



2025:CGHC:50045-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

ACQA No. 84 of 2016

Anil Khandelwal S/o Late Dashrath Lal Khandelwal R/o Uslapur Road,
Beside 36 City Mall, Mungeli Road, Bilaspur Chhattisgarh, Chhattisgarh

--- Appellant

versus

1 - State Of Chhattisgarh Through - Station House Officer, Police
Station - Civil Lines, District Bilaspur Chhattisgarh, Chhattisgarh

2 - Vicky @ Manohar Singh S/o Vansh Bahadur Singh Aged About 19
Years R/o Madhuban Nariyal Kothi, Police Station Kotwali, District
Bilaspur Chhattisgarh

3 - Vijay Chaudhary S/o Moti Lal Chaudhary Aged About 19 Years R/o
Mannu Chowk, Tikrapara, Police Station Kotwali, District Bilaspur
Chhattisgarh

--- Respondent(s)

For Appellant : Mr.Vimlesh Bajpai, Advocate

For Respondent : Mr.S.S.Baghel, Deputy Government Advocate
No.1-State

For Respondent : Mr.Samrath Singh Marhas, Advocate
No.2

For Respondent : Mr.Arvind Singh, Advocate
No.3

ACQA No. 31 of 2017

State Of Chhattisgarh Through District Magistrate, Bilaspur
Chhattisgarh , Chhattisgarh

---Appellant

Versus

1 - Vickey @ Manohar Singh S/o Vansh Bahadur Singh, Aged About 19 Years R/o Madhuban Nariyal Kothi, Police Station Kotwali, District Bilaspur Chhattisgarh, Chhattisgarh

2 - Vijay Choudhary S/o Motilal Choudhary Aged About 19 Years R/o Mannu Chowk, Tikrapara, Police Station Kotwali, District Bilaspur, Chhattisgarh

--- Respondent(s)

For Appellant : Mr.S.S.Baghel, Deputy Government Advocate

For Respondent : Mr.Samrath Singh Marhas, Advocate

No.1

For Respondent : Mr.Arvind Singh, Advocate

No.2

Hon'ble Shri Ramesh Sinha, Chief Justice and
Hon'ble Shri Bibhu Datta Guru, Judge

Judgment on Board

Per Ramesh Sinha, C.J.

08/10/2025

1. Appellant Anil Khandelwal has filed Acquittal Appeal No.84/2016 under Section 372 of the CrPC against the impugned judgment of acquittal dated 16.05.2016 passed by the Third Additional Sessions Judge, Bilaspur in Sessions Case No.63/2014, whereby the trial Court has acquitted respondents No.2 and 3 from the offence punishable under Sections 455, 394, 307, 302 and 201 of the IPC.

2. Appellant-State has filed Acquittal Appeal No.31/2017 under Section 378(1) of the CrPC against the impugned judgment of acquittal dated 16.05.2016 passed by the Third Additional Sessions Judge, Bilaspur in Sessions Case No.63/2014, whereby the trial Court has acquitted the respondents from the offence punishable under Sections 455, 394, 307, 302 and 201 of the IPC.
3. Since the aforesaid two acquittal appeals have been filed against the same judgment, they were clubbed and heard together and being disposed of by this common judgment.
4. The case of the prosecution in brief is that complainant Anil Khandelwal, son of late Dashrath Lal Khandelwal, resident of near 36 Mall, Uslapur, who is engaged in the hotel business, had his aged parents Smt. Vimla Devi Khandelwal and Dashrath Lal Khandelwal residing in a separate house adjacent to that of the complainant. On 22/11/2013, at around 1:30 A.M., the complainant returned home from his hotel, had his meal, and went to sleep. Around the same time, two unknown accused persons arrived at the said house, entered through the gate, and rang the doorbell. Believing it to be the maid, victim Vimla Devi Khandelwal opened the door, whereupon both accused forcibly entered the house. They brandished a knife, demanded money from the couple, and threatened to kill them. When the deceased Dashrath Lal Khandelwal resisted, the accused, with the intent to

