[2024] 1 S.C.R. 87 : 2024 INSC 13

Case Details

Perumal Raja @ Perumal

v.

State, Rep. by Inspector of Police

(Special Leave Petition (Criminal) No. 863 of 2019)

03 January 2024

[Sanjiv Khanna* and S. V. N. Bhatti, JJ.]

Issue for Consideration

Accused not formally arrested at the time of giving information if can be deemed to be in the 'custody' of the police, admissibility of evidence in terms of s.27, Evidence Act, 1872. Conviction and sentence of the appellant u/ss.302 and 201, Penal Code, 1860, if justified.

Headnotes

Evidence Act, 1872 – s.27 – "in the custody of a police officer" – Interpretation – Case based on circumstantial evidence – Appellant was taken into custody during the course of investigation for the murder of his Uncle – However, he made a disclosure statement – Appellant along with other co-accused had murdered his uncle's son-deceased (appellant's cousin) who was missing for months and his body was first dumped in the sump tank and later retrieved, cut into two parts, put in sack bags, and thrown in the river/canal – Appellant subsequently arrested in the present case – On the basis of the disclosure statement, parts of the dead body and sack bags were recovered – Other articles were also recovered – Appellant's conviction and sentence u/ss.302 and 201, Penal Code, 1860, challenged:

Held: The pre-requisite of police custody, within the meaning of s.27, ought to be read pragmatically and not formalistically or euphemistically – "custody" u/s.27 does not mean formal custody – It includes any kind of restriction, restraint or even surveillance by the police– Even if the accused was not formally arrested at the time of giving information, the accused ought to be deemed, for all practical purposes, in the custody of the police – Words "person accused of an offence" and "in the custody of a police

* Author

officer" in s.27 are separated by a comma and thus, have to be read distinctively – The wide and pragmatic interpretation of the term "police custody" is supported by the fact that if a narrow or technical view is taken, it will be very easy for the police to delay the time of filing the FIR and arrest, and thereby evade the contours of ss.25 to 27 – A person giving word of mouth information to police, which may be used as evidence against him, may be deemed to have submitted himself to the "custody" of the police officer – In the present case, the disclosure statement was made by the appellant when he was detained in another case relating to the murder of his Uncle– He was subsequently arrested in the present case – Body parts of the deceased were recovered on the pointing out of appellant in his disclosure statement – Deceased had been missing for months and was untraceable – His whereabouts were unknown– The perpetrator(s) were also unknown – It is only consequent to the disclosure statement by the appellant that the police came to know that the Deceased had been murdered – The homicidal death of Deceased, the disclosure statement and the consequent recoveries of the motorcycle and other belongings at the behest of the appellant proved beyond doubt – These facts, in the absence of any other material to doubt them, establish that the appellant committed murder of Deceased – The presence of motive, inter se family property disputes, reinforces the said conclusion – Conviction of the appellant upheld. [Paras 25, 28, 29, 31, 41]

Evidence Act, 1872 – ss.25-27 – s.27, an exception to ss.25, 26 – Doctrine of confirmation by subsequent events:

Held: s.27 is an exception to ss.25 and 26 – s.27 makes that part of the statement which distinctly leads to discovery of a fact in consequence of the information received from a person accused of an offence, to the extent it distinctly relates to the fact thereby discovered, admissible in evidence against the accused – The fact which is discovered as a consequence of the information given is admissible in evidence – Further, the fact discovered must lead to recovery of a physical object and only that information which distinctly relates to that discovery can be proved – s.27 is based on the doctrine of confirmation by subsequent events- a fact is actually discovered in consequence of the information given, which results in recovery of a physical object – The facts discovered and the recovery is an assurance that the information given by a person

accused of the offence can be relied – However, s.27 does not lay down the principle that discovery of a fact is to be equated to the object produced or found. [Paras 19, 22]

Evidence Act, 1872 – s.27 – Conditions necessary for bringing s.27 into operation, discussed – Facts proved by the prosecution – Duty of the Court – Evidence produced in terms of s.27 – Evidentiary value:

Held: The facts proved by the prosecution, particularly the admissible portion of the statement of the accused, would give rise to two alternative hypotheses, (i) that the accused had himself deposited the physical items which were recovered; or (ii) only the accused knew that the physical items were lying at that place – The second hypothesis is wholly compatible with the innocence of the accused, whereas the first would be a factor to show involvement of the accused in the offence – The court has to analyse which of the hypotheses should be accepted in a particular case – s.27 is frequently used by the police, and the courts must be vigilant about its application to ensure credibility of evidence, as the provision is vulnerable to abuse – However, this does not mean that in every case invocation of s.27 must be seen with suspicion and is to be discarded as perfunctory and unworthy of credence – Evidentiary value to be attached on evidence produced before the court in terms of s.27 cannot be codified or put in a straightjacket formula – It depends upon the facts and circumstances of the case – A holistic and inferential appreciation of evidence is required to be adopted in a case of circumstantial evidence. [Paras 23, 24]

Evidence Act, 1872– ss.24-27 – "accused person", "a person accused of any offence":

Held: The bar u/s.25 applies equally whether or not the person against whom evidence is sought to be led in a criminal trial was in custody at the time of making the confession – For the ban to be effective the person need not have been accused of an offence when he made the confession – The reason is that the expression "accused person" in s.24 and the expression "a person accused of any offence" in ss.26 and 27 have the same connotation, and describe the person against whom evidence is sought to be led in a criminal proceeding – The adjectival clause "accused of any offence" is, therefore, descriptive of the person against whom a

confessional statement made by him is declared not provable, and does not predicate a condition of that person at the time of making the statement. [Para 26]

Criminal Law – Appellant was accused of the murder of his Uncle and his son – Acquitted in the case relating to the murder of Uncle – Judgment of acquittal – Evidentiary value, if any:

Held: Except for the fact that the appellant was taken into custody during the course of investigation for the murder of his Uncle and thereupon his disclosure statement (Exhibit P-37) was recorded, there is no connection between the two offences – Murders were committed on two different dates – Murder trial of his Uncle was primarily based upon an entirely different set of evidence – Conviction of the appellant is sustainable in view of the evidence placed on record in the present case – The judgment of acquittal would not qualify as relevant and of evidentiary value so as to acquit the appellant in the present case. [Para 42]

Evidence Act, 1872 – s.27 – Disclosure statement (Exhibit P-37) made by the appellant, convicted – Acquittal of the co-accused – Application of s.27:

