



2025:CGHC:53766-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

ACQA No. 418 of 2010

State of Madhya Pradesh (now Chhattisgarh)

... Appellant

versus

1 – Rajano, S/o Adhar Singh Marar, aged 24 years, R/o Village Baniyatora, P.S. Bagbahara, District Mahasamund (C.G.)

2- Jagdish, S/o Agin Singh Mamar, aged 25 years, R/o Village Baniyatora, P.S. Bagbahara, District Mahasamund (C.G.)

3- Askaran, S/o Agin Singh Mamar, aged 26 years, R/o Village Baniyatora, P.S. Bagbahara, District Mahasamund (C.G.)

4- Ratan, S/o Agin Singh Mamar, aged 20 years, R/o Village Baniyatora, P.S. Bagbahara, District Mahasamund (C.G.)

5- Mahesh alias Bhuru, S/o Adhar Singh Marar, aged 21 years, R/o Village Baniyatora, P.S. Bagbahara, District Mahasamund (C.G.)

6- Adhar, S/o Chotu Marar, aged 55 years, R/o Village Baniyatora, P.S. Bagbahara, District Mahasamund (C.G.)

7- Jhanaklal Marar, S/o Jagdev Marar, aged 38 years, R/o Village Baniyatora, P.S. Bagbahara, District Mahasamund (C.G.)

8- Pitambar, S/o Kanhai Rawat, aged 31 years, R/o Village Baniyatora, P.S. Bagbahara, District Mahasamund (C.G.)

9- Agin Singh, S/o Sidharam Marar, aged 48 years, R/o Village Baniyatora, P.S. Bagbahara, District Mahasamund (C.G.) **(died and deleted)**

10- Khublal, S/o Janakram Marar, aged 20 years, R/o Village Baniyatora, P.S. Bagbahara, District Mahasamund (C.G.)

11- Pilababu, S/o Sukalu Rawat, aged 38 years, R/o Village Baniyatora, P.S. Bagbahara, District Mahasamund (C.G.)

12- Kondaram, S/o Bahoran Gond, aged 52 years, R/o Village Baniyatora, P.S. Bagbahara, District Mahasamund (C.G.) **(died and deleted)**

... Respondents

For State /Appellant : Mr. Shashank Thakur, Dy. Advocate
General

For Respondent : Mr. Aditya Dhar Diwan, Advocate

No.1 to 8, 10 & 11

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

Judgment on Board

Per Ramesh Sinha, C.J.

04/11/2025

1. As per office note dated 29.10.2025, notices have already been served upon respondent Nos. 1 to 8, 10 and 11 and notice issued to respondent Nos. 9 and 12 have been received unserved with a note that they have already passed away. It is pertinent to mention that respondent No. 12 Kondaram has been wrongly impleaded as a respondent in the instant appeal, however, he has already been passed away before passing of the impugned judgment under appeal.
2. Considering the aforesaid facts and circumstances of the case, particularly the fact that notice issued to respondent Nos. 9 and 12 have been received unserved with a note that they have already passed away, moreover that considering the fact that respondent No. 12 Kondaram has been wrongly impleaded as a respondent in the instant appeal, however, he has already been passed away before passing of the impugned judgment under appeal, the appeal so far as it relates to respondent No.9 Agin Singh and respondent No.12 Kondaram is concerned, the same is

dismissed as abated and their names are deleted from the array of parties.

3. Considering the fact that the appeal is of year 2010, with the consent of learned counsel for the parties, the same is heard finally.
4. We have heard Mr. Shashank Thakur, learned Deputy Advocate General, appearing for the State/appellant as well as Mr. Aditya Dhar Diwan, learned counsel, appearing for respondent Nos. 1 to 8, 10 and 11.
5. This acquittal appeal has been filed by the State/appellant under Section 378(1) of the CrPC against the impugned judgment of acquittal dated 19.09.1998 passed by the Second Additional Sessions Judge, Mahasamund in Sessions Trial No.295 of 1994, whereby the trial Court has acquitted the accused/respondents from the offence punishable under Sections 302/149 and 307/149 of IPC, however, convicted them under Section 148, 452 and 323/149 of IPC and sentenced them to undergo RI for 2 years, RI for 2 years and fine of Rs. 1000/- each, in default of payment of fine, additional RI for 3 months and SI for one month respectively.
6. The case of the prosecution, in brief, is that Ratan Marar, resident of village Baniya Tora, who is one of the accused and is the son of accused Agin Singh (died), was possessed by a ghost. Exorcism was being conducted for him. On the night of 04.02.1994, a meeting was held regarding exorcism. After the exorcism, the

