HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

*****

CRIMINAL PETITION Nos.6887 & 6894 of 2024

Criminal Petition No.6887 of 2024

BETWEEN

Thirunagaru Sravan Kumar @ Sravan,
S/o Venkata Rangaiah

... Petitioner

And

The state of Telangana,
Rep. by Public Prosecutor
High Court for the State of Telangana at Hyderabad
and others.

... Respondents

Criminal petition No.6894 of 2024

BETWEEN

Mohammad Abdul Bhari
S/o Late Mohammed Abdul Azeez

... Petitioner

And
The state of Telangana,
Rep. by Public Prosecutor
High Court for the State of Telangana at Hyderabad
and others.

... Respondents

Date of Judgment Pronounced: 18.07.2024

SUBMITTED FOR APPROVAL:

THE HONOURABLE SMT. JUSTICE K. SUJANA

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? (Yes/No)

2. Whether the copies of judgment may be marked to Law Reports/Journals? (Yes/No)

3. Whether their Lordship/ Ladyship wish to see the fair copy of the Judgment? (Yes/No)

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JUSTICE K. SUJANA

*** THE HON'BLE SMT. JUSTICE K. SUJANA**

+ CRIMINAL PETITION NOS.6887 AND 6894 OF 2024

% Dated 18.07.2024

Crl.P.No.6887 of 2024

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S/o Venkata Rangaiah

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Crl.P.No.6894 of 2024

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S/o Late Mohammed Abdul Azeez,

... Petitioner

And

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Rep. by Public Prosecutor
High Court for the State of Telangana at Hyderabad
and others.

... Respondents

! Counsel for Petitioners:
1. Sanjeeva Reddy Garlapati in Crl.P.No.6887 of 2024
2. C. Sharan Reddy in Crl. P No.6894 of 2024

^ Counsel for respondents: S. Ganesh, Assistant Public Prosecutor

<GIST:

> HEAD NOTE:

? Cases referred

1. Criminal Appeal Nos.1476-1477 of 2018
2. 2022 LiveLaw (SC) 843
3. Crl. Appeal @ SLP (Crl.) No.863 of 2019
4. (2000) 6 SCC 269
5. (2009) 9 SCC 417

THE HONOURABLE SMT. JUSTICE K. SUJANA

CRIMINAL PETITION Nos.6887 & 6894 of 2024

COMMON ORDER:

Since the issue involved in both the criminal petitions is one and the same, they are being heard and disposed of together by way of this common order.

2. These Criminal Petitions are filed under Section 482 of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') to quash the docket order dated 20.06.2024 against the petitioners/accused Nos.4 and 6 respectively in S.C.No.70 of 2019, on the file of the learned Special Sessions Judge for Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act Cases – cum – II Additional District and Sessions Judge, Nalgonda District.

3. The brief facts of the case are that respondent No.2/*de facto* complainant lodged a complaint before the Police, Miryalaguda I Town Police Station, Nalgonda District stating that he had two sons. When his elder son, i.e., Pranay Kumar, was in class 10, he got acquainted with one Amrutha Varshini and later they became close to each other. One day the said Amrutha Varshini told his elder son that if he did not

accept her love, she would commit suicide, due to which, the said Pranay Kumar accepted her love. When the love matter was known to the father of Amrutha Varshini, he stopped her studies and house arrested her. Due to the pressure of Amrutha Varshini, the said Pranay Kumar took her to Hyderabad and got married without informing anyone. The father of Amrutha Varshini lodged a complaint about it before the Miryalaguda Police, who then brought Pranay Kumar and Amrutha Varshini from Hyderabad to Miryalaguda. Amrutha Varshini informed the Police that they were majors, and as such, they got married. Since then, Amrutha Varshini has been residing with Pranay Kumar at his house.

4. It is further stated that Amrutha Varshini was conceived and attending regular checkups at Jyothi Hospital in Miryalaguda. On 14.09.2018, Amrutha Varshini, Pranay Kumar, and his mother went to the hospital for medical checkup, after completion of the same when they were going home, an unidentified male person came behind Pranay Kumar with a large knife, attacked him and dealt severe blows on his head with a Knife, as a result, he received severe bleeding injuries to his head and neck and died on the spot.

