2025:CGHC:44200-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 1390 of 2015

Judgment Reserved on: 1.8.2025

Judgment Delivered on: 1.9.2025

- Nandkeshwar S/o Shivnarayn Khairwar, Aged About 40 Years R/o Village- Dumarkhola P. S. - Rajpur Distt. - Balarampur-Ramanujganj Chhattisgarh.

... Appellant(s)

versus

- State of Chhattisgarh Through D. M. Balarampur- Ramanujganj Chhattisgarh , Chhattisgarh.

... Respondent(s)

For Appellant	:	Mr. Vineet Kumar Pandey, Advocate
For Respondent/State	:	Mr. Vivek Mishra, Panel Lawyer

Division Bench
Hon'ble Smt. Justice Rajani Dubey, J. &
Hon'ble Shri Justice Amitendra Kishore Prasad, J.

CAV Judgment

Per, Amitendra Kishore Prasad, J.

1. The present criminal appeal under Section 374 (2) of Cr.P.C. has been filed by the appellant herein calling in question legality, validity and correctness of the judgment of conviction and order of sentence dated 22.9.2015, passed by the learned Additional Judge of Upper Sessions Judge, Ramanujganj, District-Surguja, in Sessions Trial No. 174/2013, by which, the appellant herein has been convicted as under:-

Conviction	**Sentence**
U/s 302 of Indian Penal Code	Imprisonment for life with fine of Rs. 500/- and, in default of payment of fine amount, additional R.I. for three months.
U/s 4 of Tonhi Pratadna Adhiniyam	Rigorous imprisonment for 3 years with fine of Rs. 200/- and, in default of payment of fine amount, additional R.I. for one month.
U/s 5 of Tonhi Pratadna Adhiniyam	Rigorous imprisonment for 3 years with fine of Rs. 200/- and, in default of payment of fine amount, additional R.I. for one month.

All the sentences shall run concurrently.

2. Case of the prosecution, in nutshell, is that on or about 27th–28th March, 2013, in village Dumrakhola, within the jurisdiction of Police Station Rajpur, the accused is alleged to have subjected Smt. Parbatiya Bai to harassment by branding her as *"Tonhhi"* (witch). It is further alleged that in the intervening night of 27th and 28th March, 2013, he committed her murder by causing her death through fatal assault.

3. The case of the prosecution, in brief, is that on 28.03.2013, one Manohar, son of Ramratan Khairwar and resident of village Dumrakhola, Police Station Rajpur, lodged an information at Police Post Dabra, Police Station Rajpur. He reported that his mother, Smt. Parbatiya Bai, resided separately in the same village along with his sister-in-law Phoolbasiya and niece Sushila. On 27.03.2013, at around 12:00 noon, his mother had visited his house on the occasion of the Holi festival and remained there until about 03:00 p.m., after which she returned to her own house. On the following day, a villager by the name of Shankar informed the complainant that his mother was lying dead in her house. Alarmed by the news, the complainant, accompanied by fellow villagers Chandradev and Ravichand, immediately proceeded to the spot. Upon reaching, they found that his mother, Smt. Parbatiya Bai, was lying lifeless with a deep wound on the right temple of her head. It appeared that some unknown person had inflicted a grievous blow, causing her death on the spot. When the complainant inquired from his sister-in-law Phoolbasiya and niece Sushila regarding the incident, they disclosed that after dinner on the night of 27.03.2013, they had gone to the house of their relative Devrup to sleep. They further stated that the accused had long been suspicious of Smt. Parbatiya Bai and harbored the belief that she was a witch, which

had led to her harassment and, ultimately, to her brutal killing. Manohar (PW-1) reported the matter to the police, pursuant to which, merg intimation (Ex. P-01) and FIR (Ex. P-02) were registered. Inquest proceedings (Ex. P-04) were conducted and the dead body of the deceased was sent for postmortem. As per postmortem report (Ex.P/13A), proved by Dr. Saurabh Mandilwar (PW-15), cause of death of the deceased was due to coma, and the nature of death homicidal. Thereafter, appellant-accused was arrested (Ex.P/15) pursuant to which, soil, stick, clothes of the appellant & clothes of the deceased have been seized. The aforesaid seized articles were sent for chemical examination to FSL and, as per FSL report, no human blood was found on the stick.

