

(2025) 12 SC CK 0044

Supreme Court

Case No: Criminal Appeal No. 5534 Of 2025 (@Special Leave Petition (Criminal) No.6850 Of 2024)

Shaik Shabuddin

APPELLANT

Vs

State Of Telangana

RESPONDENT

Date of Decision: Dec. 17, 2025

Acts Referred:

- Code of Criminal Procedure, 1973- Section 313
- Indian Penal Code, 1860- Section 34, 302, 376D, 404
- Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989- Section 3(1)(w)(i), 3(2)(v)
- Evidence Act, 1872- Section 27, 106

Hon'ble Judges: Ahsanuddin Amanullah, J; K. Vinod Chandran, J

Bench: Division Bench

Final Decision: Partly Allowed

Judgement

K. Vinod Chandran, J

1. Leave granted.

2. In the Special Leave Petition, notice was issued limited to the quantum of sentence. Despite that we perused the judgment to satisfy ourselves regarding the conviction. We have very serious reservation about the conviction under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989 the SC/ST Act and also on certain circumstances found by the Division Bench of the High Court to convict the accused, which we are duty-bound to notice since while confirming the conviction for rape and murder we may not be understood as having approved the said reasoning of the High Court, whose order merges with our order.

3. Briefly stated, on 24.11.2019, the deceased, wife of PW-1 who had been dropped at Yellapatar Village, by PW1, to pursue their vocation of hawking utensils, was

found missing and the calls to her mobile were not answered. A complaint was lodged with the police who along with PW1 and his relatives, searched for the missing person. Eventually her dead body was found on the next day, first detected by PW3, within the bushes on the right side of the road leading to Yellapatar Village. PW1 rushed to the spot, identified the body and immediately intimated the police upon which an inquest was carried out and the criminal law put in motion. Based on Ex. P2 complaint of PW1, PW24 altered the provisions of law to Sections 376D and 302 read with Section 34 of the Indian Penal Code, 1860 the IPC and Section 3(2)(v) of the SC/ST Act.

4. Trial was conducted and A1 to A3 were convicted & sentenced for offences under Sections 302 & 376D read with Section 34 of the IPC and Section 3(2)(v) of the SC/ST Act with death and life imprisonment respectively and fine of Rs.5,000/- (Rupees five thousand) and Rs.2,000/- (Rupees two thousand) with default sentences respectively of simple imprisonment (S.I.) for three and two months. Further, under Section 3(1)(w)(i) of SC/ST Act, a sentence of rigorous imprisonment (R.I.) for 3 years and a fine of Rs.1,000/- (Rupees one thousand) with default sentence of S.I. for 1 month was imposed on all the accused. A2 and A3 were further convicted under Section 404 read with Section 34 of the IPC and sentenced to R.I. for 3 years and to pay fine of Rs.1,000/- each with default sentence of S.I. for 1 month.

5. Prosecution allegation was that A1 to A3 followed the deceased while she was proceeding to the village, and in an isolated area, pulled her towards the bushes and committed rape on her one by one, despite vehement protests made by her. To ensure that the accused are not implicated after the commission of rape, A1 slit her throat while A2 and A3 held her hands and legs to render her immobile. It was also alleged that A2 stole a mobile from the woman and A3 took Rs.200/- which was found in his possession.

6. The trial court had relied on various circumstances, one of which was the last seen together theory, based only on the deposition of PW4 and PW5 that they saw the woman and A1 to A3 proceeding in the same direction towards Yellapatar Village. The High Court also found that the circumstance of no explanation having been offered, after being seen together, provides an additional link in the chain of circumstances under Section 106 of the Indian

Evidence Act, 1872 the Evidence Act. We cannot but notice that there is no acquaintance proved between the accused and the deceased and there cannot be any last seen together theory propounded as a circumstance in the above case, though it has to be accepted that the accused and the deceased were found in the same vicinity just prior to the time of the crime.

7. Further, the High Court relied upon the confession made by the accused to one PW15 who was called to the police station as a witness. It was the prosecution version that PW25, the DSP Asifabad, the Investigating Officer, secured the presence

of PW15 and one Md. Yunus as panch witnesses and the confession was made to them. There can be no reliance placed on such a confession at the behest of the police and the finding of the High Court that it could be relied on cannot at all be countenanced for the reason also that it was made while in police custody. The next aspect on which we have serious reservation is with respect to the recovery made of MO1/mobile, MO11/knife and MO21/cash as purportedly admissible under Section 27 of the Evidence Act. Even as per the prosecution story, the same were handed over along with the confession, to PW15, which material objects were said to be in the possession of the accused at the time of arrest. MOs 12 to 20/clothes were projected as seized under Section 27 which were worn by the accused at the time of arrest.

8. There was no concealment as such and in any event, on an arrest, when the material objects could have been seized from the body of the accused on a mere search by the police, the attempt to convert it as a recovery under Section 27 cannot at all be accepted. It goes against the very principle of Section 27, insofar as the disclosure relied upon can only relate to the concealment and the recovery of material objects on such disclosure made, which recovery has to be made in the persons of witnesses. We find absolutely no reason to accept the circumstances as hereinabove stated, relied on by the High Court, to convict the accused.

