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2026 INSC 1220

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 1137-1138 OF 2014

NARESH **…APPELLANT(S)**

VERSUS

STATE OF HARYANA **…RESPONDENT(S)**

J U D G M E N T

SATISH CHANDRA SHARMA, J.

1. The present appeals have been preferred by the accused/appellant assailing the correctness of the common judgment dated 08.10.2013 passed by the High Court of Punjab and Haryana at Chandigarh (*hereinafter referred to as* "**High Court**") in Murder Reference No. 02 of 2013 and CRA No. D-205-DB of 2013 (*hereinafter referred to as* "**Impugned Judgment**"), whereby the conviction of the Appellant under

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Sections 302, 449, 297 and 201 of the Indian Penal Code, 1860 (*hereinafter referred to as* "**IPC**"), for the murder of Suman and Shakuntla has been upheld, while his co-accused, Subhash @ Tinku, has been acquitted of all charges. Insofar as the Appellant is concerned, the High Court declined to confirm the sentence of death, commuted it to imprisonment for life with a fine of Rs.10,000/- on each count of murder, and maintained the remaining sentences under Sections 201, 297 and 449 IPC. Furthermore, the High Court directed him to pay compensation of Rs.1,56,000/- and Rs.1,44,000/- under Section 357 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as* "**CrPC**") to the legal representatives of Suman and Shakuntla, respectively. The Appellant preferred the appeals through the Supreme Court Legal Services Committee, and leave was granted on 05.05.2014.

BRIEF FACTS

2. Shorn of unnecessary details, the case of the prosecution is that on the night of 17.04.2011, two widows of village Ranila, District Bhiwani, Haryana, namely Suman, aged about 35 years, and Shakuntla, aged about 40 years, were found dead at their respective houses, which lay along the Post Office chowk of the village. Suman lived alone, her husband Ramesh having passed away some years earlier and her son Nakul staying in a hostel.

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Shakuntla was the widow of Bahadur, a paternal uncle of the Appellant. As per the prosecution, the two women were attacked in the chowk, and their bodies were thereafter dragged into their houses.

3. On receiving telephonic information regarding the incident, SI Japan Singh (PW-17), In-charge, Police Post Achina Tal, reached the spot along with his team on the intervening night of 17/18.04.2011. There, Kailash Chander (PW-7), a panch of the village, got his statement (Ex.PE) recorded, based on which FIR No. 23 dated 18.04.2011 was registered at Police Station Baund Kalan under Section 302 IPC, naming the Appellant alone. The material part of Ex.PE reads as under:

> *"...I came to know later on that Suman and Shakuntla were murdered by Naresh son of Jagdish after inflicting injuries with danda. Naresh used to say that Suman and Shakuntla were indulging in the prostitution. Because of this reason, Naresh had committed murder of Suman and Shakuntla. Legal action be taken against Naresh..."*

4. Notably, PW-7 did not claim to have witnessed the occurrence. As per Ex.PE, he was present at his house at about 9:30/10:00 PM when he received information that the bodies were lying at the Post Office chowk, whereupon he went there along with one Parveen (PW-8). Ex.PE does not disclose the

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source from which PW-7 "came to know" of the involvement of the Appellant.

5. The inquest reports were prepared on 18.04.2011 and recorded the apparent cause of death in both cases as injuries caused with *lathi* and *danda*. Both reports recorded that no article was found near the body. The sketch appended to the inquest report of Suman separately marked the place where a wooden *thapi*[1] was lying. Samples of blood were lifted from the places where the two women were said to have been killed, and the *thapi*, which was stained with blood, was lifted from near the house of Suman, vide recovery memo. On the same day, the statements of Hukam Singh (PW-9), Jai Singh (PW-10), Raghbir Singh (PW-15) and Nakul (PW-19) were recorded. Hukam Singh, the father of Subhash, claimed to have seen the Appellant beating the two women with a *danda*. Jai Singh and Raghbir Singh spoke of having come to know that the Appellant had killed both of them. Nakul, the son of Suman, then aged about 8/9 years, claimed in his statement (Ex.PGG) that he was at home with his mother when the Appellant entered the house by jumping over the wall and opened the door, whereupon Subhash also came inside. According to him, both of them, armed with *dandas*, beat his mother, who struck the Appellant on his left foot with a *thapi*. They then took her to the chowk

[1] a bat used for washing clothes

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and continued to beat her, and killed her as well as Shakuntla, who had come to her rescue. Thereafter, they dragged the bodies into the respective houses, and Subhash took him to his grandmother's house.

6. The post-mortem examinations were conducted on 18.04.2011 by Dr. Sandeep (PW-16) along with Dr. Subhash Yadav (PW-18). Suman had sustained three incised wounds on the left side of the face, the middle of the forehead and the upper lip, each cutting through the underlying bone, besides a bruise on the outer aspect of the left thigh. Shakuntla had sustained multiple incised wounds on the forehead with fracture of the frontal bone, four further bone-deep incised wounds on the face and skull, and abrasions with bruising on the left shoulder. In both cases, the cause of death was neuro-haemorrhagic shock due to brain injury.

7. Dr. Ravinder Pal (PW-22), Senior Scientific Officer, visited the spot on 18.04.2011 and prepared a crime scene report. He recorded that the bodies had already been lifted before his team arrived, and that the Investigating Officer had reported that the two women had been beaten brutally to death allegedly by a youth.

8. The Appellant and Subhash were arrested from the bus stand of village Ranila on 18.04.2011 and are stated to have made disclosure statements (Ex.PS and Ex.PT respectively) on

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the same day. In Ex.PS, the Appellant is recorded to have stated that he and Subhash had caused injuries to the two women with Dandas, and that he had concealed the *danda* and his clothes under the earth at the eastern corner of his house. On 19.04.2011, the accused were remanded to police custody for two days and were medically examined. The investigation was taken over by Inspector Jaibir Singh (PW-20) on 20.04.2011.

9. The disclosures and the recoveries which followed may be noted as under:

a. On 20.04.2011, pursuant to Ex.PS, the Appellant got recovered a bamboo *danda* measuring about 2'4½", along with a white T-shirt and a black lower, from near the eastern wall of his house. On the same day, Subhash got his clothes recovered pursuant to Ex.PT. Both the recovery memos were attested only by police officials.

b. On 20.04.2011, Subhash made a further disclosure (Ex.PAA) and got recovered a piece of *danda* measuring about 6½" from under a bed in the house of Suman.

c. On 21.04.2011, both the accused made fresh disclosures. In Ex.PBB, the Appellant is recorded to have stated that he had caused injuries to the two women with a *gandasi*, which he had concealed

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near the western wall of a room in his field. In Ex.PCC, Subhash is recorded to have spoken of a *kulhari* (axe) and the shirt and brassiere of Suman.

d. On 22.04.2011, pursuant to Ex.PBB, the Appellant got recovered a *gandasi*/*rapri* from near the western wall of the room in his field, and pursuant to Ex.PCC, Subhash got recovered a *kulhari* (axe) and the shirt and brassiere of Suman from near the western wall of his house. Both the recovery memos were attested by police officials and by Narender (PW-21), a nephew of Shakuntla. On the same day, a statement attributed to PW-8, Parveen (Ex.PF), was also recorded, which names both the accused and speaks of *danda*, *kulhari* and *gandasi*.