commit murder, attacked the couple with a knife, inflicting grievous injuries upon them. When the injured Vimla Devi attempted to intervene, she too was stabbed in the abdomen and was subsequently confined inside a room by the assailants. The accused then fled the scene after robbing the deceased's wristwatch and mobile phone. Dashrath Lal Khandelwal was taken to Shri Ram Care Hospital, where upon examination, the doctor declared him dead. Vimla Devi was also taken to the hospital, where she was found to have sustained a serious stab injury on her waist. On the basis of the said incident, Merg Intimation No. 76/2013 was registered vide Ex.P-7. Subsequently, upon the complainant lodging a First Information Report (FIR) at Police Station Civil Line against two unknown persons, Crime No. 726/2013 was registered under Sections 458, 394, 307, 302, and 34 of the Indian Penal Code (IPC) against two unidentified accused vide Ex.P-8. MLC of injured Vimla Devi was conducted by the doctor vide Ex.P-2 and found left lumbar region stab wound approx 6 cm x 4 cm x 10 cm deep wound extending upto the peritoneum profuse bleeding noted. Spot map was prepared by the Patwari vide Ex.P-4. Spot inspection panchnama was prepared vide Ex.P-5. Dead body of the deceased was sent for postmortem to the CIMS, Bilaspur where Dr.Sawan (PW-4) conducted postmortem over the body of the deceased vide Ex.P-17 and found following injuries:-

Scratch abrasion:- (1) 12 x .5 cm left side front of thigh

obliquely placed.

Contusion:- (1) 3 x 2 cm dorsum of hand laterally left side.

(2) 2.5 x 2 cm Dorsum of right hand below wrist joint.

Incised wound:- (1) 2 x 1 cm in between index and thumb at the bone of proximal phalanx of thumb left side hand.

(2) 1 x .5cm, 1 x ½, 1 x ½, in the hip of middle, ring and little finger palm aspect of left hand.

(3) 2.5 x 1 x muscle deep Dorsum of hand at wrist joint medial aspect of left hand.

(4) through and through puncture wound entry wound 3 x 2 cm on the lower end of forearm 3 cm above wrist joint on exterior aspect existing 2.5 x 2 cm. on the phalanx aspect of forearm 4 cm above writ joint.

(5) 1 x ½ cm hip of right little finger palm aspect right hand.

(6) 1 x ½ cm hip of right middle finger palm aspect on right hand.

(7) 1 x ½ cm hip of right index finger palm aspect.

(8) 3 x 2 cm x cavity deep in lower part of abdomen 7 cm below umbilicus elliptical in shape horizontally placed through intestine are profruded out.

(9) 2.5 x 1 cm x cavity deep, elliptical shape 5 cm above umbilicus below 10th rib right side 3 cm left to midline obliquely placed.

(10) 3 x 1 cm x cavity deep 7 cm above umbilicus below 10th rib right side 4 cm left to midline obliquely placed.

(11) 3 x 1 cm x cavity deep left upper abdomen 9 cm below left nipple 4 cm left to midline obliquely placed.

(12) 3 x 1 cm x cavity deep left upper abdomen 12 cm below left nipple 6 cm left to midline obliquely placed.

The doctor has opined that cause of death is hemorrhagic shock as a result of multiple stab wounds.

5. Requisition for test identification parade was sent by the Station House Officer, Police Station Civil Line, Bilaspur to the Tahsildar, Bilaspur on 25.03.2014 at 2 P.M. vide Ex.P-11 and test identification parade was conducted vide Ex.P-6 in which injured Vimla Devi identified the accused / respondents. Sari, petticoat and gamacha stained with blood were seized from the constable vide Ex.P-12. Statement of Gourav Sharma under Section 164 CrPC was recorded vide Ex.P-13. Motor-cycle and RC book were seized on the basis of memorandum statement of the accused / respondents vide Ex.P-14. Statement of Rakesh Kushwaha under Section 164 CrPC was recorded vide Ex.P-15. Dehati First Information Report was lodged by Anil Khandelwal vide Ex.P-15 (second Ex.P-15). Police statement of Smt.Reshma Bano @ Muskan @ Gudiya was recorded vide Ex.P-16. Memorandum Statement of Reshma Bano under Section 164 CrPC was recorded vide Ex.P-17. Memorandum statement of respondent Vijay Choudhary was recorded on 25.03.2014 at 14:30 P.M. vide Ex.P-19. On the basis of memorandum statement of respondent Vikky @ Manohar Singh, knife stains with blood, fullshirt stains with blood and jeans pant stains with blood were seized vide Ex.P-20. On the basis of memorandum statement of respondent

