

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.295 of 2017

Arising Out of PS. Case No.-128 Year-2014 Thana- PHULWARISHARIF District- Patna

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Md. Kamal @ Tenny @ Tenia S/o Md. Jamal, R/o- Naya Tola Phulwari Sharif, District- Patna.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

=====

with

CRIMINAL APPEAL (DB) No. 129 of 2017

- Arising Out of PS. Case No.-128 Year-2014 Thana- PHULWARISHARIF District- Patna
- =====
1. Perwez Ahmad @ Mister @ Perwez Alam, son of Md. Kayum, Resident of Naya Tola, Masjid Gali, P.S. Phulwarisharif, District- Patna.
 2. Guddu @ Tuttu, son of Late Md. Izhar, Resident of Karbala, Phulwarisharif, P.S. Phulwarisharif, District- Patna.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

=====

with

CRIMINAL APPEAL (DB) No. 176 of 2017

Arising Out of PS. Case No.-128 Year-2014 Thana- PHULWARISHARIF District- Patna

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Lallu @ Sahjad @ Md. Sajjad son of Md. Motizan @ Md. Hussain resident of Hazi Harmain Colony, behind Islamia School, Naya Tola, P.S. Phulwarisharif, Distt. Patna.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

=====

Appearance :

(In CRIMINAL APPEAL (DB) No. 295 of 2017)

For the Appellant/s : Mr. Mohammad Minnatullah, Advocate

Ms. Jyoti Kumari, Advocate

For the Respondent/s : Ms. S.B. Verma, Addl.P.P.

(In CRIMINAL APPEAL (DB) No. 129 of 2017)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate

Mr. Md. Imteyaz Ahmad, Advocate

Ms. Kiran Kumari, Advocate

Mr. Ritwik Thakur, Advocate

Ms. Vaishnavi Singh, Advocate

For the Respondent/s : Ms. Shashi Bala Verma, Addl.P.P.

(In CRIMINAL APPEAL (DB) No. 176 of 2017)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate

Mr. Md. Imteyaz Ahmad, Advocate
Ms. Kiran Kumari, Advocate
Mr. Ritwik Thakur, Advocate
Ms. Vaishnavi Singh, Advocate
For the Respondent/s : Mr. Ajay Mishra, Addl.P.P.

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 23-10-2024

Heard Mr. Ajay Kumar Thakur, learned counsel for the appellants in Cr. Appeal (DB) No. 129 of 2017 and Cr. Appeal (DB) No. 176 of 2017, Mr. Mohammad Minnatullah, learned counsel for the appellant in Cr. Appeal (DB) No. 295 of 2017 as also Ms. Shashi Bala Verma and Mr. Ajay Mishra, learned Additional Public Prosecutors for the State.

2. We had issued notice to the victim and the said notice was received by her mother. Even though she has entered appearance through Advocate but no one has appeared either yesterday or today in course of hearing of the appeal.

3. These three appeals are arising out of the judgment of conviction dated 13.12.2016 (hereinafter referred to as the 'impugned judgment') and the order of sentence dated 21.12.2016 (hereinafter referred to as the 'impugned order') passed by learned 1st Additional Sessions Judge, Patna (hereinafter referred to as the 'learned trial court') in Special (POCSO) Case No. 14 of 2014.

By the impugned judgment, the appellant, namely, Md. Kamal @ Tenny @ Tenia has been found guilty of the charges under Sections 363/34, 302/34, 201, 376A, 376D of the Indian Penal Code (in short 'IPC') and Section 4 of the Protection of Children from Sexual Offences Act (in short 'POCSO Act') and the appellants, namely, Perwez Ahmad @ Mister, Guddu @ Tutu and Lallu @ Sahjad @ Md. Sajjad have been found guilty of the charges under Sections 302/34, 201, 376A, 376D IPC and Section 4 of the POCSO Act. Learned trial court, however, acquitted two accused persons, namely, Scientist @ Mintu and Pappu who were also charged along with these appellants.

By the impugned order, the appellant, namely, Md. Kamal @ Tenny @ Tenia has been ordered to undergo rigorous imprisonment for seven years and fine of Rs.5000/- u/s 363/34 IPC and in default of payment of fine, he has to undergo further imprisonment for three months. He has also been ordered to undergo life imprisonment with a fine of Rs.20,000/- u/s 302/34 IPC and in default of payment of fine, he has to undergo further imprisonment for six months. For the offence u/s 201 IPC, he has to undergo rigorous imprisonment for three years with a fine of Rs.5000/- and in default of payment of fine, he has to undergo further imprisonment for three months. For the offence u/s 376A

IPC, he has been ordered to undergo rigorous imprisonment for 20 years with a fine of Rs.20,000/-. For the offence u/s 376D IPC, he has been ordered to undergo rigorous imprisonment for 20 years with a fine of Rs.20,000/- and in default of payment of fine, he has to further undergo imprisonment of six months. For the offence u/s 4 of POCSO Act, he has been ordered to undergo imprisonment for life with a fine of Rs.20,000/- and in default of payment of fine, he has to further undergo imprisonment for six months. The appellants, namely, Perwez Ahmad @ Mister, Lallu @ Sahjad and Guddu @ Tutu have been ordered to undergo life imprisonment with a fine of Rs.20,000/- u/s 302/34 IPC and in default of payment of fine, they have to undergo imprisonment for six months. For the offence u/s 201 IPC, they have been ordered to undergo rigorous imprisonment for three years with a fine of Rs.5000/- and in default of payment of fine, they have to further undergo imprisonment for three months. For the offence u/s 376A IPC, rigorous imprisonment for 20 years. For the offence under Section 376D IPC, rigorous imprisonment for 20 years with a fine of Rs.20,000/- and in default of payment of fine, they have to further undergo imprisonment for six months. Further, for the offence u/s 4 of the POCSO Act, they have been ordered to undergo life imprisonment with a fine of Rs.20,000/- and in default

of payment of fine, they have to further undergo imprisonment for six months. All the sentences are to run concurrently.

Prosecution Case

4. The prosecution case is based on the *fardbeyan* (Exhibit '2/2') of the mother of the victim who has been examined as PW-5 in the present case. In her *fardbeyan*, recorded by Fahim Ajad Khan, S.I. of Phulwarisharif Police Station on 09.03.2014 at 9:00 AM, the informant has stated that she is a housewife and her husband has a business of making leather and resin ladies bag at home with the help of Md. Arman and Md. Parwej. But, Md. Parwej was on leave since last 2-3 days. The informant's husband had undergone Hydrocele surgery, so on 08.03.2014 at about 07:30-08:00 PM in the night, she applied oil on his legs and hands and then went to sleep. The two daughters of the informant were playing on the road outside the house who were asked to go in the house by Md. Arman. They came to the house one by one. In the meantime, one of the daughters of the informant told the informant that the victim 'X' is talking to one person outside the house. Victim 'X' used to go with some known person in lure of some eatables or on call. On 08.03.2014 at about 09:00 PM, when the informant was going to sleep, victim 'X' was playing in the *verandah* situated at the upper floor of the house. In the meantime,

