

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

HON'BLE SRI JUSTICE K. LAKSHMAN

AND

HON'BLE SRI JUSTICE VAKITI RAMAKRISHNA REDDY

CRIMINAL APPEAL No.271 OF 2017

Date: 10-02-2026

Between:

Smt. Anju Tripathi

.. Appellant - *De facto* Complainant

Vs.

The State of Telangana, rep.by its
Public Prosecutor, High Court
at Hyderabad & another

.. Respondent & Accused

This Court made the following:

JUDGMENT: (Per Hon'ble Sri Justice K. Lakshman)

Heard Mr. Ramakrishna Kulkarni, learned counsel representing Mr. Sudhakar Rao Sridhar Rao, learned Counsel for the Appellant - *de facto* complainant and Mr. Syed Yasar Mamoon, learned Additional Public Prosecutor appearing on behalf of respondent No.1. Despite service of notice, there is no representation on behalf of respondent No.2 - Accused.

2. The present Criminal Appeal is filed by the *de facto* complainant challenging the judgment dated 21.10.2016 passed by learned Metropolitan Sessions Judge, Hyderabad (hereinafter referred to as 'trial Court') in Sessions Case No. 99 of 2016, whereby respondent No.2 - accused was acquitted of the charge under Section - 302 of IPC.

3. In this case, the appellant herein is the *de facto* complainant and sister of the deceased - Sarita Sharma, while respondent No.2 is the accused.

4. The case of the prosecution is as follows:

i) Respondent No.2 - accused and the deceased - Sarita Sharma are husband and wife. Their marriage was solemnized in the year 2001. Out of their wedlock, they were blessed with two daughters, namely Rishita (PW.5) and Harshita.

ii) The accused used to harass the deceased on one pretext or the other. He also used to abuse her and children in vulgar and filthy

language and used to beat her black and blue in the presence of family members and during festivals and other occasions. The harassment of the accused towards the deceased both physically and mentally was witnessed by their daughters.

iii) Since few months from the date of incident, the accused started suspecting the character of the deceased as she was going out and chatting over phone with unknown persons etc. The accused was infuriated with the deceased and decided to kill her. The deceased informed such harassment etc., to the appellant herein - *de facto* complainant and requested her to subside the matter.

iv) On 08.07.2015 at about 11:30 hours, the accused returned home from outside and got into an altercation with the deceased. From 12:00 hours onwards he started hurling abuses at her related to her honour and self-respect and called her characterless. Upon which, the deceased raised strong objection and warned the accused not to abuse her. On hearing the same, the accused went into the kitchen room, picked up a small rod available there and returned to bedroom

with an intention to kill her by hitting with the iron rod. Accordingly, the accused pushed the deceased on to the bed and attacked with the iron rod. The accused repeatedly hit the deceased on her head till she broke her skull and died instantaneously.

v) The skull of the deceased was broken and blood spilled out from her head and splashed on the bed, wall, clothes of the accused as well as on her saree and blouse. On observing the same, the accused dropped the blood stained iron rod used in the commission of offence there only. At about 12:30 hours, the appellant - *de facto* complainant - (PW.1) along with her daughter (PW.4) came there and they noticed that the accused was coming down the staircase and when they tried to talk, he pushed them aside and ran away from there hurriedly.

vi) When they entered into the bed room of the deceased and found the deceased lying on the bed in a pool of blood with head injury and also found blood stained small iron rod on the bed. They noticed that the deceased died due to head injury. The accused killed the deceased brutally by hitting on her head with iron rod.

vii) On receipt of Ex.P1 - report from PW.1, PW.9 - Sub-Inspector of Police, Mangalhat Police Station, Hyderabad, registered a case in Crime No.150 of 2015 (Ex.P7) for the offence under Section - 302 of IPC and took up investigation.

viii) During investigation, PW.10 - Inspector of Police examined and recorded the statements of prosecution witnesses. He secured the presence of PW.6 and LW.10 - *panch* witnesses for scene of offence, seizure of MO.1 - iron rod, MO.2 - bed sheet, MO.3 - Pillow Cover, MO.5 - Grey Colour Kerchief and MOs.6 to 8s and inquest. He also secured presence of PW.8 and LW.12 - *panch* witnesses for confessional statement of the accused and seizure of MOs.9 and 10 - blood stained T-shirt and pant of the accused. PW.10 also took steps for conducting autopsy over the dead body of the deceased through PW.7 - the Doctor.

