CGHC010137372019 2026:CGHC:35164-DB

SAIFAN KHAN Digitally signed by SAIFAN KHAN

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 686 of 2019

[Arising out of impugned judgment dated 05.04.2019, passed in Sessions Trial No.31/2018 (State of Chhattisgarh v. Pitambar Mahant @ Pintu Mahant) by the Addl. Judge to the Court of Addl. Sessions Judge, Katghora (CG)]

Pitambar Mahant @ Pintu Mahant, S/o Tara Das, aged about 25 years, R/o Chhirra, Police Station Katghora, District Korba (Chhattisgarh)

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

Versus

State of Chhattisgarh, through The Station House Officer, Police Station Katghora, District Korba (Chhattisgarh)

... **Respondent**

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

For Appellant : Ms. Reena Singh, Advocate
For Respondent : Mr. Rahul Tamaskar, Govt. Advocate and Mr. Sharad Mishra, Panel Lawyer

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

Judgment on Board
(11.08.2026)

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 dated 05.04.2019, passed in Sessions Trial No.31/2018 (State of Chhattisgarh v. Pitambar Mahant @ Pintu Mahant) by the Addl. Judge to the Court of Addl. Sessions Judge, Katghora (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 amount, sentenced to undergo additional rigorus imprisonment for 01 month.

(2) The case of the prosecution, in short, is that on 31.01.02018, at about 09:30 AM, at Village Chhirra, which comes within the ambit of Police Station Katghora, District- Korba (CG), the accused-appellant assaulted his father, namely, Tara Das Mahant (hereinafter referred to as the "deceased") by means of hand and fist, 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/01) and FIR (Ex.P/02) were registered and wheels of investigation started running, in which, summons under Section 175 of CrPC were sent vide Ex.P/04 and inquest proceedings were conducted vide Ex.P/05. Spot Map was also prepared vide Ex.P/08. The dead-body of the deceased was sent for postmortem examination, which was conducted by Dr. JS Kanwar (PW-11) and, as per PM report (Ex.P/10), cause of death of the deceased is asphyxia due to throttling and puncture of lungs due

to fracture of ribs and nature of death is homicidal. The appellant-accused was arrested vide Ex.P/06. From the place of incident, certain articles were seized vide Ex.P/14 and same were sent for chemcial exmination vide Ex.P/22. As per FSL report (Ex.P/24), stains of blood were found in soil (A1), *gamcha* (C1) and *chasma* (C2) seized from the spot. 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 12 witnesses and exhibited 24 documents apart from Article/A-04, whereas the appellant-accused in support of his defence though not examined any witness but exhibited 04 documents.

(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) Ms. Reena Singh, learned counsel appearing for the appellant

submits that the learned trial Court is unjustified in convicting the appellant for offence under Section 302 of IPC, as the prosecution has failed to prove the offence beyond reasonable doubt. She vehemently argued that the testimonies of so called eye-witnesses, namely, Smt. Amrit Mahant (PW-01) [wife of the deceaed and mother of the appellant) and Vivek Das (PW-02) are not reliable piece of evidence, as they have not seen the incident of appellant assaulting the deceased and committing his murder, indeed, they reached to the spot after the incident and have also turned hositle and not supported the case of the prosecution at all. Further, so far reliance placed by the learned trial Court on Section 106 of the Indian Evidence Act, 1872 (for short the "IE Act") is concenred, the same would not be applicable in the present case and the prosecution case is totally projected on the testimony of eye-witness. 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 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/10), wherein it has been opined that cause of death of the deceased is asphyxia due to throttling and puncture of lungs due to fracture of ribs and nature of death is homicidal, which is duly proved by the statement of Dr. JS Kanwar (PW-11). Accordingly, taking into consideration the postmortem report (Ex.P/10) and the statement of Dr. JS Kanwar (PW-11), 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 case of the prosecution is totally projected on the testimonies of eye-witnesses, namely, Smt. Amrit Mahant (PW-01) and Vivek Das (PW-02). However, Smt. Amrit

