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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
UDAY UMESH LALIT; CJI., S. RAVINDRA BHAT; J., SUDHANSHU DHULIA; J.
CRIMINAL APPEAL NOS.1597-1600 OF 2022; September 30, 2022
MUNIKRISHNA @ KRISHNA ETC. *versus* **STATE BY ULSOOR PS**

Indian Evidence Act, 1872; Section 25 - Code of Criminal Procedure, 1973; Section 161 - Both the Trial Court and the Appellate Court went completely wrong in placing reliance on the voluntary statements of the accused and their videography statements - A confessional statement given by an accused before a Police officer is inadmissible as evidence - Statement given by an accused to police under Section 161 of CrPC is not admissible as evidence. *(Para 13)*

Criminal Trial - Circumstantial Evidence - In a case of circumstantial evidence, the Court has to scrutinize each and every circumstantial possibility, which is placed before it in the form of an evidence and the evidence must point towards only one conclusion, which is the guilt of the accused - A very heavy duty is cast upon the prosecution to prove its case, beyond reasonable doubt - Parameters under which the case of circumstantial evidence is to be evaluated. *Referred to Hanumant Govind Nargundkar & Anr. v. State of Madhya Pradesh AIR 1952 SC 343. (Para 12)*

(Arising out of Special Leave Petition (Crl.) Nos.8792-8795 of 2022)

For Appellant(s) Mr. Lakshmeesh S. Kamath, AOR Mr. Kaustubh Shukla, Adv. Ms. Samriti Ahuja, Adv. Ms. Nancy Shamim, Adv.

For Respondent(s) Mr. V. N. Raghupathy, AOR

J U D G M E N T

Sudhanshu Dhulia, J.

The appellants before us have challenged the judgment and order dated 31.8.2010 passed by the High Court of Karnataka in a Criminal Appeal which has upheld the order of conviction and sentence passed by the Trial Court against the appellants which convicted the appellants under Section 302 read with Section 34 IPC, and has sentenced them for life imprisonment. We had heard Shri Lakshmeesh S. Kamath, learned counsel for the appellant and Shri Nikhil Goel, learned Additional Advocate General for the State at length on 24.08.2022 and granted leave in the case, which was then reserved for judgment.

2. An FIR was lodged on 12.10.2000 at 1:15 PM mid night, which was the intervening night between 11 th October and 12 th October, 2000 by the son-in-law of the deceased, S. Ramakrishnan. As per the FIR, his father-in-law, who was seventy-two years of age, and was living alone in house No.19/1 Haudin Road, Ulsoor, was murdered by some unknown persons. The deceased last spoke to his daughter (wife of the informant), at about 6:30 PM that evening. Informant then says that his wife and him left their house in the evening that day (11.10.2000) to attend a dinner engagement. They returned home at about 11:15 PM. On their return they received a call from a cousin Dr. B. Anarth Narayan, of the Indian Institute of

Sciences. Dr. Narayan informed him that he had received a telephone call at about 10.00 PM, from one Sundar who is a neighbour of his fatherin-law. Sundar had informed that the gates of the house of his father-in-law were open and lights were also on, which seemed unusual at that hour in the night. On this information, the informant and his wife rushed to the house of his father-in-law. He was apprehending that his father-inlaw may have collapsed, since he had a history of heart disease. When they reached the house at around 11.30 PM, they immediately had an impression as if something was burning in the kitchen. This drew them to the kitchen, where they found the dead body of S. Ramakrishnan. They also noticed that the cupboards of the living room were open and the purse of her father was missing where he normally kept approximately Rs.3000/-. They immediately informed the Police and the FIR was lodged and Criminal Case No.600 of 2000 was registered for the offence punishable under Section 302 at Police Station, Ulsoor, Bengaluru and investigation commenced.