accused Ratan told that Arjun and his wife are witches, due to which he was possessed by a ghost. On this matter, deceased Arjun was called for the meeting in the night but he did not go. The next day on 05.02.1994 at about 8 am, all the accused who are residents of village Baniya Tora and are relatives of the deceased, went towards the house of deceased Arjun with weapons in their hands. On the way, they met the wife of deceased Arjun and beat her up. After coming inside the house, deceased Arjun's son Magan was found inside the house, from whom they inquired about deceased Arjun. When Arjun was not found in the house, they search for him inside the house and while they were assaulting Magan's mother and his wife, deceased Arjun arrived and the accused assaulted him and dragged him into the garden, dragging him. Arjun's father, Chhotu, went to the villagers to try to save Arjun, but due to fear of the accused, no one came to rescue him. The accused left Arjun there, who was completely dead and fled away from there. The accused persons injured Magan in the house of deceased Arjun and also beaten up Aautin Bai in her eye due to which blood oozed out from her eye and also beat Vishwas Bai, Arjun's wife with sticks, rods and axes.

7. The incident was reported by Magan at the Bagbahara police station on the said date at 1:25 pm. A case was registered against the accused and taken up for investigation. During the investigation, the post-mortem of the deceased Arjun was

conducted. Magan, Aautin Bai and Vishwata Bai were also medically examined. The weapons were seized from the accused as per their statements. After collecting all the evidence, a challan was presented in the territorial Court against the accused under sections 302, 307, 147, 148, 149, 323, 452/34 of the Indian Penal Code. Jairam's testimony was recorded before the Magistrate under section 164 of the CrPC. This was also presented along with the challan. The seized articles were sent for chemical examination to FSL and report was received therefrom. Upon completion of investigation, a charge-sheet was filed before the Court of the Judicial Magistrate First Class, Mahasamund, who in turn committed the case to the Court of the Sessions, Mahasamund, where it was registered as Sessions Trial Case No. 295/1994 and thereafter transferred to the Court of Second Additional Sessions Judge, Mahasamund for trial in accordance with law.

8. Charges were framed against the accused / respondents under Sections 148, 302/149, 307/149, 323/149 and 482 of the IPC, which were read over and explained to them. The accused denied the charges. Their statements under Section 313 of the CrPC were recorded, wherein they claimed to be innocent and alleged false implication. The accused did not adduce any evidence in their defence.
9. In order to bring home the offence, the prosecution examined as many as 21 witnesses and exhibited 55 documents. The accused-

respondents examined none in their defence nor any document has been exhibited in support of their case.

10. The trial Court upon appreciation of oral and documentary evidence available on record, by its judgment dated 19.09.1998, acquitted the accused/respondents from the offence punishable under Sections 302/149 and 307/149 of IPC, however, convicted them under Section 148, 452 and 323/149 of IPC and sentenced them to undergo RI for 2 years, RI for 2 years and fine of Rs. 1000/- each, in default of payment of fine, additional RI for 3 months and SI for one month respectively. Hence, this acquittal appeal.
11. Mr. Shashank Thakur, learned Deputy Advocate General, appearing for the State/appellant submits that the judgment of acquittal passed by learned trial Court is illegal, improper and incorrect and thus, liable to be set aside. He further submits that in this case the learned prosecutor, who was appeared for the State has tendered the post mortem report of the deceased Arjun under Section 294 CrPC and the same was admitted by the accused person, but the learned trial Court has not considered the same and has acquitted the accused from the charges of 302/149 of IPC solely on the ground that the Doctor, who has conducted the postmortem, has not been examined, which is completely against the law. He also submits that the prosecution witnesses have supported the prosecution version even then the respondents have been convicted only under Section 148, 452

and 323/149 of IPC, which is bad in law. He also submits that the injured witnesses in this case have supported the prosecution version beyond reasonable doubt and the grievous injuries have also been found in their medical examination even then the learned trial Court has convicted the respondents only in minor offence. As such, the acquittal deserves to be allowed and the accused / respondents deserves to be convicted for offence under Sections 302/149 and 307/149 of the IPC.

