

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**TUESDAY, THE TWENTY SECOND DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY SIX**

PRESENT

**THE HONOURABLE SRI JUSTICE K.LAKSHMAN
AND
THE HONOURABLE SMT JUSTICE K. SUJANA**

CRIMINAL APPEAL NO: 683 OF 2025

Criminal Appeal filed under Section 415(2) of BNSS against the Judgment dated 30.05.2025 passed in Sessions Case No. 04 of 2021 on the file of the Court of the Principal District and Sessions Judge, Jagitial.

Between:

Nakka Vamshi, S/o. Anjaiah, age 25 years, Madiga, R/o. H.No.6-11/2,
R/o.Laxmipur village, Jagitial Mandal and District.

...Appellant /Sole Accused

AND

State of Telangana, Rep.by its Public Prosecutor, High Court, Hyderabad.

...Respondent

I.A. NO: 1 OF 2025

The Interlocutory Application filed under section 430(1) of BNSS Act for the grounds stated in the act for the grounds stated in the criminal Appeal, the praying that in the circumstances stated in the Criminal Appeal, the High Court may be pleased to enlarge the Petitioner/Appellant on Bail in Sessions Case No.04/2021 passed by the court of the Principal District and Sessions Judge, Jagitial, by suspending the sentence imposed to the Petitioner/ Appellant vide Judgment dated 30.5.2025 pending disposal of the Criminal Appeal.

**Counsel for the Appellant : Sri C Raghu, Senior Counsel representing
Sri Kona N.D.V.Ramana Rao**

**Counsel for the Respondent : Sri RamaChandra Reddy, Additional
Public Prosecutor**

The Court delivered the following: Judgment

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

THE HONOURABLE SRI JUSTICE K.LAKSHMAN

AND

THE HONOURABLE SMT. JUSTICE K. SUJANA

CRIMINAL APPEAL.No.683 of 2025

CNR.No.HBHC010376392025

DATED: 22/9/26

Reserved on: 20.08.2026

Pronounced on: 22/9/26

Uploaded on:

Between:

Nakka Vamshi

... Appellant/Sole accused

AND

The State of Telangana

...Respondent

JUDGMENT: *(as per Hon'ble Smt. Justice K. Sujana)*

This Criminal Appeal is filed challenging the judgment dated 30.05.2025 passed by the learned Principal District and Sessions Judge, Jagtial, in S.C.No.04 of 2021, whereby the appellant/accused was convicted for the offences punishable under Sections 302 and 201 of the Indian Penal Code and

sentenced to undergo imprisonment for life and to pay a fine of Rs.2,000/-, in default to suffer simple imprisonment for three months, for the offence under Section 302 IPC and to undergo simple imprisonment for three years and to pay a fine of Rs.1,000/-, in default to suffer simple imprisonment for two months, for the offence under Section 201 IPC.

2. The prosecution case, in brief, is that the deceased, Manda Swapna, was a divorcee having one son and was acquainted with the appellant/accused, who was a student and also used to attend coolie work for his livelihood. According to the prosecution, the appellant went to Hyderabad on 04.07.2018 for his livelihood and worked at Ratnadeep Super Market, Medchal, Hyderabad. During that period, the appellant and deceased used to meet at various places in Hyderabad and developed a relationship with each other. It is alleged that they had sexual intercourse and subsequently decided to marry.

3. It is further the case of the prosecution that thereafter the appellant left his job and returned to Laxmipur village. The deceased allegedly used to call the appellant over phone and insist that he should marry her. According to the

prosecution, the appellant became irritated with her conduct and decided to eliminate her. In furtherance of the said intention, the appellant allegedly called the deceased on 19.10.2018 to come to his village.

4. It is alleged that on 20.10.2018, the deceased came to Jagtial and boarded a private bus to proceed towards Vengalapur village. The driver and conductor of the said bus, who were examined during investigation as LWs.14 and 15, allegedly recorded their statements under Section 164 Cr.P.C. before the learned Magistrate. According to the said statements, the deceased disclosed that her name was Swapna and that she was going to meet Vamshi, with whom she was in love. When the bus reached Peddamma Gudi of Vengalapur village, she allegedly got down from the bus and was received by a male person wearing a pink-coloured towel around his neck.

5. According to the prosecution, the said person was the appellant/accused, who took the deceased to a land situated near Bandam Bore and cartway bushes, where there would ordinarily be no public presence. It is alleged that both of them talked for some time and thereafter quarrelled with each

other. The prosecution further alleges that while the deceased was taking rest, the appellant intentionally caused her death by tying a towel around her neck and strangulating her and thereafter attempted to cause disappearance of the evidence of the offence.

6. On receiving information regarding the presence of an unidentified female dead body in the shivar of Vengalapur village, P.W.1, the VRO of Gollapalli village, lodged Ex.P1 report, based on which initially a case was registered under Section 174 Cr.P.C. The police visited the scene of offence, conducted scene observation and inquest proceedings, photographed and videographed the dead body and recorded the statements of the witnesses. As the dead body was in a decomposed condition, post-mortem examination was conducted at the scene.

7. P.W.10, the Medical Officer, conducted the post-mortem examination and found a ligature mark around the neck measuring approximately 20 inches in length and one inch in width, which was horizontal and running through the middle of the neck and was suggestive of strangulation or throttling. The hyoid bone was preserved for forensic examination.

Subsequently, on receipt of the FSL report, P.W.10 gave his final opinion under Ex.P8 that the cause of death was "due to asphyxia due to strangulation". On the basis of the medical opinion, the case was altered from Section 174 Cr.P.C. to Section 302 IPC.