10. On 05.05.2011, the weapons were produced before Dr. Sandeep (PW-16) for his opinion. As regards the weapons recovered at the instance of the Appellant, he opined that the possibility of injury nos. 1 to 3 on Suman and injury nos. 1 to 5 on Shakuntla being caused by the *gandasi* cannot be ruled out, and that these injuries could not have been caused by a blunt weapon such as the *danda*. Only injury no. 4 on Suman and injury no. 6 on Shakuntla were attributed to a blunt weapon. Interestingly, as regards the axe recovered at the instance of Subhash, he opined in materially identical terms that the

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possibility of the very same injuries being caused by the axe could not be ruled out.

11. The case property was sent to the Forensic Science Laboratory, Madhuban on 25.04.2011 and 10.05.2011. *Vide* its report and serological analysis, the Laboratory detected blood on the clothes of both the deceased and both the accused, on the *danda*, the piece of *danda*, the axe and the *gandasi*. Wherever the origin could be determined, the blood was human, but its group was 'inconclusive' in every instance. On the *gandasi*, as also on the sample described as blood lifted from the spot, the material had disintegrated, and neither the origin nor the group of the blood could be determined. Pertinently, the wooden *thapi* lifted from the spot was never sent to the Laboratory.

12. Upon completion of the investigation, the final report under Section 173 CrPC was filed against both the accused on 11.06.2011. The case was tried by the Ld. Additional Sessions Judge, Bhiwani (*hereinafter referred to as* "**Trial Court**") as Sessions Case No. 64 of 2011, which on 25.07.2011 framed charges against both the accused under Sections 302, 449, 297 and 201 read with Section 34 IPC. Both the accused pleaded not guilty and claimed trial.

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BEFORE THE TRIAL COURT

13. The prosecution examined as many as 22 witnesses. Each of the private witnesses who could have spoken to the occurrence, or to the involvement of the accused, turned hostile. These were PW-7 (Kailash Chander, the informant), PW-8 (Parveen, who is said to have accompanied him to the spot), PW-9 (Hukam Singh, the only adult said to have witnessed the occurrence), PW-10 (Jai Singh, the Lambardar of the village), PW-15 (Raghbir Singh, a relative of Suman) and PW-19 (Nakul, the son of Suman), all of whom were declared hostile and cross-examined by the Public Prosecutor. Rajender, the father of Suman, was given up as having been won over. The remaining witnesses were police officials, the doctors, the photographer, the draftsman, the scientific officer and Narendra (PW-21), who attested the recoveries of 22.04.2011.

14. In their statements under Section 313 CrPC, both the accused denied the incriminating circumstances and stated that they had been falsely implicated merely on the basis of suspicion. No evidence was led in defence.

15. The Trial Court noted that the private witnesses had not supported their earlier statements in court. Nonetheless, it held that the motive of both the accused had to be worked out from the initial statements of witnesses of the prosecution, and proceeded to rely upon the previous statements of PW-7, PW-9,

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PW-10 and PW-19. Placing reliance upon ***Trimukh Maroti Kirkan v. State of Maharashtra***[2], it reasoned that the witnesses had recanted because they were relatives or neighbours of the accused. Placing reliance upon ***Bhagwan Dass v. State (NCT of Delhi)***[3], it held that the previous statements could be taken into consideration in view of the proviso to Section 162(1) CrPC. Reliance was also placed upon ***State of U.P. v. Ramesh Prasad Misra & Anr.***[4], ***Sheikh Zakir v. State of Bihar***[5] and ***Himanshu alias Chintu v. State (NCT of Delhi)***[6] on the evidentiary value of the testimony of hostile witnesses. As regards Nakul, the Trial Court drew upon ***State of U.P. v. Krishna Master & Ors.***[7], where this Court had accepted the testimony of a child who had witnessed the killing of members of his family, observing that such a child is unlikely to forget the occurrence. Reasoning that Nakul, too, could not have forgotten what he had seen, and that his silence in the face of specific questions showed that he had been made not to depose against the accused, the Trial Court held that his previous statement was to be believed as per provisions of Section 162 (1) Cr.P.C.

16. Turning to the circumstantial evidence, the Trial Court found that, pursuant to their disclosure statements, the

[2] (2006) 10 SCC 681
[3] (2011) 6 SCC 396
[4] (1996) 10 SCC 360
[5] (1983) 4 SCC 10
[6] (2011) 2 SCC 36
[7] (2010) 12 SCC 324

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Appellant had got recovered the *danda*, his own blood-stained clothes and the *gandasi*, while Subhash had got recovered his clothes, a piece of *danda*, the axe, and the shirt and brassiere of Suman. It reasoned that Subhash could not have come to possess the clothes of the deceased unless he had participated in the crime. It further observed that the recovered clothes and weapons were stained with human blood, and that PW-16 had opined that the incised injuries could have been caused by the *gandasi* and the axe, and the remaining injuries by the *danda*. The Trial Court characterised the crime as an "honour killing", holding that the Appellant believed the two women to be indulging in prostitution, while Subhash believed that Suman was having illicit relations with his younger brother, Sudhir, and that Shakuntla was helping her. The latter motive was drawn from the disclosure statement of Subhash (Ex.PT), though, as the Trial Court itself noted, it had not come in the statement of any other witness. *Vide* judgment dated 20.02.2013 and order on sentence dated 28.02.2013, the Trial Court convicted both the accused on all charges, sentenced each of them to death with fine, and made a reference under Section 366 CrPC for confirmation of the sentence of death. The reference was heard by the High Court along with the appeal preferred by both the accused, and was decided by the Impugned Judgment.

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IMPUGNED JUDGMENT

17. While deciding the reference and the appeal, the High Court drew a distinction between the two accused. As regards the co-accused Subhash, it noted that he was not named in the FIR, that the clothes recovered at his instance could not connect him with the crime, and that the piece of *danda* had been recovered from the house of the deceased and not from his exclusive possession. On his disclosure leading to the recovery of the axe, the High Court observed as under:

> "*The injuries on the corpses of Suman and Shakuntla were incised wounds, which could not be caused with 'danda'.* ***When the Investigating Officer realised that the injuries were with sharp edged weapon, then the third disclosure statement Ex.PCC was ascribed to Subhash (appellant)****, that resulted into recovery of an axe and rapri. This disclosure statement Ex.PCC being contradictory to his earlier disclosure statements Ex.PT and Ex.PAA cannot be relied upon."*

18. The High Court also held the statement of Nakul, insofar as it named Subhash, to be repugnant to the FIR, and found the testimony of PW-21 to be inconsequential, as he had neither witnessed the occurrence nor disclosed the source of his knowledge. Subhash was accordingly acquitted of all charges.

