(2024) 11 SHI CK 0057

High Court Of Himachal Pradesh

Case No: Criminal Appeal No. 142 Of 2022

Anil Kumar @ Shetty		APPELLANT
	Vs	
State Of H.P.		RESPONDENT

Date of Decision: Nov. 27, 2024

Acts Referred:

- Code of Criminal Procedure, 1973 - Section 162, 173, 173(2), 190(1)(b), 313, 437A
- Indian Penal Code, 1860 - Section 34, 201, 302, 404
- Evidence Act, 1872 - Section 25, 27

Hon'ble Judges: Vivek Singh Thakur, J; Rakesh Kainthla, J

Bench: Division Bench

Advocate: Manoj Pathak, Harsh, S.D. Vasudeva

Final Decision: Disposed Of

Judgement

Under Section 302 of IPC,"To suffer rigorous imprisonment for life and to pay a fine of ₹2,00,000/-

and in default of payment of fine to undergo further simple imprisonment

for one year.

Under Section 201 of IPC,"To suffer simple imprisonment for two years and to pay a fine of ₹5,000/-

(five thousand) and in default of payment of fine to suffer further simple

imprisonment for one month. Both the substances were ordered to run

currently. Deleted vide order dated 29.11.2024

Under Section 404 of IPC,"To suffer simple imprisonment for one year and to pay fine of ₹5,000/-

(five thousand) and in default of payment of fine to suffer further simple

imprisonment for one month. All the substantive sentences have been

ordered to run concurrently. Added vide order dated 29.11.2024

3. Learned Trial Court charged accused-Anil Kumar with the commission of offences punishable under Sections 302, 201 and 404 of IPC. The other",

accused were charged with the commission of offences punishable under Sections 201 and 202 read with Section 34 of IPC. The accused pleaded not,

guilty and claimed to be tried.,

4. The prosecution examined 16 witnesses to prove its case. Roop Lal (PW1) is the informant and son of the deceased. Bimla Devi (PW2) sold the,

liquor to the accused. Nirmala Devi (PW3) informed the police about the discovery of the dead body. Maina Devi (PW4) is a witness to various,

recoveries. Ram Dass (PW5) had given ₹ 20,000/- to the deceased. HHC-Kamlesh Kumar (PW6) is the official witness to various recoveries. Mohar",

Singh (PW7) prepared Aks-Tatima. HHC Hukam Chand (PW8) proved the entry in the daily diary. HHC-Khushi Ram (PW9) carried the case,

property to SFSL Junga. SI Om Prakash (PW10) conducted the partial investigation. Jeet Ram (PW11) conducted the initial investigation. HHC Mool,

Chand (PW12) brought the case property and the result of the analysis from SFSL Junga. Jitender Kumar (PW13) prepared the supplementary,

challan. Ramesh Chand (PW14) was posted as MHC with whom the case property was deposited. HC-Harbans (PW15) issued the certificates. Dr.,

Dhruv Gupta (PW16) conducted the post-mortem examination of the deceased.,

5. The accused in their statements recorded under Section 313 of Cr.P.C. denied the prosecution case in its entirety. They claimed that they were,

innocent and were falsely implicated. No defence was sought to be adduced by the accused.,

6. The learned Trial Court held that the prosecution case was based upon circumstantial evidence. It was duly proved on record that accused Anil,

Kumar and the deceased were last seen together. Accused Anil Kumar had got the money and weapons of offence recovered. The blood of the,

deceased was found on the socks of the accused. These circumstances establish the guilt of the accused. There was no other evidence to show the,

innocence of the accused. The prosecution case regarding the other accused was not proved; hence accused Anil Kumar was convicted and,

sentenced as aforesaid while rest of the accused were acquitted.,

7. Being aggrieved from the judgment and order passed by the learned Trial Court, accused-Anil Kumar has filed the present appeal asserting that the",

learned Trial Court erred in convicting the accused. He had no connection with the commission of the offence. The judgment is based upon surmises,

and conjectures. The material contradictions were ignored. Inadmissible evidence was considered while convicting the accused. Therefore, it was",

prayed that the present appeal be allowed and the judgment and order passed by the learned Trial Court be set aside.,