3. Meanwhile, Inquest had started at about 07:00 AM in the morning of 12.10.2000, and it is completed at 09:30 AM that day. The inquest report states that a male person about 72 years old by the name of S. Ramakrishnan s/o Subbaraya Ayyer, found dead at No. 19/1, Haudin Road, Ulsoor, Bengaluru on the day of 12.10.2000. Then it records: -

"The dead body is lying in blood pool in kitchen at Door No. 19/1, Haudin Road, Ulsoor, facing the sky. Head facing West and legs towards East. Eyes are open. A 4" long bleeding injury is found in deceased's neck; it is found to be cut with a sharp weapon. Both the hands are stretched on the body. Cut injury caused in neck is found to be caused by some antisocial elements. Deceased is wearing 1) A cross-belt, 2) White full arm banyan, 3) White underwear, 4) White dhothi. All clothes are full of blood.

The dead body is found in kitchen at door No. 19/1, Haudin Road, Ulsoor, the main door of the house is facing North, 'kitchen door is to the West, on entering the kitchen, the dead body is lying on the floor facing the sky with head towards West and legs towards East. Not found in water. Not in well.

On 12-10-2000 at 9.30 AM, Sri. NS. Ramachandrappa, Police Inspector of Ulsoor Police Station, in order to know the actual cause for deceased's death, sent the dead body to Bowring Hospital Doctor through Sri. Giriyaiah PC-2539.

Sri. N.S. Ramachandra, P.I. has ordered PC 2539 to handover the dead body to deceased's blood relatives after postmortem, to perform obsequies.

On 11-10-2000. Some culprits have murdered the diseased Sri. S. Rakakrishnan, 72 years in the kitchen of his residence in between 6.30 PM and 11.30 PM and escaped from there by stealing around Rs.3000/- from the cupboard, by cutting his neck with some sharp weapon. However, we the Panchas opine that the dead body should be sent to postmortem to find out the actual cause of deceased's death."

4. A post-mortem was conducted on 12.10.2000 between 10:30-11:30 AM. The post-mortem report indicates that there were seven ante mortem injuries which are as follows:

"1. Horizontally placed Incised wound present over front of neck on the midline situated 8 cm below middle of Chin and 4 cm above level of suprasternal notch measuring 13 cm X 5 cm X cervical vertebrae deep, underneath muscles of front and sides of neck, Jugular veins on both sides, carotid arteries on both sides, trachea and oesophagus cut completely and the body of 5th Cervical Vertebrae cut superficially, blood extravasated around, margins are clean cut.

2. Obliquely placed incised wound over leftside frontal region situated 1 cm above inner end of left eye brow measuring 4 cm X 1 cm X bone deep.

3. Incised wound over right side of necksituated 6 cm below right ear lobule measuring 2.5 cm X 1 cm X muscle deep.

4. Incised wound present 1 cm below injuryNo.3 measuring 2 cm X 1 cm X muscle deep.

5. Superficial incised wound over left side ofneck situated 4 cm below left ear lobule measuring 4cm X 0.5 cm X skin deep.

6. Superficial incised wound over front andupper part. of right side chest over right sterno clavicular joint measuring 4 cm X 0.5 cm X skin deep.

7. Superficial incised wound over front andupper part of left side chest, over left sterno clavicular joint 3 cm X 0.5 cm X skin deep."

5. Undoubtedly, it is a very heinous crime which has been committed in the night of 11th October, 2000, where a seventy-two-year-old man was done to death. In all probability he died because of the main injury that is injury No.1 which is a 13 cm x 5 cm deep incised wound on the front neck cutting jugular veins on both sides. The death would have been in a few minutes due to the excessive loss of blood. The post-mortem was conducted by Dr. Nissar Ahmad, who was the Assistant Professor in the Department of Forensic Medicines Bowring Hospital, Bangalore Medical College, Bangalore. He was later, examined in the trial as PW-5. According to him, all the wearing apparels of the deceased, like white lungi, white Katcha, white baniyan and white sacred thread were all stained with blood, which were all handed over to the police. He had noticed the ante mortem injuries, as already referred above. All the injuries were fresh injuries. On opening the dead body, he found all the internal organs intact but pale. His opinion was that death was due to shock and hemorrhage due to the ante mortem injuries in the front neck. On being questioned by the Court he replied that a person who sustains such injuries in the front neck, can only survive for a few seconds and death is immediate and the injured cannot raise his voice. This expert witness is referring to in particular to injury No.1, referred above. In his post mortem report the cause of death is given as :-

"Death was due to shock and hemorrhage as a result of injury over front of neck sustained."

