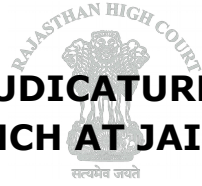




**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



D.B. Criminal Appeal (Db) No. 445/2025

Kalu Son Of Bhima Singh, Resident Of Village Gudha, Police Station, Gegal, District Ajmer At Present Lodged In The Central Jail, Ajmer

----Appellant

Versus

State Of Rajasthan, Through The Public Prosecutor

----Respondent

For Appellant(s) : Mr. Ashvin Garg with
Mr. Nonit Hatila
Mr. Ashish Sharma

For Respondent(s) : Mr. Vijay Singh Yadav, PP
Mr. Naresh Gupta, PP
Ms. Neha Goyal

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

Judgment

12/02/2026

(PER : HON'BLE JUSTICE SAMEER JAIN)

1. The present appeal is preferred assailing the judgment dated 04.09.2025 passed by learned Sessions Judge, Ajmer (hereinafter referred to as "learned Trial Court") in Sessions Case No. 41/2024 (C.I.S. No. 120/2024) whereby, the appellant has been convicted for the offence under Section 302 of Indian Penal Code (hereinafter referred to as "IPC") and sentenced life imprisonment and to pay fine of Rs. 25,000/-; in default of payment of fine, to further undergo simple imprisonment for one year.

2. The relevant facts in brief, as narrated by the learned counsel appearing for the appellant, are that on 05.03.2024,





Rikhab Chand Sancheti (PW-1), lodged a written report at Police Station Dargah, Ajmer, stating that on the preceding day at about 8:40 PM, while returning to his residence and crossing from the nearby Shri Sambhavnath Bhagwan Jain Temple, he observed the temple *pujari* running down from the staircase of the temple premises in an injured and blood-stained condition. Upon inquiry regarding his condition, the *pujari* informed him that the side gate of the temple had been bolted from inside, and that someone had knocked at the door. When he opened the door, an unknown boy requested water to drink. As he turned back to fetch water, the said boy suddenly assaulted him with an iron rod; and on raising an alarm, the assailant fled from the spot.

3. It is further submitted that in the meantime Farukh (PW-3), reached the spot, and both of them (PW -1 & 3) took the injured *pujari* to the Emergency Ward of Jawahar Lal Nehru Hospital, Ajmer. Subsequently, on the basis of the written report as submitted by the complainant, an FIR No. 58/2024 came to be registered at jurisdictional Police Station for offences under Sections 341, 323 and 307 of the IPC. Investigation was thereafter undertaken. However, the injured *pujari* succumbed to death on 11.03.2024, whereupon the offence under Section 302 IPC was added and the present appellant was charged accordingly. The charge under Section 302 IPC was read over and explained to the appellant, who denied the same and claimed trial. During the course of trial, the prosecution examined 22 witnesses and exhibited 71 documents in support of its case. The appellant consistently pleaded not guilty.



4. It is contended that, without due consideration of the material available on record, the learned Trial Court proceeded to pass the impugned judgment of conviction, which is vitiated by material irregularities and is unsustainable in law. Learned counsel contended that, as per the relevant medical records, the injuries sustained by Shankarlal *Pujari* were opined to be simple in nature. It is emphasized that the injured was discharged from the hospital on 06.03.2024, i.e., within approximately 50 hours of admission, in a healthy condition and thereafter died on 11.03.2024. The cause of death has been recorded as "Myocardial infarction", i.e., a cardiac condition, and not as a consequence of the injuries allegedly inflicted upon him as referred to in the FIR.

5. It is further argued that there are no eyewitnesses to the alleged incident and the entire prosecution case rests solely on circumstantial evidence, and that albeit the occurrence having allegedly taken place at a busy location i.e. Lakhan Kothdi near Sancheti Bhawan, no independent eyewitness has been examined. Learned counsel further submitted that the appellant can not be described as a "boy", as in the contents of FIR the complainant mentioned that the offender was a boy, and the appellant was a grown man, aged approximately 35 years at the time of incident. It is also noteworthy that the appellant has not been named in the FIR. The prosecution has, therefore, failed to establish any direct nexus between the appellant and the alleged offence. With regard to the electronic evidence, it is contended that the CCTV footage allegedly recovered from Hotel Izhar, Lakhan Kotdi, is unreliable, as it pertains to a location (60-80 m. away from the crime scene)





and does not directly relate to the scene of occurrence; also that the site plan of the crime sence has no traces of the said Hotel. Moreover, the certificate under Section 65B of the Indian Evidence Act is inadmissible in evidence on account of irregularities therein. It is further submitted that the pen drive containing the footage was not sent to the FSL for examination and the person appearing in the video has not been duly identified. It is also contended that there has been no lawful recovery at the instance of the appellant. The alleged recovery of a muffler is false, and similarly, the purported recovery of a piece of stone, stated to be the weapon of offence, is fabricated and unreliable.

