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2026 INSC 507

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). 2493-2502 OF 2025

THE STATE OF TAMIL NADU ….APPELLANT

VERSUS

PONNUSAMY & ORS. ….RESPONDENT(S)

WITH

CRIMINAL APPEAL NOS. 2503-2512/2025

J U D G M E N T

SATISH CHANDRA SHARMA, J.

> *"The greed of gain has no time or limit to its capaciousness. It's one object is to produce and consume. It has pity neither for beautiful nature nor for living human beings. It is ruthlessly ready without a moment's hesitation to crush beauty and life." –* ***Rabindranath Tagore***

1. The need for this Court to begin with the aforenoted words of Rabindranath Tagore emanates from the fact that the present case is a classic illustration of how humans tend to surpass all limits of sound human behavior and even go to the extent of crushing human lives in the pursuance of their greed. A disputed piece of land, contesting claims over the same, prolonged litigation, unsuccessful attempts to favourably turn the pending litigations, a reputed doctor of Chennai, a land-grabbing mafia,

few advocates, few henchmen and a broad day-light murder in Chennai. These are the highlights of what we are about to discuss in the present case.

2. The case pertains to the murder of Dr. Subbiah, a reputed doctor working at Billroth Hospital, Raja Annamalaipuram, Chennai. On 14.09.2013, at about 05:00 PM, the deceased doctor wrapped his work for the day and left the hospital. As he came at 1st Main Road outside the hospital, he was attacked by three men – A8, A9 and PW12[1] - with a sickle and the deceased sustained multiple injuries on his head, neck, shoulder, right forearm, etc. He was immediately shifted to Billroth Hospital, Annamalaipuram for treatment. However, as his condition worsened, he was shifted to Billroth Hospital, Aminjikarai, where he succumbed to injuries on 23.09.2013 at about 01:00 AM. The case, which was initially registered under Section 307 of Indian Penal Code, 1860[2], was converted into one under Section 302 IPC after the demise of the deceased on 23.09.2013.

3. Investigation of the case revealed that there was a prolonged dispute between the deceased and the family of A1 regarding title/ownership of a land parcel admeasuring 2 acres in Anjugramam Village, Kanyakumari District. It is not necessary

[1] *For clarity of record, the accused persons have been referred with their original ranks before the Trial Court.*
[2] *Hereinafter referred as "IPC"*

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for this Court to elaborate the details or background of the land dispute, except to note that various complaints were lodged by the deceased against A1 and his family members regarding commission of criminal trespass. One such complaint was lodged in 2013 before the Land Grabbing Cell by PW-9, who was Manager of the deceased. A compromise meeting had taken place between the parties after the said complaint; however, the accused persons were not inclined for a compromise and consequently, a criminal case no. 57/2013 was registered against A1 and A2 on 04.04.2013. Thereafter, the accused persons sought and got anticipatory bail. It was followed by an application for cancellation of the anticipatory bail by the deceased.

4. The issue escalated again on 27.06.2013, when A3, A4 and A6 caused damage to the fencing of the property and this incident led to the registration of another criminal case no. 476/2013 against the accused persons. It is the case of the prosecution that the accused persons were quite agitated with the conduct of the deceased in filing criminal complaints against them as well as in filing the application seeking cancellation of anticipatory bail granted to A1 and A2. This frustration gave rise to motive for the crime, which ultimately culminated into the commission of murder of the deceased. It is the case of the prosecution that the accused persons felt that if the deceased is eliminated, they would

be able to enjoy or dispose of the disputed property without any hindrance as the deceased would be survived only by his wife and two daughters. That's how the foundation of the criminal conspiracy to eliminate the deceased was laid down.

THE CONSPIRACY

5. The first conspiracy meeting took place in the first week of July 2013, between A3, A5, A6, A7 and A10 (A10 was granted pardon and turned into an Approver and was ultimately examined as PW12). In the said meeting, a plan was made to engage the services of A8, A9 and PW12. A1 and A2 were also called for the meeting and accordingly, they joined the conspiracy and offered to give 50% of the property value to A5 and others, if Dr. Subbiah was done away with. The second conspiracy meeting is said to have taken place on the disputed land in the last week of July 2013, in which A1 to A3, A5 to A9 and PW12 were present. In the said meeting, PW4 and PW5 (land brokers) were also called to look for prospective buyers for the disputed property. When the brokers enquired from A5 regarding the presence of a board outside the property, stating that the land belonged to Dr. Subbiah, A5 told them that Dr. Subbiah would be eliminated soon. To this, all the accused persons laughed and nodded in approval.

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6. After this meeting, A1 and A3 started transferring cash to A5, and the address details, car details and photographs of deceased, were given by A3 and A5 to A7, who-in turn supplied the same to his henchmen - A8, A9 and PW12. On 11.08.2013, almost a month before the fateful day, A8, A9 and PW12 came to Chennai from Anjugramam Village and stayed in Bakkiyam Lodge at Sungaram Chetty Street upto 14.08.2013. The purpose of this visit was to conduct reccy, to watch the movements of the deceased and to execute the plan. On 14.08.2013, precisely a month before the date of crime, the three accused persons went to Billroth Hospital along with A7, where they met PW8, a friend of A7. The plan could not be executed on 14.08.2013.

7. During the first week of September, A8, A9 and PW12 went to Tirupur along with A6 and A7 to meet DW2, who is the brother-in-law of A6. As per the case, A5 had sent Rs.6.5 Lacs to DW2 in several instalments and DW2 withdrew the said amount and kept it in cash for making payments for the crime. DW2 gave Rs.6.5 Lacs to A6 who, in turn, distributed Rs. 1.5 Lacs each to A8, A9 and PW12 and kept the remaining Rs.2 Lakhs with himself.

8. Thereafter, on 12.09.2013, A8, A9 and PW12 met A7, who gave them Rs. 10,000/- each for purchasing a second-hand Pulsar bike from PW29 from Valliyur. The bike was supposed to be

used for the commission of crime and was sent to Chennai by parcel. A9 accompanied the bike. A8 and PW12 reached Chennai in a Government bus and stayed in Aruna Lodge upto 14.09.2013. They checked out of the Lodge at 12 o'clock and left the hotel at around 12:45 PM. Since, the bike had developed a mechanical problem, the accused persons took it to PW26 and got it repaired. Eventually, they reached the scene of occurrence at 4:00 PM. After reaching, A8 and PW12 went to the hospital and met the Secretary of the deceased PW34 and enquired from her regarding the time when the deceased would come out of the hospital. After confirming the presence of the deceased, they came to the place where the car of the deceased was parked, which was opposite to Billroth Hospital at about 5:00 PM, and at about 5:07 PM, the deceased left the hospital and when he reached the location of car and attempted to enter his car, after adjusting his rear-view mirror, A8 and A9 attacked the deceased indiscriminately. During this time, PW12 kept watch and the bike ready for the accused persons to escape from the place. As soon as the culprits left, the deceased was rushed to the hospital.

9. Afterwards, PW1, the brother-in-law of the deceased came to know about the attack on the deceased and rushed to Billroth Hospital where the deceased was getting treatment. Subsequently, after enquiries, he went to E4-Abiramapuram Police Station and lodged a complaint (Ex. P1). On the said

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complaint, PW57 registered an FIR as Cr. No. l352 of 2013 for the offence under Section 307 IPC (Ex. P162). Thereafter, PW57 went to the scene of the occurrence and examined PW1 at the police station. He revisited the scene of occurrence at about 9:00 PM and prepared the Observation Memo (Ex. P3) and Rough Sketch (Ex. P163). Thereafter, he seized the bloodstained earth (M.0.37) and unstained earth particles (M.0.38) in the presence of the witnesses. Thereafter, he checked the CCTV camera installed in an apartment by the name "Shreshta Subhashree" and discovered that the incident was captured in the camera.

10. In the complaint, PW1 referred to the enmity between the family of the accused viz., A1 to A4 and the deceased regarding the disputed land. On 23.09.2013, PW55 (subsequent Investigating Officer/IO) received the information that Dr. Subbaiah had passed away. He went to the hospital and sent the body for a postmortem to Royapettah Government Hospital. He examined the other witnesses, conducted an inquest and prepared the inquest report (Ex. P150).

11. Thereafter, A3 and A4 surrendered before the concerned Metropolitan Magistrate, Saidapet. On 27.09.2013, PW55 filed a petition to take the accused into police custody, and on 29.09.2013, the Special Team brought A1 and A2 for enquiry. PW55 arrested both of them, recorded their statements and

produced them before the Magistrate for judicial remand. He examined PW13 on 09.10.2013, and wrote letters to the Association of the apartment owners of Shreshta Subhashree apartments and also to the RR Donnelley Company to obtain the hard disc containing the recording from the CCTV cameras. On the same day, the President of Shreshta Subhashree Apartment Owners' Association, one Leela Natarajan/PW25 handed over the hard disc to PW57, which was seized by him vide seizure memo Ex. P28. The hard disc was marked as M.0.9. On the same day, the Security Manager of R.R. Donnelley, one Dayalan (not examined) handed over the hard disc M.O.10, which was seized vide Ex. P29. He examined both of them and sent the hard discs under Form-95 to the Court on 10.10.2013. On 22.10.2013, he made a requisition before the Court to send the hard discs for examination. On the same day, an order was passed and the hard discs (M.0.9 and M.O.10) were sent to the Forensic Science Laboratory at Myalpore for examination. Thereafter, the investigation was handed over to PW56. Later, PW56 received a letter from the Forensic Science Laboratory stating that the hard discs could not be examined in the absence of DVR. He sought for the DVR, however, he was informed that the DVR was scrapped.

12. Investigation continued and the IO collected the call detail records of the accused A1 to A4. On 29.01.2014, he again

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examined PW1, PW9 and PW13. On the basis of their statements and investigation conducted thus far, the IO ascertained that A7 to A10 were also involved in the offence and arrested them on the same day from a bus stop near Jain College, Thuraipakkam, Chennai at about 6:00 PM. He recorded the statements of all the accused A7 to A10 and on the basis of the confession of A8, he seized a black-coloured shoulder bag (M.0.3), a bloodstained shirt (M.0.44), and a bloodstained knife (M.0.1) vide seizure memo (Ex. P19). The seizure was effected from a dilapidated building near the Tahsildar's Office near Chamier's Road, Chennai. On 31.01.2014, he made requisition for the conduct of Test Identification Parade for witnesses, Vinothkumar (PW2), Muthuvel (PW3) and Gopinath (PW9).

13. After the completion of investigation, the IO filed a final report before the concerned Magistrate on 06.05.2015 for the offences punishable under Sections 120-B, 109, 341, 302 read with 34 of the IPC against A1 to A9. After compliance of Section 207 Cr.P.C., the case was committed to the Court of Sessions and was registered as S.C. No.348 of 2015. After the accused persons pleaded not guilty, the trial was commenced and during the trial, A10 was granted pardon and was later examined as PW12. To prove the case, the prosecution examined 57 witnesses as PW1 to PW57, marked 173 exhibits as Ex. P1 to P173, and marked 42 Material Objects as M.0.1 to M.0.42.

14. The respondents/accused persons examined 3 witnesses as D.W.1 to D.W.3 and marked 7 exhibits as Ex. D1 to D7. Court Exhibits viz., C1 to 05, were also marked.

15. After trial, the Trial Court found all the accused persons guilty and sentenced them to imprisonment under different heads. For their conviction under Section 302 IPC, A1, A3, A4, A5, A7, A8 and A9 were sentenced to death and in accordance with Section 366 Cr.P.C., the sentences of death were sent for confirmation to the High Court. Separately, the respondents also assailed their conviction and sentence before the High Court. Both sets of proceedings were disposed of by the High Court of Judicature at Madras vide common judgment dated 14.06.2024[3] passed in R.T. No. 2 of 2021 and Crl. Appeal Nos. 262, 454, 455, 456, 457, 458, 459, 460 and 462 of 2022. By the said common judgment, the High Court reversed the conviction of the respondents and acquitted them under all the charges. The same is under challenge before this Court and is hereinafter referred as the impugned judgment.

IMPUGNED JUDGMENT

16. While setting aside the conviction of the respondents and acquitting them of all the charges, the High Court re-appreciated

[3] *Hereinafter referred as "the impugned judgment"*

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the evidence on record and found various faults with the findings of the Trial Court. Before proceeding to the case before us, we deem it necessary to discuss the grounds which prevailed before the High Court in a bit more detail.

