2025:CGHC:29304-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 699 of 2023

Chandrakant Nishad S/o Shyam Lal Nishad, aged about 24 years R/o Sipkona, Police Station Patan, District Durg (Chhattisgarh)

... Appellant

versus

State of Chhattisgarh, Through Police Station Urla, District Raipur (Chhattigarh)

... Respondent

For Appellant	:	Mr. Shishir Dixit, Advocate
For Respondent / State	:	Mr. Shashank Thakur, Dy. Advocate General and Mr. Soumya Rai, Panel Lawyer

Hon'ble Shri Ramesh Sinha, Chief Justice

Hon'ble Shri Bibhu Datta Guru, Judge

Judgment on Board

Per Ramesh Sinha, C.J.

01/07/2025

1. The appellant has preferred this criminal appeal under Section 374(2) of the CrPC questioning the impugned judgment of conviction and order of sentence dated 26.11.2020 (wrongly mentioned in the impugned judgment as 26.11.2022) passed by the 14th Additional Sessions Judge, Raipur in Sessions Trial No.31/2020, by which he has been convicted and sentenced in

the following manner with a direction to run all sentences concurrently :-

CONVICTION	**SENTENCE**
U/s 302 of IPC (on three counts	Life imprisonment on all three counts and fine of Rs. 100/- for every count (total fine of Rs. 300/-), in default of payment of fine, additional RI for 1 month for each default
U/s 201 of IPC	RI for 5 years and fine of Rs.50/-, in default of payment of fine, additional RI for 15 days.

2. The prosecution case, in brief, is that on the information of Chandrakant Nishad, on 10.10.2019, Head Constable Bhagirathi Bhoi registered a Rural Death Intimation No. 0/2019 on receipt of information about the death of deceased Dulaurin Bai, Sonu Nishad and Sanjay Nishad. On the said case intimation, Inspector Manish Singh Parihar registered case intimation number 97/2019 in respect of deceased Smt. Dulaurin Bai Nishad, case number 98/2019 in respect of deceased Sonu Nishad and case number 99/2019 in respect of deceased Sanjay Nishad, all residents of village Bana, police station Urla, District Raipur. On the case investigation panchnama proceedings, it was found that between 9 pm on 09.10.2019 and 5 am on 10.10.2019, all the three were killed by an unknown person in the house of the deceased by hitting them on the head with a solid heavy object causing fatal injuries and later, with the aim of hiding the evidence, the bodies

of all the three were burnt by placing them on a cot in a room inside the house of the deceased at the incident spot. Crime was registered against unknown persons under section 302, 201 IPC and investigation proceedings were carried out in the case.

3. During the course of investigation of the case, suspect Chandrakant Nishad was brought to the police station for interrogation. After reaching the scene of crime, accused Chandrakant Nishad was interrogated in front of witnesses Janak Nishad and Bhola Ram Sahu and his memorandum statement was taken, in which accused Chandrakant Nishad accepted to have committed the crime and told that the wooden stick and the clothes of deceased Sonu Nishad were thrown on the bank of the river as the weapon used in the crime. On the basis of the said memorandum statement, after reaching the spot, a wooden stick used in the crime and the clothes of deceased Sonu Nishad were recovered from the bank of Kharun river near village Bana on the indication of the accused and seized in front of witnesses. A kerosene jerrycan was searched at the scene of crime and at the places mentioned by the accused when it was not found, a search panchnama was prepared. The TVS Jupiter number CG 04-LT-8594 used by accused Chandrakant in the crime was seized in front of witnesses. When bloodstains were seen on the pink checked T-shirt worn by accused Chandrakant at the time of the incident, it was seized in front of witnesses as evidence.

4. The accused Chandrakant Nishad was arrested on 11.10.2019 as sufficient evidence was found against him to have committed the crime under Section 302, 201 IPC. After the investigation was completed, the crime was found to be proven against the accused and chargesheet number 421/19 was prepared for trial and it was presented in the Court Judicial Magistrate First Class, Raipur, from where the case was committed to the Court of Sessions and ultimately, the 14th Additional Sessions Judge, Raipur, received the case on transfer for hearing and disposal in accordance with law.