12. On the other hand, Mr. Aditya Dhar Diwan, learned counsel appearing for accused-respondents submits 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 Magan (PW-5), Chhoturam (PW-7), Vishwasa Bai (PW-8) and Jairam (PW-12), and has rightly acquitted the respondents from charges under Sections 302/149 and 307/149 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.
13. We have heard learned counsel appearing for the parties, perused the impugned judgment of acquittal and record of the trial Court.

14. The core question for consideration is whether the learned Trial Court has rightly acquitted the respondents despite the presence of the testimony of the injured eyewitness Magan (PW-5), Chhoturam (PW-7), Vishwasa Bai (PW-8) and Jairam (PW-12), along with other material evidence available on record only on the basis of non-examination of the Doctor, who has conducted the postmortem report, despite production of the post mortem report of the deceased Arjun under Section 294 CrPC marked as Ex.P-55 and the same was admitted by the accused person.
15. This appeal is against the judgment of acquittal filed 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.
16. 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.
17. The Supreme Court in **Ramanand Yadav v. Prabhunath Jha**²

1 AIR 2003 SC 182

2 AIR 2004 SC 1053

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.

18. 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 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

³ AIR 1987 SC 1083

by the Court below on its consideration of the evidence is erroneous.”

19. While exercising the appellate jurisdiction against judgment of acquittal the High Courts or the appellate Courts are fully empowered to appreciate and reappreciate 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.
20. In the light of aforesaid dictum and proposition of law, we have examined the evidence adduced on behalf of the prosecution.
21. According to the prosecution's story, accused Ratan was possessed by a ghost due to which the villagers had gathered to exorcise the ghost through exorcism. According to prosecution witness Kamalu, the exorcism was done by Parmanand Gand and Lalaram Patel and in the exorcism it was found that Arjun and his daughter-in-law had possessed ghost upon accused Ratan. Though PW-9 Ganjaha, PW-10 Chamaru and PW-11 Nanhuram have not made any statement about Arjun and his daughter-in-law using witchcraft to get accused Ratan caught by a messenger, but prosecution witness PW-7 Chhotu Ram, who is the father of deceased Arjun, has stated that on the Friday night preceding to 05.02.1994, accused Jagdish and accused Mahesh came to call him and at that time, as he was suffering from fever and was old, he expressed his inability to go with them. After this, accused

Asakaran, who is son of deceased accused Agin Singh, came to call him and said that other people from his village had also come and people from Karadula village had also come. They were calling him, but this witness expressed his inability to go there.

22. Thus, it is proved from the above evidence that a meeting was called in the house of accused Agin Singh one day prior to the date of incident to perform exorcism to exorcise the ghost of accused Ratan, in which Chhotu Ram, father of deceased Arjun was also called, but he did not attend the meeting.
23. On the second day, in connection with the incident of 05.02.1994, the prosecution got the statement of Magan (PW-5) recorded from its witness. Magan (PW-5) has stated that he also knows the accused. He is a resident of the village of the accused. Deceased Arjun was his father. It was in the morning, he was in his home, then first of all accused Rajano came, he is also the son of accused Aadhar and nephew of deceased Arjun. After that accused Jagdish, who is also son of deceased accused Agin, came there and they asked whether all his family members are there or not, on this accomplice Magan (PW-5) said that all of them are in the house. On this accused hit him with a stick which surprised him. Accused Rajano and Jagdish said this witness to take milk-curd, he is going to be murdered. After this, more people came there, including the accused Rajano Jagdish, Ratan, Mahesh, Jhanakram, Adhar, Askaran, Pilababu, Pitambar, Agin, Kondaram and Khublal. This witness has further stated that

