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ALL INDIA ACQUITTAL JUDGEMENTS

2026(1)AIAJ1

IN THE SUPREME COURT OF INDIA

[From MADHYA PRADESH HIGH COURT]

(Hon'ble Judge: Dipankar Datta; Augustine George Masih)

Criminal Appeal No 5301 of 2025 **dated 08/12/2025**

Dadu @ Ankush & Anr

Versus

State of Madhya Pradesh & Anr

CONVICTION UNDER SC/ST ACT

Indian Penal Code, 1860 Sec. 354, Sec. 323 - Code of Criminal Procedure, 1973 Sec. 374, Sec. 313 - Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 Sec. 3 - Conviction under SC/ST Act - Appellants convicted for offences under IPC and SC/ST Act - Evidence showed discrepancies between written complaint and depositions - Victim did not attribute specific act to one accused - Injuries found simple and inconsistent with allegations - No independent witnesses examined despite claim that many saw incident - High Court ignored deposition of hostile witness supporting defence version of scuffle during festival - Finding that offence committed due to caste motive unsupported by evidence - Defence version probable showing altercation at pandal and false implication - Supreme Court held conviction unsustainable - Acquitted of all charges - Benefit of doubt extended - Appeal Allowed

Law Point: Conviction under SC/ST Act requires clear proof of caste-based intent and credible, consistent evidence; contradictions and absence of independent corroboration entitle accused to acquittal.

Acts Referred:

Indian Penal Code, 1860 Sec. 354, Sec. 323

Code of Criminal Procedure, 1973 Sec. 374, Sec. 313

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 Sec. 3

Counsel:

Rajat Sehgal, Aditya Vaibhav Singh Ga, Sarad Kumar Singhania, Rashmi Singhania

JUDGEMENT

Dipankar Datta, J.- [1] This appeal, by special leave, is at the instance of the two appellants, Dadu @ Ankush (A-1) and Ankit (A-2). It is directed against the judgment

and order dated 18th January, 2024 of a learned Judge of the High Court of Madhya Pradesh at Jabalpur of dismissal of an appeal [Crl. Appeal No. 7239 of 2019] under Section 374(2), Code of Criminal Procedure, 1973 preferred by the appellants.

[2] Appellants stood trial in a case [Special Case No. 200010 of 2016] registered on the basis of a complaint lodged by the respondent no. 2 [victim] before the Special Judge, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 [SC/ST Act]. The Special Court convicted A-1 under Section 323, Indian Penal Code, 1860 [IPC] and sentenced him to rigorous imprisonment for 3 months together with fine of Rs.1000/- with default term. A-2 was convicted under Sections 354 and 323, IPC as well as Section 3(1)(xi) of the SC/ST Act. For the offences under Section 354, and Section 3(1)(xi) of the SC/ST Act, A-2 was sentenced to a year's rigorous imprisonment each together with fine of Rs.1000/-. For the offence under Section 323, IPC, he was sentenced to rigorous imprisonment for 3 months and fine of Rs.1000/-. The sentences were directed to run concurrently.

[3] Appellants carried the conviction and sentence in appeal before the High Court which, by the aforementioned judgment and order, dismissed the appeal.

[4] In the written complaint lodged by the victim giving rise to the First Information Report [FIR], it was alleged as follows:

> "I live in Sawargaon, Amba Ward, Padhurna. I study in class 11. My family consists of my mother, father, dadi and younger brother Pawan. On 04/10/2015 my mother, father and dadi had gone for hawking to Ambada market and around 10:30 at night my brother was in the Ganesh Utsav organized nearby our house. I was at home. Dadu Pendse of my locality came along with his friend Ankit Kevte and enquired from the gate of the house, if any one is there, I came out on which Dadu Pendse asked isn't there any one in the house, to which I replied that my father has gone to the market. On listening to his Ankit Kevta caught hold of my dupatta, I pulled back my dupatta and asked him to leave it, on which he caught hold of my neck with bad intention. I shouted and tried to run away due to which he scratched my neck. My brother Pawan came to save me upon listening my voice, on which both of them gave him beating and abused him. Ankit Kevte belongs to Teli cast and despite knowing that I belong to Schedule Cast (sic, Caste), he teased me, beaten and abused my brother. I have come to lodge the report along with my brother Pawan. I have lodged the report. Action be taken."

[5] Paragraph 2 of the impugned judgment and order records the prosecution's case. We consider it appropriate to reproduce the same hereunder:

> "2. The facts necessary for disposal of present appeal, in short, are that on 04.10.2015, the prosecutrix lodged a report that she was in her house and her brother had gone to attend a program of Ganesh Ji. At that time, the

appellants came there and inquired as to whether there is anybody in the house or not. When the prosecutrix informed that her father has gone to the market, then the appellant No.2 caught hold of her chunni and with evil intention caught hold of her neck. When she tried to run away, the appellant No.2 scratched her neck. When her brother came running to save her, then he too was also assaulted and he was abused filthily. The police lodged the FIR, arrested the appellants, recorded the statements of the witnesses and after completing the investigation filed the charge-sheet for offence under Sections 354, 294, 323, 34 of IPC and under Section 3 (1) 11 of SC/ST (Prevention of Atrocities) Act."

[6] In her examination-in-chief, the victim (as PW-1) deposed as follows:

"3. The accused Dadu present in the court, came to my house and asked if there was anyone in the house or not, to which I replied that no one is there. Then accused Dadu called someone from his mobile phone and after a while, the boy standing with the accused Dadu, also came to my house. I was standing on the staircase of my house suddenly when the boy standing with the accused Dadu pulled my dupatta. I screamed loudly and my brother Pawan who was 16 years old at the time of incident came to the house. The boy standing with Dadu also injured me on my back through nail marks. As soon as my brother Pawan came to rescue me, he was also beaten up by the both the accused present in the court. He got injuries on his head, hand and chest. Bleeding also oozed from head and chest."

[7] From the written complaint giving rise to the FIR as well as the victim's deposition in court, it is clear that qua the victim, A-1 did not touch the victim. His role is confined to enquiring from the victim as to whether anyone was in her house or not. Insofar as A-2 being called on phone by A-1 is concerned, the version in the written complaint is at variance. Allegedly, A-2 had accompanied A-1. Qua her brother (PW-2), the victim deposed that both the appellants beat him and he received injuries on his head, hand and chest. Blood also oozed from his head and chest. Significantly, the victim did not depose in court that A-2, knowing that she and her brother belonged to Scheduled Caste, teased her and beat and abused him.

[8] The victim's brother (PW-2) stepped into the box and deposed as follows in course of his examination-in-chief:

"2. The incident happened about 2-3 years ago. The incident took place at 8:00-8:15 pm at night when I was at the temple with my friends. My house is near the temple, I got the information about the fight happening in my house so I ran home and found the accused Dadu alias Ankush who is present in the court and another boy whose name came to be known as Ankit and my sister was there. Both the accused were teasing my sister. Accused Ankit had

already pulled my sister's dupatta and there were nail marks on her back. When I intervened, both the accused beat me with their hands and with the wood kept near the stove, due to which I got injured on my nose and mouth and there was bleeding. The accused ran away after assaulting me.

3. There was no one else at my house except my sister. At the time of the incident, many people from the locality had come and had seen the incident. Thereafter I along with my sister reached the Pandhurna police station where she filed a report about the incident. After the report, ... and I were sent to Pandhurna hospital for medical examination and where both of us were medically examined and treated."

[9] The evidence of PW-2 reveals that he was at the Ganesh temple when he got information about a fight happening in his house and, as such, he ran home to find A-1 and A-2 teasing the victim (her sister). From whom PW-2 obtained information is not disclosed. Though not being present at the relevant time, he deposed that A-2 had pulled the dupatta of the victim and scratched her back with nails. Upon intervening, the appellants beat him with a wood (kept near the stove) resulting in PW-2 suffering bleeding injury on his nose and mouth. It is also in his evidence that many people from the locality had come and had seen the incident.

[10] From the evidence on record before the trial court, it is revealed that on the next day of the incident, the victim and PW-2 were examined by the medical officer (PW-5). Insofar as the injuries suffered by them are concerned, PW-5 stated as follows:

"1. ***

1. A scratch mark on the back of the neck with length 4 to 5 cm.

2. The said injury was simple in nature and seemed to have been caused by a hard and blunt object. It was occurred within 4 to 5 hours of testing. The report given by me Exhibit P-6 which bears my signature at point A to A.

3. ***

1. There was a scratch mark on his chest of size about 1 cm X 1/2 cm.

2. A scratch mark above the eyebrow of the left eye, of size about 1 cm in length.

4. According to my opinion, the above-mentioned injuries were simple in nature and seemed to be caused by a hard and blunt object. They were of within 4 to 5 hours of examination. The report given by me Exhibit P-7 bears my signature at point A to A."

[11] In his cross-examination, PW-5 deposed as follows:

"5. It is correct to say that if a person falls or gets dragged on the ground, it is possible to get both the above-mentioned injuries in such a situation."

[12] Having considered the evidence led by the prosecution, there appears to be a discrepancy as to whether A-2 accompanied A-1 when A-1 came to the house of the victim and enquired about the availability of her family members.

[13] While the FIR version is that the A-2 had accompanied A-1, in court, she deposed that A1 had called A2 on phone whereafter he arrived. This discrepancy, however, may not be too material for the purpose of a decision on this appeal because of other more glaring discrepances which we propose to highlight now.

[14] However, what has struck us is the deposition of PW-2 that many people from the locality had come and seen the incident. Not only did PW-2 not name any person from the locality who had seen the incident, not a single witness from the locality was examined who had seen the incident. No post-occurrence witness, having heard of the incident, was also examined.

[15] That apart, the evidence of PW-5 does suggest that the injuries which were suffered by both the victim and PW-2 could have been possible if someone falls or gets dragged on the ground. It is also noteworthy that the injuries found on the person of both the victim and PW-2 were simple injuries which, according to PW-5, seem to have been caused by a hard and blunt object. PW-2 had referred to a wood by which he was struck by the appellants but such wood was not recovered and exhibited.

[16] Although the victim had deposed of being injured by A2 on her back through nail mark, the same (nail mark) does not find mention in the deposition of PW-5. It is also noteworthy that while PW-2 deposed that he was injured on his nose and mouth and there was bleeding, no injury on the nose and mouth appear to have been found by PW5. That PW-2 suffered injury on his nose and mouth is belied by the deposition of the victim, who deposed that PW-2 was bleeding from the head and chest.

[17] It is in the evidence of the victim that when A-2 pulled her dupatta, she screamed loudly prompting PW-2 to rush to the house. PW-2, however, did not say that he rushed to the house on hearing the victim's scream. He said, someone had informed him of a fight in his house. If the statement of the victim is contrasted with the statement of PW-2, we find it improbable that victim's loud screams could only reach the ears of PW-2 and no one else's considering that a large number of members of the public were present for the Ganesh Puja celebrations (as per the version of PW-2 himself).

[18] At this stage, it is also apposite to highlight that as per PW-2, many people from the locality had come and seen the incident, hence, it would appear strange that none from the locality was produced in the court as a prosecution witness. While it is within the realm of possibility, the fact that no member of the public rushed to rescue

the victim when she was being teased by the appellants is also a circumstance to find the testimony of PW-2 unbelievable. We have, therefore, come to the ineluctable conclusion that PW-2 has not been truthful.

[19] It is also important to note the deposition of PW-4. Though related to the victim and PW-2, he deposed that the pandal of Ganesh Puja was overcrowded and peoples' feet were touching each other due to which PW-2 felt that A-1 and A-2 had stepped on PW-2's feet. This resulted in a scuffle breaking out between A-1 and A-2 on the one hand and PW-2 on the other. Though PW-4 was declared hostile after he made the above statement, he was subjected to cross-examination by the Public Prosecutor. Notably, it is in his evidence that it was wrong to suggest that PW-2 was assaulted by A-1 and A-2. The High Court did not refer to the evidence of PW-4 simply on the ground that he had turned hostile, in ignorance of the law relating to appreciation of the evidence of a witness who has been declared hostile. A profitable reference may be made to the decision of this Court in **State of U.P. v. Ramesh Prasad Misra**, 1996 10 SCC 360 wherein it was held that it is settled law that the evidence of a hostile witness would not be totally rejected if spoken in favour of either the prosecution or the accused. It would rather have to be subjected to closer scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence may be accepted. The mere rejection of the evidence of PW4 in the manner aforesaid is contrary to the law laid down by this Court.

[20] The High Court further observed that from the statements of the appellants recorded under Section 313 Cr. PC, it was clear that they knew PW-1 belonging to Scheduled Caste. An abrupt finding was recorded that "it is clear that the offence was committed by the appellants simply for reason that the complainant was belonging to scheduled caste." Curiously, there appears to be no statement in court in course of trial by the victim that A-2 committed the alleged offence only because of the victim being a member of Scheduled Caste. No such statement was even made by PW-2. The finding returned by the High Court is, thus, perverse.

[21] In our view, the defence has been successful in placing a probable and believable account of a scuffle having broken out between PW-2 and the appellants at the Ganesh Puja pandal, which might have prompted PW-2 to set up a false story of commission of offence on the victim. Such scuffle could have resulted in PW-2 falling on the ground and suffering injuries which were ultimately found on his person by PW-5.

[22] Insofar as the victim is concerned, as noted above, she has not attributed any offensive act to A-1. Her version of A-2 pulling her dupatta and the appellants beating PW-2 also do not inspire confidence, in view of the aforesaid discussions. What remains is the scratch on the back of her neck. We do not see reason to hold, in view of the evidence of PW-5 and our above findings, that A-2 ought to be held guilty of an offence under Section 323, IPC.

[23] The conviction and sentence of the appellants being indefensible, stand set aside. They are set free and discharged from their bail bonds.

[24] The appeal, thus, stands allowed

2026(1)AIAJ7

IN THE SUPREME COURT OF INDIA

[From PATNA HIGH COURT]

(Hon'ble Judge: Sanjay Karol; Nongmeikapam Kotiswar Singh)

Criminal Appeal No 5137 of 2025, 5138 of 2025 **dated 01/12/2025**

Chandan Pasi & Ors

Versus

State of The Bihar

FAIR TRIAL COMPLIANCE

Indian Penal Code, 1860 Sec. 34 - Sec. 302 - Sec. 323 - Sec. 448 - Code of Criminal Procedure, 1973 Sec. 374 - Sec. 313 - Fair Trial Compliance - Appeals filed against conviction for murder - Accused contended that opportunity under Section 313 CrPC not properly given - Court reiterated importance of Section 313 ensuring dialogue between Court and accused for fair trial - Held that omission to put incriminating circumstances to accused causes prejudice and affects fairness of trial - Examined record and found questions not comprehensive to meet statutory requirement - Conviction vitiated due to noncompliance - Matter remitted for retrial from stage of Section 313 CrPC - Appeals Allowed

Law Point: Examination of accused under Section 313 CrPC not a mere formality; failure to confront accused with material circumstances amounts to violation of fair trial principles and vitiates conviction.

Acts Referred:

Indian Penal Code, 1860 Sec. 34, Sec. 302, Sec. 323, Sec. 448

Code of Criminal Procedure, 1973 Sec. 374, Sec. 313

JUDGEMENT

[1] Leave granted.

[2] The present appeals arise from the final judgments and orders dated 4th September, 2024 and 26th September, 2024 passed by the High Court of Judicature at Patna in Criminal Appeal (DB) No.443 of 2017, which affirmed the judgment of conviction dated 27th March 2017 and the order of sentence dated 29th March 2017 passed by the Court of District & Session Judge, Buxar [Hereinafter referred to as the 'Trial Court'] in Sessions Trial No.256 of 2016, whereby a total of six persons were

sentenced to life imprisonment along with a fine of Rs.10,000/- each under Section 302/34 of the Indian Penal Code 1860 ['IPC' for short], one year simple imprisonment each under Sections 448 & 323 along with Section 34 IPC with all of them running concurrently. Before us are three of the six convicts namely - Chandan Pasi, Pappu Pasi and Gidik Pasi. Here only it may be noted that there was a seventh accused person who was, by the process of law held to be a juvenile and thus dealt with in accordance with the applicable law.

[3] By way of a factual background, it shall suffice to take notice of the following:

3.1. On 31st March 2016, the informant Kachan Pasi along with his father Ghughali Pasi, mother Kouta Devi and sister-in-law Dharmsheela Devi were returning from the fields of one Nanhaku Singh when the accused persons surrounded the above-named and assaulted Ghughali Pasi with a katta, who died as a result thereof. Particular allegations of such assault were also levelled against Joni Pasi @Ravindra Pasi.

3.2. The Trial Court convicted in the manner already referred to supra. All the accused persons before the Trial Court filed appeals under Section 374(2) of the Code of Criminal Procedure 1973 [Hereinafter referred to as "CrPC"], in which the High Court upheld the findings of the Court below.

[4] We have heard Ms. Anjana Prakash, learned Senior Counsel for the appellants and learned Counsel appearing for the State.

[5] A perusal of the Special Leave Petition reveals that amongst other grounds, the primary contention rests on the noncompliance of Section 313, CrPC. This Court had indicated in the order issuing notice that, should the ground of proper compliance be made out, only then, we would proceed to examine other grounds.

[6] One of the non-negotiable requirements of a fair trial is that the accused persons should have ample opportunity to dispel the case and claims of the prosecution against them. This ample opportunity can take many forms, whether it is adequate representation through counsel or the opportunity to call witnesses to present their side of the case or to have the occasion to answer each and every allegation against them, on their own, in their own words. The last one happens under Section 313 CrPC.

[7] This Court, in many judgments, delineated the scope and object of Section 313 CrPC. The position is no longer up for debate. Even so, we may refer to certain pronouncements for the sake of completeness.

7.1. In **Sanatan Naskar v. State of W.B**, 2010 8 SCC 249 this Court as follows, regarding the scope of the examination under Section 313 CrPC:

> **"21.** The answers by an accused under Section 313 CrPC are of relevance for finding out the truth and examining the veracity of the case of the

prosecution. The scope of Section 313 CrPC is wide and is not a mere formality. ...

22. As already noticed, the object of recording the statement of the accused under Section 313 CrPC is to put all incriminating evidence to the accused so as to provide him an opportunity to explain such incriminating circumstances appearing against him in the evidence of the prosecution. At the same time, also permit him to put forward his own version or reasons, if he so chooses, in relation to his involvement or otherwise in the crime. The court has been empowered to examine the accused but only after the prosecution evidence has been concluded. It is a mandatory obligation upon the court and, besides ensuring the compliance therewith, the court has to keep in mind that the accused gets a fair chance to explain his conduct. The option lies with the accused to maintain silence coupled with simpliciter denial or, in the alternative, to explain his version and reasons for his alleged involvement in the commission of crime. This is the statement which the accused makes without fear or right of the other party to cross-examine him. However, if the statements made are false, the court is entitled to draw adverse inferences and pass consequential orders as may be called for in accordance with law. The primary purpose is to establish a direct dialogue between the court and the accused and to put every important incriminating piece of evidence to the accused and grant him an opportunity to answer and explain. ..."

(emphasis supplied)

7.2. In Indrakunwar v. State of Chhattisgarh,2023 SCCOnLineSC 1364 this Court, through one of us (Sanjay Karol, J.), after consideration of various judgments formulated the following principles vis-à-vis this Section:

"35. A perusal of various judgments15 rendered by this Court reveals the following principles, as evolved over time when considering such statements.

35.1 The object, evident from the Section itself, is to enable the accused to themselves explain any circumstances appearing in the evidence against them.

35.2 The intent is to establish a dialogue between the Court and the accused. This process benefits the accused and aids the Court in arriving at the final verdict.

35.3 The process enshrined is not a matter of procedural formality but is based on the cardinal principle of natural justice, i.e., audi alterum partem.

35.4 The ultimate test when concerned with the compliance of the Section is to enquire and ensure whether the accused got the opportunity to say his piece.

35.5 In such a statement, the accused may or may not admit involvement or any incriminating circumstance or may even offer an alternative version of events or interpretation. The accused may not be put to prejudice by any omission or inadequate questioning.

35.6 The right to remain silent or any answer to a question which may be false shall not be used to his detriment, being the sole reason.

35.7 This statement cannot form the sole basis of conviction and is neither a substantive nor a substitute piece of evidence. It does not discharge but reduces the prosecution's burden of leading evidence to prove its case. They are to be used to examine the veracity of the prosecution's case.

35.8 This statement is to be read as a whole. One part cannot be read in isolation.

35.9 Such a statement, as not on oath, does not qualify as a piece of evidence under Section 3 of the Indian Evidence Act, 1872; however, the inculpatory aspect as may be borne from the statement may be used to lend credence to the case of the prosecution.

35.10 The circumstances not put to the accused while rendering his statement under the Section are to be excluded from consideration as no opportunity has been afforded to him to explain them.

35.11 The Court is obligated to put, in the form of questions, all incriminating circumstances to the accused so as to give him an opportunity to articulate his defence. The defence so articulated must be carefully scrutinized and considered.

35.12 Non-compliance with the Section may cause prejudice to the accused and may impede the process of arriving at a fair decision."

7.3. In **Raj Kumar v. State (NCT of Delhi)**, 2023 17 SCC 95 as subsequently approved by a bench of three-Judges in Aejaz Ahmad Sheikh v. State of U.P. and Another,2025 SCCOnLineSC 913 the Court laid down the following factors:

"22. The law consistently laid down by this Court can be summarised as under:

22.1. It is the duty of the trial court to put each material circumstance appearing in the evidence against the accused specifically, distinctively and separately. The material circumstance means the circumstance or the material on the basis of which the prosecution is seeking his conviction.

22.2. The object of examination of the accused under Section 313 is to enable the accused to explain any circumstance appearing against him in the evidence.

22.3. The Court must ordinarily eschew material circumstances not put to the accused from consideration while dealing with the case of the particular accused.

22.4. The failure to put material circumstances to the accused amounts to a serious irregularity. It will vitiate the trial if it is shown to have prejudiced the accused.

22.5. If any irregularity in putting the material circumstance to the accused does not result in failure of justice, it becomes a curable defect. However, while deciding whether the defect can be cured, one of the considerations will be the passage of time from the date of the incident.

22.6. In case such irregularity is curable, even the appellate court can question the accused on the material circumstance which is not put to him.

22.7. In a given case, the case can be remanded to the trial court from the stage of recording the supplementary statement of the accused concerned under Section 313CrPC.

22.8. While deciding the question whether prejudice has been caused to the accused because of the omission, the delay in raising the contention is only one of the several factors to be considered."

[See also: **Ranvir Yadav v. State of Bihar**, 2009 6 SCC 595 and Naresh Kumar v. State of Delhi),2024 SCCOnLineSC 1641]

[8] Having duly considered the position of law and principles as above, we now examine the statements of the appellant(s) recorded under this Section. For ready reference, the statements are reproduced below:

Appellant No.1 (Chandan Pasi) statement:

"My name is Chandan Pasi, My Father's name is Birendra Pasi ...

(1) Question: - Did you listen to the Deposition of the Witnesses?

Answer: - Yes

(2) Question: - The witnesses have alleged and stated that on March 31, 2016, at 8:05 AM, with common intention along with other accused persons killed the Informant's father Ghughali Pasi by assaulting with katta, daba. What do you have to say about this? Answer: False statement. 8 9

(3) Question- It is also alleged and evidenced against you that you entered the Informant's house and verbally abused and physically assaulted the Informant's niece Poonam Kumari and Kajal Kumari, along with his nephew, Raju Kumar. What do you have to say about this?

Answer: False allegations.

(4) Question: - Whether you want to Say anything in your defence?

Answer: I am innocent."

Appellant No.2 (Pappu Pasi) statement:

"My name is Pappu Pasi @ Hindustan Pasi ...

(1) Question: - Did you listen to the Deposition of the Witnesses?

Answer: - Yes

(2) Question: - The witnesses have alleged and stated that on March 31, 2016, at 8:05 AM with common intention along with other accused persons killed the Informant's father Ghughali Pasi by assaulting with katta, daba. What do you have to say about this?

Answer: False Allegation.

(3) Question- It is also alleged and evidenced against you that you entered the Informant's house and verbally abused and physically assaulted the Informant's niece Poonam Kumari and Kajal Kumari, along with his nephew, Raju Kumar. What do you have to say about this?

Answer: False allegation.

(4) Question: - Whether you want to Say anything in your defence?

Answer: I am innocent."

Appellant No.3 (Gidik Pasi) statement:

"My name is Gidik Pasi ...

(1) Question: - Did you listen to the Deposition of the Witnesses?

Answer: - Yes

(2) Question: - The witnesses have alleged and stated that on March 31, 2016, at 8:05 AM with common intention along with other accused persons killed the Informant's father Ghughali Pasi by assaulting with katta, daba. What do you have to say about this?

Answer: False Allegation.

(3) Question- It is also alleged and evidenced against you that you entered the Informant's house and verbally abused and physically assaulted the Informant's niece Poonam Kumari and Kajal Kumari, along with his nephew, Raju Kumar. What do you have to say about this?

Answer: False allegations.

(4) Question: - Whether you want to Say anything in your defence?

Answer: I am innocent."

[9] The statements extracted above reveal a sorry state of affairs- an abject failure on the part of the Court in complying with the basic tenets of law. The statements given by all three persons are carbon copies of each other. How such statements can pass muster at the hands of the learned Trial Judge is something which we fail to understand. Out of the four questions asked, directly related to the sequence of events, were only two. The second question was as general as can be, with reference to only the bare allegations, to which an omnibus denial was issued. The third was also of similar nature, saying that it has been alleged and evidenced, and nothing further. This cannot be said to be the putting of every material circumstance. It is equally disturbing for us to see that in the desire to secure a conviction for the accused persons, the prosecutor also let their duty of assisting the Court in conducting the examination of the accused under this section fall by the wayside. The prosecutor is an officer of the Court and holds a solemn duty to act in the interest of justice. They cannot act as a defence lawyer, but for the State, with the sole aim of making the gauntlet of punishment fall on the accused. [See: Sovaran Singh Prajapati v. State of U.P.,2025 SCCOnLineSC 351]

[10] In view of the above observations, we need not delve into the other grounds raised, questioning the concurrent conviction against the appellants herein. On this ground alone, the Appeals are allowed and the matter is sent back to the concerned Trial Court to recommence from the state of the recording of the Section 313 CrPC statements. We may clarify that the remand is limited to the cases of the three appellants before us and our observations herein shall not affect the sanctity of the findings already arrived at, qua the other accused persons. A trial is a function of memory; it is this memory that, when translated into spoken word testimony on oath, becomes evidence, and thus the same is susceptible to the vagaries of time. Keeping in view the fact that the offence is from the year 2016, and while being cognizant of the observations of the Constitution Bench in High Court **Bar Association, Allahabad v. State of U.P.**, 2024 6 SCC 267 we direct the concerned Trial Court to do the needful within four months from the date of the communication of this judgment.

[11] Registrar (Judicial) to communicate this judgment and order to the learned Registrar General, High Court of Judicature at Patna, who will forthwith communicate the same to the concerned court for necessary action and compliance.

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

2026(1)AIAJ14

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

(Hon'ble Judge: Gita Gopi)

Criminal Appeal No 1405 of 2008 **dated 03/12/2025**

Bhikhabhai Mankabhai Patel

Versus

State of Gujarat

ELECTRICITY THEFT

Code of Criminal Procedure, 1973 Sec. 428 - Electricity Act, 2003 Sec. 135 - Electricity Theft - Appeal filed challenging conviction under Sec. 135(1)(b) of Electricity Act for theft of power - Allegation that appellant used additional wire bypassing meter causing dishonest abstraction of electricity - Evidence revealed seizure of wire and meter but no laboratory examination or independent witness signatures - Panchnama drawn belatedly and muddamal not produced in court - Court observed prosecution failed to prove essential link between appellant and alleged manipulation beyond reasonable doubt - Presumption under Sec. 135 not attracted in absence of cogent evidence - Conviction and sentence set aside - Appeal Allowed

Law Point: Mere presence of wire near premises without corroborative evidence or expert examination insufficient to sustain conviction under Sec. 135 Electricity Act - Prosecution must establish dishonest abstraction beyond reasonable doubt.

Acts Referred:

Code of Criminal Procedure, 1973 Sec. 428

Electricity Act, 2003 Sec. 135

Counsel:

Yogendra Thakore, Rohan H Rawal

JUDGEMENT

Gita Gopi, J.- [1] The judgment of conviction and sentence passed under Section 135(1)(b) of the Indian Electricity Act, 2003 has been challenged by the appellant-accused Patel Bhikabhai Mankabhai who came to be convicted on 24.03.2008 by Special Judge, Mehsana in the Special Electric Case No.55 of 2007. The appellant-accused was ordered to undergo sentence of nine months rigorous imprisonment and a

fine of Rs. 26,634/-, in default of payment of fine, further seven months rigorous imprisonment was ordered with the benefit of set off under Section 428 Code of Criminal Procedure (for short 'Cr.P.C.').

[2] Considering it is an offence under Section 135(1)(b) of the Electricity Act, 2003, the charge against the appellant-accused was drawn below Exh.5 with the facts that on 18.07.2006, the Officers of UGVCL had gone for checking at Village Sangthada, Taluka Kheralu. The allegation against the accused was that from his house, an overhead wire was linked from the electricity poll by switching off the outgoing main switch, the electricity flow continued for the use by-passing the meter. It was observed that the meter was not in progress and the electricity theft was noted and the supplementary bill of Rs. 8877.54/- was issued. It was also noted that, earlier on 31.05.2005, the appellant-accused was found stealing the electricity power and thus, the present matter was considered as a second theft.

[3] Learned Advocate Mr. Yogendra Thakore submitted that the other matter of Criminal Appeal No.1406 of 2008 decided on 02.12.2025 shows connection with the present matter since the Officers of UGVCL appears to have gone on random bulk raid at the village Sangthada and had considered the case of electricity theft, while actually, the Muddamal stated to be seized has not been produced before the Court. The Panchnama of the place of incident as well as the house of the appellant-accused has not been drawn on that very same day. The complaint is not registered within the statutory period and the Panchnama drawn by the police does not reflect the house number to show that the accused was in ownership and possession of the house.

[4] Countering the arguments, learned APP Mr. Rohan H. Rawal submitted that there is no denial to the fact that the house which was raided was of the ownership of the appellant-accused, since the documentary evidence was produced to substantiate the said fact and further submitted that the appellant- accused himself is the consumer. Light bill was issued in his name. He was given a notice by way of Exh.13 for paying the amount for compounding, considering it as a second offence. The inspection report also bears the signature of the appellant- accused which has been identified by the officer PW-1 Shri Rajeshkumar Bahmaniya. APP Mr. Rawal further stated that the appellant-accused had been proved by the inspection report, where the checking sheet reflects the appliances as television, fridge, fan, lamp put to use and the complaint suggest that there was a theft of 1326 kilowatts of electricity.

[5] On considering the arguments canvassed by learned Advocate Mr. Yogendra Thakore for the appellant-accused and learned APP Mr. Rohan H. Rawal for the State, perused the deposition of the witnesses and the documentary evidence on record.

[6] Pw-1 Rajeshkumar Gopalsingh Bahmaniya was working in Kheralu Sub-Division as Deputy Engineer in UGVCL who stated that on 18.07.2006, there was a checking of electricity connection at Sangthada village who had gone along with junior engineer, assistant lineman and a helper. They had checked the electricity

connection of the appellant-accused's house and found that an additional wire was used in the phase of L.T. and with that, extra wire was linked with the outgoing switch of the meter and the main switch was closed down stagnating the meter reading. Therefore, it became a case of electricity theft. The checking sheet was prepared and the electricity connection was shut down. The meter as well as the wire were seized and a bill of Rs.8877.54/- was given. After going back to the office, notice was issued, the accused had paid the bill amount, PW-1 gave the complaint Exh.9. The inspection sheet Exh.10 was produced in evidence whereupon he identified the signature of the accused. The forwarding letter which was sent along with the bill was produced at Exh.13.

6.1 The witness stated that the Muddamal which was seized by them was given to the police. The police had returned back to them for safe custody. He stated that this was a second offence of the appellant- accused. Earlier on 31.05.2005, he was found stealing electricity. In the cross-examination, it has been recorded that the loose wires on the place were seized and for the earlier offence, no compound charge was taken. The meter has not been sent for laboratory examination. A new meter was installed. He stated that the police has not sealed the wire seized. Police had given him the receipt for the custody of wire.

6.2 According to the evidence of the witness, there were about 20 to 25 raids in the village. Public people were present there. He affirmed that no signature of any person from the public had been recorded in the inspection report. The evidence, thus, clarifies that it was a raid in bulk. The Muddamal has not been produced on record. The meter which was alleged to be tampered had not been sent for laboratory examination to prove the actual manipulation. The wire which has been alleged to be used has not been produced. The inspection report at Exh.10 reflects the appliances which has been put to use, which the officers stated was by electricity theft. The present appellant-accused is the consumer. The assessment sheet of the supplementary bill is at Exh.12, which reflects the contract load, the connected load and the extra unauthorized load found during checking. Exh.13 is the notice which was given to the appellant-accused on 19.07.2006 asking him to pay the bill amount for compounding the offence.

[7] Pw-2 Kaushikbhai Joitaram Prajapati is the Junior Engineer, who has supported the evidence of the Deputy Engineer PW-1. PW-2 had prepared the inspection report. He stated that in the year 2005 compound charge was taken, however, he does not reflect the exact amount nor does he has any material to support the receipt of the compound charge. PW-2 also stated that the meter and wire which was seized were not sealed.

[8] Pw-3 Maheshbhai Narsinhbhai Solanki is the head- constable who was working at G.E.B. Police Station, Sabarmati. He was entrusted with the investigation on 08.08.2006 in connection to C.R.No.768 of 2006 under the Electricity Act, 2003.

He had recorded the statement of the complainant as well as the officers who were on checking. The Panchnama of the house of appellant-accused was drawn on 03.09.2006. The tax receipt was seized. The witness as an I.O. stated that the wire and meter was handed over to them but they were returned back to the UGVCL for safe custody. The receipt he relied upon was produced at Exh.17. The I.O. stated that he has not taken any documents with regard to the earlier case. He had not sent the meter for laboratory examination. The Muddamal was not in his custody.

[9] The third proviso to sub-section(1) of Section 135 of the Electricity Act, 2003 is with regard to the statutory presumption to be drawn in case of dishonest use of electricity by the consumer. The proviso reads as under:

> "Provided also that if it is provided that any artificial means or means not authorized by the Board or licensee or supplier, as the case may be, exist for the abstraction, consumption or use of electricity by the consumer, it shall be presumed, until the contrary is proved, that any abstraction, consumption or use of electricity has been dishonestly caused by such consumer."

[10] The second proviso to sub-section(1A) of Section 135 of the Electricity Act, 2003 is with regard to lodging the complaint within 24 hours, which reads as under:

> "Provided further that such officer of the licensee or supplier, as the case may be, shall lodge a complaint in writing relating to the commission of such offence in police station having jurisdiction within twenty four hour from the time of such disconnect:"

[11] The place which was raided was surrounded by residential houses. The Panchnama which was drawn by the police does not reflect the house number of the accused, however, the accused cannot deny that he was not a consumer. P.S.O. has not been examined in the matter to give the evidence of the fact of the date of receipt of the complaint. The original complaint Exh.9 is dated 21.07.2006, while the raid was conducted on 18.07.2006. The mandatory requirement of filing the complaint within 24 hours has not been followed in the present matter. The original Muddamal in the form of electric meter as well as the wire has not been made a part of the trial. Section 135 of the Electricity Act, 2003 makes provision for the presumption to be drawn when it becomes proved that the artificial means or means not authorized by the Board or licensee or supplier exists for the abstraction, consumption or use of electricity by the consumer. The UGVCL to prove the case for considering the presumption was required to produce on record as Muddamal, the alleged artificial means which were not authorized by UGVCL. Unless the initial burden is not proved, it would not get shifted to the consumer to prove the contrary. The meter which was alleged to be manipulated had not been examined by getting a test report to prove that the meter was blocked for the alleged abstraction, consumption or dishonest use of the electricity by the consumer. The place of incident where the alleged wire was extended for drawing

the electricity dishonestly, also does not get proved by any Panchnama from any independent person. The case of earlier theft by the appellant- accused has not been proved by any documentary evidence. The witnesses from UGVCL could not prove any compound charges received by them.

