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HIGH COURT OF CHHATTISGARH AT BILASPUR

ACQA No. 258 of 2023

Reserved on : 07.08.2026

Delivered on : 17.08.2026

State of Chhattisgarh Through Reserve Centre CID, Police Headquarter, Raipur, District Raipur Chhattisgarh.

... **Appellant(s)**

versus

1. Dharmadatt Dhania S/o. Ramkumar Dhania Aged About 24 Years Address 12 Th Vahini Chhattisgarh Armed Forces, Ramanujganj, District Balrampur Chhattisgarh, R/o. Nsg Maneshwar, Gurgaon, Native Place Village Subhash Basti, District Rewadi (Haryana).
2. Jeewanlal Ratnakar S/o. Ramkrishna Ratnakar, Aged About 28 Years 12th Vahini Chhattisgarh Armed Forces, Ramanujganj, District Balrampur Chhattigsarh, R/o. Village Balpur, Tehsil Bilaigarh, District Baloodabazar Chhattisgarh.

... Respondent(s)

For Appellant : Mr. Sanjeev Kumar Pandey, Dy. A.G.

For Respondents : Mrs. Fouzia Mirza, Sr. Advocate with Mr. Navin Shukla, Advocates

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Hon'ble Shri Sanjay S. Agrawal, Judge and
Hon'ble Shri Justice Narendra Kumar Vyas, Judge

C.A.V. JUDGMENT

Per **Narendra Kumar Vyas,J.**

1. This Acquittal Appeal under Section 378(3) of the Criminal Procedure Code, 1973 has been filed by the State/appellant challenging the legality, validity and propriety of judgment dated 05.04.2022 passed by the learned 2nd Additional Sessions Judge, Raipur District – Raipur (C.G.) in Sessions Trial No. 139/2017 (State of Chhattisgarh vs. Dharmadatt Dhania and Another), whereby the learned trial Court has acquitted the accused/Appellants (herein Respondents) from the offence punishable under Section 302/34 of the IPC as the prosecution has failed to establish its case beyond reasonable doubt against the respondents.

2. The prosecution case in brief:-

A. On 06.07.2011 In-charge of Police Station- Chando namely Nikodim Khess received secret information that Naxalites tried to infiltrate in the State of Chhattisgarh from the border of State of Jharkhand from 04.07.2011 to 11.07.2011, he noted such information in Rojnamchasanha, and proceeded towards the spot and fixed ambushing to trap Naxalites. On seeing the police force, Naxalites opened heavy fire at mid night between 2 to 3 AM, with the intention of killing police persons which has compelled the police force to open fire in their self- defense. It is also case of the prosecution that during exchange of fire, some people appeared there along with girl but the respondents fired

over her by their SLR rifle without cautioning her. It is also case of the prosecution that in-charge of Police Station Nikodim Khess made multiple fires over the girl causing multiple injuries and during course of treatment she succumbed to death. It is also the case of the prosecution that to destroy the evidence of killing of girl, in-charge of Police Station Chando registered the FIR bearing Crime No. 25 of 2011 alleging Naxalites attack and to give Naxalites colour to the deceased Meena Khalkho. During the investigation of the report, statements of the witnesses were recorded, a site map of the burial site was prepared, seizure proceedings were carried out, post-mortem of the bodies was conducted.

B. Looking to the gravity of the incident, on 29.08.2011 the State Government appointed a Judicial Commission for the enquiry and after conducting enquiry it was found that Meena Khalkho died on account of Police firing and on such finding CID Headquarter registered the FIR bearing Crime No. 01 of 2015 under Section 302/34 of the IPC against the accused person including Nikodim Khess in-charge police station Chando who died during trial. After investigation, Charge sheet was filed before the Court of Judicial Magistrate First Class Raipur who in turn committed the case to the Court of Sessions Judge, Raipur which was registered as Sessions Case No. 139 of 2017.

