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APHC010702812018



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3566]

WEDNESDAY, THE 15th DAY OF JULY 2026

PRESENT

THE HONOURABLE SRI JUSTICE K SURESH REDDY

THE HONOURABLE SRI JUSTICE A. HARI HARANADHA SARMA

CRIMINAL APPEAL NO: 2593/2018

Between:

1. BOYA HOTHURU ALLISWAMY, R/O. BODASANIPALLI VILLAGE, VAJRAKARURU MANDAL, ANANTAPUR DISTRICT.
2. DAYYALA THIMMAIAH, R/O. DEGULAPADU VILLAGE, CHIPPIGIRI MANDAL, ANANTAPUR DISTRICT.
3. YERURU MANJUNATH, R/O. DEGULAPADU VILLAGE, CHIPPIGIRI MANDAL, ANANTAPUR DISTRICT.
4. KURUBA LAKSHMI DEVI, R/O. D.NO.7/27-A, BHAGYANAGAR, GUNTAKAL TOWN, ANANTAPUR DISTRICT.

...APPELLANT(S)

AND

1. THE STATE OF ANDHRA PRADESH, Rep., by Public Prosecutor, High Court of Judicature at Hyderabad For the State of Telangana and the State of Andhra Pradesh.

...RESPONDENT

Appeal under Section 372/374(2)/378(4) of Cr.P.C praying that the High Court may be pleased to to present this Memorandum of Grounds of Criminal Appeal to this Honorable Court against the Judgment of the VI Addl. Sessions

Judge, Anantapur at Gooty passed in S.C.No. 492 of 2016, dt.10-7-2018, for the following among other grounds.

IA NO: 1 OF 2018

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to condone the delay of 9 days in filing the Appeal against the Judgment passed in S.C.No. 492 of 2016, dt.10-7-2018 on the file of the VI Addl. Sessions Judge, Anantapuramu at Gooty in the interest of justice.

IA NO: 1 OF 2025

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased Pleased to release Petitioner/Appellant No.1 on bail for a period of Twenty days for the purpose of attending his father death ceremony pending appeal in CrI.A NO 2593 of 2018 against the Judgment Dated 10.07.2018 in SC No 492 of 2016 passed by the VI Addl.Sessions Judge Anantapur At Gooty and to pass

Counsel for the Apellant(S):

1.C VASUNDHARA REDDY

Counsel for the Respondent:

1.PUBLIC PROSECUTOR (AP)

The Court made the following:

IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI

SPECIAL DIVISION BENCH

PRESENT

HONOURABLE SRI JUSTICE K SURESH REDDY

And

THE HONOURABLE SRI JUSTICE A. HARI HARANADHA SARMA

CRIMINAL APPEAL No.2593 of 2018

JUDGMENT: *(Per Hon'ble Sri Justice A. Hari Haranadha Sarma)*

Introductory:-

1. [i] This is an appeal filed under Section 374(2) Cr.P.C. by Accused Nos.1 to 4 in S.C.No.492 of 2016 on the file of the VI Additional Sessions Judge, Anantapuramu at Gooty, questioning the conviction and sentence imposed on them under the judgment dated 10.07.2018, whereunder A1 to A3 were found guilty for the offences under Sections 364, 302, 201 and 379 IPC and A4 was found guilty for the offence under Section 302 r/w 109 IPC. A1 to A3 were sentenced to suffer imprisonment for life and to pay a fine of Rs.1,000/- each and in default of payment of fine directed to suffer rigorous imprisonment for a period of one month for the offence under Section 302 IPC. They are also sentenced to suffer imprisonment for life and to pay a fine of Rs.1,000/- each and in default to suffer rigorous imprisonment for a period of one month for the offence under Section 364 IPC. Further, they are directed to suffer rigorous imprisonment for a period of three months and also to pay a fine of Rs.1,000/- each and in default to suffer simple imprisonment for a period of one month for the offence under Section 201 IPC. Further, they

are also to sentenced to suffer rigorous imprisonment for a period of three years and to pay a fine of Rs.1,000/- each and in default to suffer simple imprisonment for a period of one month for the offence under Section 379 IPC. A4 is sentenced to suffer imprisonment for life and to pay a fine of Rs.1,000/- and in default to suffer rigorous imprisonment for a period of one month for the offence under Section 302 r/w. 109 IPC. The sentences of imprisonment imposed for the said offences were directed to run concurrently.

Case of the Prosecution:-

2. [i] The case of the prosecution, in brief, is that one Bhusetty Susheelamma (hereinafter referred to as “the deceased”), aged about 62 years, was living in Door No.7/25-1, Bhagyanagar, Guntakal Town. Accused No.4 is her elder daughter. P.W.1-Sura Sujatha is her younger daughter. Sura Nagaraju (L.W.2) is the husband of P.W.1. P.W.2-Dasari Sreenivasulu and P.W.4-Shaik Habeeb are neighbors of the deceased. A1 was a tenant of the deceased. A4, being the daughter of the deceased, used to come to the house of the deceased and got acquaintance with A1. The acquaintance between A1 and A4 developed into a physical relationship, on account of which the deceased used admonish A4. For which, A4 developed a grudge against her mother (the deceased) and also for the reason that the deceased was showing difference between P.W.1 and A4. A4 offered to give money to A1 to get rid of deceased and A1 has discussed the same with his friends i.e. A2 and A3 and they also agreed to aid in the commission of the offence. Accordingly, they made a plan and went to the house of the deceased

informing her that her absconded second son is present in Bellary and assured that they will take her to see him. Believing their words, the deceased boarded the motorcycle of A2 and he took her to Gummanuru Vanka near Chippagiri Mandal, Kurnool District on 15.05.2015. A1 and A3 followed them to the said place and all of them had opened the food packets at one place. After serving food, A2 took a stick and beat the deceased on her head, whereupon she fell on the ground. Then, A3 also beat her on the head with a stone. Thereafter, A1 took the same stone and struck the deceased on her face. Consequently, the deceased died. After confirming the death of the deceased, they took the gold ear studs, gold chain and gold bangles worn by the deceased. They dug a pit at a nearby place, buried the dead body of the deceased and left the place.