4. After completion of investigation, appellant was charge-sheeted for the aforesaid offences before the jurisdictional Criminal Court, which was ultimately committed to the Court of Sessions for hearing and disposal in accordance with law, in which, the appellant abjured his guilt and entered into defence by stating that he has not committed any offence and he has been falsely implicated.

5. In order to bring home the offence, prosecution examined as many as 15 witnesses and exhibited 17 documents. Statement of the appellant was recorded under Section 313 of CrPC in

which he denied the circumstances appearing against him in the evidence brought on record by the prosecution, pleaded innocence and false implication.

6. The learned trial Court after appreciating the oral and documentary evidence available on record, convicted the appellant / accused for the offences as mentioned in the opening paragraph of the judgment, against which this appeal has been preferred by the appellant questioning the impugned judgment of conviction and order of sentence.

7. Learned counsel for the appellant submits that the conviction of the appellant is wholly unsustainable in the eyes of law, as it is based solely on circumstantial evidence, which, in the present case, fails to form a complete and cogent chain unerringly pointing towards the guilt of the appellant. It is contended that the learned Trial Court erred in appreciating the evidence on record and has proceeded to convict the appellant merely on the basis of suspicion, without establishing the circumstances relied upon beyond reasonable doubt. He further submits that the prosecution has not been able to prove any direct involvement of the appellant in the alleged offence. The learned trial Court has heavily relied upon the proximity of the appellant's residence to that of the deceased, and the existence of a prior dispute between the parties, which allegedly arose due to the

deceased's goats straying into the agricultural land of the appellant. It was the prosecution's case that the appellant, harbouring animosity and suspecting the deceased of practicing witchcraft, bore a grudge against her. However, it is submitted that such suspicion, even if assumed to be true, cannot constitute a legally admissible basis for conviction. He further submits that the alleged extra-judicial confession purportedly made by the appellant before certain villagers lacks evidentiary value, as it has not been proved in accordance with law. The prosecution has failed to bring on record any reliable, independent, and credible witness who could corroborate such extra-judicial confession, and the same appears to be a concocted piece of evidence introduced only to strengthen an otherwise weak prosecution case. He further submits that the alleged recovery of a stick from the possession of the appellant, said to be effected at his instance under Section 27 of the Indian Evidence Act, is of no evidentiary consequence. The said stick was not found to have any blood stains or forensic connection with the crime, thereby failing to link the appellant to the commission of the offence. So far as the allegation of witchcraft is concerned, learned counsel for the appellant submits that the prosecution has failed to lead any admissible or trustworthy evidence to establish that the appellant was indeed under such a

belief or that the deceased was in any manner associated with such practices. He further submits that the circumstances relied upon by the prosecution do not form a complete and unbroken chain pointing only towards the guilt of the appellant and ruling out every other hypothesis except that of his guilt. As such, the conviction recorded by the learned Trial Court is based on conjectures and surmises, and deserves to be set aside.

8. On the other hand, learned counsel for the State vehemently opposes the submissions made on behalf of the appellant and contends that the prosecution has successfully established a complete chain of circumstances which unerringly points towards the guilt of the accused-appellant. It is submitted that each circumstance relied upon by the prosecution has been duly proved beyond reasonable doubt and that the cumulative effect of these circumstances is such that they form a conclusive chain consistent only with the hypothesis of the guilt of the appellant and completely inconsistent with his innocence. Learned counsel further submits that the learned trial Court, after meticulously appreciating the oral and documentary evidence available on record, has rightly recorded the finding of conviction, and as such conviction is based on well-reasoned analysis and sound legal footing. It is further submitted that there is no perversity, illegality or irregularity in the impugned judgment and the same

does not call for any interference by this Hon'ble Court in exercise of appellate jurisdiction. Hence, the appeal deserves to be dismissed at the threshold.

9. We have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.

10. The first question for consideration would be whether the death of the deceased was homicidal in nature which has been answered by the trial Court in affirmative relying upon the postmortem reports (Ex.P-13A) proved by PW-15 Dr. Saurabh Mandilwar, which is a finding of fact based on evidence available on record, it is neither perverse nor contrary to the record and we hereby affirm the said finding.

11. Now, the question would be whether the appellant is the author of the crime in question for which the trial Court has relied upon the circumstantial evidence by delving into the incriminating evidence which have been found to be proved by the trial Court resulting into conviction of the appellant.

