

Wadla Bheemaraidu vs The State Of Telangana on 3 December, 2024

Author: Dipankar Datta

Bench: Dipankar Datta

2024 INSC 923

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S) . 573 OF 2023

WADLA BHEEMARAIDU

...APPELLANT(S)

VERSUS

STATE OF TELANGANA

...RESPONDENT(S)

JUDGMENT

Mehta, J.

1. The instant appeal by special leave arises out of the judgment and order dated 20th March, 2019, passed by the Division Bench of the High Court of Telangana at Hyderabad, dismissing the Criminal Appeal No. 1078 of 2016 preferred by the appellant and affirming the judgment dated 13th October, 2016 rendered by the Family Court-cum-VII-Additional Sessions Judge, Mahabubnagar¹.

2. Eight accused persons were put up for trial. The appellant (A1) and two co-accused (A2 and A3) were charged and tried for 1 Hereinafter, being referred to as the 'trial Court'. the offences punishable under Sections 384, 364, 302 and 201 of the Indian Penal Code, 1860², whereas the remaining co-accused (A4-A8) were charged and tried for the offences punishable under Sections 302, 201 read with Section 109 IPC.

3. Vide judgment dated 13th October, 2016, the trial Court acquitted A4 to A8 of all the charges. The appellant (A1) and the two co-accused (A2 and A3) were convicted and sentenced as below:

(i) Section 302 IPC: Life Imprisonment and a fine of Rs. 5,000/-

(in default to undergo Simple Imprisonment for six months)

(ii) Section 364 IPC: Rigorous Imprisonment for 10 years and a fine of Rs. 5,000/- (in default to undergo Simple Imprisonment for six months).

(iii) Section 384 IPC: Rigorous Imprisonment for 3 years and a fine of Rs. 5,000/- (in default to undergo Simple Imprisonment for six months).

(iv) Section 201 IPC: Rigorous Imprisonment for 5 years and a fine of Rs. 5,000/- (in default to undergo Simple Imprisonment for six months).

4. A common appeal was preferred by the appellant herein(A1), A2 and A3, before the High Court of Telangana assailing the judgment of the trial Court. The Division Bench of the High Court of Telangana proceeded to uphold the conviction and sentence awarded to the appellant herein and at the same time, acquitted 2 Hereinafter, being referred to as 'IPC'.

A2 and A3 of all the charges vide judgment dated 20th March, 2019 which is the subject matter of challenge in this appeal. Brief facts:-

5. As per the prosecution case, K. Nagesh (the deceased) and Smt. Shivaleela @ Wadla Anjali, wife of the appellant herein (A1), developed an extra-marital affair with each other. On 7th January, 2013, they eloped from their village Thipraspally³, District Rangareddy, Telangana. Smt. Shivaleela @ Wadla Anjali returned to the village after four days, but K. Nagesh failed to turn up.

Consequently, on 8th January, 2013, the mother of K. Nagesh namely, Smt. B. Laxmamma (PW-1) lodged a missing complaint⁴ at Police Station Utkoor, Telangana⁵.

6. Based on the said complaint, V. Sampath, Sub-Inspector, PS Utkoor registered a case⁶, under the caption 'man missing' and initiated an enquiry. It is stated that during the course of enquiry, it came to light that K. Nagesh and Smt. Shivaleela @ Wadla Anjali, wife of the appellant (A1) were involved in an extra-marital affair, and a panchayat was convened in relation thereto in the village. The appellant (A1), being the husband of Smt. Shivaleela, and the 3 Hereinafter being referred to as 'village'. ⁴ Exhibit P-38 ⁵ Hereinafter being referred to as 'PS Utkoor'. other accused persons threatened the family members of K. Nagesh in the panchayat and under the fear of retribution, the family members agreed to pay a compensation of Rs. 3,50,000/- to the appellant (A1) within 10 days. It is further the case of the prosecution that the appellant (A1) was not satisfied with the above resolution and thus, he hatched a plan to eliminate K. Nagesh.