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19. The conviction of the Appellant, however, was upheld. The decisive consideration, in the opinion of the High Court, was that his name figured in the FIR. As regards the FIR, it held as under:

> *"So far as the FIR Ex.PD is concerned, the same is based on statement Ex.PE, which bears the signature of Kailash Chander (PW-7), that became binding document, as he identified his signatures at point 'A', thereon and that reveals only the complicity of Naresh (appellant)."*

Applying *Bhagwan Dass* (supra), the High Court then held as regards the statement of Nakul:

> *"So far as, the testimony of Nakul (PW-19) is concerned, that may be believed only qua Naresh (appellant), as his name figures in the FIR Ex.PD. Even specific question was asked to him, as to whether he had disclosed to the investigating officer that Naresh and Subhash (appellants) had started beating his mother with 'danda' and his mother had started beating Naresh with thapi. To both the questions, Nakul (PW-19) stated that he did not remember. So, the statement of this witness as per proviso to Section 162 (1) Cr.P.C can be applied qua the complicity of Naresh (appellant)."*

20. As regards the conflict between the *danda* named in the FIR and the incised wounds found at the post-mortem, the High Court read the opinion of PW-16 as indicating that injury nos. 1 to 3 on Suman could have been caused by the

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gandasi as well as by a *danda*, and concluded that possibly both the blunt as well as sharp edged weapons were used by Naresh. It observed that in a case based on circumstantial evidence, such an error about the nature of the injuries could take place. In its view, the accusing finger still pointed towards the Appellant, as he could not swallow the prostitution being carried out by both the deceased ladies.

21. Holding that the case did not fall within the category of the rarest of rare cases, the High Court declined to confirm the sentence of death, commuted it to imprisonment for life, and directed the Appellant to pay compensation to the legal representatives of the deceased.

THE CHALLENGE

22. Taking exception to the Impugned Judgment, Ld. Counsel for the Appellant submitted that the conviction rests on no legally admissible evidence. It is submitted that the case of the prosecution rests entirely on circumstantial evidence and that every vital link in the chain is missing.

23. First and foremost, it is submitted that every private witness, including the informant and the only persons said to have witnessed the occurrence, disowned the case of the prosecution in court. Despite this, both the courts below treated the FIR and the statements recorded under Section 161 CrPC as

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substantive evidence of the guilt and the motive of the Appellant, which Section 162 CrPC expressly forbids. Ld. Counsel submitted that the FIR itself is hearsay, as the informant admittedly did not witness the occurrence and did not disclose the source of his information.

24. The next limb of submission relates to the recoveries. It is submitted that the *danda*, which the prosecution projected as the weapon of offence until the post-mortem, could not have caused any of the fatal injuries. It is further submitted that the *gandasi* was discovered only by way of a second disclosure recorded after the post-mortem had revealed incised wounds, and that the recoveries were witnessed either by police officials alone or by a relative of the deceased (PW-21) whose version is at variance with that of the police. Ld. Counsel also submitted that the forensic evidence does not connect any article with the deceased, the blood group being inconclusive throughout and the blood on the *gandasi* being of undetermined origin.

25. Lastly, it is submitted that the reasons which weighed with the High Court for acquitting Subhash apply with equal force to the Appellant, and that the Appellant has been in custody since 18.04.2011.

26. Opposing the appeal, Ld. Counsel for the State supported the concurrent findings of the courts below. It is submitted that the witnesses' statements were recorded within hours of the

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occurrence and consistently named the Appellant, and that the witnesses resiled in court only because they were the Appellant's relatives or neighbours, as rightly found by the courts below. The State relies on ***Bhagwan Dass*** **(supra)** to contend that the previous statement of a hostile witness may be considered.

27. Ld. Counsel for the State further submitted that the disclosure statements of the Appellant led to the recovery of his blood-stained clothes, the *danda* and the *gandasi*, and that the medical opinion connects the *gandasi* with the injuries. It is also submitted that the motive, namely the belief of the Appellant that the two women were of bad character, stands established. Hence, the concurrent findings of fact ought not to be interfered with in an appeal under Article 136 of the Constitution of India.

DISCUSSION

28. We have heard Ld. Counsel for both the parties and perused the original record. The principal issue for consideration is whether the prosecution has proved, beyond reasonable doubt, a complete chain of circumstances pointing only to the guilt of the Appellant. As a corollary, the following questions arise for consideration:

a. Whether the FIR and the statements recorded under Section 161 CrPC could be relied upon to establish

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the involvement and motive of the Appellant, when every private witness who could have spoken to the occurrence turned hostile?

b. Whether the disclosures made by the Appellant and the recoveries of the *danda* and the *gandasi* stand proved in accordance with Section 27 of the Indian Evidence Act, 1872 (*hereinafter referred to as* "**Evidence Act**"), and whether they constitute incriminating circumstances?

c. Whether the medical and forensic evidence connects the Appellant with the death of Suman and Shakuntla?

d. Whether there is any admissible evidence to sustain the charges under Sections 449, 297 and 201 IPC?

e. Whether the Appellant could have been convicted on evidence of the same kind as that on which the High Court acquitted Subhash?

29. Answering the first question requires us, at the outset, to place what each private witness is recorded to have told the police alongside what he stated on oath. The most glaring feature of the present case is that not a single witness deposed in court to having seen the Appellant assault either of the

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deceased, or to any fact from which his involvement could be inferred. The previous statements and the depositions of these witnesses may be noted as under:

a. PW-7, Kailash Chander: In Ex.PE, he stated that he came to know later on that the Appellant had killed both the women with a *danda* and that the Appellant used to say they were indulging in prostitution. However, in court, he deposed that he had received information through Parveen, had gone to the spot with the police, and had not named the accused. He denied the portions of Ex.PE put to him, and added that he had only heard about the activities of the two women but had never seen them indulging in any immoral activity.

b. PW-8, Parveen: The statement attributed to him (Ex.PF), bearing the date 22.04.2011, names both the accused and speaks of *danda*, *kulhari* and *gandasi*. However, in court, he deposed that he had seen the body of Shakuntla lying in the chowk, but did not know who had committed the murder, and had not noticed any immoral activities on the part of the two women.

c. PW-9, Hukam Singh, the father of co-accused Subhash: In Ex.PG, he claimed to have seen the

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Appellant beating both the women with a *danda* and to have been pushed away when he intervened. However, in court, he stated that he came to know about the bodies only later, and denied Ex.PG altogether stating that "*no such statement was made by me to the police*".

d. PW-10, Jai Singh, the Lambardar of the village: In Ex.PH, he stated that he had come to know that the Appellant had killed both the women with a *danda* and that the Appellant used to call them characterless. However, in court, he stated that he had not seen the occurrence, and denied having made Ex.PH.

e. PW-15, Raghbir Singh: In Ex.PU, he stated that a telephonic message had been received that Suman had been murdered by the Appellant "etc.". However, in court, he stated that he did not know who had committed the murder, and that he had only identified the body.

f. PW-19, Nakul, the son of Suman: In Ex.PGG, he claimed to have seen the Appellant and Subhash beat his mother with *dandas*, drag her to the chowk and kill her and Shakuntla. However, in court, aged about 11 years, he deposed that "*I was staying with*

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> *my grandmother. I did not see anybody to cause hurt to my mother".* When confronted, he stated that he did not remember having made the statement, and gave no reply to some of the questions put to him repeatedly.