8. During investigation, the identity of the deceased was established as Manda Swapna with the assistance of P.Ws.5 and 8. The Investigating Officer also examined the persons acquainted with the deceased and collected the relevant call data records. On 01.11.2018, the appellant was apprehended and, according to the prosecution, in the presence of mediators, he made a disclosure statement and led the police to the scene of offence, from where a towel allegedly used in the commission of the offence and the mobile phone of the deceased were recovered from nearby bushes. His mobile phone was also seized from his possession.

9. The prosecution further relied upon the statements of LWs.14 and 15, the driver and conductor of the private bus, recorded under Section 164 Cr.P.C. According to the prosecution, both witnesses had stated that they could identify the person who received the deceased at Vengalapur.

village. As LWs.14 and 15 died before they could enter the witness box, their statements were marked as Exs.P22 and P23 through P.W.14, the learned Magistrate who recorded the said statements. A Test Identification Parade was also conducted by P.W.14, in which P.Ws.5 and 7 and LWs.14 and 15 allegedly identified the appellant.

10. The case was taken on file for the offences punishable under Sections 302, 201 and 404 of IPC and, after compliance with Section 207 of Cr.P.C., was committed to the Court of Sessions. Charges were framed against the accused for the said offences. The accused pleaded not guilty and claimed to be tried.

11. In order to substantiate its case, the prosecution examined P.Ws.1 to 14, marked Exs.P1 to P23 and produced M.Os.1 to 11. After completion of the prosecution evidence, the accused was examined under Section 313 Cr.P.C. with reference to the incriminating circumstances appearing against him. He denied the allegations and did not adduce any defence evidence.

12. The trial Court, after appreciating the oral and documentary evidence, held that the prosecution had

established the homicidal death of the deceased through the evidence of P.W.10 and Exs.P7 and P8. The trial Court further relied upon the evidence of P.Ws.5 and 7, the Section 164 Cr.P.C. statements of LWs.14 and 15, Ex.P21 - Test Identification Parade proceedings, and the recovery of the towel at the instance of the accused, and concluded that the last-seen theory and the chain of circumstances connected the appellant with the offence.

13. The trial Court further held that the recovery of M.O.6/towel at the instance of the accused, coupled with the evidence of P.W.9 and the Investigating Officer, established the offence under Section 201 of IPC. However, insofar as Section 404 of IPC was concerned, the trial Court held that the prosecution failed to establish that M.O.9/mobile phone belonged to the deceased and, accordingly, acquitted the accused of the said offence.

14. Consequently, the trial Court convicted the appellant under Sections 302 and 201 IPC, convicted for the offences punishable under Sections 302 and 201 of the Indian Penal Code and sentenced to undergo imprisonment for life and to pay a fine of Rs.2,000/-, in default to suffer simple

imprisonment for three months, for the offence under Section 302 of IPC and to undergo simple imprisonment for three years and to pay a fine of Rs.1,000/-, in default to suffer simple imprisonment for two months, for the offence under Section 201 of IPC. Aggrieved thereby, the present Criminal Appeal has been preferred.

15. Heard Sri C. Raghu, learned Senior Counsel representing Sri Kona N.D.V. Ramana Rao, learned counsel appearing on behalf of the appellant and Sri M. Ramachandra Reddy, learned Additional Public Prosecutor appearing for the respondent-State.

16. Learned Senior Counsel appearing for the appellant submitted that the trial Court erred in convicting the appellant as the prosecution failed to establish his guilt beyond reasonable doubt and that the entire prosecution case rests upon circumstantial evidence and that the circumstances relied upon by the prosecution do not form a complete and unbroken chain leading to the conclusion that the appellant alone committed the offence. He further submitted that the evidence of P.Ws.5 and 7, who are stated to be colony elders, does not establish that they had witnessed

the deceased being taken by the appellant on the date of occurrence. Their evidence, at the most, establishes that the appellant and deceased were acquainted with each other and that they intended to marry, which by itself cannot connect the appellant with the homicidal death of the deceased.

17. Learned Senior Counsel contended that the trial Court principally relied upon the statements of LWs.14 and 15, the driver and conductor of the bus, recorded under Section 164 Cr.P.C. However, both witnesses died before entering the witness box and, therefore, their statements were not subjected to cross-examination and that such statements could not be treated as substantive evidence of the fact that the appellant was the person who received the deceased at Vengalapur village.

18. Learned Senior counsel further submitted that the Test Identification Parade was not conducted in a proper manner and that the persons who participated in the parade were not of similar features and appearance. Therefore, the identification proceedings could not safely be relied upon to establish the identity of the appellant. Further, he challenged the recovery of M.O.6/towel, contending that the alleged

disclosure and recovery do not establish that the towel was used in the commission of the offence and that the prosecution failed to establish any scientific connection between the towel and the deceased and that the recovery, by itself, cannot complete the chain of circumstances.

19. Learned Senior counsel further contended that although P.W.10 opined that the cause of death was asphyxia due to strangulation, the medical evidence does not establish the identity of the assailant. He contended that the presence of a ligature mark and the medical opinion regarding strangulation only establish the cause of death and do not, by themselves, connect the appellant with the offence. Therefore, he submitted that the prosecution failed to establish the circumstances of motive, last seen, identification and recovery beyond reasonable doubt and that the circumstances relied upon by the trial Court are capable of more than one interpretation. He contended that the benefit of doubt ought to have been extended to the appellant and prayed for setting aside the conviction and sentence and acquitting him.

