2025 INSC 657

Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal Nos.3189-3190 of 2023

RENUKA PRASAD **APPELLANT(S)**

VERSUS

THE STATE REPRESENTED BY ASSISTANT SUPERINTENDENT OF POLICE **RESPONDENT(S)**

With

Criminal Appeal No. 3399 of 2024
Criminal Appeal Nos.85-86 of 2024

J U D G E M E N T

K. VINOD CHANDRAN, J.

1. Prevaricating witnesses, turning hostile in Court and overzealous investigations, done in total ignorance of basic tenets of criminal law, often reduces prosecution to a mockery. Witnesses mount the box to disown prior statements, deny recoveries made, feign ignorance of aggravating circumstances spoken of during investigation and eye witnesses turn blind. Here is a classic case of 71 of the total 87 witnesses including eye-

witnesses, turning hostile, leaving the prosecution to stand on the testimony of the police and official witnesses. Even a young boy, the crucial eyewitness, who saw his father being hacked to death, failed to identify the assailants.

2. The prosecution alleged that due to differences arising from sharing of assets of the father; an entrepreneur who set up several educational institutions, A1 and his brother, PW4, were at loggerheads. The deceased an employee of one of the institutions, later allotted to the share of A1, resigned to join an institution managed by PW4, after the division of assets. The enmity of A1 arises, according to the prosecution, due to the active involvement of the deceased in the sibling rivalry, aligning himself with PW4, to the hilt. A1 along with his employees A2 to A4 engaged A5 and A6, through A7, an Advocate, to murder the deceased. A5 and A6 is said to have carried out the brutal murder, hacking the deceased to death, in front of his son, PW8, at 07:45 pm on 28.04.2011. PW8, immediately contacted his relatives and the deceased was rushed to the hospital where he breathed his last at 08:40 pm on the same day.

3. The first information statement (FIS) was lodged by PW8, leading to the registration of the crime and the resultant investigation. As was said, 87 witnesses were led in trial to speak about the homicide, the motive, the meeting of minds leading to the conspiracy, the preparation, what transpired after the incident and the arrest, recovery, chemical analysis and so on and so forth; all in vain for most turned hostile, especially the ones who were relevant. The Trial Court acquitted the accused finding no support for the prosecution case from the large number of witnesses arrayed to prove the various aspects leading to the murder, all of whom, except the official witnesses, turned hostile. The Division Bench of the High Court reversed the acquittal and convicted A1 to A6 under Section 302 read with Section 120-B of the Indian Penal Code, 1860. The acquittal of A7 by the Trial Court was affirmed by the High Court.

4. A1 has filed one of the appeals in which Mr. Siddharth Luthra, learned Senior Counsel, appeared for the accused/appellant. Mr. Ratnakar Dash, learned Senior Counsel appeared in the other appeals filed by A2 to A6. Mr. Aman Panwar, learned Additional Advocate General appeared for the

State. Heard both the learned Senior Counsel appearing for the appellants and the learned Additional Advocate General and perused the records.

5. The Division Bench at the outset, dealt with the judgment in ***Chandrappa v. State of Karnataka***[1] wherein this Court had set out the general principles regarding powers of the Appellate Court in dealing with an appeal from an acquittal. The principles are trite; extract having been made in the impugned judgment, we would not repeat. We are tasked to find out whether the principles have been followed scrupulously by the Division Bench in setting aside the order of acquittal. Whether, while exercising the full power conferred in an appeal to review, reappreciate and consider the evidence led in the case, the Division Bench has been circumspect, keeping in mind the trite fundamental principle that the presumption of innocence available to the accused, under the general law, stands fortified and strengthened by reason of the order of acquittal. Whether, the Trial Court has been absolutely unreasonable in taking a view that there was insufficient evidence to bring home a conviction in the case and whether it was a case

[1] (2007) 4 SCC 415

of two probable views, in which case the one favourable to the accused ought to be taken.

6. PW8 is the eyewitness who spoke of the incident but failed to identify the assailants or the weapons recovered, despite the FIS having categorically stated his ability to identify them, who suddenly came out of the bushes; when he and his father were taking a stroll, brutally hacked his father and fled on their foot. While MO6 and MO7, spectacles and mobile of the deceased seized by the police from the scene of occurrence, was identified, the witness could neither identify either of the appellants; A5 and A6. The weapons were not even confronted to PW8, since he expressed his inability to identify them. PW8's knowledge of the motive, spoken of in the statement under Section 161 of the Cr.P.C, was denied. PW 1 & PW9 were the persons who came to the scene of occurrence, as per the prosecution case, immediately after the incident, who also saw two persons running away. PW1 completely denied his presence at the scene of occurrence, while PW9 spoke only of having seen one person running away. PW9 deposed of seeing the injured and his son, the latter of whom was advised to call relatives. He called the Police and summoned an

ambulance, but even before its arrival, the injured was taken to the hospital in a pick-up van. The statement made by PW1 and PW9, under Section 161, regarding their ability to identify the persons who were running away and their awareness of the motive; being residents of the locality and the conspiracy having been hatched by reason of the sibling rivalry of prominent persons of the locality, were all denied.

7. PW2, the brother of the deceased, PW3, his uncle and PW10, his wife, were examined to prove the inquest and also the motive. All of them saw the injured at the hospital, spoke of the injuries numbering twenty-five, admitted of the inquest and identified the dress and other personal effects of the deceased, seized by the police from the body. PW2, though spoke of his brother's employment with A1 and subsequent resignation due to a disagreement, did not support the prosecution case of an active enmity between the deceased and A1 by reason of the allegiance to PW4, the brother of A1; a departure from his Section 161 statement. Curiously, the wife of the deceased also denied her statement to the police that A1 had insulted and threatened the deceased. PW3 was the uncle of the deceased who along with

PW2 and PW10 saw the deceased at the hospital. There were a number of witnesses examined to prove the motive, the conspiracy and the incidental circumstances, leading eventually to the murder of the deceased, all of whom turned hostile. The Appellate Court though accepted that all these witnesses turned hostile, looked at the story projected by the prosecution as spoken of in the Section 161 statements of the witnesses, which the witnesses did not accept, in the box, at the trial before Court.

