

MRC-9-2023 &
CRA-D-1522-2023

CNR No: PHHC011567472023
2026:PHHC:119432-DB



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

MRC-9-2023 &
CRA-D-1522-2023

State of Haryana ...Appellant

Versus

Arun and others ...Respondents

JUDGMENT RESERVED ON	JUDGMENT PRONOUNCED ON	OPERATIVE PART PRONOUNCED OR FULL	UPLOADED ON
03.08.2026	26.08.2026	FULL PRONOUNCED	26.08.2026

CORAM: JUSTICE ANOOP CHITKARA
JUSTICE RAMESH CHANDER DIMRI

Present: Mr. Rahul Mohan, Addl. A.G., Haryana
Mr. Yuvraj Shandilya, A.A.G., Haryana
Mr. Karan Sharma, D.A.G., Haryana
Mr. Shiva Khurmi, D.A.G., Haryana.

Mr. Vinod Ghai, Sr. Advocate with
Mr. Arnav Ghai, Advocate for the appellants.

Mr. J.S. Mehndiratta, Sr. Advocate (Amicus Curiae) with
Ms. Tanveen Kaur, Advocate.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
467	09.08.2021	Kundli, Sonipat	6 of POCSO Act, 302, 328, 376D, 506, 120-B/ 34 IPC

Criminal Case number before the Sessions Court	SC/591/2021
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Charges framed against all the four accused for the following offences.	
Date	19.04.2022
IPC	376 DA ¹ , 376 AB ² , 506 ³ /34 ⁴ , 328 ⁵ /34, 302 ⁶ /34, 120-B ⁷ , IPC
POCSO Act	6 ⁸ of POCSO Act

¹ §376DA. Punishment for gang rape on woman under sixteen years of age.
² §376AB. Punishment for rape on woman under twelve years of age.
³ §506. Punishment for criminal intimidation.
⁴ §34. Acts done by several persons in furtherance of common intention.
⁵ §328. Causing hurt by means of poison, etc., with intent to commit an offence.
⁶ §302. Punishment for murder.
⁷ §120B. Punishment of criminal conspiracy.
⁸ §6. Punishment for aggravated penetrative sexual assault.

Date of Decision	18.11.2023
Date of order on the quantum of sentence	24.11.2023

Name of the accused/convict	Arun
Conviction under Sections	6 of POCSO Act, 376 DA, 506/34, 328/34, 302/34, 120B IPC

Sentence imposed upon the convict – Arun			
Section	Sentence of imprisonment	Fine in INR	Sentence in default of payment of fine
376 DA IPC POCSO Act	DEATH PENALTY	-	-
302/34 IPC	DEATH PENALTY	-	-
328/34 IPC	RI for 10 years	10000/-	RI for 06 months
506/34 IPC	RI for 7 years	10000/-	RI for 06 months
120B IPC	RI for a period of life imprisonment	10000/-	RI for 06 months

Name of the accused/convict	Phool Chand
Conviction under Sections	6 of POCSO Act, 376 DA, 506/34, 328/34, 302/34, 120B IPC

Sentence imposed upon the convict – Phool Chand			
Section	Sentence of imprisonment	Fine in INR	Sentence in default of payment of fine
376 DA IPC POCSO Act	DEATH PENALTY	-	-
302/34 IPC	DEATH PENALTY	-	-
328/34 IPC	RI for 10 years	10000/-	RI for 06 months
506/34 IPC	RI for 7 years	10000/-	RI for 06 months
120B IPC	RI for a period of life imprisonment	10000/-	RI for 06 months

Name of the accused/convict	Dukhan
Conviction under Sections	6 of POCSO Act, 376 DA, 506/34, 328/34, 302/34, 120B IPC

Sentence imposed upon the convict – Dukhan			
Section	Sentence of imprisonment	Fine in INR	Sentence in default of payment of fine
376 DA IPC POCSO Act	DEATH PENALTY	-	-
302/34 IPC	DEATH PENALTY	-	-
328/34 IPC	RI for 10 years	10000/-	RI for 06 months
506/34 IPC	RI for 7 years	10000/-	RI for 06 months
120B IPC	RI for a period of life imprisonment	10000/-	RI for 06 months

Name of the accused/convict	Ram Suhag
Conviction under Sections	6 of POCSO Act, 376 DA, 506/34, 328/34, 302/34, 120B IPC

Sentence imposed upon the convict – Ram Suhag			
Section	Sentence of imprisonment	Fine in	Sentence in default

		INR	of payment of fine
376 DA IPC POCSO Act	DEATH PENALTY	-	-
302/34 IPC	DEATH PENALTY	-	-
328/34 IPC	RI for 10 years	10000/-	RI for 06 months
506/34 IPC	RI for 7 years	10000/-	RI for 06 months
120B IPC	RI for a period of life imprisonment	10000/-	RI for 06 months

1. In the early morning of Aug 06, 2021, two minor sisters, the elder ‘Kxxx’, aged 13, whom this Court would fondly remember as “*Laado*,” and the younger ‘Rxxx,’ aged 12, whom this Court would affectionately remember as “*Laadli*,” were brought to Satyavadi Raja Harishchander Hospital, Narela, Delhi, by their mother [PW-1], accompanied by Yogesh [PW-5], son of the landlady. Victims’ mother told the attending doctors that both of them were bitten by a snake at midnight. According to the hospital records, the younger one, ‘R’ *Laadli*, was brought dead, and despite various resuscitation attempts, the elder one ‘K’ *Laado* also expired after about 4 hours.

2. After that, in the evening of the same day, i.e., Aug 06, 2021, the victims’ mother [PW-1] gave written information [Ext P-48, p. 267 of the Trial Court’s Record (TCR)] to SHO, Police Station Kundli, Sonapat (Haryana). As per this information, which was earliest in time, the victims’ mother stated that they were residing as tenants in the house of Yogesh [PW-5]. On the intervening night of Aug 05 & Aug 06, 2021, after taking food, she, along with her daughters, ‘K’ and ‘R’, and her three sons ‘D’, ‘K’, and ‘A’, were sleeping in their rooms. At midnight, around 1 AM, she noticed a black snake on her daughters, they scared the snake away and moved upstairs to the roof to sleep. On the roof, the victims vomited, and on this both ‘K’ and ‘R’ were taken to the hospital, where both of them expired during their treatment.

3. The Inquest Report [Ext P-21] of the victim ‘R’ and the Inquest Report [Ext P-24] of the victim ‘K’ mention the cause of death due to snakebite. PW-9, Dr. SK Agarwal, prepared the medico-legal injury report of ‘R’ as Ext P-14, as per which she was declared brought dead, and of ‘K’ as Ext P-18 wherein “*No snake bite marks can be seen*” was observed. After a few hours, K’s health deteriorated, and eventually she also passed away.

4. On Aug 07, at 2 P.M. and 3 P.M., the postmortem examination of the bodies of both ‘K’ and ‘R’ was conducted in Babu Jagjivan Ram Hospital, Delhi. Dr. Anil Yadav, [PW-10], who conducted the autopsies, did not find any snakebite marks on any of the victims’ bodies, and in the opinion regarding cause of death gave a similar opinion for both autopsies, which read as follows, “*Cause of death kept pending till the receipt of viscera analysis report.*

Injury No. 01 is caused as a result of sexual assault and injury Nos. 02, 03, 04 & 05 are caused as a result of blunt force impact. All injuries are antemortem in nature.”

5. After that, on Aug 09, 2021, i.e., after 3 days of the deaths, the victims’ mother filed another complaint [Ext P-1] with the SHO of Police Station Kundli, stating that she was a tenant in the house of Yogesh, son of Aman Chauhan, where she resides along with her five children. In the rooms adjacent to their rooms, 14/15 people who hail from Bihar and Uttar Pradesh also reside as tenants. On the intervening night of Aug 05 & Aug 06, 2021, after taking food, she, along with her daughters ‘K’ and ‘R’ and the youngest child, who was a son, were sleeping in their room, and her two elder sons were sleeping on the roof. Around midnight, her neighbors, Arun Pandit [A-1], Phool Chand [A-2], Ram Suhag [A-4], and Dukhan [A-3] entered their room. On hearing the sound of the door, she woke up, and Arun gagged her mouth and told her not to raise her voice; otherwise, she and her children would be killed. Arun and Phool Chand repeatedly committed rape on her elder daughter ‘K’, and Ram Suhag and Dukhan repeatedly committed rape on her younger daughter ‘R’.

6. When her daughters stated that they would inform the police, Arun brought insecticide, and Phool Chand held ‘K’s hands while Arun forcibly administered the insecticide to ‘K’; similarly, Dukhan held ‘R’s hands, and Ram Suhag took insecticide from Arun and forcibly administered it to ‘R’. They all warned the victims’ mother [PW-1] that if she revealed this incident, she and her other children would also be killed.

7. After this, PW-1 along with her daughters went upstairs to the roof. At around 4 A.M., because of her daughters’ poor health, she brought them to Narela (Satyavadi Narela Raja Harishchander Hospital, Delhi), in the car of Yogesh [PW-5], who was son of her landlady. In the hospital, the victims’ mother told the doctors that her daughters were bitten by a snake. Both her daughters passed away during their treatment. She stated that earlier, because of duress, she did not reveal this fact to anyone, and even to the police, she had made a statement of snakebite. She further stated that she made this complaint without any pressure.

8. Based on the above information, the police registered an FIR [Ext P-59] at 11-27 P.M., on Aug 09, 2021.

9. After that, on the next day, i.e., Aug 10, 2021, the Investigator produced the complainant, the victims’ mother, before the concerned Additional Chief Judicial Magistrate, Sonipat, where her statement under §164 CrPC [Ext P-3] was recorded.

10. The victims’ mother, in her statement under §164 CrPC [Ext P-3], stated that she has seven children, of whom four were sons, and three were daughters. One son and one

daughter were already married and were living separately, and her husband had already passed away. She narrated that around five days earlier, she, along with her daughters 'S' and 'R' and other children, was sleeping. At midnight, four laborers entered their house, beat her, gagged her mouth, and threatened to kill her if she raised her voice. These four people raped her daughters 'Sxxx' and 'Rxxx' and then administered poison to them. The poison was in a bottle. They left at midnight, around 1 a.m. After that, her daughters felt nauseous and asked her to take them to the roof. She took them to the roof, where they vomited. Since they were all alone, they were unable to seek help during the night. In the morning at 6, the owner of their room took them to the hospital. She mentioned the age of her daughters 'S' as 15 years and 'R' as 11 years and stated that now both of them were dead. She stated that, of the four accused persons, she knows only *Sattu's* name; however, she can recognize all of them by their faces. *(In the first statement of PW-1 [Ext P-48], in the second complaint [Ext P-1] and in the FIR [Ext P-59], the elder daughter was referred to as 'Kxxx', whereas, in the statement of victims' mother recorded under 164 CrPC [Ext P-3], refers to her elder daughter as 'Sxxx').*

11. The police arrested all the accused, and the record at page nos. 47 to 53 of Part C reveals that all four accused were arrested on Aug 10, 2021, at 5 P.M.

12. Yogesh [PW-5], son of Aman Chauhan stated that the victims' family, as well as all the four accused were their tenants. PW-21 Parmod Sahni also states that they were all neighbors and tenants in Aman Chauhan's building.

13. On Aug 10, 2021, the police got conducted the medical examination of three accused Arun, Ram Suhag, and Phoolchand at 10-30 P.M., and of Dukhan at 11:05 P.M., by PW-11 Dr. Naveen Yadav. The medical examination of the accused Arun was tendered in evidence as Ext P-27 [p. 233 of TCR], the medical examination of accused Phoolchand as Ext P-29 [p. 237 of TCR], the medical examination of accused Dukhan as Ext P-31 [p. 241 of TCR] and the medical examination of Ramsuhag as Ext P-33 [p. 245 of TCR]. All medical certificates state that the doctor collected blood samples from all the accused and sealed and labeled them separately for DNA examination. The doctor also took their respective underwears.

14. The Investigator called for the FSL team to visit the scene of crime and as per the crime-scene report Ext P-36 [pp. 349 & 350 of TCR], Jagbir Singh, SSA/SOC [PW-12], MFSU, Sonipat, accompanied by EHC Surjeet, inspected the crime scene at 05-15 P.M. on Aug 11, 2021. As per column no. (vi) of Para 7 of Ext P-36, it is mentioned that "*A metallic container of capacity 500 ml. approx. full of some poisonous liquid in it was stated to have already been taken into possession by the I.O. from the affected room before the visit of SOC team.*" Further, following is mentioned in column no. (vii) of Para 7, "*One green and white lining checkdaar cloth 'Parna' stated to be used in crime by the culprits having semen like*

suspected stains in it was observed lying on bedding lying on floor in a backside room adjacent to another backside (tudi) room where all the four culprits were stated to living as tenants.”

15. As per the prosecution’s case, on Aug 12, 2021, all the accused made similar disclosure statements, in which they disclosed about the manner in which they had committed the offence, the place where rape had been committed and poison was administered to the girls, and about the cloth which they had used to gag the victim’s mouth has been concealed by them in the room of ‘S’ victims’ mother. The said statements were tendered in evidence as Ext P-40, P-41, P-42, & P-43 by PW14 [pp. 367, 373, 379, and 385 of TCR].

16. As per recovery memo Ext P-46 [p. 403 of TCR] on August 12, 2021, the Investigator took into possession a *parna*, which is a *checkdaar* [chequered] cloth, which all the accused persons pointed out, and after that took it out from the heap of clothes from their residence. However, it is also mentioned that the *parna* was taken into possession by the I.O. after the spot was inspected on the previous day, i.e., on Aug 11, 2021, by the FSL crime-scene team, Sonipat

17. After completing the investigation, the police filed a challan under §173(2) CrPC, 1973, against all the four accused. The Additional Sessions Judge, Fast Track Special Court, Sonipat, took cognizance of the offence and commenced the trial.

18. One of the Appellants [A-4] Ram Suhag took the plea of being a juvenile, by claiming that on the date of the alleged incident, he was just 13 years of age. In the inquiry undertaken to ascertain the date of birth, [A-4], Ram Suhag, relied upon his Aadhaar Card, which was produced by AW-1 Dhaneswar Pandit, father of accused Ram Suhag Pandit, and the same was taken on record as Ext A-1 [p. 473 of TCR]. Ram Suhag’s father, AW-1, also tendered the Date of Birth Certificate issued by the Headmaster of Government School, Anchal Sindhiya, (Samastipur), Bihar, as Ext A-2 [p. 477 of TCR], and as per this certificate, the date of birth of Ram Suhag is Jan 01, 2008. AW-1 also tendered a copy of the School Leaving Certificate as Ext A-3, and as per this document, the date of birth of [A-4] Ram Suhag was Jan 01, 2008.

19. Ld. Public Prosecutor tendered the dental age of A-4 Ram Suhag as Ext R-1 [p. 253 of TCR], as per which Ram Suhag’s estimated dental age was 14 to 16 years, and it had to be confirmed by a radiologist to assess anatomic age. The report of the radiologist was tendered as Ext R-2 [p. 255 of TCR], which read as follows, “*INFERENCE: based on epiphyseal fusion status as in above-mentioned X-rays, the estimated bony age is in the range of 18-19 years.*” At the bottom of the report, there is a pre-printed note which reads as follows, “*This*

is interpretation of epiphyseal centers fusion as per literature and there could be variation in bony age c/w chronological age with a range of +/- 1-3 Yrs. (based on genetic, nutritional, physical activity or any other pathological issue of individual).”