[ii] When Shaik Habeeb-P.W.4 informed P.W.1 that the deceased is not seen since 16.05.2015, P.W.1 along with A4 and the daughter of A4, rushed to the house of deceased. They found that the main door of the house was locked from both inside and outside and the back door of the house was locked from outside. On enquiry, they were informed that A1 was also found missing from that day. The mobile number of the deceased, bearing No.81258 03273, was also switched off. Thereafter, P.W.1 submitted complaint dated 12.06.2015, marked as Ex.P1 to the Police-P.W.9. and on the strength of the same, Crime No.49 of 2015 under the head of "Woman Missing" was registered vide Ex.P16.

[iii] On 10.07.2015, A1 to A3 approached P.W.5, V.R.O. Guntakal Town and confessed that A1 had taken the hut of the deceased for rent and also about the development of an illegal relationship between A1 and A4, the deceased admonishing A4, A4 abetting A1 to get rid of the deceased and A1, in turn, taking the aid of A2 and A3. They further confessed that A2 brought the deceased along with him making her to believe that her missing son will be shown to her if she accompanies him and also about all of them together eliminating the deceased.

[iv] Ex.P6 is the extra-judicial confessional statement of the accused Nos.1 to 3. Thereafter, P.W.5 took A1 to A3 and handed them over to the S.I. of Police along with their statements and his requisition Ex.P7.

[v] On the strength of Ex.P7, Ex.P17 was registered altering the Sections from "Woman Missing" to Sections 364-A, 302, 201 and 109 r/w. 34 IPC. The altered FIR-Ex.P17 is dated 10.07.2015.

[vi] Further, investigation was taken up by P.W.10. In the presence of Angadi Petaiah Ravi Kumar-L.W.7 and P. Kedaranath Reddy-P.W.5, the accused were examined. They stated that the gold ornaments of the deceased and the red-coloured Pulsar 150 CC motorcycle involved in the offence are with A4. The accused then led P.W.10 to the scene of offence where they had buried the dead body of the deceased. Thereupon, a requisition was made by P.W.10 to P.W.7-M. Akbar Hussain, Tahsildar to visit

the scene of offence for exhumation of the dead body and for holding an inquest thereon.

[vii] On 11.07.2015, a further requisition was sent to the Area Hospital, Guntakal, for conducting exhumation and autopsy. Thereupon, P.W.8-Dr.Kalyan Chakravarthi and L.W.13-Dr. Arshad Parwez came to the scene of offence, where summons were served on the blood relatives of the deceased, witnesses and inquest panchayatdars. Inquest was conducted over the dead body. The blood relatives identified the dead body of the deceased based on the wearing apparels, chappals and pieces of gold ornaments i.e. M.O.Nos.1 and 6 to 9. Observation of the scene of offence was made. A1 to A3 shown a stone stained with blood, which is used by them for beating the deceased. P.W.7 has seized the earth in the pit and its control earth recovered for sending the same to the RFSL and the skull of the deceased was also preserved for sending into RFSL examination.

[viii] During the inquest, the statements of P.W.1, Sura Nagaraju-L.W.2, L.W.3-Chinthala Anantha Setty and P.W.4-Shaik Habib were recorded. The implements used for digging the pit were thorny bushes and they were also recovered at the instance of accused vide Crowbar-M.O.No.11, Plastic bucket-M.O.No.14 and Stick-M.O.No.13 used for beating the deceased. All the said articles were seized under cover of mahazarnama. A1 to A3 showed the house of A4 to P.W.10 and on enquiry conducted in the presence of a Home Guard and mediators, A4 produced one gold chain, one portion of gold chain, two gold bangles, two ear studs i.e. M.O.Nos.2 to 5 and also showed

the motorcycle parked in the verandah-M.O.No.15, which is an unregistered motorcycle bearing No.DHZCCJZ58441.

[ix] Further, P.W.1 identified M.O.Nos.2 to 5 as belonging to her mother (the deceased) when the identification parade was conducted by P.W.6. The identification proceedings are marked as Ex.P8.

[x] Apart from the confession, the material collected during the investigation clearly indicates the guilt of all the accused for the offences under which they are charged.

3. On plea of innocence, the learned Sessions Judge proceeded with the trial in respect of the charges under Sections 364, 302, 201 and 379 IPC against A1 to A3 and under Section 302 r/w 109 IPC against A4.

4. In support of its case, the prosecution examined P.W.1 to 11 and marked Ex.P1 to P19 and M.O.Nos.1 to 15. After the closure of prosecution evidence, the accused were examined under Section 313 Cr.P.C. and they denied the incriminating material.

5. The learned Sessions Judge found the accused guilty of the offences with which they are charged and imposed the conviction and sentence mentioned above. Aggrieved by the same, the present appeal is filed.

Arguments in the appeal:

For the appellants / accused:

6. [i] This is a case based on circumstantial evidence. There is no sufficient and legally acceptable evidence to connect the accused with the alleged commission of the offence. The extra-judicial confession allegedly made by the accused is not admissible in evidence. There is an inordinate delay in giving the complaint to the Police. Accused Nos.1 to 3 are strangers to P.W.5. There is no justification as to why they shall make a confession before P.W.5 when he is in no way helpful to them. No reliance can be placed on such a weak and doubtful evidence.