8. PW4, the brother of A1, to whom was aligned the deceased, and a star witness to speak on the motive, admitted the division of the properties between the brothers but denied any long-standing enmity between them. He also denied that he wrote a letter to his father complaining about the actions of A1. A photocopy of the said letter confronted to him, at the trial, was denied, though he admitted that the signature seen therein was similar to his. The effort of the prosecution to prove the various aspects leading to the crime and what happened afterwards; (i) of the conspiracy; hatched through the meetings carried out by the accused, purportedly to prove the meeting of minds, the inquiries made to find out the contract killers, persons approached for

owning up the crime; (ii) preparation; like, the purchase of machetes, procurement of fake number plates to be affixed in a motorbike and pick up van, used to escape from the crime scene and reach the hide out; and the (iii) motive itself; through employees of the Medical College, PW57 to PW62 & PW72, including the Administrative Superintendent and the Principal of the College, to establish the enmity between A1 and PW4, all of which collapsed like a pack of cards, when all of these witnesses turned hostile. The motive, conspiracy, preparation made before, and what transpired after the crime, as projected by the prosecution remained a mere scripted story as discernible from the Section 161 statements; not established in the trial.

9. Surprisingly, all the panch witnesses who attested the various recoveries, like cash seized from A2 to A5, the weapons used, and the clothes worn by the accused, when the crime was committed, also turned hostile. We will deal with Exhibit P49, recovery of the machetes, the weapons used in the offence and Exhibit P50, recovery of the clothes worn by A5 and A6 at the time of the crime, a little later, which has to be considered along with the FSL report and the result of analysis coming forth. We also

notice that there were two Mahazars produced as Annexure P51 and P54, wherein A1 allegedly confessed and pointed out the place where the conspiracy was carried out and the money transfer occurred. This, however, is not a confession under Section 27 of the Indian Evidence Act, 1872, since there was no tangible object recovered from the two sites pointed out, leading to the discovery of a fact. The confession statement regarding the conspiracy, of course cannot at all be relied upon, being hit by Sections 25 & 26 of the Evidence Act. The other witnesses examined to prove the aggravating circumstances also turned hostile in which event the Court turned to the evidence of the Investigating Officers, PW's 83, 84 and 87.

10. Commencing the analysis of evidence the High Court first held that undisputedly Ramkrishna met with a homicidal death, which is also the conclusion of the Trial Court from which there is no reason for us to differ. The evidence of PW8, who was an eye witness and PW9, who saw the hacked body of the deceased immediately after the incident, coupled with the evidence of PWs 2, 3 and 10, brother, uncle and wife, who saw the body of the deceased at the hospital and spoke of the injuries sustained,

clearly established the brutal attack on the deceased. The post-mortem report and the cause of death as spoken of by the Doctor, PW74, also established the homicidal death caused by the cutting wounds inflicted on the deceased, which were also ante-mortem. We need not further deal with the issue and fully agree with the Trial Court and the High Court that the deceased was brutally murdered.

11. The High Court having found that all the witnesses except the official witnesses turned hostile looked at the evidence of the official witnesses especially the Investigating Officers and the recoveries made in the course of investigation. The High Court also relied on two decisions of this Court, ***State, Govt. of NCT of Delhi v. Sunil***[2] and ***Rizwan Khan v. State of Chhattisgarh***[3] to find that the courts need not always feed on a distrust of police officers. We have to emphasize that the proposition coming out of the said decisions were in the context of recoveries made under Section 27 of the Evidence Act or the seizures effected on search or interception.

[2] (2001) 1 SCC 652
[3] (2020) 9 SCC 627

12. In ***Sunil and another***[2], the recovery of a blood-stained knickers was eschewed by the High Court since there were no independent witnesses. A distinction was drawn from a case of recovery, under information supplied by the accused and a discovery made on a search, where there is an insistence on having independent witnesses, under Chapter VII of the Code. It was held that it is fallacious to hold that every recovery under Section 27 must necessarily be attested by independent witnesses and it is for the Police Officer to have such witnesses present to provide further veracity to the recovery. But there could be circumstances in which there were no witnesses present or none had agreed to affix his signature on the mahazar, which cannot always lead to the evidence of recovery being eschewed, especially when the testimony of the Police Officer is not shown to be tainted in any manner and is also found to be credible. It was held that it is archaic and a colonial hangover that actions of the Police Officer should be approached with primal distrust, always. ***Rizwan Khan***[3] was a three Judge Bench decision which affirmed ***Sunil & another***[2] to hold that if the police witnesses are found to be reliable and trust worthy, no error can be attributed to the

conviction entered relying upon such testimony. Therein, it was a case of recovery of a narcotic substance from a motor-cycle in which the accused were travelling, search having been conducted on interception of the vehicle. The panchnama witnesses turned hostile but the evidence of the Police Officers, found to be trust worthy was relied upon.

13. ***State of H.P. v. Pardeep Kumar***[4], again was a case in which there were no independent witnesses to attest the recovery of the contraband, since none were available due to the severe cold on that day. The conviction was based on the testimony of seizure of contraband from the accused, as testified by the Police Officers. We cannot digress from the above proposition as laid-down by this Court but only raise a caution, insofar the recovery made under Section 27, in the context of the findings of the High Court, in the instant case, having to be necessarily connected to the crime and the accused, failing which the recovery is of no consequence. We also have to observe that the confession can only be with respect to the discovery of a fact leading to the recovery of a material object and cannot be with respect to any

[4] (2018) 13 SCC 808

confession as to the actual crime as has been held in ***Pulukuri Kottaya v. Emperor***[5].