6. Meanwhile the investigation had commenced in the present case. The present appellants were, however arrested by PW-15 who was the Police Inspector and Investigation Officer in another case of dacoity and murder which was registered at Police Station, Vijayanagar as Crime No.674 of 1999 under Sections 354/397, IPC. This Investigation Officer (PW-15) received information on 31.01.2001 about the location of an accused called 'Dodda Hanuma'. Dodda Hanuma was also an accused in this case and had faced trial and was convicted like the other appellants (he is, however, not before this Court amongst the present appellants). The information received was that Dodda Hanuma had escaped from the Chittor Jail after assaulting the staff of the jail. Following the lead, this Police Inspector (PW-15) along with some Constables reached Eachanoor village and caught the accused along with four other persons at about 9.00 PM. All the five persons were taken into custody and were brought to Vijayanagar Police Station and were formally arrested on 01.02.2001. A voluntary statement was then given

by Dodda Hanuma (Accused No. 2), and finally all the five accused confessed that they had committed the dastardly murder of S. Ramakrishnan on that fateful night of 11.10.2000. They also volunteered to show the place where they had committed the crime on the night of 11.10.2000 (i.e. House No. 19/1, Haudin Road), and how they murdered the old aged person and then decamped with the cash and jewelry. They led the Police party to the said house that is House No. 19/1, Haudin Road, showed the exact place where they had committed murder and got away with the cash and jewelry. Meanwhile a videography statement of the accused was also recorded. The videography was done by one, Sadashiva (PW-16), on 08.02.2001.

7. Consequent to the voluntary statement given by Doda Hanuma, the police party was led to Raja Market, Nagaraj Complex to Shop No. 167, i.e., Satyanarayana Jewellery Mart where the accused Doda Hanuma identified Janardhana Shetty (P.W.-17) of the said Jewelry Mart and asked him to produce the jewels which he had sold to him. These were the jewels pertaining to Kamakshipalya case and Ulsoor case (present case). Janardhana Shetty, then produced a golden ingot, a pair of golden ear rings having red stones and also drops pertaining to the said pair of ear rings. The Police seized the said property and prepared a mahazar in the presence of the panchas which is Ex. P-14.

8. Police after its investigation filed its chargesheet for the offences under Section 302 read with 34 IPC, against all the accused. The case was committed to the Sessions Court and then assigned to the IVth Additional City Civil and Sessions Judge, Mayohall, Bangalore. On 19.03.2003 charges were framed against the accused under Section 302/396, read with Section 34 IPC. Ultimately the accused were convicted by the Trial Court under Section 302 read with Section 34 IPC. Out of the five accused, who faced the trial and were convicted and their conviction sentence was upheld by the High Court, we have only four accused before this court. They are as follows :-

1. Appellant No.1, Munikrishna @ Krishna (accused No.4)
2. Appellant No.2, Nallathimma (accused No.3)
3. Appellant No.3, Lakshmi (accused No.5)
4. Appellant No.4, Venkatesh @ Chandra (accused No.1)

9. Undoubtedly, it is a case of homicide. The question is whether the prosecution has been able to prove the case against the present appellants, beyond reasonable doubt. The prosecution in order to establish its case had examined as many as 17 prosecution witnesses, apart from other exhibits such as forensic and other material, seizure memo of the discovery of weapon of crime and the gold ornament from the jewelry shop, etc.

