance of recovery of blood-stained article cannot form the basis of conviction unless the same is corroborated with other piece of incriminating circumstances. Accordingly, for the aforesaid reasons, the recovery of said wooden stick is also of no help to the prosecution. We hereby hold accordingly.

(15) 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 Section 302 being the author of the crime in question in light of the incriminating circumstances culled out in the impugned judgment and same are liable to be set aside.

(16) 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 11.01.2019. The appellant is acquitted of the charge under Section 302 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 bond shall remain in force for a further period of six months in view of the provision contained in

3 2024 SCC Online SC 67

Section 437-A of the CrPC.

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

(18) 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

s@if