14. The High Court having stated the principle, went on to examine the evidence of PW's 83, 84 and 87. PW83 commenced the investigation, to whom was handed over the letter, MO40, allegedly written by PW4 to his father; which however, was denied by PW4 in his testimony. The High Court discussing PW83's evidence specifically referred to the Section 161 statements made by PWs 1, 5, 6, 9, 12, 13, 26 and 51, which were affirmed to have been made by them before the Police as spoken of by PW83. Observing that in cross-examination of PW83 but for general suggestions, which were denied by him there was nothing to discredit him and hence the testimony of PW83 is not affected, the Division Bench held there is no reason to discard it. We are afraid that the High Court seriously erred in relying on the statements made by the witnesses under Section 161, as affirmed by the Investigating Officer, clearly in violation of Section 162 and the specific use to which Section 161 statements can be put to, as we will further elaborate, a little later. It's also pertinent that the

[5] AIR 1947 PC 67

conspiracy angle spoken of by PW83, is what has been stated to him by A7, clearly inadmissible in evidence.

15. The evidence of PW84 with respect to seizure of currency worth Rs.8,50,000/- and two mobile phones respectively from the staff quarters of A5 and the person of A6, on information, the source of which has not been disclosed was emphasised. The arrest of A3, the seizure of Rs.2,00,000/- and a mobile phone from A3 were also relied on. The Trial Court had placed no reliance on these recoveries finding it to be not admissible under Section 27; which the High Court was not impressed with and found it to be permissible under Section 102 of Cr.P.C. Seizure under Section 102, unless it is linked to the crime cannot be relied on to convict the accused for murder on the conspiracy alleged. But more relevant is the fact that only the bundles of the money recovered were identified in Court, by PW78, an ASI who accompanied PW84 at the time of seizure and PW84, since there was no proper inventory taken of the cash recovered. Further though PW84 spoke of the cash recovered being in bundles with slips showing the name of the banks, no attempt was made to find out its source from the Banks. The money hence was not connected to the crime

and the Call Data Records of the mobile phones were not proved in the trial.

16. Now we come to the IO, who concluded the investigation and filed charge-sheet, PW87, before whom A3, A5 and A6 were produced by PW84, after which the investigation was carried out by PW87. It was PW87's testimony that the voluntary statements of A3 led to A2, from whose staff quarters Rs.2,58,000/- and two mobile phones were recovered. A1 was also arrested, who is said to have given statements about his enmity with PW4 and also the deceased. These voluntary statements and the confession statements of A3, under Section 27 also led PW87 to Amarajyothi Farms, from where the weapons (MO 10 & MO 11) and a motorcycle (MO 49) were recovered as per Ex.P49 Mahazar and MO12 to MO15 clothes worn by A5 & A6 were recovered as per Ex.P113, Mahazar. PW87's testimony also spoke about PW5 who was close to the deceased having spoken of the enmity between A1 and PW4; denied in Court by PW5. A reading of PW87's statement would reveal that she has just spoken of the voluntary statements made by the various accused and there is no investigation worthy of reliance spoken of by the witness. We are

reminded of the extract in ***State of Bombay v. Kathi Kalu Oghad***[6], an eleven Judge Bench, of a quote attributed to Sir James Fitzjames Stephen, the principal draftsman of the Evidence Act:

> *"If it is permissible in law to obtain evidence from the accused person by compulsion, why tread the hard path of laborious investigation and prolonged examination of other men, materials and documents? It has been well said that an abolition of this privilege would be an incentive for those in charge of enforcement of law "to sit comfortably in the shade rubbing red pepper into a poor devil's eyes rather than to go about in the sun hunting up evidence".*
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> *(Stephen, History of Criminal Law, p. 442)*

17. The High Court has placed heavy reliance on the testimonies of PW's 83, 84 and 87, the IOs, with the assertion that they were unshaken in cross-examination and reliance was placed on the affirmation of the statements made by the witnesses under Section 161, which the witnesses did not speak themselves in the box, at the trial. We cannot but observe that, though reliance is said to be placed on the testimony of the IOs' this would in fact be a reliance placed on Section 161 statements as spoken of by the IOs which is egregiously wrong. The High Court in paragraph 85 speaks of the affirmation of statements given by witnesses

[6] (1962) 3 SCR 10

examined by PW87 and records that though these were denied by the witnesses, a reading of the cross-examination of PW87 indicates that she had not been discredited and the suggestions made to her in cross were denied. The reliance placed on the so called voluntary statements of the accused and the statements made under Section 161 as recorded by PW87, based on the decisions afore-cited cannot be countenanced.

18. As we noticed, the decisions cited by the High Court regarding the testimony of the Police Officers before Court not liable to be treated with distrust, was specifically with respect to recoveries made under Section 27 and the seizures of contraband. Seizure often is on surprise interception or on information received, which principle cannot be imported to the affirmation of the statements made by the witnesses during investigation under Section 161; if they do not subscribe to it at trial. Merely for the IO having spoken about such a statement having been made, it cannot be treated as gospel truth. Nor can the voluntary statements of the accused relied on except to the extent of the discovery of fact, on information supplied, which would be a

strong implicating circumstance if, and only if, there is a link established to the crime.