7. In furtherance of this nefarious design, the appellant (A1) contacted his wife (Smt. Shivaleela) over phone and asked her to return to the village to which she agreed. The appellant was in continuous contact with his father-in-law (G. Hanumanth) who conveyed that Smt. Shivaleela (wife of the appellant) and K. Nagesh would be reaching Raichur railway station on 11th January 2013. In order to carry out the plan to eliminate K. Nagesh, the appellant (A1), along with his brother (A2) on one motorcycle and his brother- in-law (A3) on another proceeded to Raichur railway station. The accused (A4 to A8) were also informed about the arrival of K. Nagesh and accordingly, they too

proceeded to Raichur railway station in a car. At about 00:30 hours, K. Nagesh and Smt. Shivaleela, wife of the appellant (A1), got down at Raichur railway station. K. Nagesh proceeded to Raichur bus stand in an auto rickshaw. He was pursued by A1, A2, and A3, who abducted him and took him towards Shakthi Nagar on their motorcycles. A1 directed A4, A5, A6, A7 and A8 to return. A1, A2 and A3 disrobed K. Nagesh. A1 and A2 strangled and killed him with a towel brought by A1. The assailants then crushed the face of K. Nagesh by a big boulder so as to destroy his identity. The dead body was concealed in a nearby water channel. The clothes worn by K. Nagesh (the deceased) were tied up in the towel used to murder him and were thrown in the Krishna River near Devasugur.

8. On 19th January, 2013, the family members of the deceased, on a demand made by the accused persons paid a penalty of Rs.3,50,000/- to the appellant (A1). On 8th February, 2013, the appellant (A1), along with his family members went to the house of his in-laws at Makthal and divorced his wife Smt. Shivaleela and also took an undertaking from her. When A1 came to know about a case having been registered at PS Utkoor regarding the disappearance of K. Nagesh, out of fear, he approached P. Ramalingappa (PW-6), a resident of the village, and prayed for being provided protection. V. Sampath, Sub-Inspector, PS Utkoor purportedly recorded the statement of PW-6 and based thereupon, he proceeded to apprehend the accused (A1) and recorded his confessional statement. Based on the confession so made by the appellant herein (A1), the missing person complaint was converted into an FIR⁷ for the offences punishable under Sections 384, 364, 302, 201 read with Section 109 IPC.

9. Further investigation of the case was assigned to N. Venkateshwarla, Circle Inspector of Police, Makthal⁸ (PW-22). All the accused persons were arrested in furtherance of the confession made by the appellant (A1). During the course of investigation, the Investigating Officer (PW-22) claims to have recorded the information memo/confessional panchnama⁹ of the appellant (A1) and thereafter, he forwarded a letter to the S.P., Mahabubnagar seeking permission to visit the crime scene located at Egsanhally village of Raichur district. A requisition was sent to H.B. Sanamani, PSI, Raichur Rural (PW-21) for arranging local panchas to conduct the spot panchnama. Accordingly, PW-21 arranged two local panch witnesses namely Javeed (PW-9) and Baswaraj Patil (PW-19). The Investigating Officer (PW-22) thereafter, proceeded to the crime scene and prepared the spot panchnama in the presence of Javeed (PW-9), Mallikarjun (PW-16), V. Venkataiah (PW-17) and Baswaraj Patil (PW-19). The crime scene was photographed by K. 8 Hereinafter, being referred to as 'Investigating Officer (PW-22)'. ⁹ Exhibit P22-A. Papireddy (PW-7). No human dead body was found at the spot. However, the Investigating Officer (PW-22) noticed some remains viz hair, lower jaw embedded with teeth, three rib bones, one piece of underwear(MO5), two shirt buttons (MO1), one jeans pant button (MO2) and a boulder (MO4) at the spot which he seized vide seizure panchnama¹⁰ dated 19th March, 2013 with the assistance of Dr. Syed Irshad, Medical Officer (PW-15). The material objects i.e. the bones and hair etc. found at the spot were packed by the Medical Officer (PW-15), who handed the same over to the Investigating Officer (PW-22). He in turn forwarded these human remains along with the seized material objects to the FSL¹¹.

10. The DNA profiling report¹² was received which purportedly indicated that the DNA profile of the skeletal remains collected from the crime scene matched the DNA profile of Smt. B. Laxamma (mother of the deceased) (PW-1).

11. Upon concluding the investigation, the Investigating Officer (PW-22) proceeded to file a charge sheet against A1 to A8 for the offences mentioned above¹³. The offence punishable under Section 302 IPC being exclusively sessions triable, the case was committed to Exhibit P-34¹¹ Forensic Science Laboratory¹² Exhibit P-42 and transferred for trial to the Court of Sessions Judge, Mahabubnagar vide committal order dated 28th March, 2014. The trial Court framed charges against the accused persons (A1 to A8) for the above offences¹⁴. The accused persons pleaded not guilty and claimed trial. In order to bring home the charges, the prosecution examined as many as 22 witnesses and exhibited 42 documents and 23 material objects.

