Form No: J(1)

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:-

The Hon'ble Justice Rajasekhar Mantha
And
The Hon'ble Justice Anuj Singh

CRA 519 of 2015

With

CRAN 3 of 2026

Yeasin Sk.

Vs.

The State of West Bengal & Anr.

For the appellant:	Mr. Soumyajit Das Mahapatra, Mr. Ali Ahsan Alamgir, Ms. Soma Mal, Ms. RabiaKhatoon, Ms. June Modak, Ms. MadhuraiSinha, Ms. Upasana Banerjee, Mr. Bisal Roy.
For the State:	Mr. Soumapriya Chowdhury, Mr. Arka Mukherjee.
Hearing concluded on:	October 13th, 2026.
Judgment pronounced on:	October 14th, 2026.

RAJASEKHAR MANTHA , J. :-

1. This appeal is directed against the judgment of conviction dated 20th May, 2015 and order of sentence dated 30th, May 2015, respectively, passed by the Additional Sessions Judge, Lalbagh, Murshidabad, in Sessions Trial No. 02 of 2010, arising out of Sessions Case No. 52 of 2010.
2. The appellant was sentenced to rigorous imprisonment for 10 (ten) years and a fine of Rs.5,000/- for rape under Section 376, IPC. In default of payment of fine, the appellant shall undergo simple imprisonment for 6 (six) months.
3. He was also sentenced to rigorous imprisonment for life and a fine of Rs.5,000/- for murder under Section 302, IPC. In default of payment of fine, the appellant shall undergo simple imprisonment for 6 (six) months. Both sentences were to run concurrently. Under Section 428 of the CrPC, the appellant to receive receive set-off for any period of detention already undergone during the investigation and trial.
4. The name of the victim and her family members are withheld in this judgment.

THE PROSECUTION CASE

5. The victim was aged about 11 years when she was raped and murdered by the appellant. Charges were framed against the appellant and one more accused person Royal Sk; the latter was, however, acquitted in the trial. All the FIR named accused was not charge sheeted.
6. In the evening of **1st February, 2009**, the victim had an evening snack and left for her grandmother's house to stay thereat for the night. She was kidnapped raped and murdered on her way thereto. The victim routinely stayed with her grandmother, **PW 1,** in the night and spent the day with her parents.

7. On the fateful evening, the victim was to pay Rs 15 (fifteen) to her grandmother for purchase of cow dung cakes (used as fuel in mud-stoves). **Her mother, PW 6**, gave her the said amount and instructed accordingly.
8. On her way, the appellant, Yeasin Sk, and Royal Sheikh (charge sheeted and acquitted in the trial), and Badshah Sheikh (discharged) intercepted the victim, engaged her in a conversation, lured her away to a mango orchard of late Dulu Sheikh, raped and murdered her. PW 2 and PW 6 saw the victim talking to the appellant and acquitted and discharged accused in the evening of 1st February, 2009.
9. The parents of the victim did not search for her; they thought that she is in her grandmother's house as usual. Similarly, **grandmother, PW 1,** presumed that the victim did not turn up since she might have wanted to stay back with her parents that night.
10. Next morning i.e. 2nd February, 2009, some persons passing by the mango orchard of late Dulu Ghosh noticed the victim hanging thereat. They informed **PW 2, the father of the victim**, who along with his wife, PW 6, PW 7, and PW 8 rushed to the PO and saw that the victim was hanging from a wooden ceiling of a tin shed thereat. She was half clad. Her private parts were fully smeared with blood. A red coloured ladies Hero brand bicycle was found nearby.
11. **PW 1, victim's grandmother**, claimed that **PW3, Gobindo Sheikh,** informed her that the victim was taken away by the appellant on a red-coloured Hero ladies' bicycle. PW 3 also informed it to PW 1, 6, 7, and 8.
12. Inquest was conducted on the dead body of the victim by **PW 22, the first IO,** pursuant to an unnatural death case being registered. Murshidabad P.S. case cum FIR no. 17 of 2009 dated February 2nd, 2009 under Sections 376(f) &(g), 302, and 34 of the IPC was lodged against the appellant, Yeasin Sheikh and

one Badshah Sheikh based on the written complaint of **PW 2, the father of the victim.** The appellant and the victim were residents of Motijhil village under Murshidabad district.

13. The investigation was conducted by three successive IOs, namely **PW-22 Sourav Majumder, PW-23, Sk Siltan Ali, and PW-25, Goutam Biswas.** The body of the victim was sent for post-mortem. From the PO, the IOs seized the slippers of the victim and the red Hero bicycle. Investigation was completed by PW 25, the last IO, who submitted the charge sheet.

14. Charges were framed by the trial court against the appellant and one Royal Sheikh under Section 376 read with Section 34, 302 read with Section 34, and Section 363 read with Section 34 of the IPC. The FIR named accused Babu Sk was not charge sheeted.

THE TRIAL AND EVIDENCE ON RECORD

15. **PW-1 was the grandmother of the victim.** She deposed that the victim stayed with her in the night and with her parents in the daytime. The victim was coming to her house from her parents' house around 6:00 PM on 1st February 2009. When the victim did not turn up at her house, she thought that the victim stayed with her parents on that day. Later from PW 3, she came to know that the appellant had taken away the victim girl towards the market on his bicycle. The mother of the victim came searching for her the next day morning.

16. She came to know that the dead body of the victim was found in the mango orchard of late Dulu Sheikh in a wretched condition. The lower part of her wearing apparel was torn, bruises were on her body, and her mouth was full of dust. Next to the victim’s dead body a ladies’ bicycle and a pair of Hawai slippers were found. She identified the dead body of the victim.

17. She deposed that the appellant confessed in the house of the father of acquitted accused Royal Sheikh that he eliminated the victim. She further deposed that she was informed by **Altap Sk, PW 5,** that he had also seen the appellant take away the victim on his bicycle. Her evidence could not be shaken during cross- examination.

18. **PW 2 was the father of the victim**. He deposed that the victim was 10 years and 3 months old at the time of her rape and murder. He had seen the victim talking to the appellant Royal Sheikh and Badshah Sheikh near an alley beside his house around 6:00 to 6:15 PM in the evening on1st February, 2009. Badshah and Royal Sheikh were not seen thereafter.

19. The rest of his evidence is in line with the prosecution case and that of PW-1. He deposed that when he along with his wife and nephew found the victim, she was dead, hanging from the ceiling of a tin shed in the mango orchard of late Dulu Sheikh. Her private parts were bleeding.