Held: Acquittal of the co-accused was for want of evidence against them – At best, they were found in possession of the articles connected with the crime on the basis of the disclosure statement (Exhibit P-37) made by the appellant – s.27 of the Evidence Act could not have been applied to the other co-accused as the provision pertains to information that distinctly relates to the discovery of a 'fact' that was previously unknown, as opposed to fact already disclosed or known – Once information is given by an accused, the same information cannot be used, even if voluntarily made by a co-accused who is in custody – s.27 does apply to joint disclosures, but this is not one such case – This was precisely the reason given by the trial court to acquit the co-accused – Further, even if Section 8 of the Evidence Act was to apply, it would not have been possible to convict the co-accused – The trial court rightly held other co-accused not guilty. [Para 43]

Evidence – Case based on circumstantial evidence – Five golden principles to be satisfied as laid down in Sharad Birdhichand Sarda v. State of Maharashtra [1985] 1 SCR 88 – Conditions to be fulfilled before the false explanation or a false defence can be used by the Court as an additional link to lend an assurance to the court, stated – A distinction has

to be drawn between incomplete chain of circumstances and a circumstance after a chain is complete and the defence or explanation given by the accused is found to be false, in which event the said falsehood is added to reinforce the conclusion of the court. [Paras 37, 38]

Evidence Act, 1872 – s.106 – Code of Criminal Procedure, 1973 – s.313:

Held: Appellant in his statement u/s.313 denied all accusations without furnishing any explanation regarding his knowledge of the places from which the dead body was recovered – The failure of the appellant to present evidence on his behalf or to offer any cogent explanation regarding the recovery of the dead body by virtue of his special knowledge must lead to a reasonable adverse inference, by application of the principle u/s.106 of the Evidence Act thus forming an additional link in the chain of circumstances – The additional link further affirms the conclusion of guilt as indicated by the prosecution evidence. [Para 40]

Words and Phrases – 'distinctly' in s.27, Evidence Act, 1872:

Held: The word 'distinctly' is used to limit and define the scope of the information and means 'directly', 'indubitably', 'strictly' or 'unmistakably' – Only that part of the information which is clear, immediate and a proximate cause of discovery is admissible. [Para 22]

List of Citations and Other References

State of U.P. v. Deoman Upadhyaya (1961) 1 SCR 14 – followed.

State (NCT of Delhi) v. Navjot Sandhu alias Afsan Guru **[2005] 2 Suppl. SCR 79:(2005) 11 SCC 600;** *Mohmed Inayatullah v. State of Maharashtra* **[1976] 1 SCR 715:(1976) 1 SCC 828;** *Aghnoo Nagesia v. State of Bihar* **[1966] SCR 134:AIR 1966 SC 119;** *Dharam Deo Yadav v. State of Uttar Pradesh* **[2014] 8 SCR 650:(2014) 5 SCC 509;** *Sharad Birdhichand Sarda v. State of Maharashtra* **[1985] 1 SCR 88:(1984) 4 SCC 116 – relied on.**

State of A.P. v. Gangula Satya Murthy **[1996] 8 Suppl. SCR 808:(1997) 1 SCC 272;** *A.N.Vekatesh and Anr. v. State of Karnataka* **(2005) 7 SCC 714;**

State of Maharashtra v. Suresh **[1999] 5 Suppl. SCR 215:(2000) 1 SCC 471;** *Harivadan Babubhai Patel v. State of Gujarat* **[2013] 10 SCR 889:(2013) 7 SCC 45;** *Vasanta Sampat Dupare v. State of Maharashtra* **[2014] 14 SCR 961:(2015) 1 SCC 253;** *State of Maharashtra v. Damu S/o Gopinath Shinde and Ors.* **[2000] 3 SCR 880:(2000) 6 SCC 269;** *Rumi Bora Dutta v. State of Assam* **[2013] 3 SCR 801:(2013) 7 SCC 417;** *Rajesh & Anr. v. State of Madhya Pradesh 2023 SCC OnLine SC 1202; Khatri Hemraj Amulakh v. State of Gujarat (1972) 3 SCC 671; Vikram Singh and Ors. v. State of Punjab [2010] 2 SCR 22:(2010) 3 SCC 56; Sandeep v. State of U.P.* **[2012] 5 SCR 952:(2012) 6 SCC 107;** *Hanumant v. State of Madhya Pradesh* **(1952) 2 SCC 71;** *Deonandan Mishra v. State of Bihar* **(1955) 2 SCR 570;** *Central Board of Dawoodi Bohra Community and Anr. v. State of Maharashtra and Anr.***, [2004] 6 Suppl. SCR 1054:(2005) 2 SCC 673;** *Union of India and Anr. v. Raghubir Singh (Dead) By Lrs.***, [1989] 3 SCR 316:(1989) 2 SCC 754;** *Trimurthi Fragrances (P) Ltd. v. Government of N.C.T. of Delhi***, 2022 SCC OnLine SC 1247 – referred to.**

List of Acts

Evidence Act, 1872; Penal Code, 1860; Code of Criminal Procedure, 1973.

List of Keywords

Circumstantial evidence; Disclosure statement; Police custody; Formal custody; Doctrine of confirmation by subsequent events; Special knowledge; Adverse inference; Additional link in chain of circumstances.

Other Case Details Including Impugned Order and Appearances

CRIMINAL APPELLATE JURISDICTION : Special Leave Petition (Criminal) No.863 of 2019.

From the Judgment and Order dated 31.08.2016 of the High Court of Judicature at Madras in CRLA No.280 of 2016.

PERUMAL RAJA @ PERUMAL v.
STATE, REP. BY INSPECTOR OF POLICE

Appearances:

Col R. Balasubramanian, Sr. Adv., D. Kumanan, Raghav Gupta, Y. William Vinoth Kumar, Advs. for the Appellant.

Aravindh S., Abbas, Advs. for the Respondent.

Judgment / Order of The Supreme Court

Judgment

Sanjiv Khanna, J.

Leave granted.

2. The impugned judgment[1] by the High Court of Judicature at Madras affirms the conviction of the appellant – Perumal Raja @ Perumal for murder of Rajini @ Rajinikanth under Section 302 of the Indian Penal Code, 1860[2] and Section 201 of the IPC, by the Principal Sessions Judge, Puducherry in SC No. 22 of 2014[3], in the charge sheet arising from the First Information Report[4] No. 80 of 2008 registered on 24.04.2008 in Police Station[5] Odiansalai, District – Puducherry.

3. The appellant – Perumal Raja @ Perumal stands sentenced to imprisonment for life and fine of Rs.5,000/- for the offence under Section 302 of the IPC and rigorous imprisonment for three years and fine of Rs.3,000/- for the offence under Section 201 of the IPC.