17. On the evidence of approver/PW12, the High Court observed that the approver's evidence was full of contradictions and omissions. PW12 stated in his examination in chief that he was aware of the meetings at the disputed land wherein the conspiracy was forged, however, in his cross-examination, he was confronted with his statement under Section 161 Cr.P.C., and he stated that he could not remember. It observed that as regards the conspiracy meeting between A3, A5, A7 and A8 wherein the potential value of disputed land as Rs. 40 crores was discussed, photograph of deceased was shown to A8, and A7 had promised to execute the job with the aid of A8, A9 and PW12, the approver PW12 firstly, in his confession, stated that he was informed of the same by A8. Later, he improved his version in examination-in-chief and cross-examination and incriminated other accused persons. The Court also observed that this improvement in the version of PW12 is also corroborated by the evidence of PW56, who had recorded the confession of PW12. The Court further observed that PW12 had also admitted that his statement regarding the presence of a client PW53 during the meeting at the house of PW5 was also not made in the statement

and was improved later. As regards the presence of A6 also, the Court observed that the participation of A6 in the conspiracy meeting was also an improvement as it was not stated by PW12 in his statement to the police.

18. In further appreciation of the evidence of PW12, the Court observed that the incriminating fact of payment by DW2 to A6, following by disbursals to the assailants, was not stated by PW12 in his confession due to fear and was also a material improvement. The Court also pointed out other contradictions from the testimony of PW12, in comparison with his police confession, and observed that PW12 stated various vital facts for the first time in his deposition. The Court also observed that in his police confession, PW12 had denied any direct knowledge of the conspiracy, however, he uttered otherwise in his deposition in the Court. In addition to the improvements in the version of PW12, the Court also disbelieved the reason assigned by PW12 for turning an approver i.e. remorse. The Court observed that PW12 was questioning the prosecution's case all along and had also moved an application seeking protection from harassment by the police during investigation. The Court further observed that the circumstances wherein PW12 became an approver required material corroboration of his evidence. The relevant part reads thus:

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> "20. …
>
> (d). … As we have stated earlier, the delay in filing the application and the time chosen by him though may not be the grounds to eschew his evidence, but are factors to be kept in mind while appreciating his evidence. Therefore, this Court in the peculiar facts of this case while appreciating PWl2's evidence has to look for corroboration on all the material aspects and the corroboration has to be through unimpeachable evidence."

19. The Court then examined the evidence led by the prosecution to prove the conspiracy. The Court examined the evidence of PW53, the client who overheard the conversation between the accused persons, and observed that he was merely a chance witness whose presence was highly doubtful. It further observed that he was introduced as a witness at a belated stage and it was a desperate attempt by the prosecution to suit its case. The Court also observed that the circumstances wherein PW53 was found and examined by the IO also belied common sense and logic.

20. The High Court observed on similar lines regarding the evidence of PW4 and PW5, and held that they were introduced as witness to suit the prosecution version. The Court observed that both the said witnesses were examined after considerable delay and there was no explanation for the same. The testimony of

PW32, the photographer who had taken printout of the photograph of the deceased at the instance of A8, was also discarded by the High Court by observing that he could not have remembered all his customers after such delay and he failed to produce any other record of the visit by the accused persons.

21. Further, the Court dealt with the statement of PW6 who deposed regarding the handing over of visiting card of the deceased to A8 and PW12 by A5 as well as disclosure of the details of the deceased's work place to the assailants. The Court observed that there was nothing unusual in the fact that A5 was carrying the visiting card of the deceased and the seizure of visiting card of the deceased from A5 was also not of any consequence. The Court discarded the statement of eye witness PW3 and observed that his testimony was unnatural and was recorded five months later. It also observed that the conspirators would not have discussed the minute details of conspiracy in a manner that it could be heard by a third person such as PW3.

22. As regards money trail, the High Court observed that the money was indeed transferred as alleged by the prosecution, but the purpose of such transfers was not clear in light of the testimony of DW2, who ought to have been examined as a witness by the prosecution to ascertain the purpose of transfer. The Court noted that DW2 was examined on behalf of the defence

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and he deposed that such transfers had taken place previously also and the money was meant for missionary work and to help youngsters.

23. The Court also examined the testimony of PW37, an independent witness who had witnessed the exchange of money between the accused persons, and observed that PW37 was a chance witness whose presence has not been explained by the prosecution. It further observed that the IO could not explain as to how he discovered PW37 and found it to be unnatural that PW37 handed over the money to the accused persons in cash in the presence of a stranger. Further, the Court found the evidence of DW2 to be more reliable than that of PW37. The Court also noted that DW2, Maheshwaran and Babu were examined by the IO during investigation, however, they were not examined by the prosecution during trial. The non-examination of the said witnesses during trial, as per the impugned judgment, raised doubts in the case of the prosecution.

24. As regards the call details records (CDRs) indicating that the accused persons were in touch with each other, the Court observed that the said call detail records were received by PW45 from the telecom companies. However, no witnesses were examined from the telecom companies to prove the same and the CDRs were placed on record along with the certificate under

Section 65-B of Indian Evidence Act, 1872[4] of PW45. The Court observed that the prosecution ignored the fundamental principle of proving a document and merely because PW45 had collected the CDRs during the course of investigation, he did not become the competent person to prove the same.

25. Thereafter, the High Court dealt with the extra-judicial confession made by A6 to PW7 and observed that PW7 was a complete stranger to A6 and there was no corroboration of the said confession. It further observed that an extra-judicial confession is a weak piece of evidence and without corroboration of the confession made to a stranger, it does not inspire confidence of the Court.

26. As regards motive, the High Court observed that it is the admitted position that there were disputes between the parties involved in the case, however, mere pendency of dispute is of no consequence if there is no sufficient evidence on record. The Court further observed that since conspiracy was not proved, mere motive is of no consequence.

27. The High Court further noted that there was a considerable delay in the examination of witnesses and held that the prosecution did not succeed in explaining the delay to the

[4] *Hereinafter referred as "Evidence Act"*

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satisfaction of the Court. It further observed that the documents were not dispatched to the Magistrate without delay and the same was also without an explanation. The relevant paras of the impugned judgment read thus:

> "**23.** …
>
> (vi) From the above judgments, it would be clear that the delay in the examination of witnesses may not be a reason to reject the testimony of the witness, provided the investigating officer and the witness offered plausible explanation for the delay. In any case, where there is a delay in the examination of witness, the Courts also have to be, cautious in appreciating the evidence, even if some explanation is offered.
>
> (vii)- As to whether the delay in the examination would affect the credibility of the witnesses would depend on the facts and circumstances of each case. Factually, in the instant case, we find that the delay has not been explained properly and the explanation sought to be given by either the witnesses or the investigating officer as discussed earlier, belies common sense."

28. While discussing the evidence against the accused persons separately, the High Court observed that the prosecution failed to prove the criminal conspiracy against accused nos. 1 to 7. As regards the assailants (accused nos. 8, 9 and PW12), the Court

examined the electronic evidence on record and observed that Ex. P155, a pen drive containing the backup copy of the CCTV footage extracted from the hard disk, could not be relied upon by the prosecution as it contained a truncated copy which cannot be relied upon to identify the accused persons. Further, the Court observed that Ex. P155 was never shown to the eye witnesses PW2 and PW3 for the purposes of identification. The Court also doubted the manner in which cloned copies of the CCTV footage were made by PW54 as the hard disk was not functioning when it was originally sent to the Forensic Science Laboratory, for want of DVR. Further, PW54 could not make the cloned copies, when a request in that regard was made by the defence, on the ground of hard disk failure. The Court analyzed this issue in light of the testimony of PW57, who had deposed that before collecting the hard disk from the concerned Society, a copy of the CCTV was made and handed over to Constable Parthiban in a pen drive. The Court noted that the said Constable was never examined as a witness by the prosecution and since, the original footage could not be retrieved from the hard disk, it was probable that the gait comparison of the accused persons was based on the copy of the footage and not the original footage. The relevant part reads thus:

> "(ix) It may be relevant to point out here that PW57 had stated in the cross examination that after the occurrence and before collecting the hard

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> disc from Shreshta Subhashree apartments, he copied the footage on a pen drive through a Constable by name Parthiban, who was not examined by the prosecution. This pen drive was neither sent to the Court nor marked by the prosecution. However, strangely, when the forensic science lab could not retrieve the video due to the absence of DVR, it is not known as to how, PW54 alone could take a backup copy, that too a truncated version and store it in Ex.P155. Hie fact that cloned copies also could not be made, raises doubt as to whether PW54 had taken the backup copy from the hard disc, especially in the light of PW57's evidence that he was in possession of a pen drive taken earlier, immediately after the occurrence."

29. The Court further observed that the IO PW56 never made any request for obtaining the DVR from PW25, as is evident from the testimony of the latter. On this basis, the Court discarded Ex. P155 as a reliable piece of evidence. Importantly, the Court then analyzed Ex. P157, the report filed by PW54, wherein she opined that the gait pattern of the individuals seen in the two videos (CCTV footage and demonstration video) were same. The Court questioned the right of the investigating agency to compel the accused persons to re-enact the occurrence and examined the admissibility of such evidence. Considering the mandate of

Article 20(3) of the Constitution of India, 1950[5], the Court held that re-enactment of the occurrence by the accused persons amounts to personal testimony during police custody and the same is inadmissible in evidence. Further, the Court found that the demonstration video was hit by Section 25 and 26 of Evidence Act.

30. The High Court's opinion as regards visual/CCTV evidence is encapsulated in the following para:

> "(iii) Considering the fact that the cloned copies could not be produced, because of alleged mechanical failure; the fact that the investigating officer had copied the footage on a pen drive and. had not produced it before the Court; the version of PW54 that a truncated backup of the footage was taken being doubtful; besides the act of the investigating officer in referring it to a private lab and the 'not so-good' reputation of the said private lab; that the prosecution did not establish that the DVR which was called for by the Government Lab was scrapped' and for the other reasons mentioned above, we are of the view that no reliance can be placed either on Ex.P155-pen drive or Ex.PI57-report of PW54."

31. As regards the eyes witnesses, the High Court observed that the statements of PW2 and PW3 were dispatched to the

[5] *Hereinafter referred as "the Constitution"*

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Magistrate after considerable delay and the same rendered the witnesses as unreliable. The Court further observed that PW3 was a tutored witness in the hands of the prosecution and his testimony was artificial in nature. Similarly, the Court found the evidence of PW2 also as unreliable as he was a chance witness, and discarded their evidence even for the purpose of corroboration of the version of PW12/Approver. The Court also discarded the Test Identification Parade report of the Magistrate on the ground that the Magistrate/PW51 admitted that all three accused persons were different in appearances and therefore, the dummy inmates could not have been similar to all three of them. This, as per the High Court, violated the requirement that identification parade must be carried out in the presence of similarly looking persons. The Court observed that test identification parade of the three accused persons ought to have been carried out separately. The Court also observed that the TIP was vitiated because PW56 had shown pictures and CCTV footage of the incident to the witnesses before the parade.

32. Further, the High Court discarded the evidence of PW28, the Manager of Aruna Lodge, by observing that the arrival register of the lodge was never seized by the IO, the ledger marked as M.O. 17 did not record any address or name of A8, who purportedly signed the same, and the signatures were never compared with the signatures of A8. The Court also found

infirmity in the fact that no test identification parade was conducted for PW28 to identify the accused. The Court also disbelieved the identification of the accused by PW27 (room boy of Arun Lodge) in open Court as the same was done after a lapse of six years and no TIP was conducted earlier.

33. On these parameters, the High Court re-appreciated the entire evidence on record and returned a finding of acquittal of all the accused persons. Consequently, the sentences were also set aside and the accused persons were released. The said judgment is under challenge before us.