8. We have heard Mr. Manoj Pathak and Mr. Harsh, learned counsel for the appellant/accused and Mr. S.D. Vasudeva, learned Deputy Advocate",

General, for the respondent/State.",

9. Mr. Manoj Pathak, learned counsel for the appellant/accused submitted that the learned Trial Court erred in convicting and sentencing the accused.",

There was no evidence against the accused and learned Trial Court relied upon inadmissible evidence to record the conviction. The recovery of the,

blood-stained socks is highly improbable because it is highly unlikely that the socks would have been stained with blood when the shoes had no blood,

stains. The chain of circumstances was not established, therefore, he prayed that the present appeal be allowed and the judgment and order passed by",

the learned Trial Court be set aside.,

10. Mr. S.D. Vasudeva, learned Deputy Advocate General for the respondent/State supported the judgment and order passed by the learned Trial",

Court and submitted that no interference is required with the same.,

11. We have given considerable thought to the submissions made at the bar and have gone through the records carefully.,

12. The prosecution case is based upon the circumstantial evidence. The law relating to circumstantial evidence is well settled and was explained by,

the Honâ€™ble Supreme Court in Raja Naykar v. State of Chhattisgarh, (2024) 3 SCC 481 as under:",

â€œ16. Undoubtedly, the prosecution case rests on circumstantial evidence. The law with regard to conviction on the basis of circumstantial evidence has very well",

been crystalised in the judgment of this Court in Sharad Birdhichand Sarda v. State of Maharashtra [Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4",

SCC 116: 1984 SCC (Cri) 487: 1984 INSC 121], wherein this Court held thus : (SCC pp. 184-85, paras 152-54)",

â€œ152. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a",

criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is Hanumant v. State of M.P. [Hanumant v. State,

of M.P., (1952) 2 SCC 71: AIR 1952 SC 343: 1952 SCR 1091] This case has been uniformly followed and applied by this Court in a large number of later decisions",

up-to-date, for instance, the cases of Tufail v. State of U.P. [Tufail v. State of U.P., (1969) 3 SCC 198: 1970 SCC (Cri) 55] and Ram Gopal v. State of Maharashtra",

[Ram Gopal v. State of Maharashtra, (1972) 4 SCC 625]. It may be useful to extract what Mahajan, J. has laid down in Hanumant case [Hanumant v. State of M.P.,",

(1952) 2 SCC 71: AIR 1952 SC 343: 1952 SCR 1091]: (Hanumant case [Hanumant v. State of M.P., (1952) 2 SCC 71: AIR 1952 SC 343: 1952 SCR 1091], SCC",

pp. 76-77, para 12)",

â€˜12. It is well to remember that in cases where the evidence is circumstantial, the circumstances from which the conclusion of guilt is to be drawn should in the first",

instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances",

should be conclusive and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a",

chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to,

show that within all human probability, the act must have been done by the accused.â€™",

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:,

(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 â€œmust or shouldâ€ and not â€œmaybeâ€ established. There is not only a grammatical but a legal distinction between â€œmay be,

provedâ€ and â€œmust be or should be provedâ€ as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [Shivaji Sahabrao Bobade v. State,

of Maharashtra, (1973) 2 SCC 793: 1973 SCC (Cri) 1033] where the observations were made : (SCC p. 807, para 19)",

â€˜19. â€¦ 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",

â€œmaybeâ€ and â€œmust beâ€ is long and divides vague conjectures from sure conclusions.â€™,

(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.",

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.â€ (emphasis in original)",

17. It can thus clearly be seen that it is necessary for the prosecution that the circumstances from which the conclusion of the guilt is to be drawn should be fully,

established. The Court holds that it is a primary principle that the accused â€œmust beâ€ and not merely â€œmay beâ€ proved guilty before a court can convict the,

accused. It has been held that there is not only a grammatical but a legal distinction between â€œmay be provedâ€ and â€œmust be or should be provedâ€. It has,

been held that the facts so established should be consistent only with the guilt of the accused, that is to say, they should not be explainable on any other hypothesis",

except that the accused is guilty. It has further been held that the circumstances should be such that they exclude every possible hypothesis except the one to be,

proved. It has been held that 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 probabilities, the act must have been done by the accused.",