10. PW-1 & PW-2 respectively are the son-in-law and daughter of the deceased. They were the one who had first discovered the dead body on that fateful night of 11.10.2000. PW-3 is the witness of the inquest reports, PW-4 is the witness for the seizure memo mahazar (Ex. P2). PW-5 is the Doctor who conducted the post-mortem, PW-6 is the watchman, who was on the watch between 9.30 PM to 5.30 AM. PW-7 is the witness who accompanied the accused to the place of incident. PW-8 is the constable who shifted the dead body from the house of the deceased to the hospital for post-mortem. PW-15 is the Inspector of Police Station,

Vijayanagar and the investigating officer, investigating another crime who had arrested the present appellant on 01.02.2001, and PW-9 & PW-14 are the police personnel who accompanied him when he had apprehended the accused. PW-10 is the independent witness for the seizure memo of knife (the weapon of crime), and the witness which led to the discovery of the knife on the pointing out of Accused No.1. Similarly, PW-11 is the witness to the seizure memo of the golden ingot from the 'Satyanarayana Jewellery Mart'. PW-12 is the police Sub-Inspector of police station, Ulsoor, who had received the telephonic message about the crime, at about 11.45 PM on 11.10.2000, saw the dead body and then took PW-1 with him to the police station to lodge the FIR. PW-13 is the police inspector who took up the investigation further and finally filed the chargesheet in the case. PW-16 is the videographer who had video graphed the statements of the accused persons. PW-17 is the propriety of the Satyanarayana Jewellery Mart. PW-15 is the Police Inspector who had apprehended the accused while he was investigating another crime. As we can see there is no direct evidence in the case. There is no forensic or scientific evidence which links any of the present appellants to the crime. The so-called discovery of the weapon of crime and the discovery of stolen gold material is also severely flawed. It is thus in sum and substance entirely a case of circumstantial evidence.

11. It is a case of circumstantial evidence and in a case of circumstantial evidence, the entire chain of evidence must be complete and the conclusions which is arrived after examining the chain of evidence must point towards the culpability of the accused and to no other conclusion. This, however, is clearly missing from the case of the prosecution. The entire case of the prosecution is based on the so-called confessional statements or voluntary statements given by accused Nos. 1 to 5 (all the present appellants) while they were in police custody. Statement given by an accused to police under Section 161 of CrPC is not admissible as evidence. The so-called evidence discovered under section 27 of Indian Evidence Act, 1872, i.e., the recovery of stolen items and the recovery of the weapon are also very doubtful.

12. In a case of circumstantial evidence, the Court has to scrutinize each and every circumstantial possibility, which is placed before it in the form of an evidence and the evidence must point towards only one conclusion, which is the guilt of the accused. In other words, a very heavy duty is cast upon the prosecution to prove its case, beyond reasonable doubt. As early as in 1952, this Court in its seminal judgment of **Hanumant Govind Nargundkar & Anr.** v. **State of Madhya Pradesh**[1] had laid down the parameters under which the case of circumstantial evidence is to be evaluated. It states: -

"… It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must

[1] AIR 1952 SC 343

be such as to show that within all human probability the act must have been done by the accused…"

Hanumant (supra) has been consistently followed by this Court. To name a few, **Tufail (Alias) Simmi** v. **State of Uttar Pradesh**[2], **Ram Gopal** v. **State of Maharashtra**[3] and **Sharad Birdhichand Sarda** v. **State of Maharashtra**[4]**.**

In **Musheer Khan @ Badshah Khan & Anr.** v. **State of Madhya Pradesh**[5] dated 28.01.2010, this Court while discussing the nature of circumstantial evidence and the burden of proof of prosecution stated as under: -

"39. In a case of circumstantial evidence, one must look for complete chain of circumstances and not on snapped and scattered links which do not make a complete sequence. This Court finds that this case is entirely based on circumstantial evidence. While appreciating circumstantial evidence, the Court must adopt a cautious approach as circumstantial evidence is "inferential evidence" and proof in such a case is derivable by inference from circumstances.

40. Chief Justice Fletcher Moulton once observed that "proof does not mean rigid mathematical formula" since "that is impossible". However, proof must mean such evidence as would induce a reasonable man to come to a definite conclusion. Circumstantial evidence, on the other hand, has been compared by Lord Coleridge "like a gossamer thread, light and as unsubstantial as the air itself and may vanish with the merest of touches". The learned Judge also observed that such evidence may be strong in parts but it may also leave great gaps and rents through which the accused may escape. Therefore, certain rules have been judicially evolved for appreciation of circumstantial evidence.