30. Thus, Hukam Singh and Nakul, the only two persons who claimed before the police to have witnessed the occurrence, did not support the prosecution in court, nor did any other private witness. The only material against the Appellant emanating from these witnesses is to be found in their previous statements. The courts below nonetheless held the complicity and the motive of the Appellant proved on the strength of these statements and of the FIR. We shall examine the statements recorded under Section 161 CrPC first, the FIR next, and thereafter the statement of Nakul and the finding on motive. As regards the first, the question is what use, if any, the law permits of such statements. Section 162(1) CrPC reads as under:

> "***162. Statements to police not to be signed: Use of statements in evidence.***—*(1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record,* ***be used for any purpose, save as hereinafter provided****, at any inquiry or trial in respect of any offence under*

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> *investigation at the time when such statement was made:*
>
> *Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution,* ***to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872*** *(1 of 1872); and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination."*

31. The prohibition contained in Section 162 CrPC is couched in the widest terms. A statement made to a police officer in the course of investigation shall not be used "*for any purpose*", save as provided therein. The proviso permits but one use, namely, to contradict the witness in the manner provided by Section 145 of the Evidence Act. The Constitution Bench of this Court in ***Tahsildar Singh & Anr. v. State of U.P***.[8] explained that the provision is designed to protect the accused at the trial against the use of statements made by witnesses to the police during investigation, which are recorded without the safeguards that attend testimony in court.

[8] AIR 1959 SC 1012

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32. Following ***Tahsildar Singh* (supra)**, a three-Judge Bench of this Court in ***V.K. Mishra & Anr. v. State of Uttarakhand & Anr.***[9] summarised the position of law thus:

> *"**16.** Section 162 CrPC bars use of statement of witnesses recorded by the police except for the limited purpose of contradiction of such witnesses as indicated there. The statement made by a witness before the police under Section 161(1) CrPC can be used only for the purpose of contradicting such witness on what he has stated at the trial as laid down in the proviso to Section 162(1) CrPC. The statements under Section 161 CrPC recorded during the investigation are not substantive pieces of evidence but can be used primarily for the limited purpose: (i) of contradicting such witness by an accused under Section 145 of the Evidence Act; (ii) the contradiction of such witness also by the prosecution but with the leave of the Court; and (iii) the re-examination of the witness if necessary."*

33. This Court in ***Alauddin & Ors. v. State of Assam & Anr.***[10] has held that where a witness denies the portion of his previous statement put to him, that portion must be proved through the officer who recorded it, for it is only then that the contradiction stands proved. Pertinently, even a proved contradiction serves only to impeach the credit of the witness under Section 155(3) of the Evidence Act. It may lead the Court

[9] (2015) 9 SCC 588
[10] 2024 INSC 376

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to view what he has said in court with caution, or to reject his testimony altogether. It does not, however, make his previous statement evidence of the facts narrated therein. In other words, a proved contradiction may show that the witness is unreliable, but it cannot show that what he told the police is true.

34. The distinction between a statement recorded by the police and one recorded by a Judicial Magistrate is well recognised. In ***Vijaya Singh & Anr. v. State of Uttarakhand***[11], this Court, while dealing with statements recorded under Section 164 CrPC from which the witnesses had resiled, observed that the vigour of Section 162 CrPC does not apply to a statement under Section 164 CrPC and that such a statement must be considered on a better footing. It was further observed that to permit retraction from a statement recorded before the Magistrate on flimsy grounds would effectively negate the difference between a statement recorded by the police officer and that recorded by the Judicial Magistrate. If even a statement recorded by a Magistrate is not substantive evidence, a statement made to the police, which carries none of these safeguards, cannot be. Where a witness departs in court from what he had told the police, the Court cannot prefer the police version over his testimony on oath. In the present case, the record does not indicate that any of the witnesses was produced

[11] 2024 INSC 905

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before a Magistrate for recording a statement under Section 164 CrPC. Every statement relied upon by the courts below is a statement recorded by the police and falls squarely within the vigour of Section 162 CrPC.

35. Tested on the anvil of these principles, the approach of the courts below cannot be countenanced. The Trial Court held that the motive has to be worked out from the initial statements of witnesses of the prosecution and that the statement of Nakul is being believed as per provisions of Section 162 (1) Cr.P.C. The High Court held that the statement of Nakul as per proviso to Section 162 (1) Cr.P.C. can be applied qua the complicity of the Appellant. In each instance, the previous statement was used as proof of its contents. This is an error of law which strikes at the root of the conviction.

36. Even the limited use permitted by the proviso was not properly laid. The witnesses were confronted with portions of their previous statements and denied having made them. The record does not indicate that the Investigating Officers, PW-17 and PW-20, were called upon to prove those portions. PW-17 deposed no more than that he had recorded the statements of the witnesses. The contradictions, therefore, were not even proved in the manner known to law.

37. There is a further difficulty with the statement attributed to PW-8 (Ex.PF). PW-8 was admittedly present at the spot

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when the police arrived on the night of the occurrence, and the inquest proceedings record his presence. He stated in his cross-examination that he helped the police shift the bodies on 18.04.2011, and that "*I did not meet the police thereafter*". Yet the only statement attributed to him is dated 22.04.2011, five days after the occurrence, and is signed by the Station House Officer. It names Subhash, and speaks of the *kulhari* and the *gandasi*, neither of which had surfaced until the disclosures of 21.04.2011 and the recoveries of 22.04.2011. Such a statement cannot be a record of what PW-8 told the police on the night of the occurrence. It reflects, instead, the case of the prosecution as it stood on 22.04.2011.

38. The courts below sought to justify the use of these statements on the strength of ***Bhagwan Dass* (supra)**, the decisions on hostile witnesses, and ***Trimukh Maroti Kirkan* (supra)**, but none of them bears it out. To begin with, the reliance upon ***Bhagwan Dass* (supra)** is misplaced. In that case, the mother of the accused had told the police that her son had confessed to killing his daughter, and she resiled at the trial. This Court observed that her statement could be taken into consideration in view of the proviso to Section 162(1) CrPC and, disbelieving her denial, accepted her statement to the police. However, the conviction in that case rested upon a series of independently proved circumstances. The deceased had spent

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the night in the house of the accused, and the medical evidence established death by ligature strangulation. The accused had not informed the police for about ten hours, and the family was preparing for the last rites when the police arrived. The signed statement of the accused before the Sub-Divisional Magistrate stood proved and unchallenged, and the electric wire was recovered at his instance. The observation must be read in that context. Moreover, the decision of the Constitution Bench in ***Tahsildar Singh*** **(supra)**, which held that Section 162 CrPC enacts an absolute bar against the statement made before a police officer being used for any purpose whatsoever, was not brought to the notice of the Court. ***Bhagwan Dass*** **(supra)** cannot, therefore, be read as laying down that where a witness turns hostile, his statement to the police may be treated as substantive evidence of its contents.

39. Equally misplaced is the reliance upon ***Ramesh Prasad Misra*** **(supra)**, ***Sk. Zakir*** **(supra)** and ***Himanshu*** **(supra)**. The decisions in ***Ramesh Prasad Misra*** **(supra)** and ***Himanshu*** **(supra)** hold that the evidence of a witness is not to be rejected in toto merely because he has been declared hostile, and that the Court may rely upon such part of his testimony as is found to be dependable and, as *Himanshu* (supra) adds, duly corroborated by other reliable evidence on record. ***Sk. Zakir*** **(supra)** holds that the hostility of some witnesses does not, by itself, prevent a

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conviction where there is otherwise acceptable evidence in support of the prosecution. None of these decisions treats what a hostile witness had told the police as substantive evidence. In ***Ramesh Prasad Misra*** **(supra)**, this Court used the previous statements of the hostile witnesses only to show that the version introduced by them in cross-examination was an afterthought, and noted that what they had spoken of to the police is not on record as substantive evidence. The High Court nonetheless applied all three decisions against the Appellant on the footing that his name figured in the FIR. In the present case, it is true that the statements recorded by the police from the hostile witnesses named the Appellant. Not one of these witnesses, however, implicated him in court, either before or after being declared hostile. Whatever incriminates the Appellant is to be found only in those statements, which the witnesses disowned and which Section 162 CrPC does not permit to be used as evidence. There is, in effect, no grain to be separated from the chaff.

