[2023] 15 S.C.R. 1 : 2023 INSC 839

CASE DETAILS

RAJESH & ANR.

v.

THE STATE OF MADHYA PRADESH

(Criminal Appeal No(s). 793-794 of 2022)

SEPTEMBER 21, 2023

[B. R. GAVAI, J. B PARDIWALA AND SANJAY KUMAR, JJ.]

HEADNOTES

Issue for consideration: In a case based on circumstantial evidence as there was no eyewitness to the kidnapping and murder, and where the prosecution's case essentially turned upon the 'recoveries' made at the behest of the appellants-convicts, purportedly u/s.27, Evidence Act, whether their conviction on different counts and death sentence imposed on two out of the three appellants was justified, when the confessions were made before their arrest and prior to being 'accused of any offence'.

Evidence Act, 1872 – ss.26, 27 – Being in 'the custody of a police officer' and being 'accused of an offence' – Pre-requisites to render a confession made to the police admissible to a limited extent by bringing into play the exception postulated u/s.27:

Held: s.26 provides that no confession made by any person whilst he is in the custody of a police officer shall be proved against such person, unless made in the immediate presence of a Magistrate – s.27 is in the nature of an exception to s.26 – It is essential u/s.27 that the person concerned must be 'accused of an offence' and being in the 'custody of a police officer', he or she must give information leading to the discovery of a fact and so much of that information, whether it amounts to a confession or not, that relates distinctly to the fact discovered, may be proved against him – Both aspects, viz, being in 'the custody of a police officer' and being 'accused of an offence', are indispensable pre-requisites to render a confession made to the police admissible to a limited extent, by bringing into play the exception postulated u/s. 27 – In the present case, though one of the appellant was taken to the police station, be it on

29.03.2013 or even earlier, he could not be said to be in 'police custody' till he was arrested at 18:30 hours on 29.03.2013, as he did not figure as an 'accused' in the FIR and was not 'accused of any offence' till his arrest – Therefore, it was his arrest which resulted in actual 'police custody', and the confession made by him, before such arrest and prior to his being 'accused of any offence', would be directly hit by s.26 and there is no possibility of applying the exception u/s.27 to any information given by him in the course of such confession, even if it may have led to the discovery of any fact – Thus, the purported discovery of the dead body, the murder weapon and the other material objects, even if it was at his behest, cannot be proved against him, as he was not 'accused of any offence' and was not in 'police custody' at the point of time he allegedly made a confession – Similarly, the other two appellants were also not named as the 'accused' in the FIR and were not 'accused of any offence' till they were arrested and taken into 'police custody', well after the recording of their confessions and the alleged seizures based thereon – This lapse on the part of the police is fatal – There are yawning infirmities and gaps in the chain of circumstantial evidence – The degree of proof required to hold appellants guilty beyond reasonable doubt, on the strength of circumstantial evidence, not established – No valid reasons were put forth by the Trial Court and the High Court as to why this case qualified as the 'rarest of rare cases', for imposing and sustaining capital punishment – Conviction and sentences of all the appellants on all counts set aside and they are acquitted by giving them the benefit of doubt – Penal Code, 1860 – ss. 302, 364A, 120B, 201. [Paras 22, 27 and 39]

Criminal Law – Investigation – Panchnamas and memos:

Held: In the present case, the manner and method in which the panchnamas and memos were prepared leave the prosecution high and dry – The witnesses to the panchnamas and the seizures acted as mere attestors to the documents and did not disclose in their own words as to how these objects were discovered, i.e., at whose instance and how – No lawful validity attaches to these proceedings recorded by the police in the context of collection of all this evidence – Code of Criminal Procedure, 1973. [Para 31, 32]

Evidence – DNA evidence- hair, source and origin suspected – Non-reliance upon:

Held: In the present case, DNA evidence was also relied upon by the prosecution, by projecting a scenario that the deceased had struggled with his assailant and in the course of that scuffle, he managed to pull out some hair from the head of his assailant and they remained in his hand till the discovery of his body – DNA analysis of that hair proved that they were those of one of the appellant, 'RY' – However, on facts, this story is found to be bereft of logic – Further, as there is a doubt as to when 'RY' was taken by the police and as to whether his hair could have been pulled out by the police while he was in their control, the possibility of such evidence being introduced by the police themselves cannot be ruled out – Thus, as the source and origin of the DNA evidence, viz., the hair, is rendered suspect, the end result of that DNA analysis serves no real purpose in establishing the prosecution's case. [Para 33]

Criminal Law – Police investigation – Disappointing standards, noted with concern – Dr. Justice V.S. Malimath's 'Committee on Reforms of Criminal Justice System'; Law Commission of India Report No.239 – Discussed.

LIST OF CITATIONS AND OTHER REFERENCES

C. Chenga Reddy and others vs. State of A.P [1996] 3 Suppl. SCR 479 : (1996) 10 SCC 193; *Ramreddy Rajesh Khanna Reddy vs. State of A.P.* [2006] 3 SCR 348 : (2006) 10 SCC 172; *Majenderan Langeswaran vs. State (NCT of Delhi) and another* [2013] 10 SCR 907 : (2013) 7 SCC 192; *Sharad Birdhichand Sarda vs. State of Maharashtra* [1985] 1 SCR 88 : (1984) 4 SCC 116; *Hanumant vs. State of Madhya Pradesh* (1952) 2 SCC 71; *Padala Veera Reddy vs. State of Andhra Pradesh and others* 1989 Supp (2) SCC 706; *Bodhraj alias Bodha and others vs. State of Jammu & Kashmir* [2002] 2 Suppl. SCR 67 : (2002) 8 SCC 45; *State of Karnataka vs. David Rozario and another* [2002] 2 Suppl. SCR 419 : (2002) 7 SCC 728; *Ashish Jain vs. Makrand Singh and others* [2019] 1 SCR 345 : (2019) 3 SCC 770; *Boby vs. State of Kerala Criminal Appeal No. 1439 of 2009, decided on 12.01.2023; Yakub Abdul Razak Memon vs. State of Maharashtra through CBI, Bombay* [2013] 15 SCR 1 : (2013) 13 SCC 1; *Ramanand @*

Nandlal Bharti vs. State of Uttar Pradesh Criminal Appeal Nos. 64-65 of 2022, decided on 13.10.2022:2022 SCC OnLine SC 1396; *Khet Singh vs. Union of India* [2002] 2 SCR 598 : (2002) 4 SCC 380; *Manoj and others vs. State of Madhya Pradesh* (2023) 2 SCC 353 – relied on.

Pulukuri Kotayya vs. King Emperor AIR 1947 Privy Council 67 – referred to.