THE CHALLENGE

34. Taking exception to the impugned judgment, the appellant State has approached this Court, broadly urging the following grounds:

i. That the conviction by the Trial Court was based on credible and reliable evidence including the evidence of eye witnesses, approver, call details records, money trail, electronic and scientific evidence etc.;

ii. That the High Court did not consider the circumstantial evidence of conspiracy and prior connection between the accused persons. Further,

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the Court proceeded on a prejudicial notion that all conspiracies are essentially hatched in secrecy and no conspiracy could be heard by any third person;

iii. That the Court erred in rejecting the call detail records, as the CDRs were duly obtained by the witness who had produced them through email and the same were produced before the Court along with a certificate under Section 65-B of Indian Evidence Act;

iv. That the Court erred in rejecting the evidence of the eye witnesses, who had no prior enmity with the accused persons and whose testimonies were duly corroborated by the evidence of PW12 and electronic evidence;

v. That the Court erred in rejecting the evidence of the approver on the basis that it was not consistent with earlier statement/confession given to the police, as some omissions are bound to happen in a statement/confession given to the police under fear, coercion or influence;

vi. That the High Court erroneously exhibited an additional document Ex. C6 (Letter written by the

Trial Court on the administrative side) during the appeal without following the procedure under Section 294 Cr.P.C. and directly at the time of judgment, without providing any opportunity to the prosecution to question the same;

vii. That the High Court laid undue emphasis on the alleged bias of the concerned Trial Judge who had granted the pardon to PW12, despite the fact that no judgment was rendered by the said Judge and the potential conflict was also disclosed by the concerned Judge herself in order to maintain the sanctity of the proceedings;

viii. That the Court erred in holding that the re-enactment of the crime by the accused persons amounted to confessional statements within the meaning of Section 25 of Evidence Act and was hit by Article 20(3) of the Constitution. It is submitted that voluntary re-enactment of crime by the accused persons, without undue influence or coercion, does not amount to confession and it only indicates the familiarity of the accused persons with the crime scene;

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ix. That the High Court erred in summarily rejecting the testimony of PW19 regarding the recovery of incriminating material, such as weapon of offence, blood-stained clothes etc., in furtherance of the statement of the accused. It is urged that the said recovery is duly admissible as per Section 27 of Evidence Act and the same was made in the presence of a neutral government witness;

x. That the Court erred in not analyzing the frivolous defence taken by A8 that the deceased died by accident. The failure of A8 to substantiate the defence ought to have resulted in an adverse inference against him;

xi. That the High Court erroneously rejected the evidence related to CCTV footage merely on the basis of doubtful credibility of the private lab, and without examining the quality of evidence and corroborative factors. It is submitted that mere involvement of a private lab does not automatically disqualify the evidence as procedural safeguards and chain of custody were duly maintained;

xii. That the High Court laid undue emphasis on the non-availability of DVR, instead of independently

examining the probative value of the evidence on record i.e. CCTV footage and report Ex. P157;

35. The written submissions filed on behalf of the State of Tamil Nadu also contain similar submissions. On similar lines, the complainant has also filed detailed written submissions. We have carefully gone through the same, however, for brevity and to avoid repetition, we are not reproducing the submissions.

36. Responding to this challenge and arguing in favour of the impugned judgment, the accused persons have addressed separate arguments and have filed separate written submissions. It is deemed proper to incorporate the contentions raised on behalf of the accused persons separately, so as to not curtail the zone of consideration in any manner.

GROUNDS URGED BY ACCUSED NO. 1, 2 & 3

37. Accused no. 1, 2 and 3 have broadly urged the following grounds:

i. The appellate court must not ordinarily reverse a judgment of acquittal as long as the impugned judgment reflects a legally plausible view and is not unsustainable;

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ii. The evidence of PW12 is unreliable, hearsay and full of material contradictions and omissions as material aspects of his evidence are missing from his testimony recorded under Section 161 Cr.P.C.;

iii. The Trial Court did not properly appreciate the omissions and contradictions and brushed them aside by observing that they were immaterial;

iv. The testimony of PW12 was not corroborated in accordance with law and the Trial Court cursorily concluded that it was duly corroborated, without noting that the witnesses who purportedly corroborated PW12 i.e. PW4, PW5 and PW53 were themselves not reliable;

v. The High Court rightly concluded that PW53 was merely a chance witness who was a total stranger to the other accused persons, except A5. Further, the Court rightly concluded that the presence of PW53 was not properly explained and there was an inherent improbability in his version;

vi. The Trial Court did not examine the credibility of PW4 and did not examine crucial aspects such as belated disclosure, suspicion and contradiction

regarding the discovery of PW4 as a witness by the IO, improbability of the version of PW4 and absence of justification of the presence of PW4 at the spot;

vii. The evidence of PW5 is equally vulnerable for the reasons applicable to PW4. Additionally, PW5 chose to appear after a considerable delay despite being a witness of the conspiracy meeting and despite being aware of the murder of the deceased. Further, his statement was dispatched to the Magistrate after inordinate delay without any plausible explanation;

viii. The CDRs have not been proved in accordance with the law as the same were not proved by the author of the document i.e. nodal officer of the telecom company. PW45 was neither the author nor witness of such authorship of the CDRs and he was merely a recipient who could not have proved the same;

ix. As per Section 65-B of Evidence Act, CDRs could have been proved only by a person having lawful control over the computer that produced the electronic record and therefore, a certificate under Section 65-B ought to have been filed by the

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concerned nodal officer of the telecom company. Since, PW45 had no lawful control over the computer which was used to produce the CDRs, he could not have filed a certificate under Section 65-B in support of the CDRs;

x. PW45 produced the CDRs in the Court in Excel format, which could be easily edited or manipulated. He ought to have filed the same in PDF format to avoid any possibility of manipulation;

xi. The money trail between the accused persons was not unusual as the accused persons were known to each other and the explanations furnished by them at the stage of examination under Section 313 Cr.P.C. were plausible and acceptable on the anvil of preponderance of probabilities;

xii. The Investigating Officers failed to carry out independent investigation in the matter as they admitted that they did not investigate other persons, who had claimed the disputed land and had enmity with the deceased;

xiii. The entire investigation was directed at the instance of PW1, and PW57 admitted that he obtained

information of the case from PW1, who was conducting his own investigation alongside;

xiv. The entire investigation was influenced by DCP Thiru Balakrishnan who got married to the daughter of the deceased. PW57 (IO) admitted that the statements of 39 out of 89 witnesses were recorded after DCP Balakrishnan took charge of the area;

xv. The statement of PW12 recorded during the course of investigation was a statement under Section 161 Cr.P.C. and it was permissible to use the same as per Section 162 Cr.P.C.;

xvi. The statement of PW12 recorded under Section 161 Cr.P.C. could be used for the purpose of contradiction during evidence, and omissions and contradictions from the same could be relied upon to impeach the credibility of the witness;

GROUNDS URGED BY ACCUSED NO. 4

38. Accused No. 4 has broadly urged the following grounds;

i. The prosecution has failed to prove the conspiracy beyond reasonable doubt and the witnesses of the prosecution are unreliable and chance witnesses;

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ii. It is settled law that the evidence of an approver requires material corroboration, however, the evidence of PW12 has not been corroborated by other evidence on record;

iii. The presence of A4 in Chennai has not been proved on the basis of credible evidence as PW38 was not the reporting officer of A4 who sanctioned his leave, and the reporting officer has not been examined by the prosecution. Furthermore, the manual attendance register and leave application of A4 were not produced by the prosecution;

iv. The evidence of PW13 was not even considered by the Trial Court and her statement that she saw A4 around her house in the 2nd week of September, 2013 was not corroborated by any evidence. Furthermore, she identified A4 only after seeing his picture on television despite the fact that they were relatives.

GROUNDS URGED BY ACCUSED NO. 5

39. On behalf of accused No. 5, broadly, the following reasons were advanced for sustaining his acquittal and the impugned judgment:

i. The State has failed to show any perversity in the impugned judgment and the judgment reflects a possible view. Further, it is settled law that if the judgment under appeal reflects a legally possible view, it cannot be reversed unless anything erroneous or perverse is found out;

ii. The prosecution failed to delineate the incriminating circumstances and to form a complete chain of such circumstances, which must have been identified and ought to have been connected with the accused persons;

iii. The prosecution has failed to dispel the taint of unfair investigation which reflected a pattern of planting witnesses, belated examination of witnesses, belated forwarding of their statements etc.;

iv. The entire case against A5 is circumstantial in nature and is filled with weak links;

v. The prosecution has used one infirm piece of evidence to support another by using PW53, PW4, PW5 and PW37 to support PW12 and later, to rely

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on the version of PW12 to support the former witnesses;

vi. The role attributable to A5 is distinct in nature as he was not directly involved in any land dispute with any of the parties and has been implicated merely on the basis of association with the family of A1;

vii. A5's role as a legal professional is admitted and purely professional acts cannot be converted to attribute any criminal motive or to infer a link between A5 and the crime in question;

viii. The threat of "dire consequences" allegedly extended by A5 is completely vague and is lacking in material particulars such as the words used, presence of other persons, to whom it was extended etc.;

ix. The version of PW9 as regards the naming of A5 in the complaint of trespass over the disputed land, is hearsay as he learnt of the same from LW49, who was not examined by the prosecution citing availability of overwhelming evidence;

x. The versions of PW9 and PW13 as regards the life threats extended by A5 are also based on hearsay as

they did not directly hear any such threat, and thus, their versions are unreliable;

xi. The version of PW53 to prove the conspiracy meeting at the house of A5 is a complete fabrication as no trained lawyer or hired killers would loudly conspire a murder so as to enable the strangers to hear. Further, the statement of PW53 was recorded after 7 months and he was able to recall the precise details of the meeting perfectly, thereby indicating that he was introduced as an afterthought;

xii. The witnesses of the second conspiracy meeting i.e. PW4 and PW5 are also chance witnesses whose discovery was completely unnatural and therefore, reliance cannot be placed upon their testimonies;

xiii. The version of PW3 is completely unnatural as the assailants are not expected to be discussing the details of the conspiracy, benefits of committing the offence, involvement of other conspirators etc., immediately before the commission of the offence and that too, in the presence of strangers;

xiv. PW3 could not explain his presence at the place of occurrence, especially because he was visiting the

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bank on a Saturday evening. Further, the IO did not enquire from HDFC Bank as to whether PW3 maintained a bank account at the bank and whether he had actually met someone at the bank;

xv. The recovery of a visiting card M.O. 8 is of no importance as a visiting card is not an incriminating material;

xvi. The money trail relied upon by the prosecution is also highly improbable as the accused persons would not have indulged in any bank transfer for such a purpose, and if the money was actually meant for any illegal activity, it would have been handed over in cash as the assailants lived 35 km away from the village of A1 to A6;

xvii. The version of PW37 is unreliable and improbable as A6 would not have distributed the cash to the assailants in the presence of a complete stranger;

xviii. The testimony of DW2 is unshaken and presents a reasonably possible view insofar as the money trail is concerned. Furthermore, the prosecution neither made DW2 as an accomplice in the case nor

examined him as a witness which raised suspicion on the prosecution;

xix. The bank transfers only prove the movement of money and not the purpose of such movement;

xx. The testimony of an approver must satisfy the twin-test of reliability and sufficient corroboration as per the dictum of this Court in ***Sarwan Singh v. State of Punjab***[6];

xxi. The pardon granted to PW12 is vitiated by a reasonable apprehension of bias on the part of the concerned Sessions Judge and in view of such apprehension, the testimony of PW12 must be approached with greater circumspection;

xxii. The statement given by PW12 to the police duly qualified as a statement under Section 161 Cr.P.C. and the same could have been used to contradict PW12 in accordance with Section 162 Cr.P.C.;

xxiii. The decision in ***Narayan Chetanram Chaudhary and another v. State of Maharashtra***[7] is *per-incuriam* as it failed to consider the decision of 3-

[6] *AIR 1957 SC 637*
[7] *(2000) 8 SCC 457*

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Judge bench in ***Nandini Satpathy V. P.L. Dani***[8] and ***Kartar Singh v. State of Punjab***[9] (5-Judge bench). Further, the decision in ***Narayan Chetanram Chaudhary*** has been disapproved in the recent decision in ***P. Krishna Mohan Reddy v. State of Andhra Pradesh***[10].

xxiv. There are material contradictions, omissions and improvements in the version of PW12 on the aspects of direct knowledge of conspiracy, date of conspiracy meeting, presence of PW53/client, second conspiracy meeting, cash payment of Rs. 1.5 lacs each to the assailants, visit to DW2's house and recovery of the visiting card of deceased from A5;

xxv. The prosecution has violated the prompt-dispatch rule as the statements recorded under Section 161 Cr.P.C. were not transmitted to the Magistrate forthwith; some were forwarded selectively and others were sent *en masse*;