12. The accused, upon being questioned under Section 313 of the Code of Criminal Procedure, 1973¹⁵ denied the prosecution's allegation and claimed to be innocent. Upon hearing the arguments advanced by the prosecution and defence, and after appreciating the evidence available on record, the trial Court vide judgment dated 13th October, 2016, proceeded to acquit A4 to A8 of the charges. A1(the appellant herein), A2 and A3 were convicted and sentenced in the above terms¹⁶.

13. The Division Bench of the High Court of Telangana in appeal¹⁷ reversed the conviction of A2 and A3 and acquitted them while affirming the conviction and sentence awarded by the trial¹⁴ Ibid¹⁵ Hereinafter being referred to as 'CrPC'.¹⁷ Criminal Appeal No. 1078 of 2016.

Court to the appellant (A1). Aggrieved, the appellant (A1) is before us in the present appeal by special leave.

Submissions on behalf of the accused-appellant: -

14. Shri A. Sirajudeen, learned senior counsel representing the accused appellant advanced the following pertinent submissions to assail the impugned judgments seeking acquittal for the accused appellant: -

(i) That the entire case of the prosecution is false and fabricated. The prosecution has failed to prove the motive attributed to the appellant (A1) for commission of the offence, because neither B. Laxmamma (PW-1), the mother of the deceased nor G. Hanumanth (PW-2), the father of the deceased, supported the prosecution case regarding the alleged theory of motive which was based upon the so called extra-marital affair of the deceased with Smt. Shivaleela (PW-8), the wife of the appellant, who also did not support the prosecution case on this aspect.

(ii) That the sole circumstance of recovery of the skeletal remains relied upon by the High Court for convicting the accused appellant could not be proved by the prosecution by leading cogent and clinching evidence. In this regard, it was contended that the information provided by the accused (A1) to the Investigating Officer (PW-22) under Section 27 of the Indian Evidence Act, 1872¹⁸ was never proved as per law and thus, the discovery pales into insignificance and cannot be read in evidence.

(iii) That the clothes which were allegedly discovered at the crime scene were not identified by any of the witnesses examined during the course of the trial as belonging to the deceased K. Nagesh.

(iv) That the prosecution heavily relied upon DNA profiling report¹⁹ to claim that the DNA of the skeletal remains collected from the crime scene matched with the DNA of Smt. B. Laxamma (PW-1), the mother of the deceased. But the fact remains that the prosecution led no evidence whatsoever to establish that the blood samples of B. Laxamma (PW-1) (the mother of the deceased) were actually collected during the course of investigation. In this regard, the attention of the Court was drawn to the testimony of PW-1 to urge that the witness never stated that her blood samples were collected during the course of the

¹⁸ Hereinafter being referred to as 'IEA'.

¹⁹ Exhibit P-42.

investigation. Even the Medical Officer (PW-15) did not state that he collected blood samples of any person related to the deceased for the purpose of DNA finger printing. It was submitted that the testimony of Smt. B. Laxamma (PW-1) and the Medical Officer (PW-15) totally contradicts the version of the Investigating Officer (PW-22) on this aspect of the prosecution case.

(v) That the crime scene was not pointed out by the appellant (A1) to the Investigating Officer (PW-22). The Medical Officer (PW-15) categorically admitted in his cross-examination that the police and other persons had shown him the scene of incident from where he collected the skeletal remains. Thus, the circumstance of discovery of the incriminating evidence at the instance of the accused could not be proved by proper evidence.

(vi) That the alleged incident took place on 11th January, 2013 whereas, the skeletal remains were recovered on 19th March, 2013 i.e. nearly after two months of the incident and it is absolutely impossible to believe that the skeletal remains would still be lying at the crime scene after such a long duration.

(vii) That it is settled law that in a case purely based on circumstantial evidence, the chain of circumstances must be proved beyond all manner of doubt. Even if one of the links in the chain of incriminating circumstances is broken, the accused becomes entitled to the benefit of doubt. Reliance in this regard was placed on Bhim Singh v. State of Uttarakhand²⁰ and Darshan Singh v. State of Punjab²¹.

