2026 INSC 85

Reportable

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No.3738 of 2023

Bernard Lyngdoh Phawa

...Appellant

Versus

The State of Meghalaya

...Respondent

W I T H

Criminal Appeal No. of 2026
[@Special Leave Petition (Crl.) No.1798 of 2025]

J U D G M E N T

K. VINOD CHANDRAN, J.

Leave granted.

2. An enquiry, commenced with a missing person complaint, led, to the arrest of the appellants, discovery of the body; exhumed from a graveyard, recovery of a rope; allegedly used to strangulate the victim, allegation of ransom calls received and recovery of material possessions of the victim from the house of one of the accused and a

mobile phone from a witness. These coupled with the last seen theory; as purportedly stated by the witnesses, resulted in the prosecution being lodged before the Trial Court. The Trial Court after examining the evidence found it to be not sufficient to enter a finding of guilt, resulting in the acquittal of the accused. The High Court on an appeal by the State found that the five golden principles as enunciated in ***Sharad Birdhichand Sarda v. State of Maharashtra***[1] adequately satisfied, bringing forth a conclusion only of a hypothesis of guilt excluding all possible hypothesis of innocence. There is no weak link, and the chain of circumstances is complete was the finding of the High Court. The High Court reversed the judgment of the Trial Court but found no kidnapping as charged, all the same finding the accused guilty of murder (Section 302 of the Indian Penal Code, 1860[2]) and causing disappearance of evidence (Section 201 of the IPC).

3. We are, in the above appeals, confronted with the divergence of opinion as expressed by the Trial Court and

[1] (1984) 4 SCC 116
[2] For brevity 'the IPC'

the High Court respectively. We heard Sh. Subhro Sanyal, Advocate-on-Record and Sh.Ajay Sabharwal, Advocate appearing for the two appellants and Sh. Avijit Mani Tripathi, Advocate-on-Record appearing for the State.

4. Learned counsel appearing for the accused argued that a well-reasoned judgment of acquittal was reversed by the High Court without any compelling reason and without recording a clear finding as to whether the view taken by the Trial Court was a possible view, bringing forth a reasonable doubt. The trite principle that an acquittal by one Court reinforces the presumption of innocence available to the accused, not liable to be displaced lightly, was thrown to the winds. The High Court has substituted its own inferences on the evidence led. There is no valid last seen theory coming out of the evidence and there is no clarity as to the exact time of death. Neither was the recovery of the murder weapon (rope) proved, nor was it found to have any connection with the crime, the traces of which having not been detected in a forensic analysis. The allegation of ransom calls having been made to the father of the victim was not at all established. The confessional

statements are full of inconsistencies, not made voluntarily and does not contain any inculpatory statements. Further, there can be no conviction based merely on the confessional statement, which also was retracted. The cumulative effect of the lapses in investigation and the complete absence of incriminating circumstances; the former of which was specifically noticed by the High Court, ought to have persuaded the High Court to not disturb the acquittal by the Trial Court.

5. Learned counsel appearing for the State would, however, vehemently put forth the incriminating circumstances coming out from the last seen theory and recovery of the weapon and the other possessions of the victim, as also the confessional statement, the last of which, per State, corroborates the entire prosecution story. The learned counsel specifically referred to the decisions of this Court in ***Mohammed Ajmal Mohammad Amir Kasab v. State of Maharashtra***[3] and ***Manoharan v. State by Inspector of Police, Variety Hall Police Station,***

[3] (2012) 9 SCC 1

Coimbatore[4] to urge that a confessional statement voluntarily made, even if retracted, can still be reckoned to bring home a conviction, which has been successfully done in the present case. The High Court rightly reversed the judgment of the Trial Court, and the conviction has to be upheld, asserts learned Counsel for the State.