GROUNDS URGED BY ACCUSED NO. 6

40. Accused No. 6 urged the following grounds:

[8] *(1978) 2 SCC 424*
[9] *(1994) 3 SCC 569*
[10] *2025 SCC Online SC 1157*

i. A5 and DW2 had long running monetary transactions even prior to the conspiracy in question, and the money transferred by A5 to DW2 during the period of conspiracy was Rs. 4,50,000/- only, which did not match with allegations levelled by the prosecution;

ii. No recovery of the amount in question was made from any person and there is no explanation as to how the said amount was spent;

iii. A6 was not a part of the first conspiracy meeting or the land dispute between the other accused persons and the deceased. Further, there was no allegation against A6 in the evidence of PW13 or PW9;

iv. The evidence of the approver is unreliable and there are material omissions and contradictions in his evidence, which makes it unsafe to place reliance upon the same;

v. There is no infirmity in the findings of the High Court insofar as A6 is concerned and his acquittal cannot be reversed by this Court in the exercise of powers under Article 136 of the Constitution;

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GROUNDS URGED BY ACCUSED NO. 7

41. Accused No. 7 has advanced the following grounds:

i. The entire case against A7 is based on unreliable and belated witnesses and the evidence of PW2, PW4, PW5, PW53 and PW12 has not been corroborated by any other evidence;

ii. There is no credible evidence of conspiracy and there are serious investigative lapses such as unexplained delays in dispatching statements, failure to conduct test identification parades, non-examination of material witnesses etc;

GROUNDS URGED BY ACCUSED NO. 8

42. The following grounds have been urged on behalf of Accused No. 8:

i. The reversal of an acquittal must be done only in rarest of the rare cases wherein the Appellate Court finds illegality or perversity pertaining to the vital facts of the case;

ii. The evidence of PW2 is completely unreliable as his disclosure was belated and his statement was

dispatched after considerable and unexplained delay;

iii. The entire testimony of PW2 has been tailored to match the CCTV footage of the incident, as it is improbable that he could not remember the details of the incident two days after the incident, but remembered all the details after more than three years from the incident;

iv. The material contradictions between the statements of PW2 recorded under Section 161 Cr.P.C. and 164 Cr.P.C. cannot be reconciled and the contradictions indicate that PW2 was not actually present at the place of occurrence;

v. Common features such as belated disclosure, belated dispatch of statements, open discussions regarding conspiracy in front of strangers, sudden appearance and disappearance, unnatural discovery etc. are applicable to all the chance witnesses of the prosecution including PW2, PW3, PW4, PW5, PW8 and PW53;

vi. The knowledge of PW12 is co-terminus with the knowledge of the investigating officer and despite

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being an accomplice, he has not disclosed any additional or exclusive information regarding the commission of the offence which could have added credibility to his version;

vii. The testimony of PW12 is wholly derived from the knowledge of the prosecution and the improvements in his versions suggests that he kept on improving as the prosecution imparted him with more knowledge with the passage of time;

viii. The recovery of sickle and shirt are artificial as the recovered sickle was not sealed and blood report is also inconclusive. Further, it is improbable that the accused would throw the knife near a building close to the police station;

ix. The evidence of PW32 is wholly unreliable and unnatural as he had no reason to remember the customers who had visited his shop on a single occasion. Further, PW32 admitted that the police had pointed A8 to him;

x. No face analysis of the persons seen in the CCTV was carried out and in the absence of face analysis,

gait analysis report becomes the ‘worst’ form of available evidence;

xi. No reliance could be placed on the CCTV footage as the hard disk was seized after a month, and when the same was sent to FSL, it could not be read and was returned for want of DVR. Later, the same hard disk was sent to Truth Labs and the said private lab was able to read it without DVR. Further, when the accused persons asked for a cloned copy of the footage and the hard disk was resent to Truth Labs, the same could not be read again due to mechanical failure;

xii. The presumption applicable to a government laboratory is not applicable to a private laboratory;

xiii. Gait analysis is an imperfect and imprecise science and has not been upheld by any decision of this Court. Further, it is not unique to any person like DNA and there is a possibility of mimicking or copying in the gait analysis;

xiv. The comparison of CCTV footage was not made with the natural gait of the accused persons, rather, they were made to perform the same movements

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and to re-enact the occurrence. Thus, the gait of the persons in the CCTV footage and the re-enactment video was bound to be the same;

GROUNDS URGED BY ACCUSED NO. 9

43. On behalf of Accused No. 9, the following grounds have been advanced:

i. The presence of A9 in the first conspiracy meeting has not been proved;

ii. PW 32 did not identify A9 as the person who had visited his shop for taking print of the photograph of the deceased and the statement of PW12 to that effect has not been corroborated;

iii. The presence and role of A9 has not been proved by the prosecution and the eyes witnesses PW2 and PW3 are tutored witnesses;

iv. The call detail records between the accused persons have not been proved and the CCTV footage cannot be relied upon in evidence;

v. The approver PW12 is an unreliable witness and his evidence is full of material contradictions and omissions. The said point has been argued by all the

accused persons on similar grounds and thus, the particulars of this ground are not being reproduced;

DISCUSSION & ANALYSIS

44. Having set out the case set up by the respective parties, we may now proceed to consider the seminal question i.e. whether the respondents/accused persons have committed the offences mentioned above in relation to the death of Dr. Subbaiah. We have heard Ld. Counsels appearing for the respective parties at length and have carefully gone through the record.

45. The respondents have collectively advanced an argument, which needs to be addressed at the outset, that this Court is not expected to disturb the impugned judgment until and unless there is a perversity or illegality or erroneous finding in the impugned judgment. To buttress, it is submitted that even if there are two possible views, the view taken by the earlier Court be not disturbed. No doubt, the said submission reflects the settled position of law. However, it equally applied to the High Court as well, when it sat in appeal over the judgment of the Trial Court, and therefore, it is for this Court to examine whether the High Court has committed an error in disturbing the findings of the Trial Court. Nevertheless, this Court is faced with a situation where two competent Courts have arrived at opposite conclusions on appreciation of the same set of evidence.

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Naturally, it falls upon this Court to re-appreciate the evidence and to deliver a final finding.

46. The case of the prosecution, as detailed above, rests on oral as well as documentary evidence. The prosecution has examined 57 witnesses, exhibited 173 documents and 42 material objects to prove its case. As per the prosecution, A8, A9 and PW12 are the assailants who committed the murder of the deceased and collectively, all nine accused persons are the conspirators behind the said murder. The evidence on record is both direct and circumstantial, and we may begin with the evaluation of the direct evidence.

47. PW2 is the first eye witness, who directly witnessed the commission of offence. He deposed regarding his identity, his purpose of visit at the place of occurrence, the presence of deceased, attack on deceased by three assailants, body parts which were attacked by the three assailants, weapon of assault, identities of the assailants as A8, A9 and A10 (later PW12) and the act of calling ambulance. He deposed that he waited for some time after the deceased was taken to the hospital and thereafter, he left. He identified the knife in the Court as M.O.1. He deposed that he went to the police station after two days and in view of the assault witnessed by him, he was of the view that the deceased must have died on the spot and therefore, he had stated to the

police that Dr. Subbaiah died on the spot. However, he was informed by police that Dr. Subbaiah was undergoing treatment at that time. He also deposed regarding the identification of the accused persons in Judicial Custody in the presence of the Magistrate as well as his statement under Section 164 Cr.P.C. recorded by the Magistrate. PW2 was extensively cross-examined on behalf of the accused persons, however, his testimony has remained fairly consistent on material particulars. No doubt, there are slight contradictions such as whether PW2 was sitting or standing when he witnessed the commission of murder. However, once the testimony is evaluated on its overall merit, it appears to be consistent. The contradictions appear in aspects which are immaterial to the case. The accused persons have suggested that PW2 was a stock witness, however, there is nothing to substantiate the same and the accused persons have merely suggested so without anything more. Furthermore, the accused persons have not been able to show any association of PW2 either with the deceased or assailants or the police. The profession of PW2 is also largely admitted as there are questions in the cross-examination regarding the advertisements made by PW2 in the newspaper regarding AC repair work. On being asked, PW2 also disclosed the name of owner and registered number of the vehicle/TATA Ace in which he had arrived at the place of occurrence.

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48. PW3 is the next eye witness, who happened to visit the HDFC Bank near the place of occurrence and was waiting outside the bank with one Mr. Gopinathan when the incident took place. He overheard a conversation between the assailants wherein they expressed their resolve to successfully murder Dr. Subbaiah, vowed to not repeat the failure of the first attempt and discussed their expectation of getting a sum of Rs. 50 Lacs from Advocate Williams/A5 and Dr. James/A7, through Basil/A3 and Boris/A4, on successful completion of the task. PW3 also deposed regarding the manner and sequence of assault on the deceased and the same completely corroborates the sequence narrated by PW2. He identified the weapon M.O.1 as well as the accused persons during the test identification parade conducted by the Magistrate. He admitted Ex. P2 as his statement recorded by the Magistrate.

49. Furthermore, he provided the account number of the account maintained by him at the concerned branch and specified the purpose of visit i.e. to know regarding KYC, which aligns with his visit on a Saturday. He specifically clarified that he did not come for any cash transaction. Unlike a tutored witness, PW3 specifically deposed that the assailants did not use the word "murder", thereby meaning that the language used by the assailants was of an indirect nature, which is quite natural. A tutored testimony would have attributed a direct statement to the

assailants, disclosing the material particulars of the offence. The discovery of PW3 has also been explained and we find nothing unnatural if PW3, being a stranger, found it more convenient to stay away from a murder investigation for a considerable time. What is important is that there is no prior association or personal interest or motive which could be imputed to PW3, who has fairly passed the test of an independent witness. Furthermore, he corroborated the testimony of PW2 and confirmed that during the assault, he had heard the words "do not cut brother". As per PW2, these were the words uttered by PW2 during the assault. PW3 was also extensively cross-examined regarding the surroundings of the place of occurrence and no discrepancy was highlighted which could raise a doubt on his presence at the spot.

50. On a comprehensive analysis of the eye witness accounts of PW2 and PW3, we are of the view that their testimonies are wholly incriminating and there is nothing unnatural or doubtful regarding their presence at the place of occurrence. Their presence is duly explained and material particulars related to their visit have been disclosed by both the witnesses in their cross-examination. Furthermore, the manner of assault and nature of injuries specified by the eye witnesses are consistent with the medical examination reports, which is a material corroboration.

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51. The cross-examination conducted on behalf of the accused persons is all encompassing and even crossing the line of relevance at various stages. What is consistent is an attempt to suggest contradictions and omissions in the testimonies of PW2 and PW3. However, we may suffice to note that no material contradiction has surfaced and the minor contradictions appear quite natural. Furthermore, there is a gross procedural infirmity in the manner of contradiction of the PWs as at various stages, contradictions have been recorded without confronting the witnesses with the contradictory portions from their previous statements under Section 161 Cr.P.C. We have no hesitation in observing that the same is irregular and not in conformity with the procedure.

52. PW4 and PW5 are the next witnesses in sequence, who have been relied upon by the prosecution as direct witnesses of the criminal conspiracy. Both the said witnesses are real estate agents and were approached by A3 and A5 to look for a party for the purchase of disputed land in Kanyakumari. In that regard, PW4 visited the house of A5 where other accused persons were also present, including A1, A2, A3, A6, A7, A8, A9 and PW12. When PW4 enquired regarding the signage "*This property belongs to Dr. Subaiah*", he was censored by A5, who pointed towards the three assailants and stated that they will "*take away the weed*". He further saw that all other accused persons approved

of the same. PW4 deposed that PW5 was also present at the house of A5, however, he admitted in cross-examination that the said fact was not stated by him in his statement to police. He further deposed that he did not remember whether the other accused persons present at the house of A5 had approved of the remark made by A5.

53. PW4 explained the location of the house of A5 and its distance from the disputed land. He also explained that he had visited the house of A5 to get the *patta* and encumbrance certificate for the disputed land. He further deposed that he knew A5 since 2007 and no contrary suggestion was given by the accused persons, thereby meaning that PW4 indeed knew A5 for a considerable period of time and may have been approached by the latter for the sale of the disputed land. He also deposed that he had seen A6 prior to his visit.

54. He gave his statement to the police only on 10.03.2014, which was after a considerable delay. However, we need to see whether the delay is properly explained. He admittedly got to know about the murder of Dr. Subbaiah in September, 2013 through news channels, however, he did not disclose it to anyone. On 10.03.2014, he happened to visit Kanimadam to meet one Subramani Nadar, his acquaintance from Anju Village, and police was there to enquire about Yesurajan/A6 and

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Williams/A5. Admittedly, Kanimadam is also the native place of A5. It was during this encounter that he disclosed his knowledge to the police for the first time. Notably, no counter suggestion has been given to question this visit by PW4.

