

**NAFR****HIGH COURT OF CHHATTISGARH AT BILASPUR****ACQA No. 17 of 2012****Judgment Reserved on 06.01.2026****Judgment Delivered on 23.01.2026**

1 - Smt. Sushila Suman Wd./o Late Shri Kamleshwar Suman , R/o Village Kirari , Police Station -Masturi , Distt. - Bilaspur C.G.

... Appellant

**versus**

1.Tikam Singh, S/o. Dadu Singh Thakur, aged about 32 years, R/o. Village Kirari, Police Station -Masturi, District Bilaspur (C.G.)

2. Banke Singh, S/o. Khamhan Singh, aged about 27 years, R/o. Village Kirari, Police Station -Masturi, District Bilaspur (C.G.)

3. Uttam Singh, S/o. Mowa Singh, aged about 35 years, R/o. Village - Guddi, Police Station -Sipat, District Bilaspur (C.G.).

4. Gopal Singh, S/o. Prem Singh Thakur, aged about 65 years, R/o. Village - Kirari, Police Station -Masturi, District Bilaspur (C.G.)

5. Bhola Singh, S/o. Ramshanker Singh, aged about 24 years, R/o. Rajawar Jamuna, P. S. Bhalumada, District Anuppur (M.P.)



(Accused-persons)

6. The State of Chhattisgarh, Through: Station House Officer, Police Station Masturi, District Bilaspur (C.G.)

**... Respondents**

For Appellant	:	Ms. Seema Singh, Advocate
For State/Respondent No.6	:	Mr. Sangharsh Pandey, Govt. Advocate

**Division Bench**

**Hon'ble Shri Justice Sanjay S. Agrawal, J. &**  
**Hon'ble Shri Justice Amitendra Kishore Prasad, J.**

**CAV Judgment**

**Per, Amitendra Kishore Prasad, J.**

1. This acquittal appeal has been preferred by the appellant– complainant challenging the judgment dated 01.04.2011 passed by the learned Sessions Judge, Bilaspur, in Special Case No. 1/2009, whereby respondent Nos. 1 to 5 were acquitted of the charges under Section 302/34 of Indian Penal Code (for short, “IPC”) and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short, “the Act, 1989”). Respondent No. 5 – Bhola Singh was also acquitted of the offences under Sections 25 and 27 of the Arms Act, 1959 (for short, “the Act, 1959”). Further, respondent No. 1 – Tikam Singh, respondent No. 2 – Banke Singh, and respondent No. 3 – Uttam Singh were acquitted of the offence under Section 27 of the Arms Act; however, they were convicted under Section 25 of the Arms Act and sentenced to the period already



undergone, along with a fine of Rs. 1,000/- each, and in default of payment of fine, to undergo simple imprisonment for two months each.

2. Case of the prosecution, in brief, is that on 30.08.2008 at about 11:45 hours, informant Devid Denial sent a memo from Apollo Hospital to Police Station Sarkanda informing that Kaleshwar Suman, aged about 45 years, had been brought to the hospital in a dead condition. The brother of the deceased, namely Parmeshwar Suman, stated at the hospital that at about 9:30 p.m. on the same date, the deceased had sustained a gunshot injury at the place of occurrence. On the basis of this information, Police Station Sarkanda registered a zero merg. Subsequently, on 30.08.2008, Jagwat Suman lodged the First Information Report at Police Station Masturi stating that the deceased Kaleshwar Suman was his brother and was the Sarpanch of Gram Panchayat Kirari. He further stated that between 7:30 to 8:00 p.m., while he was at his house, Badaku Satnami and Shiv Kumar Suman came and informed him that the Sarpanch had sustained a bullet injury. On inquiry, it was revealed that Kaleshwar Suman was accompanying Gopal Singh Thakur and when they reached near the transformer, Gopal Singh suspected that two persons were following them. At that moment, a gunshot was fired from behind from a distance of about 20 feet. The incident was thereafter communicated to the nephew of the informant. On this basis, Police Station Masturi registered an offence against unknown



persons. During the course of investigation, an inquest over the dead body was conducted and the body was sent for post-mortem examination, which opined that the cause of death was due to a gunshot injury. The spot map was prepared through the Patwari. From the place of occurrence, *charota bhaji*, one glass, and blood-stained grass were seized. On the memorandum statements of accused persons namely Tikam Singh, Uttam Singh, and Banke Singh, a country-made pistol, bullet, and motorcycle were seized in the presence of witnesses. The accused persons were arrested and the seized pistol and bullet were sent to the Forensic Science Laboratory for chemical examination.