18. It is settled law that the suspicion, however strong it may be, cannot take the place of proof beyond reasonable doubt. An accused cannot be convicted on the",

ground of suspicion, no matter how strong it is. An accused is presumed to be innocent unless proved guilty beyond a reasonable doubt.â€",

13. TheÂ presentÂ caseÂ hasÂ toÂ beÂ decidedÂ asÂ perÂ the parameters laid down by the Honâ€™ble Supreme Court.,

14. The learned Trial Court held that it was duly proved by the statement of Bimla Devi (PW2) and the result of investigation that the accused and,

deceased were last seen together. The accused had not protested regarding his false implication, which strengthens the prosecution case. These",

findings cannot be sustained.,

15. Bimla Devi (PW2) stated that accused Anil Kumar and Santosh Kumar came to her house on 20.03.2018 at about 12:30 pm and demanded liquor.,

She had brought liquor for the marriage of her daughter and some bottles were lying with her. She handed over two bottles to accused Anil and,

Santosh and they paid ₹ 140/-. Accused Anil Kumar again visited her house at around 3:30 pm in her absence. The accused purchased two liquor,

bottles from her son and paid ₹ 140/-. The accused again visited her house at 5:30 pm but no liquor was available with her; hence, she refused to",

supply any liquor. She received a call from Roop Lal at 7:00 pm and she told Roop Lal that his father had not visited her home on that day.,

16. The statement of this witness nowhere shows that she had seen accused-Anil Kumar and the deceased together; rather she categorically stated,

that when the informant called her, she told him that his father (the deceased) had not visited her home. Therefore, the learned Trial Court erred in",

holding that the statement of Bimla Devi (PW2) proved that the accused and the deceased were last seen together.,

17. The learned Trial Court also relied upon the result of the investigation and the statement of Jeet Ram, the investigating officer to this effect. There",

is a force in the submission of Mr. Manoj Pathak, learned counsel for the accused that the result of the investigation is not a legally admissible piece of",

evidence. The result of the investigation can form the basis for submitting a charge sheet before the Court but it cannot form legally admissible,

evidence to record the conviction. Further whatever has been told to the Investigating Officer during investigation is hit by Section 162 of Cr. P.C and,

cannot be proved in a Court of law. In Kaptan Singh and Others Versus State of M.P. and Another (1997) 6 SCC 185, the trial Court had based",

its judgment on the result of an investigation conducted by an Inspector of CID. It was held to be improper and it was held that the court cannot base,

its judgment on the result of the investigation. It was observed:-,

â€œ5â€¦.From the judgment of the trial Court, we find that one of the grounds that largely weighed with it for acquitting the appellants was that an Inspector of CID",

who had taken up the investigation of the case and was examined by the defence (D.W. 3) testified that during his investigation he found that the story as made out,

by the prosecution was not true and on the contrary, the plea of the accused (appellants) that in the night of the incident, a dacoity with murder took place in the",

house of Baijnath by unknown criminals and the appellants were implicated falsely was true. It is trite that the result of investigation can never be legal evidence; and,

this Court in Vijender v. State of Delhi, (1997) 3 JT (SC) 131, made the following comments while dealing with this issue :",

The reliance of the trial Judge on the result of the investigation to base his findings is again patently wrong. If the observation of the trial Judge in this regard is",

taken to its logical conclusion it would mean that a finding of guilt can be recorded against an accused without a trial, relying solely upon the police report submitted",

under Section 173, Cr.P.C., which is the outcome of an investigation. The result of investigation under Chapter XII of the Criminal Procedure Code is a conclusion that",

an Investigating Officer draws on the basis of materials collected during the investigation and such conclusion can only form the basis of a competent Court to take,

cognizance thereupon under Section 190(1)(b), Cr.P.C. and to proceed with the case for trial, where the materials collected during the investigation are to be translated",

into legal evidence. The trial Court is then required to base its conclusion solely on the evidence adduced during the trial, and it cannot rely on the investigation or",

the result thereof. Since this is an elementary principle of criminal law, we need not dilate on this point any further."""",

The High Court was, therefore, fully justified in commenting upon the trial Court's impermissible and undue reliance on the evidence of DW 3 and, for that matter, the",

result of his investigation. Incidentally, it may be mentioned that ignoring the report of investigation submitted by the Inspector the Magistrate took cognizance of",

the offences alleged against the appellants and committed the case to the Court of Session..â€,

