2026 INSC 162

Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No.689 of 2026
[@Special Leave Petition (Crl.) No.5624 of 2024]

Rohit Jangde

...Appellant

Versus

The State of Chhattisgarh

...Respondent

J U D G M E N T

K. Vinod Chandran, J.

Leave granted.

2. A botched investigation leaves many questions unanswered and in the present case, the murder of a six-year-old girl went unpunished and her stepfather was incarcerated on mere conjectures. The impugned judgment of the High Court affirmed the conviction and sentence of the accused, the stepfather, on three circumstances. One, the last seen together theory propounded through a neighbour. Then, the ashes and the bony remnants from the charred remains of the child, having been recovered on the information supplied by the accused. And last, the skull and teeth recovered from a canal having tallied with the sample

DNA profile of the biological parents of the girl child, establishing death unequivocally. The High Court also emphasized the aspect of no explanation having been offered by the accused regarding his knowledge of the location from which the bony remnants of the deceased were recovered; an incriminating circumstance under Section 106 of the Indian Evidence Act, 1872. Whether these factors would form a complete chain of circumstances leading only to the hypothesis of the guilt of the accused without leaving room for any other hypothesis, is the question arising herein.

3. We have heard Dr. Rajesh Pandey, learned Senior Counsel appearing for the accused and Ms. Ankita Sharma, Advocate-on-Record, appearing for the State. We cannot but appreciate the Government Advocate for undertaking the exercise of preparing, for our perusal, a paper-book containing the entire records, both the vernacular and the translation. The hearing on the earlier occasion also raised serious questions as to the custody of the accused, prior to the arrest in the present crime, which persuaded us to pass an order on 14.11.2025, directing the State to produce proof,

if any, of the accused having been taken into custody and imprisoned between 05.10.2025 to 10.10.2025. An additional affidavit dated 08.12.2025, filed by the State in compliance of our order, producing an arrest/Court surrender memo adds to the confusion, making the truth regarding the crime, further elusive.

4. On facts suffice it to notice that the accused was living with his two wives and three children. One of the children was born to the accused from his first wife and the two children of his second wife (PW7) were from her previous marriage with PW17. On 05.10.2018, a quarrel broke out between the accused and PW7, in which PW7 was physically assaulted. This prompted her to leave her marital home and proceed to the home of her parents. PW7 was admitted to a hospital and on her request, her mother PW2 went to her daughter's marital home to pick up the grandchildren. She was, however, informed by the first wife of the accused that the accused had taken the younger child. There was no attempt to find out the missing child and a missing complaint was registered on 11.10.2018 at 13.20 hrs at Sahaspur Lohara Police Station in District Kabirdhan.

Later, allegedly on the confession statement of the accused under Section 27 of the Evidence Act, on 13.10.2018, the accused is said to have led the police party to a field from where some burnt bones and ashes were recovered and from a nearby canal a skull and some bones, covered in a green saree were recovered.

5. PW1, the doctor before whom the bone remnants were produced, suggested a chemical examination of the remains, which was carried out under the supervision of PW18, the Senior Scientific Officer. The FSL report marked as Annexure P21A indicated that the DNA profile of the sample taken from PW7 and PW17, the biological parents of the deceased child, matched with the DNA profiles of the vertebrae and teeth recovered from the canal; the skull having not matched, on analysis. PW8, a neighbor of the accused was also examined to show that the accused had taken the child from the house on a motor bike allegedly establishing the last seen together theory. Thus, the circumstances, of the recovery made, the last seen together theory projected and the matching of the DNA profiles, led to the conviction of the accused.