19. In this context, we also have to specifically notice paragraph 86 where some of the responses by PW87 were discussed to add further credibility to her testimony; which in fact runs counter to the prosecution case. The test identification parade had not given any result, which was stated to be not an argument against the prosecution. We perfectly agree, since even if there was an identification at the stage of investigation, as per the precedents, it only aids the investigation and cannot lead to a conviction, unless the accused are identified in the box at the time of trial, in Court, which in the present case has not occurred. PW87 admitted to a suggestion that when she interrogated the family members of the deceased, none talked about the existing differences between the deceased and A1. The said admission was rubbished on the ground that, to another suggestion in the same vein, PW87 firmly denied it and this was because her investigation revealed involvement of A1; a presumptuous finding without any legal basis. What has been revealed in the investigation, to the IO, has to be clearly established before Court

by oral testimony or other evidence, failing which the Court cannot base a conviction on the predilection of the IO that a particular circumstance was revealed in the investigation.

20. The discrepancy regarding the statements made by her with respect to the clothes of A5 and A6 was attempted to be explained away. We would not dwell on the discrepancy since nothing comes out of the recovery made under Section 27. The recovery was made on a confession statement by A3 and not A5 or A6. Further, the statement attributed to A3 as spoken of by PW 87 marked as exhibit P 113 is *"The machetes used in this murder is kept in a gunny bag in the last room of the first floor of the farmhouse of Renuka Prasad at Ajjavara-Addangaya-Mavinapalla. The blood-stain clothes which were worn by Sharan and Bhavani Shankar during the offence and the Kannada number plate which was affixed to the Hero Honda Splendour bike during the offence are kept near the water pump in a plastic cover; and if you come with me, I will show them to you." (sic)* The reference to murder and offence has to be completely eschewed and the fact discovered is only the concealment of the weapons and the dress which information supplied is by A3 who even according to the

prosecution, was not involved in the crime proper, of murder. Further, while recording the Mahazar for recovery, the shirt and pants recovered were said to be of A5 and a shirt and jeans of A6. Nothing was done to verify whether MO12 – MO15 items of dress would fit A5 & A6. PW87 in fact admits that she did not ask A5 and A6 to wear it nor was it verified from a tailor as to whether the dress recovered would fit A5 & A6. There is no statement made by A3 regarding the handing over of the weapons & dress, by A5 & A6 to A3, which in any event would have to be proved independently. The identification of A5 & A6, of their dress at the time of recovery also is inadmissible. The mere recovery of dress under Section 27, that also through a confession statement of an alleged conspirator, does not implicate A5 or A6 who were alleged to be the assailants who killed the deceased. Pertinently the site or farm from which the recoveries were made was not proved to be owned by A1.

21. Insofar as the crime is concerned, the eye witness PW8 and the persons who reached the occurrence immediately thereafter, PW1 and PW9, admittedly did not identify the accused. PW8 being a young boy of 15 at the time of incident, the Division Bench was

of the opinion that it was quite natural that he was not able to identify the accused. It was also observed from his statement that, it was the police who informed him about A5 & A6 having committed the murder. As far as PW1 is concerned looking at the evidence of PW9, it has been found that PW1 had stated a deliberate falsehood before Court; which again, would not enable the Court to look at his Section 161 statement. PW9 also did not identify the accused and he spoke only of seeing one person running away. Obviously since no reliance could be placed on the evidence of PW8, PW1 & 9, to pin the crime on A5 & A6, the Division Bench went on to look at the circumstances attempted to be established at the trial; being the motive, the conspiracy, the preparation, seizure of incriminating materials and the FSL report. Before leaving the eye-witnesses testimony, we cannot but notice that the prosecution never attempted to confront PW8 with the clothes recovered as MO12 to MO15, said to have been worn by A5 & A6, at the time when the crime was committed. Neither was it shown to PW9, who at least spoke of having seen one person running away from the scene.

22. On the question of motive, the Division Bench examined the evidence of PW4, the brother of A1, PW10, the wife of the deceased and PWs 6, wife of PW4, PW7, their son & PWs 11 to 13, relatives of A1 & PW4, all of whom turned hostile. The employees in the institutions of PW4 & A1 also denied their former statements of enmity between the brothers and the alleged ill will of A1 against the deceased. PW4 denied the letter which was produced as MO40 before Court. However, the Division Bench has relied on MO40 and its contents on the ground that PW83 had stated that PW4 came to the Police Station and handed over the xerox copy of a 14-page letter. We are unable to accept the reasoning of the Division Bench especially since MO40 was confronted to PW4, when he was examined and he denied having written such a letter. The letter hence was not proved, though marked through the IO. Merely because PW83, the IO, submitted that it was handed over to him by PW4 at the time of investigation, that cannot be a reason to place reliance on MO40 or to look into its contents to find enmity existing between A1 and PW4 and threats having been levelled against the deceased, by A1.

23. The High Court further places reliance on PW10's testimony or rather the statements made by her in the Section 161 statement on the reasoning that the wife will definitely be aware of the reasons behind the murder. She cannot be believed, if it is deposed that she is not aware of anything, was the finding. A statement made by PW10 that, she knew about A1 having insulted and levelled threats against the deceased; confronted to PW10 but denied, was relied upon, finding that it was affirmed by PW83. PW4 was also found to have resiled from his earlier statement under Section 161 because the sister of PW4 and A1 had filed a suit against them which was being jointly contested by them; a mere surmise to place heavy reliance on the Section 161 statements made by PW4. According to us the motive insofar as A1 having inimical feelings against the deceased, for having meddled in the affairs of the institutions and the division of assets, does not stand proved. PW4 only admitted to certain differences between the brothers with reference to the running of a mess in the college and there was no reference to the deceased in so far as the specific dispute spoken of. We find absolutely no reason to find the motive established.