[12] Section 135 of the Electricity Act, 2003 refers to the provision of first conviction, second and subsequent conviction. The relevant provision of Section 135 of the Electricity Act, 2003 is abstracted hereinbelow:

> "Provided that in a case where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use-
>
> (I) does not exceed 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction of the fine imposed shall not be less than six times the financial gain on account of such theft of electricity;
>
> (II) exceeds 10 kilowat, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction, the sentence shall be imprisonment for a term not less than six months, but which may extend to five years and with fine not less than six times the financial gain on account of such theft of electricity:
>
> Provided further that in the event of second and subsequent conviction of a person where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use exceeds 10 kilowatt, such person shall also be debarred from getting any supply of electricity for a period which shall not be less than three months but may extend to two years and shall also be debarred from getting supply of electricity of electricity for that period from any other source or generating station:"

[13] On first conviction, the fine imposed shall not be less than three times of financial gain on account of such theft of electricity, if in a case, where the load abstracted, consumed or used or attempted abstraction or attempted consumption or attempted use does not exceed 10 kilowatts. In the event of second or subsequent conviction, the fine imposed shall not be less than six times of financial gain on account of such theft of electricity. Here, the complaint shows that there was a total electricity theft of 1566 kilowatts, which as provided in Clause (ii), the fine imposed on first conviction shall not be less than three times of financial gains. On account of such theft of electricity and in event of second or subsequent conviction, the sentence shall be imprisonment for a term not less than six months but which may extend to five years and with a fine not less than six times of financial gain on account of such theft of electricity.

[14] In view of the observations made here-in-above with the analysis of the evidence, the prosecution witnesses had failed to prove the case against the accused.

[15] In the result, **the appeal is allowed**. The conviction order dated 24.03.2008 passed by the learned Special Judge, Mehsana in Special Electricity Case No.55 of 2007 is set aside. The appellant- accused is acquitted. The amount of the fine deposited by the appellant-accused before the trial Court be handed over to the appellant-accused on verification of the identity. Record and Proceedings be sent back to the concerned Trial Court forthwith

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2026(1)AIAJ19

GAUHATI HIGH COURT

(Hon'ble Judge: Parthivjyoti Saikia)

Crl A (Criminal Appeal); I A (Crl) (Interlocutory Application(Criminal)) No 250 of 2023; 598 of 2023 **dated 02/12/2025**

Robiyal Ali @ Robial Sheikh S/o Late Nuchar Ali Sheikh @ Nuchruddin Sheikh

Versus

State of Assam and Anr; Dilbar Sheikh @ Dilabar S/o Late Mongla Sheikh

RAPE CONVICTION APPEAL

Code of Criminal Procedure, 1973 Sec. 376, Sec. 164, Sec. 366, Sec. 374 - Protection of Children from Sexual Offences Act, 2012 Sec. 4 - Rape Conviction Appeal - Appeal against conviction under Sec. 376(1) IPC and Sec. 4 POCSO Act - Victim alleged abduction and sexual assault - Multiple witnesses gave inconsistent versions on place and sequence - Medical evidence found no proof of sexual assault - Victim known to accused and relationship indicated consensual contact - Court found evidence contradictory and uncorroborated - Held that prosecution failed to prove guilt beyond reasonable doubt - Conviction set aside - Appellant acquitted. - Appeal Allowed

Law Point: Inconsistencies between victim testimony and medical evidence create reasonable doubt; conviction for rape cannot sustain without clear, consistent and corroborated proof of non-consensual act

Acts Referred:

Code of Criminal Procedure, 1973 Sec. 376, Sec. 164, Sec. 366, Sec. 374

Protection of Children from Sexual Offences Act, 2012 Sec. 4

Counsel:

N Uddin, M U Mahmud, S H Mahmud, L Parbin, B Chetia, D Bora, M Islam, S K Chhetry Sarfraz Nawaz, K K Das, S Nawaz

JUDGEMENT

Parthivjyoti Saikia, J.- [1] Heard Mr. M.U. Mahmud, learned counsel appearing for the appellant. Also heard Mr. K.K. Das, the learned Addl. Public Prosecutor, Assam representing Respondent No.1 as well as Mr. S. Nawaz, learned counsel appearing for the Respondent No.2.

[2] This is an appeal under Section 374 of the Code of Criminal Procedure, 1973 against the judgment and order dated 15.06.2023 passed by the learned Special Judge, Bongaigaon in Special (P) Case No.6(BGN) of 2022.

[3] On 24.11.2021, the informant Dilbar Sheikh (PW-2) had lodged a written FIR before police that on 23.11.2021 at about 7 P.M., while his daughter PW-1 was washing her feet by the side of the tubewell at his residence, the present appellant and one unknown person forcibly took her to the banks of the river Ghutoni and committed **rape** upon her. On the basis of the said FIR, police registered the Bongaigaon P.S. Case No.962/2021. The PW-1 i.e. the victim also gave a statement before a Magistrate under Section 164 CrPC. She stated before the Magistrate, inter alia, that the present appellant had assaulted her and also **raped** her. She also stated before the Magistrate that when she started to shout and raised a holler, the appellant ran away.

[4] After investigation, police filed the charge sheet against the present appellant alleging commission of offences under Sections 376(1) and 366 of the Indian Penal Code read with Section 4 of the POCSO Act.

[5] During the trial of the case, the prosecution side examined 9(nine) witnesses. The appellant did not examine any witness. Finally, the trial court convicted the appellant under Sections 376(1) and 366 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment of 10(ten) years and to pay fine of Rs. 25,000/- with default stipulations for each of the offences.

[6] I have gone through the evidence and the impugned judgement.

[7] Pw-1 is the victim of this case. She stated in her evidence that while she was washing her feet at the tubewell situated within her house, the appellant and another person forcibly gagged her mouth from behind and lifted her and took her to the banks of the river. There, the appellant removed her pants and inserted her penis into her vagina. He allegedly assaulted her also as she had refused to love him. The PW-1 further stated that after the appellant had left the place, she started to shout and some people arrived there after hearing her voice and all of them took her to the house of Akkabbar Ali (not examined in this case). She stated that from his house, her father i.e. the PW-2 brought her home.

[8] In her cross-examination, the PW-1 has stated that for two years, she did not appear in the final examination of her class because of COVID-19. She also stated that on the day of the incident at about 7 P.M., the appellant called her over phone but she

did not receive his phone call. The remaining part of her cross-examination contains some suggestions and she denied all those suggestions.

[9] The PW-2 was not present in his house at the time of occurrence. Whatever he learnt about the incident was from his daughter. He stated that after the incident, somebody took her to the house of another villager and from there, he brought her home.

[10] In his cross-examination, he has stated that his daughter studied in Class-VIII with one year gap.

[11] The 3rd Prosecution witness is Miyar Uddin Sheikh (PW-3). He stated in his evidence that on the day of occurrence, while he was returning home after performing Namaz, he heard hue and cry amongst some young boys on the road. One of the villagers was told him that the appellant had taken away PW-1 and left her on the road. According to this witness, when the villagers found the PW-1 crying on the road, they took to the house of Noor Hussain. PW-3 also went to the house of Noor Hussain and found the girl there. PW-3 noticed that the wearing apparels of the girl were torn. The girl reportedly told this witness that the appellant forcibly took her to the jute fields and committed **rape** upon her. According to PW-3, the girl reportedly told him that the appellant took the girl to the place of occurrence on a promise of marriage. PW-3 brought the victim girl to the house of the PW-2.

[12] In his cross-examination, PW-3 has reiterated that the PW-1 told him that the appellant took her away on a promise of marriage.

[13] The 4th prosecution witness is Mohibul Islam (PW-4). He is a hearsay witness. He has stated that after hearing about the incident, he went to the place of occurrence and saw that the wearing apparels of PW-1 were torn. She told this witness that the appellant and another person had brought her there and they committed **rape** upon her. According to the witness Mohibul, he along with other villagers took the girl to the house of Gofur and later on her parents took her away from there.

[14] In his cross-examination, the witness Mohibul has stated that he never stated before police that the present appellant had abducted the PW-1 while she was washing her feet at her residence nor did he state before police that the victim girl had ever told him that the appellant and another unknown person had committed **raped** upon her.

[15] The 5th prosecution witness is Bir Ali (PW-5). He has stated in his evidence that on the day of occurrence, he was sitting in the house of Jaharul and one unnamed boy informed him that the PW-1 was taken to Gofur's house. PW-5 along with PW-2 and some other persons went to the house of Gofur. PW-5 has stated that the PW-1 had told him that the present appellant and another person forcibly took her to the banks of river Ghutoni and **raped** her. The girl also told that she tried to detain the appellant but he managed to escape after giving her a good thrashing.

[16] The cross-examination portion of the evidence of PW-5 contains repetitions of whatever he has already stated in his examination-in-chief.

[17] The 6th prosecution witness is Abdul Kashem Sheikh (PW-6). He has stated that one day that a person called Rafikul had called him over phone and asked him to come to the house of PW-2. When this witness went to the house of PW-2, then only he came to know about the incident. This witness had informed the Officer-inCharge of Bidyapur Police Out Post over phone.

[18] The cross-examination portion of his evidence has nothing relevant to warrant a discussion.

[19] The 7th prosecution witness is Momin Ali (PW-7). He has stated in his evidence that one night, he along with some fellow villagers went to the house of Gofur and brought PW-1 home from there. The PW-1 told him that the appellant forcibly took her to the banks of river Ghutoni and committed **rape** upon her there.

[20] The cross-examination portion of the evidence of this witness has nothing relevant.

[21] The 8th prosecution witness (PW-8) is the police investigation officer and he spoke about the investigation.

[22] The 9th prosecution witness is the doctor (PW-9), who examined the victim girl at the time of investigation. She has stated in her evidence that after three days after the occurrence i.e. on 26.11.2021, she examined the victim girl and she has stated that no opinion could be given whether she was **raped** or not.

[23] The defence plea is total denial and the appellant did not examine any defence witnesses.

[24] After going through the prosecution evidence, it is clear that the victim girl knew the present appellant prior to the date of occurrence, because on the day of the occurrence, the appellant called her over phone.

[25] The victim has stated in her evidence that after the incident, she was taken to the house of Akkabbar Ali. The PW-3 has stated that the girl was taken to the house of Noor Hussain. On the other hand, the PW-5 has stated that the victim girl was present in the house of Gofur from where the girl was taken away by her father.

[26] Be that as it may, except the victim girl, there are no eye witnesses to the occurrence. The medical evidence failed to support the prosecution story.

[27] It is true that in a case of **rape**, there may not be any other witnesses except the victim. It is also true that in a case of **rape**, the value of medical evidence plays a little role. Even then, I will rely upon a judgment of the Supreme Court that was delivered in **Rajoo v. State of M.P.**, 2008 15 SCC 133, it is held as under:

> "11. It cannot be lost sight of that **rape** causes the greatest distress and humiliation to the victim but at the same time a false allegation of **rape** can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration."

[28] In this case, there is evidence that the victim girl PW-1 tried to detain the appellant at the place of occurrence but he managed to escape from her clutches by assaulting her. In her statement under Section 164 of the CrPC, the victim girl simply told that the appellant committed **rape** upon her. But in her examination-in-chief, she has clearly stated that the appellant had inserted his penis into her vagina. It goes to show that the victim has tried to improve the prosecution case in her evidence. She had also stated that the appellant had fallen in love with her but she did not love him. Police did not seize her wearing apparels at the time of investigation. The investigating officer in this case has stated in his cross-examination that the PW-1 has never stated before him that the appellant had inserted his penis into her vagina.

[29] From the aforesaid facts, this Court is of the opinion that there is a substantial doubt about the truthfulness of the prosecution case against the present appellant and the benefit of doubt must go to the appellant. For the aforesaid reasons, the appeal is allowed.

[30] The impugned judgment and order dated 15.06.2023 passed by the learned Special Judge, Bongaigaon in Special (P) Case No.6(BGN) of 2022 is set aside. The appellant Robiyal Ali @ Robial Sheikh is acquitted from this case. If he is in custody now, he shall be set at liberty forthwith.

[31] The present appeal along with the connected IA(Crl.) stand disposed of accordingly.

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2026(1)AIAJ24

IN THE HIGH COURT OF KARNATAKA

(Hon'ble Judge: G Basavaraja)

Crl A (Criminal Appeal) No 498 of 2015 **dated 02/12/2025**

Puttaswamygowda S/o Nanjegowda; Manjegowda S/o Puttaswamygowda; Vanajakshi W/o Manjegowda

Versus

State By Hirisave Police, Channarayapatna Taluk

GRIEVOUS HURT ALLEGATION

Indian Penal Code, 1860 Sec. 504, Sec. 34, Sec. 320, Sec. 326, Sec. 323, Sec. 506 - Code of Criminal Procedure, 1973 Sec. 313 - Grievous Hurt Allegation - Appeal challenged conviction by first appellate court reversing acquittal for offences under IPC - Allegation of assault during panchayat over land dispute - Trial court acquitted for lack of evidence while appellate court convicted - High Court found inconsistencies and delay in FIR and absence of corroborative medical or investigation records - Wound certificate lacked details of accused and weapon - Prosecution failed to prove grievous hurt or intent - Held that conviction unsustainable and Acquittal restored - Appeal Allowed

Law Point: When medical and documentary evidence lack corroboration and prosecution fails to establish essential ingredients of Sec.326 IPC beyond doubt, conviction by appellate court reversing acquittal is not sustainable

Acts Referred:

Indian Penal Code, 1860 Sec. 504, Sec. 34, Sec. 320, Sec. 326, Sec. 323, Sec. 506

Code of Criminal Procedure, 1973 Sec. 313

Counsel:

Girish B Baladare, Kum Asma Kouser

JUDGEMENT

G Basavaraja, J.- [1] The appellants have preferred this appeal against the judgment of conviction and order on sentence dated 28.03.2015 passed in Crl.A.No.149/2014 by the Fast Track Court and Additional Sessions Judge at Channarayapattana (for short "the first appellate Court"), whereby the judgment of acquittal dated: 05.06.2014 passed in C.C. No.423/2013 by Senior Civil Judge and JMFC, Channarayapattana (for short " the trial court"), came to be set aside

[2] For the sake of convenience, the parties herein are referred to their rank as before the trial Court.

[3] The brief facts leading to this appeal are that the SubInspector of Police, Hirisave Police Station laid a charge sheet against the accused for the offences punishable under Sections 323, 326, 504 and 506 read with Section 34 of Indian Penal Code.

[4] It is alleged by the prosecution that on 04th October, 2008 at about 10.30 am, a panchayat was conducted in property bearing Sy.No.81 in respect of the properties of the complainant-Sri Kapanigowda. At that time, the accused contending that no proper panchayat was conducted in their favour, hence, accused No.1 abused CW2 in filthy language. At that time, the accused No.2 assaulted CW2 on his head with a sickle resulting in bleeding injury and the accused No.1 also assaulted CW2 by his hands resulting in pain and the accused No.4 assaulted CW2 and all the accused threatened the CW2 with dire consequences. Accordingly, CW1 has lodged the complaint.

[5] After investigation, Investigating Officer submitted the charge-sheet against the accused for the aforesaid offences. Upon hearing on charges, the trial Court has framed charges for the commission of alleged offences. Same was read over and explained to the accused. Having understood the same, accused pleaded not guilty and claimed to be tried.

[6] To prove the guilt of the accused, six witnesses were examined as PWs1 to 6 and three documents were marked as Exs.P1 to P3 and one material object marked as MO.1. On closure of prosecution side evidence, the statement under Section 313 Code of Criminal Procedure was recorded. The accused have totally denied the evidence of prosecution witnesses. However, they did not choose to lead any defence evidence on their behalf.

[7] Having heard the arguments on both sides, the trial Court has acquitted the accused for offences under Sections 323, 326, 504 and 506 read with Section 34 of Indian Penal Code.

[8] Being aggrieved by the judgment of acquittal, the State has preferred the appeal before the Fast Track Court and Additional Sessions Court at Channarayapatna, in Crl. Apl. No.149 of 2014. The appeal came to be allowed and acquittal judgment passed by the trial Court in CC No.423 of 2013 dated 05th June 2014, was set aside. Consequently, the accused were convicted for the offences punishable under Sections 323, 326, 504, 506 read with Section 34 Indian Penal Code and the trial Court sentenced the accused to pay a fine of Rs.500/- each in default to undergo simple imprisonment for three months for the offence punishable under Section 323 read with Section 34 of Indian Penal Code. Accused 1 to 3 were sentenced to pay a fine of Rs.500/- each and in default to undergo simple imprisonment for three months for the offence punishable under Section 504 read with Section 34 of IPC. Accused were also sentenced to pay a fine of Rs.1,000/- each for the offence under Section 506 read with 34 Indian Penal Code and further accused are sentenced to undergo simple

imprisonment for a period of two years and pay a fine of Rs.2,000/- each for the offence under Section 326 read with Section 34 of Indian Penal Code.

[9] Being aggrieved by the judgment of conviction and order on sentence, the appellants have preferred this appeal.

[10] The learned counsel for the appellants would submit that there is a civil dispute between the complainant and accused. In that background, the panchayat was held. When panchayat was not in favour of the accused, they assaulted the complainant and threatened with dire consequences. Based on such allegations, the complaint came to be filed and the case was filed before the trial Court. After proper appreciation of the evidence of PWs1 to 6, the trial Court has acquitted the accused. There is no illegality or infirmity in the judgment of the trial Court. The First Appellate Court without appreciating the evidence on record in its proper perspective, has ignorantly, based on some contradiction and misconception of facts, set aside the judgment of acquittal and convicted the accused for alleged offences.

[11] Further, it is submitted that after examining the independent witnesses, no police witnesses including the Investigating Officer who conducted the investigation, were examined by the prosecution. Apparently, the said facts goes against the prosecution, thereby the prosecution has failed to prove the contents of the respective documents which are ought to be relied upon to prove the case of the prosecution. Merely the evidence of PWs.1 to 6 itself is not sufficient to prove the guilt of the accused and these aspects were not appreciated by the First Appellate Court while convicting the accused by reversing the judgment of the acquittal. Ex.P3- wound certificate and evidence of PW6 will not disclose the name of the accused. There is no consistency in the evidence of prosecution witnesses regarding the incident, the trial Court has failed to appreciate the evidence on record in its proper perspective. Hence, he sought for allowing the appeal.

[12] The learned Additional SPP Ms. Asma Kouser, appearing for the respondent-State, would submit that the First Appellate Court has properly appreciated the materials on record and has convicted the accused for commission of alleged offences and sought for dismissal of the appeal.

[13] I have heard the arguments on both sides. On perusal of the materials available on the record, the following points would arise for consideration:

1. Whether the First Appellate Court has committed an error in reversing the judgment of acquittal passed by the Trial Court?

2. What order?

Regarding Point No.1:

[14] I have examined the materials place before this court. It is alleged by the prosecution that on 04th October, 2008 at about 10.30 am, a panchayat was conducted

in property bearing Sy.No.81 in respect of the properties of the complainant-Sri Kapanigowda. At that time, the accused contended that no proper panchayat was conducted in their favour, hence, the accused No.1 abused CW2 in filthy language. At that time, the accused No.2 assaulted CW2 on his head with a sickle resulting in bleeding injury and the accused No.1 has also assaulted CW2 by his hands resulting in pain and the accused No.4 has also assaulted CW2 and all the accused threatened the CW2 with dire consequences. Thus the accused has committed the alleged offences. To prove the guilt of the accused, six witnesses were examined as PWs1 to 6 and three documents were marked as Exs.P1 to P3 and one material object marked as MO.1.

[15] To substantiate the case of prosecution, PW1- Kapinigowda is examined. He has deposed his evidence that about four years back, dispute arose between them and the accused regarding land. To resolve the dispute, panchayat was held near their land. In that panchayat CWs2, 3 to 6 were present. Accused were also present. Accused have not agreed for the decision of the panchayat. When accused No.1 picked up CW2 and abused him in filthy language. Accused No.2 gave blow to him with a sickle on his head. Accused No.3 held the tuft of CW2 and dragged her. About 3 to 6 persons, who have gathered for panchayat, intervened and separated the scuffle. He snatched the sickle from the hands of accused No.2 and then shifted his son to Hirisave Hospital. Accused threatened him that they will kill him. On the next day he lodged the complaint with the police. Hence, there was delay in filing the complaint. Thereafter, police came to the spot and conducted mahazar as per Exhibit P2 and seized material object, i.e. the sickle. PW2-Govindaraju has also deposed as to the scuffle as deposed by PW1.

[16] Pw3-Mallegowda and PW4-Shivegowda have deposed that on the date of alleged incident, they have gathered to with respect to panchayat between the accused and the complainant. The accused have not agreed for the panchayat decision and then accused picked up quarrel with CW2 and 3 to 6, dragged CW2 and gave blow on the backside of the head with sickle. Then he and others intervened and separated them.

PW5-Mallikarjun has deposited regarding Exhibit P2-mahazar and also seizure of MO1. PW6-B.N. Shivaswamy has deposed in his evidence as to the examination of the injured and also issuance of wound certificate-Exhibit P3.

[17] The alleged incident took place on 4th October, 2008 at 10:30 am. Complaint came to be filed on 5th October, 2008 at 5.00 pm, and the FIR reached the Court on the same day at 11:15 pm. Exhibit P3-wound certificate reveals that the injured was admitted to the hospital with history of assault on 4th October, 2008. In the wound certificate, the name of the accused and the weapon used for commission of offence is not shown. When the injured admitted to the hospital with the history of assault, it is the duty of the medical officer to register the case as medico-legal case and to report the same to the jurisdictional Police. But the medical officer has not registered medico-legal case and intimated the same the police. Medical officer is examined PW6. He has

not whispered anything against accused. He has not deposed as to non-registration of medical legal case. The investigating officer has not been examined by the prosecution as to why he has not collected any evidence, as also, for non-mentioning of the name of the accused and the weapon used in the wound certificate. Therefore, the delay in filing the First Information Report will create a reasonable doubt as to the act of the accused. Exhibit P3-wound certificate reveals that the injured has sustained following injuries:

"(1) There is an incised 1/2 x 4cm in the occipital region

(2) Age of the wound 1/2 hour to 1 hour (one hour) Referred to C.T. Scan

C.T. Scan report enclosed."

[18] The Doctor has opined that the injuries are grievous in nature. CT scan report and x-ray has not been produced by the prosecution. Even the investigating officer has not collected the case sheet maintained by the concerned medical officer to show that injured was admitted to the hospital as an in-patient. Absolutely, there is no evidence to prove that the injured has sustained "grievous hurt" as defined in section 320 of Indian Penal Code. There is no evidence to constitute the offence under section 326 of Indian Penal Code. The first appellate Court has convicted the accused for offence punishable under section 326 of Indian Penal Code, which is not sustainable under law.

[19] With regard to other offences are concerned, it is a case of the prosecution that there is dispute between the accused and CW1 regarding the land. To solve their dispute, they have gathered for conducting panchayat. The investigating officer has not collected any information as to the land dispute between the accused and the complainant. The prosecution has also not explained anything regarding the land dispute between the accused and CW1. In the absence of any material piece of evidence in this regard, it is very difficult to accept the version of prosecution witnesses. Apart from this, during the course of cross-examination of PW1-Kapinigowda, he has clearly admitted that, two days prior to Panchayat galata took place and in that galata, accused assaulted his son on his head with sickle and he lodged complaint with the police. His son has taken treatment in Hirisave Hospital for a period of one week. The police had come to the spot and recorded the statement of his son. PW2 has also deposed that he took treatment for about period of one week in the hospital. PW3 has deposed that he do not know the exact date of the alleged incident and the police have not recorded his statement. Further, he has stated that only at the instance of CW1, he has deposed before the court as to the galata. He has deposed in his cross-examination that there was land dispute between accused and CW2 prior to the alleged incident.

[20] On careful examination of the entire evidence placed before this Court, the material evidence does not inspire confidence as to their witness. Evidence of

prosecution will falsify the contents of Exhibit P1 and also Exhibit P3-wound certificate. Though the injured had taken treatment for a period of one week, the investigating officer has not collected any material in this regard. The delay in filing the complaint, the statement of admission made by the material witnesses in their cross-examination, disclose that the complaint is filed only as an after-thought, taking advantage of the injuries caused to the injured prior to the alleged incident. Whether the accused have participated in the earlier incident or not has not been disclosed by prosecution. Absolutely, there is no cogent, consisting, trustworthy evidence before the court. The trial court has properly appreciated the evidence on record in its proper perspective. Unfortunately, the first appellate court has reversed the judgement of acquittal passed by the trial Court, without assigning proper reasons. Accordingly, the appellants have made out ground to interfere with the impugned judgment of conviction passed by the first appellate court. Hence, I answer point No.1 in the affirmative.

Regarding Point No.2:

[21] For the reasons and discussions made above, I proceed to pass the following:

O R D E R

i. Appeal is allowed

ii. Judgment of conviction and order and sentence dated 28.03.2015 passed in Crl.A.No.149/2014 by the Fast Track Court and Additional Sessions Judge at Channarayapattana, is set aside;

iii. Judgement of acquittal dated 05th June, 2014 passed in CC No.423 of 2013 by the Senior Civil Judge and JMFC, Channarayapatna, is confirmed;

iv. Appellants/accused are acquitted of the offence punishable under Sections 326, 504 and 506 read with section 34 of Indian Penal Code;

v. The concerned Court is directed to refund the fine amount, if any, in deposit by the appellants/accused;

vi. Registry to send the copy of this judgment along with the trial court records to the concerned court, forthwith

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2026(1)AIAJ29

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

(Hon'ble Judge: Dr Neela Gokhale)

Criminal Appeal No 716 of 2009 **dated 01/12/2025**

State of Maharashtra

Versus

Maruti Bhikaji Borkar; Ramesh Dhondiba Ware; Shrikant Sopan Gaikwad

DEMAND OF BRIBE

Code of Criminal Procedure, 1973 Sec. 313 - Prevention of Corruption Act, 1988 Sec. 13, Sec. 7, Sec. 12 - Demand of Bribe - Appeal filed against acquittal order under Prevention of Corruption Act - Allegation that public servant demanded illegal gratification for passing order in mutation entry - Trap laid by Anti-Corruption Bureau and recovery made - Trial Court acquitted accused on ground of lack of corroboration and absence of proof of conscious acceptance - Evidence of complainant and panch witnesses considered not credible - Appellate Court observed that double presumption of innocence operates in case of acquittal and interference permissible only if findings are perverse or unreasonable - Evidence reappreciated showing that prosecution failed to prove demand and acceptance beyond reasonable doubt - Held that mere recovery not sufficient to convict without proof of demand and voluntary acceptance - Acquittal based on proper appreciation of evidence - Acquittal confirmed - Criminal Appeal Dismissed

Law Point: For conviction under Sections 7 and 13 of Prevention of Corruption Act, prosecution must establish demand and voluntary acceptance of illegal gratification beyond reasonable doubt - Mere recovery of tainted money without proof of demand and conscious acceptance cannot sustain conviction - Appellate Court should not interfere with acquittal unless findings are perverse or wholly unreasonable

Acts Referred:

Code of Criminal Procedure, 1973 Sec. 313

Prevention of Corruption Act, 1988 Sec. 13, Sec. 7, Sec. 12

Counsel:

Anuja Sunil Gotad, Uday Dube (Senior Advocate), Balwant Salunkhe, Saurabh Butala

JUDGEMENT

Dr. Neela Gokhale, J.- [1] This Appeal assails the Judgment and Order dated 2nd September, 2008, passed by the Special Judge at Baramati, District Pune, acquitting the Respondents herein (Original Accused Nos.1 and 2) from the offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for short '**PC Act**') and acquitting the Respondent No.3 (Original Accused No.3) from the offence punishable under Section 12 of the PC Act.

[2] By an order dated 18th June 2009, this Court, by a reasoned order opined that a triable issue was made out by the Appellant-State of Maharashtra, to be dealt with in this Appeal, to ascertain the correctness and legality of the impugned Judgment and Order. Hence, this Court allowed the Leave Petition and admitted the Appeal.

[3] The facts of the case, in brief, are as under:

3.1 The Respondent No. 1/Accused No.1 (A/1) was a Tahsildar posted at Indapur. The Accused No.2/Respondent No.2 (A/2) was working as a clerk in the Tahsildar's office, and the Accused No.3/Respondent No.3 (A/3) was another person in the office of the Tahsildar.

3.2 The Informant's father died on 19th June 2005 and he thus, made an application before the Talathi, seeking to enter the names of his father's legal heirs on the revenue records of the agricultural land owned by his father. The Talathi carried out the mutation entry. The same was challenged by one Vijay Gulumkar, a cousin brother of the Informant. Hence, the Application was forwarded to the A/1 for decision. Notices were issued to the parties calling upon them to appear before the Tahsildar on 31st October 2005. Written statements were submitted, and the matter was closed for orders.

3.3 On 22nd December 2007, the Informant (PW/1) went to the office of the Tahsildar to enquire about the pending case. The Tahsildar demanded Rs.3,000/- in lieu of clearing the file and passing an order in favour of the Informant. The Informant indicated his inability to pay the said amount prompting the Tahsildar to reduce the demand to Rs.1,000/-. The Informant met A/2 who also conveyed the demand of 'Saheb' to him. Again at 05:00 pm. on the same date, the Informant met the Tahsildar and his clerk in his office, who asked him as to whether he had brought the amount with him. They told him that he should pay the money and collect the order. The Informant assured the A/1 and A/2 that he will come on the following day with his brother and bring the money.

3.4 The Informant then, made a complaint with the AntiCorruption Bureau, Pune ('**ACB**') on 28th December 2005, (Exhibit-30) narrating the demand of the A/1 and A/2. The ACB Pune laid a trap on the same day. The amount of Rs.1,000/- (10 currency notes of Rs.100/- denomination) was taken from the Informant and the numbers of the currency notes were noted; anthracene powder was applied on the currency notes on both sides; and these notes were returned to the Informant to be given to A/1 - Tahsildar. A pre-trap panchanama was recorded (Ex.33). One panch, Shri Ganesh Krishna Chillal (PW/2) accompanied the Informant in the office of the Tahsildar. The Tahsildar informed him that a copy of the order was sent to the Talathi and also inquired about the bribe money. On the instructions of the Tahsildar, the Informant met A/2 - clerk who pointed to the A/3, namely Shrikant Gaikwad, who accepted the money on behalf of the A/1. Two copies of the order were handed over to the Informant. After paying the money to A/3, the Informant signaled the officers as per their instructions and he came out of the room. The pancha accompanying the Informant remained in the room as per predetermined plan. The members of the raiding party went in the room on a predetermined signal and caught A/3 red handed.

The amount was recovered from the drawer of the computer room in A/2's cabin, where the A/3 had kept the same.

3.5 The numbers of the currency notes recovered from the computer room were tallied with the numbers noted by the ACB officials. Anthracene powder was found on the said currency notes and on A/3's hand and the drawer of the computer room. The documents of the mutation entry case were collected from the Tahsildar's office, a panchanama was recorded (Exhibit-34). Shri Sudam Darekar (PW/4), Deputy SP, ACB, conducted the investigation. A sanction for prosecution of the A/1 and A/2 was sought and granted by the sanctioning authority (Sanction Order at Ex.40) and upon completion of the investigation, the charge-sheet was filed before the JMFC, Indapur. The offence punishable under Sections 7 and 13 of the PC Act, being exclusively triable by the Sessions Court, was committed by the JMFC, Indapur, to the Court of Sessions, for trial.

3.6 By an order dated 26th March 2008, the Special Judge, Baramati, framed charges against the A/1 and A/2 for offences punishable under Sections 7 and 13(1)(d) r/w Section 13(2) of the PC Act, and against A/3 for offence punishable under Section 12 of the PC Act.

3.7 After framing of the charges, the Accused pleaded not guilty and sought to be tried.

3.8 During the course of the trial, the prosecution examined four witnesses. The witnesses examined are as follows:

PW/1 Sukhdeo Rangnath Gulumkar (First Informant)

PW/2 Ganesh Krishna Chillal (Panch No.1)

PW/3 Shantaram Sitaram Kudale (Under SecretaryForest Section- Proposal for sanction received by his office).

PW/4 Sudam Vitthal Darekar (ACP of the Anti -Corruption Bureau)

3.9 Thereafter, the Trial Court recorded the statements of the Respondents (Accused Nos.1, 2 and 3) under Section 313 of the Code of Criminal Procedure, 1973 ('Cr.P.C.'). The defence of the accused was that of false implication. The learned Special Judge, Baramati, by its Judgment and Order dated 2nd September 2008 acquitted A/1 and A/2 for the offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of the PC Act and acquitted A/3 for the offence punishable under Section 12 of the PC Act. Aggrieved by the acquittal, the State of Maharashtra has filed the present Appeal. By an order dated 18th June 2009, Leave Petition was allowed, and the Appeal was admitted. The Record and Proceedings were called and received.

[4] Notice was duly served on all the Respondents and Mr. Balwant Salukhe represented the Respondent Nos.1 and 2. None appeared for the Respondent No.3.

[5] Before adverting to the rival submissions, it is necessary to discuss the principles laid down by the Supreme Court governing the scope of interference by the High Courts in an appeal filed by the State, assailing the finding of acquittal of the accused by the Trial Court. The Supreme Court in its decision in the matter of **Rajesh Prasad v. State of Bihar & Anr.**, 2022 3 SCC 471 held as below:-

> "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]
>
> "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 phraseology 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."

[6] Further, in the case of **H.D. Sundara & Ors. v. State of Karnataka**, 2023 9 SCC 581 the Supreme Court summarized the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 of Cr.P.C. as follows:

> "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 re appreciate 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."

[7] 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:-

(a) That the judgment of acquittal suffers from patent perversity;

(b) That the same is based on a misreading/omission to consider material evidence on record;

(c) 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.

[8] The Appellate Court, to interfere with the judgment of acquittal, would have to record pertinent findings on the above factors if it is inclined to reverse the judgment of acquittal rendered by the trial Court.

[9] In the light of above legal principles, I now proceed to analyze the evidence before the Trial Court, leading to the acquittal of the accused.

[10] The PW/1, the Informant, in his examination-in-chief has clearly narrated the incident of 22nd December 2005, i.e., the day on which the first demand was made by A/1. He specifically stated that A/1 demanded an amount of Rs.3,000/- for deciding

the application in his favour. There were some negotiation and A/1 agreed to accept a reduced amount of Rs.1,000/- in lieu of passing an order in favour of the Informant. The PW/1 visited the Tahsildar office once again, when he was again told by A/1 to pay the money to A/2, who was instructed by A/1 to prepare the order and give copy of the same, after receiving the amount. In his crossexamination, PW/1 has categorically denied that he was unable to meet A/1 on the said date as he was on tour from 8.00 am to 5.00 pm. It is also revealed from the crossexamination that PW/1 learnt about the decision on his application only when he went on the assigned date to pay the bribe amount. Once, he assured that he had the amount, he was directed to pay the money to A/2 and collect the order passed in his favour from the Talathi, to whom the order was dispatched. Nothing was elicited from the cross-examination to indicate that A/1 was out of his office on 22nd December 2005, i.e., the day on which the demand was made. One of the defence of A/1 was that he was not present in the office on the date of first demand.