Rizwan Sajid @ Rusi came to her house searching Md. Parwej. He asked about Parwej from Aman and went away. After he departed, the informant and **Karishma** came down to find victim 'X' but she was not present there. Then the informant called her employee and elder *bhaisur* Aftab Alam to search victim 'X'. When the informant in the company of Arman, her elder *bhaisur* and neighbours reached Ishanagar field in course of searching her daughter, she saw that a candle was burning there and accused Mintu @ Scientist, Kamal @ Tenny, Mister, Lallu, Pappu and Tuttu @ Guddu were present there and when they saw the informant, they started fleeing away. The informant and others kept on searching her daughter till 03:30 AM in the morning but she could not be traced. On 09.03.2014 at about 08:00 AM in the morning, Md. Aftab Alam came to know from his younger brother Rizwan Alam that the dead body of girl was lying in the latrine tank situated on the southern side of Ishanagar Pipeline in an under construction house of Md. Hussain. When the informant got this information, she went at the place of occurrence, the dead body had been taken out of the latrine tank by the mohalla people and she identified the dead body as that of her daughter. The dead body of her daughter was having maroon colour dotted jumper. There was mark of teeth bite and cut injury on her left cheek and also

mark of injury on her left ear and other parts of the body. One Md. Moiz Ahmad living in the southern side of the house of Md. Hussain had heard some sound at about 10:30-11:00 PM and raised alarm and on his alarm, some people collected near the backside of the house of Md. Hussain and recognized the accused Scientist and Kamal and caught them, however, they were set at free and in the next morning, the dead body of her daughter has been found in the latrine tank. The informant has alleged that the accused persons, namely, Mintu @ Scientist, Kamal, Mister, Lallu, Md. Pappu and Tutu @ Guddu raped her daughter, killed her by strangulating and threw the dead body in the latrine tank to hide the dead body.

5. On the basis of the said *fardbeyan*, Phulwarisharif P.S. Case No.128 of 2014 was registered on 09.03.2014 at 10.30 AM. Upon investigation of the case, police submitted a charge-sheet against six named accused persons. The learned Special Judge, POCSO Act took cognizance of the offences and the charge-sheeted accused were explained the charges which they denied and claimed to be tried.

6. In course of trial, the prosecution examined as many as 12 witnesses and exhibited documentary evidences. The defence did not adduce any oral or documentary evidence. The details of

the prosecution witnesses and the documentary evidences exhibited on behalf of the prosecution are being mentioned hereunder for a ready reference:-

List of Prosecution Witnesses

PW-1	Md. Zahiruddin
PW-2	Md. Perwez Alam
PW-3	Md. Jishan Alam
PW-4	Md. Aftab Alam
PW-5	Rabia Sultana
PW-6	Md. Irshad
PW-7	Md. Kamaruddin
PW-8	Md. Farooq
PW-9	Md. Ali Ashraf
PW-10	Mukesh Chandra Kumar
PW-11	Dr. Arun Kumar Singh
PW-12	Moiz Ahmad

List of Court Witnesses

CW-1	Md. Shabad Alam
CW-2	Md. Zeeshan Alam
CW-3	Md. Javed Ali
CW-4	Md. Irshad
CW-5	Md. Perwez
CW-6	Md. Zahiruddin
CW-7	Md. Abdul Haneef
CW-8	Md. Ali Ashraf
CW-9	Md. Firoz

List of Exhibits produced on behalf of the Prosecution

Ext 1	धारा 164 के ब्यान पर साक्षी परवेज आलम का उर्दू में हस्ताक्षर
Ext 1/1	धारा 164 के ब्यान पर साक्षी मो0 जीशन आलम का हस्ताक्षर

Ext 2	फर्दब्यान पर साक्षी रजिया सुल्तान का हस्ताक्षर
Ext 2/1	फर्दब्यान पर अफताब आलम का हस्ताक्षर
Ext 1/2	धारा 164 के ब्यान पर साक्षी मो० इरशाद का हस्ताक्षर
Ext 3	मृत्यु समीक्षा रिपोर्ट पर साक्षी मो० शमरुदीन का हस्ताक्षर
Ext 4	जप्ती सूची पर साक्षी मो० फिरोज का हस्ताक्षर
Ext-1/3	धारा 164 के ब्यान पर साक्षी मो० अली अशरफ का हस्ताक्षर
Ext 2/2	फर्दब्यान
Ext 2/3	फर्दब्यान पर पृष्ठांकन
Ext 3/1	मृत्यु समीक्षा रिपोर्ट की कार्बन प्रति
Ext 5	अभियुक्त मो० कमाल उर्फ टेनिया का स्वीकारोक्ति ब्यान
Ext 4/1	जप्ति सूचि
Ext 5/1	अभियुक्त सजाद उर्फ लल्लू का स्वीकारोक्ति ब्यान
Ext 6	मेडिकल रिपोर्ट

7. The learned trial court examined the evidences available on the record and found that none of the prosecution witnesses had seen the occurrence. All of them have stated that the deceased girl was missing from outside her house, her body was found on the next day in semi-naked condition in the latrine tank. The learned trial court noticed that no witness has stated about any person in the company of the deceased girl, therefore, no one has seen the girl in the company of any accused, therefore, this case would not come in the category of 'last seen theory'. The trial court held that the case is entirely dependent upon circumstantial

evidence and the court has just to see whether from the evidence of the witnesses a chain of circumstances is made so complete to point out towards the guilt of the accused persons.

8. Having said so, the learned trial court held that the prosecution witnesses have stated in their evidence that in course of search of the deceased girl they reached at the field where the accused persons were present and they were gambling in a candle light. They have stated that the accused persons started fleeing away, however, two of them were caught, they told that they were fleeing away thinking that police has come. On the next day, the dead body of the girl had been recovered from a place near that field and that has been taken by the learned trial court as a circumstance to prove that the accused persons had committed the occurrence. In the opinion of the learned trial court, there was no possibility of any other person present, raping and killing the girl and throwing her dead body in the latrine tank. The learned trial court has referred the confessional statement of Md. Kamal @ Tenny and Md. Sajjad @ Md. Lallu recorded by police. The learned trial court has, in fact, recorded in detail the confessional statement of both the accused in paragraphs '31' and '32' of it's judgment. Thereafter, the learned trial court has concluded in paragraph '33' that from the confessional statement of both the

accused persons, it is clear that they have given a clear picture of the occurrence and the confessional statement of both the accused persons corroborate each other regarding their raping the deceased along with two other accused persons. The learned trial court has heavily relied upon the confessional statement of both the accused persons. The learned trial court has held the accused persons guilty and sentenced them as stated hereinabove.