12. PW-1 Manohar, who is the son of the deceased Smt. Parwatiya, has deposed before the Court that about nine to ten months prior to the present incident, the appellant had assaulted his mother with an stick. He further stated that on the date of occurrence, upon reaching the spot, he found his mother lying

dead. It is, however, noteworthy that he is not an eyewitness to the actual assault that resulted in her death. During his cross-examination, PW-1 candidly admitted that at the time of lodging the First Information Report, he did not mention the name of the accused in connection with the incident. He further conceded that it was only after the accused fled from the spot that he developed a suspicion against him.

13. PW-11 Ku. Susheela has been examined as a witness of the alleged extra-judicial confession. In her deposition, she has stated that at the time when the police arrived at the scene, the accused himself admitted before them that he had assaulted the deceased. With regard to the temperament and general conduct of the deceased, she has further stated that there used to be frequent quarrels between the family members and the grandmother of the deceased. However, she has categorically clarified that she had never heard the appellant-accused calling or branding the grandmother of the deceased as a practitioner of witchcraft.

14. PW-13 Shankar has been declared hostile by the prosecution. In his examination, he has deposed that on the fateful night, the family members of the deceased had come to his residence and informed him that the deceased had consumed liquor and, under its influence, was abusing and quarreling with them. Therefore,

for their safety and peace of mind, they had decided to spend the night at his house. Beyond this, the witness has not supported the case of the prosecution. He has further clarified that he is neither an eyewitness to the actual incident in question nor has any person informed him about the occurrence of the assault or the circumstances leading to the death of the deceased.

15. PW-15 is the doctor who had conducted the post-mortem of the deceased. In his detailed medical report, marked as Ex. P/13A, he has categorically opined that the cause of death was the injuries sustained on the head of the deceased. He has further clarified that the nature of those injuries was homicidal, thereby ruling out any possibility of accidental or natural death. According to his estimation, the time of death was approximately within 12 to 24 hours prior to the examination.

16. The Hon'ble Supreme Court in the matter of ***Raja Naykar vs. State of Chhattisgarh (2024) 3 SCC 481*** has held as under:-

> *"It can thus be seen that, the only circumstance that may be of some assistance to the prosecution case is the recovery of dagger at the instance of the present appellant. However, as already stated hereinabove, the said recovery is also from an open place accessible to one and all. In any case, the blood found on the dagger does not match with the blood group of the deceased.*

In Mustkeem v. State of Rajasthans, this Court held that sole circumstance of recovery of bloodstained weapon cannot form the basis of conviction unless the same was connected with the murder of the deceased by the accused. Thus, we find that only on the basis of sole circumstance of recovery of bloodstained weapon, it cannot be said that the prosecution has discharged its burden of proving the case beyond reasonable doubt."

17. Also, the Hon'ble Supreme Court in the matter of ***Thakore Umedsing Nathusing vs. State of Gujarat 2024 SCC OnLine SC 320*** has dealt with the recovery and blood stains not found to be that of the deceased and the relevant para reads as under:-

"35. We have gone through the evidence of the concerned police officials associated with the recoveries and find their testimonies to be highly doubtful. The knife which was recovered at the instance of A3 was found from a nala which is a place open and accessible to all. The knife attributed to A4 was presented by one Shobhnaben wife of Kanji Chhara and thus it cannot be linked to A4. Thus, these recoveries in no manner can be treated to be incriminating in nature. In the case of Mustkeem alias Sirajudeen v. State of Rajasthan, reported in (2011) 11 SCC 724, this Court held that the solitary circumstance of recovery of blood-stained weapons cannot constitute such evidence which can be

considered sufficient to convict an accused for the charge of murder. We thus find the recoveries to be highly doubtful and tainted. Even if it is assumed for a moment that such recoveries were effected, the same did not lead to any conclusive circumstance in form of Serological report establishing the presence of the same blood group as that of the deceased and hence they do not further the cause of prosecution. In addition thereto, we find that the prosecution failed to lead the link evidence mandatorily required to establish the factum of safe keeping of the muddamal articles and hence, the recoveries became irrelevant."