6. Learned Senior Counsel for the accused on the previous hearing date specifically argued that on 05.10.2018, alleging an assault on PW7 an FIR was registered which led to the arrest of the accused on 05.10.2018 itself, after which he was released from judicial custody only on 08.10.2018. We have looked at the additional affidavit filed, which indicates that the accused was arrested on 06.10.2018 and remanded to judicial custody by the Sub-Divisional Magistrate; the accused having been released from the District Jail, Kabirdham on 08.10.2018 as per the bail order of the Sub-Divisional Magistrate. Having gone through Annexure 2, the Arrest/Court Surrender Memo produced along with the affidavit, we have serious doubts on when the arrest occurred. There is clear interpolation in the date and though at column No. 8, of the FIR, the arrest is shown to have been carried out on 06.10.2018 at 13.40 hrs, in Column No.2 the date and time have been changed from 05.10.2018 and 12.40 to 06 or 08.10.2018 and 13.40. The interpolation on the date is very clear from the documents produced which raises a reasonable doubt as to the arrest of the accused,

which could have been at 12.40 hrs on 05.10.2018, seriously hampering the last seen theory as projected by the prosecution. Be that as it may, we will first examine the evidence led at the trial keeping in mind the principle that every faulty investigation will not inure to the benefit of the accused unless serious prejudice is caused thereby and the evidence led is not sufficient to arrive at a finding of guilt, unequivocally.

7. PW2, mother-in-law of the accused spoke about the quarrel between her daughter and the accused and her daughter's admission to the hospital for treatment. She also deposed that she had gone to the house of the accused along with the police, to fetch the grandchildren, when the first wife of the accused informed her that the accused had taken away the second child. Pertinently we have to observe that in chief-examination there is no date mentioned and the whereabouts of the first child of her daughter, who also was staying along with the accused, has not at all been disclosed. PW10, the husband of PW2, who accompanied her to the house of the accused fully

corroborated the version of PW2 but again without any date mentioned and also the whereabouts of the first child.

8. In any event, even going by the version of the State, the accused was arrested on 06.10.2018 and released only on 08.10.2018. This has been fully corroborated by PW15, the I.O who spoke of the arrest of the accused on 06.10.2018, his remand and later release on 08.10.2018. The last seen theory as projected through PW8 indicates that the child was taken away by the accused, in which circumstance, the crime ought to have occurred on 05.10.2018 or before the arrest of the accused on 06.10.2018. Despite the child having not been found, PW2, PW7 and PW10 did not register any case of missing, and an FIR was first registered on 11.10.2018, when PW7 along with the accused came to the Police Station and registered an FIR regarding the missing child. This assumes relevance especially since the incident of assault was reported to the police, who accompanied PW2 to the house of the accused on the same day, when they were told that the child went with the accused.

9. The accused having been arrested, even accepting the version of the Police, on 06.10.2018, it is strange that no enquiries were made about the missing child. Further the missing complaint is said to have been registered much later on 11.10.2018. The First Information Statement (FIS) by the Sub-Inspector of Sahaspur Lohara Police Station is on information supplied by PW2 who was accompanied by her husband. The oral report spoken of in the FIS was that the six-year-old child went missing at 09.00 P.M. on 06.10.2018, obviously after the accused was arrested. These aspects as borne out from the records puts to peril the prosecution story of the last seen together theory as projected through PW8. PW8 a neighbor of the accused also deposed before Court that she volunteered this information to the Police, seven days after 05.10.2018; when already the said aspect was known to the mother and grandparents of the deceased child as also the Police, by virtue of the information supplied by the first wife of the accused on 05.10.2018 itself. The last seen together theory hence fails miserably.

10. Now we come to the recovery allegedly made under Section 27, which is also fraught with inconsistencies as we

would presently indicate. The memorandum under Section 27 of the Evidence Act produced as Ex. P4 indicates the same having been drawn up on 13.10.2018 at 10.30 A.M. The only admissible portion in the said memorandum is : *'I will show you the place... where her bones and ashes are and the place where her skull and bones were..'(sic)*. The police were led by the accused first to a field from where bones with ashes were recovered at 10.55 A.M evidenced by Property Seizure Memo Ex.P5. The canal was searched by three fishermen PW 3 to PW 5 who recovered the skull with 8 numbers of tooth of the upper jaw and a piece of bone wrapped in a green color saree, all of which showed evidence of burning as indicated in Ex.P3 Property Seizure Memo at 13.00 on 13.10.2018. Though the recoveries as per Exts. P3 & P5 Memos were made, in accordance with the confession statement of the accused, Ext. P4 at 10.30 on 13.10.2018, the Arrest/Court Surrender Memo produced at Ex.P27, indicates the arrest of the accused having been made on 13.10.2018 at 22.00 hrs. Section 27 of the Evidence Act clearly speaks of information received from a person accused of any offence while in the custody of the police

leading to a discovery of a fact being enabled of proof in the trial. The accused at the time of the statement was not in the custody of the police and hence it is removed from the ambit of Section 27.