41. To my mind, the first rule is that the facts alleged as the basis of any legal inference from circumstantial evidence must be clearly proved beyond any reasonable doubt. If conviction rests solely on circumstantial evidence, it must create a network from which there is no escape for the accused. The facts evolving out of such circumstantial evidence must be such as not to admit of any inference except that of guilt of the accused. (See Raghav Prapanna Tripathi v. State of U.P. [AIR 1963 SC 74 : (1963) 1 Cri LJ 70])

42. The second principle is that all the links in the chain of evidence must be proved beyond reasonable doubt and they must exclude the evidence of guilt of any other person than the accused. (See State of U.P. v. Dr. Ravindra Prakash Mittal [(1992) 3 SCC 300 : 1992 SCC (Cri) 642 : 1992 Cri LJ 3693] , SCC p. 309, para 20.)

43. While appreciating circumstantial evidence, we must remember the principle laid down in Ashraf Ali v. King Emperor [21 CWN 1152 : 43 IC 241] (IC at para 14) that when in a criminal case there is conflict between presumption of innocence and any other presumption, the former must prevail.

44. The next principle is that in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and are incapable of explanation upon any other reasonable hypothesis except his guilt.

45. When a murder charge is to be proved solely on circumstantial evidence, as in this case, presumption of innocence of the accused must have a dominant role. In Nibaran Chandra Roy v. King Emperor [11 CWN 1085] it was held that the fact that an accused person

[2] (1969) 3 SCC 198
[3] (1972) 4 SCC 625
[4] (1984) 4 SCC 116
[5] (2010) 2 SCC 748

was found with a gun in his hand immediately after a gun was fired and a man was killed on the spot from which the gun was fired may be strong circumstantial evidence against the accused, but it is an error of law to hold that the burden of proving innocence lies upon the accused under such circumstances. It seems, therefore, to follow that whatever force a presumption arising under Section 106 of the Evidence Act may have in civil or in less serious criminal cases, in a trial for murder it is extremely weak in comparison with the dominant presumption of innocence.

46. The same principles have been followedby the Constitution Bench of this Court in Govinda Reddy v. State of Mysore [AIR 1960 SC 29 : 1960 Cri LJ 137] where the learned Judges quoted the principles laid down in Hanumant Govind Nargundkar v. State of M.P. [AIR 1952 SC 343 : 1953 Cri LJ 129] The ratio in Govind [AIR 1952 SC 343 : 1953 Cri LJ 129] quoted in AIR para 5, p. 30 of the Report in Govinda Reddy [AIR 1960 SC 29 : 1960 Cri LJ 137] are:

"5. … '10. … in cases where the evidence is of a circumstantial nature, the circumstances [which lead to the conclusion of guilt should be in the first instance] fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be [shown] that within all human probability the act must have been [committed] by the accused.' [As observed in Hanumant Govind Nargundkar v. State of M.P., AIR 1952 SC 343 at pp. 345-46, para 10.] "

The same principle has also been followed by this Court in Mohan Lal Pangasa v. State of U.P. [(1974) 4 SCC 607: 1974 SCC (Cri) 643: AIR 1974 SC 1144]"

13. In the case at hand the entire case of the prosecution is built upon the confessional/voluntary statements made by the accused persons before the police and the recovery of the alleged weapon of murder recovered at the pointing out of the accused and the recovery of alleged stolen gold material from a jewelry shop, again, on pointing out of the accused. Let us deal with the first evidence. As per the police, all the accused were arrested from a school building on 31.01.2001 and formally arrested on 01.02.2001. They confessed to as many as 24 crimes committed by them. Their confessions of how they planned and executed the murders has been captured on a video, which was also exhibited before the court. The Court has taken this evidence of voluntary statements made by the accused and hence admitted it as evidence. This was done both by the Sessions Court as well as the High Court. The learned Sessions Judge records in his judgment dated 19.03.2003 records as under: -

"… The prosecution has played the audio in the open Court Hall in the presence of the accused persons and jam-packed Court Hall and on a mere perusal and hearing the video, it will be evident that the accused persons themselves had explained the entire incident the manner in which they have committed the offence alleged by the prosecution against them. The video statement of accused no. 5 makes it clear as to how the deceased was made to open the iron grill and as to how they had planned to murder the aged innocent Ramakrishnan who was residing alone. The video statement of the accused personal reveals the intension of the accused person and also the manner in which they have made deceased Ramakrishnan to open the iron grill and also the manner in which the accused persons have committed the offence in murdering the aged man."