6. We would examine the evidence led, keeping in mind the principles regulating a case of circumstantial evidence stated in ***Sharad Birdhichand Sarda***[1] as harmonized with the principles regarding powers of the Appellate Court in dealing with an appeal from an acquittal as has been delineated in ***Chandrappa & Others v. State of Karnataka***[5]. As we noticed, the prosecution went to trial with the last seen together theory, the discovery of the dead body at the instance of A1, recovery of the rope; allegedly used for strangulation, at the instance of A2 and the seizure of various articles belonging to the deceased from the house of A2, the seizure of a mobile from the possession of PW11, and the confessional statement of both the accused under Section

[4] (2020) 5 SCC 782
[5] (2007) 4 SCC 415

164 of *Code of Criminal Procedure, 1973*[6] as also the medical and forensic evidence put forth before the Trial Court, which though disbelieved by the Trial Court was reckoned by the High Court to enter a conviction. We will in the course of the judgment only refer to the witnesses who are relevant from the 34 witnesses paraded by the prosecution before the Trial Court.

7. The First Information Statement (FIS) was by PW1, a Professor of the College in which the deceased was studying, who was also his local guardian. PW1 was informed by the roommates of the deceased that he did not return to his room on the evening of 18.02.2006. It was also stated that the deceased reportedly was last seen in Police Bazar with a friend by the name of Bernard; the first accused. Even according to PW1, who deposed in tandem with the FIS, he along with the roommates of the deceased approached Bernard, the first accused and met him at Police Bazar, when the later told him that though he was with the deceased on the evening of 18.02.2006, the deceased had

[6] For brevity 'the Cr.P.C.'

left in a Maruti car bearing registration number of Delhi with a dent on the right side, in which car there were two more persons who claimed to be friends of the deceased from Siliguri.

8. On the next day, the first accused was arrested at 10 AM i.e. on 20.02.2006. On the arrest of A1, he is said to have led PW33 to the house of A2 from where a silver color chain and a spectacle was seized, which allegedly belonged to the victim. On 21.02.2006, again it was stated that A1 led the police party under PW33 to the graveyard at Mawroh from where the body of the deceased was exhumed and sent for post-mortem. But for the I.O, none spoke of A1 having led the police to the spot nor was there any statement recorded under Section 164 of the Cr.P.C.

9. A2 was arrested on 23.02.2006, who led to the recovery of the rope. One another person, Mohd. Akbar Qureshi, though arrested on 21.02.2006, was discharged after investigation. The post-mortem report was marked by PW2, doctor. PW2 spoke of ligature marks on the front portion of the neck of the dead body and the spleen in a ruptured state, on opening the abdomen. There was also

presence of air bubbles in the lungs and there were multiple abrasions on the left lateral aspect of the chest and abdomen. On the basis of the above findings, it was opined in the post-mortem report that the cause of death was asphyxia by strangulation with a '*hard, blunt and long rope*' (sic). The time of death of the victim was recorded as about 48 hours prior to the conduct of post-mortem.

10. Before we proceed further, we have to first deal with the inconsistency urged by the accused regarding the time of death. The post-mortem conducted on 22.02.2006 found that the death occurred prior to two days; i.e. prior to 48 hours. The deceased was missing from 18.02.2006 and the body was discovered on 21.02.2006; a day after which the post-mortem was conducted. Hence the death could have occurred any time before 20th of February. This would necessarily warrant a closer look at the last seen together theory, is the argument of the learned counsel.

11. Be that as it may, in cross examination by A2, it was categorically stated by the doctor that the hyoid bone was found broken at both sides, which could happen in a strangulation suspending the body, that is by hanging. It

was also opined that it could be a case of suicide by hanging in the instant case, especially since the larynx of the deceased was found intact and not broken, which could happen in case of strangulation. The doctor went further to say that there was no blood clot in the nostrils, ears or mouth or cyanosis (bluish or purple discolouration) of nails or face of deceased, which are again common symptoms of strangulation. Hence, the medical evidence is not conclusive as to a homicide, but the fact remains that even if the death was by hanging, the body was exhumed from where it was buried, which raises strong suspicions at least as to the burial of the body.