18. In the matter of ***Debapriya Pal vs. State of West Bengal (2017) 11 SCC 31,*** the Hon'ble Supreme Court has held with the issue that even if blood stain was found, the blood group of accused or deceased was not ascertained. The relevant para reads as under:-

"For the sake of argument, we are presuming that they were present at the time when the appellant brought bloodstained clothes from his house and gave the same to the police. What is material is the reliance on these bloodstained clothes for the culpability of the appellant herein. As per the prosecution, the blood group on these bloodstained clothes matched with the blood on the bedsheet on which the body of one of the deceased persons was found. The record reveals that though blood of both the deceased persons was

drawn and sent for examination, it is not known as to what was the report thereupon and what was the blood group of the deceased persons. No such blood report has been produced. So much so, blood group of the accused persons was also not ascertained. Even if we presume that the blood on the bedsheet was that of the deceased, the possibility cannot be ruled out that the same blood group as of the appellant-accused thereof. Therefore, mere matching of the blood group on the bloodstained clothes, which was even on the bedsheet, would not lead to the conclusion that it is the appellant who had committed the crime."

19. In the matter of ***Shantabai and others vs. State of Maharashtra (2008) 16 SCC 354,*** the Hon'ble Supreme Court has held as under:-

"25. In support of the fifth circumstance, the prosecution has examined Dr. Hanumant, who performed post-mortem on the dead body of the deceased Gunwant on 15-8-1993. The doctor noticed as many as thirteen injuries on the body of the deceased as described in the post-mortem report (Ext. 41). According to the opinion of the doctor, the cause of death was because of shock due to cardio-respiratory failure caused by injury to brain and brain haemorrhage. The chemical analyser's report would reveal that ethyl alcohol was found in the viscera contents of the deceased.

26. We may point out that the investigating officer has not cared to collect the fingerprints appeared on the stones and axe, the alleged weapons of offence, at the time of seizure of the articles nor had he taken the fingerprints of the appellants for comparison with the fingerprints, if any, detected on the alleged weapons of offence. The articles collected by the investigating officer from the spot were found lying in the open place which was accessible to all and sundry. The prosecution has not led any evidence to prove that axe, which was the alleged weapon of offence, found on spot in the open place belonged to A-1, A-2 and A-3. Thus, the prosecution has not established beyond reasonable doubt that A-1, A-2 and A-3 had used the recovered weapons of offence in the commission of the crime.

28. The chemical analyser's report (Ext. 72) reveals that human blood of Group 'B' was detected on the clothes, which were seized by the police, allegedly belonging to the appellants. The blood group on those clothes did not tally with the blood of Group 'O', which was found on the clothes of the deceased and on the sample of soil, axe, stones, handles, etc, which were taken from the spot by the investigating officer. The investigating officer has categorically stated that when he along with A-1 and panch witnesses had gone in search of the clothes of the appellants, the lock to the door of the house of the appellants was kept with the Police Patil which was opened by them later on. In this view of the matter, the prosecution has not proved that d the clothes, which were allegedly seized by the police at the instance of A-1 and lying in the open place, were stained with Blood Group 'O' of the deceased found on the deceased's clothes and on the articles which were seized by the investigating officer from the place of occurrence. These circumstances are not proved by the prosecution by lending cogent, satisfactory and convincing evidence to hold A-1, A-2 and A-3 guilty of the offence."

20. Also, the Hon'ble Supreme Court in the matter of ***Dhananjay Shanker Shetty vs. State of Maharashtra (2002) 6 SCC 596***

has held as under:-

> *"9. Another circumstance which was alleged against the appellant was that bloodstained clothes and weapon were recovered from his house, but the trial court as well as the High Court did not place any reliance upon this circumstance in view of the fact that according to the report of the chemical examiner, the blood group found thereon did not tally with that of the deceased."*

21. Upon perusal of the record and in light of the decisions of the Hon'ble Supreme Court, it is evident that although the prosecution has produced a soil, stick and clothes of the deceased seized from the spot, there is a complete absence of forensic evidence establishing that the blood found on these articles matches the blood group of the deceased. The mere presence of bloodstains, without proof that it is human blood belonging to the deceased, renders the recovery inconsequential.