3. After completion of investigation, the charge sheet was filed against the accused persons/respondents No.1 to 5 before the concerned trial Court. The accused persons/respondents No.1 to 5 abjured the guilt and claimed to be tried.
4. The prosecution in order to bring home the offence, examined as many as 29 witnesses in support of its case and exhibited 29 documents Exs.P-1 to P-43. However, the accused persons/respondent No.1 to 5, in support of their defence, have examined none, but exhibited five documents i.e. Exs.D-1 to D-5.
5. The trial Court, after hearing learned counsel for the parties and appreciating the evidence on record, by the impugned judgment



acquitted the accused persons/respondents No.1 to 5 herein of the aforesaid charges levelled against them.

6. Learned counsel for the appellant submits that the trial Court has erred in acquitting the accused persons/respondents No.1 to 5 by recording perverse findings. It is contended that the prosecution has duly proved the homicidal death of the deceased- Kaleshwar by firearm injury through the cogent medical evidence of PW-28 Dr. Vijay Chandel, yet the learned trial Court erroneously disbelieved the same. He submits that the learned trial judge failed to appreciate the vital circumstantial evidence, including the "last seen together" theory, previous enmity between the deceased and accused- Gopal, seizure of the country-made *katta* at the instance of the accused persons, and the suspicious conduct of accused- Gopal in maintaining a deliberate distance from the deceased at the time of the incident, which clearly establishes prior meeting of minds and criminal conspiracy. It is further submitted that the conduct of the assailants in selectively targeting only the deceased, despite the presence of accused- Gopal, itself points towards a pre-planned conspiracy hatched by accused- Gopal, who acted as the mastermind of the offence. The learned trial Court, by ignoring these material circumstances and by placing undue emphasis on minor omissions and contradictions, committed a grave error in acquitting the accused persons, particularly when the chain of circumstantial evidence was complete and unerringly pointed towards their guilt beyond



reasonable doubt. Thus, the impugned judgment of acquittal suffers from perversity and illegality and is, therefore, liable to be set aside.

7. Learned counsel for the State/Respondent No.6 has supported the contention made by learned counsel for the appellant.
8. We have heard learned counsel for the parties and perused the material available on record.
9. The Supreme Court has considered the scope of interference in cases of acquittal in several matters and has passed several guidelines for considering the appeals arising out of acquittal of accused persons in the matter of ***Jafarudheen and others vs. State of Kerala***<sup>1</sup> has considered the scope of interference in Appeal against acquittal, which reads as under:-

*“25. While dealing with an appeal against acquittal by invoking Section 378 CrPC, the appellate court has to consider whether the trial court's view can be terms as a possible one, particularly when evidence on record has been analysed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the appellate court has to be relatively slow in reversing the order of the trial court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in*

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<sup>1</sup> (2022) 8 SCC 440



*favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters.”*

10. In the matter of ***Kali Ram vs State of H.P.***<sup>2</sup>, the Supreme Court has held in para 25 which reads as under:-

*“25. Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favorable to the accused should be adopted. This principle has a special relevance in cases where the guilt of the accused is sought to be established by circumstantial evidence.”*

11. The Hon'ble Apex Court vide its judgment dated 12.02.2024 (Criminal Appeal No 1162 of 2011) passed in ***Mallappa and Ors. Versus State of Karnataka*** has held in para 36 as under:-

*“36. Our criminal jurisprudence is essentially based on the promise that no innocent shall be condemned as guilty. All the safeguards and the jurisprudential values of criminal law, are intended to prevent any failure of justice. The principles which come into play while deciding an appeal from acquittal could be summarized as:-*