20. The Investigator did not collect any other document pertaining to the date of birth certificate to contradict the date of birth as projected by the accused [A-4] Ram Suhag.

21. According to the Date of Birth Certificate [Ext A-2] and the School Leaving Certificate [Ext A-3], the date of birth of [A-4] Ram Suhag was Jan 01, 2008. If these certificates were considered, his age as of Aug 06, 2021, would be 13 years, 08 months, and 06 days. It is pertinent to note that if the prosecution had disputed Ram Suhag's date of birth as Jan 01, 2008, the burden would have been on them to prove that what was his date of birth, and if that was not possible, to at least prove that his age was more than 18 years.

22. Be that as it may, vide order dated Mar 12, 2022, the Trial Court while dismissing the application referred to the Aadhar Card, Date of birth certificate, School leaving certificate, Dental age and Radiologist report and the relevant extracts of para no. 11 of the aforesaid order dated Mar 12, 2022, reads as follows:

“11. ...The accused by appearance also did not appear to be 13 years of age and the said fact was noticed by this Court while conducting the proceedings through video conferencing on 24.09.2021...”

23. Challenging the rejection of the plea of juvenility, the accused Ram Suhag came up before this Court by filing a criminal revision petition against the impugned order dated Mar 12, 2022, which was registered as CRR-634-2022.

24. The CRR-634-2022 was first listed on Apr 21, 2022, before Single Bench of this Court, when petitioner's counsel sought an adjournment and thereafter also continued to seek adjournments. Furthermore, on Feb 23, 2023, a response was sought, which was filed after about a year by the Assistant Commissioner of Police, Sonipat, and bears the date of 06/07.02.2024. The Registry has also tagged the above revision petition with the Murder Reference [MRC-9 of 2023] and the Criminal Appeal [CRA-D 1522 of 2023] filed by the convicts. In this background, the criminal revision, which is still pending, is being disposed of by a separate order.

25. There was no challenge to their age by the remaining three accused who were also being tried as adults. Since the trial was not stayed in the revision petition, the trial continued.

26. By order dated Apr 19, 2022, the above-mentioned charges were framed against all the four accused persons. Eventually, the prosecution succeeded, and by the impugned judgment

dated Nov 18, 2023, all the four accused were convicted for rape and murder in terms of the offences captioned in the beginning, and vide separate order dated Nov 24, 2023, were awarded death sentences in addition to other sentences as captioned above.

27. Seeking confirmation of the death sentences, the Trial Court sent the above-mentioned reference to this Court under §366⁹ of the CrPC, 1973 [§407 BNSS, 2023]. Challenging the conviction and the consequent sentences as captioned above, the convicts also came before this Court by filing a common Criminal Appeal under §374(2)¹⁰ CrPC, 1973 [§415 BNSS, 2023].

28. An analysis of the evidence and the submissions of the Counsel for the convicts, the State, and of the Ld. Amicus would lead to the following outcome.

29. PW-1, the victims' mother, stated that she did not remember the date of birth of the victims; however, she admitted that the victims had studied in the Government Primary School, Kothia Naya, District Shivhar; however, she denied that the date of birth of Laado 'K' was Mar 07, 2008, and the date of birth of 'R' Laadli was June 24, 2009. PW-13, Thakur Vijay Kumar, Headmaster, Primary School Kothiya, District Shivhar, Bihar, tendered in evidence Ext P-39 [p. 361 of TCR], the copy of the admission and withdrawal register, which shows the date of birth of victim 'K' as 07.03.2008 and of victim 'R' as 24.06.2009. Based on the school records, he also issued certificates of date of birth for the victims as Ext P-37 and Ext P-38 [pp. 353 and 357 of TCR].

30. To evaluate the Medical and Scientific Evidence of the commission of rape on both victims, an analysis of the following evidence would be relevant.

31. The tell-tale signs of sexual assault were noticed by the doctors while conducting the victims' autopsies.

32. PW-10 Dr Anil Yadav, who was a specialist in forensics, conducted the autopsy of both the victims and also tendered in evidence his affidavit as Ext P-20 and the post-mortem report of victim 'R' as Ext P-22. The Autopsy of victim 'R', conducted at BJRM Hospital, Govt of NCT of Delhi, by Dr Anil Yadav, on Aug 07, 2021, at 2:00 PM. [p. 201 of TCR], reads as follows:

EXTERNAL EXAMINATION:

1) VAGINA - CLITORIS IS RED, SWOLLEN AND EDEMATOUS
LINEAR TEARS ARE SEEN IN THE FOLDS OF THE SKIN
BETWEEN LABIA MAJORA AND MINORA VAGINAL INTROITUS
IS BRUISED AND EDEMATOUS HYMEN IS TORN POSTERIORLY
AT 06 O' CLOCK, 09 O' CLOCK POSITION AND

⁹ §366. Sentence of death to be submitted by Court of Session for confirmation.

¹⁰ §374. Appeals from convictions.

POSTEROLATERALLY AT 05 O' CLOCK AND 07 O' CLOCK AND 09 O' CLOCK POSITIONS WITH SHARP AND RED MARGINS.

VAGINAL CANAL - TEAR ALONG WITH BRUISING (DEEP RED IN COLOUR) OF THE MUCOSA SEEN OVER LOWER ONE THIRD ON THE ANTERIOR VAGINAL WALL AND UPPER ONE THIRD AREA OF THE POSTERIOR VAGINAL WALL.

EXTENSIVE LACERATION OF THE VAGINAL VAULT IS SEEN. THE PUBIC AREA SURROUNDING THE VAGINA IS EDEMATOUS AND SWOLLEN.

2) MULTIPLE SCRATCH ABRASIONS REDDISH BROWN IN COLOUR ARE SEEN OVER THE BACK SURROUNDING BOTH THE SCAPULAR REGION OF SIZE RANGING FROM 0.4 X 0.2 CMS TO 0.1 X 0.8 CMS EACH.

3) REDDISH BROWN ABRAISON- CRESCENTRIC IN SHAPE, 04 IN NUMBERS ARE SEEN OVER THE RIGHT ANGLE OF THE MANDIBLE.

4) MULTIPLE REDDISH BLuish BRUISES 07 IN NUMBERS RANGING FROM 0.2 X 0.2 CMS TO 0.5 X 0.4 CMS OVER THE INNER SIDE OF BOTH THE THIGHS.

5) REDDISH BLuish BRUISE OF SIZE 0.7 X 0.5 CMS AND 0.8 X 0.8 CMS SEEN OVER THE LEFT AND RIGHT BUTTOCKS RESPECTIVELY.

33. The autopsy of victim 'K', conducted at BJRM Hospital, Govt of NCT of Delhi, vide PMR Ext P-25, by Dr Anil Yadav, on Aug 07, 2021, at 3:00 PM. [p. 223 of TCR], reads as follows:

EXTERNAL EXAMINATION:

1) VAGINA - CLITORIS IS RED, SWOLLEN AND EDEMATOUS. LINEAR TEARS ARE SEEN IN THE FOLDS OF THE SKIN BETWEEN LABIA MAJORA AND MINORA.

VAGINAL INTROITUS IS BRUISED AND EDEMATOUS. HYMEN IS TORN POSTERIORLY AT 06 O' CLOCK AND AT 07 O'CLOCK POSITION AND POSTEROLATERALLY AT 05 O' CLOCK, 07 O'CLOCK AND 09 O'CLOCK POSITIONS WITH SHARP AND RED MARGINS.

VAGINAL CANAL - TEAR ALONG WITH BRUISES (DEEP RED IN COLOUR) OF THE MUCOSA SEEN OVER LOWER ONE THIRD ON THE ANTERIOR VAGINAL WALL AND UPPER ONE THIRD ON AREA OF POSTERIOR VAGINAL WALL.

EXTENSIVE LACERATION OF THE VAGINAL VAULT WITH BLOOD CLOTS SEEN THE PUBIC AREA SURROUNDING THE VAGINA IS SWOLLEN AND EDEMATOUS.

2) MULTIPLE REDDISH BROWN SCRATCH ABRASIONS RANGING FROM 0.5 X 0.3 CMS TO 0.1 X 0.8 CMS OVER THE BACK - DEPENDENT PARTS OF THE BODY SHOULDER, BUTTOCKS AND THE CALF REGION.

3) MULTIPLE REDDISH BLUISH BRUISES ARE SEEN OVER THE INNER ASPECT OF BOTH THE THIGHS OF SIZE RANGING FROM 03 X 03 CMS TO 7X04 CMS.

4) REDDISH BROWN ABRASION, CRESCENTRIC IN SHAPE NAIL MARKS, SURROUNDED BY BRUISE ON THE EDGES SEEN OVER THE PERIAREOLAR AREA OF BOTH THE BREASTS.

5) REDDISH BROWN CRESCENTRIC SHAPE ABRASIONS SUGGESTING NAIL SCRATCH MARKS, 03 AND 01 EACH IN NUMBERS ARE PRESENT OVER THE RIGHT AND LEFT ANTEROLATERAL ASPECT OF NECK RESPECTIVELY.

34. Based on the physical examination of both victims' bodies during their post-mortem examinations, PW-10 Dr. Anil Yadav was of the opinion that certain injuries indicated the commission of sexual assaults against both the girls.

35. The post-mortem reports Ext P-22 and Ext P-25 also noted the presence of approximately 120 ml and 100 ml, respectively, of dark brown fluid in the stomach of both the victims with pungent odour. As per the FSL report [Ext PX], Pendimethalin, a herbicide, was found in the contents of the stomach and other organs of both of the victims and also in the plastic bottle taken into possession pursuant to the alleged disclosure statements of the accused.

36. PW 10 Dr. Anil Yadav testified in his examination-in-chief, as follows, “As per Toxicology Report Ex.PY, pendimethalin, an herbicide was detected in stomach small and large intestine Ex. 2a; liver, spleen and kidney Ex.2b; blood Ex.2c of victim (Rxxx)and I am of the opinion that death of victim (Rxxx) has taken place due to poisoning with sexual assault (pendimethalin is a herbicide which is used to control/kill pre-emergence and post-emergence of unwanted grasses and not a snake poison). I had also opined in PMR of victim (Rxxx)that injury No. 1 is caused as a result of sexual assault and injury No. 2,3,4 and 5 are caused due to blunt force impact. All injuries are anti-mortem in nature.” An identical opinion was given regarding the other victim ‘K’.

37. The foremost question that needs a definitive answer is whether both the victims were subjected to rape and after that were administered poison that caused their death?

38. The presence of nail marks and abrasions in the periareolar area of the breasts, multiple bruises on the inner thighs, abrasions on the buttocks, multiple scratches on the back, and similar injuries in the vaginas of both girls establish beyond any doubt that they were forcibly subjected to penetrative sexual assaults and that they most likely died primarily of poisoning.

39. However, the prominent question is the analysis of the evidence tendered by the prosecution to establish the connection of all or any of the accused to the commission of rapes.

40. The other evidence which the prosecution relied upon to prove rape and murder is ocular through the statements of the victims' mother, PW-1, victims' brothers PW-3, PW-4, and PW-7; discovery of poison bottle, and *parna* pursuant to disclosure statements, and also by the Scientific evidence, i.e., the post-mortem reports [Ext P-22 & Ext P-25], FSL report Bio Division [Ext PX-1], and FSL report DNA [Ext PY (Parcel No. 18 *checked Parna*, & Parcel No. 19 *Shawl* which were recovered from the crime scene)].

41. Victims' mother testified as PW-1 [p. 493 of TCR] but did not support the prosecution's case and was declared as a hostile witness. It shall be appropriate to reproduce the relevant portion of her testimony, starting from the beginning, which reads as follows:-

“I was blessed with seven children i.e., four boys and three daughters. Now out of them, only one daughter is alive. Two younger daughters/victims had died due to snake bites. Except this I do not know anything regarding the present case. I have seen all the accused namely Arun, Phool Chand, Dukhan and Ram Subhag present in the Court today through video conferencing. I do not know any of these accused. They never committed any wrong act with the victims.”

42. After that, the victims' mother, PW-1, was declared as a hostile witness, and leading questions were put to her by the Public Prosecutor; however, she did not support the prosecution's case and denied everything, including the statement she made under §164 CrPC [Ext P-3]. After that, the Court questioned her about her denial of having made the statement and of affixing the thumb impression, but she denied making any such statement under §164 CrPC to the Magistrate concerned and even denied affixing the thumb impression.

43. The testimony of PW-1 was recorded in the Trial Court on July 18, 2022, and she was never examined again. A perusal of the order dated Dec 09, 2022, reveals that PW-1 was called again in the Court, where Ms. Sonia, a fingerprint expert, had taken specimen impressions of both thumbs of PW-1, for comparison with her thumb impressions affixed by her in her statement recorded before the Trial Court on July 18, 2022, and also to compare these with the thumb impression on PW-1's statement under §164 CrPC, [Ext P-3]. The fingerprint expert's report, which affirmed her thumb impression on the above-mentioned documents, forms part of the Trial Court Record from page 101 of Part B. However, PW-1 was never summoned to confront her with the fingerprint report, nor were any perjury proceedings initiated against her.

44. A reference to paragraph nos. 114 to 117, 161 (ix), (x), (xi) of the impugned judgment passed by the Trial Judge indicates that she has based her findings by referring to §80¹¹ of the Indian Evidence Act, 1872, and has relied upon the statement [Ext P-3] of the victims' mother recorded under §164 CrPC. The Ld. Trial Judge did not explain how §80 of the Indian Evidence Act even applies in the present case. The Trial Judge in paragraphs nos. 120, 121, 122, 126, and 161 (xi) of the judgment of conviction placed reliance upon the victims' mother's second complaint dated Aug 09, 2021, [Ext P-1].

45. Thus, it is most relevant to analyze the legal admissibility of victims' mother's second complaint Ext P-1 [154 CrPC] based on which FIR [Ext P-59] was registered, her statement [Ext P-3] made under §164 CrPC, viz-a-viz her testimony on oath in Court as PW-1 and its overall impact.

46. It shall be appropriate to refer to the ratio of the relevant judicial precedents propounded by the Supreme Court on §154¹² CrPC.

47. Section 154 of the Code of Criminal Procedure provides for the recording of the first information—The information report as such is not substantive evidence.¹³ A First Information Report is not a substantive piece of evidence and can only be used to corroborate the statement of the maker under s. 157 of the Evidence Act or to contradict it under s. 145 of that Act.¹⁴ It is trite that an F.I.R. is not substantive evidence (unless of course it is admitted under Section 32(1) of the Evidence Act) and can be used to corroborate or contradict the maker thereof.¹⁵

48. In Sheikh Hasib Alias Tabarak v. The State of Bihar, AIR 1972 SC 283, Aug 23, 1971, a three-Judge Bench of the Supreme Court holds,

[4.]The principal object of the first information report from the point of view of the informant is to set the criminal law in motion and from the point of view of the investigating authorities is to obtain information about the alleged criminal activity so as to be able to take suitable steps for tracing and bringing to book the guilty party. The first information report, we may point out, does not constitute substantive evidence though its importance as conveying the earliest information regarding the occurrence

¹¹ §80. Presumption as to documents produced as record of evidence.—Whenever any document is produced before any Court, purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding or before any officer authorized by law to take such evidence or to be a statement or confession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the Court shall presume—that the document is genuine; that any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true, and that such evidence, statement or confession was duly taken.

¹² §154. Information in cognizable cases.