Vijay Choudhary, full pant stains with blood and knife stains with blood were seized vide Ex.P-21. Motor-cycle was seized from registered owner vide Ex.P-22. Titan watch was seized from respondent Vijay Choudhary vide Ex.P-23. Respondent Vikky @ Manohar Singh was arrested on 25.3.2014 vide arrest memo Ex.P-24. Respondent Vijay Choudhary was arrested on 25.03.2014 vide arrest memo Ex.P-25. Bedsheet stains with blood, pillow stains with blood and bedsheet stains with blood of Vima Devi were seized from the spot vide Ex.P-26. Statement of Namit Choubey was recorded under Section 164 CrPC vide Ex.P-26. Merg intimation was recorded vide Ex.P-28. Spot map was prepared by the investigating officer vide Ex.P-29. Inquest was prepared over the body of deceased Dashrath Lal Khandelwal vide Ex.P-32. Memorandum statement of juvenile Jayant Patel was recorded vide Ex.P-59. Mobile was seized from juvenile Jayant @ Jashwant Patel vide Ex.P-60. Juvenile Jayant Patel was arrested on 27.03.2014 vide arrest memo Ex.P-61. Seized articles were sent to FSL for chemical examination and as per FSL report (Ex.P-70), human blood was found on Article C bedsheet seized from the spot, Article D pillow cover seized from the spot, Article H1 sari seized from injured Vimla Devi, Article H2 petticoat seized from injured Vimla Devi, Article H3 gamcha seized from from injured Vimla Devi, Article I1 Kurta seized from the deceased, Article I2 vest seized from the deceased, Article I4 dhoti seized from the deceased, Article J jacket seized from

respondent Vikky and Article K pant seized from respondent Vikky and blood was found on Article A pant and Article B knife seized from accused Vijay Choudhari.

6. During the course of investigation, it was found that the accused had committed the offence with the motive of obtaining money. Upon completion of investigation, a charge-sheet was filed before the Court of the Chief Judicial Magistrate, Bilaspur, who in turn committed the case to the Court of the Sessions, Bilaspur, where it was registered as Sessions Trial Case No. 63/2014 and thereafter transferred to the Court of Third Additional Sessions Judge, Bilaspur for trial in accordance with law.
7. Charges were framed against the accused / respondents under Sections 455, 394, 307, 302, and 201 of the Indian Penal Code, which were read over and explained to them. The accused denied the charges. Their statements under Section 313 of the Code of Criminal Procedure were recorded, wherein they claimed to be innocent and alleged false implication. The accused did not adduce any evidence in their defence.
8. In order to bring home the offence, the prosecution examined as many as 22 witnesses and exhibited 70 documents. The accused-respondents examined none in their defence nor any document has been exhibited in support of their case.
9. The trial Court upon appreciation of oral and documentary evidence available on record, by its judgment dated 16.05.2016,

acquitted the respondents from the offence punishable under Sections 455, 394, 307, 302 and 201 of the IPC. Hence, these acquittal appeals.

10. Mr. Vimlesh Bajpai, learned counsel for the appellant in Acquittal Appeal No.84/2016 submits that the trial Court has acted contrary to law in not placing reliance upon the prosecution witnesses and their testimony. The trial Court has further erred in law in disregarding the legal evidence placed before it by the prosecution wherein the accused persons were duly identified by injured eyewitness Smt. Vimla Devi (PW-3). He further submits that the trial Court has also committed grave error in not relying upon the evidence of Additional Tahsildar Jai Uraon (PW-6) who conducted test identification parade (Ex.P-6) and has duly proved the documents and identification procedure in accordance with law. The trial Court has erroneously overlooked the seizures of knives from accused persons and the FSL report which shows the presence of blood in one of them. He also submits that the trial Court has also overlooked the medical evidence on record which has proved the commission of the offence. The trial Court ought to have relied upon the evidence adduced by the prosecution and the testimony and documents proved by the prosecution witnesses and it ought to have convicted the respondents-accused for commission of heinous crime of robbery and murder of deceased Dashrath Lal Khandelwal. As such, the acquittal appeal deserves to be allowed and the respondents

deserves to be convicted for offence under Sections 302/34 and 307/34 of the IPC.