*(i) Appreciation of evidence is the core element of a criminal trial and such appreciation must be comprehensive--*



inclusive of all evidence, oral and documentary;

(ii) *Partial or selective appreciation of evidence may result in a miscarriage of justice and is in itself a ground of challenge;*

(iii) *If the Court, after appreciation of evidence, finds that two views are possible, the one in favour of the accused shall ordinarily be followed;*

(iv) *If the view of the Trial Court is a legally plausible view, mere possibility of a contrary view shall not justify the reversal of acquittal;*

(v) *If the appellate Court is inclined to reverse the acquittal in appeal on a re-appreciation of evidence, it must specifically address all the reasons given by the Trial Court for acquittal and must cover all the facts;*

(vi) *In a case of reversal from acquittal to conviction, the appellate Court must demonstrate an illegality, perversity or error of law or fact in the decision of the Trial Court.*

12. Further, the Supreme Court in the matter of ***Surendra Singh and another v. State of Uttarakhand***<sup>3</sup>, whereby in Para-11 & 12, it has been held that the High Court should interfere in the order of acquittal, if the same suffers from perversity and is based on misreading of material evidence etc. and observed as under:

***“11. Recently, in the case of Babu Sahebagouda Rudragoudar and others v. State of Karnataka,***



(2024) 8 SCC 149, a Bench of this Court to which one of us was a Member (B.R. Gavai, J.) had an occasion to consider the legal position with regard to the scope of interference in an appeal against acquittal. It was observed thus:

“38. First of all, we would like to reiterate the principles laid down by this Court governing the scope of interference by the High Court in an appeal filed by the State for challenging acquittal of the accused recorded by the trial court.

39. This Court in *Rajesh Prasad v. State of Bihar* [*Rajesh Prasad v. State of Bihar*, (2022) 3 SCC 471 : (2022) 2 SCC (Cri) 31] encapsulated the legal position covering the field after considering various earlier judgments and held as below : (SCC pp. 482-83, para 29) 6 (2024) 8 SCC 149

“29. After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal in the following words : (*Chandrappa case* [*Chandrappa v. State of Karnataka* (2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325], SCC p. 432, para 42

42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is



founded.

(2) *The Criminal Procedure Code, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.*

(3) *Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.*

(4) *An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.*

(5) *If two reasonable conclusions are*



*possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.' "*

40. Further, in *H.D. Sundara v. State of Karnataka* [*H.D. Sundara v. State of Karnataka*, (2023) 9 SCC 581: (2023) 3 SCC (Cri) 748], this Court summarised the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378CrPC as follows : (SCC p. 584, para 8)

*"8. ... 8.1. The acquittal of the accused further strengthens the presumption of innocence;*

*8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;*

*8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;*

*8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and*

*8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no*



*other conclusion was possible.”*

*41. Thus, it is beyond the pale of doubt that the scope of interference by an appellate court for reversing the judgment of acquittal recorded by the trial court in favour of the accused has to be exercised within the four corners of the following principles:*

*41.1. That the judgment of acquittal suffers from patent perversity;*

*41.2. That the same is based on a misreading/omission to consider material evidence on record; and*

*41.3. That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.”*

**12.** *It could thus be seen that it is a settled legal position that the interference with the finding of acquittal recorded by the learned trial judge would be warranted by the High Court only if the judgment of acquittal suffers from patent perversity; that the same is based on a misreading/omission to consider material evidence on record; and that no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.”*

13. Thus, in light of the above-quoted guidelines/ dictums laid down by the Hon'ble Supreme Court, we have to examine whether the findings recorded by the learned trial Court suffers from patent perversity or the same is based on misreading/omission to consider material evidence on record and whether two reasonable views are



possible or only the view consistent with the guilt of the accused is possible from the evidence available on record.