20. **PW 3 was Gobinda Sk**. He denied that he saw the appellant with the victim in the evening of 1st February, 2009 on a bicycle. He was declared hostile. In cross-examination by the prosecution, the entire prosecution case was confronted to him, which he denied.

21. He stated that he had been living in Delhi and Noida for the last four years and used to come to the neighbouring village on vacation. He, however, confirmed that he was present in the village of the victim on the fateful evening and the next day also, when her body was found hanging.

22. **PW-4 was Chameli Bibi**. She was declared hostile. The prosecution confronted her with its case, which she flatly denied.

23. **PW-5 was Altap SK**, a resident of Sodorghat Lalbagh. He was a mason by profession. He denied knowing anything about the incident. He denied his

statement given under Section 164 of the CrPC. He stated that he recorded such statement under pressure from the police. He was declared hostile by the Trial Court.

24. In his statement under Section 164, he had stated that he had seen the accused persons at about 7:00 PM on 1st February 2009 at the PO with a bicycle and gossiping amongst themselves. He stated that the victim was dragged away by the appellant and made to sit on a bicycle. He was returning from his work that evening and noticed the accused persons with the victim. The appellant is stated to have told PW 5 not to stop there, mind his own business, and leave the place, or face dire consequences.

25. **PW 6 was the mother of the victim**. She confirmed that she saw the victim talking to the appellant at a tea stall near her house. She sent her daughter to her grandmother's place. The victim had dinner at her house and had gone out to her maternal grandmother's house. She narrated the rest of the incident on the lines of the prosecution case.

26. She confirmed that PW 3 informed her when she was crying at the PO that he saw the appellant carry the victim on a red-colored ladies' bicycle towards the mango orchard of late Dulu Sheikh. She identified the jacket that the victim was wearing as well as her outer and inner wearseized by the police. She identified the bicycle and all the clothes of the victim that were exhibited in the trial court.

27. **PW-7 was the brother of the victim**, a witness to the seizure of the said bicycle and Hawai slippers of the victim at the PO. He was also an inquest witness. He confirmed in cross-examination that PW 3 told him that the appellant took his sister away on the said bicycle.

28. He confirmed that the appellant owned the said bicycle. The bicycle produced in Court did not bear the name of the appellant written in Bengali. PW 7, however, could identify it since he regularly saw the appellant riding on it in and around the village.

29. **PW 8, the maternal cousin of the victim,** deposed that on the morning of February 2nd, 2009, two persons informed her that the victim's dead body was hanging in the mango orchard of late Dulu Sheikh. She rushed to the P.O. and found the victim's dead body hanging. The private parts of the victim were bleeding. She noticed the appellant's bicycle at the P.O., near the dead body.

30. In trial, she identified the bicycle as well as the hawai chappals (slippers) of the victim. She confirmed that the police seized the aforesaid articles in her presence and that she signed on the seizure list.

31. During cross-examination, she vociferously asserted that even if the incriminatory bicycle is mixed with other similar-looking bicycles, she would still identify it. She deposed that the rims and tires of the bicycle made it distinct from others. She confirmed that no family member of the appellant rides the said bicycle.

32. **PW 9 was victim's maternal aunt.** She was not an eyewitness. However, she heard from people that the victim was raped and murdered by the appellant.

33. **PW 10 was cited as a witness** but was neither examined by the prosecution nor the defense.

34. **PW 11 was a photographer**. He confirmed that the Murshidabad Police Station hired him to photograph the scene of crime. He clarified that the pictures taken by him do not display the date and time on it.

35. **PW 12, the Judicial Magistrate,** who recorded the statement of **PW 5** under Section 164, CrPC**.** He confirmed that PW 5 placed his Left Thumb Impression

on his statement. During cross-examination, he confirmed that one police constable identified PW 5 before him. PW 12 clarified that he did not specifically ask PW 5 whether the police threatened him into making the statement.

36. **PW 13 was constable Dilip Kumar Majumdar attached to Murshidabad PS on February 2nd, 2009.** He transported the victim's dead body to the hospital for autopsy. The PM Doctor handed over the victim's wearing apparelsnamely, one black panty, one yellow pullover, one black scarf, and one pink-and-green churidar to him. PW 13 handed over these articles to SI Sourav Majumdar, who seized them in his presence. He signed the seizure list, identified his signature at trial, and confirmed during cross-examination that he could identify the articles even if mixed with similar items.

37. **PW 14 was a home guard posted at Murshidabad PS on February 2, 2009.** He corroborated PW 13's evidence regarding the seizure of the victim's wearing apparels. He confirmed that the police seized a hawai chappal, one panty, one black scarf, and one churidar in his presence. He also confirmed PW 13's presence during the said seizure and confirmed that SI Sourav Majumdar effected the said seizure.

38. **PW 15, a law clerk and scribe, wrote the complaint filed by PW 2**. He confirmed that he wrote the complaint per PW 2's instructions, read over and explained its contents to PW 2, and then PW 2 put his LTI on the said complaint.

39. **PW 16, a constable attached to Hazaraduari Chanditola Town Outpost under Murshidabad PS**, deposed that on July 7, 2012, he escorted the accused, Royal Sheikh (acquitted by the trial court), from Lalbagh Sub-Correctional Home to Berhampore Hospital. He identified his signature on

Royal Sheikh's medical report. **PW 17, a constable attached to Murshidabad PS**, deposed along the same lines as PW 16. **PW 18, another home guard attached to Murshidabad PS**, deposed along the same lines as PW 17& 18.

40. **PW 19, a constable attached to Kashimbazar town out-post under Murshidabad PS,** confirmed that on February 14, 2009, he took the appellant to Lalbagh Hospital for a medical examination. He identified his signature on the appellant's medical report during the trial.

41. **PW 20, Dr. Bibhash Ch. Mukherjee, Medical Officer / Surgeon**, examined the appellant on February 14, 2009, in connection with this criminal case. He confirmed that the appellant's external genitalia were normal and that he was capable of performing sexual intercourse. He found no obvious injuries on the appellant's private parts, identified the medical report at trial, and noted that the appellant had also signed it.

42. During cross-examination, he deposed that injury to the external genitalia of an assailant is possible after committing rape. He pointed out that an assailant would suffer more injuries if the victim was not habituated to regular intercourse.

43. **PW 21, attached to Berhampore District Hospital, examined Royal Sheikh on July 7, 2010**, in connection with the criminal case. He found Royal Sheikh capable of performing sexual intercourse and observed no injuries or signs of violence on his private parts.