The Sessions Court then refers to a decision of Supreme Court, (**Shri N. Sri Rama Reddy, Etc.** v**. Shri V.V. Giri**[6]) and states that in view of this decision video tapes can also be used as corroborative evidence. This is what has been said:

"When such being the case, it goes without saying that the video recorded statement of the accused persons can also be made use as corroborative piece of evidence. If really, the accused persons after witnessing and hearing the video cassettes suspected the bonafide or genuineness of the video recorded statement of the accused persons, instead of taking contention that their statements obtained by making them to consume alcohol, they would have requested the Court for subjecting the video tape records for scientific scrutiny. In view of the rulings of the Honourable Supreme Court, even video tapes of the voluntary statement of the accused persons can be used as the corroborative piece of evidence. Thus, on perusal of the materials on record, it will be quite manifest that the circumstances relied upon by the prosecution will bring home the guilt of the accused beyond all reasonable doubt"

Later the High Court while hearing the appeal of the accused gives a similar finding as follows :

"It is not the case of the accused that they have not given voluntary statements before PW 15 as per Ext P 8,9,10, 11 & 12. However, it is their contention that they were made to drink liquor and under the influence of liquor, the statements have been taken as per Exs. P-8,9,10,11 & 12 and the statements were not voluntary. The material on record does not probablise the said version taken by the accused. In the absence of proof of the said fact, voluntary statements at Exs. P8,9,10,11 & 12 given by accused Nos. 1 to 5 is proved to be voluntary as there is no material on record which would probablise the defence taken by the accused that they were made to drink liquor and their statements were recorded in the influence of drinking and it was not voluntary".

The High Court then affirms the finding of the Sessions Court and the admissibility of the voluntary statement of the accused and the videography placed before the Court and states as under: -

"It is clear from the above said proved circumstances that the accused have committed murder of S Ramakrishnan aged 72 years by slitting his neck as he was living alone in the house. The only defence taken by the accused is that they have given voluntary statements under the influence of liquor which is not probabilised by the material on record and in view of statements of the accused pointing to the scene of offence wherein S Ramakrishnan was murdered and Ramakrishnan suffered homicidal death and recovery of M.O.1 which according to P.W.5 would cause injury found on the body of S Ramakrishnan and also recovery of ornaments which they melted into ingot from the shop of P.W.17 and the fact that accused have shown the place where they committed the scene of offence in furtherance of the voluntary statements have been conclusively proved by the prosecution and such circumstances form a complete link which would point out only to the guilt of the accused and is wholly inconsistent with their innocence.

The trial Court has appreciated oral and documentary evidence on record in the right perspective and on re-appreciation of the entire material on record, we hold that finding of guilt arrived at against the accused Nos.1 to 5 – appellants herein for having committed the offence punishable under Sections 302 & r/w 34 of IPC is justified and sentence imposed thereon cannot also be said to be excessive so as to call for interference in this appeal."

Both the Trial Court and the Appellate Court went completely wrong in placing reliance on the voluntary statements of the accused and their videography

[6] AIR 1971 SC 1162

statements. Under Article 20(3)[7] of the Constitution of India, an accused cannot be compelled to be a witness against himself. Again, under Section 25[8] of the Indian Evidence Act, 1872; a confessional statement given by an accused before a Police officer is inadmissible as evidence.

