

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.535 of 2023

Arising Out of PS. Case No.-38 Year-2018 Thana- BABUBARHI District- Madhubani

Ghanshyam Paswan S/O Musan Paswan, R/O Village- Baunsi, P.S.-
Babubarhi, Distt.- Madhubani.

... .. Appellant/s

Versus

1. The State of Bihar
2. Md. Slauddin S/O Md. Isha Ansari, R/O Baunsi, P.S- Babu Barhi, Distt.- Madhubani.
3. Khtija Khatun @ Khjida Khatun W/O Md. Mubarak, R/O Baunsi, P.S.- Babu Barhi, Distt.- Madhubani.
4. Md. Mubarak S/O Abdul Wanki, R/O Baunsi, P.S.- Babu Barhi, Distt.- Madhubani.
5. Md. Ehtesham S/O Md. Naim, R/O Baunsi, P.S.- Babu Barhi, Distt.- Madhubani.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Gajanan Mishra, Advocate
For the State	:	Mr. Abhimanyu Sharma, APP
For the Respondent Nos. 2 & 4	:	Mr. Dhananjay Kumar Tiwary, Advocate
		Mr. Bhavesh Kumar Sah, Advocate
For the Respondent Nos. 3 & 5	:	Mr. Ansul, Advocate
		Mr. Aditya Pandey, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JITENDRA KUMAR)

Date : 06-05-2024

The present appeal has been preferred against the judgment dated 15.03.2023 passed by Ld. Additional Sessions Judge Ist -cum- Special Court (SC/ST) Madhubani in Trial Case No. 690 of 2022 arising out of Babubarhi P.S. Case No. 38 of 2018, corresponding to G.R. Case No. 304 of 2018, whereby all the accused, who are private Respondents herein, were acquitted



of all the charges framed under Sections 302, 201, 364 read with Section 34 of the Indian Penal Code and Sections 3(2)(v)/3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act), 1989.

2. The prosecution case as emerging from the written report is that 25 years old Bipin Kumar, son of the informant has been missing since 9.00 PM on 13.02.2018. The informant did search at his level, but he was not traced. The Mobile No. 7903695126 was found closed. The informant expressed his apprehension that his son Bipin Kumar has been kidnapped by unknown persons and hence, informant requested the Police to take expeditious legal action in this regard.

3. On the written report of informant Ghanshyam Paswan, Babubarhi P.S. Case No.38 of 2018 was lodged against unknown persons for offence punishable under Section 363 of the Indian Penal Code.

4. After registration of the case, an investigation started and after investigation, charge-sheet bearing nos. 96 of 2018 and supplementary chargesheet bearing no.202 of 2018 were filed by the Police in the Court of Additional Chief Judicial Magistrate, Madhubani for offence punishable under Sections 302 and 201 read with Section 34 of the Indian Penal



Code and Sections 3(2)(v)/3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act), 1989. Charge-sheet No. 96 of 2018 was filed against two FIR Accused, namely, Md. Mubarak and Khatiza Khatoon and charge-sheet no. 202 of 2018 was filed against Salauddin @ Sallu and Ehtesham and subsequently, cognizance of offence punishable under Sections 302 and 201 read with Section 34 of the Indian Penal Code and Sections 3(2)(v)/3(2)(va) Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act), 1989 was taken on 26.10.2018 by Ld. Magistrate against the charge-sheeted persons. After supplying the police papers to the Accused persons, the case was committed to the Court of Sessions.

5. Against all the accused persons, who are Appellants herein, charge was framed under Sections 302, 201 and 364 read with Section 34 of the Indian Penal Code and Sections 3(2)(v)/3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act), 1989 and the same was read over to them. However, the Accused pleaded not guilty and claimed to be tried. Hence, the trial started.

6. During trial, the following 12 witnesses were examined on behalf of the prosecution:-

(i) P.W.-1 – Ram Kumar Paswan (brother of the



informant)

(ii) P.W.-2 – Tirath Raju

(iii) P.W.-3 – Sunil Kumar Paswan

(iv) P.W. -4 – Subodh Narayan Yadav (Supervisory
Medical Officer)

(v) P.W. -5 – Dr. Rajiv Ranjan (Doctor)

(vi) P.W.-6 – Dhanveer Mandal

(vii) P.W. -7 – Vinit Kumar (brother of the deceased)

(viii) P.W. -8 – Ghanshayam Paswan (informant and
father of the deceased)

(ix) P.W. 9 – Ashok Kumar Pratham (First
Investigating Officer)

(x) P.W.-10 – Sanjeev Kumar (Second Investigating
Officer)

(xi) P.W.-11 – Arvind Kumar Singh (Sub-Inspector)

(xii) P.W.-12 – Rajendra Kumar Raju (witness of
seizure list)

7. The prosecution has also brought on record the
following documentary evidence:-

(i) Ext. 1 and 1/1 (witness no. 1) – Signature on the
seizure list;

(ii) Ext. 2 – Postmortem report;



- (iii) Ext. 3 – Signature of the doctor on the postmortem report;
- (iv) Ext. 4 – Signature of the informant on the written report;
- (v) Ext. 4/6 – Photostat copy of the written report;
- (vi) Ext. 5 – Signature of the officer-in-charge of the Police Station on the written report;
- (vii) Ext. 5/1 – Signature of the officer-in-charge of the Police Station on the formal FIR;
- (viii) Ext. 6 – Signature of the second Investigating Officer on the supplementary charge-sheet;
- (ix) Ext. 7 (witness no. 12) – Signature on seizure list;
- (x) Ext. 8 – Signature of the officer-in-charge of the Police Station on the seizure list.

8. Following objects were made material exhibits :

- (i) Material Ext. i – Chhura.
- (ii) Material Ext. i/a – Dabia
- (iii) Material Ext. i/b – Chaku
- (iv) Material Ext. ii – Blood Stain T-Shirt
- (v) Material Ext. iii – Soil from wall stain with blood



9. After closure of the prosecution evidence, the Accused, who are private respondents herein, were examined under Section 313 Cr.PC confronting all the incriminating circumstances so that they could explain them.

10. No evidence has been adduced on behalf of the defence.

11. Ld. Trial Court after appreciating the evidence on record and considering the submissions of the parties passed the impugned judgment acquitting the Respondents No.2 to Respondents No. 5. Ld. Trial Court has, however, not passed any order in terms of Section 357A Cr. PC dealing with compensation to the victim of the crime.

12. Ld. Trial Court held that in the given facts and circumstances, the provisions of SC & ST (POA) Act does not get attracted and prosecution has failed to prove other charges also against the Accused persons beyond reasonable doubts.