55. The accused persons have given a series of suggestions to impeach the credibility of PW4, such as the pendency of a criminal case against him. However, no direct or indirect advantage to PW4 could be shown to flow from the act of deposing in the present matter. Therefore, no adverse inference could be drawn on that basis alone. There is one ambiguity in the testimony of PW4 i.e. whether he had disclosed the presence of PW5/Bensom at the house of A5 in his initial statement to the police. He was confronted and it was admitted that he had not disclosed it. However, it is not an infirmity which strikes at the root of the evidence of PW4 as there is ample corroboration of this aspect from the testimony of PW5. Furthermore, it cannot be termed as a material omission and an information of such peripheral nature could have skipped the mind of the witness while giving his statement to the police after a considerable delay. At times, minor infirmities are indicators of a natural testimony and perfection is an indicator of tutoring.

56. We may now come to PW5. He deposed that he knew A3, A5, A7 and the family members of A1 through A7. He also knew

about the dispute between the family members of A1 and deceased. He was also approached to look for a prospective buyer for the disputed land and was a part of the second conspiracy meeting held in the last week of July, 2013 at the residence of A5. He confirmed the presence of PW4 in the said meeting and deposed that he was taken to the disputed land by A5 along with A3 and A6. He further corroborated that in the said meeting, A1, A2, A7, A8, A9 and A10 were also present. PW5 identified all the accused persons present in the Court except A4, which is consistent with his testimony that A4 was not present in the said meeting. He further deposed that on being asked regarding the disputed character of the land, A5 assured him that Subbaiah will be no more. He also heard A3 speaking on a call to A4 and assuring him that he need not fear as doctor will be no more in a few days. PW5 later got to know about the murder of Dr. Subbaiah, but he took no further interest in the matter until 12.12.2014, when he visited Kanimadam and discovered that A5 had been arrested in connection with the murder of Dr. Subbaiah.

57. PW5 was subjected to cross-examination on similar lines as PW4 and we find no substance in the same to impeach the evidence of PW5 for similar reasons, as noted above. The only crucial circumstance that needs to be addressed is that there was a considerable delay between the date of knowledge of offence by PW5 and date of disclosure made by him to the police. He has

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accepted that he discovered the offence in September, 2013 through news channels, however, he never disclosed to anyone until 12.12.2014 when he visited Kanimadam. This explanation might have failed to pass the test of judicial satisfaction had PW5 been the only primary witness of the prosecution. However, the testimony of PW5 is duly corroborated by the testimony of PW4 as well as by PW3 insofar as he disclosed the names of the conspirators, as heard by him during the internal discussion of the assailants on the date of murder. In view of this material corroboration, we are not prepared to discard the testimony of PW5 by placing undue reliance on delay. Moreover, apart from general and vague suggestions during cross-examination, the accused persons have not shown any circumstance to indicate any motive or tutoring of PW5.

58. The next direct witness is PW12 – *the approver*. He gave a detailed testimony regarding the timeline of conspiracy, nature of conspiracy, participants in the conspiracy, flow of money and the final act of commission of murder. PW12 not only disclosed the details which were accessible to the investigating agency but also provided exclusive details such as the place of stay of the assailants during their visit to Chennai, both during the first attempt and the second time when the act was completed. The presence and involvement of PW12, both in the conspiracy meetings and at the place of occurrence, has been independently

corroborated by the other direct witnesses such as PW2, PW3, PW4 and PW5. The first conspiracy meeting was not only witnessed by PW12, but also by PW53, who is again an independent public witness. PW53 deposed regarding the first meeting which took place in July, 2013, which was attended by A5, A3, A7, A8 and A9. In the said meeting, various remarks were made by the participants regarding the need to do away with Dr. Subbaiah. Importantly, in the said meeting, A5 had asked A3 to get the photograph of the deceased and the meeting was also joined by A1 and A2 at the instance of A3. He also deposed regarding the involvement of A4, specifically his visit at the house of the deceased which led to the decision of not killing the deceased in his house. Despite specific evidence to the effect that A4 had specifically come to Chennai from Bangalore and had taken leaves from his company, no counter version was presented by A4. Notably, the burden shifted on A4 once acceptable evidence was led against him, and he ought to have discharged it. He could have easily disproved the said evidence by examining witnesses from the company, but he failed to do it. The testimony of PW53 cannot be read in isolation and must be read with the surrounding evidence on record. On a comprehensive perusal of the same, it is clear that isolated and independent prosecution witnesses have deposed on similar lines

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and their testimonies form part of a consistent and uninterrupted chain.

59. Pertinently, the manner in which the evidence of the approver/PW12 has been appreciated by the High Court requires specific deliberation. While evaluating his evidence, the High Court firstly dealt with the allegation of bias on the part of the Sessions Judge who granted pardon to the approver. In doing so, the High Court *suo moto* took an additional document Ex. C6 on record, which was a letter sent by the concerned Sessions Judge to the High Court on the administrative side, seeking transfer of the present case. The letter was addressed by the Sessions Judge on her own, after she discovered a potential conflict of interest, without being flagged by either side. In view of the said letter, the matter was eventually transferred to a different Judge and admittedly, trial was concluded by a different Judge. The evidence of the approver/PW12 was also recorded before a different Judge. In an unusual exercise of power at the appellate stage, the High Court took the letter addressed on the administrative side on record as a fresh document, and placed reliance upon the same to arrive at a finding of reasonable apprehension of bias, without providing an opportunity to the prosecution to cross question the said document or to the concerned Judge to make a representation against the unwarranted evaluation of her conduct in the present case despite

the fact that she did not pass the final judgment of conviction. No doubt, the power of the Appellate Court to record additional evidence is undisputed, however, the manner of exercise of such power must be aligned with the procedure in place. The said letter was taken on record at the instance of the accused persons, and that too in the final judgment. Moreover, the Court did so without even questioning as to why the accused persons never raised any objection regarding the grant of pardon or bias at any point of time during the trial.

60. Even if we brush aside the manner of taking the letter on record and go into its contents, we are of the view that the letter itself suggests no apprehension of bias. The High Court failed to appreciate that the very fact that the concerned Judge voluntarily disclosed the potential conflict at the first available opportunity, without being asked by any party, and the same was accepted by the High Court on the administrative side, reflected fairness on the part of the concerned Judge. The matter was eventually transferred to another Judge who conducted the trial. Notably, the question of judicial bias is to be approached on the standard of reasonable apprehension alone, and not on the proof of actual bias. The High Court erred in imputing bias upon the concerned Judge while failing to acknowledge that the disclosure was made voluntarily by the concerned Judge, which was a positive act to avoid any apprehension of bias. Even otherwise, apart from

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granting pardon to PW12, the concerned Judge played no role in the adjudication of the case. Even the evidence of PW12 was recorded in the presence of the successor Judge. Nevertheless, the High Court found that the biasness on the part of the Judge may not have affected the outcome of the case, but it raised a doubt on the credibility of PW12.

61. We fail to understand the reasoning adopted by the High Court on this aspect. PW12 was granted pardon on the promise of '*true and full disclosure'* made by him and the Judge had no role to play in the voluntariness, truthfulness and comprehensiveness of the disclosure made by PW12. The grant of pardon is a limited exercise and no doubt, the testimony of an approver is always taken with a pinch of salt and is generally accepted only on due corroboration. However, the High Court erred in adding an extra layer of circumspection on the testimony of the approver by raising doubts on the fairness of the Judge who granted the pardon. Not only was the apprehension of bias ill founded, but the ultimate decision of granting pardon was also not unusual in any sense. The High Court appears to have fallen for a narrative that ought not have featured in the appreciation of evidence on record. Suffice to note that the testimony of PW12, being a testimony of approver, must be approached with caution and by following the rule of prudence which requires due corroboration of such a testimony.

62. In the present case, as noted above, the evidence of PW12 is not in isolation from the other evidence on record. The disclosure made by PW12 is specific in nature and is wholly consistent with the other direct and circumstantial evidence on record. Furthermore, in the facts of the case, it is not the case that the prosecution is standing on the evidence of the approver alone. At best, the approver's evidence has played the role of making the chain of evidence more consistent and wholesome. The prosecution has led ample independent evidence to prove the charges in question.

63. The accused persons have taken certain common exceptions to the testimonies of the direct witnesses i.e. manner of discovery of the witnesses, lack of test identification parade, unnatural testimonies, lack of corroboration, existence of contradictions and omissions in their testimonies, etc. The High Court has also disbelieved the testimonies of the material witnesses on similar grounds. Having evaluated the evidence on record, we are of the opinion that the High Court has fell in a grave error in appreciating the evidence on record. The testimonies of the direct witnesses of the prosecution are fairly consistent with each other. No doubt, there are certain contradictions and omissions in their testimonies, however, mere presence of contradictions and omissions does not demolish the credibility of public witnesses, as long as they appear to be

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natural and are duly explained. The High Court appears to have proceeded on a presumption of falsehood and the findings in the impugned judgment are not based on concrete doubts; rather, the findings are based on suppositions and the Court's own subjective assessment of how a public witness is supposed to depose before the Court.

64. When we say that every contradiction is not fatal, we essentially mean that every contradiction carries different weight and the weight is to be adjudged in light of the surrounding evidence and the peculiar facts associated with a witness, including the fact that a public witness is almost invariably out of his comfort zone while deposing before a Court of law, that too in a murder trial. In the present case, the accused persons have stressed heavily on the contradictions and omissions appearing in the testimony of PW12. Elaborate comparisons have been drawn between the statement of PW12 under Section 161 Cr.P.C. recorded during investigation (when he was an accused) and oral deposition in the Court. No doubt, there are contradictions and omissions between the two statements, however, the contradictions and omissions do not surface without a satisfactory explanation. At the time of recording the statement under Section 161 Cr.P.C., PW12 was being questioned as an accused/A10 and not as a witness. His natural disposition at that time was to conceal as much as he could and to somehow

exonerate himself. Moreover, the said statement was recorded by the police and without administering any oath. However, after grant of pardon, PW12 was examined as a witness on oath and it was for the first time that PW12 made a true and full disclosure of the incriminating facts, without the overarching fear of self-incrimination.

65. The contradictions between the two statements would have made significant difference had the character of the person making the statements remained the same throughout. However, the statement was bound to change after the grant of pardon. In fact, the whole object of grant of pardon is to elicit full disclosure in the aid of prosecution. If a statement given by an approver making true and full disclosure, after grant of pardon, is to be rejected on the ground that it contradicted with the earlier statement recorded by the police when the approver was an accused, it would effectively frustrate the very object of pardon in the course of a criminal trial. The phrase '*true and full disclosure'* contains within its sweep an inherent acknowledgement that the accused had not disclosed truthfully and fully prior thereto. Therefore, the High Court adopted an infirm approach in the appreciation of evidence of the approver.

66. Having said so, we must briefly address an issue agitated by both sides i.e. whether the statement of the accused recorded

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during investigation could be treated as a statement Section 161 Cr.P.C. and consequently, could be used for the purpose of contradiction under Section 162 Cr.P.C. The short answer to this question is *yes*. The long answer, without entering into any elaborate discussion, is that the issue is no more *res integra*. It is clear that a non-confessional statement of an accused recorded by the investigating officer during investigation qualifies as a statement under Section 161 Cr.P.C. and if the accused steps into the witness box at a later stage, it could be put to the accused for the purpose of contradiction. The accused, while being examined under Section 161 Cr.P.C., is a person acquainted with the facts and circumstances of the case. However, two things stand out. *Firstly*, the weight to be attached to such contradictions needs to be analyzed on a case to case basis, and *secondly*, a confessional statement shall be hit by Section 25 of Evidence Act and cannot be used for any purpose except for the purpose specified in Section 27 of Evidence Act.

67. Coming back, we are of the considered opinion that the approach adopted by the High Court in appreciating the contradictions in the approver's testimony, was erroneous. The contradictions appearing in his testimony are reasonably self-explanatory and do not carry much weight, once seen in light of the circumstances of the case, change of character of the witness

from an accused to an approver and independent corroboration by the surrounding evidence.

68. It is necessary, at this stage, to note that the present case is not one wherein the conviction is solely based on the testimony of the approver. The approver's testimony has been substantially corroborated by independent evidence of the public witnesses and has been found to be consistent with the entire chain.