5. On completion of investigation and receipt of Ex.P5 - postmortem examination report and Ex.P8 - FSL report, PW.10 filed charge sheet against the accused. The same was committed to the

Court of Sessions, which was taken on file as S.C. No. 99 of 2016 and proceeded with trial.

6. During trial, PWs.1 to 10 were examined and Exs.P1 to P9 were marked and MOs.1 to 10 were also exhibited by the prosecution. None was examined on behalf of the accused. However, Exs.D1 and D2 were marked.

7. After completion of trial, examination of accused under Section - 313 of Cr.P.C. and hearing both sides, *vide* impugned judgment, learned trial Court held that the prosecution failed to establish the guilt of the accused beyond reasonable doubt and consequently acquitted him.

8. The said judgment of acquittal was earlier subjected to challenge by the State in Criminal Appeal No. 388 of 2017, which came to be dismissed by a Co-ordinate Bench of this Court on 29.04.2025, thereby affirming the acquittal. The present appeal is filed by the *de facto* complainant (PW.1), sister of the deceased,

challenging the very same trial Court judgment on the grounds urged in the memorandum of appeal.

9. The defence of the accused was one of total denial of the allegations levelled by the prosecution. The accused pleaded innocence and contended that he was falsely implicated in the case.

i) It was the defence case that the prosecution failed to establish that the accused was present in the house at the time of the occurrence or that he was last seen in the exclusive company of the deceased immediately prior to her death. Emphasis was placed on the fact that other inmates and occupants were residing in the same house/building, whose non-examination, according to the defence, created a serious dent in the prosecution version.

ii) The defence further contended that the investigation suffered from material lapses, including non-examination of crucial witnesses, suppression of earlier statements of PW.5, and failure to collect and produce call data records, which, according to the defence, undermined the fairness and credibility of the prosecution case.

iii) It was also argued that the evidence of the prosecution witnesses, particularly PW.1 and PW.4, was unreliable as they were interested witnesses, and that the contradictions in the testimony of PW.5 struck at the root of the prosecution version. On these premises, the accused sought acquittal contending that the prosecution failed to prove its case beyond reasonable doubt.

10. The appellant herein - PW.1 is the sister of the deceased and also the *de facto* complainant. She deposed about the marital relationship between the deceased and the accused, harassment on account of suspicion over the character of the deceased, and stated that on 08.07.2015 at about 12.30 p.m., she along with her daughter PW.4 went to the house of the deceased, where they saw the accused coming down the staircase in a hurried manner after pushing them aside. She further stated that on entering the flat, she found the deceased lying on the bed with bleeding injuries and an iron rod nearby, and thereafter lodged the complaint (Ex.P-1). In cross-examination, she admitted that several family members were residing

in the building, and that she did not personally verify several aspects relating to mobile phone usage and presence of other occupants.

11. PW.2, the mother of the deceased, is a hearsay witness. She stated that she came to know about the incident through PW.1 and thereafter came to Hyderabad and saw the dead body of the deceased with head injuries. Her evidence is confined to post-occurrence facts and what was conveyed to her by PW.1.

12. PW.3, another sister of the deceased, deposed that the deceased used to inform her over telephone about harassment by the accused. She stated that on receiving information from PW.1, she came to the house of the deceased and saw the dead body and the iron rod near it. In cross-examination, she admitted that she was not residing in Hyderabad, and that she had no direct knowledge of the incident.