20. In support of his submissions, he relied upon the judgment of the Hon'ble Supreme Court in **George and others**

v. State of Kerala and another¹, wherein paragraph No.36, it is held as follows:

"36. We may now turn to the evidence of PW 50, detailed earlier. From the judgment of the trial court we notice that the substantial parts of its comments, (quoted earlier) are based on his statement recorded under Section 164 CrPC and not his evidence in court. The said statement was treated as substantive evidence; as would be evident from the following, amongst other observations made by the learned trial court:

"If Ext. P-42 (the statement recorded under Section 164 CrPC) is found to be a genuine statement it can be used as an important piece of evidence to connect the accused with the crime."

In making the above and similar comments the trial court again ignored a fundamental rule of criminal jurisprudence that a statement of a witness recorded under Section 164 CrPC cannot be used as substantive evidence and can be used only for the purpose of contradicting or corroborating him. Instead of appreciating the evidence of PW 50 from that perspective the trial court confined its attention mainly to his statement so recorded and discredited him. This legal infirmity apart, factually also the trial court committed patent errors. As earlier noticed, one of the grounds for disbelieving him was that in the trip-sheet the name of the person who performed the journey, namely, A-1 was not shown. If the trial court had cared to look into the other trip-sheets which form part of Ext. P-54 it would have found that in none of them the name of the person who hired the car is mentioned.

¹ (1998) 4 SCC 605

The trial court was, therefore, not at all justified in commenting upon such non-mentioning of the name of the hirer and concluding therefrom that the document was suspect. The comments of the trial court that PW 50 made the statement before the Magistrate (Ext. P-42) to oblige the police as his brother was arrested in connection with an excise case is also without any basis whatsoever. In drawing the above inference the trial court was much influenced by the fact that the car in question, namely, KEK 3114 was seized by the police on 31-5-1990 and that it was released on 28-6-1990. According to the trial court it was wrongfully detained by the police for such a long period to compel PW 50 to make a statement according to its dictate. Once a car is seized in connection with a case it can be returned pursuant to the order of a competent court only and there is nothing on record to indicate that in spite of such an order the car was not returned so as to entitle the trial court to comment that the long detention of the car was itself a suspicious circumstance. Having gone through the evidence of PW 50 we find that each of the reasons canvassed by the trial court for disbelieving PW 50 is either legally unsustainable or factually incorrect."

21. He further relied upon the judgment of the Hon'ble Supreme Court in **Pandurang Kalu Patil and another v. State of Maharashtra**², wherein paragraphs Nos.5, 14 and 15, it is held as follows:

"5. Even the recent decision in *State of Maharashtra v. Damu* [(2000) 6 SCC 269 : 2000 SCC (Cri) 1088] this Court followed

² AIR 2002 SUPREME COURT 733

Pulukuri Kottaya [AIR 1947 PC 67 : 48 Cri LJ 533] with approval. The fallacy committed by the Division Bench as per the impugned judgment is possibly on account of truncating the word "fact" in Section 27 of the Evidence Act from the adjoining word "discovered". The essence of Section 27 is that it was enacted as a proviso to the two preceding sections (see Sections 25 and 26) which imposed a complete ban on the admissibility of any confession made by an accused either to the police or to anyone while the accused is in police custody. The object of making a provision in Section 27 was to permit a certain portion of the statement made by an accused to a police officer admissible in evidence whether or not such statement is confessional or non-confessional. Nonetheless, the ban against admissibility would stand lifted if the statement distinctly related to a discovery of fact. A fact can be discovered by the police (investigating officer) pursuant to an information elicited from the accused if such disclosure was followed by one or more of a variety of causes. Recovery of an object is only one such cause. Recovery, or even production of object by itself need not necessarily result in discovery of a fact. That is why Sir John Beaumont said in Pulukuri Kottaya [AIR 1947 PC 67 : 48 Cri LJ 533] that (AIR p. 70, para 10) "it is fallacious to treat the 'fact discovered' within the section as equivalent to the object produced". The following sentence of the learned Law Lord in the said decision, though terse, is eloquent in conveying the message highlighting the pith of the ratio: (AIR p. 70, para 10)

"Information supplied by a person in custody that 'I will produce a knife concealed in the roof of my house' does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved

to have been used in the commission of the offence,
the fact discovered is very relevant.”

(emphasis supplied)

14. Learned counsel then contended that the High Court had gone wrong in relying on the evidence of PW 18 Dy SP who said that when A-2 was arrested and interrogated, a gun was disinterred pursuant to the information supplied by him. It is on the said aspect that the Division Bench of the High Court considered the ratio in Pudukuri Kottaya [AIR 1947 PC 67 : 48 Cri LJ 533] . What PW 18 said in the Court is that the statement made by A-2 had been recorded in Ext. 91 memorandum. We have noticed from the said memorandum the following statement of A-2 as recorded therein: “I have kept the firearm concealed behind the old house in a heap of wood.”

15. The fact discovered by PW 18 is certainly not the gun. The fact discovered is that A-2 had concealed the gun (Article 5/2) behind the old house under a heap of wood. It was the same gun with which A-2 had fired at PW 2 and that aspect has been proved with the help of other evidence.”