13. We heard Ld. Counsel for the Appellant, Ld. APP for the State and Ld. Counsel for the private respondents.

14. Ld. counsel for the Appellant submits that Ld. Trial Court has failed to properly appreciate the prosecution evidence on record and erroneously acquitted the private respondents of the charges framed against them. There is



sufficient evidence on record to convict all the accused persons not only under SC & ST (POA) Act but even of the other charges framed under the Indian Penal Code. To substantiate his submission, he submits that there is sufficient evidence on record to prove charge under the SC & ST (POA) Act and the circumstantial evidence has been fully established to show that the Accused Persons were guilty of the offence punishable under the Indian Penal Code. The confessional statement of the Accused leading to recovery itself proves the case of the prosecution. Hence, Ld. Counsel for the Appellant submits that the impugned judgment of acquittal is bad in law as well facts requiring interference of this Court to convict all the Accused who are Private Respondents herein.

15. However, *per contra* Ld. APP for the State and Ld. Counsel for the Private Respondents support the impugned judgment and submit that there is no illegality or infirmity in the impugned judgment, because the prosecution has failed to prove its case beyond reasonable doubts against the Private Respondents.

16. We carefully perused all the relevant materials on record and sincerely considered the submissions advanced by both the parties.



17. The main question which arises for consideration by this Court is whether the prosecution has proved its case against the private Respondents beyond all reasonable doubts.

18. As it is an **appeal against acquittal**, it would be pertinent to refer to observations made by Hon'ble Supreme Court in regard to the **principles which are required to be applied** by the Appellate Courts while hearing such appeals.

19. In **Harbans Singh v. State of Punjab, 1961 SCC OnLine SC 40**, Hon'ble Supreme Court has held as follows:

“8. The question as regards the correct principles to be applied by a court hearing an appeal against acquittal of a person has engaged the attention of this Court from the very beginning. In many cases, especially the earlier ones, the Court has in laying down such principles emphasised the necessity of interference with an order of acquittal being based only on “compelling and substantial reasons” and has expressed the view that unless such reasons are present an appeal court should not interfere with an order of acquittal. (Vide *Suraj Pal Singh v. State* [1952 SCR 194] ; *Ajmer Singh v. State of Punjab* [(1952) 2 SCC 709 ; *Puran v. State of Punjab* , (1952) 2 SCC 454 . The use of the words “compelling reasons” embarrassed some of the High Courts in exercising their jurisdiction in appeals against acquittals and difficulties occasionally arose as to what this Court had meant by the words “compelling reasons”. In later years the Court has often avoided emphasis on “compelling reasons” but nonetheless adhered to the view expressed earlier that before interfering in appeal with an order of acquittal a court must examine not only questions of law and fact in all their aspects but must also closely and carefully examine the reasons which impelled the lower



courts to acquit the accused and should interfere only if satisfied, after such examination that the conclusion reached by the lower court that the guilt of the person has not been proved is unreasonable. (Vide Chinta v. State of Madhya Pradesh, Criminal Appeal No. 178 of 1959; Ashrafkha Haibatkhya Pathan v. State of Bombay, Criminal Appeal No. 38 of 1960)

9. It is clear that in emphasising in many cases the necessity of “compelling reasons” to justify an interference with an order of acquittal the court did not in any way try to curtail the power bestowed on appellate courts under Section 423 of the Code of Criminal Procedure when hearing appeals against acquittal; but conscious of the intense dislike in our jurisprudence of the conviction of innocent persons and of the fact that in many systems of jurisprudence the law does not provide at all for any appeal against an order of acquittal the court was anxious to impress on the appellant courts the importance of bestowing special care in the sifting of evidence in appeal against acquittals. As has already been pointed out less emphasis is being given in the more recent pronouncements of this Court on “compelling reasons”. But, on close analysis, it is clear that the principles laid down by the Court in this matter have remained the same. What may be called the golden thread running through all these decisions is the Rule that in deciding appeals against acquittal the court of appeal must examine the evidence with particular care, must examine also the reasons on which the order of acquittal was based and should interfere with the order only when satisfied that the view taken by the acquitting Judge is clearly unreasonable. Once the appellate court comes to the conclusion that the view taken by the lower court is clearly an unreasonable one that itself is a “compelling reason” for interference. For, it is a court's duty to convict a guilty person when the guilt is established beyond reasonable doubt, no less than it is its duty to acquit the accused when such guilt is not so established.

10. When the High Court's judgment shows clearly that the matter has been approached in the proper manner and the correct principles have been



applied, there is very little scope for this Court to interfere with an order made by the High Court convicting an accused person in an appeal against acquittal. Once it is found that the principles laid down by this Court have been correctly applied this Court will not ordinarily embark upon a re-appraisal of the evidence to ascertain whether the High Court was right in its view of the evidence. The only examination of the evidence that this Court may find itself called upon to undertake will ordinarily be just so much as is necessary to see whether the High Court has approached the question properly and applied the principles correctly.

11. The position may however be different if the judgment of the High Court while indicating its conclusion that in its opinion the view taken by the lower court is unreasonable does not disclose a careful examination of the evidence for coming to such conclusion. Or it may appear from the High Court's judgment that the High Court has erred on questions of law or has obviously misread the evidence on the record or the judgment of the trial court.....”

(Emphasis Supplied)

20. In Chandrappa Vs. State of Karnataka, (2007) 4 SCC 415, Hon'ble Supreme Court after referring to several authorities has held as follows:

“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, reappraise and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 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.”

(Emphasis Supplied)

21. In Murugesan Vs. State, (2012) 10 SCC 383,

Hon’ble Supreme Court has held as follows:

“ 18. Before proceeding any further it will be useful to recall the broad principles of law governing the power of the High Court under Section 378 CrPC, while hearing an appeal against an order of acquittal passed by a trial Judge.

19. An early but exhaustive consideration of the law in this regard is to be found in the decision of Sheo Swarup v. King Emperor [(1933-34) 61 IA 398 : AIR 1934 PC 227 (2)] wherein it was held



that the power of the High Court extends to a review of the entire evidence on the basis of which the order of acquittal had been passed by the trial court and thereafter to reach the necessary conclusion as to whether order of acquittal is required to be maintained or not. In the opinion of the Privy Council no limitation on the exercise of power of the High Court in this regard has been imposed by the Code though certain principles are required to be kept in mind by the High Court while exercising jurisdiction in an appeal against an order of acquittal.....

