CGHC010292702017 2026:CGHC:37030-DB

SAIFAN KHAN Digitally signed by SAIFAN KHAN

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 1124 of 2017

[Arising out of judgment dated 14.06.2017, passed in Session Trial No.38/2016 (State of Chhattisgarh v. Brijbhan Singh Maravi and another) by the Addl. Sessions Judge, Pendra Road, District Bilaspur (CG)]

1 - Brijbhan Singh Maravi S/o Motilal Maravi, Aged About 24 Years R/o Nagwahi, Police Station Pendra, District- Bilaspur, Chhattisgarh

2 - Mainak Singh Uday S/o Lachchhan Singh Uday, Aged About 24 Years R/o Kateltola, Nagwahi, Police Station Pendra, District- Bilaspur, Chhattisgarh

... **Appellants**
(On Bail)

Versus

State of Chhattisgarh, through Police Station Pendra, District- Bilaspur, Chhattisgarh

... **Respondent**

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

For Appellants	:	Mr. Yogendra Chaturvedi, 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
(19.08.2026)

Sanjay K. Agrawal, J

(1) Invoking criminal appellate jurisdiction of this Court, two

appellants herein have 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 14.06.2017, passed in Session Trial No.38/2016 (State of Chhattisgarh v. Brijbhan Singh Maravi and another) by the Addl. Sessions Judge, Pendra Road, District Bilaspur (CG), whereby they has been convicted and sentenced as under:

Conviction	Sentence
U/s. 302/34 of IPC	Imprisonment for life with fine of Rs.500/- and each, in default of payment of fine, additional rigorous imprisonment for 02 months each.
U/s. 201/34 of IPC	Rigorous imprisonment for 03 years with fine of Rs.200/- each and, in default of payment of fine, additional rigorous imprisonment for 01 month each.

[All the sentences are directed to run concurrently]

(2) The case of the prosecution, in short, is that in the intervening night of 03-04/10/2016, at Village Nagwahi, Ghadwatola, which comes within the ambit of Police Station Pendra, District Bilaspur (CG) the accused-appellants herein, in furtherance of their common objection, assaulted Dewangan Porte (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 of the offence, threw the dead-body of the deceased in the pond and, thereby, the appellants are said to have

committed the aforesaid offences.

(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/20) were registered and wheels of investigation started running, in which, summons under Section 175 of CrPC were sent vide Ex.P/06 and inquest proceedings were conducted vide Ex.P/07. Site map was prepared vide Ex.P/21. The dead-body of the deceased was sent for postmortem examination, which was conducted by Dr. Hemant Kumar (PW-08) and, as per PM report (Ex.P/02), the cause of death of the deceased is opined to be coma due to shock as a result of head injury and nature of death is homicidal. The appellants-accused were arrested vide Ex.P/22 & Ex.P/24 and their memorandum statements were recorded vide Ex.P/08 & Ex.P/13 respectively. Pursuant to the memorandum statement of appellant- Brijbhan Singh (A-1), wooden stick (weapon of the offence) was seized vide Ex.P/12. Certain other articles were also seized vide Ex.P/9 to Ex.P/15. Thereafter, the seized articles were sent for chemical examination vide Ex.P/28, but no FSL report has been brought on record for the reasons best known to the prosecution. After statements of witnesses were recorded and due investigation, the police filed charge-sheet against the appellants 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 appellants/accused abjured their guilt and entered into defence by stating that they are innocent and have been falsely implicated.

(4) The prosecution in order to prove its case examined as many as 12 witnesses and exhibited 29, whereas the appellants-accused in support of their defence, though not examined any witness, but exhibited 01 document.

(5) The learned trial Court after appreciating the oral and documentary evidence available on record, proceeded to convict appellants herein for offence under Section 302/34, 201/34 of IPC and sentenced them as mentioned herein-above, against which this appeal has been preferred by the appellants-accused questioning the impugned judgment of conviction and order of sentence.