OTHER CASE DETAILS INCLUDING IMPUGNED ORDER AND APPEARANCES

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos. 793-794 of 2022.

From the Judgment and Order dated 10.08.2017 of the High Court of Madhya Pradesh, Principal Seat at Jabalpur in Cr.RFC No.1 of 2017 and Crl.A. No.84 of 2017.

With

Criminal Appeal No.795 of 2022.

Appearances:

Sidharth Luthra, Sr. Adv., Ms. Supriya Juneja, Aditya Singla, Bhavesh Seth, Shakti Singh, Ayush Aggarwal, Ayush Agarwal, Udbhav Sinha, Advs. for the Appellants.

Shreeyash Uday Lalit, Pashupathi Nath Razdan, Abhinav Aggarwal, Krishnagopal Abhay, Ms. Runjhun Garg, Ms. Maitreyee Jagat Joshi, Astik Gupta, Ms. Ayushi Mittal, Kuldeep Kumar Shukla, Vipul Abhishek, Advs. for the Respondent.

JUDGMENT / ORDER OF THE SUPREME COURT

JUDGMENT

SANJAY KUMAR, J.

1. Ajit Pal @ Bobby, a 15-year-old lad, was killed brutally in the last week of July, 2013. A neighbour, Om Prakash Yadav, along with his brother, Raja Yadav, and son, Rajesh @ Rakesh Yadav, stood trial in Sessions Case No. 560 of 2013 for Ajit Pal's murder and connected offences. By judgment dated 29.12.2016 passed therein, the learned Additional Sessions Judge,

Jabalpur, Madhya Pradesh, convicted all three of them on different counts. Om Prakash Yadav was held guilty under Section 364A read with Section 120B IPC while Raja Yadav and Rajesh Yadav were held guilty of offences under Section 302 IPC read with Section 120B IPC; Section 364A read with Section 120B IPC; and Section 201 IPC. Sentences were passed against the three of them on the same day. Om Prakash Yadav was sentenced to life imprisonment along with default imprisonment of two months, if he failed to pay a fine of ₹2,000/-. Raja Yadav and Rajesh Yadav were sentenced to death for the offences under Sections 302 and 364A IPC and to two months default imprisonment each, if they individually failed to pay the fine amounts of ₹1,000/- and ₹1,000/- respectively. Both of them were also sentenced to five years rigorous imprisonment and payment of fine of ₹500/- each in relation to the offence under Section 201 IPC coupled with one month's default imprisonment.

2. Aggrieved thereby, all three convicts appealed to the High Court of Madhya Pradesh. Their appeals were clubbed with 'In reference (CRRFC-1 of 2017)' received from the Sessions Court in the light of the death sentences. By judgment dated 10.08.2017 delivered in Criminal Appeal No. 83 of 2017, filed by Om Prakash Yadav, and Criminal Appeal No. 84 of 2017, filed by Rajesh Yadav and Raja Yadav, along with 'In reference (CRRFC-1 of 2017)', a Division Bench of the Madhya Pradesh High Court confirmed their conviction and sentences, including the death penalty visited upon Raja Yadav and Rajesh Yadav.

3. Assailing this verdict, the three convicts are before this Court by way of these appeals by special leave. Criminal Appeal No. 793 of 2022 was filed by Rajesh Yadav and Raja Yadav in the context of Criminal Appeal No. 84 of 2017, while Criminal Appeal No. 794 of 2022 was filed by them in relation to 'In reference (CRRFC-1 of 2017)'. Criminal Appeal No. 795 of 2017 was filed by Om Prakash Yadav against the dismissal of Criminal Appeal No. 83 of 2017.

4. To establish its case, the prosecution had examined 17 witnesses before the Trial Court and marked 45 exhibits. The defence examined 3 witnesses and adduced 14 exhibits in evidence.

5. In brief, the prosecution's case is as follows: Rajwant Kaur (PW-1), Ajit Pal's mother, received a substantial sum of money upon sale of

some property by her father. This sale was effected on 22.03.2013 but prior to that, a sum of ₹10 lakhs was received by her in cash. On the date of registration of the sale deed, a sum of ₹27.5 lakhs was received by cheque, in the name of her father. The balance amount was also received in cash on the same day. Out of the ₹10 lakhs received by her, PW-1 created a fixed deposit for ₹9 lakhs and ₹1 lakh was kept in her account. This information was in the knowledge of Om Prakash Yadav, a neighbour, and his entire family. While so, on 26.03.2013, PW-1's son, Ajit Pal, left the house at 9 o'clock in the night to see the 'Holika' and did not return. PW-1 lodged a 'missing person' report (Ex. P1) at Gorakhpur Police Station on 27.03.2013 at 16:15 hours. On 28.03.2013, PW-1's brother, Amarjeet Singh @ Mitthu (PW-2), and Om Prakash Yadav went to the Gurudwara in Gwarighat to search for the boy. They did not find him there but while they were returning, PW-2 received a call on his mobile phone from mobile number 8305620342. The caller said - "I am Khan speaking, Bobby is with me. Send me 50 lakh rupees." PW-2 went to PW-1 to tell her about this and at that time, another call came on his mobile phone from the same number. PW-2 gave the phone to PW-1 and the caller said "I am Khan speaking. Your Bobby is with me. Send 50 lakh rupees and if you tell the police or any other person then I will cut Bobby's throat and kill him." PW-1 told him not to do that and asked to speak to her child. She then heard a voice saying: "Mummy, save me, Mummy, save me, I am Bobby". PW1 stated that, on hearing Bobby's voice, she fell down and the mobile fell from her hand. Om Prakash Yadav took the phone and started speaking to the caller. He said "Tell us quickly where to get the money and I am getting the money with (sic) Didi". Then, Monu Gujral (PW-10), another neighbour, took the phone but it was cut. PW-10 then used his own phone to call the kidnapper on the same number and asked to speak to Bobby. When the kidnapper let him do so, PW-10 told PW-1 that it was not Bobby's voice. Then, the caller said to PW-10 that Bobby had told him that his mother had ₹3 lakh; to send the same right away and the balance ₹20 lakh could be given in 1 month.