Mahant (PW-01), who is wife of the deceased and mother of the appellant, has also lodged FIR (Ex.P/02) in the present case, but in her statement before the Court she completely turned hostile and not supported the case of the prosecution at all and came out with a new case that on the date of incident the decased fell down on a stone mill, due to which, he suffered injuries and died. Similaly, Vivek Das (PW-02) [son of the deceased and brother of the appellant] has stated that he reached to the spot after sometime, as he has gone out of the house to make reacharge of his mobile phone. He also stated that when he returned to his house, he saw his mother (PW-01) lying on the floor and, thereafter, when he administered water to her she became consious and he also saw that his father (deceased) was lying near the cot and, thereafter, the FIR was lodged and wheels of investigation stated running. As such, the testimonies of both the witnesses- Smt. Amrit Mahant (PW-01) and Vivek Das (PW-02) is of no help to the prosecution and same cannot be relied upon to hold the appellant guilty for the offences in question. We hereby hold accordingly.

(12) Furthermore, learned trial Court has also relied upon Section 106 of the IE Act to hold the appellant guilt for the offences in question.

(13) In this regard, the Supreme Court in the matter of **Murlidhar and others v. State of Rajasthan**[1] has clearly held that where the

1 AIR 2005 SC 2345

prosecution itself proceeded on the footing that there were eye-witnesses to the fact of murder, then rule of burden of proof under Section 106 of IE Act would not be applicable and observed in Para-22 as under:

> "**22.** In our judgment, the High Court was not justified in relying on and applying the rule of burden of proof under Section 106 of the Evidence Act to the case. As pointed out in Mir Mohammand Omar (supra) and Shambu Nath Mehra (supra), the rule in Section 106 of the Evidence Act would apply when the facts are "especially within the knowledge of the accused" and it would be impossible, or at any rate disproportionately difficult for the prosecution to establish such facts, "especially within the knowledge of the accused." In the present case, the prosecution did not proceed on the footing that the facts were especially within the knowledge of the accused and, therefore, the principle in Section 106 could not apply. On the other hand, the prosecution proceeded on the footing that there were eye witnesses to the fact of murder. The prosecution took upon itself the burden of examining Babulal (PW 5) as eye witness. Testimony of Ram Ratan (PW 7) and Isro (PW 10) shows that their agricultural land was situated in a close distance from the house of Khema Ram. As rightly pointed out by the High Court, it is highly unlikely and improbable that their kith and kin Ramlal would have been given beating resulting in his death by the accused- appellants while keeping lights of their house on and door of the room opened. It is also unlikely that the accused-appellants would have taken the risk of dragging Ramlal to the house of Khema Ram, which was situated in the vicinity of agricultural land and well of Isro (PW 10), the father of Ramlal. The evidence of Govind (PW 13) also appears to be unnatural, as he had not disclosed the incident to anybody. The High Court has correctly analysed that all the witnesses, namely, Babulal (PW 5), Ram Ratan (PW 7), Isro (PW 10) and Govind (PW 13) are wholly unreliable as their evidence is repleated with contradiction and inherent improbabilities. "

(14) The aforesaid dicta of **Murlidhar** (supra) has further been applied in the matter of **Badshah and others v. State of Uttar Pradesh**[2], wherein it has been held in Para-18 as under:

> "18. The question as to on whom the onus lies would depend upon the facts of each case. We may at this juncture notice a few decisions operating in the field. In Murlidhar & Ors. v. State of Rajasthan [(2005) 11 SCC 133], this Court proceeded on the basis that the prosecution while taking upon itself the burden of proving the murder of the abducted boy by introducing eye- witnesses, the provisions of Section 106 of the Indian Evidence Act would have no application. Several circumstances which were sought to be proved by the prosecution were held to have been not proved. It was in the aforementioned fact situation, Section 106 of the Evidence Act was held to have no application. "

(15) In view of the above, since the case of the prosecution it toally based on the basis of testimony of eye-witnesses, specially, Smt. Amrit Mahant (PW-01), the learned trial Court is absolutely unjustified in relying upon Section 106 of the IE Act to hold the appellant guilt for the offence in question and same is liable to be and is hereby set aside. We hereby hold accordingly.

(16) In view of foregoing analysis, we are unable to hold that the prosecution has been able to prove its case beyond all reasonable doubt and, in absence of which, the learned trial Court is unjustified in convicting the appellant for offences under Sections 302 of IPC being the author of the crime in question in light of the findings

2 (2008) 3 SCC 681

culled out in the impugned judgment and same are liable to be set aside.

(17) 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 05.04.2019. 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 Section 437-A of the CrPC.

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

(19) 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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