CGHC010289902018 2026:CGHC:36160-DB

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SAIFAN KHAN Digitally signed by SAIFAN KHAN

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 1404 of 2018

[Arising out of judgment dated 03.01.2015, passed in Special Sessions Trial No.32/2014 (State of Chhattisgarh v. Bodhan Singh Thakur) by the Special Sessions Judge, Balod, District Balod (CG)]

Bodhan Singh Rajput, S/o Late Shri Chabilal Singh Thakur, aged about 52 years, R/o Village- Rengadabri, P.S.- Doundilohara, District- Balod, (Chhattisgarh)

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

Versus

State of Chhattisgarh, through District Magistrate, Balod, District - Balod, (Chhattisgarh)

... **Respondent**

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

For Appellant : Mr. Keshav Dewangan, Advocate
For Respondent : Mr. Amit Buxy, Dy. Government Advocate

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

Judgment on Board
(14.08.2026)

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 03.01.2015, passed in Special Sessions Trial No.32/2014 (State of Chhattisgarh v. Bodhan Singh Thakur) by the Special Sessions Judge, Balod, District Balod (CG), whereby he has been convicted and sentenced as under:

Conviction	Sentence
U/s. 302 of IPC	Imprisonment for life with fine of Rs.100/- and, in default of payment of fine, additional rigorous imprisonment for 01 month.
U/s. 201 of IPC	Rigorous imprisonment for 03 years with fine of Rs.100/- and, in default of payment of fine, additional rigorous imprisonment for 01 month.
U/s. 323 of IPC	Rigorous imprisonment for 03 months only.

[All the sentences are directed to run concurrently]

(2) The case of the prosecution, in short, is that on 02.04.2014 between 1:30 to 02:00 PM, at village Mangchua, Bistrict Balod (CG), the accused-appellant herein committed murder of Mansha Ram (hereinafter referred to as the "deceased") by means of strangulation and, thereafter, in order to screen himself, burnt the dead-body of the deceased 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/21)

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 and Panchnama were also prepared vide Ex.P/10 and Ex.P/16 respectively. The dead-body of the deceased was sent for postmortem examination, which was conducted by Dr. SL Oika (PW-09) and, as per PM report (Ex.P/19A), cause of death of the deceased is asphyxia due to strangulation and nature of death is homicidal. The appellant-accused was arrested vide Ex.P/15 and his memorandum statement was recorded vide Ex.P/12. Pursuant to the memorandum statement of the appellant, one blue colour button was seized vide Ex.P/13. Further, one full-shirt of the deceased was also seized from his possession vide Ex.P/14. Certain other articles were also seized vide Ex.P/06, P/07 & P/20. Thereafter, the seized articles were sent for chemical examination, in which, as per FSL report (Ex.P/27) it has been opined that the blue colour button which has been seized vide Ex.P/13 from the spot pursuant to the memorandum statement of the appellant completely matches with the shirt of the appellant seized vide Ex.P/14. 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 10 witnesses and exhibited 27 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 Sections 302, 201 & 323 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. Keshav Dewangan, 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 circumstances relied upon by the learned trial Court in the impugned judgment are based on surmises and conjunctures and there is no material available on record to connect the appellant herein with the aforesaid offences. He vehemently argued that the circumstances, as projected by the prosecution and relied upon by

the learned trial Court to base the conviction of the appellant herein, are weak pieces of evidence. The theory of last seen together is no established beyond reasonable doubt and, infact, there is no corroboration. Further, seizure of blue colour button vide Ex.P/13 from the spot pursuant to the memorandum statement of the appellant is also not proved, as witness to said seizure and memorandum, namely, Sakha Ram (PW-07) have not supported the case of the prosecution and, therefore, the opinion of the FSL report (Ex.P/27) cannot relied upon to hold the appellant guilty for the offence. 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 & 323 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/19A), wherein it has been opined that cause of death of the deceased is asphyxia due to strangulation and nature of death is homicidal, which is duly proved by the statement of Dr. SL Oika (PW-09). Accordingly, taking into consideration the postmortem report (Ex.P/19A) and the statement of Dr. SL Oika (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, which the learned trial Court has answered in affirmative by relying upon following incriminating circumstances as culled out in Para-10 of the impugned judgment and same reads as under:

> "1. घटना दिनांक 2–4–2014 को दोपहर 1.30 बजे आरोपी एवं मृतक मंशाराम का ग्राम मंगचुआ के शराब दुकान में चंद्रशेखर सिन्हा (अ.सा. क.-4) तथा पंचराम ठाकुर (अ.सा.क. - 5) के समक्ष मृतक के
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> 2. शराब मुंह से लगाकर पी लेने के कारण झगड़ा हुआ था एवं उक्त झगड़े में आरोपी ने मृतक मंशाराम को थप्पड़ से मारा था । शराब दुकान के उक्त झगड़े के पश्चात् चंद्रशेखर सिन्हा (अ.सा.क. –4) के व्दारा उन्हें दुकान

से निकाल देने पर वे दोनों दुकान से साथ-साथ गये थे ।

3. आरोपी उक्त के आधे घंटे के पश्चात् पुनः शराब दुकान में वापस आया था एवं पंचराम ठाकुर (अ.सा.क. - 5) के साथ उसकी मोटरसायकिल से अपने ग्राम रेंगाडबरी गया था ।

4. इसी घटना दिनांक की शाम को 5.00 बजे मृतक मंशाराम की लाश जली अवस्था में घटनास्थल खेत में पाई गई थी, जो मरणोत्तर परीक्षक के कथन से एवं घटनास्थल की परिस्थिति से स्ट्रेंगुलेशन के कारण हत्या कर तत्पश्चात् उसके शरीर को जला देने की परिस्थिति दर्शित होती है ।"

(11) Apart from the above, learned trial Court has also relied upon the opinion of the FSL report (Ex.P/27), whereby it has opined that that the blue colour button which has been seized vide Ex.P/13 from the spot pursuant to the memorandum statement of the appellant completely matches with the shirt of the appellant seized vide Ex.P/14.

(12) Before proceedings further, since the present case is based on circumstantial evidence, it is profitable here to note following five golden principles laid down by their Lordships of the Supreme Court in the matter of **Sharad Birdhichand Sarda vs. State of Maharashtra**[1] which constitute the 'panchsheel' of proof of a case based on circumstantial evidence and same read as under:

> "153. …. **(1)** the circumstances from which the conclusion of guilt is to be drawn should be fully established.
>
> It may be noted here that this Court indicated that the

1 (1984) 4 SCC 116

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, (1973) 2 SCC 793* 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, and

(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."

(13) We shall now consider the incriminating circumstances mentioned herein-above in light of the above-quoted principles of law laid down by their Lordships of the Supreme Court as also in light of the evidence available on record, in order to ascertain whether the appellant herein has rightly be held guilty for offence in question by the learned trial Court or not.

(14) The main circumstance that has been relied upon by the learned trial Court is the theory of last seen together, as on the date of incident i.e. on 02.04.2014, in the afternoon at about 1:30 PM, the appellant and the deceased both went to the snacks shop of Chandrashekhar Sinha (PW-04), wherein a dispute arose between them, as the deceased has taken a sip of the liquor, on which, the appellant being annoyed slapped the deceased. The aforesaid fact has been duly proved by the statement of Chandrashekhar Sinha (PW-04) and Panchram Thakur (PW-05). However, the finding of the learned trial Court that after the said dispute in the snacks shop of Chandrashekhar Sinha (PW-04), the appellant and the deceased both went together is not based on evidence and, therefore, it is not clear whether after the said dispute of appellant slapping in the deceased in the snacks shop of Chandrashekhar Sinha (PW-04), they both went together or not. Furthermore, a careful perusal of the statement of Chandrashekhar Sinha (PW-04) would show that he has clearly stated that after the dispute between the appellant and the deceased, he instructed both of them to go out from his shop and, thereafter, the deceased went towards the village Rengadobari and after half an hour the appellant had gone on his motor-cycle with his friend on different direction and, thereafter, in the evening he came to know that the deceased died. There is nothing available in the statement of Chandrashekhar Sinha (PW-04) that after the dispute