18. Similar is the judgment of the Honâ€™ble Supreme Court in Rajesh Yadav v. State of U.P., (2022) 12 SCC 200: 2022 Cr.L.J. 2986, wherein",

it was held:-,

â€œ27. Section 173(2) of the CrPC calls upon the investigating officer to file his final report before the court. It being a report is nothing but a piece of evidence. It,

forms a mere opinion of the investigating officer on the materials collected by him. He takes note of the offence and thereafter, conducts an investigation to identify",

the offender, the truth of which can only be decided by the court."""",

19. Therefore, the learned Trial Court erred in relying upon the statement of Jeet Ram (PW11) and the result of the investigation to conclude that the",

accused and the deceased were last seen together.,

20. Learned Trial Court also relied upon the recovery of ₹19,300/- from the possession of accused-Anil Kumar. However, there is nothing on record",

to show that the money belonged to the deceased. Ram Dass (PW5) stated that he had handed over currency notes of ₹2,000/-, 26 currency notes of",

₹500/- and 10 currency notes of ₹100/- total ₹20,000/- to the deceased on 19.03.2018. He identified the currency notes shown to him. He stated in his",

cross-examination that he was not aware whether he had mentioned to the police that 26 currency notes of ₹ 500/-were handed over by him to the,

deceased.,

21. The currency notes are commonly available and there is nothing in the statement of this witness to show that the currency notes shown to him,

during his examination had any distinguishing mark which would enable him to identify them; hence, his testimony that the currency notes handed over",

by him to the deceased were the same currency notes, which were shown to him in the Court is not acceptable.",

22. Learned Trial Court also relied upon various recoveries effected at the instance of the accused to connect the accused with the commission of,

crime. Jeet Ram (PW11) stated that accused Anil Kumar made a disclosure statement in the presence of HHC-Inder Singh and HHC-Kamlesh that,

he could get the currency notes, socks and shoes recovered which he was wearing on the date of the incident and the clothes which he had hidden in",

his house, stone which was used as a weapon of offence and the tree from which he had taken the stick used as a weapon of offence to kill the",

deceased. The disclosure statement (Ext. PW6/A) was reduced into writing. The accused led the police in the presence of Maina Devi and Gopal to,

his house and got ₹ 19,300/- recovered from a backpack. He also got shoes, and socks recovered from a shelf outside the kitchen. The socks were",

blood-stained. Pooja, wife of the accused, produced the clothes which the accused was wearing on the date of the incident. These were also seized.",

The accused identified the plant from which he had broken the stick. The accused also got a stone recovered, which was put in a cloth parcel and the",

parcel was sealed with seal impression â€˜Aâ€™. He stated in his cross-examination that the shoes got recovered by the accused were hunting shoes,

and were commonly available in the market. The stone was not blood stained and it had no specific identification mark. Such stones were commonly,

available in the forest.,

23. HHC-Kamlesh Kumar (PW6) stated that the accused took the police party towards the Jhumkarai forest where Ajay Rana and Vinod Chauhan,

were joined as witnesses. The accused identified the plant from which he had broken the stick. The piece of wood from where the accused had taken,

out the stick was cut and taken into possession as a sample. The accused also got a stone recovered which was put in a cloth parcel and the parcel,

was sealed with seal impression â€˜Aâ€™. These were seized vide memo (Ext. PW6/B). He stated in his cross-examination that the wood piece was,

of â€˜chaleen woodâ€™ as is called in the local language. The wooden piece (Ext. PF1) can be taken out of the plant by twisting and not pulling it,

easily.,

24. The disclosure statement (Ext. PW6/A) reads that the accused could show the place from where the stick was broken and he could also get the,

stone recovered which was thrown by him.,

25. This disclosure statement shows that the stone was not concealed anywhere and was lying in the open. It is an admitted case of the prosecution,

that the forest is an open forest having access to all. It was laid down by the Honâ€™ble Supreme Court in Manjunath v. State of Karnataka,",