12. The inconclusive medical evidence will have to be looked at on the basis of other incriminating circumstances put forth by the prosecution.

13. On the theory projected of last seen together, we cannot but notice that there is no proof of the deceased having been seen together with the accused immediately before the death occurred. We say this despite the fact that there is no clear-cut time specified on which the death occurred, when it is trite that the last seen together theory

projected by the prosecution should be proximate to the death of the victim. Even the prosecution story that the victim was in the company of the accused on the evening of 18.02.2006 is not established in the trial. It is the roommates of the deceased who informed PW1 that they were told by a friend of the deceased that he was going to meet A1 in the evening. The roommates of the deceased were not examined but the friend to whom the deceased talked about the meeting in the evening, was examined as PW6. PW6 deposed that she was a close friend of the deceased and they also did projects together for which reason the laptop of the deceased was entrusted to PW6. It was the statement of PW6 that the deceased had rung her up in the course of the day, i.e. on 18.02.2006, to tell her that he will be collecting the laptop later and also that he would be meeting A1 in the evening. This is not in proof of the victim having been seen with the accused in the evening.

14. One other witness projected to prove the last seen together theory was PW12, the auto rikshaw driver who is said to have picked up three persons from the Police Bazar and dropped them near the scene of occurrence. PW12

spoke in tandem with his statement under Section 161 Cr.P.C. and identified both the accused in the dock. The prosecution interestingly did not put any question regarding the acquaintance, the witness had with the accused so as to identify them in the dock. However, on cross-examination by A2, the witness, on a specific query stated that he has known A2 from childhood. Still, there was nothing to indicate how A1 was identified as having travelled in the auto rickshaw on the fateful day and more particularly, there was no statement regarding the identity of the third person who travelled along with the two accused.

15. It is also disturbing that the witness stated in cross-examination that the first identification was done in the Thana (Police Station) where he was taken for the identification of the accused. It was also stated that there was no other person standing with the accused at the time of identification. Hence, there was no Test Identification Parade carried out, as is required, in the course of an investigation, which in any case only lends credence to the line of investigation and not necessarily to the eventual

conviction. However, it has to be noticed that the identification of the accused was first done at the Police Station putting the identification in the dock under a cloud. Further, though PW14 a Sub-Inspector of Police speaks of the seizure of the auto rickshaw corroborated by a Police Constable, PW16, there is nothing brought on record to indicate the ownership of the auto rickshaw or the possession by PW12, who was alleged to be the driver of the auto rickshaw. There was an interpolation to the registration number of the autorickshaw as seen from the seizure mahazar Ext-15, admitted by PW14 in cross examination, but not satisfactorily explained by the prosecution. The auto was also not produced at the time of trial despite its seizure. The last seen together theory projected by the prosecution fails miserably in the above circumstances.

16. PW5, the father of the victim deposed about two phone calls in his mobile number demanding ransom, which the police did not follow up in their investigation. PW1 and PW17; a classmate and friend of the deceased, spoke of their visit to a PCO from where they obtained documents to

indicate a call having been made to PW6, the lady friend of the deceased. PW17 also spoke of the PCO owner having told him about A1 having come to the PCO on the night of 18.02.06 and requested him not to disclose the factum of his visit. A1 had accompanied PW1 & PW17 to the PCO and was sitting in the taxi was the testimony. This does not in any manner prove the ransom calls alleged to have been made to PW5. PW22 was the PCO owner who did speak of some persons having come to his PCO on 18.03.2006 and the same persons having requested him, the next day, to not disclose their identity. But the witness categorically stated that he would not recognize them, if he met them again. The ransom calls hence remained an unsolved puzzle.