15. Learned senior counsel concluded his submissions by urging that the prosecution could not prove the chain of incriminating circumstances by leading cogent/reliable evidence and failed to even remotely establish that the appellant was in any manner connected with the alleged crime.

16. On these grounds, the learned counsel representing the appellant implored the Court to accept the appeal, set aside the impugned judgment and acquit the accused appellant by giving him the benefit of doubt.

Submissions on behalf of Respondent-State: -

17. Per contra, Ms. Devina Sehgal, learned Standing Counsel representing the State, vehemently and fervently opposed the submissions advanced by the learned counsel for the appellant 20 (2015) 4 SCC 281.

21 2024 INSC 19.

and submitted that every reasonable hypothesis based on the evidence led by the prosecution irrefutably points toward the guilt of the accused appellant. She urged that the two Courts, i.e., the trial Court as well as the High Court after appreciating and reappreciating the evidence, have recorded concurrent findings of facts for convicting the appellant and for affirming his conviction and hence, this Court in exercise of its jurisdiction under Article 136 of the Constitution of India should be slow to interfere in such concurrent findings of facts. She advanced the following submissions seeking dismissal of the appeal: -

- i. That the prosecution has led cogent evidence that K. Nagesh (the deceased) was involved in an illicit affair with the wife of the accused appellant and fueled with the said motive, he hatched a conspiracy with the co-accused and acting in furtherance of such nefarious design, K. Nagesh (the deceased) was murdered and his dead body was concealed so as to destroy the evidence of the crime.
- ii. That crime scene was in the exclusive knowledge of the appellant(A1). He suffered a disclosure statement²² to the Investigating Officer (PW-22), and based thereupon, the 22 Exhibit P22-A Investigating Officer along with the panch witnesses (PW-9 and PW-19) proceeded to the crime scene and recovered the skeletal remains of the deceased K. Nagesh. Since the place of concealment of the skeletal remains of the deceased was in the exclusive knowledge of the appellant (A1), the recovery thereof at his instance would give rise to the only inference that it was the appellant (A1) and no one else who murdered K. Nagesh (the deceased) and then tried to destroy the evidence by hiding his dead body.
- iii. That there was a gap of two months between the time of murder and the discovery of the skeletal remains, apparently thus, the dead body must have been destroyed by the scavengers/natural elements.
- iv. That the DNA of the skeletal remains recovered from the crime scene matched with the blood samples of Smt. B. Laxmamma (PW-1), the mother of the deceased, as is clearly proved by the DNA profiling report²³. This incriminating circumstance irrefutably points towards the guilt of the accused.

23 Exhibit P-42 On these grounds, learned counsel contended that the present appeal against the judgment of the trial Court and the High Court deserve to be dismissed.

Discussion and Conclusion: -

18. We have given our thoughtful consideration to the submissions advanced at the bar and have gone through the material placed on record.

19. There is no dispute that the case of prosecution is based purely on circumstantial evidence, since no witness claims to have seen the alleged incident wherein K. Nagesh (the deceased) was murdered.

20. The law is well-settled that in a case based purely on circumstantial evidence, the prosecution is under an obligation to prove each and every link in the chain of incriminating circumstances beyond all manner of doubt and that the circumstances so relied upon by the prosecution should point unequivocally towards the guilt of the accused and should be inconsistent with the guilt of anyone else or the innocence of the accused. Only in the event of the complete/unbroken chain of circumstances being proved by cogent and clinching evidence which does not admit of any other inference, otherwise that of the guilt of the accused, the conviction can be recorded. Reference in this regard may be made to Sharad Birdhichand Sarda v. State of Maharashtra²⁴, the relevant extract of which reads as under: -

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established: (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be” established. There is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved” as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793] where the observations were made: [SCC para 19, p. 807] “Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.” (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty, (3) the circumstances should be of a conclusive nature and tendency, (4) they should exclude every possible hypothesis except the one to be proved, and (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

24 (1984) 4 SCC 116.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.” (emphasis supplied)

21. Having noted the principles governing the case based purely on circumstantial evidence, we now proceed to discuss the case set up by the prosecution in order to bring home the guilt of the accused appellant.

22. In view of the detailed discussion of the facts enumerated above, it is apparent that the following circumstances were portrayed by the prosecution in its endeavour to establish the charges against the accused appellant: -

(i) Motive, i.e. to say that K. Nagesh (the deceased) and Smt. Shivaleela, the wife of the appellant (PW-8) were involved in an illicit extra-marital affair which fueled the appellant herein with such animosity that he hatched a plan to eliminate K. Nagesh (the deceased).