4. The other co-accused, namely, Saravanan @ Krishnan, Mohan @ Mohankumar, and Ravi @ Ravichandran were acquitted by the trial court, which acquittal has become final. One *'N'* was tried as a juvenile and acquitted. On 15.02.2013, the case of another co-accused – Chella @ Mugundhan was split up since he was absconding. Subsequently, *vide* judgment dated 04.06.2019, which has been placed on record as additional evidence, Chella @ Mukundhan has been acquitted.

5. The prosecution case in brief is as follows:

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1 Dated 31.08.2016 passed in Criminal Appeal No.280/2016.

2 For short, "IPC".

3 Dated 07.04.2016.

4 For short, "FIR".

5 For short, "PS".

(i) On 20.04.2008, Rajaram, who was settled in France, returned to Puducherry as his son Rajini @ Rajinikanth, who was living in India, had gone missing.

(ii) On 20.04.2008, Rajaram had approached PS Odiansalai, Puducherry, and made an oral complaint stating that when he had opened his house No. 13, Chinna Vaikkal Street, Puducherry, he had found articles to be scattered all over the place. His motorcycle was missing. He had suspected that his son – Rajini @ Rajinikanth and his sister's husband Krishnamurthy could have taken the bike. He requested the Police to make inquiries. However, in spite of being asked, he did not make any written complaint. He stated that he was exhausted and would come back to lodge written complaint afterwards.

(iii) Next day on 21.04.2008, Rajaram was murdered. FIR No. 204 of 2008 was registered at PS Grand Bazaar, District – Puducherry under Sections 147, 148, 341 and 302 of the IPC read with Section 149 of the IPC.

(iv) On 24.04.2008, Arumugam, father of Rajaram, had made a written complaint at Odiansalai PS, Puducherry that his grandson Rajini @ Rajinikanth was missing. The complaint was registered as Diary No. 80 of 2008 for a 'missing man' and was taken up for investigation.

(v) The appellant – Perumal Raja @ Perumal, son of Krishnamurthy (husband of the sister of Rajaram), was detained and taken into custody during the course of investigation in FIR No. 204 of 2008 for murder of Rajaram.

(vi) On 25.04.2008, the appellant – Perumal Raja @ Perumal made a disclosure statement (Exhibit P-37).[6]

(vii) The appellant – Perumal Raja @ Perumal, along with other co-accused, had committed murder of Rajini @ Rajinikanth on 23.11.2007 at Rajaram's house at Chinna Vaikkal Street, Puducherry. His dead body was thrown in the sump tank located in the same house.

6 We shall be subsequently referring to the admissible portions of the disclosure statement under Section 27 of the Indian Evidence Act, 1872, and also to a limited extent in terms of Section 8 of the Indian Evidence Act, 1872.

(viii) The appellant – Perumal Raja @ Perumal had also removed various belongings from the same house, including iron box, home theatre, CD player, documents of the house, motorcycle, RC book, key, Rajini @ Rajinikanth's passport, Rajini @ Rajinikanth's passport size photograph, birth registration of the grandmother, ration card, etc.

(ix) Later on, the appellant – Perumal Raja @ Perumal, and other co-accused, decided to remove the dead body of Rajini @ Rajinikanth from the sump tank as they had learnt that Rajaram was returning to India as his son Rajini @ Rajinikanth was missing.

(x) Accordingly, the appellant – Perumal Raja @ Perumal had bought a knife and sack bags. They opened the sump tank and took out Rajini @ Rajinikanth's body, which was in a decomposed state. They had cut Rajini @ Rajinikanth's body into two pieces and put it in two sack bags. The knife and rope were put in another sack bag. The three sack bags were taken by them from Chinna Vaikkal Street, and after passing through Gandhi Street they threw the sack bags in the canal/river from the Uppanaru Bridge near the railway crossing.

(xi) On the basis of the disclosure statement (Exhibit P-37), the sack bags with the decomposed dead body of Rajini @ Rajinikanth were recovered on 26.04.2008 from the Uppanaru canal/river. Knife was also recovered.

(xii) The body parts which were in a decomposed state were sent for post mortem, which was conducted by Dr. S. Diwakar (PW-24), Senior Medical Officer, Department of Forensic Medicine, Government General Hospital, Puducherry on 26.04.2008.

(xiii) On 30.04.2008, eight articles were recovered from the water sump tank at the house of the deceased, namely, gloves, lower jaw, rib, cervical vertebrae, tarsal and metatarsal, small and big size bone pieces, and knee cap.

(xiv) The skull recovered from the canal/river and the lower part of the jaw recovered from the sump tank were sent for superimposition test to ascertain whether they belong to the deceased Rajini @ Rajinikanth. C. Pushparani, Scientific Assistant Grade II,

Anthropology Division, Forensic Sciences Department, Chennai, who had deposed as PW-29, proves the superimposition test report dated 20.01.2009 (Exhibit P-25), which confirms that the skull and mandible were of the deceased – Rajini @ Rajinikanth.

(xv) On the basis of the disclosure statement, various articles, including the motorcycle, ignition key, original RC book were recovered from the co-accused Mohan Kumar @ Mohan and a juvenile.

(xvi) The motive for the crime was *inter se* family property disputes and the appellant – Perumal Raja @ Perumal's desire to acquire and become owner of the property No. 13, Chinna Vaikkal Street, Puducherry.

6. Several public witnesses turned hostile and did not support the prosecution case. This includes Arumugam (PW-20), the grandfather of the deceased Rajini @ Rajinikanth, who had filed the 'missing man' complaint for Rajini @ Rajinikanth, *vide* Diary No. 80 of 2008. However, Arumugam (PW-20) did accept that his son, Rajaram, who was living abroad had come home when he was murdered on 21.04.2008. Arumugam (PW-20) also accepts that his grandson Rajini @ Rajinikanth had not attended crematorial rites of his father Rajaram and was missing.

7. Narayanasamy (PW-12), then head constable, PS Odiansalai, has testified that he had received the oral complaint of Rajaram on 20.04.2008, in connection with the scattered articles in his house, and the missing motorcycle. Rajaram had assumed that his son Rajini @ Rajinikanth could have taken it away.

8. Kaniyakumaran (PW-10), involved in real estate business, did not specifically implicate the appellant – Perumal Raja @ Perumal, but has accepted that Punitha (PW-3), a relative of the deceased Rajini @ Rajinikanth, had tried to sell the property in Kurumbapet. Reliance can be also placed on the documentary evidence to establish that the property in question in the name of Rajaram was dealt with by Porkilai (PW-4), mother of the appellant – Perumal Raja @ Perumal. In support, the following documents are relied:

(i) sale deed in favour of Rajaram executed on 26.06.1990 (Exhibit P-66);

(ii) sale agreement between Porkilai (PW-4) and accused no.5 - Ravi @ Ravichandran executed on May, 2007 (Exhibit P-66);

(iii) release deed in favour of Rajaram by Porkilai (PW-4), executed on 27.06.1990 (Exhibit P-68);

(iv) sale agreement in favour of Thangaveni Ammal, mother of Rajaram, executed on 19.08.1981 (Exhibit P-69).