Submissions on behalf of the appellants

9. Learned counsel for the appellants in all the three appeals have vehemently submitted before this Court that the judgement of the learned trial court is perverted inasmuch as the learned trial court seems to have admitted the confessional statement of the two accused recorded in police custody and has heavily relied upon the same to prove the guilt of the accused persons. Referring to the judgement of the Hon'ble Supreme Court in the case of **Venkatesh @ Chandra & Another Vs. State of Karnataka** reported in **(2022) 16 SCC 797 (para-19 and 20)**, learned counsel submits that in the said case, the Hon'ble Supreme Court has noted that there are some features of the case which are quite disturbing and that must be noted and deliberated upon. In paragraph '22' of the judgment, the Hon'ble Supreme Court has observed that the court has repeatedly found a tendency on the part

of the prosecuting agency in getting the entire statement recorded rather than only that part of the statement which leads to the discovery of facts. It has been held that a confession of an accused which is otherwise hit by the principles of the Evidence Act finds its place on the record and such kind of statements may have a direct tendency to influence and prejudice the mind of the court. The Hon'ble Supreme Court observed that this practice must immediately be stopped. It is submitted that what had happened in the case of **Venkatesh** (supra) in which the Hon'ble Supreme Court had recorded those observations has happened in the present case. In the present case also, the learned trial court has not only extracted the entire confessional statement of the two accused but have also relied upon them.

10. A recent order of the Hon'ble Supreme Court in Petition for Special Leave to Appeal (Crl.) No. **10536 of 2023 arising out of the judgment and order dated 01.03.2023 in A482 No. 40808 of 2022** passed by the Hon'ble High Court of Judicature at Allahabad has been placed before this Court to submit that in its order dated 12.07.2024, the Hon'ble Supreme Court has once again observed that the confessional statement recorded by police officers cannot remain part of the charge-sheet

and the same must be ignored. The Hon'ble Supreme Court has directed the learned trial court to take note of it.

11. Learned counsel submits that, it would appear from the materials on the record that in this case the first information with regard to the missing of the victim girl 'X' was made available to police by Md. Aftab Alam (PW-4) on 08.03.2014 itself. In paragraph '4' of his deposition, he has stated that he had given the written information to police on 08.03.2014. The informant (PW-5) has also stated in her deposition that her *bhaisur* had given the written information to police but she was not aware that what was written by him. It is submitted that this first information submitted by PW-4 has been suppressed by the prosecution.

12. Learned counsel submits that the dead body of the victim girl was taken out from the latrine tank but who had taken out the dead body from the latrine tank remained a mystery. The informant has stated that the people from the mohalla had taken out the dead body from the latrine tank and on 09.03.2014 at about 8.00 AM it was Aftab Alam who was informed by his younger brother Rizwan Alam that in the under-constructed house of Md. Hussain situated south to the Ishanagar Pipeline in the latrine tank a girl is lying dead. On this information, the informant had gone

there with the other people of the mohalla but by that time the dead body had already been taken out. The persons from the mohalla have not been examined in this case and there is no independent witness from the mohalla.

13. It is submitted that the informant has stated in her examination-in-chief that when she along with her *Bhaisur* and mohalla people reached in the field of Ishanagar, they saw Mister, Lallu, Tenny, Tutu, Scientist and Pappu were present there who on seeing them started fleeing away. They had remained in search of the victim girl in the night till 12.00-1.00 AM but the victim girl could not be found. In the morning, the victim girl was found in half-naked condition and injured lying in the latrine tank and it appeared that the rape was committed with her. She was told by Moiz Ahmad that Scientist and Tenny had concealed themselves behind the bushes near the house of Hussain Sahab. It is her statement that on the said information of Moiz Ahmad, in the morning mohalla people had caught hold of Tenny and brutally assaulted him. At this stage, learned counsel points out that Moiz Ahmad has not been examined by the I.O., he was not a charge-sheet witness in this case but deposed as PW-12. In his deposition, he has stated that his statement was not recorded by the I.O. He has also stated that he did not identify the accused persons.

14. It is submitted that the I.O. got recorded the statement of some of the prosecution witnesses under Section 164 Cr.P.C. on 20.03.2014. Some of the witnesses such as Md. Abdul Haneef and Md. Ali Ashraf, who have not been examined in course of trial, have stated in their statement (exhibit-1/3) that in the morning they had reached the house of the accused and first of all Tenny was caught whereafter four others were also caught. Crowd had assembled, police came there and took them away. It is submitted that even the informant has admitted about the brutal assault upon Tenny. It is evident from the evidence of the prosecution witnesses that Tenny was taken into police custody on 09.03.2014 itself in between 9.00-10.00 AM, however, police did not show his arrest for about three days. All the four accused persons who were in police custody since 09.03.2014 were produced in court only on 14.03.2014.

15. It is submitted that in the formal FIR police has recorded the time of receipt of information of the occurrence as 08.03.2014 at 23.00 hours, therefore, it is evident that police had come to know about the occurrence on 08.03.2014 at 11.00 PM that the victim girl was missing. A written information was submitted before police but no FIR was lodged. Tenny and other four accused were taken into custody on 09.03.2014 in between

9.00-10.00 AM and, thereafter, the FIR was registered on 09.03.2014 at 10.30 AM, therefore, on the basis of the suspicion raised by Md. Moiz who has denied to have identified the accused in course of trial, Tenny was caught hold of and was brutally assaulted and thereafter the whole prosecution case was built up thereon.

16. Learned counsel submits that in paragraph '17' of the evidence of PW-2, it has come that police had got published the names and photographs of six persons. PW-2 is an employee of the husband of the informant. He has stated in paragraph '7' that he works for wages for him. On perusal of his deposition, it would appear that in paragraph '15' thereof, he has stated that he had not met the I.O. of this case and had not given any application to Darogaji for recording of his statement. In paragraph '16', he has stated that after 10-12 days of the occurrence, he had gone to the court for recording of his statement. In paragraph '17', he has stated that after one or two days of the occurrence, photographs of six persons were got published by police in the newspaper. This witness was, therefore, suggested that he had taken name of the accused persons in the court on the basis of the information published in the newspaper which the witness denied. Learned counsel has pointed out that in this case the I.O. has been

examined as PW-10. He has, in fact, created false entry in the case diary by showing that he had raided the house of Tenny on 13.03.2014 at 4.00 PM and had arrested him from his house whereafter his confessional statement was recorded by him. The prosecution witnesses are rather consistent that Tenny was caught hold of by mohalla people on 09.03.2014 itself at about 9.00 AM and after giving him brutal assault, he was handed over to police. PW-10 has proved the confessional statement of Tenny (exhibit-5) and the confessional statement of Md. Sajjad (exhibit-5/1). He has stated that he did not verify Rizwan who had gone to the house of the informant on the date of occurrence at 9.00 PM to know the whereabouts of Parvez, an another employee of the husband of the informant. The I.O. had not recorded the statement of Arman under Section 161 Cr.P.C. who was another worker with the husband of the informant and on the date of occurrence, he was very much present in the house and it was he from whom Rizwan had verified about the whereabouts of Parwez.

17. It is submitted that in the case of **V.C. Shukla versus State Delhi (Administration)** reported in **AIR 1980 SC 1382** in which the Hon'ble Supreme Court has observed that a witness who deliberately gives false statement is unreliable. Since one of the submissions of the appellants in this case is that the I.O. (PW-10)

had made false entries in the case diary and has wrongly shown the date of arrest of the accused persons and recorded the confessional statement of the accused despite the direction of the Hon'ble Supreme Court not to do so.