The reference of the Supreme Court judgment by the trial Court (**Shri N. Sri Rama Reddy** v. **Shri V.V. Giri**) is also misplaced. That case only refers to the admissibility of a taperecorded conversation in an election petition which is tried before a Court under the Civil Procedure Code (Section 87 of the Representation of People Act, 1951). This Court, in the above cited judgment was not dealing with a criminal case and most certainly not on the admissibility of a statement given by an accused to the Police under Section 161 of Code of Criminal Procedure. Indeed, the above judgment also ends with a note of caution:

"30. We once again emphasize that this order relates only to the admissibility in evidence of the conversation recorded on tape and has not dealt with the weight to be attached to that evidence. It must also be pointed out that the question, whether the pamphlets, Exhibits P-18-B and P-37A, have been circulated in the manner alleged by the petitioners and the further question whether they amount to exercise of undue influence are also matters which have not been considered in this order. The above are all aspects which will be dealt with in the judgment, while disposing of the election petitions."

Thus, the opinion of this Court regarding the admissibility of a tape-recorded conversation, was in an entirely different context.

As far as the recovery of gold ingot is concerned, PW-1, i.e., the son-in-law and the complainant has said in his evidence before the Court that he does not recognize the ingot and it does not belong to his father-in-law. Therefore, the gold which has been recovered has not been identified as the one which was stolen from the house of the deceased. The recovery of knife is also doubtful. Firstly, Venkatesh who had led the discovery had mentioned about the knife and its disposal on 01.02.2001 when he was arrested. The recovery, however was made on 15.05.2001 i.e., four and a half months later. Why such a belated recovery was made has not been explained. Secondly, the independent witness to this recovery PW-10 Murugan, had also turned hostile during crossexamination as he said that he does not recognize Venkatesh (accused) on whose pointing out the alleged recovery was made. So much for the recovery of the murder weapon.

14. At this juncture, we may also add that some of the accused who were before us were also facing another trial of similar nature in which they were convicted on 17.09.2010 and sentenced to death. Thereafter in Appeal their conviction was upheld, but the sentence was converted to life imprisonment by the High Court. They finally came before this Court in Appeal. The course of investigation and the appreciation of evidence by the Trial Court and the Appellate Court had taken a similar course as they have in the present case. While hearing their Criminal Appeal (Nos. 1476-1477 of 2018)[9] this Court made certain observations, which are equally

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[7] 20 (1) XXX XXX (2) XXX XXX
(3) No person accused of any offence shall be compelled to be a witness against himself.

[8] **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.**

[9] 2022 SCC OnLine SC 765

relevant for the present case as well. Regarding the investigation of the Police in the case, this is what was said by this Court:

"…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, the Trial Court not only extracted the entire statements but also relied upon them.

20. The other disturbing feature that we have noticed is that voluntary statements of the appellants were recorded on a DVD which was played in Court and formed the basis of the judgment of the Trial Court as is noticeable from paragraph Nos.34 and 35 of its judgment. Such a statement is again in the nature of a confession to a Police Officer and is completely hit by the principles of Evidence Act. If at all the accused were desirous of making confessions, the Investigating Machinery could have facilitated recording of confession by producing them before a Magistrate for appropriate action in terms of Section 164 of the Code. Any departure from that course is not acceptable and cannot be recognized and taken on record as evidence. The Trial Court erred in exhibiting those DVD statement Exh.P-25 to 28. As a matter of fact, it went further in relying upon them while concluding the matter on the issue of conviction.

21. What has further aggravated thesituation is the fact that said statements on DVD recorded by the Investigating Agency were played and published in a program named "Putta Mutta" by Udaya TV. Allowing said DVD to go into the hands of a private TV channel so that it could be played and published in a program is nothing but dereliction of duty and direct interference in the administration of Justice. All matters relating to the crime and whether a particular thing happens to be a conclusive piece of evidence must be dealt with by a Court of Law and not through a TV channel. If at all there was a voluntary statement, the matter would be dealt with by the Court of Law. The public platform is not a place for such debate or proof of what otherwise is the exclusive domain and function of Courts of law. Any such debate or discussion touching upon matters which are in the domain of Courts would amount to direct interference in administration of Criminal Justice.