3. In order to prove its case, the prosecution has examined as many as 38 witnesses and exhibited 48 documents. Accused

were examined under Section 313 of the Cr.P.C., wherein they denied all the incriminating circumstances appearing against them and pleaded innocence alleging false implication in the case. The accused/respondents did not lead any evidence in their defence. Learned trial Court appreciating the evidence, material on record has acquitted the accused/respondents from all the charges levelled against them. Hence, this acquittal appeal.

4. Learned State counsel would submit that the trial Court has erred in visualizing the nature of crime and despite that there is clear medical expert opinion given by Smt. Apolina Ekka (PW-17) with regard to cause of death of the girl due to fire on the deceased, the court below erred in acquitting the accused persons by giving the benefit of doubt. He would further submit that the witness PW-20 namely Shravan Prajapati, in his court statement, clearly deposed that at the time of incident he heard the weeping voice of any girl and on the very next day he also helped the injured girl (Meena) by accommodating her in the Bolero Vehicle for the purpose of medical treatment. His statement is also corroborated by the court statement of PW-04 namely Pradeep Kumar Gupta. However, learned court below has totally ignored the statement of these two witnesses and acquitted them. He would further submit that the death of the deceased was homicidal in nature, which is proved by the postmortem report given by Dr. R.S. Markam (PW-25). He would

further submit that Forensic Science Laboratory, Gujarat in its report dated 27.12.2012 and the Chhattisgarh State Forensic Science Laboratory, Raipur in its report dated 27.08.2011 vide Ex.P-22 confirmed that the bullet is fired by the SLR rifle and not from any country made fire arm and no advance weapon has been recovered from the spot. In these circumstances, it was the duty of accused persons to explain the special circumstances within their knowledge in order to discharge their reverse burden of proof cast over them as per Section 106 of Indian Evidence Act. Accused persons have utterly failed to discharge this burden and hence, the trial Court has committed illegality in acquitting the accused persons. He would further submit that trial Court has completely overlooked the evidence of Budheshwar (PW-1) and Kotiyari (PW-2), i.e. father and mother of the deceased Meena who have categorically stated in their evidence that their daughter was killed by these two accused persons, as such the impugned judgment of acquittal is contrary to law and evidence on record and deserves to be set aside by allowing the present appeal, thus, he would pray for admission of the appeal.

5. On the other hand, Mrs. Fouzia Mirza, Learned Sr. Advocate appearing for the accused/ respondents supported the impugned judgment passed by the learned trial Court and submitted that the learned trial Court, considering the evidence available of record, has rightly acquitted the accused/respondents. She would further submit that It is a settled principle of law that when

two views are possible, the appellate Court should not interfere with a well-reasoned order of acquittal. The findings recorded by the learned Trial Court are neither perverse nor illegal and call for any interference; therefore, the acquittal appeal filed by the State deserves to be dismissed.

6. We have heard learned counsel appearing for the parties, perused the impugned judgment of acquittal and record of the trial Court with utmost circumspection.

7. In order to establish the alleged allegations, electric wire of 140 centimeter, 170 centimeter respectively, 12 iron *chharre*, electric detonator, single barrel mazzal loading gun without sling and ram rod, total length 122 cm, barrel length 82 cm, trigger weight 4 Kg, muzzle diameter 1. 57cm. E.C.-4, 7.62 G 51 MM caliber bullets fired and empty cartridge case from 8 mm /3.15 inch caliber cartridge were seized from the spot vide (Ex.P-I-1, Ex.A-1, Ex.EC-5 and (Ex.EC-6).

8. Pradeep Kumar Gupta (PW-4) who has taken the deceased on his vehicle has admitted before the trial Court that the village Karcha is adjacent to village Mutki Bargard and this village is Naxalites affected area. Since this area is Naxalites affected area, therefore, police used to continue search the Naxalites in that area.