6. Om Prakash Yadav pressed upon PW-1 to arrange ₹1 lakh and to withdraw the rest of the ₹20 lakhs from the bank. However, PW-1 could not give ₹1 lakh to Om Prakash Yadav as there were relatives in her house. PW-10 wrote down the mobile number from which the kidnapper had

called, viz., 8305620342, on a piece of paper and gave it to PW-1. She gave the said number to the police. When she came back from the police station, Om Prakash Yadav came to her and asked her not to tell the police anything and that Bobby would be freed by midnight. Later, Raja Yadav came to PW-1's house at about 11 o'clock in the night and told her that her brother, PW-2, and her other brother, Major Singh, had kidnapped her son in their greed for money. Raja Yadav had a sword in his hand and told PW-1 that he would cut the throats of her brothers if she asked him to. PW-1 told him not to do any such thing as her brothers would not do something like that.

7. On 28.03.2013 at about 3:30 pm, basing on the ransom calls received, PW-2filed a report with the Gorakhpur Police Station. On that basis, FIR No. 273/13 (Ex. P35) was registered at 18:20 hours against unknown persons under Sections 364A and 365 IPC. Call details and IMEI data were obtained by the Investigating Officer (PW-16) from the Cyber Cell for mobile number 8305620342 from which the ransom calls had been made. PW-16 was informed by the Cyber Cell that the mobile phone handset with IMEI No. 358327028551270 was used to make the ransom calls and the handset with this IMEI number was also used with mobile number 9993135127, which was issued to Om Prakash Yadav. On receiving this information, PW-16 went to the house of Om Prakash Yadav in Narmada Nagar, Gwarighat, on 29.03.2013. PW-16 took Rajesh Yadav to the police station and questioned him at 13:45 hours, whereupon he confessed to having killed Ajit Pal, along with Raja Yadav. PW-16 recorded a Memorandum (Ex. P8) containing the confession of Rajesh Yadav, wherein he also stated that he would help recover Ajit Pal's body and the murder weapon. Rajesh Yadav and PW-16, along with witnesses, then went to Narmada Nagar. Rajesh Yadav led them to a well near Khandari Canal. Ajit Pal's body was found in the well. It was stuffed in a white plastic sack. The body was identified as that of Ajit Pal by the witnesses present. Ajit Pal's throat was cut and there was hair entangled in his right-hand fingers. The police prepared a Panchayatnama (Ex. P2). It bears the signature of PW-2. The Naksha Panchayatnama (Ex. P3) was also signed by PW-2. Rajesh Yadav pointed out an empty liquor bottle lying at some distance. The same was seized under a Property Seizure Memo (Ex. P10). An iron knife was also seized at the behest of Rajesh Yadav

from the canal. There were blood-like stains on the knife. The seizure was effected in the presence of witnesses under a Property Seizure Memo (Ex. P11). Rajesh Yadav was then arrested on 29.03.2013 at 18:30 hours under an Arrest Memo (Ex. P36).

8. PW-16 again went to the house of Rajesh Yadav on 30.03.2013 to search for the SIM cardof mobile number 8305620342, but it was not found. Ex. P37 is the House Search Panchnama in that regard. On 31.03.2013, Rajesh Yadav was again questioned in Gorakhpur Police Station in the presence of witnesses and his statement was recorded in a Memorandum (Ex. P15). He stated that the mobile phone from which the ransom calls were made was with his brother, Brijesh Yadav, and that he would help recover it. On 31.03.2013, Brijesh Yadav was taken to Gorakhpur Police Station and questioned in the presence of witnesses. He made a statement, recorded in a Memorandum (Ex. P17), that he had hidden the mobile phones given by his brother, Rajesh Yadav, in a suitcase in his room. Brijesh took the police and witnesses to the house and a double-SIM mobile phone handset, with IMEI Nos. 358327028551278 and 358327028653272, was seized. Another mobile phone of Micromax company with SIM No. 9993135127 and IMEI Nos. 910549001346373 and 910549001754378 was also seized. The Seizure Memo is Ex. P19.

9. On 31.03.2015 at 15:00 hours, PW-16 questioned Raja Yadav in Gorakhpur Police Station in the presence of witnesses. He stated that he had hidden the blood-stained clothes worn by him at the time of the incident and would help recover the same. On the basis of this statement, recorded in a Memorandum (Ex. P16), Raja Yadav took the police and witnesses to his Dairy in Narmada Nagar, where his clothes, with blood-like stains, were seized under a Seizure Memo (Ex. P18). Raja Yadav was arrested on 31.03.2013 under an Arrest Memo (Ex. P20) at 17:40 hours.

10. Om Prakash Yadav was taken to Gorakhpur Police Station on 05.04.2013 and questioned in the presence of witnesses. He stated that the blood-stained clothes worn by Rajesh Yadav at the time of the incident were hidden by him in a plastic bag under some hay in a room of his house. This statement was recorded in a Memorandum (Ex. P22) and on that basis, one black T-shirt, one black full lower and one light green Bermuda were found under the hay in a room of his house. The clothes

were seized at 15:15 hours on 05.04.2013 under a Seizure Memo (Ex. P23). Om Prakash Yadav was arrested on 05.04.2013 at 15:30 hours under an Arrest Memo (Ex. P24).

11. The hair seized from the right fist of the deceased was sent for DNA analysis and for comparison with the blood samples of Rajesh Yadav and Raja Yadav. The DNA Test Report revealed that the said hair belonged to Rajesh Yadav. The autopsy of the body was done by Dr. Vivek Shrivastav (PW-7). His postmortem report (Ex. P7) indicated that the death had occurred 3 to 5 days prior to the examination and the cause of death was haemorrhagic shock which occurred due to the throat being cut prior to death. The postmortem examination was conducted by him at 10:15 hours on 30.03.2013.

12. According to the prosecution, the ransom calls were made by Raja Yadav by inserting the SIM card with mobile number 8305620342 into Om Prakash Yadav's mobile phone handset bearing IMEI No. 358327028551270. Thereafter, the said SIM card was destroyed and Om Prakash Yadav's SIM card with mobile number 9993135127 was inserted into the handset. As per the prosecution, though the ransom calls were made during the morning hours on 28.03.2013, Ajit Pal was killed on the night of 26.03.2013 itself by Rajesh Yadav and Raja Yadav. They lured him by offering him alcohol, whereupon Raja Yadav and Ajit Pal drank whisky. Raja Yadav then caught hold of Ajit Pal and Rajesh Yadav cut his throat. Rajesh Yadav then got a white plastic sack and they hid the body in the well. This, in sum and substance, was the prosecution's case.

