2026 INSC 543

Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No(s). 1818/2022

PULKIT @ MONU **Appellant(s)**

VERSUS

THE STATE OF MADHYA PRADESH **Respondent(s)**

O R D E R

1. Heard learned Counsel for the parties.

2. This appeal arises from an order of the High Court of Madhya Pradesh at Indore[1] dated 25.06.2022 passed in Criminal Appeal No. 1475/2012, whereby the appeal of the appellant against his conviction under Section 302/ 120B IPC in Sessions Trial No.662/ 2008 was dismissed.

Facts

3. Four persons, namely, Tarun, Mithun @ Deepak, Sandeep and the appellant, were

1 High Court

tried for murder of one Ashok Bakdiya, which took place on 18.06.2008. Tarun, Mithun @ Deepak and Sandeep, were convicted under Section 302/34 of the Indian Penal Code, 1860[2] and Section 25 of the Arms Act whereas the appellant was convicted for criminal conspiracy to commit murder, punishable under Section 302/120B IPC. All convicted accused appealed to the High Court. Sandeep's appeal abated whereas rest three appeals were dismissed by the impugned order.

4. This appeal is confined to the case against the appellant who has been convicted for criminal conspiracy to commit murder of Ashok Bakdiya[3].

5. The trial court convicted the appellant for the offence of conspiracy by relying on the following circumstances:

(i) Three days before the incident, appellant had contacted Manish (PW3)

2 IPC
3 Deceased

in the presence of Sonu @ Jitendra (PW5) to do recce of the daily movement of the deceased.

(ii) Few days before the incident Yogesh (PW-9), while parking his vehicle at a public place, saw the appellant, co-accused Tarun and few others talking abusively about the deceased.

(iii) Disclosure statement of the appellant led to discovery of the names of other co-accused i.e. perpetrators of the crime and seizure of appellant’s mobile with which he contacted the co-accused Tarun after the occurrence.

(iv) There was a dispute between the appellant and the deceased as disclosed by Asha Bakdiya (PW8), wife of the deceased, and one Navneet (PW10), who, about six months before, saw the appellant being slapped by the

deceased, in response to which the appellant had pointed a gun at the deceased. Thus, there existed motive for the crime.

(v) After the occurrence, on the same day, the appellant had contacted co-accused Tarun from the mobile seized from the appellant.

6. Though the appeal of the appellant was dismissed, the High Court discarded the testimony of PW3 and PW5 upon finding that those two witnesses had deposed that they were detained illegally for a few days at the police station before their statement was recorded. However, the High Court relied on other circumstances to uphold conviction of the appellant.

<u>Submissions on behalf of the Appellant</u>

7. Impugning the orders of the trial court as well as the High Court, the submission on behalf of the appellant is as follows:

(i) There is no evidence, direct or indirect, to indicate that there was an agreement or meeting of mind between the appellant and the perpetrators of the crime, prior to the occurrence.

(ii) Once the High Court discarded the testimony of PW3 and PW5, there remained literally no evidence as regards involvement of the appellant.

(iii)Disclosure statement suffered by the appellant in custody is not admissible being a confessional statement which led to no discovery of any fact. In that context, it was urged that (a) the appellant was arrested on 01.07.2008 whereas statements of PW3, PW5, PW9 and other witnesses were recorded on or about 21/22.06.2008 wherein the name of Tarun had already surfaced; (b) PW 23 (R.K. Malviya) i.e., the investigating

officer, during cross-examination, had admitted that he had suspicion about the involvement of the appellant and Tarun through secret information.

(iv) Insofar as the mobile seized from the appellant is concerned, it was not discovered but handed over by the appellant to the police. Moreover, it stood in the name of his father. Besides, the mobile number allegedly contacted from that mobile was not of any co-accused. Thus, in absence of any evidence of prior agreement, these bits and pieces of unreliable evidence, which have no evidentiary value, cannot sustain conviction of the appellant on the charge of conspiracy.

(v) Motive is not proved beyond reasonable doubt. PW8, wife of the deceased, in her statement-in-chief stated that her husband had no

enemies. However, later, during cross-examination by the prosecution, she stated that her husband had informed her about some dispute with the appellant about a year and half back. PW10 (Navneet) states about some incident which he witnessed by chance about 6 months before the incident. Being a chance witness his testimony had to be viewed with circumspection. Moreover, motive by itself is not sufficient to sustain a conviction. Besides, it could form the basis of false implication. In such circumstances, according to the learned counsel for the appellant, there is no worthwhile evidence to convict the appellant for the charge of conspiracy.