24. The next aspect dealt with by the High Court was on the conspiracy and preparation for the crime. Rightly reliance was placed on ***Mohd. Khalid v. State of W.B.***[7] wherein it was opined that conspiracies are not hatched in the open and when done in secrecy, it is very difficult for direct evidence to be produced relating to the conspiracy and the Court would have to fall back upon circumstantial evidence, which also has to be based on inferences made from the various circumstances proved from the acts and omissions of the accused. The Division Bench while referring to the various witnesses who were produced to prove the conspiracy first looked at the evidence of PW71, a Director of one of the institutions, also the wife of A1 and PW72, who was an employee in the same institution. PW71 though denied the various documents alleged to have been produced before Court, the Division Bench presumed that her testimony was a deliberate falsehood intended to save her husband. PW72 had produced the salary certificate of A2 issued by him in the capacity of in-charge Principal of the Dental College. The aforesaid evidence was relied on to find close acquaintance of A1 with A2 to A4, the

[7] (2002) 7 SCC 334

former being the employer of the latter three persons. Insofar as the conspiracy hatched, the Court relied on the voluntary statements made by A3, A5 and A6 before PW87 and relied on ***Mehboob Ali v. State of Rajasthan***[8]. The testimony of PW87 regarding the sites, where discussions were held and money changed hands, pointed out through the voluntary statements made by A1, was relied on by the Division Bench. In addition, Section 161 statements of PW61 to PW64 who had resiled from their statements in the testimony before Court regarding A3 having been seen with A5 and A6 in a hotel on 28.04.2011, was also relied upon. As far as the preparation made, since the witnesses examined for proving the same also turned hostile, the evidence of the police officers were reckoned and the story as spoken of by the IOs were elaborately discussed, which in effect is based on the Section 161 Statements made by the various witnesses, before the police.

25. Section 162 of the Criminal Procedure Code, 1898 was dealt with in ***Kali Ram v. State of H.P.***[9] to hold that the provision makes it plain that '*the statement made by any person to a police*

[8] (2016) 14 SCC 640
[9] (1973) 2 SCC 808

officer in the course of an investigation cannot be used for any purpose except for the purpose of contradicting a witness, as mentioned in the proviso to sub-section (1) or for the purposes mentioned in sub-section (2)' (sic para-17). The said principle was reiterated with reference to Section 162 under the Criminal Procedure Code, 1973 in ***R. Shaji v. State of Kerala***[10]. It was held by this Court that '*statements under Section 161 Cr.P.C. can be used only for the purpose of contradiction and statements under Section 164 Cr.P.C. can be used for both corroboration and contradiction'* (sic para-25). It was further held that though the object of the statement of witness recorded under Section 164 is two-fold, there is no proposition that if the statement of a witness is recorded under Section 164 before a Magistrate, the evidence of such witness in Court should be discarded. ***Rajendra Singh v. State of U.P.***[11] was a case in which the High Court, as in the present case, relied upon the statements of six witnesses, recorded by the IO under Section 161 Cr.P.C., to enter a finding that the respondent could not have been present at the scene of crime, as he was present in the meeting of the Nagar Nigam at Allahabad. It was

[10] (2013) 14 SCC 266
[11] (2007) 7 SCC 378

unequivocally held that '*a statement under Section 161 Cr.P.C. is not a substantive piece of evidence. In view of the proviso to sub-section (1) of Section 162 Cr.P.C., the statement can be used only for the limited purpose of contradicting the maker thereof in the manner laid down in the said proviso'* (sic para-6). It was found that the High Court committed a manifest error of law in relying upon wholly inadmissible evidence in recording a finding on the alibi claimed by one of the accused.

26. The statements made by the IOs regarding the motive, conspiracy and preparation comes out as the prosecution story, as discernible from the Section 161 statements of various witnesses who were questioned by the police during investigation; which statements are wholly inadmissible under Section 162 of the Cr.P.C. Merely because the IOs spoke of such statements having been made by the witnesses during investigation, does not give them any credibility, enabling acceptance, unless the witnesses themselves spoke of such motive or acts of commission or omission or instances from which conspiracy could be inferred as also the preparation, established beyond reasonable doubt. We are unable to find either the motive, the conspiracy or the

preparation or even the crime itself to have been established in Court, at the trial through the witnesses examined before Court. The witnesses had turned hostile, for reasons best known to themselves. The only inference possible, on the witnesses turning hostile is that either they have been persuaded for reasons unknown or coerced into resiling from the statements made under Section 161 or that they had not made such statements before police officers. Merely because the story came out of the mouth of the IO, it cannot be believed and a legal sanctity given to it, higher than that provided to Section 161 statements under Section 162 of the Cr.P.C.

27. The High Court has also relied on voluntary statements made regarding the sites where discussions were held, and the money was transferred, by A1 itself, to further find the conspiracy relying on ***Mehboob Ali***[8]. That was a case in which, pursuing the voluntary statements of the accused arrested, on the charge of dealing in counterfeit notes, the kingpin was arrested, from whose possession fake notes were recovered. In the present case but for the accused having pointed out the various places where allegedly discussions were held and money was transacted, there

was no fact discovered from the site, or any recovery made of a concealed object which could lead to an inference of a culpable fact.

28. Now we come to the seizures and recoveries relied on by the Court, again as spoken of by the Investigating Officer since the independent witnesses who attested the mahazars turned hostile. The significant recoveries made were of cash from the possession of A2 to A6, the clothes alleged to have been worn by A5 & A6 when the crime was committed, the weapons with which the crime was committed and the vehicles in which the getaway was carried out. As far as the vehicles are concerned even the eyewitnesses, either PW1 or PW9, who were at the crime scene immediately after the commission of the offence, did not speak of A5 & A6 having fled on a motor bike. The specific allegation of PW8, the eyewitness, in his FIS was that while himself and his father were strolling, at the scene of occurrence, suddenly two persons emerged from the bushes, hacked his father to death and ran away, obviously on foot. This was the statement made by both PW1 and PW9, the former of whom turned completely hostile, and the latter did not speak of any motor bike. The recovery of the

motor bike hence is of no consequence. The pickup van is said to have been used for reaching the hide out, which is said to be a farm. There was no incriminating material found from the pickup van connecting this vehicle to the crime.