44. **PW 22, the first Investigating Officer (IO) of the case**, conducted the inquest over the victim's body and arrested the appellant and Badshah Sheikh. He sent the appellant for medical examination and seized the incriminating cycle. He identified the cycle in court and confirmed that no Test Identification parade was held for identifying the bicycle.

45. **PW 23, Sk Sultan Ali,** took over the investigation from PW 22. He sent PW 5 for recording a statement under Section 164 CrPC.

46. **PW-24 was Dr. Gautam Ghosh**, who performed the post-mortem on the body of the victim. He deposed as follows:-

> *On examination I found: there was slight bleeding from nostrils and mouth. Hairs were matted with dust and dry grass, more on the back of the head. There was bruise behind the left elbow which was anti mortem in nature. Orna was tied around her neck. The knot was several deep nail scratch mark in front of the neck. All the viscera, brain and meninges were congested.* ***Stomach was full of undigested food****.* ***Bleeding present over the external genitalia of vagina.*** *on vaginal examination , injury was present at the posterior vaginal wall, hymen ruptured with profuse bleeding present near vaginal orifice, thighs.* ***the injuries indicate that the victim was sexually assaulted before her death****. hyoid bone was broken and* ***cause of death was, in his opinion, throttling, which was anti mortem and homicidal in nature."***
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> Emphasis Applied

47. **PW 25 was the last IO.** Hesubmitted the charge sheet against the appellant and the acquitted accused, Royal Sheikh. He confirmed sending Royal Sheikh for a medical examination to ascertain his capability of performing sexual intercourse. He also confirmed that a pair of sandals and a bicycle was seized from the PO by his predecessor IO. No steps were taken to examine fingerprints or footprints on those articles.

48. The appellant was examined under Section 313 of the CrPC, and all the circumstances in the evidence on record were duly put to him. The appellant denied that he ever owned a bicycle. He, however, did not explain under what circumstances the victim died. Based on the evidence on record, the trial judge convicted the appellant as already indicated hereinabove.

ANALYSIS OF THE COURT

I) The retraction by PW 3 from his previous statement was dishonest

49. Learned counsel for the appellant has argued that PW 5 and PW 3 have turned hostile. They purportedly stated to the police that the appellant took the

victim in a Hero, red-colored ladies' bicycle, advancing the last seen theory. He has next argued that the other PWs namely 1, 2, 6, 7, and 8 have come to learn that the appellant took away the victim from PW 3 and PW 5. Consequently, the entire prosecution case stands invalidated, since the main witness turned hostile. The appellant thus cannot be called upon to offer an alibi or explain the circumstances under which the victim died.

50. The evidence of PW 3 must be read closely. In the trial, PW 3 first deposed that the police did not examine him. However, when the prosecution declared him hostile and cross-examined him, he deposed that he did not tell the police that he saw the appellant with the victim. He denied every suggestion put to him by the prosecution as regards what he stated to the police. PW 3, thus, contradicted himself in the trial.

51. If during course of investigation the police had examined PW 3, the denial thereof in course of trial must be motivated. He, however, denied all suggestions put to him by the prosecution as if he gave a statement to the police. This indicates that the police in fact has examined him.

52. PW 3 dishonestly resiled from his previous statement that he saw the victim with the appellant. This is further evident from the evidence of PW 1 and 6. The latter have collectively deposed that PW 3 and PW 5 informed them that the appellant was last seen with the victim on the said bicycle.

53. The complaint filed by PW 2 discloses the name of the appellant and one Babu Sheikh, who was not charge-sheeted by the police. PW 2, therefore, certainly came to learn the names of the FIR-named accused from PW 3 and 5 as did PW 1 and PW 6. She could not have any motive to falsely implicate the appellant. No such evidence was led by the defense.

54. In the present case, the prosecution examined other witnesses to whom PW 5 and 3 specifically told that they had seen the appellant taking the victim on a red colored ladies' bicycle. The retraction by PW 3 and 5 during trial was duly contradicted by the other prosecution witnesses. The learned Trial Judge, therefore, erred in completely discarding the evidence of PW 3.

55. The Court must carefully scrutinize the evidence of a hostile witness before rejecting it. The retraction of a witness in course of trial could be dealt with by scrutinizing the evidence of other witnesses, who have confirmed that the hostile witness previously shared the facts retracted from with them.

56. A mere denial in Court cannot erase prior statements made by a witness to fellow prosecution witnesses. While the police may force a witness to make a statement to them, they cannot force a statement to be made to a fellow witness which is spontaneous, before the arrival of the Police to the crime scene. In **Ramesh v. State of Haryana, reported in (2017) 1 SCC 529,** it was held as follows:-

> 39. We find that it is becoming a common phenomenon, almost a regular feature, that in criminal cases witnesses turn hostile. There could be various reasons for this behaviour or attitude of the witnesses**. It is possible that when the statements of such witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 by the police during investigation, the investigating officer forced them to make such statements and, therefore, they resiled therefrom while deposing in the court and justifiably so.*However, this is no longer the reason in most of the cases. This trend of witnesses turning hostile is due to various other factors. It may be fear of deposing against the accused/delinquent or political pressure or pressure of other family members or other such sociological factors. It is also possible that witnesses are corrupted with monetary considerations.***
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> 100. This Court in State of U.P. v. Ramesh Prasad Misra [State of U.P. v. Ramesh Prasad Misra, (1996) 10 SCC 360 : 1996 SCC (Cri) 1278] held that it is equally settled law that the evidence of a hostile witness could not be totally rejected, if spoken in favour of the prosecution or the accused, **but it can be subjected to closest scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence may**

be accepted. In K. Anbazhagan v. Supt. Of Police [K. Anbazhagan v. Supt. Of Police, (2004) 3 SCC 767 : 2004 SCC (Cri) 882] , this Court held that if a court finds that in the process the credit of the witness has not been completely shaken, he may after reading and considering the evidence of the witness as a whole, with due caution, accept, in the light of the evidence on the record that part of his testimony which it finds to be creditworthy and act upon it. This is exactly what was done in the instant case by both the trial court and the High Court [Sanjeev Nanda v. State, 2009 SCC OnLine Del 2039 : (2009) 160 DLT 775] and they found the accused guilty.

