



2026 INSC 1077

NON-REPORTABLE
IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). 2400 OF 2014

**STATE OF HIMACHAL
PRADESH**

....APPELLANT(S)

VERSUS

SULENDER

....RESPONDENT(S)

J U D G M E N T

1. Heard.

2. The State of Himachal Pradesh is in appeal before us, assailing the judgment dated 22nd April, 2014 rendered by the High Court of Himachal Pradesh¹ whereby the Division Bench, accepted the appeal against conviction filed by the accused-Sulender and set aside the judgment dated 21st May, 2008 passed by the Additional Sessions Judge, Fast Track Court, Shimla² in Sessions Trial No. 17-R of 2008/07 whereby the respondent had been convicted for the offence punishable under Section 302 of the Indian Penal Code, 1860³ and was sentenced to

¹ Hereinafter, referred to as "High Court".

² Hereinafter, referred to as "trial Court".

³ For short, "IPC".

undergo rigorous imprisonment for life along with a fine of Rs.20,000/-. The Division Bench of the High Court, acquitted the accused of the charge of committing the murder of his own wife Smt. Devki on 27th June, 2006.

3. In brief, the prosecution case is that the respondent and his wife Smt. Devki (since deceased) were working as labourers in the construction work of the school building of which Krishan Kumar (PW-5) was the Contractor.

4. The respondent-Sulender appeared at the Police Station, Chirgaon on 27th June, 2006 and made a complaint that he and his wife had gone into the open to answer the call of nature. His wife was standing on the roadside whereas he went to the valley side. While he was in the process of easing himself, he heard the cries of his wife but when he came back on the road, she was not to be seen anywhere. Despite making a fervent search near the road and the riverside, when he could not trace his wife, he returned to camp and there too, did not find his wife present. He suspected that his wife had gone missing with a co-labourer. On this report of the respondent,

a missing person report (Exhibit PW15/A) was registered at the police station.

5. The prosecution has come out with a totally different story, alleging that, as a matter of fact, the accused had taken his wife to the jungle in the early hours of morning on the pretext of having sexual intercourse with her. She was made to lie down and instead of performing sexual intercourse, the respondent assaulted her with a knife and caused injuries on her stomach, head and other parts of the body thereby killing her. He then lifted her clothes upwards and covered the body with the shawl and returned to the camp. The prosecution further claims that while the respondent was returning to the camp, he was seen by Brahma Nand (PW-13) at a distance of about 500 meters from the place of occurrence.

6. The trial Court concluded that the prosecution had established the guilt of the accused by leading a complete chain of circumstantial evidence which pointed to the guilt of the respondent alone. These circumstances were comprised of last seen together, recovery of the weapon of the offence in furtherance of the disclosure made by the respondent, and the

extra judicial confession made before Surender Singh (PW-1) and Pyare Lal (PW-4).

7. In appeal, the High Court found that circumstance No. 1, *i.e.*, the last seen together, was not proved by the prosecution. Two co-labourers Vikas and his wife Pyari Devi were cited by the prosecution in the list of witnesses to prove this fact but both of them were not examined at the trial. Hence, the High Court concluded that there was no evidence on record to show that the respondent and the deceased had gone together from the camp at 4.30 a.m. The missing person report (Exhibit PW15/A) lodged by the respondent was admitted, but as per this report, the respondent and his wife went out at about 6.00 a.m. to answer the call of nature.

8. The High Court further found that the dead body was found at a place about 4 to 5 kilometres away from the *dera*/camp and there could not be any reason as to why the respondent and his wife would go to such a distant place for answering the call of nature. Thus, the High Court was of the view that the allegation of last seen together was doubtful and not proved on account of non-examination of the material witnesses.

9. The 2nd circumstance relied upon by the prosecution was pertaining to the alleged suspicious conduct of the respondent, which was allegedly observed by Brahma Nand (PW-13). The High Court noticed that the only aspersion which Brahma Nand (PW-13) made in his evidence was that he had seen one person walking briskly, having covered himself with a grey shawl. However, the fact remains that Brahma Nand (PW-13) did not identify the accused to be the said suspicious person. The High Court further found that the mere fact that the witness (PW-13) had seen the suspect walking briskly, that, by itself, could not be treated to be an incriminating circumstance and had no consequence on the case of the prosecution.

10. The 3rd circumstance, being the soiling of the clothes of the respondent by the stains of the soil, was held to be inconsequential because admittedly the respondent was present at the spot with the police when the dead body was discovered. The High Court held that it was absolutely natural that the respondent would have assisted in lifting the dead body of his wife and in this process, he may have got the stains of soil on his clothes. Hence, in our

opinion, the said circumstance was also rightly held to be not proved against the respondent and correctly discarded.

11. The 4th circumstance was the alleged extra judicial confession made by the respondent in the presence of Pyare Lal (PW-4). In this regard, the High Court considered the evidence of the material witnesses and found that the alleged extra judicial confession was made by the accused when PW-4 questioned him at the instance of the police. The High Court also found that when the extra judicial confession was allegedly made, the respondent was in physical custody of the police, though his formal arrest was shown later and hence, the extra judicial confession could not be admitted in evidence.

12. The last circumstance was the recovery of the knife. Suffice it to say that the High Court found various lacunae in the evidence of the material witnesses who deposed about the recovery of the knife. Further, the High Court found that the FSL report did not connect the recovered knife with the commission of the crime as no opinion of matching blood group was given by the FSL.

13. The High Court also took note of the fact that the prosecution could not prove that the respondent had any motive to murder his own wife. Concluding thus, the High Court proceeded to acquit the respondent of the charges by the impugned judgment.

14. Having heard learned counsel for the appellant-State and considering the material placed on record, we are in complete agreement with the reasons assigned by the High Court in the impugned judgment whereby the respondent was acquitted of the charges. The circumstances sought to be relied upon by the prosecution as being incriminating against the respondent were neither proved by convincing evidence nor were the said circumstances of such a nature which could form a complete incriminating chain pointing exclusively to the guilt of the respondent.

15. Law is well settled by a catena of decisions rendered by this Court⁴ that, where two views are possible, one favouring the prosecution and the other favouring the accused, the appellate Court, while

⁴ See, *Chandrappa & Ors. v. State of Karnataka*, (2007) 4 SCC 415.

exercising jurisdiction in an appeal against acquittal, should adopt the view favourable to the accused and refrain from interfering with the judgment of acquittal unless such judgment suffers from patent perversity.

16. In the present case, having gone through the judgment rendered by the High Court, the judgment rendered by the trial Court and the evidence placed on record, we are of the view that the prosecution has fallen woefully short of bringing home the guilt of the respondent by evidence which is conclusive and points exclusively to the guilt of the respondent. The impugned judgment dated 22nd April, 2014 does not suffer from any infirmity warranting interference.

17. Hence, the appeal lacks merit and is accordingly dismissed as such.

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

.....**J.**
(AUGUSTINE GEORGE MASIH)

.....**J.**
(SANDEEP MEHTA)

NEW DELHI;
SEPTEMBER 16, 2026.