5. When charges were framed against the accused under Sections 302, 302, 302, 201 of the Indian Penal Code and were read out to him and explained to him, the accused denied having committed the offence and sought defence.

6. In order to bring home the offence, the prosecution examined as many as 14 witnesses and exhibited 45 documents Exs.P-1 to P-45. The accused was examined under Section 313 of the Code of Criminal Procedure, in which he pleaded that he was innocent and had been falsely implicated. When the accused was admitted in defence, he stated that he did not want to adduce any evidence in his defence.

7. The trial Court upon appreciation of oral and documentary evidence available on record, by its judgment dated 26.11.2020, convicted and sentenced the appellant as aforementioned, against which, this criminal appeal has been preferred.

8. Mr. Shishir Dixit, learned counsel for the appellant submitted that the prosecution has failed to establish a clear and compelling motive against the accused to commit the crime and the impugned judgment has been passed only on the basis of conjuncture and surmises. He further submitted the whole conviction is based on the sole evidence of Ramadhar Sahu (PW-4) that the appellant was last seen together with the deceased in the party, which is weak evidence to base the conviction of the appellant. He also submitted that there is no eye witness of the said murder of the deceased, none of the neighbors saw or heard the appellant killing the deceased, this is mere speculation that the appellant has killed the deceased. He contended that on the night of incident the appellant went to village Murra and in the morning when he came back to the place of incident, he got information about the crime and has lodged the merg intimation before the concerned police station. He further contended that it is a settled principle of law that the statement given by the accused before the police officers cannot be relied on for convicting the accused. However, in the instant case, the trial Court has erred in relying upon the appellant's statement to the police in order to convict him. The prosecution has not proved the case against the present appellant beyond all the reasonable doubt. Hence, the appellant is entitled for acquittal.

9. On the other hand, learned State counsel opposed the aforesaid submissions and submitted that conviction of the appellant is

based on direct as well as circumstantial evidence. The prosecution during investigation recorded the statements of the prosecution witnesses in which they have categorically deposed in their statements regarding conduct and commission of offence by the appellant, which is concurrent evidence against the appellant and thus, the learned trial Court has rightly convicted and sentenced the accused/appellant. Therefore, the instant appeal deserves to be dismissed. It has been further submitted that the learned trial Court has come to the conclusion regarding involvement of the accused / appellant in the crime in question under the concluding paras of the judgment in which the learned trial Court has observed all incriminating circumstances against the accused / appellant, which connect him with the instant crime and chain of circumstances are fully linked and completed with each other. Thus, the prosecution has proved its case beyond reasonable doubt and the judgment of the trial Court is just and proper and does not call for any interference by this Court and as such, criminal appeal deserves to be dismissed.

10. We have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.

11. The first question for consideration would be, whether the trial Court was justified in holding that death of deceased Dulaurin Bai, Sonu Nishad and Sanjay Nishad were homicidal in nature ?

12. The trial Court relying upon the statement of Dr. M. Nirala (PW-14), who has conducted postmortem over the dead bodies of deceased Dulaurin Bai, Sonu Nishad and Sanjay Nishad, has clearly come to the conclusion that death of deceased Dulaurin Bai, Sonu Nishad and Sanjay Nishad were homicidal in nature. The said finding recorded by the trial Court is a finding of fact based on evidence available on record, which is neither perverse nor contrary to record. Even otherwise, it has not been seriously disputed by the learned counsel for the appellant. We hereby affirm the said finding.

13. It is the case of no direct evidence, rather conviction is based on circumstantial evidence.

14. We may also make a reference to a decision of the Supreme Court in **C. Chenga Reddy and Ors. v. State of A.P., (1996) 10 SCC 193**, wherein it has been observed thus:

> "In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence....".

15. In **Padala Veera Reddy v. State of A.P. and Ors., AIR 1990 SC 79**, it was laid down by the Supreme Court that when a case rests

upon circumstantial evidence, such evidence must satisfy the following tests:

> "(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
>
> (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
>
> (3) the circumstances, taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and
>
> (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence."

16. In **State of U.P. v. Ashok Kumar Srivastava, (1992 Crl.LJ 1104)**, it was pointed out by the Supreme Court that great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. It was also pointed out that the circumstances relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt.

