Raja Khan vs State Of Chhattisgarh on 7 February, 2025

Author: Sanjay Karol

Bench: Sanjay Karol

2025 INSC 167 REPO

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 70 OF 2025
(Arising out of Special Leave Petition (Crl.) No. 14411 of 2

RAJA KHAN ..... APPE

VERSUS

STATE OF CHATTISGARH ....RESPOND

JUDGMENT

MANMOHAN, J.

1. Present Appeal has been filed challenging the judgment and order dated 4th July, 2023 passed by the High Court of Chhattisgarh at Bilaspur in Criminal Appeal No. CRA/855/2014, whereby the appeal filed by the Appellant-accused was dismissed and the judgment and order dated 12 th August, 2014 passed in Sessions Trial No.42/2014 by the third Additional Sessions Judge, Raipur, Chhattisgarh (hereinafter referred to as "the Trial Court") convicting and sentencing the Appellant-accused was affirmed. It is pertinent to mention that the Appellant-accused has been convicted for committing offences under Sections 302 and 201 of Indian Penal Code, 1860 (hereinafter referred to as "IPC") and has been sentenced to undergo life imprisonment with a fine of Rs.500/- (Rupees Five Hundred) for committing the offence under Section 302 of IPC and to undergo rigorous imprisonment for 5 (five) years with fine of Rs.200/- (Rupees Two Hundred) for committing the offence under Section 201 of IPC along with default stipulations.

FACTS NEETU KHAJURIA Date: 2025.02.07 18:16:59 IST Reason:

2. The facts leading to the present appeal are as under:

> 2.1 The case of the prosecution is that Neeraj Yadav (hereinafter referred to as "deceased") left his house on 29th November, 2013 but did not return home and a Missing Report was lodged by the father of the deceased, Premlal Yadav (PW-5), on 30th November, 2013. Chandrashekhar Verma (PW-1) informed the police on 1st December, 2013 that a dead body had been found floating in the pond of a stone quarry at Village Dondekala Matia and upon receiving the information, police

personnel of P.S Vidhan Sabha reached the spot. Thereafter, a MERG Intimation being MERG No. 62/2013 (Ex. P-17) was registered on 2nd December, 2013 and the body of the deceased was sent for post-mortem examination, and it was concluded that the death was homicidal in nature. Subsequently, a First Information Report (hereinafter referred to as "FIR") dated 3rd December, 2013 bearing no. 228/2013 was registered at P.S. Vidhan Sabha, District Raipur. The dead body of the deceased was identified by Balram Yadav (PW-21) who was the cousin brother of the deceased. 2.2 During the course of the investigation, it was found that the Appellant-

accused had borrowed money from the deceased and a dispute had arisen between them with respect to refund of the borrowed amount. 2.3 It is the case of prosecution that the Appellant-accused along with co-

accused Tarachand Verma (who has been acquitted by the Trial Court) had taken the deceased on the intervening day in an auto to the place of incident and assaulted the deceased with an iron pipe and battleaxe (Gandasa) and thereby committed his murder and with intent to cause disappearance of evidence smashed his head with stone and after removing his full pant tied a rope around his waist and thrown the body in the water of quarry no. 1.

2.4 The dead body of the deceased was sent for Post-Mortem Examination which was conducted by Dr. Nitin Shaymrao Barmate (PW-10) and as per the Post-Mortem Report (Ex. P-13), the injuries were caused by a sharp-edged weapon and some of the injuries were as a result of a hard and blunt impact. It was also stated that the cause of death was "Head Injury" and the death was homicidal in nature.

2.5 A Memorandum of Statement (Ex. P-23) of the Appellant-accused under Section 27 of the Indian Evidence Act, 1872 (herein referred to as "Evidence Act") was recorded which led to the discovery and seizure of the iron blade (Gandasa) and a stone covered in blood from Kachna Pond. Further, recovery and seizure of two gold chains of the deceased was also made from the rooftop of the house of the Appellant-accused. The seized articles i.e. blood-stained soil, mobile cover, iron pellet and stones were sent to Forensic Science Laboratory (hereinafter referred to as "FSL") and its report (Ex. P-39) stated that the presence of human blood stain was found on the stone seized by the Investigating Agency. 2.6 The prosecution, to prove that the deceased was last seen with the Appellant-accused, had examined Bhagwat Prasad Sahu (PW-23) and Balram Yadav (PW-21) who had deposed that the deceased was seen travelling with the Appellant-accused in an auto on 29th November, 2013 between 5:00 PM and 6:00 PM.