13. PW.4 - daughter of PW.1 supported the version of PW.1 regarding their visit to the house of the deceased on the date of incident and claimed to have seen the accused coming down the

staircase hurriedly. She stated that they found the deceased lying on the bed with head injuries and blood scattered around. In cross-examination, she admitted that several occupants were residing in the building and that her statement regarding drafting of the complaint and interaction with inmates of the house where the incident took place was not reflected in Ex.P-1.

14. PW.5 - daughter of the deceased and the accused deposed about harassment and ill-treatment of the deceased by the accused on various occasions prior to the incident. She stated that on the date of incident, she saw her mother lying dead in a pool of blood and that relatives informed her that her father had killed her mother. Her statement under Section 164 Cr.P.C. was also recorded. In cross-examination, material contradictions emerged regarding mobile phone usage, recording of her statements by the police, and the existence of multiple statements, which were marked as Exs.D1 and D2.

15. PW.6 is a *panch* witness to the scene of offence *panchanama* and inquest. He deposed about seizure of material

objects from the scene and from the hospital. In cross-examination, he admitted that he did not observe sealing of the seized articles and that he signed documents at the instance of police.

16. PW.7 - the doctor, who conducted the post-mortem examination, deposed that the cause of death was head injury and issued the post-mortem certificate (Ex.P5). His evidence remained unchallenged.

17. PW.8 is also *panch* witness to the confessional statement of the accused and seizure of blood-stained clothes. He identified the accused and the seized clothes. In cross-examination, he admitted prior acquaintance with the police and that the confessional *panchanama* was not drafted in his presence.

18. PW.9 - Sub-Inspector of Police registered the FIR based on Ex.P1 - report given by the appellant herein. In cross-examination, he admitted that the FIR reached the Magistrate at 10.45 P.M. on the same day, that the time of dispatch was not mentioned, and that certain procedural formalities were not strictly complied with.

19. PW.10 - the Investigating Officer deposed about the steps taken during investigation, including scene of offence *panchanama*, arrest of the accused, recording of statements, seizure of material objects, and filing of the charge sheet. In cross-examination, he admitted non-examination of inmates of the building, recording of multiple statements of PW.5 with only one being filed in court, non-seizure of mobile phones, and lack of clarity regarding sealing of seized articles.

20. **CONTENTIONS OF THE APPELLANT:**

i) Learned counsel for the appellant - *de facto* complainant contended that the judgment of acquittal passed by the trial Court is contrary to law, weight of evidence, and probabilities of the case. It was argued that the learned Sessions Judge failed to properly appreciate the oral and documentary evidence adduced by the prosecution and erroneously extended the benefit of doubt to the accused.

ii) It was submitted that the evidence of PW.1 and PW.4, who categorically deposed about seeing the accused leaving the house in a hurried manner immediately prior to the discovery of the dead body, clearly established the presence of the accused at the scene of offence. According to the appellant, the trial Court erred in discarding their testimony on untenable grounds.

iii) Learned counsel further contended that the trial Court placed undue emphasis on the non-examination of inmates and other occupants of the building, ignoring the fact that lapses in investigation cannot, by themselves, enure to the benefit of the accused when the substantive evidence of prosecution witnesses is otherwise cogent and reliable.

iv) It was also argued that the trial Court failed to properly appreciate the evidence of PW.5, the daughter of the deceased and the accused, whose testimony regarding prior harassment and ill-treatment was natural and trustworthy, and who had no reason to falsely implicate her own father. The contradictions pointed out in her

evidence, according to the appellant, were minor and did not go to the root of the prosecution case.

v) Learned counsel assailed the findings of the trial Court relating to non-production of call data records and mobile phones, contending that even assuming such non-production, the same could not be treated as fatal to the prosecution, nor could it be used to cast aspersions on the character of the deceased.

