2025 INSC 1135

Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No.425 of 2014

Nagamma @ Nagarathna & Ors.

...Appellants

Versus

The State of Karnataka

...Respondent

J U D G E M E N T

K. VINOD CHANDRAN, J.

1. The default in repayment of a loan led to a crime, most foul, of murder, is the prosecution case. The allegation was that a police man, the 1st accused, took a loan from another police man, the deceased, who was killed by the wife, brother and brother-in-law of the former; at his instigation. The deceased, the driver of a Superintendent of Police made persistent demands for repayment of the loan. This led to A2, the wife of A1, calling the deceased to her home on the pretext of repaying the debt, on the night of 10.03.2006. At

around 2am on the next day the victim was made immobile by throwing chili powder on his face and hacked to death with two choppers wielded by the accused. A2 then, after sunrise, went directly to the police station and confessed to the SHO about the crime and apprised him of the presence of the dead body in her house. The SHO deputed a police constable to make enquiries and later an inquest was done by PW-24 at the house of A2, after which the body was taken to the hospital.

2. Before the trial court, the prosecution examined 24 witnesses and marked 33 documents as also 16 material objects. The first accused examined himself and during the examination of the prosecution witnesses marked Exs.D1 to D8. The trial court found, from the evidence of the prosecution witnesses, that the presence of the dead body in the house of A2 was proved, and the crime itself was confessed to by A2, who also pointed out the dead body which was lying in her house. A2 is said to have made extra

judicial confessions to other persons, including the wife of the deceased.

3. A recovery was made of a chopper, and one chopper (sickle) was seized from the scene of occurrence itself. A1, who was arrayed for instigation, had a perfect alibi insofar as the night duty undertaken in another police station, deposed to by PW-14, who was also on duty. There was nothing to indicate an instigation, which led to the acquittal of A1. A2 to A4 were convicted under Section 302 read with Section 34 and was sentenced to life. The High Court affirmed the findings of the Trial Court in an appeal by A2 to A4, finding established; the motive and the culpability of the accused based on other circumstances, like extra judicial confessions, recovery of a chopper under Section 27, the crime scene being the house of A1&2 and the absence of explanation for the dead body being at the house of the accused, under Section 106.

4. Mr.C.B. Gururaj, learned counsel for the appellants would argue that since Section 302 is charged against four

accused read with Section 34, when one of the accused is acquitted, it should inure to the benefit of the others also. Reliance was placed on ***State of West Bengal v. Vindu Lachmandas Sakhrani alias Deru***[1] and ***Suraj Pal v. State of Uttar Pradesh***[2]. The depositions were read over to us and it was argued that the eye witnesses had turned hostile and there was no circumstance bringing out the culpability of the accused.

5. Mr.Nishanth Patil, learned AAG, however, sought to uphold the conviction on the ground that the dead body was found in the house of A2, which was pointed out by her and there was no explanation even under Section 313 questioning. The motive was proved, and the extra judicial confessions further established the crime. The recovery as against A4 also provided a link in the chain of circumstances, which chain is complete.

[1] AIR 1994 SC 772
[2] AIR 1995 SC 419

6. Undisputedly, this is a case of circumstantial evidence, especially since the eyewitnesses who were projected as tenants in the building in which the crime occurred, turned hostile. It is also pertinent that as per the allegation of the prosecution, a police man was killed by the wife of another police man, with the aid of her brother and brother-in-law. Upon the sad news being conveyed to the wife of the deceased, she allegedly went to the premises with her relatives and friends; the latter of whom were either police men or their spouses.

7. On the question of whether the death was a homicide, there can be no dispute raised, unequivocally established by the evidence of PW-23, the Doctor who conducted the post-mortem. Almost 13 wounds were noticed which were lacerated and chop wounds. According to the Doctor, death was caused due to the injuries sustained to the head; all the internal and external injuries being ante-mortem in nature. The chop wounds were found on the right side & middle of the forehead as also over the left parietal prominence and

the eye, the nose and the lip on the left side. There were wounds on the right cheek, over the right ear lobe, incised wound extending from the occipital area to the left ear, with comminuted fracture on the occipital area, at the right temporal bone extending to lower of left temporal bone, with brain tissue exposed. There were other lacerated and chop wounds on the left leg exposing the libia and fibula and on the left wrist a joint fracture in the second metacarpal bone. The injuries bring forth a case of a brutal frontal attack, which is opined, by PW-23, to be possible by the chopper recovered from the scene of occurrence and that recovered at the instance of A4.