29. Insofar as the clothes are concerned, we cannot but notice that the analysis report indicates that the recovered dress materials had blood stains on it which were analyzed to be human blood of 'O' group, and the post-mortem certificate indicates the deceased to be of 'O+' group. It is trite that this alone cannot implicate the accused since there should be a clear connection established of the recovered items with the accused and the crime. Especially in this case, where the clothes were not recovered on the confession statement of A5 & A6, who are alleged to have committed the crime. The weapons, as were the clothes, were recovered on the confession statement of A3, from the farm. Though, the High Court went on to find that A5 & A6 had handed over the clothes and the weapons to A3 to hide, this has to be proved by the prosecution and cannot be based on the so called voluntary statements made by the accused. A3, A5 & A6 were arrested on the same day and they were taken together,

allegedly in pursuance of the confession statement made by A3. The identification said to have been made by A5 & A6 at the time of recovery, to the police officers, again is not a confession made under Section 27 and would be hit by Sections 25 and 26 of the Evidence Act.

30. ***Athappa Goundan, In re***[12], was relied on heavily in the impugned judgment by the Division Bench to bring in the confession under Section 27, to inculpate the accused other than those who confessed, under Section 30 of the Evidence Act. Therein the confession specifically spoke of the murder by the person in police custody and also offered to produce two bottles, a rope and a cloth gag, which was used to commit the murder. These objects were recovered on the same being pointed out by the accused. The Court opined that the objects produced, not being incriminating in nature, their production would be irrelevant unless they were connected with the murder; when there was no evidence to connect the objects to the murder, apart from the confession. It was hence held that any information which

[12] 1937 SCC OnLine Mad 76

served to connect the object discovered with the offence charged was admissible under Section 27. ***Pulukuri Kottaya***[5] held:

> *"Their Lordships are unable to accept this reasoning. The difficulty, however great, of proving that a fact discovered on information supplied by the accused is a relevant fact can afford no justification for reading into Section 27 something which is not there, and admitting in evidence a confession barred by Section 26. Except in cases in which the possession, or concealment, of an object constitutes the gist of the offence charged, it can seldom happen that information relating to the discovery of a fact forms the foundation of the prosecution case. It is only one link in the chain of proof, and the other links must be forged in manner allowed by law."*
>
> *(Paragraph 10)*

31. ***Naresh Chandra Das v. King-Emperor***[13]*,* in a dissenting judgment held that so much of the statements leading to the discovery of a fact is admissible, but still, for the fact discovered to be made relevant, the prosecution has to supply independent evidence and for this purpose the confessional statement cannot

[13] 1941 SCC OnLine Cal 178

be utilised, since it would offend Section 25 and Section 26 of the Evidence Act. It was held that *"If the prosecution cannot bring in any evidence aliunde, connecting the fact discovered with the offence, the prosecution may have to fall". (sic)*

32. ***Pulukuri Kottaya***[5] considering the impact of Section 27 held that the disclosure, under Section 27, is with reference to the concealment of some object and not the object itself, which object recovered must be connected to the crime to pin the guilt on the accused, who was instrumental in making the recovery by supplying the information of concealment. The confession under Section 27, if speaking of the crime itself, that portion is not admissible evidence, since it would offend Sections 25 and 26. We extract paragraph 9 which dealt with the effect and impact of Section 27:

> *"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."*
>
> *(underlined by us for emphasis)*

33. ***State (NCT of Delhi) v. Navjot Sandhu***[14] traced the history of case law and described ***Pulukuri Kottaya***[5] as a *locus classicus* which set at rest much of the controversy centring around the interpretation of Section 27. The first requirement, according to the learned Judges was that the IO should depose that he discovered a fact in consequence of the information received from an accused person in police custody, which fact was not in the knowledge of the police officer. The information or disclosure should necessarily be free from any element of compulsion and

[14] (2005) 11 SCC 600

only so much of the information as relating distinctly to the fact thereby discovered can be proved and nothing more. The Section explicitly clarifies that confession is not taboo, but the confessional part which is admissible is only such information or part of it, which relates distinctly to the facts discovered, by means of the information furnished. The rationale behind the provision was held to be that, if a fact is discovered in consequence of the information supplied, it offers some guarantee that the information is true and can therefore, be safely allowed to be admitted in evidence as an incriminating circumstance against the accused.

34. In ***H.P. Admn. v. Om Prakash***[15], there was a recovery made of a dagger from under a stone, on the concealment being informed to the police and the accused also pointed out the person from whom he had purchased the dagger. While the former statement was admissible under Section 27, the latter was held to be inadmissible. The concealment of a knife, which the police were not aware of, when discovered by the information supplied, then the information of concealment is reliable.

[15] (1972) 1 SCC 249

However, if the person from whom the knife is purchased is pointed out, it cannot be said to be discovered, if nothing is found or recovered from him, as a consequence of the information furnished by the accused.