18. It is submitted that the Hon'ble Supreme Court in the case of **State of Gujarat versus Kishanbhai and Others** reported in **(2014) 5 SCC 108** has held that where the conduct of the I.O. is blameworthy, the matter be referred to the Home Department of the Government and every State Government will incorporate in its existing training programmes for prosecution officials course-content drawn and such responsibility be vested in the committee of senior officers.

19. It is submitted that PW-10 has admitted that he had not recorded the statement of Zahiruddin (PW-1) and in paragraph '19' of his deposition, he has stated that he had not inspected the field in which the accused persons were playing gamble. He had also not investigated as to who had taken out the dead body from the latrine tank. No one from Madina Gali was examined by him. In paragraph '20' of his deposition, PW-10 has stated that in her re-statement the informant (PW-5) had not stated about Moiz Ahamd (PW-12). Learned counsel submits that paragraph '23' and '24' of the deposition of PW-10 would be important to take note

of. He was suggested by defence that accused Kamal @ Tenny was handed over to police after assaulting him on 09.03.2014 itself which this witness denied. It is submitted that apparently PW-10 has made false statement and even the prosecution witnesses have stated that Tenny was handed over to police on 09.03.2014 itself. PW-10 was suggested that the arrest of Tenny was wrongly shown on 13.03.2014.

20. Learned counsel submits that PW-10 had taken blood samples of the accused persons but the blood samples reports have been suppressed by the prosecution. Referring to the order dated 24.03.2014, 01.04.2014 and 04.04.2014 of the learned trial court, learned counsel submits that the accused persons had voluntarily given their blood and twice blood samples were taken but the report has not been brought before the court which amounts to suppression of material fact and this would lead to drawing an adverse inference against the prosecution.

21. Learned counsel submits that PW-10 has stated in paragraph '23' of his deposition that he had not taken blood samples of the mother of the victim girl and no DNA test was conducted. He had not been examined as to whether there was any blood on the pyajama or not. He had not given any application in the court to get recorded the confessional statement of accused

Tenny under Section 164 CrPC. He has claimed that he sent the blood samples for DNA test to Forensic Science Laboratory but had not received the report.

22. Learned counsel submits that the I.O. has stated that he had not found any blood or semen on the *gendra* (a kind of bed sheet). He had not seized the same although he had shown seizure of liquor bottles and pyajama of the victim girl in the seizure list dated 13.03.2014 but no test was conducted of the liquor bottles and the pyajama was not produced for identification by the family members.

23. Learned counsel submits that in these circumstances, learned trial court has grossly erred in appreciating the evidences available on the record and has convicted the accused persons on mere suspicion. Reliance has been placed upon the judgment of the Hon'ble Supreme Court in the case of **Surajdeo Mahto and Another vs. State of Bihar** reported in **AIR 2021 SC 3643** (paragraph '45') to submit that mere suspicion cannot be accepted as impeccable evidence to prove the guilt.

Submissions of the State

24. Ms. Shashi Bala Verma and Mr. Ajay Mishra, learned Additional Public Prosecutors for the State have though made all efforts to defend the impugned judgment of the learned

trial court but towards the end of their submissions, learned Additional Public Prosecutors find it difficult to establish the chain of criminological events from the circumstances which are available on the record. They have agreed at the bar and rightly so that the learned trial court had grossly erred in exhibiting the whole confessional statement of the two accused persons and then drawing strength on that basis to prove the guilt of the accused persons.

25. Learned APPs do not controvert the submissions of the learned counsel for the appellants that in this case, the only circumstance which is appearing from the prosecution evidence is that in the night when some of the prosecution witnesses had gone in search of the victim girl in the field of Ishanagar, they had seen the accused persons playing gamble in the candle light and they had tried to flee away apprehending that the police had arrived. It is not controverted that nobody had seen either of the accused persons taking away the victim girl from her house or on way from her house to the place where the dead body was found even as several houses exist in the vicinity.

Consideration

26. Having heard learned counsel for the appellants and learned Additional Public Prosecutors for the State as also on

perusal of the trial court records, this Court finds that the whole prosecution case is based on circumstantial evidences. The learned trial court has come to a conclusion that nobody had seen the victim girl in the company of any of the accused, therefore, this case is not based on last seen theory.

27. In a case of circumstantial evidence, we have to keep in mind the principles of *panchsheel* as laid down by the Hon'ble Supreme Court which has been discussed on various occasions in catena of judgments of the courts. We will refer those judgments at an appropriate stage hereinafter.

28. On perusal of the evidences on the record, it would appear that admittedly PW-4, who is *bhaisur* of the informant, had given a written information to police on 08.03.2014. The I.O. (PW-10) has not produced the *sanha*. The fact as to submission of the application on 08.03.2014 has not been mentioned in the case diary. PW-10 has stated that he cannot say what were stated in the *sanha*. He was suggested that because no name was mentioned in the *sanha*, therefore, it has been knowingly not attached to the case diary. PW-10, though, denied the suggestion but his conduct in not making *sanha* as part of the case diary and not producing the same in course of trial would lead to conclude that the prosecution has

suppressed the initial version of PW-4 which could have reflected the circumstances under which the victim girl had gone missing.

29. This Court finds that in her *fardbeyan*, the informant (PW-5) has stated that on 08.03.2014 at about 7:30-8:00 PM, she had applied oil on the hands and legs of her husband and went to sleep. She has stated that at this time her two daughters including the victim girl were playing on the road, they were told by Md. Arman to go to their house on which both came. This Court finds it unnatural on the part of the informant that she went to a sleep at 7:30-8:00 PM and at that time her two daughters were playing on the road. She claims that on the asking of Arman her both daughters came one after another. If this statement is correct then it is to be believed that the victim daughter of the informant had also come inside the house but at this stage, the informant has stated in her *fardbeyan* that one of her daughters told her that the victim girl was talking to a person outside the house. The informant says that the victim girl was in habit of going with any known person if he offers any food item to her. She has stated that when she was sleeping at about 9:00 PM then the victim girl was playing on the floor of the *verandah*, during this period Rizwan Sajid @ Rusi had come to her house to enquire about one of the *karigars* Parwez and had gone back after asking about Parwez from Arman. After his

departure, when the informant and one of her daughters came down in the house, they did not find the victim girl. Here this Court finds that according to the informant one of her daughters had seen the victim girl talking to a person. Who was that person could not be identified. The said daughter of the informant has not been examined. The accused persons were not subjected to Test Identification Parade (TIP) and this part of the information available in the *fardbeyan* has not at all been investigated.