5. Based on the said complaint, the Police registered a case in Crime No.139 of 2018 for the offences punishable under Sections 302 read with 34, 120 (b) read with 109 of IPC, and Section 3 (2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 25 (1) (A) and Section 27 (3) of the Indian Arms Act, 1959. After completion of the investigation, they filed a charge sheet, *vide* S.C.No.70 of 2019, before the learned Special Sessions Judge for Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act Cases – cum – II Additional District and Sessions Judge, Nalgonda District.

6. During the course of trial, the prosecution examined 17 witnesses. On 20.06.2024, during the chief examination of P.W.17, the prosecution brought on record the confession statement of accused Nos.1 and 6 and reiterated the same in his evidence for which the defence counsel objected for recording the said evidence. The trial Court has passed the impugned order stating that though the confession of accused Nos.1 and 6 was not admissible in evidence, the objection of the defence was overruled since the confession revealed a pertinent piece of information i.e., MO.6 – Mobile phone. Hence, the present criminal petitions.

7. Heard Sri Sanjeeva Reddy Garlapati, learned counsel appearing on behalf of the petitioner in Criminal Petition No.6887 of 2024, and Sri C. Sharan Reddy, learned counsel appearing on behalf of the petitioner in Criminal Petition No.6894 of 2024 as well as Sri S. Ganesh, learned Assistant Public Prosecutor appearing on behalf of respondent No.1 in both the cases.

8. Learned counsel for the petitioners submitted that the confession of accused Nos.1 and 6 should only have been admitted to the extent that they contributed to the discovery of a fact and the trial Court should not have recorded the entire confession in the evidence of P.W.17. The prosecution asserted that MO.6 – Mobile Phone was discovered in the confession statement of accused No.1, which is admissible as per Section 27 of the Indian Evidence Act. He further submitted that just a specific portion of confession is acceptable in evidence and the same should have been recorded. He further submitted that the prosecution marked Ex.P.30 during the chief-examination of P.W.17 and that is the relevant portion of the confession of accused No.1. Thus, there is no reason for the trial court to record the entire portion of the confession of accused No.1 in the evidence of

P.W.17 since the admissible portion of the confession is marked as Ex.P-30.

9. Learned counsel for the petitioners further submitted that if the evidence of P.W.17 contains any inadmissible evidence the same cannot be recorded. He further submitted that Sections 25 to 27 of the Indian Evidence Act are very obvious and establish that a confession made in front of a police officer is not acceptable as evidence. It is the only part that is admissible that results in a factual discovery. He further submitted that the entire confession made by Accused Nos.1 and 6 is not admissible as evidence, it is therefore, illegal to record it. Therefore, prayed the Court to set aside the docket order dated 20.06.2024 passed in S.C.No.70 of 2019.

10. In support of their submissions, learned counsel for the petitioners relied upon the judgment of this Court in Criminal Petition No.11358 of 2011, wherein it is held as under:

> "This Court perused the record and also the evidence recorded by the learned trial Judge during the time of examination of P.W.5. It is unfortunate to note that the learned trial Judge while proceeding in this case in an erroneous manner, has recorded the evidence adduced by P.W.5 in connection with

> the confession given by the accused herein, which is totally inadmissible in law. In so far as the Panch witnesses are concerned, a duty is casted upon the trial Court only to record the admissible portion, which leads to recovery on the basis of the confession concerned, whereas the trial Judge has recorded the entire confession as evidence through P.W.5. Hence, this Court is of the view that the present petition has to be allowed and the following directions are given to the trial Court.
>
> The trial Court is directed to expunge the evidence recorded through P.W.5 except to the extent, which leads to recovery of the material objects, and the trial Court can proceed further in the matter."

11. Learned counsel for the petitioners further relied upon the judgment of the Hon'ble Supreme Court in **Venkaesh @ Chandra vs. The State of Karnataka**[1], wherein in paragraph No.19, it is held as under:

> "19. We must observe that we have repeatedly found a tendency on part of the Prosecuting Agency in getting the entire statement recorded rather than only that part of the statement which leads to the discovery of facts. In the process, a confession of an accused which is otherwise hit by the principles of Evidence Act finds its place on record. Such kind of statements may have a direct tendency to influence and prejudice the mind of the Court. This practice must immediately be stopped. In the present case,

[1]Criminal Appeal Nos.1476-1477 of 2018

> the trial Court not only extracted the entire statements but also relied upon them."