11. Mr.S.S.Baghel, learned Deputy Government Advocate for the appellant-State in Acquittal Appeal No.31/2017 submits that the judgment of acquittal passed by learned trial Court is illegal, improper and incorrect and thus, liable to be set aside. Learned trial Court ought to have seen that there is enough material available on record on which basis the accused/respondents are liable to be convicted for offence punishable U/s 455, 394, 307, 302 & 201 of the IPC. He further submits that learned trial Court has failed to appreciate the evidence in its perspective and succumbed to conjecture and surmises. Learned trial Court ought to have appreciated that the injured eyewitness of the incident namely Smt. Vimla Devi (PW-3) has given clinching evidence against the respondents/accused. He also submits that learned trial Court ought to have been held that the deceased together with the victim had received injuries which have been proved by Anil Khandelwal (PW-11), Smt. Kusum Khandelwal (PW-10), Mukesh Ganjhu (PW-18) & Dr. Sawan (PW-4) who has given postmortem report (Ex.P-17) of the deceased and also M.L.C. report of the victim. Learned trial Court has disbelieved the test identification parade (Ex.P-6) conducted by Jai Uraon (P.W.-6), Additional Tahsildar, wherein the victim Vimla Devi Khandelwal has clearly identified the accused persons. As such, the acquittal deserves to be allowed and the accused / respondents deserves

to be convicted for offence under Sections 302/34 and 307/34 of the IPC.

12. On the other hand, Mr. Samrath Singh Marhas, learned counsel appearing for respondent Vikky @ Manohar Singh, and Mr. Arvind Singh, learned counsel appearing for respondent Vijay Choudhary submit that the impugned judgment of acquittal passed by the learned Trial Court is just and proper, based on a careful and proper appreciation of the evidence on record, and deserves to be upheld by this Court. The learned Trial Court has considered the material evidence available on record, including the testimony of prosecution witnesses such as the injured eyewitness Smt. Vimla Devi (PW-3) and Reshma Bano (PW-12), and has rightly acquitted the respondents from charges under Sections 455, 394, 307, 302, and 201 of the IPC, holding that the prosecution has failed to prove the charges beyond reasonable doubt. There is no perversity or illegality in the impugned judgment warranting interference. It is submitted that the incident in question took place on 22.11.2013. However, the memorandum statements of respondent Vikky @ Manohar Singh at 14:00 hours, and respondent Vijay Choudhary at 14:30 hours on the same date were recorded only on 25.03.2014, that is, after a delay of more than four months. The requisition for Test Identification Parade (TIP) was sent by the Station House Officer, Police Station Civil Line, Bilaspur, to the Tahsildar, Bilaspur, and was received by the Tahsildar at 2:00 P.M. on 25.03.2014. The

TIP was conducted on the same day at 3:55 P.M. by Additional Tahsildar Jay Uraon (PW-6), where the injured witness, Smt. Vimla Devi (PW-3), purportedly identified the respondents as the assailants. The delay of over four months in recording the statements and conducting the TIP, without any plausible explanation or justification from the prosecution, seriously undermines the credibility of the identification and the overall prosecution case. This temporal gap raises a strong presumption that the identification and related evidence may have been concocted and manipulated to falsely implicate the respondents in the alleged crime. They further submit that Inspector L.P. Dwivedi (PW-19), who recorded the injured witness's statement, has confirmed that Smt. Vimla Devi gave her statement on the day following the incident. The statement (Ex.D-1) records that both the boys had their faces covered from the neck to the face with a scarf; one of them was wearing glasses. She recalled that both boys appeared to be about 24-25 years old and were thin. Their appearance resembled a driver named Gudda who had previously worked with her. Significantly, during the cross-examination of Smt. Vimla Devi, she admitted in paragraph 9 that nowhere in her original police statement was it mentioned that the scarves covering the faces of the assailants were removed during the scuffle to enable her identification of the accused. This is a vital omission, as such a fact would have materially bolstered the reliability of her identification. Further, in paragraph 12 of her