2023 SCC OnLine SC 1421, that where the recoveries were effected from a place accessible to the public, the same cannot be relied upon. It was",

observed:,

Â â€œ25. The next aspect is the recovery of the alleged weapons, we have noted the particulars thereof while discussing the findings of the Trial Court. Such",

recoveries were discarded by the trial court stating that the clubs were recovered from a place accessible to the public and, the chopper and the rods were recovered",

from a house where other persons were also residing which compromises the sanctity of such recovery and takes away from the veracity thereof.,

26. Further discovery made, to be one satisfying the requirements of Section 27, Indian Evidence Act it must be a fact that is discovered as a consequence of",

information received from a person in custody. The conditions have been discussed by the Privy Council in PulukuriKotayya v. King Emperor 1946 SCC OnLIne,

PC 47 and the position was reiterated by this Court in Mohd. Inayatullah v. State of Maharashtra (1976) 1 SCC 828, in the following terms:â€"",

â€œ12â€¦It will be seen that the first condition necessary for bringing this section into operation is the discovery of a fact, albeit a relevant fact, in consequence of the",

information received from a person accused of an offence. The second is that the discovery of such fact must be deposed to. The third is that at the time of the,

receipt of the information the accused must be in police custody. The last but the most important condition is that only â€œso much of the informationâ€ as relates,

distinctly to the fact thereby discovered is admissible. The rest of the information has to be excluded. The word â€œdistinctlyâ€ means â€œdirectlyâ€,",

â€œindubitablyâ€, â€œstrictlyâ€, or â€œunmistakablyâ€. The word has been advisedly used to limit and define the scope of the provable information. The phrase",

â€œdistinctly relates to the fact thereby discoveredâ€ is the linchpin of the provision. This phrase refers to that part of the information supplied by the accused which,

is the direct and immediate cause of the discoveryâ€¦â€ (Emphasis supplied),

27. Prima facie, in the present facts, the 3 conditions above appear to be met. However, the Trial Court held, given that the discoveries made were either from a public",

place or from an area where other persons also resided, reliance thereupon, could not be made. We find this approach of the trial court to be correct.",

27.1 This court has, in various judgments, clarified this position. Illustratively, in Jaikam Khan v. State of U.P. (2021) 13 SCC 716 it was observed:â€"",

â€œOne of the alleged recoveries is from the room where deceased Asgari used to sleep. The other two recoveries are from the open field, just behind the house of",

deceased Shaukeen Khan i.e. the place of the incident. It could thus be seen that the recoveries were made from the places, which were accessible to one and all and",

as such, no reliance could be placed on such recoveries.â€",

27.2 Also, in Nikhil Chandra Mondal v. State of W.B. (2023) 6 SCC 605 the Court held:â€"",

â€œ20. The trial court disbelieved the recovery of clothes and weapons on two grounds. Firstly, that there was no memorandum statement of the accused as required",

under Section 27 of the Evidence Act, 1872 and secondly, the recovery of the knife was from an open place accessible to one and all. We find that the approach",

adopted by the trial court was in accordance with the law. However, this circumstance which, in our view, could not have been used, has been employed by the High",

Court to seek corroboration to the extra-judicial confession.â€,

28. As reflected from the record, and in particular the testimony of PW-15 it is clear that the discovery (stick as shown by A10, for instance) was a eucalyptus stick,",

found from the eucalyptus plantation, which indisputably, is a public place and was found a week later. A second and third stick purportedly found half a kilometre",

away on that day itself, was found by a bush, once again, a place of public access. Two further sticks recovered at the instance A6 and A7, were also from public",

places. An iron chain produced from the houses of A1 and A2 is not free from the possibility that any of the other occupants of their house were not responsible for,

it. We, further cannot lose sight of the fact that sticks, whether bamboo or otherwise, are commonplace objects in village life, and therefore, such objects, being",

hardly out of the ordinary, and that too discovered in places of public access, cannot be used to place the gauntlet of guilt on the accused persons.",

26. Since, in the present case, there is no evidence of the exclusive knowledge of the accused, therefore, the stone cannot be connected to the",

accused.,

27. There are other reasons to doubt the recovery of the stone. The recovery memo (Ext. PW6/B) is witnessed by Vinod Chauhan and Ajay Rana.,