22. *Per contra*, learned Additional Public Prosecutor appearing for the respondent-State supported the judgment of the trial Court and submitted that the prosecution had established the guilt of the appellant beyond reasonable doubt through a complete chain of circumstantial evidence. He further submitted that the evidence of P.Ws.5 and 7 establishes the close relationship between the deceased and the appellant and that the deceased had left the house to meet the appellant pursuant to their decision to marry and that the

evidence of the bus driver and conductor, as recorded under Section 164 Cr.P.C., establishes that the deceased travelled by bus on the date of occurrence and was received by the appellant at Vengalapur village.

23. Learned Additional Public Prosecutor submitted that LWs.14 and 15 died before they could be examined in Court and, therefore, their statements recorded under Section 164 Cr.P.C. were rightly brought on record through P.W.14, the learned Magistrate who recorded them and that the said statements are corroborated by the Test Identification Parade proceedings, wherein the appellant was identified by the relevant witnesses. He further submitted that the medical evidence of P.W.10 and Exs.P7 and P8 establishes that the death of deceased is a homicidal death due to asphyxia caused by strangulation and that the medical evidence is consistent with the prosecution case regarding the manner in which the deceased was killed.

24. Learned Additional Public Prosecutor contended that the recovery of M.O.6/towel at the instance of the appellant is an important incriminating circumstance. The recovery was proved through P.W.9 and the Investigating Officer and

corroborates the prosecution version regarding the manner of commission of the offence. He further contended that the last-seen circumstance assumes significance as the deceased was seen proceeding to meet the appellant on the date of occurrence and was subsequently found dead and that the time gap between the deceased being last seen with the appellant and the discovery of her dead body was sufficiently proximate and that the appellant failed to furnish any explanation regarding the circumstances in which the deceased died.

25. Learned Additional Public Prosecutor further contended that the discrepancies and omissions pointed out by the defence are minor in nature and do not affect the core of the prosecution case and that when the evidence of P.Ws.5, 7, 9 and 10, the evidence of the Investigating Officer, the Section 164 Cr.P.C statements of LWs.14 and 15, the Test Identification Parade proceedings and the recovery of M.O.6 are considered cumulatively, they establish a complete chain of circumstances connecting the appellant with the homicidal death of the deceased. Therefore, he prayed the Court to dismiss the Criminal Appeal.

26. In support of the submissions of the learned Additional Public Prosecutor, he relied upon the judgment of the Hon'ble Supreme Court in **Vijaya Singh and another v. State of Uttarakhand**³, wherein paragraph No.31, it is held as follows:

"31. Having said so, we deem it fit to observe that a statement under Section 164 CrPC cannot be discarded at the drop of a hat and on a mere statement of the witness that it was not recorded correctly. For, a judicial satisfaction of the Magistrate, to the effect that the statement being recorded is the correct version of the facts stated by the witness, forms part of every such statement and a higher burden must be placed upon the witness to retract from the same. To permit retraction by a witness from a signed statement recorded before the Magistrate on flimsy grounds or on mere assertions would effectively negate the difference between a statement recorded by the police officer and that recorded by the Judicial Magistrate. In the present matter, there is no reasonable ground to reject the statements recorded under Section 164 CrPC and reliance has correctly been placed upon the said statements by the courts below."

27. The following points arise for consideration in the Criminal Appeal:

- i. Whether the prosecution has proved beyond reasonable doubt that the death of Manda Swapna was homicidal and that the appellant/accused was responsible for causing her death by strangulation, thereby committing the offence punishable under Section 302 IPC?

³ 2024 INSC 905

- ii. Whether the prosecution has established beyond reasonable doubt that the appellant caused disappearance of evidence of the offence, or gave false information with the intention of screening himself from legal punishment, thereby committing the offence punishable under Section 201 IPC?
- iii. Whether the judgment of conviction and sentence passed by the trial Court under Sections 302 and 201 IPC warrants interference by this Court?

28. In the light of the submissions made by both the learned counsel and a perusal of the material available on record, the following points arise for consideration. Since the prosecution case rests entirely upon circumstantial evidence and there is no direct eyewitness to the actual occurrence, it is necessary to examine each of the circumstances relied upon by the prosecution independently and thereafter consider whether all such circumstances, taken cumulatively, form a complete chain pointing only towards the guilt of the appellant/accused.

29. At the outset, it is not in dispute that the deceased Manda Swapna died an unnatural death. P.W.10 is the Medical Officer who conducted the post-mortem examination over the dead body. According to his evidence, he found a ligature mark around the neck measuring approximately 20

inches in length and one inch in width, which was horizontal and running through the middle of the neck and was suggestive of strangulation or throttling. He also preserved the hyoid bone for forensic examination. Subsequently, after receipt of the FSL report, he gave his final opinion under Ex.P8 that the cause of death was due to asphyxia due to strangulation.

30. The evidence of P.W.10, therefore, establishes the nature and cause of death of the deceased. The evidence of P.W.1, the VRO, and P.W.2, the VRA, further establishes that an unidentified female dead body was found near Bandam Bore in the shivar of Vengalapur village and that the matter was initially reported as a suspicious death. P.Ws.3 and 6 are the panch witnesses to the scene observation and inquest proceedings, while P.W.4 is the photographer who photographed the dead body and scene of offence. Their evidence supports the fact that the dead body was found at the place in question and that the police conducted the necessary proceedings.

31. However, the fact that the deceased died due to strangulation, though an important circumstance, by itself

does not establish the identity of the person who caused her death. Medical evidence can establish the nature and cause of death, but in the absence of other reliable evidence connecting the accused with the occurrence, such medical evidence cannot by itself form the basis for recording a conviction against the accused. Therefore, the crucial question is whether the prosecution has established the nexus between the appellant and the homicidal death of the deceased through legally admissible and reliable evidence.