40. Nor does ***Trimukh Maroti Kirkan*** **(supra)** come to the aid of the prosecution. The courts below relied upon its observation that neighbours are generally reluctant to depose in court, as they want to keep aloof and do not want to antagonise a neighbourhood family. On that basis, they explained why PW-7 and PW-8 had resiled, and then fell back upon what these

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witnesses had told the police. Such an observation may explain why evidence is scarce, but it cannot supply the evidence. A reason why a witness may have resiled, even if accepted, is not proof of the fact which he declined to prove. Moreover, ***Trimukh Maroti Kirkan*** **(supra)** concerned the death of a woman in her matrimonial home. As explained by this Court in ***Uma & Anr. v. The State Rep. by the Deputy Superintendent of Police***[12], the decision deals with the consequences that follow when an offence is said to have taken place in the privacy of a house where the accused is said to have been present. In such a case, the standard of proof expected of the prosecution is lesser, and the accused comes under a duty to explain the circumstances which led to the death. The present case is not of that kind. The Appellant was not an inmate of the house of either of the deceased, and the fatal assault is alleged to have taken place in the open chowk of the village.

41. In any event, the explanation offered by the courts below does not fit the facts. According to the courts below, the witnesses had turned hostile out of loyalty to the accused, either as relatives or as neighbours. This explanation fails for two reasons. Firstly, PW-9 and PW-10 were related to the deceased Shakuntla as much as to the Appellant. Shakuntla was the widow of their nephew Bahadur, and the Appellant is the son of

[12] 2024 INSC 809

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their nephew Jagdish. Their kinship, therefore, cannot explain why they would side with the Appellant against the deceased. Secondly, two of the hostile witnesses came from the family of the deceased Suman. PW-15 was her relative and had come to the village with her father, and PW-19, Nakul, is her son. Neither of them had any apparent reason to protect the accused. The High Court nonetheless grouped Nakul with the neighbours, and observed as under:

> *"PW-7 (Kailash Chander), PW-8 (Parveen) and PW-19 (Nakul) being neighbourers did not support the case of the prosecution. So, simply on the basis of their deposition, the case against Naresh (appellant) could not be held to be doubtful."*

It further observed that Nakul "*did not want to antagonize Naresh (appellant)*". There is no material on record to suggest that Nakul was won over, and the Public Prosecutor did not even put such a suggestion to him. Nor is it self-evident why the son of the deceased would shield those who, as per the prosecution, killed his mother in his presence.

42. It is also not without significance that the occurrence is alleged to have taken place in the evening at the Post Office chowk of the village, where, as the Trial Court itself noted, several shops are situated. The Trial Court went so far as to observe that the whole of the locality must have seen the occurrence, and treated the fact that nobody came to the rescue

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of the two women as an aggravating circumstance while awarding the sentence of death. Yet, the only persons said to have witnessed the occurrence were PW-9, a relative of the Appellant as well as of the deceased Shakuntla, and Nakul, the son of the deceased Suman. PW-7 and PW-8, the only witnesses from the locality who were not related to either side, did not claim, even before the police, to have seen the occurrence. The Trial Court did not consider what follows from its own finding. An occurrence which the whole of the locality must have seen produced no independent account at all, and the case of the prosecution as to the occurrence rested entirely on police statements which their makers disowned.

43. We now turn to the FIR, which was registered on the statement of PW-7 (Ex.PE). It is trite that an FIR is not substantive evidence, and that it can be used only to corroborate or contradict its maker. In the present case, PW-7 did not support it. More importantly, Ex.PE is not, on its own terms, an account of anything which PW-7 had witnessed. It records only that he came to know later that the Appellant had committed the murders, without disclosing from whom. PW-17, the Investigating Officer, candidly admitted in his cross-examination that, as per Ex.PE, PW-7 was not an eyewitness and had come to the spot later. Thus, even if PW-7 had affirmed

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the contents of Ex.PE in the witness box, the assertion that the Appellant was the assailant would have remained hearsay.

44. The High Court treated Ex.PE as a binding document since PW-7 had admitted his signature thereon. With respect, we are unable to agree. Section 154 CrPC itself requires the information to be signed by the person giving it. The signature proves only that PW-7 made the statement to the police. It does not prove the truth of what unnamed persons had told him. An FIR which names an accused on hearsay cannot supply the proof which the witnesses failed to furnish at the trial. Interestingly, the High Court then used the FIR as a touchstone for the statements under Section 161 CrPC, accepting the statement of Nakul against the Appellant because his name figured in the FIR, and rejecting the very same statement against Subhash because his name did not. A statement which is not substantive evidence cannot become evidence against one accused and remain something less against another. The statement of Nakul was not substantive evidence against either of them.

45. There is yet another difficulty with the statement of Nakul. In court, he deposed that he was staying with his grandmother and did not see anyone hurting his mother. Although his statement to the police bears the date 18.04.2011, PW-17 admitted that the application for police remand

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(Ex.DX), filed on the very next day and setting out the case against both the accused, did not mention that Nakul was an eyewitness. The Trial Court treated the silence of the child in the face of repeated questions by the Public Prosecutor, and his answer that he did not remember, as if they confirmed his previous statement, but they do not. The Trial Court relied upon ***Krishna Master*** **(supra)** to hold that the memory of a child does not fade with time, and attributed the silence of Nakul to his having been "*made not to depose*". In that case, however, the child witness had narrated in court what he had seen and withstood a lengthy cross-examination, and it was that testimony which this Court accepted. The difficulty in the present case is not whether Nakul could remember the occurrence, but that he gave no evidence of it at all. A previous statement made to the police does not become evidence merely because the memory of its maker is presumed to be intact.

46. The finding on motive rests entirely upon the same inadmissible material. No witness stated in court that the Appellant held, or had ever expressed, the belief attributed to him. PW-7 stated that he had heard of the activities of the two women but had seen nothing, and PW-8 stated that he had not noticed any such activities. The case of the prosecution on motive was not even consistent. The disclosure statement attributed to Subhash (Ex.PT) ascribed an altogether different

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reason for the crime, namely an alleged relationship between Suman and his younger brother. The Trial Court noted that this version found no support in the statement of any other witness, yet characterised the crime as an "honour killing" committed by both the accused. That portion of a disclosure statement is, in any case, a confession made to a police officer and is inadmissible under Sections 25 and 26 of the Evidence Act. The same holds good for the reason recorded in the Appellant's own disclosure statement (Ex.PS), that the two women were of bad character. That characterisation thus rests on no admissible evidence.

47. In a nutshell, the FIR and the statements recorded under Section 161 CrPC could not have been used to prove either the complicity of the Appellant or his motive. Once that material is excluded, as it must be, there remains no oral evidence connecting the Appellant with the death of Suman and Shakuntla. The first question is, therefore, answered in the negative.