9. Chinta Kodanda Rao (PW-30), Inspector of Police, PS Grand Bazaar, the investigating officer in FIR No. 204 of 2008 relating to the murder of Rajaram by unknown persons, has testified on the disclosure statement made by the appellant – Perumal Raja @ Perumal (Exhibit P-37). The relevant portion of the disclosure statement reads:

> "…myself and xxx pull Rajni's xxx, put him in the sump tank near the bathroom and closed it…
>
> …took xxx, Iron box, Home theatre, xxx, xxx, rental documents of my uncle's house at Chittankudi, Hero Honda CD Dawn motorcycle, RC book and key, Rajini's passport book, Rajini's passport size photo, birth registration of grandmother, family ration card of uncle and the copy of documents written in English, bunch of keys of the house and my uncle Ranjith's notebook, xxx xxx xxx, took Hero Honda CD Dawn motorbike of my uncle Rajaram…..one bag was put by Mohan xxx xxx xxx the house of Mohan nearby to the Tollgate of Ariyankuppam, kept 2 bags in Mohan's house…
>
> …I, immediately, went to N (name withheld) house and gave him document, ration card, bunch of keys, Rajini's passport, by keeping them in Ranjith notebook and stated to keep them safe…
>
> …I took the already kept 3 sack bags, rope, curry knife, showed the sump tank to xxx. When he opened the cover of the sump tank, he bend down and lifted the hand of the body of Rajini, who was already killed and put in the sump by us, since Rajini's body was in decomposed stage, his hand had alone come. I put the hand in sack bag. Then we tied rope in chest, myself and xxx pulled the body outside from sump. Then, head has come alone. I put head in the

> sack bag. Then xxx took knife from me and cut Rajini's body into two pieces and put them in two sack bags, then put knife and xxx in another sack bag and kept the sack bags near kitchen, then xxx closed the sump…
>
> …via Chinnavaikal Street and Gandhi Street, turned on the left side of the street, in front of small clock tower, via Varnarapettai Billu Shop, on the centre of the bridge of Railway Crossing on the left side, threw the two bags, containing the decomposed body of Rajini, on the right side threw the sack bag, containing knife and xxx…
>
> …Also, I gave statement that if I was taken, I would identify the Chinnavaikal street, which is the place of occurrence, my maternal uncle's house which is in the same street.. the place where I had left the motor cycle of my (nc) and the place where I had put the body of Rajini... "

10. On the aspect of the recovery of two nylon sack bags with body parts, we have affirmative depositions of Chinta Kodanda Rao (PW-30), Inspector of Police, PS Grand Bazaar, public witness Devadass (PW-21) and Satyamurthy (PW-11). The recovery was photographed by Selvaganapathy (PW-26), police photographer *vide* photographs marked Exhibit P-19. The recovery was duly recorded in the rough sketch plan (Exhibit P-30) and the *mahazar* (Exhibit P-31).

11. On 29.04.2008, accused no. 4 - Mohan Kumar @ Mohan was arrested. On the same day, stolen items including, the motorcycle and ignition key of motorcycle, original registration book, insurance certificate of the motorcycle, iron box, home theatre and speaker box belonging to the deceased were recovered, as recorded *vide* seizure *mahazar* (Exhibits P-44, P-45, P-46 and P-47).

12. On 30.04.2008, eight articles were recovered from the water sump tank at the house of the deceased, namely, gloves, lower jaw, rib, cervical vertebrae, tarsal and metatarsal, small and big size bone pieces, and knee cap. T. Bairavasamy (PW-32), Circle Inspector, PS Odiansalai has deposed about the recovery and proved the *Mahazar* (Exhibit P-48). The recovery was photographed by Subburayan (PW-25), police photographer *vide* photographs marked Exhibit P-18 and duly witnessed by public witness Devadass (PW-21).

13. To determine the identity of the deceased person, some of the body parts were sent for a superimposition test to C. Pushparani (PW-29), who was working as a Scientific Assistant Grade II, Anthropology Division, Forensic Sciences Department, Chennai. She has deposed about having received the case properties, consisting of a skull with mandible on 10.09.2008. The mandible was attached with the skull by means of a spring. For the purpose of identification, she had two identical colour photographs of a male individual sent to her in a sealed envelope as Item Nos. 2 and 3. The photographs were enlarged to the size of a self-portrait. Using the computer aided video superimposition technique, she had examined the skull and mandible viz. the photographs. For the purposes of the examination, the flesh thickness and the anthroposcopic landmarks in the face were also taken into consideration. C. Pushparani (PW-29), Scientific Assistant Grade II, Anthropology Division, Forensic Sciences Department, Chennai opined that the landmarks on the face matched well with those of the skull. She submitted her forensic report dated 20.01.2009 with analysis on the anthroposcopy and superimposition test (Exhibit P-25). The skull, as per C. Pushparani (PW-29), Scientific Assistant Grade II, Anthropology Division, Forensic Sciences Department, Chennai belonged to the male individual seen in the photograph at serial no.4. With the report, Exhibit P-25, C. Pushparani (PW-29), Scientific Assistant Grade II, Anthropology Division, Forensic Sciences Department, Chennai had enclosed the computer laser printouts taken by her at the time of examination to establish and prove that the photographs of deceased – Rajini @ Rajinikanth match with the mandible and the skull (Exhibits P-26 to P-28). We have carefully examined the computer laser print outs, and are of the opinion that the findings of the High Court affirming the judgment of the trial court are justified.

14. On behalf of the appellant – Perumal Raja @ Perumal, it is submitted that as per Dr. S. Diwakar (PW-24), Senior Medical Officer, Department of Forensic Medicine, Government General Hospital, Puducherry no definite cause of death could be ascertained due to decomposition of the body. However, it is pertinent to note that Dr. S. Diwakar (PW-24), Senior Medical Officer, Department of Forensic Medicine, Government General Hospital, Puducherry has also deposed that the deceased could be between 25-30 years of age and probable

death could have occurred six months prior to the autopsy. It must be further noted that the deceased – Rajini @ Rajinikanth was about 30 years of age and he had been missing for about six months prior to the date on which the autopsy was conducted.