2.7 Statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C.") and after the investigation was complete, a chargesheet was filed against the Appellant-accused and co-accused Tarachand for committing the offences punishable under Section 302 read with Section 34 and Section 201 of IPC which was then committed to the Court of Sessions and charges were framed against the Appellant-accused and Tarachand Verma.

2.8 In order to substantiate the charges levelled against the Appellant-

accused and Tarachand Verma, the prosecution examined 26 (twenty-six) witnesses and exhibited 39 (thirty-nine) documents and on the other hand no defense witness was examined.

2.9 The Appellant-accused was examined under Section 313 of Cr.P.C.

wherein the Appellant-accused denied all the allegations and charges and pleaded innocence.

3. The Trial Court heard arguments on behalf of the Appellant-accused and after appreciating the oral and documentary evidence on record, acquitted the co-accused Tarachand Verma from all charges but convicted the Appellant- accused vide its judgment and order dated 12th August, 2014 for the offences under Sections 302 and 201 of IPC.

4. Being aggrieved by the said judgment, the present Appellant-accused preferred a criminal appeal before the High Court challenging the order of conviction and sentence awarded by the Trial Court. The High Court vide the impugned judgment dismissed the appeal and affirmed the conviction and sentence awarded by the Trial Court. The High Court held that the stone which was stained with human blood was seized at the instance of the Appellant- accused and the two gold chains were found from the house of the Appellant- accused regarding which the Appellant-accused had failed to provide any explanation.

5. Being aggrieved thereby, the present appeal has been preferred by the Appellant-accused.

ARGUMENTS ON BEHALF OF THE APPELLANT-ACCUSED

6. Mr. Saubhagya Chauriha, learned counsel appearing on behalf of the Appellant-accused stated that there were grave inconsistencies in the seizure made by the investigating authority. He stated that the Courts below had failed to appreciate that the Memorandum of Statement of the Appellant-accused under Section 27 of the Evidence Act was recorded by the Investigating Officer (hereinafter referred to as “IO”) in the presence of one Tirath Dhruv (PW-22) and Bhupender Dhruv, however, Bhupender Dhruv was not examined by the Investigating Agency.

7. He emphasised that a perusal of the testimony of PW-22 reveals that the said witness had not seen the Memorandum Statement and property seizure memo as put forth by the Investigating Agency. He further stated that PW-22’s testimony discloses that he and Bhupender Dhruv had signed a number of documents pertaining to seizure of articles, before leaving the police station and had not signed any documents after seizure was made by the IO.

8. He stated that a perusal of the testimonies of PW-22 and PW-26 reveal that Ex. P-25 articles such as stone and the gandasa were recovered by PW-26 from the bottom of Kachna Pond at the instance of the police officer and not of the Appellant-accused.

9. He stated that the Test Identification Parade (hereinafter referred to as "TIP") of the two gold chains, purportedly belonging to the deceased was questionable as the place of recovery i.e. rooftop of the house of the Appellant- accused, was an open space accessible to public from outside and the same was evidenced from the fact that the recovery was made by climbing onto the rooftop from outside the house.

10. According to him, the recovery of the gold chains was fabricated as the witnesses i.e. Tirath Dhruv (PW-22) and Bhupender Dhruv never saw the police officers recovering the same from the house of the Appellant-accused. Further, neither the testimony of the witnesses nor the IO mentioned that the Appellant- accused was accompanying the recovery team or the recovery was made at the instance of the Appellant-accused.

11. He contended that the last seen theory does not help the case of the prosecution in view of the marked variance and material contradictions as to the place and time of last seen. He further stated that since the testimony of PW-23 is not corroborated by the testimonies of PW-2, PW-3 & PW-5.

12. He stated that the prosecution had failed to establish motive on the part of the Appellant-accused to commit the offence as there was no evidence or record to show the amount of money that the Appellant-accused had borrowed from the deceased. According to him, prosecution had failed to produce any other evidence to prove the inimical relationship between the deceased and the Appellant-accused except the testimony of PW-2, who vaguely deposed before the Trial Court that the deceased had many enemies, but did not mention the name of the Appellant-accused as one of them and the testimony of PW-15 pertaining to earlier scuffle of the deceased with the Appellant-accused was not reliable as she failed to state the same to police in her statement (Ex. D/2).