17. The discovery of the body also is not supported by any statement recorded from A1. The police party under PW33 is said to have been led by A1 to the graveyard from which the body was exhumed. PW20, a photographer summoned to the scene at the time of exhumation does not speak of the presence of A1 either at the police station at Sadar, Shillong; from where the police party started or at the exhumation spot. The discovery so made cannot be pinned against the

accused under Section 27 but could very well have been proved as an incriminating circumstance if the 'last seen together' theory was proved and there was sufficient evidence to establish the burial spot having been spoken of by A1. But for the exhumation of the body from the graveyard, there is nothing to indicate that A1 had led the police party to the graveyard. PW23, the helper of a Cameraman who was summoned to the exhumation spot, deposed that the body was recovered on 25.04.2006 but another Cameraman, PW31 deposed that he witnessed the exhumation on 21.02.2006. PW31 testified that the exact spot was pointed out by a person, whom he was told was A1, but there was no attempt to identify the accused from the dock at the time of trial.

18. Likewise, the rope was recovered allegedly at the instance of A2 as spoken of by PW33 and PW34 Investigating Officers, on 24.03.2026. The witnesses to such recovery; PW25, 26 and 27 categorically deposed that no statement was recorded from A2 before such recovery was made. The IO also did not mark any such disclosure statement which was recorded. A2 was arrested on

23.03.2006 and the rope is alleged to have been recovered on the next day. But PW18 a police driver spoke of the rope having been seized from the graveyard on 18.03.2006 in the presence only of police personnel. Neither was a statement of A2 recorded of a concealment nor is there anything in the deposition of the IOs or the witnesses to indicate that the rope was recovered from a place of concealment. The rope is recovered from the open at the crime scene itself, from where the exhumation was carried out earlier, making it suspect and not worthy of reliance under Section 27 of the Evidence Act.

19. At the time of recovery, the seizure report indicated blood stains on the rope. PW3 who is the Senior Scientific Assistant of Meghalaya Forensic Science Laboratory deposed only of a few strands of synthetic cloth fiber, of various shades, having been detected in the rope sent to the FSL. In cross-examination, it was brought out that there was no human skin or hair present in the rope nor were any blood stains spoken of in the forensic report or in the deposition of PW3. The discovery of the body and the

recovery of the alleged weapon hence fail to impress, as incriminating circumstances against the accused.

20. As has been rightly noticed by the Trial Court, there were many seizures made of the material possessions of the victim, which could have been the personal property of the victim. These, however, were not identified as that belonging to the victim and some seizure witnesses like PWs 23 & 24 turned hostile. The laptop was recovered from the father of the victim, PW5, who identified it as belonging to his son, the deceased. The laptop was received by the father from PW6, the friend of the deceased, with whom it was retained at the request of the deceased. The identification of the laptop as that belonging to the deceased is not a link to the crime.

21. The prosecution case also spoke of a mobile of the victim having been taken from the deceased after his death, by A2. A2 is said to have entrusted this mobile, for sale, to PW11. The wife of PW11 examined as PW8, spoke of the entrustment, but she admitted to have not witnessed it. PW11 interestingly spoke of very close acquaintance with A2 and the mobile having been found with A2 for long.

Hence, even the evidence of PW11 does not indicate that the mobile was the proceeds of the crime alleged, of murder and in any event the seized mobile was never put to PW5, the father of the deceased for identification as that belonging to his son.

22. Similarly, there was seizure of a bag, purse and rakhi spoken of by PW10 and the seizure of wrist watch and spectacles spoken of by PW13, from the house of A2, which was alleged to be belongings of the deceased. These material objects were also not confronted to PW5, the father of the deceased, for identification. The recoveries made thus do not form a link, in the conspicuously absent chain of circumstances.

23. The learned counsel appearing for the State had specifically urged the confession made by the two accused, which at least indicates their presence with the deceased on 18.02.2006, is the argument. The confessions were retracted by the accused and in any event, they do not bring out any inculpating circumstances against the persons who confessed. In this context, we have to examine the confessions, which are produced in the Criminal Appeal

No.3738 of 2023 as Annexure P5 and P6 and available in the records. Annexure P5 is the confession of A1 who states that after they reached the graveyard, A2 asked for a cigarette, to purchase which he had gone out of the graveyard. It was A1's statement that when he came back, he saw A2 strangulating the deceased with a plastic rope. It is his statement that he asked A2 why he killed their friend, to which A2 did not respond. A1, in the confession, spoke of having opened the shoes of the deceased and rubbed his feet to revive him. The confession so made is exculpatory in nature and clearly incriminates the co-accused.