30. This Court further finds that immediately before the victim girl went missing, one Rizwan Sajid @ Rusi had come to the house of the informant to enquire about Parwez who was on leave for 3-4 days. This Rizwan Sajid @ Rusi is a resident of the same *mohalla* but why he came in unusual time at 9:00 PM in search of Perwez who was one of the *karigars* employed by the husband of the informant, is not known. It has come in evidence that neither the informant nor any other prosecution witness had gone to the house of Rizwan Sajid @ Rusi in search of the victim girl. The I.O. has stated in paragraph '16' of his deposition that he had not done any verification of Rizwan Sajid @ Rusi and he had not done any investigation on the point that on the said date at about 9:00 PM he was at the place of occurrence. He had not investigated as to for what Rizwan Sajid @ Rusi had gone to the

house of the informant at 9:00 PM. The I.O. has also stated that he had not investigated that after 8:30 PM where was Arman and what work he did. Md. Arman has not been examined in this case. It, therefore, appears that the prosecution case suffers from basic infirmities inasmuch as the two most important persons, namely, Rizwan Sajid @ Rusi and Md. Arman who were there in the house of the informant at 9:00 PM on 08.03.2014 have not been verified and investigated. The informant (PW-5) has not supported her own *fardbeyan* on the point that Rizwan Sajid @ Rusi had come to her house on the date of occurrence. She has stated in paragraph '15' of her deposition that Rizwan Sajid @ Rusi is from her *mohalla* but he is not related to her. She has further stated that Rizwan Sajid @ Rusi had not come to her house on the date of occurrence. She again said that even if he had come, she was not aware of it. This Court, therefore, clearly finds that the informant having sensed the weakness of the prosecution case made it further complicated by deviating from her statement in the *fardbeyan*.

31. This Court, further, finds from the evidences on the record that only circumstance which has impressed the learned trial court is the event that when the informant along with her *bhaisur* and *mohalla* people reached in the field of Isha Nagar, they had seen the six named accused persons present there, some

of them were sitting and a candle was burning there. On seeing them those persons had started fleeing away. It has come in evidence of Md. Aftab Alam (PW-4) that in course of search of the victim girl they reached to a field which was surrounded by houses from all the four sides. He found that some persons were sitting there. They had burnt a candle, some were standing and on seeing the witness and other persons they started fleeing away. They were chased and reached at the Petrol Pipe Road. PW-4 identified Guddu, Teniya, Mister, Lallu, Md. Pappu, Mintu @ Scientist. This witness has stated that the accused persons fled towards the auto garage, out of them one was Guddu and the other was Teniya. The informant (PW-5) has stated that she along with PW-4 and Md. Zahiruddin (PW-1) and people of the *mohalla* had gone to the field of Isha Nagar. She had seen the accused persons who started fleeing away on seeing the witness and others.

32. Md. Zahiruddin (PW-1) has stated in his examination-in-chief that in course of search of the victim girl, in the field he found Tenny and Lallu who had started fleeing away on seeing them. This witness has stated that when he and other persons asked them as to why they were fleeing, they said that they were apprehensive that police had reached. This witness is the brother-in-law of the informant. He has stated that he had not

given any application to the police requesting to conduct TIP and had not given any application saying that he identified the accused persons. He had stated that prior to recording of his statement under Section 164 CrPC, Lallu and Tenny had come in the court and their photographs were also published in the newspaper. He, however, denied the suggestion that Tenny and Lallu were got identified in the court and seeing their photographs he had taken their names. This Court finds that the only circumstance which has been brought for consideration by the prosecution is the fact that the informant, *bhaisur* and brother-in-law, who had gone in search of the victim girl in the night, had seen the accused persons. While PW-4 and PW-5 have taken name of six accused persons whom he identified in the night while fleeing away, PW-1 has taken name of only two persons. This Court also finds that these witnesses have not stated that there was any source of light in the field and how they were able to identify the accused persons when they were fleeing away. PW-2 and PW-4 both stated that they saw some persons in the field and there was a candle light but they did not claim that they identified them in the candle light. At this stage, one of the witnesses, Md. Jishan Alam who is the nephew of the informant and has been examined as PW-3 has stated that he had seen some boys indulged in gambling in candle light whereafter he

lighted his torch and on this the accused persons started fleeing away. Some of them had opened their pant and some had opened their shirt, they chased them and caught Mister, Guddu, Lallu and Tenny and asked them as to why they were fleeing away then Mister told them that they were fleeing away being afraid of police. This Court finds that PW-3 has not been named by PW-4 and PW-5 as one of the family members who had been accompanying them in course of search of the victim girl. PW-3 has been planted at a belated stage and his evidence is materially different from the evidence of PW-4 and PW-5. This Court is, therefore, of the opinion that PW-3 is a wholly unreliable witness.

33. This Court further finds that the prosecution witnesses have stated that Tenny and other four accused were taken into custody on 09.03.2014 in between 9-10:00 AM. The informant (PW-5) and other witnesses who have made their statements under Section 164 CrPC are consistent that Tenny was caught hold of by the *mohalla* people, he was brutally assaulted in between 9-10:00 AM on 09.03.2014, then police came and took him away with them. Thereafter other accused persons were also arrested. The informant (PW-5) came out with a statement that after the recovery of the dead body of her daughter from the tank she was told by one Moiz Ahmed that Scientist and Tenny had

concealed themselves behind the bushes near the house of Hussain Sahab during night. On the said information of Moiz Ahmed, in the morning *mohalla* people had caught hold of Tenny and brutally assaulted him. PW-7 who is one of the witnesses of the seizure list has deposed that after recovery of dead body, the accused were immediately arrested and police had kept them under their control.

34. It is found that on the one hand Moiz Ahmed informed the *mohalla* people that Scientist and Tenny concealed themselves behind the bushes near the house of Hussain Sahab, the informant (PW-5), her *bhaisur* (PW-4) and her brother-in-law (PW-1) all have stated that they had seen Scientist and Tenny both with other accused persons in the field. Moiz Ahmed, on whose information *mohalla* people had caught hold of Tenny, was not made a charge-sheet witness in this case but he has deposed as PW-12. He has stated that his statement was not recorded by the I.O. Most important is that he has not identified the accused persons in court.

35. This Court, therefore, finds that the accused Tenny was brutally assaulted and handed over to police on 09.03.2014 in between 9-10:00 AM and thereafter the FIR was registered on the same day at 10:30 AM. It has come in evidence that the dead body had already been recovered by 5:00 AM, therefore, for about 5-6

hours after recovery of the dead body no FIR was registered. This Court is of the opinion that even the arrest of Tenny was suppressed by the I.O. (PW-10) and only after four days he was shown arrested and produced in court on 14.03.2014. The *fardbeyan* of the informant which was recorded on 09.03.2014 at 9:00 hours has been seen by learned ACJM on 11.03.2014. Thus, there is not only a delay in recording of the *fardbeyan*, there is also a delay of two days in sending the FIR to the court of learned jurisdictional Magistrate. This, in the opinion of the Court further creates a dent in the prosecution story, authenticity of the prosecution case would become doubtful and it will prove fatal to the prosecution.