accused Rajano had an iron rod for bursting firecrackers in his hand, Jagdish had an iron rod in his hand, Askaran also had a rod in his hand, Ratan had a stick in his hand, Pitambar had a cart handle in his hand, Mahesh had an axe in his hand, Pilababu had a stick in his hand and other accused also had sticks in their hands. First these people beat him and his mother too, thereafter, the accused also beat his wife Autinbai and after that he had also assaulted his younger brother Bhekchand. At that his father was in the garden of deceased Arjun, who also came at the same time. This witness has further stated that accused Ratan had inserted a needle in his wife's eye. After his father's arrival, the accused left beating them and started beating his father, his father asked the accused "why they are doing this ?" meanwhile accused Rajano hit his father's neck with a rod due to which he fell down. After that, accused Jagdish snatched the axe from accused Mahesh and hit his father's mouth with the axe due to which his father's jaw was injured, though his father was trying to speak, but could not speak, then all the accused beat him. While beating his father, they took him near the well and there Ratano and Askaran stabbed iron rod on the chest his father. Mahesh cut his father's neck completely with sickle. Mahesh took axe from Jagdish and hit it on his father's neck. All the people cut his father below the waist, on the head and broke his bones by digging with a wooden stick. This witness has also stated that when he was going to save his father, Rajano, Jagdish, Askaran and Ratan told him that if he tried to intervene, they would chop him up and throw him

away. They said that if he testified against them, they would kill his entire family after serving their sentence.

24. It is clear from the testimony of Magan (PW-5) that the accused group, armed with weapons, gathered in his house with the intention and preparation to beat him, who were more than five in number and they had lethal weapons in their hands. PW-7 Chhotu Ram, who is the father of deceased Arjun and also the father of accused Adhar, used to reside in the same house. This witness has also stated that on Saturday morning, 05.02.1994, the accused came to his house with stick, axe and iron rod in their hands and asked where is Arjun, bring him out and searched for deceased Arjun. At that time, Shivram, Nain Singh, Mani and Junu were with this witness, who stopped this witness from saying anything to the accused. This witness has supported the presence of more than five people with weapons in the courtyard of his house. Since they were looking to kill deceased Arjun, this behavior clearly demonstrates that the accused had criminal intent and had gathered with the intention of killing Arjun. Therefore, the entire incident also falls under the ambit of the unlawful assembly.
25. Other witness Vishwasa Bai (PW-8) has stated that deceased was her husband. On the day of the incident, on Saturday morning, when she was fetching water from the river, the accused Rajano and others ran to attack her and they beat her with sticks, which injured the legs, waist and temples of this witness.

26. 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.

(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)”

27. In the present case though the injured witnesses Magan (PW-5), Chhotu Ram (PW-7) and Vishwasa Bai (PW-8) are members of the same family, but it is also necessary to clarify here that the accused are also members of the same family, hence being members of the same family does not affect the credibility of the evidence.
28. PW-12 Jairam who had gone to PW-7 Chhotu's house to purchase wood. At that time Arjun was not at there. Accused Aadhar was there, who gave tea to this witness. Magan's mother brought water in a pot and kept the pot down. At that very moment accused Rajano came and hold Magan mother's hair, asked to take care of her son and started beating her. When Rajano was about to hit Magan and his mother with an iron rod, she came to this witness. At that very moment seven-eight men arrived from the colony with sticks and rods. Among them were accused Agin, Agin's son, Pilababu, Konda, Pitambar, Khublal, Joker alias Jankaram. Rajno and accused Aadhar and Aadhar's other son joined them. The accused group searched for Arjun and the accused Agni said that Arjun's daughter-in-law had gone mad, so break her eyes. On this, three to four people entered Arjun's house and broke Arjun's daughter-in-law's eye. The rest of the

people were standing in the courtyard. At that very moment Arjun arrived. Arjun was also beaten with a crowbar, a stick and an axe.