101. We cannot, however, close our eyes to the disturbing fact in the instant case where even the injured witness, who was present on the spot, turned hostile. This Court in Manu Sharma v. State (NCT of Delhi) [Manu Sharma v. State (NCT of Delhi), (2010) 6 SCC 1 : (2010) 2 SCC (Cri) 1385] and in Zahira Habibullah Sheikh (5) v. State of Gujarat [Zahira Habibullah Sheikh (5) v. State of Gujarat, (2006) 3 SCC 374 : (2006) 2 SCC (Cri) 8] had highlighted the glaring defects in the system like non-recording of the statements correctly by the police and the retraction of the statements by the prosecution witness due to intimidation, inducement and other methods of manipulation. ***Courts, however, cannot shut their eyes to the reality. If a witness becomes hostile to subvert the judicial process, the court shall not stand as a mute spectator and every effort should be made to bring home the truth. Criminal judicial system cannot be overturned by those gullible witnesses who act under pressure, inducement or intimidation***. Further, Section 193 IPC imposes punishment for giving false evidence but is seldom invoked."

48. **Apart from the above, another significant reason for witnesses turning hostile may be what is described as "culture of compromise".** Commenting upon such culture in rape trials, Pratiksha Bakshi ["Justice is a Secret : **Compromise in Rape Trials" (2010) 44, Issue 3, Contributions to Indian Sociology, pp. 207-233.] has highlighted this problem in the following manner:**

> "During the trial, compromise acts as a tool in the hands of defence lawyers and the accused to pressurise complainants and victims to change their testimonies in a courtroom. Let us turn to a recent case from Agra wherein a young Dalit woman was gang-raped and the rapist let off on bail. The accused threatened to rape the victim again if she did not compromise. Nearly a year after she was raped, she committed suicide. While we find that the judgment records that the victim committed suicide following the pressure to compromise, the judgment does not criminalise the pressure to compromise as criminal intimidation of the victim and her family. The normalising function of the socio-legal category of compromise converts terror into a bargain in a context where there is no witness protection programme. This often accounts for why prosecution witnesses routinely turn hostile by the time the case comes on trial, if the victim does not lose the will to live.
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> Emphasis Applied

57. In the **Ramesh case (supra)**, the Court noted that a witness may change his statement even where there is no evidence of a previous statement made under coercion by the police. Economic and social factors can also cause a witness to resile from their previous statement. The Court took judicial notice of a 'culture of compromise' that exists among the people. It noted that the accused person often frightens the prosecution witnesses, forcing them to move away from the truth.

58. Hence, this Court cannot ipso facto discard a hostile witness's evidence. The Court should closely examine both the previous statement and one, deposed by a witness in trial, to find out the truth. The Court must examine as to whether the witness changed their statement in the trial to tell the truth to the Court, or they did so because of fear, money, or social/peer pressure.

59. As discussed hereinabove, the retraction by PW 3 and PW 5 from their previous statement which, in fact, were made not only to the police but also to other prosecution witnesses, clearly establishes that they have departed from the truth.

60. In **Ramesh decision (supra)**, the Court noted various factors that cannot be set out in so many words, for a witness to retract from the truth. In the present case, one reason could be that the said witnesses were not related to the victim by blood. Hence, they did not feel an incumbent duty to speak the truth in the Court.

61. This Court also notes that Babu Sheikh was ultimately not charge-sheeted by the police though he was made an accused in the FIR. There is no evidence on record clearly showing that Babu Sheikh committed the crime. It is, however, clear that Babu Sheikh was a friend of the appellant and the acquitted accused, Royal Sheikh. He was named in the FIR and was arrested in this

case. In fact, he was a member of the group with whom the victim was seen speaking on the fateful evening by her parents. It, therefore, cannot be ruled out that Babu Sheikh, being a friend of the accused, may have found ways and means to win over the hostile prosecution witnesses.

II. The statement under Section 164, CRPC, of PW 5 cannot be ignored in the facts of the case.

62. Learned counsel for the appellant has argued that the learned Trial Court placed reliance on the statement made by PW 5 under Section 164 of the CrPC. We, however, find upon perusal of the relevant portion of the impugned judgment that the learned Trial Judge has discarded and ignored the statement of PW 5 made under section 164, CRPC. The relevant portions of the judgement of the learned Trial Judge are set out below:

> Amongst those three witnesses as above, the PW-5 was also made statement before the Judicial Magistrate and the same was recorded in terms of section 164 of Cr.P.C. But on perusal of the statement made by PW-5 it appears that even when the witness turned hostile, the prosecution did not ask the witness by reading out the contents of such statements to that witness or confronted the same when learned Magistrate was examined in this case as PW-12**. Although it was not denied by the PW-5 that his statement was obtained under section 164 of Cr.P.C. but in that regard he contended that whatever he stated, it was dictated by the police. Further more, such statement is considered to be the corroborative piece of evidence. So, when the substantive evidence of the witness does not support the prosecution version, the statement recorded under section 164 of theCode of same witness cannot be taken into consideration for the purpose of establishing the prosecution version.**
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> **The evidences of these hostile witnesses taken as a whole do not inspire confidence in my mind as to the statement allegedly made by them earlier or as regards the contention of the prosecution in that regard. More so, whenever the 1.O.s and the Magistrate were not confronted with the deponent's denial of making any statement before him to the effect that they saw the accused persons with the victim for the last time or they witnessed any incident of rape and murder of the victim by the accused persons. The credibility of this witness has thus affected considerably. *I am, therefore, not prepared to place any reliance upon such testimony of these hostile witnesses.*** Such being the position of law, the evidence on the last seen together aspect appears to be very scanty and is not conclusive to

connect the accused persons with the commission of crime of murder and rape.

Emphasis Applied

63. The statement of PW 5 to the Magistrate cannot be casually brushed aside. A statement under Section 164, CRPC, is given on oath. The legislative history on Section 164 of the Cr.P.C. reveals the significance of the mandate that a statement thereunder must be taken on oath. The Law Commission's reports are set out below.

From the 37th report

Section 164 (2) and administration of oath- 466. The position regarding administration of oath to a witness whose statement is recorded under section 164 has been considered by us. The conflict of decisions on the subject has been discussed in detail in our Report on the Oaths Act. The question that now arises is, what ought to be the law. **On the one hand, if a witness whose statement is recorded is to be encouraged to speak the truth, *an oath is desirable***. On the other hand, our attention was drawn to the view expressed by Mr. L. C. Crump' (while the Bill which led to the 1923 Amendment was under consideration). Mr. Crump had pointed out, **that, in favour of the view that the witness who is examined under section 164 should not be liable for perjury**, was the consideration that the police would (if he is to be made so liable) be able to compel a **person to adhere to a statement which he may have made at their instance under compulsion, on pain of prosecution for perjury**. **We however think, that on principle there is something to be said for recording the statement on oath, to lend it some sanctity.** We recommend an amendment of section 164 to provide that the statements of witnesses should be on oath.