ARGUMENTS ON BEHALF OF THE RESPONDENT-STATE

13. Per contra, Mr. Prafful Bharat, learned Senior Counsel appearing on behalf of the Respondent-State stated that the recovery of the stone which was used for commission of crime had been made at the instance of the Appellant- accused. According to the disclosure statement (Ex. P-23) of the Appellant- accused, the stone was thrown by him in the Kachna pond and PW-22, who is the witness to the memorandum statement and seizure memo (Ex. P-25), had duly supported the same. As per the FSL Report (Ex. P-39), human blood was found on the seized stone.

14. He further stated that on the basis of the disclosure statement of the Appellant-accused, two gold chains belonging to the deceased were also seized at the instance of the Appellant-accused from the roof of the house of the Appellant-accused, which had been duly proved by PW-22. Additionally, he pointed out that the seized gold chains were identified by PW-2 vide memo of identification (Ex. P-10) which had been duly proved by Gopi Sahu (PW-6).

15. He stated that it was evident from the testimony of PW-23 that the deceased was last seen together with the Appellant-accused before he went missing and his dead body was found on 2nd December, 2013 floating in the pond of stone quarry at Village Dondekala Matia. He pointed out

that the statement of PW-23 was corroborated by the statement of PW-21 to whom PW- 23 had informed on 30th November, 2013 regarding last seen and missing of the deceased.

REASONING

16. Having heard learned counsel for the parties, the entire case of the prosecution rests on circumstantial evidence, as there is neither any eye-witness nor any judicially admissible confession. It is well settled law that where the case rests entirely on circumstantial evidence, the chain of evidence must be so far complete, such that every hypothesis is excluded but the one proposed to be proved and such circumstances must show that the act has been done by the Appellant-accused within all human probability (See Hanumant vs. State of Madhya Pradesh, (1952) 2 SCC 71). In Sharad Birdhichand Sarda vs. State of Maharashtra, (1984) 4 SCC 116, this Court outlined five essential principles, often referred to as five golden principles, which must be satisfied for circumstantial evidence to conclusively establish the guilt of the Appellant- accused:

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

17. To prove the charges, the prosecution has laid emphasis on recovery of weapon of assault (stone as well as the gandasa) and gold chains belonging to the deceased, on the basis of statement (Ex. P-23) given by the Appellant- accused while in custody.

18. Sections 25 and 26 of the Evidence Act stipulate that confession made to a police officer is not admissible. However, Section 27 is an exception to Sections 25 and 26 and serves as a proviso to both these sections [Delhi Administration vs. Bal Krishan & Ors., (1972) 4 SCC 659].

19. This Court is of the view that Section 27 lifts the ban, though partially, to the admissibility of confessions. The removal of the ban is not of such an extent so as to absolutely undo the object of Section 26. As such the statement whether confessional or not is allowed to be given in evidence but that portion only which distinctly relates to discovery of the fact is admissible. A discovery of a fact includes the object found, the place from which it is produced and the knowledge of the Appellant-accused as to its existence (Udai Bhan Vs. State of Uttar Pradesh, AIR 1962 SC 1116).

20. The essential ingredients of Section 27 of the Evidence Act are three- fold:

> i. The information given by the accused must led to the discovery of the fact which is the direct outcome of such information.

ii. Only such portion of the information given as is distinctly connected with the said recovery is admissible against the accused.

iii. The discovery of the facts must relate to the commission of such offence.

21. The question as to whether evidence relating to recovery is sufficient to fasten guilt on the accused was considered by this Court in Bodhraj Alias Bodha & Ors. v. State of Jammu & Kashmir, (2002) 8 SCC 45, wherein it has been held as under:-