20. The principles of law laid down by the Privy Council in Sheo Swarup(supra) have been consistently followed by this Court in a series of subsequent pronouncements

21. A concise statement of the law on the issue that had emerged after over half a century of evolution since Sheo Swarup (Supra) is to be found in para 42 of the Report in **Chandrappa v. State of Karnataka [(2007) 4 SCC 415**

32. In the above facts can it be said that the view taken by the trial court is not a possible view? If the answer is in the affirmative, the jurisdiction of the High Court to interfere with the acquittal of the appellant-accused, on the principles of law referred to earlier, ought not to have been exercised. In other words, the reversal of the acquittal could have been made by the High Court only if the conclusions recorded by the learned trial court did not reflect a possible view. It must be emphasised that the inhibition to interfere must be perceived only in a situation where the view taken by the trial court is not a possible view. The use of the expression “possible view” is conscious and not without good reasons. The said expression is in contra²³. Having dealt with the principles of law that ought to be kept in mind while considering an appeal against an order of acquittal passed by the trial court, we may now proceed to examine the reasons recorded by the trial court for acquitting the accused in the present case and those that prevailed with the High Court in reversing the said conclusion and in convicting and sentencing the appellant-accused.



33. The expressions “erroneous”, “wrong” and “possible” are defined in Oxford English Dictionary in the following terms:

“erroneous.— wrong; incorrect.

wrong.—(1) not correct or true, mistaken.

(2) unjust, dishonest, or immoral.

possible.—(1) capable of existing, happening, or being achieved.

(2) that may exist or happen, but that is not certain or probable.”

34. It will be necessary for us to emphasise that a possible view denotes an opinion which can exist or be formed irrespective of the correctness or otherwise of such an opinion. A view taken by a court lower in the hierarchical structure may be termed as erroneous or wrong by a superior court upon a mere disagreement. But such a conclusion of the higher court would not take the view rendered by the subordinate court outside the arena of a possible view. The correctness or otherwise of any conclusion reached by a court has to be tested on the basis of what the superior judicial authority perceives to be the correct conclusion. A possible view, on the other hand, denotes a conclusion which can reasonably be arrived at regardless of the fact where it is agreed upon or not by the higher court. The fundamental distinction between the two situations have to be kept in mind. So long as the view taken by the trial court can be reasonably formed, regardless of whether the High Court agrees with the same or not, the view taken by the trial court cannot be interdicted and that of the High Court supplanted over and above the view of the trial court.

35. A consideration on the basis on which the learned trial court had founded its order of acquittal in the present case clearly reflects a possible view. There may, however, be disagreement on the correctness of the same. But that is not the test. So long as the view taken is not impossible to be arrived at and reasons therefor, relatable to the evidence and materials on record, are disclosed any further scrutiny in exercise of the power under Section 378 CrPC was not called for.”



(Emphasis Supplied)

22. In Hakeem Khan Vs. State of M.P., (2017) 5

SCC 719 , Hon’ble Supreme Court has held as follows:

“ 9 [Ed. : Para 9 corrected vide Official Corrigendum No. F.3/Ed.B.J./29/2017 dated 13-7-2017.] . Having heard the learned counsel for the parties, we are of the view that the trial court's judgment is more than just a possible view for arriving at the conclusion of acquittal, and that it would not be safe to convict seventeen persons accused of the crime of murder i.e. under Section 302 read with Section 149 of the Penal Code....”

(Emphasis Supplied)

23. In H.D. Sundara v. State of Karnataka, (2023) 9 SCC 581, Hon’ble Supreme Court 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 reappraise the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappraising 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.”

(Emphasis Supplied)

24. In Babu Sahebagouda Rudragoudar Vs. State of Karnataka, 2024 SCC Online SC 561, Hon’ble Supreme Court, after referring to relevant precedents, has observed as follows:

“39. 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.

40. The appellate Court, in order 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.”

(Emphasis Supplied)

25. Now coming to the prosecution evidence on record, we find that the informant has been examined as P.W.-8. In his examination-in-chief, he has deposed that he belongs to Scheduled Caste community and his deceased son was an



engineering student and he used to do work of filling of soil by JCB and Tractor and he had done soil filling work for Accused Md. Mubarak, but he was not paying the charge for soil filling despite demand by the deceased and Accused Md. Mubarak was used to extend even threat him and said that you are a *dusad* and what can you do.

26. We find that the statement made in the written report and this deposition is completely different. In his written report, this witness who was informant has lodged only missing report and not expressed any suspicion against anybody regarding a foul play against the deceased. Hence, evidence adduced by the informant ,being improvement , is not reliable.

27. P.W.-1 is Raj Kumar Paswan, who is not an eye-witness. Only statement he has made that in course of search, dead body of the victim Bipin Kumar was found near syphon of canal on 21.02.2018 by the family members and thereafter, the Police visited there. Seizure list was prepared by the Police and he had put his signature on the seizure list. In his cross-examination, he has deposed that he does not remember on how many documents he had put his signature.

28. P.W.-2 is Tirath Raju. He is also not an eye-witness to the offence committed against the victim. Only thing



he has deposed that deceased used to do soil filling work and such work was done by him for Accused Md. Mubarak and the victim used to demand charge from him. He has also deposed that dead body of the deceased Bipin Kumar was found near Koshi canal where Police came and made seizure list. He had also put his signature on the seizure list. In his cross-examination, he has clearly deposed that he has not seen any occurrence happening to the victim.

29. P.W.-3 is Sunil Kumar Paswan. He is also not an eye witness to any occurrence happening to the victim. The only thing he has deposed is that the victim had done soil filling work for the Accused Md. Mubarak and the charge for such work was due against Mubarak.

30. P.W. -4 is S.C. Rai who was just an observer of the postmortem conducted by Dr. Rajiv Ranjan on the victim.

31. P.W. -5 is Dr. Rajiv Ranjan, who had conducted the postmortem examination on the victim. As per the postmortem report, the findings are as follows:

“(i) A wound on the left side of neck — front and left side of neck 6"x2 1/2" muscle cut, blood vessels cuts (sharp cut) with gap. Muscles in the process of purification.

(ii) A wound on the left side of abdomen — 8" x4" viscera exposed and putrified On dissection of chest — lungs and heart in the process of putrification — All chamber of the heart empty. On



dissection of Abdomen — liver spleen kidney intestine stomach urinary bladder all in process of putrifaction. The muscles of the chest was pink in color. Time since death between 3-7 Days Death is our opinion was due to haemorrhage & shock caused by sharp cut of neck and abdomen.”

32. P.W.-6 is Dhanveer Mandal. He is also not an eye-witness to any occurrence happening to the victim. He has also deposed that the victim had done soil filling work for accused Mubarak and charge for such work was due against him. He has further deposed that dead body of the victim was found near Koshi Canal and he was identified by his family members. He has also deposed that Accused Md. Mubarak and Khatiza were arrested by the police and they had confessed to the police that these two accused along with Ehtesham and Salauddin had committed the offence.

33. P.W.-7 is Binit Kumar. He is also not an eye-witness to any occurrence happening to the victim and he has deposed nothing important worth mentioning.