¹³ Supreme Court of India, Aghnoo Nagesia v State of Bihar, Three-Judge Bench, [1966] 1 SCR 134; 1965-INSC-126, May 04, 1965.

¹⁴ Supreme Court of India, Nasar Ali v. State of UP, Three-Judge Bench, [1957] 1 SCR 657, [p. 659]; 1957-INSC-17, Feb 14, 1957.

¹⁵ Supreme Court of India, George v. State of Kerala [1998] 2 SCR 303, Para 30; 1998-INSC-143, Mar 18, 1998.

cannot be doubted. It can, however, only be used as a previous statement for the purpose of either corroborating its maker Under Section 157 of the Indian Evidence Act or for contradicting him Under Section 145 of that Act. It cannot be used for the purpose of corroborating or contradicting other witnesses.

49. In the present case, the FIR [Ext P-59] was registered based on a complaint [Ext P-1] which was scribed by someone else at the instance of the victims' mother [PW-1], and she affixed her thumb impression on it. The investigation did not reveal the name of the person who wrote Ext P-1. The contents of the complaint were stated to be those of the victims' mother, who appeared as PW-1. It was for the victims' mother to state on oath during the trial, when the accused were duly represented, that she had narrated the allegations, which were correctly taken down in writing, and after that she put her thumb impression on Ext P-1.

50. Further, during her cross-examination, attention of PW-1 was drawn to Ext P-1, wherein she denied having known, seen, or heard the contents of her complaint, Ext P-1, [p. 493 of TCR]. She also stated that the police had obtained her thumb impressions on many blank papers. Ext P-1 reveals that she dictated her complaint to someone, but the Investigator neither pointed out the name of that person nor did the prosecution examine any such person. [7th last line of Ext P-1, p. 262 of TCR].

51. As per the prosecution, Ext P-1 was the version of the victims' mother [PW-1]. Thus, only PW-1 could explain what she said and what she intended to state. However, when her testimony was being recorded during the trial, the version she told the Court was more in line with her earliest information [Ext P-48] that she had got scribed through one Ram Avtar [Not-Examined], and what she testified in Court was absolutely not what was written down in Ext P-1. She stated that the cause of death of both of her daughters was due to snake bites and during dock identification, she did not recognize any of the four accused who were shown to her through video conference and further denied that any of the four accused was responsible.

52. One of the primary purposes of a statement recorded under §154 CrPC, 1973 [§173 BNSS, 2023] is to place the earliest version of commission of a cognizable offence on record and set the criminal justice process in motion; thus, the FIR, subject to very few fact-based exceptions such as where it amounts to a dying declaration of the informant, is not, by itself a substantive piece of evidence and ordinarily, it can be used only to corroborate or contradict its maker under §160/§148 of the BSA, 2023 which corresponds to §157/§145 of the Indian Evidence Act.

53. The statement under §154 CrPC cannot be compared with the statement made on oath before the Court during the trial in the presence of the accused, because the testimony

recorded in a trial can be disbelieved on the facts and circumstances peculiar to the said case, only on grounds of improbabilities, contradictions, improvements, delay, or the witness's competence.

54. The present matter does not fall within the category where the FIR might have evidentiary value; as such, this Court does not wish to elaborate further, as any such discussion would be obiter.

55. In this background, neither the contents of the FIR are proved, nor did the FIR corroborate its informant during the trial. Thus, Ext P-1, based on which FIR Ext P-59 was registered, does not carry any evidentiary value except that the FIR was registered on the basis of the written complaint Ext P-1 and both the victims were subjected to rapes and they died of poisoning.

56. The portion of §164 CrPC, relevant for the adjudication of the present matter, reads as follows:

164. Recording of confessions and statements.—(1) Any Metropolitan Magistrate or Judicial Magistrate may, whether or not he has jurisdiction in the case, record any confession or statement made to him in the course of an investigation under this Chapter or under any other law for the time being in force, or at any time afterwards before the commencement of the inquiry or trial:

(5) Any statement (other than a confession) made under sub-section (1) shall be recorded in such manner hereinafter provided for the recording of evidence as is, in the opinion of the Magistrate, best fitted to the circumstances of the case; and the Magistrate shall have power to administer oath to the person whose statement is so recorded.

57. The version of the victims' mother that was tendered in evidence as Ext P-3, recorded under §164 of the CrPC, was not a confession but falls within the category of a statement.

58. In the earliest version [Ext P-48], of the victims' mother, made on Aug 06, 2021, she had narrated that her daughters had been bitten by a black snake. After that, on Aug 09, 2021, the victims' mother made a second complaint [Ext P-1] to the SHO of the same police station, in which she explicitly named all four accused as Arun Pandit, Phoolchand, Ram Suhag Pandit, and Dukhan Pandit, and attributed separate acts to them by stating that Arun Pandit and Phoolchand had committed rape upon 'K' and had then administered poison to 'K', whereas accused Ram Suhag Pandit and Dukhan Pandit had committed rape upon 'R' and had administered poison to 'R'.

59. Whereas, in her statement recorded under §164 of the CrPC on the next date, i.e., Aug 10, 2021 [Ext P-3], she stated on oath that, of the four accused, she knows only the name of Sattu and does not know the names of the others; however, she can recognize all four of them by their faces.

60. If the victims' mother did not know the names of the four accused on Aug 10, 2021, how could she have known their full names on the previous day, i.e., Aug 09, 2021?

61. It is common sense that if the victims' mother had known the names of the accused on Aug 09, 2021, when she made a written complaint to the Police, there was no reason for her to explicitly state to the Judicial Magistrate (ACJM) the very next day that she did not know the names of any of the accused except one, Sattu. A perusal of the names of the accused in the Police Report, Order of Charges, and Memo of Parties in the judgment shows that none of the accused has the name or alias name "Sattu". Although the father's name of A-1 Arun is "Sattu", but Arun's father was neither an accused nor were there any allegations leveled against him at any point of time.

62. Thus, a material contradiction arises between Ext P-1 [§154 CrPC] and Ext P-3 [§164 CrPC] regarding the failure to know the names on the next day in Ext P-3, even though all the names were mentioned in the written complaint Ext P-1, made on the previous day.

63. An analysis of the above raises doubt about who had scribed the written complaint Ext P-1, dated Aug 09, 2021, based on which FIR [Ext P-59] was registered, and at whose instance the names of all the accused were written in the complaint, because on the next day, the victims' mother stated before the ACJM that she was not aware of their names except Sattu. A similar doubt arises as to her earliest version, Ext P-48, dated Aug 06, 2021, wherein no offence was alleged.

64. It shall be appropriate to refer to the relevant judicial precedents propounded by the Supreme Court on a statement recorded under §164 CrPC:

65. In Ram Kishan Singh vs. Harmit Kaur [1972] 3 SCC 280, Dec 9, 1971, the Supreme Court holds,

[8]. A statement under Section 164 of the Code of Criminal Procedure is not substantive evidence. It can be used to corroborate the statement of a witness. It can be used to contradict a witness.

66. In R. Shaji v. State of Kerala [2013] 3 S.C.R. 1172, 2013-INSC-72, Feb 04, 2013, the Supreme Court holds,

[14]. Evidence given in a court under oath has great sanctity, which is why the same is called substantive evidence. Statements under Section 161 Cr.P.C. can be used only for the purpose of contradiction and statements under Section 164 Cr.P.C. can be used for both corroboration and contradiction. In a case where the magistrate has to perform the duty of recording a statement under Section 164 Cr.P.C., he is under an obligation to elicit all information which the witness wishes to disclose, as a witness who may be an illiterate, rustic villager may not be aware of the purpose for which he has been brought, and what he must disclose in his statements under Section 164 Cr.P.C. Hence, the magistrate should ask the

witness explanatory questions and obtain all possible information in relation to the said case.

[15]. So far as the statement of witnesses recorded under Section 164 is concerned, the object is two fold; in the first place, to deter the witness from changing his stand by denying the contents of his previously recorded statement, and secondly, to tide over immunity from prosecution by the witness under Section 164. A proposition to the effect that if a statement of a witness is recorded under Section 164, his evidence in Court should be discarded, is not at all warranted. (Vide: Jogendra Nahak & Ors. v. State of Orissa & Ors., AIR 1999 SC 2565; and Assistant Collector of Central Excise, Rajamundry v. Duncan Agro Industries Ltd. & Ors., AIR 2000 SC 2901).

[16]. Section 157 of the Evidence Act makes it clear that a statement recorded under Section 164 Cr.P.C., can be relied upon for the purpose of corroborating statements made by witnesses in the Committal Court or even to contradict the same. As the defence had no opportunity to cross-examine the witnesses whose statements are recorded under Section 164 Cr.P.C., such statements cannot be treated as substantive evidence.

67. The jurisprudence concerning a statement under Section 164 CrPC is fairly clear—Such a statement is not considered as a substantive piece of evidence, as substantive oral evidence is one which is deposited before the Court and is subjected to cross-examination.¹⁶

68. Evidentiary value of a statement recorded under §183 BNSS, 2023 [§164 CrPC] cannot be equated with the statement of such a witness recorded on oath before the Court in the presence of the accused. The major difference between statements recorded under §183 BNSS, 2023 before the Magistrate on oath and a witness's testimony during trial is the absence or non-representation of the accused, subject to the exceptions of §335 BNSS, 2023 [§299 CrPC, 1973]. Further, the legislature did not formulate the language of §183 BNSS to substitute such a statement as substantive evidence at par with the statement made on oath during the trial in the presence or representation of the accused, who has an opportunity to cross-examine such a witness to create a doubt in their credibility. Thus, the testimony recorded during trial stands on the highest pedestal and is ordinarily accepted as reliable evidence unless impeached, shown to be from an incompetent witness, or shown to have been given under duress.

69. Another deficiency in the investigation is in not conducting the Test Identification Parade. In her statement recorded on oath under §164 CrPC, when the victims' mother clarified that she knew the accused by their faces, it was incumbent upon the Investigators and their Supervisory Officers to conduct a test identification parade to rule out the

¹⁶ Supreme Court of India, Vijaya Singh v. State of Uttarakhand [2024] 11 SCR 906, Para 27; 2024-INSC-905, Nov 25, 2024.

possibility of false implication. Subsequently, during the trial, she refused to identify any of the four persons shown to her through video conference as accused.

70. PW-1 explicitly denied that victims 'K' and 'R' had died as a result of the commission of rape and administration of poison by the accused persons during the intervening night of Aug 05/06, 2021 and not by snake bites. She also denied having compromised the matter with the accused outside the Court under pressure from her family to save the accused from legal punishment.

71. As per the prosecution's version, the second person who was present in the room in which the four laborers had trespassed was 'A', aged 10 years, who was the youngest brother of the victims. In the trial, he was produced as PW-7; however, after the initial primary examination, the Trial Court did not find PW-7 a competent witness and did not record his statement.

72. Thus, we are left with only the ocular version of the victims' mother PW-1, where there are not only contradictions between her statements under §154 and §164 CrPC, but she also even denied making either of the statements. In addition, the earliest information, as per Ext P-48, was recorded at 6:00 PM on Aug 06, 2021, in which she stated that there was a snake bite, and that part of her version is certainly disproved in light of the MLRs [Ext P-14 & P-18], PMRs [Ext P-22 & P-25], and the testimony of Doctors [PW-9 & PW-10]. However, this does not mean that her contradictory statements made under §§154 and 164 CrPC, which also create doubt about her presence at the time when her daughters were subjected to rape, can be treated as substantive evidence in contravention of the law by ignoring the statement made before the trial Court. Further, her testimony during the trial was on the lines of the earliest statement made after the death of the victims on Aug 06, 2021, [Ext P-48].

73. In State of Punjab v. Jagir Singh Baljit Singh and anr. (1974) 1 SCR 328, 1973-INSC-132, Aug 06, 1973, the Supreme Court holds,

A criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and phantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the crime with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures.

74. In State of Rajasthan v. Smt. Kalki and Anr., [1981] 3 SCR 504; 1981-INSC-94, Apr 15, 1981, the Supreme Court holds,

[6.]...In the depositions of witnesses there are always some normal discrepancies however honest and truthful they may be. These discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of the occurrence, and the like. Material discrepancies are those which are not normal, and not expected of a normal person.

75. In Alauddin & Ors. v. The State of Assam & Anr., [2024] 6 S.C.R. 20; 2024-INSC-376, May 03, 2024, the Supreme Court holds,

[7]. When the two statements cannot stand together, they become contradictory statements. When a witness makes a statement in his evidence before the Court which is inconsistent with what he has stated in his statement recorded by the Police, there is a contradiction. When a prosecution witness whose statement under Section 161 (1) or Section 164 of CrPC has been recorded states factual aspects before the Court which he has not stated in his prior statement recorded under Section 161 (1) or Section 164 of CrPC, it is said that there is an omission. There will be an omission if the witness has omitted to state a fact in his statement recorded by the Police, which he states before the Court in his evidence. The explanation to Section 162 CrPC indicates that an omission may amount to a contradiction when it is significant and relevant. Thus, every omission is not a contradiction. It becomes a contradiction provided it satisfies the test laid down in the explanation under Section 162. Therefore, when an omission becomes a contradiction, the procedure provided in the proviso to sub-Section (1) of Section 162 must be followed for contradicting witnesses in the cross-examination.

[9]. ...It must be noted here that every contradiction or omission is not a ground to discredit the witness or to disbelieve his/her testimony. A minor or trifle omission or contradiction brought on record is not sufficient to disbelieve the witness's version. Only when there is a material contradiction or omission can the Court disbelieve the witness's version either fully or partially. What is a material contradiction or omission depends upon the facts of each case. Whether an omission is a contradiction also depends on the facts of each individual case.

76. The contradictions between the second written complaint, Ext P-1, which bears the victims' mother's thumb impression based on which the FIR was registered, and her statement under §164 CrPC, Ext P-3, are such that the absence of the names of the accused in her statement under §164 CrPC, Ext P-3, recorded the day after the complaint, creates serious doubt about whether the complainant [PW-1] was even aware of the contents of Ext P-1 as well as Ext P-3, and in Court, she denied making either of the statements.

77. The absence of any allegations and, consequently, no persons named as culprits in victims' mother's [PW-1] earliest statement, [Ext P-48], made on Aug 06, 2021, which was scribed by one Ram Babu, as is mentioned in the last portion of Ext P-48, the non-examination of Ram Babu, and her statement under §164 CrPC, [Ext P-3], made on Aug 10, create serious doubt about the authorship of the earliest information [Ext P-48], made on

Aug 06, 2021, and of the second complaint [Ext P-1], made on Aug 09, 2021, in which the names of all four accused are mentioned.

78. Once the victims' mother [PW-1] had put her thumb impressions on her first information [Ext P-48] made in the evening of Aug 06, 2021, on her second complaint made on Aug 09, 2021 [Ext P-1], on her statement under §164 CrPC [Ext P-3] on Aug 10, 2021, and also in her testimony recorded in Court, it was for the prosecution to show who had scribed her earliest information [Ext P-48] and her second complaint [Ext P-1].

79. Additionally, a cursory review of the handwriting on Ext P-1 and Ext P-48 shows that they were written by different people. The prosecution did not explain who wrote these complaints. In both Ext P-1 and Ext P-48, it is mentioned that someone else wrote them, which would imply that the victim's mother did not write any of these and only affixed her thumb impressions on both complaints. Additionally, instead of signing her statement under §164 CrPC and her testimony recorded in Court, she had affixed her thumb impressions to both statements.