24. The reliance placed by the State on ***Mohammed Ajmal Mohammad Amir Kasab***[3] to urge the acceptability of the confessions in this case may not be appropriate. Therein, the confession was argued to be not voluntary, but a tutored statement to suit the prosecution's case. It was argued that the language, tone and tenor of the confession coupled with its inordinate length and also the unnecessary details contained therein made it highly suspect. This Court on an examination of the facts leading to the confession found it to be a voluntary statement. Though, some of the

statements made were vague that was found to be no reason to eschew the confession altogether. It was categorically found from the statements that it was not made under any influence or under duress and that the tone and tenor indicated that it was truthful and voluntary, especially since the statement indicated that the confession was not made out of a feeling of weakness or a sense of resignation or out of remorse but on the other hand made, more out of pride and to project himself to be a role model. The Court also noticed that in the course of the trial, after 58 prosecution witnesses were examined, the accused requested to make a statement, which though not so detailed had almost similar contents as in the confessional statement.

25. Examined, in the light of the above findings, we find the confessional statements as seen from the records, juxtaposed with the deposition of PW 32, the Magistrate who recorded the confession under Section 164 of the Cr.P.C, to be highly suspect. The confession of A1 as deposed before the Court was recorded on 07.03.2006. Insofar as A2 is concerned, in the testimony before the Court, PW32 deposed that the confessional statement of A2 was recorded

on 09.03.2006. The confessional statement, however, does not record any date nor is the signature of the Magistrate accompanied by a date. The signature of A2 is accompanied with a date; i.e. 08.03.2006. The recorded statement of A2 in the handwriting of the Magistrate, in the loose sheets affixed to the printed form, the signature of the Magistrate is accompanied with the date 09.03.2006. The said discrepancy was specifically put to the Magistrate in cross-examination. There was no satisfactory answer to the question, regarding discrepancy of the accused having signed on 08.03.2006 but the Magistrate having signed the recorded confession on 09.03.2006. The printed portion of the confessional statement also indicates the statements having been recorded of A1 in English while that of A2 is stated to be in Khasi. This is contrary to the testimony of PW32 before Court and both the recorded statements are completely in English as seen from the records.

26. One other compelling circumstance is the fact that the accused, when produced before the Magistrate for the purpose of recording the confession, they were never asked as to whether they required the assistance of a lawyer. In

Mohammed Ajmal Mohammad Amir Kasab[3], a similar contention raised was negated by the Court finding that the accused had initially refused representation by an Indian lawyer and had been seeking the services of a Pakistani lawyer. Examining the question of legal assistance at the pre-trial stage on a conspectus of Article 22(1) of the Constitution of India and Section 304 of the Cr.P.C. read with Article 39A of the Constitution of India, it was held so in paragraphs 474 and 475:

> *"**474**. We, therefore, have no hesitation in holding that the right to access to legal aid, to consult and to be defended by a legal practitioner, arises when a person arrested in connection with a cognizable offence is first produced before a Magistrate. We, accordingly, hold that it is the duty and obligation of the Magistrate before whom a person accused of committing a cognizable offence is first produced to make him fully aware that it is his right to consult and be defended by a legal practitioner and, in case he has no means to engage a lawyer of his choice, that one would be provided to him from legal aid at the expense of the State. The right flows from Articles 21 and 22(1) of the Constitution and needs to be strictly enforced. We, accordingly, direct all the Magistrates in the country to faithfully discharge the aforesaid duty and obligation and further make it clear that any failure to fully discharge the duty would amount to dereliction in duty and would make the Magistrate concerned liable to departmental proceedings.*