11. Section 27, as has been held in ***Jaffar Hussain Dastagir v. State of Maharashtra***[1], is in effect a proviso to Section 26 which makes admissible so much of the statement of the accused deposed to by him, leading to the discovery of the fact deposed and connected with the crime, irrespective of the question whether it is confessional or otherwise. The essential ingredient of the provision is that the information given by the accused must lead to the discovery of a fact which is the direct outcome of such information. Secondly only such portion of the information given as is distinctly connected with the said recovery is admissible against the accused. Thirdly, the discovery of the fact must relate to the commission of the offence alleged.

12. A similar situation, as in this case arose before the Calcutta High Court in ***Durlav Namasudra v. Emperor***[2] wherein the information which led to the discovery of the

[1] (1969) 2 SCC 872
[2] 1931 SCC Online Cal 146

dead body had been given by the accused before they were taken into custody. It was held that Section 27 controls Section 24 to 26 and the first thing that is to be ascertained before its application is whether the information came from a person who was in the custody of the police. It was held that if information came from a person who was not in the custody of the police, then it cannot be brought under Section 27. The Chief Justice passed a concurring judgment but expressed anguish insofar as Section 27 permitted reliance on a statement made to the police which leads to the discovery of a fact, only when the person who gave the information is in custody, which was also observed to be absurd in terms. However, it was also held that till the legislature takes the matter in hand and redrafts the provision, the paradox expressed would continue to be law.

13. The position is somewhat clarified in ***Dharam Deo Yadav v. State of Uttar Pradesh***[3], which dealt with the murder of a foreign national by a tourist guide. The I.O having received information that the guide was arriving by a train rushed to the railway station and intercepted him in

[3] (2014) 5 SCC 509

the platform. On interrogation it was confessed by the accused that he had murdered the victim and the dead body was buried in his house. The I.O thus was led to the house of the accused from where the accused dug up the skeleton which later was proved to be of the victim. It was held that the expression 'custody' appearing in Section 27 does not mean formal custody and includes any kind of surveillance, restriction or restraint by the police. It was held, relying on ***State of A.P. v. Gangula Satya Murthy***[4] that even if there is no formal arrest made, if a person is within the ken of surveillance of the police, during which his movements are restricted, then it can be regarded as custodial surveillance. It was also held by this Court that even if the recovery of the skeleton was not in terms of Section 27, on the premise that the accused was not in the custody of the police while the statement was made, it would be admissible as *'conduct under Section 8 of the Act'*. In that case there was absolutely no explanation by the accused for the skeleton found buried in his own house.

[4] (1997) 1 SCC 272

14. In the present case, the FIR was registered on 11.10.2018 at 13.20 hours and the so-called Section 27 statement was recorded at 10.30 on 13.10.2018, after which the recoveries were made and the arrest carried out later in the night of the 13th. There is nothing indicated to show that the accused, who had accompanied his wife to register the missing complaint was even suspected of being responsible for the missing of the child. In any event, this does not pose any difficulty insofar as the deposition of the I.O, PW 15; that he was led to the field and the canal from where the recovery was made, subsequent to which the person was arrested, though not admissible under Section 27, all the same can be brought under Section 8 of the Evidence Act.