69. As regards the failure of the investigating agency to conduct test identification parade of certain witnesses, we may suffice to note that the conduct of a test identification is a discretionary act of the investigating agency and it is only meant to lend credence to the actual identification which takes place before the Court during evidence. Moreover, some PWs such as PW4 and PW5 admittedly knew the accused persons prior to the offence and therefore, no purpose would have been served by conducting test identification parades for such witnesses. The real test of identification is whether the witnesses have duly identified the accused persons in the Court. The evidence recorded by the Trial Court reflects that at the time of identification of the accused persons by the PWs, no objections were raised and even during cross-examination, no credible circumstance has been highlighted to raise a question on the sanctity of identification made before the Court. In such

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circumstances, to raise a question on the identification done by the witnesses on the sole ground of non-conduct of TIP, would be nothing but a speculative exercise. It is not the domain of the Court to raise procedural doubts in this manner, especially when such doubts were not raised by the accused persons themselves at the time of recording of evidence.

70. We are afraid, various other issues have also been dealt in a similar pre-conceived manner in the impugned judgment. The PWs were extensively cross-examined on behalf of the accused and they not only remained fairly consistent but also remained committed to their testimonies. In other words, the accused persons could not move past the adverse suggestions given to the witnesses of the prosecution and all such adverse suggestions were unequivocally denied. Furthermore, the accused persons did not lead any independent or counter evidence to impeach the witnesses. However, despite such denials and absence of counter evidence, the High Court went on to treat the '*suggestions'* given by the accused persons as '*doubts'*. We are not prepared to accept it as the correct approach for appreciation of evidence and are constrained to observe that the High Court has committed a grave error in adopting the said approach.

71. Having examined the direct evidence led on behalf of the prosecution, we may now come to indirect or circumstantial

evidence on record, which overwhelmingly supplements the direct evidence.

72. Prior to the commission of the fatal act, a previous attempt was made by the assailants on 14.08.2013. The said fact was disclosed by PW12 and to give effect to the plan, A8, A9 and PW12 had arrived in Chennai on 11.08.2013 and had stayed in Bakkiyam Lodge. The stay in Bakkiyam Lodge has been proved by PW24, who produced documentary evidence including bill book/M.O.11, arrival register/M.O.12 and departure register/M.O.13 to show the arrival of the assailants. The seizure of the objects was witnessed by independent witness PW23. A prior connection and involvement of A3, A5 and A7 in the first attempt is further corroborated by PW8 who witnessed A7 along with A8, A9 and PW12/A10 in R.A. Puram on 14.08.2013. Notably, earlier, PW8 was also asked by the accused persons to look for a suitable buyer for the disputed land. PW8 is an independent witness who knew A3 since 2007. His wife is a District Munsif and he himself joined St. Peter College as an Assistant Professor. Despite various suggestions, we find no plausible circumstance to impute any motive to this witness or to question his credibility. The social standing of the witness reflects that there could be no possible reason for him to depose falsely.

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73. As regards money trail, the transfer of money between various key participants of the conspiracy is admitted, as noted by the High Court as well. However, the purpose of such transfer is questioned. Initially, the money travelled from A1 and A3 to A5. Thereafter, A5 transferred it to DW2, who withdrew the same and handed over the cash to A6. Further, A6 distributed the money to the assailants A8, A9 and PW12 after retaining his cut. Notably, the receipt of money from A6 is confirmed by PW12. The transfers made by A5 to DW2 and subsequent withdrawals within 1-2 days of each transfer are substantiated by the bank statements on record. PW37 is another witness regarding the money trail who had witnessed the handing over of money by DW2 to A6 at the former's house. The accused persons have presented a convoluted version of the transfer of this amount. While cross-examining PW37, a suggestion was given to PW37 to the effect that he did not know Veeramani/DW2 and never visited her house. However, in the statement under Section 313 Cr.P.C., a justification was advanced that the amount transferred to Veeramani/DW2 was meant for investment in C&G Textiles Company. If such was the case, then the handing over of the said amount by Veeramani/DW2 to A6 stands admitted, and it strengthens the testimony of PW37 who had witnessed it. Another question raised on behalf of the accused persons is that if the amount was transferred to A6 and further to the assailants

through DW2, then DW2 ought to have been made an accused or a witness in the case. We find that the question is incapable of advancing the case of the accused persons as its answer lies in the testimony of PW37. The said witness has deposed that while handing over the money to A6, DW2 had asked him as to why A5 was paying so much money to A6. This statement indicates that DW2 was not aware of the purpose of the transfer being made through him and therefore, there was no error on the part of the prosecution in not making him an accused in the present case. Furthermore, it is the admitted position that DW2 is the brother in law of A6 and therefore, the prosecution could have legitimately opted to not examine a family member of the accused persons as a witness for the prosecution. We find nothing unusual in it.

74. On a careful examination of the money trail, it could be observed that the money trail appears to be well aligned with the timeline of conspiracy and despite two incriminating testimonies regarding the purpose of the money trail, the accused persons have only managed to present conflicting versions. The circumstantial evidence constituted by the money trail is consistent with the direct evidence on record. Importantly, we may also note that despite convoluted statements regarding the money being meant for investments, the accused persons have not led any evidence to that effect. If the money was indeed

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transferred for making investments, assuming that the accused persons could actually invest direct cash in the company, it would not have been an onerous task for the accused persons to prove the said investments in their defence, so as to dispel the theory of the prosecution. Unfortunately, no such evidence was led on this aspect.

75. The chain of circumstances is further fortified by the evidence of travel made by the accused persons, purchase of second hand motorcycle, place of stay in Chennai from 13.09.2013 to 14.09.2013, inquiries made from the secretary of the deceased (PW34) and manager of Billroth Hospital (PW11), purchase of knife from PW31 by A8, discovery of the knife on the basis of admissible disclosure of fact made by the accused persons under Section 27 of Evidence Act and identification of knife by PW31 in the Court. Interestingly, the testimony of PW31 has been effectively admitted by A7 to A9, as evident from the cross-examination conducted by them. In cross-examination, the accused persons suggested to PW31 that the knife was taken by the accused persons for cutting tender coconut and PW31 answered in affirmative. This suggestion effectively amounts to an admission that the knife was indeed taken by the accused persons from PW31 and therefore, the accused persons have themselves added credibility to the evidence of PW31. The purchase of knife M.O.1 by the accused persons from PW31,

subsequent discovery of knife at the instance of the accused persons and identification of the said knife by PW31 in the Court are heavily incriminating circumstances, which not only indicate towards the solitary conclusion of guilt but also lend credence to the testimony of direct witnesses, especially the approver/PW12.

76. Notably, the post mortem report confirmed that the injuries could have been inflicted with M.O.1, which is sufficient to connect the weapon of offence with the injuries which caused the death of the deceased. Unfortunately, in totality, the impugned judgment has not appreciated the recoveries made from the accused persons in correct perspective. The recovery of objects/documents (few documents have been inadvertently marked as objects in evidence) such as visiting card, knife, bag, blood-stained shirt etc., exclusively at the instance of the accused persons and on the basis of the disclosures made by them, ought to have been considered while appreciating the overall effect of the evidence. It would have been a different scenario if the objects and their whereabouts were in common knowledge and discoveries would not have been effected on the basis of exclusive disclosures. However, the High Court appreciated the material objects in isolation and erred in not attaching due weight to their discoveries. For instance, mere discovery of a visiting card, if seen in isolation, is certainly not of much consequence. However, if the discovery forms part of a series of incriminating

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events and conspiracy meetings, it could not be brushed aside as immaterial.

77. Pertinently, these crucial circumstantial aspects constitute a series of prior and subsequent events/conduct which are consistently aligned with the chain of circumstances. Understandably, previous and subsequent events/conduct are relevant facts as per the law of evidence and therefore, they are material for forging the case of the prosecution. One of the fundamental rules of appreciation of evidence is that evidence is to be appreciated as a whole and in a comprehensive manner. If pieces from a chain of evidence are picked in isolation, their meaning and inferences flowing therefrom are bound to be different. At times, even a seemingly weak link falling in the chain of evidence acts a bridge in completing the chain.

78. Having observed so, we may now come to the electronic and corresponding expert evidence on record. There is a significant controversy with respect to the said material. The electronic evidence has been relied upon to corroborate the oral and documentary evidence discussed above. The prosecution has relied upon call detail records of the accused persons to prove the conspiracy and CCTV footage/Gait Analysis to prove the identities of the assailants – A8 and A9.

79. As regards call detail records (CDRs), the primary objection is that the CDRs Ex. P112 to Ex. P145 have been exhibited by PW45, who was working as a Sub-Inspector in Cyber Police Unit. He received the CDRs from the telecom companies and they were exhibited to show that the assailants and other accused persons were in contact with each other. PW45 exhibited the CDRs along with a certificate under Section 65-B of Evidence Act. The High Court rejected the CDRs on the ground that the exhibition of CDRs by PW45 would be of no consequence as the concerned officers of the telecom companies were not examined to prove the call details.

80. On an examination of the CDRs and the mode of proof adopted by the prosecution to prove the same, we find ourselves in agreement with the view taken by the High Court to reject this piece of evidence. Admittedly, the CDRs were generated from the data maintained by the telecom service providers and were sent to PW45 by email. PW45 took printouts of the same and produced in evidence by exhibiting his own certificate under Section 65-B of Evidence Act. Notably, the prosecution did not examine the concerned nodal officers of the telecom companies as witnesses to prove the CDRs generated by the companies and that too, without explanation. Further, PW45 did not even place on record the relevant emails whereby the CDRs were sent by the companies to him. We are of the view that the prosecution has

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fallen short of proving the CDRs in this case. PW45, at best, could have only proved the receipt of CDRs by him on his computer system and could have filed a certificate to that effect. However, the CDRs were not generated by PW45 and he was not competent to prove the contents of the same. Although, PW45 could have legitimately taken print outs of the CDRs from his system and could have filed a certificate to that effect, however, the prosecution ought to have simultaneously examined the nodal officers as well, so as to prove that the CDRs filed by PW45 were indeed generated and sent by the telecom companies. As noted above, the emails though which the CDRs were mailed to PW45 were also not proved by the prosecution. Moreover, the CDRs were filed in an editable format.

81. Therefore, the CDRs ought to have been proved along with a certificate under Section 65-B certificate of the competent person/nodal officer who was in control of the system which generated the CDRs. Furthermore, the failure to examine the nodal officers raises credible questions regarding the chain of custody of the electronic record. The said examination was essential to prove that the chain of custody was unbroken and remained coherent from the telecom companies to the investigating agency and further, to the Court.

82. Having said so, we are of the view that the failure of the prosecution to prove the CDRs shall not affect the outcome of the matter. The CDRs have been relied upon for corroborative purposes only, in order to prove the connection between the accused persons. Since, there is ample direct evidence to prove the conspiracy and inter-se connection between the accused persons, mere failure to prove an additional piece of evidence to prove the same fact shall not have any adverse impact on the outcome. After all, what is important is the quality, and not the quantity of evidence.

83. As far as the evidence related to CCTV footage and gait analysis report is concerned, there are two aspects which require discussion – *first*, whether re-enactment of a crime scene by the accused amounts to personally incriminating testimony barred by Article 20(3) of the Constitution and *second*, whether the CCTV footage and gait analysis report are admissible in evidence and can be relied upon.

84. On the first aspect, the High Court has given a conclusive finding that compelling an accused to re-enact or demonstrate a scene of occurrence amounts to compelling him to reveal personal knowledge and to be a witness against himself within the meaning of Article 20(3). Further, re-enactment of a scene of crime would amount to giving a confession to the police in police

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custody, which is inadmissible in evidence. The relevant portion of the impugned judgment is reproduced thus:

> "But in our view, obtaining voice sample is different from asking the accused to reenact the occurrence; Asking the accused to reenact the occurrence would amount to personal testimony. By reenacting the occurrence, the accused conveys information based on his personal knowledge and thereby becomes a witness against himself. It is not merely an identification data. For instance, if the accused is simply asked to walk, which would enable comparison of his gait appearance, he does not convey any information based on personal knowledge and it would be in the realm of 'identification data'. However, reenacting the occurrence certainly leads to revelation of facts within personal knowledge. Therefore, we are of the view that asking the accused to reenact the occurrence would amount to becoming a witness against himself, thereby offending Article 20(3) of the Constitution of India. That apart, the reenacting of the occurrence would amount to giving a confession to the police or a confession while in police custody. Therefore, it has no evidentiary value and it cannot be used for comparison with the video containing the recording of the actual occurrence, if any."