12. *Per contra*, the learned Assistant Public Prosecutor appearing on behalf of respondent No.1 opposed the submissions made by the learned counsel for the petitioners stating that the order of the trial Court was lawful and the confessional statement must be recorded to reach a meaningful decision, and therefore, prayed the Court to dismiss these criminal petitions.

13. In support of his submissions, learned Assistant Public Prosecutor relied upon the judgment of the Hon'ble Supreme Court in **Ramanand @ Nandlal Bharti vs. State of Uttar Pradesh**[2], wherein in paragraph Nos.53, 66 and 67, it is held as under:

> "53. If, it is say 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

[2] 2022 LiveLaw (SC) 843

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 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 other accused and the two independent witnesses (panch witnesses) would proceed to a 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."

67. What emerges from the evidence in the form of panchnama is that the appellant stated before the panch witnesses to the effect that "I will

> show you the weapon used in the commission of offence". This is the exact statement which we could read from the discovery panchnama and the Investigating Officer also could have been deposed as regards the exact statement other than what has been recorded in the panchnama. This statement does not suggest that the appellant indicated anything about his involvement in concealment of the weapon. Mere discovery cannot be interpreted as sufficient to infer authorship of concealment by the person who discovered the weapon. He could have derived knowledge of the existence of that weapon at the place through some other source. He may have even seen somebody concealing the weapon, and therefore, it cannot be presumed or inferred that because a person discovered weapon, he was the person who concealed it, least it can be presumed that he used it. Therefore, even if discovery by the appellant is accepted, what emerges from the panchnama of the discovery of weapon and the evidence in this regard is that he disclosed that he would show the weapon used in the commission of offence. In the same manner we have also perused the panchnamaExh.32 wherein the statement said to have been made by the accused before the panchas in exact words is "the accused resident of Roghada village on his own free will informs to take out cash and other valuables".

14. Learned Assistant Public Prosecutor further relied upon the judgment of the Hon'ble Supreme Court in **Perumal Raja**

@ **Perumal vs. State, Rep by Inspector of Police**[3], wherein in paragraph No.22, it is held as under:

> "22. However, we must clarify that Section 27 of the Evidence Act, as held in these judgments, does not lay down the principle that discovery of a fact is to be equated to the object produced or found. The discovery of the fact resulting in recovery of a physical object exhibits knowledge or mental awareness of the person accused of the offence as to the existence of the physical object at the particular place. Accordingly, discovery of a fact includes the object found, the place from which it was produced and the knowledge of the accused as to its existence. To this extent, therefore, factum of discovery combines both the physical object as well as the mental consciousness of the informant accused in relation thereto. In Mohmed Inayatullah vs. State of Maharashtra, elucidating on Section 27 of the Evidence Act, it has been held that the first condition imposed and necessary for bringing the Section into operation is the discovery of a fact which should be a relevant fact in consequence of information received from a person accused of an offence. The second is that the discovery of such a fact must be deposed to. A fact already known to the police will fall foul and not meet this condition. The third is that at the time of receipt of the information, the accused must be in police custody. Lastly, it is only so much of information which relates distinctly to the fact thereby discovered resulting in recovery of a physical object which is admissible. Rest of the information is to be

[3]Crl. Appeal @ SLP (Crl.) No.863 of 2019

> excluded. The word 'distinctly' is used to limit and define the scope of the information and means 'directly', indubitably', 'strictly' or 'unmistakably'. Only that part of the information which is clear, immediate and a proximate cause of discovery is admissible."

15. In the light of the submissions made by the respective counsel and a perusal of the material available on record, it appears that the trial Court has recorded the entire confession of accused Nos.1 and 6 in the evidence of P.W.17, and overruled the objection raised by the defence counsel before the trial Court. The main contention of learned counsel for the petitioners is that the confession is only admissible to the extent of discovery of a fact, as such, the specific confessional statement needs to be recorded in the evidence of P.W.17, which is admissible. After reviewing the aforesaid contention, learned Assistant Public Prosecutor opposed the same stating that since the evidence is admissible, it must be recorded to discover the fact.