15. Apposite also would be a reference to ***Ramkishan Mithanlal Sharma v. State of Bombay***[5]. The charge therein was of commission of dacoity using deadly weapons. The I.O deposed before Court that on information supplied by the first accused, he reached the location where he asked one Bali Ram to dig out a tin box from the mud floor of a house pointed out by the first accused leading to recovery

[5] (1954) 2 SCC 516

of three revolvers and live cartridges. Since the I.O did not depose on the specific information passed on by the first accused, it was held that the operation of Section 27 though not attracted, *prima facie* there was nothing to prevent that evidence being admitted against the first accused. We extract herewith paragraph 33 of the cited decision:

> *"33. The evidence of the police officer would no doubt go to show that the accused knew of the existence of the fact discovered in consequence of information given by him. But that would not necessarily show his direct connection with the offence. It would merely be a link in the chain of evidence which taken along with other pieces of evidence might go to establish his connection therewith. This circumstance would therefore be quite innocuous, and evidence could certainly be given of that circumstance without attracting the operation of Section 27."*
> *[underlining by us for emphasis]*

Hence, we are persuaded to accept the recovery of the bone remnants having been made at the instance of the accused, though at the time of his statement, he was not in police custody, which could only be a link under Section 8 of the Evidence Act, in the chain of circumstances; but his connection with the crime still has to be proved otherwise.

16. The next circumstance projected by the prosecution is the matching of the DNA profiles of the bone remnants with

the DNA profiles of the biological parents of the deceased child. We have to specifically notice that the DNA profiles matched only with the piece of vertebrae and the teeth recovered from the canal, while the skull and those recovered from the field, where the body is said to have been burnt, did not match with the samples taken from the parents. In this context, we also have to notice that the bones recovered were wrapped in a green saree of PW7, which was not attempted to be identified as belonging to her, by confronting the same to the witness, while she was in the box.

17. The learned Senior Counsel for the accused also argued that the matching of the DNA samples was not put to the accused in the Section 313 questioning. PW18 was the Scientific Officer who spoke of the samples having matched with the DNA profiles of the bone and teeth remnants taken from the canal. Question No. 157 specifically was with respect to the blood samples of the mother and father of the deceased having been marked as C1 and C2. Question No. 158 spoke of Ex.A (specifically A-02) and Ex.B DNA profiles and that the alleles were found matching with the DNA

profile of Ex.C. Question No. 159 specifically informed the accused of the vertebrae having been marked as A2 and subjected to DNA testing. We are of the opinion that question numbers 157 to 159 informed the accused about the matching of the DNA profiles which was responded to by a bland denial.

18. As of now, we are faced with only two circumstances, the knowledge of the accused regarding the place from which the bone remnants of the child were recovered and the matching of some of it with the DNA profiles of the biological parents of the child. What has been established beyond doubt is only the death of the child whose vertebrae and teeth, recovered from a canal, matched with the DNA profiles obtained from the sample taken from the biological parents. The knowledge of the accused, which led to the detection of the bone remnants though not acceptable under Section 27 would all the same be acceptable evidence under Section 8, which by itself is a weak piece of evidence. The evidence under Section 8 can only offer corroboration and cannot by itself result in a conviction. The suspicion regarding the earlier arrest and incarceration of

the accused also would pose serious difficulty in finding a hypothesis of guilt beyond all reasonable doubt. The long gap when there was no complaint made about the missing child and the factum of none having questioned the accused, despite the family and police having been told that she went with the accused tilts the scales in favour of the accused; especially since he was released on 08.10.2018, two days before the FIR was lodged. Pertinent also is that since the *corpus delicti* was not recovered, there is no time of death specified. We are hence unable to uphold the conviction of the accused, and he has to be necessarily given the benefit of doubt.

19. The Appeal is allowed. The order of the Trial Court convicting the accused and that of the High Court affirming the same are set aside. The accused shall be released forthwith, if not wanted in any other case.

20. Before we leave the matter, we cannot but record our appreciation for the meticulous preparation of the learned Government Advocate who, with astute vigor addressed arguments despite the major pitfalls in investigation. We cannot but observe that if the investigation had been half as

good as the preparation of the State Counsel, the shroud of mystery over the poor child's disappearance and death, could have been unravelled. We also appreciate the efforts put in by the learned Senior Counsel for the appellant, in probing the State to effectively bring forth the inept handling of the investigation.

21. Pending applications, if any, shall stand disposed of.

..... J.
(SANJAY KUMAR)

..... J.
(K. VINOD CHANDRAN)

NEW DELHI;
FEBRUARY 17, 2026.