(6) Mr. Yogendra Chaturvedi, learned counsel appearing for the appellants submits that the learned trial Court is unjustified in convicting the appellants for the aforesaid offences, as the prosecution has failed to prove the same beyond reasonable doubt. He argued that the theory of last seen together has not been established at all. Kaushilya Porte (PW-11), who is wife of the deceased, has not seen the appellants and the deceased lastly alive together, yet the learned trial Court proceeded to convict the appellants herein on the basis of theory of last seen together, which is totally a perverse finding and liable to be set aside. Further, it is

also not borne out from the record that on the date of incident, the appellants and the deceased all went to the house of Budhram (PW-05), where they consumed liquor together, still the learned trial Court relied upon the said circumstance to hold the appellants guilty for the offence in qusetion. Even, there is no evidence available on record to show that appellant- Brijbhan (A-1) has used the wooden stick, which is recovered pursuant to his memorandum statement vide Ex.P/12 in commission of the offence, therefore, the recovery of the same is also of no use to the prosecution. 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 appellants for offence in question. 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/02), wherein it has been opined that cause of death of the deceased is come due to shock, as a result of head injury and nature of death is homicidal, which is duly proved by the statement of Dr. Hemant Kumar (PW-08), who has conducted postmortem of the dead-body of the deceased. Accordingly, taking into consideration the postmortem report (Ex.P/02) and the statement of Dr. Hemant Kumar (PW-08), 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 appellants herein are authors 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-13 of the impugned judgment and same reads as under:

> "अ- क्या मृतक को अंतिम बार जीवित अवस्था में अभियुक्तगण के साथ देखा गया ?
>
> ब- क्या घटना के समय या उसके पश्चात घटनास्थल के आसपास अभियुक्तगण को देखा गया ?

स- क्या परिस्थितियाँ निश्चायक रूप से अभियुक्तगण को ही दोषी होना इंगित / साबित करती हैं ?"

(11) 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 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.

1 (1984) 4 SCC 116

> **(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."

(12) 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.

(13) The first circumstance that has been relied upon by the learned trial Court is the theory of last seen together. However, it is not the case of the prosecution that the appellants and the deceased all were lastly seen together alive at any point of time before the death of the deceased. In this regard, learned trial Court relied upon the testimony of Kaushilya Porte (PW-11), who is wife of the deceased and has stated that on 03.10.2016, in the evening at about 06:00 PM, appellant- Brijbhan Singh (A-1) called her husband (deceased) for giving money and the deceased had gone to take back his money and, thereafter, the deceased did not return to his home. At this, the learned trial Court assumed that when the deceased had gone to take back his money, the appellants might have killed him and,

thereby, accepted the case of the prosecution. However, it is admitted case of the prosecution that Kaushilya Porte (PW-11) has not seen the appellants and the deceased together alive, infact, she has only stated that the deceased had gone to take back his money. As such, Kaushilya Porte (PW-11) is not at all a witness to the theory of last seen together and the learned trial Court has committed grave legal error while relying upon her statement to found prove the theory of last seen together. Accordingly, the findings recorded by learned trial Court in this regard is liable to be and is hereby set aside being perverse and contrary to the record. We hereby hold accordingly.

(14) The next incriminating circumstance that has been relied upon by the learned trial Court is that the appellants and the deceased were seen near the place of incident. However, no evidence in this regard has been led by the prosecution. Therefore, it cannot be accepted that the appellants and the deceased were seen near the place of incident. Furthermore, the learned trial Court has also relied upon the circumstance that on the date of incident, the appellants and the deceased all went to the house of Budhram (PW-05) and where they consumed liquor and, thereafter, the appellants committed the offence in question. However, a careful perusal of the statement of Budhram (PW-05) would show that it was much prior to the date of offence that the appellants and the deceased visited his house and consumed liquor. As such, the aforesaid circumstance

relied upon by the learned trial Court is not at all borne out from the record and, consequently, the same cannot be relied upon to hold the appellants guilty for the offence in question. We hereby hold accordingly.

(15) So far recovery of wooden stick vide Ex.P/12 pursuant to the memorandum statement of appellant- Brijbhan (A-1) is concerned, 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 who has used the said knife 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]. As such, recovery aforesaid is also of no help to the prosecution. We hereby hold accordingly.

(16) The last circumstance that has been relied upon by the learned trial Court is that since appellant- Brijbhan (A-1) has borrowed money from the deceased and the deceased had relationship with one girl, who was liked by appellant- Brijbhan (A-1). However, these facts are not established on record, therefore, cannot be relied upon to hold the appellants guilty for the offence. We hereby hold accordingly.

(17) In view of foregoing analysis, we are unable to hold that the prosecution has been able to prove its case beyond all reasonable

2 (2011) 11 SCC 724

doubt, in absence of which, the learned trial Court is unjustified in convicting the appellants for offences under Sections 302/34 & 201/34 being the authors of the crime in question in light of the findings 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 appellants vide the impugned judgment dated 14.06.2017. The appellants are acquitted of the charges under Sections 302/34 & 201/34 of the IPC on the basis of benefit of doubt. The appellants are reported to be on bail, therefore, they need not to surrender. However, their 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.

(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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