36. This Court finds that on 13.03.2014, the I.O. (PW-10) has extracted confessional statements of Md. Kamal @ Tenny and Md. Sajjad @ Lallu. Their whole confessional statements have been placed on the record and made part of the charge-sheet in violation of the directions of the Hon'ble Supreme Court in the case of **Venkatesh @ Chandra & Another** (*supra*). The confessional statements were recorded by police after illegally keeping the accused persons in confinement. Even the learned trial court remained oblivious of this fact and committed gross error in exhibiting the whole confessional statement of the two accused as

Exhibit '5' and Exhibit '5/1' respectively. Not only this, the learned trial court has gone to the extent of recording that both the accused had confessed that they were thrashing the victim and slapping her. This Court finds that this confessional statement was not admissible in evidence, it could not have been made part of the charge-sheet and exhibiting of these documents has resulted in miscarriage in the administration of justice.

37. This Court further finds that even though the accused persons were arrested by police, they were not subjected to medical examination which would have provided some information with regard to their complicity in the alleged occurrence. The accused persons had voluntarily given their blood samples which would be evident from the order dated 24.03.2014, 01.04.2014 and 14.04.2014 of the learned trial court but the report of the test of blood samples has not been brought before the court. The I.O. (PW-10) has stated that he had not taken blood samples of the mother of the victim girl and had not got her DNA test conducted. He had not got examined as to whether there was any blood on the *pyjama* of the victim or not. The I.O. (PW-10) claimed that he had sent the blood samples of accused for DNA test to Forensic Science Laboratory (in short 'FSL') but had not received the report. The I.O. (PW-10) has not placed on record the

forwarding letter sent to the FSL and the acknowledgment receipt of the FSL showing receipt of those articles for examination. This is the failure of the prosecution and one of the vital circumstances which could have been proved in connection with this case has not been established.

38. This Court has also seen the seizure list dated 13.03.2014 showing seizure of liquor bottles and burnt *pyjama* of victim girl on the basis of the information furnished by one of the accused persons in his confessional statement. From naked eyes, it appears that on the seizure list in the middle, signature of the accused was taken and this Court takes a view that the signature of the accused was obtained on a blank sheet of paper. No identification of *pyjama* has been done by family members of the deceased and the same was not got examined. The *janghiya* and *phulpant* of the accused have been shown seized on 13.03.2014 but none of these seized clothes were sent to 'FSL'. The I.O. (PW-10) has stated that he had not found any blood or semen on the *gendra* (a kind of bed sheet) which was seized from the house of accused Md. Kamal @ Tenny.

39. This Court would not lose sight of the evidence on the record that the victim girl was subjected to rape and she was murdered but this is an unfortunate case in which this Court finds

that the whole investigation of the case has been done on mere suspicion. On several aspects of the matter, the I.O. has not verified the facts, the persons and the circumstances. From the discussions made hereinabove, this Court has no hesitation in recording that the conduct of the I.O. (PW-10) is blameworthy and this would result in failure of the prosecution case.

40. In the case of **Jaharlal Das Vs. State of Orissa** reported in **(1991) 3 SCC 27**, the Hon'ble Supreme Court has held that an accused cannot be convicted on mere suspicion how so strong it may be. Reference in this connection may be made to the judgment of the Hon'ble Supreme Court in the case of **Jahar Lal** (*supra*). Paragraph '4' is being reproduced hereunder for a ready reference.

“**4.** No doubt the offence is a shocking one but the gravity of the offence cannot by itself overweigh as far as legal proof is concerned. Invariably in such cases a person last seen with the victim, unless otherwise there are circumstances *prima facie* exonerating him, would be the prime suspect but in the ultimate judicial adjudication suspicion, howsoever strong, cannot be allowed to take the place of proof.”

41. In the case of **V.C. Sukhla** (*supra*), the Hon'ble Supreme Court has observed that a witness who deliberately gives false statement is unreliable. In this case, the I.O. (PW-10) has made false statements and created wrong entries in the case diary with

regard to the date of arrest of the accused persons, thus his deposition would not inspire much confidence.

42. In a case based on circumstantial evidence, the judgment of the Hon'ble Supreme Court in the case of **Sharad Birdhichand Sarda vs. State of Maharashtra** reported in (1984) 4 SCC 116 must be taken note of. Paragraph '152' of the judgment is being reproduced hereunder for a ready reference.

“152. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is *Hanumant v. State of Madhya Pradesh*¹.

“This case has been uniformly followed and applied by this Court in a large number of later decisions up-to-date, for instance, the cases of *Tufail (Alias) Simmi v. State of Uttar Pradesh*¹⁷ and *Ramgopal v. State of Maharashtra*¹⁸. It may be useful to extract what Mahajan, J. has laid down in *Hanumant case*¹: “It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.”

1. 1952 SCR 1091 : AIR 1952 SC 343 : 1953 Cri LJ 129
17. (1969) 3 SCC 198 : 1970 SCC (Cri) 55
18. AIR 1972 SC 656 : (1972) 4 SCC 625

43. In the case of Dilavar Hussain and Others versus the State of Gujarat and Another reported in (1991) 1 SCC 253 again the Hon'ble Supreme Court has observed in paragraphs '3' and '4' as under:-

“3. All this generated a little emotion during submissions. But sentiments or emotions, howsoever strong, are neither relevant nor have any place in a court of law. Acquittal or conviction depends on proof or otherwise of the criminological chain which invariably comprises of why, where, when, how and who. Each knot of the chain has to be proved, beyond shadow of doubt to bring home the guilt. Any crack or loosening in it weakens the prosecution. Each link, must be so consistent that the only conclusion which must follow is that the accused is guilty. Although guilty should not escape (*sic*). But on reliable evidence, truthful witnesses and honest and fair investigation. No free man should be amerced by framing or to assuage feelings as it is fatal to human dignity and destructive of social, ethical and legal norm. Heinousness of crime or cruelty in its execution however abhorrent and hateful cannot reflect in deciding the guilt.

4. Misgiving, also, prevailed about appreciation of evidence. Without adverting to submissions suffice it to mention that credibility of witnesses has to be measured with same yardstick, whether, it is ordinary crime or a crime emanating due to communal frenzy. Law does not make any distinction either in leading of evidence or in its assessment. Rule is one and only one namely,

whether depositions are honest and true. Whether the witnesses, who claim to have seen the incident in this case, withstand this test is the issue? But before that some legal and general questions touching upon veracity of prosecution version may be disposed of.”

44. In the light of the aforementioned judgments of the Hon’ble Supreme Court, this Court finds that in the present case, the only circumstance is the suspicion against the accused because some of the witnesses have claimed that they had seen the accused persons in the field. Even as the field is surrounded by several houses from all the four sides, there is no independent witness from the *mohalla* who has seen these persons in the field. There is no witness who claimed to have seen the victim girl going with any of the accused persons. This Court further finds that the conviction of the accused persons being based on confessional statements cannot sustain and is liable to be set aside.

45. Accordingly, these appeals are allowed. The impugned judgment and order of the learned trial court as regards the appellants are set aside and the appellants are acquitted of the charges giving them benefit of doubt.

46. The appellants in Criminal Appeal (DB) No. 129 of 2017 and Criminal Appeal (DB) No.176 of 2017 are on bail, hence, they and their sureties are discharged from the liability of bail bonds.

47. The appellant Md. Kamal @ Tenny @ Tenia in Criminal Appeal (DB) No. 295 of 2017 is in custody. He shall be released forthwith if not wanted in any other case.