between the appellant and the deceased in his shop they both went together. Even otherwise, the chances of appellant and the deceased both going together is also very low, as in the dispute between the appellant and the deceased in the snacks shop of Chandrashekhar Sinha (PW-04), the appellant being annoyed with the deceased upon taking sip of the liquor, has already slapped him. As such, the theory of last seen together from the statement of Chandrashekhar Sinha (PW-04) is not established. Similarly, Panchram Thakur (PW-05) has also not supported the case of the prosecution, infact, he has only supported the case of the prosecution still the dispute of appellant slapping the deceased in the snack shop of Chandrashekhar Sinha (PW-04) and, thereafter, he stated that he did not know that after the said dispute the appellant and the deceased both went together or not. Even, the finding of the learned trial Court that the appellant after half and hour revisited the liquor shop and went on his motor-cycle with Pancharam Thakur (PW-05) to his village Reigadabri is also not borne out from the evidence available on record. Consequently, the theory of last seen together is not established from the statement of Panchram Thakur (PW-05) too. As such, the fact that the appellant and the deceased both went together or lastly seen together alive is not established at all and, therefore, the findings of the trial Court appears to be perverse and the same are not based on the record. We hereby hold accordingly.

(15) The next circumstance that has been relied upon by the learned trial Court is FSL report (Ex.P/27), wherein it has been opined that the blue colour button which has been seized vide Ex.P/13 from the spot pursuant to the memorandum statement of the appellant completely matches with the shirt of the appellant seized vide Ex.P/14. However, the said opinion of the FSL report is also not free from doubt for the reason that the said shirt and button were seized on 07.04.2014 vide Ex.P/13 & Ex.P/14 respectively and thereafter the same were sent for chemical examination to FSL, Raipur, which was received therein on 30.11.2014 i.e. after about 8 months and there is no evidence available on record to show that as to whether the said seized article was kept in safe custody for the said period of not. Therefore, chances of fabrication and manipulation cannot be ruled out. Consequently, on this count, the result of FSL report pales into insignificance and cannot be relied upon. Furthermore, the said button was seized vide Ex.P/13 and witness to said seizure, namely, Sakha Ram Thakur has been examined as PW-07, however, he did not say that the said button was seized pursuant to the memorandum statement of the appellant, indeed, he only stated that from the possession of the appellant his shirt was seized and, in absence of such statement, the seizure aforesaid is of no help to the prosecution that too when another witness to said seizure and memorandum, namely, Ghanshyam

Singh Gour has not been examined. Even otherwise, the spot map has been thoroughly examined by NP Chandrakar (PW-08) on the date of incident and panchanama was also prepared and number of articles were seized vide Ex.P/06 and it cannot be accepted that in the spot inspection thoroughly by a police officer on the date of incident the said button could not have been seized and same was seized later on vide Ex.P/13 dated 07.04.2014. As such, the seizure of said blue button is not free from doubt. Consequently, for the above-mentioned reasons, the reliance placed by the learned trial Court on the FSL report (Ex.P/27) is totally illegal and perverse and same be liable to be discarded more particularly when their Lordships of the Supreme Court in the of **Digamber Vaishnav and another vs. State of Chhattisgarh**[2] on a similar issue have clearly held that there is nothing on record to show that the shirt is unique and cannot be matched with the shirt of any other person and observed in Para-37 as under:

> "37. The shirt of appellant No. 2 recovered from him in pursuance of his statement under Section 27 of the Evidence Act is allegedly matched with the small broken button found at the scene of crime. This has been relied upon by the courts below as another circumstance to corroborate the presence of the appellants at the scene of crime. However, there is nothing on record to show that the shirt is unique and cannot be matched with the shirt of any other person. PW-13 has admitted in his testimony that shirts of the same kind are easily

2 (2019) 4 SCC 522

> available in the market. In such circumstances, it cannot be conclusively proved that the shirts are in any way unique to the 'appellants' shirt to the exclusion of everyone else. Therefore, the reliance placed with analysis of the shirt in the absence of any unique make thereof is improper."

(16) As such, the seizure of button vide Ex.P/13 and the opinion of the FSL report (Ex.P/27) is also of no help to the prosecution and same cannot be relied upon to hold the appellant guilty of the offence in question. We hereby hold accordingly.

(17) In view of foregoing analysis, we are unable to hold that the prosecution has been able to prove the five golden principles to constitute the 'panchsheel' of proof of a case based on circumstantial evidence, as laid down by the Supreme Court in the matter of **Sharad Birdhichand Sarda** (supra), in absence of which, the learned trial Court is unjustified in convicting the appellant for offences under Sections 302, 201 & 323 of IPC 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.

(18) 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 03.01.2015. The appellant is acquitted of the charge under Sections 302, 201 & 323 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.

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

(20) 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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