13. Before parting with the factual narrative, we may note that the prosecution tried to project Puran Singh (PW-3) as a witness to buttress a 'last seen' theory so as to build up a stronger case. This witness stated that his daughter was married to PW-2. He stated that he knew the accused also. He claimed that on 26.03.2013 at 6 pm, he had gone to Narmada Nagar to give a box of sweets to his daughter for Holi. He further stated that, after leaving her house, he reached the railway crossing and met Raja Yadav, Rajesh Yadav and Ajit Pal. Ajit Pal greeted him and he asked Ajit Pal why he was not at home as it was past 9 pm. Ajit Pal told him that he was going to see the 'Holika' and left with the others. PW-3 stated that he then went home and was informed by his daughter on 28.03.2013 that Ajit Pal had been

kidnapped and ransom calls had been made. On 29.03.2013, his daughter informed him that Ajit Pal's dead body was found inside a well and that Raja Yadav, Rajesh Yadav, Brijesh Yadav and Om Prakash Yadav had helped recover it. PW-3 stated that he went for Ajay Pal's last rites on 30.03.2013 and when he met the TownInspectorat the crossing, he told him that he had met Ajit Pal along with Raja Yadav and Rajesh Yadav on 26.03.2013. This version of PW-3 was accepted by the Trial Court but was disbelieved by the High Court. The 'last seen' theory sought to be built up by the prosecution, therefore, fell to the ground.

14. A conspectus of the prosecution's case clearly reveals that it is poised entirely on circumstantial evidence as there was no eyewitness to the kidnapping and murder of Ajit Pal. In a case resting on circumstantial evidence, the prosecution must establish a chain of unbroken events unerringly pointing to the guilt of the accused and none other [See ***C. Chenga Reddy and others vs. State of A.P[1], Ramreddy Rajesh Khanna Reddy vs. State of A.P.[2], Majenderan Langeswaran vs. State (NCT of Delhi) and another[3]and Sharad Birdhichand Sarda vs. State of Maharashtra[4]].*** As long back as in the year 1952, in ***Hanumant vs. State of Madhya Pradesh[5]***, a 3-Judge Bench of this Court observed as under:

> 'It is well to remember that in cases where the evidence is of a circumstantial nature, 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 of a conclusive nature 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.'

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1 (1996) 10 SCC 193
2 (2006) 10 SCC 172
3 (2013) 7 SCC 192
4 (1984) 4 SCC 116
5 (1952) 2 SCC 71

Again, in ***Padala Veera Reddy vs. State of Andhra Pradesh and others***[6], this Court affirmed that when a case rests solely upon circumstantial evidence, such evidence must satisfy the following tests:

> '1. The circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established;
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> 2. Those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
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> 3. The circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and
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> 4. The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.'

15. Applying these standards presently, we find that the prosecution utterly failed to pass muster in establishing its case. There are cavernous gaps in the evidence that the prosecution would offer as an 'unbroken chain unerringly pointing to the guilt of the appellants'. Discrepancies galore in the prosecution's case tear asunder the fabric of its purported version as to how events unfolded. Oftentimes, Courts find that reckless overzealousness and unbridled fervour coupled with scant regard for due procedures and practices on the part of the police, in picking upon those whom they perceive to be the guilty party and then building up a case against them, accomplishes the direct opposite of what they seek to achieve, by exposing gaping holes and weak links in the chain of evidence that they ultimately offer, as is the situation now.

16. To begin with, there is no clarity as to the time at which Ajit Pal went missing. Ex. P1, being the 'missing person' report lodged by Rajwant Kaur (PW-1), recorded that Ajit Pal left the house on 26.03.2013

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6 1989 Supp (2) SCC 706

at 9 o'clock and went somewhere and that he was searched for but was not found. Significantly, there is no mention therein of whether it was at 9 am or 9 pm that Ajit Pal had left the house or that it was to see the 'Holika'. PW-6 is the Chief Constable at Gorakhpur Police Station who recorded Ex. P1 on 27.03.2013. He stated that PW-1 reported that her son, Ajit Pal, had left the house on 26.03.2013 at 9 o'clock without telling anyone and he had not been found despite their search. There is a mention of the time as 9 o'clock, without specifying whether it was in the morning or night and again, no mention of the 'Holika'. However, FIR No.273/13 (Ex. P35), registered on 28.03.2013 at 18:20 hours, recorded that Ajit Pal had left the house on 26.03.2013 at '9 in the morning' without telling anyone and that he was searched for everywhere but was not found. Again, there is no mention therein of his having gone to see the Holika, but there is now clear ambiguity whether Ajit Pal went missing on 26.03.2013 at 9 o'clock in the morning itself or at 9 o'clock at night. Further, the prosecution would have it that the kidnappers were not even certain as to the ransom amount that they wanted. Several varying figures find mention in the prosecution's case. If the very motive for the offence was to collect ransom, it is doubtful whether the kidnappers would have been so equivocal about their demand.

17. Adding to the confusion, Rajwant Kaur (PW-1) stated during her cross-examination that the person on the phone who made the ransom call was a stranger and then went on to add that she had recognised the voicebut as her child's life was in danger, she did not tell the police. She further stated that she did not say that she had recognized the voice until the end. She also admitted that she did not even mention in her examination-in-chief that she had recognised the voice. Compounding matters further, she stated that the police had used tracking dogs on 29.03.2013 but denied the suggestion that the dogs had detected the body in the well. According to her, the dogs were used in the evening after the body was taken out from the well in the afternoon. Thereafter, she said that the tracking dogs had gone to the well and washing area at 7-8 o'clock but she did not remember on which dateit was,but it was after the body was found. Similarly, Jitendra Singh (PW-8), a close relation of PW-1 and a key witness to the prosecution's seizure memos, stated that he had heard of sniffer dogs being used between 28.03.2013 and 29.03.2013 but it was not in his presence. As to why sniffer/tracking dogs

would be pressed into service after the police found the dead body, the murder weapon and other material objects is not comprehensible. Notably, the Investigating Officer (PW-16) did not even mention the use of sniffer/ tracking dogs during investigation. This suppression, be it for whatever reason, does not reflect well upon the prosecution.

18. These being glaring disparities in the very foundation of the case, things get progressively worse.Saidutt Bohare (PW-15), the Nodal Officer from Bharti Airtel Limited, who furnished the call data to the police, said that he sent those details by email to the Police Superintendent's Office when he was asked. He produced a copy of the email, containing the call details sent to the Police Superintendent's office (Ex. P31). He stated that the subscriber of mobile number 9993135127 was Om Prakash, son of Buletan Yadav, and furnished the call details and IMEI data. The call data statement (Ex. P31) reveals that it was made available to the police at 18:05 hours on 28.03.2013. It was only thereafter that the FIR was registered at 18:20 hours. However, though the call data statement was sufficient to link Om Prakash Yadav with the ransom calls, the police chose to mention in the FIR that the accused was 'Unknown'. Further, if Ex. P31 statement pointed to the involvement of Om Prakash Yadav, as claimed by the Investigating Officer (PW-16), there is no explanation forthcoming as to why the police picked up Rajesh Yadav first.