17. Sir Alfred Wills in his admirable book "Wills' Circumstantial Evidence" (Chapter VI) lays down the following rules specially to

be observed in the case of circumstantial evidence: (1) the facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the factum probandum; (2) the burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability; (3) in all cases, whether of direct or circumstantial evidence the best evidence must be adduced which the nature of the case admits; (4) in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation, upon any other reasonable hypothesis than that of his guilt, (5) if there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted".

18. Five golden principles which constitute *Panchseel* of proof of case based on circumstantial evidence have been laid down by the Supreme Court in the matter of **Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116** which state as under :-

> "(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned "must" or "should" and not "may be" established;
>
> (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."

19. The Supreme Court in the matter of **Suresh and Another v State of Haryana, (2018) 18 SCC 654** has observed that cases of circumstantial evidence, the courts are called upon to make inferences from the available evidence, which may lead to the accused's guilt. The court at paras 41 and 42 has observed thus :

"41. The aforesaid tests are aptly referred as Panchsheel of proof in Circumstantial Cases (refer to Prakash v. State of Rajasthan). The expectation is that the prosecution case should reflect careful portrayal of the factual circumstances and inferences thereof and their compatibility with a singular hypothesis wherein all the intermediate facts and the case itself are proved beyond reasonable doubt.

42. Circumstantial evidence are those facts, which the court may infer further. There is a stark contrast between direct evidence and circumstantial evidence. In cases of circumstantial evidence, the courts are called upon to make inferences from the available evidence, which may lead to the accused's guilt. In majority of cases, the inference of guilt is usually drawn by establishing the case from its initiation to the point of commission wherein each factual link is ultimately based on evidence of a fact or an inference thereof. Therefore, the courts have to

> identify the facts in the first place so as to fit the case within the parameters of “chain link theory” and then see whether the case is made out beyond reasonable doubt. In India we have for a long time followed the “chain link theory” since Hanumant case, which of course needs to be followed herein also.”

20. The Supreme Court in the matter of **Sailendra Rajdev Pasvan and Others vs. State of Gujarat Etc., AIR 2020 SC 180** observed that in a case of circumstantial evidence, law postulates two-fold requirements. Firstly, that every link in the chain of circumstances necessary to establish the guilt of the accused must be established by the prosecution beyond reasonable doubt and secondly, all the circumstances must be consistent pointing out only towards the guilt of the accused. We need not burden this judgment by referring to other judgments as the above principles have been consistently followed and approved by this Court time and again.

21. In the present case, the prosecution has proved the following circumstantial evidence against the appellant:-

> (i) The death of the deceased is of a homicidal nature,
>
> (ii) The accused being in the company of the deceased before the incident,
>
> (iii) The dead cannot be seen by some other person from the village on the night of the incident

(iv) The accused was the first to see the deceased after the incident,

(v) Based on the memorandum of the accused, the wooden stick used in the incident and the clothes of the deceased Sonu Nishad were seized.

(vi) Seizure of the blood-stained T-shirt worn by the accused at the time of the incident from his possession,

(vii) Human blood found on the wooden stick, shirt of deceased Sonu Nishad and T-shirt of the accused,

(viii) O group blood found on the wooden stick and the T-shirt of the accused,

(ix) Destruction of evidence by the accused,

(x) Under Section 106 of the Indian Evidence Act, it is the responsibility of the accused to explain how the deceased died but the accused has not given any such explanation and the explanation given is false.

22. The next question for consideration would be, whether the trial Court has rightly held that the appellant is author of the crime by relying upon the following circumstances:-

(i) Homicidal death was proved by the prosecution as per postmortem reports Exs.P-41, 42 & 43 of deceased Dulaurin Nishad, Sonu Nishad and Sanjay Nishad

respectively given by Dr. M. Nirala (PW-14) who had conducted autopsy.

(ii) As per the case of the prosecution, the fact of death of deceased Dulaurin Nishad, Sonu Nishad and Sanjay Nishad was within the knowledge of the appellant, however, there was no any explanation given by the appellant in his statement under Section 313 of the CrPC. Thus, burden of proof was on the appellant to explain such circumstance, which he failed to explain.