[ii] The motive alleged by the prosecution is very weak and there is no consistency in the motive stated. The initial complaint, Ex.P1, is silent about the alleged motive, particularly the illicit affair between A1 and A4. The recovery of M.O.Nos.2 to 5 from the possession of A4 is unbelievable and cannot be accepted. The identification of M.O.Nos.2 to 5 by P.W.1 is also not acceptable, particularly for the reason that the said items are common in nature. The exhumation of the dead body and its identification by the family members also suffer from inherent improbabilities. Therefore, the same cannot be accepted.

[iii] The confession leading to the recovery of the material objects and the dead body of the deceased also suffers from improbabilities.

[iv] In view of time gap between the alleged offence and the confession, the recovery is highly doubtful and the same is not natural. There

is an inordinate delay in giving the complaint. The witnesses MRO and VRO are stock witnesses. The confession allegedly made before such stock witnesses shall not inspire the confidence of the Court. A retracted extra-judicial confession is a weak piece of evidence and unless there is corroboration cannot be believed. There is no evidence proving all the links in the chain of circumstances relied on by the prosecution. The recovery of the dead body and the articles / material belonging to the deceased pursuant to the confession of the accused cannot be believed in the facts of the present case. Therefore, the accused are entitled for acquittal.

For the Prosecution:

7. [i] The evidence of P.W.1 is clear and categorical as to the access of A1 and A4 to the deceased. A4, being the daughter of the deceased, had sufficient access to her. A1, being a tenant of the deceased and got affair with A4 can have motive to eliminate the deceased as the deceased is objecting the illicit affair between A1 & A4 and that A4 is also having displeasure for deceased treating P.W.1 more cordially and giving monies to P.W.1. The conduct of A4, who accompanied P.W.1 while giving Ex.P1 report and the recovery of the gold jewellery from her after the discovery of the dead body etc. would clearly indicate the involvement of the A4 and her abetment and the motive for A1.

[ii] The confession made by A1 and A2 along with A3 before P.W.5 is sufficient to connect all the accused with the commission of the offence. The evidence adduced by the prosecution and the reasoning of the learned

Sessions Judge in convicting the accused are sound and sufficient. The prosecution has established the guilt of the accused beyond reasonable doubt and that there are no grounds to interfere with the judgment under appeal. Consequently, the appeal is liable to be dismissed by confirming the conviction and sentence.

8. Heard both sides. Perused the record. Thoughtful consideration is given to the arguments advanced by both sides

9. Now, the points that arise for determination in this appeal are:

1) Whether the prosecution is able to bring home the guilt of the appellants/accused Nos.1 to 4 for the offences under Sections 364, 302, 201 and 379 IPC against A1 to A3 and under Section 302 r/w 109 IPC against A4 under which they are charged and whether the conviction and sentence imposed on them by the learned Sessions Judge under the impugned judgment dated 10.07.2018 passed in Sessions Case No.492 of 2016 are sustainable in law and on facts or require any interference? If so, on what grounds and to which extent?

2) What is the result of the appeal?

Point No.1:

Corpus Delicti, Identity of B. Susheelamma and Nature of Death:

10. [i] Learned counsel for the appellants / accused would submit that the identity of the corpus itself is highly doubtful and that the prosecution failed to establish that the dead body exhumed was that of the deceased,

B. Susheelamma. The evidence of P.W.7, Tahsildar, Chippagiri Mandal, Kurnool District would show that on 10.07.2015, the C.I. of Police, I Town Police Station made a request to conduct an inquest over the dead body of the deceased Suseelamma. Accordingly, he along with the V.R.O proceeded to the fields at Gummanuru Village, by which time accused Nos.1 to 3 and the Police were present and they found one tomb. Thereafter requisition was sent to the Forensic Professor, Medical College, Kurnool to exhume the dead body of Suseelamma from the tomb shown by accused and conduct a post-mortem examination. The help of the doctors from the local medical college, Anantapur and the Government Area Hospital, Guntakal was taken while exhuming the dead body in the presence of P.W.7 and in the presence of blood relatives, the body was exhumed. M.O.Nos.1, 6, 8 to 10 were found on the dead body under Ex.P3 and he has examined P.W.1, L.W.2-Sura Nagaraju, L.W.3-Chinthala Anantha Setty and P.W.4 vide Ex.P9 and Ex.P10 and all the inquestdars opined that A4 got killed Suseelamma (deceased) with the help of A1 to A3.

[ii] During the cross-examination of P.W.7, the identity of the deceased Suseelamma (deceased) is not disputed.

[iii] P.W.8, the Civil Assistant Surgeon, who conducted autopsy on the exhumed body along with his team stated about the saree, blouse and inner petticoat, gold colour dollar having face of Lord Venkateswara, a cut piece of gold colour chain and a pair of sky-blue colour chappals vide M.O.Nos.1 and 6 to 10 articles recovered from the dead body. His evidence is

clear that P.W.1 identified those articles and stated that the dead body belongs to her mother. Basing on his external and internal examination of the corpus, he has opined that the cause of death is due to severe head injury. This suggests that the death of the deceased is not natural but homicidal.

[iv] P.W.1, the daughter of the deceased deposed that she identified all the belongings of her mother at the time of exhumation viz. Saree, blouse, petticoat, slippers, gold colour dollar having face of Lord Venkateswara, a cut piece of gold colour chain and a pair of sky blue colour chappals in the presence of the Mandal Revenue Officer and the other witnesses etc. Therefore, the identity of the deceased and nature of death of the deceased being homicidal are clear. The findings of the learned Sessions Judge to that extent are fit for concurrence.