[11] The second demand was made at the time when PW/1 and PW/2, i.e., one of the panchas, accompanying PW/1 went to the Tahsildar's office, pursuant to the trap laid by the ACB. The deposition of the pancha confirms the demand made by A/1 once again. He deposed that he accompanied PW/1 in the cabin of Tahsildar on 28th December 2005, when the Tahsildar told PW/1 in his presence that his work is ready, one copy was sent to the Talathi and another is with A/2 and that he should collect the order from A/2. A/1 met A/2 after which A/2 asked PW/1 as to whether he had brought the money. Thereupon A/2 directed PW/1 to give the money to A/3. The money exchanged hands, A/3 counted the amount and pocketed it, confirmed to A/2 that money was paid after which PW/1 was given a copy of his order. PW/2 further confirmed that in his presence and on a signal given by PW/1 as prearranged, the ACB officials entered the Tahsil office. On A/3's admission, money was recovered from the drawer of the computer-room. The currency notes were checked for anthracene powder, and the numbers were tallied with the pre-trap panchanama. Anthracene was found on the hands and pocket of A/3 and the drawer in the computer-room. The entire sequence of events has been deposed by PW/2 to have taken place in his presence. Even on intense crossexamination, his testimony could not be shaken.

[12] Pw/3 is the Under-Secretary of Forest Section and has deposed regarding sanction to prosecute the Accused. The same has not been seriously contested by the Accused.

[13] Pw/4 is the ACP of the ACB. In his deposition, he has narrated the facts regarding complaint of PW/1, the action taken by him and other officials in laying the trap including, applying anthracene powder on Rs.100/- notes, which were to be given by PW/1 to the Accused, the recording of the pretrap panchanama and the actual raid carried out. In his crossexamination, an attempt was made by the defence to establish that the work of PW/1 was done by the Accused before the bribe money was paid.

However, this witness remained steadfast in his testimony that the fact of the order passed in favour of PW/1 was noticed after the trap. Hence, nothing beneficial to the Accused was elicited from his crossexamination.

[14] I have perused the pre-trap panchanama and the panchanama recorded after the bribe money was recovered. The deposition of the witnesses is consistent with the panchanamas.

[15] I have perused the Judgment and Order acquitting the Accused carefully. The finding of the acquittal is only on the basis of a certified copy of a log-book of the Government vehicle, claimed to have been used by A/1 to travel out of Indapur to nearby villages for official work on 22nd December 2005, i.e., on the date on which PW/1 claims that the first demand was made. The learned Special Judge has relied on the statement of A/1 recorded under Section 313 of the Cr.P.C., that on the date of demand, he left his residence at 8.00 a.m. and visited villages - Wadapuri, Bhodni, Lakhewadi, Chakati, Redni and Warkude (Khurd). The Special Judge has recorded that a copy of the bill of TA and DA paid to the driver Kale, as per entry in the log-book and the certified copies of the statements of the persons recorded at the time of spot inspection at Mauje-Wadapuri on 22nd December 2005 are on record and sufficient to show that the A/1 was not in office on the date of demand. Hence, only on this basis, the Special Judge has disbelieved the deposition of PW/1. Secondly, the Special Judge appears to be swayed by the statement of A/1 that the application was already decided in favour on 27th December 2005, i.e., one day before the trap. On these two grounds, the Special Judge acquitted the Accused.

[16] I have perused the Record & Proceedings. There is a copy of the log-book certified by the Tahsildar himself, which has an entry of the vehicle leaving Indapur at 8:00 am and returning at 9:00 pm traveling to the villages mentioned herein above. There are also other entries in the log-book of the movement of the Government vehicle on other dates, including on 28th December 2005 from 9:00 am to 6:00 pm. However, it is an admitted fact that, on 28th December 2005, between 5:00 pm and 5:45 pm, a trap was laid by the ACB in A/1's office and all the accused were very much present in the office. The trap and the recovery of the bribe amount accepted by Accused is proved by statements of PW/1, PW/2 and PW/4. It is also not the case of any of the Accused, that they were not present in the office on 28th December 2005. Thus, the entries in the log-book are only indicative of movement of the Government vehicle from Indapur to various places. The log-book entries by themselves are not evidence of travel of A/1 in the Government vehicle. If it was his case that the Government vehicle is used only by A/1, then, there possibly cannot be an entry regarding travel by A/1 on 28th December 2005, i.e., on the date of trap. The defence has nowhere attempted to establish that the Government vehicle was used only by the Tahsildar, leading the trial court to believe absence of A/1 in the office on the first demand date. On the contrary, the prosecution has beyond any doubt proved the

demand made by A/1 by cogent oral evidence, which the defence was unable to demolish.

[17] The Special Judge has also accepted the statement of overtime TA/DA given to one Mr. A.J. Kale stated to be the driver attached to the Tahsil office in Indapur. The statement of TA/DA is from 1st December 2005 to 27th December 2005 and 3rd January to 28th February 2006. Contrary to the logbook entry of movement of the vehicle from 9:00 am to 6:00 pm on 28th December 2005, there is no explanation forthcoming regarding absence of the allowance on 28th December 2005. Thus, this is a major contradiction on the part of defence, rendering the story of the Accused completely unbelievable.

[18] There are many documents placed on record by the defence to show that some applications were made by the residents of Wadapur regarding requirement of a road in their village. Of the plethora of documents placed on record, only two statements relate to 22nd December 2005 signed by persons stated to be villagers of Wadapur. The place of recording of the statements is not visible on the documents. Most pertinently, none of the persons including any villager, pancha, driver-Kale nor any person maintaining the log-book of the Government vehicle is examined by the defence. In view of the discrepancies in the log-book as compared with TA/DA statement of the driver, it was imperative for the defence to examine some witness corroborating the story of the Accused.

[19] The defence of the Accused appears to be that of a plea of alibi. In the decision in **Binay Kumar Singh v. State of Bihar**, 1996 INSC 1260. The Supreme Court has considered the question of alibi meaning 'Elsewhere' and observed that the said plea would be available only if that 'Elsewhere' is a place far-off making it impossible or improbable for the person concerned to reach the place of occurrence of offence. The Apex Court held as under:

> ".....Once the prosecution succeeds in discharging the burden it is incumbent on the Accused, who adopts the plea of alibi, to prove it with absolute certainty so as to exclude the possibility of his presence at the place of occurrence. When the presence of the accused at the scene of occurrence has been established satisfactorily by the prosecution through reliable evidence, normally the court would be slow to believe any counter-evidence to the effect that he was elsewhere when the occurrence happened. But if the evidence adduced by the accused is of such a quality and of such a standard that the court may entertain some reasonable doubt regarding his presence at the scene when the occurrence took place, the accused would, no doubt, be entitled to the benefit of that reasonable doubt. For that purpose, it would be a sound proposition to be laid down that, in such circumstances, the burden on the accused is rather heavy. It follows, therefore, that strict proof is required for establishing the plea of alibi. This Court has observed so on earlier

occasions (vide Dudh Page 13 of 19 **Nath Pandey v. State of U.P.**, 1981 2 SCC 166 **State of Maharashtra v. Narsingrao Gangaram Pimple**, 1984 1 SCC 446."

[20] In the facts of the present case, the demand of the bribe money is established satisfactorily by the prosecution, through reliable evidence. Hence, it was incumbent on the defence to adduce evidence of the alibi by strict proof. The defence has completely failed to establish the plea of alibi. There is absolutely no evidence establishing presence of A/1 at the place other than the spot of the occurrence of the offence. In these circumstances, I am of the considered view that there is a mis-reading/omission on the part of the Special Judge in considering the material evidence on record. There is thus, a patent infirmity in the Judgment and Order impugned herein.

[21] The other basis of acquittal as per the Special Judge is that, there was no motive for the demand of bribe as the order in favour of the Informant was passed on 27th December 2005 itself. This finding is also contrary to the evidence on record. The prosecution has established the factum of demand and acceptance of bribe money by A/1 and A/2 beyond reasonable doubt. It has come on record that PW/1 was informed regarding the order passed on 27th December 2005 when he along with PW/2-Pancha went to the office of the Accused to pay the money, pursuant to the trap laid by the ACB. The PW/1 was told that his order was sent to the Talathi's office and categorically A/2 was directed by A/1 to take money from PW/1. The entire transaction was that of a simultaneous give and take. The fact of passing of the order was informed to him at the same time when the bribe money was accepted from him. Hence, the finding of the Special Judge in this regard is quite distorted, in this regard, as well.

[22] Section 7 of the PC Act deals with public servants accepting or attempting to accept illegal gratification other than their legal remuneration. It's essential ingredients are (i) that the person accepting the gratification should be a public servant; and (ii) that he should accept the gratification for himself, and the gratification should be as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official function, favour or disfavour to any person. Insofar as Section 13(1)(d) of the PC Act, it was amended by the Prevention of Corruption (Amendment) Act, 2018, with effect from 26th July, 2018. However, in view of Section 6 of the General Clauses Act, 1897, Section 13(1)(d) prior to the amendment, is applicable to the facts of the present case, as the offence was stated to have been committed on 22nd December 2005 and 28th December 2005. Thus, its essential ingredients are (i) that he should have been a public servant; (ii) that he should have used corrupt or illegal means or otherwise abused his position as such public servant, and (iii) that he should have obtained a valuable thing or pecuniary advantage for himself or for any other person. The facts in the present case not only

bring home the guilt to A/1 but also A/2, who directed the Informant to hand over the bribe money to A/3 and in lieu of the same, gave a copy of the order to the Informant. Thus, A/1 and A/2 are both complicit in commission of offence. As far as A/3 is concerned, the prosecution has been unable to establish beyond reasonable doubt, the abetment of the offence by A/3. The prosecution has failed to establish the active role and knowledge of A/3 that the money given to him was bribe money. Hence, the acquittal of A/3 cannot be faulted.

[23] The Supreme Court in its decision in the case of **State of Karnataka v. Chandrasha**, 2024 INSC 899 has reproduced its observations in an earlier decision in the matter of **Swatanter Singh v. State of Haryana**, 1997 4 SCC 14

> "6..... Corruption is corroding, like cancerous lymph nodes, the vital veins of the body politic, social fabric of efficiency in the public service and demoralizing the honest officers. The efficiency in public service would improve only when the public servant devotes his sincere attention and does the duty diligently, truthfully, honestly and devotes himself assiduously to the performance of the duties of his post. The reputation of being corrupt would gather thick and unchaseable clouds around the conduct of the officer and gain notoriety much faster than the smoke."

[24] Corruption on the part of public officers erodes the faith reposed by the citizens and has a pervasive impact on governance and democracy. Undoubtedly, the amount of bribe is a mere Rs.1,000/- however, it is settled law that it is not necessary for the amount involved to be substantial to draw the presumption under Section 20 of the PC Act. As per Section 20(3) of the PC Act, the Court has a discretion to refrain from drawing adverse presumption against the public servant if the amount involved is trivial. In the case of **Chandrasha** (Supra), the Supreme Court held that the presumption becomes irrelevant when the agreement to receive gratification is factually proved. The presumption under Section 20 of the PC Act provides that where it is proved that the public servant has accepted or obtained any undue advantage, unless the contrary is proven, it shall be presumed that such acceptance of undue advantage was with a motive or reward under Section 7 of the PC Act. The value of gratification is to be considered in proportion to the act to be done or not done, to forebear or not to forebear, favour or disfavour sought, so as to be trivial to convince the Court, not to draw any presumption of corrupt practice. In any case, the fact of demand and receipt of demand stand proved in the present case.

[25] Being conscious of the settled law that, in an appeal against acquittal, if two views are possible and the Court below has acquitted the accused, the Appellate Court would not be justified in setting aside the acquittal merely because another view is possible. In the present case however, the demand, the recovery of the bribe money from A/1 and A/2 being proven, in the absence of any concrete material supporting the defence, brings home guilt to them beyond reasonable doubt. Once, the 'demand' and

'acceptance' of the bribe amount is established beyond reasonable doubt, in my opinion, no two views are possible in that matter. The defence has made no attempt to establish the alibi theory attempted to be put forth by A/1. Thus, the Judgment and Order impugned herein, is unsustainable. The Judgment and Order dated 2nd September, 2008, passed by the Special Judge at Baramati, District Pune, acquitting the Respondents herein (Original Accused Nos.1 and 2 from the offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 is quashed and set aside. For reasons mentioned herein above, A/3 remains acquitted and the Judgment and Order impugned in so far as relating to A/3 is confirmed.

[26] Having convicted the Respondent Nos. 1 and 2 for the offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988, the next consideration is the quantum of punishment that may be imposed on them. Hence, I proceeded to hear the Respondent Nos.1 and 2 on the aspect of sentencing on 21st November 2025.

[27] Heard Mr. Uday Dube, learned Senior Counsel appearing for the Respondent Nos.1 and 2.

[28] Mr Dube, submitted that as many as 17 years have elapsed from the time that the accused were acquitted. He further submitted that the A/1 is due for retirement next year and has also aged considerably. Similarly, he submitted that the A/2 has few more years of service and has a family with children. Both the Accused are the sole earning members in their families and hence, lenient view be taken in the matter of sentencing.

[29] Admittedly, as many as 17 years have elapsed from the time, the accused were acquitted. The A/1 is due for retirement next year and the A/2 has few more years of service and has a family with children. Considering the gravity of the offence, the circumstances of the Accused and the time taken in deciding the present Appeal, I am inclined to impose minimum sentence provided for the said offence at the relevant time. The A/1 and A/2 are directed to undergo 6 months of simple imprisonment and liable to pay fine of Rs.500/- each. The A/1 and A/2 are directed to surrender before the Trial Court within a period of 12 weeks from today and the Trial Court is directed to take steps to commit them in prison to undergo the period of sentence and recover the fine imposed on them.

[30] The Appeal is accordingly, partly allowed

2026(1)AIAJ41

DELHI HIGH COURT

(Hon'ble Judge: Manoj Kumar Ohri)

Crl A (Criminal Appeal) No 897 of 2024 **dated 01/12/2025**

Pawan Soni

Versus

State (Govt of Nct) Delhi

ROBBERY CONVICTION

Indian Penal Code, 1860 Sec. 392, Sec. 34, Sec. 397, Sec. 411, Sec. 394 - Code of Criminal Procedure, 1973 Sec. 428, Sec. 313, Sec. 294 - Robbery Conviction - Appellant convicted for robbery and causing injury under penal provisions - Prosecution stated complainant was attacked by four persons who snatched belongings and inflicted stab wound - Police arrested appellant on secret information and recovered robbed articles - Complainant identified appellant during trial and narrated detailed account of attack and recovery - Defence argued false implication and absence of identification test - Observed that no test identification parade conducted though accused unknown to complainant - Dock identification after long gap held weak - Recovery of power bank not supported by complainant's first statement - Court noted inconsistencies and absence of corroborative evidence - Held conviction unsustainable due to identification flaws and evidentiary lapses - Appellant entitled to benefit of doubt - Conviction set aside and appellant acquitted - Sentence quashed - Appeal Allowed

Law Point: Where accused is a stranger and no test identification parade conducted, dock identification alone after long lapse cannot form sole basis for conviction; corroboration through consistent evidence and recovery is essential to sustain guilt.

Acts Referred:

Indian Penal Code, 1860 Sec. 392, Sec. 34, Sec. 397, Sec. 411, Sec. 394

Code of Criminal Procedure, 1973 Sec. 428, Sec. 313, Sec. 294

Counsel:

Rohan J Alva, Anant Sanghi, Shubhi Gupta

JUDGEMENT

Manoj Kumar Ohri, J.- [1] Being convicted and sentenced for the offence punishable under Sections 394/34 IPC read with Section 397 IPC, the appellant has preferred the present appeal seeking setting aside of the judgment dated 30.03.2024

and order on sentence dated 20.07.2024 passed by Ld. Additional Sessions Judge-07, South-East, Saket Courts, New Delhi.

The appellant was directed, for the offence under Section 394 IPC to undergo 3 years RI along with a fine of Rs. 10,000/-, in default whereof he was to undergo SI for 1 month. For the offence under Section 397 IPC, he was sentenced to RI for 7 years. The benefit of section 428 CrPC was given to the appellant and both the sentences were to run concurrently.

[2] Facts as per case of the prosecution are that DD No. 9A was received on 31.12.2022 at 12.39 A.M. regarding stabbing of one boy and snatching of his mobile phone and purse. ASI Subhash and Ct Roki reached the spot to find that injured had been taken to hospital. Another DD No.15A regarding admission of patient/injured Abid Ali in AIIMS Trauma Centre was received at 02.04 A.M. In hospital, the statement of complainant was recorded, wherein he stated that on 30.12.2022, while returning after attending a marriage ceremony, he was going to get his projector repaired at the company located at No.47/5, Okhla Phase-II around 11:00 p.m. While he was walking to the said address after alighting from the rickshaw, four boys came near him. While one of them took out his Samsung mobile phone and Rs.5,000/- from the pocket, the other three caught hold of him. When he asked them to return his bag, then the fourth boy stabbed him with a sharp object in his stomach. The accused persons, thereafter, fled after leaving his bag there on the ground. The injured complainant inquired about hospital from a person who called the PCR which subsequently took him to AIIMS trauma Centre. Statement of the caller, Sanjay Kumar was also recorded.

[3] On the basis of secret information, on 02.01.2023, the appellant and one co-accused Ashish @ Kalia were apprehended from the container yard at Okhla Phase-II. One power bank was recovered from the appellant, and the mobile was recovered from the co-accused.

[4] The charge was framed under Sections 392/394/397/411/34 IPC against the accused appellant/Pawan @ Soni, to which he pleaded not guilty and claimed trial.

[5] The prosecution examined eight witnesses to substantiate its case. The most material of them being the complainant Abid Ali, who was examined as PW-1. Sanjay Kumar, the public witness who called the PCR after the incident was examined as PW-5. The officials of the companies from where CCTV footage was to be collected were examined as PW-2 and PW-6. HC Jaspal, the IO was examined as PW8. The remaining witnesses were formal in nature, who deposed as to the various aspects of investigation.

[6] In his statement under Section 313 CrPC, the appellant claimed false implication. He did not lead any evidence in his defence.

[7] Learned counsel for the appellant submits that the appellant is innocent and has been falsely implicated in the present case. He submits that the CCTV does not capture the incident of stabbing and robbery. The appellant was identified by the complainant in the police station and his identification in Court is meaningless. Moreover, it is alleged that the seals were tampered as while the complainant states that he identified the mobile in the police station and thereafter it was sealed, HC Jaspal has deposed that the mobile phone was seized and sealed and thereafter brought to the police station. Even though the appellant was arrested after a few days, yet he was found in possession of the robbed goods.

[8] Learned APP for the State strongly opposes the present appeal and contends that the Trial Court has rightly convicted the appellant. The complainant has remained consistent and fully supported the prosecution case and has attributed the role of stabbing him to the appellant. The presence of appellant and other co-accused is also established by the CCTV footage.

[9] Injured complainant/Abid Ali, examined as PW1, deposed that on the day of the incident, i.e., 30.12.2022, he came to Delhi to attend a marriage ceremony which concluded around 11:00 pm. He wanted to get the projector that he had purchased earlier repaired, for which he contacted the seller. He went to Okhla Phase-II for the said purpose. While he was going on foot to the shop after alighting from the auto rickshaw, he passed four boys who came to him and one of them asked if he had a match box, which he denied. Thereafter, he was caught hold of by one of them from behind, while another one put a knife on his neck. Of the remaining persons, one tried to snatch his bag in which the projector, blanket and jacket were kept, while the remaining one stood at a distance. On his resistance, the one who had put a knife to him tried to stab him. However, during an attempt to save himself with the help of his bag, the said knife was broken. The person standing at the distance was then instructed to bring another knife. He brought the second knife from a Jhuggi, gave it to the person who tried to stab the complainant earlier, and caught hold of the complainant. Thereafter, he was stabbed on the right side of the belly by the same person who tried to stab him earlier. His bag, purse containing Rs.5,000-7,000/-, Samsung mobile phone, power bank and headphone were forcibly taken by the accused persons. They left his bag and purse after taking out the money and fled with the remaining articles.

After the incident, he states that while he was enquiring about a chemist shop from two boys, they called the police on seeing him bleed. Thereafter, he was taken to the AIIMS for treatment where his statement was recorded. He was admitted to the hospital for two days. He further states that he was called by the IO to the police station two days after the incident. He identified the recovered articles, Samsung mobile phone and the power bank, as the ones robbed from him. He further deposed that the IO had arrested the appellant and Ashish, and identified his signatures on their arrest memos. In Court, he identified appellant as the one who had stabbed him, co-

accused Ashish as the one who held him from behind, Ravi as the one who took away the articles forcibly.

In his cross-examination, he affirmed the statements made in the chief examination and stated that the facts could not be mentioned at the time of initial complaint because he was injured and in hospital for 2 days and could not recall the entire incident. He denied the suggestion that he had deposed falsely at the instance of the IO.

[10] Sanjay Kumar (PW-5) stated in his deposition that on the intervening night of 30-31.12.2022, around midnight, a person knocked on the door of his shop and enquired about the way of nearby hospital. He made a call to the police at 100 number from his mobile number on the request of the injured person. The police reached the spot and recorded his statement. He further stated that he had not seen the incident but was informed by the injured that 3-4 persons had stabbed him and taken his mobile and purse. He was not cross examined, despite opportunity.

[11] Hc Jaspal, examined as PW-8, stated that on receiving DD No.9A, he alongwith Ct. Roki went to X-26, Okhla Phase-II where he found out that the injured person was taken to the hospital. He received another DD No.15A regarding admission of injured Abid Ali in AIIMS Trauma Centre. After reaching there and taking the necessary permissions, he recorded the statement of victim and prepared the Rukka, Ex. PW8/A. The same was handed over to Ct. Roki who went to the PS and registered the F.I.R. He further states that when he along with Ct. Roki went to the spot to search for the CCTV footage, he could not collect it as the office was closed and there were no eye-witnesses. He went to the spot again and spoke with the caller.

Two days after the incident, i.e., on 02.02.2023, he went again to the spot and prepared the site plan in the presence of the complainant. He also collected the CCTV footage from the two offices situated at X-26 & X-51, Okhla Phase-II, Delhi. On this day, he met a secret informer and based on his information, he along with Ct. Jaswant and Ct. Satyanarain went to the Container Yard, Okhla Phase-II, where appellant and Ashish were present. They were apprehended and the disclosure statements of both the accused were recorded. The robbed properties were recovered from them, particularly the Samsung mobile phone from Ashish and the power bank from the appellant/ Pawan Soni. He deposed that once the accused were taken to the police station, the injured also came there and identified both the accused persons. On 28.03.2023, the co-accused Ravi @ Munna surrendered in the PS.

[12] Ct Satyanarayan (PW3) and HC Jaswant (PW4) and Ct. Roki (PW7) also deposed on similar lines as to the manner of arrest of the appellant and recovery of the power bank from him and the complainant coming to the police station and identifying the appellant and the co-accused.

[13] The formal proof of the MLC (Mark -X) was dispensed with in view of the appellant s statement recorded under Section 294 CrPC. It was prepared on 31.12.2022 at 01.38 AM. It records a stab wound at lower chest region. The weapon used was categorized as sharp and the nature of injury was grievous.

[14] The present is not a case where the appellant was apprehended at the spot. He was apprehended from the container yard at Okhla Phase-II on 02.01.2023, while the incident occurred on the night of 31.12.2022. From him, one power bank was recovered, whereas from his co-accused, the mobile phone of the complainant was recovered. Interestingly, the initial statement of the complainant does not mention any power bank. He only states that a mobile and cash were robbed from him. Sanjay Kumar (PW5), the PCR caller, has also deposed that he did not witness the incident and the complainant had informed him of snatching of mobile and purse. Thus, even he does not state about the power bank. Yet, PW3, PW4, PW7, and PW8 have categorized the power bank as robbed property. Not stopping at that, all of them have further deposed that the complainant came to the police station on the day of the arrest and identified the appellant and co-accused and his property. The complainant has also deposed that after 2 days of the incident, he was called by the IO to the police station where he identified the mobile phone and black power bank which was recovered by the police. He also identified his signatures on the arrest memo of the appellant (Ex. PW1/F), even though he was not a part of the arresting party.

[15] Despite the appellant being a stranger to the complainant, no judicial TIP was conducted. The purpose of the TIP is that the witness, who claimed to have seen the culprit at the time of occurrence of the incident, is able to identify them in the midst of other people. The Supreme Court in Gireesan Nair (Supra) has held as follows: -

> 28. We may, at the outset, note that the eyewitnesses questioned by the prosecution did not give out the names or identities of the accused participating in the riot and involved in the destruction of public property. Therefore, the IO (PW 84) had to necessarily conduct a TIP. The object of conducting a TIP is threefold. First, to enable the witnesses to satisfy themselves that the accused whom they suspect is really the one who was seen by them in connection with the crime. Second, to satisfy the investigating authorities that the suspect is the real person whom the witnesses had seen in connection with the said occurrence. Third, to test the witnesses' memory based on first impression and enable the prosecution to decide whether all or any of them could be cited as eyewitnesses to the crime (Mulla v. State of U.P. [**Mulla v. State of U.P.**, 2010 3 SCC 508, paras 44, 45 & 55: (2010) 2 SCC (Cri) 1150]).
>
> 29. TIPs belong to the stage of investigation by the police. It assures that investigation is proceeding in the right direction. It is a rule of prudence which is required to be followed in cases where the accused is not known to

the witness or the complainant (Matru v. State of U.P. [**Matru v. State of U.P.**, 1971 2 SCC 75, para 17: 1971 SCC (Cri) 391]; Mulla v. State of U.P. [**Mulla v. State of U.P.**, 2010 3 SCC 508, paras 41 & 43: (2010) 2 SCC (Cri) 1150] and C. Muniappan v. State of T.N. [**C. Muniappan v. State of T.N.**, 2010 9 SCC 567, para 42: (2010) 3 SCC (Cri) 1402])..

Dock identification, in a case where the accused is not previously known to the appellant, especially when it takes place when a long time has passed between the incident and the identification in Court, is a weak piece of evidence. Reference may be made to the decision of Supreme Court in Nazim v. State of Uttarakhand,2025 SCCOnLineSC 2117 wherein it was held that: -

41. Both PW-3 and PW-4 thus identified the Appellants for the first time in court. No TIP was conducted, even though PW-3 admitted he had never known the accused earlier. It is well settled that dock identification without a prior TIP has little evidentiary value where the witness had no prior familiarity with the accused. In P. Sasikumar v. State3 , this Court **acquitted** the accused on precisely this ground...

42. The Court further explained that TIP is only part of the investigative process and that the substantive evidence is dock identification; however, where the accused is a stranger to the witness and no TIP is held, courts must exercise extreme caution in accepting such identification. The following paragraph of P. Sasikumar (supra) is indicative of the same:

21. It is well settled that TIP is only a part of police investigation. The identification in TIP of an accused is not a substantive piece of evidence. The substantive piece of evidence, is only dock identification that is identification made by witness in court during trial.

23. [...] In cases where an accused is a stranger to a witness and there has been no TIP, the trial court should be very cautious while accepting dock identification by such a witness.

24. [...] We are of the opinion that not conducting a TIP in this case was a fatal flaw in the police investigation and in the absence of TIP the dock identification of the present appellant will always remain doubtful. Doubt always belongs to the accused.

[16] Once the appellant was already shown to the complainant in the police station, his dock identification in Court became meaningless. In Jafar v. State,2024 SCCOnLine 310 the complainant was already shown the accused in the police station. No TIP was conducted. Though he identified the accused in Court as well, not much value was assigned to it by the Supreme Court, which held as under: -

> 8. Anil Kumar (PW-8), who is the Investigating Officer (IO), has also admitted that PW-1 identified the accused persons by seeing them at the police station. He has further admitted that no identification parade was conducted. As such, it can be seen that the identification of the appellant herein by PW-1 is quite doubtful as no identification parade has been conducted. PW-1 clearly states that he has identified the accused persons since the police had shown him those two people.
>
> 9. In the absence of proper identification parade being conducted, the identification for the first time in the Court cannot be said to be free from doubt. ..

[17] The CCTV footage is also of no help to the prosecution as the same does not record the incident of robbery taking place. There are also certain improvements in the complainant s testimony over his initial complaint. He has stated for the first time that one boy asking him for a matchbox, him using his bag as a shield resulting in the first knife breaking, and the other person bringing a second knife from the Jhuggi from which he was stabbed, them taking away his headphone and power bank in addition to the cash and mobile phone.

[18] Considering the entire facts and circumstances, this Court finds that serious doubts have been raised about the appellant s identification due to the police showing him to the complainant in the police station without conducting a judicial TIP, rendering his identification in Court useless. The complainant also has shown a tendency to improvise, and the power bank has been mentioned as one of the robbed properties after the appellant was arrested. The case against the appellant has not been proven beyond reasonable doubt, and as such, the benefit must go to the appellant.

[19] Consequently, the appeal is allowed. The appellant is held to be **acquitted**. The impugned judgment and the order on sentence are accordingly set aside.

[20] The appellant be released forthwith, unless wanted in any other case.

[21] A copy of this judgment be communicated to the Trial Court as well as concerned Jail Superintendent

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2026(1)AIAJ47

GAUHATI HIGH COURT

[From KOHIMA BENCH]

(Hon'ble Judge: Yarenjungla Longkumer)

Cr Apl (Criminal Appeal) No 4 of 2020 **dated 25/11/2025**

Weshete Lohe S/o Veselie Lohe

Versus

State of Nagaland

POSSESSION OF GANJA

Code of Criminal Procedure, 1973 Sec. 161, Sec. 313 - Narcotic Drugs and Psychotropic Substances Act, 1985 Sec. 20, Sec. 52A, Sec. 54, Sec. 35 - Possession of Ganja - Appellant convicted under Sec.20(b)(ii)(C) NDPS Act for recovery of 50 Kgs Ganja from abandoned vehicle - Prosecution based solely on statements of police and Assam Rifles personnel - No independent witness examined - No proof that accused was present or had control over seized vehicle - Chain of custody and certification under Sec.52A NDPS Act not followed - FSL samples varied in weight and procedure defective - Confessional statement under Sec.161 CrPC inadmissible - Trial Court relied on uncorroborated evidence and presumptions without establishing conscious possession - Conviction set aside - Appellant acquitted - Appeal Allowed

Law Point: Conviction under NDPS Act cannot sustain unless prosecution proves conscious possession and compliance with Sec.52A regarding inventory and sampling-Mere ownership of vehicle or confession under Sec.161 CrPC cannot establish guilt beyond reasonable doubt

Acts Referred:

Code of Criminal Procedure, 1973 Sec. 161, Sec. 313

Narcotic Drugs and Psychotropic Substances Act, 1985 Sec. 20, Sec. 52A, Sec. 54, Sec. 35

Counsel:

Khriekethonuo, Neise Liegise, Khriekethonuo, K Angami

JUDGEMENT

Yarenjungla Longkumer, J.- [1] Heard learned counsel for the appellant Ms. Khriekethonuo. Also heard the learned Public Prosecutor for the State of Nagaland, Mr. K. Angami.

[2] The instant appeal is directed against the Judgment and Order dated 18.03.2020 passed by the learned Special Judge NDPS Phek, Nagaland in Sessions Special Case No. 08/19 in GR Case No. 29/19 arising out of Pfutsero P.S Case No. 08/19 whereby the appellant has been convicted under Section 20(b)(ii)(C) NDPS Act for a period of 10 years with fine of Rs. 1 Lakh and in default to undergo RI for one year.

[3] The prosecution case in brief is that on 25.06.2019, at around 0145 Hrs, a written FIR was received at the Pfutsero Police Station from Naik Subedar D.D. Joshi of 14th Assam Rifles stating that on 24.06.2019 at around 2100 Hrs while conducting surprise MVCP one suspected driver of Maruti Alto bearing Registration No. NL-01T-9577 fled from the scene to avert apprehension, leaving the vehicle behind. Upon search of the vehicle, 50 Kgs of suspected Marijuana (Ganja) in 5 sealed black poly bags were recovered. The vehicle and the seized contraband were produced at the

Pfutsero Police Station and re-seized by the police under proper seizure memos. On receipt of the FIR, the case was taken up for investigation.

[4] During the investigation the owner of the seized vehicle was summoned and upon examination it was revealed that his friend, Weshete Lohe/accused had borrowed his vehicle on the pretext of visiting an ailing relative at Pfutsero Town. The accused/appellant surrendered before the police and admitted his crime. The complainant and one witness were examined along with the accused person. The seized articles were brought before the S.D.O.(C) Pfutsero, sealed and packed and samples of the contraband articles were drawn and sent for forensic examination. The FSL Report confirmed that the samples tested positive for Cannabis/Ganja. Having found a prima facie case against the appellant under Section 20(b) (ii) (C) of the NDPS Act the I.O submitted the Chargesheet. Charge was framed against the appellant/accused under Section 20(b)(ii)(C) NDPS Act on 20.11.2019. Charge was read over and explained to the accused/appellant and he pleaded not guilty and claimed to be tried. The matter, accordingly, went up for trial.

[5] In order to bring home the charge against the accused/appellant the prosecution side examined 5 witnesses and exhibited 7 documents. The defence did not adduce any evidence.

[6] Upon examining the evidence available on record, the learned Trial Court was of the view that the presumption of culpable mental state can be made against the accused and that the prosecution has succeeded in establishing the case against the appellant/accused and proved the charges brought against the appellant under Section 20(b)(ii)(C) NDPS Act beyond reasonable doubt and, accordingly, convicted and sentenced the appellant by the impugned Judgment and order dated 18.03.2020.

[7] Assailing the impugned Judgment and Sentence dated 18.03.2020, the learned counsel for the appellant has submitted that there is no independent witness to the seizure. All the prosecution witnesses are Police personnel and Assam Rifles personnel except for the owner of the seized vehicle. Nothing was seized from the possession of the accused/appellant and the possession was not proved by cogent and reliable evidence. There was no evidence that the accused/appellant was travelling in the seized vehicle or that he was the one who was carrying the seized contraband items in the seized vehicle, except for the deposition of PW/4 who deposed that the accused borrowed his vehicle on 24.06.2019. Beside this statement PW/4 did not know anything.

[8] The learned counsel submits that as per Section 2.3 of the Standing Order, i.e., S.O. No. 1/89 dated 13.06.1989 as well as Notification No. G.S.R. 899(E) dated 23.12.2022, the specified quantity to be drawn in each sample for Opium, Ganja and Charas is 24 gms. Failure to adhere to these guidelines renders the forensic analysis unreliable. In the instant case, as per the Letter dated 26.06.2019, written by the Investigating Officer of the case to the Superintendent of Police, Phek forwarding the

samples to be tested the three samples were of 30 gms, 25 gms and 15 gms respectively. And again the FSL Report dated 29.07.2019 shows that the samples received weighed 27 gms, 26 gms and 18 gms respectively. Not only was the weight of samples contradictory to the standing instructions but there is also discrepancy in weight in the various communications regarding the samples. As such, the learned Trial Court could not have relied on the Forensic Report dated 25.02.2022.

[9] Learned counsel for the appellant further submits that the chain of custody in respect of the seized articles from the stage of seizure till the production before the Magistrate has not been proved and, further, there is no inventory list as mandated under Section 52A of the NDPS Act. It is mandatory on the part of the investigating authority to certify the correctness of the inventory by a Magistrate and to take photographs of such seized articles and to certify the photographs in the presence of such Magistrate and also to draw the representative samples of the seized articles in the presence of the Magistrate. The procedure under Section 52A of the NDPS Act has been given a total go by in the present case and on this ground alone the impugned Judgment and Order dated 18.03.2020 needs to be quashed and set aside.

[10] The learned counsel for the appellant further submits that the learned Trial Court has convicted the accused/appellant solely on the basis of the Sec 161 CRPC statement of the accused, the Section 313 CRPC statement of the accused and the deposition of PW-4/owner of the seized vehicle. No other evidence has been adduced to corroborate the same as the confessional statement under Section 161 CrPC is not admissible in evidence. Further, the PW-4 only stated that the accused/appellant had asked for his vehicle on 24.06.2019 to carry a sick person for treatment. He deposed that on the next day he came to know about the seizure of his vehicle by the Assam Rifles. Learned counsel for the appellant, therefore, submits that there is no witness who has seen the accused keeping the seized articles inside the vehicle or there is also no witness who saw the accused/appellant driving the vehicle or even being near the vehicle when it was seized. Learned counsel, therefore, submits that the prosecution has not been able to prove the guilt of the accused beyond reasonable doubt.