Both of whom were not produced before the Court. SI-Jeet Ram (PW11) visited the spot after coming to know of the discovery of the dead body. He,

recovered various articles lying around the dead body on 21.03.2018 in the presence of Roop Lal and Vinod Chauhan. He also recovered a stick (Ext.,

P1) on the same day from the spot at a distance of 200 meters from the dead body. As per the statement of the accused recorded under Section 27,",

he had thrown the stone and the stick at the same place. It is difficult to believe that the investigating officer would not have discovered the stone,

when he had inspected the spot and found other articles on the spot. It was held by Allahabad High Court in Amin v. State, 1957 SCC OnLine All",

331: AIR 1958 All 293: 1958 Cri LJ 462t hat where the investigating officer could have effected the recovery earlier, the subsequent recovery at",

the instance of the accused is suspect. It was observed at page 303:,

â€œ109. Sri Naim appears to us to be quite capable of recovering the ornaments on the 13th and staging a recovery on the 16th. The story of the division of these,

ornaments is also highly suspicious and seems to us to be an attempt to incriminate Shrimati Shakira by proving her exclusive possession over some of the property.,

It does not stand to reason that the mother and son would divide the ornaments, and, even if they intended to do so, they will do it immediately and will not bury",

them at the same place.â€,

28. Delhi High Court also took a similar view in Vijay Kumar v. State, 1995 SCC OnLine Del 364 : (1995) 60 DLT 261: 1996 Cri LJ 2429 :",

(1995) 2 ALT (Cri) (NRC 2) 23 and observed at page 271:,

42. As far as the recovery of a piece of hockey from the room of the appellant, Vijay, is concerned, the said piece of hockey was not lying hidden anywhere. A casual",

search of the room by the police would have yielded the said piece of hockey. Section 27 of the Evidence Act could make such a disclosure statement of the

accused,

in custody admissible which leads to the discovery of a material fact but if a material fact is self-evident to the police, the disclosure statement of the accused of such",

material fact becomes inadmissible. In case a particular material fact is in exclusive knowledge of the accused and he makes a disclosure statement pertaining to the,

same which leads to recovery of such material fact, then and then only such disclosure statement of the accused is admissible in evidence. So, this recovery of a",

piece of hockey cannot be linked to the accused Vijay in view of the above reasons. Moreover, Premwati had stated in Court that Vijay had thrown away the second",

piece of hockey outside his house. If that is so, the disclosure statement of the appellant, Vijay, becomes all the more doubtful. (Emphasis supplied)",

29. It was held in Mani v. State of T.N., (2009) 17 SCC 273: (2011) 1 SCC (Cri) 1001: 2008 SCC OnLine SC 7t5h at the discovery of an article",

at some distance from a dead body at the instance of the accused cannot be believed because it is difficult to believe that the investigating officer,

would not have searched the nearby places after the discovery of the dead body. It was observed at page 278:,

24. Now, it is nobody's case that at the time the discovery was made by Accused 1, Accused 2 also made certain discoveries. Therefore, the witness (PW 15) was not",

certain as to who made the discovery. This is apart from the fact that discovery admittedly was made from 300 ft away from the dead body of Sivakumar and after,

Sivakumar's body was inspected by PW 14 as early as 25-11-1996. It would be impossible to believe that the Inspector did not search the nearby spots and that all the,

articles would remain (sic remained) in the open, unguarded till 6-12-1996 when the discovery had allegedly been made. This was nothing but a farce of a discovery",

and could never have been accepted particularly because all the discovered articles were lying in bare open barely 300 ft away from the body of the deceased,

Sivakumar.â€ (Emphasis supplied),

30. These circumstances cast reasonable doubt on the recovery of the stone at the instance of the accused.,

31. Reliance was also placed on the disclosure statement of the accused that he had killed the deceased with the stick; however, this part of the",

statement is inadmissible. The statement under Section 27 of the Indian Evidence Act can only be used to admit the fact discovered as a consequence,

of information received from the accused. Section 27 of the Indian Evidence Act reads:,

â€œ27. How much of information received from the accused may be proved.,

Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police",

officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.â€",

32. It is apparent from the bare perusal of the section that the whole of the statement made by the accused has not been made admissible but only so,

much of the information that leads to the discovery of the fact is admissible. This provision fell for consideration before the Judicial Committee of the,