cross-examination, Smt. Vimla Devi admitted that during the Test Identification Parade, the faces of all persons presented were clearly visible, and the sheet used to cover them extended only up to the neck. This directly contradicts any claim that the assailants' faces were obscured during the TIP. Smt. Vimla Devi also admitted that from the date of the incident until the date of the TIP, she did not inform the police, nor did she communicate to any family member or relative, that she had seen and could identify the accused persons at her house on the day of the incident. This admission casts serious doubt on the genuineness and reliability of the identification. They also submit that It is a well-established principle that the Test Identification Parade is a crucial and delicate procedure that must be conducted at the earliest possible opportunity to preserve the sanctity of identification evidence. Delay in conducting TIP adversely affects its credibility. Any discrepancy, contradiction, or omission in the identification evidence must be viewed with suspicion and the benefit of doubt must be extended to the accused where identification is doubtful or vitiated. In the instant case, the unexplained delay coupled with the omissions and contradictions in the injured witness's testimony render the identification parade vitiated and unreliable. This alone is sufficient to negate the prosecution's case and justify the acquittal of the respondents.

13. We have heard learned counsel appearing for the parties, perused the impugned judgment of acquittal and record of the

trial Court.

14. The first question for consideration would be, whether the trial Court was justified in holding that death of deceased Dashrath Lal Khandelwal was homicidal in nature ?
15. The trial Court relying upon the statement of Dr. Sawan (PW-4), who has conducted postmortem on the body of deceased Dashrath Lal Khandelwal vide Ex.P-17, has clearly come to the conclusion that death of deceased Dashrath Lal Khandelwal was 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 respondents. We hereby affirm the said finding.
16. The next question for consideration is whether the learned Trial Court has rightly acquitted the respondents despite the presence of the testimony of the injured eyewitness Smt. Vimla Devi (PW-3) and Reshma Bano (PW-12), along with other material evidence available on record.
17. These are the appeals against the judgment of acquittal filed by the complainant / appellant Anil Khandelwal under Section 372 of the CrPC and by the State under Section 378(1) of the Cr.P.C. The appellate Courts are required to keep in mind that the trial Court had the advantage of looking at the demeanour of witnesses and observing their conduct in the Court especially in

the witness-box and also required to keep in mind that even at that stage, the accused was entitled to benefit of doubt. The doubt should be such as a reasonably person would honestly and conscientiously entertain as to the guilt of the accused.

18. The Supreme Court in **C. Antony v. Raghavan Nair**¹, has held that unless the High Court arrives at definite conclusion that the findings recorded by trial Court are perverse, it would not substitute its own view on a totally different perspective.

19. The Supreme Court in **Ramanand Yadav v. Prabhunath Jha**² has held that the appellate Court in considering the appeal against judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference.

20. The scope of interference in appeal against the judgment of acquittal is well settled. In **Tota Singh and another v. State of Punjab**³, the Supreme Court has held in para 6 as under:-

“6.....the mere fact that the Appellate Court is inclined on a reappraisal of the evidence to reach a conclusion which is at variance with the one recorded in the order of acquittal passed by the Court below will not constitute a valid and sufficient ground for setting aside

1 AIR 2003 SC 182

2 AIR 2004 SC 1053

3 AIR 1987 SC 1083

the acquittal. The jurisdiction of the appellate Court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower Court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the Court below is such which could not have been possibly arrived at by any Court acting reasonably and judiciously and is, therefore, liable to be characterised as perverse. Where two views are possible on an appraisal of the evidence adduced in the case and the Court below has taken a view which is a plausible one, the Appellate Court cannot legally interfere within an order of acquittal even if it is of the opinion that the view taken by the Court below on its consideration of the evidence is erroneous.”