[11] In view of the submissions made hereinabove, the learned counsel for the appellant submits that the impugned Judgment and Sentence dated 18.03.2020 may be quashed and set aside and the accused/appellant may be acquitted and set at liberty.

[12] Learned Public Prosecutor, Mr. K. Angami submits that the prosecution has led sufficient evidence to establish the fact that the appellant had committed the offence under Section 20(b)(ii)(C) NDPS Act. He has submitted that the seizure of the contraband items has been proved by the PW-1 and 2 who are the Assam Rifles personnel who made the search and seizure from the seized vehicle. Learned Public Prosecutor also submits that the FSL Report dated 25.02.2022 has clearly proved that the seized items tested positive for cannabis/ganja. Learned Public prosecutor has, however, fairly submitted that there is no inventory list in the records. Learned Public

Prosecutor, therefore, submits that all the procedural requirements have been carried out by the Investigating Agency and, therefore, the impugned Judgment and Sentence dated 18.03.2020 does not warrant the interference of this Court.

[13] This Court has considered the arguments advanced by the learned counsel for both sides and have examined the evidence available on record. As noted above, there are 5 prosecution witnesses. The defence has not adduced any evidence.

[14] Pw-1 is Naik Subedar D.D. Joshi of the 14th Assam Rifles. He deposed that on 24.06.2018, at around 8:15 PM he along with 10 other jawans was on MVCP duty near Pfutsero. They were checking the vehicles and at that time one Maruti Alto vehicle was parked along with two vehicles in the front. However, the particular Alto vehicle was left abandoned and upon checking they found ganja packets inside the vehicle. They took the vehicle and the contraband ganja and submitted the same at the Pfutsero Police Station. PW-1 deposed that he is the complainant and he submitted the FIR. Upon lodging the FIR the contraband ganja was weighed and it was a total of 50 kgs, each packet weighing 10 kgs. On being cross-examined, PW-1 stated that he did not see anyone fleeing from the scene to evade apprehension by leaving the vehicle behind. He also stated that he cannot identify the accused.

[15] Pw-2 is O.D. Singh of the 14th Assam Rifles. His deposition was the same as that of PW-1 and in his cross-examination he also deposed that there was no person inside the Alto vehicle which was abandoned near the MVCP area. PW-2 also could not identify the accused person in the Court. PW-2 stated that there was no public witness during the seizure of the consignment.

[16] Pw-3 is a police personnel posted at the Pfutsero Police Station. He deposed that the seized article was produced in the Police Station when he was on duty. He stated that the contraband ganja was weighed in his presence and there were 5 packets of 10 kgs each. On being crossexamined, PW-3 stated that he was not at the place of occurrence when the incident took place.

[17] Pw-4/Meyielo Losou is the owner of the seized vehicle. He deposed that the accused person had asked for his vehicle to carry a sick person for treatment on 24.06.2019. He gave the vehicle to the accused/appellant in good faith but later on he got information that his vehicle was seized by the Assam Rifles. In his cross-examination the PW-4 stated that he saw the contraband ganja only at the Police Station when he went to find out about his vehicle. He also stated that he was informed about the seizure of the vehicle by the accused person and not by the police.

[18] Pw-5 is the Investigating Officer of the case. He deposed that on 24.06.2019, an Alto vehicle was seized by the Assam Rifles at Razeba Junction. The vehicle was left abandoned and the Assam Rifles on searching the vehicle found 50 kgs of ganja in 5 packets. The vehicle along with the seized ganja was produced at the Police Station the following day. They searched for the owner of the seized vehicle and one Meyielo

surrendered himself at the Police Station and stated that his friend, Weshete/accused took his vehicle on the pretext of carrying a sick person for treatment and that he did not know that his vehicle was used for illegal transaction. After some time the accused surrendered himself before the Police Station and stated that he had asked for his friend's vehicle and used it for carrying the contraband ganja but on seeing the Assam Rifles checking the vehicles at Razeba Junction he fled from the place leaving the vehicle behind. PW-5 also stated that the contraband ganja was in 5 packets of 10 kgs each and the ganja was produced before the Magistrate/S.D.O.(C) Pfutsero and it was packed and sealed in his presence. The Report of the FSL was received which stated that the samples tested positive for cannabis/ganja. Accordingly, he submitted the Charge-Sheet which he proved as Exhibit-P3. In his cross-examination, PW-5 admitted that there is no independent witness in the present case. He also stated that the seized ganja was sent to the FSL in 3 packets of 30 gms each.

[19] In the case of **Noor Aga Versus State of Punjab**, 2008 16 SCC 417, the Supreme Court has held that the initial burden to establish the foundational facts lies squarely on the prosecution. In **Mohan Lal vrs State of Punjab**, 2018 17 SCC 627, the Hon'ble Supreme Court held as follows: "Unlike the general principle of criminal jurisprudence that an accused is presumed innocent unless proved guilty, the NDPS Act carries a reverse burden of proof under Sections 35 and 54. But that cannot be understood to mean that the moment an allegation is made and the FIR recites compliance with statutory procedures leading to recovery, the burden of proof from the very inception of the prosecution shifts to the accused, without the prosecution having to establish or prove anything more. The presumption is rebuttable. Section 35(2) provides that a fact can be said to have been proved if it is established beyond reasonable doubt and not on preponderance of probability. The stringent provisions of the NDPS Act, such as Section 37, the minimum sentence of ten years, absence of any provision for remission, do not dispense with the requirement of the prosecution to establish a prima facie case beyond reasonable doubt after investigation, only after which the burden of proof shall shift to the accused. The case of the prosecution cannot be allowed to rest on a preponderance of probabilities."

The presumption under Section 35 of the NDPS Act is an evidentiary inference and cannot be invoked in a vacuum. The prosecution has to first establish the basic facts, i.e, possession/seizure, identification of the substance, proper seizure procedure, etc. Only after such burden is discharged the onus shifts to the accused.

[20] This Court, upon going through the evidence in the present case is of the view that the prosecution has not been able to prove the foundational fact regarding the seizure and possession in respect of the appellant/accused and further the conscious possession of the seized article has not been proved. For the conviction of a person under NDPS Act it must be shown that the possession was conscious and not accidental or without knowledge. The accused must know that he/she is in possession

of the contraband and have control over the same. In the present case, another important factor to be considered is that the Assam Rifles personnel from the rank of Sub-Inspector and above have been empowered under Section 42 and 67 of the NDPS Act only by a Notification No. S.O.5064 (E) dated 08.12.2021. Therefore, before 08.12.2021 the Assam Rifles personnel cannot be termed as empowered officers. The complainant/seizing officer D.D Joshi and PW-2/O.D. Singh were neither gazetted officers nor empowered officers. There were also no empowered police or Excise officers with them during the search. Because of this lack of statutory power the search and seizure by the Assam Rifles personnel has vitiated the seizure in this case. The hon'ble Supreme Court in **State of Punjab Versus Balbir Singh**, 1994 3 SCC 299 made the following observations, ."In Bhajan Singh Vrs State of Haryana, it was observed that only officers empowered under the Act can take steps regarding entry, search, seizure and arrest and that the relevant provisions of the Act are mandatory. In Umrao Vrs. State of Rajasthan, it was held that the search made by a police constable without jurisdiction and investigation made by an officer not empowered, vitiates the trial. In Shanti Lal vrs. State of Rajasthan, it was similarly held that search and seizure made by SHO who was not authorized under the Act were illegal ..Therefore, if an arrest or search contemplated under Section 41 and 42 is made under a warrant issued by any other magistrate or is made by any officer not empowered or authorized, it would per se be illegal and would affect the prosecution case and consequently vitiate the trial." Admittedly, there were no independent witnesses to the seizure and the seizure was made from an abandoned vehicle. Further, no evidence has been adduced by the prosecution to connect the seizure with the accused/appellant.

[21] The law is settled that only when the prosecution is able to prove the possession, the burden shifts to the accused to rebut the presumption of knowledge under Section 35 and 54 of the NDPS Act. It must be borne in mind that the more severe the punishment, the greater has to be the case taken to see that all the safeguards provided in a statute are scrupulously followed.

[22] Even assuming but not admitting that the foundational facts had been proved, there are glaring violations of statutory provisions of the NDPS Act in the prosecution case as far as the chain of custody in respect of the seized articles is concerned in as much as there is no inventory list nor any certification of photographs by the Magistrate nor production of any Malkhana register to show the safekeeping of the seized items. No evidence has been produced by the prosecution to prove the safe keeping of the contraband till they were placed before the Magistrate for being certified and sent to the FSL for being tested. If at all entries were made, the Malkhana register could have been very easily produced by the prosecution showing entry therein of the articles having been deposited there but this has not been done. The sample of the seal used for packing the samples has also neither been produced before Court nor was it sent to FSL for comparison. This creates a doubt as to whether the

said articles were actually kept in safe condition or whether such kind of recovery has been made from the seized vehicle at all.

[23] There is also irregularity in the weight of the samples sent to the FSL as it was not done in accordance with the Standing Orders dated 13.06.1989 or 23.12.2022. As submitted by the learned counsel for the appellant the accused's statement under Section 161 CrPC is not admissible in evidence and the Section 313 CrPC statement can be used only for corroboration but it is not substantive evidence as it is not a statement under oath and without cogent and reliable evidence being adduced conviction cannot be made solely on the basis of such statements. More so in the present case where there is no evidence at all adduced by the prosecution to connect the accused/appellant with the seizure or the possession of the seized articles.

[24] As the foundational facts have not been established by the prosecution in the present case, this Court does not find it necessary to go into the other grounds put forward by the appellant. Since the foundational facts of (i) proper and lawful search and seizure and (ii) recovery of contraband from the conscious possession of the accused are not proved, the accused cannot be called upon to rebut any presumption and acquittal must follow. On this ground alone, the Judgment and Sentence dated 18.03.2020 is liable to be interfered with.

[25] In the result, the appeal is allowed. The impugned Judgment and Sentence dated 18.03.2020 in Sessions Special Case No. 08/19 in GR Case No. 29/19 arising out of Pfutsero P.S Case No. 08/19 is quashed and set aside. As the accused/appellant is stated to be on bail no order is passed for his release.

[26] Appeal stands disposed. The Registry is directed to send back the Trial Court Records

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2026(1)AIAJ54

IN THE HIGH COURT OF KERALA AT ERNAKULAM

(Hon'ble Judge: Johnson John)

Crl A (Criminal Appeal) No 307 of 2008 **dated 24/11/2025**

Biju S/o Ramankutty; Jomon Thomas S/o Thomas

Versus

State

GANJA CULTIVATION

Narcotic Drugs and Psychotropic Substances Act, 1985 Sec. 44, Sec. 41, Sec. 53, Sec. 43, Sec. 20, Sec. 42, Sec. 57 - Ganja Cultivation - Appeal filed against conviction under Section 20(a)(i) of NDPS Act for cultivating ganja - Excise officers detected cultivation and arrested accused from forest area - Defence contended absence of

authorization under Section 53 empowering investigating officer and non compliance of Sections 42 and 57 - Court noted delay in production of sample and lack of proof of safe custody - Observed that investigating officer had no notified power as officer in charge for investigation - Evidence of seizure and sampling doubtful and not corroborated by independent witnesses - Found material contradictions in prosecution version and failure to establish chain of custody - Held conviction unsustainable as prosecution failed to prove case beyond reasonable doubt - Appellants acquitted accordingly - Appeal Allowed

Law Point: In NDPS cases, absence of valid authorization under Section 53 and failure to establish compliance with procedural safeguards render conviction unsustainable when prosecution unable to prove recovery and custody of contraband beyond reasonable doubt

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 Sec. 44, Sec. 41, Sec. 53, Sec. 43, Sec. 20, Sec. 42, Sec. 57

Counsel:

B Raman Pillai (Senior Advocate), Anil K Muhamed, R Anil, Delvin Jacob Mathews, Sujesh Menon V B, Alex M Thombra

JUDGEMENT

Johnson John, J.- [1] The appellants are accused Nos. 1 and 2 in S.C. (NDPS) No. 4 of 2007 on the file of the Special Judge for NDPS Act Cases, Thodupuzha and they are challenging the conviction and sentence imposed on them for the offence under Section 20(a)(i) of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act" for short).

[2] The prosecution case is that on 23.02.1998, while the Excise Circle Inspector of Narcotic Enforcement Squad, Adimaly was checking the vehicles at Top Station Kovilloor road, he got information about ganja cultivation in the Government forest area near Vadavari and accordingly, after recording the information and forwarding the same to the higher officials, he proceeded to the forest area along with the excise party by walking and when they reached the place of occurrence, they saw two persons engaged in nursing the ganja cultivation. They saw a shed covered by plastic sheet at a distance of 100 metres from the ganja cultivation.

[3] The Circle Inspector arrested the accused persons and out of the ganja plants numbering 2280, three plants were taken as sample and the remaining ganja plants were destroyed. Thereafter, the shed was searched in the presence of the accused persons and implements for cultivation, utensils for manufacturing food etc. were recovered. It is stated that they also recovered a country-made gun and 4 bullets from the shed. The Excise Circle Inspector of the Narcotic Enforcement Squad, Adimaly

conducted the investigation and filed final report against the accused persons for the offence under Section 20(a)(i) of the NDPS Act.

[4] When the accused persons appeared before the trial court, after hearing both sides, charge was framed under Section 20(a)(i) of the NDPS Act and when the accused persons pleaded not guilty, PWs 1 to 7 were examined and Exhibits P1 to P13 and MOs 1 to 4 series were marked from the side of the prosecution. From the side of the accused, Exhibits D1 and D2 were marked.

[5] After hearing both sides and considering the oral and documentary evidence on record, the learned Special Judge, as per the impugned judgment dated 07.02.2008, convicted and sentenced the accused persons to undergo rigorous imprisonment for four years and to pay a fine of Rs.50,000/- each and in default of payment of fine, to undergo simple imprisonment for six months each for the offence under Section 20(a)(i) of the NDPS Act.

[6] Heard Sri. George Vinci Jose, the learned counsel representing the learned counsel for the appellant on record and Sri. Alex M. Thombra, the learned Senior Public Prosecutor for the State and perused the records.

[7] The point that arise for consideration is whether the conviction and sentence passed against the accused are legally sustainable.

[8] The main contentions raised on behalf of the appellants are the following:

I. The prosecution has not produced any notification under Section 53 of the NDPS Act empowering the Circle Inspector of the Narcotic Special Squad, Adimaly with the powers of an officer in charge of a Police Station for the investigation of the offences under the Act.

II. The prosecution has not explained the delay in producing the sample before the court.

III. The prosecution has not explained the inordinate delay in producing the sample in the Chemical Examiner's Laboratory.

IV. There is non compliance of Sections 42 and 57 of the NDPS Act and the same caused prejudice to the accused and resulted in failure of justice.

V. No satisfactory evidence is adduced to prove the manner of sampling as well as its safe custody in tamper free condition.

VI. There is no satisfactory explanation as to why the Excise Circle Inspector has not reported the seizure of the country-made gun and cartridges to the police for registering a crime under the relevant provisions of the Indian Arms Act.

[9] Pw1 was the Circle Inspector of Narcotic Special Squad, Adimaly who detected this case and conducted investigation. The evidence of PW1 and Exhibit P3 mahazar dated 23.02.1998 shows that on getting information about the cultivation of ganja plants in the forest area, in order to avoid leak of information regarding the raid, he proceeded to the place of occurrence along with excise party without informing the forest officials.

[10] The evidence of PW1 shows that at the time of search, he was not accompanied by any independent witness from the locality. According to PW1, he forwarded a report under Section 42(2) of the NDPS Act to the Assistant Excise Commissioner; but, it is not seen produced before the court. PW1 deposed that out of the total 2280 ganja plants, he took three plants as sample and after packing and affixing seal, he also affixed a label marked 'A' in the sample with his signature and the signature of the accused persons.

[11] In cross examination, PW1 stated that the accused were spreading fertilizer in the ganja plantation. PW1 would say that they were in uniform; but, there was no attempt on the part of the accused to run away on seeing the excise party. PW1 admitted that on the same day, he detected another case of ganja plantation; but, he cannot remember the number of the said case or whether the accused were acquitted in that case.

[12] Pw2 is the Excise Preventive Officer who accompanied PW1 and he also admitted that they have not informed the forest officials about the raid and they have not reported the seizure of the countrymade gun and cartridges to the police.

[13] Pw3 is the Assistant Excise Commissioner who obtained plan and certificate from the Village Officer. The evidence of PW6, Village Officer, and Exhibit P12, possession certificate, and Exhibit P13, site plan, would show that the place of occurrence is a Government waste land comprised in survey No. 183 of Block No. 62 in Vattavada Village in the possession of the Forest Department. From Exhibit P12, certificate, and Exhibit P13, site plan, it is clear that the place of occurrence is not forest as deposed by PWs 1 and 2.

[14] Pw5 was the Assistant Excise Commissioner of Thodupuzha on 23.2.1998 and he deposed that Exhibits P10 and P11 are the copies of the information and grounds of information received from PW1 and that Exhibit P7 is the report received by him regarding the registration of the crime. In cross examination, PW5 admitted that he has not produced the original of Exhibits P10 and P11 in the court and there is also no endorsement in Exhibits P10 and P11 to indicate that he received the original of the same. In cross examination, PW5 categorically admitted that at the time of receiving the original, he used to endorse in the copy regarding the receipt of the original and there is no such endorsement in Exhibits P10 and P11.

[15] Pw7 deposed that he was working as Circle Inspector in the Narcotic Enforcement Squad, Adimaly from August, 2001 to July, 2002 and during that period, he recorded the statement of the Detecting Officer and the Range Officer. But, he would say that further investigation was conducted by his successor in office. In cross examination, when a specific question was put to PW7, as to whether any offence under the Arms Act was detected in this case, the witness stated that he has not conducted any investigation regarding the same.

[16] In **Varinder Kumar v. State of H.P.**, 2020 3 SCC 321, a threeJudge Bench of the Honourable Supreme Court held that all pending criminal prosecution, trials and appeals prior to the law laid down in **Mohan Lal v. State of Punjab**, 2018 17 SCC 627 shall continue to be governed by the individual facts of the case. It is not in dispute that in this case, the alleged occurrence was on 23.02.1998 and therefore, the law laid down in **Mohan Lal**'s case (supra) is not applicable.

[17] The decision of the Honourable Supreme Court in **Mukesh Singh v. State (NCT of Delhi)**, 2020 10 SCC 120 shows that in a case where the informant himself is the investigator, by that itself, it cannot be said that the investigation is vitiated on the ground of bias or prejudice and that the question of bias or prejudice would depend upon the facts and circumstances of each case. In **Mukesh Singh** (supra), it was further held that the contrary view in **Mohan Lal** (supra) that the informant cannot be the investigator and in such a case, the accused is entitled to acquittal is not good law and the same is over ruled.

[18] The learned counsel for the appellant pointed out that the prosecution has not produced any notification under Section 53 of the NDPS Act empowering PW1 or any other Inspector of the Narcotic Enforcement Squad, Adimaly investing with powers of an officer-incharge of a Police Station. Section 53 of the NDPS Act reads thus:

> **"53. Power to invest officers of certain departments with powers of an officer-in-charge of a police station.** (1) The Central Government, after consultation with the State Government, may, by notification published in the Official Gazette, invest any officer of the department of central excise, narcotics, customs, revenue intelligence [or any other department of the Central Government including para-military forces or armed forces] or any class of such officers with the powers of an officer-in-charge of a police station for the investigation of the offences under this Act.
>
> (2) The State Government may, by notification published in the Official Gazette, invest any officer of the department of drugs control, revenue or excise [or any other department] or any class of such officers with the powers of an officer-in-charge of a police station for the investigation of offences under this Act."

[19] In this case, PW1, Circle Inspector of Narcotic Enforcement Squad, Adimaly, has not handed over the accused and properties to the Excise Range Office, Adimaly and the evidence of PW1 shows that he registered the crime and conducted the investigation. It is true that Section 53 of the NDPS Act does not say that all those officers to be authorized to exercise the powers of an officer in charge of Police Station for the investigation of the offences under the NDPS Act, shall be other than those officers authorised under Sections 41 to 44 of the NDPS Act. But, in the absence of a notification under Section 53 of the NDPS Act, it cannot be held that PW1 was having the powers of an officer-in-charge of a Police Station for the investigation of the offences under the NDPS Act as on 23.02.1998, the alleged date of occurrence in this case.

[20] The decision of the Honourable Supreme Court in **Mukesh Singh** (supra) would show that in a case where the informant himself is the investigator, by that itself it cannot be said that the investigation is vitiated on the ground of bias or prejudice and that the matter has to be decided on a case-to-case basis.

[21] Exhibit D1, certified copy of the judgment in CC No. 6 of 2003 of the Special Judge for NDPS Act cases, Thodupuzha and Exhibit D2, copy of the deposition of PW1 in that case, would show that the allegation in the said case is that on 23.02.1998, the Excise Circle Inspector attached to Narcotic Enforcement Squad, Adimaly detected ganja cultivation in the forest area near Top Station, Kovilloor road and arrested two accused persons from the spot. The learned counsel for the appellant pointed out that Exhibit D1 judgment would show that the allegations in the said case are similar to the allegations in this case and the very same Circle Inspector of Narcotic Enforcement Squad, Adimaly detected both these cases on the same day and the allegations against the accused in both the cases are almost similar.

[22] Exhibit P3 mahazar, Exhibit P5 property list and Exhibit P4 search list in this case reached the court only on 26.02.1998 and there is no explanation from the side of the prosecution regarding the delay in producing the said documents and properties before the court.

[23] Exhibit P9, certificate of chemical analysis dated 27.11.1998, shows that the sample forwarded from the Sessions Judge, Thodupuzha, as per letter dated 26.02.1998 through the excise guard, Baby Thomas, was produced in the Chemical Examiner's Laboratory only on 19.03.1998. In this case, the prosecution has not examined the property clerk of the court or the excise guard with whom the sample was entrusted for producing in the laboratory to explain the reason for the delay in producing the sample in the Chemical Examiner's Laboratory. In this connection the learned counsel for the appellant also pointed out that the evidence of PW1 and Exhibit P3, mahazar, would show that PW1 affixed a label marked 'A' in the sample with his signature and the signature of the accused persons and there is nothing in

Exhibit P9, chemical analysis report, to show that the sample packet contained any label marked 'A' with the signature of the Detecting Officer and the accused persons.

[24] The evidence of PW5 in cross examination would clearly show that he is not sure, whether he received the original of Exhibits P10 and P11 and there is also no satisfactory explanation as to why the seizure of the country-made gun and cartridges were not reported to the police for registering the crime under the relevant provisions of the Indian Arms Act and therefore, I find merit in the argument of the learned counsel for the appellants that there are significant procedural violations.

[25] In the absence of satisfactory evidence to show as to how and in what condition the articles were preserved by PW1 before the same was produced in the court along with Exhibit P5, property list, on 26.02.1998 and as to how safely the sample was taken by the excise guard, Baby Thomas, from the court to the Chemical Examiner's Laboratory, I find merit in the argument of the learned counsel for the appellant that there is a strong circumstance to doubt the genuineness of the sample and the credibility of the prosecution case.

[26] The decision of the Honourable Supreme Court in **State of U.P. v. Hansraj**, 2018 18 SCC 355 and the decisions of this Court in **Faijas v. State of Kerala**, 2020 CrLJ 4758 and **Renjith v. State of Kerala**, 2024 KER 760322024 KHCOnLine 7030 =] would show that unexplained delay in producing the contraband before the court and the sample before the Chemical Examiner's Laboratory are strong circumstances affecting the credibility of the prosecution case. It is also pertinent to note that PW1 has not affixed the specimen impression of the seal on Exhibit P3 seizure mahazar and therefore, considering the entire facts and circumstances of the case, this court finds that the accused are entitled for the benefit of reasonable doubt and the impugned judgment is liable to be set aside.

In the result, the appeal is allowed and the impugned judgment is set aside and the accused/appellants are acquitted of the offence under 20(a)(i) of the NDPS Act. The bail bond executed by the appellants/accused shall stand cancelled and they are set at liberty forthwith

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2026(1)AIAJ60

THE HIGH COURT OF JUDICATURE AT MADRAS

(Hon'ble Judge: N Sathish Kumar; M Jothiraman)

Crl A (Criminal Appeal); Crl M P (Criminal Miscellaneous Petition) No 235 of 2025; 3800 of 2025 **dated 21/11/2025**

Rajman @ Ramesh

Versus

Samuluram; State

CIRCUMSTANTIAL EVIDENCE FAILURE

Code of Criminal Procedure, 1973 - Sec. 209 - Sec. 207 - Circumstantial Evidence Failure - Appellants convicted under Sections 302 and 201 IPC for murder of migrant labourer based on circumstantial evidence - Defence claimed false implication and lack of motive - Court found prosecution failed to establish motive or last seen circumstance conclusively - No direct evidence linking accused to death - Recovery of articles not sufficient to establish guilt - Held that every link in chain of circumstances missing - Conviction based on suspicion cannot stand - Benefit of doubt extended - Conviction and sentence set aside - Appellants acquitted - Appeals Allowed

Law Point: In cases based on circumstantial evidence, each link must be firmly established forming complete chain-failure to prove motive or last seen circumstance entitles accused to benefit of doubt and acquittal.

Acts Referred:

Code of Criminal Procedure, 1973 Sec. 209, Sec. 207

Counsel:

A Damodaran, M Arifa Thasneem

JUDGEMENT

N Sathish Kumar, J.- [1] Aggrieved over the judgment of conviction and sentence passed by I Additional District and Sessions Judge, Namakkal dated 08.09.2023 in S.C.No.66 of 2021, the appellants / accused have filed the present criminal appeal.

[2] The Appellants herein, who are Accused in S.C.No.66 of 2021 on the file of learned I Additional District and Sessions Judge, Namakkal, were convicted and sentenced as follows

Sl.No.	Accused	Conviction	Sentence
1.	1st Accused	Section 302 of IPC	To undergo Life Imprisonment and to pay a fine of Rs.1,000/-, in default to pay fine to undergo Simple Imprisonment for a period of 6 Months.
		Section 201 IPC	To under go 3 years Rigorous Imprisonment and to pay a fine of Rs.500/-, in default to pay fine to undergo Simple

			Imprisonment for a period of 3 Months.
2	2nd Accused	Section 302 r/w.114 and 34 of IPC	To undergo Life Imprisonment and to pay a fine of Rs.1,000/-, in default to pay fine to undergo Simple Imprisonment for a period of 6 Months.
		Section 201 IPC	To under go 3 years Rigorous Imprisonment and to pay a fine of Rs.500/ ,in default to pay fine to undergo Simple Imprisonment for a period of 3 Months.
These sentences were ordered to run concurrently			

The period of remand already undergone by the accused was directed to be set off. Aggrieved by the order of the learned I Additional District and Sessions Judge, Namakkal, the Appellants have preferred the present Criminal Appeal before this Court

[3] Brief Facts of the Prosecution case are as follows:

(i) The deceased is a migrant labourer from Assam and the Accused 1 and 2, who are relatives, were brought by the deceased and both Accused 1 and 2 joined the work with PW1 in his poultry farm from 19.05.2021. Later, they have given shelter by PW1. According to the prosecution case, there was a dispute between the deceased and Accused 1 and 2 with regard to bringing migrant labourers and getting commission by employing them. While so, on 07.06.2021, when PWs 1 to 3 were working in the field, they found decomposed body wrapped in plastic mats. Immediately, PW1 gave a complaint (Ex.P1) and the police came to the spot and recovered plastic mats (MO1), spade (MO2) and also the note books found in the place of occurrence (MO3 series). PWs 5 to 8 are all migrant labourers working along with A1 and A2. On 03.06.2021, PWs 5 to 8, accused and deceased had a dinner at 06.00pm and thereafter Pws 5 to 8 left the place. PW16, sold his bike to the deceased and also handed over the RC Book. PW18 has seen the second accused two days prior to the occurrence going in a hurried manner.

(ii) PW27-Investigating Officer, after receipt of FIR (Ex.P20), received the body and went to the place of occurrence and prepared rough sketch (Ex.P23) and Observation Mahazar (Ex.P24) in the presence of witnesses and seized MO 4 (blood stained earth) and MO5 (ordinary earth) from the place of occurrence and sent the dead body to the Hospital for postmortem and also seized blood stained dresses (MOs 9 to 12) under Ex.P3 and P4 in the presence of PW4. On 08.06.2021, the Investigating Officer arrested the first accused and recorded his confession, which was translated by PW9. Based on the admitted portion of the confession, Vivo Cellphone (MO14) and blue colour T-shirt (MO 15) were seized under Ex.P5 mahazar and Spade (MO2) under Ex.P7 mahazar. Thereafter, altered the crime under alteration report (Ex.P25) sent the accused and material objects to the Court and PW25 prepared Exs. P26 and P27 on 08.06.2021 and again recorded the statement of the witnesses on 13.06.2021.

(iii) The second accused was arrested from Chattisgarh and his confession was recorded. Based on confession of the second accused, PW25 seized cellphone (MO21), Voter ID of the deceased (MO17), Pan Card of the deceased (MO16), ID Card of the deceased (MO18), Shirt (MO19) and blood stained shirt (MO20) under Ex.P8 mahazar and forwarded the material objects to the Court and remanded the accused to the judicial custody. PW20 conducted autopsy on the dead body. According to PW20, the body was in a fully decomposed state and could not be identified. PW20 found the following injuries:

'Comminuted fracture of left franto temporo parieto occipital bones, entire base of skull with chips of bone seen covering the region with adjoining sub Scalpal contusion, brain matter not present, clumps of maggot seen covering the region"

(iv) PW20 opined that the death occurred 6 to 7 days prior to the autopsy and the deceased appeared to have died due to crush injuries on the head.

[4]

[5]

[6] On appearance of the accused, the provisions of Section 207 Cr.P.C. was complied with and the case was committed to the learned Principal District and Sessions Court, Namakkal as contemplated under Section 209 of Cr.PC in S.C.No.66 of 2021 and was made over to the learned I Additional District Judge, Namakkal.

[7] In order to bring on the guilt of the accused, the prosecution has examined as many as 27 witnesses and exhibited 31 documents and 22 material objects.

[8] The trial Court, after appreciation of evidence, found the accused guilty and imposed the punishment as indicted supra. Challenging the same, the present appeal has been filed.

[9] The main contention of the learned counsel for the appellants is that the entire case rests on circumstantial evidence and absolutely there is no evidence to connect the circumstances. The accused, who are migrant workers, have been falsely implicated in this case. It is his further contention that absolutely there is no evidence to establish the so called motive and the trial Court has wrongly convicted the accused for grave crime.

[10] The learned Additional Public Prosecutor would submit that PWs 5 to 8, who are also known to the accused, have seen Accused 1 and 2 and the deceased together on 03.06.2021 and thereafter, they have not seen. This evidence coupled with the opinion of the Medical Officer clearly show that death would have occurred on 03.06.2021. The learned Prosecutor further submitted that second accused has also absconded and therefore, his contact go against him. Further, the recovery made by the investigating officer clearly prove the complicity of the accused and hence, it is his contention that the prosecution has proved the guilt of the accused beyond reasonable doubt .

[11] The entire case of the prosecution is based on circumstantial evidence and the prosecution has relied on the following circumstances to prove their case, namely, motive, last seen theory and alleged recovery of the material objects from the accused.

[12] As far as the motive is concerned, the prosecution has projected the motive, as if the deceased alone was bringing the migrant labours from their State and was getting commission for getting them job and the accused were also wanted to do the same, which is not liked by the deceased and therefore, there was a grudge and hence, there was a motive.

[13] On a perusal of the entire evidence, we do not find any material to show that the accused also brought migrant labours from their State and got commission to substantiate the very charge of the prosecution that there was a motive. Therefore, the prosecution has not proved the motive by clinching evidence.

[14] As far as the circumstantial evidence is concerned, every circumstances has to be established and there should be only one hypothesis that only the accused committed the offence and there should not be any other circumstances to doubt the case of the prosecution. The Hon'ble Supreme Court in **Trimukh Maroti Kirkan Vs. State of Maharashtra**, 2006 10 SCC 681 has enunciated the principle of circumstantial evidence as under:

> '12. ... The normal principle in a case based oncircumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn

must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with his innocence."

[15] As far as the last seen theory is concerned, the prosecution has relied upon evidence of PWs 5 to 8. PWs 5 to 8 are also migrant labourers. According to them, they had a dinner along with deceased and accused on 03.06.2021 at 06.00pm and thereafter, they went to their place and only Accused 1 and 2 and deceased were in the place where Accused 1 and 2 used to stay. Except that, it is not their evidence that they have seen the deceased or the accused alive thereafter. The evidence of the Medical Officer clearly shows that the body was in a decomposed state beyond recognition and though the death was due to crush injuries, the Medical Officer opined that the deceased would have died 6 to 7 days prior to autopsy. Postmortem was conducted on 10.06.2021. Though the exact date and time of death cannot be given or ascertained, the opinion of the Medical Officer clearly indicates that death would have occurred even on the subsequent date also. Though PWs 5 to 8 have seen the accused and deceased alive on 03.06.2021, that one circumstance alone is not sufficient to come to a conclusion that the last seen theory has been established. To rely on the last seen theory, the time gap between the accused and the deceased being seen alive and the discovery of the dead body must be very small, enough to make it impossible for another person to have been involved. This proximity of time is crucial because a smaller gap strengthens the link between the accused and the crime, making it more likely that the accused was the last person with the deceased before the death occurred. Therefore, merely because the deceased was seen on 03.06. 2021 along with Accused 1 and 2, it cannot be said that only the accused would have committed such offence. Dead body was found in a decomposed state by PWs 1 to 3 on 07.06.2021 in the open field and absolutely, there is no evidence to show that anyone else has seen the accused and the deceased alive prior to that. Therefore, merely on the evidence of PWs 5 to 8, we are not in a position to conclude that it is only these accused have committed the offence since the time gap between the point of time when they were seen together and the dead body was found

[16] The other circumstances relied upon by the prosecution is that on the basis of the admitted portion of confession, MO2 (spade) was recovered by PW25 in the presence of PW4. It is the admitted case of the prosecution that the witnesses and the accused are not conversant in Tamil. The Investigating Officer sought the help of PW9 to translate the so called confession. Even assuming that the investigating officer followed the proper procedure, the fact remains that the alleged recovery spoken to by

the Investigating Officer is highly doubtful for the reason that the Investigating officer has stated that only pursuant to the confession of the first accused, MO2 spade was recovered but on a perusal of evidence of PW1 indicates that MO2 was very much available in the place of occurrence where the dead body was found and the same was taken by the police on the same day when they visited the spot. It is the further evidence of PW1 that other dresses lying in the place of occurrence have also been seized by the police on 07.06.2021. Therefore, there is a contradiction regarding alleged recovery. It is further to be noted that Ex.P5-seizer mahazar does not disclose MO2 said to have been seized by the Investigating Officer. These facts creates serious doubt about the very seizure.

[17] Further, the very charge against the accused is that accused used crow bar to cause head injury whereas it is the evidence of investigating officer that only spade (MO2) was used. These facts create serious doubt in the prosecution theory. That apart, the investigating officer has stated that since spade was washed out by the accused, no blood stain was found but that evidence is also contrary to the forensic report (Ex.P31) wherein it is stated that blood was detected in the spade, which was sent for examination.

