



2026:CGHC:99-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 31 of 2019

(Arising out of judgment dated 14.09.2018 passed in Sessions Trial No.15/2018 by the learned Sessions Judge, Bemetara)

Kumar Singh Dhruv, S/o Jitan Dhruv, aged about 51 years, R/o Village- Motimpur, Police Station- Dadhi, District- Bemetara, Chhattisgarh

... Appellant

versus

State of Chhattisgarh, Through Police Station- Dadhi, District- Bemetara, Chhattisgarh

...Respondent

For Appellant : Ms. Smita Jha, Advocate

For Respondent/State : Mr. Afroz Khan, Panel Lawyer

Division Bench

Hon'ble Shri Justice Sanjay K. Agrawal
Hon'ble Shri Justice Sanjay Kumar Jaiswal

Judgment on Board
(02.01.2026)

Sanjay Kumar Jaiswal, J.

1. Invoking criminal appellate jurisdiction of this Court under Section 374(2) of the CrPC, the appellant herein has preferred this criminal appeal calling in question legality, validity and correctness of the judgment of conviction and order of sentence dated 14.09.2018 passed by the learned Sessions Judge Bemetara, District Bemetara (C.G.), in Sessions Trial No.15/2018, by which the appellant has been convicted and sentenced as under:-

Conviction	Sentence & Fine
U/s 302 of the IPC	Life imprisonment and to pay fine of ₹100/-; in default of payment of fine, 3 months' additional RI.

2. The prosecution case, in brief, is that accused/appellant, Kumar Singh Dhruv, had taken the field of Arjun Thakur on sharecropping (adhiya) located at Motimpur, Police Station-Dadhi, Bemetara. On the date of incident, 01/01/2018, the accused Kumar Singh Dhruv went to the field with his wife, Binda Bai, in the morning. While working there, a dispute arose, and he killed his wife Binda

Bai by hitting her with an iron sharp-edged spade (Rapli). He returned home and informed his brothers that he had killed his wife Binda Bai. The villagers went to the field and saw Binda Bai's body. Based on the information given by Kotwar Makund Das (PW-1), a Merg intimation was registered at Police Station Dadhi, and a inquest (Exhibit P-8) was prepared. Dr. Anamika Minj (PW-10) conducted the post-mortem and gave a report (Exhibit P-24) stating the cause of death as "coma, multi-organ failure, severe blood loss". Thereafter, the First Information Report (Exhibit P-2) was registered. The police seized the iron sharp-edged spade produced by the accused, and prepared a seizure memo (Exhibit P-5). Statements of witnesses were recorded, a spot map was prepared, and after completing the investigation, a charge sheet was filed.

3. During the course of trial, in order to bring home the offence, the prosecution has examined as many as 10 witnesses and exhibited 25 documents. Statement of the appellant was also recorded under Section 313 of Cr.P.C. in which he denied circumstances appearing against him in prosecution case, pleaded innocence and false implication.
4. After hearing both the parties, the trial Court passed the impugned judgment of conviction and order of sentence.

5. Learned counsel for the appellant submits that the case is based on circumstantial evidence and the motive of the accused has not been proved. The chain of circumstances is not complete, and the extra-judicial confession has not been corroborated by the accused's brother, Dharam Singh Dhruv (PW-3). The statement made by the other brother, Aghnuram Dhruv (PW-2), is not reliable. The extra-judicial confession is a weak type of evidence and cannot be the basis for conviction. No memorandum of the accused's statement has been prepared. The seizure of the iron spade (Exhibit P-5) has not been corroborated by independent witnesses. The conviction cannot be based solely on the seizure of the spade (Rapli), as it has not been proved that the blood of the deceased and the blood found on the spade belong to the same group. In these circumstances, the conviction of the accused is not sustainable in law. Therefore, the appeal may be allowed, and the impugned judgment of conviction and order of sentence may be set aside and the accused may be acquitted.
6. On the other hand, learned counsel for the State submits that the finding recorded by the Trial Court regarding conviction and sentence of the appellant is based on sufficient and reliable evidence, which does not require any interference. Therefore, the contention made by the counsel

for the appellant is not acceptable, hence, the appeal may be dismissed.