32. The prosecution mainly relies upon the circumstances of the relationship between the deceased and the appellant, the alleged last-seen circumstance, the Test Identification Parade, the statements of LWs.14 and 15 recorded under Section 154 Cr.P.C., and the alleged recovery of M.O.6/towel at the instance of the appellant. Each of these circumstances requires careful scrutiny.

33. So far as the evidence of P.W.5 is concerned, he is stated to be a colony elder who had provided shelter to the deceased. His evidence establishes that the deceased was residing in the colony and that the appellant had come to his house and expressed his intention to marry the deceased.

P.W.5 also identified the dead body of the deceased from her clothes and footwear when the police showed the photograph of the dead body. His evidence further indicates that the deceased had left the house during the Dussehra festival and had gone with the appellant.

34. P.W.7 is another colony elder. His evidence is to the effect that he knew the deceased for a considerable period and that the appellant used to visit her. He also stated that the appellant had expressed his intention to marry the deceased and that the deceased had informed him that the appellant would marry her. Thus, the evidence of P.Ws.5 and 7 establishes that the deceased and the appellant were acquainted with each other and had a close relationship and that there was an intention on their part to marry.

35. However, the said circumstance has to be appreciated within its proper limits. The existence of a relationship between the deceased and the appellant is not, by itself, sufficient to establish that the appellant committed the murder of the deceased. The said circumstance may provide a background to the prosecution case, but it cannot substitute the requirement of proving the essential link connecting the

accused with the actual occurrence. Even assuming that the appellant and deceased were last known to be acquainted with each other, the prosecution must establish by reliable evidence that the appellant was with the deceased at or immediately prior to the time of her death.

36. The prosecution, therefore, heavily relies upon the evidence of L.Ws.14 and 15, the driver and conductor of the private bus in which the deceased allegedly travelled from Jagtial towards Vengalapur on 20.10.2018. Admittedly, both L.Ws.14 and 15 died before they could be examined before the trial Court. Their statements recorded under Section 164 Cr.P.C. were marked as Exs.P22 and P23 through P.W.14, the learned Magistrate who recorded the said statements.

37. According to Exs.P22 and P23, the deceased allegedly boarded the bus at Jagtial at about 09.30 a.m. and informed the driver/conductor that her name was Swapna and that she was going to meet Vamshi, with whom she was in love. It is further stated that when the bus reached Peddamma Gudi of Vengalapur village, the deceased requested the driver to stop the bus and got down, whereupon a male person wearing a

pink-coloured towel around his neck received her. The said witnesses further stated that they could identify that person.

38. The trial Court treated Exs.P22 and P23 as substantive evidence and relied upon them for establishing the last-seen circumstance. The trial Court proceeded on the premise that as LWs.14 and 15 had died, their statements recorded under Section 164 Cr.P.C. became relevant and could be used as evidence after examining the Magistrate who recorded them. In our considered view, the said approach requires reconsideration in the light of the settled principles governing statements recorded under Section 164 Cr.P.C.

39. The Hon'ble Supreme Court in the case of **George** (cited supra), has reiterated that a statement of a witness recorded under Section 164 Cr.P.C. cannot be treated as substantive evidence and ordinarily can be used for the purpose of contradicting or corroborating the testimony of such witness. The Court specifically disapproved an approach where the trial Court treated the statement recorded under Section 164 Cr.P.C. as substantive evidence instead of appreciating the evidence of the witness before the Court.

40. The significance of the said principle becomes even greater in the present case because LWs.14 and 15 did not enter the witness box at all. Therefore, there is no substantive testimony of either of those witnesses before the trial Court which could be corroborated or contradicted by their earlier statements under Section 164 Cr.P.C. Their statements, therefore, cannot be elevated into substantive evidence merely because the witnesses died before trial.

41. The evidence of P.W.14, the learned Magistrate, establishes that he recorded the statements of LWs.14 and 15 under Section 164 Cr.P.C. It also establishes the fact that the statements were recorded by him in the course of his judicial duties. However, the evidence of the Magistrate as to the recording of the statements does not transform the contents of those statements into substantive testimony regarding the facts narrated by the deceased bus passengers. The Magistrate was not an eyewitness to the occurrence and had no personal knowledge as to whether the deceased was actually received by the appellant at Vengalapur village.

42. The distinction between proving the fact that a statement was recorded and proving the truth of the contents

of that statement is material. P.W.14 can establish that Exs.P22 and P23 were recorded before him, but he cannot give substantive evidence regarding the truth of the matters stated therein merely because he recorded them. Consequently, the contents of Exs.P22 and P23 cannot, in the facts of the present case, be treated as substantive evidence establishing that the appellant was the person who received the deceased from the bus.

43. The contention of the learned Additional Public Prosecutor that the statements become substantive evidence because the witnesses died before entering the witness box cannot be accepted merely on that ground. The death of a witness may affect the availability of his testimony, but it does not, by itself, convert every previous statement made by him into substantive evidence unless the statement falls within a specific statutory exception permitting its use for that purpose. The trial Court, therefore, ought to have examined the precise statutory basis on which Exs.P22 and P23 could be treated as substantive proof of the last-seen circumstance.