[18] Of course the grouping has not been established. The fact remains that the blood was very much on the metal spade but the evidence of Investigating Officer shows that as if there was no blood stain. This aspect also creates serious doubt. Further, the very mahazar (Ex.P5) do not show seizure of MO2 whereas the evidence of PW1 show that the spade was very much there in the field and the same was seized by the police on the same day. Though it is also submitted that the second accused was absconding and left to his native, the evidence of PW15, if carefully seen, the same will show that he had left the place two days prior to the occurrence. Though PWs 5 to 8 would state that the second accused was also present during dinner on 03.06.2021, PW18 in his evidence has stated that he saw the second accused going in a hurried manner two days prior to the occurrence. This creates doubt about the prosecution projecting the case as if the accused has left the place after the occurrence. Therefore, merely because the accused was arrested in Chattisgarh, it cannot be said that he left the place and his conduct goes against him. A person visiting his own place, cannot be used against him particularly in the absence of other materials or evidence established in the prosecution theory and though the investigating officer has spoken about seizure of Pan Card and phones of the deceased under Ex.P8, a careful perusal of the evidence of investigating officer and Ex.P5, the cellphone of deceased said to have been seized from A1 on 08.06.2021. Therefore, again seizing the phone of the deceased from A2 is also highly doubtful and further, the so called seizure is also effected from the open place of the land belonging to PW1. Therefore, the recovery is also highly doubtful. The prosecution has not clinchingly established the circumstances. The trial Court has not appreciated the evidence properly and imposed the conviction mechanically.

Accordingly, this Criminal Appeal stands allowed and the judgment of the I Additional District and Sessions Judge, Namakkal dated 08.09.2023 in S.C.No.66 of 2021, is set aside, and the accused are acquitted of all the charges framed against them. Fine amount, if any, paid by the appellants/accused 1 & 2 shall be refunded to them. Bail bond executed by the appellants shall stand discharged. Consequently, the connected miscellaneous petition is closed

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2026(1)AIAJ67

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

(Hon'ble Judge: Ilesh J Vora; R T Vachhani)

Criminal Appeal No 1073 of 2002 **dated 20/11/2025**

State of Gujarat

Versus

Ismile Jusabbhai Chavda

RAPE ALLEGATION

Indian Penal Code, 1860 Sec. 324, Sec. 376 - Code of Criminal Procedure, 1973 Sec. 378, Sec. 313 - Bombay Police Act, 1951 Sec. 135 - Rape Allegation - Appeal by State against acquittal of accused charged with offences of rape and causing injury - Victim alleged assault by tanker driver while travelling with daughter - FIR contained no description or name of accused - Material contradictions between FIR, testimony and medical evidence - Previous rape complaints by victim against others reduced credibility - Identification procedure doubtful as police showed accused before parade - Medical evidence did not support recent sexual assault - Trial court rightly disbelieved testimony - Acquittal confirmed - Appeal Dismissed

Law Point: Conviction for rape cannot rest on unreliable and contradictory testimony of prosecutrix unsupported by medical or independent evidence and where identification procedure stands vitiated due to prior exposure of accused

Acts Referred:

Indian Penal Code, 1860 Sec. 324, Sec. 376

Code of Criminal Procedure, 1973 Sec. 378, Sec. 313

Bombay Police Act, 1951 Sec. 135

Counsel:

J K Shah, Pratik B Barot

JUDGEMENT

R. T. Vachhani, J.- [1] Feeling aggrieved and dissatisfied with the judgment and order of acquittal dated 20/07/2002 passed by the learned Joint District Judge &

Additional Sessions Judge, Fast Track Court, Jamnagar in Sessions Case No. 173 of 2001 for the offences punishable under Sections 376 and 324 of Indian Penal Code under Section 135 of the Bombay Police Act, the appellant State has preferred the present appeal under Section 378 of the Code of Criminal Procedure, 1973 ("the Code" for short).

[2] The brief facts leading to the filing of the present appeal are as under:

2.1. The prosecution case in brief is that about one month prior to 15/9/2001, the victim of this incident had been to Bet-Dwarka, where she met a Saint. The said saint had promised her to arrange for her accommodation in Bet-Dwarka. That on 14/9/2001 at night at about 1-15 a.m., she was waiting at Mithapur for going to Bet-Dwarka. At that time a water tanker came and she sat in the water tanker along with her daughter for going to Bet-Dwarka. The accused was the driver and they were alone in the truck. The victim was to get down at the Railway Station. However, the truck was taken to a lonely place near seashore. The accused thrown away the victim and dragged her to the back side of the tanker. Thereafter, he committed rape on her against her will. That he also inflicted knife blows on the wrist and palm of the victim. Thereafter, the accused went away with his tanker.

2.2. On these facts, the complaint was filed with Okha Police Station. The Police after investigation charge-sheeted the accused for the aforesaid offences. After investigation, chargesheet was filed before the learned JMFC, Court. However, as the said Court lacks jurisdiction to try offence under Section 376 IPC, the case was committed to the Court of Sessions and it was registered as Sessions Case No. 173 of 2001 for trial. On conclusion of evidence on the part of the prosecution, the trial Court put various incriminating circumstances appearing in the evidence to the respondent-accused so as to obtain explanation/answer as provided under Section 313 of the Code. In the further statement, the respondent-accused denied all incriminating circumstances appearing against him as false and further stated that he is innocent and a false case has been filed against him. After examining the evidence, witness testimonies and submissions from both sides, the learned Court below recorded the finding in favour of the respondent-accused acquitting him of the charges levelled against them.

[3] We have heard learned APP for the appellant State and minutely examined oral and documentary evidence adduced and produced before the learned Sessions Court concerned.

[4] Mr. J K Shah, learned APP appearing for the appellant State submits that the impugned order of acquittal is required to be interfered with as the evidence produced on record proves the involvement of the accused in the commission of crime in question. He has further submitted that evidence of the victim and her girl clearly indicates the involvement of the accused in commission of the crime and therefore this

Court may not interfere with the said finding. It is further submitted that the complainant, who was raped by the accused had narrated the entire incident as stated in the FIR in her deposition before the Court and no such contradiction or omission has come on record to discard her evidence. However, the learned Sessions Judge has committed serious error in acquitting the accused.

4.2 Learned APP has further submitted that insofar the offence under Sections 376 of the IPC are concerned, the evidence of the victim girl is sufficient to surface the involvement of the accused and here in the present case the victim has supported the case of prosecution and the said evidence also gets corroboration with the medical evidence and thus the said offence also proved. However, the learned Sessions Court has not considered the said evidence and therefore it is submitted to quash the finding of the trial Court in this regard and to convict the accused for the said offence.

4.3 Learned APP has further referred to the evidence of the other material witnesses and submitted that from the evidence of the said witnesses, the involvement of the accused in commission of the crime is proved and therefore, this Court may interfere with the said finding and record the conviction. He would therefore submit to allow this appeal.

[5] On the other hand, learned Advocate Mr.Barot appearing for the respondent accused has submitted that prosecution has failed to prove the charges levelled against the respondent accused as the evidence of the complainant is doubtful and no plausible reasons are shown by the prosecution as to why their evidence ought to have been believed since they are the interested witnesses and thus their evidence are not reliable and believable. He has further submitted that there are omissions and contradictions in the evidence of the prosecution witnesses and the same cannot be ignored.

5.1 It is submitted that no such independent witness has been examined by the prosecution to believe that the accused committed the rape on the victim and merely because the victim had stated and lodged the complaint and that too after a period of one month, the evidence produced by the prosecution is not sufficient to prove the charges levelled against the accused. He would therefore submit to dismiss the present appeal while confirming the judgment and order of acquittal passed by the learned Sessions Court.

[6] Heard the learned APP for the appellant State and learned Advocate appearing for the respondents accused and perused the deposition of witnesses, as also documentary evidence placed on record as well as the order passed by the learned Sessions Court.

[7] At the outset, evidence of PW 9 victim lady, complainant examined at Exh.59 is required to be seen. The said witness has deposed in her testimony about the occurrence of the incident. This Witness has deposed in her testimony that while she alongwith her daughter intended to go Bet-Dwarka and they were standing on the road,

at that time, accused came in one truck which was stopped by them by raising the hand and accused told them that he will leave them at Bet-Dwarka. This Witness has further deposed that thereafter they sat in the cabin of the truck and accused took the truck to the seashore side and administered threat her to kill by throwing them in the sea if she would not allow to have sexual intercourse with her. This Witness has further deposed that accused also administered threat to kill her daughter if her daughter makes any shout. Witness has deposed in her testimony that thereafter the accused committed rape on her against her will and wish. This Witness has deposed in her testimony that accused gave two-three knife blows between the elbow and wrist portion, as also on the palm and on the head and therefore she was bleeding. Witness has deposed in her testimony that complaint was filed. This Witness has been crossexamined by the other side; where-from important contradictions and omissions have come on record. She has admitted of having raped earlier by two unknown persons and for that complaint was also filed. This Witness has admitted in her cross-examination that some complaint of rape was also filed by her against K.S.T. Sir and Sagardan Gadhavi for committing rape at Dwarka Guest House. This Witness has admitted in her cross-examination that no such description of the accused is stated in the FIR; neither the registration number of the truck is mentioned. Thus, in the cross-examination, omission and contradictions in relation to the place of incident as well as the presence of her daughter in consonance with the other evidence surfaced and therefore the evidence of the complainant comes under the shadow of doubt.

[8] Pw No.10 Jayshriben Ravubha Sarvaiya, daughter of the victim has been examined at Exh.60. The said witness is the child witness and she deposed in her testimony that while they boarded in the truck, she got to sleep and in the morning when she wake up, her mother told her that accused committed rape on her and she was bleeding from her hand and on being asked, her mother told her that accused gave knife blow. However, the said witness is declared hostile by the prosecution.

[9] Prosecution Witness No.1-Dr. Vinodray Trivedi, has been examined at Exh.11. In his deposition, he has stated that victim had been produced before him and she was given the preliminary treatment and at that time there were wound on the surface portion of the palm and wrist and bandage was applied and certificate of injury was also given. However, during cross-examination, witness has admitted that neither the patient nor the Police Constable who brought to the victim for treatment has given any history before him.

[10] Prosecution Witness No.5 Dr. Bindu Sainath, who examined the victim girl has been examined at Exh.46. She has deposed in her testimony that victim gave history of commission of rape by some unknown persons while they were going to Okha in the truck. This Witness has deposed examined the victim and found certain injuries on the right hand and right wrist where-from she was bleeding, the injuries were also found on backside of the head. This Witness has deposed in her testimony

that there are no marks of injury on the chest and on private part of the victim as also no marks of injuries were on the waist and her vaginal membrane was intact and during the cross-examination this witness has admitted that probabilities of having sexual intercourse with the victim cannot be ruled out and to that effect certificate was issued at Exh.47. This Witness has also admitted in the cross-examination that when he examined the victim no such marks of having sexual intercourse within short span has been noticed.

[11] All the Panch witnesses to the Panchnama drawn by the IO have turned hostile and has not supported the case of prosecution.

[12] Thus, from the aforesaid evidence placed on record by the prosecution, it appears that in the FIR lodged by the victim woman at Exhibit-62 after the incident, she has not mentioned the name or description of the accused. She has merely stated that the man "said he was a Muslim," and apart from that, no other particulars have been provided by which the identity of the person committed rape rape could be established. Furthermore, there exist material contradictions between the version of events stated in the victim's testimony and the facts stated by her in the FIR at Exhibit-62. Additionally, as admitted by the victim herself, she had previously lodged four to five rape complaints against unknown persons and therefore if any woman had been subjected to rape four or five times earlier by unknown individuals, it is not possible to believe that she would make some venture to go out alone at night in such a manner; nor is it credible that she would sit in a tempo with a stranger and travel during nighttime. Moreover, she claims to have been sitting in the tempo and thereafter subjected to rape during nighttime, she has nowhere stated that there was sufficient light at the place of incident, and therefore the victim woman could have identified the person who committed rape on her. She also identified the accused during the test identification parade. However, prior to this, the police had shown the accused to the victim, and as per her own admission, when the police showed her the accused, she had identified him at that time itself. Hence, the identification made before the police cannot be treated as admissible evidence. The only identification is the one made by the victim woman before the Court. Therefore, it cannot be conclusively held that the accused was the person who committed rape upon her. When the accused is sitting in the dock, it is natural for any witness to identify him. There are material contradictions between the victim's testimony and her crossexamination regarding how the incident happened, how she reached the place of incident, and what happened after the alleged rape. Significant inconsistencies also exist in her deposition before the Court, in complaint lodged by her, and the medical history given by her before the doctor after the incident and such contradictions are of such nature which cannot be ignored.

[13] Furthermore, regarding the injuries she claims to have suffered, she has given an exaggerated version. If the injuries she described had in fact been inflicted upon her, the doctor who provided her initial treatment and the doctor who later examined

her at G.G. Hospital, Jamnagar, would have noted such injuries. However, except for one incised wound on her hand, no doctor has testified to having seen any other injuries. Therefore, the testimony of the victim lady is not reliable, and substantive piece of evidence to convict the accused. Even for the sake of assuming that rape was committed upon her and that she suffered knife injuries, it still cannot be said with certainty that it was the present accused who committed the rape and inflicted the knife injuries. This is because the police had shown the accused to her before the test identification parade held, and outside the place where the parade was conducted, she had seen the accused handcuffed and tied with a rope. Further, the learned Executive Magistrate who conducted the identification parade did not select dummy persons having descriptions similar to that of the accused. Therefore, the entire procedure of the identification parade, and the identification made by the victim woman, becomes doubtful.

[14] In **Mohd. Abdul Hafeez vs. State of Andhra Pradesh**, 1983 1 SCC 143 , the Hon'ble Apex Court has held that if the names or description of the accused persons are not given in the FIR and accused was identified before the Court after certain gaps of the incident, in such circumstances, if TI parade is held, the same is not reliable to connect the accused with the crime.

[15] A reference may also be made to the decision in case of Vinod alias Nasmulla vs. State of Chhattisgarh,2025 4 SCC 313 wherein the Hon'ble Apex Court has described the evidentirary value and purpose of the test identification parade. Relevant observations made in paragraphs no.21 and 22 reads thus:

> "21. A test identification parade under Section 9 of the Evidence Act, 18724 is not substantive evidence in a criminal prosecution but is only corroborative evidence. The purpose of holding a test identification parade during the stage of investigation is, firstly, to ensure that the investigating agency is proceeding in the right direction where the accused is unknown and, secondly, to serve as a corroborative piece of evidence when the witness identifies the accused during trial. The evidence of identification merely corroborates and strengthens the oral testimony in court which alone is the primary and substantive evidence as to identity.
>
> 22. In Rameshwar Singh v. State of Jammu and Kashmir, a three-Judge Bench of this Court succinctly summarized the evidentiary value of the TIP as under:
>
> "6 . The identification during police investigation . is not substantive evidence in law and it can only be used for corroborating or contradicting evidence of the witness concerned as given in Court. The identification proceedings must be so conducted that evidence with regard to them when given at the trial, enables the court safely to form appropriate judicial opinion about its

evidentiary value for the purpose of corroborating or contradicting the statement in Court of the identifying witness."

Thus, if the witness who identified a person or an article in the TIP is not examined during trial, the TIP report which may be useful to corroborate or contradict him would lose its evidentiary value for the purposes of identification."

[16] Thus, the evidence of the victim lady produced by the prosecution before the Court appears to be doubtful. From the evidence emerging from the record, the prosecution has failed to prove the charge against the accused beyond all reasonable doubt and therefore, and the learned Sessions Court has rightly recorded the findings recording acquittal of the respondents accused.

[17] At this stage, this Court may refer to the decision of the Hon'ble Apex Court in the case of **Rajesh Prasad v. State of Bihar and Another**, 2022 3 SCC 471 encapsulated the legal position covering the field after considering various earlier judgments and held as below: -

"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 acquittal in the following words: (Chandrappa case [**Chandrappa v. State of Karnataka**, 2007 4 SCC 415]

"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."

[18] In the case of **H.D. Sundara & Ors. v. State of Karnataka**, 2023 9 SCC 581 the Hon'ble Apex Court has summarized the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 of CrPC as follows: -

"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."

[19] In light of the above legal position and for the reasons recorded in the foregoing paragraphs, coupled with the fact that the case of the prosecution does not get support from the evidence recorded by the learned Special Court, the present appeal fails and is accordingly dismissed. Records and Proceedings, if any, be remitted to the Court concerned forthwith

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2026(1)AIAJ75

HIGH COURT OF ANDHRA PRADESH: AMARAVATI

(Hon'ble Judge: Subhendu Samanta)

Criminal Revision Case No 781 of 2007, 948 of 2007, 985 of 2007, 1026 of 2007 **dated 20/11/2025**

Kakarala Raju, S/o Nookaraju; Gude Haribabu, & Another, S/o Bhaskara Rao; Bethala Somaraju, S/o Yeluraju; Kathera Sreenivasa Rao, S/o Ugadi; Sangamreddy Suresh, S/o Adinarayana; Eedhi Durga Rao,, S/o Suryarao; Chilaparta

Versus

State of Andhra Pradesh

DACOITY CONVICTION

Indian Penal Code, 1860 Sec. 391, Sec. 397, Sec. 342, Sec. 506 - Dacoity Conviction - Criminal Revision filed against concurrent findings of conviction under Sections 397, 342, and 506 IPC - Petitioners contended that prosecution failed to prove conjoint action necessary for offence of dacoity and evidence lacked corroboration - Delay in holding test identification parade unexplained - No seizure of material objects from scene - Court observed that essential ingredients of dacoity not established and evidence insufficient to sustain conviction - Held that prosecution failed to prove case beyond reasonable doubt - Conviction and sentence set aside - Petitioners Acquitted - Criminal Revision Allowed

Law Point: To prove dacoity under Section 391 IPC, prosecution must establish conjoint participation of five or more persons - In absence of consistent evidence and recovery, conviction unsustainable.

Acts Referred:

Indian Penal Code, 1860 Sec. 391, Sec. 397, Sec. 342, Sec. 506

Counsel:

P Mohan Rao, Legal Aid

JUDGEMENT

Subhendu Samanta, J.- [1] All the Criminal Revision Cases have been preferred against the concurrent finding of learned Courts below, whereby, the Trial Court convicted the present Petitioners for an offence punishable under Sections 397, 342 and 506 of Indian Penal Code, sentencing them to undergo Rigorous Imprisonment for 7 years.

[2] Learned counsel appearing on behalf of the Petitioners submits that the finding and observations of the learned Courts below are illegal and improper. He further submits that the ingredients of an offence of dacoity requires that 5 or more persons, to

conjointly commit or attempted to commit theft or robbery. He further submits the term "conjoint commission of offence" by the Petitioners is missing in the Charge Sheet. He further submits that the Investigating Agency has callously submitted a charge sheet by citing Petitioners as Accused persons in a common case of decoity. He further submitted that it would appear from the prosecution case that Test Identification parade of instant case was done after long 15 days of incident. The prosecution has no explanation why such inordinate delay caused to conduct Test Identification parade. Moreover, Accused No.5 was not identified in such Test Identification parade.

[3] Learned counsel for the Petitioners further submits that PWs 1 to 11 were examined on behalf of the prosecution, but none of them has stated regarding alleged "conjoint action? of the Petitioners to commit an offence of decoity. He further submits that particular facts of the prosecution case suggested that all the Accused persons were entered into a lorry and bound the lorry driver (A1) and its helper (A2) by some rope and also gagged some cloths inside their mouth, in this particular case, the Police have not seized any rope or cloths from the scene of offence to justify the prosecution case.

[4] Learned counsel for the Petitioner argued that doctor has examined as PW-7 in this case, who categorically submits that the injury has inflicted over the persons of the injured may be self inflicted injuries. It is further argued that the prosecution case for commission of robbery was made in respect of Rs. 3,500/- which alleged to have been snatched from the pocket of Accused No.1. The prosecution case also suggests the amount of money consists of all Indian currency notes of Rs.500/- denomination, but during the course of investigation, the Police only recovered Rs.100/- from Accused persons. Such type of recovery in this particular case cannot conjoint allegation of robbery of Rs. 3,500/- from the possession of the driver.

[5] Learned counsel further argued that the entire case records if properly scrutinized, it would be revealed that this is a stock case of Police Authority, who only placed blame upon the Accused persons to maintain their case records good. Further, learned Trial Court as well as learned Appellate Court has committed an error in passing the order of conviction against the Accused persons. Learned counsel further argued that it is not possible for all 8 Accused persons including the PWs 1 and 2 to be fitted inside the cabin of the lorry. Thus, the prosecution case is not at all believable. The offence as alleged as never been proved beyond all reasonable doubts. Thus, the erroneous observation of the learned Trial Court as well as Appellate Court is liable to be set aside.

[6] Learned Assistant Public Prosecutor refuting the contention of learned counsel for the Petitioners has placed reliance upon the observations of the learned Trial Court. He placed on record by showing necessary paragraphs of the Judgment of the learned Trial Court as noted down the prosecution case in detail.

[7] Learned Assistant Public Prosecutor has also pointed out that the evidence of Prosecution Witnesses, who stated the commission of offence and antecedent thereto by the present Accused persons. He further pointed out that learned Trial Court as well as learned Appellate Court has categorically observed in the Judgments the points which are mentioned by the learned counsel for the Petitioners.

[8] Learned Assistant Public Prosecutor further argued that the observation of the learned Trial Court as well as learned Appellate Court is not illegal and proper on attending facts and circumstances of the case. There is no merit to entertain the instant Criminal Case.

[9] Having heard the learned counsel appearing on behalf of both the parties and perused the observation of the learned Trial Court as well as learned Appellate Court.

[10] In a nutshell, prosecution case has narrated a factum of robbery by the present Accused persons. It has been stated that the Accused persons being a common passengers approached PWs 1 and 2 being a driver and helper of a lorry to allow them to carry from one place to another with an amount of Rs. 30/- each. At that time, when they reached a lonely place, one of the Accused intends to stop the lorry on the pretext of calls of nature. When the lorry was stopped, Accused No.1 place a knife on the neck of the driver (PW-1) and threatened him with dire consequences. Accused No.5 and 6 assaulted the driver as well as helper and one of the Accused dragged out the purse of the driver containing Rs. 3,500/- all in Rs. 500/- notes denomination.

[11] It has been further alleged that some of the Accused persons dragged PW-2 from the cabin and pushed his head under the tyre of the lorry, so that he may disclose regarding cash placed in the cabin. Thereafter, the prosecution case suggests that Accused persons bound and gagged PWs 1 and 2 by rope and cloths, so that they may not raise voice, thereafter, all the Accused persons left the lorry with PWs 1 and 2 therein and boarded one Auto rickshaw drove by PW-3. PW-3 raised an objection to carry all 8 persons in a Auto, but PW-3 was also threatened with dire consequences by the Accused persons and thereby PW-3 carried all Accused persons, thereafter, they flooded away.

[12] During the course of investigation, the Police Authority apprehended some of the Accused persons and recovered an amount of Rs. 100/- from some Accused persons and also recovered Cell Phone, Tape Recorder, Screw Driver, Wrench, Button Knife and cash from all the Accused persons under denomination of Rs. 100/-.

[13] During the course of trial, the prosecution has examined total 11 witnesses including the lorry driver and helper/ cleaner. Auto Driver was also examined as PW-3. Prosecution has also exhibited 22 documents including some confessional statements of Accused No.3 to 8. Report of Test Identification Parade proceedings was also exhibited as Ex.P20; case materials were marked as Material Objects 1 to 19.

[14] It is argued before this Court that to constitute an offence of decoity the prosecution must have prove that the alleged commission of robbery has been omitted by more than 5 persons conjointly.

[15] I have perused the statutory definition of term decoity defined under Section 391 of Indian Penal Code is set out hereunder:

> "391. Dacoity. When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit "dacoity".

[16] In Paragraph No.12 of the Judgment of the learned Trial Court it has been observed the arguments of the defence recording absence of term "conjointly? in prosecution case. In deciding the such issue, learned Trial Court has indicated the version of PWs 1 and 2 and also observed that the other evidence i.e M.Os 1 to 19 and also the confessional statements before the Police successfully able to substantiate the fact that the Accused persons has jointly participated in the decoity.

[17] Learned Appellate Court in its Judgment at Paragraph No.8 has observed that though Charge Sheet is missing regarding term of "conjoint commission of an offence", but it is the observation of the learned trial court the evidence on record clearly shows that the Accused person has acted conjointly and committed an offence.

[18] In this particular case, let me understand the merit of the submissions of learned counsel for the Petitioners. It is the argument that the Police Authority has filed Charge Sheet being a stock case and put all the Accused persons in the same Charge Sheet under the offence of decoity.

[19] It is the particular case of the Petitioners argued that there are no ingredients for conjoint commission of offence by all the Accused persons.

[20] To substantiate the argument in this case, the defence has to prove that any of the Accused persons may have other antecedent or not connected with particular offence as alleged by the prosecution. I understand the submission of learned counsel for the Petitioners that the prosecution case has not clearly stated that which Accused person has committed which particular offence. The prosecution case has been duly supported by PWs 1 and 2 and also, PW-3 (Auto Driver). In the report of Test Identification Parade, except PW-5, all other Accused persons were identified. PW-2 as well as PW-1 has also narrated the presence of Accused persons in the said lorry. There is no iota of doubt to understand that all the Accused persons were involved in the offence. Considering the findings of the learned Courts below, it appears to me proper and legal on the basis of attending facts and circumstances of the case.

Accordingly, the point raised by learned counsel for the Petitioners appears to me meritless.

[21] In this particular case, it has been argued that Test Identification Parade was done, the recovery was made from all the Accused persons and after commission of offence all the Accused persons were apprehended after some days, such delay not appears to me inordinate in attending facts and circumstances of the case.

[22] It is true that the rope and cloths by which the PWs 1 and 2 were bound and gagged was not seized during the course of investigation in this case. The lacunae in the prosecution case in not seizing those materials is not so fatal itself to doubt the entire prosecution case. Moreover, the evidence of doctor i.e PW-7 has specifically stated that the injury may be inflicted injury that indicated that the injury itself was caused by the Accused on PWs 1 and 2. No incident was reported to the Police regarding self inflicted injury. There is no reason for PWs 1 and 2 to assail themselves to implicate all the Accused persons in this case of decoity. Furthermore, it is not difficult to fit 8 Accused persons including PWs 1 and 2 in the cabin of a lorry, rather there are no such positive suggestions from defence to the Investigating Officer during trial. Under the above observation, after considering the findings of the learned Trial Court as well as learned Appellate Court I find no justification to entertain the Criminal Revision.

[23] Accordingly, being meritless, the Criminal Revision Case is dismissed. The Order of conviction and sentence recorded by the learned Trial Court, affirmed by the learned Appellate Court is appears justified.

[24] Order suspension of sentence passed by this Court is hereby revoked. The Petitioners are directed to appear before learned Trial Court within two (02) weeks from the date of receipt of a copy of this order to serve out the remaining portion of the sentence, failing which, learned Trial Court is at liberty to issue Non Bailable Warrants against the Petitioners to comply the order of this Court.

As a sequel, miscellaneous applications pending, if any, shall stand closed

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2026(1)AIAJ79

IN THE HIGH COURT AT CALCUTTA

(Hon'ble Judge: Rajasekhar Mantha; Rai Chattopadhyay)

Cr A (Criminal Appeal) No 417 of 2018 **dated 17/11/2025**

Alamgir Sk & Anr

Versus

State of West Bengal

MURDER ON ROAD

Indian Penal Code, 1860 Sec. 341, Sec. 34, Sec. 302 - Code of Criminal Procedure, 1973 Sec. 437A, Sec. 164, Sec. 313 - Evidence Act, 1872 Sec. 155 - Arms Act, 1959 Sec. 39, Sec. 27, Sec. 25 - Bharatiya Nagarik Suraksha Sanhita, 2023 Sec. 481 - Murder on Road - Victim along with wife went to attend last rites - While returning, appellants intercepted their scooter and fired bullets at victim - Complaint lodged by wife on which investigation initiated - Inquest conducted and postmortem confirmed bullet injuries - Pipe gun and cartridges recovered from one appellant - Evidence of wife as eyewitness supported firing by two persons on black motorcycle - Doubts arose due to discrepancies in timing of FIR, inquest, and postmortem - Presence of wife at scene questioned as investigation reflected irregularities - Police conduct and delay in FIR registration raised suspicion regarding credibility of prosecution version - Trial court convicted appellants for murder and arms offence relying on eyewitness and recovery - Appellate court observed inconsistencies created doubt regarding identification and sequence of events - Conviction set aside due to lack of conclusive link between appellants and offence - Appellants acquitted from all charges - Appeals Allowed

Law Point: Delay and discrepancy in timing of FIR, inquest, and postmortem without proper explanation create doubt about prosecution's case and benefit of such doubt must go to accused leading to acquittal

Acts Referred:

Indian Penal Code, 1860 Sec. 341, Sec. 34, Sec. 302

Code of Criminal Procedure, 1973 Sec. 437A, Sec. 164, Sec. 313

Evidence Act, 1872 Sec. 155

Arms Act, 1959 Sec. 39, Sec. 27, Sec. 25

Bharatiya Nagarik Suraksha Sanhita, 2023 Sec. 481

Counsel:

Sabir Ahmed, Md Kutubuddin, Dhiman Banerjee, Quazi Ezaz Ahmed, Saibal Bapuli, Bibaswan Bhattacharya

JUDGEMENT

Rajasekhar Mantha, J.- [1] The present appeal is directed against the judgment of conviction dated May 29, 2018, and the order of sentence dated June 2, 2018, passed by the Learned Additional Sessions Judge, Fast Track Court-1, Lalbagh, Murshidabad, in Sessions Trial No. 3(1) 2015 and Sessions Serial no. 23 of 2014. The appellants were convicted under Section 302 read with Section 34 of the IPC, and further convicted under Section 25 and 27 of the Arms Act, 1959. The appellants were sentenced to suffer rigorous imprisonment for life for the offence under Section 302/ 34 of the Indian Penal Code. They were directed to pay a fine of rupees 10,000 each;

in default of such payment, they were directed to undergo rigorous imprisonment for 6 months each. The appellants were further sentenced to suffer rigorous imprisonment for 5 years each, for the offence under section 27 of the Arms Act, 1958. The appellant Alamgir was sentenced to suffer rigorous imprisonment for 3 years for the offence under section 25 of the Arms Act, 1959.

THE PROSECUTION CASE:

[2] On July 12, 2014, the victim and his wife, PW 3, went, by scooter, to Achra village to attend the last rites of a relative of PW 3. On their way back home around 10:00 A.M., their scooter was stopped at Hazipukur, Anatapur by the appellants, who came riding on a black-colored motorcycle. The appellants dragged the victim and his wife by their hair out of the scooter and fired 4 successive bullets at the victim. The appellants snatched the purse from the victim. The appellants spared the life of the wife of the victim, after the wife made repeated requests in that regard.

[3] One bullet failed to hit the victim. The appellant Airuddin is stated to have fired one bullet and Alamgir fired three bullets. The local people assembled at the PO after the 4 bullets were fired. The appellants thereafter fled the scene towards Anantapur village.

[4] Complaint scribed by PW 10 and was lodged by PW 3 and on the basis of which, FIR was registered around 1:20 PM. Investigation started. In course of investigation, the police came to learn that the appellants may have committed the murder, from the villagers. The police arrested the appellants on a tip-off. The police recovered a pipe gun and cartridges from the appellant Airuddin.

[5] Inquest was conducted at 1:15 P.M. The inquest report recorded that the victim has suffered a deep injury at the right ear which spread till the right eye. Gunpowder was found at the said injury site. The next injury was on the left chest. Another injury was found at the back of the right side of the waist. These three injuries appeared to have been caused by gunshot wounds. There were other injuries as well. The body was sent for postmortem to Murshidabad medical College and Hospital at Behrampur at PM which started at 2 PM. The appellants were arrested on July 24, 2014. A pipe gun and cartridges were recovered from the person of the appellant Airuddin.

[6] Charge-Sheet was filed after investigation was completed. Charges were framed under Section. 341/302/34 of the IPC and 25 and 27 of the Arms Act, 1959 against the appellants. Sanction to prosecute under the Arms Act was obtained from the office of the District Magistrate, Murshidabad, under Section 39 of the Arms Act, 1959.

[7] The trial commenced. The prosecution examined 27 witnesses. The appellants were examined under Section 313. The accused stated during examination u/s 313 CrPC, that the wife of the victim is their family relation; the wife of the victim knows all the family members of the appellants. The case of appellants was one of false

implication. The Trial court found the appellants guilty of charges for the offence and sentenced them as stated above.

THE EVIDENCE ON RECORD

[8] Pw 1, Sanatan Pal, is the co-villager of the victim. He arrived at the PO after the victim was shot dead. He noticed two empty cartridges and one unused cartridge at the PO. The victim was taken to the hospital; however, he did not go to the hospital since he was guarding the articles of the victim and his wife at the PO. He is a witness, inter alia, to the recovery of the said cartridges from the PO. He identified the said cartridges in Court. According to him, the police arrived at 4:00 p.m. at the PO.

[9] Pw 2, Gour Kishore Banerjee, is the Inquest Officer. He stated that when he arrived at the PO, he found 4 persons, apart from the wife of the victim. The names of the four persons mentioned by him did not, however, include PW 1. He reiterated the findings of the inquest report as stated above.

[10] Pw 3 was, Sakila Bewa, the wife of the victim. She reiterated what she said in the complaint. She however clarified that the said purse, which she stated in complaint to have been taken by the appellants, were found in the house of the victim.

[11] She was unequivocal in stating that her husband accompanied her to participate in the last rites of her relative at Anantapur village. She stated that the distinguishing physical feature between the two appellants was that one of them was tall and the other was short. The appellant Airuddin was the tall man, and the appellant Alamgir was the short one. She deposed to the acts of the appellants with reference to their height.

[12] She stated that the tall person stopped the motorcycle. He instructed the short person to pull out the arms. The short person loaded the cartridge and shot the first shot at the right waist of the victim. The second bullet was fired by the tall person at the forehead on the right side. The short person fired the third bullet. It failed to fire. The short person again fired the fourth bullet at the right side of the victim. She identified the two participants in the TI parade and also before the trial Court.

[13] She admitted that she had come to learn the names of the appellants from the villagers, who identified the appellants from the physical description given to them by her. She said that she knows Biltu, brother of the appellants who was murdered 3 years ago, from the date of the murder of the victim. She, however, stated that she does not personally know the appellants. Her statement u/s 164 CrPC was recorded 2 months after the incident.

[14] Pw 4, Nazrul Sk., was a co-villager. He reached the PO with PW 1. He reached the place after the murder of the victim. He stated that the local people took the victim to the hospital. He, however, did not go to the hospital. He and PW 1 guarded the articles of the victim. He stated that three cartridges were found at the PO.

The evidence of PW 4 is the reflection of the evidence of PW 1 since both of them arrived at the PO together.

[15] Pw 5, Mamon Sk, was a co villager. He admitted that he is one of the accused in the murder case of Biltu, the brother of the appellants. He stated that he saw the two appellants loitering with a black Bajaj motorcycle in the village. He saw them when he was returning from Anantapur Village. He saw the appellants before the commission of the murder. He saw the appellants after the commission of the murder. In fact, he saw the appellants near the PO just after he heard the sound of bullets being fired. He saw the appellants when he was rushing to the PO. He heard the sound of the three bullets being fired. At the PO, however, he saw 4 cartridges, one of which was unused.

[16] Pw 6, Monirul Sk., was a co-villager. He reiterated what PW 5 said. PW 6 admitted that he is one of the accused persons in the murder case of Biltu, the brother of the appellants.

[17] Pw 7, Sadek Sk., was a co-villager. He was a bystander. He is a witness to the murder of the victim. He was cultivating crops on an agricultural field near the PO. He saw the crime from the agricultural field. He stated that the two appellants fired bullets. He recognized the identity of the appellants when they were firing bullets. He has identified the victim's scooter. His evidence has remained uncontroverted in crossexamination.

[18] Pw 8, Haider Sk, was a co-villager. He is a witness to the recovery of the black Bajaj motorcycle, which is stated to have been used in the murder of the victim. He and the appellant Airuddin were taken to the house of Asadul of Daspara. The motorcycle was recovered therefrom. He identified the motorcycle in the Court.