19. Further, and most crucial of all, there is no clarity as to when the appellants were actually taken into 'custody' by the police. PW-2 stated in his examination-in-chief that the police caught Rajesh Yadav and took him to Gorakhpur Police Station during the afternoon hours of 28.03.2013 itself. During his cross-examination, PW-2 again asserted that the police did not take Om Prakash Yadav on 28.03.2013 but they took Rajesh Yadav and Raja Yadav. PW-2 categorically denied the suggestion that the police did not take Raja Yadav and Rajesh Yadav on 28.03.2013 and that they took them on 29.03.2013. Shiv Prakash (PW-4), a relation of the accused, also stated that the Gorakhpur police had taken him along with Raja Yadav, Brijesh Yadav, Om Prakash Yadav and Rajesh Yadav and held them in the police station on the night of 28.03.2013 itself, where they were beaten. He was declared hostile and cross-examined by the prosecution. He again claimed that the police had taken them on the night of 28.03.2013. He stated that he

was released on the 5th from Gorakhpur Police Station but he did not make a complaint due to fear, as the police had beaten him a lot.

20. Princy Thakur (DW-2) stated that she used to visit Om Prakash Yadav's house since a long time as her mother used to work for them. She claimed that the Gorakhpur police arrested Raja Yadav and Rajesh Yadav at 3-4 pm on 27.03.2013 itself and took them for questioning to the police station. She stated that, at about 8-9 pm on that day, the police took her also to Gorakhpur Police Station for questioning. She alleged that the police seized all their mobiles. According to her, the police beat Raja Yadav and Rajesh Yadav a lot. She further stated that the police pulled out Rajesh Yadav's hair and that the three of them were questioned all day and night. She further claimed that, on 30.03.2013, the police brought Om Prakash Yadav to the police station at 2-3 o'clock. She asserted that the police beat Om Prakash Yadav a lot and that she saw it. Om Prakash was stated to have fallen down unconscious and two policemen, Rajesh Nag and Jugal Kishore, took him to Bhandari Hospital. She stated that, when she was released on 01.04.2013, she went to see Om Prakash Yadav at Bhandari Hospital and there were four policemen there, guarding him to ensure that he did not run away. She said that she used to go to give food every day to Om Prakash Yadav and the police were present all day and all night. She said that the police seized her mobile and she got it back through the Court on handing over a receipt. The evidence of this defence witness remained practically unshaken during her cross-examination. The prosecution conveniently chose to ignore this witness altogether and made no mention of her whatsoever.

21. Even if the deposition of DW-2 is discounted, going by the evidence of the prosecution's own witnesses, viz., PW-2 and PW-4, Rajesh Yadav and Raja Yadav were taken by the police on 28.03.2013 itself and not on 29.03.2013, as claimed by the prosecution. However, their arrests were shown much later. Rajesh Yadav was arrested only on 29.03.2013 at 6:30pm, while Raja Yadav was arrested on 31.03.2013 at 5:40 pm. Om Prakash Yadav was arrested much later on 05.04.2013 at 3:30 pm. Most crucial is the fact that the Investigating Officer (PW-16) chose to examine Rajesh Yadav at 1:45 pm on 29.03.2013 and record his confession without even arresting him, whereby he would have stood 'accused of an offence'. It is on the strength of this confession that the police and the witnesses allegedly went

with Rajesh Yadav to the well, where from the dead body of Ajit Pal was taken out. In effect, Rajesh Yadav was not even 'accused of any offence' at the time he made a confession and allegedly helped the police find the dead body. Similarly, Raja Yadav was not arrested by the time his confession was recorded and he was not 'accused of any offence' when he allegedly helped the police in seizing his blood-stained clothes. In effect, they were not in the 'custody of the police' at that time. In that situation, the vital question that would arise is as to the legal sanctity of the procedure adopted by the police and, in consequence, the value to be attached to the seizures made by them on the strength of such so-called confessions.

22. Section 26 of the Indian Evidence Act, 1872 (for brevity, 'the Evidence Act'), provides that no confession made by any person whilst he is in the custody of a police officer shall be proved against such person, unless it is made in the immediate presence of a Magistrate. Section 27, thereafter, is in the nature of an exception to Section 26 of the Evidence Act. It states 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. Therefore, it is essential under Section 27 of the Evidence Act that the person concerned must be 'accused of an offence' and being in the 'custody of a police officer', he or she must give information leading to the discovery of a fact and so much of that information, whether it amounts to a confession or not, that relates distinctly to the fact discovered, may be proved against him. In effect, both aspects, viz, being in 'the custody of a police officer' and being 'accused of an offence', are indispensable pre-requisites to render a confession made to the police admissible to a limited extent, by bringing into play the exception postulated under Section 27 of the Evidence Act.

23. In this regard, reference may be made to ***Bodhraj alias Bodha and others vs. State of Jammu & Kashmir***[7], wherein this Court had observed that the requirement of 'police custody' is productive of extremely anomalous results and may lead to the exclusion of valuable evidence in cases where

7 (2002) 8 SCC 45

a person, after committing a crime meets a police officer and states the circumstances of the crime which lead to the discovery of the dead body, weapon or any other material fact, in consequence of the information thus received from him, and he is subsequently taken into custody and becomes an 'accused'. This Court pointed out that this information, which would otherwise be admissible, becomes inadmissible under Section 26 of the Evidence Act as it did not come from a person in the 'custody of a police officer' or rather, came from a person not in the 'custody of a police officer'. In other words, the exact information given by the accused 'while in custody', which led to recovery of the articles can be proved. It was noted that this doctrine is founded on the principle that if any fact is discovered as a search was made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true.

24. Thereafter, in ***State of Karnataka vs. David Rozario and another***[8]**,** this Court held that information which is otherwise admissible under Section 27 of the Evidence Act would become inadmissible, if it did not come from a person in the 'custody of a police officer' or came from a person 'not in the custody of a police officer'. It was further held that what is admissible is the information and not the opinion formed on it by the police officer and, in other words, the exact information given by the accused while in 'custody' which led to recovery of the articles has to be proved. The two essential requirements, per this Court, are that: (i) the person giving the information must be 'accused of an offence'; and (ii) he must be in 'police custody'.