From Report No. 152

3.24. Section 164: Confession before Magistrate.-

The Code, in section 164, **contains provisions of great importance to the criminal process and vital for the preservation of integrity** in the process.

From 154th report

4.....The two Members having discussed this issue, ultimately recommended amendment of Section 164 Cr.P.C. **so as make it mandatory for the Investigating Officer to send to the nearest Magistrate all material witnesses questioned by him during the course of investigation and have the statements recorded on oath by that Magistrate within a day or two**. The two Members thus recommended amendments to Sections 161, 162 and 164 and correspondingly 172 and 173 Cr.P.C.

> 42/128 (**it is necessary to amend Section 164 Cr.P.C. so as to make it mandatory for the Investigating Officer to get statements of all material witnesses questioned by him during the course of investigation recorded on oath by the Magistrate. The statements thus recorded will be of much evidentiary value and can be used as previous statements.Such recording will prevent the witnesses turning hostile at their free will**. Such a change will also help the police to complete the investigation and submit a final report on the basis of such statements made on oath and on other facts and circumstances, such as recovery, etc.
> 164. (1) No change.
>
> I(A) to be added as follows:
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> **Every Investigating Officer shall send to the nearest Magistrate all material witnesses during the course of investigation and the Magistrate on oath record their statements**, if such Magistrate is empowered to take cognizance of the case on police report, he shall keep such statements along with the FIR received by him and await the further police report under Section 173. If he is not empowered to take such cognizance, he shall send the statements thus recorded on oath to the Magistrate empowered to take cognizance of the case.
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> ..It is true that if such statements are not recorded under section 164, then the record containing statements of the facts ascertained, prepared by the Investigating Officer cannot be of any use except enabling the court to peruse which may give some aid. We do visualize that there are quite a few practical difficulties in getting the statements recorded under Section 164. **There is bound to be some delay which may give scope for interference by others trying to influence the witnesses. Even after making the statement on oath under Section 164, the witness may prevaricate. It cannot also be presumed that all what was stated in such statement under Section 164 is always true: but the redeeming feature is that it is made on oath.**
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> Emphasis applied

64. The Law Commission reports (supra) have alluded to two aspects on section 164, CRPC. First, a statement recorded thereunder must be made on oath; no proceedings for perjury however can be initiated against a false statement made thereunder. A degree of solemnity thus has been instilled in a statement under Section 164, CRPC.

65. Second, an amendment was proposed requiring the police to send all material witnesses to the magistrate for recording their statements.

However, it was noted that such an exercise might take a considerable amount of time, leaving scope for tutoring of the witnesses. Parliament, however, has never accepted this amendment.

66. In light of the said Law Commission reports, the decision in **Vijaya Singh and Another v. State of Uttarakhand, reported in 2024 SCC OnLine SC 3510** should be read as follows:-

> 28. Considering the conceptual requirement of recording a statement before a Judicial Magistrate during the course of investigation and the utility thereof, as prescribed in Section 157 of Evidence Act, **it could be observed that a statement under Section 164, although not a substantive piece of evidence, *not only meets the test of relevancy but could also be used for the purposes of contradiction and corroboration.*A statement recorded under Section 164 CrPC serves a special purpose in a criminal investigation *as a greater amount of credibility* is attached to it for being recorded by a Judicial Magistrate** and not by the Investigating Officer. A statement under Section 164 CrPC is not subjected to the constraints attached with a statement under Section 161 CrPC and the vigour of Section 162 CrPC does not apply to a statement under Section 164 CrPC. Therefore, it must be considered on a better footing. However, relevancy, admissibility and reliability are distinct concepts in the realm of the law of evidence. **Thus, the weight to be attached to such a statement (reliability thereof) is to be determined by the Court *on a case-to-case basis* and the same would depend to some extent upon whether the witness has remained true to the statement or has resiled from it,*but it would not be a conclusive factor.*For, even if a witness has retracted from a statement, such retraction could be a result of manipulation and the Court has to examine the circumstances in which the statement was recorded, *the reasons stated by the witness for retracting from the statement etc*.Ultimately, what counts is whether the Court believes a statement to be true, and the ultimate test of reliability happens during the trial *upon a calculated balancing of conflicting versions in light of the other evidence on record.***
>
> 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.

Emphasis Applied

67. In **Vijaya Singh decision (supra)** it was held that if a witness is casually allowed to depart from a statement given under Section 164 of the CrPC, the distinction between a statement under Section 161 of the CrPC and one under Section 164 of the CrPC will stand eliminated; the object of Section 164 will stand frustrated.

68. Therefore, it was held that a witness who seeks to depart from a statement given under Section 164 of the CrPC must provide credible reasons in support thereof. A Magistrate acts as a safety valve assuring the witness that he may say what he has seen.

69. During cross-examination, the prosecution called upon PW 5 to describe the threat under which he gave his statement under Section 164 Cr.P.C. PW 5 admitted that he could not describe any such threat. However, he added that the police told him to support the prosecutioncase. He made a mechanical, vague, and standard denial, which does not inspire confidence.

70. PW-5 therefore has failed to discharge the burden under Section 106 of the Evidence Act. His Statement under Section 164 of the CrpC thus becomes an additional link in the chain of circumstances. Reference in this regard is made to the paragraph 48 of the decision of the Hon'ble Supreme Court in the case of **Vahitha Vs State of Tamil Nadu reported in (2023)11 SCC Pg 338.**

71. Before the Magistrate, PW 5 did not complain that the police threatened him. PW 12 who recorded the statement of PW-5, did not observe any anomaly in his behavior.

72. The retraction from a statement given under Section 164, CRPC, does not only interfere with the course of the trial. In given case, it may also put blame

on the judicial officer who recorded the statement. Therefore, any material departure by a witness from his statement under Section 164, CRPC should not be allowed unless he offers reasons in support thereof.

73. The Section 164 statement of PW 5 was crucial since he stated that he saw the appellant Yeasin, and Royal Sk, the acquitted accused, near the mango orchard of Dulu Sheikh, where the victim was found hanged. He further stated that they had a bicycle. His retraction therefore appears to be calculated. The appellant has not explained the same in his examination under Section 313 particularly question 40 thereof.

74. In **Chinnamal v. State reported in (1997) 1 SCC 145),** the High Court did not do a comparative analysis between statements made during the trial and prior statements. In **Jiarul Laskar v. State of West Bengal, reported in (2025 SCC Online Cal 1251)**, a coordinate Bench noted that the victim admitted she made statements against the accused before the magistrate only due to her father's insistence. The Court observed a lack of corroborative evidence proving that the victim was abducted and forced into sexual intercourse against her will. The victim deposed that she voluntarily left with the accused and stayed at her sister's residence.