[19] Pw 9 was Nurul Huda. He admitted that he is one of the accused persons in the murder case of Biltu, the brother of the appellant. He was taken by the police when the police searched the appellant Airuddin. A pipe gun with a cartridge was recovered from Airuddin. He identified the same pipe gun in the court.

[20] Pw 10, Anjumanowara Bibi, was the daughter of the victim. She wrote the complaint to the police on behalf of PW 3, the wife of the victim. On that fateful day, she came from her matrimonial house to the hospital where the victim was admitted. PW 3, her mother related to her how the victim was killed. She confirmed that her mother was not able to tell her the name of the appellants.

[21] She stated in her deposition that her mother told her that the complaint to the police mentioned that the appellants took out the purse from the person of the victim. PW 3, the mother of PW 10, was under the impression that the victim was supposed to pay money to some persons in connection with the hardware business of the victim. Thus, PW 3 thought that the victim was carrying his purse. PW 3, however, subsequently discovered that the victim on that fateful day forgot to take his since the

purse was found at home. She informed the police about it. The purse story was related to PW 10, 2 months after the incident. It was related to PW 10, when the police visited them.

[22] Pw 11, Sahajamal Sk., was a co villager. He is a witness to the recovery of the motorcycle, used in the crime. He confirmed the presence of PW 8 during the recovery of the motorcycle. He confirmed that a Bajaj motorcycle was recovered from the house of Asadul at Daspara. He identified the motorcycle upon placing specific reliance on the red colour, bordering the wheel of the motorcycle. He admitted that his brother Meenu is one of the accused persons in the murder case of Biltu, the brother of the appellants.

[23] Pw 12 was Asdar SK. He was a villager. He reiterated what Nurul Huda, PW 9, said. PW 12 is also a witness to the recovery of the pipe gun from the person of Airuddin. He confirmed that the police officers asked PW 12 and PW 9 to search the police officers. PW 12 stated that he found that the police officers did not possess any guns. Thereafter, the police officers in front of PW 12 and PW 9 searched the appellant, Airuddin, and found a pipe gun with a cartridge loaded. Airuddin was wearing a lungi at that time. From the fold of his lungi, another cartridge was found. He admitted that he is one of the accused persons in the murder of Biltu, the brother of the appellant.

[24] Pw 13, Arman Hossain, was a co villager. He reached the PO upon hearing the sound of the gunfire. He reached the spot after the death of the victim. He said that the wife of the victim told him about how the victim was killed. His version of the crime corroborates with the version, narrated by the wife of the victim to the police. He stated that on his way to the PO, he saw two persons unknown to him fleeing from the PO towards Anantapur village.

[25] Pw 14 was Piyush Khan was a photographer. He took out printouts of the pictures of the dead body of the victim from his computer. The pictures were taken by the Officer in Charge of the police station. He stated that he was instructed by the OC to come to the police station, where the officer in charge handed him the camera, from which PW 14 took 18 photographs, and printed them out from his computer.

[26] Pw 15 was Mostafa Sk @ Bandu. He is a co villager. He was declared hostile. He was cross-examined. He denied the prosecution's case. He stated that he did not tell the police anything about the murder of the victim.

[27] Pw 16 was Ainal Haque. He is a co villager. He is a witness to the wife of the victim crying when the victim was lying dead beside her. He knows the appellants as the son of one Azibur. The victim was shot and died in front of his house.

[28] Pw 17, Kundan Bhattacharjee, was the head clerk of judicial Munshikhana, which is under the aegis of the District Magistrate of Murshidabad. He confirmed that a request for a sanction for invoking the Arms Act was sent by the

police to the office of the District Magistrate. He confirmed that the gun and any material related to the gun were not sent to the office of the District Magistrate for considering the application for the grant of sanction.

[29] Pw 18, Jyotirmoy Bagchi, was the officer in charge of the Nabagram police station, which investigated the murder of the victim. He confirmed that he has taken certain pictures of the body of the victim. He confirmed that the wife of the victim has lodged a written complaint with the police.

[30] Pw 19, Dibyendu Chakraborty, was the duty officer of the said police station. He is a witness to the seizure of bloodstained clothing of the victim. He confirmed that the wife of the victim has lodged a written complaint with the said police station.

[31] Pw 20, Mahadeb Sharma, was the police constable. He was on duty at Malkhana (a place where unclaimed and crime-related articles are kept by the police). He confirmed that a blue coloured Lungi was deposited in the Malkhana on the fateful day. He identified the said lungi in the court. He signed the document, which recorded the list of articles deposited in the malkhana on that fateful day. He, however, stated that he cannot recall all the details of the Alamats (the articles recovered from the crime scene). The articles recovered from the PO were shown to him in court. He stated that the packet containing the said articles does not contain his signature.

[32] Pw 21 was Salema Bibi. She is a co villager. She was declared hostile by the prosecution. She denied having stated to the police that she heard the sound of gunfire. She, however, stated that she had learnt from the villager that the victim has been murdered.

[33] Pw 22, Kamal Kanti Majumder, is the postmortem doctor. He confirmed the presence of injuries in the person of the victim, has been caused by bullets. He stated that such bullets have been fired from a close range. He stated that there was no exit of such bullets from the body. He stated that there were three bullet injuries to the person of the victim. The details of the injuries are set out herein below:-

> "(1) One barrel shaped deep lacerated injury seen over middle of right gluten region with an oblique direction, from lateral side to medial side, with an oblique direction, which approximately 70 degree angle from the entry point to the medial side, penetrating in the gluten muscle. It measures opening 11/2" of diameter circular in shape, almost parallel side with 3" deep with blind end i.e. no opening or exit. Upon opening of the wound I observed the following:
>
> (a) is more or less circular with a abraded colour with conducing irregular indrawn margin.
>
> (b) Mixed with gut.

(c) Rinse of power and deposit of power. Blood smoke was seen in the empty of the wound.

Foreign body of the end on synthetic probably of nylon, red in colour, dumble shaped, having length 1 1/26" in two disc shaped ends jointed by three interrupted pillars of 1/2" length, which detected from the cavity of the wound. 32" metallic pellets of small peanut size were detected from the wound which were preserved and handed over the same to the constable."

[34] Pw 23, Bimal Das, was the police constable. He accompanied the Additional Sub Inspector of Police, who was entrusted with the duty of seeing that the postmortem gets done. He saw the postmortem doctor handing over the wearing apparel of the victim to the said ASI. He saw a blue coloured Lungi being handed over. He identified the said Lungi in the court.

[35] Pw 24, Goutam Singha Roy, was the Arms Expert employed with the DIG(AP) cell Barrackpore. He examined the pipe gun and cartridges. He conceded that conclusive opinion can be formed as to whether the empty cartridges were fired from the said pipe gun.

[36] Pw 25 was Mir Salek Ali. He is a co villager. He stated that he arrived at the PO and found the victim lying dead. He stated that the brother of the appellants, who has been murdered, is known to the wife of the victim. The wife of the victims is related to Biltu by some family relation. All the family members of Biltu are known to the wife of the victim.

[37] Pw 26, Sanjib Mandal, was the Investigating Officer of this case. He came to learn the names of the appellants from the villagers, Minu Sk, Sadek Sk and Mir Salek Ali. Based on tip-offs, he arrested the two appellants. He thereafter made the recovery of the pipe gun and the cartridges from the custody of the appellant, Airuddin. He did not send the pipe gun and the empty cartridges for an FSL report.

[38] He stated that he has come to learn that there were in fact two pieces of information relating to the death of the victim which reached the said police station. FIR was however not lodged based on the first piece of information. He stated the first piece of information was the never supplied to him. He stated that FIR was lodged, based on the second piece of information. However, he did not say that he has reasons to believe that the first piece of information was improved upon in the second piece of information. He did not state the contents of the first piece of information. He did not say that the first piece of information was in favor of the appellants.

[39] Pw 27, Purba Kundu, was the judicial magistrate. In his presence the TI parade was conducted. He also recorded the 164 statement of the wife of the victim.

ANALYSIS OF THIS COURT

[40] The question involved in the present appeal is whether the prosecution has been able to link the appellants to the murder of the victim. Otherwise, the prosecution

has been able to prove that the victim died from bullet shots. Two people fired bullets at the victim. The wife of the victim has unequivocally stated that 2 people came on a black colored motorcycle, stopped the scooter on which the victim and his wife were heading back home, and fired bullets at the victim. The medical evidence has also confirmed that bullet shots have caused injuries to the victim.

[41] However, the following circumstances create substantial doubts in the mind of this Court regarding the true identity of the assailants of the victim:-

A. The conduct of the police in the preliminary stages of investigation;

B. The manner in which the evidence was collected;

C. The conduct of the PW 3, the wife of the victim. Was she at all with the victim when he was shot at?;

D. The silence of PW 7, a bystander. He has deposed that he has seen the appellants firing bullet shots at the victim. However, he did not reveal it to the police.

[42] The investigating officer, PW 26, has deposed that the said police station received two pieces of information in writing relating to the death of the victim. The first piece of information did not result in the FIR. The first piece of information was not even examined by the PW 26. He has deposed that he has compared the first piece of information with the second. He however did not state that whether there was any difference between the first piece of information and second one, or how and from whom he received the first information.

[43] The alleged first piece of information has neither been brought on record nor its non-production has ever been explained by the prosecution. The FIR was lodged based on the second piece of information. The receipt of two pieces of information relating to the death of the victim appears to have a link with the unbelievable timings of the lodging of FIR, the conduction of the inquest, and the commencement and completion of the post-mortem.

[44] The murder took place between 10:00 and 10:15 A.M. The FIR records that information of the crime was received at 1:25 P.M., pursuant to which the said FIR was lodged. The inquest officer however reached the PO earlier i.e. at 1.15 P.M. The evidence on record is silent on whether any corresponding general diary entry exists as regards the time when the inquest officer received the information of the death of the victim and the time when he left the police station for the conduction of the inquest. The post-mortem commenced from 2 pm and was completed at 3 pm.

[45] The first doubt that flows from FIR itself is the timing of the general diary entry as regards the receipt of information of the victim's death.The FIR indicates that the entry in the 'general diary' as regards the time of receipt of information relating to the death of the victim has been made at 1.25 P.M. A general diary of a Police Station

records the description and timing of every activity of the police officers and every event connected to the police station in a day. The inquest officer therefore would first enter the time of receipt of the information and the brief nature thereof in the general diary, before heading towards the spot for conducting the inquest.

[46] Therefore, the inquest in the present case could not have been conducted on and from 1.15 P.M., that is, 10 minutes before the entry made in the general diary as regards the death of the victim. The police admittedly did not bring on record any UD case registered in respect of the death of the victim.

[47] In the present case, the FIR was lodged based on the written complaint of the wife of the victim. The inquest officer reached the spot based on the receipt of oral information, as would be evident from the comparison between the time at which the inquest commenced and the time when the entry in the general diary was made. The inquest started at 1:15 P.M. The entry in the general diary stating the time of receipt of information of the death of the victim was made at 1:25. The inquest, therefore, commenced before a general diary entry in that regard could have been made.

[48] If the police station had lodged the FIR based on oral information of the crime, pursuant to which the inquest officer then and there also left for the PO, then the time in the general diary and the time when the first information was received would have been the same. The FIR has recorded the time of receipt of information concerning the death of the victim at 1:25 PM so also has the general diary entry, notwithstanding that the FIR was not lodged based on the information, pursuant to which the inquest officer left for the PO.

[49] Secondly, the FIR was lodged just 12 minutes after the inquest officer reached the PO. It is nearly impossible for the inquest officer to complete the inquest within 12 minutes. It is equally impossible that when the inquest officer was conducting the inquest, the wife went to the police station and lodged the written complaint. If the FIR can be lodged just 12 minutes after the inquest officer arrived at the PO, why then was the FIR registered, during the span of 3 hours, from 10 AM to 1:25 PM. The police ought to have been proactive in lodging the FIR and starting an investigation in the instant case which is that of murdur.

[50] The police appear to have become proactive only after the commencement of the inquest. The post mortem was started just 45 minutes after the inquest commenced. The inquest commenced at 1:15 P.M. and the post mortem at 2 P.M. If the time span between the commencement of the post mortem and the lodging of the FIR is calculated then the post-mortem commenced just 35 minutes post-FIR. The time taken to reach the Mushidabad hospital from the Nabagram Police station is at least an hour. The prosecution in their written notes have stated that the distance between the said hospital and police station is 23 kilometers. The unbelievably short time span between the registration of the FIR and commencement of the post-mortem has remained

unexplained. The distance of 23 Kms with heavy traffic cannot be covered within 35 or 45 minutes.

[51] Pw 10, the daughter of the victim and PW 3, has deposed that she came from her matrimonial home to the Police station to write the complaint on behalf of her mother, PW 3. As to who informed PW 10 about the death of her father is not clear. The distance between the matrimonial home of PW 10 and the said PS is about an hour. Thus, a doubt arises as to why PW 10, who resides far from the PS, would be called to attend such an incident, where every second is vital. The arrival of PW 10 for writing the complaint is suspicious, given the discrepancies in the time of lodging of the FIR as stated above.

[52] Pw 7 has deposed that he has clearly seen the face of the assailants of the victim. He has deposed that the assailants were the appellants. He was cultivating crops at an agricultural field, when he saw the appellants firing bullets at the victim. The rough sketch prepared of the PO and its surroundings indicates the existence of an agricultural field close to the PO. Curiously however, after the murder, he maintained an unexplained silence as regards the fact that he has seen the assailants of the victim. It was normal for PW 7 to reveal the identity of the assailants of the victim, when identity of the victim was looming large.

[53] The FIR was lodged against unknown persons. Thus, PW 7 was the vital witness who could have assisted the police in nabbing the appellants immediately. The police, in fact, did not come to learn of the identity of the assailants of the victim from PW 7. The wife of the victim gave the physical description of the assailants of the victim to the villagers. The police learned from the villagers that the assailants are the appellants. The stark silence of the PW 7, therefore, renders his evidence unreliable.

[54] The PW 3, the wife of the victim, has deposed that she has seen the assailants of the victim. However, the assailants were not known her. She specifically stated that the assailants came on a black coloured motorcycle. She orally told the police and the villagers that she could identify the assailants if they are brought before her.

[55] She told the police and villagers that the one of the assailants was tall. The other was short. This is only description that the PW 3 gave to the villagers and police. Her complaint to the police however did not mention the said description. It was normal for the wife of the victim to give physical descriptions of the assailants in the complaint, given the fact that the assailants were unknown.

[56] The daughter of the victim, PW 10, has deposed that her mother, PW 3, related to her the entire incident. PW 3, however, was unable to recognise the assailants when they shot at the victim. PW 10 confirmed that PW 3 was confident that if the assailants were brought before her, she would surely be able to identify them.

[57] Pw 3 has deposed that she knew the brother of the appellants, Biltu. She has deposed that she was also aware that Biltu was murdered. Therefore, it is but normal that PW 3 would also know who the brothers of Biltu are. The appellants were the

brothers of Biltu. The brothers of the Biltu would have surely been known to many, after Biltu was murdered.

[58] It is possible that PW 3 who was traumatised by the death of her husband may not be able to recollect the identity of the victims. She continued to deny that she knows the appellants till the cross-examination. It is however difficult to reconcile that PW 3 was able to recollect the colour of the motorcycle riding which the assailants came. Therefore, it cannot be ruled out that PW 3 in fact knew the appellants. In course of 313 examination both the appellants clearly stated that the PW-3 was a family relation and knew them. Her refusal to reveal the identity of the assailants immediately throws doubts as to whether appellants were at all the actual assailants who shot the victim.

[59] Pw 5 and 6 stated that they had seen the appellants loitering close to the PO with a black colored Bajaj motorcycle, before the commission of the crime. They thereafter heard the firing of the bullets. PW 5, deposed that he saw the appellants rushing out from the PO when PW 5 was rushing towards the PO upon hearing the sound of bullet shots. PW 5 and 6 are the accused persons in the murder of one Biltu, who was the brother of the appellants. Learned Counsel for the appellants seeks to impeach the evidence of PW 5 and 6 on this count. He submits that PW 5 and 6 were stock and or tutored witnesses who deposed falsely.

[60] Under section 155 of the Indian Evidence Act, 1872, the credibility of a witness can be impeached by 3 methods. Sec. 155 is set out below:-

> S. 155 Impeaching credit of witness- The credit of a witness may be impeached in the following ways by the adverse party, or with the consent of the Court,
>
> by the party who calls him
>
> By the evidence of persons who testify that they, from their knowledge of the witness believe him to be unworthy of credit;
>
> By proof that the witness has been bribed, or has accepted the offer of a bribe, or has received any other corrupt inducement to give his evidence;
>
> By proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;

[61] Pw 5 and 6, being accused persons in the murder of a family member(brother Biltu) of the appellants, will not automatically disqualify them under any of the three heads under Section 155. The defense needs to do any one of three positive acts, under Sec. 155, to impeach the credibility of PWs 5 and 6.

[62] The defense has suggested to the PWs that the appellants are the complainant and/or cited as witnesses to the murder of their brother Biltu. PW 5 and 6 would

therefore have a motive to send the appellants to Jail. Doubts, however, are cast on the evidence of PW 5 and PW 6 from the nature and pattern of the witnesses, cited by the prosecution.

[63] Further, an accused may be cited as a witness to a crime if he has witnessed it. It is, however unusual that the aforesaid PWs, who are the accused persons in the murder of the brother of the appellants have found themselves being witnesses to a murder, allegedly committed by the appellants.

[64] Pw 9 and 12 were made witnesses to recovery of the pipe gun from the possession of the appellant, Airuddin. The said pipe gun is alleged to have been used for firing bullets at the victim. PW 9 and 12 also happen to be accused persons in the murder of Biltu, the brother of the appellants. The pipe gun recovered was 12 bore and was 12 inches in length as deposed by the IO and the seizure witnesses. The gun produced in the trial court was found to be 8 inches long and bore not label of seizure.

[65] Further, PW 11 has been cited as a witness to the recovery of the black Bajaj motorcycle. The said motorcycle is alleged to have been used to reach the PO and left therefrom. PW 11 also happens to be an accused in the murder of Biltu.

[66] The evidence of the aforesaid prosecution witnesses eminently establishes a pattern. The pattern indicates that the prosecution seeks to rely on the persons who has motive to ensure that the appellants remain in jail. It was therefore unavoidable for the prosecution to explain why the investigating officer picked up such persons as witnesses, who are made accused in the murder of Biltu, the brother of the appellants. No plausible explanation is available on record.

[67] The presence of PW 5 and 6 near the PO may therefore be an afterthought. It cannot be ruled out that the police did not have any leads as regards the identity of the assailants. The prosecution therefore procured and prepared witnesses against the appellants who were accused in their brother's case and would willingly depose falsely for the asking. They were otherwise under the threat of being convicted in the Biltu murder case. The aforesaid PWs may also be stock witnesses and cannot be trusted.

[68] Pw 26, the investigating officer has indicated that the appellants were arrested based on a tip-off. The IO has deposed that he was unable to ascertain the identity of the assailants when he initially reached the PO. He thus activated his sources to ascertain the identity of the assailants. The said statement is unbelievable because just after the commission of the crime, the villagers suspected that the appellants were the assailants, based on the physical description of the assailants provided by the PW 3. The IO therefore is supposed to have learnt as to who are the suspects immediate upon his arrival at the PO.

[69] The events preceding the arrest of the appellants indicate that the IO acted blindly on the assumption and/or suspicion of the villagers. It is interesting to note that

IO did not come to learn the identity of the assailants from the PW 7, who has deposed that he has clearly seen the appellants firing bullets at the victim.

[70] The IO has deposed that on July 13, 2014, a day after the crime, he went to the village of the victim, Mohorul. From the villagers, he came to learn that the assailants could be the appellants. The IO, however, did not prepare any sketch of the assailants. The villagers have arrived at the conclusion that the assailants could be these appellants based on the physical description given by PW3.

[71] The IO therefore was required to cause preparation of a sketch portrait of the assailants from their physical description, provided by the PW 3. The IO then ought to have compared the sketch with the appellants. The said exercise would have demonstrated whether the suspicion of the villager is correct.

[72] On July 14, 2017, the IO is stated to have unsuccessfully attempted to nab the appellants. There is no clarity as to whether there was any sketch of the appellants with the IO when the IO attempted to arrest the appellants. The IO has not deposed as to which of the appellants, the IO attempted to arrest on that day.

[73] On July 24, 2014, 10 days thereafter based on a tip-off, the IO arrested the appellant Airuddin. On the same day, the IO arrested the appellant Alamgirh.

[74] It is interesting to note that the only physical description of the assailants that was given by PW 3 was that the height of the assailants. One of them was stated to be tall, and other short. A person cannot be identified based on this generalized physical description. So many villagers may have been of the same height as the assailants. The wife of the victim, therefore, must have said something very specific about the assailants, which has the core minute details concerning the physical features of the assailants.

[75] Such details about a person cannot be provided by another unless the latter knows the former. The PW 3 was under trauma when the victim was shot. She therefore could not have noticed such details when the murder was unfolding. To therefore believe that the villagers suspected the appellants based on the said description given by PW 3, it must also be believed that PW 3 knew the identity of the assailants. However, she did not divulge their identity either in the complaint or her deposition or even in the Statement under Section 164 CrPC. The said statement was curiously recorded 2 months after the incident.

[76] Pw 3 appears to have no motive to suppress the identity of the assailants of her victim husband. Hence, it follows that the villagers have completely surmised the name of the appellants as assailants.

[77] The Prosecution has not proved that the appellants have criminal antecedents. Thus, the villagers did not have the occasion to suspect the appellants based on the fact

that whenever a crime is committed in their village, the involvement of appellants is a foregone conclusion.

[78] The above indicates that the PW 3, therefore, either had very clearly observed the physical features of the appellants or she knew the identity of the assailants of the victim. It is therefore possible that the assailants of the victim were different from the appellant. The villagers surmised the name of the appellants.

[79] Pw 3 has mentioned in her complaint that the assailants of the victim snatched the victim's purse and fled away. A motive, therefore, was attributed to the assailants. Before trial could commence, PW 3, however, informed the police that the purse of the victim was found in the house. The said retraction may be explained by saying that the victim made a bona fide mistake. Her retraction well before the commencement of the trial may be read in her favor. However, the said retraction assumes significance from what PW 10, the daughter of PW 3 and the victim, has deposed.

[80] Pw 10 has deposed that PW 3, after 2 months after the murder, told her that the purse was found in the house of the victim, and PW 3 informed it to the police. PW 3 further stated to have told PW 10 that she was under the impression that the victim was supposed to pay some money on that fateful day to some persons in connection with the hardware business of the victim. Thus, PW 3 thought that the victim was carrying purse on that day.

[81] This Court is of the view that PW 3 mentioned the snatching of the purse in her complaint, not because she actually saw the assailants snatch away the purse. Rather, PW 3 assumed that the victim was murdered because of the money that the victim owed to some persons in connection with his hardware business. Therefore, the possibility of the victim being murdered by the persons, who were entitled to get money from the victim cannot be ruled out. There was no investigation in this regard.

[82] Pw 3 has deposed that she was out with the victim solely for the purpose of attending the last rites of a relative of PW 3. PW 3 has deposed that the victim was merely accompanying her to drop her off at the house of a deceased relative. There is no independent witness to corroborate this part of the evidence of PW 3. It may therefore be a case that the victim alone was out to pay his creditors. The assertion and subsequent retraction by PW 3 of the snatching of the purse of the victim is therefore not without doubt.

[83] The recovery of the black motorcycle is not free from doubt. The motorcycle is recovered from Asadul's house. Asadul was never cited as a PW. The IO stated that he took Airuddin to the house of Asadul. The motorcycle was recovered from the house. The IO was not clear as to whether there was any confession from Airuddin that the said motorcycle was used in the murder. The motorcycle has not been proven to have been used in the murder. PW 3 stated that she has seen the assailants riding a black motorcycle. PW 5 has stated that he has seen the appellants on a black Bajaj

motorcycle. The police, however, have not ascertained the ownership of the motorcycle. The motorcycle was not linked to the other appellant Alamgir.

[84] The IO stated that the pipe gun was recovered from Airuudin when he was arrested. The cartridge was recovered from the lungi of Airuddin. The PWs 9 and 11, who have been witnesses to the recovery of the pipe gun, were the accused in the murder of Biltu. In fact, the measurement of the pipe gun recovered from Airuddin and that produced before the Court varied.

[85] Pw 20, the police constable, denied that he was aware of the details of the recovery. He first said he was not examined by the IO. He, during crossexamination, admitted that he had been so examined. He, however, was unable to recognize his signature on the seized materials.

[86] Having regard to the above discussion this court is of the view that the role of the appellants in the murder of the victim has not been proved at all much less beyond reasonable doubt. The prosecution has miserably failed to prove the identity of assailants.

[87] The appeal is therefore allowed. The appellants are acquitted on the benefit of doubt. The impugned judgment and order of conviction are set aside. The appellants shall be set free forthwith.

[88] The appellants shall be set at liberty forthwith from the custody, if not wanted in any other case, upon execution of a bond to the satisfaction of the Learned Trial Court, which shall remain in force for a period of six months under Section 437A of the Code of Criminal Procedure corresponding to Section 481 of the BNSS, 2023.

[89] Cra 417 of 2018 is allowed and disposed of.

[90] There shall be no order as to costs.

[91] Urgent certified photocopy of this judgment, if applied for, be supplied to the parties upon completion of all requisite formalities.

[92] All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court

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2026(1)AIAJ94

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

(Hon'ble Judge: Ilesh J Vora; P M Raval)

Criminal Appeal (Against Conviction); Criminal Appeal No. 1230 of 2014, 553 of 2014; 1231 of 2014 **dated 14/11/2025**

Jagdishbhai Arjanbhai Gondalia Patel & Anr

Versus

State of Gujarat & Anr

MURDER TRIAL EVIDENCE

Indian Penal Code, 1860 Sec. 149, Sec. 148, Sec. 143, Sec. 34, Sec. 147 - Code of Criminal Procedure, 1973 Sec. 164, Sec. 302, Sec. 313 - Evidence Act, 1872 Sec. 26, Sec. 65B - Murder Trial Evidence - Appeals filed against conviction for murder under various sections of IPC - Case based on statements under Section 164 of CrPC and electronic evidence of CD and photographs - Witnesses turned hostile and statements found stereotyped without procedural compliance - Magistrate failed to record satisfaction that statements voluntary or read over to witnesses - Test identification parade not properly conducted and not corroborated by substantive evidence - Recovery and other documentary proofs failed to connect accused - Prosecution evidence not reliable to prove guilt beyond reasonable doubt - Trial Court erred in convicting solely on uncorroborated and inadmissible evidence - Conviction unsustainable - Accused acquitted - Appeals Allowed

Law Point: Statements recorded under Section 164 CrPC are not substantive evidence and cannot form sole basis of conviction without corroboration - Non-compliance with procedural safeguards and absence of substantive corroborative evidence vitiates conviction based on such statements.

Acts Referred:

Indian Penal Code, 1860 Sec. 149, Sec. 148, Sec. 143, Sec. 34, Sec. 147

Code of Criminal Procedure, 1973 Sec. 164, Sec. 302, Sec. 313

Evidence Act, 1872 Sec. 26, Sec. 65B

Counsel:

J M Panchal (Senior Advocate), N R Kodekar, Rohan Raval

JUDGEMENT

P M Raval, J.- [1] The present appeals are directed against the judgment and order of conviction dated 14.2.2014 in Sessions Case No.26 of 2012 passed by learned Additional Sessions Judge, Gondal whereby the learned trial Court was pleased to convict the appellants - accused.

[2] Since the judgment and order of conviction under challenge in all the captioned appeals is the same, the appeals were heard analogously and are being disposed of by this common order.

[3] The case of prosecution is that PW 48 [Police Inspector, Gondal City Police Station] received an anonymous telephone call on 14.11.2011, at about 2050 hours, disclosing Mahant of a temple (hereinafter referred to as "the deceased"] was creating a nuisance on Gundala Road. The said anonymous telephone call was registered vide Station Diary Entry No. 29 of 2011 [Ex.151]. Therefore, PSI RL Dave [PW:46] and his subordinates proceeded towards the scene of incident, but did not find anyone at the temple or in the Aashram or nearby vicinity. However, soon thereafter, they found

dead body of the Mahant lying on the wasteland situated behind the Ashram, and therefore PSI, Shri RL Dave [PW:46] informed about the same to the concerned police station [Ex:154]. The PW:46 drew inquest panchnama at Ex:29 in presence of PW:3 and PW:4 on 15.11.2011 at about 0100 at midnight. The dead body was identified by PW:40 and thereafter it was sent for autopsy purpose at government hospital at Gondal, and thereafter it was sent to Rajkot. Upon the autopsy, the medical officer-PW:45 primarily came to conclusion that the Mahant died of injuries sustained all over the body and head with blunt substance. It is the case of prosecution that during the course of investigation, two witnesses namely Devang @ Pintoo Maheshbhai Bhojani and Bhavesh Madhubhai Bhojani [PW:33-34} appeared before the Investigating Officer and got their statements recorded. Allegedly both these witnesses declared before the Investigating Officer that they had video graphed and photographed the entire incident which led to death of the Mahant. They allegedly produced video cassette of the CD and three cameras in which the entire incident was allegedly recorded under panchnama- Ex:35-97. When the investigating officer saw the CD, the appellants were allegedly identified. It is also alleged that statements of several witnesses were recorded at [Exh:158- 161] under S.164 of CrPC by the learned Magistrate who was examined as one of the witnesses during trial as PW:47. It is also case of prosecution that during the course of investigation, they had drawn panchnama [Ex:44] of the ashram where the Mahant used to live, and found photo copies of application dated 14.11.2011 purported to have been prepared by the deceased Mahant, disclosing that several persons, excluding the accused appellants were likely to assault the deceased Mahant.

[4] On the basis of the aforesaid, the appellants were arrested and at the end of the investigation, charge-sheet was submitted before the Court of competent jurisdiction. However, the case being exclusively triable by the Court of Sessions, was committed to the learned Additional Sessions Court where it came to be numbered as Sessions Case No. 26 of 2012. The learned trial Court framed charge against the accused persons. On the accused pleading not guilty, the prosecution examined 50 witnesses and produced 45 documents to prove the case of prosecution. At the end of recording of oral evidence, the learned trial Court was pleased to record further statements as all accused persons by virtue of provisions of Section 313 of the Code of Criminal Procedure, 1973. The accused appellants again pleaded false implication. After hearing the parties through their advocates, the learned trial Court has been pleased to hold all accused guilty of offence punishable under sections 302 read with 34 Of the Indian Penal Code and also for the offence punishable under Section 143, 147, 148 and 149 of the Indian Penal Code, 1860.

[5] Learned senior advocate Mr.J.M.Panchal along with learned advocate Mr.N.R.Kodekar appearing for the appellants - accused would submit that despite all these witnesses having been turned hostile and having not supported the case of the

prosecution, learned trial Judge has convicted the appellants - original accused persons based on deposition of learned Judicial Magistrate, First Class who had recorded the statements under section 164 of CrPC. However, it is argued that statements recorded by learned Magistrate have been resiled by the witnesses before the learned trial Court coupled with the fact that statements are stereo-typed and not read over to the makers of the statements and also coupled with the fact that due care and caution which ought to have been taken while recording of statements of witnesses under section 164 of CrPC is not followed in its true spirit and creates serious doubt and the same can be discarded.

5.1 That none of the witnesses have supported the case of the prosecution and in such circumstances relied upon the photographs and CD without there being any substantive piece of evidence, more particularly, section 65- B of the Indian Evidence Act makes the judgment under challenge palpable wrong on the face of the record and there can be no justification whatsoever for convicting the present accused persons.

5.2 That even otherwise, the character and conduct of the deceased (Mahant) would show that the deceased was having enmity with many persons and many persons might have motive against the deceased which would be evident from the number of FIRs placed on record. In support of their submissions, learned advocates have relied upon the following decisions.

Sr.No.	Citation	Party name	Particulars
1	(2022) 7 SCC 581	Ravinder Singh Alias Kaku Vs State of Punjab	Failure to produce 65-B certificate.
2	(2014) 10 SCC 473	Anvar P.V. Vs P.K.Basheer & Ors.	Failure to produce 65-B certificate.
3	(2020) 7 SCC 722	Spmasundaram alias Somu Vs State	S.164 statement is not substantive evidence
4	(2010) 6 SCC 736	Baij Nath Sah Vs State of Bihar	S.164 statement is not substantive evidence
5	(1972) 3 SCC 280	Ram Kishan Singh Vs Harmit Kaur @ Another	S.164 statement is not substantive evidence

[6] Per Contra, learned APP Mr.Rohan Raval would submit that when the prosecution has proved its case beyond reasonable doubt, more particularly, by examining learned Judicial Magistrate who has recorded the statements under section 164 of CrPC, the factum of witnesses resiling from their statements before the learned

Magistrate would be of no consequences coupled with the fact that there are recovery of photos, CD and video recording CD which are exhibited and proved in accordance with law and that during the test identification parade also, the accused were identified and thus test identification parade having been conducted in fair and transparent manner, learned trial Court was justified in convicting the present appellants, more particularly, when the deceased had also given the application naming two of the accused persons who were harassing him just prior to the death and under the circumstances, learned APP has argued to reject the present appeals.

[7] Heard learned advocates for the respective parties and perused the impugned judgment and order. We have also gone through the depositions of all the witnesses.

[8] At the outset, it is required to be noted that except PW 31 - Rameshbhai Mohanbhai Bhuva who knows accused No.3 has been examined vide Exh.87. PW 39 - Kanaiyadas Guru Dayaramji has been examined vide Exh.108. PW 40 - Tulsidas Guru Nrutyagopaldas Bapu has been examined vide Exh.109. PW 42 - Ravjibhai Devabhai Davera has been examined vide Exh.112 and PW 44 - Sureshbhai Vishvanath Dave, Executive Magistrate who has conducted test identification parade has been examined vide Exh.127. PW 45 - Dr.Shailesh Dhanjibhai Bhuva has been examined vide Exh.140 who has conducted postmortem. PW 46 - Rameshchandra Laljibhai Dave has been examined vide Exh.149, PW 48 - Vishnudan Jasubhai Gadhvi has been examined vide Exh.197 and Arshad Aiyub Yakubkhan Sarvani has been examined vide Exh.197 who are Police Officers, none of the other witnesses have supported the case of the prosecution. It is required to be noted that vide Exh.155 - PW 47 Dipenbhai Dilipbhai Buddhdev, learned Magistrate who has recorded the statements of the witnesses under section 164 of CrPC has been examined.

[9] From the reading of the entire record of the case and also the impugned judgment, it transpires that learned trial Judge has heavily relied upon the statements recorded by PW 47 (learned Magistrate examined vide Exh.155) under section 164 of CrPC to bring home the charge coupled with the CD and photographs placed on record and then taking support from the test identification parade conducted by the Executive Magistrate - PW 44 - Sureshbhai Vishwanath Dave and also from the depositions of the Police Officers.

[10] It is also required to be noted that the statements recorded under section 164 of CrPC by the learned Magistrate is not the substantive piece of evidence. In this regard, the decision in the case of **Vijaya Singh and another Vs State of Uttarakhand**, 2024 INSC 905 is required to be taken into consideration wherein in paragraphs 27, 28 and 31, the Honourable Apex Court has thus held as follows:

> "27. The jurisprudence concerning a statement under Section 164 CrPC is fairly clear. Such a statement is not considered as a substantive piece of evidence, as substantive oral evidence is one which is deposed before the Court and is subjected to cross-examination. However, Section 157 of Indian

Evidence Act, 1872 makes it clear that a statement under Section 164 CrPC could be used for both corroboration and contradiction. It could be used to corroborate the testimonies of other witnesses. In R.Shaji v. State of Kerala, this Court discussed the two-fold objective of a statement under Section 164 CrPC as:

"15. So far as the statement of witnesses recorded under Section 164 is concerned, the object is two fold; in the first place, to deter the witness from changing his stand by denying the contents of his previously recorded statement, and secondly, to tide over immunity from prosecution by the witness under Section 164. A proposition to the effect that if a statement of a witness isrecorded under Section 164, his evidence in Court should be discarded, is not at all warranted ..."