(ii) Incriminating recoveries in the form of skeletal remains of the deceased and the clothes and other articles such as a cover containing an amount to a tune of Rs. 3,50,000/- and motorcycle used in commission of the crime allegedly recovered in furtherance of the information²⁵ provided by the appellant (A1) to the Investigating Officer (PW-22).

(iii) The DNA profiling report²⁶, which establishes that the profiling of the blood collected from the mother of the deceased (PW-1) matched with the DNA profile of the allegedly recovered skeletal remains.

23. Firstly, we proceed to consider the theory of motive. On going through the entire evidence led by the prosecution, we do not find an utterance of a single word by any of the prosecution witnesses including the mother of the deceased (PW-1), the father of the deceased (PW-2), that there was any complaint of an illicit affair between K. Nagesh (the deceased) and Smt. Shivaleela, the wife of the appellant.

24. The prosecution alleged that owing to this illicit affair, the appellant got convened a panchayat wherein, he demanded and extorted a sum of Rs. 3,50,000/- from the family members of the deceased. However, such a suggestion was totally denied by PW-1 and PW-2. Both these witnesses stated that it was the chit amount collected by their son (the deceased) which was paid by them. Further, on going through the testimony of the Investigating 25 Exhibit P22-A 26 Exhibit P-42 Officer (PW-22), we find that even he did not state that any information was provided to him regarding the so-called illicit affair between the deceased and the wife of the appellant (PW-8) during the entire course of investigation. The only evidence provided regarding this aspect of motive, as per the testimony of Investigating Officer (PW-22) was in the form of a photograph (Exhibit P-37). However, the fact remains that even the parents of the deceased (PW-1 and PW-2) were not made to identify this photograph. Thus, the theory of motive attributed by the prosecution to the accused appellant could not be established by any credible evidence.

25. The second and most vital link of circumstantial evidence sought to be relied upon by the prosecution was the alleged discovery and recovery of the skeletal remains of the deceased in furtherance of the information²⁷ provided by the accused appellant (A1) to the Investigating Officer (PW-22).

26. The law is well settled by a catena of judgments of this Court that the information under Section 27 IEA which leads to discovery of an incriminating material/evidence must be proved by the Investigating Officer as being voluntary and uninfluenced by ²⁷ Exhibit P22-A threat, duress or coercion. The Investigating Officer is also required to prove the contents of the information/confessional memo to the extent they relate to the facts discovered.

27. This Court in the recent judgment of Babu Saheb Gouda Rudragoudar v. State of Karnataka²⁸, while referring to the earlier judgments on this point, examined the aspect regarding the standard of proof of information provided by the accused to the Investigating Officer under Section 27 IEA in the following terms:-

“60. We would now discuss about the requirement under law so as to prove a disclosure statement recorded under Section 27 of the Evidence Act, 1872 (hereinafter being referred to as “the Evidence Act”) and the discoveries made in furtherance thereof.

61. The statement of an accused recorded by a police officer under Section 27 of the Evidence Act is basically a memorandum of confession of the accused recorded by the investigating officer during interrogation which has been taken down in writing. The confessional part of such statement is inadmissible and only the part which distinctly leads to discovery of fact is admissible in evidence as laid down by this Court in State of U.P. v. Deoman Upadhyaya [State of U.P. v. Deoman Upadhyaya, 1960 SCC OnLine SC 8 : AIR 1960 SC 1125] .

62. Thus, when the investigating officer steps into the witness box for proving such disclosure statement, he would be required to narrate what the accused stated to him. The investigating officer essentially testifies about the conversation held between himself and the accused which has been taken down into writing leading to the discovery of incriminating fact(s).

63. As per Section 60 of the Evidence Act, oral evidence in all cases must be direct. The section leaves no ambiguity and mandates that no secondary/hearsay evidence can be given in case of oral evidence, except for the circumstances enumerated

²⁸ (2024) 8 SCC 149.

in the section. In the case of a person who asserts to have heard a fact, only his evidence must be given in respect of the same.

64. The manner of proving the disclosure statement under Section 27 of the Evidence Act has been the subject matter of consideration by this Court in various judgments, some of which are being referred to below.