21. While exercising the appellate jurisdiction against judgment of acquittal the High Courts or the appellate Courts are fully empowered to appreciate and reappraise the evidence adduced on behalf of the parties while reversing the judgment of the trial Court. The appellate Court is required to discuss the grounds given by the trial Court to acquit the accused and then to dispel those reasons.
22. In the light of aforesaid dictum and proposition of law, we have examined the evidence adduced on behalf of the prosecution.
23. Injured witness Vimla Devi (PW-3) deposed that the deceased Dashrath Lal Khandelwal was her husband. The incident took place on 22nd November 2013. On that day, at around 3:00 to

3:30 in the afternoon, when the doorbell of her house rang, she assumed that the domestic maid had arrived. She went to open the door, and her husband Dashrath Lal Khandelwal followed her. As soon as she opened the door, the accused / respondents entered the house and locked the door from inside. She and her husband stepped back a little and asked the accused what the matter was. One of the accused had a black bag hanging on his shoulder, and the other was holding a knife in his hand. When asked, the accused said that they wanted money. She replied that her son's house was next door and said she would get the money from there. At that moment, one of the accused stabbed her on the left side of her abdomen with the knife. Then, the accused dragged her into a room and partially closed the door of that room. The bell button of her son's room was attached near her bed, but it was not working at that time. While she was in that room, she heard screams from outside. When she opened the door and looked outside, she saw the accused stabbing her husband with the knife. Afraid, she went back into her room, closed the door, rang the bell, and called her son Anil Khandelwal. However, it was her daughter-in-law who answered the phone. After a while, when she opened the door and looked outside, the accused had already left. At that time, she informed her daughter-in-law Kusum Khandelwal that two boys had come and attacked her husband, deceased Khandelwal, and fled. She then went outside and shouted. At that moment, their servant

Mukesh arrived. Soon after, her son Anil Khandelwal and daughter-in-law Kusum Khandelwal also arrived. Her son Anil took her husband Dashrath Khandelwal to the hospital. Since she had also been injured, her daughter-in-law Kusum took her to the hospital for treatment. The accused had stabbed her husband with the knife, due to which he was lying in a pool of blood near the divan inside the room. In para 7 of her cross-examination, she has stated that the police recorded her statement at the hospital 3-4 days after the incident. She received treatment only at Shriram Care Hospital. She do not remember telling the police while giving her statement in Ex. D-1 that "both boys had their faces covered from the neck to the face with a scarf, and one of them was wearing glasses, if she remember correctly." The witness's spontaneous statement is that their faces were covered, but during the scuffle, their scarves came off, which enabled her to identify them.

24. The Supreme Court in **Balu Sudam Khalde and Anr. v. State of Maharashtra**⁴ held as under:

"26. When the evidence of an injured eye-witness is to be appreciated, the under-noted legal principles enunciated by the Courts are required to be kept in mind:

(a) The presence of an injured eye-witness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.

4 2023 SCC OnLine SC 355

(b) Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.

(c) The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.

(d) The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.

(e) If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence.

(f) The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded.

(emphasis supplied)”

25. In the present case, the prosecution has proved the test identification parade vide Ex.P-6, which was conducted by Additional Tahsildar Jay Uraon (PW-6). Jay Uraon (PW-6) in para 3 of his evidence before the Court has stated that witness Vimla Devi Khandelwal was called for identification of accused Vicky @ Manohar and Vijay Choudhary. For the above identification process, he had carried out identification process among people having similar name, age and height as the accused. In this

identification process, Vimla Devi Khandelwal had identified accused Vicky @ Manohar and Vijay Choudhary by placing her hand on their heads. No police personnel were present in the meeting hall during this identification process. At the time of identification, everyone's body was covered with a sheet up to the neck. The faces were visible. The accused were brought by the police for identification with their faces covered. He further stated that the witnesses and the accused were kept separate before the identification. The individuals identified with the accused were those who had come to the Tahsil office for their respective cases. The identification document prepared by him is Ex.P-6, which bears the signatures of the accused and the witnesses. In para 5 of his cross-examination, he has stated that before conducting the identification parade, he did not question Vimla Devi about when and how she had seen the accused. He has denied that the other individuals he included in the identification proceedings were court employees. He voluntarily stated that they had come to the court office. He had admitted that the faces of the parties who came to the proceedings were not covered. He had denied that he had lined up the witnesses first and then made the accused stand at the end. In para 7 of his cross-examination, this witness had denied that Vimla Devi did not identify any of the accused. He had also denied that he prepared Ex.P-6 in a false manner regarding Vimla Devi's identification of

the accused. He had also denied that he did not conduct the test identification parade with Vimla Devi.