75. In **Tipparam Prabhakar Vs State of Andhra Pradesh reported in (2009)13 SCC 534,** cited by the appellant, in addition to the noncorrelation of the identity card of the appellant, the Supreme Court found that there were inconsistencies between the Statements of PW 1 and 2 as regards the victim being last seen with the accused.

76. In the present case, the **said decisions (supra)** have no manner of application because the PW 3 and PW 5 have departed from the truth in the trial. This is evident from the evidence of PW 1, 2, 6, 7, and 8 who have

deposed that PW 2 and 5 have told them that the appellant took away the victim on the red colored ladies' bicycle. In addition to this, PW 2 and 6 have seen the victim speaking with the appellant and others after which she was found dead.

77. PW 3 and PW 5 told PW 1, 6, 7, and 8 that the former(s) saw the appellant with the victim as a pillion rider on a red ladies' bicycle. This statement was conveyed before arrival of the police at the PO. Therefore, this statement was made spontaneously at the moment; it carries evidentiary value under Section 6 of the Evidence Act, 1872 as res gestae. No inference of fabrication can be drawn from such a spontaneous statement made by PW 3 and PW 5 to other PWs.

78. Another reason given by the learned trial court for disbelieving the evidence of PW 5 is that the prosecution failed to confront the investigating officer (PW-25), who sent PW 5 for examination under Section 164 CrPC, and the judicial magistrate (PW-12), who recorded the statement of PW 5, with the section 164 Statement of PW 5.

79. Section 145 of the Indian Evidence Act, 1872 states that a party may cross-examine a witness regarding his previous statements reduced in writing or otherwise. Therefore, Section 145, by necessary implication, prohibits confronting a witness with such previous statements that were never made by him.

80. A witness can depose to the statements made by him. Thus, the investigating officer or the judicial magistrate need not be confronted with the contents of statement made by PW 5. Their roles were strictly limited to affirming whether they actually recorded the statement of PW 5. The

prosecution has confronted PW-5 with his previous statement under Section 164, CRPC.

81. The evidence on record has established that the investigating officer (PW-25) deposed that he sent PW-5 for examination under Section 164 CrPC. Similarly, the judicial magistrate (PW-12) deposed that he examined PW 5 under Section 164 CrPC.

I. III. The presence of PW 2 and PW 6 was natural.

82. Ld. Counsel for the appellant has argued that PW 1, 2, 6, 7, and 8 are closely related to the victim and hence, are interested witnesses. No credence should be given to their evidence.

83. The evidence of a witness cannot be brushed aside on the ground that he is a relative of the victim. The presence of a victim's relatives when a crime is committed in the vicinity of their house is quite natural. PW 2 the father of the victim and PW 6, the mother of the victim, were present at the house when the victim left for her grandmother's house. Therefore, it was quite normal for PW 2 and PW 6 to have seen the victim. They saw her with the appellant.

84. PW 3 indicated he used to work from 7:00 AM to 8:00 PM. On the fateful day, he deposed that he was out for work. However, PW 6, the mother of the victim, clarified that the victim's father came home for evening snacks. PW 2 and PW 6 jointly saw their daughter leaving for her grandmother's house.

85. An interested witness is one who derives any benefit or settles personal scores from the conviction of an accused. A family member of a victim in interest of justice deposes about the assailant. Thus, a related witness cannot be conflated with an interested witness.

86. It is quite natural for the mother and the father to see off their minor daughter as she left for her grandmother's house. The appellant has not been

able to impute any motive or mala fide intention to the parents/blood relatives of the victim.

87. The evidence on record has established that it was the usual practice of the victim to stay with her grandmother in the evening. Therefore, the departure of the victim from her house in the evening is not unnatural. This supports and lends credence to the evidence of the father and mother of the victim that the victim was out of her house in the evening.

88. The evidence of PW-1, 2, 6, 7, and 8 is consistent with what they heard from PW 3 and 5 that the appellant had taken away the victim on a red colored ladies' bicycle. Prior to that, the appellant and the other accused persons were having a conversation with the victim. This is consistent with the statement of PW 5 recorded under Section 164 of the CrPC.

IV. The evidence of other PWs establishes 'last seen theory', in addition to PW 3's and PW 5's evidence.

89. PW 1, the victim's grandmother, confirmed that the victim usually stayed with her in the night; she used to come there every evening from her parents' house. On the fateful evening, the victim did not turn up at her house; PW-1 was expecting her. It was later revealed that the victim was raped and murdered.

90. PW 1's evidence further shows that the victim's mother, PW-6, searched for the victim that very night. PW 1 was unaware of this search. PW 1 did also search for the victim. This indicates that the victim's family suspected some foul play. They however remain content with that the victim may be staying in either of the houses.

91. The victim's mother came to PW 1's house the following morning, searching for the victim before the victim was found hanging, with her private parts bleeding.

Both PW 3 and PW 5 informed PW 1 that the appellant had taken the victim away in the said bicycle.

92. The evidence of PW 1 must be read alongside the evidence of PW 2, the victim's father. PW 2's evidence has established that the victim was seen speaking with the appellant, the acquitted accused, and one Badshah SK (who was not charge-sheeted by the police). PW 2 corroborated PW 1 that the victim routinely stayed with her grandmother at night.

93. PW 2's evidence has established that he and his wife, PW-6, searched for the victim that night. They temporarily paused their search, assuming the victim had reached her grandmother's house. This also corroborates PW 1's evidence on the temporary search.

94. PW 2's evidence matches PW 1's regarding the distressing condition in which they found the victim, hanging from the ceiling of a tin shed in the late Dulal Ghosh's mango orchard. PW 2 also found the presence of a red ladies' bicycle at the PO.

95. PW 6's evidence, the victim's mother, corroborates PW 2's that the victim left home for her grandmother's house on the fateful evening. PW 6 corroborated PW 1 that PW 3 informed them that he saw the appellant taking the victim on a red ladies' bicycle. PW 6 identified the victim's clothes in court, recovered from the PO. She also confirmed that the police recovered the said bicycle from the PO and identified it in court.

96. PW 7, the victim's younger sister, corroborated PW 1, 2, and 6 that the victim usually slept at their grandmother's house at night. She corroborated PW 1 and 6 that PW 3 informed them he saw the appellant carrying the victim as a pillion rider on a ladies' bicycle. PW 7 confirmed that the appellant routinely rode that

bicycle. She corroborated PW 6 on recovery of the victim's dead body and the said bicycle from the PO.

