



2026:CGHC:26767-DB

**NAFR**

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**CRA No. 78 of 2016**

[Arising out of judgment dated 18.12.2015, passed in Central Registration (Sessions Trial) No.11/2014, by the Sessions Judge, Surguja, Ambikapur (CG)]

Manoj Sharma S/o Virendra Sharma, aged about 29 years, Occupation Mason, Interior Decorator, R/o Kushal Garden Kairimod, Police Station Saidnagar, District Agra (Uttar Pradesh), at Present F-3/C 372, Sangam Vihar, Maharauli Road, Delhi, (Uttar Pradesh)

... **Appellant**  
**(One Bail)**

**Versus**

State of Chhattisgarh, through the Station House Officer, Police Station Gandhi Nagar, District Surguja Ambikapur (Chhattisgarh)

... **Respondent**

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

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For Appellant : Mr. Amarnath Pandey, Advocate  
For Respondent : Mr. Sharad Mishra, Panel lawyer  
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**Division Bench**

**Hon'ble Mr. Justice Sanjay K. Agrawal, and**  
**Hon'ble Mr. Justice Sanjay Kumar Jaiswal**

**Judgment on Board**  
**(01.07.2026)**

**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 18.12.2015, passed in Central Registration (Sessions Trial) No.11/2014, by the Sessions Judge, Surguja, Ambikapur (CG), whereby he has been convicted and sentenced as under:

<b>Conviction</b>	<b>Sentence</b>
U/s. 302 of IPC	Imprisonment for life with fine of Rs.5,000/- and, in default of payment of fine, additional rigorous imprisonment for 06 months.
U/s. 450 of IPC	Rigorous imprisonment for 05 years with fine of Rs.3,000/- and, in default of payment of fine, additional rigorous imprisonment for 03 months.
U/s. 427 of IPC	Rigorous imprisonment for 01 year with fine of Rs.3,000/- and, in default of payment of fine, additional rigorous imprisonment for 01 month.

[All the sentences are directed to run concurrently]

(2) The case of the prosecution, in short, is that in the night of 05.09.2013, at Shriram Tower, situated near Ambedkar Chowk, which comes within the ambit of Police Station Gandhi Nagar, District Ambikapur (CG), the accused-appellant herein illegally entered into the office of Shriram Finance Company and committed murder of Urmila @ Guddi (hereinafter referred to as the “deceased”) by causing her injuries by means of hammer and further caused damage to the property of the said office worth Rs.20,08,150/- 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 by Manoj Kumar Shukla (PW-01), 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/16 and inquest proceedings were conducted vide Ex.P/17. Spot map and Panchnama were also prepared. The dead-body of the deceased was sent for postmortem examination, which was conducted by Dr. Anup Minj (PW-05) and, as per PM report (Ex.P/13), cause of death of the deceased is coma due to head injury and. The appellant-accused was arrested vide Ex.P/11 and his memorandum statement was recorded vide Ex.P/08. Pursuant to the memorandum statement of the appellant, hammer and cutter were seized vide Ex.P/09, but the same were not subjected to chemical examination for the reasons best known to the prosecution. 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 21 documents, whereas the appellant-



accused in support of his defence though not examined any witness but exhibited 02 document.

(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) Mr. Amarnath Pandey, 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. 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 extra judicial confession allegedly given by the appellant o Pushpendra Kumar Singh (PW-04) is a very weak pieces of evidence and same has been given after a later point



of time qua the incident in question, therefore, the same cannot be relied upon. Further, though pursuant to the memorandum statement of the appellant, hammer and cutter have been recovered, but there is no FSL report or any other evidence available on record to show that the said articles were used by the appellant in the instant crime. 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/13), wherein it has been opined that cause of death of the deceased is coma due to head injury, which is duly proved by the statement of Dr. Anup Minj (PW-05). Accordingly, taking into consideration the postmortem report (Ex.P/12) and the statement of Dr. Anup Minj (PW-05), 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-25 of the impugned judgment and same reads as under:

“अ- आरोपी घटना के लगभग 09 माह पूर्व से श्रीराम फाईनेंस कम्पनी के कार्यालय में बीच-बीच में आकर वहां इण्टीरियर डकोरेशन का काम करता था अतः वह उस कार्यालय की परिस्थितियों से भली-भांति वाकिफ था।

ब- दिनांक 17/09/2013 को आरोपी जब अपने सहकर्मी पुष्पेन्द्र कुमार सिंह के साथ बस में रायगढ़ से अंबिकापुर आ रहा था तब वह दिनांक 05/09/2013 की रात को श्रीराम फाईनेंस कम्पनी के कार्यालय में चोरी करने की नीयत से घुसना तथा श्रीराम टॉवर में साफ-सफाई एवं देखरेख करने वाली गुड्डी (उर्मिला) को मार देना और श्रीराम फाईनेंस कम्पनी की तिजोरी को काटने का प्रयास करना किंतु उसे नहीं काट पाने की न्यायिकेत्तर - संस्वीकृति किया था और किसी के द्वारा पूछने पर उसे (अर्थात आरोपी