34. P.W.-9 is Ashok Kumar-I, who had lodged the FIR on the written report of the informant and after the FIR, investigation was started by him himself. He visited the place of occurrence. He further deposed that at 10:30 ‘O’ Clock on 21.02.2018, he got information that a dead body is lying near Kosi canal. He visited the place where the dead body was found



lying. The dead body was identified by his family members and inquest report was prepared thereafter. He further deposed that on 22.02.2018 itself, he again visited the place where the dead body was found. The place was syphon of the Kosi canal. The slipper of the victim was recovered from nearby a ditch and his body was recovered from nearby *jalkumbhi*. On 22.02.2018, the Accused Md. Mubarak and Khatiza were arrested, who confessed to the crime and their confessional statement was recorded. One mobile was also seized from their house. Seizure list was prepared thereafter. In his cross-examination, he has deposed that the informant has not stated to him that the victim Bipin Kumar had done soil filling work of Accused Mubarak and charge for which was due against the Accused. It was also not stated by the informant to this witness that when the victim Bipin Kumar had visited Accused Mubarak for payment of charge or the Accused Mubarak had extended threat to the victim to kill him. He also deposed that he has recorded the confessional statement of Accused Mubarak and Khatiza Khatoon twice. His first confessional statement of Mubarak was recorded on 08.02.2016 whereas his second confessional statement was recorded on 11.03.2018. It has also been deposed that before remand, Accused Mubarak had stated to him that



knife was thrown by him in the syphon of Koshi canal. It has further been deposed that *chhura*, knife and *dabia* were recovered from toilet tank of Shakir Ansari and that *chhura* is material Ext. no.i and the *dabia* is material Ext.- i/a and *chaku* has been made as material Ext.-i/b. It has also been deposed that from the house of Accused Mubarak blood stain T-shirt was also recovered which is material Ext.-ii and soil from wall stain with blood was also seized which is material Ext.-iii. Two mobiles were also seized from the house of Accused Mubark. One being of Karbon Company which is material Ext. iv and the other being from LYF Company which is material Ext. iv/a He has also admitted that the blood stain on T-shirt was not got examined. The articles from latrine tank was recovered by him but the name of the persons who were present at the time of recovery of the same is not mentioned in the case diary. He has further deposed that statement of Accused Mubarak and Khatiza Khatoon was recorded by Circle Officer, Babubarhi. He has denied the suggestion that the green suit and three knives were not recovered from the latrine tank. He admitted that only confessional statement of Accused Md. Mubarak has been found against the Accused Ehtesham and Salauddin and there was no other material found against them. Even informant and his



family members had not expressed any suspicion against these two Accused Ehtesam and Salauddin. He has further deposed that Accused Md. Mubarak has given statement not in writing. His oral confessional statement was recorded by him.

35. P.W. 12 – Rajendra Kumar Raju is the seizure witness, the seizure list being **exhibit-7**.

36. From the perusal of the aforesaid evidence of the prosecution, we are clearly of the view that no offence is made out by the prosecution under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act), 1989, against the Accused/Respondents. The first and foremost requirement to prove offence under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act), 1989 is that the Accused belongs to other than Scheduled Castes or Scheduled Tribes community and the Accused has committed offence against the victim because he belongs to a Scheduled Castes or a Scheduled Tribes. In this context, some authorities may be referred to.

37. In **Dinesh v. State of Rajasthan, (2006) 3 SCC 771**, Hon'ble Supreme Court has observed as follows:

“15. Sine qua non for application of Section 3(2)(v.) is that an offence must have been committed against a person on the ground that such person is a member of the Scheduled Castes or the Scheduled Tribes. In the instant case no evidence has been led to establish this requirement. It is not the case of the prosecution that the rape was committed on the victim since she was a



member of a Scheduled Caste. In the absence of evidence to that effect, Section 3(2)(v.) has no application. Had Section 3(2)(v.) of the Atrocities Act been applicable then by operation of law, the sentence would have been imprisonment for life and fine.”

38. In Khuman Singh v. State of M.P., (2020) 18

SCC 763, Hon'ble Supreme Court has held as follows:

“14.The offence must have been committed against the person on the ground that such person is a member of Scheduled Caste and Scheduled Tribe. In the present case, the fact that the deceased was belonging to “Khangar”- Scheduled Caste is not disputed. There is no evidence to show that the offence was committed only on the ground that the victim was a member of the Scheduled Caste and therefore, the conviction of the appellant-accused under Section 3(2)(v.) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is not sustainable.”

39. In Hitesh Verma v. State of Uttarakhand,

(2020) 10 SCC 710, Hon'ble Supreme Court has held as follows:

“18. Therefore, offence under the Act is not established merely on the fact that the informant is a member of Scheduled Caste unless there is an intention to humiliate a member of Scheduled Caste or Scheduled Tribe for the reason that the victim belongs to such caste. In the present case, the parties are litigating over possession of the land. The allegation of hurling of abuses is against a person who claims title over the property. If such person happens to be a Scheduled Caste, the offence under Section 3(1)(r) of the Act is not made out.”

40. In Masumsha Hasanasha Musalman Vs.

State of Maharashtra, (2000) 3 SCC 557, Hon'ble Supreme



Court has observed as follows:

“9. Section 3(2)(v.) of the Act provides that whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, commits any offence under the Penal Code, 1860 punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine. In the present case, there is no evidence at all to the effect that the appellant committed the offence alleged against him on the ground that the deceased is a member of a Scheduled Caste or a Scheduled Tribe. To attract the provisions of Section 3(2)(v.) of the Act, the sine qua non is that the victim should be a person who belongs to a Scheduled Caste or a Scheduled Tribe and that the offence under the Penal Code, 1860 is committed against him on the basis that such a person belongs to a Scheduled Caste or a Scheduled Tribe. In the absence of such ingredients, no offence under Section 3(2)(v.) of the Act arises. In that view of the matter, we think, both the trial court and the High Court missed the essence of this aspect. In these circumstances, the conviction under the aforesaid provision by the trial court as well as by the High Court ought to be set aside.”

41. After referring to various relevant authorities, this Court in **Rakesh Kumar Singh and Anr. Vs. State of Bihar and Anr (2023) SCC Online Pat 9584** has also held as follows:

“ 34. As such, it emerges that to constitute an offence punishable under the SC and ST (POA) Act, 1989, there must be an allegation that the Accused belongs to other than Scheduled Caste or Scheduled Tribe Community and he has committed the offence against the Victim because he belongs to Scheduled Caste or Scheduled Tribe Community.”

42. However, when we perused the prosecution evidence on record, we find that in the written report, the



informant, who is father of the deceased, has not even whispered regarding any offence committed under Scheduled Castes and Scheduled Tribes (POA) Act. The informant has lodged just simple missing report requesting the police to take legal action in that regard. However, during trial, the informant has developed his statement deposing that there was some payment due against the Accused Md. Mubarak on account of soil filling work done by the deceased, but the Accused Md. Mubarak was not paying the same and he was extending threat to him and stating that the deceased being a *dushad* cannot do anything against him. No other witness has deposed anything in regard to offence punishable under SC & ST Act. As such, the informant, who is father of the deceased is not reliable in this context. Hence no offence under SC & ST Act is made out as per the prosecution evidence on record.