> "18... Section 27 of the Indian Evidence Act, 1872 (in short "Evidence Act") is by way of proviso to Sections 25 to 26 and a statement even by way of confession made in police custody which distinctly relates to the fact discovered is admissible in evidence against the accused. This position was succinctly dealt with by this Court in Delhi Admn v. Balakrishan [(1972) 4 SCC 659] and Mohd. Inayatullah v. State of Maharashtra [(1976) 1 SCC 828]. The words "so much of such information" as relates distinctly to the fact thereby discovered, are very important and the whole force of the section concentrates on them. Clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. The ban as imposed by the preceding sections was presumably inspired by the fear of the Legislature that a person under police influence might be induced to confess by the exercise of undue pressure. If all that is required to lift the ban be the inclusion in the confession of information relating to an object subsequently produced, it seems reasonable to suppose that the persuasive powers of the police will prove equal to the occasion, and that in practice the ban will lose its effect. The object of the provision i.e. Section 27 was to provide for the admission of evidence which but for the existence of the section could not in consequence of the preceding sections, be admitted in evidence. It would appear that under Section 27 as it stands in order to render the evidence leading to discovery of any fact admissible, the information must come from any accused in custody of the police. The requirement of police custody is productive of extremely anomalous results and may lead to the exclusion of much valuable evidence in cases where a person, who is subsequently taken in to custody and becomes an accused, after committing a crime meets a police officer or voluntarily goes to him or to the police station and states the circumstances of the crime which lead to the discovery of the dead body, weapon or any other material fact, in consequence of the information thus received from him. This information which is otherwise admissible becomes inadmissible under Section 27 if the information did not come from a person in the custody of a police officer or did come from a person not in the custody of a police officer. The statement which is admissible under Section 27 is the one which is the information leading to discovery. Thus, what is admissible being the information, the same has to be proved and not the opinion formed on it by the police officer. In other words, the exact information given by the accused while in custody which led to recovery of the articles has to be proved. It is, therefore, necessary for the benefit of both the accused and prosecution that information given should be recorded and proved and if not so recorded, the

> exact information must be adduced through evidence. 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 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. It is now well settled that recovery of an object is not discovery of fact envisaged in the section. Decision of Privy Council in Palukuri Kotayya v. Emperor [AIR (1947) PC 67], is the most quoted authority of supporting the interpretation that the "fact discovered" envisaged in the section embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect. [See State of Maharashtra v. Dam Gopinath Shirde and Ors, (2000) 6 SCC 269]. No doubt, the information permitted to be admitted in evidence is confined to that portion of the information which "distinctly relates to the fact thereby discovered". But the information to get admissibility need not be so truncated as to make it insensible or incomprehensible. The extent of information admitted should be consistent with understandability. Mere statement that the accused led the police and the witnesses to the place where he had concealed the articles is not indicative of the information given.
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> (emphasis supplied)

22. In the present case, the prosecution has produced Tirath Dhruv (PW-22) and Bhuvan Dhimar (PW-26) as the panch witnesses to prove the recovery pursuant to the disclosure made by the Appellant-accused. A bare perusal of the testimonies of the said witnesses raises serious doubts regarding the version of the prosecution with respect to the alleged disclosure made by the Appellant- accused herein and the recoveries pursuant to such alleged disclosure.

23. Tirath Dhruv (PW-22) has deposed that when the Appellant-accused was questioned in his presence, the Appellant-accused stated that he could recover the stone, axe and the pipe. However, during his cross-examination, Tirath Dhruv (PW-22) admits that he along with another witness (not produced during trial) stayed in police station for about 5 (five) minutes during which period, the police made them sign many papers. The said witness further admits that the Memoradum of Statement (Ex.P-23) of the Appellant-accused had been taken and he signed the same on the instructions of the police, without reading or understanding the contents of the said document. He admits that none of the seizure memos were prepared or signed at the spot. He states that the same were prepared and signed at the police station. Therefore, from the testimony of Tirath Dhruv (PW-22), there is grave doubt as to whether the Appellant-accused had made any disclosure in front of the said witness or that any alleged recovery had in fact been witnessed by Tirath Dhruv (PW-22).

24. Ex. P-25, i.e., the seizure memo for the stone and gandasa states that the said items were taken out at the behest of the Appellant-accused. Similarly, in Ex. P-29, it has been stated that the chains were taken out by the Appellant- accused. However, Tirath Dhruv (PW-22) nowhere states that the Appellant- accused was present along with the said witness and the police during the seizure

proceedings (i.e. when Ex. P-25 to Ex. P-31 were prepared). In fact, none of the seizure memos apart from Ex. P-29 and Ex. P-25 state that the recoveries therein were at the instance of the Appellant-accused or the acquitted co-accused.