6. In light of the aforesaid circumstances, it is submitted that the prosecution was under a legal obligation to prove its case beyond reasonable doubt, which it has clearly failed to do in the present matter. Thence, the instant appeal be allowed and the appellant be acquitted from all the charges.

7. Per contra, learned Public Prosecutor while vehemently opposing the prayer made by the appellant, and supporting the findings recorded by the learned Trial Court in the impugned judgment dated 04.09.2025, submitted that the learned Trial Court has meticulously considered each objection raised by the appellant and, upon due appreciation of the material evidence and other vital aspects on record, has written its findings in accordance with law.

8. Having heard the rival submissions made by the learned counsel, upon a careful consideration of the entire material available on record, this Court finds that the prosecution case





suffers from serious and material infirmities, entitling benefit to the appellant. At the outset, it is significant to note that it is not in dispute that the FIR (No. 58/2024) was initially registered for offences under sections 341, 323 and 307 IPC on the basis of the written report made by PW-1. The allegation therein was that the assailant had inflicted injuries upon the *pujari* by means of an iron rod. The injured was admitted to JLN Hospital, Ajmer, and was discharged on 06.03.2024, i.e., within about 50 hours of admission. Subsequently, he died on 11.03.2024, whereafter Section 302 IPC was added. The relevant medical record indicates that the injuries sustained were simple in nature, and the cause of death has been opined as "Myocardial infarction", i.e. a cardiac condition (The report states - "**Part of Heart:** shows area of Acute Myocardial infraction. Coronary: shows Arteriosclerotic with calcification."). The prosecution has not placed cogent medical evidence establishing a direct and proximate nexus between the alleged injuries and the subsequent cardiac event. Therefore, in the absence of such medical linkage, the essential ingredient of culpable homicide attributable to the alleged assault remains unproved and it can be noted that the opinion formulated by the learned Trial Court is sans any cognate, substantial and direct evidences and witnesses.

9. Moreover, the entire case of the prosecution rests on circumstantial evidence. There is admittedly no eyewitness to the alleged assault, despite the occurrence having allegedly taken place at a busy temple premises situated in Lakhani Kothdi area near Sancheti Bhawan. It is trite law that where a case is based





purely on circumstantial evidence, the chain of circumstances must be complete and must exclude every hypothesis except that of guilt. The principles governing such cases were authoritatively laid down in the ratio encapsulated in **Sharad Birdhichand Sarda v. State of Maharashtra: (1984) 4 SCC 116**, wherein the Hon'ble Supreme Court held that each circumstance must be firmly established and the cumulative effect must lead only to the hypothesis of guilt. It is also indubitable that the appellant has not been named in the FIR, and PW-1 – complainant in his statements as tendered before the learned Trial Court has submitted that when he along with PW-3 was taking the *pujari* to hospital, no response qua the physique or facial description of the assailant was given.

10. In the present case, the alleged recovery further weakens the prosecution story, as while the complaint and the FIR specifically state that the injury was inflicted by an iron rod, the recovery shown by the prosecution is of a stone allegedly stained with blood, with no recovery of any iron rod. In the memo Ex.P.20 the prosecution has planted false recovery of muffler from Jaliyan Kabristan. On one hand in Ex.P. 17 it has been mentioned that "संचेती भवन से वापस लाखनकोटडी की तरफ जाते समय उक्त संदिग्ध के पास मफलर नहीं है", thus on return when the suspected person did not possess any muffler then how it could be recovered from Jaliyan Kabristan, which is again a remote location, from the place of incident. This material contradiction between the version in the FIR and the alleged weapon recovered strikes at the root of the prosecution case. Withal, as regards recovery evidence, it is well settled that





recovery under Section 27 of the Indian Evidence Act must inspire confidence and must be clearly connected with the crime. It is a trite law that only that portion of information leading distinctly to discovery is admissible, and in the present case, the alleged recovery of a stone, that to after a lapse of two-three days, from an open road corner, is contrary to the version of an iron rod in the FIR and the absence of corroboration through medical or forensic evidence renders the recovery dubious.