80. In Goverdhan & Anr. v. State of Chhattisgarh, [2025] 1 S.C.R. 657; 2025-INSC-47, Jan 09, 2025, SC, a three-Judge bench of the Supreme Court holds,

[19]. As per Section 3 of the Indian Evidence Act, 1872, a fact can be said to have been proved when, after considering the matters before it, the court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act up on the supposition that it exists. The court undertakes this exercise of examining whether the facts alleged including the particular criminal acts attributed to the accused are proved or not.

[20]. It is also to be noted that the law does not contemplate stitching the pieces of evidence in a watertight manner, for the standard of proof in a criminal case is not proof beyond all doubts but only beyond reasonable doubt. In other words, if a clear picture emerges on piecing together all evidence which indicates beyond reasonable doubt of the role played by the accused in the perpetration of the crime, the court holds the accused criminally liable and punishes them under the provisions of the penal code, in contradistinction to the requirement of proof based on the preponderance of probabilities as in case of civil proceedings.

81. In State of Punjab v. Hari Singh & Anr., [1974] 3 S.C.R. 725; 1974-INSC-67, Mar 21, 1974,

[pp.731-732][H-E] As human testimony, resulting from widely different powers of observation and description, is necessarily faulty and even truthful witnesses not infrequently exaggerate or imagine or tell half truths the Courts must try to extract and separate the hard core of truth from the whole evidence. This is what is meant by the proverbial saying that courts must separate “the chaff from the grain”. If, after considering the whole mass of evidence, a residue of acceptable truth is established by the prosecution beyond any reasonable doubt the Courts are bound to give

effect to the result flowing from it and not throw it overboard on purely hypothetical and conjectural grounds...

82. In C. Muniappan & ors. v. State of Tamil Nadu, [2010] 10 S.C.R. 262; 2010-INSC-553, Aug 30, 2010, the Supreme Court holds,

[69]. It is settled legal proposition that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross examine him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent that their version is found to be dependable on a careful scrutiny thereof.

83. In Paramjeet Singh @ Pamma v. State of Uttarakhand, [2010] 11 SCR 1064; 2010-INSC-647, Sep 27, 2010, the Supreme Court holds,

[17]. The fact that the witness was declared hostile at the instance of the public prosecutor and he was allowed to cross examine the witness furnishes no justification for rejecting en bloc the evidence of the witness. However, the court has to be very careful, as prima facie, a witness who makes different statements at different times, has no regard for the truth. His evidence has to be read and considered as a whole with a view to find out whether any weight should be attached to it. The court should be slow to act on the testimony of such a witness; normally, it should look for corroboration to his testimony. (Vide : State of Rajasthan v. Bhawani & Anr. (2003) 7 SCC 291).

[22]. In view of the above, it is evident that the evidence of a person does not become effaced from the record merely because he has turned hostile and his deposition must be examined more cautiously to find out as to what extent he has supported the case of the prosecution.

84. In Ramesh Harijan v. State of UP, [2012] 6 SCR 688; 2012-INSC-243, May 21, 2012, the Supreme Court holds,

[18]. It is a settled legal proposition that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross examine him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent that their version is found to be dependable on a careful scrutiny thereof. (Vide: Bhagwan Singh v. The State of Haryana, AIR 1976 SC 202; Rabindra Kumar Dey v. State of Orissa, AIR 1977 SC 170; Syad Akbar v. State of Karnataka, AIR 1979 SC 1848; and Khujji @ Surendra F Tiwari v. State of Madhya Pradesh, AIR 1991 SC 1853).

85. In Dev Raj v. State of Chhattisgarh, [2016] 3 S.C.R. 323, 2016-INSC-554, Jul 25, 2016, the Supreme Court holds,

[19]. The evidence of a witness who has been declared hostile can be relied if there are some other material on the basis of which said evidence can be corroborated. More so, that part of evidence of a witness as contained in examination-in-chief, which remains unshaken even after cross-examination, is fully reliable even though the witness has been declared hostile.

86. In K.P. Tamilmaran v. The State by Deputy Superintendent of Police, [2025] 4 S.C.R.

1865: 2025-INSC-576, Apr 28, 2025, the Supreme Court holds,

[31]. The phrase ‘hostile witness’ is commonly used in criminal jurisprudence and court proceedings. We too cannot escape the blame of using the term ‘hostile witness’ in our judgment. We do it for pragmatic reasons. Some words like ‘hostile witness’ in this case are now a part of our legal vocabulary. There is no point in inventing or substituting new words or phrases, at least in the present case, and we leave that for the future. But what is necessary, however, is to explain the meaning of the term as it is now to be understood. The phrase ‘hostile witness’ has come to be used for a witness who gives a statement contrary to the story of the side for which he/she is a witness. All the same, because a witness has supported some, though not all, aspects of a case, it would not automatically mean that this witness has to be declared ‘hostile’. A party can cross-examine its own witness under Section 154 Evidence Act, even without getting a declaration of ‘hostility’. The only restriction to cross-examination under Section 154 Evidence Act is that the party, who seeks to cross-examine its own witness, must obtain the leave of the Court. Whether there is a declaration of ‘hostility’ or not, one thing is clear that evidence of witness, who has been cross-examined under Section 154 Evidence Act by the party who called such witness, cannot be washed off entirely and it is for the Court to see what can be retrieved from such evidence.

[32]. This can be understood from another aspect. We shall now refer to the definition of the term ‘evidence’ given under Section 3 of the Evidence Act. It reads as follows:

“Evidence” - “Evidence” means and includes –

(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence;

(2) all documents including electronic records produced for the inspection of the Court; such document are called documentary evidence.” (Emphasis Provided)

[33]. The statements made by a witness in Court, including in cross-examination, either conducted by the opposite party or by the party who produced the witness, would come under the definition of ‘evidence’ under Section 3 of the Evidence Act, since this evidence has come before the Court with its permission. Moreover, there is no specific bar under the Evidence Act which mandates that such evidence has to be discarded. Thus, it would form part of the entire evidence which the Court can examine while arriving at its decision, and it is for the Court to determine what value has to be given to that piece of evidence or how such evidence has to be used in a given case.

[34]. Viewed from a different perspective, the rejection of the entire testimony of a prosecution witness, who has been cross-examined by the prosecution, would not only harm the case of the prosecution but perhaps also of the defence in a given case. This is because as the law stands today, the benefit of the testimony of such witness can be taken by both the prosecution and the defence, allowing them to use it to build their case [See: Paulmeli v. State of T.N. (2014) 13 SCC 90, Ramesh Harijan v. State of U.P. (2012) 5 SCC 777]. In any case, ultimately, it will be the cause of justice that will suffer if the testimony of such witness is totally discarded.

It is, therefore, rightly left to the discretion of the Court to test the evidentiary value of such a testimony.

[35]. Here, we may also take note of Section 155 of the Evidence Act¹⁷ which allows a party, with permission of the Court, to impeach the credibility of its own witness as per the procedure laid down therein.

[36.] It is though trite and much overstated but the maxim “*falsus in uno, falsus in omnibus*”¹⁸, is not applicable to our criminal justice system. It is for the Court to distinguish the wheat from the chaff while dealing with the depositions of a hostile witness. Courts can rely upon that part of the deposition of a hostile witness which is corroborated by other evidence on record.

87. In Indian criminal jurisprudence, a witness turning hostile by resiling from their previous statement recorded during investigation or recorded under §164 and/or §299 CrPC does not by itself discredit their entire testimony, as such hostility may stem either from being won over or from genuine factors, such as fading memory, nervousness, anxiety, duress, or external pressure. Courts nevertheless approach the testimony of a hostile witness with caution, and a separable portion of it may be accepted as a reliable piece of evidence, depending on their overall credibility, the surrounding facts and circumstances, and its consistency with the rest of the evidence proved on record. Even portions of their testimony contrary to their earlier statement may be relied upon, subject to corroboration from other credible evidence on the record, subject to the compliance of the procedure under §§148, 158, & 160 of BSA, 2023 [§§145, 155, & 157 of Indian Evidence Act], and can be relied upon after analyzing the overall credibility of the testimony, the extent of the discrepancies, whether the variations were non-material, and the impact on the crux of such evidence.

88. In the present case, neither the complainant’s earliest statement nor her final statement made during the trial implicates the accused. It would be perilous to rely on her second statement, on the basis of which the FIR was registered in which she named the accused, while ignoring her statement on oath during the trial, in which she neither attributed any allegations to any of the accused nor identified any one of them, and while overlooking her statement recorded under 164 CrPC, in which she had not named any of these four accused persons who were put to the trial.

89. In Shankarlal Gyarasilal Dixit v State of Maharashtra, [1981] 2 SCR 384; 1980-INSC-237, Dec 17, 1980, a three-Judge bench of the Supreme Court holds,

¹⁷ §155. Impeaching credit of witness: The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him:

(1) By the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit;
(2) By proof that the witness has been bribed, or has accepted the offer of a bribe, or has received any other corrupt inducement to give his evidence;
(3) By proof of former statements inconsistent with any part of his evidence which is liable to be contradicted...

¹⁸ *false in one thing, false in everything.*

[pp. 395-396] Our judgment will raise a legitimate query : If the appellant was not present in his house at the material time, why then did so many people conspire to involve him falsely ? The answer to such questions is not always easy to give in criminal cases. Different motives operate on the minds of different persons in the making of unfounded accusations. Besides, human nature is too willing, when faced with brutal crimes, to spin stories out of strong suspicions.

90. Since the prosecution has collected and relied upon scientific evidence, it is incumbent upon this Court to test the chain of custody, the link evidence, and its relevance.

91. On Aug 10, 2021, pursuant to the arrest of the four accused, namely Dukhan, Phool Chand, Arun, and Ramsuhag, PW-20 SI Usha moved an application Ext P-26/PW11 to get all the accused medically examined. On the same day, Dr Naveen Yadav [PW-11] conducted their medical examination. SI Usha [PW-20] and ASI Dinesh [PW-16] stated during examination-in-chief that the doctor handed over the parcel of blood samples of all the accused, which were taken into police possession vide recovery memos Ext P-52/PW16, Ext P-53/PW16, Ext P-54/PW16 and Ext P-55/PW16. EASI Rajpal [PW-15] stated in his affidavit Ext P-47 [p. 595 of TCR] that L/SI Usha [PW-20] deposited the case property with him on Aug 11, 2021, at 02-09 A.M.

92. Dr. Anil Yadav [PW-10] conducted the autopsies of both victims, 'R' and 'K', on Aug 07, 2021, and tendered the post-mortem reports Ext P-22 and Ext P-25 in evidence. After the post-mortems of the two victims, the parcels containing the vaginal swabs of 'R' (MO-3) and of 'K' (MO-4) were taken into police possession by SI Usha [PW-20] vide Ext P-51 dated Aug 09, 2021.

93. PW-15 EASI Rajpal stated in his affidavit Ext P-47 [p. 595 of TCR] that ASI Dinesh deposited the case property with him on Aug 07, 2021, at 10:20 pm. PW-16 ASI Dinesh stated that on Aug 09, 2021, EHC Rajpal [PW-15] handed over parcels belonging to the victims, which were taken into possession vide recovery memo Ext P51/PW16, duly attested by him and EHC Rajpal.

94. As per the report of FSL DNA Madhuban, Karnal, Haryana Ext PY, it was observed that:

- 1. DNA profile of the Accused-1 (Item No. 9) Accused-2 (Item No. 10), Accused-3 (Item No. 11) and Accused-4 (Item No. 12) could not be accounted in the DNA profile obtained from the biological material on the source of item No. 14 (Vaginal Swab), item No. 15 (Vaginal Swab) and item No. 18 (Parna recovered from crime scene).**
- 2. Further, DNA profile of female origin was obtained from item No. 19 (Shawl recovered from crime scene).**
- 3. Also, item No. 6 (Underwear of Accused-2) & item No. 17 (Pubic Hair of Deceased-1) did not yield consensus DNA profile due to degraded/poor quality of DNA, hence could not be compared with other exhibits.**

4. Item No.20A, 20B, 20C, 21A & 21B yielded inconsistent amplification. Hence, a consensus DNA profile could not be obtained which can be attributed to high degree of contamination.

95. The specific opinion of FSL reports is that the DNA profiles of Accused-1 (Item No. 9), Accused-2 (Item No. 10), Accused-3 (Item No. 11), and Accused-4 (Item No. 12) could not be accounted for in the DNA profile obtained from the biological material on the source of item No. 14 (Vaginal Swab), item No. 15 (Vaginal Swab), and item No. 18 (Parna recovered from the crime scene).

96. On Aug 11, 2021, at 05-15 P.M., in the crime-scene report, which had been tendered in evidence by PW-12, Jagbir Singh, SSA/SOC, MFSU, Sonipat, as Ext P-36, it had been mentioned that he had noticed one green and white lining *checkdaar* cloth 'Parna' stated to be used in crime by the culprits having semen like suspected stains on it and was observed lying on bedding lying on floor in a backside room adjacent to another backside (Tudi) room where all the four culprits were stated to be living as tenants.

97. The presence of semen on the parna (a thin, small cloth/towel) recovered pursuant to disclosure statements made by all the accused people is not proved. According to the DNA report [Ext PY], item no. 18 (parna) yielded DNA amplification. The allelic patterns of items nos. 9, 10, 11, and 12 (Blood samples of accused nos. 1, 2, 3, and 4) could not be accounted for in the allelic pattern of item no. 18. Thus, there is no evidence that the genetic material is of any of the accused persons. Given the above analysis, the parna is not a relevant piece of evidence for implicating any of the accused persons.

98. The chain of custody has been established. Normally, the link evidence has to be proved if other scientific evidence connects, but in this gruesome case, a reference to the link evidence being unbroken and the chain of custody having been established has been referred to rule out the possibility of tampering with the accused's blood samples by replacing them with those of someone else.

99. Thus, even the scientific evidence did not mention the detection of genetic material of any of the accused from the victims' vaginal swabs or from the *parna*. The absence of evidence creates a strong doubt about the involvement of any of the accused in the commission of rape.

100. All the four accused allegedly made separate disclosure statements, each bearing the date of Aug 12, 2021 (Ext P-40 to P-43), and confessed to the commission of the offence. Although Ext P-40 to P-43 have cuttings, with the whitener applied and the dates changed by hand to 12th; however, PW-14 HC Arvind Kumar stated in his examination-in-chief that on Aug 12, 2021, he recorded the disclosure statements Ext P-40 to P-43 and also recovered

parna vide Ext P-46. Thus, as per the prosecution's case, the alleged disclosure statements were made on Aug 12, 2021, and Ext P-40 to P-43 also have the date 12.08.21. A perusal of the disclosure statement made by Dukhan [Ext P-40, p. 367 of TCR] states that the cloth from which he had gagged the mouth of the victim 'R' was concealed by him in the room of 'S' (Victims' mother PW-1), and he could get it recovered, about which none except them are aware. Similarly, a perusal of the disclosure statement made by Phoolchand [Ext P-42, p. 379 of TCR] states that the cloth from which he had gagged the mouth of the victim 'K' was concealed by him in the room of 'S' (Victims' mother PW-1), and he could get it recovered, about which none except them are aware.

101. Neither the disclosure statement [Ext P-41] made by the other accused Arun nor the disclosure statement [Ext P-43] allegedly made by Ramsuhag mentions anything about the *parna*.