14. In the present case, the learned trial Court recorded a categorical finding that the death of the deceased was homicidal in nature. The said finding is based on the medical evidence of P.W.-28 Dr. Vijay Chandel, who conducted the post-mortem examination and found multiple firearm injuries resulting in fractures of ribs and iliac bone, damage to vital organs and massive hemorrhage. The doctor (PW-28) opined that death of deceased occurred due to cardio-respiratory failure caused by hemorrhagic shock. This finding is affirmed by this Court.

15. The prosecution case rests entirely on circumstantial evidence. It is settled law that in a case based on circumstantial evidence, each circumstance must be fully established and the chain of circumstances must be so complete as to exclude every hypothesis except that of the guilt of the accused. Merg and FIR was lodged against unknown persons. Further except memorandum and seizure therein no evidence against the respondent accused persons.

16. The prosecution relied upon the circumstance of 'last seen' against accused- Gopal Singh. However, though it is proved that accused- Gopal Singh was present with the deceased prior to the incident and informed the sons of the deceased about the occurrence, but no evidence was led to establish proximity of time



between the alleged last seen circumstance and the occurrence.

No dying declaration naming any of the accused was proved. P.W.-

7 Manish Singh stated that when he reached the spot, the deceased was conscious and only stated that someone had fired at him from behind. The deceased did not disclose the name or identity of any assailant. Thus, the 'last seen theory' is not sufficient to fasten criminal liability.

17. The prosecution also alleged motive in the form of political rivalry and disputes relating to gambling activities. On scrutiny, the trial Court found that the alleged motive was not proved beyond reasonable doubt, as the material witnesses made improvements before the Court and the alleged disputes were not shown to have any direct nexus with the incident.

18. This apart, the recovery of firearms and cartridges from certain accused was relied upon by the prosecution. However, the forensic evidence does not conclusively connect the seized weapons with the firearm injuries sustained by the deceased. The ballistic evidence is incomplete and unreliable, as all seized weapons were not examined and no conclusive matching was proved.

19. In respect of accused- Bhola Singh, the prosecution failed to prove beyond reasonable doubt the charges under Sections 25 and 27 of the Arms Act. The recovery and seizure documents in his case were not duly proved in accordance with law. Consequently, accused- Bhola Singh was rightly acquitted of the charges under



Sections 25 and 27 of the Arms Act.

20. Further, the prosecution also failed to prove beyond reasonable doubt the charge under Section 27 of the Arms Act against accused- Tikam Singh @ Dadu Singh, Banke Singh @ Khamhan Singh and Uttam Singh @ Mowa Singh. In absence of proof of use of arms in the commission of the offence, they were rightly acquitted of the charge under Section 27 of the Arms Act. However, so far as the charge under Section 25 of the Arms Act is concerned, the prosecution succeeded in proving beyond reasonable doubt that accused- Tikam Singh @ Dadu Singh, Banke Singh @ Khamhan Singh and Uttam Singh @ Mowa Singh were in conscious possession of unlicensed firearms. Accordingly, they were held guilty of the offence under Section 25 of the Arms Act and sentenced to the period already undergone by them.
21. So far as the charges under Sections 302/34 IPC and Section 3(2) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act are concerned, the prosecution failed to establish a complete chain of circumstances so as to prove the guilt of the accused persons beyond reasonable doubt. The findings recorded by the trial Court in acquitting the accused persons of the said charges are based on proper appreciation of evidence and do not suffer from perversity.
22. After considering the material available on record as well as the elaborated impugned judgment passed by the trial Court and being



very much conscious of the existing legal position that in an appeal against acquittal if two views are possible on the basis of the evidence led by the prosecution and the trial Court taking one view favouring the accused, reversal of the findings of acquittal by the Appellate Court taking the other possible view into consideration, is not permissible in law, we are of considered opinion that the conclusions arrived at by the learned trial Court are based on a proper appreciation of evidence and represent a plausible and reasonable view. The findings are neither perverse nor contrary to the material available on record.

23. Accordingly, the acquittal appeal filed by the Appellant/Complainant is devoid of merit and is hereby **dismissed**.

Sd/-

(Sanjay S. Agrawal)

Sd/-

(Amitendra Kishore Prasad)

Judge

Judge

Vishakha