



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



D.B. Criminal Appeal No. 548/2015

Sardar @ Bala @ Balu S/o Bansidhar Age 36 years R/o Dhani
Bijarniya Ki Tan Ratanpura Police Station Sri Madhopur District
Sikar (At Present confined in Central Jail Jaipur)

-----Accused/Appellant

Versus

State Of Rajasthan Through PP

-----Respondent/Non-Petitioner

For Appellant(s) : Mr. Anshuman Saxena with
Mr. Dharamsheel Sharma
For Respondent(s) : Mr. Shree Ram Dhakar, PP

**HON'BLE MR. JUSTICE MAHENDAR KUMAR GOYAL
HON'BLE MR. JUSTICE SAMEER JAIN**

Order

04/02/2026

This criminal appeal is directed against the judgement dated 15.05.2015 passed by the learned Additional Sessions Judge, Sri Madhopur, District Sikar (for brevity, 'learned trial Court') in Sessions Case No.3/2014 whereby, the accused appellant (for brevity, 'appellant') has been convicted and sentenced as under:-

Section 302 IPC:- Life imprisonment and fine
of Rs.10,000/-.

The relevant facts in brief are that the complainant-Bhanwar Lal (PW 15) lodged a written report (Ex. P15) at the Police Station Sri Madhopur on 17.10.2013 stating therein that his daughter-Kiran @ Gothi was married to the appellant in the year 2004. It was alleged that after the marriage, the appellant, along with his



other family members, used to harass and torture the deceased with regard to demand of dowry and on that very day, at about 7:00 am, he received a telephonic message that the appellant, along with his other family members, has hacked her daughter to death. Based thereupon, an FIR No.466 dated 17.10.2013 (Ex. P16) came to be registered for the offence under Sections 498A and 302/34 IPC. The police after investigation, charge-sheeted the appellant under Section 302 IPC whereunder, charge was framed by the learned trial Court. After trial, he has been convicted and sentenced, as stated hereinabove.

Assailing the impugned judgement, learned counsel for the appellant submits that findings of the learned trial Court are based on conjectures and surmises and there is no legally admissible evidence on record to connect him with the offence. He submits that the case is based on circumstantial evidence but, the prosecution has not been able to establish the complete chain of circumstances leading to the irresistible conclusion of his guilt. Inviting attention of this Court towards the testimony of the prosecution witnesses including that of Smt. Lichhma Devi (PW 4)-sister of the deceased and married to the brother of the appellant, learned counsel-Shri Anshuman Saxena submits that the learned trial Court has misinterpreted and misconstrued their testimony while recording his conviction. He submits that even the recovery of incriminating material from his possession was not established. Shri Saxena submits that in absence of blood grouping, the FSL Report was of no consequence. He, therefore, prays that the appeal be allowed, the impugned judgement dated 15.05.2015 be





quashed and set aside and he may be acquitted of the charge framed against him.

Per contra, learned Public Prosecutor, opposing the submissions and supporting the findings recorded by the learned trial Court, prayed for dismissal of the appeal.

Heard. Considered.

It is not disputed before us that it is a case of culpable homicide of Kiran @ Gothi. However, the moot question is as to whether the prosecution has been able to connect the appellant with the offence. Indisputably, it is a case based on circumstantial evidence. A perusal of the judgement impugned reflects that while recording a finding that the appellant was last seen in the company of the deceased, the learned trial Court has relied upon the testimony of Smt. Lichhma Devi and other witnesses. So far as deposition of Smt. Lichhma Devi (PW 4) is concerned, she has stated that the appellant and the deceased were on good terms after their marriage. On being declared hostile, upon her cross examination by the learned Additional Public Prosecutor, she has categorically stated that on the fateful night, the appellant had gone to 'well' at about 7-8 pm situated at a distance of about 15 minutes walk from the place of incident and had returned only on the next day at about 7:00 am. Although, the learned trial Court has not specified the other witnesses who have testified to have seen the appellant in the company of the deceased last but, after going through the testimony of remaining prosecution witnesses, we do not find that any of them has deposed to have seen the appellant last in the company of the deceased in the fateful night.





Thus, it is apparent that findings of the learned trial Court, in this regard, are perverse.

So far as injuries on the body of the deceased and blood in the room- the scene of crime, are concerned, as already held, it is an admitted position that it is a case of culpable homicide. Therefore, it requires no deliberation by this Court.

The learned trial Court has held that the appellant had a motive to eliminate the deceased inasmuch as he mistrusted her character. However, we do not find any evidence on record to substantiate this inference. None of the material witnesses including the sister of the deceased-Smt. Lichhma Devi (PW4) and her neighbour such as Shri Hanuman (PW 1), Smt. Rukma (PW 6) and Smt. Jhuma Devi (PW 7) have stated that the appellant used to doubt deceased's character. Rather, Smt. Lichhma Devi has deposed that her sister used to go to work as a labourer which was never objected by the appellant; rather, they were in good relationship.

Next, the learned trial Court has relied upon the recovery of blood stained clothes of the deceased, of the appellant as also a blood stained axe which, as per the FSL Report dated 30.12.2013 (Ex. P23) were found to have human blood but, except the t-shirt of the appellant, blood grouping of remaining samples remained inconclusive. It is not the prosecution case that blood group of the deceased was 'A', which was found on the T-shirt.

Their Lordships have, in the case of **Raja Naykar Vs. State of Chhattisgarh: (2024) 3 Supreme Court Cases 481** held that if blood grouping is inconclusive, mere presence of human blood on the subject article is of no assistance to the prosecution.





In the backdrop of the aforesaid precedential law, we are not convinced that mere presence of human blood on the aforesaid samples could connect the appellant with the alleged offence.

It is trite law that to record conviction of an accused based on circumstantial evidence, the prosecution must prove the complete chain of circumstances leading to the only probability of guilt of the accused to the exclusion of any of the possibility.

The Hon'ble Supreme Court has, in the case of **Sharad Birdhichand Sarda Vs. State of Maharashtra: (1984) 4 Supreme Court Cases 116**, held as under:-

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

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in *Shivaji Sahabrao Bobade v. State of Maharashtra* MANU/SC/0167/1973: 1973 CriLJ 1783 where the following observations were made:

Certainly, it is a primary principle that the accused must be and not merely may be guilty before a Court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they





should not be explainable on any other hypothesis except that the accused is guilty. (3) the circumstances should be of a conclusive 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.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.

In the present case, after appreciation of the evidence on record, we find that the prosecution has miserably failed to establish guilt of the appellant by establishing a complete and unbroken chain of evidence.

In view thereof, the appeal deserves to be allowed.

Accordingly, the appeal is allowed. The judgement impugned dated 15.05.2015 passed by the learned Additional Sessions Judge, Sri Madhopur, District Sikar in Sessions Case No.3/2014 is quashed and set aside. The appellant is acquitted of the charge framed against him. He be set at liberty forthwith if not required to be detained in any other case.

In view of the provisions of Section 437-A CrPC (Section 481 Bharatiya Nagarik Suraksha Sanhita, 2023), the appellant namely **Sardar @ Bala @ Balu** is directed to furnish a personal bond in the sum of Rs.25,000/- and a surety in the like amount within four weeks before the Registrar (Judl.) of this Court which shall be effective for a period of six months with the stipulation that in that event of Special Leave Petition being filed against the judgement





or on grant of leave, the appellant aforesaid, on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.

Pending application(s), if any, also stands disposed of accordingly,

(SAMEER JAIN),J

(MAHENDAR KUMAR GOYAL),J

PRAGATI/54