The Court also recognized that the need for recording the statement of a witness under Section 164 CrPC arises when the witness appears to be connected to the accused and is prone to changing his version at a laterstage due to influence. The relevant para reads thus:

"16. ... During the investigation, the Police Officer may sometimes feel that it is expedient to record the statement of a witness under Section 164 Code of Criminal Procedure. This usually happens when the witnesses to a crime are clearly connected to the accused, or where the accused is very influential, owing to which the witnesses may be influenced ..."

28. Considering the conceptual requirement of recording a statement before a Judicial Magistrate during the course of investigation and the utility thereof, as prescribed in Section 157 of Evidence Act, it could be observed that a statement under Section 164, although not a substantive piece of evidence, not only meets the test of relevancy but could also be used for the purposes of contradiction and corroboration. A statement recorded under Section 164 CrPC serves a special purpose in a criminal investigation as a greater amount of credibility is attached to it for being recorded by a Judicial Magistrate and not by the Investigating Officer. A statement under Section 164 CrPC is not subjected to the constraints attached with a statement under Section 161 CrPC and the vigour of Section 162 CrPC does not apply to a statement under Section 164 CrPC. Therefore, it must be considered on a better footing. However, relevancy, admissibility and reliability are distinct concepts in the realm of the law of evidence. Thus, the weight to be attached to such a statement (reliability thereof) is to be determined by the Court on a case-to-case basis and the same would depend to some extent upon whether the witness has remained true to the statement or has resiled from it, but it would not be a conclusive factor. For, even if a witness has retracted from a

> statement, such retraction could be a result of manipulation and the Court has to examine the circumstances in which the statement was recorded, the reasons stated by the witness for retracting from the statement etc. Ultimately, what counts is whether the Court believes a statement to be true, and the ultimate test of reliability happens during the trial upon a calculated balancing of conflicting versions in light of the other evidence on record.
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> xxxx xxxx xxxx
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> 31. Having said so, we deem it fit to observe that a statement under Section 164 CrPC cannot be discarded at the drop of a hat and on a mere statement of the witness that it was not recorded correctly. For, a judicial satisfaction of the Magistrate, to the effect that the statement being recorded is the correct version of the facts stated by the witness, forms part of every such statement and a higher burden must be placed upon the witness to retract from the same. To permit retraction by a witness from a signed statement recorded before the Magistrate on flimsy grounds or on mere assertions would effectively negate the difference between a statement recorded by the police officer and that recorded by the Judicial Magistrate. In the present matter, there is no reasonable ground to reject the statements recorded under Section 164 CrPC and reliance has correctly been placed upon the said statements by the courts below." Considering the aforesaid principle, though it is observed that the statement under section 164 of CrPC cannot be discarded at the drop of a hat and on a mere statement of the witness that it was not recorded correctly and much higher burden is placed on the witness who retracts from the same. After perusing the record of the case, we find reasonable grounds to reject the statements recorded under section 164 of CrPC merely for the following reasons.

[11] The statement recorded under section 164 of CrPC of witness - Pravinbhai Gordhanbhai Dholaria at Exh.158, witness - Mayursinh Jitendrasinh Raijada at Exh.159, witness - Virjibhai Somabhai Dangar at Exh.160 and witness - Girdharbhai Keshubhai Raiyani at Exh.161 if perused, all the statements of these witnesses are verbatim and stereotyped except barring few words. The entire statements of all the four witnesses are verbatim and on perusal of these statements at Exh.158 to 161, recording of satisfaction by learned Magistrate that witnesses have beenexplained, repercussions of recording of statements under section 164 of CrPC and after recording of such statements, whether such statements were read over to the witnesses is also not reorded under these exhibits. Thus, despite witnesses having stated that they have given the statements before the learned Magistrate, no specific dates have been admitted by them with regards making of such statements and they have resiled from their statements recorded under section 164 of CrPC coupled with the fact that none of the independent witnesses except as stated hereinabove have supported the case of the

prosecution. No reliance can be placed on the statements of the witnesses recorded under section 164 of CrPC which creates serious doubt in the manner in which they were recorded and under the circumstances as to how these statements were given is not proved beyond reasonable doubt nor the cooling off period or the factum of repercussions of the statements under section 164 of CrPC having been explained and recorded in such statements cannot be relied upon to convict the accused persons. Thus, the statements though relevant but their admissibility and reliability create serious doubt and does not pass the test of admissibility and reliability under the provisions of the Indian Evidence Act and no weightage can be attached to such statements and in light of all other evidence on record relied upon, section 164 of CrPC would be of no avail to the prosecution.

[12] As far as witnesses supporting the case of the prosecution are concerned, the first such witness PW 31 - Rameshbhai Mohanbhai Bhuva at Exh.87 though has not been declared hostile, but does not support the case of the prosecution and does not take the case of the prosecution any further. As far as PW 39 - Kanaiyadas Guru Dayaramji who has been examined at Exh.108 is concerned, it is only proved to the effect that 10 to 12 days before the death of the deceased, the deceased had talked with this witness and stated that accused Nos.1 and 2 are harassing him and want to snatch away the possession of the land. Thus, only serious doubt can be said to have created and when no specific role is attributed to any of the accused nor as he eye witness to the incident, no reliance can be placed on such witness. The next witness who has supported the case of the prosecution is Tulsidas Guru Nrutyagopaldas Bapu who has been examined at Exh.109 also does not take the case of the prosecution any further since he only recognizes the dead body. PW 42 - Ravjibhai Devabhai Davera who has been examined at Exh.112 also does not take the case of the prosecution any further and has clearly admitted in his cross examination that on the day of incident, he was not in Gondal City and that he has no personal knowledge about the incident and has no knowledge about how the deceased has expired.

[13] As far as PW 25 Ratilal Naginbhai Patel is concerned who is examined vide Exh.69, he is Circle Officer working at the Mamlatdar office, Gondal had received request from Gondal City Police Station to prepare site map of the place of incident of 18.11.2011 and the same came to be prepared on 6.1.2012. However, merely preparing map of place of incident would not take case of the prosecution any further when none of the material witnesses have supported the case of the prosecution.

[14] As far as PW 26 - Dr.Jitendrabhai Jivrambhai Joshi who has been examined at Exh.72 is concerned, he has treated accused No.1 and before the Doctor, he had given the history to the effect that Ramdas Bapu had inflicted stick injury to him near Khimori lake on 14.11.2011 at 4.00 O'clock in the evening and also found injuries of reddish brown abrasion of 2 x 2 cm with scrap. It is required to be noted that such admission was recorded by the Doctor while he was in police custody and on the basis

of such statement without there being any other substantial corroborative piece of evidence coupled with the fact that a bar under section 26 of the Indian Evidence Act which prevents confession by the accused while in custody of the police to be proved against him. Under such circumstances, no reliance can be placed on such history.

[15] As far as PW 27 - Devendrabhai Tapubhai Babariya who has been examined at Exh.80 is concerned, the witness has deposed that it is accused No.1 i.e. Jagdishbhai who had telephoned and called ambulance and in the cross examination of the said witness, he has admitted that when he reached at the place of incident, one Sadhu was lying and was changing sides and was also speaking and had also heard from mouth to word that Bapu who was expired was in drunk condition. In his examination-in-chief also, he has stated that he has received the call on 6.30 on 14.11.2011 from Jagabhai Gondaliya i.e. accused No.1 and in pursuance thereof, they had gone to Shriram Petrol Pump where one Sadhu was lying who was not well and on reaching, his health was improved and therefore, they came back. Thus, from the deposition of this witness also, nothing substantial supporting the case of the prosecution is coming on record.

[16] As far as the deposition of the Executive Magistrate who has conducted test identification parade i.e. PW 44 - Sureshbhai Vishwanath Dave at Exh.127 is concerned, on perusal of the deposition of this witness and considering the same in its entirety, it transpires that the age, appearance, height etc. of the accused persons who were not stated and due to which dummy accused persons who were made to sit in the test identification parade were of neither relevant hight, colour, structure of the body and thus mandatory provisions of conducting test identification parade having not followed. Also considering the fact that test identification parade is merely for the purpose of identification of the accused and is not substantial evidence but only corroborative evidence and hence mere identification in test identification parade cannot form the substantial evidence for conviction in absence of corroborative to the identification. Even otherwise, it was onus on the prosecution to establish that test identification was held in accordance with law.

[17] As far as the death of the deceased being homicidal in nature is concerned, though defence lawyer has examined the Doctor at length, but we have no reason to discard the evidence that the death of the deceased was because of multiple injuries sustained by the deceased on his body and thus the death of the deceased was due to homicidal cannot be disputed.

[18] As far as the deposition of PW 46 - Rameshchandra Laljibhai Dave who has been examined at Exh.149, PW 48 - Vishnudan Jasubhai Gadhvi - Police Inspector and Investigating Officer who has been examined at Eh.166 and PW 49 - Arshad Aiyub Yakubkhan Sarvani - incharge Police Inspector when Vishnudan Jasubhai Gadhvi was on leave who has been examined at Exh.197 have been subjected to lengthy cross examination but the fact remains that they are formal witnesses and that none of them have deposed the contents of the panchnamas to prove various panchnamas recorded

during the investigation and under the circumstances, it cannot be said that despite the panchas have turned hostile, panchnamas have been proved in accordance with law.

[19] As far as recovery of camera and print out of photographs are concerned, the fact remains that none of the witnesses from whom such camera was recovered have supported the case of the prosecution nor they have been shown the camera which were used in taking photographs and/or CD and they have turned hostile coupled with the fact that no certificate under section 65-B of the Indian Evidence Act is placed on record and hence no reliance can be placed, more particularly, in view of the decision in the case of **Arjun Panditrao Khotkar Vs Kailash Kushanrao Gorantyal and others**, 2020 7 SCC 1 wherein it is held that certificate required under section 65-B is a condition precedent to the admissibility of secondary evidence by way of electronic evidence. It was further held that oral evidence in place of such certificate cannot sufficient as section 65-B(4) is mandatory requirement of law and clearly states that secondary evidence is admissible only if laid in the manner stated and not otherwise.

[20] The certificate under section 65-B(4) would be unnecessary if the original document itself is produced and this can be done by the owner of the laptop computer, computer tablet or even a mobile phone by stepping into the witness box and proving that the device concerned on which the original information is first stored is owned and/or operated by him. No such exercise has been undertaken while exhibiting the document, more particularly, CD or photographs coupled with the fact that the person alleged to have taken photographs, recorded video and alleged interview after the death are not proved in accordance with settled principles in the aforesaid case.

[21] In view of the same, reliance placed by learned trial Court on CD as well as photographs is based on without considering the settled principles of law. It is required to be noted that conduct of the deceased was also not clear of any doubt since there are various FIRs lodged against him also and that from the depositions of Girdharbhai and Jahidbhai Ismailbhai Bhatti, it has come on record that it is accused No.1 who had telephoned for calling abulance and was also found present at the scene of offence which would generally not be a conduct of an accused after committing a crime. Normally, a human behaviour is to the effect that a person who has committed a crime would try to concel himself from the offence and would not be present at the scene of offence nor would be telephoned to call ambulance after committing crime and thus, defence is able to create serioud dent in the case of the prosecution theory.

[22] Considering overall facts and circumstances of the case as well as documentary evidences on record, we are of the considered opinion that it cannot be said that the prosecution has been able to prove its case beyond reasonable doubt.

[23] For the reasons stated hereinabove, the present criminal appeals succeed and the same are allowed. At this juncture, it would be relevant to note that appellant No.1 of Criminal Appeal No.1231 of 2014 i.e. Shambhubhai Gandubhai Kotadia Patel has expired pending the appeal on 8.2.2025 and photocopy of the death certificate is also

placed on record. Considering the same, Criminal Appeal No.1231 of 2014 qua appellant No.1 - Shambhubhai Gandubhai Kotadia Patel stands abated. The impugned judgment and order dated 14.2.2014 in Sessions Case No.26 of 2012 passed by learned Additional Sessions Judge, Gondal is quashed and set aside.

[24] If the appellants - accused are in jail, they be set at liberty if not required in any other offence. R & P be sent back forthwith

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2026(1)AIAJ104

IN THE HIGH COURT OF KERALA AT ERNAKULAM

(Hon'ble Judge: Bechu Kurian Thomas)

Crl A (Criminal Appeal) No 1218 of 2015 **dated 07/11/2025**

Aneesh S/o Nassar

Versus

State of Kerala

NDPS POSSESSION

Narcotic Drugs and Psychotropic Substances Act, 1985 Sec. 50, Sec. 52A, Sec. 22, Sec. 42, Sec. 57 - NDPS Possession - Accused challenged conviction under NDPS Act for possession of psychotropic substance - Contended delay in production and non-compliance of mandatory provisions - No independent witnesses examined - Procedural lapses in taking samples and conversion of quantity - Prosecution failed to prove compliance under Sections 42, 50, 52A and 57 - Court held recovery doubtful - Conviction set aside - Appeal Allowed

Law Point: Strict procedural compliance under NDPS Act is mandatory; failure thereof renders conviction unsustainable.

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 Sec. 50, Sec. 52A, Sec. 22, Sec. 42, Sec. 57

Counsel:

P Mohamed Sabah, Libin Stanley, Saipooja, Sadik Ismayil, R Gayathri, M Mahin Hamza, Alwin Joseph, Benson Ambrose, Sreeja V

JUDGEMENT

Bechu Kurian Thomas, J.- [1] Appellant assails the verdict of guilty apart from the consequent conviction and sentence imposed upon him under section 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'). By the impugned judgment, appellant has been sentenced to undergo rigorous imprisonment

for a period of thirteen years and to pay a fine of Rs.1,00,000/-, with a default sentence.

[2] The prosecution alleged that on 21.10.2011, the accused was found in possession of 174 ampules of Lupigesic and 24 unlabelled ampules. Prosecution further alleged that each ampule contained 2 millilitres (ml) of contraband and 12 of the ampules were found in the pocket of the pants of the accused, apart from Rs.200/- found in his shirt pocket and thereby the accused committed the offences alleged.

[3] The prosecution case was attempted to be proved through PW1 to PW6, apart from Exhibit P1 to Exhibit P20 and material objects MO1 to MO5, while the defence tried to justify the claim of innocence of the accused and marked Exhibit D1. However, after analysing the evidence adduced in the case, the Trial Court found the accused guilty and sentenced him as mentioned earlier.

[4] Smt. Saipooja, the learned counsel for the petitioner contended inter alia that the production of contraband before the Court was delayed by around seven days, thereby creating doubts on the veracity of the prosecution case. The learned counsel also pointed out that the requirements under section 52A of the NDPS Act had not been complied with and the accused could not have been convicted since the sample was not taken in the presence of the Magistrate as required by section 52A of the Act and as held in the decision in **Noor Aga v. State of Punjab and Another**, 2008 16 SCC 417 and **Nadeem Ahamed v. State of West Bengal**, 2025 INSC 993. The learned Counsel further submitted that there was no compliance of section 50 of the NDPS Act as it was compulsory to make an endeavour to take the accused to a Magistrate as held in **Ranjan Kumar Chadha vs. State of Himachal Pradesh**, 2023 AIR(SC) 5164. The learned Counsel also contended that Exhibit P1 and Exhibit P13 reports filed under section 42 and section 57 of the NDPS Act respectively, were not in accordance with law. In order to buttress her submissions that the prosecution was totally flawed, the learned counsel relied upon the absence of any independent witnesses in Exhibit P2 consent statement of the accused, absence of any independent local witnesses and the presence of two papers with the signatures of the accused and witnesses, all of which, according to her create doubts on the prosecution case itself. The learned counsel also pointed out that as per the deposition of PW2-the Village Officer, the width of the road was so narrow that a container lorry could not have been parked there. The learned counsel further submitted that the NDPS Act indicates quantity of contraband on the basis of grams while the prosecution case dealt with millilitres and in the absence of any evidence regarding quantum of alleged contraband after converting it into grams or even any reference in the court charge to the equivalent grams of contraband, the charge by itself is faulty and the accused cannot be found guilty, that too, for the offence of possessing commercial quantity of the contraband. It was further submitted that the two independent witnesses examined by the prosecution as PW4 and PW5, had turned hostile and there was no attempt to

identify any of the signatures in the records. It was submitted that the evidence adduced by the prosecution being full of inconsistencies and incongruities, their case is unbelievable.

[5] Smt. V. Sreeja, the learned Public Prosecutor on the other hand contended that the accused was found in possession of 174 ampules of Lupigesic carried by him in a plastic kit, apart from another 12 ampules of the same drug recovered from the pocket of his pants, each containing 2 millilitres and that every procedure required by law has been complied with. It was submitted that Exhibit P1 is the document that satisfies the compliance of section 42 of the NDPS Act, while Exhibit P13 is the document that depicts compliance of section 57 of the NDPS Act. The learned Prosecutor submitted that section 50 of the NDPS Act also stands satisfied in the instant case and that it was not compulsory that the accused should be taken to the Magistrate. It was further submitted that Section 52A has no application in the instant case since what was produced and marked in the trial court was not a representative sample but the entire quantum of drugs seized from the possession of the appellant. The learned Public Prosecutor further submitted that there is no delay in producing the documents before the Court and further that the width of the road as deposed to by PW2 was clarified by the Investigating Officer when examined as PW6 and considering the nature of evidence adduced, there is no reason to disbelieve the prosecution case. The learned Public Prosecutor also submitted that the seized contraband was produced before the Magistrate's court without any delay.

[6] On an appreciation of the rival contentions, the following issues arise for consideration;

1. Whether the requirements under sections 42 and 57 of the of NDPS Act have been satisfied or not?

2.Whether the requirements under section 50 of the NDPS Act have been complied with?

3. Whether section 52A of the NDPS Act is required to be complied with, in the instant case?

4. Whether the reference to millilitres in the quantum of contraband seized and the charge framed has affected the prosecution case?

5. Whether there was any delay in production of the contraband before the Court?

6.Whether the prosecution case is doubtful or not and whether the impugned judgment needs any interference?

Issue No. 1: Whether the requirements under sections 42 and 57 of the NDPS Act have been satisfied or not?

[7] The prosecution case was built on the allegation that on 21-10-2011 at around 4.30 pm, an anonymous information was received regarding a person indulging in sale of drugs near Aquinas College. The said information was taken down in writing and a copy thereof was sent to the Circle Inspector, Palluruthy. Exhibit P1 is the information communicated to the immediate official superior, dated 21-10-2011 and is endorsed as received on the same date itself. Further, the said document contains the seal of the Magistrate's Court with the date "22 Oct 2011". Exhibit P13 is the report of arrest and seizure as required under section 57 of the NDPS Act. The said report is also seen received by the immediate official superior. However the date of receipt as endorsed by the said superior officer has created some confusion, as it can be read either as "27-10-2011" as well as "21-10-2011", but more as the former. Though the learned Counsel argued that the date can only be read as 27-10-2011, it can be seen from the endorsement on the document that it was received by the Magistrate's Court on 22-10-2011. Further, PW6 had, in his deposition, deposed that he writes the numeric '1' in that manner. No doubts were raised by the defence to that answer during the evidence stage and the said statement remains unchallenged. Hence it has to be concluded that both Exhibit P1 and Exhibit P13 were received by the superior officer on 21-11-2010.

[8] Law requires compliance of Section 42 of the NDPS Act as mandatory. Non compliance will vitiate the trial. The first step under Section 42 of the NDPS Act starts with the information received by the empowered officer, about the commission of an offence under the NDPS Act, and recording the information or the grounds of belief, as the case may be, in writing. The second step is to send a copy of the recorded information or grounds of belief to his immediate official superior within seventy two hours. Section 57 of the NDPS Act requires the arrest or seizure to be reported to the immediate official superior within forty eight hours. On an appreciation of the oral and documentary evidence mentioned earlier, it is evident that Exhibit P1 and Exhibit P13 were received by the immediate official superior on the same day itself and within the time limits prescribed by law. Thus, the requirements under sections 42 and 57 of the NDPS Act have been satisfied in the instant case.

Issue No. 2. Whether the requirements under section 50 of the NDPS Act have been complied with?

[9] Section 50 of the Act requires that when a person is to be searched under the provisions of the NDPS Act, he should be made aware of his right to be searched in the presence of a Gazetted Officer or a Magistrate. However, the provision has application only in cases of personal search of a person and does not extend to the search of a vehicle or a container or a bag or even premises. Further, section 50 of the NDPS Act has no application in cases where the recovery of the contraband is made from a bag or a container carried by the suspect, as it has been held that those articles do not come within the sweep of the word "person" in the said provision. Needless to mention that the provisions of section 50 of the NDPS Act will come into play only in

the case of personal search of the accused and not of anything which the accused may be carrying in his hands. Reference to the decisions in **State of Punjab v. Baldev Singh**, 1999 6 SCC 172, **Jarnail Singh v. State of Punjab**, 2011 AIR(SC) 964, **Than Kunwar v. State of Haryana**, 2020 5 SCC 260 and **Ranjan Kumar Chadha v. State of Himachal Pradesh**, 2023 AIR(SC) 5164 are relevant in this context.

[10] In Exhibit P13 report, it is mentioned that when PW1 reached the place where the accused was standing, he found a white plastic kit in his hands. Immediately on seeing the police party, the accused tried to hide behind a container lorry parked on the side of the road. Thereafter, the accused was restrained and when questioned regarding the contents of the kit in his hands, he initially informed that he was carrying certain food items and when demanded it to be opened, it was found to contain another kit, which, when inspected, was found to contain ampules of Lupigesic.

[11] The accused was then informed that the search of his body was required to be carried out, for which he had the right to have it conducted in the presence of a Gazetted Officer or a Magistrate. The report also mentions that the accused insisted on being searched in the presence of a Gazetted Officer and hence the Excise Circle Inspector, Kochi was attempted to be contacted but since the said Officer was on leave, the Circle Inspector of Fort Kochi was contacted and he reached the place by 5:20 pm. After ensuring that the police officers present at the scene did not have any contraband in their possession, the accused was searched, which revealed that he possessed 12 ampules of Lupigesic inside the pocket of his pants and Rs.200/- as cash. PW1 and PW6 have given evidence to the above effect as well and Exhibit P2 is the written consent statement of the accused agreeing to be searched.

[12] Section 50 of the NDPS Act imposes an obligation on the Police Officer to inform the suspect of his right to have his search conducted either in the presence of a Gazetted Officer or a Magistrate. The mandate under the provision depends upon the decision of the suspect. If the suspect declines his right to be searched in the presence of either of the two persons mentioned in the provision, the empowered officer can proceed to conduct the search of the person himself. In the decision in **Vijaysinh Chandubha Jadeja v. State of Gujarat**, 2011 AIR(SC) 77, it has been held that the obligation of the authorised Officer under section 50(1) of the Act is mandatory and requires strict compliance. It was also observed that failure to comply with the provision would render the recovery of the illicit article oubtful and even vitiate ? conviction.

[13] As mentioned earlier, the learned counsel for the appellant contended that the no endeavour was made by the Detecting Officer to take him to a Magistrate which was a mandatory requirement under section 50 of the NDPS Act as held in **Ranjan Kumar Chadha v. State of Himachal Pradesh**, 2023 AIR(SC) 5164. The argument, though compelling initially, a deeper analysis reveals it as legally untenable. In **Ranjan Kumar Chadha** (supra) the Supreme Court had laid down ten propositions

relating to the procedure under section 50 of the Act. As those propositions lucidly explains the ambit of the provision, it is reproduced as follows:

> "66. From the aforesaid discussion, the requirements envisaged by Section 50 can be summarised as follows: -
>
> (i) Section 50 provides both a right as well as an obligation. The person about to be searched has the right to have his search conducted in the presence of a Gazetted Officer or Magistrate if he so desires, and it is the obligation of the police officer to inform such person of this right before proceeding to search the person of the suspect.
>
> (ii) Where, the person to be searched declines to exercise this right, the police officer shall be free to proceed with the search. However, if the suspect declines to exercise his right of being searched before a Gazetted Officer or Magistrate, the empowered officer should take it in writing from the suspect that he would not like to exercise his right of being searched before a Gazetted Officer or Magistrate and he may be searched by the empowered officer.
>
> (iii) Before conducting a search, it must be communicated in clear terms though it need not be in writing and is permissible to convey orally, that the suspect has a right of being searched by a Gazetted Officer or Magistrate.
>
> (iv) While informing the right, only two options of either being searched in presence of a Gazetted Officer or Magistrate must be given, who also must be independent and in no way connected to the raiding party.
>
> (v) In case of multiple persons to be searched, each of them has to be individually communicated of their right, and each must exercise or waive the same in their own capacity. Any joint or common communication of this right would be in violation of Section 50.
>
> (vi) Where the right under Section 50 has been exercised, it is the choice of the police officer to decide whether to take the suspect before a Gazetted Officer or Magistrate but an endeavour should be made to take him before the nearest Magistrate.
>
> (vii) Section 50 is applicable only in case of search of person of the suspect under the provisions of the NDPS Act, and would have no application where a search was conducted under any other statute in respect of any offence.
>
> (viii) Where during a search under any statute other than the NDPS Act, a contraband under the NDPS Act also happens to be recovered, the provisions relating to the NDPS Act shall forthwith start applying, although in such a

situation Section 50 may not be required to be complied for the reason that search had already been conducted.

(ix) The burden is on the prosecution to establish that the obligation imposed by Section 50 was duly complied with before the search was conducted.

(x) Any incriminating contraband, possession of which is punishable under the NDPS Act and recovered in violation of Section 50 would be inadmissible and cannot be relied upon in the trial by the prosecution, however, it will not vitiate the trial in respect of the same. Any other article that has been recovered may be relied upon in any other independent proceedings.

(emphasis supplied)."

[14] The obligation of the empowered officer to inform the suspect of his right to be searched in the presence of the nearest Gazetted Officer or a Magistrate is a mandatory condition. As held in para 66(vi) of the above judgment, once the right is exercised, the choice whether to take the suspect to a Gazetted Officer or to a Magistrate is that of the empowered officer and not that of the suspect or the accused. Though, it would be ideal to take the suspect to a Magistrate and endeavour should also be made to take him before the nearest Magistrate, such an ideal requirement cannot be elevated to the status of a mandatory requirement. The contention to the contrary cannot be accepted.

[15] It is trite that a judgment cannot be read like a statute and the words or observations in a judgment should not be read in isolation. The decisions in **P. S. Sathappan v. Andhra Bank Ltd. and Others**, 2004 11 SCC 672 and that in **Goan Real Estate and Construction Limited and Another v. Union of India and Others**, 2010 5 SCC 388 are relevant in this context. Thus, though the obligation of the empowered Officer under section 50(1) of the Act to inform the suspect of his right to be searched is mandatory, the requirement to, endeavour to take him to a nearest Magistrate, cannot be regarded as a mandatory requirement. Hence, in the instant case, the requirements of section 50 of the NDPS Act have been complied with.

Issue No. 3. Whether section 52A of the NDPS Act is required to be complied with, in the instant case?

[16] On a perusal of the nature of evidence adduced and also the material objects produced, it is evident that the entire quantum of contraband seized was produced before the Court and has even been marked in evidence. Section 52A of the NDPS Act deals with disposal of seized narcotic drugs and psychotropic substances. The contention raised by the learned counsel for the appellant, relying upon the decisions in **Noor Aga v. State of Punjab and Another**, 2008 16 SCC 417and **Nadeem Ahamed v. State of West Bengal**, 2025 INSC 993 was that when the procedure under section 52A has not been complied with, the sampling becomes flawed and the case of the prosecution has to fail.

[17] The aforesaid contention of the learned counsel is misplaced. First and foremost, section 52A of the NDPS Act has not been considered to be mandatory, as observed in **Nadeem Ahammed's** case (supra) itself. The irregularity in sampling for failure to comply with section 52A of the NDPS Act cannot automatically result in vitiating the entire procedure adopted by the prosecution or treat the evidence of the prosecution to be unworthy of credence. Further, as held in **Kashif** (supra), any lapse or delay in complying with section 52A of the Act by itself will not vitiate the trial.

[18] Secondly, the scope and ambit of section 52A of the NDPS Act arises in cases where the contraband seized is disposed of by destruction or otherwise or when a representative sample alone is produced before the Court during trial. In the decision in **Narcotic Control Bureau v. Kashif**, 2024 11 SCC 372, it was observed that the purpose of insertion of Section 52A laying down the procedure for disposal of seized Narcotic Drugs and Psychotropic Substances, was to ensure the early disposal of the seized contraband drugs and substances having regard to the hazardous nature, vulnerability to theft, substitution, constraints of proper storage space and other relevant considerations. It was also held that sub-section (2) of section 52A lays down the procedure for the purpose contemplated in sub-section (1) thereof, and any lapse or delayed compliance thereof would merely be a procedural irregularity which would not vitiate the trial on that ground alone.

[19] Similarly, in the decision in Bharat Aambale v. State of Chhattisgarh,2025 8 SCC 452 it has been held, after considering all the decisions on the issue, that, although Section 52A of the Act is primarily for the disposal and destruction of seized contraband in a safe manner, yet, it extends beyond the immediate context of drug disposal, as it serves a broader purpose of also introducing procedural safeguards in the treatment of narcotics substance after seizure inasmuch as it provides for the preparation of inventories, taking of photographs of the seized substances and drawing samples therefrom in the presence and with the certification of a Magistrate. It was also observed that any inventory, photographs or samples of seized substance prepared in substantial compliance of the procedure prescribed under Section 52A of the NDPS Act would have to be mandatorily treated as primary evidence irrespective of whether the substance in original is actually produced before the court or not. Further, the court held that mere noncompliance of the procedure under section 52A will not be fatal to the trial unless there are discrepancies in the physical evidence rendering the prosecution case doubtful, which may not have been there had such compliance been done.

[20] Thus, the requirement to comply with section 52A of the NDPS Act will arise when the contraband seized is not produced in its entirety before the Court and instead only a representative sample was produced. When a representative sample alone is produced and marked in evidence, and the procedure prescribed under section 52A of the NDPS Act had been complied with, then the representative sample would be

reflective of the entire lot and the same would be treated as the primary evidence. The above proposition can be explained through an illustration as follows. Imagine a case where a commercial quantity of a contraband is seized from an accused. Normally the entire quantity of contraband seized must be produced to justify the prosecution case that the accused was found in possession of a commercial quantity of the contraband. However, if the contraband is required to be destroyed or cannot be stored or is unable to be produced in its entirety, a representative sample can be taken as prescribed under section 52A of the NDPS Act. If such a sample is taken, then the said representative sample shall by law be treated as the primary evidence of the entire quantity and nature of contraband seized.

[21] In the light of the above mentioned principles and taking note of the fact that the entire contraband seized was produced during evidence, this Court is of the view that the question of compliance or non-compliance of section 52A of the NDPS Act does not arise in the instant case. Issue No.4. Whether the reference to millilitres in the quantum of contraband seized and the charge framed has affected the prosecution case?

[22] The contraband seized from the possession of the appellant was 174 ampules of Lupigesic and 24 unlabelled ampules. Each ampule contained 2 millilitres of the said contraband. The NDPS Act specifies the commercial quantities in grams or kilograms and not in millilitres or litres. The appellant argued that the quantum of contraband seized was specified in millilitres and not in grams and hence there was nothing to prove that the contraband seized falls within the commercial category as spelt out in the statute. The said contention though appealing prima facie, it falters on a closer appreciation of the evidence. The narcotic drug contained in the contraband seized is Buprenorphine and is scheduled in the Table of NDPS Act as serial No.169. Commercial quantity of Buprenorphine as per the Table is 20 grams. Exhibit P20 chemical analysis report specifically mentions that the strength of Bupremorphine per one millilitre is equivalent to 0.299 mg. Hence the quantum of 194 ampules seized from the appellant contained a total strength of 116 grams of Buprenorphine and falls in the commercial category. Since the conversion is mentioned in the chemical analysis report, reference to millilitres in the quantum of contraband seized and the charge framed has not affected the prosecution case.

Issue No.5. Whether there was any delay in production of the contraband before the Court?

[23] Exhibit P18 is the remand report and it contains the remand order dated 22-10-2011 written by the learned Magistrate. The remand order refers to the accused alone as having been produced before the Magistrate. There is no mention of the contraband having been produced along with the accused. Exhibit P14 is the property list dated 22-11-2011, which contains the seal of the Sessions Court with the date 28-11-2011. Though there is an endorsement in green ink with the date 22-10-2011, there

is nothing to indicate that the said sign belongs to the Magistrate or that the contraband was produced before the Magistrate at any time. The property (thondi) number is seen allotted on 27-10-2011. The forwarding letter Exhibit P19 is dated 28-10-2011. The documentary evidence adduced do not disclose as to who was in custody of the contraband from the date of seizure till 28-10-2011. The depositions of the witnesses do not shed any light on this aspect. No attempt was made to identify the signature in the green ink with the date 22-10-2011 on Exhibit P14. The said signature does not have any similarity with the signature of the Magistrate on the remand order. Thus, it has to be concluded that the contraband seized on 21-10-2011 reached the Court only on 28-11-2011 or at least on 27-10-2011. No attempt was even made to explain the reason for the delay or even the mode and manner in which the contraband was kept in custody. Hence it has to be held that there was an unexplained delay in producing the seized contraband before the Court.

Issue No. 6. Whether the prosecution case is doubtful or not and whether the impugned judgment needs any interference?

[24] In the decision in **State of Uttar Pradesh v. Hansraj alias Hansu**, 2018 18 SCC 355, the Supreme Court was considering a case where the contraband seized was sealed and deposited in the police station and later produced before the Court. There was no evidence as to how and at what time and date the samples were taken for analysis. The High Court acquitted the accused after coming to the conclusion that there was no evidence to show as to how and in what condition the articles were preserved at the police station and how safely they were taken from there to the respective chemical examiners. The Supreme Court refused to interfere and held that there was no perversity to interfere with the said conclusion.

[25] Similarly, in **Faijas v. State of Kerala**, 2020 CrLJ 4758 a learned single Judge of this Court considered a case where the seizure was on 15.11.2011 while the property list showed its production before the court only on 19-11-2011. This Court came to the conclusion that the prosecution had failed to explain the reason for the delay in producing the contraband. In the decision in **Renjith v. State of Kerala**, 2024 KER 76032, it was held that when there is inordinate delay in producing the contraband before the Court, without proper explanation for the delay, and when no evidence is adduced to show who was keeping the contraband till such time, and under what conditions, it is a strong circumstance to doubt the genuineness of the sample and the credibility of the prosecution case.

[26] On an appreciation of the above principles it can be discerned that if there is delay in production of the contraband before the Court, in the absence of a reasonable explanation from the side of the prosecution, the credibility of the prosecution case will be affected. The accused will, in such circumstances, be entitled to the benefit of doubt. In this context, it is relevant to note that the seizure mahazar does not contain the specimen seal, which is yet another factor that leans in favour of the accused. As

there is no evidence forthcoming regarding the person in whose custody the contraband was kept, the conditions under which it was kept in the police station or elsewhere, the unexplained delay in producing the contraband before the Court coupled with the absence of the specimen seal on Exhibit P11 seizure mahazar, the integrity of the prosecution case becomes doubtful. The cumulative effect of the above factors persuade this Court to give the benefit of doubt to the appellant and the impugned judgment is liable to be interfered with and the accused has to be acquitted.

In the result, the conviction and sentence imposed upon the appellant in S.C. No.641 of 2011 on the files of the Additional Sessions Court-VIII, Ernakulam, is hereby set aside and the appellant is acquitted. The fine amount if any, deposited by the appellant, shall be refunded to him.