48. At this stage, we cannot remain oblivious of the fact that it is a case in which a child has been subjected to rape and murder. In the discussions recorded herein above, we have noticed how the I.O. of this case has dealt with this matter. The lapses on the part of the I.O. have been found at various stages of investigation. At first instance, when written application was submitted by PW-4 with the police station on 08.03.2014 in the night hour, no action has been taken by the Officer-in-Charge of the police station to register a *sanha* at first instance and then take steps towards tracing out the victim girl. The written application submitted by PW-4 does not form part of the case diary and has not been produced in course of trial. In course of investigation, the I.O. did not take up the verification work of Md. Rizwan Sajid and Md. Arman who were the two important persons who were lastly present in the house of the informant just before the victim girl went on missing. The prosecution witnesses have stated that Md. Kamal @ Tenny was caught hold of by the *mohalla* people in the morning between 09-10:00 AM on 09.03.2014, he was brutally assaulted, police came and took him away. All other accused were

also arrested immediately. This Court has found that police did not show their arrest for about four days. Their arrest has been shown on 13.03.2014, the confessional statements of the accused were obtained in the police station and then they were produced in court on 14.03.2014. Even as it was a case of rape and the accused were arrested soon after the recovery of the dead body, they were not subjected to medical examination as required under Section 53 CrPC. The accused persons voluntarily gave their blood samples for test but it is not known as to why the blood test reports were not obtained and made part of the investigation. The I.O. has not recorded statement of independent witnesses of the locality. He has not verified the place of occurrence and the people whose houses are there in surrounding. He had not obtained blood samples of the mother of the victim girl and did not get the DNA test conducted. He claimed that blood samples of accused were sent for DNA test to FSL but he had not received the report. He has not even proved the forwarding letter showing that he had sent the blood samples for DNA test to the FSL. The I.O. has gone to the extent of making false entries in the case diary showing the date of arrest of the accused as 13.03.2014. Evidence has also come that the I.O. published the photographs of the accused persons in the newspaper and no step was taken by him to get conducted TIP of the accused

even as the informant claimed that one of his daughters had seen the victim girl talking to a person at the relevant time. Above all, despite the directions of Hon'ble Supreme Court in case of **Venkatesh @ Chandra** (*supra*), I.O. has recorded confessional statements of the accused and made them part of the charge-sheet. This Court would reproduce paragraphs '22' and '23' of **Venkatesh @ Chandra** (*supra*):-

“**22.** We must observe that we have repeatedly found a tendency on the part of the prosecuting agency in getting the entire statement recorded rather than only that part of the statement which leads to the discovery of facts. In the process, a confession of an accused which is otherwise hit by the principles of the Evidence Act finds its place on record. Such kind of statements may have a direct tendency to influence and prejudice the mind of the court. This practice must immediately be stopped. In the present case, the trial court not only extracted the entire statements but also relied upon them.

23. The other disturbing feature that we have noticed is that voluntary statements of the appellants were recorded on a DVD which was played in court and formed the basis of the judgment of the trial court as is noticeable from paras 34 and 35 of its judgment. Such a statement is again in the nature of a confession to a police officer and is completely hit by the principles of the Evidence Act. If at all the accused were desirous of making confessions, the investigating machinery could have facilitated recording of confession by producing them before a Magistrate for appropriate action in terms of Section 164 of the Code. Any departure from that course is not acceptable and cannot be recognised and taken on record as evidence. The

trial court erred in exhibiting those DVD statements Exts. P-25 to 28. As a matter of fact, it went further in relying upon them while concluding the matter on the issue of conviction.”

49. Recently in case of **Sanuj Bansal Vs. The State of Uttar Pradesh and Anr.** in **Petition for Special Leave to Appeal (Crl.) No. 10536 of 2023** which arose out of a judgment of the Hon’ble High Court of Judicature at Allahabad, the Hon’ble Supreme Court has observed as under:-

“We have perused the affidavit of Shri Prashant Kumar, Director General of Police, Uttar Pradesh. He has stated that in the State of Uttar Pradesh, confessional statements are not being recorded by the Investigating officers and the present case is an exception where charge-sheet contains alleged confessional statement of the accused recorded by the police. He has assured that appropriate action will be taken against the concerned Investigation Officer.

It is obvious that confessional statements recorded by the Police officers which are part of the charge-sheet cannot remain a part thereof and the same must be ignored. The Trial Court to take note of this”.

50. We are reminded of the judgment of the Hon’ble Supreme Court in case of **State of Gujarat v. Kishanbhai** reported in **(2014) 5 SCC 108**. Paragraph ‘19’, ‘22’ and ‘23’ of the judgment reads as under:-

“**19.** Every time there is an acquittal, the consequences are just the same, as have been noticed hereinabove. The purpose of justice has not been achieved. There is also another side to be taken into consideration. We have declared the respondent-accused innocent, by upholding

the order of the High Court, giving him the benefit of doubt. He may be truly innocent, or he may have succeeded because of the lapses committed by the investigating/prosecuting teams. If he has escaped, despite being guilty, the investigating and the prosecution agencies must be deemed to have seriously messed it all up. And if the accused was wrongfully prosecuted, his suffering is unfathomable. Here also, the investigating and prosecuting agencies are blameworthy. It is therefore necessary, not to overlook even the hardship suffered by the accused, first during the trial of the case, and then at the appellate stages. An innocent person does not deserve to suffer the turmoil of a long-drawn litigation, spanning over a decade or more. The expenses incurred by an accused in his defence can dry up all his financial resources — ancestral or personal. Criminal litigation could also ordinarily involve financial borrowings. An accused can be expected to be under a financial debt, by the time his ordeal is over.

22. Every acquittal should be understood as a failure of the justice delivery system, in serving the cause of justice. Likewise, every acquittal should ordinarily lead to the inference, that an innocent person was wrongfully prosecuted. It is therefore essential that every State should put in place a procedural mechanism which would ensure that the cause of justice is served, which would simultaneously ensure the safeguard of interest of those who are innocent. In furtherance of the above purpose, it is considered essential to direct the Home Department of every State to examine all orders of acquittal and to record reasons for the failure of each prosecution case. A Standing Committee of senior officers of the police and prosecution departments should be vested with the aforesaid responsibility. The consideration at the hands of the above Committee, should be utilised for crystallising mistakes committed during investigation, and/or prosecution, or

both. The Home Department of every State Government will incorporate in its existing training programmes for junior investigation/prosecution officials course-content drawn from the above consideration. The same should also constitute course-content of refresher training programmes for senior investigating/prosecuting officials. The above responsibility for preparing training programmes for officials should be vested in the same Committee of senior officers referred to above. Judgments like the one in hand (depicting more than ten glaring lapses in the investigation/prosecution of the case), and similar other judgments, may also be added to the training programmes. The course-content will be reviewed by the above Committee annually, on the basis of fresh inputs, including emerging scientific tools of investigation, judgments of courts, and on the basis of experiences gained by the Standing Committee while examining failures, in unsuccessful prosecution of cases. We further direct, that the above training programme be put in place within 6 months. This would ensure that those persons who handle sensitive matters concerning investigation/prosecution are fully trained to handle the same. Thereupon, if any lapses are committed by them, they would not be able to feign innocence when they are made liable to suffer departmental action for their lapses.