43. As far as prosecution case for the offence punishable under IPC is concerned, we find that the Prosecution case is based on **circumstantial evidence**. Hence, it would be relevant to refer to observations made by Hon'ble Supreme Court while appreciating such evidence.

44. In Hon'ble Supreme Court in **Neeraj Dutta Vs. State (NCT of Delhi), (2023) 4 SCC 731**, has observed as



follows:—

“71. Thus, circumstantial evidence is evidence of circumstances as opposed to what is called direct evidence. The prosecution must take place and prove all necessary circumstances constituting a complete chain without a snap and pointing to the hypothesis that except the accused, no one had committed the offence vide Navaneethakrishnan v. State, (2018) 16 SCC 161.

.....

73. It is trite law that in cases dependent on circumstantial evidence, the inference of guilt can be made if all the incriminating facts and circumstances are incompatible with the innocence of the accused or any other reasonable hypotheses than that of his guilt, and provide a cogent and complete chain of events which leave no reasonable doubt in the judicial mind. When an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete. If the combined effect of all the proven facts taken together is conclusive in establishing the guilt of the accused, a conviction would be justified even though any one or more of those facts by itself is not decisive.Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116 as reiterated in Prakash v. State of Rajasthan, (2013) 4 SCC 668.”

(Emphasis Supplied)

45. In the case of **Pritinder Singh Vs. State of Punjab, (2023) 7 SCC 727, Hon'ble Supreme Court** after referring to Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116, observed as follows:—

“17. It can thus be seen that this Court has held that the circumstances from which the conclusion of guilt is to be drawn should be fully established. It has been held that the circumstances concerned “must or should” and not “may be” established. It has been held that there is



not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved”. It has been held that 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. It has been held that the circumstances should be of a conclusive nature and tendency and they should exclude every possible hypothesis except the one sought to be proved, and that there must be a chain of evidence so complete so 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.

18. It is a settled principle of law that however strong a suspicion may be, it cannot take place of a proof beyond reasonable doubt. In the light of these guiding principles, we will have to consider the present case.”

(Emphasis Supplied)

46. In the case of Ravi Sharma v. State (NCT of Delhi), (2022) 8 SCC 536, Hon'ble Supreme Court has observed as follows:—

“14. When we deal with a case of circumstantial evidence, as aforesaid, motive assumes significance. Though, the motive may pale into insignificance in a case involving eyewitnesses, it may not be so when an accused is implicated based upon the circumstantial evidence.”

(Emphasis Supplied)

47. We also find that the Prosecution has relied upon confessional statements of the Accused and subsequent recovery at the instance of the Accused. Hence, it would be relevant to refer to observations made by Hon'ble Supreme Court regarding admissibility of confessional statements and



facts proved on the basis of recovery at the instance of the Accused made under Section 27 of the Evidence Act.

48. Hon'ble Constitution Bench of Supreme Court in **State of U.P. v. Deoman Upadhyaya, 1960 SCC OnLine SC 8**, has held as follows :-

“9. On an analysis of Sections 24 to 27 of the Indian Evidence Act, and Section 162 of the Code of Criminal Procedure, the following material propositions emerge:

(a) Whether a person is in custody or outside, a confession made by him to a police officer or the making of which is procured by inducement, threat or promise having reference to the charge against him and proceeding from a person in authority, is not provable against him in any proceeding in which he is charged with the commission of an offence.

(b) A confession made by a person whilst he is in the custody of a police officer to a person other than a police officer is not provable in a proceeding in which he is charged with the commission of an offence unless it is made in the immediate presence of a Magistrate.

(c) That part of the information given by a person whilst in police custody whether the information is confessional or otherwise, which distinctly relates to the fact thereby discovered but no more, is provable in a proceeding in which he is charged with the commission of an offence.

(d) A statement whether it amounts to a confession or not made by a person when he is not in custody, to another person such latter person not being a police officer may be proved if it is otherwise relevant.

(e) A statement made by a person to a police officer in the course of an investigation of an offence under Chapter XIV of the Code of Criminal Procedure, cannot except to the extent permitted by Section 27 of the Indian Evidence Act, be used for any purpose at any enquiry or trial in respect of any offence under investigation at the time when the statement was made in



which he is concerned as a person accused of an offence.

10. A confession made by a person not in custody is therefore admissible in evidence against him in a criminal proceeding unless it is procured in the manner described in Section 24, or is made to a police officer. A statement made by a person, if it is not confessional is provable in all proceedings unless it is made to a police officer in the course of an investigation, and the proceeding in which it is sought to be proved is one for the trial of that person for the offence under investigation when he made that statement. Whereas information given by a person in custody is to the extent to which it distinctly relates to a fact thereby discovered is made provable, by Section 162 of the Code of Criminal Procedure, such information given by a person not in custody to a police officer in the course of the investigation of an offence is not provable. This distinction may appear to be somewhat paradoxical. Sections 25 and 26 were enacted not because the law presumed the statements to be untrue, but having regard to the tainted nature of the source of the evidence, prohibited them from being received in evidence. It is manifest that the class of persons who needed protection most were those in the custody of the police and persons not in the custody of police did not need the same degree of protection. But by the combined operation of Section 27 of the Evidence Act and Section 162 of the Code of Criminal Procedure, the admissibility in evidence against a person in a criminal proceeding of a statement made to a police officer leading to the discovery of a fact depends for its determination on the question whether he was in custody at the time of making the statement. It is provable if he was in custody at the time when he made it, otherwise it is not.”

49. In Udai Bhan v. State of U.P., 1962 Supp (2)

SCR 830 : AIR 1962 SC 1116 : (1962) 2 Cri LJ 251 Hon'ble

Supreme Court Held as Follows:

“7. Thus, Section 27 partially removes the ban placed on the reception of confessional statements under Section 26. But the removal of the ban is not of such an extent as to absolutely undo the object of Section 26. All it says is that



so much of the statement made by a person accused of an offence and in custody of a police officer, whether it is confessional or not, as relates distinctly to the fact discovered is proveable. Thus, in this case taking the recovery memos the statements in regard to the key was this that the appellant handed over the key and said that he had opened the lock of the shop of the complainant with that key. The handing over of the key is not a confessional statement but the confession lies in the fact that with that key the shop of the complainant was opened and, therefore, that portion will be inadmissible in evidence and only that portion will be admissible which distinctly relates to the fact discovered i.e. the finding of the key. Similarly the recovery of the box is proveable because there is no statement of a confessional nature in that memorandum.