25. Again, in ***Ashish Jain vs. Makrand Singh and others***[9], this Court held that once a confessional statement of the accused is found, on facts, to be involuntary, it would be hit by Article 20(3) of the Constitution of India, rendering such a confession inadmissible. It was further noted that there is an embargo on accepting self-incriminatory evidence, but if it leads to the recovery of material objects in relation to a crime, it is most often taken to hold evidentiary value as per the circumstances of each case. This Court further cautioned that if such a statement is made under undue pressure and

8 (2002) 7 SCC 728
9 (2019) 3 SCC 770

compulsion from the Investigating Officer, the evidentiary value of such a statement leading to the recovery is nullified.

26. More recently, in ***Boby vs. State of Kerala***[10]**,** this Court referred to the decision of the Privy Council in ***Pulukuri Kotayya vs. King Emperor***[11]**,** wherein Section 27 of the Evidence Act had been considered at length and it was noted that Section 27 provides an exception to the prohibition imposed by the preceding provisions and enables certain statements made by an 'accused' in 'police custody' to be proved. It was observed that the condition necessary to bring Section 27 into operation is that the discovery of a fact in consequence of information received from a person 'accused of any offence' in the 'custody of a police officer' must be deposed to, and thereupon so much of the information, as relates distinctly to the fact thereby discovered, may be proved. It was observed that normally, Section 27 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 accused. However, the Privy Council concluded that the exception to Section 26 added by Section 27 should not be held to nullify the substance of the provision and it would be fallacious to treat the 'fact discovered' 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. By way of example, it was elucidated that 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; as knives were discovered many years ago, but if 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. Noting this principle, this Court observed that Section 27 of the Evidence Act requires that 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 the said fact.

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10 Criminal Appeal No. 1439 of 2009, decided on 12.01.2023.
11 AIR 1947 Privy Council 67

27. In the case on hand, though Rajesh Yadav was taken to the police station, be it on 29.03.2013 or even earlier, he could not be said to be in 'police custody' till he was arrested at 18:30 hours on 29.03.2013, as he did not figure as an 'accused' in the FIR and was not 'accused of any offence' till his arrest. Therefore, it was his arrest which resulted in actual 'police custody', and the confession made by him, before such arrest and prior to his being 'accused of any offence', would be directly hit by Section 26 of the Evidence Act and there is no possibility of applying the exception under Section 27 to any information given by him in the course of such confession, even if it may have led to the discovery of any fact. In consequence, the purported discovery of the dead body, the murder weapon and the other material objects, even if it was at the behest of Rajesh Yadav, cannot be proved against him, as he was not 'accused of any offence' and was not in 'police custody' at the point of time he allegedly made a confession. So too would be the case with Raja Yadav and Om Prakash Yadav, as they also were not named as the 'accused' in the FIR and were not 'accused of any offence' till they were arrested and taken into 'police custody', well after the recording of their confessions and the alleged seizures based thereon. Needless to state, this lapse on the part of the police is fatal to the prosecution's case, as it essentially turned upon the 'recoveries' made at the behest of the appellants, purportedly under Section 27 of the Evidence Act.

28. That apart, the manner in which the Investigating Officer (PW-16) went about drawing up the proceedings forms an important issue in itself and it is equally debilitative to the prosecution's case. In ***Yakub Abdul Razak Memon vs. State of Maharashtra through CBI, Bombay***[12], this Court noted that the primary intention behind the 'panchnama' is to guard against possible tricks and unfair dealings on the part of the officers entrusted with the execution of the search and also to ensure that anything incriminating which may be said to have been found in the premises searched was really found there and was not introduced or planted by the officers of the search party. It was further noted that the legislative intent was to control and check these malpractices of the officers, by making the presence of independent and respectable persons compulsory for search of a place and seizure of an

12 (2013) 13 SCC 1

article. It was pointed out that a panchnama can be used as corroborative evidence in the Court when the respectable person who is a witness thereto gives evidence in the Court of law under Section 157 of the Evidence Act. This Court noted that Section 100(4) to Section 100(8) Cr.P.C. stipulate the procedure with regard to search in the presence of two or more respectable and independent persons, preferably from the same locality, so as to build confidence and a feeling of safety and security amongst the public. The following mandatory conditions were culled out from Section 100 Cr.P.C. for the purposes of a valid panchnama:

> (a) All the necessary steps for personal search of officer (Inspecting officer) and panch witnesses should be taken to create confidence in the mind of court as nothing is implanted and true search has been made and things seized were found real.
>
> (b) Search proceedings should be recorded by the I.O. or some other person under the supervision of the panch witnesses.
>
> (c) All the proceedings of the search should be recorded very clearly stating the identity of the place to be searched, all the spaces which are searched and descriptions of all the articles seized, and also, if any sample has been drawn for analysis purpose that should also be stated clearly in the Panchanama.
>
> (d) The I.O. can take the assistance of his subordinates for search of places. If any superior officers are present, they should also sign the Panchanama after the signature of the main I.O.
>
> (e) Place, Name of the police station, Officer rank (I.O.), full particulars of panch witnesses and the time of commencing and ending must be mentioned in the Panchnama.
>
> (f) The panchnama should be attested by the panch witnesses as well as by the concerned IO.
>
> (g) Any overwriting, corrections, and errors in the Panchnama should be attested by the witnesses.
>
> (h) If a search is conducted without warrant of court Under Section 165 of the Code, the I.O. must record reasons and a search memo should be issued.

It was held that a panchnama would be inadmissible in a Court of law if it is recorded by the Investigating Officer in a manner violative of Section 162 Cr.P.C. as the procedure requires the Investigating Officer to record the search proceedings as if they were written by the panch witnesses themselves and it should not be recorded in the form of examining witnesses, as laid down in Section 161 Cr.P.C. This Court concluded, by stating that the entire panchnama would not be liable to be discarded in the event of deviation from the procedure and if the deviation occurred due to a practical impossibility, then the same should be recorded by the Investigating Officer so as to enable him to answer during the time of his examination as a witness in the Court of law.

29. Recently, in ***Ramanand @ Nandlal Bharti vs. State of Uttar Pradesh***[13], a 3-Judge Bench of this Court observed that the requirement of law that needs to be fulfilled before accepting the evidence of discovery is by proving the contents of the panchnama and the Investigating Officer, in his deposition, is obliged in law to prove the contents of the panchnama. It was further observed that it is only if the Investigating Officer has successfully proved the contents of the discovery panchnama in accordance with law that the prosecution would be justified in relying upon such evidence and the Trial Court may also accept the same. It was held that, in order to enable the Court to safely rely upon the evidence of the Investigating Officer, it is necessary that the exact words attributed to the accused, as the statement made by him, be brought on record and, for this purpose, the Investigating Officer is obliged to depose in his evidence the exact statement and not merely say that the discovery panchnama of the weapon of the offence was drawn up as the accused was willing to take it out from a particular place.