26. The Supreme Court in the matter of **Malkhansingh and others v.**

State of M.P.⁵ held as under:-

“7. It is trite to say that the substantive evidence is the evidence of identification in court. Apart from the clear provisions of section 9 of the Evidence Act, the position in law is well settled by a catena of decisions of this Court. The facts, which establish the identity of the accused persons, are relevant under section 9 of the Evidence Act. As a general rule, the substantive evidence of a witness is the statement made in court. The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence, however, is subject to exceptions, when, for example, the court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration. The identification parades belong to the stage of investigation, and there is no provision in the Code of Criminal Procedure, which obliges the investigating agency to hold, or confers a right upon the accused to claim, a test identification parade. They do not constitute

5 (2003) 5 SCC 746

substantive evidence and these parades are essentially governed by section 162 of the Code of Criminal Procedure. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The weight to be attached to such identification should be a matter for the courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration. (Emphasis supplied).”

27. Reshma Bano (PW-12) in her 164 CrPC statement (Ex.P-17) has stated that one or two days after the incident, sometime in November, she noticed an injury on Vicky’s hand. When she asked, he told her it was due to an accident in Sarkanda. However, seeing the injury, she did not think it was caused by an accident. Then she asked Vijay, and he told her that both of them had gone and Vicky had committed a murder. In para 3, she has stated that she asked Vicky about this, but at first, he did not tell her anything. Later, he said that he had murdered someone from the Khandelwal family. When she asked why, he said it was due to some personal dispute.

28. Reshma Bano (PW-12) in para 4 of her Court’s statement has stated that three days after the incident, Vicky Singh called her and suddenly announced that he had committed murder. She initially thought it was a joke, but then he said he had been in an accident. She then said “the next day she read in the newspaper that a Khandelwal man had been murdered. In para 12 of her cross-examination, she had denied that Vicky did not inform her

over the phone that he had committed the murder. When she gave her statement before the Magistrate, she stated that Vicky had confessed to her over the phone regarding the commission of the murder.

29. The Supreme Court in the matter of **State of Rajasthan v. Raja Ram**⁶ has held that an extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. It was observed as under:-

“19. An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. The value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. It is not open to any court to start with a presumption that extra-judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession. Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive for attributing an untruthful statement to the accused, the words spoken to by the witness are clear, unambiguous

6 (2003) 8 SCC 180

and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it. After subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, the extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility.”

30. In the case in hand, memorandum statement of accused Vicky Singh @ Manohar Singh was recorded on 25.03.2014 vide Ex.P-18 and on the basis of his memorandum statement, knife stains with blood, full shirt stains with blood and jeans pant stains with blood were seized from his possession. Memorandum statement of accused Vijay Choudhary was recorded on 25.03.2014 vide Ex.P-19 and on the basis of his memorandum statement, full pant stains with blood and knife stains with blood were seized from his possession and as per FSL report (Ex.P-70), human blood was found on Article K i.e. pant seized from accused Vicky and blood was found on Article A i.e. pant and Article B i.e. knife seized from accused Vijay Choudhary.
31. 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 deposited 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.”

32. Section 27 of the Indian Evidence Act is applicable only if the confessional statement relates distinctly to the fact thereby discovered.
33. The Supreme Court in the matter of **Asar Mohammad and others v. State of U.P.**,⁷ 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**⁸ 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

7 AIR 2018 SC 5264

8 AIR 1947 PC 67

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*⁹, in particular, paragraphs 23 to 29 thereof. The same read thus:

“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.

xxx

xxx

xxx”

34. The Supreme Court in the matter of **Perumal Raja alias Perumal v. State, Rep. By Inspector of Police**¹⁰ 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.

35. The Supreme Court in the matter of **Boby v State of Kerala**¹¹ 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.

36. Having carefully examined the evidence on record, the testimonies of the injured eyewitness Vimla Devi (PW-3) and

¹⁰ 2024 SCC OnLine SC 12

¹¹ 2023 SCC OnLine SC 50

Reshma Bano (PW-12), along with the material evidence such as the test identification parade (Ex.P-6), the confessional statements of the accused, and the forensic reports confirming the presence of human blood on the seized articles, we find that the learned Trial Court has erred in acquitting the respondents. The injured eyewitness Vimla Devi's testimony is credible and consistent with the legal principles laid down by the Supreme Court in **Balu Sudam Khalde** (supra).