15. It has been submitted with considerable emphasis that Dr. S. Diwakar (PW-24), Senior Medical Officer, Department of Forensic Medicine, Government General Hospital, Puducherry has accepted that the lower jaw (mandible) was not found. Whereas, deposition of C. Pushparani (PW-29), Scientific Assistant Grade II, Anthropology Division, Forensic Sciences Department, Chennai and the photo superimposition done by her specifically refer to the lower jaw. We have examined this contention. Dr. S. Diwakar (PW-24), Senior Medical Officer, Department of Forensic Medicine, Government General Hospital, Puducherry, in his examination-in-chief, has testified that the police had sent the skull, sternum and right femur which were preserved by him from the autopsy material. Dr. S. Diwakar (PW-24), Senior Medical Officer, Department of Forensic Medicine, Government General Hospital, Puducherry has also stated that the lower jaw and the left lower first premolar tooth were preserved by him from the skeleton remains for onward transmission to Central Forensic Science Laboratory, Hyderabad, for necessary photo superimposition and DNA test through the Judicial Magistrate-II, Puducherry. The *mahazar* dated 21.5.2008 (Exhibit P-15) was prepared after collecting the aforesaid body parts.

16. We do not find that any confusion or doubt arises from the deposition of Dr. S. Diwakar (PW-24), Senior Medical Officer, Department of Forensic Medicine, Government General Hospital, Puducherry. He had conducted the post mortem examination (Exhibit P-16) on 26.04.2008, wherein he had examined the remains/body parts of the deceased which were found in the two nylon sack bags on the same day. Other body parts including, the lower part of the skull i.e. the mandible and the tooth were found subsequently in the sump tank on 30.04.2008. Therefore, Dr. S. Diwakar (PW-24), Senior Medical Officer, Department of Forensic Medicine, Government General Hospital, Puducherry, in his deposition, while referring to Exhibit P-17 dated 19.05.2008, has referred to the lower jaw (mandible) and the left lower first premolar tooth, to send the said body parts to the Central Forensic Science Laboratory at Hyderabad.

17. It has been submitted on behalf of the appellant – Perumal Raja @ Perumal that Dr. S. Diwakar (PW-24), Senior Medical Officer, Department of Forensic Medicine, Government General Hospital, Puducherry, in his cross-examination, has accepted that body parts were sent to him in two nylon sack bags only once, and nothing was sent thereafter. The post mortem was completed on 26.04.2008, *vide* the post mortem report (Exhibit P-16) of the same date.

18. Dr. S. Diwakar (PW-24), Senior Medical Officer, Department of Forensic Medicine, Government General Hospital, Puducherry had issued bone-case certificate (Exhibit P-17) on 19.05.2008. Dr. S. Diwakar (PW-24), Senior Medical Officer, Department of Forensic Medicine, Government General Hospital, Puducherry has clarified that while he did not mention the lower jaw in the post mortem 26.04.2008 (Exhibit P-16), he had mentioned that the lower jaw was preserved in the bone-case certificate (Exhibit P-17) dated 19.05.2008.[7] Further, the aforesaid deposition of Dr. S. Diwakar (PW-24), Senior Medical Officer, Department of Forensic Medicine, Government General Hospital, Puducherry has to be read with the testimony of T. Bairavasamy (PW-32), Circle Inspector, PS Odiansalai, who had deposed that he had taken the letter written by Dr. S. Diwakar (PW-24), Senior Medical Officer, Department of Forensic Medicine, Government General Hospital, Puducherry and had obtained the signatures of Judicial Magistrate-II, Puducherry for conducting DNA test. Thereafter, the material objects were sent through Form 95 No. 02876 (Exhibit P-60) to the Judicial Magistrate-II, Puducherry. The skull and the mandible were sent for photo superimposition test after addressing a letter to Judicial Magistrate-II, Puducherry which was signed by Dr. S. Diwakar (PW-24), Senior Medical Officer, Department of Forensic Medicine, Government General Hospital, Puducherry (Exhibit P-61).

19. The prosecution's case, in the absence of eye witnesses, is based upon circumstantial evidence. As per Section 25 of the Indian Evidence Act, 1872[8], a confession made to a police officer is prohibited and cannot be admitted in evidence. Section 26 of the Evidence Act provides that no confession made by any person whilst

7 The recovery of lower jaw from the sump took place on 30.04.2008. Thus, it could not have been mentioned in the post mortem report dated 26.04.2008.

8 For short 'the Evidence Act'.

he is in the custody of a police officer shall be proved against such person, unless it is made in the immediate presence of a Magistrate. Section 27[9] of the Evidence Act is an exception to Sections 25 and 26 of the Evidence Act. It makes that part of the statement which distinctly leads to discovery of a fact in consequence of the information received from a person accused of an offence, to the extent it distinctly relates to the fact thereby discovered, admissible in evidence against the accused. The fact which is discovered as a consequence of the information given is admissible in evidence. Further, the fact discovered must lead to recovery of a physical object and only that information which distinctly relates to that discovery can be proved. Section 27 of the Evidence Act is based on the doctrine of confirmation by subsequent events – a fact is actually discovered in consequence of the information given, which results in recovery of a physical object. The facts discovered and the recovery is an assurance that the information given by a person accused of the offence can be relied.

20. In ***Pulukuri Kottaya*** v. ***King Emperor***[10], the Privy Council held that the fact discovered embraces the place from which the physical object is produced and the knowledge of the accused as to this, and the information given, must distinctly relate to this fact.

21. In ***State (NCT of Delhi)*** v. ***Navjot Sandhu alias Afsan Guru***[11], this Court affirmed that the fact discovered within the meaning of Section 27 of the Evidence Act must be some concrete fact to which the information directly relates. Further, the fact discovered should refer to a material/physical object and not to a pure mental fact relating to a physical object disassociated from the recovery of the physical object.

22. However, we must clarify that Section 27 of the Evidence Act, as held in these judgments, does not lay down the principle that discovery of a fact is to be equated to the object produced or found. The discovery of the fact resulting in recovery of a physical object exhibits

9 **27. How much of information received from accused may be proved.** – Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

10 AIR 1947 PC 67.

11 (2005) 11 SCC 600.

knowledge or mental awareness of the person accused of the offence as to the existence of the physical object at the particular place. Accordingly, discovery of a fact includes the object found, the place from which it was produced and the knowledge of the accused as to its existence. To this extent, therefore, factum of discovery combines both the physical object as well as the mental consciousness of the informant accused in relation thereto. In ***Mohmed Inayatullah*** v. ***State of Maharashtra***[12], elucidating on Section 27 of the Evidence Act, it has been held that the first condition imposed and necessary for bringing the section into operation is the discovery of a fact which should be a relevant fact in consequence of information received from a person accused of an offence. The second is that the discovery of such a fact must be deposed to. A fact already known to the police will fall foul and not meet this condition. The third is that at the time of receipt of the information, the accused must be in police custody. Lastly, it is only so much of information which relates distinctly to the fact thereby discovered resulting in recovery of a physical object which is admissible. Rest of the information is to be excluded. The word 'distinctly' is used to limit and define the scope of the information and means 'directly', 'indubitably', 'strictly' or 'unmistakably'. Only that part of the information which is clear, immediate and a proximate cause of discovery is admissible.