44. The reliance placed by the trial Court upon Sections 6 and 35 of the Evidence Act also does not cure the

fundamental defect. Section 6 relates to facts forming part of the same transaction and is concerned with the relevancy of facts. Relevancy and admissibility are distinct from the question whether a particular statement can be treated as substantive proof of the truth of its contents. Similarly, Section 35 concerns entries in public records made by a public servant or by a person performing a duty specially enjoined by law. The mere fact that a Magistrate recorded a statement in the discharge of judicial duty does not mean that every assertion contained in that statement becomes substantive proof of the truth of the assertion.

45. The presumption regarding regularity or genuineness of an official act also cannot be confused with proof of the truth of the facts narrated by the person whose statement was recorded. At the highest, the evidence of P.W.14 establishes that the statements were recorded in the manner stated by him. It does not establish, from his personal knowledge, that the person described by LWs.14 and 15 was in fact the appellant or that the deceased was actually received by the appellant at the bus stop. Further, the judgment relied upon by the prosecution is also not helpful, as there is a factual

difference in the present case, since the said driver and conductor were not examined by the Court.

46. The Test Identification Parade evidence also requires consideration in this context. Ex.P21 relates to the identification proceedings conducted by P.W.14. The trial Court relied upon the identification of the appellant by P.Ws.5 and 7 and by LWs.14 and 15. However, insofar as LWs.14 and 15 are concerned, their identification cannot independently supply substantive evidence of the last-seen circumstance when the witnesses themselves were not examined before the trial Court. The identification proceedings cannot be treated as a substitute for substantive testimony which was never given in Court.

47. As regards P.Ws.5 and 7, their identification of the appellant only establishes that they identified the person whom they already knew as Nakka Vamshi. Their evidence, as noticed above, establishes acquaintance and relationship between the appellant and the deceased. It does not establish that they saw the appellant taking the deceased to the place where her dead body was subsequently found or that they saw the appellant with the deceased immediately before her death.

48. The prosecution has, therefore, not been able to establish through substantive evidence the crucial circumstance that the deceased was last seen alive in the company of the appellant immediately prior to her death. This is not a minor discrepancy. In a case resting entirely upon circumstantial evidence, the last-seen circumstance assumes importance only when it is established by cogent and legally admissible evidence and when the proximity between the time of last seen and the time of death is such that the possibility of intervention by another person is substantially excluded.

49. In the present case, once Exs.P22 and P23 are excluded from consideration as substantive evidence, there remains no direct or substantive evidence showing that the deceased was last seen with the appellant immediately before her death. P.Ws.5 and 7 establish the relationship between the two, but not the last-seen circumstance on the date and at the relevant place of occurrence.

50. The prosecution next relies upon the alleged disclosure statement and recovery of M.O.6/towel. P.W.9 is stated to be one of the mediators to the confession-cum-recovery proceedings and P.W.13 is the Investigating Officer. Their

evidence is relied upon to establish that the appellant gave information leading to the recovery of M.O.6/towel from the bushes near the scene of offence. M.O.7 is stated to be the mobile phone of the accused which was seized from his possession.

51. The evidentiary value of such recovery has to be examined in the light of Section 27 of the Indian Evidence Act. The principle laid down by the Hon'ble Supreme Court in **Pandurang Kalu Patil** (cited supra), is that the fact discovered under Section 27 is not necessarily synonymous with the object produced or recovered. The admissible portion is that part of the information supplied by the accused which distinctly relates to the fact thereby discovered. Recovery of an object by itself does not automatically establish that the accused committed the offence.

52. Applying the above principle to the present case, even assuming that the recovery of M.O.6/towel at the instance of the appellant is proved, the recovery establishes only such fact as is legally discoverable from the information furnished by the accused. The prosecution must further establish the

incriminating character of the recovered article and its nexus with the commission of the offence.

53. In the present case, there is no reliable evidence establishing that M.O.6/towel belonged to the appellant or that it was the very towel used for strangulating the deceased. Significantly, the prosecution relies upon the Section 164 Cr.P.C. statements of LWs.14 and 15 to suggest that the person who received the deceased was wearing a pink-coloured towel. Once the statements of LWs.14 and 15 are not available as substantive evidence, the circumstance that the towel allegedly recovered from the bushes was the same towel noticed by the bus driver and conductor also loses its evidentiary foundation.

54. Further, there is no satisfactory scientific evidence placed on record establishing that M.O.6 contained any blood, biological material or other incriminating substance connecting it with the deceased. In the absence of such corroborative evidence, the recovery of an ordinary article such as a towel from bushes near the scene, even if proved, cannot by itself establish that the appellant used that towel to cause the death.

55. The same reasoning applies to M.O.7, the mobile phone of the appellant. The evidence of P.W.12, the Nodal Officer, establishes the relevant mobile connection in the name of the appellant. However, recovery of the appellant's own mobile phone from his possession is not an incriminating circumstance unless it connects him with the commission of the offence. It does not establish that he was present with the deceased at the place of occurrence or that he committed the murder.

56. It is also significant that the trial Court itself found the prosecution evidence insufficient to establish the charge under Section 404 IPC concerning the alleged mobile phone of the deceased. The trial Court held that there was no sufficient evidence to establish that M.O.9 belonged to the deceased. This finding demonstrates that the prosecution failed to establish the ownership and evidentiary nexus of the deceased's mobile phone. Therefore, the alleged recovery of mobile-related material cannot be given greater evidentiary significance than what the record permits.

57. The evidence of P.W.10, though reliable to the extent of establishing the cause of death, also does not connect the

appellant with the commission of the offence. The medical evidence establishes strangulation, but it does not identify the person who caused the strangulation. There is no scientific evidence on record which connects the appellant with the ligature mark or with the towel allegedly used in the offence.