85. The exposure of an accused and the permissible limits of such exposure during investigation have been the subjects of constant evolution in the criminal jurisprudence. On a jurisprudential scale, we begin with Article 20(3) of the Constitution, which declares that no accused could be compelled to be a "*witness against himself*". Effectively, it indicates that an accused cannot be compelled to incriminate himself. The statutory manifestation of this concept is found in Sections 25 and 26 of Evidence Act[11], which render a confession made by an accused in police custody as inadmissible. A confession made in police custody is deemed to be involuntary or under compulsion and therefore, it is *per se* inadmissible. From time to time, we come across various investigative techniques which present renewed challenges and raise questions pertaining to the violation of these principles. Illustratively speaking, questions such as - *whether compelling an accused to provide finger prints would amount to compelling him to be a witness against himself*; or *whether compelling an accused to give his voice sample would amount to him being a witness against himself*; or *whether compelling an accused to provide his mobile password would amount to compulsion to be a witness against himself* etc., have arisen in the past and have been judicially settled. Such issues

[11] *Now Sections 23(1) and 23(2) of Bharatiya Sakshya Adhiniyam, 2023 ("BSA")*

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emerge primarily because the larger public interest in adopting technically advanced investigations often comes in a conflict with the constitutional and statutory rights of the accused which ensure fairness and lie at the heart of our criminal justice system. Therefore, such issues demand appropriate balance.

86. Invariably, the core test that has been applied in resolving these issues is whether the act in question merely requires an accused to act in a certain manner or to perform an act, without giving any personal testimony, or in alternative, whether it compels him to disclose incriminating information from his personal knowledge. If it is the former, the act is constitutionally valid as it merely amounts to assistance in the course of investigation and the act, in itself, does not amount to any personal testimony. However, if it is the latter, the act becomes constitutionally impermissible as it effectively compels an accused to be a "*witness against himself*".

87. In the present case, the police conducted an exercise of re-enactment or demonstration of the crime scene by involving the accused persons. A crime scene re-enactment is a technique which is gaining prominence in the investigation of heinous offences. On its own, a re-enactment exercise does not constitute any direct form of evidence of the offence, as it is essentially in the nature of recreated evidence. However, it serves the limited

purpose of explaining the physical attributes of the occurrence, such as place of occurrence, lighting conditions at the relevant point of time etc., as well as to visualize the manner of commission of the offence. It may not directly assist the Court in reaching any conclusion, but may help in the appreciation of the surrounding evidence on record, especially the visual evidence of the events.

88. The re-enactment or demonstration of an occurrence by an accused is often based on eye-witness accounts of the offence or on the basis of CCTV footage extracted from nearby cameras installed in public spaces. Nevertheless, it cannot be held as a general proposition that every re-enactment or demonstration of a crime scene *per se* amounts to personal testimony of the accused. If the re-enactment is merely based on a direction to walk or to act a certain way or to imitate a visual sequence, it does not necessarily involve any physical manifestation or disclosure of the personal knowledge of the accused. In that sense, it does not amount to any personal testimony. However, if the accused is somehow led into demonstrating the incriminating acts committed by him from his own knowledge, the same would amount to testimonial compulsion and would be squarely hit by Section 25 and 26 of Evidence Act. Therefore, it would be dangerous to lay down a general rule against the admissibility of evidence based on re-enactment or demonstration of the

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occurrence, as it would effectively kill a potent and scientific investigative technique. The right approach is to tread a proportionate path and see whether the re-enactment is merely a directed demonstration to analyse physical attributes of the suspects or a manifestation of the personal knowledge of the accused. Although, we must be mindful of the fact that inherently, by its very nature, an exercise of re-enactment of occurrence is carried out as per the directions given by the investigating officer and the re-enacted version does not amount to a personal version of the accused. Rather, it remains an enactment or demonstration of the version of the investigating officer. *Per se*, a re-enactment of an occurrence is merely 'created' document/evidence and on its own, it hardly proves anything. On the basis of such re-enactment, expert analysis such as gait analysis is carried out, which gives rise to a distinct piece of evidence, with distinct implications. Such expert evidence is not based on the personal testimony of the accused and is merely an analysis of the physical attributes of the accused, which could be used for the purpose of identification during trial. Thus, the thin line between 're-enactment' and 'evidence based on re-enactment' needs to be acknowledged.

89. Importantly, it needs to be noted that evidence based on a re-enactment or demonstration is not a substantive piece of evidence of the actual commission of the offence. It is merely

corroborative evidence which may be useful to corroborate the identities and physical attributes of the suspects, sequence of the alleged occurrence, physical attributes of the place of occurrence etc. On its own, re-enacted evidence cannot be made the basis to arrive at a finding of conviction.

90. In view of the above discussion, we are of the view that the High Court has committed an error in holding that re-enactment by the accused persons amounted to their personal testimonies within Article 20(3) of the Constitution. In fact, the accused persons have themselves questioned the gait analysis report on the ground that re-enactment carried out by them was artificial and was made to align with the movements shown in the CCTV footage and therefore, similarities were bound to emerge. It shows that the re-enactment by the accused persons was not based on their personal knowledge and it was artificially staged to draw some inferences regarding physical attributes of the accused persons. Such inferences regarding physical attributes are invariably drawn using other attributes such as voice sample, finger prints, thumb impressions, etc.

91. We may now come to the second aspect regarding electronic evidence in the present case i.e. whether the CCTV footage and gait analysis report are admissible in evidence and can be relied upon. Gait analysis is a scientific technique which

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is used to analyze the walk of a person and at times, also to examine the other physical attributes of human body such as motion, appearance etc. For decades now, evidence of gait analysis on the basis of acquaintance has been invariably used in criminal trials. In such evidence, a witness well acquainted with the accused steps in to identify the accused on the basis of his knowledge of the gait of the accused. Of late, gait analysis is being carried out by experts on the basis of visual/electronic evidence, such as CCTV footage. In this examination, the bodily movement of the suspect is captured in a re-enactment or demonstration video and the same is compared with the CCTV footage or other video of the actual occurrence. The experts generally step in to confirm 'similarities' between the persons seen in the two pieces of evidence, although it cannot be said with certainty that the two persons are exactly the same. It is for this reason that gait analysis reports serve as corroborative pieces of evidence, to fill in the gaps in the mind of the Judge by corroborating the remaining evidence of identity or eye witness accounts, and to resolve the last-minute doubts in the mind of the Judge before arriving at a final conclusion.

92. However, the gait analysis report must be based on a comparison of two admissible and reliable pieces of evidence. In other words, the re-enactment video and CCTV footage of actual occurrence must be proved first in a reliable sense. A comparison

of two unreliable pieces of evidence cannot produce a reliable piece of evidence. We say so because in the present case, the gait analysis has been carried out on the basis of the re-enactment video and CCTV footage obtained from Shrestha Subhashree Apartment. However, we find ourselves unable to place reliance on the CCTV footage because of serious apprehensions regarding mishandling and inconsistent chain of custody. The CCTV footage was extracted from the camera installed at Shrestha Subhashree Apartment and as per PW57, it was copied in a pen drive by one police official, namely PC Parthiban, on the date of occurrence itself i.e. 14.09.2013. He kept the pen drive with himself and was never examined as a witness by the prosecution. The investigating officer failed to act on the CCTV footage for over a month, and on 09.10.2013, PW55 recovered the hard disk (M.O.9) as per memo Ex. P28. The said hard disk was forwarded to FSL and was returned as unexamined for want of DVR. On 26.10.2023, PW56 (new I.O.) learnt that DVR was already scrapped and a new DVR system had been installed there. Thus, what the investigating agency was left with was a hard disk purportedly containing the CCTV footage of the camera installed at Shrestha Subhashree Apartment, without any DVR to confirm that the hard disk was indeed extracted from the video recorder of the same camera.

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93. The investigating agency tried to move on from this roadblock and sent the hard disk/M.O.9 to a private agency, namely Truth Labs. Importantly, this referral was not made for analyzing the CCTV footage or for confirming the genuineness of the footage. Rather, it was sent for conducting gait analysis of the persons seen in the footage. PW54 extracted the footage from the hard disk and took a copy in a USB drive. She produced the said copy in the Court along with her report of gait analysis. When the accused persons insisted for the production of cloned copies from the hard disk, it was informed that the hard disk had become corrupt. Although, copies made from the existing copy in the USB drive were produced in the Court. A careful examination of these circumstances would suggest that the investigating officers have completely mishandled the electronic evidence and have failed to maintain the chain of custody. The camera was left unattended for over a month, hard disk was extracted after an unexplained delay, DVR was destroyed due to inaction on the part of the investigating agency and hard disk was found to be corrupt when specific directions were given to prepare clone copies from the hard disk. In such circumstances, the overwhelming possibility that the gait analysis report has been prepared on the basis of the copy of the CCTV footage and not the original footage, cannot be denied. The possibility that the copy obtained by PC Parthiban was used to conduct scientific

examination, cannot be denied either, as the hard disk was corrupted. A reasonable doubt, therefore, emerges in view of the distorted chain of custody and destruction/corruption of the original hard disk and DVR. In such circumstances, merely because the copied footage was played in the Trial Court, it cannot be held that the footage was proved in accordance with the law. Therefore, we find it dangerous to place reliance on the CCTV footage or the gait analysis report prepared on that basis. The High Court has rightly rejected this piece of evidence.

94. However, as noted in case of CDRs, rejection of gait analysis report shall not affect the outcome of the case. For, the report has been relied upon for purely corroborative purposes to prove the identities of A8 and A9, and in view of ample direct and circumstantial evidence on record, both oral and documentary, we feel no need for corroboration on the basis of gait analysis. The identities of the accused persons have been established to the satisfaction of the Court by credible eye witness accounts, as discussed above.

95. We shall now move from the evidentiary analysis to the motive for the commission of the offence. The prosecution has led extensive oral and documentary evidence to prove that there was a prolonged land dispute between the parties; that various complaints regarding trespass were filed by the deceased or his

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family members against the accused persons; that an FIR was also registered by the Land Grabbing Cell of the State Police, and that the fencing was disturbed after the registration of FIR, for which another FIR was lodged. The evidence of motive aligns with the eye witness accounts of the conspiracy meetings wherein similar discussions took place. There is ample evidence on record to show the motive of the accused persons and it is trite law that motive assumes significance in a case based on substantive evidence. Conversely, a complete absence of motive may have played as a factor in favour of the accused persons, however, such is not the case here. The position of law in this regard was succinctly discussed by this Court in a recent pronouncement in ***Vaibhav v. State of Maharashtra***[12]. The relevant extract thereof reads as:

> "23. We may now come to the next aspect of the case i.e. absence of motive and consequence thereof. It is trite law that in a case based on circumstantial evidence, motive is relevant. However, it is not conclusive of the matter. There is no rule of law that the absence of motive would ipso facto dismember the chain of evidence and would lead to automatic acquittal of the accused. It is so because the weight of other evidence needs to be seen and if the remaining evidence is sufficient to prove

[12] 2025 INSC 800

> guilt, motive may not hold relevance. But a complete absence of motive is certainly a circumstance which may weigh in favour of the accused. During appreciation of evidence wherein favourable and unfavourable circumstances are sifted and weighed against each other, this circumstance ought to be incorporated as one leaning in favour of the accused."

96. Thus, the motive established by the prosecution further fortifies the case of the prosecution and lends credence to the finding of guilt of the accused persons on the basis of other evidence on record.

97. In addition to the aforementioned infirmities in the impugned judgment, we feel constrained to note that the High Court has appreciated the entire evidence on an artificial standard. We are afraid, the High Court has introduced numerous fictional probabilities in the sequence of events, without being supported by the record and cross-examination of the concerned witnesses. Various aspects such as, the manner in which a public person should behave; the manner in which the conspirators should behave while discussing the conspiracy, the impossibility of a conspiracy being discussed in front of third persons; the potential of eye witnesses to actually decipher the conversations between the accused persons; the exchange of money in the

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presence of stranger eyes; low economic profiles of certain witnesses etc., have been assessed in a completely subjective manner, detached from the objective explanations furnished by the prosecution on all such aspects. No doubt, such aspects are relevant in examining the evidence in a criminal case, however, the Court cannot detach itself from the explanations on record and cannot dismiss them in a subjective manner. On conspiracy, for instance, the High Court has proceeded to lay down general statements of law to the effect that a conspiracy is always hatched in secrecy and cannot be heard by third persons. It went to the extent of calling it an "*insult to the criminal justice system*" if it is believed that the conspiracy was discussed in the presence of eye witnesses. We are a little taken back with the sweeping nature of remarks made in the impugned judgment. Effectively, to say so would mean that there could possibly never be any direct evidence of conspiracy. We often find ourselves reiterating that conspiracies are generally hatched in secrecy, however, it does not mean that direct evidence of conspiracy is an impossibility, or that such evidence would get rejected on this notion alone.