35. The State in its written submission has relied on ***State of Maharashtra v. Damu***[16]**,** ***Rumi Bora Dutta v. State of Assam***[17]**,** ***Raja v. State of Haryana***[18]**,** to buttress its contention regarding the admissibility of the disclosure statements. In ***Damu***[16]**,** the dead body was recovered from a site, to which site, it was carried by the 2nd & 3rd accused, in the former's motorcycle and thrown in the canal. Since the dead body was recovered prior to the disclosure made, the statement was found to be inadmissible under Section 27. But a broken piece of glass was recovered from the spot, pointed out by A3, which correctly fitted into the broken tail lamp of the motorcycle recovered from the house of A2. This provided credence to the confession statement of the accused, despite the dead body having been recovered, antecedent to the information. ***Navjot Sandhu***[14] *(supra),* affirmed ***Om Prakash***[15] ***and Damu***[16] and held that *"discovery of a fact would not comprehend a pure and*

[16] (2000) 6 SCC 269
[17] (2013) 7 SCC 417
[18] (2015) 11 SCC 43

simple mental fact or state of mind relating to a physical object, dissociated from the recovery of a physical object." (sic)

36. In this context, we must notice ***Pandurang Kalu Patil v. State of Maharashtra***[19], wherein ***Pulukuri Kottaya***[5] was followed and it was reiterated that the fact discovered is not equivalent to the object produced. The information regarding concealing of the article of the crime, it was held, does not lead to discovery of the article but this leads to the discovery of the fact that the article was concealed at the indicated place, within the knowledge of the accused.

37. In ***Rumi Bora Dutta v. State of Assam***[17]**,** the confession of the accused led to the discovery of a knife and skipping rope and the medical evidence corroborated the fact that the deceased died because of strangulation and there was also a stab injury on his chest. The weapons concealed by the accused and recovered on their information had a direct nexus with the injuries found in the post-mortem report. In ***Raja v. State of Haryana***[18]**,** there was a recovery of knife and blood-stained clothes and ashes of a burnt blanket. The blood-stained clothes and the weapons were sent to

[19] (2002) 2 SCC 490

the FSL, whose report clearly indicated blood stains on the clothes and the knife, despite absence of matching of the blood group. Relying on ***John Pandian v. State***[20], it was held that the accused has not offered any explanation as to how the human blood was found on the clothes and the knife, which was an incriminating circumstance.

38. With the above principles in mind when we look at the recoveries made, even if the testimonies of the IOs are believed, that there was an unexplained stash of money recovered from the person and the residential accommodations of A2 to A6, they were not recoveries under Section 27. The recovery was akin to a seizure, not one made on the information supplied or confession recorded. Further, there is nothing connecting the cash with the crime. As we held, even the Mahazar did not carry out a proper inventory, of the cash recovered and the identification made in Court, was of the bundles in which the cash was seized. A question arises as to how the accused came in possession of such huge amounts of cash, which if found to be beyond their means and sources of income, proceedings will have to be initiated

[20] (2010) 14 SCC 129

elsewhere and unless there is a connection clearly established of the money having been transacted, in furtherance of the conspiracy, which is totally lacking in the above case, the recovery cannot aid the prosecution.

39. The clothes and machetes allegedly, worn by A5 & A6 and used by them to commit the crime, were recovered on the confession statement of A3, the alleged conspirator. True, there were blood stains on the clothes and the machetes, which were found to be of 'O' group, matching the blood group of the accused as found from the post-mortem report. A3, we have pertinently observed is not alleged to have committed the crime proper, i.e. the hacking of the deceased victim. There is also no independent evidence to prove that A5 & A6 handed over the clothes and the machetes to A3. The confession statement of A3 that the clothes and machetes were handed over to him by A5 & A6 is the history, which has to be cogently proved by evidence aliunde. The fact discovered is the concealment of the clothes and the machetes, by A3, which fact of concealment has to be connected to the actual crime. In the present case neither are the clothes or machetes connected to A5 & A6 who are alleged to have

committed the crime nor is A3, an alleged conspirator even accused of having been involved in the crime proper, that is the murder of the deceased. Further, it was not even verified whether the clothes recovered fit A5 & A6, in which context they owe no explanation insofar as the blood found on the clothes. Confessions allegedly made by A1 regarding the sites where the conspiracy was hatched and the money transacted does not lead to any discovery of fact. The narration about the conspiracy and the money transactions are not admissible and the mere pointing out of two sites does not lead to any discovery of fact, when the narration is eschewed.

40. The High Court has laboured on Section 30 of the Evidence Act to hold that the confession of a co-accused can be used against the other accused. It was held, Section 30 would bring within its ambit even a Section 27 confession in addition to an extra-judicial confession or one made under Section 164 of the Cr.P.C.; the last two of which is totally absent in the present case. In so far as Section 30 is concerned ***Kashmira Singh v. State of Madhya Pradesh***[21]**,** held so :

[21] (1952) 1 SCC 275

> *"The proper way to approach a case of this kind is, first, to marshal the evidence against the accused excluding the confession altogether from consideration and see whether, if it is believed, a conviction could safely be based on it. If it is capable of belief independently of the confession, then of course it is not necessary to call the confession in aid. But cases may arise where the Judge is not prepared to act on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In such an event, the Judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession he would not be prepared to accept."*

41. A Constitution Bench in ***Haricharan Kurmi vs. State of Bihar***[22]**,** held that a confession as mentioned in Section 30 is not evidence under Section 3 of the Evidence Act. We extract from paragraph 13 of the said decision:

> *"… The result, therefore, is that in dealing with a case against an accused person, the court cannot start with the confession of a co-accused person; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence. That, briefly stated, is the effect of the provisions contained in Section 30. The same view has been*

[22] (1964) 6 SCR 623

> *expressed by this Court in Kashmira Singh v. State of Madhya Pradesh(1952) 1 SCC 275 where the decision of the Privy Council in Bhuboni Sahu Case has been cited with approval."*

42. ***Athappa Goundan's*** [12] case was held to be wrongly decided, by the Privy Council in ***Pulukuri Kottaya***[5]. When even the recovery made based on a confession under Section 27, by itself cannot inculpate the person who made such a confession, if there is no independent evidence otherwise connecting the fact discovered to the crime, there is no question of such a confession being made use of, to inculpate the other accused under Section 30 of the Evidence Act.

