

**Judgment on Remand in Furtherance of Judgment dated  
30.03.2022 in Sessions Case No.32/2017.**

**1. Introduction:-**

1.1. This judgment is passed in furtherance of the judgment dated 30.03.2022, in Sessions Case No.32/2017 and in compliance with the directions issued by the Hon'ble High Court in Special Criminal Application dated 02.09.2024, limited to the reconsideration of the direction regarding payment of compensation by the Investigating Officer.

1.2 It is required to be noted that in Sessions Case No.32 of 2017, the accused persons were acquitted of the offences punishable u/s.302, 201 and 114 of the IPC. While passing the judgment of acquittal, the Ld.Predecessor Judge has also directed the Investigating Officer of the case to pay compensation of Rs.50,000/- each to both the accused persons within one month.

1.3 The said judgment of acquittal has not been challenged by the State. However, the Investigating officer challenge the direction regarding payment of compensation before the Hon'ble High Court.

1.4 The Hon'ble High Court after considering the matter, observed that the Ld.Sessions Court has passed the order of compensation against the Investigating Officer without giving him any opportunity of being heard and without calling for any explanation from him. The Hon'ble High Court held that such action was not in consonance with the

principle of natural justice. Accordingly, the Hon'ble High Court remanded the matter to this Court with a direction to decide the matter afresh after giving sufficient opportunity to the Investigating Officer to explain the circumstances.

1.5 Pursuant to the directions of the Hon'ble High Court, notice was issued to the Investigating Officer. The Investigating Officer appeared before this Court and filed a detailed reply vide Exh.127, explaining his conduct during investigation and the reasons for filing the chargesheet. Alongwith the affidavit, the Investigating Officer has also produced documentary evidence vide Exh.128 being (1) copy of complaint (2) copy of death registration diary (3) copy of deposition of important witnesses (4) copy of charge framed (5) copy of charge-sheet (6) copy of bail application no.375/2016 and 535/2016 (7) letter written by Ld.2nd Sessions Court, Navsari to Dy.S.P. and (8) copy of judgment of Sessions Case No.32/2017. Thenafter, during the course of hearing IO has again filed reply/explanation on oath vide Exh.134.

## **2. Sessions Court Observations (as recorded in the earlier judgment):-**

2.1 The Ld.Sessions Court, while deciding the trial, examined the deposition of the Investigating Officer and the documentary evidence produced on record. The Court took note of the photographs of the dead body as well as the photographs of Nagulal Krusingh Gairy and observed that this appeared to be some facial resemblance between the deceased person and Nagulal.

**2.2** The Court considered the testimony of witness, Ganguram Karusingh Gairy, who stated that upon being informed that his brother, Nagulal, was murdered he and other relatives came to Navsari, identified the dead body as that of Nagulal and performed the last rites. It was further noted that subsequently, it came to light that Nagulal was alive and returned home, whereupon, the mistake of identity was realized.

**2.3** The Sessions Court also took into consideration the statement of Nagulal Karusingh Gairy himself, wherein, he explained that he had left Navsari due to fear after an incident at night and had traveled to different places. He stated that later he came to know that a dead body resembling him was treated as his and cremated. He further stated that the deceased person was not known to him.

**2.4** The Court further observed that during cross-examination, the IO stated that the dead body was initially treated as unclaimed. He has also admitted that no missing complaint regarding Nagulal was lodged after 06.07.2016. The Court noted that no documentary proof was produced alongwith the charge-sheet to show that photographs of the deceased were circulated to various police stations for identifying the relatives of the unknown deceased.

**2.5** It was further observed that even after it was confirmed that Nagulal was alive, the investigating officer did not carry out any effective investigation to ascertain the identity of the deceased person or to trace his relatives.

The investigating officer stated that the question as to who the deceased person was remained unresolved.

**2.6** The Sessions Court placed reliance on the answers given by the IO in response to the questions put by the Court and the defense. The Court recorded that the IO admitted that, the accused had not caused the death of Nagulal and that Nagulal was alive. The IO also stated that no complaint was received alleging that the accused had murdered the unknown deceased person.

**2.7** The Court further ordered that the IO admitted that if no offence was made out, "B" Summary ought to have been filed, but, no such summary was submitted. It was also recorded that the IO stated that he had no evidence on the basis of which the charge-sheet under section 302, 201 and 114 of the IPC could be filed against the accused.

**2.8** On the basis of these admissions and observations, the Sessions Court concluded that the accused persons had neither caused the death of Nagulal nor, of any other person and that despite this, they were arrested, charge-sheeted and made to undergo trial.

**2.9** The Sessions Court observed that due to the alleged negligence and lack of due care, on the part of the Investigating Officer, the accused persons were wrongly arrested, remained in jail, until grant of bail and were compelled to face a prolonged criminal trial. The Court further observed that the accused persons being residence of another State, suffered financial loss, mental agony and social stigma.