.....
11. Thus it appears that Section 27 does not nullify the ban imposed by Section 26 in regard to confessions made by persons in police custody but because there is the added guarantee of truthfulness from the fact discovered the statement whether confessional or not is allowed to be given in evidence but only that portion which distinctly relates to the discovery of the fact. A discovery of a fact includes the object found, the place from which it is produced and the knowledge of the accused as to its existence. Applying this test, in our opinion, the evidence in regard to the discovery of the key as well as the box was rightly admitted into evidence in the present case. Apart from this we have the finding of the High Court that the appellant was seen carrying the box near about the place of occurrence when he was coming from the side of the shop of the complainant. Therefore the contention as to the non-applicability of Section 27 is without substance and must be repelled.”

(Emphasis Supplied)

50. In Subramanya Vs. State of Karnataka, 2022

SCC OnLine SC 1400 Hon’ble Supreme Court Held as

Follows:

“ 82. 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 deposed 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.”

83. 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.

84. If, it is say of the investigating officer that the accused appellant 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 blood stained 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.

85. In the aforesaid context, we may refer to and rely upon the decision of this Court in the case of **Murli v. State of Rajasthan reported in (2009) 9 SCC 417**, held as under:

“34. The contents of the panchnama are not the substantive evidence. The law is settled on that issue. What is substantive evidence is what has been stated by the panchas or the person concerned in the witness box.....”

86. One another serious infirmity which has surfaced is in regard to the authorship of concealment by the person who is said to have discovered the weapon.

87. **The conditions necessary for the applicability of Section 27 of the Act** are broadly as under:—

- (1) Discovery of fact in consequence of an information received from accused;
- (2) Discovery of such fact to be deposed to;
- (3) The accused must be in police custody when he gave information; and
- (4) So much of information as relates distinctly to the fact thereby discovered is admissible - **Mohmed Inayatullah v. State of Maharashtra : (1976) 1 SCC 828.**

Two conditions for application : -

- (1) information must be such as has caused discovery of the fact; and
- (2) information must relate distinctly to the fact



discovered - **Earabhadrapa v. State of Karnataka : (1983) 2 SCC 330 .**

.....
89. The scope and ambit of Section 27 of the Evidence Act were illuminatingly stated in **Pulukuri Kottaya v. Emperor, AIR 1947 PC 67**, which have become locus classicus, in the following words:

“10.It is fallacious to treat the “fact discovered” within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that “I will produce a knife concealed in the roof of my house” does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added “with which I stabbed A” these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant.”

.....
91. In **Dudh Nath Pandey v. State of U.P., (1981) 2 SCC 166** , this Court observed that the evidence of discovery of pistol at the instance of the appellant cannot, by itself, prove that he who pointed out the weapon wielded it in the offence. The statement accompanying the discovery was found to be vague to identify the authorship of concealment and it was held that pointing out of the weapon may, at the best, prove the appellant's knowledge as to where the weapon was kept.

92. Thus, in the absence of exact words, attributed to an accused person, as statement made by him being deposed by the investigating officer in his evidence, and also without proving the contents of the panchnama, the High Court was not justified in placing reliance upon the circumstance of discovery of weapon.”

(Emphasis Supplied)

51. In Bodhraj alias Bodha Vs. State of Jammu



and Kashmir, (2002) 8 SCC 45, Hon'ble Supreme Court has

held as follows:

“18.It would appear that under Section 27 as it stands in order to render the evidence leading to discovery of any fact admissible, the information must come from any accused in custody of the police. The requirement of police custody is productive of extremely anomalous results and may lead to the exclusion of much valuable evidence in cases where a person, who is subsequently taken into custody and becomes an accused, after committing a crime meets a police officer or voluntarily goes to him or to the police station and states the circumstances of the crime which lead to the discovery of the dead body, weapon or any other material fact, in consequence of the information thus received from him. This information which is otherwise admissible becomes inadmissible under Section 27 if the information did not come from a person in the custody of a police officer or did come from a person not in the custody of a police officer. The statement which is admissible under Section 27 is the one which is the information leading to discovery. Thus, what is admissible being the information, the same has to be proved and not the opinion formed on it by the police officer. In other words, the exact information given by the accused while in custody which led to recovery of the articles has to be proved. It is, therefore, necessary for the benefit of both the accused and the prosecution that information given should be recorded and proved and if not so recorded, the exact information must be adduced through evidence. The basic idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered as a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true. The information might be confessional or non-inculpatory in nature but if it results in discovery of a fact, it becomes a reliable information. It is now well settled that recovery of an object is not discovery of fact envisaged in the section. Decision of the Privy Council in *Pulukuri Kottaya v. Emperor* [AIR 1947 PC 67 : 48 Cri LJ 533 : (1946-47) 74 IA 65] is the most-quoted authority for supporting the interpretation that the “fact discovered” envisaged in the section embraces the place from which



the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect. (See State of Maharashtra v. Damu Gopinath Shinde, (2000) 6 SCC 269 No doubt, the information permitted to be admitted in evidence is confined to that portion of the information which “distinctly relates to the fact thereby discovered”. But the information to get admissibility need not be so truncated as to make it insensible or incomprehensible. The extent of information admitted should be consistent with understandability. Mere statement that the accused led the police and the witnesses to the place where he had concealed the articles is not indicative of the information given.”

94. Mr. V.N. Raghupathy, the learned counsel for the State would submit that even while discarding the evidence in the form of various discovery panchamas the conduct of the appellant herein would be relevant under Section 8 of the Evidence Act. The evidence of discovery would be admissible as conduct under Section 8 of the Evidence Act quite apart from the admissibility of the disclosure statement under Section 27 of the said Act, as this Court observed in A.N. Venkatesh v. State of Karnataka, (2005) 7 SCC 714:

“9. By virtue of Section 8 of the Evidence Act, the conduct of the accused person is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact. The evidence of the circumstance, simpliciter, that the accused pointed out to the police officer, the place where the dead body of the kidnapped boy was found and on their pointing out the body was exhumed, would be admissible as conduct under Section 8 irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 or not as held by this Court in Prakash Chand ersus State (Delhi Admn.) (1979) 3 SCC 90 . Even if we hold that the disclosure statement made by the accused-appellants (Exts. P-15 and P-16) is not admissible under Section 27 of the Evidence Act, still it is relevant under Section 8.....”

95. In the aforesaid context, we would like to sound a note of caution. Although the conduct of an accused may be a relevant fact under Section 8 of the Evidence Act, yet the same, by itself, cannot be a ground to convict him or hold him guilty and that too, for a serious offence like



murder. Like any other piece of evidence, the conduct of an accused is also one of the circumstances which the court may take into consideration along with the other evidence on record, direct or indirect. What we are trying to convey is that the conduct of the accused alone, though may be relevant under Section 8 of the Evidence Act, cannot form the basis of conviction.”