Motive:

11. [i] In cases where there are no direct witnesses for any crime and where the prosecution relies on circumstantial evidence motive plays an important role. In the present case, the motive attributed to the accused is that A1 and A4 were having an illicit affair and the deceased used to admonish A4 (daughter of the deceased), for which the A4 developed grudge. Further, the deceased was giving priority and monies to P.W.1 and for that reason, A4 developed jealous against the P.W.1 and hatred against the deceased. Hence, she prompted A1 to eliminate the deceased by assuring that money will be given to him and that the deceased will not be an obstruction to their illicit intimacy. A1, in turn, has taken the assistance of A2

and A3 to eliminate the deceased. This version of the prosecution is traceable to the confession made by the accused to P.W.5. The argument of the learned counsel for the accused is that the confession of the accused cannot be the basis to implicate them, particularly when the same is retracted and not properly proved. For the illicit affair between A1 and A4, the prosecution would rely on the evidence that A1 was the tenant of the deceased and that A4 was also living with the deceased for some time and that A4 is having access to the deceased quite often. Whether there is any evidence of the neighbours or the other family members of the deceased to indicate the instances of such an illicit relationship and the objection of the deceased in that regard is an important question. P.W.1, who is the daughter of the deceased and sister of A4 has set the criminal law into motion. As per her evidence, she received information about the missing of her mother (the deceased) and such missing was from 16.05.2015. The information was received from one Shaik Habeeb-L.W.4. On receiving such information, she went to the house of her mother and noticed that the main door was locked from both inside and outside, whereas back door was locked from outside. She has submitted report to the Police on 12.06.2015 vide Ex.P1. On 11.07.2015, she got information about the tracing of dead body. It is relevant to note that when she went to the house of the deceased on the information from Shaik Habeeb-L.W.4, A4 was also with her and accompanied her to the Police station also. P.W.1 did not speak anything about relationship between A1 & A4.

[ii] P.W.2, neighbour of the deceased stated that A1 and A4 were residing in the sheds of the deceased as tenants and they were moving closely. The deceased used to chastise A4 for moving closely with A1 and thereafter demanded A1 and A4 to vacate the house. Thereafter, she asked him (P.W.2, being a good tenant) look for tenants as they (A1 & A4) will vacate it within 10 to 15 days. Thereafter, A4 vacated the same and after such vacating of the house he has seen two other persons approaching the house of A1 and also A4 coming out of house of A1. At that time, P.W.2 asked A4 whether A4 is going to her mother's house or not, for which A4 said that there is no such necessity and that the problem with deceased will come to an end "Dani Peeda Viragada Aitundi".

[iii] A2 and A3 are strangers to P.W.2 and he (P.W.2) has seen them on one day when they were going to house of A1 and thereafter before the Court on the day of his evidence. It is not case that there was any test identification parade. P.W.2 admits that A4 vacated her shed two months before the missing of deceased and that he do not know where A4 shifted. He is unable to give the details as to when A4 went to the house of A1 and when the two strangers went to the house of A1.

[iv] The succession of events are as follows: (1) deceased found missing from 16.05.2015, (2) report was given to the Police on 12.06.2015 and (3) the dead body was recovered on 11.07.2015.

[v] P.W.4 is one S. Habib, who is said to have informed P.W.1 about the missing of the deceased. As per his evidence he do not know who are the tenants of the deceased. None were living in the entire sheds of Suseelamma since her missing. The deceased alone was residing in her house.

[vi] P.W.2 is an independent witness and an outsider. No specific motive is attributed to him to speak against the accused. P.W.2 during his cross-examination, states that he stated before the Police that he came to know that A4 was closely moving with A1 and that Suseelamma demanded A1 and A4 to vacate their respective shares. This suggests that A1 and A4 moving closely is not his personal knowledge, but he had it.

[vii] The exact statement of P.W.2 during cross examination is as follows:

"It is true that I stated before the Police that I came to know that A4 was closely moving with A1 and Suseelamma demanded A1 and A4 to vacate their respective sheds, but they have not vacated. A4 vacated her shed two months before the missing of Suseelamma (deceased)."

[viii] The motive with regard to the close movement between A1 and A4 and the same being illicit relationship is not found from the evidence of P.W.1, the sister of A4 and the evidence of P.W.2 is admittedly hearsay and as there is no other independent evidence except the alleged confession made by the accused before P.W.5. There exists a reasonable doubt against the motive relied on by the prosecution in that regard.

[ix] It is not the clear case of the prosecution that the deceased Susheelamma was murdered for committing theft of the jewellery. As per the prosecution version, one of the accused (A2) approached her informing her that her missing son is available at Ballari and that if she joins with him, her son will be shown. On that assurance, she accompanied accused No.2. For this theory, except the confession of the accused Nos.1 to 3 made under Ex.P6, before P.W.5, there is no other basis. It cannot be inferred from this version that the accused had any idea that the deceased will come along with the jewellery. Therefore, the motive part being an intension to knock away the gold jewellery of the deceased is highly doubtful. Further theory that, A4 to knock away the property of the deceased being a successor and she got the deceased eliminated through A1 to A3 is also unbelievable. A4 resorting to prompting A1 to A3 to commit murder of the deceased to get the property is only an imagination, which cannot be accepted particularly in the context of absence of any earlier disputes or demand by A4 for the property of the deceased. P.W.1 did not say anything about A4 demanding for any money or property from the deceased, except stating that "we came to know from the Police enquiry that my mother was killed by A1 to A3 at the instigation of A4 to knock away the property".