23. The facts proved by the prosecution, particularly the admissible portion of the statement of the accused, would give rise to two alternative hypotheses, namely, (i) that the accused had himself deposited the physical items which were recovered; or (ii) only the accused knew that the physical items were lying at that place. The second hypothesis is wholly compatible with the innocence of the accused, whereas the first would be a factor to show involvement of the accused in the offence. The court has to analyse which of the hypotheses should be accepted in a particular case.

24. Section 27 of the Evidence Act is frequently used by the police, and the courts must be vigilant about its application to ensure credibility of evidence, as the provision is vulnerable to abuse. However, this does not mean that in every case invocation of Section 27 of the Evidence Act must be seen with suspicion and is to be discarded as perfunctory and unworthy of credence.

12 (1976) 1 SCC 828.

25. The pre-requisite of police custody, within the meaning of Section 27 of the Evidence Act, ought to be read pragmatically and not formalistically or euphemistically. In the present case, the disclosure statement (Exhibit P-37) was made by the appellant – Perumal Raja @ Perumal on 25.04.2008, when he was detained in another case, namely, FIR No. 204/2008, registered at PS Grand Bazar, Puducherry, relating to the murder of Rajaram. He was subsequently arrested in this case, that is FIR.No.80/2008, which was registered at PS Odiansalai, Puducherry. The expression "custody" under Section 27 of the Evidence Act does not mean formal custody. It includes any kind of restriction, restraint or even surveillance by the police. Even if the accused was not formally arrested at the time of giving information, the accused ought to be deemed, for all practical purposes, in the custody of the police.

26. Reference is made to a recent decision of this Court in ***Rajesh & Anr.*** v. ***State of Madhya Pradesh***[13], which held that formal accusation and formal police custody are essential pre-requisites under Section 27 of the Evidence Act. In our opinion, we need not dilate on the legal proposition as we are bound by the law and ratio as laid down by the decision of a Constitution Bench of this Court in ***State of U.P.*** v. ***Deoman Upadhyaya***[14]. The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or coequal strength.[15] This Court in ***Deoman Upadhyay*** (supra) observed that the bar under Section 25 of the Evidence Act applies equally whether or not the person against whom evidence is sought to be led in a criminal trial was in custody at the time of making the confession. Further, for the ban to be effective the person need not have been accused of an offence when he made the confession. The reason is that the expression "accused person" in Section 24 and the expression "a person accused of any offence" in Sections 26 and 27 have the same connotation, and describe the person against whom evidence

13 2023 SCC OnLine SC 1202.

14 (1961) 1 SCR 14.

15 See Judgments of the Constitution Bench of this Court in *Central Board of Dawoodi Bohra Community and Anr. v. State of Maharashtra and Anr.,* (2005) 2 SCC 673 and *Union of India and Anr. v. Raghubir Singh (Dead) By Lrs.,* (1989) 2 SCC 754. *Raghubir Singh* (supra) and *Central Board of Dawoodi Bohra Community* (supra) have been subsequently followed and applied by this Court in *Trimurthi Fragrances (P) Ltd. v. Government of N.C.T. of Delhi,* 2022 SCC OnLine SC 1247.

is sought to be led in a criminal proceeding. The adjectival clause "accused of any offence" is, therefore, descriptive of the person against whom a confessional statement made by him is declared not provable, and does not predicate a condition of that person at the time of making the statement.

27. Elaborating on this aspect, a three judge Bench of this Court in ***Aghnoo Nagesia*** v. ***State of Bihar***[16] has held that if the FIR is given by the accused to a police officer and amounts to a confessional statement, proof of the confession is prohibited by Section 25 of the Evidence Act. The confession includes not only the admission of the offence but all other admissions of incriminating facts related to the offence, except to the extent that the ban is lifted by Section 27 of the Evidence Act. While dealing with the admission of part of confession report dealing with motive, subsequent conduct and opportunity, this Court rejected the severability test adopted by some High Courts. The statement can, however, be relied upon and admitted to identify the accused as the maker, and the portion within the purview of Section 27 of the Evidence Act is admissible. ***Aghnoo Nagesia*** (supra) has been applied and followed by this Court in ***Khatri Hemraj Amulakh*** v. ***State of Gujarat***.[17]

28. The words "person accused of an offence" and the words "in the custody of a police officer" in Section 27 of the Evidence Act are separated by a comma. Thus, they have to be read distinctively. The wide and pragmatic interpretation of the term "police custody" is supported by the fact that if a narrow or technical view is taken, it will be very easy for the police to delay the time of filing the FIR and arrest, and thereby evade the contours of Sections 25 to 27 of the Evidence Act. Thus, in our considered view the correct interpretation would be that as soon as an accused or suspected person comes into the hands of a police officer, he is no longer at liberty and is under a check, and is, therefore, in "custody" within the meaning of Sections 25 to 27 of the Evidence Act. It is for this reason that the expression "custody" has been held, as earlier observed, to include surveillance, restriction or restraint by the police.

16 AIR 1966 SC 119.

17 (1972) 3 SCC 671.

29. This Court in ***Deoman Upadhyay*** (supra), while rejecting the argument that the distinction between persons in custody and persons not in custody violates Article 14 of the Constitution of India, observed that the distinction is a mere theoretical possibility. Sections 25 and 26 were enacted not because the law presumed the statements to be untrue, but having regard to the tainted nature of the source of the evidence, prohibited them from being received in evidence. A person giving word of mouth information to police, which may be used as evidence against him, may be deemed to have submitted himself to the "custody" of the police officer. Reference can also be made to decision of this Court in ***Vikram Singh and Ors.*** v. ***State of Punjab***[18], which discusses and applies ***Deoman Upadhyay*** (supra), to hold that formal arrest is not a necessity for operation of Section 27 of the Evidence Act. This Court in ***Dharam Deo Yadav*** v. ***State of Uttar Pradesh***[19], has held that the expression "custody" in Section 27 of the Evidence Act does not mean formal custody, but includes any kind of surveillance, restriction or restraint by the police. Even if the accused was not formally arrested at the time of giving information, the accused is, for all practical purposes, in the custody of the police and the bar *vide* Sections 25 and 26 of the Evidence Act, and accordingly exception under Section 27 of the Evidence Act, apply. Reliance was placed on the decisions in ***State of A.P.*** v. ***Gangula Satya Murthy***[20] and ***A.N.Vekatesh and Anr.*** v. ***State of Karnataka***[21].