को) अपने साथ दिल्ली में ही रहना बताना अन्यथा उसे (पुष्पेन्द्र सिंह - अ0सा04 को) भी फंसा देने और उसका बकाया पैसा नहीं देने की धमकी दिया था।

स- 'आरोपी के मेमोरण्डम बयान के आधार पर उसकी निशानदेही पर श्रीराम फार्निश कम्पनी के कार्यालय के फाईल रखने के लिये बने केबिनेट के पीछे गैप से श्रीराम फार्निश कम्पनी के कार्यालय से. गायब हुई तिजोरी जिसके ताला वाले स्थान के बगल में 6.5 इंच कटा हुआ था, एक कटर मशीन तथा लोहे की एक हथौड़ी बरामद हुई थी।

द- जब्तशुदा सीलिंग प्लेट में पाये गये फुट प्रिंट तथा कटर मशीन में पाये गये फिंगर प्रिंट जांच में क्रमशः आरोपी के बांये पैर के अंगूठे का प्रिंट होना तथा उसके दाहिने हाथ के अंगूठे का प्रिंट होना पाया गया।”

(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<sup>1</sup> 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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1 (1984) 4 SCC 116



"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."

(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.

**Incriminating Circumstance No.1:**

(13) So far as incriminating circumstances No.01 is concerned, it is the case of the prosecution that around 09 months prior to the incident the appellant used to visit the office of Shriram Finance



Company intermittently to do the work of Interior Decoration and same has been found proved by the learned trial Court, which finding in the considered opinion of this Court is correct finding of fact based on evidence available on record. We hereby hold accordingly.

**Incriminating Circumstance No.2:**

(13) So far as this incriminating circumstance is concerned, it is the case of the prosecution that the appellant has given extra-judicial confession to Pushpendra Kumar Singh (PW-04) on 17.09.2013, which has been found established by the learned trial Court. However, it is pertinent that Pushpendra Kumar Singh (PW-04), to whom the appellant has given extra-judicial confession on 17.09.2013 is his co-worker and date of incident is 05.09.2013. Further, the investigating officer, namely, Virendra Singh (PW-07) has clearly stated that though the appellant was interrogated uptill 17.09.2013, but he did not make any confession before the police and only on 18.09.2013 he gave his confessional statement, which came to be recorded. According to learned counsel for the appellant, it is on account of pressure tactics adopted by the police, the appellant made confessional statement, whereas when he was in custody uptill 17.09.2013 he did not may any confession/statement. Furthermore, in the present case, the date of incident is 05.09.2013 and extra-judicial confession is said to have been given on 17.09.2013 i.e. after



a delay of more than 12-13 days. Even otherwise, It is the settled principle of criminal jurisprudence that extra judicial confession is a weak piece of evidence. Wherever the Court, upon due appreciation of the entire prosecution evidence, intends to base a conviction on an extra judicial confession, it must ensure that the same inspires confidence and is corroborated by other prosecution evidence. If, however, the extra judicial confession suffers from material discrepancies or inherent improbabilities and does not appear to be cogent as per the prosecution version, it may be difficult for the Court to base a conviction on such a confession. In such circumstances, the Court would be fully justified in ruling such evidence out of consideration. [See : **Sahadevan and another v. State of Tamil Nadu**<sup>2</sup>]. As such, from the aforesaid cumulative reasons, this incriminating circumstance is not found proved and the findings recorded by the learned trial Court in this regard are liable to be discarded. We hereby hold accordingly.

**Incriminating Circumstance No.3:**

(14) Now, the next piece of evidence that has been relied upon by the learned trial Court is that pursuant to the memorandum statement of the appellant recorded vide Ex.P/08, hammer and cutter have been seized vide Ex.P/09. However, The Supreme Court in the matter of **Raja Nayka v. State of Chhattisgarh**<sup>3</sup> by relying

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2 (2012) 6 SCC 403

3 2024 SCC Online SC 67



upon its earlier decision rendered in the matter of **Mustkeen @ Sirajudeen v. State of Rajasthan**<sup>4</sup> has held that sole circumstance of recovery of blood-stained article cannot form the basis of conviction unless the same is corroborated with other piece of incriminating circumstances. Consequently, the recovery of aforesaid article is also of no help to the prosecution. We hereby hold accordingly.

**Incriminating Circumstance No.4:**

(15) The last incriminating circumstance is relating to the evidence of finger print and foot print of the appellant found on the ceiling plate seized from the spot. However, this incriminating circumstance has not been found proved by the learned trial Court, therefore, we have no occasion to consider the same in this appeal.

(16) 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, 450 & 427 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.

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4 (2011) 11 SCC 724



(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 18.12.2015. The appellant is acquitted of the charge under Sections 302, 450 & 427 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/-  
(Sanjay Kumar Jaiswal)  
Judge