16. At this stage, it is significant to note the relevant sections of the Evidence Act, which reads as under:

> "24. **Confession caused by inducement, threat or promise, when irrelevant in criminal proceeding** :–A confession made by an accused

person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

25. **Confession to police-officer not to be proved :**—No confession made to a police-officer, shall be proved as against a person accused of any offence.

26. **Confession by accused while in custody of police not to be proved against him**:- No confession made by any person whilst he is in the custody of a police-officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

[Explanation.—In this section "Magistrate" does not include the head of a village discharging magisterial functions in the Presidency of Fort St. George *** or elsewhere, unless such headman is a Magistrate exercising the powers of a Magistrate under the Code of Criminal Procedure,1882(10 of 1882).]

27. **How much of information received from accused may be proved :**—Provided that, when any fact is deposed to as discovered inconsequence 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."
>
> 167. **No new trial for improper admission or rejection of evidence**. — The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the Court before which such objection is raised that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.

17. Reverting to the facts of the case on hand, the trial Court in the impugned docket order held that the Court is not justified in relying on the circumstances of discovery without proving the contents of panchnama. To that effect, learned Judge relied on the judgment of the Hon'ble Supreme Court in **State of Maharashtra vs. Damu Gopinath Shinde**[4], wherein it is observed that no doubt, the information permitted to be admitted in evidence is confined to that portion of the information which 'distinctly relates to the fact thereby discovered'. But the information to get admissibility need not be so truncated as to make it insensible or incomprehensible. The extent of information admitted should be consistent with

[4](2000) 6 SCC 269

understandability. Mere statement that the accused led the police and the witnesses to the place where he had concealed the article is not indicative of the information given.

18. In the aforesaid context it is opt to refer and rely upon the decision of the Apex Court in the case of **Murli v. State of Rajasthan**[5], wherein it is categorically observed that the contents of the panchnama are not the substantive evidence. The law is settled on that issue. What is substantive evidence is what has been stated by the panchas or the person concerned in the witness box. Further, the information must be such as has caused discovery of the fact and information must relate distinctly to the fact discovered. Furthermore, the conditions necessary for the applicability of Section 27 of the Indian Evidence Act are as follows:

1. Discovery of fact in consequence of an information received from the accused.
2. Discovery of such fact to be deposed to
3. The accused must be in Police custody when he gave information and
4. So much of information as relates distinctly to the fact thereby discovered is admissible.

[5] (2009) 9 SCC 417

19. The scope and ambit of Section 27 of the Evidence Act were illuminatingly stated in **Pulukuri Kottaya and Others vs. Emperor**[6], AIR 1947 PC 67, which have become locus classicus, in the following words:

> "10. It is fallacious to treat the "fact discovered" within the section as equivalent to the subject 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 that 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."

20. A brief summary of the above judgment in **Pulukuri Kotayya** (supra), wherein, it is categorically held that it is unquestionably incorrect to treat the 'fact discovered' within the section as being equivalent to the subject produced, the

[6] AIR 1947 PC 67

fact discovered includes the location from which the object is produced and the same is in knowledge of the accused as to this. Further, the information provided must be specifically related to this fact. There is no connection between the finding of the object and its past usage or history in the setting in which it was discovered.

21. Further, it is also observed in the above judgment that what emerges from the evidence in the form of panchnama is that the accused stated before the panch witnesses to the effect that "I will show you the weapon used in the commission of offence". This is the exact statement, which we could read from the discovery panchnama. But if 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 informant".

22. Further Section 167 of the Indian Evidence Act, says that the improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the Court before which such objection is raised that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the

decision, or that, if the rejection evidence had been received it ought not to have varied the decision.

23. In the present case, the trial Court seems to be recorded total confession statement of the accused including inadmissible part of the confession. Therefore, in view of the of the facts and circumstances of the case and a cursory reading of the above sections and judgments the inadmissible evidence can be rejected and only admissible evidence can be considered.

24. In view thereof, these criminal petitions are disposed of directing the trial Court to consider the statement of P.W.17 to the extent which is admissible as per Section 27 of the Indian Evidence Act and remaining cannot be considered while deciding the matter.

Miscellaneous applications, if any pending, shall also stand closed.

K. SUJANA

Date: 18.07.2024

Note: L.R. copy to be marked

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