25. Further, a perusal of the disclosure statement made by the Appellant- accused indicates that the Appellant-accused had allegedly hidden the gold chains allegedly belonging to the deceased by wrapping them in a red wrapper and then hiding them at the terrace of his house behind a green-coloured container. However, the seizure memo being Ex. P-29 states that the chains were recovered from a green-coloured blanket on the roof of the house. The said seizure memo further states that the police took possession of the articles after they were taken out by the Appellant-accused in presence of the witnesses. On the other hand, the IO–G.S. Singh (PW-25), states that at the time of seizure proceedings of Ex. P-29, he himself had not gone to the roof and the Appellant- accused and the witness had gone to the roof. Pertinently, Tirath Dhruv (PW-22) in his deposition, without making any reference to the presence of the Appellant-accused, states that a policeman had climbed the roof of the house of the Appellant-accused from the outside and, thereafter, he along with Bhupender Dhruv climbed on the said roof from which the recovery of chains was made. Therefore, there are glaring inconsistencies with respect to the manner in which gold chains were recovered from the house of the Appellant-accused and further, the presence of the Appellant-accused at the time of the said recovery is itself doubtful.

26. Similarly, Bhuvan Dhimar (PW-26), i.e., the diver who allegedly recovered the stone and the gandasa from the Kachna pond, in his testimony admits that he recovered the said items upon the instruction from the police and from the place told by the police without making any reference to the presence of the Appellant-accused or the fact that the said items were recovered upon being pointed out by the Appellant-accused. The fact that the items from Kachna pond were seized upon the instructions from the police is corroborated by the statement of Tirath Dhruv (PW-22), who unequivocally states that it was the police who instructed the divers to go into the pond and take out the items.

27. This Court, in Varun Chaudhary vs. State of Rajasthan, (2011) 12 SCC 545 and Mustkeem alias Sirajudeen vs. State of Rajasthan, (2011) 11 SCC 724, has held that if the recovery memos have been prepared in the police station itself or signed by the panch witnesses in the police station, the same would lose their sanctity and cannot be relied upon by the Court to support the conviction.

28. There are also glaring inconsistencies in the TIP of the gold chains rendering the proceedings unreliable and inadmissible, as Anwar Hussain (PW-

20) (who identified the two gold chains) has consistently denied that Purnima Yadav (PW-2) (wife of the deceased) identified the two gold chains and that the said gold chains belonged to the deceased. He further denied that six more similar chains were placed alongside the said two gold chains. This fact has been corroborated by the testimonies of Gopi Sahu (PW-6) and Yugal Kishore Verma (PW-7), wherein they have stated that only two gold chains were placed for identification.

29. Further, the testimonies of witnesses reveal that the two gold chains do not bear any distinguishable mark or properties and no identification mark or properties were disclosed by Purnima Yadav (PW-2) prior to identification proceedings. Purnima Yadav (PW-2) states in her testimony that the two gold chains were handed over to her at the police station on 10th December, 2013 in exchange for receipts/bills/invoices, a day prior to the conduct of the TIP of the gold chains.

30. This Court is of the view that the Courts below were not justified in disregarding the glaring inconsistencies with respect to the recoveries made by the police pursuant to the alleged disclosure made by the Appellant-accused. Consequently, the manner of recovery and preparation of seizure memos raises grave doubts about the version of disclosure and recovery put forth by the prosecution.

31. Also, as the testimony of PW-23 is not corroborated by the testimonies of PW-2, PW-3 & PW-5, this Court has doubt with respect to the 'last seen' circumstance too.

32. Keeping in view the aforesaid, this Court is of the opinion that the prosecution has failed to prove the chain of circumstances leading to the guilt of the accused, beyond reasonable doubt.

CONCLUSION

33. Consequently, this Court is of the view that the Appellant-accused is entitled to the benefit of doubt. Accordingly, the impugned judgments and the conviction of the Appellant-accused under Sections 302 and 201 of IPC are hereby set aside and the appeal is allowed. The Respondents are directed to release the Appellant-accused forthwith unless and until he is in detention in another matter.

34. Pending application(s), if any, shall stand disposed of.

.....J. [SANJAY KAROL] .....J. [MANMOHAN] New Delhi;

February 07, 2025.