30. In ***Khet Singh vs. Union of India***[14], this Court held that even if there is a procedural illegality in conducting the search and seizure, the evidence collected thereby would not become inadmissible and the Court would consider all the circumstances to find out whether any serious prejudice

13 Criminal Appeal Nos. 64-65 of 2022, decided on 13.10.2022 = 2022 SCC OnLine SC 1396

14 (2002) 4 SCC 380

has been caused to the accused. However, this Court pointed out that if the search and seizure were in complete defiance of the law and procedure and there was any possibility of the evidence collected having been tampered with or interpolated during the course of such search and seizure, then that evidence could not be admitted. Though these observations were made in the context of a search and seizure under the Narcotic Drugs and Psychotropic Substances Act, 1985, they would have relevance generally.

31. Tested against this backdrop, the manner and method in which the panchnamas and memos were prepared in the case on hand leave the prosecution high and dry. For instance, the Naksha Panchnama (Ex. P3) dated 29.03.2013 records the names of five witnesses, including PW-2 and PW-8, and states that the witnesses inspected the body of deceased Ajit Pal @ Bobby; that there was a big wound on the right side of the neck of the deceased; that, in the opinion of the panch witnesses, the deceased was murdered by Rajesh Yadav and Raja Yadav by cutting his throat with a knife; that his body was stuffed in a sack; and that the sack was thrown in a well. It then goes on to record the opinion of the Investigating Officer (PW-16) wherein, after noting the factual aspects, he stated that Ajit Pal was murdered by Rajesh Yadav and Raja Yadav by cutting his throat with a knife. Notably, the narrative is not that of the panch witnesses but mostly of PW-16 himself and the panch witnesses merely signed the panchnama. Akin thereto, the Crime Details Form (Ex. P13) notes that the scene of the crime was visited on 29.03.2013 at 15:15 hours and records that, 15 metres from the Khandari Canal, an old well is situated; that there are bushes growing around the well; that there was a body inside a white sack which was floating in the water in the well; that the width of the well was 2 metres 70 cms.; that the well was 6 metres deep; and that there was 1 metre water in the well and 5 metres was empty. Significantly, though the Crime Details Form notes that two panch witnesses were present, there is no narrative by them and they simply signed the form. The same is the position with the Crime Details Form (Ex. P14), relating to the finding of blood on the walls of the washing area and the floor; black plastic slippers; and an empty bottle of liquor. The same panch witnesses find mention in this Crime Detail Form and they affixed their signatures but again, it is not their narrative and there is no recording of how they went about finding these objects. Further, the form straightaway records the opinion that Rajesh

Yadav and Raja Yadav had murdered Ajit Pal, put his body in a plastic sack and threw it into the well.

32. Property Seizure Memos (Ex. P18 and Ex. P23), relating to the seizure of the blood-stained clothes of Rajesh Yadav and Raja Yadav respectively, are drafted likewise wherein the witnesses, Bambam (PW-9) and Surjeet Singh, are named but there is no narrative on their part as to how they were led and assisted by someone to find these objects. On the same lines, Property Seizure Memo (Ex. P9), relating to the seizure of the blood-stained soil, controlled soil and the plastic slippers; Property Seizure Memo (Ex. P10), relating to seizure of the liquor bottle; Property Seizure Memo (Ex. P12), relating to seizure of the body of the deceased and his clothes along with the hair found in his right fist; Property Seizure Memo (Ex. P11), relating to seizure of the murder weapon; and Property Seizure Memo (Ex. P19) relating to seizure of the two mobile phones; also reflect the same style of recording. Witnesses to the panchnamas and the seizures acted as mere attestors to the documents and did not disclose in their own words as to how these objects were discovered, i.e., at whose instance and how. Ergo, no lawful validity attaches to these proceedings recorded by the police in the context of collection of all this evidence.

33. DNA evidence was also relied upon by the prosecution, by projecting a scenario that Ajit Pal had struggled with his assailant and in the course of that scuffle, he managed to pull out some hair from the head of his assailant and they remained in his hand till the discovery of his body. DNA analysis of that hair proved that they were those of Rajesh Yadav. However, this story is found to be bereft of logic. According to Raja Yadav's Arrest Memo (Ex. P20), he was 5.8" in height and the prosecution would have it that he caught hold of Ajit Pal, a 15-year-old boy, who was 5.4" in height from behind and Rajesh Yadav, who was 5.7" in height, as per his Arrest Memo (Ex. P36), cut his throat. The possibility of Ajit Pal, held by a much taller Raja Yadav, managing to get his hands on Rajesh Yadav's head, who was also much taller than him, whereby he could have plucked out any hair is inherently improbable. This scenario does not lend itself to credibility and seems to have been concocted so that Rajesh Yadav's hair would be conveniently available for DNA analysis to corroborate the prosecution's case. Further, as there is a doubt as to when Rajesh Yadav was taken by

the police and as to whether his hair could have been pulled out by the police while he was in their control, the possibility of such evidence being introduced by the police themselves cannot be ruled out. In ***Manoj and others vs. State of Madhya Pradesh***[15], a 3-Judge Bench of this Court refused to rely on DNA evidence, inter alia, as the genuineness of its recovery was suspect. Presently also, as the source and origin of the DNA evidence, viz., the hair, is rendered suspect, the end result of that DNA analysis serves no real purpose in establishing the prosecution's case.

34. The proverbial last nails in the coffin of the prosecution's case, if at all needed, are the shocking lapses and the slipshod investigation on the part of the police. It is on record that when the Investigating Officer (PW-16) undertook the first search of Om Prakash Yadav's house under Ex. P-37 Panchnama, nothing was found. However, a later search with the aid of Brijesh Yadav led to the seizure of two mobile phones from a trunk in one of the rooms of Om Prakash Yadav's house. As to why these phones were not found during the first search is not explained. That apart, Shaival @ Bambam (PW-9), a witness to the seizure of the phones, claimed that there were no SIM cards in the mobiles but candidly admitted that they did not open the mobiles and look inside. He said that they did not try to operate the mobiles or see the numbers inside and that both the phones were turned off. The self-contradictory deposition of this witness does not aid the dubious investigative process adopted by the police. As regards the call data and the ransom calls, we may note that Santosh Jadhav, Assistant Nodal Officer, Reliance Communication, was examined as PW-17 and spoke of the call data of mobile number 8305620342 from which the ransom calls were made. According to him, the SIM card with the said mobile number was given to one Bhuraji, son of Deepu, whose address was House No. 433, Sanjay Gandhi Ward, Tehsil Jabalpur. He produced Bhuraji's 'Customer Application Form' along with his attached Election ID card. These documents were marked as Ex. D6. The call data of 28.03.2013 showed that this SIM card was used on the mobile handset with IMEI No. 358327028551270. He marked in evidence Ex. P35 in that regard. Therefore, the mobile number from which ransom calls were made