8. The death, no doubt is homicidal in nature and now we turn to the culpability of the accused. The first argument of the learned counsel for the appellants, that, the appellants too have to be acquitted, considering their parity with A-1, cannot at all be countenanced. In ***Vindu Lachmandas Sakhrani alias Deru***[1] (supra), a husband and his wife were charged with the kidnapping and murder of a six-year-old

child. While the husband was acquitted, the trial court convicted the wife, which conviction was overturned in appeal on the ground of parity. In that case, dependent solely on circumstantial evidence, it was held that the charge under Section 302 read with Section 34 IPC, based on the common intention of both, falls flat with the acquittal of the husband, especially when there was no simpliciter charge under Section 302 against the wife.

9. In ***Suraj Pal***[2] (supra), the charges were under Sections 147, 323, 307 and 302 read with Section 149 of the IPC. There was no independent charge against the sole accused convicted for the offence under Sections 307 and 302 IPC. In that circumstance when all the others were acquitted, one of the accused who was arrested for shooting the deceased, could not have been convicted under Sections 307 and 302 IPC, was the finding. In the present case, the charge against A1 was under Section 109, instigation, leading to a charge under Section 302 read with Section 34. The charge against the other accused was under Section 302 read with Section

34 IPC; quite distinguishable. There was no evidence to substantiate instigation and an independent charge under Section 302 would not stand against A2 by reason of the air-tight alibi.

10. The motive alleged is of a loan of Rs.1 lakh taken from the deceased having not been repaid giving rise to persistent demands, resulting in ill will between the deceased and the accused, leading to frequent quarrels. The trial court and the High Court placed reliance on the evidence of PW-18, 11 &12, the wife, mother and brother of the accused and PW-7, to find motive.

11. In chief examination, PW-18 deposed that it was A2 who revealed to her that she owed a sum of Rs.1 lakh to the deceased which A2 had obtained at the time of construction of the house. The chief examination of PW-18 does not at all support the motive set up by the prosecution. In cross examination, it was categorically stated by PW-18 that in the domestic inquiry against A-1, she had appeared before the inquiry officer; Dy. S.P. Arasikare, and deposed that her

husband and accused were in cordial terms and there were no transactions between them. Very strangely, after the cross examination by the accused, the Special Public Prosecutor sought to treat the witness as hostile and attempted a cross examination. She categorically asserted that the statement made before the inquiry officer was not under coercion.

12. Yet another witness proffered by the prosecution to prove the motive was PW-7, a police constable and a neighbour of the deceased. In his chief examination, it was deposed that while occupying the police quarters, the deceased and the accused were on friendly terms. He also deposed that he had no information regarding any loan taken by A-1 from the deceased. The witness was treated hostile and cross examined by the prosecution, when it was brought out that in the statement under Section 161, Cr. PC, the witness had spoken about the loan of Rs.1 lakh taken by A-1 from the deceased, which alone would not prove the motive since it was not deposed in his chief examination.

13. PW-11 and PW-12, the mother and brother of the deceased, however spoke of a loan having been taken by A-1 from the deceased. The reliability of the said witnesses has to be tested on the totality of the circumstances as deposed to by the witnesses. PW-18 deposed that PWs-11&12 were not on cordial terms with her husband; belying their knowledge of the loan availed, which even the wife of the deceased was not aware of. PW-18 asserted that she or her husband were not in the habit of discussing their problems with PWs-11&12 nor was there even exchange of pleasantries. There are further reasons to disbelieve the testimony of PWs-11&12, which we shall deal with a little later.

14. Absence of motive is not an imperative circumstance to arrive at a conviction, in a case where there is ocular evidence. The role of motive is not very significant even when circumstances otherwise form an unbreakable chain. Motive only provides another link, and the absence of motive is a factor that weighs in favour of the accused as held

in ***Babu v. State of Kerala***[3]. We cannot find a motive in this case; of the financial transaction having led to the crime. Further, the prosecution case is that the deceased was summoned over telephone, to the house of A2, on the pretext of repaying the loan. But even PW-18 has no case that the deceased left the house on such a mission, after a telephone call. There is also no clear evidence as to whether the deceased returned to his home in the evening of that day.

15. Even according to the prosecution, the police came to know about the death from A2 who surrendered before the Police Station and made a voluntary statement before PW-15, the Station House Officer (SHO) in the presence of PW-17, a Sentry on duty at the Police Station. PW-15, immediately called PW-21, a constable and directed him to proceed to the house of A2 to verify the information given by A2. PW-22, with another constable, visited the house of

[3] (2010) 9 SCC 189

A2 and having seen the dead body, intimated it to PW-15. PW-15 informed PW-18, who in turn informed her neighbours and her relatives.