**2.10** Considering these circumstances the Sessions Court felt that although the suffering caused to the accused cannot be fully compensated, monetary compensation would serve ends of justice. Accordingly, by acquitting the accused, the Court directed the Investigating Officer to pay compensation of Rs.50,000/- to each accused.

### **3. Hon'ble High Court Directions and Observations:-**

**3.1** It is required to be noted that, the IO had approached the Hon'ble High Court by filing a Sp.Cri.Application under Article 226 and 227 of Constitution of India, challenging the direction issued by the Ld.Sessions Court vide judgment dated 30.03.2022 in Sessions Case No.32/2017, in so far as it directed the IO to pay compensation of Rs.50,000/- to each of the accused persons.

**3.2** The Hon'ble High Court, after hearing the Ld.Advocates for the parties and after perusing the record, observed that while recording evidence, the Ld.Sessions Judge had exercised powers under section 165 of the IPC and had put certain questions to the IO. However, the Hon'ble High Court found that the Sessions Court had straightway arrived at an adverse conclusion against the IO and imposed liability of compensation without affording him any opportunity of being heard.

**3.3** The Hon'ble High Court observed that the prior to fixing the quantum of compensation and passing adverse remarks or imposing personal liability upon IO,

compliance with the principles of natural justice was mandatory. It was specifically observed that no notice or opportunity of explanation was given to the IO before directing him to pay compensation.

**3.4** Hon'ble High Court placed reliance upon the decision of the Hon'ble Supreme Court in State (NCT of Delhi) V/s. Pankaj Chowdhry and others, reported in (2019) 11 SCC 575, wherein it has been held that any adverse remarks or liability imposed upon an officer without affording an opportunity of hearing are liable to be set aside.

**3.5** In view of the settled legal position, the Hon'ble High Court quashed and set aside that part of the judgment dated 30.03.2022, which directed the IO to pay compensation of Rs.50,000/- to each of the accused persons. The matter was remitted back to the Sessions Court with a direction to decide issue afresh after issuing notice to IO and after giving him an opportunity to explain his conduct and thereafter, to pass appropriate order in accordance with law.

**3.6** The Hon'ble High Court further directed that Sessions Court shall decide remanded proceedings upon his own merits and shall not be influenced by any observations made in the Hon'ble High Court order.

**3.7** It was also directed that the amount of Rs.1,00,000/- deposited by the IO, pursuant to earlier orders shall be kept in FD by the Sessions Court and shall abide by the final outcome of the remanded proceedings.

**4. Explanation offered by the IO:-**

**4.1** In his affidavit, the Investigating Officer has stated that he never filed a charge-sheet for the murder of a living person. According to him, the charge-sheet was filed in respect of an unknown person who was allegedly killed by the accused under the mistaken belief that the deceased was one "Nagu", whereas, in fact "Nagu" was found to be alive later. He has explained that this fact was clearly mentioned in the charge-sheet and in the committal order passed by the Ld.Magistrate.

**4.2** The Investigating Officer has further stated that during his deposition before the Court, certain answers recorded in cross-examination contained typographical and clerical errors, which resulted in an incorrect impression that he had admitted filing a false charge-sheet. According to him, wherever it was recorded that he stated "it is true", the correct version should have been "it is not true", and such mistakes occurred due to inadvertence while recording evidence.

**4.3** He has also explained that the charge-sheet was based on the statements of surrounding residence, the disclosures statements of the accused, and the recovery of the rope allegedly used in the offence u/s.27 of Indian Evidence Act. He has denied the allegation that the investigation was conducted negligently or with malafide intentions.

**4.4** The Investigating Officer has further stated that the extensive efforts were made to identify the deceased and to trace his relatives, including circulations of photographs, informing nearby police stations, recording statements of local residents, and preserving DNA samples. According to him, these steps were part of the investigation record though not all documents were annexed with the charge-sheet, as they were not required to be produced at that stage.

**4.5** It is also stated in the affidavit that the public prosecutor was not present at the time of his cross-examination and that he was not given adequate opportunity by the Court to clarify his answers or explain the apparent inconsistency noted during his evidence.