9. In order to prove the charges leveled against the respondents, prosecution examined the Forensic Science expert (PW-11) G.S.

Sahu, who has admitted in the cross examination that Police department has provided weapon namely S.L.R, AK-47, 9 mm pistol and revolver but the cartridge .315 has been used by the public and not by the police. He has also admitted that .315 cartridge is not used in SLR or AK-47. He has also admitted that SLR and AK-47 are seized in Naxalites attack also and automatic weapon. He has admitted that bullet which was found in the body of the deceased was fired from the police weapon or from the weapon used by the Naxalites, no such fact was brought to his notice.

10. The clothes of the deceased were subject to Forensic analysis vide Ex.P-47 as there was allegation of rape, but no male DNA was detected in it.

11. Inspector Ramavatar Dhruv (PW-9), Head Constable Deepak Kumar Patre (PW-13), R.K. Sharma (PW-18), Vipin Bihari Sahu (PW-19) Inspector K.K. Shukla (PW-21), D.S.Tiwari (PW-22) did not support the prosecution case during trial. Consequently, the prosecution declared them hostile and subjected them to cross-examination; however, they denied the material suggestions put forth by the prosecution and merely admitted their signatures on certain documents. In the cross-examination by the accused, PW-13 has affirmed regarding availability of the Naxalites at village Chando and also affirmed about firing done by the Naxalites at 3.25 AM. Ashok Kumar Uikey (PW-13) has also admitted about availability of Naxalites at the place of

occurrence.

12. Vinay Kumar Gupta (PW-37) deposed that there was injury marks on the chest of the deceased below the left shoulder from which pieces of flesh were protruded and injury mark on the back side of the waist where piece of flesh had protruded, indicating the place where the bullet had struck. He signed the inquest report (Ex.P-1).

13. Head Constable Lalit Kerkatta (PW-24) deposed that on the date of incident, they have received the information for search and after dinner at about 10.00AM and they left the police Station for search along with the weapons, we were 25 in number. While conducting search, we reached near Karcha Village where firing was started from jungle side. He further deposed that firing took place at about 2.30 to 3.00 AM, after the firing we remained wherever we found cover. When it became light at about 5. 00 AM, we saw a girl was lying there in injured condition. At that time a white coloured Bolero vehicle came from Chando. The injured girl was taken to the hospital for treatment and we again conducted a search the spot. This witness admitted that respondents Jeevanlal and Dharamdutt were the part of search party. But denied the suggestion that they had fired in haste after calling the girl a Naxalite. He admitted that if firing occurred after the search operation, each member of search party was questioned about the weapon used by them. In the cross-

examination, he admitted that the place where incident happened was highly sensitive Naxalites affected area and distance from there to village Karcha was 5-6 kilometers.

14. Learned trial Court appreciating the evidence and material on record has given finding in paragraphs 63 to 72 and has held that though the firing has been done but from the evidence who has fired the deceased has not been proved by the prosecution as none of the witnesses has deposed regarding use of weapon upon the deceased by the respondents. Similarly, in paragraph-66 it has recorded its finding that the alleged weapons which have been used by the respondents have been allotted to them or not, has not been proved by the prosecution as no documents regarding allotment of weapon was produced by them to prove the involvement of the respondents in crime in question.

15. Learned trial Court by relying upon the opinion of Forensic Science expert (PW-11) G.S. Sahu has given its finding that the cartridge found in the body of the deceased has not linked with the weapon used by the respondents which is required to prove the charge leveled against the respondents. Learned trial Court after appreciating the evidence has recorded its finding that since the respondents were charge sheeted for culpable homicide then it is incumbent upon them to prove that the commission of offence of murder has been done by the weapon allocated to the respondents which the prosecution has

miserably failed to prove. Accordingly, it has recorded its finding that the prosecution failed to prove the case against the respondents beyond reasonable doubt. These findings do not suffer from perversity or illegality.