[x] In view of the above reasons, it is clear that the prosecution has failed to show the motive alleged against the accused and theory of prosecution that the accused had a motive to kill the deceased is doubtful.

Confession of the accused and discovery in terms of Section 27 of the

Evidence Act:

12. [i] The prosecution relies upon the evidence of P.W.5 to show that the accused has made an extra-judicial confession before P.W.5 about their guilt. As per P.W.5, A1 to A3 came to his house and admitted the guilt and he has record the statements of A1 to A3 covered by Ex.P6 and thereafter handed over A1 to A3 to the Inspector of Police.

[ii] As per P.W.5, there are five VRO's working for the Guntakal Municipal area and he is one among them. Accused Nos.1 to 3 are strangers to him and he had never seen them prior to 10.07.2015 (date of confession). Degulapadu Village is at a distance of 20 K.Ms from Guntakal. Bodisanipalli Village is at a distance of 30 K.Ms from Guntakal. The accused approached him at 07:30 A.M. on 10.07.2015. The distance between his house and the Police Station is half a Kilometer. After examining A1 to A3, he started recording their statements. One hour time was taken for recording Ex.P6. No draft was prepared. The statement was recorded based on the answers given to the questions put by him. He did not record the questions in Ex.P6.

Following facts are clear in respect of P.W.5 :

- (a) He is a mediator in several Police Stations pertaining to Guntakal Police Station.
- (b) He is acted as a witness in the preparation of some other extra-judicial confessions.

(c) He deposed as P.W.7 in S.C.No.423 of 2016 on 07.02.2017. He deposed in the said case that he signed on the report at the request of Police in Police Station.

(d) He deposed as P.W.3 in C.C.No.196 of 2015 on the file of the Special J.F.C.M Court, P & E, Anantapuram on 30.01.2017.

(e) He has deposed as P.W.2 in C.C.No.162 of 2014 on the file of J.F.C.M. Guntakal on 10.07.2017.

[iii] As per prosecution accused No.1 is resident of Bodasanipalli Village, whereas A2 and A3 are residents of Degulapadu Village of Chippagiri Mandal. There was no prior acquaintance between the accused and P.W.5. Therefore, the possibility of the accused making confession before the P.W.5 is highly doubtful.

[iv] P.W.5 produced the accused before the Police along with Ex.P6-confession statement and Ex.P7-requisition and thereafter the Police said to have prepared mahazar. Thereafter, the Police altered the FIR under Ex.P17 adding the offences under Sections 364-A, 302, 201 and 109 r/w 34 IPC on the strength of Ex.P7-requisition.

[v] The language of Ex.P17 clearly discloses that VRO-P.W.5 has enclosed the extra-judicial confession statement of the accused and the endorsement shows that Ex.P7 is altered / registered on 10.07.2015 at about 08:30 A.M.

[vi] P.W.5 clearly deposed that A1 to A3 were present before him between 07:30 to 09:00 A.M. and that he went to the Police Station at 09:30 A.M. Therefore, the receipt of information at 08:30 A.M. and the registration / alteration of FIR under Ex.P17 at 08:30 A.M. create a doubt against the prosecution version. Further, the confession covered by Ex.P6 alone appears to be the basis for recovery of the corpus of the deceased and material objects relied.

[vii] P.W.10 says that mahazarnama was prepared at 09:30 A.M. P.W.10 admits during cross-examination that P.W.5 handed over the Ex.P6 along with its copy of Ex.P6 and again he recorded the statements of A1 to A3 and he did not serve summons to the mediators who were present when the confession statements of A1 to A3 were recorded.

[viii] The prosecution would rely on Ex.P6 for the purpose of identifying the place of recovery of dead body and also for the confession. The confession leading to the recovery of certain material objects like gaddapara, gadaru, plastic gampa M.O.Nos.11 to 15-Crowbar, Spade, Stick etc. Ex.P11 to P15. Further, the prosecution also relied on the confession of accused for recovery of gold ornaments, ear studs-M.O.No.2, Gold chains-M.O.Nos.3 and 4 and one pair of Bangles-M.O.No.5.

[ix] The prosecution claims that on the strength of confession of A1 to A3, the Police went to the house of A4 along with P.W.3 and one Valmiki Ranganna-L.W.6 and A4 voluntarily produced the gold jewellery covered by M.O.Nos.1 to 3 and also the motorcycle-M.O.No.15, which was used at the

time of committing of the offence. Ex.P5 is the seizure-cum-arrest mahazarnama of A4.

[x] Ex.P5 discloses the presence of the Police and the arrest of A4. Therefore confession part of the Ex.P5 relating to the motive of A4 and her instigation of the other accused etc. cannot be relied on.

[xi] It is not the case of the prosecution that A1 to A3 made any statement under Ex.P6 that the Gold jewellery taken away by them from the body of the deceased was handed over by them to the A4. Therefore, the link of handing over gold jewellery of the deceased by the accused Nos.1 to 3 to A4 is not found from Ex.P6.

[xii] From the evidence of prosecution witnesses, it is clear that the confession of the accused being the only source for the recovery of corpus and material objects M.O.Nos.1 to 5 of the deceased and the same is suffering from so many doubts. Hence, it is not acceptable. The confession of the accused leading to the discovery of the dead body of the deceased is doubtful for the following reasons:

(A) The specific statements of the accused that they will show the place where they buried the dead body is not forming part of Ex.P6-confession statements.

(B) The confession recorded by the investigating officer separately by the accused whether preceded by any summoning of other witness for the said recording of such statement is not stated. The said statement is not proved.