29. From the statement given by this witness Jairam (PW-12), it becomes clear that the accused had gathered at Chhotu's house with the intention of beating Arjun's daughter-in-law and his son. However, instead of mentioning the names of the accused in his statement, their presence has been stated on the basis of their relationship.
30. From the evidence of PW-5 Magan, PW-7 Chhotu Ram, PW-8 Vishwasa Bai and PW-12 Jairam that the accused persons formed a gang with the intention of beating deceased Arjun, PW-5 Magan and his wife Vishwas Bai (PW-8). From their evidence it is also clear that accused were in possession of wooden stick, lathi, iron rod and axe, which are deadly weapons. In this regard PW-20 Ajit Choubey, the Investigating Officer, has stated that he was posted as Station House Officer in Bagbahara. He had interrogated accused Rajano regarding the incident and a small axe was recovered from his possession vide Ex.P-12. Similarly, this witness had seized the iron rod from accused Mahesh vide Ex.P-14 and one wooden plank from accused Jagadish has been seized vide Ex.P-18.
31. Similarly, PW-18 Bodhan Sahu has stated that he had seized a firecracker burster fitted with an iron rod from the accused Aaskaram vide Ex.P-21. This witness had seized an crowbar

shaped iron rod from the accused Rajano vide Ex.P-24. A bamboo stick was seized from the accused Aadhar Singh vide Ex.P-27. The aforesaid seizure made by PW-20 Ajit Choubey, Investigating Officer and the seizure made by PW-18 Bodhan Sahu was made in the presence of panch witness PW-16 Brijlal, who in his statement has admitted the aforesaid recoveries.

32. 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.”

33. Section 27 of the Indian Evidence Act is applicable only if the confessional statement relates distinctly to the fact thereby discovered.
34. The Supreme Court in the matter of **Asar Mohammad and others v. State of U.P.**,⁵ 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

5 AIR 2018 SC 5264

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**⁶ 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*⁷, 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

6 AIR 1947 PC 67

7 (2015) 1 SCC 253

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”

35. The Supreme Court in the matter of **Perumal Raja alias Perumal v. State, Rep. By Inspector of Police**⁸ 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.
36. The Supreme Court in the matter of **Boby v State of Kerala**⁹ 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

8 2024 SCC OnLine SC 12

9 2023 SCC OnLine SC 50

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.

37. 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.
38. Though in the instant case, the trial Court has convicted the accused appellants under Section 148, 452 and 323/149 of IPC and sentenced them to undergo RI for 2 years, RI for 2 years and fine of Rs. 1000/- each, in default of payment of fine, additional RI for 3 months and SI for one month respectively, however, has acquitted the accused/respondents from the offence punishable under Sections 302/149 and 307/149 of IPC only on the basis that the prosecution has not examined the Doctor, who has conducted the postmortem of the deceased Arjun holding that even though the postmortem report (Ex.P-55) has been accepted by the accused persons, but this report is not a document in itself.

Rather, it is a report prepared by grouping the subject matter of evidence. Even if its veracity is accepted, the right of cross-examination on behalf of the accused persons on this report or on this evidence could not be exercised by the accused persons. Further the learned trial Court has observed that from the examination of the evidence of the witnesses presented by the prosecution that the descriptions of the injuries inflicted on Arjun by the accused are different by PW-5 Magan and PW-7 Chhotu Ram in relation to the injuries inflicted on Arjun before his death. Therefore, it is necessary to prove the injuries inflicted on Arjun after his death and the cause of death. Thus, in the absence of medical witness, Ex.P-55 cannot be used as corroborative evidence and in its absence, it is not clear beyond doubt as to which parts of the body of the deceased were injured by the accused and which weapons were used by them and which caused the death of Arjun.