This appeal is allowed as above

2026(1)AIAJ114

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

(Hon'ble Judge: S V Pinto)

Criminal Appeal (Against Acquittal) No 223 of 2025 **dated 06/11/2025**

Sejalben W/o Pareshkumar

Versus

State of Gujarat & Anr

ACQUITTAL CHALLENGE

Indian Penal Code, 1860 Sec. 143, Sec. 294, Sec. 354, Sec. 323, Sec. 506, Sec. 354C - Code of Criminal Procedure, 1973 Sec. 209, Sec. 313 - Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 Sec. 3 - Protection of Children from Sexual Offences Act, 2012 Sec. 11 - Bharatiya Nagarik Suraksha Sanhita, 2023 Sec. 413 - Acquittal Challenge - Appeal filed under Bharatiya Nagarik Suraksha Sanhita challenging acquittal order of accused for offence under Indian Penal Code and POCSO Act - Complainant alleged that accused stared at minor girl with bad intention and frightened her - FIR registered and charge framed under IPC and later POCSO added - Trial Court appreciated evidence and acquitted accused holding that ingredients of voyeurism not established as victim not engaged in private act - Appellant contended that evidence proved bad intention and Trial Court failed to draw presumption under POCSO - Respondent argued that act did not constitute voyeurism and case filed as counterblast - Appellate Court held that no error found in appreciation of evidence and act did not amount to voyeurism under law - Acquittal confirmed - Appeal Dismissed

Law Point: For offence of voyeurism under IPC it must be proved that woman was engaged in private act and act observed not ordinarily done in public-Staring at minor girl in public place without such act does not constitute voyeurism-Acquittal justified.

Acts Referred:

Indian Penal Code, 1860 Sec. 143, Sec. 294, Sec. 354, Sec. 323, Sec. 506, Sec. 354C

Code of Criminal Procedure, 1973 Sec. 209, Sec. 313

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 Sec. 3

Protection of Children from Sexual Offences Act, 2012 Sec. 11

Bharatiya Nagarik Suraksha Sanhita, 2023 Sec. 413

Counsel:

Swapneshwar Goutam, C M Shah

JUDGEMENT

S V Pinto, J.- [1] This appeal has been filed by the appellant - original complainant under Section 413 of the Bhartiya Nagarik Suraksha Sanhita (hereinafter referred to as 'the BNSS ') against respondent no.1 - State and the respondent no.1 - original accused challenging the impugned judgment and the order passed by the learned 5th Additional Sessions Judge, Vadodara (hereinafter referred to as 'the learned Trial Court') in Special (POCSO) Case No. 26 of 2020 order dated 01.07.2024, whereby, the learned Trial Court has acquitted the respondent no. 2 - original accused from the offence under Section 354(C) of the Indina Penal Code ((hereinafter referred to as 'the IPC') and under Section 11(iv) of the POCSO Act (hereinafter referred to as 'the Act').

1.1 The appellant and the respondent no. 2 are hereinafter referred to as 'the complainant and the accused' as they stood in the original case, for the sake of convenience, clarity and brevity.

[2] The relevant facts leading to filing of the present appeal are as under:

2.1. The residential house of the complainant Sejalben Pareshkumar Shah and the residential house of the accused were opposite each other in Vrindavan bungalows, VaghodiyaDabhoi Ring Road, Kubereshwar Marg, Vadodara and on 05.03.2017 while at around 8:15am, the minor daughter of the complainant was standing outside of her house waiting for the school van, the accused was staring at her in a wrongful manner. When asked what was he looking at, the accused started laughing and the minor daughter of the complainant got frightened. The complainant Sejalben Pareshkumar Shah, the mother of the minor victim, filed a complaint at the Panigate Police Station on the same day under Section 354(C) of the IPC, which came to be registered as Panigate Police Station IC.R.No.76 of 2017.

2.2. After registration of the FIR, the investigation was carried out by the concerned Investigating Officer and after having sufficient material against the accused, the chargesheet came to be filed before the Court of Chief Judicial Magistrate.

2.3. The accused was duly served with the summons and the accused appeared before the learned 12th Additional Chief Judicial Magistrate, Vadodara and a charge was framed at Exh.5 under Section 354(C) of the IPC and the plea of the accused was recorded at Exh.6. The accused denied the contents of the charge and during the dependency of the trial, the learned APP filed an application at Exh.24 stating that the provisions of the POCSO Act are attracted as the victim is a minor and an application at Exh.24 was preferred to add Section 11(4) of the POCSO Act. After the parties were heard, the learned Trial Court allowed the application and as the offence under the POCSO Act is triable by the Special Court, a committal order under Section 209 of the Cr.P.C. was passed and the case was committed to the Special Court, Vadodara.

2.4. In connection with the charge framed by the learned Jurisdictional Magistrate, the statement of the accused was again recorded at Exh.19 by the learned Trial Court, wherein, the accused denied all the contents of the charge and the entire evidence of the prosecution was taken on record.

2.5. After the closing pursis was submitted by the learned APP at Exh.29, the further statement of the accused under Section 313 of the Code was recorded wherein the accused denied the evidence on record and stated that he has been falsely framed as he has filed a complaint against the complainant and he is innocent. The accused did not step into the witness box or lead any evidence. After hearing the arguments of the learned APP and learned advocate for the accused and after perusing the documents on record, the learned Trial Court, by the impugned judgment and order dated 01.07.2024, was pleased to acquit the accused for the alleged offence.

[3] Being aggrieved and dissatisfied with the judgment and order of acquittal, the appellant - original complainant has filed the present appeal mainly stating that the complainant has proved the case beyond reasonable doubts but the learned Trial Court has not appreciated that the accused was stalking the minor daughter with bad intention and the evidence of the victim has not been appreciated by the learned Trial Court in the proper manner and in the true spirit. There are no material contradictions in the testimonies of the witnesses which can affect the case of the prosecution but without appreciating that the victim who has attained enough maturity of thought or understanding so as to judge the nature of the act that it was indecent behaviour has not been properly appreciated by the learned Trial Court. The learned Trial Court has not appreciated that the victim is able to understand the act of voyeurism and the learned Trial Court ought to have considered the sensitiveness of the incident and the act of voyeurism on the part of the accused that has been proved beyond reasonable doubts. The learned Trial Court has not considered the contents of the FIR and has

failed to consider the presumption, which is in nature and is required to be drawn against accused in cases filed under the POCSO Act and by not drawing presumptions and not appreciating the evidence on record, and hence, the judgment and order of acquittal is completely erroneous. The victim has identified the accused and such admission does not require material evidence. The victim has narrated the entire episode, trauma and agony suffered by the act of the accused and such act should be strictly viewed which is the aim and object of the legislature in Section-11 of the POCSO Act and Section 354(C) of IPC. The learned Trial Court has failed to appreciate that the accused has not produced any evidence to show that any false allegations were leveled against him by the complainant and the learned Trial Court has not considered the statement of the victim with regard to the act of laughing of the accused with a bad intention which could be understood by the minor victim. Moreover, the learned Trial Court has not considered that on 08.11.2016 the appellant and the father of the victim went to meet the Police Commissioner, Vadodara, where it was categorically mentioned that the respondent no.2 was stalking the minor with bad intention whenever the complainant and her daughter used to step out of the house and the accused used to come out of his house in boxer shorts and would be singing and dancing and this aspect has been completely missed out by the learned Trial Court. The learned Trial Court has wrongly discarded the reliable and trustworthy evidence of the appellant and victim and the impugned judgment suffers from the vices of patent illegality, absolutely wrong reasoning and perverse approach to the facts of the case, misconception of law and applicability of the provisions of the Statutes, and hence, the appeal be admitted and the impugned judgment and order be quashed and set aside.

[4] Heard learned advocate Mr. Swapneshwar Gautam for the appellant and learned APP Ms.C.M.Shah for the respondent no.1 - State.

[5] Learned advocate Mr. Swapneshwar Gautam for the appellant has taken this Court through the entire evidence of the prosecution on record and has filed the entire evidence in the form of a paper book. Learned advocate submits that the learned Trial Court has not considered that the prosecution witnesses which include the complainant, her husband, the minor victim and three neighbours have all stated that the accused was stalking and staring at the minor girl in a wrong manner and the act of the accused is proved beyond reasonable doubts. The learned Trial Court has not considered these aspects and in the evidence, it is proved that the incident had occurred on 05.03.2017 at 8:15 a.m., and thereafter, the complainant had immediately gone to the Police Station and had given a written complaint to the police, and thereafter, the FIR was lodged. The learned Trial Court has not considered that the father of the victim has also supported the case of the prosecution and has categorically stated that he was standing in the door way of his house and he had witnessed the incident. The victim has also identified the accused and has stated that the accused was standing in his house and he was looking at her in a bad manner but the learned Trial Court has not appreciated the evidence of the victim and her parents and the other witnesses in a

proper manner. Learned advocate further submits that the evidence proves that the respondent no.2 was stalking the minor victim and was engaged in an act of watching the victim and the entire act of the respondent no.2 who is the perpetrator of the crime falls within the definition of Section 354(C) of the IPC and the offence of voyeurism is clearly made out. Learned advocate further submits that it is settled law that minor discrepancies and inconsistencies in the deposition of the victim is not relevant when there are other evidences available on record of the case but the same have not been considered by the learned Trial Court. Learned advocate further submits that the evidence of the victim can be said to be of a sterling witness as the evidence is of a very high quality and calibre and can be accepted at its face value without any hesitation but the learned Trial Court has merely relied on minor omissions and contradictions and has passed the impugned judgment and order of acquittal, and hence, the appeal must be admitted.

[6] Learned APP Ms.C.M.Shah for the respondent no.1 - State has submitted that the entire evidence on record does not prove the offence of voyeurism under Section 354(C) of the IPC as the definition of voyeurism itself states that the accused must be watching a woman engaged in a private act. As per the case of the complainant, the victim was ready to go to school and she was stepping outside of her house to sit in the school van and her mother had accompanied her and the accused who is residing exactly opposite the house of the complainant was standing in his house. There is no iota of evidence that at the time when the accused was watching the victim she was engaged in any private act. As per the explanation-1 of Section 354(C) of the IPC and there was no act that was being done by the victim which is not ordinarily done in public. The learned Trial Court has considered the entire evidence and has discussed the entire evidence in great detail in the judgment and has also considered that there are cross cases filed between the parties and the present case has been filed as a counter blast to the cases filed against the complainant and her husband by the accused. The learned Trial Court has also discussed the legal aspects and has rightly passed the impugned judgment and order of acquittal and there is no scope for any interference in the impugned judgment and order. Learned APP further submits that the State has not received any request for filing an appeal and as per the communication dated 22.07.2029 no appeal is proposed to be filed by the State, and hence, the appeal is not required to be admitted.

[7] It is a settled principle of law that in an appeal against acquittal, the Appellate Court is circumscribed by limitation that no interference has to be made in the order of acquittal unless after appreciation of the evidence produced before the Trial Court, it appears that there is some manifest illegality or perversity which could not have been possibly arrived at by the Court. It is also a settled principle that there is no embargo on the Appellate Court to review the evidence but, generally the order of acquittal shall not be interfered with as the presumption of innocence of the accused is further strengthened by the order of acquittal. The golden thread which runs through the web

of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case of the prosecution i.e. (i) guilt of the accused and (ii) his innocence, the view, which is in favour of the accused, should be adopted, and if the trial Court has taken the view in favour of the accused, the Appellate Court should not disturb the findings of the acquittal. The Appellate Court can interfere with the judgment and order of acquittal only when there are compelling and substantial reasons and the order is clearly unreasonable and where the Appellate Court comes to conclusion that based on the evidence, the conviction is a must.

[8] As per the settled principles of law, the evidence of the prosecution on record is re-appreciated and PW-1 Sejalben Pareshkumar Shah examined at Exh.9 is the complainant and mother of the victim and has stated that the incident has occurred on 05.03.2017 at around 8:15am near her house. Her minor daughter was going to sit in her school van and while she left her house the accused, who was residing in the house opposite her house, was watching the minor daughter in a bad manner. The minor daughter asked him what was he looking at and the complainant also asked the accused why he was looking in such manner but the accused started laughing and immediately the complainant dialed 181 and went to the Police Station and filed the complaint, which is produced at Exh.10. In the cross - examination, the witness has stated that there is a compound in front of her house and the school van was waiting outside the compound. The place between both the houses is constantly teeming with persons passing by and the house of the accused is exactly opposite the house of the complainant. If the complainant steps out of her house, she would be able to see the house of the accused, and in the complaint, she did not state that the accused was looking at her daughter in a bad manner. In the complaint, she has also not mentioned that she had dialed 181 and they have facilities for parking and security in their society. She had given the complaint on 05.03.2017 and had filed a written application to the police on the same day. The accused had filed a complaint against them on 29.11.2016, which was pending for trial.

8.1. PW-2 Pareshkumar Kanhaiyalal Shah examined at Exh.12 is the husband of the complainant and father of the minor victim and he has stated that on 05.03.2017 at around 8:15am his daughter was going to school and the accused was watching his daughter and at that time he was standing in his door way. He had dialed 181 and they came and took the accused to the police station. His wife had filed the FIR, and at that time, his wife had also given a copy of the application dated 29.10.2016 to the police station regarding the quarrel about bursting crackers and on 08.11.2016, they had gone to meet the Police Commissioner and a copy of the application dated 08.11.2016 was also given to the police. In the cross-examination, the witness has admitted that his wife would accompany his daughter till the school van and in his statement before the police he did not mention that he was standing in his door way. He had accompanied his wife to the Police Station while filing the complaint and the police had recorded his statement at the same time.

8.2. PW-3 the minor victim has been examined at Exh.13 and has stated that on the day of the incident she was going to school to appear for her examinations and the school van had reversed in front of the house of the accused and was parked in front of her house. When she and her mother came out, the accused was standing inside his house and was looking at her in a bad manner and when she was about to sit in the school van he smiled and she asked him why was he laughing. She sat in the van and she does not know what had happened thereafter. In the cross-examination, the witness has admitted that the house of the accused is situated exactly opposite their house and if they step out of the house they could see the house of the accused. The accused had filed a case against her father and her father too had filed a case against the accused and the accused was angry as her father had filed a case against him. She does not remember the name of the driver of the school van and the van would come right up to the gate of their house. Her mother would accompany her till the school van and make her sit in the school van. Her father was present with her when the police had recorded her statement and the police had also discussed about the incident with her father. The witness has admitted that there is a difference between a person laughing and looking in a bad manner.

8.3. PW-4 Parulben Bhadreshbhai Rai examined at Exh.14 is an eye-witness as per the case of the prosecution but the witness has clearly stated that she was not present at the time of the incident and she cannot say how the accused was looking at the minor daughter. The witness has not supported the case of the prosecution and has been declared hostile. In the crossexamination by the learned advocate for the accused, the witness has stated that she was in her house at the time of the incident.

8.4. PW-5 Prabhudas Shankarbhai Patel examined at Exh.15 is the neighbour of the parties and he has stated that the accused used to mock the victim and would look at her and laugh and the father of the victim had dialed 181 and called the police. In the cross-examination, the witness has admitted that his house is situated four houses away from the house of the victim, and at the time of the incident, he was going to pick flowers.

8.5. PW-6 Manojbhai Parshottambhai Patel examined at Exh.16 is also a neighbour of the parties who has stated that the accused would often look at the minor victim and laugh at her and the reason was the cases filed between them. The father of the victim had dialed 181 and the police had come but at the time of the incident he had gone to the temple. He was going from the temple and he does not know anything about the incident and the police has not recorded his statement. In the cross-examination, the witness has admitted that merely if a person was looking at the other person, it cannot be said that any molestation has taken place.

8.6. PW-8 Hasmukhbhai Nanjibhai Patel examined at Exh.21 is the Sub-Register, who has produced the birth certificate of the victim at Exh.22 and the date of birth of the victim is 21-06-2001.

8.7. PW-9 Baliyabhai Nayakabhai Rathwa examined at Exh.25 is the PSO who has registered the complaint and has produced a copy of the extract of the Station Diary at Exh.26.

8.8. PW-7 Sandeepbhai Vishnubhai Vasava examined at Exh.17 is the Investigating Officer, who has narrated the procedure undertaken by him during investigation. In the cross-examination, the witness has admitted that there were CCTV cameras fixed at the place of incident but the complainant did not give any copy of the CCTV footage. When the complainant had come to file the complaint at the Police Station, she had stated that the CCTV cameras are fixed in her compound from which the opposite compound would be clearly seen but she has not given the copy of the CCTV footage. The complainant had stated that she would prepare a CD of the footage and submit the same in the Police Station but she has not done so. During investigation, the deposition of the statement of the driver of the school van has not been recorded. The witness has admitted that there were many neighbors of different communities including college going girls staying on rent in the society but he has not recorded their statements and has not recorded the statements of Chirag Patel, Neetaben Solanki etc.

[9] The accused has been charged with an offence under section 354(C) of the IPC and Section 11(iv) of the POCSO Act and it is appropriate to reproduce Section 354(C) of the IPC and Section 11(iv) of the POCSO Act, which reads as under:

Section: 354-C of the IPC

> **"354C. Voyeurism:-** Any man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.
>
> **Explanation 1.**-For the purpose of this section, "private act" includes an act of watching carried out in a place which, in the circumstances, would reasonably be expected to provide privacy and where the victim's genitals, posterior or breasts are exposed or covered only in underwear; or the victim is using a lavatory; or the victim is doing a sexual act that is not of a kind ordinarily done in public.
>
> **Explanation 2.-**Where the victim consents to the capture of the images or any act, but not to their dissemination to third persons and where such image or

act is disseminated, such dissemination shall be considered an offence under this section."

9.1. Section ii(iv) of the POCSO Act:

"11. Sexual harassment:- A person is said to commit sexual harassment upon a child when such person with sexual intent:-

(i) XXX XXX XXX

(ii) XXX XXX XXX

(iii) XXX XXX XXX

(iv) repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or"

[10] Voyeurism refers to the act of watching, capturing or disseminating the image of a person, particularly a woman engaged in a private act without her consent in circumstances where she has a reasonable expectation of privacy. The word "voyeur" is derived from the French term "voir", meaning to see. In legal terms, it signifies an intrusion into a person's privacy and dignity by observing or recording them during private moments. The offence of voyeurism was inserted in the IPC by the Criminal Amendment Act, 2013 and the key elements of voyeurism are that the act involves watching, recording or distributing images or videos, while the victim is engaged in a private act such as dressing or using the restroom etc. while the victim has a reasonable expectation of privacy. The act is done without consent and the purpose is typically sexual gratification. To constitute an offence under Section 354(C) of the IPC, the prosecution has to prove that the offender was watching or recording a woman's private act which includes acts like photographing, filming or observing through hidden devices. The woman must be engaged in a private act such as undressing, using a restroom or engaging in sexual activity where she expects privacy. The situation must be one where the woman reasonably expects not to be observed. The act of watching, capturing or disseminating must be without the woman's consent and even sharing or publishing images captured with consent if done without permission amounts to voyeurism. So, the key factor is invasion of privacy and absence of consent.

[11] In the instant case, the accused has been charged with the offence under section 354(C) of the IPC mainly on the ground that the accused who was residing in front of the house of the victim was watching her with a bad intention while the victim was going out of her house to sit in the school van which was parked in front of her house. To constitute an offence of voyeurism as defined under Section 354(C) of the IPC, it is essential that the victim at the time of the offence must be engaged in a private act. Explanation-1 to Section 354(C) of the IPC defines the private act which includes an act of watching carried out in a place which in the circumstances would

reasonably be expected to provide privacy and where the victim's genitals, posterior or breasts are exposed or covered only in an underwear or the victim is using a lavatory or the victim is doing a sexual act that is not of a kind ordinarily done in public. In the entire evidence on record, there is no iota of evidence that the victim was doing any private act but as per the case of the prosecution, the victim was stepping out of her house to sit in a school van to go to school and at that time, she would be fully dressed in her school uniform and not engaged in any private act. Considering the evidence on record, there are major contradictions in the deposition of the complainant PW-1 Sejal Pareshkumar Shah, PW-2 Pareshkumar Kanelal Shah and PW-3 the victim. In fact, the mother and father of the victim do not state the exact place where the accused was standing but the victim states that he was standing inside his house. There is no panchnama of the place of offence on record and if the FIR is perused, the complainant has stated that the accused was standing near his house. It is not clear as to where the accused was at the time of the incident and prior to registering of the FIR, the complainant had given a written application to the police wherein she has stated that while her daughter was going to sit in the van, the accused was watching her with a bad intention but her daughter was not paying attention and this was noticed by her mother i.e. the complainant. In the written application, the complainant has stated that she told the accused not to do so and he started crying, but his wife did not come out of the house, and at that time, as it was morning time, everyone was in their own homes. Hence, in the written application, the complainant has clearly stated that there were no eye-witnesses to the incident. The neighbours PW-4 Parulben Bhadreshbhai Rai and PW-7 Manojbhai Prashothambhai Patel have not supported the case of the prosecution and have deposed that they are not eye-witnesses to the incident. PW-5 Prabhudas Shankarbhai Patel who is a neighbour and residing four houses away from the house of the parties has given an exaggerated version and has stated that the accused was mocking and making fun of the victim which is not the case of the complainant. It is also on record that the complainant had access to a CCTV footage and at the time of filing of the complaint, she had told the Investigating Officer that she would give a copy of the CCTV footage in a CD but the same was not given by her. Moreover, if the incident has occurred, the best independent witness would be the van driver but the victim and the complainant have both stated that they do not know the name of the driver of the van. In the evidence, it has also come on record that the parties were having disputes between them since 29.10.2016 when an incident about bursting of crackers had taken place and the complainant had given a written application to the Vaghodiya Police Station on 30.10.2016. Thereafter, the accused had filed a complaint under Sections 323, 294(B), 506(2) and 11(iv) of the IPC on 07.11.2016, which was registered at Panigate Police Station II-CR No.542 of 2010 on 07.11.2016 for the offence that had occurred on 29.10.2016 regarding the bursting of crackers. Thereafter, the accused had also filed a complaint under Section 143, 323, 354 of the IPC and Section 3(1)(r)(s) and 3(2)(va) of the Atrocity Act against the victim and her parents

on 03.12.2017 which was registered at Panigate Police Station I-C.R.No.0276 of 2017. It is on record that cases have been filed by the accused against the complainant and her husband and the complainant has filed this case against the accused. In the first instance, the complainant has in the written application given to the Police Station has stated that the victim was not aware of the presence of the accused and considering the contradictions in the deposition of the victims in the deposition of the victim and her parents, is no evidence that any such offence had taken place.

[12] Considering the settled legal position and the facts of the case, the act of a person glancing or looking at a victim who is about to sit in a school van in a public place does not constitute voyeurism because the act of sitting in a school van is a public and non-private act. At the time of the act, the victim is not engaged in an act that involves undressing, using a lavatory or any form of intimate or private activity. The public space like a street where others are present does not provide the victim a reasonable expectation of complete privacy and the offence of voyeurism would be committed only when privacy is expected such as bathrooms, bedrooms or changing rooms. As per the settled principle of law, the offence of voyeurism requires an intention or act of watching or capturing for sexual satisfaction. A mere glance or look even if momentary without such intention or act cannot amount to voyeurism. In voyeurism, the core element is the absence of consent for which for being watched or recorded in a private act and if a person is simply being looked at in a public setting does not meet this requirement. In the instant case, the act of the accused glancing or looking at the victim about to sit in a school van does not amount to voyeurism as it fails to satisfy the essential ingredient of a private act and the reasonable expectation of privacy. Such conduct does not attract any criminal liability under Section 354(C) of the IPC as the offence of voyeurism is confined strictly to acts that intrude upon the personal, private and intimate sphere of an individual. The act in question occurred in a public place and the victim was not engaged in any private or intimate act and there is no evidence on record to show that the accused had attempted to intrude the privacy of the victim. The essential ingredients of Section 354(C) of the IPC are not satisfied and the act of the accused does not attract criminal liability under the provisions of the act, and hence, the accused cannot be held guilty for the offence of voyeurism either directly or through electronic digital or any other means.

[13] As far as the offence under Section 11(iv) of the POCSO Act is concerned, a person is said to commit sexual harassment upon a child when he repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any means. In the entire evidence, there is no iota of evidence that the accused had with any sexual intention repeatedly or constantly followed or watched or contacted the victim either directly or through any electronic, digital or any other means. As stated by the complainant, the incident has occurred on 05.05.2017 at 8:15am when the minor victim was going from her house to sit in their school van and besides this incident, there are no other details of any other incident narrated by the

complainant or the victim that the accused was repeatedly or constantly following or watching the victim.

[14] In view of the above, the learned Trial Court has appreciated the entire evidence in proper perspective and there does not appear to be any infirmity and illegality in the impugned judgment and order of acquittal. The learned Trial Court has appreciated all the evidence and this Court is of the considered opinion that the learned Trial Court was completely justified in acquitting the accused of the charges leveled against them. The findings recorded by the Trial Court are absolutely just and proper and no illegality or infirmity has been committed by the learned Trial Court and this Court is in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by the learned Trial Court. This Court finds no reason to interfere with the impugned judgment and the order passed by the learned 5th Additional Sessions Judge, Vadodara in Special (POCSO) Case No. 26 of 2020 order dated 01.07.2024 and the present appeal is devoid of merits and resultantly, the same is dismissed at the stage of admission

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2026(1)AIAJ125

IN THE HIGH COURT OF KARNATAKA

(Hon'ble Judge: G Basavaraja)

Criminal Appeal No 1818 of 2016, 1227 of 2015 **dated 04/11/2025**

Indra S/o Late Muthu; Khadal @ Rama S/o Ravi @ Lal Masab; Bandoos @ Bandu S/o Dr Babu; Manja @ Manjunath S/o Late Babu; Manna S/o Late Mutthu

Versus

State By Yelawala Police, Mysore

PREPARATION FOR DACOITY

Indian Penal Code, 1860 Sec. 402, Sec. 399, Sec. 400 - Code of Criminal Procedure, 1973 Sec. 313 - Preparation for Dacoity - Accused alleged to have assembled with deadly weapons to commit dacoity at petrol bunk and convicted under Sections 399, 400 and 402 IPC - Prosecution relied solely on police evidence and seizure mahazar - Independent witnesses turned hostile and no corroboration to support police version - Complainant himself investigated matter creating doubt about fairness of investigation - Evidence of identification not proved and material contradictions found in testimonies - Court observed that prosecution failed to establish guilt beyond reasonable doubt and benefit of doubt must go to accused - Held that conviction unsustainable and set aside - Accused acquitted - Appeals Allowed

Law Point: When prosecution evidence lacks independent corroboration and investigating officer himself is complainant, conviction under Sections 399, 400 and 402 IPC cannot be sustained-Benefit of doubt to be extended to accused.

Acts Referred:
Indian Penal Code, 1860 Sec. 402, Sec. 399, Sec. 400
Code of Criminal Procedure, 1973 Sec. 313

Counsel:
B Lethif, M R Patil

JUDGEMENT

G Basavaraja, J.- [1] Both appeals arise out of Judgment of conviction and order on Sentence passed in Sessions Case No.212 of 2013 dated 01st October 2015 on the file of I Additional Sessions Judge, Mysuru (for short "the trial Court"). Accused 2, 3, and 4 have filed Criminal Appeal No.1818 of 2016 and accused 1 and 5 have filed Criminal Appeal No.1227 of 2015.

[2] For the sake of convenience, the parties in these appeals are referred to as per their rank before the trial Court.

[3] Brief facts, leading to these appeals are that on 4/5th February, 2023 during midnight, at about 11:30 pm, accused 1 to 6 along with absconded accused No.7, have assembled with deadly weapons with an intention to make preparation to commit dacoit of Friends Filling Station (Petrol Bunk) situate near RMP Factory Cross, Mysuru-Hunsur Main Road and thereby committed offence punishable under Sections 399, 400 and 402 of Indian Penal Code. After filing chargesheet, case was registered in CC No.278 of 2013 and the same was committed to Court of Sessions. After committal to Sessions Court, case came to be registered in SC No.212 of 2013.

[4] Upon hearing on charges, the trial Court framed Charges against accused 1 to 6 for the offences punishable under Sections 399, 400 and 402 of Indian Penal Code. The same was read over and explained to the accused. Having understood the same, accused pleaded not guilty and claimed to be tried. To prove the guilt of the accused, prosecution has examined 8 witnesses as PWs1 to 8, marked eight documents as Exhibit P1 to P8 and 7 Material Objects as per MO1 to 7. On closure of prosecution side evidence, statement of the accused under Section 313 Code of Criminal Procedure was recorded. Accused have totally denied evidence of prosecution witnesses appearing against them, but have not chosen to lead any defence evidence on their behalf. However, during the course of cross-examination of PW2, Exhibits D1, 1(a) and 1(b) were marked.

[5] Having heard the arguments on both sides, the trial Court convicted the accused 1 to 6 for offences punishable under Sections 399, 400, 402 of Indian Penal Code and passed sentence. Being aggrieved by the impugned Judgment of conviction and order on sentence, appellants have preferred these appeals.

[6] Sri Lethif, learned Counsel appearing for the appellants in both the appeals, would submit that during the pendency of the appeal, appellant No.3-Deepak in

Criminal Appeal No.1227 of 2015 who is accused No.6, has expired and the absconding accused No.7 has also expired. The learned counsel would submit that the Judgment of conviction and order on sentence passed by the learned Sessions Judge is illegal, invalid, contrary to law and facts. The prosecution is guilty of suppressing material evidence and has not come to the Court with true version of incident. PWs3 & 4 are the eye-witnesses to the alleged incident. They have failed to identify the appellants. PWs5 & 7 who are witnesses to seizure mahazar- Exhibit P7, have not supported the case of prosecution. The evidence of PWs1, 6 & 8, are Police Official witnesses and their evidence are not corroborated with any of the independent witnesses. There are material contradictions in the case of prosecution. It is submitted that Exhibit P1 reveals that the complainant-T. Shivakumar, Police Inspector has received the information at 11.30 pm on 04th February, 2013 that about 6 to 7 persons were suspiciously moving near petrol bunk, but the same is not entered in the General Diary. First Information Report-Exhibit P8 reveals that in General Diary, the time is shown as 3.00 am. Though they received the information regarding movement of six to seven persons near the petrol bunk in a suspicious manner, the same is not entered in the General Diary. On the contrary, they have arrested the accused on 05th February 2013 at 00.10 hours and have conducted seizure mahazar as per Exhibit P2 between 00.30 and 02.00 am and seized the material objects. After seizure of properties and arrest of the accused, the investigating officer has registered the case against the accused in Crime No.17 of 2013 on 05th February, 2013 and submitted First Information Report to the Court on the same day at 3:25 pm. The complainant, who himself has lodged the complaint, has arrested the accused which is not permissible under law. The learned counsel submit that the police have filed charge-sheet against the accused for the offence punishable under Sections 395 and 302 of Indian Penal Code in SC No.215 of 2013 before the III Additional District and Sessions Judge, in which accused were acquitted on 29th January, 2019. As against this, State has not preferred any appeal. He would further submit that the petrol bunk employees have not supported the case of prosecution. Since the complainant himself has investigated the crime, the credibility of investigation in the case is doubtful. Complainant is the higher officer. In the case on hand, PW1 has lodged the complaint and Yelawala police have registered the case. When Yelawala Police have registered the case, the Station House Officer of Yelawala Police has to investigate the case. Instead, the complainant himself has investigated the case, which is not sustainable. The evidence of PW2 & PW7 reveals that they are stock witnesses and have deposed only at the instance of the Police. PW3 & PW4 are employees of Petrol Bunk. Only after the arrest, Police have shown the accused and prior to that they have not seen the accused. They have also been treated as partly hostile witness. To substantiate his submissions, he has relied on the Judgment of Supreme Court in the case of **JASBIR SINGH @ JAWARI @ JABBAR SINGH v. STATE OF HARYANA**, 2015 5 SCC 762.

[7] As against this, Sri M.R. Patil, learned High Court Government Pleader, submit that the trial Court has properly appreciated evidence and record in accordance with law and facts and there is no ground for interference in these appeals. Accordingly, he sought for dismissal of the appeals.

[8] Having heard the arguments and on perusal of the materials placed on record, the point that would arise for consideration in these appeals is:

> "Whether the appellants have made out a ground to interfere with the impugned judgment of conviction and order on sentence, passed by the trial Court?"

[9] Before appreciation of evidence on record, it is necessary to mention here as to the judgment of Hon'ble Supreme Court in the case of JASBIR SINGH (supra). In the said judgment, at paragraphs 11 to 13, the Hon'ble Supreme Court has held as under:

> "11. Having considered the submissions of the learned counsel for the parties and after going through the papers on record, we are of the view that none of the charge in the present case, against the appellant, can be said to have been proved beyond Page 8 of 10 reasonable doubt. In this connection, we would like to quote following observations of the High Court, made in the impugned, after re-appreciating the evidence: -
>
> "The statement of ASI Sube Singh and H.C. Ram Singh cannot be believed to the effect that they had over heard the conversation of the accused, details of which are given above to show that the accused were discussing their plan in detail to commit dacoity on the liquor shop, situated at Meerut Road, Karnal. It is apparently exaggeration and padding on the part of Investigating Officer."
>
> 12. Strangely, even after observing as above, the High Court has believed the prosecution story in respect of offences punishable under Sections 399 and 402 IPC, and one in respect of offence punishable under Section 25 of Arms Act. The High Court has erred in law in not taking note of the following facts apparent from the evidence on record: -
>
> (i) In a day light incident at 1.20 p.m. within the limits of City Police Station, Karnal, there is no public or any other independent witness of the arrest of the appellant along with other accused from the place of incident nor that of the alleged recovery of fire arm said to have been made from two of them.
>
> (It is not a case where arrest or recovery has been made in the presence of any Gazetted Officer.)
>
> ii) Complainant (PW-6) has himself investigated the crime, as such, the credibility of the investigation is also doubtful in the present case,

particularly, for the reason that except the police constables, who are subordinate to him, there is no other witness to the incident.

(iii) It is not natural that the six accused, four of whom were armed with deadly weapons, neither offered any resistance nor caused any injury to any of the police personnel before they are apprehended by the police.

(iv) It is strange that all the accused were wearing blue shirts, as if there was a uniform provided to them.

(v) It is hard to believe that the appellant and three others did not try to run away as at the time of the noon they must have easily noticed from a considerable distance that some policemen are coming towards them.

(It is not the case of the prosecution that police personnel were not in uniform.)

13. In view of the above facts and circumstances, which are apparent from the evidence on record, we find that both the Courts below have erred in law in holding that the prosecution has successfully proved charge of offences punishable under Sections 399 and 402 IPC, and one punishable under Section 25 Page 10 of 10 of Arms Act against appellant Jasbir Singh @ Javri @ Jabbar Singh, beyond reasonable doubt. In our opinion, it is a fit case where the appellant is entitled to the benefit of the reasonable doubt, and deserves to be acquitted."

[10] In the case on hand, interested testimony of official witnesses have not been corroborated by any independent witness. The evidence of PW2 & PW7 reveals that they are stock witnesses and have deposed only at the instance of the Police. PW3 & PW4 are employees of Petrol Bunk. Only after the arrest, Police have shown the accused and prior to that they have not seen the accused. They have not deposed anything against the accused as to the alleged commission of offence.

[11] The complainant himself has investigated the crime.

The credibility of investigation in this is doubtful. The evidence of prosecution witnesses reveals that the accused have not resisted the police officials before arrest and they have also not caused any injury to any of the police personnel before they were apprehended by the police. Even appellants have not tried to run away after witnessing the police personnel. For the aforesaid reasons, the entire evidence of prosecution witnesses will create doubt as to the alleged commission of offence committed by the accused. Therefore, considering the facts and circumstances of the case and also keeping in mind the aforesaid decisions, I am of the considered opinion that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt. Hence, I proceed to pass the following:

O R D E R

i) Appeals are allowed;

ii) Judgment of conviction and order on Sentence passed in Sessions Case No.212 of 2013 dated 01st October 2015 on the file of I Additional Sessions Judge, Mysuru, is set aside;

iii) Accused are acquitted of the offences under Sections 399, 400, 402 of Indian Penal Code;

iv) Registry to send the copy of this judgment along with trial court records to the concerned court

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