48. Moving on to the second question, what remains against the Appellant are the recoveries said to have been effected pursuant to his disclosure statements. Section 27 of the Evidence Act carves out a limited exception to Sections 25 and 26 thereof. It permits proof of only so much of the information given by an accused in police custody as relates distinctly to the

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fact thereby discovered. The scope of the provision was explained by the Privy Council in ***Pulukuri Kottaya & Ors. v. King-Emperor***[13] in the following words:

> *"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."*

49. It follows that a recovery, even where admissible, proves no more than that the accused knew of the place where the object was found. Whether that knowledge points towards guilt depends upon whether the recovery is credibly proved, and whether the object is shown to be connected with the crime. As

[13] 1946 SCC OnLine PC 47

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regards the first, the manner of proving a disclosure statement was explained by this Court in ***Ramanand alias Nandlal Bharti v. State of U.P.***[14] as under:

> *"**59**. The requirement of law that needs to be fulfilled before accepting the evidence of discovery is that by proving the contents of the panchnama. The investigating officer in his deposition is obliged in law to prove the contents of the panchnama and it is only if the investigating officer has successfully proved the contents of the discovery panchnama in accordance with law, then in that case the prosecution may be justified in relying upon such evidence and the trial court may also accept the evidence. In the present case, what we have noticed from the oral evidence of the investigating officer, PW 7 Yogendra Singh, is that he has not proved the contents of the discovery panchnama and all that he has deposed is that, as the accused expressed his willingness to point out the weapon of offence, the same was discovered under a panchnama. We have minutely gone through this part of the evidence of the investigating officer and are convinced that by no stretch of imagination it could be said that the investigating officer has proved the contents of the discovery panchnama (Ext. 5). There is a reason why we are laying emphasis on proving the contents of the panchnama at the end of the investigating officer, more particularly when the independent panch witnesses though examined yet have not said a word about such discovery or turned hostile and have not supported the prosecution. In order to enable the Court **to safely***

[14](2023) 16 SCC 510

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> ***rely upon the evidence of the investigating officer, it is necessary that the exact words attributed to an accused, as statement made by him, be brought on record and, for this purpose the investigating officer is obliged to depose in his evidence the exact statement and not by merely saying that a discovery panchnama of weapon of offence was drawn as the accused was willing to take it out from a particular place****."*

50. In the present case, neither PW-17 nor PW-20 deposed to the words actually used by the Appellant. PW-17 stated that the accused "*suffered their disclosure statements which are Ex.PS and Ex.PT", and that the disclosure statement of the Appellant, Ex.PBB, was "regarding the concealment of gandasi in his fields*". PW-20 likewise deposed that the Appellant suffered disclosure statement Ex.PBB "*regarding concealment of rapri/gandasi in a room situated in his field*". The information said to have been furnished by the Appellant was thus never narrated in evidence. Only the memoranda were exhibited. The disclosure statements of the Appellant, therefore, do not stand proved in the manner known to law.

51. As regards the second, it is trite that the recovery of a weapon, even one stained with blood, cannot by itself form the basis of a conviction unless the weapon is shown to be connected with the crime. Indeed, this Court in ***Manoj Kumar***

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Soni v. State of Madhya Pradesh[15] has held that a disclosure statement, without more, is not sufficient to sustain a conviction, in the following words:

> *"**20**. A doubt looms: Can disclosure statements per se, unaccompanied by any supporting evidence, be deemed adequate to secure a conviction? We find it implausible. Although disclosure statements hold significance as a contributing factor in unriddling a case, in our opinion, they are not so strong a piece of evidence sufficient on its own and without anything more to bring home the charges beyond reasonable doubt."*

52. Turning to the first recovery, the *danda* and the clothes of the Appellant (Ex.PM) were recovered on 20.04.2011 from near the eastern wall of his house, on the outside. The memo was attested only by police officials. PW-13, Constable Sushil Kumar, admitted that no public witness was called, while PW-17 stated that although many persons were present at the time of recovery, none was joined as they showed their helplessness. In ***Nazim & Ors. v. State of Uttarakhand***[16] where the investigating officer likewise admitted that villagers were present but none was called, this Court held that such lapses diminish the credibility of the recovery. The same holds good here.

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[15] (2024) 17 SCC 401
[16] (2025) SCC OnLine SC 2117

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53. The more fundamental difficulty, however, is that the *danda* is not shown to have any connection with the injuries which caused death. Every fatal injury on both the women was an incised, bone-deep wound. PW-16 categorically opined that these injuries cannot be caused by blunt weapon i.e. 'danda'. The only injuries attributed to a blunt weapon were a bruise on the thigh of Suman and an abrasion with bruising on the shoulder of Shakuntla. In his cross-examination, PW-16 accepted that the injury No.4 is possible by dragging and that Injury No.6 is possible by blunt as well as dragging. It is the case of the prosecution itself that both the bodies were dragged. The recovery of the *danda*, therefore, proves nothing as to how the two women were killed.

54. Interestingly, until the post-mortem, the *danda* was the weapon in every version put forth by the prosecution. The FIR, both the inquest reports, the application for post-mortem and the first disclosure statement of the Appellant (Ex.PS) all attributed the injuries to a *danda*, and the crime scene report prepared on the same day recorded that the women had been beaten to death.

55. The post-mortem examinations conducted on the afternoon of 18.04.2011 revealed incised wounds. On 21.04.2011, while the Appellant had remained in continuous police custody since 18.04.2011, a second disclosure statement (Ex.PBB) came to be recorded, wherein he is stated to have

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disclosed that it was with a *gandasi* that he had caused the injuries. This is in direct contradiction to his first disclosure which, as per the prosecution itself, had already identified the weapon and had been acted upon. No explanation is forthcoming as to why the Appellant, having disclosed one weapon on the day of his arrest, would disclose a different weapon three days later.

56. Significantly, the High Court rejected the corresponding disclosure of Subhash (Ex.PCC) for precisely this reason, holding that it was ascribed to him once the Investigating Officer realised that the injuries were with a sharp-edged weapon. The said reasoning applies with equal, if not greater, force to Ex.PBB. Both the second-round disclosures were recorded on the same day, by the same officers, after the same post-mortem, and each supplied a sharp-edged weapon which the first round of disclosures had not. The Impugned Judgment does not explain as to why the reasoning which discredited Ex.PCC left Ex.PBB untouched. The only answer offered was that "*possibly both the blunt as well as sharp edged weapons were used by Naresh*". That is a conjecture and not a finding on evidence. No witness ever stated that the Appellant had used two weapons, and that was never the case of the prosecution.

57. Furthermore, the said conjecture proceeds on a misreading of the medical evidence. The High Court recorded

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that, as per PW-16, injury nos. 1 to 3 on Suman could be caused by a blunt weapon, i.e 'danda'. The opinion of PW-16 (Ex.PHH/1), as proved in his deposition, is to the contrary. Those injuries cannot be caused by a blunt weapon. The premise upon which the High Court reconciled the *danda* with the incised wounds, therefore, does not exist.