30. However, evidentiary value to be attached on evidence produced before the court in terms of Section 27 of the Evidence Act cannot be codified or put in a straightjacket formula. It depends upon the facts and circumstances of the case. A holistic and inferential appreciation of evidence is required to be adopted in a case of circumstantial evidence.

31. When we turn to the facts of the present case, the body parts of the deceased Rajini @ Rajinikanth were recovered on the pointing out of appellant – Perumal Raja @ Perumal in his disclosure

18 (2010) 3 SCC 56.

19 (2014) 5 SCC 509.

20 (1997) 1 SCC 272.

21 (2005) 7 SCC 714.

statement. Rajini @ Rajinikanth had been missing for months and was untraceable. In the present case, as discussed above, the homicidal death of Rajini @ Rajinikanth, the disclosure statement marked Exhibit P-37, and the consequent recovery as elucidated above have been proved beyond doubt and debate.

32. In ***State of Maharashtra*** v. ***Suresh***[22], this Court in the facts therein held that recovery of a dead body, which was from the place pointed out by the accused, was a formidable incriminating circumstance. This would, the Court held, reveal that the dead body was concealed by the accused unless there is material and evidence to show that somebody else had concealed it and this fact came to the knowledge of the accused either because he had seen that person concealing the dead body or was told by someone else that the dead body was concealed at the said location. Here, if the accused declines and does not tell the criminal court that his knowledge of the concealment was on the basis of the possibilities that absolve him, the court can presume that the dead body (or physical object, as the case may be) was concealed by the accused himself. This is because the person who can offer the explanation as to how he came to know of such concealment is the accused. If the accused chooses to refrain from telling the court as to how else he came to know of it, the presumption is that the concealment was by the accused himself.

33. The aforesaid view has been followed subsequently and reiterated in ***Harivadan Babubhai Patel*** v. ***State of Gujarat***[23], ***Vasanta Sampat Dupare*** v. ***State of Maharashtra***[24], ***State of Maharashtra*** v. ***Damu S/o Gopinath Shinde and Ors.***[25], and ***Rumi Bora Dutta*** v. ***State of Assam***[26].

34. Our reasoning, which places reliance on Section 106 of the Evidence Act, does not in any way dilute the burden of proof which is on the prosecution. Section 106 comes into play when the prosecution is able to establish the facts by way of circumstantial evidence. On this aspect we shall delve upon subsequently.

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22 (2000) 1 SCC 471.

23 (2013) 7 SCC 45.

24 (2015) 1 SCC 253.

25 (2000) 6 SCC 269.

26 (2013) 7 SCC 417.

35. Apart from Section 27 of the Evidence Act, Section 8 of the said Act would be also attracted insofar as the prosecution witnesses, namely, the investigating officers, Chinta Kodanda Rao (PW-30), Inspector of Police, PS Grand Bazaar and T. Bairavasamy (PW-32), Circle Inspector, PS Odiansalai, have referred to the conduct of the appellant – Perumal Raja @ Perumal with regard to any fact in issue or a relevant fact when the appellant – Perumal Raja @ Perumal was confronted and questioned.[27] Reference in this regard may also be made to the judgment of this Court in ***Sandeep v. State of U.P.***[28] which held that:

> "*52*. (…) It is quite common that based on admissible portion of the statement of the accused whenever and wherever recoveries are made, the same are admissible in evidence and it is for the accused in those situations to explain to the satisfaction of the court as to the nature of recoveries and as to how they came into possession or for planting the same at the places from where they were recovered."

36. On the basis of the prosecution evidence, the following factual position has been established:

    (i) Rajini @ Rajinikanth was missing for months before his father Rajaram came from France to India, on 20.04.2008.

    (ii) On return, Rajaram had noticed that the articles in the property No.13, Chinna Vaikkal street, Puducherry, where deceased Rajini @ Rajinikanth used to reside and was owned by Rajaram, were scattered. The motorcycle owned by Rajaram, which the deceased Rajini @ Rajinikanth used to use, was missing.

    (iii) Rajaram was murdered on 21.04.2008.

    (iv) The appellant – Perumal Raja @ Perumal is a close relative of Rajini @ Rajinikanth and Rajaram (son of sister of Rajaram).

    (v) Rajaram as the owner of the immovable property No.13, Chinna Vaikkal street, Puducherry and Rajini @ Rajinikanth, as the son of Rajaram, were hindrance in the way of the appellant –

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27 See *State (NCT of Delhi) v. Navjot Sandhu,* (2005) 11 SCC 600, ¶¶ 190, 204-206, 219-223, 225.

28 (2012) 6 SCC 107.

Perumal Raja @ Perumal acquiring the said property. There were also *inter se* family disputes relating to the property in Kurumbapet. This was the motive for the offence.

(vi) On the basis of the disclosure statement made by the appellant – Perumal Raja @ Perumal on 25.04.2008 (Exhibit P-37) – (a) two nylon sack bags were recovered containing decomposed human body parts; and (b) human bones were also recovered from the sump tank in property bearing No.13, Chinna Vaikkal street, Puducherry.

(vii) The superimposition report dated 20.01.2009 (Exhibit P-25) by C. Pushparani (PW-29), Scientific Assistant Grade II, Anthropology Division, Forensic Sciences Department, Chennai states that the skull and the mandible which were recovered from the river and the sump tank were that of the deceased Rajini @ Rajinikanth. The report relies on the computer laser print out of the skull and the mandible for comparison with the photograph of the deceased Rajini @ Rajinikanth. It is shown that the skull and the mandible were of the deceased Rajini @ Rajinikanth.

(viii) As per the post mortem report (Exhibit P-16), though the cause of death could not be ascertained due to decomposition of the body, the bones were that of a person between 25-30 years of age. Further, the death had probably occurred six months prior to the autopsy. The deceased Rajini @ Rajinikanth was of 30 years in age and he had been missing for about six months.

(ix) Motorcycle bearing registration No. PY 01 X 9857 belonging to Rajaram (which was then at Rajaram's house and in possession of Rajini @ Rajinikanth, as Rajaram was in France), keys, insurance papers, as well as other personal belongings were recovered from Mohan Kumar @ Mohan and a juvenile, whose name is withheld.