13. In the context of evidence stated above, it is relevant to note the observations of the Hon'ble Supreme Court in the following cases:

[i] In ***Boby vs. State of Kerala***¹, the Hon'ble Supreme Court, in paragraphs 31 and 32, observed as follows:

31. *It will also be relevant to refer to the following observations of this Court in State of Karnataka v. David Rozario [State of Karnataka v. David Rozario, (2002) 7 SCC 728 : 2002 SCC (Cri) 1852] : (SCC p. 733, para 5)*

“5. ... This information which is otherwise admissible becomes inadmissible under Section 27 if the information did not come from a person in the custody of a police officer or did come from a person not in the custody of a police officer. The statement which is admissible under Section 27 is the one which is the information leading to discovery. Thus, what is admissible being the information, the same has to be proved and not the opinion formed on it by the police officer. In other words, the exact information given by the accused while in custody which led to recovery of the articles has to be proved. It is, therefore, necessary for the benefit of both the accused and the prosecution that information given should be recorded and proved and if not so recorded, the exact information must be adduced through evidence. The basic idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered as a search 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. The information might be confessional or non-inculpatory in nature but if it results in discovery of a fact, it becomes a reliable information. It is now well settled that recovery of an object is not discovery of a fact envisaged in the section. Decision of the Privy Council in Pulukuri Kotayya v. King-Emperor [Pulukuri Kotayya v. King-Emperor, 1946 SCC OnLine PC 47 : (1946-47) 74 IA 65 : AIR 1947 PC 67] is the most-quoted authority for supporting the interpretation that the “fact discovered” envisaged in the section embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect. (See State of Maharashtra v. Damu [State of Maharashtra v. Damu, (2000) 6 SCC 269 : 2000 SCC (Cri) 1088] .)”

¹ (2023) 15 Supreme Court Cases 760

32. A three-Judge Bench of this Court recently in *Subramanya v. State of Karnataka* [*Subramanya v. State of Karnataka*, (2023) 11 SCC 255] , has observed thus : (SCC pp. 299-300, paras 76-78)

“76. Keeping in mind the aforesaid evidence, we proceed to consider whether the prosecution has been able to prove and establish the discoveries in accordance with law. Section 27 of the Evidence Act reads thus:

‘27. How much of information received from 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.’

77. The first and the basic infirmity in the evidence of all the aforesaid prosecution witnesses is that none of them have deposed the exact statement said to have been made by the appellant herein which ultimately led to the discovery of a fact relevant under Section 27 of the Evidence Act.

78. If, it is say of the investigating officer that the appellant-accused while in custody on his own free will and volition made a statement that he would lead to the place where he had hidden the weapon of offence, the site of burial of the dead body, clothes, etc. then the first thing that the investigating officer should have done was to call for two independent witnesses at the police station itself. Once the two independent witnesses would arrive at the police station thereafter in their presence the accused should be asked to make an appropriate statement as he may desire in regard to pointing out the place where he is said to have hidden the weapon of offence, etc. When the accused while in custody makes such statement before the two independent witnesses (panch witnesses) the exact statement or rather the exact words uttered by the accused should be incorporated in the first part of the panchnama that the investigating officer may draw in accordance with law. This first part of the panchnama for the purpose of Section 27 of the Evidence Act is always drawn at the police station in the presence of the independent witnesses so as to lend credence that a particular statement was made by the accused expressing his willingness on his own free will and volition to point out the place where the weapon of offence or any other article used in the commission of the offence had been hidden. Once the first part of the panchnama is completed thereafter the police party along with the accused and the two independent witnesses (panch witnesses) would proceed to the particular place as may be led by the accused. If from that particular place anything like the weapon of offence or bloodstained clothes or any other article is discovered then that part of the entire process would form the second part of the

panchnama. This is how the law expects the investigating officer to draw the discovery panchnama as contemplated under Section 27 of the Evidence Act. If we read the entire oral evidence of the investigating officer then it is clear that the same is deficient in all the aforesaid relevant aspects of the matter.”

This Court in Subramanya case [Subramanya v. State of Karnataka, (2023) 11 SCC 255] , has elaborately considered as to how the law expects the IO to draw the discovery panchnama as contemplated under Section 27 of the Evidence Act.

It is clear from the evidence on record in this case that prosecution is simply relied on the statement recorded by the Investigation Officer without there being any clear material indicating such recording of statement in the presence of such independent witnesses etc. The test of prudence advised by the Hon’ble Supreme Court in **Boby vs. State of Kerala** (1 supra), when applied to the evidence on record, the evidence is found not acceptable.

[ii] In **Moorthy vs. State of Tamil Nadu**², the Hon’ble Supreme Court, in paragraphs 6, 7 and 8, observed as follows:

Our view

6. *Firstly, we will deal with the prosecution case about the extra-judicial confession. As regards extra-judicial confession, the law has been laid down by this Court in Pawan Kumar Chourasia v. State of Bihar [Pawan Kumar Chourasia v. State of Bihar, (2023) 18 SCC 414] . In para 6 it is held thus: (SCC pp. 415-16)*

“6. As far as extra-judicial confession is concerned, the law is well settled. Generally, it is a weak piece of evidence. However, a conviction can be sustained on the basis of extra-judicial confession provided that the confession is proved to be voluntary and truthful. It should be free of any inducement. The evidentiary value of such confession also depends on the person to whom it is made. Going by the natural course of human conduct, normally, a person would confide about a crime committed by him only with such a person in whom he has implicit faith. Normally, a person would not make a confession to someone who is totally a stranger to him. Moreover, the Court has to be satisfied with the reliability of the confession keeping in view the circumstances in which it is

² AIR 2023 Supreme Court 3960

made. As a matter of rule, corroboration is not required. However, if an extra-judicial confession is corroborated by other evidence on record, it acquires more credibility.”