58. The recovery of the *gandasi* on 22.04.2011 (Ex.PDD) was effected from near the western wall of a room situated in the field of the Appellant, an open place. Apart from police officials, the memo was attested by PW-21, Narender, a nephew of Shakuntla. Upon closer scrutiny, his evidence suffers from serious infirmities and is at variance with that of the police:

a. PW-21 deposed that he came from Narnaul on 22.04.2011 and then came to know that both the accused had murdered the two women with a *kulhari* and a *rapri*, without disclosing the source of such knowledge. PW-20 admitted that Narender had not been summoned by the police and had come of his own.

b. PW-21 deposed that SI Japan Singh met him at the house of Shakuntla and that the accused were with him. He further stated that the kulhara and brassiers were recovered from the back side of the

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house of my Mosi Shakuntla. These articles were recovered at about 10.00 or 11.00 am.

c. On the other hand, the memo Ex.PEE records the recovery of the axe and the clothes of Suman from near the western wall of the house of Subhash, and not of Shakuntla. PW-17 deposed that the Appellant got recovered 'rapri' at about 6.30 pm and that Subhash got recovered 'kulhari' at about 5.30 pm, while PW-20 stated that the recoveries were effected in the evening time of 22.04.2011.

59. Thus, the only witness to these recoveries who was not a police official placed them in the morning instead of the evening, and placed the recovery of the axe and the clothes of Suman at the house of one of the deceased instead of the house of the accused. These are not minor discrepancies of detail. They go to the very question of whether the recoveries took place as recorded. Notably, the High Court itself found the testimony of PW-21 to be inconsequential qua Subhash, as he had not witnessed the occurrence and had not disclosed the source of his knowledge. The same holds good qua the Appellant. It is also not without significance that the scaled site plan of the place of occurrence (Ex.PA) came to be prepared on the demarcation of the very same witness, who admittedly

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arrived in the village only on 22.04.2011 and had no personal knowledge of the occurrence.

60. The investigation into the weapon was deficient in another respect as well. PW-5, the photographer, admitted in his cross-examination that a knife was lying near the dead body as shown in Ex.P-6, which is one of the photographs of the body of Suman. The inquest report of Suman, however, records that nothing was found near the body. The knife was neither seized nor examined. We say nothing as to what the knife may or may not signify. We only note that in a case where every fatal injury was caused by a sharp-edged weapon, the investigation left unexplained a knife lying beside one of the bodies.

61. We are, therefore, of the view that the disclosure statements of the Appellant were not proved in accordance with law, that the recovery of the *danda* bears no connection with the fatal injuries, and that the recovery of the *gandasi* follows a disclosure which the High Court's own reasoning renders unreliable and is sought to be supported by internally inconsistent evidence. Neither recovery can be treated as a fully established circumstance pointing towards the guilt of the Appellant. The second question is, accordingly, answered in the negative.

62. Coming to the third question, PW-16 opined that the possibility of the incised injuries having been caused by the

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gandasi cannot be ruled out. He rendered an opinion in materially identical terms qua the axe recovered at the instance of Subhash. An opinion that the same injuries could have been caused by either of two different weapons, recovered from two different persons, at best establishes that each weapon was capable of causing such injuries. It cannot establish that either of them was in fact used. Having discarded the axe, the High Court could not have relied upon the very same opinion to single out the *gandasi*.

63. The forensic evidence fares no better. The report of the Forensic Science Laboratory detected human blood on the T-shirt and the lower of the Appellant and on the *danda*, but the blood group was "inconclusive" in each case. On the *gandasi*, the material had disintegrated, and it could not even be determined whether the blood was human. The sample of blood lifted from the spot had likewise disintegrated, and the blood group on the clothes of both the deceased was inconclusive. There was, therefore, nothing against which the blood on the articles of the Appellant could be compared, and nothing to indicate that it was the blood of either of the deceased.

64. It is true that the prosecution need not, in every case, prove that the blood group on a recovered article matches with that of the deceased. A three-Judge Bench of this Court in

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Balwan Singh v. State of Chhattisgarh & Anr.[17] summarised the position as under:

> *"**23.** From the aforementioned discussion, we can summarise that if the recovery of bloodstained articles is proved beyond reasonable doubt by the prosecution, and if the investigation was not found to be tainted, then it may be sufficient if the prosecution shows that the blood found on the articles is of human origin though, even though the blood group is not proved because of disintegration of blood. The court will have to come to the conclusion based on the facts and circumstances of each case, and there cannot be any fixed formula that the prosecution has to prove, or need not prove, that the blood groups match."*

The Court also cautioned that the non-confirmation of the blood group or origin may assume importance where the accused alleges that the evidence has been fabricated to implicate him, which is precisely the defence of the Appellant. Neither condition laid down in ***Balwan Singh*** **(supra)** is met in the present case. The recoveries are doubtful for the reasons recorded hereinabove, and the investigation altered its account of the weapon after the post-mortem. In any event, the blood on the gandasi was not even shown to be human, and the danda is not connected with the fatal injuries. That leaves the clothes of the Appellant, which bore human blood of an inconclusive

[17](2019) 7 SCC 781

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group. The lower recovered from Subhash bore blood of the same description, and the High Court held that the clothes recovered from him could not connect him with the commission of murder. They can do no more against the Appellant.

65. Nor does the medical examination of the Appellant advance the case of the prosecution. The report of his examination on 19.04.2011 records a bruise on the back of his left knee and the upper part of his left leg, of a duration of two to three days. Neither of the courts below relied upon it. PW-18, who proved the report, was not asked how the bruise could have been caused, and the circumstance was not put to the Appellant under Section 313 CrPC. The wooden *thapi*, with which Suman is said to have struck the Appellant as per the statement of Nakul, was lifted from the spot but never sent for forensic examination. The bruise could be of relevance only as corroboration of the statement of Nakul, which is not substantive evidence. The Trial Court nonetheless observed that, if the statement of Nakul was not true, it was not apparent on the record or explained by the accused as to how thapi came on the spot. This reasoning seeks to corroborate a statement which is not evidence, and casts upon the accused a burden which the law does not place upon him. A bruise on the leg of an agriculturist, which no witness explains, cannot by itself become a circumstance pointing towards guilt.

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66. Moreover, several circumstances relied upon by the courts below were never put to the Appellant in his examination under Section 313 CrPC. He was not questioned regarding the findings of the Forensic Science Laboratory on his clothes and on the weapons, regarding the motive attributed to him, regarding the statement of Nakul, or regarding the assertion of PW-21 that he had come to know of the involvement of the Appellant. As held by this Court in ***Raj Kumar alias Suman v. State (NCT of Delhi)***[18], material circumstances not put to the accused must ordinarily be eschewed from consideration. The prejudice in the present case is evident as both the courts below treated the presence of blood on the clothes of the Appellant as incriminating, yet he was never called upon to explain it. The third question is, therefore, also answered in the negative.

67. Having answered the first three questions, it would be apposite to recall the principles which govern a case resting on circumstantial evidence before drawing the strands together. In ***Sharad Birdhichand Sarda v. State of Maharashtra***[19], this Court held as under:

> *"**153.** A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:*

[18] (2023) 17 SCC 95
[19] (1984) 4 SCC 116

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

68. These five golden principles constitute the panchsheel of proof in a case based on circumstantial evidence. Drawing the strands together, the position which emerges is as follows. The

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death of the two women was homicidal, which is undisputed but points to no one. The *danda* recovered at the instance of the Appellant is unconnected with the fatal injuries. His clothes bore human blood of an undetermined group, which was never put to him. The *gandasi* was produced pursuant to a second disclosure which the High Court's own reasoning renders unreliable, through evidence which is inconsistent as to the time and place of recovery, and it was not shown to bear human blood. The medical opinion on the *gandasi* is no stronger than the identical opinion on the axe, which the High Court discarded. There is no admissible evidence of motive. There is no evidence that the Appellant was seen with either of the deceased, or at or near the place of occurrence, on the fateful night, and no evidence of any conduct on his part pointing towards his guilt.