97. PW 8, the victim's maternal nephew, corroborated PW 1, 6, and 7 on the hanging condition of the victim's dead body from the ceiling and noted the presence of the appellant's bicycle at the PO.

98. The evidence of the aforesaid PWs reaffirms that the appellant was last seen with the victim in the red colored ladies' bicycle, after which she was found dead. They reaffirm that PW 3 and 5 indeed saw the appellant and victim on the said bicycle.

V. The Last seen theory puts the appellant at the PO

99. The victim's parents, PW-2 and PW-6, saw the victim speaking with the appellant, acquitted accused Royal Sk and FIR named accused Babu Sk, who was not charge sheeted. The victim went missing and was found dead thereafter. The appellant and acquitted accused thus had exclusive knowledge of the conversation they had with the victim, evidence of which cannot be led by the prosecution.

100. The PM Doctor, PW 24, found undigested food in the victim's stomach. He opined that food typically takes 2 to 3 hours to digest. Given that the victim had an evening snack around 6:00 PM, she likely died before 9:30 PM. The time span between the victim last seen with the appellant by her parents and her death is, thus, extremely close. This is one more link to the last seen theory. This also calls upon the appellant to indicate the nature of conversation with the victim.

101. The evidence of PW 3 and PW 5 confirms that they saw the appellant with the victim on the red colored ladies' bicycle. This reduces the time gap of the victim

last seen with the appellant and her death than her parents last seeing her speaking with the appellant and other accused persons.

102. It is, thus, established that the appellant was with the victim after 6:30 PM within 3 hours therefrom, the victim died. The prosecution cannot lead evidence as to why did the victim was travelling with the appellant on the said bicycle, after which she was found raped and murdered. The PM report found the victim was rapped and throttled to death.

103. A unique feature lending credence to the prior statement of PW 3 and PW 5 is that they did not merely report seeing the appellant with the victim to the police; they also informed it to PW-1, PW-6, PW-7, and PW-8. The said prior statements have been tested during cross examination of PW 3 and 5 by putting the same to them. Such prior statements have assumed the character of substantive evidence in the trial because PW 3 and 5 did not deny in the trial that they made such an incriminating statement against the appellant to the said PWs. They did not offer any valid reason for retracting from their prior statements.

104. A common thread runs through the evidence PW 3, PW 4, and PW 5; they are not related to the victim by blood and they turned hostile. In contrast, the victim's family supported the prosecution's case. They lost their daughter and have no motive to falsely implicate the appellant.

105. The red-colored ladies' bike was recovered from the PO. The bike belonged to the appellant. This adds to the last seen theory. The prosecution cannot lead evidence as to why did the appellant went to the PO and kept his bike thereat.

106. In course of examination under Section 313 of the CrPC, apart from denying that he ever had owned a bicycle, the appellant did not avail such opportunity to offer any alibi that he was not at the PO or could not have been seen by the

prosecution witnesses immediately prior to the incident. He did not say that he did not meet with the victim on the fateful day. Such failure on the part of the appellant would definitely complete the chain of circumstances and call for an adverse inference against him.

107. The appellant has also failed to explain the why the statement of PW 5 under 164 of the CrPC should not be used against him or that he was elsewhere, during the date and time of occurrence. These would form additional links in the chain as per paragraph 61 of the **Vahita decision(Supra).**

108. The principle of 'last seen' thus runs contrary to the innocence of the appellant in view of the following circumstances:-

A) The prosecution first placed the appellant at the stage of meeting the victim near her residence;

B) Thereafter, it established that the appellant rode a bicycle while carrying the victim as a pillion rider;

C) Finally, it established the appellant's presence with the victim at the PO by recovering the said bicycle and wearing apparels of the victim.

109. Therefore, the appellant was required to advance negative evidence namely, that he did not meet the victim and rode with her in a bicycle on the fateful evening and night in view of the decision in **Anees v. The State Govt. Of NCT, reported in 2024 INSC 368**, wherein it was held as follows:-

> 48. A manifest distinction exists between the burden of proof and the burden of going forward with the evidence. Generally, the burden of proof upon any affirmative proposition necessary to be established as the foundation of an issue does not shift, but the burden of evidence or the burden of explanation may shift from one side to the other according to the testimony. Thus, if the prosecution has offered evidence, which if believed by the court, ***would convince them of the accused's guilt beyond a reasonable doubt, the accused, if in a position, should go forward with counter-vailing evidence, if he has such evidence.*** When facts are peculiarly within the knowledge of the accused, the burden is on him to present evidence of such facts, ***whether the proposition is an affirmative or negative one***. He is not required to do so even though a prima facie case

> has been established, for the court must still find that he is guilty beyond a reasonable doubt before it can convict. However, the accused's failure to present evidence on his behalf may be **regarded by the court as confirming the conclusion indicated by the evidence presented by the prosecution or as confirming presumptions which might arise therefrom**. Although not legally required to produce evidence on his own behalf, the accused may, therefore, as a practical matter find it essential to go forward with proof.

110. In the absence of an explanation from the appellant regarding his presence with the victim at the PO and recovery of his bicycle therefrom, the Court called upon the appellant to explain these circumstances under Section 313. He did not offer any explanation.

111. The absence of such an explanation from the appellant confirms that the appellant is guilty of raping and murdering the victim. The prosecution cannot be called upon to prove through direct eyewitness that the appellant actually killed the victim in view of the aforesaid circumstances which were in the exclusive knowledge of the appellant. In **Anees decision (supra),** it was held as follows:-

> 45..... But, if the accused in such a case does not give any explanation at all or gives a false or unacceptable explanation, **this by itself is a circumstance which may well turn the scale against him. In the language of Prof. Glanville Williams:**
>
> > "All that the shifting of the evidential burden does at the final stage of the case is to allow the jury (Court) to take into **account the silence of the accused or the absence of satisfactory explanation appearing from his evidence**."
>
> 46. To recapitulate the foregoing : What lies at the bottom of the various rules shifting the evidential burden or burden of introducing evidence in proof of one's case as opposed to the persuasive burden or burden of proof, i.e., of proving all the issues remaining with the prosecution and **which never shift is the idea that it is impossible for the prosecution to give wholly convincing evidence on certain issues from its own hand and it is, therefore, for the accused to give evidence on them if he wishes to escape**.
>
> 47.....**The intention underlying the act or conduct of any individual is seldom a matter which can be conclusively established; it is indeed only known to the person in whose mind the intention is conceived. *Therefore, if the prosecution has***

> ***established that the character and circumstance of an act suggest that it was done with a particular intention, then under illustration (a) to this section, it may be assumed that he had that intention, unless he proves the contrary.***
>
> Emphasis Applied

112. In **State of W.B. v. Mir Mohammad Omar and Ors., reported in (2000) 8 SCC 382,** it was held that the Court must harmonize the principle of 'proof beyond a reasonable doubt' with the 'presumption of certain facts' inferred from other established facts.