**5. Argument of Prosecution:-**

The Ld.P.P.Mr.T.C.Sule, appearing for the State has relied upon upon the record of the case, the judgment given by the Sessions Court and the written explanation made by the IO and argued that, the Sessions Court has come to the conclusion that, the person who was declared to be dead was found alive. But, such conclusion is not proper. That, the charges were framed in respect of murder of a person, who was identical to Nagu and accordingly, charges were framed. The plastic rope which was used in causing death of the victim was also seized and panchanama was also prepared as per Section 27 of the Evidence Act. Therefore, it cannot be said that the investigating officer has not conducted the investigation in

a proper manner. It is not the case of the complainant that Nagu was murdered and no such charge is also levied and therefore, the allegations that the accused had been falsely implicated in the alleged offence is also not true. That there was death of a one person, but after thorough investigation, the person was not identified and for that, the Investigating Officer could not be held liable. The Investigating Officer, in his affidavit has clearly admitted that, he has conducted the investigation of the dead body and he has also produced all the evidence which was gathered during the investigation with the charge-sheet. That, a prudent person will never make admission before the Court that, he has submitted the charge-sheet though no evidence was gathered. Therefore, if for any reason, there is any such note placed on evidence, the Investigating Officer cannot be held liable for the same. Therefore, Ld.Advocate for the State has requested to accept explanation given by the Investigating Officer.

**6. Submissions of Ld.Adv.for the accused:-**

The Ld.Advocate Mr.B.J.Morawala for the accused, after taking note of the affidavit and the directions of the Hon'ble High Court has submitted that appropriate order may be passed in accordance with law.

**7. Reasons and Discussions:-**

Thus, in compliance with the directions of Hon'ble High Court, this Court has afforded full opportunity to the Investigating Officer to place his explanation on record

and the same is duly considered for deciding the issue afresh.

8. This Court has carefully considered the directions of the Hon'ble High Court, the affidavit filed by the IO pursuant to the notice, the record of the Sessions Case and the observation made in the earlier judgment dated 30.03.2022.

8.1 At the outset, it is required to be noted that the scope of remand is limited to examining whether the direction fastening personal liability upon the IO to pay compensation was justified, after giving him an opportunity of being heard and after considering his explanation.

8.2 The main basis on which the Predecessor Court has directed payment of compensation was the alleged admission of the IO that, he had filed a "false charge-sheet" despite there being no connection between the accused and the dead body. However, on a careful reading of the entire deposition of the IO, it becomes clear that such conclusion was drawn on the basis of isolated or stray sentences without appreciating the evidence as a whole.

8.3 It is well settled principle of law that the evidence cannot be appreciated by taking out one sentence in isolation. The deposition of a witness has to be read as a whole. In the present case, though during cross-examination, the IO answered one suggesting question in a manner which appears adverse, at the same time, he has

specifically denied the suggestion that he had filed the charge-sheet, despite there being no evidence against the accused. Thus, the record itself shows contradictory answers elicited during cross-examination.

**8.4** Such contradictions by themselves, cannot automatically lead to the conclusion that the Investigating Officer acted malafide or negligently so as to warrant personal liability. Whether there was sufficient evidence against the accused or not is essentially a matter of record and cannot be conclusively decided merely on the basis of oral answers given during cross-examination.

**8.5** In the present case, it is an undisputed fact that charges u/s.302, 201 and 114 of the IPC, was framed by the competent Court. Framing of charge presupposes that the Court found sufficient prima facie material on record to proceed against the accused. This fact itself indicates that the charge-sheet was not accepted mechanically but, was judicially examined at the stage of charge.

**8.6** It is also significant to note that at no stage did the accused take a defense that there was absolutely no evidence against them. The accused did not file any discharge application under the code of Criminal Procedure. They did not approach the Hon'ble High Court by filing any quashing petition, challenging the charge-sheet or the framing of charge. These aspects clearly demonstrate that the issue whether sufficient evidence existed or not was never raised by the accused at the appropriate stage.

**8.7** Therefore, the question whether sufficient evidence was collected during the investigation is not to be decided on the basis of oral testimony alone. It is primarily a matter to be examined from the case papers, charge-sheet and judicial orders passed during the course of trial. Merely because the prosecution ultimately failed to prove the case beyond reasonable doubt, it does not automatically follow that no offence had occurred or that the investigation was false or malicious.

**8.9** It is also necessary to clarify that there appears to have been some misunderstanding in the earlier judgment regarding the actual position of the case. It is not correct to state that the IO filed a charge-sheet for a murder of a person who was later found to be alive. The record including the charge-sheet and the committal order clearly shows that the charge was in respect of an unknown deceased person who was allegedly killed under a mistaken identity believing him to be Nagulal. At no point, was a charge sheet filed alleging the murder of a living person.

**8.10** Similarly, the observation that the IO made no effort to trace the identity of the deceased is also not borne out from the record. The affidavit filed by the IO, which is supported by the case diary material shows that efforts were made to identify the deceased and to trace his relatives, including circulation of photographs, inquiries with local residents, communication with other police stations and preservation of DNA samples, merely because

all such steps were not annexed with the charge-sheet does not mean that no such investigation was carried out.

**8.11** The explanation offered by the IO regarding typographical and recording errors in his deposition cannot be brushed aside lightly particularly when the record otherwise shows that the case was investigated under supervision and the charge sheet was subjected to judicial scrutiny at multiple stage.