22. The Hon'ble Supreme Court has consistently held that such failure materially affects the evidentiary value of the alleged recoveries. In ***Kansa Behera v. State of Orissa, (1987) 3 SCC 480,*** the Court held:

> *"Unless the blood stains found on the clothes or weapons are proved to be that of the deceased, the discovery cannot be said to incriminate the accused beyond doubt."*

23. Similarly, in ***Sattatiya @ Satish Rajanna Kartalla v. State of Maharashtra, (2008) 3 SCC 210***, it was observed:

> *"In the absence of a serological report confirming that the blood on the clothes or weapon belonged to the deceased, the recovery is of no substantial help to the prosecution."*

24. Again, in ***Vijay Shankar v. State of Chhattisgarh, (2022) 10 SCC 353,*** the Apex Court reiterated:

> *"The prosecution's failure to establish, through scientific evidence, that the blood found on the weapon or clothes matched that of the deceased creates a serious doubt about the veracity of the recovery and the guilt of the accused."*

25. These authoritative pronouncements make it abundantly clear that mere recovery of blood-stained articles, without scientific corroboration, is insufficient to sustain a conviction, especially when the case is otherwise based on circumstantial evidence.

26. It is a settled principle of criminal jurisprudence that the prosecution must establish the chain of circumstances with cogent and reliable evidence, particularly in cases based on circumstantial evidence.

27. 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:
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> "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

1 (1984) 4 SCC 116

> of the accused and must show that in all human probability the act must have been done by the accused."

28. Considering the aforesaid circumstantial evidence relied upon by the prosecution and accepted by the trial Court, it is evident that the case suffers from serious infirmities. With regard to the extra-judicial confession, PW-11 Ku Susheela, who happens to be the granddaughter of the deceased, has deposed that during police interrogation the accused admitted to having assaulted the deceased. However, such a confession cannot be admitted in evidence, as it was made in the presence of police officers and cannot be said to be voluntary. The settled position of law is that unless an extra-judicial confession is made voluntarily and without coercion, it cannot be relied upon, and even otherwise, such confessions are considered weak pieces of evidence requiring corroboration from independent sources. In so far as the other circumstantial evidence is concerned, although a stick was seized from the appellant, the prosecution has failed to prove its evidentiary value, as no bloodstains were found upon it, rendering the seizure inconsequential. Further, the allegation that the appellant suspected the deceased of practicing witchcraft has also not been substantiated, as none of the prosecution witnesses have stated anything to that effect. PW-11 Ku. Susheela has categorically admitted that no such fact was

disclosed before her, and therefore, the allegation remains unproven. Likewise, the supposed dispute between the accused and the deceased regarding washing of the field has also not been established. It is trite law that suspicion, however strong, cannot substitute the requirement of proof beyond reasonable doubt. In the present case, although PW-1, Manohar son of the deceased, harbored suspicion against the accused primarily on the ground that the accused fled after the incident, such suspicion alone cannot be the basis of conviction in absence of credible evidence. No witness has testified regarding any existing dispute between the parties or motive for committing the alleged offence. So far as offence under Sections 4 & 5 of the Tonhi Pratadna Adhiniyam, 2005 is concerned, the evidence in this respect is completely lacking, the prosecution witnesses have miserably failed to prove the same. Except bold allegation there is nothing on record to substantiate. Thus, from every perspective, the prosecution has utterly failed to discharge its burden of proof. Consequently, this Court finds no hesitation in setting aside the judgment of conviction passed by the learned trial Court.

29. Accordingly, the appeal is **allowed**, and the judgment of conviction and order of sentence dated 22.9.2015 passed by the learned Additional Judge of Upper Sessions Judge,

Ramanujganj, District- Surguja, in Sessions Trial No. 174/2013 is hereby set- aside. The appellant is acquitted of the charge under under Section 302 of Indian Penal Code and U/s 4 & 5 of the Tonhi Pratadna Adhiniyam and shall be released forthwith unless wanted in any other case.

30. In compliance with Section 437-A Cr.P.C., the appellants are directed to furnish a personal bond of ₹25,000/- each with two sureties of the like amount before the concerned court. The bond shall be effective for six months and include an undertaking that in case of filing a Special Leave Petition or grant of leave against this judgment, the appellants will appear before the Supreme Court upon receipt of notice.

31. Registry is directed to transmit the lower court record along with a copy of this judgment to the trial court forthwith for information and necessary compliance.

Sd/- Sd/-

(Rajani Dubey)
Judge

(Amitendra Kishore Prasad)
Judge

Raghu Jat

Head Note

For applying provisions of the C.G. Tohni Pratadna Act, 2006, the sine qua non is to establish the same through cogent evidence.