11. Moreover, the CCTV footage relied upon by the prosecution, recovered from Hotel Izhar, Lakhan Kotdi, pertains to a remote location and does not corroborate the recovery or the presence of the appellant at the alleged location, vis-a-vis his entry or exit at or around the crime scene (As per the Ex.P. 17 i.e. the seizure memo). Upon scanning the records, it is noted that the Ex. P. 3 i.e. the site plan, does not reflect presence of the said Hotel around the crime scene/temple; and that the Hotel Manager i.e. PW-17 in his statements before the learned Trial Court has stated that there is no temple within 100 m. in the same lane of the Hotel; the said version of story is also substantiated by the statements made by PW-17 – Shayamlal. Moreso, the pen drive containing the footage was not sent to the FSL, and the person appearing in the footage has not been conclusively identified to be the appellant.

12. The Hon'ble Supreme Court has, in the case of **Sharad Birdhichand Sarda Vs. State of Maharashtra: (1984) 4 SCC 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: 1973CriLJ 1783 where the following observations weremade: 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."*

(Emphasis supplied)

13. Withal, it is noteworthy that in the absence of corroborative evidence, conviction cannot be sustained merely on conjectures. It can further be noted that the prosecution was required to prove its case beyond reasonable doubt. Suspicion, however strong, cannot take the place of proof, and the material discrepancies regarding the nature of the weapon, the medical report qua the cause of death, the doubtful electronic evidence, and the absence of eyewitnesses, creates substantial gaps in the chain of circumstances. However, in the matter at hand, it appears that the learned Trial Court has erred in appreciation of evidences.

14. In view of the foregoing discussion, which can in summation be noted as that there is contradiction vis-a-vis the allegations leveled in the FIR and recovery made qua weapon used to inflict the injuries, as in the FIR it is stated that the *pujari* sustained injuries by an iron rod, and the recovery made is of a blood stained stone from a remote location; that there has been a false recovery of the muffler in question and the learned Trial Court has erred in formulating an opinion thereto; that in order to convict an accused for offence under Section 302 of IPC the essential attribute is *actus reus* in furtherance of a *mens rea*, however, in the matter at hand there is no plausible *mens rea* qua the appellant; that the nature of injuries as per the relevant medical record has been simple; that the *pujari* was discharged from the





JLN Hospital, Ajmer, on 06.03.2024, in a healthy condition within approximately 50 hours from being admitted; that the *pujari* died on 11.03.2024, and there is no cogent nexus drawn inter-se the reason of death i.e. "Myocardial Infraction" and the attributed injuries; that in the FIR the suspected offender has been termed as a "boy" with no description qua physique, and the appellant at the time of arrest was a grown man aged approximately 35 years; that the impugned conviction is purely based on circumstantial evidences as even the pen-drive in question was not sent to the FSL Department for examination; that there have been discrepancies in the exhibited site plan and the rationale noted in the impugned judgment, for instance it is noted that the Ex. P. 3 i.e. the site plan, does not reflect presence of the said Hotel around the crime scene/temple; and that the Hotel Manager i.e. PW-17 in his statements before the learned Trial Court has stated that there is no temple within 100 m. in the same lane as that of the Hotel, the said version of story is also substantiated by the statements made by PW-17 – Shayamlal; that due to absence of any eyewitnesses, despite the crime scene being a busy place, any lawful recovery, in presence of substantial gaps in the chain of events, this Court is of the considered opinion that the prosecution has failed to establish a complete and unbroken chain of circumstances pointing unerringly towards the guilt of the appellant.

15. Resultantly, the appeal is allowed. The judgment dated 04.09.2025 passed by the learned Sessions Judge, Ajmer in Sessions Case No. 41/2024 is quashed and set aside and the





appellant is acquitted of the charge framed against him. Since, the appellant is in custody, he be set at liberty forthwith if not warranted in any other case.

16. In view of the provisions of Section 437-A CrPC (Section 481 Bharatiya Nagarik Suraksha Sanhita, 2023), the appellant, namely, **Kalu S/o Shri Bhima Singh** 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 (Judicial), Rajasthan High Court, Jaipur Bench, Jaipur, which shall be effective for a period of six months with the stipulation that in the event of Special Leave Petition, being filed against the judgment 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

Preeti Asopa