Privy Council in Pulukari Kotayya vs. King Emperor AIR 1947 P.C. 67. This judgment is a locus classicus and it settled much of the controversy,

about the interpretation of Section 27. Lord Beaumont J. who spoke on behalf of the Judicial Committee, said:",

Normally, the Section is brought into operation when a person in police custody produces from some place of concealment, some object, such as a dead body, a",

weapon or ornaments, said to be connected with the crime of which the informant is the accused"".",

33. The statement made in the said case by the accused was:,

â€¦About 14 days ago, I, Kotayya and the people of my party lay in wait for Sivayya and others at about sunset time at the corner of the Pulipad tank. We, all beat",

Beddupati China Sivayya and Subayya, to death. The remaining persons, Pullayya, Kotayya and Narayana ran away. Dondapati Ramayya who was in our party",

received blows on his hands. He had a spear in his hands. He gave it to me then. I hid it and my stick in the rick of Venkatanarasu in the village. I will show you if you,

come. We did all this at the instigation of Pulukuri Kotayya.""",

34. It was contended before the Judicial Committee on behalf of the crown that the information given by the person that the weapon produced is the,

one used by him in the commission of the murder would be admissible. This contention was rejected and it was said:,

If this be the effect of Section 27, little substance would remain in the ban imposed by the two preceding sections on confessions made to the police, or by persons",

in police custody. That ban was presumably inspired by the fear of the Legislature that a person under police influence might be induced to confess by the exercise,

of undue pressure. But if all that is required to lift the ban be the inclusion in the confession of information relating to an object subsequently produced, it seems",

reasonable to suppose that the persuasive powers of the police will prove equal to the occasion and that in practice the ban will lose its effect"""",

35. The meaning of the term â€˜fact discoveredâ€™ was explained as follows:,

â€œIn their Lordships' view, it is fallacious to treat the 'fact discovered' within the section as equivalent to the object produced; the fact discovered embraces the",

place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to",

past user, or the past history, of the object produced, is not related to its discovery in the setting in which it is discovered. Information supplied by a person in",

custody that ""I will produce a knife concealed in the roof of my house"" does not lead to the discovery of a knife; knives were discovered many years ago. It leads to",

the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of",

the offence, the fact discovered is very relevant. But if to the statement words be added ""with which I stabbed A"" these words are inadmissible since they do not",

relate to the discovery of the knife in the house of the informant."" (Emphasis supplied).",

36. Ultimately, it was held that the whole of the statement made by the accused in that case except the passage â€œ'I hid it' (a spear) and my stick in",

the rick of Venkatanarasu in the village. I will show if you come"" is inadmissible. It was held:",

The whole of that statement except the passage I hid it [a spear] and my stick in the rick of Venkatanarasu in the village. I will show if you come is inadmissible. In",

the evidence of the witness Potla China Mattayya proving the document the statement that accused 6 said I Mattayya and others went to the corner of the tank-land.,

We killed Sivayya and Subayya must be omitted. A confession of accused 3 was deposed to by the police sub-inspector, who said that accused 3 said to him: ""I",

stabbed Sivayya with a spear, I hid the spear in a yard in my village. I will show you the place.â€ The first sentence must be omitted. This was followed by a",

Mediatornama, Exhibit Q.1, which is unobjectionable except for a sentence in the middle. He said that it was with that spear that he had stabbed Boddupati Sivayya,",

which must be omitted.""",

37. In the present case, the whole of the statement is regarding the past transaction. It does not lead to the discovery of the fact that the stick was",

used to kill the deceased. It was laid down by the Judicial Committee of the Privy Council in Narayan Swami Versus Emperor AIR 1939 PC 47 that,

the article recovered has to be linked with the commission of the crime independently and the prosecution cannot rely upon the statement u/s 27 to,

prove its connection with the commission of a crime. Hon'ble Supreme Court held in Babbu Versus State of M.P. AIR 1979 S.C. 1042 that the,

prosecution has to prove independently that the object recovered was connected with the commission of an offence. It was observed:,