16. The prosecution in addition to the official witnesses, sought to establish the presence of the dead body at the house of A1& A2, through the other witnesses including the wife, mother and brother of the deceased who were alleged to have come to the crime scene and witnessed the presence of the dead body thereat. PW-18, the wife of the deceased more than once deposed in her chief examination and cross examination, that she came to know of the death of her husband at '7 O'clock' on the morning of 11.03.2006 when the police came to her house with the information of the crime. Though, she stated in her chief examination that she went to the house of A2 and saw the dead body, before the inquiry officer, Dy. S.P. Arasikare, she had stated that she saw the dead body first at the hospital; admitted in her testimony before Court. In cross examination by the Prosecutor, after she was declared hostile, it was

categorically stated by PW-18 that she did not see the dead body of her husband at the house of A-1&2.

17. PW-6 and PW-8, the wives of two police constables who resided near to the house of the deceased stated before police that they saw the dead body at the house of A-1&2, but resiled from their statement before Court and both of them were declared hostile. PW-7, in his chief examination stated that he too saw the dead body first at the hospital but, in cross examination by the prosecution, sought to assert that he had seen the body of the deceased at the house of A-1&2; which statement he had not made before the police.

18. The inquest report was drawn up by PW-24, allegedly at the house of A-1&2. PWs-1&4, the witnesses to the inquest report, did not corroborate and deposed that the report was drawn up and signed at the hospital. PW-11 and PW-12, the mother and brother of the deceased spoke of having seen the dead body at the alleged crime scene, the house of A-1&2. It is pertinent that according to PW-18, the relatives including her mother-in-law and brother-in-law came to the

hospital. The presence of the said witnesses in the alleged scene of crime, after the crime proper, is suspect.

19. PW-11, the mother of the deceased stated in her cross examination that PW-18 called her over phone at 4 am to inform her about the crime committed. It is also stated that she was informed by PW-18 through the phone of one Shankarappa, who was not examined before Court. PW-12, the brother of the accused stated in his cross examination that having been informed of the murder of his brother, by PW18, he came to Hassan at about 05:30 am in the morning. PW18 at the risk of repetition, asserted before Court more than once, that she was first informed about the death of her husband at 7 am when the police came to her house with the said information.

20. Useful reference can be made to the decision of this Court in ***Santosh v. State (NCT of Delhi)***[4], wherein the dead body was recovered from an apartment occupied by the

[4] (2023) 19 SCC 321

appellant/accused as a tenant. The Court categorically found that there was no serious dispute to the tenancy arrangement but even then, that was insufficient by itself, to hold the accused guilty. It was held:

> *"… there is no general presumption against the owner/tenant of a property with regard to his/her guilt if a dead body with homicidal injuries is found in his/her property. No doubt if the prosecution succeeds in proving a chain of circumstances from which a reasonable inference can be drawn regarding one's guilt then, in absence of proper explanation, the court can always draw an appropriate conclusion with respect to his/her guilt with the aid of Section 106 of Evidence Act, 1872. But, if the chain of circumstances is not established, mere failure of the accused to offer an explanation is not sufficient to hold him guilty."*

21. This Court also relied on ***Shivaji Chintappa Patil v. State of Maharashtra***[5] in which it was observed that Section 106 of Evidence Act 1872 does not directly operate against either the husband or the wife, staying under the same roof, even if he/she is the last person seen with the deceased. It does not absolve the prosecution of discharging its primary

[5] (2021) 5 SCC 626

burden of proving a case beyond reasonable doubt. Unless there is evidence led to sustain a conviction or which makes out a prima facie case, the question does not arise of a burden of proof placed upon the accused to offer an explanation.

22. As we found, there is no cogent, credible evidence that the body was at the house of A-1&2. But, for the moment we will accept the said circumstance to have been proved on two grounds. One, PW-15, the SHO to whom A2 spoke of the crime, even if eschewed as a confession, recorded the statement, marked as Ext.P10(a) in the Station Diary produced as Ext.P10. PW-17 corroborated the statement, leading to the discovery of the body at the house of A2 by PW-21, the Constable deputed to verify. Even if these circumstances are accepted, going by the decisions cited, that alone cannot be conclusive proof to find A2 guilty, without other corroborating evidence.

23. One another circumstance, heavily relied upon by the trial court and the High Court are the extra judicial

confessions made by A2 to various persons, but all inside the police station. The First Information Report was on the complaint made by PW-18, the wife of the deceased, though the information first supplied was by A2 in the morning, to PW-15, the SHO and PW-17, the Sentry. Both these extra judicial confessions have been made in the police station before the police officers, even according to the prosecution, on which no reliance can be placed. PW-18, the wife of the deceased deposed that it was A2 who revealed to her the murder of her husband, at the police station, which was the testimony of PW-7 also. The extra judicial confessions and the context in which they were made, within the police station cannot at all be relied upon.