**8.12** It is pertinent to note that pursuant to the opportunity granted by this Court, the IO has placed on record certain documents in support of the explanation offered by him vide Exh.128/1 to 128/5. On perusal of this document, it indicates that they are part of the official record of investigation and trial and some documents prepared in discharge of official duties. The said documents support the explanation of the investigating officer that, the investigation was conducted on the available material and that charge-sheet was filed after following due procedure. These documents also corroborates the stand that the case proceeded beyond the stage of investigation and was subjected to judicial scrutiny at various stages (including framing of charge). The production of these documents further clarifies that the adverse observations recorded in the earlier judgments arose out of an incomplete appreciation of the record and not due to any deliberate or malafide act on the part of the investigating officer. Accordingly, the documents placed on the record are taken into consideration only for a

limited purpose of examining the justification of the direction imposing personal liability upon the investigating officer, in compliance with the remand directions of the Hon'ble High Court.

**8.13** This Court is conscious of the fact that an Investigating Officer may commit error of judgment but, every error or failure of the prosecution does not amount to negligence or misconduct warranting personal punishment. The power to award compensation against an investigating officer has to be exercised sparingly and only in cases of clear malafide or gross abuse of process which is not established in the present case.

- 9.** It is a settled principle of law of criminal jurisprudence that, failure of the prosecution to prove the charge beyond reasonable doubt does not necessarily mean that no offence was committed or that the investigation was false or malafide. Acquittal may result from various reasons, including insufficiency of proof, hostile witnesses or benefit of doubt, and cannot by itself be a ground to attribute negligence or misconduct to the investigating officer.

**9.1** The Hon'ble Supreme Court has consistently held that adverse remark or personal liability against the investigating officer should not be made lightly and should be confined to cases where clear malafides, deliberate misconduct or abuse of process is established on record.

9.2 *In Union of India V/s. J.Ahmed (1979) 2 SCC 286*, it has been held that lack of insufficiency or an error of judgment is not the same as misconduct, and disciplinary or criminal consequences cannot follow unless the conduct is shown to be blame worthy or dishonest.

9.3 It is also well settled that evidence must be appreciated as a whole, and not on the basis of isolated answers or stray sentences elicited during cross-examination. *The Hon'ble Supreme Court in State of U.P. V/s. M.K.Anthony (1985) 1 SCC 505*, has held that minor inconsistency or isolated statements cannot be the basis for discarding the oral version, and the testimony must be read in its entirety.

9.4 Further, at the stage of investigation, and filing of charge-sheet, the test is not proof beyond reasonable doubt, but whether prima facie material exists. Once, a competent Court frames charge, it indicates that judicial satisfaction regarding existence of sufficient material was recorded. In such circumstances, holding the Investigating Officer personally liable merely because the accused is acquitted after trial would be legally unsustainable.

9.5 Lastly, it is a settled principle that oral admissions in cross-examination cannot override documentary record and judicial orders passed during investigation and trial. Whether, sufficient evidence existed is primarily determinable from the case papers and procedural history and not merely from oral answers given by the investigating officer.

10. In view of the above discussion, this Court finds that the observation made by my Ld.Predecessor, holding the Investigating Officer personally responsible and directing him to pay compensation were based on an incomplete appreciation of evidence and certain incorrect assumption regarding the factual matrix of the case.

Accordingly, the explanation offered by the Investigating Officer, is found to be satisfactory and the adverse observation and consequential direction for payment of compensation cannot be sustained in law. Hence, following order is passed in the interest of justice.

#### Order

- (1) In view of the directions issued by the Hon'ble High Court and upon reconsideration of the matter after granting due opportunity of hearing to the IO, the explanation offered by the IO is found to be satisfactory.
- (2) The observations made in the judgment dated 30.03.2022, in Sessions Case No.32/2017, holding the IO negligent and directing him to pay compensation of Rs.50,000/- to each of the accused are hereby set aside.
- (3) Consequently, the direction containing paragraph (2) of operative part of the judgment dated 30.03.2022, requiring the IO to pay compensation to the accused persons stands quashed and recalled.
- (4) The amount of Rs.1,00,000/- (Rupees One Lakh Only)) deposited by the IO pursuant to the earlier

order shall be refunded to the IO, after appeal period alongwith accrued interest, if any, after due verification as per rules.

- (5) Except to the extent modified hereinabove, the judgment dated 30.03.2022 in Sessions Case No.32/2017 shall remain unchanged and in force.
- (6) The Nazir is directed to take necessary step for compliance of this order.

The order is declared in the open Court on this 12<sup>th</sup> day of March, 2026, at Navsari.

Date : 12.03.2026  
Place: Navsari.

[ **Chinmay Ghanshyambhai Mehta** ]  
Additional Sessions Judge,  
Navsari.  
**UID. No.GJ 00534**