37. Smt. Vimla Devi (PW-3), aged approximately 76 years at the time of recording her testimony, provided evidence which, notwithstanding minor contradictions and omissions attributable to trauma and lapse of time, unequivocally establishes the presence of the accused at the scene, their forcible intrusion, and the stabbing of her husband. The conduct of the injured witness, marked by her prompt efforts to seek assistance and identify the assailants, enhances the credibility and reliability of her testimony. The test identification parade conducted by Additional Tahsildar Jay Uraon (PW-6) was carried out in a lawful and proper manner, free from any undue influence or presence of police personnel during the identification procedure. The fact that the accused were identified by Smt. Vimla Devi during the parade, which was duly recorded and exhibited as Ex.P-6, substantiates the authenticity of the identification process. In this regard, the Supreme Court in **Malkhansingh** (supra) has held that while test identification parades form part of the investigation and do not

constitute substantive evidence per se, they significantly bolster the credibility of the in-court identification.

38. Reshma Bano's (PW-12) statement corroborates the prosecution's case by revealing the accused Vicky Singh's own admission of having committed the murder. The confession made to her, though not a formal confession before police or court, is admissible under Section 27 of the Indian Evidence Act, as it led to the discovery of incriminating facts namely, the blood-stained clothes and knife seized from the accused. The seizure of blood-stained articles from both accused and the FSL report (Ex.P-70) confirming the presence of human blood further corroborate the testimonies and the confession-related evidence. This physical evidence aligns with the testimony of the injured eyewitness and the admission by the accused, thereby strengthening the prosecution's case.

39. The legal principles regarding Section 27 of the Evidence Act, as elucidated by the Supreme Court in **Asar Mohammad** (supra) and **Perumal Raja** (supra), clearly apply here. The accused were in custody or under police surveillance at the time of making the statements leading to the recovery of incriminating articles, making the discovery relevant and admissible.

40. We are conscious of the fact that the incident took place on 22.11.2013, and a considerable passage of time has elapsed since then. However, the present case clearly demonstrates that

despite the existence of cogent legal evidence against the accused/respondents, the trial Court has, regrettably, based its conclusions solely on conjectures and surmises. In particular, the trial Court has disbelieved the testimony of the injured witness, Smt. Vimla Devi (PW-3), whose evidence is material and credible on the record. Such an approach by the trial Court amounts to a perverse finding, as it disregards unimpeached and reliable evidence without any justifiable basis. Consequently, the impugned judgment cannot be sustained in law and deserves to be set aside.

41. For the foregoing reasons, as held by the Supreme Court in **C.Antony, Ramanand Yadav and Tota Singh** (supra), interference is called to cause justice. Consequently, both the acquittal appeals are **allowed**. Impugned judgment of acquittal dated 16.05.2016 passed by the Third Additional Sessions Judge, Bilaspur (C.G.) in Sessions Case No. 63/2014 is hereby set aside. For committing murder of deceased Dashrath Lal Khandelwal, accused/respondents are convicted under Section 302/34 of IPC and sentenced to undergo rigorous imprisonment for life and to pay fine of Rs.1,000/- each, in default of payment of fine, they shall further undergo simple imprisonment for 2 months and for inflicting injuries over the person of injured Smt.Vimla Devi (PW-3) attempting to commit her murder, they are convicted under Section 307/34 of the IPC and sentenced to undergo rigorous imprisonment for 10 years and to pay fine of Rs. 200/-

each, in default of payment of fine, they shall further undergo simple imprisonment for 15 days. Both the sentences are directed to be run concurrently.

42. The accused/respondents are directed to surrender before the Third Additional Sessions Judge, Bilaspur (C.G.) within a period of one month from today for serving sentence imposed upon them by this Court, failing which, they shall be taken into custody by the trial Court for serving the sentence imposed by this Court and compliance report be submitted to this Court.
43. Let a copy of this judgment and the original records be transmitted to the trial Court concerned forthwith for necessary information and compliance.

Sd/-

(Bibhu Datta Guru)
Judge

Sd/-

(Ramesh Sinha)
Chief Justice

Bablu

Head-Note

The evidence of injured witness cannot ordinarily be doubted on account of minor contradictions & omissions and conviction can be based upon such evidence subject to corroboration with other incriminating factors coupled with recoveries.