(emphasis supplied)

7. We have perused the evidence of PW 1 Ganesan who was posted as the Village Administrative Officer at the time of the commission of the offence. He was not permanently posted in Village Seekkarajapuram as he stated that at the time of recording of evidence, he was transferred as Village Administrative Officer to Ranipet. PW 1 admitted in the cross-examination that he did not know the appellant before he came to him and allegedly made the extra-judicial confession.

8. The incident is of 29-5-2006 but the alleged extra-judicial confession was made on 10-8-2006. It is impossible to understand why would the appellant meet the Village Administrative Officer, who was a total stranger to him, more than two months after the incident for making a confession. PW 1 and the appellant were not known to each other till 10-8-2006. Normally an accused will confide only with a person in whom he has implicit faith. He would not go to a stranger to make a confession of guilt. The fact that the alleged confession was made by him more than two months after the incident makes it more suspicious.

It was a case similar to the facts of the present case viz. the VRO (P.W.5) in the present case is a complete stranger to the accused. Therefore, his evidence is of no help to the prosecution.

[iii] In **Ram vs. State of Punjab**³, the Hon'ble Supreme Court, in paragraph 5 observed as follows:

5. The trial Judge having observed that retracted extra judicial confession is a weak piece 45 of evidence, however, held that the same is corroborated by the recovery of the dead body at the instance of the accused and held that the prosecution case could be accepted and accordingly convicted the two appellants. The learned counsel for the appellants submitted that both the accused have been working under Pal Singh for the last five or seven years and they have been demanding the wages due from him and, therefore, both went against him. His further submission is that the evidence of Pal Singh regarding the retracted extra judicial confession is highly artificial and at any rate is a weak piece of evidence and the recovery of the dead body by itself does not in any manner connect the accused with the murder. He also submitted that there is not an independent evidence in respect of the alleged recovery of the dead body and it is not possible that-somebody having committed the murder has burned the dead body. Having gone through the records and

³ 1992 Supreme (SC) 985

the evidence of the witnesses we find it difficult to accept evidence of Pal Singh regarding the alleged extra judicial confession. Regarding the same,' the prosecution case entirely rests on his evidence and we find it difficult to accept his evidence but the alleged extra judicial confession. Once it is retracted it become very weak piece of evidence 'Regarding the recovery of the dead body, we do not find from the judgment of the trial Court that any independent witnesses have spoken about the recovery at the, instance of the accused. Reliance has been placed by the prosecution on the photographs to show that the accused were seen digging the dead body from the well at the time of the recovery. This can be explained away by saying that the two accused as labourers might have helped the Police to recover the dead body by digging. This by itself is not enough to establish that the place where the dead body is alleged to have been concealed was especially within the knowledge of the accused so as to connect them with the murder. The two circumstances relied upon by the prosecution, in our view, are insufficient to bring home the guilt of the accused. In result convictions and sentences are set aside and the appeals are allowed. If the accused are in jail they shall be set at liberty forthwith.

[iv] In ***Ravishankar Tandon vs. State of Chhattisgarh***⁴, the Hon'ble Supreme Court, in paragraphs 8 and 12, observed as follows:

8. *Undoubtedly, the prosecution case rests on circumstantial evidence. The law with regard to conviction on the basis of circumstantial evidence has very well been crystalized in the judgment of this Court in the case of Sharad Birdhichand Sarda v. State of Maharashtra¹, wherein this Court held thus:*

“152. 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 Madhya Pradesh [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129]. 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 (Alias) Simmi v. State of Uttar Pradesh [(1969) 3 SCC 198 : 1970 SCC (Cri) 55] and Ramgopal v. State of Maharashtra [(1972) 4 SCC 625 : AIR 1972 SC 656]. It may be useful to extract what Mahajan, J. has laid down in Hanumant case [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129]:

“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

⁴ AIR 2024 Supreme Court 2087

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."

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 "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in *Shivaji Sahabrao Bobade v. State of Maharashtra* [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 Cri LJ 1783] where the observations were made : [SCC para 19, p. 807 : SCC (Cri) p. 1047]

"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 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(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."

12. The prosecution case basically relies on the circumstance of the memorandum of the accused under Section 27 of the Indian Evidence Act, 1872 (for short "Evidence Act") and the subsequent recovery of the dead body from the pond at Bhatgaon. The learned Judges of the High Court have relied on the judgment of this Court in the case of *State (NCT of*

*Delhi) v. Navjot Sandhu alias Afsan Guru*². The High Court has relied on the following observations of the said judgment:

“121. The first requisite condition for utilising Section 27 in support of the prosecution case is that the investigating police officer should depose that he discovered a fact in consequence of the information received from an accused person in police custody. Thus, there must be a discovery of fact not within the knowledge of police officer as a consequence of information received. Of course, it is axiomatic that the information or disclosure should be free from any element of compulsion. The next component of Section 27 relates to the nature and extent of information that can be proved. It is only so much of the information as relates distinctly to the fact thereby discovered that can be proved and nothing more. It is explicitly clarified in the section that there is no taboo against receiving such information in evidence merely because it amounts to a confession. At the same time, the last clause makes it clear that it is not the confessional part that is admissible but it is only such information or part of it, which relates distinctly to the fact discovered by means of the information furnished. Thus, the information conveyed in the statement to the police ought to be dissected if necessary so as to admit only the information of the nature mentioned in the section. The rationale behind this provision is that, if a fact is actually discovered in consequence of the information supplied, it affords some guarantee that the information is true and can therefore be safely allowed to be admitted in evidence as an incriminating factor against the accused. As pointed out by the Privy Council in Kottaya case [AIR 1947 PC 67 : 48 Cri LJ 533 : (1946-47) 74 IA 65] : (AIR p. 70, para 10)

“clearly the extent of the information admissible must depend on the exact nature of the fact discovered”

and the information must distinctly relate to that fact.