16. Further submission of learned counsel for the State that the prosecution has proved its case against the accused that due to use of the weapon, the deceased has succumbed to death, therefore, it is for the respondents to rebut the same in view of Section 106 of the Evidence is now being considered by this Court.

17. To appreciate this submission, it is expedient for this Court to extract Section 106 of the Evidence Act.

> Section 106 of the Evidence Act, Burden of proving fact especially within knowledge.
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> 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 travelling in a railway without a ticket. The burden of proving that he had a ticket is on him.

18. Considering the above stated legal position and also considering that the prosecution is unable to prove that the deceased succumbed to death by the bullet fired by the respondents beyond reasonable doubt, as such the prosecution cannot take benefits of Section 106 of the Act 1972 as this Section is applicable only when prosecution succeeds in

establishing the basic 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.

19. Section 106 of the Act, 1872 has recently come up for consideration before Hon'ble the Supreme Court in case of **Nusrat Parween Vs. State of Jharkhand [2024 SCC OnLine SC 3683]** wherein it has been held in paragraphs 19, 20, 21 as under:-

> 19. Further, in Tulshiram Sahadu Suryawanshi and Anr. v. State of Maharashtra29, this Court observed as under:-
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> "23. It is settled law that presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above position is strengthened in view of Section 114 of the Evidence Act, 1872. It empowers the court to presume the existence of any fact which it thinks likely to have happened. In that process, the courts shall have regard to the common course of natural events, human conduct, etc. in addition to the facts of the case. In these circumstances, the principles embodied in Section 106 of the Evidence Act can also be utilised. We make it clear that this section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but it would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the court to draw a different inference. (emphasis supplied)
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> 20. A similar observation is found in Nagendra Sah v. State of Bihar30, wherein the Court held that: -
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> "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 (2012) 10 SCC 373. (2021) 10

SCC 725. 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."

21. Recently, this Court in the case of Anees v. The State Govt. of NCT31, held in the following terms:

"40. Section 106 of the Evidence Act cannot be invoked to make up the inability of the prosecution to produce evidence of circumstances pointing to the guilt of the accused. This section cannot be used to support a conviction unless the prosecution has discharged the onus by proving all the elements necessary to establish the offence. It does not absolve the prosecution from the duty of proving that a crime was committed even though it is a matter specifically within the knowledge of the accused and it does not throw the burden on the accused to show that no crime was committed. To infer the guilt of the accused from absence of reasonable explanation in a case where the other circumstances are not by themselves enough to call for his explanation is to relieve the prosecution of its legitimate burden. So, until a prima facie case is established by such evidence, the onus does not shift to the accused." 2024 INSC 368."

20. Learned trial Court after thread bearing analysis of evidence has acquitted the respondents from the charges giving benefit of doubt which does not suffer from perversity or illegality warranting interference by this court. Also considering the well settled parameters laid down by the Hon'ble Supreme Court regarding interference in the order of acquittal by the appellate Court which provides that appellate Court can interfere with the

order of acquittal only if it comes to a finding that only conclusion which can be recorded on the basis of evidence on record was guilty of the accused beyond reasonable doubt and no other conclusion was possible. The Hon'ble Supreme Court in case of C**onstable 907 Surendra Singh and another vs. State of Uttarakhand reported 2025 SCC online SC 176** has held as under:-

> 12. It could thus be seen that it is a settled legal position that the interference with the finding of acquittal recorded by the learned trial judge would be warranted by the High Court only if the judgment of acquittal suffers from patent perversity; that the same is based on a misreading/omission to consider material evidence on record; and 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.

21. Examining from all the angles, we are of the view that the order of acquittal passed by the learned trial Court is well merit and does not want any interference by this Court. Accordingly, the acquittal appeal deserves to be dismissed and it is hereby dismissed.

Sd/-
(Sanjay S. Agrawal)
JUDGE

Sd/-
(Narendra Kumar Vyas)
JUDGE

santosh