39. As per postmortem report, the following injuries has been found over the dead of deceased Arjun :

“(1) Abrasion below left lower lid over face size 2.5 cm x 2 cm

(2) Abrasion over left cheek size 5 cm x 2 cm

(3) Abrasion along left lower mandible size 1.5 cm x 1 cm

(4) Contusion over right eyebrow size 2 cm x 0.5 cm

(5) Contusion over forehead above right eyebrow size 3 cm x 0.5 cm

- (6) Contusion present just below right lower lid over face size 4 cm x 1.5 cm
- (7) Contusion over right submandibular region size 6 cm x 1.5 cm
- (8) Incised injury along right lower mandible body of size 6.5 cm x 1 cm depth upto bone
- (9) Incised injury over post part right parietal region of scalp size 4.5 cm x 0.5cm depth upon bone.
- (10) Contusion over ant. surface of chest involving Rt. side & left side of chest size 19 cm x 20 cm. (Multiple contusions are merged to each other).
- (11) Contusion over left side of Ant. abdominal wall size 15 cm x 3 cm. Situated obliquely along lower rib.
- (12) Contusion over left side of Ant. Abdominal wall, 2 cm below injury No. 11 size 10 cm x 4 cm.
- (13) Contusion over lower abdominal wall below umbilicus size 10 cm x 5 cm.
- (14) Contusion over Ant. abdominal wall on Right side size (i) 15 cm x 2 cm (ii) 14 cm x 2 cm (iii) 8 cm x 2 cm direction upward & to the right side.
- (15) Abrasion over ant. medial surface of left thigh size (i) 9 cm x 0.5 cm, (ii) 12 cm x 0.5 cm, (iii) 8 cm x 0.5 cm, (iv) 3 cm x 0.5 cm, (v) 12 cm x 1 cm.
- (16) Lacerated wound over upper part left thigh size 4 cm x 1.5 cm x 0.5 cm.
- (17). Abrasion left scrotum size 8 cm x 5 cm.
- (18). Abrasion left lateral surface of penis size 7 cm x 3 cm.
- (19). Abrasion over ant.-medial surface of right thigh size (i) 4 cm x 0.5 cm (ii) 5 cm x 0.2 cm (iii) 2 cm x 0.2 cm (iv) 5 cm x 0.2 cm.
- (20) Contusion over ant.-medial surface of Rt. thigh size (i) 3 cm x 1 cm (ii) 4 cm x 1 cm.

(21) Incised wound present over middle 1/3 of post-surface of Rt. forearm size 2 cm × 1 cm. depth upto muscle.

(22). Incised wound over post surface of Rt. forearm 3 cm below elbow joint size 2.5 cm × 1 cm. depth up to muscle.

(23) Abrasion post surface of Rt. elbow joint size 2 cm × 2 cm.

(24.) Abrasion lateral surface of left elbow size 6 cm × 1.5 cm.

(25) Abrasion post surface of left elbow size (i) 2 cm × 2 cm (ii) 3 cm × 2 cm.

(26). Contusion dorsal surface of Rt. hand size 7 cm × 5 cm.

(27). Contusion Rt. scapular region size (i) 6 cm × 2 cm (ii) 5 cm × 2 cm.

(28). Abrasion left scapular region size 5 cm × 4 cm."

40. Now the question arises that whether acquittal can be granted only on the basis that the Doctor, who has conducted postmortem over the dead body of deceased, has not been examined ?
41. In this regard, the normal rule is that a post-mortem certificate being a document containing the previous statement of a Doctor, who examined the dead body can be used only to corroborate the statement under Section 147 or to contradict the statement under Section 145 or to refresh his memory under Section 159 of the Evidence Act, but the provision of Section 32 of the Evidence Act is exception to this rule. If the Doctor, who held autopsy is dead or is not available for examination, the certificate issued by him, is relevant and admissible under Section 32(2) of the Evidence Act.

Section 32 of the Evidence Act provides that when a statement written or verbal, is made by a person is the discharge of professional duty whose attendance cannot be procured without an amount of delay, the same is relevant and admissible in evidence. Besides, since the carbon copy was made by one uniform process the same was primary evidence within the meaning of Explanation 2 to Section 62 of the Evidence Act. Therefore, the medical certificate is clearly admissible evidence.

