

HIGH COURT OF MADHYA PRADESH : JABALPUR**M.Cr.C. No.3926/2018.****The State of Madhya Pradesh****Versus****Nandu Ahirwar.**

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CORUM:**Hon'ble Shri Justice Hemant Gupta, Chief Justice.****Hon'ble Shri Justice Vijay Kumar Shukla, Judge.**

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Shri Amit Seth, Government Advocate for the applicant.

Whether approved for reporting ?	Yes
Law laid down	<ol style="list-style-type: none"> 1. In a case of circumstantial evidence, 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. 2. In an appeal against the order of acquittal, the Court has to be very cautious in interfering with an appeal unless there are compelling and substantial grounds to interfere with the order of acquittal.
Significant paragraph Nos.	8

JUDGMENT**(Jabalpur, dated:16.03.2018)****Per : Vijay Kumar Shukla, J.-**

1. This is an application for grant of leave to appeal under Section 378(3) of the Code of Criminal Procedure against the judgment dated 13.09.2017 passed by First Additional Sessions Judge, Raisen in Sessions Trial No.81/2017 whereby the accused has been acquitted for commission of offence under Sections 302 and 397 of Indian Penal Code.

2. The prosecution story in short is that on 26.12.2016 at about 06:00 pm in the evening, the dead body of Prem Bai was found in the agricultural field with an injury on the head and clothes. The son of the deceased (PW-5) informed the police that silver anklets worn by the deceased were missing from her body. The police had registered an FIR against unknown person under Sections 302 and 395 of Indian Penal Code. During the investigation, it was found that the accused had committed the crime and the challan was filed against him.

3. The prosecution case is based on circumstantial evidence. The learned Trial Court has found that except the evidence that on the discovery statement of the accused, an Axe was seized. The said seized weapon was also sent for chemical examination and it was found that there was no human blood on the said seized weapon. The entire prosecution case is based on the seizure of the weapon and on the assumption that there was a dispute between the son of the deceased Ramesh and the accused Nandu and the accused Nandu used to cause teasing and harassment to Sapna daughter of the deceased and there were some affairs between the accused and Sapna. The same was the motive behind committing the murder of the deceased.

4. The prosecution could not prove the chain of circumstances and how the accused has been correlated with the commission of offence. The seizure of the weapon alone could not have been a basis for the conviction unless the chain of circumstances is complete. The Trial Court has found that the seizure has not been proved beyond doubt by the prosecution. Further, the prosecution could not prove the human blood on the seized weapon and other articles. The

Apex Court in the case of **Sharad Birdhichand Sarda Vs. State of Maharashtra [AIR 1984 Supreme Court 1622]** has held as under:

1. The circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established;
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.

The same has further been reiterated by the Apex Court in the case of **Ashish Batham Vs. State of Madhya Pradesh [2002 (7) SCC 317]**.

5. In the case of **Kaliram Vs. State of Himachal Pradesh [AIR 1973 Supreme Court 2773]**, the Apex Court has contained that the golden rule is to extend the benefit of doubt in case where the prosecution could not prove the chain

of circumstances and held as under:

“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 favourable to the accused should be adopted. This principle has a special relevance in cases where in the guilt of the accused is sought to be established by circumstantial evidence.”

6. The scope of appeal against the order of acquittal is no longer *res-integra* as it has been held that the Appellate Court should not ordinarily set aside the judgment of acquittal in a case where two views are possible. In the present case, we find that the Trial Court has taken into consideration the entire facts, evidence and found that the chain of circumstances is not complete. In acquittal appeals, the Appellate Court is not required to rewrite the judgment or to give fresh reasoning when the reasons are assigned by the Court below are found to be just and proper. A reference is made to the judgment passed by the Apex Court in the case of **State of Karnataka Vs. Hemareddy [AIR 1981 Supreme Court 1417]** and also judgment passed by co-ordinate Bench of this Court in the case of **State of MP Vs. Babulal Meena [2018 (1) MPLJ (Cri.) 86]**.

7. The Apex Court has held in the case of **Mahavir Singh Vs. State of MP, [(2016) 10 SCC 20]** that in the cases of acquittal by the Court of law, the Court has to be very cautious in interfering in an appeal unless there are compelling and substantial grounds to interfere with the order of acquittal. The relevant paras 11 and 12 of the said judgment of **Mahavir Singh (supra)** quoted as under:-

“11. We have heard the learned counsel on either side at length and perused the material available on record. Now it is imperative to look into the scope of interference by the appellate Court in an appeal against acquittal and whether the High Court was justified in convicting the accused under Section 302, IPC by reversing the order of acquittal passed by the Trial Court.

12. In the criminal jurisprudence, an accused is presumed to be innocent till he is convicted by a competent Court after a full-fledged trial, and once the Trial Court by cogent reasoning acquits the accused, then the reaffirmation of his innocence places more burden on the appellate Court while dealing with the appeal. No doubt, it is settled law that there are no fetters on the power of the appellate Court to review, reappraise and reconsider the evidence both on facts and law upon which the order of acquittal is passed. But the Court has to be very cautious in interfering with an appeal unless there are compelling and substantial grounds to interfere with the order of acquittal. The appellate Court while passing an order has to give clear reasoning for such a conclusion.”

8. In view of the aforesaid findings recorded by the trial Court and the law laid down by the Apex Court, we do not find any illegality or perversity in the impugned order and there are no compelling and substantial grounds to interfere with the order of acquittal. Hence, application for leave to appeal is **dismissed**.

(HEMANT GUPTA)
CHIEF JUSTICE

(VIJAY KUMAR SHUKLA)
JUDGE