65. In *Mohd. Abdul Hafeez v. State of A.P.* [*Mohd. Abdul Hafeez v. State of A.P.*, (1983) 1 SCC 143 : 1983 SCC (Cri) 139], it was held by this Court as follows : (SCC p. 146, para

5) “5. ... If evidence otherwise confessional in character is admissible under Section 27 of the Evidence Act, it is obligatory upon the investigating officer to state and record who gave the information; when he is dealing with more than one accused, what words were used by him so that a recovery pursuant to the information received may be connected to the person giving the information so as to provide incriminating evidence against that person.”

66. Further, in *Subramanya v. State of Karnataka* [*Subramanya v. State of Karnataka*, (2023) 11 SCC 255], it was held as under : (SCC pp. 299-300, paras 76 to 78) “76. Keeping in mind the aforesaid evidence, we proceed to consider whether the prosecution has been able to prove and establish the discoveries in accordance with law. Section 27 of the Evidence Act reads thus:

‘27. How much of information received from accused may be proved.—Provided that, when any fact is proved to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.’

77. The first and the basic infirmity in the evidence of all the aforesaid prosecution witnesses is that none of them have deposed the exact statement said to have been made by the appellant herein which ultimately led to the discovery of a fact relevant under Section 27 of the Evidence Act.

78. If, it is said of the investigating officer that the appellant-accused while in custody on his own free will and volition made a statement that he would lead to the place where he had hidden the weapon of offence, the site of burial of the dead body, clothes, etc. then the first thing that the investigating officer should have done was to call for two independent witnesses at the police station itself. Once the two independent witnesses would arrive at the police station thereafter in their presence the accused should be asked to make an appropriate statement as he may desire in regard to pointing out the place where he is said to have hidden the weapon of offence, etc. When the accused while in custody makes such statement before the two independent witnesses (panch witnesses) the exact statement or rather the exact words uttered by the accused should be incorporated in the first part of the panchnama that the investigating officer may draw in accordance with law. This first part of the panchnama for the purpose of Section 27 of the Evidence Act is always drawn at the police station in the presence of the independent witnesses so as to lend credence that a particular statement was made by the accused expressing his

willingness on his own free will and volition to point out the place where the weapon of offence or any other article used in the commission of the offence had been hidden. Once the first part of the panchnama is completed thereafter the police party along with the accused and the two independent witnesses (panch witnesses) would proceed to the particular place as may be led by the accused. If from that particular place anything like the weapon of offence or bloodstained clothes or any other article is discovered then that part of the entire process would form the second part of the panchnama. This is how the law expects the investigating officer to draw the discovery panchnama as contemplated under Section 27 of the Evidence Act. If we read the entire oral evidence of the investigating officer then it is clear that the same is deficient in all the aforesaid relevant aspects of the matter.”

67. Similar view was taken by this Court in Ramanand v. State of U.P. [Ramanand v. State of U.P., (2023) 16 SCC 510 : 2022 SCC OnLine SC 1396] , wherein this Court held that mere exhibiting of memorandum prepared by the investigating officer during investigation cannot tantamount to proof of its contents. While testifying on oath, the investigating officer would be required to narrate the sequence of events which transpired leading to the recording of the disclosure statement.” (emphasis supplied)

28. Keeping the above principle in mind, let us now examine the testimony of the Investigating Officer (PW-22) on the aspect of disclosure and discovery of incriminating facts at the instance of the accused. The relevant extracts of his testimony are reproduced hereunder:-

“The L.W.24-Sampat, S.I. of Police, produced A1-Bheem Raidu before me. On my interrogation he admitted commission of offence and when he about mood of confess I secured the mediators P.W.s 16 and 17. In their presence I prepared confession panchanama of A1. Ex.P.22-A, after preparing the confession panchanama I send letter to the S.P., Mahabubnagar, for obtaining the permission to visit the scene of offence situated at Egsanhally village of Raichur District of Karnataka State along with panchas and P.W.7, to Photograph the scene. After applying the permission from S.P. Mahabubnagar, I also filed requisition before the police, P.W.21, of Raichur Rural with a request to provide two panch witnesses and to visit the scene. Accordingly, P.W.21 provided two panch witnesses P. Ws.9, and 19.

Accordingly with the help of P.Ws.9 and 19 along with P.Ws. 16 and 17 I prepared scene of offence panchanama and photographed the scene of offence with the help of P.W.7. At the scene of offence there was no dead body was found but some hair, lower jaw embedded with teeth, 3-rip bones, one piece of under wear two shirt buttons, one jean pant button, one boulder, were found.