Submissions on behalf of the State

8. *Per contra,* on behalf of the State, it is submitted that the High Court fell in

error in discarding the testimony of PW3 and PW5. It is submitted that though PW3 and PW5 had stated that they were detained by the police for a few days, their statement to that extent did not appear correct because their statements were recorded by the investigating officer just 4 days after the incident. Therefore, the trial court disbelieved that part of their statement where they stated about being detained for 5-6 days before their statement was recorded. Besides, nothing much could be elicited in the cross-examination to doubt the correctness of their statement. The Call Detail Record ("CDR") indicated that after the occurrence there had been a contact between the appellant and the perpetrator of the crime. In such circumstances, as motive was also proved, the concurrent finding of guilt returned by the two courts below does not warrant any interference.

Analysis

9. We have accorded due consideration to the rival submissions and have perused the record carefully.

10. Admittedly, the FIR was lodged against unknown persons by son of the deceased without expressing suspicion against anyone. Four persons were sent for trial. Charge against the appellant is one of conspiracy. Admittedly, there is no evidence regarding the presence of the appellant at the place of occurrence.

11. To bring home the charge of conspiracy, the prosecution must prove, either by direct evidence or circumstantial, that the accused had been privy to an agreement to do, or cause to be done, an illegal act or an act which is not illegal by illegal means. Here, there is no direct reliable evidence to indicate that the accused persons i.e., perpetrator and conspirator, met each other at any place, prior to the occurrence. PW-9, the sole

witness who states that he saw the appellant and co-accused Tarun along with few others at a public place talking about the deceased, is a chance witness. He states that while he was parking his vehicle at a public place, he could overhear what they were talking. However, he could not elaborate upon the nature of talks and admittedly it was a fleeting presence of PW9 there. Besides, the defense gave suggestion about the criminal antecedents of that witness as also that he was set up by the police. Admittedly, there are no call detail records of the appellant being in concert with the other co-accused prior to the occurrence. Further, no evidence of money/ consideration passing from the appellant to any of the co-accused is on record.

12. We are conscious of the law that from circumstances also inference of conspiracy can be drawn. However, the law regarding proof of guilt by circumstantial evidence is settled. The circumstances from which the

conclusion of guilt is to be drawn must or should be, and not merely may be, fully established; the facts 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; these circumstances should be of a conclusive nature and tendency; they should exclude every possible hypothesis except the one to be proved; and there must be a chain of circumstances 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[4].

13. In that light, we shall deal with the circumstances set out by the prosecution and relied by the trial court.

14. First circumstance is motive. Regarding motive for the crime, there is no worthwhile evidence. Wife of the deceased

4 Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116

stated in her statement in chief that her husband had no enemies. Though, later, during her cross-examination by the prosecution, she stated about being informed, a year and half ago, of some dispute between the appellant and her husband. The other witness Navneet (PW10) speaks about some incident which occurred six months before the occurrence. According to him, he saw the deceased slapping the appellant and the appellant taking out his gun and threatening the deceased. There is no proximity between the date of that incident and the date of the crime. Moreover, there is no report of any such incident. Besides, motive alone, though may be relevant for investigation of the case, by itself cannot sustain a conviction. It is nothing more than a link to the chain of incriminating circumstances. On its own, it cannot form the basis of conviction.

15. As far as the circumstance of the appellant requesting PW3 and PW5 for a recce

of the deceased is concerned, the testimonies of PW-3 and PW-5 have already been discarded by the High Court as one obtained by coercion in as much as those witnesses had deposed that they were illegally detained by the police for few days. No doubt the trial court observed that their statement about detention for 5-6 days may not be correct as their statement was recorded within 4 days of the incident, but once those witnesses complain of detention and there appears no good reason for the investigating agency to summon those witnesses, there arises a doubt whether those witnesses were set up by the police. In such circumstances, when the High Court had discarded testimony of those witnesses there is no reason for us to accept their testimony.