7. We have heard learned counsel appearing for the parties and perused the record with utmost circumspection.

8. The first question, for consideration, as to whether the death of deceased was homicidal in nature has been answered by the trial Court in affirmative relying upon the post-mortem report (Exhibit P-24), proved by Dr. Anamika Minj (PW-10), according to which, cause of death was stated to be coma, multi organ failure and severe blood loss and death was homicidal in nature, which in our considered opinion is a correct finding of fact based on evidence available on record, it is neither perverse nor contrary to the record and accordingly, we hereby affirm the said finding.

9. In the instant case, there is no direct evidence available on record and case of the prosecution is solely based on circumstantial evidence. The five golden principles which constitute the *panchsheel* of the proof of a case based on circumstantial evidence have been laid down by their Lordships of the Supreme Court in the matter of **Sharad Birdhichand Sarda v. State of Maharashtra**¹ which must

¹ (1984) 4 SCC 116

be fulfilled for convicting an accused on the basis of circumstantial evidence. The relevant paragraph 153 of the said judgment reads as under: -

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

- (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 Sahab Rao Bobade v. State of Maharashtra*² 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

² (1973) 2 SCC 793

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."

10. The prosecution has not proved any motive for the accused's conviction. The primary basis for the accused's conviction is that he made an extra-judicial confession before his brother and villagers. Examining the evidence on record, it is clear that other witnesses have mentioned the extra-judicial confession made by the accused to the police, which is inadmissible under Section 25 of the Indian Evidence Act. A key witness to the extra-judicial confession is Dharam Singh Dhruv (PW-3), the accused's brother, who stated that the accused had told his son (name not specified) that he had killed Binda Bai. Dharam Singh Dhruv's statement reveals that the accused did not make an extra-judicial confession before him. In these circumstances, Dharam Singh Dhruv's (PW-3) statement does not support the prosecution's case for the accused's

conviction.

11. The second key witness to the extra-judicial confession is Aghnuram Dhruv (PW-2), the accused's brother. Aghnuram stated in his Court testimony that the accused had gone to the field with his wife around 8:00 am to work, and after two hours, the accused returned alone and said he had killed his wife Binda Bai, whose body was lying in the field which they had taken on sharecropping (adhiya). Notably, the villagers were already aware that the body was lying in the field, meaning thereby the recovery of the body was not based on the accused's information.

12. In the matter of **Sahadevan and another Vs. State of Tamil Nadu**³, their Lordships of the Supreme Court further considered the earlier decisions including **Balwinder Singh Vs. State of Punjab**⁴ and pertinently laid down the principle in paragraphs 15.1, 15.8 and 16 as under :-

"15.1. In Balwinder Singh (supra) this Court stated the principle that: (SCC p. 265, para 10)

"10. An extra-judicial confession by its very nature is rather weak type of evidence and requires appreciation with a great deal of care and caution. Where an extra-judicial

³ (2012) 6 SCC 403

⁴ 1995 Supp (4) SCC 259

confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance."

15.8. Extra-judicial confession must be established to be true and made voluntarily and in a fit state of mind. The words of the witnesses must be clear, unambiguous and should clearly convey that the accused is the perpetrator of the crime. The extra-judicial confession can be accepted and can be the basis of conviction, if it passes the test of credibility. The extra-judicial confession should inspire confidence and the court should find out whether there are other cogent circumstances on record to support it. (*Ref. Sk. Yusuf v. State of W.B.*⁵ and *Pancho v. State of Haryana*⁶.)

The principles

16. Upon a proper analysis of the above referred judgments of this Court, it will be appropriate to state the principles which would make an extra-judicial confession an admissible piece of evidence capable of forming the basis of conviction of an accused. These percepts would guide the judicial mind while dealing with the veracity of cases where the prosecution heavily relies upon alleged accused: an extra-judicial confession alleged to have been made by the accused:

- (i) The extra-judicial confession is a weak

5 (2011) 11 SCC 754

6 (2011) 10 SCC 165

evidence by itself. It has to be examined by the court with greater care and caution.