102. Subsequently, vide recovery memo [Ext P-46], which mentions the names of all four accused, all of them led the police to their room, from where they produced a cloth parna checkdaar from the pile of clothes. The said parna was allegedly used by them at the time of the commission of rape. It must be clarified that in the disclosure statements, as per the recovery memo, Ext P-46 [p. 403 of TCR], it is mentioned that they had concealed the parna in the room of 'S' victims' mother, whereas the recovery was not from the room of 'S', the victims' mother, but from the room of accused.

103. A perusal of the above demonstrates that the alleged disclosure statements regarding parna were made by the accused Dukhan and Phoolchand. The subsequent recovery was made at the instance of all four accused, who had jointly pointed out the parna. Thus, in the absence of precursor disclosure statements by Arun and Ramsuhag, their subsequent joint discovery does not fall within the exception under §27 of the Indian Evidence Act, 1872.

104. Regarding the effect of the discovery pursuant to the disclosure statements Ext P-40 by Dukhan and Ext P-42 by Phoolchand, the fact had already been in the notice of the police as mentioned by PW-12 in the Crime Scene Report [Ext P-36]. PW-11 was accompanied by EHC Surjeet, C/o SP Office, Sonipat.

105. Thus, once the fact of parna was already known to the police and others, as such, its subsequent recovery cannot be said to have been made solely at the instance of the accused Dukhan and Phoolchand. Furthermore, the recovery was not from the disclosed place.

106. The Trial Judge, in paragraphs no. 135, 136, 145, and 161(vi) of her judgment, also relied on the accused's disclosure statements, which led to the discovery of the poison bottle [MO-22].

107. PW-12, Jagbir Singh, SSA/SOC, MFSU, Sonipat, tendered the crime-scene report in evidence as Ext P-36. A perusal of the crime-scene report [Ext P-36] indicates that on Aug 11, 2021, at 05-15 P.M., when PW-12 visited the spot, he noted in column no. (vi) of para 7 of his report [Ext P-36] the presence of a metallic container of capacity 500 ml., which had already been taken into possession.

108. A perusal of the disclosure statements made by Dukhan [Ext P-40] and by Phool Chand [Ext P-42] does not mention any disclosure that they have concealed the bottle of poison and can get it recovered. A perusal of the disclosure statement [Ext P-43] allegedly made by Ramsuhag only mentions that Arun was aware of the place where the bottle was concealed by him. As such, in the absence of any precursor to the subsequent disclosure, the subsequent recovery of the plastic bottle even at the instance of these three accused, Dukhan, Phool Chand, and Ramsuhag, is hit by S. 26 of the Indian Evidence Act and cannot be read in evidence against them.

109. In the disclosure statement [Ext P-41] made by the other accused Arun, he disclosed that he was aware of the place where he had concealed the poison bottle and could get it recovered. Subsequently, on the same date, vide recovery memo Ext P-45, the plastic bottle containing herbicide, was recovered at the instance of all the four accused.

110. There is another contradiction regarding the recovery of the poison bottle MO-22. PW-12 Jagbir Singh, SSA/SOC, MFSU, Sonipat, had specifically written in column no. (vi) of para no. 7, of his crime-scene report, which he tendered in evidence as Ext P-36, that a metallic container of capacity 500 ml was stated to have already been taken into possession by the I.O. from the affected room before the SOC Team's visit. Thus, initially the expert had described the container as metallic, whereas what was later recovered was a plastic bottle.

111. Once the container had already been taken into possession by the Investigating Officer, there was no question of its concealment by any of the accused. The crime scene report is dated August 11, 2021, at 5:15 PM, whereas the alleged disclosure statements bear the date of Aug 12, 2021. Thus, it is clear that all the disclosure statements were fabricated, and no reliance can be placed on them, and these must be discarded.

112. It shall be appropriate to refer to the relevant judicial precedents propounded by the Supreme Court on a statement recorded under proviso to §23 of BSA, 2023, which corresponds to §27 of Indian Evidence Act, 1872:

113. In Pulukuri Kottaya and Others v. Emperor, AIR 1947 PC 67, 1946 SCC OnLine PC 47, Dec 19, 1946, the four-Judge Bench of the Privy Council holds,

[p. 262]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.

114. In Ramkishan Sharma v. State of Bombay, [1955] 1 SCR 903; 1954-INSC-99, Oct 22, 1954, a three-Judge Bench of the Supreme Court holds,

[p. 924] The expression "whether it amounts to a confession or not" has been used in order to emphasise the position that even though it may amount to a confession that much information as relates distinctly to the fact thereby discovered can be proved against the accused. The section seems to be based on the view that if a fact is actually discovered in consequence of information given some guarantee is afforded thereby that the information was true and accordingly can be safely allowed to be given in evidence. But clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. [*Kottaya v. Emperor*].

115. In State of Uttar Pradesh v. Deoman Upadhyaya, [1961] 1 SCR 14; 1960-INSC-107, May 6, 1960, a Constitutional Bench of the Supreme Court holds, [Majority View],

[p. 29] Sections 25 and 26 are manifestly intended to hit at an evil, viz., to guard against the danger of receiving in evidence testimony from tainted sources about statements made by persons accused of offences. But these sections form part of a statute which codifies the law relating to the relevancy of evidence and proof of facts in judicial proceedings. The State is as much concerned with punishing offenders who may be proved guilty of committing offences as it is concerned with protecting persons who may be compelled to give confessional statements. If s. 27 renders information admissible on the ground that the discovery of a fact pursuant to a statement made by a person in custody is a guarantee of the truth of the statement made by him, and the legislature has chosen to make on that ground an exception to the rule prohibiting proof of such statement, that rule is not to be deemed unconstitutional, because of the possibility of abnormal instances to which the legislature might have, but has not extended the rule. The principle of admitting evidence of statements made by a person giving information leading to the discovery of facts which may be used in evidence against him is manifestly reasonable. The fact that the principle is restricted to persons in custody will not by itself be ground for holding that there is an attempted hostile discrimination because the rule of admissibility of evidence is not extended to a possible, but an uncommon or abnormal class of cases.

116. In State of Bombay v. Kathi Kalu Oghad, [1962] 3 S.C.R. 10; 1961-INSC-229, Aug 04, an eleven-Judge bench of the Supreme Court holds,

[p. 33-34] The information given by an accused person to a police officer leading to the discovery of a fact which may or may not prove incriminatory has been made admissible in evidence by that Section. If it is not incriminatory of the person giving the information, the question does not arise. It can arise only when it is of an incriminatory character so far as the giver of the information is concerned. If the self-incriminatory information has been given by an accused person without any threat, that will be admissible in evidence and that will not be hit by the provisions of cl. (3) of Art. 20 of the Constitution for the reason that there has been no compulsion. It must, therefore, be held that the provisions of s. 27 of the Evidence Act are not within the prohibition aforesaid, unless compulsion has been used in obtaining the information.

[p. 35] The compulsion in this sense is a physical objective act and not the state of mind of the person making the statement, except where the mind has been so conditioned by some extraneous process as to render the making of the statement involuntary and, therefore, extorted. Hence, the mere asking by a police officer investigating a crime against a certain individual to do a certain thing is not compulsion within the meaning of Art. 20 (3). Hence, the mere fact that the accused person, when he made the statement in question was in police custody would not, by itself, be the foundation for an inference of law that the accused was compelled to make the statement. Of course, it is open to an accused person to show that while he was in police custody at the relevant time, he was subjected to treatment which, in the circumstances of the case, would lend itself to the inference that compulsion was, in fact, exercised. In other words, it will be a question of fact in each case to be determined by the Court on weighing the facts and circumstances disclosed in the evidence before it. In view of these considerations, we have come to the following conclusions :-

- (1) An accused person cannot be said to have been compelled to be a witness against himself simply because he made a statement while in police custody, without anything more. In other words, the mere fact of being in police custody at the time when the statement in question was made would not, by itself, as a proposition of law, lend itself to the inference that the accused was compelled to make the statement, though that fact, in conjunction with other circumstances disclosed in evidence in a particular case, would be a relevant consideration in an enquiry whether or not the accused person had been compelled to make the impugned statement.
- (2) The mere questioning of an accused person by a police officer, resulting in a voluntary statement, which may ultimately turn out to be incriminatory, is not 'compulsion'.
- (3) 'To be a witness' is not equivalent to 'furnishing evidence' in its widest significance; that is to say, as including not merely making of oral or written statements but also production of documents or giving materials which may be relevant at a trial to determine the guilt or innocence of the accused.
- (4) Giving thumb impressions or impressions of foot or palm or fingers or specimen writings or showing parts of the body by way of identification are not included in the expression 'to be a witness'

(5) 'To be a witness' means imparting knowledge in respect of relevant facts by an oral statement or a statement in writing, made or given in Court or otherwise.

(6) 'To be a witness' in its ordinary grammatical sense means giving oral testimony in Court. Case law has gone beyond this strict literal interpretation of the expression which may now bear a wider meaning, namely, bearing testimony in Court or out of Court by a person accused of an offence, orally or in writing.

(7) To bring the statement in question within the prohibition of Art. 20(3), the person accused must have stood in the character of an accused person at the time he made the statement. It is not enough that he should become an accused, any time after the statement has been made.

117. In Udai Bhan v. State of UP, [1962] SUPP 2 SCR 830; 1962 INSC 30, the Supreme Court holds,

[pp. 835- 837] Thus, s. 27 partially removes the ban placed on the reception of confessional statements under s. 26. But the removal of the ban is not of such an extent as to absolutely undo the object of s. 26. All it says is that so much of the statement made by a person accused of an offence and in custody of a police officer, whether it is confessional or not, as relates distinctly to the fact discovered is proveable. Thus, in this case taking the recovery memos the statements in regard to the key was this that the appellant handed over the key and said that he had opened the lock of the shop of the complainant with that key. The handing over of the key is not a confessional statement but the confession lies in the fact that with that key the shop of the complainant was opened and, therefore, that portion will be inadmissible in evidence and only that portion will be admissible which distinctly relates to the fact discovered i.e., the finding of the key. Similarly, the recovery of the box is proveable because there is no statement of a confessional nature in that memorandum.

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Thus it appears that s. 27 does not nullify the ban imposed by s. 26 in regard to confessions made by persons in police custody but because there is the added guarantee of truthfulness from the fact discovered the statement whether confessional or not is allowed to be given in evidence but only that portion which distinctly relates to the discovery of the fact. 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.

118. In K. Chinnaswamy Reddy v. State of Andhra Pradesh, [1963] S.C.R. 412; 1962-INSC-216, July 25, 1962, a three-judge Bench of the Supreme Court holds,

[p. 421] Let us then turn to the question whether the statement of the appellant to the effect that "he had hidden them (the ornaments)" and "would point out the place" where they were, is wholly admissible in evidence under s. 27 or only that part of it is admissible where he stated that he would point out the place but not that part where he stated that he had hidden the ornaments. The Sessions Judge in this connection relied on *Pulukuri Kotayya v. King-Emperor* where a part of the statement leading to the recovery of a knife in a murder case was held inadmissible by the Judicial Committee. In that case the Judicial Committee considered s. 27 of the Indian Evidence Act, which is in these terms :-

"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."

This section is an exception to ss. 25 and 26, which prohibit the proof of a confession made to a police officer or a confession made while a person is in police custody, unless it is made in immediate presence of a magistrate. Section 27 allows that part of the statement made by the accused to the police "whether it amounts to a confession or not" which relates distinctly to the fact thereby discovered to be proved. Thus even a confessional statement before the police which distinctly relates to the discovery of a fact may be proved under s. 87. The Judicial Committee had in that case to consider how much of the information given by the accused to the police would be admissible under s. 17 and laid stress on the words "so much of such information... as relates distinctly to the fact thereby discovered" in that connection. It held that the extent of the information admissible must depend on the exact nature of the discovered to which such information is required to relate. It was further pointed out 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 this fact." It was further observed that "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."

This was exemplified further by the Judicial Committee by observing- "Information supplied by a person in custody that 'I will produce a knife concealed in the roof of my house' 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. If however 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."

If we may respectfully say so, this case clearly brings out what part of the statement is admissible under s. 27. It is only that part which distinctly relates to the discovery which is admissible; but if any part of the statement distinctly relates to the discovery it will be admissible wholly and the court cannot say that it will excise one part of the statement because it is of a confessional nature. Section 27 makes that part of the statement which is distinctly related to the discovery admissible as a whole, whether it be in the nature of confession or not. Now the statement in this case is said to be that the appellant stated that he would show the place where he had hidden the ornaments. The Sessions Judge has held that part of this statement which is to the effect "where he had hidden them" is not admissible. It is clear that if that part of the statement is excised the remaining statement (namely, that he would show the place) would be completely meaningless. The whole of this statement in our opinion relates distinctly to the discovery of ornaments and is admissible under s. 27 of the Indian Evidence Act. The words "where he had hidden them" are not on a par with the words "with which I stabbed the deceased" in the example given in the judgment of the Judicial Committee. These words (namely, where he had hidden them) have nothing to do with the past history of the crime and are distinctly related to the actual discovery that took place by virtue of that statement. It is however urged that in a case where the offence consists of possession even the words "where he had hidden them" would be inadmissible as they would amount to an admission by the accused that he was in possession. There are in our opinion two answers to this argument. In the first place, s 27 itself says that where the statement distinctly relates to the discovery it will be admissible whether it amounts to a confession or not. In the second place,

these words by themselves though they may show possession of the appellants would not prove the offence, for after the articles have been recovered, the prosecution has still to show that the articles recovered are connected with the crime, i. e. in this case, the prosecution will have to show that they are stolen property. We are therefore of opinion that the entire statement of the appellant (as well as of the other accused who stated that he had given the ornament to Bada Sab and would have it recovered from him) would be admissible in evidence and the Sessions Judge was wrong in ruling out part of it. Therefore, as relevant and admissible evidence was ruled out by the Sessions Judge, this is a fit case where the High Court would be entitled to set aside the finding of acquittal in revision, though it is unfortunate that the High Court did not confine itself only to this point and went on to make rather strong remarks about other parts of the evidence.

119. In Jaffer Hussein Dastgir v. State of Maharashtra, [1970] 2 S.C.R. 332; 1969-INSC-232, Sep 11, 1969, a three-judge bench of the Supreme Court holds,

[p. 336] [D-F] Section 27 is a proviso to section 26 and makes admissible so much of the statement of the accused which leads to the discovery of a fact deposed to by him and connected with the crime, irrespective of the question whether it is confessional or otherwise.

The essential ingredient of the section is that the information given by the accused must lead to the discovery of the fact which is the direct outcome of such information. Secondly, only such portion of the information given as is distinctly connected with the said recovery is admissible against the accused. Thirdly, the discovery of the fact must relate to the commission of some offence. The embargo on statements of the accused before the police will not apply if all the above conditions are fulfilled.

[p. 341] [C-D] In the result although the statements might otherwise have been admissible in evidence, that there was no discovery of a fact connecting the appellant with the receipt of the diamonds which were stolen within the meaning of s. 27 of the Evidence Act because the police already knew that the third and or the fourth accused had the diamonds.

120. In Thimma @ Thimma Raju v. State of Mysore [1971] 1 SCR 215; 1970 INSC 82, Apr 02, 1970, a three-judge bench of the Supreme Court holds,

[p. 225][D-E]...Once a fact is discovered from other sources there can be no fresh discovery even if relevant information is extracted from the accused and courts have to be watchful against the ingenuity of the investigating officer in this respect so that the protection afforded by the wholesome provisions of ss. 25 and 26 of the Indian Evidence Act is not whittled down by mere manipulation of the record of case diary. It would, in the circumstances, be somewhat unsafe to rely on this information for proving the appellant's guilt...