113. The prosecution has proved that the appellant spoke with the victim and placed him at the PO through the recovery of the said bicycle. In fact, through the evidence of PW 3 and PW 5, the prosecution has established that the appellant carried the victim as a pillion rider on his bicycle.

114. Therefore, the doctrine of presumption requires this Court to infer that the appellant only had the opportunity to kill the victim, which he indeed did by raping and murdering her. Paragraphs 31, 32, and 34 of **Mir Mohammad Omar decision (supra)** are set out below-

> 31. The pristine rule that the burden of proof is on the prosecution to prove the guilt of the accused **should not be taken as a recognized doctrine as though it admits no process of intelligent reasoning.The doctrine of presumption is not alien to the above rule, nor would it impair the temper of the rule. On the other hand, if the traditional rule relating to burden of proof of the prosecution is allowed to be wrapped in pedantic coverage, *the offenders in serious offences would be the major beneficiaries and the society would be the casualty.***
>
> 32. In this case, when the prosecution succeeded in establishing the afore-narrated circumstances, the court has to presume the existence of certain facts. Presumption is a course recognized by the law for the court to rely on in conditions such as this.
>
> 34. **When it is proved to the satisfaction of the Court that Mahesh was abducted by the accused and they took him out of that area, the accused alone knew what happened to him until he was with them. If he was found murdered within a short time after the abduction the permitted reasoning process would enable the Court to draw the presumption that the accused have murdered him.**

Such inference can be disrupted *if the accused would tell the Court what else happened to Mahesh at least until he was in their custody*

Emphasis applied

115. In **Mir Mohammad Omar (supra),** the accused abducted the victim and removed him from the area where he resided. Shortly after the abduction, the victim was found dead. The Court drew the inference that the accused had, therefore, killed the victim. Such an inference could only be rebutted if the accused had explained to the Court what he did with the victim.

116. In the present case, the situation is similar. The victim was last seen with the appellant near her house and was subsequently seen riding on the appellant's bicycle. The bicycle was later recovered from the PO.

117. Therefore, the inference of guilt against the appellant could only be rebutted in line with **Mir Mohammad Omar decision (supra)** provided the appellant had disclosed to the Court what transpired after he was seen speaking with the victim and riding her on his bicycle. At the very least, the appellant was bound to deny meeting the victim that day and establish an alibi, which he failed to do

118. Failing to infer guilt from these circumstances would amount to holding that an appellant cannot be convicted in the absence of direct eyewitness testimony. This would undermine the principle of proving guilt through circumstantial evidence, a standard crucial in heinous crimes, which are invariably committed in secrecy and away from public view.

VI. Circumstances against the appellant

119. The circumstances against the appellant are as follows:-

A) The victim habitually went to her grandmother's house every evening.

B) On the fateful evening, she left for her grandmother's home after having her evening snacks.

C) PW 2 and 6 saw the victim talking to the appellant, after leaving her home.

D) PW 3 and 5 saw the appellant with the victim on red coloured ladies' bicycle. They relayed this information to PW 1, 6, 7, and 8.

E) The said bicycle was recovered from the PO.

F) The said bicycle belonged to the appellant

G) Medical evidence revealed undigested food in the victim's body, indicating she died shortly after leaving her house.

H) The Statement of the PW-5 under Section 164 of CrPC.

VII. **Case against the appellant is distinct from the acquitted accused Royal Sk.**

120. Learned counsel for the Appellant has argued that the trial Court convicted the appellant while acquitting co-accused Royal Sheikh. The evidence against both appellant and accused is identical. Thus, the principle of parity entitles the appellant to an acquittal as well.

121. PW2 and PW6, the parents of the victim, saw her speaking with the appellant, the acquitted accused Royal Sheikh, and the FIR-named accused Babu Sheikh (who was not charge-sheeted). Thereafter, the trend of the events took a turn: PW 3 and PW 5 saw the appellant and victim together on a red ladies' bicycle. The police recovered this bicycle from the PO, and the appellant was its owner.

122. Therefore, the evidence against Royal Sheikh only establishes that he was part of the group speaking with the victim initially. Witnesses did not see him

with the victim on the bicycle. Consequently, the case of the acquitted accused Royal Sheikh is distinct from that of the present appellant.

123. In any event, an accused cannot take benefit of a wrong acquittal of his co-accused. Reference in this regard may be made to decision in **Khujji V. State Of M.P., reported in (1991) 3 SCC 627, Javed Shaukat Ali Qureshi V. State Of Gujarat, reported in (2023) 9 SCC 164, and R. Muthukumar V. TANGEDCO, reported in 2022 SCC Online SC 151.**

CONCLUSION

124. In view of the discussions above, the impugned judgment and order of conviction and sentence is upheld. CRA 519 of 2015 is dismissed. Consequently, CRAN 3 of 2026 and all connected applications, if any, shall stand dispose of in terms of this judgment.

125. The State shall pay a total sum of Rs.4,00,000/- (four lakhs only) to the victim. In the absence of the victim, the State shall pay this amount to the victim's dependents, namely the parents, who have suffered as a result of the crime, in terms of Section 357A, CRPC. The State shall be at liberty to recover the amount of compensation from the appellant in accordance with law.

126. If any amount towards compensation has already been paid by the State, the balance sum, if any, from Rs 4 lakhs shall be paid.

127. Further, the concerned trial Court and State shall ensure that the fine amount imposed by the trial Court upon the appellant is recovered. This fine amount, if realized, shall also be remitted in favor of the victim and in her absence, to her dependents namely, her parents.

128. The learned Public Prosecutor, Calcutta High Court, shall communicate this order to the State at once and request the State to disburse the said

compensation amount of Rs.4,00,000/- within a period of seven days from the date of communication of this judgment and order to the State.

129. Let a copy of this judgment and the Trial Court Records be sent to the trial court at once.

130. Urgent certified copy of this judgment, if applied for, shall be made available to the parties upon compliance with due formalities.

(Rajasekhar Mantha, J.)

I agree.

(Anuj Singh, J.)