24. Section 25 of the Evidence Act mandates that no confession made to a police officer shall be proved as against a person accused of any offence and Section 26 also restricts any confession by a person in the custody of a police officer from being proved against him unless it is made in the immediate presence of a Magistrate. In ***State of***

U.P. v. Deoman Upadhyaya[6], this Court had considered the impact of Section 25 and 26, in paragraph 7, from which the relevant portion is extracted herein below:

> *"... The expression, "accused person" in Section 24 and the expression "a person accused of any offence" have the same connotation, and describe the person against whom evidence is sought to be led in a criminal proceeding. As observed in Pakala Narayan Swami v. Emperor by the Judicial Committee of the Privy Council, "Section 25 covers a confession made to a police officer before any investigation has begun or otherwise not in the course of an investigation". The adjectival clause "accused of any offence" "is therefore descriptive of the person against whom a confessional statement made by him is declared not provable, and does not predicate a condition of that person at the time of making the statement for the applicability of the ban. Section 26 of the Indian Evidence Act by its first paragraph provides. "No confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against a person accused of any offence". By this section, a confession made by a person who is in custody is declared not provable unless it is made in the immediate presence of a Magistrate. ..."*

[6] 1960 SCC OnLine SC 8

25. The extra judicial confessions, said to have been made by A2 in the present case, were all within the police station, where she is said to have voluntarily come, to confess about the murder. The confession made to the SHO, PW-15, overheard by PW-17, the Sentry of the police station, hence has to be completely eschewed under Section 25. The confession made to PW-18, the wife of the deceased and PW-7, though a police constable; who arrived at the police station in the status of the neighbour of the deceased, also has to be eschewed under Section 26. The other witnesses to whom the extra judicial confession was made, that too inside the police station, in any case turned hostile.

26. Yet another circumstance relied upon by the prosecution is the recovery of a chopper, MO-16 on the confession statement of A4 under Section 27. In this context, we have to look at the evidence of PW-24, the investigating officer (I.O) who deposed that A3 and A4 were taken into police custody on 15.03.2006 after their voluntary surrender before Court on 13.03.2006. It is the categoric statement of

the I.O that both A3 and A4 confessed in their voluntary statements that they would point out the chopper used for commission of offence by leading the police to the spot where they concealed it. A4 alone was taken to the spot, leading to the recovery of MO-16, is the case of the prosecution.

27. Disclosure statements taken from one or more persons in police custody do not go out of the purview of Section 27 altogether, as held in ***State (NCT of Delhi) v. Navjot Sandhu @ Afsan Guru***[7] and reiterated in ***Kishore Bhadke v. State of Maharashtra***[8]***.*** While asserting that a joint or simultaneous disclosure would *per se* be not inadmissible under Section 27, it was observed that it is very difficult to place reliance on such an utterance in chorus; which was also held to be, in fact, a myth. Recognising that there would be practical difficulty in placing reliance on such evidence, it was declared that it is for the Courts to decide, on a proper

[7] (2005) 11 SCC 600
[8] (2017) 3 SCC 760

evaluation of evidence, whether and to what extent such a simultaneous disclosure could be relied upon. In ***Kishor Bhadke***[7], while affirming the above principles in ***Navjot Sandhu***[6], the facts revealed were noticed, wherein the information given by one, after the other, was without any break, almost simultaneously and such information was followed up by pointing out the material thing by both the accused, in which circumstance it was held that there is no reason to eschew such evidence.

28. With the above principles in mind when we look at the facts of the present case, the I.O though has stated about the disclosure statement of both A3 and A4, he does not specify whether it is simultaneous or one after the other. It is also not clear; if the disclosure is at different points of time, in which event, who made the first disclosure. Deposition of PW-24 though does not speak of the exact location as stated by the accused in the confession statement; PW-24 speaks of having taken A4 to the bush of Rose Trees at the Helipad near Udayagiri Layout from where the chopper was

produced. PW-2 and PW-3, the witnesses of recovery of MO-16 turned hostile and they deposed that they affixed their signatures to the recovery mahazar at the police station. Further, it also has to be noticed that but for the recovery there is nothing to indicate the culpability of A3 and A4 through forensic evidence to link the recovered weapon to the crime proper.