121. In H.P. Admn. v. Om Prakash [1972] 2 SCR 765; 1971-INSC-340, Dec 07, 1971, the Supreme Court holds,

[p. 776][C-D] We are not unaware that Section 27 of the Evidence Act which makes the information given by the accused while in custody leading to the discovery of a fact and the fact admissible, is liable to be abused and for that reason great caution has to be exercised in resisting any attempt to circumvent, by manipulation or ingenuity of the Investigating Officer, the protection afforded by Section 25 and Section 26

of the Evidence Act. While considering the evidence relating to the recovery we shall have to exercise that caution and care which is necessary to lend assurance that the information furnished and the fact discovered is credible.

122. In Nandini Sathpathy v. Dani (P.L.) and Anr, [1978] 3 S.C.R. 608; 1978-INSC-80, Apr 07, 1978, a three-judge bench of the Supreme Court, through Justice Krishna Iyer, holds,

[p. 631] [E-H] There is one touch of nature which makes the judicial world kin - the love of justice-in-action and concern for human values. So, regardless of historical origins and political borrowings, the framers of our Constitution have cognised certain pessimistic poignancies and mellow life meanings and obligated judges to maintain a 'fair state-individual balance' and to broaden the fundamental right to fulfil its purpose, lest frequent martyrdoms reduce the article to a mock formula. Even silent approaches, furtive moves, slight deviations and subtle ingenuities may erode the article's validity unless the law out-laws illegitimate and unconstitutional procedures before they find their first firm footing. The silent cause of the final fall of the tall tower is the first stone obliquely and obviously removed from the base. And Art. 20(3) is a human article, a guarantee of dignity and integrity and of inviolability of the person and refusal to convert an adversary system into an inquisitorial scheme in the antagonistic antechamber of a police station. And in the long run, that investigation is best which uses stratagems least, that policeman deserves respect who gives his fists rest and his wits restlessness. The police are part of us and must rise in peoples' esteem through firm and friendly, not foul and sneaky strategy. The police reflect the State, the State society. The Indian legal situation has led to judicial concern over the State v. individual balance.

123. In State of Maharashtra v. Damu & Ors., [2000] 3 SCR 880; 2000-INSC-273, May 01, 2000, the Supreme Court holds,

[p. 89] (B-D) 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 in 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. Hence the legislature permitted such information to be used as evidence by restricting the admissible portion to the minimum. It is now well-settled that recovery of an object is not discovery of a fact as envisaged in the Section. The decision of Privy Council in Pullukurri Kottayya v. Emperor, 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.

124. In Anter Singh v. State of Rajasthan, [2004] 2 S.C.R 123; 2004-INSC-88, Feb 05, 2004, the Supreme Court holds,

[p. 129] [C – D] Though recovery from an open space may not always render it vulnerable, it would depend upon factual situation in a given case and the truthfulness or otherwise of such claim. In the case at hand the recovery was made from an open space visible from the place where the

dead body was lying and at a close proximity. It is not clear from evidence that it was hidden in such a way so as making it difficult to be noticed.

[p. 132] [A – E] The various requirements of the Section can be summed up as follows:

(1) The fact of which evidence is sought to be given must be relevant to the issue. It must be borne in mind that the provision has nothing to do with question of relevancy. The relevancy of the fact discovered must be established according to the prescriptions relating to relevancy of other evidence connecting it with the crime in order to make the fact discovered admissible.

(2) The fact must have been discovered.

(3) The discovery must have been in consequence of some information received from the accused and not by accused's own act.

(4) The persons giving the information must be accused of any offence.

(5) He must be in the custody of a police officer.

(6) The discovery of a fact in consequence of information received from an accused in custody must be deposed to.

(7) Thereupon only that portion of the information which relates distinctly or strictly to the fact discovered can be proved. The rest is inadmissible.

125. In Geejaganda Somaiah v. State of Karnataka, Appeal (Crl.) 311 of 2007, Mar 12, 2007, the Supreme Court holds,

[p. 5] Section 25 of the Evidence Act mandates that no confession made to a police officer shall be proved as against a person accused of an offence. Similarly Section 26 of the Evidence Act provides that confession by the accused person while in custody of police cannot be proved against him. However, to the aforesaid rule of Sections 25 to 26 of the Evidence Act, there is an exception carved out by Section 27 the Evidence Act providing 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. Section 27 is a proviso to Sections 25 and 26. Such statements are generally termed as disclosure statements leading to the discovery of facts which are presumably in the exclusive knowledge of the maker. Section 27 appears to be based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true and accordingly it can be safely allowed to be given in evidence.

As the Section is alleged to be frequently misused by the police, the courts are required to be vigilant about its application. The court must ensure the credibility of evidence by police because this provision is vulnerable to abuse. It does not, however, mean that any statement made in terms of the aforesaid section should be seen with suspicion and it cannot be discarded only on the ground that it was made to a police officer during investigation. The court has to be cautious that no effort is made by the prosecution to make out a statement of accused with a simple case of recovery as a case of discovery of fact in order to attract the provisions of Section 27 the Evidence Act.

126. In Mani v. State of T.N. [2008] 1 SCR 228; 2008-INSC-19, Jan 08, 2008, the Supreme Court holds,

[21]. The discovery is a weak kind of evidence and cannot be wholly relied upon on and conviction in such a serious matter cannot be based upon the discovery.

127. In Musheer Khan v. State of MP, [2010] 2 S.C.R. 119; 2010-INSC-64, Jan 28, 2010, the Supreme Court holds,

[69]. The limited nature of the admissibility of the facts discovered pursuant to the statement of the accused under Section 27 can be illustrated by the following example: Suppose a person accused of murder deposes to the police officer the fact as a result of which the weapon with which the crime is committed is discovered, but as a result of such discovery no inference can be drawn against the accused, if there is no evidence connecting the knife with the crime alleged to have been committed by the accused.

128. In Selvi & Ors v. State of Karnataka & Anr, [2010] 5 SCR 381; 2007-INSC-520, May 05, 2010, a three-Judge bench of the Supreme Court holds,

[92.] The concerns about the 'voluntariness' of statements allow a more comprehensive account of this right. If involuntary statements were readily given weightage during trial, the investigators would have a strong incentive to compel such statements - often through methods involving coercion, threats, inducement or deception. Even if such involuntary statements are proved to be true, the law should not incentivise the use of interrogation tactics that violate the dignity and bodily integrity of the person being examined. In this sense, 'the right against self-incrimination' is a vital safeguard against torture and other 'third-degree methods' that could be used to elicit information. It serves as a check on police behaviour during the course of investigation. The exclusion of compelled testimony is important, otherwise the investigators will be more inclined to extract information through such compulsion as a matter of course. The frequent reliance on such 'short-cuts' will compromise the diligence required for conducting meaningful investigations. During the trial stage, the onus is on the prosecution to prove the charges levelled against the defendant and the 'right against self-incrimination' is a vital protection to ensure that the prosecution discharges the said onus.

129. In Madhu v. State of Kerala, [2012] 2 S.C.R. 986; 2012-INSC-27, Jan 13, 2012, the Supreme Court holds,

[pp. 1021-1022] [H-D] As an exception, Section 27 of the Indian Evidence Act provides that a confessional statement made to a police officer or while an accused is in police custody, can be proved against him, if the same leads to the discovery of an unknown fact. The rationale of Sections 25 and 26 of the Indian Evidence Act is, that police may procure a confession by coercion or threat. The exception postulated under Section 27 of the Indian Evidence Act is applicable only if the confessional statement leads to the discovery of some new fact. The relevance under the exception postulated by Section 27 aforesaid, is limited " ... as it relates distinctly to the fact thereby discovered.... ". The rationale behind Section 27 of the Indian Evidence Act is, that the facts in question would have remained unknown but for the disclosure of the same by the accused. Discovery of facts itself, therefore, substantiates the truth of the confessional statement. And since it is truth that a court must endeavour to search, Section 27 aforesaid has been incorporated as an exception to the mandate contained in Sections 25 and 26 of the Indian Evidence Act.

130. In Jafarudheen & Ors. v. State of Kerala, [2022] 5 SCR 721; 2022-INSC-464, Apr 22, 2022, the Supreme Court holds,

[30]. Section 27 of the Evidence Act is an exception to Sections 24 to 26. Admissibility under Section 27 is relatable to the information pertaining to a fact discovered. This provision merely facilitates proof of a fact discovered in consequence of information received from a person in custody, accused of an offense. Thus, it incorporates the theory of “*confirmation by subsequent facts*” facilitating a link to the chain of events. It is for the prosecution to prove that the information received from the accused is relatable to the fact discovered. The object is to utilize it for the purpose of recovery as it ultimately touches upon the issue pertaining to the discovery of a new fact through the information furnished by the accused. Therefore, Section 27 is an exception to Sections 24 to 26 meant for a specific purpose and thus be construed as a proviso.

[31]. The onus is on the prosecution to prove the fact discovered from the information obtained from the accused. This is also for the reason that the information has been obtained while the accused is still in the custody of the police. Having understood the aforesaid object behind the provision, any recovery under Section 27 will have to satisfy the Court’s conscience. One cannot lose sight of the fact that the prosecution may at times take advantage of the custody of the accused, by other means. The Court will have to be conscious of the witness’s credibility and the other evidence produced when dealing with a recovery under Section 27 of the Evidence Act.

131. In Ramanand @ Nandlal Bharti v. State of Uttar Pradesh, [2022] 5 S.C.R. 162; 2022-INSC-1075, Oct 13, 2022, a three-judge bench of the Supreme Court holds,

[53]. If, it is said of the investigating officer that the accused appellant 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 along with his blood stained clothes 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 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. 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 blood stained 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.

[54]. The reason why we are not ready or rather reluctant to accept the evidence of discovery is that the investigating officer in his oral evidence has not said about the exact words uttered by the accused at the police station. The second reason to discard the evidence of discovery is that the investigating officer has failed to prove the contents of the discovery panchnama. The third reason to discard the evidence is that even if the entire oral evidence of the investigating officer is accepted as it is, what is lacking is the authorship of concealment. The fourth reason to discard the evidence of the discovery is that although one of the panch witnesses PW-2, Chhatarpal Raidas was examined by the prosecution in the course of the trial, yet has not said a word that he had also acted as a panch witness for the purpose of discovery of the weapon of offence and the blood stained clothes. The second panch witness namely Pratap though available was not examined by the prosecution for some reason. Therefore, we are now left with the evidence of the investigating officer so far as the discovery of the weapon of offence and the blood stained clothes as one of the incriminating pieces of circumstances is concerned. We are conscious of the position of law that even if the independent witnesses to the discovery panchnama are not examined or if no witness was present at the time of discovery or if no person had agreed to affix his signature on the document, it is difficult to lay down, as a proposition of law, that the document so prepared by the police officer must be treated as tainted and the discovery evidence unreliable. In such circumstances, the Court has to consider the evidence of the investigating officer who deposed to the fact of discovery based on the statement elicited from the accused on its own worth.

[55]. Applying the aforesaid principle of law, we find the evidence of the investigating officer not only unreliable but we can go to the extent to saying that the same does not constitute legal evidence.

[56]. The requirement of law that needs to be fulfilled before accepting the evidence of discovery is that by proving the contents of the panchnama. The investigating officer in his deposition is obliged in law to prove the contents of the panchnama and it is only if the investigating officer has successfully proved the contents of the discovery panchnama in accordance with law, then in that case the prosecution may be justified in relying upon such evidence and the trial court may also accept the evidence.

132. In Dinesh Kumar v. The State of Haryana, [2023] 4 SCR 220; 2023-INSC-493, May 04, 2023, the Supreme Court holds,

[8]. ...If the disclosure has been made by the accused to the police while he was in their custody and such a disclosure leads to discovery of a fact then that discovery is liable to be read as evidence against the accused in terms of Section 27 of the Act. All the same, the distinguishing feature of such a discovery must be that such a disclosure must lead to the discovery of a “distinct fact”. The recovery of the stolen tractor, the place where the murder was committed and the place where body was thrown in the canal were facts which were already in the knowledge of the police, since it is the case of the prosecution that the co-accused Mange Ram, who was arrested by the police 2 days preceding the arrest of the present appellant, had earlier led to the same discoveries on 12th, 13th & 14th of May, 2000. So, this disclosure and discovery made thereafter cannot be read against

the present appellant. There cannot be a “discovery” of an already discovered fact!

133. In Manoj Kumar Soni v. State of MP [2023] 11 S.C.R. 246; 2023-INSC-705, Aug 11, 2023, the Supreme Court holds

[21]. A doubt looms: can disclosure statements *per se*, unaccompanied by any supporting evidence, be deemed adequate to secure a conviction? We find it implausible. Although disclosure statements hold significance as a contributing factor in unriddling a case, in our opinion, they are not so strong a piece of evidence sufficient on its own and without anything more to bring home the charges beyond reasonable doubt.

134. In Allarakha Habib Memon v State of Gujarat, [2024] 8 SCR 345; 2024-INSC-590, Aug 08, 2024, the Supreme Court holds,

[45]. ...Thereafter, all the accused-appellants conveyed their willingness to show the place of the offence and thereafter, panchnama as per Section 27 of the Evidence Act was prepared. Since the place of incident was also known to police, this disclosure is irrelevant.

135. In Govind v. State of Haryana, [2025] 12 SCR 206; 2025-INSC-1318, Nov 14, 2025, the Supreme Court holds,

[15]. As per Section 25 of the Evidence Act, the confession given in the Police custody, cannot be proved against a person accused of an offence unless it is given in the immediate presence of the Magistrate. However, Section 27 deals with how much of the information as received from the accused, in Police custody may be proved.

xxx

On a glance of the language of the said section [27 IEA], which starts with the expression “provided that”, it is apparent that this Section is an exception to the preceding Sections 25 and 26. The language further indicates that when any fact is deposed to as discovered in consequence of information received from a person who is in custody of the Police in connection of an offence, it must relate distinctly to the fact so discovered. For relevancy, the “*facts thereby discovered*” is preceded with the words “*so much of such information, whether it amounts to confession or not as relates distinctly*”. Special emphasis must be given to the word ‘*distinctly*’. The word “distinctly” has its own importance which is a derivative of the word ‘distinct’. As per Concise Oxford English Dictionary [Concise Oxford English Dictionary (10th Edition, Revised in 2002, Edited by Judy Pearsall)] it means recognizable, different in nature, individual or separate, readily distinguishable by the senses. As per Advance Law Lexicon [P Ramanatha Aiyar, Advanced Law Lexicon (3rd Edition, 2005)], “distinctly” means clearly, explicitly, definitely, precisely, unmistakably, in a distinct manner. Therefore, “distinctly”, as used in Section 27, is meant to exclude certain language and to limit and confine the information which may be proved within definite limits and not necessarily to include everything which may relate to that information. The said word “distinctly” indicates directly, indubitably, strictly and unmistakably, apparently, used in Section 27 to limit and define the scope of probable information. Therefore, only that much information as is clearly connected with the fact discovered can be treated as relevant under the phrase ‘*facts discovered*’.

136. Section 27 of the Indian Evidence Act, 1872, [Now §23 proviso BSA, 2023], reads as follows,

§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.