37. In ***Sharad Birdhichand Sarda*** v. ***State of Maharashtra***[29], this Court referred to ***Hanumant*** v. ***State of Madhya Pradesh***[30], and laid down the five golden principles ('*panchsheel*') that should be satisfied before a case based on circumstantial evidence against an accused can be said to be fully established:

29 (1984) 4 SCC 116.

30 (1952) 2 SCC 71.

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

(ii) 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;

(iii) the circumstances should be of a conclusive nature and tendency;

(iv) they should exclude every possible hypothesis except the one to be proved; and

(v) 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.

38. This Court in ***Sharad Birdhichand Sarda*** (supra) rejected the contention that if the defence case is false it would constitute an additional link as to fortify the case of the prosecution. However, a word of caution was laid down to observe that a false explanation given can be used as a link when:

(i) various links in the chain of evidence laid by the prosecution have been satisfactorily proved;

(ii) circumstance points to the guilt of the accused with reasonable definiteness; and

(iii) the circumstance is in proximity to the time and situation.

If these conditions are fulfilled only then the court can use the false explanation or a false defence as an additional link to lend an assurance to the court and not otherwise. Thus, a distinction has to be drawn between incomplete chain of circumstances and a circumstance after a chain is complete and the defence or explanation given by the accused is found to be false, in which event the said falsehood is added to reinforce the conclusion of the court.

39. This Court in ***Deonandan Mishra*** v. ***State of Bihar***[31] has laid down the following principle regarding circumstantial evidence and the failure of accused to adduce any explanation:

31 (1955) 2 SCR 570.

> "It is true that in a case of circumstantial evidence not only should the various links in the chain of evidence be clearly established, but the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused. But in a case like this where the various links as stated above have been satisfactorily made out and the circumstances point to the appellant as the probable assailant, with reasonable definiteness and in proximity to the deceased as regards time and situation, and he offers no explanation, which if accepted, though not proved, would afford a reasonable basis for a conclusion on the entire case consistent with his innocence, such absence of explanation or false explanation would itself be an additional link which completes the chain. We are, therefore, of the opinion that this is a case which satisfies the standards requisite for conviction on the basis of circumstantial evidence."

40. The appellant – Perumal Raja @ Perumal in his statement under Section 313 of the Code of Criminal Procedure, 1973 plainly denied all accusations without furnishing any explanation regarding his knowledge of the places from which the dead body was recovered. In this circumstance, the failure of the appellant – Perumal Raja @ Perumal to present evidence on his behalf or to offer any cogent explanation regarding the recovery of the dead body by virtue of his special knowledge must lead to a reasonable adverse inference, by application of the principle under Section 106 of the Evidence Act, thus forming an additional link in the chain of circumstances. The additional link further affirms the conclusion of guilt as indicated by the prosecution evidence.

41. The whereabouts of Rajini @ Rajinikanth were unknown. The perpetrator(s) were also unknown. It is only consequent to the disclosure statement by the appellant – Perumal Raja @ Perumal, that the police came to know that Rajini @ Rajinikanth had been murdered and his body was first dumped in the sump tank and after some months, it was retrieved, cut into two parts, put in sack bags, and thrown in the river/canal. The police, accordingly, proceeded on the leads and recovered the parts of the dead body from the sump tank and sack bags from the river/canal. It has been also established that Rajini @ Rajinikanth was murdered. In addition, there have been

recoveries of the motorcycle and other belongings at the behest of the appellant – Perumal Raja @ Perumal. These facts, in the absence of any other material to doubt them, establish indubitable conclusion that the appellant – Perumal Raja @ Perumal is guilty of having committed murder of Rajini @ Rajinikanth. The presence of motive reinforces the above conclusion.

42. It has been contended before us that the appellant – Perumal Raja @ Perumal had been acquitted in the case arising out of crime No. 204 of 2008 relating to the murder of Rajaram. The judgment passed by the trial court[32] has been taken on record as additional evidence. However, we do not find this judgment in any way relevant or negating the prosecution evidence, which we have referred to and elucidated earlier in the prosecution case against the appellant, because the murder trial of Rajaram was primarily based upon an entirely different set of evidence. The evidence we have mentioned in the present case is not relevant and directly connected with the murder of Rajaram. The two occurrences are separate, *albeit* the appellant – Perumal Raja @ Perumal was accused of the murder of Rajaram and his son Rajini @ Rajinikanth. The murders certainly were committed on two different dates – 23.11.2007 (or thereabout) and 21.04.2008 respectively, approximately five months apart. Except for the fact that the appellant – Perumal Raja @ Perumal was taken into custody during the course of investigation in FIR No. 204 of 2008 for murder of Rajaram and thereupon on 25.04.2008 his disclosure statement (Exhibit P-37) was recorded, there is no connection between the two offences. The conviction of the appellant is, therefore, sustainable in view of the evidence placed on record in the present case. The judgment of acquittal would not qualify as relevant and of evidentiary value so as to acquit the appellant – Perumal Raja @ Perumal in the present case.[33]

43. Acquittal of the co-accused, as noticed in paragraph 4 above, again is for want of evidence against them. At best, they were found in possession of the articles connected with the crime on the basis of the disclosure statement (Exhibit P-37) dated 25.04.2008 made by the appellant – Perumal Raja @ Perumal. Section 27 of the Evidence

32 Dated 13.06.2017.

33 See §§ 40-43 of the Indian Evidence Act, 1872.

Act could not have been applied to the other co-accused for the simple reason that the provision pertains to information that distinctly relates to the discovery of a 'fact' that was previously unknown, as opposed to fact already disclosed or known. Once information is given by an accused, the same information cannot be used, even if voluntarily made by a co-accused who is in custody. Section 27 of the Evidence Act does apply to joint disclosures, but this is not one such case.[34] This was precisely the reason given by the trial court to acquit the co-accused. Even if Section 8 of the Evidence Act is to apply, it would not have been possible to convict the co-accused. The trial court rightly held other co-accused not guilty. For the same reason, acquittal of co-accused Chella @ Mukundhan, who was earlier absconding, is also of no avail.

44. As far as acquittal of the juvenile is concerned, reference can be made to the provisions of Sections 40 to 43 of the Evidence Act.

45. In view of the above discussion, we have no difficulty in upholding the conviction of the appellant – Perumal Raja @ Perumal. The appeal is dismissed.

Headnotes prepared by: Divya Pandey

Result of the case: Appeal dismissed.

34 See State *(NCT of Delhi) v. Navjot Sandhu,* (2005) 11 SCC 600, ¶ 145.