42. In the instant case, from the testimonies of injured eye-witnesses, namely, PW-5 Magan, PW-7 Chhotu Ram, PW-8 Vishwasa Bai, it is quite clear that Ratan Marar, who is one of the accused and is the son of accused Agin Singh (died), was possessed by a ghost. Exorcism was being conducted for him. On the night of 04.02.1994, a meeting was held regarding exorcism. After the exorcism, the accused Ratan told that Arjun and his wife are witches, due to which he was possessed by a ghost. On this matter, deceased Arjun was called for the meeting in the night but he did not go. The next day on 05.02.1994 at about 8 am, the accused persons, who were more than five in number, armed with weapons, gathered in the house of the injured and deceased Arjun with common intention forming unlawful assembly to kill Arjun, and they had lethal weapons in their hands and all the accused are relatives of the deceased and injured persons, who firstly went towards the house of deceased Arjun with weapons in their hands. On the way, they met the wife of deceased Arjun and

beat her up. After coming inside the house, deceased Arjun's son Magan (PW-5) was found inside the house, from whom they inquired about deceased Arjun. When Arjun was not found in the house, they search for him inside the house and while they were assaulting Magan's mother and his wife, deceased Arjun arrived and the accused assaulted him and took him into the garden by dragging him. Arjun's father, Chhotu Ram (PW-7), went to the villagers to try to save Arjun, but due to fear of the accused, no one came to rescue him. The accused left Arjun there, who was completely dead and fled away from there. The accused persons also assaulted the injured witness Magan (PW-5) in the house of deceased Arjun and also beaten up Aautin Bai in her eye due to which blood oozed out from her eye and also beat Vishwas Bai (PW-8), Arjun's wife with sticks, rods and axes. Moreover, though the learned prosecutor, who was appeared for the State has tendered the post mortem report (Ex.P-55) of the deceased Arjun under Section 294 CrPC and the same was admitted by the accused person, but the learned trial Court has not considered the same and has acquitted the accused from the charges of Section 302/149 of IPC solely on the ground that the Doctor, who has conducted the postmortem, has not been examined, which is completely against the law.

43. Having carefully examined the evidence on record, the testimonies of the injured eyewitnesses PW-5 Magan, PW-7 Chhotu Ram, PW-8 Vishwasa Bai, along with the material

evidence such as post-mortem report (Ex.P-55) and the forensic report (not exhibited) confirming the presence of human blood on the seized articles, we find that the learned Trial Court has erred in acquitting the respondents. The testimony of injured eyewitness is credible and consistent with the legal principles laid down by the Supreme Court in **Balu Sudam Khalde** (supra).

44. We are conscious of the fact that the incident took place on 05.02.1994, 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 witnesses, PW-5 Magan, PW-7 Chhotu Ram, PW-8 Vishwasa Bai, whose evidence is material and credible on the record and only convicted and sentenced the accused/respondents under Sections under Section 148, 452 and 323/149 of IPC as aforementioned and acquitted the accused/respondents from the charges of Sections 302/149 and 307/149 only on the basis of non-examination of the Doctor, who has conducted the postmortem report, despite production of the post mortem report of the deceased Arjun under Section 294 CrPC marked as Ex.P-55 and the same was admitted by the accused person. Such an approach by the trial Court amounts to a perverse finding, as it disregards unimpeached and reliable evidence without any justifiable basis.

45. For the foregoing reasons, as held by the Supreme Court in **C.Antony, Ramanand Yadav and Tota Singh** (supra), the impugned judgment cannot be sustained in law and deserves to be set aside so far as it relates to acquittal of the accused under Section 302/149 of the IPC is concerned.
46. Consequently, the acquittal appeal is **partly allowed**. Impugned judgment of acquittal dated 19.09.1998 passed by the Second Additional Sessions Judge, Mahasamund (C.G.) in Sessions Case No. 295/1994 so far as it relates to conviction and sentence under Sections Section 148, 452 and 323/149 of IPC are concerned the same are hereby affirmed and so far as it relates to acquittal of the accused under Section 302/149 of the IPC is concerned, the same is hereby set aside. For committing murder of deceased Arjun, accused/respondents are convicted under Section 302/149 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.
47. The accused/respondents are directed to surrender before the Second Additional Sessions Judge, Mahasamund (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.

48. 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

Chandra

Head-Note

An accused cannot be acquitted solely on the ground that the Doctor, who has conducted the postmortem, has not been examined by the prosecution, whereas as per Section 32(2) of the Indian Evidence Act, the postmortem report is admissible even without examination of the Doctor coupled with other corroborative evidence which strongly supports the case of prosecution.