58. P.Ws.1 and 2 are also not eyewitnesses to the commission of the offence. P.W.1 merely set the criminal law into motion on receiving information regarding the unidentified dead body. P.W.2 informed P.W.1 about the presence of the dead body. Their evidence is therefore relevant to the discovery of the dead body and the initiation of investigation, but it does not establish the involvement of the appellant.

59. P.Ws.3 and 6, the panch witnesses, speak about the scene observation and inquest proceedings and the articles found at the scene. Their evidence establishes the investigative steps undertaken by the police. P.W.4 speaks about photographing the dead body and scene. These witnesses do not connect the appellant with the actual commission of the offence.

60. P.W.8, the sister of the deceased, assisted in identifying the deceased. Her evidence is relevant to the identity of the deceased and the surrounding circumstances, but there is no substantive evidence from her that she saw the deceased in the company of the appellant immediately before the occurrence or that the appellant caused her death.

61. P.W.9 is the mediator to the alleged confession-cum-recovery proceedings. His evidence may establish the proceedings undertaken by the police and the recovery of the article, subject to the admissibility of the information leading to discovery. However, as already discussed, recovery alone cannot establish the commission of murder unless the recovered article is shown to have a reliable and incriminating connection with the crime.

62. P.W.11/P.W.13, the police officers connected with registration and investigation of the case, can establish the steps taken during investigation. Their evidence regarding investigation, however, cannot substitute substantive evidence regarding the actual commission of the offence. The prosecution must independently establish the incriminating circumstances through legally admissible evidence.

63. Thus, on an overall appreciation of the evidence, the prosecution has established certain foundational facts, namely, that Manda Swapna died an unnatural death by strangulation, that her dead body was found near Bandam Bore in the shivar of Vengalapur, that she was acquainted with the appellant and that a towel was allegedly recovered during investigation. However, the crucial connecting circumstances between the appellant and the homicidal death have not been established with the degree of certainty required in a criminal trial.

64. The present case is admittedly one based entirely on circumstantial evidence. The law relating to circumstantial evidence is well settled.

65. At this stage, it is pertinent to note the judgment of the Hon'ble Supreme Court in **Sharad Birdhichand Sarda v. State of Maharashtra**⁴, wherein paragraph No.153, it is held as follows:

153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

⁴ (1984) 4 SCC 116

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

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

"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

66. In the case of **Sharad Birdhichand Sarda** (cited supra), the Hon'ble Supreme Court laid down the five principles which have to be satisfied before a conviction can be founded solely

on circumstantial evidence: the circumstances must be fully established; the established facts must be consistent only with the hypothesis of guilt; the circumstances must be conclusive in nature and tendency; they must exclude every possible hypothesis except guilt; and the chain of evidence must be so complete as to leave no reasonable ground consistent with innocence and must show that, in all human probability, the act must have been committed by the accused. These principles continue to govern appreciation of circumstantial evidence.

67. Applying the aforesaid principles to the present case, the first circumstance, namely, the relationship between the appellant and the deceased, is established only to the extent that they were acquainted and intended to marry. Such circumstance is not conclusive of guilt. The second circumstance, namely, the last-seen theory, has not been established through substantive evidence because LWs.14 and 15 did not enter the witness box and their Section 164 Cr.P.C. statements cannot, in the circumstances of the case, be treated as substantive evidence.

68. The third circumstance, namely, the Test Identification Parade, does not independently establish the last-seen circumstance. The identification of the appellant by P.Ws.5 and 7 only confirms his identity as the person whom they already knew. The identification attributed to LWs.14 and 15 cannot be used as substantive proof of their assertions when they were not examined before the Court.

69. The fourth circumstance, namely, the recovery of M.O.6/towel, also does not complete the chain. Even accepting the recovery as proved, the prosecution has not established by independent evidence that the recovered towel was the instrument used in strangulating the deceased or that it contained any material connecting it with the deceased. As held in Pandurang Kalu Patil, the discovery contemplated by Section 27 is the discovery of a fact within the knowledge of the accused and not merely the production of an object. The evidentiary value of the discovery therefore depends upon the further evidence connecting the discovered fact or article with the offence.

70. The medical evidence establishes homicidal death but does not connect the appellant with that death. The identity

of the deceased is established, but the identity of the assailant is not established through any direct evidence. The prosecution has not placed before the Court any independent circumstance which conclusively establishes the presence of the appellant at the scene of offence at or immediately before the time of death.

71. It is also important to bear in mind that the burden upon the prosecution in a case based on circumstantial evidence does not become lighter merely because the deceased and the accused were acquainted or because certain circumstances create suspicion against the accused. Suspicion, however strong, cannot take the place of proof. The circumstances must form a continuous and complete chain and each important link must be established by legally admissible evidence.

72. The learned Additional Public Prosecutor contended that the circumstances have to be considered cumulatively and that the last-seen circumstance, recovery and medical evidence together point towards the guilt of the appellant. There can be no dispute with the proposition that circumstantial evidence has to be appreciated cumulatively.

However, the cumulative effect can be considered only after each material circumstance is independently established by admissible and reliable evidence. A missing or legally defective link cannot be supplied merely by combining other circumstances which, individually or collectively, do not establish the missing link.

73. Likewise, the contention that the appellant failed to explain the circumstances surrounding the death cannot relieve the prosecution of its primary burden. The prosecution must first establish the foundational circumstances from which an inference of guilt can legitimately be drawn. The absence of an adequate explanation from the accused cannot be used to fill serious gaps in the prosecution evidence.