29. Insofar as the recovery under Section 27, as has been reiterated in ***Mohd. Inayatullah v. State of Maharashtra***[9], the expression '*fact discovered*' includes not only the physical object produced, but also the place from which it is produced and the knowledge of the accused about the concealment. In the cited decision, which considered the offence of theft, the accused had made a statement of the place where the stolen drums were kept by him. Finding the admissible portion of the statement to be only the location of the three drums, it was held that the information taken in

[9] (1976) 1 SCC 828

conjunction with the facts discovered, was insufficient to draw the presumption that the accused was the thief or the receiver of the stolen property, with the knowledge that it was stolen. The drums in question were found in the compound or yard of a *musafirkhana* (rest place for travellers) and it was neither lying concealed nor was the compound under the lock and key of the accused. In the present case, the I.O, PW-24, categorically deposed before Court that after A3 and A4 were taken into custody on 15.03.2006, pursuant to their surrender before Court on 13.03.2006, confessions were made by both the accused regarding the concealment of the chopper allegedly used for commission of offence; which statement of '*use in the commission of offence'* has to be totally eschewed. The exact spot in which the concealment was made as stated in the disclosure statement has also not been deposed to by the I.O.

30. ***Manoj Kumar Soni v. State of M.P.***[10] was a case in which all the accused persons made disclosure statements to the IO whereupon recovery of various articles were effected. It was held that even when disclosure statements hold significance as a contributing factor in a case, it is not so strong a piece of evidence sufficient on its own and without anything more to bring home the charges beyond reasonable doubt (*sic*, para 22).

31. The fact that confessions were made by both the accused and the recovery was made from one of the accused, A4, leading the police to the spot would restrain us from treating the recovery as an inculpating circumstance against A3 or A4, especially when the confession is taken simultaneously from both the accused. We are of the opinion that in the present case there can be no reliance placed on the recovery based on the sketchy evidence adduced.

[10] 2023 SCC OnLine SC 984

32. Now, looking at the witness who supported the prosecution case, we find them to be totally unreliable. PW-7, whose evidence was relied upon for the purpose of motive and also the presence of the dead body at the house of A-1&2, we have already found, did not speak of either of these circumstances before the police under Section 161 or in the chief examination. As far as PW-11 and PW-12 are concerned, their presence at the scene of occurrence itself is doubtful. The motive sought to be proved through PW-11&12 as also the presence of the dead body in the house of A-1&2, hence stands totally discredited. It is also relevant that PW-16, the brother-in-law of the deceased, categorically stated that he saw the dead body at the hospital and not at the house of A-1&2.

33. As we noticed at the outset, PW-20 and PW-22 eyewitnesses turned completely hostile. We are at a loss to understand how the High Court and the trial court made an observation that though they were declared hostile, there was credible material in their evidence pointing to the

culpability of the accused, which could be relied upon. We find no such material in the chief examination or the cross examination. PW-20 and PW-22, who as per the prosecution were brothers staying in the house of A1 and A2 on rent. The witnesses admitted that they were bothers but they denied that they were tenants of A1 and A2. After PW-20 was declared hostile, the prosecutor had put forth P-12 to P-20 contradictions in the alleged statements under Section 161 recorded by the police, which were all denied by the said witness. Likewise, PW-22 also did not subscribe to the prosecution case and there was nothing in his evidence to find culpability of the accused.

34. The prosecution case itself was that the deceased was summoned to the house of A-1&2, for which there is no evidence adduced nor does PW-18, the wife speaks of the deceased having left the house on receiving such a call. Further it is the case of the prosecution that the deceased reached the house of the accused at around 10 pm while the death was confirmed as having occurred at 2 pm. What

happened in the interregnum is not clear and together with what we noticed above, there is a suspicion as to the genesis and origin of the crime which compounds the reasonable doubt regarding the prosecution case.

35. Undisputably, the case is one of circumstantial evidence which is treated as proved only when there is a complete chain of circumstances, comprising cogent and reliable material, providing an unbreakable link, leading only to the culpability of the accused and bringing forth the hypothesis only of guilt and not leading to any reasonable doubt as to the guilt or otherwise of the accused. The motive projected and the crime itself has not at all been proved and there is no circumstance leading to the culpability of the accused. The presence of the dead body in the house of the accused is also under a cloud and in any event, that, with the absence of a proper explanation cannot by itself bring home a conviction.

36. Considering the totality of the circumstances and the evidence led in the trial, we are of the considered opinion

that the conviction cannot be sustained; which we set aside and acquit the accused. If the accused are in custody, they shall be released forthwith, if they are not wanted in any other case. However, if they are on bail, their bail bonds shall stand cancelled and revoked.

37. The criminal appeal stands allowed.

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

..... J.
(K. V. VISWANATHAN)

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

NEW DELHI;
SEPTEMBER 22, 2025.