137. The protection granted to an accused under §27 of the Indian Evidence Act, 1872 was elevated to a wider protection in Chapter III of the Constitution of India. Article 20 of the Constitution of India guarantees a fundamental right of protection in respect of conviction for offences and sub-clause (3) of Art 20, reads as follows, “*No person accused of any offence shall be compelled to be a witness against himself.*”

138. 'To be a witness' means imparting knowledge in respect of relevant facts by an oral statement or a statement in writing, made or given in Court or otherwise.¹⁹ 'To be a witness' is not equivalent to 'furnishing evidence' in its widest significance; that is to say, as including not merely making of oral or written statements but also production of documents or giving materials which may be relevant at a trial to determine the guilt or innocence of the accused.²⁰ To bring the statement in question within the prohibition of Art. 20(3), the person accused must have stood in the character of an accused person at the time he made the statement—It is not enough that he should become an accused, any time after the statement has been made.²¹

139. The principle of admitting evidence of statements made by a person giving information leading to the discovery of facts which may be used in evidence against him is manifestly reasonable.²² The concerns about the 'voluntariness' of statements allow a more comprehensive account of this right—If involuntary statements were readily given weightage during trial, the investigators would have a strong incentive to compel such statements - often through methods involving coercion, threats, inducement or deception.²³ We are not unaware that Section 27 of the Evidence Act which makes the information given by the accused while in custody leading to the discovery of a fact and the fact admissible, is liable to be abused and for that reason great caution has to be exercised in resisting any attempt to circumvent, by manipulation or ingenuity of the Investigating Officer, the

¹⁹ Supreme Court of India, Eleven-Judge bench, State of Bombay v. Kathi Kalu Oghad, [1962] 3 S.C.R. 10, [p. 33-34], Sub-para (5); 1961-INSC-229, Aug 04.

²⁰ Supreme Court of India, Eleven-Judge bench, State of Bombay v. Kathi Kalu Oghad, [1962] 3 S.C.R. 10, [p. 33-34], Sub-para (3); 1961-INSC-229, Aug 04.

²¹ Supreme Court of India, Eleven-Judge bench, State of Bombay v. Kathi Kalu Oghad, [1962] 3 S.C.R. 10, [p. 33-34], Sub-para (7); 1961-INSC-229, Aug 04.

²² Supreme Court of India, Constitutional Bench, State of Uttar Pradesh v. Deoman Upadhyaya, [Majority View], [1961] 1 SCR 14, p. 29; 1960-INSC-107, May 6, 1960.

²³ Supreme Court of India, Three-Judge bench, Selvi & Ors v. State of Karnataka & Anr, [2010] 5 SCR 381, para 92; 2007-INSC-520, May 05, 2010.

protection afforded by Section 25 and Section 26 of the Evidence Act.²⁴ Sections 25 and 26 are manifestly intended to hit at an evil, viz., to guard against the danger of receiving in evidence testimony from tainted sources about statements made by persons accused of offences.²⁵

140. The mere questioning of an accused person by a police officer, resulting in a voluntary statement, which may ultimately turn out to be incriminatory, is not 'compulsion'.²⁶ An accused person cannot be said to have been compelled to be a witness against himself simply because he made a statement while in police custody, without anything more.²⁷ Thus, s. 27 partially removes the ban placed on the reception of confessional statements under s. 26—But the removal of the ban is not of such an extent as to absolutely undo the object of s. 26.²⁸ The court has to be cautious that no effort is made by the prosecution to make out a statement of accused with a simple case of recovery as a case of discovery of fact in order to attract the provisions of Section 27 the Evidence Act.²⁹ Once a confessional statement of the accused on facts is found to be involuntary, it is hit by Article 20(3) of the Constitution, rendering such a confession inadmissible.³⁰

141. The onus is on the prosecution to prove the fact discovered from the information obtained from the accused.³¹ There cannot be a “discovery” of an already discovered fact!³² Once a fact is discovered from other sources there can be no fresh discovery even if relevant information is extracted from the accused and courts have to be watchful against the ingenuity of the investigating officer in this respect so that the protection afforded by the wholesome provisions of ss. 25 and 26 of the Indian Evidence Act is not whittled down by mere manipulation of the record of case diary.³³

²⁴ Supreme Court of India, H.P. Admn. v. Om Prakash, [1972] 2 SCR 765, [p. 776][C-D]; 1971-INSC-340, Dec 07, 1971.

²⁵ Supreme Court of India, Constitutional Bench, State of Uttar Pradesh v. Deoman Upadhyaya, [Majority View], [1961] 1 SCR 14, p. 29; 1960-INSC-107, May 6, 1960.

²⁶ Supreme Court of India, Eleven-Judge bench, State of Bombay v. Kathi Kalu Oghad, [1962] 3 S.C.R. 10, [p. 33-34], Sub-para (2); 1961-INSC-229, Aug 04.

²⁷ Supreme Court of India, Eleven-Judge bench, State of Bombay v. Kathi Kalu Oghad, [1962] 3 S.C.R. 10, [pp. 33-34], Sub-para (1); 1961-INSC-229, Aug 04.

²⁸ Supreme Court of India, Udai Bhan v. State of UP, [1962] SUPP 2 SCR 830, p. 835- 837; 1962 INSC 30, Jan 29, 1962.

²⁹ Supreme Court of India, Geejaganda Somaiah v. State of Karnataka, Appeal (Crl.) 311 of 2007, [p. 5], Mar 12, 2007.

³⁰ Supreme Court of India, Ashish Jain v. Makrand Singh & Ors, [2019] 1 SCR 345, para 21; 2019-INSC-47, Jan 14, 2019.

³¹ Supreme Court of India, Jafarudheen & Ors. v. State of Kerala, [2022] 5 SCR 721, para 31; 2022-INSC-464, Apr 22, 2022.

³² Supreme Court of India, Dinesh Kumar v. The State of Haryana, [2023] 4 SCR 220, [p. 229], Para 8; 2023-INSC-493, May 04, 2023.

³³ Supreme Court of India, Three-judge bench, Thimma @ Thimma Raju v. State of Mysore, [1971] 1 SCR 215, [p. 225][D-E]; 1970 INSC 82, Apr 02, 1970

142. The basic idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events.³⁴ Section 27 appears to be based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true and accordingly it can be safely allowed to be given in evidence.³⁵ The rationale behind Section 27 of the Indian Evidence Act is, that the facts in question would have remained unknown but for the disclosure of the same by the accused.³⁶

143. The exception postulated under Section 27 of the Indian Evidence Act is applicable only if the confessional statement leads to the discovery of some new fact.³⁷ It is for the prosecution to prove that the information received from the accused is relatable to the fact discovered.³⁸ [I]t 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.³⁹

144. The expression “whether it amounts to a confession or not” has been used in order to emphasise the position that even though it may amount to a confession that much information as relates distinctly to the fact thereby discovered can be proved against the accused.⁴⁰ The essential ingredient of the section is that the information given by the accused must lead to the discovery of the fact which is the direct outcome of such information—Secondly, only such portion of the information given as is distinctly connected with the said recovery is admissible against the accused—Thirdly, the discovery of the fact must relate to the commission of some offence.⁴¹ For relevancy, the “*facts thereby discovered*” is preceded with the words “*so much of such information, whether it amounts to confession or not as relates distinctly*”—Special emphasis must be given to the word ‘*distinctly*’—The word “distinctly” has its own importance which is a derivative of the word ‘distinct’.⁴² Therefore, “distinctly”, as used in Section 27, is meant to exclude certain language and to limit and confine the information which may be proved within definite limits and not necessarily to

³⁴ Supreme Court of India, State of Maharashtra v. Damu & Ors., [2000] 3 SCR 880, [p. 89] (B-D); 2000-INSC-273, May 01, 2000.

³⁵ Supreme Court of India, Geejaganda Somaiah v. State of Karnataka, Appeal (Crl.) 311 of 2007, [p. 5], Mar 12, 2007.

³⁶ Supreme Court of India, Madhu v. State of Kerala, [2012] 2 S.C.R. 986, [pp. 1021-1022] [H-D]; 2012-INSC-27, Jan 13, 2012.

³⁷ Supreme Court of India, Madhu v. State of Kerala, [2012] 2 S.C.R. 986, [pp. 1021-1022] [H-D]; 2012-INSC-27, Jan 13, 2012.

³⁸ Supreme Court of India, Jafarudheen & Ors. v. State of Kerala, [2022] 5 SCR 721, [30]; 2022-INSC-464, Apr 22, 2022.

³⁹ Privy Council, Four-Judge Bench, Pulukuri Kottaya and Others v. Emperor, AIR 1947 PC 67, p. 262, 1946 SCC OnLine PC 47, Dec 19, 1946.

⁴⁰ Supreme Court of India, Three-Judge Bench, Ramkishan Sharma v. State of Bombay, [1955] 1 SCR 903; 1954-INSC-99, Oct 22, 1954.

⁴¹ Supreme Court of India, Three-judge bench, Jaffer Hussein Dastgir v. State of Maharashtra, [1970] 2 S.C.R. 332, [p. 336] [D-F]; 1969-INSC-232, Sep 11, 1969.

⁴² Supreme Court of India, Govind v. State of Haryana, [2025] 12 SCR 206, Para 15; 2025-INSC-1318, Nov 14, 2025.

include everything which may relate to that information—The said word “distinctly” indicates directly, indubitably, strictly and unmistakably, apparently, used in Section 27 to limit and define the scope of probable information—Therefore, only that much information as is clearly connected with the fact discovered can be treated as relevant under the phrase ‘*facts discovered*’.⁴³

145. The limited nature of the admissibility of the facts discovered pursuant to the statement of the accused under Section 27 can be illustrated by the following example: Suppose a person accused of murder deposes to the police officer the fact as a result of which the weapon with which the crime is committed is discovered, but as a result of such discovery no inference can be drawn against the accused, if there is no evidence connecting the knife with the crime alleged to have been committed by the accused.⁴⁴ The information might be confessional or non- inculpatory in nature, but if it results in discovery of a fact it becomes a reliable information—Hence the legislature permitted such information to be used as evidence by restricting the admissible portion to the minimum.⁴⁵ 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.⁴⁶ The words “where he had hidden them” are not on a par with the words “with which I stabbed the deceased” in the example given in the judgment of the Judicial Committee.⁴⁷ These words (namely, where he had hidden them) have nothing to do with the past history of the crime and are distinctly related to the actual discovery that took place by virtue of that statement.⁴⁸ The handing over of the key is not a confessional statement but the confession lies in the fact that with that key the shop of the complainant was opened and, therefore, that portion will be inadmissible in evidence and only that portion will be admissible which distinctly relates to the fact discovered i.e., the finding of the key.⁴⁹

146. The silent cause of the final fall of the tall tower is the first stone obliquely and obviously removed from the base—And Art. 20(3) is a human article, a guarantee of dignity and integrity and of inviolability of the person and refusal to convert an adversary system into an inquisitorial scheme in the antagonistic antechamber of a police station—And

⁴³ Supreme Court of India, Govind v. State of Haryana, [2025] 12 SCR 206, Para 15; 2025-INSC-1318, Nov 14, 2025.

⁴⁴ Supreme Court of India, Musheer Khan v. State of MP, [2010] 2 S.C.R. 119, [69]; 2010-INSC-64, Jan 28, 2010.

⁴⁵ Supreme Court of India, State of Maharashtra v. Damu & Ors., [2000] 3 SCR 880, [p. 89] (B-D); 2000-INSC-273, May 01, 2000.

⁴⁶ Privy Council, Four-Judge Bench, Pulukuri Kottaya and Others v. Emperor, AIR 1947 PC 67, p. 262, 1946 SCC OnLine PC 47, Dec 19, 1946.

⁴⁷ Privy Council, Four-Judge Bench, Pulukuri Kottaya and Others v. Emperor, AIR 1947 PC 67, p. 262, 1946 SCC OnLine PC 47, Dec 19, 1946.

⁴⁸ Supreme Court of India, Three-judge Bench, K. Chinnaaswamy Reddy v. State of Andhra Pradesh, [1963] S.C.R. 412, [p. 421], 1962-INSC-216, July 25, 1962.

⁴⁹ Supreme Court of India, Udai Bhan v. State of UP, [1962] SUPP 2 SCR 830, p. 835- 837; 1962 INSC 30, Jan 29, 1962.

in the long run, that investigation is best which uses stratagems least, that policeman deserves respect who gives his fists rest and his wits restlessness—The police are part of us and must rise in peoples' esteem through firm and friendly, not foul and sneaky strategy.⁵⁰

147. In other words, the mere fact of being in police custody at the time when the statement in question was made would not, by itself, as a proposition of law, lend itself to the inference that the accused was compelled to make the statement, though that fact, in conjunction with other circumstances disclosed in evidence in a particular case, would be a relevant consideration in an enquiry whether or not the accused person had been compelled to make the impugned statement.⁵¹

148. Before analyzing the disclosure statement, whether its contents were proved by the investigator, or whether the discovered article was lying in an accessible open place and was visible, such a stage would only arrive if the disclosure and discovery pass the following six-fold test.

149. Sextipartite⁵² test:

- 1) Disclosure of information must be made by the person already arraigned as an accused for the commission of the said offence⁵³.
- 2) Such an accused must be in custody for that offence when making the disclosure.^{54,55}
- 3) The accused must have disclosed voluntarily⁵⁶, without compulsion⁵⁷, coercion, threats, inducement or deception.⁵⁸
- 4) Such information must disclose a fact relevant to the crime.⁵⁹
- 5) The information must have been distinctly⁶⁰ connected with the fact discovered.⁶¹

⁵⁰ Justice Krishna Iyer, Supreme Court of India, Three-judge bench, Nandini Sathpathy v. Dani (P.L.) and Anr., [1978] 3 S.C.R. 608, [p. 631] [E-H]; 1978-INSC-80, Apr 07, 1978.

⁵¹ Supreme Court of India, Eleven-Judge bench, State of Bombay v. Kathi Kalu Oghad, [1962] 3 S.C.R. 10, [pp. 33-34], Sub-para (1); 1961-INSC-229, Aug 04.

⁵² Oxford University Press. (n.d.). Sextipartite, adj. In Oxford English dictionary. Retrieved Aug 23, 2026, from <https://doi.org/10.1093/OED/9499291168>.

⁵³ Supreme Court of India, Eleven-Judge bench, State of Bombay v. Kathi Kalu Oghad, [1962] 3 S.C.R. 10, [pp. 35], Sub-para (7); 1961-INSC-229, Aug 04.

⁵⁴ Supreme Court of India, Eleven-Judge bench, State of Bombay v. Kathi Kalu Oghad, [1962] 3 S.C.R. 10, [pp. 33-34], Sub-para (7); 1961-INSC-229, Aug 04.

⁵⁵ Supreme Court of India, Constitutional Bench, State of Uttar Pradesh v. Deoman Upadhyaya, [Majority View], [1961] 1 SCR 14, p. 29; 1960-INSC-107, May 6, 1960.

⁵⁶ Supreme Court of India, Ashish Jain v. Makrand Singh & Ors, [2019] 1 SCR 345, para 21; 2019-INSC-47, Jan 14, 2019.

⁵⁷ Art 20(3)— No person accused of any offence shall be compelled to be a witness against himself.

⁵⁸ Supreme Court of India, Three-Judge bench, Selvi & Ors v. State of Karnataka & Anr, [2010] 5 SCR 381, para 92; 2007-INSC-520, May 05, 2010.

⁵⁹ Supreme Court of India, Anter Singh v. State of Rajasthan, [2004] 2 S.C.R 123, [132 A – E] sub-paras (1), (5), (6); 2004-INSC-88, Feb 05, 2004.