23. It can thus clearly be seen that it is necessary for the prosecution that the circumstances from which the conclusion of the guilt is to be drawn should be fully established. The Court holds that it is a primary principle that the accused ‘must be’ and not merely ‘may be’ proved guilty before a court can convict the accused. It has been held that there is not only a grammatical but a legal distinction between ‘may be proved’ and ‘must be or should be proved’. It has been held that the facts so established should be consistent only with the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty. It has further been held that the circumstances should be such that they exclude every possible hypothesis except the one to be proved. It has been held that 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 probabilities the act must have been done by the accused.

24. It is settled law that the suspicion, however strong it may be, cannot take the place of proof beyond reasonable doubt. An accused cannot be convicted on the ground of suspicion, no matter how strong it is. An accused is presumed to be innocent unless proved guilty beyond a reasonable doubt.

25. In the light of these guiding principles, we will have to examine the present case.

26. On a perusal of the judgment of the Trial Judge, it would reveal that the main circumstance on which the Trial Judge found the appellant guilty of the crime is the recovery of various articles at his instance. The Trial Judge has further found that on the basis of memorandum statement of the appellant, the wooden stick used in the incident and the clothes of the deceased Sonu Nishad and blood-stained T-shirt worn by the accused at the time of the incident from his possession, were seized on production of the appellant and as per FSL report, human blood was found on the wooden stick, shirt of deceased Sonu Nishad and T-shirt of the accused, seized from the appellant. Furthermore, O group blood was found on the wooden stick and the T-shirt of the accused

27. At this stage, it would be appropriate to notice Section 27 of the Indian Evidence Act, 1872, which states as under: -

> "**27. How much of information received from accused may be proved**.—Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved."

28. Section 27 of the Indian Evidence Act is applicable only if the confessional statement relates distinctly to the fact thereby discovered.

29. The Supreme Court in the matter of **Asar Mohammad and others v. State of U.P., AIR 2018 SC 5264** with reference to the word “fact” employed in Section 27 of the Evidence Act has held that the facts need not be self-probatory and the word “fact” as contemplated in Section 27 of the Evidence Act is not limited to “actual physical material object”. It has been further held that the discovery of fact arises by reason of the fact that the information given by the accused exhibited the knowledge or the mental awareness of the informant as to its existence at a particular place and it includes a discovery of an object, the place from which it is produced and the knowledge of the accused as to its existence. Their Lordships relying upon the decision of the Privy Council in the matter of **Pulukuri Kotayya v. King Emperor, AIR 1947 PC 67** observed as under: -

> “13. It is a settled legal position that the facts need not be self-probatory and the word “fact” as contemplated in Section 27 of the Evidence Act is not limited to “actual physical material object”. The discovery of fact arises by reason of the fact that the information given by the accused exhibited the knowledge or the mental awareness of the informant as to its existence at a particular place. It includes a discovery of an object, the place from which it is produced and the knowledge of the accused as to its existence. It will be useful to advert to the exposition in the case of *Vasanta Sampat Dupare v. State of Maharashtra*[1], in particular, paragraphs 23 to 29 thereof. The same read thus:

1 (2015) 1 SCC 253

> "23. While accepting or rejecting the factors of discovery, certain principles are to be kept in mind. The Privy Council in *Pulukuri Kotayya v. King Emperor* (supra) has held thus: (IA p. 77)
>
> > "… 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.
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> xxx xxx xxx
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> xxx xxx xxx"

30. The Supreme Court in the matter of **Perumal Raja alias Perumal v. State, Rep. By Inspector of Police, 2024 SCC OnLine SC 12** has defined the 'custody'. It held that the expression "custody" under Section 27 of the Evidence Act does not mean formal custody. It includes any kind of restriction, restraint or even surveillance by the police. Even if the accused was not formally

arrested at the time of giving information, the accused ought to be deemed, for all practical purposes, in the custody of the police.

31. The Supreme Court in the matter of **Boby v State of Kerala, 2023 SCC OnLine SC 50** held that the basic idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered as a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true. The information might be confessional or non-inculpatory in nature but if it results in discovery of a fact, it becomes a reliable information. Section 27 puts a bar to use the confessional statement, but the fact that discovery and information which proved to reliable would be a circumstantial evidence.