43. Before leaving the impact and effect of Section 27 and Section 30, we cannot but reiterate the caution expressed in ***Pandurang Kalu Patil***[19] wherein was impugned a judgment of a Division Bench of the High Court of Bombay which disagreed with the ratio in ***Pulukuri Kottaya***[5]***.*** In that context this Court referred to the judgment in ***State v. Chhaganlal Gangaram Lavar***[23] and an extract was made from page 6 paragraph 10 which is as below:

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[23] 1954 SCC OnLine Bom 69

> *"So long as the Supreme Court does not take a different view from the view taken by the Privy Council, the decisions of the Privy Council are still binding upon us, and when we say that the decisions of the Privy Council are binding upon us, what is binding is not merely the point actually decided but an opinion expressed by the Privy Council, which opinion is expressed after careful consideration of all the arguments and which is deliberately and advisedly given."*

44. It was held that ***Pulukuri Kottaya***[5] was considered and tested by this Court time and again and on all such occasions, its ratio was re-affirmed, lately, as we noticed in ***Navjot Sandhu***[14]**.** The attention of the Division Bench of the High Court of Karnataka obviously was not drawn to the decision in ***Pulukuri Kottaya***[5] **,** of the Privy Council, affirmed and reaffirmed by the Supreme Court of India, in which, the Full Bench decision of the Madras High Court in ***Athappa Goundan***[12], relied on in the impugned judgment, had been overruled.

45. In the present case, we have already held that the confession under Section 27 cannot be relied upon and there is no question of any aid being drawn from it to implicate the other accused. As far as the sites pointed out by A1, we have found that

it did not lead to any discovery of a fact and it is hit by Section 25 & 26 of the Evidence Act.

46. We cannot but observe that the judgment of the High Court reversing the order of acquittal of the Trial Court proceeds on mere surmises and conjectures relying wholly on the testimony of the Investigating Officers, who merely regurgitated the statements recorded under Section 161 and the voluntary statements of the accused. As has been rightly pointed out in ***Ramesh v. State of Haryana***[24] when the statements recorded under Section 161 of the Code of Criminal Procedure is resiled from, there arises a possibility that the police coerced such statements, but considering the huge prevalence of such instances, as in the present case, of the entire witnesses turning hostile, there could be various other factors also. It could be for fear of deposing against the accused, political pressure, pressure from family or society and even instances of monetary consideration. We do not think that the High Court could have relied on the decision to hold that the reason for the enblock hostility of witnesses at trial, could only be due to the influence

[24] (2017) 1 SCC 529

wielded by the accused who had even persuaded the wife of the deceased to turn hostile; which reasoning is presumptuous and fallacious.

47. We quite understand the consternation of the learned Judges, in the cold-blooded murder of a person, carried out in front of his own son where the investigation though elaborate, it collapsed miserably at the trial, where the prosecution witnesses; all of them, turned hostile. We share the consternation of the learned Judges but that is no reason for us to rely on Section 161 statements or the story scripted by the investigating agency based on the so called voluntary statements and the recoveries made, which the prosecution failed to prove to have a nexus with the crime. We also notice that there was a test identification parade carried out, in which also PW1, PW8 and PW9 failed to identify the assailants. We make this observation fully conscious of the principle that a TIP is only to aid the investigation but keeping in mind the fact that it could always lend support to an identification made in Court, which unfortunately in the present case was not made either in Court or at the stage of investigation.

We find absolutely no reason to sustain the conviction entered by the High Court, reversing the order of acquittal.

48. Though ***Chandrappa***[1] was specifically noticed by the High Court, the principles were not rightly appreciated, while setting aside the order of acquittal. It has been emphasized that when there are two reasonable views possible from the evidence led, the one favouring the accused should be adopted, especially since the presumption of innocence of the accused until proved guilty, a fundamental tenet of criminal jurisprudence, stands further strengthened by the order of acquittal. In the present case, we are afraid that there are not even two views coming forth from the evidence. The only view that comes forth is that the prosecution completely failed to prove the allegations raised and charged against each of the accused, more by reason of all the witnesses paraded before Court, at the trial, having turned hostile for reasons unknown. Whatever be the reason behind such hostility, it cannot result in a conviction, based on the testimony of the Investigating Officers which is founded only on Section 161 statements and voluntary statements of accused; the former

violative of Section 162 of the Cr.P.C and the latter in breach of Sections 25 & 26 of the Evidence Act.

49. We cannot but say that the High Court has egregiously erred in convicting the accused on the evidence led and has jumped into presumptions and assumptions based on the story scripted by the prosecution without any legal evidence being available. Truth is always a chimera and the illusion surrounding it can only be removed by valid evidence led, either direct or indirect, and in the event of it being circumstantial, providing a chain of circumstances with connecting links leading to the conclusion of the guilt of the accused and only the guilt of the accused, without leaving any reasonable doubt for any hypothesis of innocence. We can only accede to and share the consternation of the Division Bench of the High Court, which borders on desperation, due to the futility of the entire exercise. That is an occupational hazard, every judge should learn to live with, which cannot be a motivation to tread the path of righteousness and convict those accused somehow, even when there is a total absence of legal evidence; to enter into a purely moral conviction, total anathema to criminal jurisprudence. With a

heavy heart for the unsolved crime, but with absolutely no misgivings on the issue of lack of evidence, against the accused arrayed, we acquit the accused reversing the judgment of the High Court and restoring that of the Trial Court.

50. Criminal Appeals are allowed.

51. The accused shall be released forthwith, if in custody and not required in any other case and if already released on bail, their bail bonds shall stand cancelled.

52. Pending applications, if any, shall stand disposed of.

.....J.
(SUDHANSHU DHULIA)

.....J.
(K. VINOD CHANDRAN)

NEW DELHI;
MAY 09, 2025.