15 (2023) 2 SCC 353

was in the name of one Bhuraji, s/o Deepu, and his address was available. However, the police did not even attempt to contact Bhuraji or examine him to find out how and why his SIM card was used for making the ransom calls. Even more startling is the fact that, though PW-17 placed on record actual proof of the allotment of this mobile number to Bhuraji (Ex. D6), no such steps were taken by the police to establish the link between Om Prakash Yadav and mobile number 9993135127, which was attributed to him. PW-15 baldly stated that the said mobile number was allotted to Om Prakash Yadav but did not mark in evidence any document in proof thereof. Surprisingly, he had stated in his deposition that he had brought the certified copy of the application form and the ID used when this SIM card was allotted to the subscriber, Om Prakash Yadav, but the same were not marked. In effect, no palpable connection is established between the said mobile number and Om Prakash Yadav. In the absence of such a tangible link, the call data report (Ex. P31) and the contents thereof are practically useless in establishing the prosecution's case that the ransom calls were made from Om Prakash Yadav's mobile phone handset by inserting Bhuraji's SIM card, with mobile number 8305620342, therein.

35. Another notable feature is that PW-2, during his cross-examination, came up with a different story as to what transpired during those crucial days. He stated that on 28.03.2013, when Om Prakash Yadav and he went to the Gurudwara and while he was there, Om Prakash Yadav gave him a missed call. He claimed that he called him back at about 2 pm and Om Prakash Yadav told him that Bobby was there and had taken gutkha and left. PW-2 claimed that he told his sister not to worry and that Bobby was with Om Prakash Yadav. He, however, went on to state that when they reached the police station at 3:30 pm, he did not tell the police about Om Prakash Yadav calling and speaking to him. He claimed that, on 28.03.2013, Om Prakash Yadav threatened that he would kill him and burn down his house. According to PW-2, he had not recognised the voice of the caller who called for ransom. He further stated that the police did not call him or PW-1 when they took Rajesh Yadav and Raja Yadav. PW-2 also said that when they questioned him. i.e., PW-2, on 28.03.2013 at about 5 or 6 in the evening, he told them everything about who had called, etc. There is, again, total suppression by the prosecution of this new twist in the tale and how it could possibly fit in with its version projected before the Court.

36. Lastly, Dr. Vivek Shrivastav (PW-7), who conducted the postmortem examination, stated that semi-digested food was found in the stomach of the deceased and it would have been consumed less than six hours prior to death. According to him, it could have been 30 minutes or 1 hour. He stated that if alcohol is drunk with food and death occurs within 1 hour thereafter, then it is possible for the semi-digested food to smell of alcohol. He admitted that he did not find any such smell of alcohol. His testimony weakens the prosecution's claim that Ajit Pal consumed whiskey just before he was killed.

37. Before parting with the case with our verdict, we may note with deep and profound concern the disappointing standards of police investigation that seem to be the invariable norm. As long back as in the year 2003, the Report of Dr. Justice V.S.Malimath's 'Committee on Reforms of Criminal Justice System' had recorded thus:

> 'The manner in which police investigations are conducted is of critical importance to the functioning of the Criminal Justice System. Not only serious miscarriage of justice will result if the collection of evidence is vitiated by error or malpractice, but successful prosecution of the guilty depends on a thorough and careful search for truth and collection of evidence which is both admissible and probative. In undertaking this search, it is the duty of the police to investigate fairly and thoroughly and collect all evidence, whether for or against the suspect. Protection of the society being the paramount consideration, the laws, procedures and police practices must be such as to ensure that the guilty are apprehended and punished with utmost dispatch and in the process the innocent are not harassed. The aim of the investigation and, in fact, the entire Criminal Justice System is to search for truth. ……The standard of police investigation in India remains poor and there is considerable room for improvement. The Bihar Police Commission (1961) noted with dismay that "during the course of tours and examination of witnesses, no complaint has been so universally made before the Commission as that regarding the poor quality of police investigation". Besides inefficiency, the members of public complained of rudeness, intimidation, suppression of evidence, concoction of evidence and malicious padding of cases…..'

38. Echoing the same sentiment in its Report No.239 in March, 2012, the Law Commission of India observed that the principal causes of low rate of conviction in our country, inter alia, included inept, unscientific investigation by the police and lack of proper coordination between police and prosecution machinery. Despite passage of considerable time since these gloomy insights, we are dismayed to say that they remain sadly true even to this day. This is a case in point. A young boy in the first flush of youth was cruelly done to death and the wrongdoers necessarily had to be brought to book for the injustice done to him and his family. However, the manner in which the police tailored their investigation, with complete indifference to the essential norms in proceeding against the accused and in gathering evidence; leaving important leads unchecked and glossing over other leads that did not suit the story that they had conceived; and, ultimately, in failing to present a cogent, conceivable and fool-proof chain of events pointing to the guilt of the appellants, with no possibility of any other hypothesis, leaves us with no option but to extend the benefit of doubt to the appellants. The higher principle of 'proof beyond reasonable doubt' and more so, in a case built on circumstantial evidence, would have to prevail and be given priority. It is high time, perhaps, that a consistent and dependable code of investigation is devised with a mandatory and detailed procedure for the police to implement and abide by during the course of their investigation so that the guilty do not walk free on technicalities, as they do in most cases in our country. We need say no more.

39. It is indeed perplexing that, despite the innumerable weak links and loopholes in the prosecution's case, the Trial Court as well as the High Court were not only inclined to accept the same at face value but went to the extent of imposing and sustaining capital punishment on Rajesh Yadav and Raja Yadav. No valid and acceptable reasons were put forth as to why this case qualified as the 'rarest of rare cases', warranting such drastic punishment. Per contra, we find that the yawning infirmities and gaps in the chain of circumstantial evidence in this case warrant acquittal of the appellants by giving them the benefit of doubt. The degree of proof required to hold them guilty beyond reasonable doubt, on the strength of circumstantial evidence, is clearly not established.

On the above analysis, we allow the appeals and set aside the conviction and sentences of all the three appellants on all counts. They shall be set at liberty forthwith, if their continued incarceration is not validly required in connection with any other case. Fine amounts paid by them, if any, shall be refunded within eight weeks from today.

Headnotes prepared by:
Divya Pandey

Appeals allowed.