32. In the present case, the prosecution has proved that the accused had special knowledge that deceased Dulaurin Nishad, Sonu Nishad and Sanjay Nishad have been murdered and he gave the above information to the police and when the crime scene was verified, it was found that dead body of deceased Dulaurin Nishad, Sonu Nishad and Sanjay Nishad were found in brunt condition inside their house. It is also important that blood stains were also found on the clothes worn by the accused. It is clear from forensic test report that human blood was found in clothes worn by the one of the deceased Sonu Nishad and wooden stick seized from the accused and clothes worn by the accused at the time of incident. The accused

has not offered explanation in this regard. The bodies of the deceased were recovered on the identification of the accused. The accused has not given any explanation in this regard also. The accused has also not given any explanation that how he came to know about the said particular fact, therefore, in absence of motive, the case of the prosecution is found to be proved against the accused beyond reasonable doubt.

33. Shani Rajak (PW-2) has stated in his evidence that the accused used to come to their house at night as well as during the day and also stayed overnight. The accused is in the Police Department and used to come in uniform also. While putting the question No.67 to the appellant under Section 313 CrPC that “your duty was from 16.00 hours to 20.00 hours on 08.04.2018, but you did not report for duty on that day. What do you say ? The appellant stated that he was coming to duty, but the police caught him half away and took him along with them, but no defence witness or any document has been produced / adduced that he was not present at the place of occurrence and he was present somewhere else.

34. From the evidence adduced by the prosecution, it is clear that the accused was called to go to Urla police station to question him about the withdrawal of ₹40,000 from Dulaurin Bai's ATM card without her knowledge and in this connection, the accused had the ATM number etc. For this reason, the accused had come to Dulaurin Bai's house and on the same night Dularin Bai had asked the accused to buy fish from the market and cook it. Under Section 106 of the Indian

Evidence Act, the accused had the special knowledge that the deceased were murdered. No explanation was offered by the accused before the trial Court as to how the said special fact was in his knowledge. There is no evidence which shows even the slightest possibility that the incident could have been caused by any other person. It is also important to note that there is a very short time gap between the time of occurrence of the incident and the time of making the confession. The accused had not given any explanation as to how the clothes worn by him got stained with human blood. There is no evidence which shows that the deceased could have been murdered by any person other than the accused. Therefore, it is found that in the present case, the links of circumstantial evidence have been connected with each other in such a way that it leads to the conclusion of direct conviction of the accused and there is no possibility of the incident being committed by any other person. Therefore, on the basis of the above circumstantial evidence, this fact is proved beyond reasonable doubt that accused Chandrakant Nishad himself with the intention of causing the death of deceased Dulaurin Bai, Sonu Nishad and Sanjay Nishad by hitting them on the head with a wooden stick and killed them and with the intention of covering himself from legal punishment, he poured kenosene on the bodies of the deceased and set them on fire.

35. Applying the aforesaid well settled principles of law and taking into consideration the facts in totality and considering the facts and circumstances of the case, in our considered view the prosecution was able to establish the guilt of the accused beyond reasonable

doubt. The impugned judgment of conviction and order of sentence is just and proper warranting no interference of this Court.

36. In the result, the appeal being devoid of merit is liable to be and is hereby **dismissed**.

37. It is stated at the Bar that the appellant is in jail, he shall serve out the sentence as ordered by the learned trial Court.

38. The trial court record along with a copy of this judgment be sent back immediately to the trial Court concerned for compliance and necessary action.

39. Registry is directed to send a copy of this judgment to the concerned Superintendent of Jail where the appellant is undergoing his jail term, to serve the same on the appellant informing him that he is at liberty to assail the present judgment passed by this Court by preferring an appeal before the Hon'ble Supreme Court with the assistance of the High Court Legal Services Committee or the Supreme Court Legal Services Committee.

Sd/-
(Bibhu Datta Guru)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice

Chandra

Head – Note

If the chain of circumstances is complete and the recoveries made from the accused are duly proved, and if the accused was last seen together with the deceased shortly before the death, then the failure of the accused to offer a plausible explanation would be fatal to his defence.