98. The phrase '*beyond reasonable doubt'*, which marks the standard of proof for the prosecution in a criminal case, is a potent phrase. It does not mean any and every doubt. Rather, it means a doubt which is so strong and reasonable that it effectively creates space for an alternate theory in the mind of the

Judge. Unsurprisingly, ordinary doubts are bound to emerge in a case of this nature where the transaction and witnesses are scattered across a wide spectrum. The job of a criminal court is not to order lose acquittals by entertaining such vague and ordinary doubts, convoluted theories and suppositions. In the present case, the accused persons have conveniently refrained from leading counter evidence on various aspects, such as money trail, leaves taken by A4, his visit to Chennai etc. They also failed to advance plausible explanations qua the incriminating evidence against them. One of the accused persons attempted to introduce a new fact and went to the extent of calling the death of Dr. Subbaiah as an 'accident', and led no evidence to prove it. Probably, counter evidence on such aspects could have created reasonable doubts in the mind of the Court. When a party is in a position to raise doubts and refrains from doing so, *what does it mean?* The only reasonable inference is of the falsity of the theories propagated by the accused persons. In such cases, the Court is not expected to import its own doubts, without being supported by the manner in which the case has been defended by the accused persons. The dangers associated with the lose application of the principle of '*beyond reasonable doubt'* have been discussed on various occasions by this Court. We would not like to prolong our judgment by reiterating once again, and

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suffice to note that a lose acquittal of a guilty person is as dangerous as the conviction of an innocent.

99. We may now, with a renewed hope, discuss and reiterate a statement of law which has been reiterated innumerous times by this Court in the past. The job of an Appellate Court is not to automatically enter into reappreciation of evidence by force of habit. It is to examine whether the Trial Court has committed any perversity or illegality in the appreciation of evidence or has rendered completely erroneous findings. Until and unless the findings of the Trial Court are held to be erroneous or perverse or illegal or impossible, the Appellate Court is not expected to convert the appeal into a re-trial. Naturally, there is nothing unusual if the Appellate Court feels that it might have taken a different view if the trial was conducted by it. However, that is not enough to reverse the findings of the Trial Court. As long as the view taken by the Trial Court is a legally possible view, mere availability of an alternate view is not enough to reverse such view of the Trial Court. What the High Court has done in the present case is to replace the legally possible view of the Trial Court with one of its own. The Trial Court had conducted a comprehensive appreciation of the evidence on record and had arrived at the finding of guilt of the accused persons. The High Court reappreciated the entire evidence, without actually demonstrating any acceptable perversity or illegality in the view

of the Trial Court. The respondents have beseeched this Court to observe the limitations applicable to Appellate Courts, without realizing that this Court is bound to analyze whether those limits were observed by the High Court in the first place.

100. In view of the foregoing discussion, we are of the considered opinion that the High Court has committed a grave error in reversing the view of the Trial Court. Even without regard to the breach of principles governing exercise of appellate powers, the impugned judgment is unsustainable on account of erroneous appreciation of evidence and for the reasons mentioned above. We find that the findings of the Trial Court are legally sustainable and stand restored. The judgment of the Trial Court stands restored, and the conviction of the respondents is upheld. Accordingly, A1/P. Ponnusamy, A2/Mary Pushpam and A3/Basil P.M. are convicted for the commission of offences punishable under Sections 302 read with 120-B and 120-B of IPC; A4/Boris P.M. is convicted for the commission of offences punishable under Sections 302 read with120-B and 120-B read with 109 of IPC; A5/B. William, A6/Yesurajan and A7/Dr. James Satish Kumar are convicted for the commission of offences punishable under Sections 302 read with 120-B and 120-B of IPC; A8/Murugan and A9/Selva Prakash are convicted for the commission of offences punishable under Sections 302,

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Section 302 read with 34/120-B, Section 341 and 120-B of IPC. All the sentences shall run concurrently.

101. The State has already made a statement to the effect that capital punishment is not pressed for in the present matter. Thus, all the respondents/convicts are hereby sentenced to undergo imprisonment for life along with fines imposed by the Trial Court, for the offences mentioned above. The default sentences, in case of default in payment of fine shall also remain the same.

102. We do not wish to conclude our judgment by merely recording a conviction. Though the seriousness of the offence cannot be understated, we believe that this Court has a slightly larger role to play and thus, would like to make certain observations. Parents love their children irrespective of their age and continue to support them even when no one else does. In their advanced years, they fail to question or resist their actions out of affection and emotional dependence, believing it to be their duty to protect and support them under all circumstances. It is in this background that the role of A1 and A2 is required to be appreciated.

103. The actions of A1 and A2, being the parents of A3 and A4, appear to have stemmed from a deeply misplaced sense of parental obligation and emotional attachment towards securing the perceived welfare and future of their children as the parental

instinct to protect and provide is one of the most powerful human impulses which can, at times, cloud judgment and rational thinking. In the present case, A1 and A2 played a very limited role and acted largely in accordance with the directions of A3 and A4. They joined the conspiracy at the instance of A3, and the money from the account of A1 was utilized for the same. It must also be borne in mind that A2 is a woman, and both A1 and A2 are in the advanced years of their lives. We would like to make it clear that these observations are not intended to condone their actions, but are made only for the limited purpose of appreciating the human factors underlying their conduct.

104. At this juncture, we would like to refer to the observations made by this Court in the context of reformation in ***Subha @ Shubhashankar vs. State of Karnataka and another 2025 SCC Online SC 1426.***

> "13. The Constitution of India (hereinafter referred to as the "**Constitution**") which is the supreme law of the land, encourages the reformation of individuals, by granting them a new lease of life. This is personified by Articles 72 and 161 of the Constitution which empowers the constitutional authorities to grant pardon to convicts. In light of this, we would like to specifically elaborate on the underlying principles pertaining to the powers vested with the Governor under Article 161 of the Constitution.

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Article 161 of the Constitution

"161. Power of Governor to grant pardons, etc., and to suspend, remit or commute sentences in certain cases.—

The Governor of a State shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends."

14. Article 161 of the Constitution has an in-built laudable objective. This Article emphasizes the role of the State to facilitate an offender to be reintegrated into society, after realizing his mistake. This power is sovereign, and is to be exercised on the advice of the Council of Ministers. Thus, it grants the Constitutional Court only a limited power of judicial review.

15. Though the power conferred under Article 161 of the Constitution might sound similar to the statutory powers available under Sections 473 and 474 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as the "**BNSS**"), corresponding to Sections 432 and 433 of the Criminal Procedure Code, 1973 (hereinafter referred to as the "**Cr.P.C**.'), its powers are much wider. While statutory provisions govern classes of convicts collectively, the prerogative of pardon is generally exercised discretely in specific instances. Therefore, the scope of this power is much broader and is to be applied on a case-to-case basis. A constitutional power is fundamentally different and distinct from a statutory one. While statutory

powers are derived from laws enacted by legislatures and remain subject to amendment or repeal, constitutional powers originate from the Constitution itself. Therefore, the power to pardon, reprieve, respite, remit etc. forms part of the constitutional ethos, goal and culture. Unlike statutory provisions, which are tailored to address specific scenarios or population demographics, constitutional powers embody the State's commitment to a broader ethical vision - one that prioritizes humanity and equity, even in the administration of punishment.

Maru Ram v. Union of India, (1981) 1 SCC 107

"72. We conclude by formulating our findings:

(1) We repulse all the thrusts on the vires of Section 433-A. Maybe, penologically the prolonged term prescribed by the section is supererogative. If we had our druthers, we would have negatived the need for a fourteen-year gestation for reformation. But ours is to construe, not construct, to decode, not to make a code.

(2) We affirm the current supremacy of Section 433-A over the Remission Rules and short-sentencing statutes made by the various States.

(3) We uphold all remissions and short-sentencing passed under Articles 72 and 161 of the Constitution but release will follow, in life sentence cases, only on government making in order en masse or individually, in that behalf.

(4) We hold that Section 432 and Section 433 are not a manifestation of Articles 72 and 161

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of the Constitution but a separate, though similar power, and Section 433-A, by nullifying wholly or partially these prior provisions does not violate or detract from the full operation of the constitutional power to pardon, commute and the like."

(emphasis supplied)

Shatrughan Chauhan v. Union of India, (2014) 3 SCC 1

"16. Articles 72/161 of the Constitution entail remedy to all the convicts and are not limited to only death sentence cases and must be understood accordingly. It contains the power of reprieve, remission, commutation and pardon for all offences, though death sentence cases invoke the strongest sentiment since it is the only sentence that cannot be undone once it is executed.

17. Shri Andhyarujina, learned Senior Counsel, who assisted the Court as amicus commenced his submissions by pointing out that the power reposed in the President under Article 72 and the Governor under Article 161 of the Constitution is not a matter of grace or mercy, but is a constitutional duty of great significance and the same has to be exercised with great care and circumspection keeping in view the larger public interest. He referred to the judgment of the US Supreme Court in Biddle v. Perovich [71 L.Ed. 1161 : 274 US 480 (1927)] as also the judgments of this Court in Kehar Singh v. Union of India, (1989) 1 SCC 204 : 1989 SCC (Cri) 86 and Epuru Sudhakar v. State of A.P., (2006) 8 SCC 161 : (2006) 3 SCC (Cri) 438.

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19. In concise, the power vested in the President under Article 72 and the Governor under Article 161 of the Constitution is a constitutional duty. As a result, it is neither a matter of grace nor a matter of privilege but is an important constitutional responsibility reposed by the People in the highest authority. The power of pardon is essentially an executive action, which needs to be exercised in the aid of justice and not in defiance of it. Further, it is well settled that the power under Articles 72/161 of the Constitution of India is to be exercised on the aid and advice of the Council of Ministers.

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47. It is clear that after the completion of the judicial process, if the convict files a mercy petition to the Governor/President, it is incumbent on the authorities to dispose of the same expeditiously. Though no time-limit can be fixed for the Governor and the President, it is the duty of the executive to expedite the matter at every stage viz. calling for the records, orders and documents filed in the court, preparation of the note for approval of the Minister concerned, and the ultimate decision of the constitutional authorities. This Court, in Triveniben v. State of Gujarat, (1989) 1 SCC 678 : 1989 SCC (Cri) 248, further held that in doing so, if it is established that there was prolonged delay in the execution of death sentence, it is an important and relevant

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> consideration for determining whether the sentence should be allowed to be executed or not."
>
> (emphasis supplied)
>
> 16. From the above, we would only clarify that, notwithstanding the existence of a Circular or a Rule introduced by way of a statutory power under Section 473 of the BNSS, the constitutional powers granted under Article 161 of the Constitution, can also be exercised in a given case. Thus, even in cases where statutory mechanisms exist, the constitutional mandate under Article 161 of the Constitution remains inviolable and exercisable, in order to ensure that justice in individual cases is not constrained by procedural norms."

105. It is in the backdrop of the aforesaid constitutional principles, coupled with the peculiar mitigating circumstances noticed in the present case, that we deem it appropriate to facilitate the right of A1 and A2 to seek pardon by permitting them to file appropriate petitions before His Excellency, the Hon'ble Governor of Tamil Nadu. We would only request the constitutional authority to consider the same, which we hope and trust shall be done by taking note of the relevant circumstances mentioned above.

106. Accordingly, we grant eight weeks' time from the date of this judgment to A1 and A2 to file appropriate petitions seeking invocation of the power of pardon under Article 161 of the Constitution of India. Till such petitions are duly considered and

decided, A1 and A2 shall not be arrested and the sentence imposed upon them shall remain suspended.

107. Save and except A1 and A2, all the respondents are directed to surrender before the Trial Court within two weeks for serving the sentences. Trial Court shall be at liberty to initiate coercive measures in case of non-compliance.

108. We record our appreciation for the able assistance rendered by the counsel for both sides.

109. The captioned appeals stand allowed in the aforesaid terms. Interim application(s), if any, shall also stand disposed.

....……J.
[M. M. SUNDRESH]

....……J.
[SATISH CHANDRA SHARMA]

New Delhi
May 19, 2026.