Alongwith panchas PW.16 and P.W.17 and myself went with A.1. Al lead us to his village of Tipraspally village of Utkurmandal of Mahabubnagar District, there A2 and A3 were also present in the house. Thereafter Al went in side his house and brought a cover containing Rs.3,50,000/- (Rupees Three Lakhs fifty thousand only) cash and

one cell phone. Al also shown the Hero Honda motor bearing No. AP22-N-7927 Hero Honda C.D. Delux, Black Colour as crime vehicle which was used in the commission of offence. M.O.6 is cash of Rs.3,50,000/- later it was deposited in FDR No.0919458, 26.05.2014 in the JMFC, Narayanpet, M.O.7 is cell phone Samsung Company, MO.8 Hero Honda Motor Cycle br. No.AP 22 N 7927.”

29. On going through the aforesaid version of Investigating Officer (PW-22), it is clear that the accused appellant (A1) was produced before him by V. Sampath (LW-24) (IO in the ‘man missing’ case). The said LW-24 was not examined by the prosecution in this case. Pursuant to production of the accused, the Investigating Officer (PW-22) proceeded to interrogate him and allegedly recorded his confession/information followed by the so- called recovery of the skeletal remains of the deceased.

30. From the aforesaid version of PW-22, it can clearly be discerned that neither did the witness narrate the words spoken by the accused regarding the place of concealment of the dead body of K. Nagesh nor that the said fact/place was exclusively in his knowledge and that he could get the same recovered. Rather, there is a very startling fact which is evident from the aforesaid extract of the Investigating Officer’s evidence inasmuch as the Investigating Officer did not utter a single word that the accused also accompanied him and the panch witnesses for pointing out and getting recovered the skeletal remains and the clothes purported to be of the deceased.

31. Contrary thereto, on the aspect of recovery of Rs. 3,50,000/- from the house of the accused, the Investigating Officer (PW-22) made a pertinent deposition that he along with the panchas (PW- 16 and PW-17), accompanied by the accused went to the accused’s house. The accused(A1) led them inside his house and brought out a cover containing Rs. 3,50,000/-. Thus, so far as the aspect of recovery of the currency notes is concerned, the Investigating Officer categorically stated that it was the accused who led them to the place of discovery, but so far as the crime scene is concerned, there is not even a slightest utterance by the Investigating Officer (PW-22) that the accused made the disclosure or led them to the place where the skeletal remains were found.

32. In addition, thereto, we may also refer to the testimony of Dr. Syed Irshad, Medical Officer (PW-15) who also admitted in his cross-examination that police and other persons had shown him the skeletal remains. The panch witness (PW-9 and PW-19) also did not make a whisper regarding the accused, leading them to the place from where the incriminating articles were recovered.

33. Hence, we have no hesitation in holding that neither was the disclosure allegedly suffered by the accused before the Investigating Officer (PW-22) under Section 27 IEA proved as per law nor did the prosecution establish that the discovery was made on being pointed out by the accused. Since the very factum of the discovery/recovery of incriminating skeletal remains was not proved by proper evidence, the same cannot be linked to the accused appellant.

34. The third link of circumstantial evidence is that the recovered skeletal remains were purportedly matched with the blood of the mother of the deceased (PW-1) by the process of DNA profiling. However, as has been noted above, PW-1 did not utter a single word that her blood sample was

collected by the Investigating Officer (PW-22) during the course of the investigation. Also, even Dr. Syed Irshad, Medical Officer (PW-15) did not state that he collected the blood samples of PW-1. Thus, the DNA profiling report²⁹ pales into insignificance and cannot be treated as an incriminating circumstance against the accused.

35. As a consequence of the above discussion, we have no hesitation in holding that none of the incriminating circumstances ²⁹ Exhibit P-42 portrayed by the prosecution in its endeavour to bring home the charges against the accused appellant were established by cogent and clinching evidence, and therefore, the conviction of the accused appellant as recorded by the trial Court and affirmed by the High Court cannot be sustained.

36. Resultantly, the impugned judgments dated 13th October, 2016 and 20th March, 2019 are hereby quashed and set aside. The accused appellant is acquitted of the charges. He is in custody and shall be released forthwith, if not wanted in any other case.

37. The appeal is allowed accordingly.

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

.....J. (DIPANKAR DATTA)J. (SANDEEP MEHTA) New Delhi;

December 03, 2024