9. Having said that, we notice the fact that the accused were in the vicinity in which the deceased was also present just prior to her rape and murder; clearly established by the prosecution. PW5 while he was crossing Yellapatar Village on his motorcycle at about 9:00 am saw the accused going to Ramnaik Thanda and noticed that the deceased was also proceeding in the same direction with a bag full of utensils on her head. PW4 who was working in the adjacent field on the fateful day, at about 10:30 am, heard the shrieks of a lady and went in search, but failed to find anybody. He also deposed of having seen the accused at the same time proceeding from Ramnaik Thanda, the specific location in which the dead body was detected, to Yellapatar Village. He spoke of PW1, the husband of the deceased having come in search of her in the evening and confirmed that the shrieks he heard came from the location in which the body was eventually found. PW6 on the very same day, at about 11:30 am, spoke of the accused having come to his kirana shop and sat on a bench. A2 took water from a pot and drank it, and PW6 observed blood stains on the clothes of all the accused. PW8 deposed that the accused, residents of the village were missing from the village after the incident took place.

10. The medical evidence clearly indicated a homicide, and it noticed 14 ante-mortem external injuries, which also conclusively proved that the victim was raped. The approximate time of death indicated in the preliminary postmortem report produced as Ex. P18 tallied with the time the witnesses saw the accused and the deceased and when PW4 heard the shrieks of a woman. The time indicated of the death, as noticed in Ex. P18, preliminary postmortem examination report, was

24 to 28 hours prior, which placed the murder exactly at the time when the above-mentioned witnesses saw the accused and the deceased, then alive, in the vicinity of Ramnaik Thanda.

11. PW18, the doctor who conducted postmortem, also deposed that the vaginal smear and swab of semen and spermatozoa and DNA profile from the dead body was handed over to the police for onboard transmission to the Forensic Science Laboratory, Hyderabad for analysis. Blood samples were also obtained from the accused, and they were also sent for DNA test and serology report as deposed by PW21 who collected the blood samples. PW21 also spoke of the Autosomal STR analysis having indicated that the seminal stains on the saree of the victim matched with the DNA profiles of A1 and A2 and they are of the same biological origin.

12. The medical evidence regarding the homicidal death and the rape committed on the victim, the time of death as stated in the postmortem report, the accused having been found in the same vicinity as the victim and the failure of the accused to establish the alibi as spoken of under Section 313 questioning, would provide a complete chain of circumstances to convict the accused under Sections 302 & 376D read with Section 34 of the IPC.

13. However, we are not convinced that any offence is made out or that there could be any conviction entered under the provisions of the SC/ST Act. Though the prosecution has proved the caste of the victim/deceased, there is nothing to indicate that the accused knew the caste of the victim or even that they were in any manner acquainted with the victim, to be aware of her caste status. The offence hence cannot be said to have been committed with the knowledge of the caste status of the victim; which is an essential ingredient under both the provisions charged under the SC/ST Act.

14. Further, the conviction under Section 404 against A2 cannot also be sustained since, as we found, there can be no circumstance of Section 27 recovery accepted as an incriminating circumstance, on the alleged recovery of the mobile by PW15, as handed over to him by A2. Yet again, though, the mobile number has been proved to be that of PW11 as per the evidence of PW22, there is nothing to indicate that the mobile handset was the one in which the SIM card was used. The prosecution has not produced any SIM card, and their case is that while the mobile was appropriated from the possession of the deceased victim, the SIM card was thrown away. Neither was the SIM card traced out nor is the ownership of the mobile established which persuades us to acquit A2 under Section 404 read with Section 34 of the IPC. So would A2 be acquitted of the offences alleged under Sections 3(1)(w)(i) & 3(2)(v) of the SC/ST Act.

15. Now, we come to the sentencing, which the High Court has modified from death sentence as awarded by the trial court to imprisonment of life, under Section 302, with a rider that the accused shall remain in custody till the last breath, without

remission.

16. We are in this case concerned only with A2 and we have considered the mitigating circumstances with respect to A2, as found by the High Court. A2 was aged 40 years at the time of commission of the offence, and he is said to have a family consisting of his wife, four children and aged parents. He was the only earning member of the family. A2 did not have any past criminal record, nor can it be said, as has been found by the High Court, that he poses a grave danger to the society at large, which requires his life to be extinguished. It was also found by the High Court, rightly so, that the subject case is not one which can be categorized as the rarest of the rare requiring death to be handed down. The trial court has further noticed that despite A2 being in custody, there is no report from the jail authorities about his adverse conduct or that he is beyond reformation. Even before us, the State Counsel does not argue on any such adverse conduct while in prison or that the person is beyond reformation. Despite the aforesaid circumstances, the Division Bench proceeded to impose a sentence of life imprisonment, till the remainder of his life. We are convinced that the case is one in which imprisonment of life till the remainder of A2s life can be modified to one extending to 25 years without remission. The conviction under Section 302 read with Section 34 of the IPC is thus modified and that under 376D read with Section 34 of the IPC is affirmed, which sentences shall be concurrently suffered.

17. The appeal stands partly allowed.

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

19. Before leaving the matter, we notice that all together there were three accused in the case, all of whom were convicted and sentenced, identically. There is no appeal filed by the other two accused. We direct the Registry of this Court to forward a copy of this Judgment to the Member Secretary, Telangana Legal Services Authority, who shall through the concerned District Legal Services Authority provide legal assistance to the other accused to file an appeal to this Court through the Supreme Court Legal Services Committee.