74. In the present case, the prosecution has failed to establish the most significant link, namely, that the deceased was last seen alive with the appellant shortly before her death. Once Exs.P22 and P23 are not treated as substantive evidence, there is no reliable evidence to establish this circumstance. The evidence of P.Ws.5 and 7 does not fill this gap, as their evidence relates principally to the relationship

between the deceased and the appellant and not to the events immediately preceding the death.

75. The prosecution has also failed to establish an unbroken nexus between the recovered towel and the murder. The recovery, standing alone, is insufficient. The medical evidence does not connect the towel with the death. There is no substantive evidence that the towel recovered at the instance of the appellant was the same towel allegedly seen around the neck of the person who received the deceased, because the very statements of LWs.14 and 15 on which that circumstance rests cannot be treated as substantive evidence.

76. Therefore, the circumstances relied upon by the prosecution do not satisfy the five principles laid down in **Sharad Birdhichand Sarda** (cited supra). The circumstances are not fully established in the manner required by law. They do not, even when taken cumulatively, exclude every reasonable hypothesis consistent with the innocence of the appellant and the chain of circumstances is not complete so as to lead to the conclusion that, in all human probability, the appellant alone committed the offence.

77. Consequently, though the evidence establishes that the deceased suffered a homicidal death, the prosecution has not established beyond reasonable doubt that the appellant was the person who caused her death. The benefit of the missing links in the chain must necessarily go to the appellant.

78. Coming to the offence under Section 201 of IPC, the trial Court found the appellant guilty principally on the basis of the alleged recovery of M.O.6/towel. Section 201 of IPC requires proof that the accused caused disappearance of evidence of the offence or gave false information with the intention of screening the offender from legal punishment. Mere recovery of an article at the instance of the accused, without establishing the essential ingredients of the offence and the connection of the accused with the underlying offence, cannot by itself sustain a conviction under Section 201 of IPC.

79. Once the prosecution has failed to establish beyond reasonable doubt that the appellant committed the murder and has further failed to establish that M.O.6 was the article used in the commission of the offence and that the appellant caused its disappearance with the requisite intention, the conviction under Section 201 IPC also cannot be sustained.

80. The evidence relating to Section 404 of IPC need not be reconsidered in detail, as the appellant was already acquitted of the said offence by the trial Court and there is no challenge by the prosecution to the said acquittal before this Court.

81. On an overall consideration of the entire material on record, this Court is of the view that the prosecution has established the factum of homicidal death of Manda Swapna, but has failed to establish the identity of the perpetrator beyond reasonable doubt. The relationship between the appellant and the deceased, the alleged last-seen circumstance based upon the Section 164 Cr.P.C. statements of deceased witnesses, the Test Identification Parade, the recovery of M.O.6/towel and the medical evidence, when examined individually and cumulatively, do not form a complete chain of circumstances leading only to the guilt of the appellant.

82. The principles relied upon by the learned counsel for the appellant in **George** and **Pandurang Kalu Patil** (cited supra), when applied to the evidence on record, reinforce the conclusion that the Section 164 Cr.P.C. statements of LWs.14 and 15 cannot be treated as substantive evidence in the

absence of their testimony before the trial Court and that the recovery under Section 27 must be confined to the fact actually discovered and cannot, by itself, establish the commission of the offence.

83. At the same time, the principle relied upon by the learned Additional Public Prosecutor that circumstantial evidence must be considered cumulatively is accepted as a matter of law. However, the cumulative assessment must still satisfy the requirement laid down in **Sharad Birdhichand Sarda** (cited supra) that the chain must be complete and must exclude every reasonable hypothesis consistent with innocence. In the present case, the prosecution has not crossed that threshold.

84. Therefore, this Court finds that the prosecution has failed to prove the guilt of the appellant for the offences punishable under Sections 302 and 201 of IPC beyond reasonable doubt. The appellant is consequently entitled to the benefit of doubt.

85. In the result, the Criminal Appeal is allowed. The judgment dated 30.05.2025 passed by the learned Principal District and Sessions Judge, Jagtial, in S.C.No.04 of 2021,

convicting the appellant/accused for the offences punishable under Sections 302 and 201 IPC, is hereby set aside.

86. The appellant/accused is acquitted of the offences punishable under Sections 302 and 201 of IPC by extending the benefit of doubt. The appellant shall be set at liberty forthwith, if he is not required in any other case.

Pending miscellaneous applications, if any, shall stand closed.

**SD/- M MANJULA,
JOINT REGISTRAR**

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SECTION OFFICER

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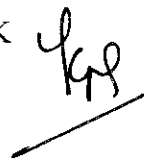
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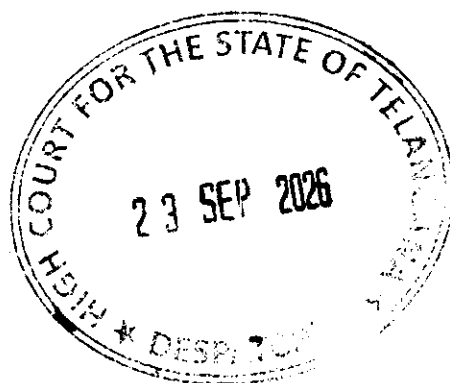


HIGH COURT

DATED: 22/09/2026

JUDGMENT

CRLA.No.683 of 2025



ALLOWING THE CRLA

(18)

Kpru
23/9/26