(ii) It should be made voluntarily and should be truthful.

(iii) It should inspire confidence.

(iv) An extra-judicial confession attains greater credibility and evidentiary value if it is supported by chain of cogent circumstances and is further a corroborated by other prosecution evidence.

(v) For an confession to be extra-judicial the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.

(vi) Such statement essentially has to be proved like any other fact and in accordance with law."

13. In light of the principles laid down by the Supreme Court in the above-mentioned judgment, examining the facts and evidence on record, it is clear that the extra-judicial confession corroborated by brother Aghnuram Dhruv (PW-2) is a weak type of evidence and cannot be considered sufficient for conviction.

14. The second basis for the accused's conviction is that the

investigating officer, Inspector Ajay Singh Bais (PW-9), seized the iron spade (Rapli) allegedly used in the crime and prepared Exhibit P-5 when the accused was produced. The FSL report (Exhibit P-23) states that human blood was found on the iron spade.

15. The seizure of the iron spade (Exhibit P-5) stated by Inspector Ajay Singh Bais (PW-9) is not corroborated by Jaykaran Yadav (PW-5). Kotwar Makund Das (PW-1) stated in response to a leading question that the police had told the accused to produce any weapon available at home, and then the police themselves entered the accused's room, took out the spade, and seized it. This witness did not confirm whether there were any bloodstains or marks on the spade. No memorandum was prepared after recording the accused's statement. Thus, the seizure is not proved beyond doubt.

16. According to the FSL report (Exhibit P-23), blood group 'A' was found on the deceased's saree, whereas the blood group on the iron spade allegedly seized from the accused could not be determined.

17. Furthermore, though the blood stained spade has been seized from the accused, but it is well settled law that

disclosure alone would not automatically lead to conclusion that offence was also committed by accused and burden lies on prosecution to establish a close link between discovery of material object and its use in commission of offence. In this regard, Their Lordships of the Supreme Court in the matter of **Mustkeem Alias Sirajudeen v. State of Rajasthan**⁷, held as under :

25. With regard to Section 27 of the Act, what is important is discovery of the material object at the disclosure of the accused but such disclosure alone would not automatically lead to the conclusion that the offence was also committed by the accused. In fact, thereafter, burden lies on the prosecution to establish a close link between discovery of the material objects and its use in the commission of the offence. What is admissible under Section 27 of the Act is the information leading to discovery and not any opinion formed on it by the prosecution.

27. The scope and ambit of Section 27 were also illuminatingly stated in **Pulukuri Kotayya v. King Emperor**⁸ reproduced hereinbelow:-

7 (2011) 11 SCC 724

8 AIR 1947 PC 67

".....it is fallacious to treat the 'fact discovered' within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that 'I will produce a knife concealed in the roof of my house' does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added 'with which I stabbed A' these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant."

18. Furthermore, in the matter of **Raja Naykar v. State of Chhattisgarh**⁹ the Supreme Court has clearly held that only on the basis of sole circumstance of recovery of blood-stained weapon, it cannot be said that the prosecution has discharged its burden of proving the case beyond reasonable doubt. In that view of the matter, the appellant could not have been convicted mainly on the basis of recovery of blood stained weapon without establishing the fact that it was used for commission of offence.

19. In light of the above-mentioned judgments, based on the evidence on record, it is not proved beyond doubt that the spade was seized from the accused, and it is also not established that the spade had any direct connection with Binda Bai's murder.

20. In view of the above, the impugned judgment of conviction and order of sentence dated 14.09.2018 is set aside. The appellant stands acquitted giving him benefit of doubt from the charge framed against him for the offence under Section 302 of I.P.C. The appellant is already on bail, he need not surrender; however, his bail bond shall remain in force for a period of six months in view of the provision contained in Section 437-A of the Cr.P.C.

21. In the result, this criminal appeal is **allowed**.

22. Let a certified copy of this judgment along with the original record be transmitted to the concerned trial Court forthwith for information and necessary action, if any.

Sd/-

Sd/-

(Sanjay K. Agrawal)
Judge

(Sanjay Kumar Jaiswal)
Judge

Shubham