22. The last disturbing feature is the factthat Chart Exh.P-29 was taken to be proof of the activities of the gang to which the appellants allegedly belonged. Apart from exhibiting the chart, no details or documents either in the form of chargesheet or orders, depositions were produced on record. If the Prosecution wanted the Court to take note of the fact that there were other matters in which accused were involved, the concerned Chargesheets should have been produced on record along with sufficient details including the judgments or orders of conviction. A mere chart cannot be taken as proof of the involvement of the accused in other crimes either at the stage of conviction or sentence. But that factor seriously weighed with the Trial Court as is obvious from paragraphs 15 to 18 of the order of sentence. In fact, such involvement was taken to be one of the reasons why the death sentence was awarded by the Trial Court. Such a practice can never be approved.

23. We must clarify that the approach atcertain stages including the stage of considering the bail application may be qualitatively different. At the stage of consideration of bail, the primary concern is to weigh in balance the liberty of an accused and the possible prejudice that may get visited upon the societal interest in case he is released. It would therefore be apt and proper to consider his involvement in other crimes. But at the stage of final assessment whether conviction be recorded or not, the matter must be considered purely on its merits unless the very membership of a gang or a group or an outfit itself can amount to an offence or as an aggravated form of an offence. Again, at the stage of sentencing, his involvement in other crimes may be a relevant factor provided the concerned material in the form of concluded judgments in the other matters are brought on record in a manner known to law. The established involvement in other matters would then certainly be relevant while dealing

with the question whether the concerned accused is required to be dealt with sternly or leniently.

24. We have gone through Chart Exh. P-29. According to said chart, in so far as the present appellants are concerned, they were said to be involved in one more crime which has given rise to Special Leave Petition (Crl) Diary No.24079 of 2020 and was listed along with the instant appeal before us. That matter is still pending consideration before us. Therefore, what weighed with the Trial Court was the alleged involvement of the other members of the alleged gang in so many similar activities, in support of which there was no concrete material, other than the confessions of the appellants."

15. We must add that this Court in its order dated 19.04.2022has allowed the above appeal and has set aside the order of the Sessions Judge as well as of the High Court which had placed its reliance almost completely on the statement made by the accused before the Police under Section 161 of CrPC. This is exactly what has been done in the present case as well and consequently this too must meet the same fate. Indeed, it was also the case of the prosecution that the appellants belong to a gang which commits crime of this nature and that the modus operandi is by and large the same in all cases. It was alleged that the appellants are involved in as many as 20-25 such cases. But what was given before the Court was a chart giving description of offences, numbers and Sections under which such offences had been allegedly committed. No documents in the nature of chargesheet or any other proof was submitted. Therefore, this factor cannot be taken into account. This was also not taken into account by this Court in the above order dated 19.04.2022, while allowing the Criminal Appeal No. 1476-1477 of 2018 as referred above.

16. Ordinarily, this Court does not interfere with concurrent findings of facts as they are in the present case. But, then in the present case it has become necessary to interfere with the findings for the reasons that both the High Court as well as the Sessions Court have ignored the well-established principles of criminal jurisprudences and have relied upon facts and evidences which are clearly inadmissible in a court of law. The crime indeed was ghastly, to say the least. Yet, linking the crime to the present appellants is an exercise which was to be undertaken in the court of law under established principles of law. This has not been done. This Court in **Sharad Birdhichand Sarda** (supra) has cautioned thus: -

"179. We can fully understand that though the case superficially viewed bears an ugly look so as to prima facie shock the conscience of any court yet suspicion, however great it may be, cannot take the place of legal proof. A moral conviction however strong or genuine cannot amount to a legal conviction supportable in law.

180. It must be recalled that the wellestablished rule of criminal justice is that "fouler the crime higher the proof". In the instant case, the life and liberty of a subject was at stake. As the accused was given a capital sentence, a very careful, cautious and meticulous approach was necessary to be made."

17. In view of the above, these appeals are allowed, the order of the Sessions Judge dated 19.03.2003 and the High Court dated 31.08.2010 are hereby set aside, the appellants shall be released from jail, unless they are wanted in some other crime.