23. On the culmination of a criminal case in acquittal, the investigating/prosecuting official(s) concerned responsible for such acquittal must necessarily be identified. A finding needs to be recorded in each case, whether the lapse was innocent or blameworthy. Each erring officer must suffer the consequences of his lapse, by appropriate departmental action, whenever called for. Taking into consideration the seriousness of the matter, the official concerned may be withdrawn from investigative responsibilities, permanently or temporarily, depending purely on his culpability. We

also feel compelled to require the adoption of some indispensable measures, which may reduce the malady suffered by parties on both sides of criminal litigation. Accordingly, we direct the Home Department of every State Government to formulate a procedure for taking action against all erring investigating/prosecuting officials/officers. All such erring officials/officers identified, as responsible for failure of a prosecution case, on account of sheer negligence or because of culpable lapses, must suffer departmental action. The above mechanism formulated would infuse seriousness in the performance of investigating and prosecuting duties, and would ensure that investigation and prosecution are purposeful and decisive. The instant direction shall also be given effect to within 6 months.”

51. We are of the opinion that in this case the lapses in investigation has seriously affected the outcome of this case and it would fall in the category of a blameworthy lapse on the part of the investigating authorities. We, therefore, direct the Home Department, Government of Bihar to take appropriate action, identify the erring official(s) for the failure of the prosecution and find out whether it is a case of sheer negligence or the lapse on the part of the investigating authorities or is in the nature of culpable lapses as envisaged by the Hon’ble Supreme Court in the case of **Kishanbhai** (*supra*). If it is found that it is a case of culpable lapse, the consequences in terms of the judgment of the Hon’ble Supreme Court shall follow. The decision of the Department in compliance of this direction be placed before this Court for perusal

within four months from the date of receipt/communication of a copy of this judgment.

52. This Court has been noticing in course of hearing of the criminal appeals that in large number of cases, entire confessional statements of the accused are being made part of the charge-sheet and in substantial number of cases even the trial judges are exhibiting the entire confessional statements. They are not only exhibiting the confessional statements, they are heavily relying upon them as has happened in the present case. The decision of the trial courts are getting influenced by the confessional statements which are on the records and marked exhibits. In the case of **Venkatesh @ Chandra** (*supra*), the Hon'ble Supreme Court has very elucidately discussed the law as to which part of the statement recorded by police would be admissible and why the entirety of the statements would not be admissible in evidence. A good deal of discussions may be found in this regard in paragraph '20' and '21' of the judgment which we quote hereunder:-

“20. The trial court in paras 27 to 30 of its judgment extracted voluntary statements of the appellants. First and foremost, going by the parameters of Section 27 of the Evidence Act (“the Evidence Act, 1872”) only so much of information which relates distinctly to the facts thereby discovered can be stated to have been proved. The extent and ambit of the said provision as well as applicability thereof were considered by the Privy Council in *Pulukuri Kotayya v. King Emperor*² as under : (SCC OnLine PC)

2. 1946 SCC OnLine PC 47 : AIR 1947 PC 67

“10. Section 27, which is not artistically worded, provides an exception to the prohibition imposed by the preceding section, and enables certain statements made by a person in police custody to be proved. The condition necessary to bring the section into operation is that the discovery of a fact in consequence of information received from a person accused of any offence in the custody of a police officer must be deposed to, and thereupon so much of the information as relates distinctly to the fact thereby discovered may be proved. The section seems to be based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true, and accordingly can be safely allowed to be given in evidence; but clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. Normally the section is brought into operation when a person in police custody produces from some place of concealment some object, such as a dead body, a weapon, or ornaments, said to be connected with the crime of which the informant is accused. Mr Megaw, for the Crown, has argued that in such a case the “fact discovered” is the physical object produced, and that any information which relates distinctly to that object can be proved. Upon this view information given by a person that the body produced is that of a person murdered by him, that the weapon produced is the one used by him in the commission of a murder, or that the ornaments produced were stolen in a dacoity would all be admissible. If this be the effect of Section 27, little substance would remain in the ban imposed by the two preceding sections on confessions made to the police, or by persons in police custody. That ban was presumably inspired by the fear of the legislature that a person under police influence might be induced to confess by the exercise of undue pressure. But if all that is required to lift the ban be the inclusion in the confession of information relating to an object subsequently produced, it seems reasonable to suppose that the persuasive powers of the police will prove equal to the occasion, and that in practice the ban will lose its effect. On normal principles of construction their Lordships think that the proviso to Section 26, added by Section 27, should not be held to nullify the substance of the section. In their Lordships’

view 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.”*

(emphasis supplied)

21. As was observed by the Privy Council in *Pulukuri Kotayya case*² the words — “with which I stabbed A” were inadmissible since they did not relate to the discovery of knife in the house of the informant. Applying this logic, only that part of the statement which leads to the discovery of certain facts alone could be marked in evidence and not the entirety of the statement. Coming to the instant case and going by the principle and the illustration highlighted by the Privy Council, out of the statement of Accused 1, only the following portion except the words printed in “italics” would be admissible and can be marked in evidence:

“... If I am taken there, I will show the spot *where we committed murder*, and we will show the place where we have thrown the knife and the rod. And we will show the shop in which we sold the jewelleryes.”

The expression “where we committed murder” must not come on record. Similarly, all the earlier facts narrated in the statement about past history which are in the nature of self-implication, would be inadmissible as amounting to a confession made to a police officer. All the statements, namely, Exts. P-21 to P-24 must be read accordingly.”

53. We are of the view that merely setting aside the impugned judgment and order of the learned trial court would not be sufficient in this case. The issues with regard to recording of the confessional statements in police custody, making them part of the charge-sheet and then getting them exhibited in the trial court are required to be addressed by the stakeholders, i.e. the police as well as the Judiciary. The Hon'ble Supreme Court has in fact observed in its order dated 12.07.2024 in case of **Sanuj Bansal** (*supra*) that the confessional statements recorded by the police officers which are part of the charge-sheet cannot remain a part thereof and the same must be ignored. The trial court is to take note of this.

54. In the light of these discussions in order to sensitise the Police as well as the Presiding Officers of the trial court, we direct that a copy of this judgment be sent to the Director General of Police, Bihar to look into the matter and issue appropriate instructions to the police officers dealing with investigation of the case(s) in the matter of recording of confessional statements of accused in police custody.

55. The judgment be also placed before Hon'ble the Chief Justice-cum-Patron-in-Chief and the Hon'ble Administrative Judge-cum-Executive Director of the Bihar Judicial Academy, Patna to consider issuing appropriate direction to the Director of the Academy to conduct a training session for the trial judges to

make them understand the judgment of the Hon’ble Supreme Court in the matter of recording and admissibility of a confessional statement of the accused extracted in police custody.

56. In result, the appeals are allowed.

(Rajeev Ranjan Prasad, J)

(Ashok Kumar Pandey, J)

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