> ***475.*** *It needs to be clarified here that the right to consult and be defended by a legal practitioner is not to be construed as sanctioning or permitting the presence of a lawyer during police interrogation. According to our system of law, the role of a lawyer is mainly focused on court proceedings. The accused would need a lawyer to resist remand to police or judicial custody and for granting of bail; to clearly explain to him the legal consequences in case he intended to make a confessional statement in terms of Section 164 CrPC; to represent him when the court examines the charge-sheet submitted by the police and decides upon the future course of proceedings and at the stage of the framing of charges; and beyond that, of course, for the trial. It is thus to be seen that the right to access to a lawyer in this country is not based on the Miranda [(1966) 16 L Ed 2d 694: 384 US 436] principles, as protection against self-incrimination, for which there are more than adequate safeguards in Indian laws. The right to access to a lawyer is for very Indian reasons; it flows from the provisions of the Constitution and the statutes, and is only intended to ensure that those provisions are faithfully adhered to in practice."*
>
> *[underlining by us for emphasis]*

27. We do not find PW32 having offered any such legal assistance to the accused at the time of production before her before recording the confession under Section 164.

28. Yet again, as we found, the confession of A1 is purely exculpatory and accuse A2 of having strangulated his

friend, leading to his death. The exculpatory statements made by A1 to absolve himself from the liability and accuse A2 of having caused the death, cannot at all be relied on against A2. Insofar as A2 is concerned, he does not speak of the murder having been committed and merely admits that the deceased took his last breath in A2's lap, which is not a confession as such. True, if the incidence of death as spoken in both confessions is eschewed and the other aspects of the three having been together on the crucial evening, even if accepted, can only be used for corroborating the circumstantial evidence otherwise established, which we find to be totally absent in the above case. Neither has the last seen theory been proved nor has the recoveries or the seizures established as having any connection with the crime proper.

29. It has been held in a host of decisions as noticed in ***Manoharan***[4] that a confession can form a legal basis of a conviction if the Court is satisfied that it was true and was voluntarily made. However, it was also held that a Court shall not base a conviction on such a confession without

corroboration [***Pyarelal Bhargava v. State of Rajasthan***[7]]. Quoting the Privy Council, it was held in ***Kanda Pandyachi @ Kandaswamy v. State of Tamil Nadu***[8] that '*a confession has to be a direct acknowledgment of guilt of the offence in question and such as would be sufficient by itself for conviction. If it falls short of such a plenary acknowledgment of guilt it would not be a confession even though the same is of some incriminating fact which taken with other evidence tends to prove his guilt.' (sic para 11).* In the instant case there is no such acknowledgment of the crime proper nor is there any shred of evidence to establish the various circumstances put forth by the prosecution.

30. The confession allegedly made by the appellants is of no use in bringing home a conviction, especially when there was no corroboration available, of the statements made, from other valid evidence. There was thus no single circumstance available, incriminating the accused in the death of their friend, the son of PW5.

[7] AIR 1963 SC 1094
[8] (1971) 2 SCC 641

31. Having discussed the evidence, we fail to see any circumstance having been found from the evidence led, in the prosecution before the Trial Court to arrive at a hypothesis of guilt. The High Court proceeded on the premise that the Trial Court lost its way on the minor details and failed to see the larger picture, which was obviously and eventually admitted in the confession statements. The admissions were only that made in the confessional statements, of the death having occurred in the presence of the accused, on the day the deceased was found missing, which we have found to be not worthy of acceptance.

32. We find absolutely no reason to uphold the conviction of the accused as entered into by the High Court reversing the order of acquittal of the accused by the Trial Court. We reverse the order of the High Court and restore that of the Trial Court, which acquitted the accused. We have already granted bail to the accused on the conclusion of hearing. We direct that if the accused are still in jail, then they shall be released forthwith, if not required in any other case and if they are already released on bail, the bail bonds will stand cancelled.

33. The appeals stand allowed with the above directions.

34. Pending application(s), if any, shall stand disposed of.

..... J.
(SANJAY KUMAR)

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

NEW DELHI
JANUARY 27, 2026.