69. Tested against the panchsheel, none of these circumstances is fully established as an incriminating circumstance. Taken together, they can in no fathomable manner complete a chain which excludes every hypothesis other than the guilt of the Appellant. At best, they give rise to suspicion. It is trite that suspicion, however grave, cannot take the place of proof. Furthermore, as held by this Court in ***Vaibhav v. State of Maharashtra***[20], the complete absence of

[20] (2025) 8 SCC 315

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motive is a circumstance which weighs in favour of the accused. It is well settled that where the evidence admits of two possibilities, the one favourable to the accused must be adopted.

70. As regards the fourth question, the charges under Sections 449, 297 and 201 IPC stand on no firmer footing. The finding under Section 449 IPC rested on the statement of Nakul and a general observation in the crime scene report that a "reshuffling" might have taken place prior to the crime. The charges under Sections 297 and 201 IPC rested on the premise that the bodies had been dragged from the chowk into the houses. However, PW-22, the Senior Scientific Officer, admitted in his cross-examination that he had prepared no site plan showing the marks of dragging, and PW-8 stated that he had not seen any drag marks from the chowk to the houses. In any event, there is no admissible evidence as to who entered the house of Suman, or who moved the bodies from the chowk. The fourth question is, therefore, answered in the negative, and these charges must fall along with the charge of murder.

71. Finally, we turn to the fifth question, namely parity. The High Court acquitted Subhash because he was not named in the FIR, because the clothes recovered at his instance did not connect him with the crime, because his disclosure leading to the axe came to be recorded only after the post-mortem had revealed incised wounds, because the statement of Nakul

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naming him could not be relied upon, and because PW-21 had not witnessed the occurrence. The only feature which, in the opinion of the High Court, distinguished the case of the Appellant was that his name figured in the FIR and in the statements recorded under Section 161 CrPC.

72. The principle of parity was explained by this Court in ***Javed Shaukat Ali Qureshi v. State of Gujarat***[21] in the following terms:

> *"**15.** When there is similar or identical evidence of eyewitnesses against two accused by ascribing them the same or similar role, the Court cannot convict one accused and acquit the other. In such a case, the cases of both the accused will be governed by the principle of parity. This principle means that the Criminal Court should decide like cases alike, and in such cases, the Court cannot make a distinction between the two accused, which will amount to discrimination."*

73. We have held that neither the FIR nor the said statements constitute substantive evidence of the complicity of the Appellant. Once this distinction falls away, the evidence against both the accused is of the same kind and quality. Each made a first disclosure leading to his own clothes bearing human blood of an undetermined group. Each made a further disclosure on 21.04.2011, after the same post-mortem, leading to a sharp-

[21] (2023) 9 SCC 164

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edged weapon, qua which the doctor rendered the same "cannot be ruled out" opinion. Both were named together in the statement of Nakul, who did not support it. PW-21 attested the recoveries of 22.04.2011 against both, and his evidence suffers from the same infirmities qua each.

74. The reasons which weighed with the High Court in finding the evidence insufficient against Subhash apply with equal force to the Appellant. The High Court distinguished the two cases solely on the strength of material which the law did not permit it to use. The fifth question, too, is answered in the negative.

CONCLUSION

75. In view of the foregoing discussion, our answers to the questions formulated in paragraph 28 hereinabove are as follows:

a. The FIR, which records hearsay and was not supported by its maker, and the statements recorded under Section 161 CrPC, which were disowned by every witness and were not even proved as contradictions, could not have been used to establish either the involvement or the motive of the Appellant. Their use as substantive evidence by the courts below is contrary to Section 162 CrPC.

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b. The disclosure statements of the Appellant were not proved in accordance with Section 27 of the Evidence Act, the words used by him having never been narrated in evidence. The recovery of the *danda* bears no connection with the fatal injuries, and the recovery of the *gandasi* is unworthy of reliance. Neither recovery constitutes an incriminating circumstance.

c. The medical opinion establishes, at best, that the *gandasi* was capable of causing the injuries, as was the axe recovered from Subhash. The forensic evidence, being inconclusive as to the blood group throughout and indeterminate as to the origin of the blood on the *gandasi*, does not connect the Appellant with the death of either of the deceased.

d. There is no admissible evidence to sustain the charges under Sections 449, 297 and 201 IPC.

e. Once the FIR and the statements recorded under Section 161 CrPC are excluded, the evidence against the Appellant is of the same kind and quality as the evidence which the High Court found insufficient against Subhash. The conviction of the Appellant cannot, therefore, be sustained on the principle of parity as well.

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76. Ld. Counsel for the State urged that the concurrent findings of the courts below ought not to be interfered with in an appeal under Article 136 of the Constitution of India. This Court is, no doubt, slow to interfere with concurrent findings of fact. Where, however, such findings rest on material which the law does not permit to be used, and cannot survive once that material is excluded, interference is not only warranted but necessary.

77. Before parting, we are conscious of the gravity of what transpired in village Ranila on the fateful night of 17.04.2011. Two women lost their lives in a brutal manner, and their families have waited for more than fifteen years for these proceedings to attain finality. However, a conviction for murder must rest on evidence which the law admits and which proves guilt beyond reasonable doubt. In the present case, every witness who could have spoken to the occurrence disowned the case of the prosecution, and the investigation altered its account of the weapon after the post-mortem. The gaps so created were filled by the courts below with statements which the law does not permit to be used as evidence.

78. Accordingly, the prosecution has failed to prove the guilt of the Appellant beyond reasonable doubt, and he is entitled to the benefit of doubt. His conviction and sentence under Sections

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302, 449, 297 and 201 IPC cannot be sustained. The appeals are accordingly allowed.

79. In view thereof, the Impugned Judgment dated 08.10.2013 passed by the High Court in Murder Reference No. 02 of 2013 and CRA No. D-205-DB of 2013, insofar as it upholds the conviction and sentence of the Appellant, and the judgment of conviction dated 20.02.2013 and the order on sentence dated 28.02.2013 passed by the Trial Court in Sessions Case No. 64 of 2011, insofar as they relate to the Appellant, are set aside. The Appellant is acquitted of all the charges levelled against him. He shall be released forthwith, if in custody, unless required in connection with any other case. If on bail, his bail bonds and sureties shall stand discharged.

80. Consequently, the direction to the Appellant to pay compensation under Section 357 CrPC also stands set aside, and the fine, if deposited, shall be refunded to him.

81. Section 357A(3) CrPC contemplates compensation to a victim where a case ends in acquittal. Our conclusion does not diminish the loss suffered by the families of the deceased. We, therefore, recommend that the District Legal Services Authority, Bhiwani, consider the grant of compensation to the legal representatives of Suman and Shakuntla under the applicable Victim Compensation Scheme (now under Section

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396 of the Bharatiya Nagarik Suraksha Sanhita, 2023), after such inquiry as it deems appropriate.

82. Registry to communicate this judgment forthwith to the Trial Court and to the Superintendent of the jail concerned for compliance.

83. The captioned appeals stand disposed of in the aforesaid terms. Pending application(s), if any, shall also stand disposed of. No costs.

.....J.
[SATISH CHANDRA SHARMA]

.....J.
[NONGMEIKAPAM KOTISWAR SINGH]

New Delhi
November 16, 2026