â€œ13. The learned Additional Sessions Judge has also referred to the recovery of Katarnas on the information given by accused Nos. 1, 3 and 5. These recoveries",

hardly have any probative value in the facts and circumstances of this case. If there is no substantive evidence worth the name the recovery of Katarnas would,

hardly advance the prosecution case against the accused. Katarnas appear to have been stained with human blood. However, it is revealing to refer to the recovery",

memos. Katarna is recovered from accused No. 1 under seizure memorandum Ex. P-8 in which it is recited that accused No. 1 made the statement that he would show,

the Katarna with which he assaulted Diwan Singh on 21-9-73 at night. The first part in the seizure memo would be inadmissible because the fact that accused No. 1,

assaulted Diwan Singh is not discovered in pursuance of the information given by accused No. 1. It would be a confessional statement to a police officer hit by,

section 25 of the Evidence Act. The same infirmities were to be found in regard to the recovery memos in respect of accused Nos. 3 and 5. In this background, we are",

not disposed to attach any importance to the recovery of blood-stained Katarnas on the information given by accused Nos. 1, 3 and 5.â€",

38. This position was reiterated in Musheer Khan v. State of M.P., (2010) 2 SCC 748: (2010) 2 SCC (Cri) 1100: 2010 SCC OnLine SC 22 a9t",

page 762, wherein it was observed:",

Â â€œ57. The limited nature of the admissibility of the facts discovered pursuant to the statement of the accused under Section 27 can be illustrated by the following,

example:,

Suppose a person accused of murder deposes to the police officer the fact result of which the weapon with which the crime is committed is discovered, but as a result",

of such discovery no inference can be drawn against the accused, if there is no evidence connecting the knife with the crime alleged to have been committed by the",

accused.â€,

39. Thus, the statement under Section 27 of the Indian Evidence Act cannot be used to prove that the accused had killed the deceased.",

40. The prosecution has also relied upon the recovery of blood-stained socks from the house of the accused. The police also recovered the blood-,

stained shoe. As per the report of analysis (Ext. PX), human blood was detected on the shoes and hood of the accused but it was insufficient for blood",

group examination, however, the human blood of Group â€˜ABâ€™ was detected on the socks. There is a force in the submission of learned counsel",

for the defence that it is highly unlikely that the shoe that was covering the socks had human blood, the blood group of which could not be identified",

whereas the socks inside the show had the blood whose group could be identified easily. Similarly, the report (Ext. PZ1) shows that the socks of the",

accused could generate a DNA profile, which matched the sample of the accused. However, the shoes yielded degraded DNA, which did not show",

proper amplification. This aspect would cast doubt regarding the authenticity of the recovery of the blood stained socks.,

41. There is no other circumstance connecting the accused with the commission of crime. When the prosecution relies upon the circumstantial,

evidence, it is bound to prove all the circumstances and they should lead unerringly towards the guilt of the accused. In the present case, the",

circumstances do not establish a complete chain pointing towards the guilt of the accused. The motive to commit the crime namely the theft of the,

money is not established. The last-seen theory propounded by the prosecution and accepted by the learned Trial Court was also not proved. The,

recovery of the stone from an open place without any concealment when the police had earlier visited the spot will make it doubtful and the recovery,

of the socks is shrouded in suspicious circumstances. Thus, the accused is entitled to the benefit of the doubt, which is extended to him.",

42. Therefore, the present appeal is allowed and the judgment dated 29.03.2022 and order of sentence dated 01.04.2022 passed by the learned Trial",

Court are ordered to be set aside. The accused is acquitted of the commission of the offences punishable under Sections 302, 2015 and 404 of IPC.",

The fine 5 Added vide order dated 29.11.2024 amount be refunded to him in case no appeal is preferred and in case of appeal, the same be dealt with",

as per the orders of the Appellate Court.,

43. In view of the provisions of Section 437-A of the Code of Criminal Procedure (Section 481 of Bhartiya Nagarik Suraksha Sanhita, 2023) the",

appellant is directed to furnish bail bonds in the sum of ₹25,000/- with one surety in the like amount to the satisfaction of the learned Trial Court within",

four weeks, which shall be effective for six months with stipulation that in the event of Special Leave Petition being filed against this judgment, or on",

grant of the leave, the appellant on receipt of notice thereof, shall appear before the Honâ€™ble Supreme Court.",

44. A copy of this judgment along with the record of the learned Trial Court be sent back forthwith. Pending applications, if any, also stand disposed",

of.,