(Emphasis Supplied)

52. In Mohd. Abdul Hafeez Vs. State of A.P., (1983) 1 SCC 143 : 1983 SCC (Cri) 139 Hon’ble Supreme Court Held as Follows:

“5..... If evidence otherwise confessional in character is admissible under Section 27 of the Indian 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.....”

(Emphasis Supplied)

53. In Ravishankar Tandon Vs. State of Chhattisgarh, 2024 SCC OnLine SC 526, Hon’ble Supreme Court has held as follows :-

“12. The prosecution case basically relies on the circumstance of the memorandum of the accused under Section 27 of the Indian Evidence Act, 1872 (for short “Evidence Act”) and the subsequent recovery of the dead body from the pond at Bhatgaon. The learned Judges of the High Court have relied on the judgment of this Court in the case of *State (NCT of Delhi) v. Navjot Sandhu alias Afsan Guru, (2005) 11 SCC 797*. The High Court has relied on the following observations of the said judgment:

“121. The first requisite condition for utilising Section 27 in support of the prosecution case is that



the investigating police officer should depose that he discovered a fact in consequence of the information received from an accused person in police custody. Thus, there must be a discovery of fact not within the knowledge of police officer as a consequence of information received. Of course, it is axiomatic that the information or disclosure should be free from any element of compulsion. The next component of Section 27 relates to the nature and extent of information that can be proved. It is only so much of the information as relates distinctly to the fact thereby discovered that can be proved and nothing more. It is explicitly clarified in the section that there is no taboo against receiving such information in evidence merely because it amounts to a confession. At the same time, the last clause makes it clear that it is not the confessional part that is admissible but it is only such information or part of it, which relates distinctly to the fact discovered by means of the information furnished. Thus, the information conveyed in the statement to the police ought to be dissected if necessary so as to admit only the information of the nature mentioned in the section. The rationale behind this provision is that, if a fact is actually discovered in consequence of the information supplied, it affords some guarantee that the information is true and can therefore be safely allowed to be admitted in evidence as an incriminating factor against the accused.....”

13. As such, for bringing the case under Section 27 of the Evidence Act, it will be necessary for the prosecution to establish that, based on the information given by the accused while in police custody, it had led to the discovery of the fact, which was distinctly within the knowledge of the maker of the said statement. It is only so much of the information as relates distinctly to the fact thereby discovered would be admissible. It has been held that the rationale behind this provision is that, if a fact is actually discovered in consequence of the information supplied, it affords some guarantee that the information is true and it can therefore be safely allowed to be admitted in evidence as an incriminating factor against the accused.”

(Emphasis Supplied)



54. In Perumal Raja Vs. State, 2024 SCC

OnLine SC 12, Hon'ble Supreme Court has held as follows :-

“19. The prosecution's case, in the absence of eye witnesses, is based upon circumstantial evidence. As per Section 25 of the Indian Evidence Act, 1872, a confession made to a police officer is prohibited and cannot be admitted in evidence. Section 26 of the Evidence Act provides that no confession made by any person whilst he is in the custody of a police officer shall be proved against such person, unless it is made in the immediate presence of a Magistrate. Section 27 of the Evidence Act is an exception to Sections 25 and 26 of the Evidence Act. It makes that part of the statement which distinctly leads to discovery of a fact in consequence of the information received from a person accused of an offence, to the extent it distinctly relates to the fact thereby discovered, admissible in evidence against the accused. The fact which is discovered as a consequence of the information given is admissible in evidence. Further, the fact discovered must lead to recovery of a physical object and only that information which distinctly relates to that discovery can be proved. Section 27 of the Evidence Act is based on the doctrine of confirmation by subsequent events - a fact is actually discovered in consequence of the information given, which results in recovery of a physical object. The facts discovered and the recovery is an assurance that the information given by a person accused of the offence can be relied.

.....

24. Section 27 of the Evidence Act is frequently used by the police, and the courts must be vigilant about its application to ensure credibility of evidence, as the provision is vulnerable to abuse. However, this does not mean that in every case invocation of Section 27 of the Evidence Act must be seen with suspicion and is to be discarded as perfunctory and unworthy of credence.

25. The pre-requisite of police custody, within the meaning of Section 27 of the Evidence Act, ought to be read pragmatically and not formalistically or euphemistically. In the present case, the disclosure statement (Exhibit P-37) was made by the appellant - Perumal Raja @ Perumal on 25.04.2008, when he was detained in another case, namely, FIR No. 204/2008,



registered at PS Grand Bazar, Puducherry, relating to the murder of Rajaram. He was subsequently arrested in this case, that is FIR. No. 80/2008, which was registered at PS Odiansalai, Puducherry. The expression “custody” under Section 27 of the Evidence Act does not mean formal custody. It includes any kind of restriction, restraint or even surveillance by the police. Even if the accused was not formally arrested at the time of giving information, the accused ought to be deemed, for all practical purposes, in the custody of the police.

.....

28. The words “person accused of an offence” and the words “in the custody of a police officer” in Section 27 of the Evidence Act are separated by a comma. Thus, they have to be read distinctively. The wide and pragmatic interpretation of the term “police custody” is supported by the fact that if a narrow or technical view is taken, it will be very easy for the police to delay the time of filing the FIR and arrest, and thereby evade the contours of Sections 25 to 27 of the Evidence Act. Thus, in our considered view the correct interpretation would be that as soon as an accused or suspected person comes into the hands of a police officer, he is no longer at liberty and is under a check, and is, therefore, in “custody” within the meaning of Sections 25 to 27 of the Evidence Act. It is for this reason that the expression “custody” has been held, as earlier observed, to include surveillance, restriction or restraint by the police.

.....

30. However, evidentiary value to be attached on evidence produced before the court in terms of Section 27 of the Evidence Act cannot be codified or put in a straightjacket formula. It depends upon the facts and circumstances of the case. A holistic and inferential appreciation of evidence is required to be adopted in a case of circumstantial evidence.”

55. In Babu Sahebagouda Rudragoudar Vs. State of Karnataka, 2024 SCC OnLine SC 561, Hon’ble Supreme Court has held as follows :-

“59. 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 the case of State of Uttar Pradesh v. Deoman Upadhyaya.

60. 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).

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

.....
65. **Ramanand @ Nandlal Bharti v. State of Uttar Pradesh, 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.

69. Thus, we are of the firm opinion that neither the disclosure memos were proved in accordance with law nor the recovery of the weapons from open spaces inspire confidence and were wrongly relied upon by the High Court as incriminating material so as to reverse the finding of the acquittal recorded by the trial Court.”