⁶⁰ Supreme Court of India, Three-Judge Bench, Ramkishan Sharma v. State of Bombay, [1955] 1 SCR 903, p. 924; 1954-INSC-99, Oct 22, 1954.

- 6) The fact that was discovered pursuant to the disclosure must not have already been discovered.⁶²

150. Analyzing and appreciating in the light of the above there is no iota of doubt that the discovery has not been shown to have been made at the instance of any of the accused persons, and their disclosure statements do not fall under the exceptions to §27 of the Indian Evidence Act, 1872.

151. Regarding the forcible administration of poison, the prosecution has failed to connect any of the accused to poison or its administration. There is no explanation as to what happened to the metallic container full of some poisonous liquid, which as per the Crime Scene Report Ext P-36 [pp. 349 & 350 of TCR], had already been taken into possession by the SHO. It was for the prosecution to have proved that the contents of the said metallic container were different from that of plastic container allegedly recovered at the instance of the accused persons because as per the FSL report [Ext PX], Pendimethalin, an herbicide, was found in the plastic bottle.

152. Additionally, the Doctor did not specifically state that the four crescent-shaped, reddish-brown abrasions on the mandible of victim 'R' could have been caused during the forcible administration of poison, nor did the Doctor state that they could not have been caused during the commission of rape. Furthermore, there are no similar injuries to victim 'K', and no injuries to the mouth or lips of any of the victims. The evidence of forcible administration of poison was mentioned in the statement Ext P-1 of the victims' mother [PW-1] and was also recorded under §164 CrPC [Ext P-3]. As already discussed above, she did not admit to or corroborate the contents of her statement recorded under §164 CrPC.

153. Thus, for the offence of forcible administration of poison, the medical opinion is not specific. The herbicide was in a 500 ml plastic bottle. There are no corresponding injuries on the lips and mouth of any of the victims to prima facie demonstrate that the poison was forcibly administered to them. An analysis of the above creates reasonable doubt about the forcible administration of poison, and there is no evidence linking any of the accused to the poison or to its forcible administration to the victims. This Court would refrain from forming any definitive opinion as to whether the victims had self-consumed the poison, because that would be relevant only when there is evidence connecting the accused with the commission of rape, and after that comes the motive or abetment and instigation if it was self-consumed by the victims, and a further evaluation of evidence of the forcible administration of poison.

⁶¹ Supreme Court of India, Govind v. State of Haryana, [2025] 12 SCR 206, Para 15; 2025-INSC-1318, Nov 14, 2025.

⁶² Supreme Court of India, Three-judge bench, Thimma @ Thimma Raju v. State of Mysore, [1971] 1 SCR 215, [p. 225][D-E]; 1970 INSC 82, Apr 02, 1970.

154. The Trial Court, in paragraph nos. 72 and 161(iv), also referred to the injuries sustained by all four accused as a result of resistance offered by the victims. It shall be relevant to extract paragraph no. 161(iv), which reads as follows,

“The arrest of the accused persons and their medical examination has been clearly proven by the prosecution establishing injuries on the person of all the accused suffered as a result of resistance put up by the victims when they were being gang raped/ subjected to aggravative penetrative sexual assault by the accused.”

155. It shall be relevant to refer to the medical evidence of all the accused wherein the injuries are mentioned.

156. PW-11 Dr. Naveen Yadav medically examined all the accused. The Affidavit regarding the medical examination of accused Arun is Ext P-25, and his MLR is Ext P-27. The Affidavit regarding the medical examination of accused Phool Chand is Ext P-28, and his MLR is Ext P-29. The Affidavit regarding the medical examination of accused Dukhan is Ext P-30, and his MLR is Ext P-31. The Affidavit regarding the medical examination of accused Ramsuhag is Ext P-32, and his MLR is Ext P-33.

157. The injuries to the accused Arun are mentioned in MLR [Ext P-27, p. 233 of TCR] as *“OLD SCAR MARKS PRESENT OVER LEFT CHEEK OF SIZE 4X0.5CM.”* In the endorsement made by Dr. Naveen Yadav in Ext. P-35 [p. 347 of TCR], it is mentioned as follows, *“No fresh injury mark seen during examination.”*

158. The injuries to the accused Phoolchand are mentioned in MLR [Ext P-29, p. 237 of TCR] as *“OLD SCAR MARKS PRESENT OVER LEFT CHEEK OF SIZE 4X0.5CM.”* In the endorsement made by Dr. Naveen Yadav in Ext. P-35 [p. 347 TCR], it is mentioned as follows, *“Old scar over forearm of sizes 0.5x0.5 cm. No fresh injury mark seen during examination.”*

159. The injuries to the accused Dukhan are mentioned in MLR [Ext P-31, p. 241 of TCR] as *“OLD SCAR OVER RIGHT ARM OF SIZE 1X1 CM.”* In the endorsement made by Dr. Naveen Yadav in Ext. P-35 [p. 348 of TCR], it is mentioned as follows, *“No fresh injury mark seen on examination.”*

160. The injuries to the accused Ramsuhag are mentioned in MLR [Ext P-33, p. 245 TCR] as *“OLD SCAR MARKS PRESENT OVER RIGHT ARM UPPER ASPECT OF SIZE 1X0.5CM.”* In the endorsement made by Dr. Naveen Yadav in Ext. P-35 [p. 348 TCR], it is mentioned as follows, *“No fresh injury mark seen during examination.”*

161. PW-11 Dr. Naveen Yadav, in his examination-in-chief, stated as follows, “*I made my endorsements Ex.P35/PW11 that there were no fresh injuries on the persons of all the accused.*” In his cross-examination, he stated as follows, “*It is correct that during my examination I did not find any sign of use of force on the persons of accused.*”

162. With the aforesaid interpretation by the Trial Judge, it is also expedient to mention the dictionary meaning of the word ‘scar’.

163. As per Shorter Oxford English Dictionary⁶³, Scar is defined as “*permanent mark left on the skin after the healing of a wound, sore, or burn; a cicatrice.*”

164. As per New Lexicon Webster's Dictionary⁶⁴, “*A permanent mark on the skin or other tissue, consisting of fibrous tissue formed where a wound, ulcer etc. heals.*”

165. Dr Umadethan⁶⁵ defines scar as follows: “*A scar is formed as a result of healing of an injury and is composed of fibrous tissue. Only if the injury has involved dermis and deeper tissues, a scar is formed. A clean incised wound, without sepsis will heal in 6-7 days and a vascular scar appears. By about 14 days, the scar becomes pale. In about 2-6 months the scar becomes white, tough and remains permanent.*”

166. Dr KS Narayan Reddy⁶⁶ defines scar as follows, “*A scar is a fibrous tissue covered by epithelium without hair follicles, sweat glands or pigment, produced from the healing of a wound. Injury to the dermis produces a scar, while superficial injuries involving only the epidermis do not produce a scar. Scars are permanent.*”

167. It appears that the Trial Court misunderstood the term ‘scar’ to refer to recent injuries, whereas the doctor PW-11, in his examination conducted on Aug 10, 2021, i.e., on the 6th day of the alleged incident, explicitly denied that any of the accused had any signs of the use of force on their persons. Thus, the Trial Court’s findings regarding resistance leading to injuries on the accused are factually incorrect.

168. In Manjunath v. State of Karnataka, [2023] 14 S.C.R. 727; 2023-INSC-978, Nov 06, 2023, the Supreme Court holds,

[22]. For an eye-witness to be believed, his evidence, it has been held, should be of sterling quality. It should be capable of being taken at face value...

⁶³ Shorter Oxford Dictionary, 6th edition, Volume 2, p. 2686, Oxford University Press [2007].

⁶⁴ New Lexicon Webster’s Dictionary, Volume -2, p. 891, Encyclopedic Edition, Lexicon Publications INC, New York [1987].

⁶⁵ Principles and Practice of Forensic Medicine, p. 27, Swamy Law House, First Edition [2008].

⁶⁶ Medical Jurisprudence and Toxicology, p. 82, 1st Edition, Alt Publications [2000].

169. In the present case, the version of the victims' mother, as stated in Court during the trial, is corroborated by FSL reports, which show that the DNA of any of the accused could not be accounted for, the alleged discovery of the container containing pendimethalin is not proved, parna is not connected with the victims, and the injuries on the persons of the accused were old scars and not related to the time of the incident.

170. Given the above, there is no legally admissible evidence linking any of the accused to the commission of rape against any of the victims or to the murder of any of the victims by forcibly administering poison.

171. Why would a mother who lost her two minor daughters, and why would two adult brothers who lost their two minor sisters, spare the real culprits? Ordinarily, these closest relatives, in utter grief, would be in a vengeful mood and thus support the prosecution to ensure the conviction of the real culprits and to seek the maximum punishment. All of them stating that the accused who were shown to them were not involved and would also create a possibility that the real culprits were never arraigned as accused, cannot be ruled out.

172. Additionally, it is common sense that if the accused wanted to kill the girls to destroy evidence of rape, there was no reason for them to spare their mother and the other brother.

173. Furthermore, the victims' brothers, who were said to be sleeping on the roof, should have corroborated that their mother came to the roof at midnight. The possibility that the victims revealed the incident to their brothers cannot be ruled out, but the brothers refused to blame any of the four accused. PW-3 and PW-4, the victims' brothers, were not children but were 22 and 18 years of age; still, they did not support the prosecution's case and were declared hostile witnesses. Even when the Public Prosecutor put leading questions to them, they did not budge.

174. In Dahyabhai Chhaganbhai Thakkar v. State of Gujarat, 1964(7) SCR 361, 1964-INSC-80, Mar 19, 1964

[p. 364] It is a fundamental principle of criminal jurisprudence that an accused is presumed to be innocent and, therefore, the burden lies on the prosecution to prove the guilt of the accused beyond reasonable doubt. The prosecution, therefore, in a case of homicide shall prove beyond reasonable doubt that the accused caused death with the requisite intention described in s. 299 of the Indian Penal Code. This general burden never shifts and it always rests on the prosecution.

175. In Shivaji Sahebrao Bobade & Anr. v. State of Maharashtra, [1974] 1 SCR 489; 1973-INSC-151, Aug 27, 1973, a three-Judge Bench of the Supreme Court holds,

[p. 493] [A-E]. The cherished principles or golden thread of proof beyond reasonable doubt which runs thro' the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt. The excessive solicitude reflected in the attitude that a thousand

guilty men may go but one innocent martyr shall not suffer is a false dilemma. Only reasonable doubts belong to the accused. Otherwise any practical system of justice will then break down and lose credibility with the community. The evil of acquitting a guilty person light-heartedly as a learned *author*⁶⁷ has sapiently observed, goes much beyond the simple fact that just one guilty person has gone unpunished. If unmerited acquittals become general, they tend to lead to a cynical disregard of the law, and this in turn leads to a public demand for harsher legal presumptions against indicated 'persons' and more severe punishment of those who are found guilty. Thus too frequent acquittals of the guilty may lead to a ferocious penal law, eventually eroding the judicial protection of the guiltless. For all these reasons it is true to say, with Viscount Simon, that "*a miscarriage of justice may arise from the acquittal of the guilty no less than from the conviction of the innocent. ..*" In short, our jurisprudential enthusiasm for presumed innocence must be moderated by the pragmatic need to make criminal justice potent and realistic. A balance has to be struck between chasing enhance possibilities as good enough to set the delinquent free and chopping the logic of preponderant probability to punish marginal innocents. We have adopted these cautions in analysing the evidence and appraising the soundness of the contrary conclusions reached by the courts below. Certainly, in the last analysis reasonable doubts must operate to the advantage of the appellant. In India the law has been laid down on these lines long ago.

176. In Aher Raja Khima v. State of Saurashtra [1955] 2 SCR 1285; 1955-INSC-81, Dec 22, 1955, a three-Judge Bench of the Supreme Court [Majority View] holds,

[pp.1289-1290]. Now it may be possible to take two views of this statement but there are two important factors in every criminal trial that weigh heavily in favour of an accused person: one is that the accused is entitled to the benefit of every reasonable doubt and the other, an off-shoot of the same principle, that when an accused person offers a reasonable explanation of his conduct, then, even though he cannot prove his assertions they should ordinarily be accepted unless the circumstances indicate that they are false.

177. In Kali Ram v. State of Himachal Pradesh, [1974] 1 SCR 722; 1973-INSC-173, Sep 24, 1973, a three-Judge Bench of the Supreme Court holds,

[pp. 734- 735] [G – B]. Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence. Rule has accordingly been laid down that unless the evidence adduced in the case is consistent only with the hypothesis of the guilt of the accused and is inconsistent with that of his innocence, the court should refrain from recording a finding of guilt of the accused. It is also an accepted rule that in case the court entertains reasonable doubt regarding the guilt of the accused, the accused must have the benefit of that doubt. Of course, the doubt regarding the guilt of the accused should be reasonable: it is not the doubt of a mind which is either so vacillating that it is incapable of reaching a firm conclusion or so timid that it is

⁶⁷ Glanville Williams in 'Proof of Guilt'. (2) [1934] L. R. 61 I.A., 398.6—L382 Sup.CD74.

hesitant and afraid to take things to their natural consequences. The rule regarding the benefit of doubt also does not warrant acquittal of the accused by resort to surmises, conjectures or fanciful considerations.

178. An analysis of the entire evidence not only creates doubt about the involvement of any of the accused but also indicates the absence of scientific evidence against them. Given the above, although the prosecution is able to establish the commission of the offence of rape against both the victims, but it has failed to connect any of the accused as the perpetrator of rape.

179. In light of judicial precedents and after careful analysis of the entire evidence and the record, the picture that emerges is hazy as to how these four persons were implicated, much worse given the death sentence, including to A-4 Ramsuhag.

180. Thus, the prosecution has failed to establish any legally admissible evidence connecting any of the four accused to the commission of any offence beyond a reasonable doubt, and they are therefore entitled to the benefit of the doubt. Consequently, the convictions and sentences of all four appellants on all charges are set aside, and they are acquitted of all charges.

181. CRA-D 1522 of 2023, Arun and others is allowed on the terms mentioned above.

182. Murder Reference No. 9 of 2023 is dismissed because of the acquittal of all the convicts.

183. The Registry is directed to initiate the process, either itself or through the concerned Court, for their immediate release, and the accused are directed to furnish personal bonds and there shall be no requirement to furnish any surety bonds; however the personal bonds shall be in terms of §481 BNSS, 2023.

184. The Trial Court shall order the destruction of all other case property in accordance with the rules, notifications, and office orders, if any, after six months from the pronouncement of this Judgment. If any SLP/Appeal/Review/Curative Petition is filed before the Supreme Court of India, then, as per its directions, if any, regarding the case property, and if no such directions are made, then after six months from the final order of the Hon'ble Supreme Court.

185. To comply with §412 BNSS, 2023 [371 CrPC, 1973], the proper officer of the High Court shall, without delay, send either physically or through electronic means, a copy of the order, under the seal of the High Court and attested with their official signature, to the Court of Session.

MRC-9-2023 &
CRA-D-1522-2023

186. All the matters stand closed on the terms set out in this verdict. All pending miscellaneous applications, if any, stand disposed of.*

(ANOOP CHITKARA)
JUDGE

(RAMESH CHANDER DIMRI)
JUDGE

Aug 26, 2026
Jyoti Sharma

Whether speaking/reasoned	YES
Whether reportable	YES

* The outstanding assistance of Research Associates, Ms. Somya Sharma and Ms. Jashandeep Kaur is acknowledged.