16. Now the circumstance regarding the appellant being seen few days before the occurrence with few others including Tarun talking about the deceased, falls for our

consideration. This circumstance is narrated by Yogesh. Yogesh is a chance witness. According to his testimony, while he was parking his vehicle, he came to witness few people including the appellant and Tarun talking about the deceased. However, it is not disclosed as to what those talks were about. Besides from the testimony of the investigating officer (R.K. Malviya) (paragraph 82) it appears that during investigation Yogesh did not disclose about abusive word being used in the context of the deceased. Therefore, not much importance can be attached to the said circumstance as it is not of conclusive nature and tendency in pointing towards the guilt of the accused-appellant.

17. Now we come to the disclosure statement. It is well settled that a confessional disclosure made during police custody is admissible under Section 27 of the Indian Evidence Act, 1872[5] only to the

5 Evidence Act

extent it leads to discovery of a fact[6]. According to the learned counsel for the State, it led to discovery of mobile and identity of other co-accused. Insofar as discovery of the name of co-accused Tarun is concerned, that surfaced much earlier as would be clear from the testimony of Yogesh, whose statement was recorded much prior to the arrest of the appellant and disclosure statement made by him. Insofar as the relevance of mobile is concerned, it would depend on the probative value of the call detail record (CDR) of that mobile because it is not a case of there being any incriminating audio or video recording.

18. Insofar as the relevance of CDR of the mobile seized from the appellant and the one alleged to be in possession of co-accused Tarun is concerned, apart from there being serious doubt regarding its admissibility for want of certificate under Section 65B of the Evidence Act, there is no evidence that

6 Pulukuri Kotayya & Ors. v. King-Emperor: AIR 1947 PC 67: 1946 SCC OnLine SC 67, recently followed in Raja Naykar v. State of Chattisgarh, (2024) 3 SCC 481.

the other mobile, which was contacted after the occurrence from the mobile of the appellant, was in the name of any of the co-accused. Rather, it stood in the name of one Kailash. Further, it is not borne out from the record that the said mobile was in possession of the concerned accused on the date of the incident. Besides, the CDR record does not indicate that the appellant was the only one who contacted that mobile after the incident. And, most importantly, there is no evidence that there was a mobile contact with the perpetrators of crime prior to the incident. Thus, the seizure of mobile and its CDR had little or no evidentiary value to link the appellant to the crime.

19. In the light of discussion above, in our view, neither the circumstances are proved beyond reasonable doubt, nor they are of conclusive nature and tendency as to point towards the guilt of the appellant. Besides, the chain of those circumstances is not complete as to rule out all hypotheses

save and except the guilt of the appellant.

20. In such circumstances, we are of the considered view that the conviction of the appellant is not sustainable. The appellant ought to have been given the benefit of doubt.

21. Consequently, the appeal is allowed; the judgment and order of the High Court as well as of the trial court is set aside.

22. The appellant is acquitted of the charge for which he was tried and convicted. He shall be released, unless required in any other case.

23. All pending applications shall stand disposed of.

…….J
[MANOJ MISRA]

…….J
[MANMOHAN]

New Delhi;
May 20, 2026

ITEM NO.1 COURT NO.14 SECTION II-E

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Criminal Appeal No(s). 1818/2022

PULKIT @ MONU **Appellant(s)**

VERSUS

THE STATE OF MADHYA PRADESH **Respondent(s)**

[ONLY IA NO. 122214/26 IS LISTED UNDER THIS ITEM]
IA No. 122214/2026 - GRANT OF BAIL

Date : 20-05-2026 This matter was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE MANOJ MISRA
HON'BLE MR. JUSTICE MANMOHAN

For Appellant(s) :
Mr. Ganesh A. Khemka, Adv.
Mr. Sarthak Sharma, Adv.
Mr. Shreenath A. Khemka, Adv.
Ms. Vidhi Gupta, Adv.
Mr. Raghavendra Pratap Singh, AOR

For Respondent(s) :
Mr. Pashupathi Nath Razdan, AOR
Ms. Maitreyee Jagat Joshi, Adv.

UPON hearing the counsel the Court made the following
O R D E R

1. IA No. 122214/2026 is allowed.

2. The appeal is allowed in terms of the signed order placed on the file.

3. All pending applications shall stand disposed of.

(CHETAN ARORA) **(SAPNA BANSAL)**
ASTT. REGISTRAR-cum-PS **COURT MASTER (NSH)**