Elucidating the scope of this section, the Privy Council speaking through Sir John Beaumont said : (AIR p. 70, para 10)

“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 accused.”

(emphasis supplied)

We have emphasised the word “normally” because the illustrations given by the learned Judge are not exhaustive. The next point to be noted is that the Privy Council rejected the argument of the counsel appearing for the Crown that the fact discovered is the physical object produced and that any and every information which relates distinctly to that object can

be proved. Upon this view, the information given by a person that the weapon produced is the one used by him in the commission of the murder will be admissible in its entirety. Such contention of the Crown's counsel was emphatically rejected with the following words : (AIR p. 70, para 10)

"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."

Then, Their Lordships proceeded to give a lucid exposition of the expression "fact discovered" in the following passage, which is quoted time and again by this Court : (AIR p. 70, para 10)

"In 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 the 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)

128. So also in *Udai Bhan v. State of U.P.* [1962 Supp (2) SCR 830 : AIR 1962 SC 1116 : (1962) 2 Cri LJ 251] J.L. Kapur, J. after referring to *Kottaya case* [AIR 1947 PC 67 : 48 Cri LJ 533 : (1946-47) 74 IA 65] stated the legal position as follows : (SCR p. 837)

"A discovery of a fact includes the object found, the place from which it is produced and the knowledge of the accused as to its existence."

The above statement of law does not run counter to the contention of Mr. Ram Jethmalani, that the factum of discovery

combines both the physical object as well as the mental consciousness of the informant accused in relation thereto. However, what would be the position if the physical object was not recovered at the instance of the accused was not discussed in any of these cases.”

14. When the evidence on record is put to the test contemplated under authorities cited above, the extra-judicial confession said to have been made by the Accused Nos.1 to 3 found not sufficient to believe their guilt or the recovery of either the corpus of the deceased or gold jewellery pursuant to the such confession. As far as confession of Accused No.4 is concerned, since it is made in the presence of Police, the same is not reliable. When there is no link as to the accused Nos.1 to 3 handing over the gold jewellery of the deceased to Accused No.4, the recovery of gold jewellery from A4, if any the prosecution relies will not advance the case of the prosecution in any manner.

15. Upon analysing the evidence on record particularly relating to the confession of the accused Nos.1 to 3 made before P.W.5 and covered by Ex.P6, in the light of the precedential guidance referred to above and the other improbabilities discussed above, this Court finds that the confession of accused Nos.1 to 3 is not helpful to accept that the prosecution has proved the guilt of the accused for the offences alleged against them and that the same is liable to be rejected.

Other Evidence-Circumstantial Evidence

16. [i] The prosecution is relying on the circumstantial evidence. The five golden principles referred by the Hon'ble Supreme Court in ***Ravishankar***

Tandon vs. State of Chhattisgarh (4 supra), after referring to the earlier judgments vide paragraph 8 are:

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 “must or should” and not “may be” established. There is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved” as was held by this Court in Shivaji Sahabao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 Cri LJ 1783] where the observations were made : [SCC para 19, p. 807 : SCC (Cri) p. 1047]

“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 ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.”

(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.”

[ii] There is substantial delay in giving complaint after the missing of the deceased. Though the deceased was found missing in May, 2015 the complaint was given only in June, 2015.

[iii] It is not shown that A1 and A4 were living in the sheds of the deceased as tenants or otherwise and having access to the deceased by the date of her missing.

[iv] The important links in the chain of circumstances:

(1) Access of the accused to the deceased.

(2) Accused at least one or some was last seen with the deceased.

(3) The confession of the accused leading to the discovery of the corpus of the deceased or the gold jewellery of the deceased.

(4) The role or possibility of the accused in the homicidal death of the deceased.

(5) The motive for the accused to eliminate the deceased.

None of these important links in the chain of circumstances are proved beyond reasonable doubt. Therefore, the accused are entitled for benefit of doubt.

17. In view of the discussion made above, point framed is answered concluding that the prosecution has failed to prove the guilt of the appellants for the offences alleged against them beyond all the reasonable doubt and that the accused are entitled for benefit of doubt and consequently to an acquittal of the charges.

18. In the result,

- (i). the Criminal Appeal is allowed.
- (ii). the conviction and sentence recorded by the learned VI Additional Sessions Judge, Anantapuram at Gooty in S.C.No.492 of 2016, under the impugned judgment dated 10.07.2018 are set-aside.
- (iii). Appellant Nos.1 to 3 / accused Nos.1 to 3 are acquitted of the charges under Sections 364, 302, 201 and 379 IPC, and appellant No.4/ accused No.4 is acquitted under Section 302 r/w 109 IPC.
- (iv). Appellants/Accused Nos.1 to 4 shall be set at liberty forthwith, if they are not required in connection with any other case or crime.
- (v). Fine amount, if any, paid by the appellants/accused shall be refunded to them.
- (vi).The property orders, if any, passed by the learned Sessions Judge shall stand confirmed.

19. Consequently, interlocutory applications, if any, pending shall stand closed.

JUSTICE K.SURESH REDDY

JUSTICE A.HARI HARANADHA SARMA

Date:15.07.2026

Knr

Whether the order is:

Speaking		Reasoned	✓
Reportable	✓	Non-reportable	

HONOURABLE SRI JUSTICE K SURESH REDDY

And

HONOURABLE SRI JUSTICE A. HARI HARANADHA SARMA

CRIMINAL APPEAL No.2593 of 2018

Date:15.07.2026

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