(Emphasis Supplied)

56. Coming back to the case on hand, we find that no witness has seen the occurrence happening to the victim. As such, the prosecution case is based on circumstantial evidence.



In this context we find that informant who is father of the deceased has no clue about the offence and he had lodged only the missing report to the police. Other witnesses i.e P.W.-1, P.W.-2, P.W.-3, P.W.-6 and P.W.-7 have also not seen the offence being committed to the victim. They are only witnesses to the fact that the dead body of the victim, Bipin Kumar was found near syphon of Kosi Canal and they have also deposed that the deceased had done soil filling work for Accused, Mubarak and charge for such work was due against the Accused, Mubarak. As per P.W.-5, Dr. Rajiv Ranjan, who had conducted the postmortem examination of the victim, the victim had died on account of haemorrhage and shock caused by sharp cut on neck and abdomen.

57. As per P.W.-9, who had lodged the formal FIR on the written Report and investigated the case, the dead body of the victim was found near syphon of kosi canal and sleeper of the victim was recovered from nearby ditch where the dead body of the victim was found. He has also seized blood stained T-Shirt, blood stained soil from the wall and two mobiles from the house of Accused, Mubarak. It is also deposed by the investigating officer that he has recovered chhura, knife and dhabia from the toilet tank of one Shakir Ansari. He has



also claimed that he recorded confessional statement of Accused, Mubarak and Khatija Khatoon twice. He has further claimed that Accused, Mubarak had stated to him that knife was thrown by him in the syphon of kosi canal.

58. From the aforesaid evidence of the Investigating Officer, it is crystal clear that he has not brought on record any panchnama regarding the confessional statements of the Accused Persons. He has also not given any testimony about the exact statements of the Accused Persons made to him, nor has he deposed whether the Accused persons led him to the place of recovery of the objects. He has also not claimed that any object was seized/recovered at the instance of the Accused. Simple recovery/seizure of any object does not help the prosecution case any way. From the aforesaid evidence of the investigating officer, even the fact that chhura, knife and dabia were lying at the place of recovery to the knowledge of the accused has not been proved. Even other seized articles do not prove any connection of the Accused with the alleged offence, because blood stained T-Shirt or even blood stained soil and other articles were not tested to show any connection between the Accused and the alleged offence. Even the motive is not established by the prosecution. Evidence regarding motive has



come on record by way of improvement of statement by the informant during trial. The informant, who is father of the victim, had not raised even suspicion against any Accused, let alone any motive of any Accused for commission of the crime.

59. As per the prosecution evidence on record, the only following circumstances are established.

(i) Dead body of the victim, Bipin Kumar was lying near the syphon of kosi canal.

(ii) The victim has died on account of haemorrhage and shock caused by sharp cut of neck and abdomen.

60. Needless to say that the aforesaid circumstances do not form a complete chain which could lead to irresistible conclusion that the Accused, who are Respondents herein have committed the alleged offence. In fact, it is a case of no legal evidence against any of the Accused/Respondents. The Respondents No.2 to Respondent No. 5 are entitled to get acquitted of all charges getting benefits of doubts. Suspicion, howsoever strong, is not proof and it cannot be basis of conviction of the Accused/Respondents.

61. In view of the aforesaid facts and circumstances, we clearly find that the prosecution has miserably failed to prove its case against Respondent Nos. 2, 3,



4 and 5 beyond reasonable doubts. As such, there is no error in the view taken by Ld. Trial Court to acquit the Accused Persons who are Respondent No.2 to Respondent No.5. The impugned judgment of acquittal is based on proper appreciation of law and facts on record. It warrants no interference by this Court. Accordingly, the Appeal is dismissed upholding the impugned judgment.

62. However, before we part with the present appeal, we must record our finding that 25 years old Bipin Kumar, the son of the informant, Ghanshayam Paswan has lost his life on account of offence. As per the evidence on record, he has died due to haemorrhage and shock caused by sharp cut on neck and abdomen. We further find that as per the evidence on record, informant/father, being legal heir, is the victim, in terms of Section 2(w)(a) Cr.PC and he is entitled to get compensation under Section 357A Cr.PC from Bihar Victim Compensation Scheme, 2014, because the accused have already been acquitted and hence, State is liable to pay compensation to the victim as per its scheme.

63. In this regard, it would be relevant to refer to **Sunil Kumar Jha Vs. State of Bihar, 2024 SCC OnLine PAT 960**, delivered by a Division of this Court, wherein subject of



compensation to the victims has been dealt with in great detail
adverting to relevant statutory provisions and case laws holding
as follows:-

“105. It clearly emerges from the aforesaid statutory provisions and case laws that the Court conducting a criminal trial is duty bound to pass reasoned order, on the conclusion of the trial, regarding compensation to victims as per Section 357 and Section 357 A Cr.PC, irrespective of conviction, acquittal or discharge. Such order has to be passed by the Trial Court even when the victim has not filed an application for compensation. In such order, the Court is required to give finding whether the alleged offence has been committed or not, and if committed who is victim of the committed offence, and if there is any victim in terms of Section 2 (wa) Cr.PC, whether victim is entitled to compensation under Section 357 and Section 357 A Cr.PC and if yes, how much and from whom.

106. The Appellate and Revisional Court are equally duty bound to pass such order regarding compensation to the victims in their final judgments even if the appeals/revisions have been filed by a party other than the victim, only condition being that appeal or revision or any other proceeding arising out of the crime is pending before the Court.

107. Moreover, victims are entitled to benefits under State Victim Compensation Scheme made under Section 357A Cr.PC even when the concerned offence has been committed prior to the scheme coming into force if the trial, appeal or revision are pending on or after the scheme came into force.

108. In case of conviction of the Accused, compensation payable to the victim may be imposed upon the convict as per his paying capacity either by way of fine or otherwise under Section 357 Cr.PC and if the compensation directed to be paid under Section 357 Cr.PC is not sufficient to rehabilitate the victim, the Court is empowered to recommend the Legal Services Authority to pay the compensation to the victim from the State fund created under Victim Compensation Scheme made under Section 357A Cr.PC. In case of acquittal of the Accused-Appellant, the Court is duty bound to resort to Section 357A Cr.PC to recommend Legal Services Authorities to pay compensation to the victim as per Victim Compensation Scheme of the State as made under Section



357A Cr.PC.”

64. Accordingly, we recommend Bihar State Legal Services Authority to pay compensation to the victim Ghanshayam Paswan, father of the deceased (Binod Kumar) as per Bihar Victim Compensation Scheme, 2014 within a period of two months from the date of receipt of this order.

65. Office is directed to send a copy of this judgement to the Secretary of Bihar State Legal Services Authority, for needful.

(Ashutosh Kumar, J.)

(Jitendra Kumar, J.)

ravishankar/chan
dan/shoaib-

AFR/NAFR	AFR
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