vi) It was further contended that the trial Court erred in rejecting the applicability of Section 106 of the Indian Evidence Act, despite the incident having occurred within the four walls of the matrimonial home. According to the appellant, the accused failed to offer any plausible explanation as to how the deceased sustained fatal injuries, and such failure ought to have been treated as an incriminating circumstance.

vii) Learned counsel also argued that the plea of alibi suggested by the accused was neither pleaded nor proved, and therefore, the trial Court ought to have drawn an adverse inference

against the accused for his failure to explain the blood stains on his clothes and his conduct immediately after the incident.

viii) Placing reliance on the decision of the Hon'ble Supreme Court in **Ramesh v. State of Rajasthan**¹, it was contended that the circumstantial evidence on record formed a complete chain pointing only towards the guilt of the accused, and that the acquittal recorded by the trial Court was unsustainable.

21. As discussed above, PW.5 is the daughter of the accused and the deceased. She has specifically deposed about the harassment of her deceased mother by the accused and also torture meted out by him. However, during cross-examination, she has admitted that she did not inform about the said harassment of her mother, herself and her sister by her father - accused. Except that, nothing useful was elicited from her.

22. Admittedly, the death is not in dispute. The deceased died on 08.07.2015. The accused was apprehended on 09.07.2015 near

¹. (2009) 9 SCC 719

Railway Station, Secunderabad while he was going to his sister's house, as spoken by PW.10 - Investigating Officer. Thus, there is no explanation from respondent No.2 - accused for the said absconding from 08.07.2015 to 09.07.2015.

23. As discussed above, PW.1 to PW.5 specifically deposed that they found MO.1 - iron rod at the scene of offence. Even then, nothing useful was elicited from them during cross-examination. PW.6 is the *panch* witness for recovery of MO.1 - iron rod from the scene of offence. However, during cross-examination, he has admitted that he belongs to the same community of the accused and the deceased. He knew the family members of the deceased and PW.1 as they belong to his community. Except that, nothing useful was elicited from him during cross-examination.

24. PW.7, the doctor, who conducted autopsy over the dead body of the deceased, categorically opined in Ex.P5 - post-mortem examination report that cause of the death is head injury. There was no cross-examination of PW.7.

25. Learned trial Court acquitted the accused holding that there are lapses on the part of the prosecution as specifically observed in paragraph No.9.

26. It is settled principle of law that defect/faulty investigation is not a ground to acquit the accused.

i) In **C. Muniappan v. State of Tamil Nadu**², the Apex Court held as follows:

“44. There may be highly defective investigation in a case. However, it is to be examined as to whether there is any lapse by the I.O. and whether due to such lapse any benefit should be given to the accused. The law on this issue is well settled that the defect in the investigation by itself cannot be a ground for acquittal. If primacy is given to such designed or negligent investigations or to the omissions or lapses by perfunctory investigation, the faith and confidence of the people in the criminal justice administration would be eroded. Where there has been negligence on the part of the investigating agency or omissions, etc. which

². (2010) 9 SCC 567

resulted in defective investigation, there is a legal obligation on the part of the court to examine the prosecution evidence de hors such lapses, carefully, to find out whether the said evidence is reliable or not and to what extent it is reliable and as to whether such lapses affected the object of finding out the truth. Therefore, the investigation is not the solitary area for judicial scrutiny in a criminal trial. The conclusion of the trial in the case cannot be allowed to depend solely on the probity of investigation.”

ii) In **Visveswaran v. State**³, the Apex Court held as under:

“..... In defective investigation, the only requirement is of extra caution by courts while evaluating evidence. It would not be just to acquit the accused solely as a result of defective investigation. Any deficiency or irregularity in investigation need not necessarily lead to rejection of the case of prosecution when it is otherwise proved.”

iii) In **Karnel Singh v. State of M.P.**⁴, the Apex Court held as under:

³. (2003) 6 SCC 73

“5. In the case of a defective investigation the Court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective.

6. To acquit solely on that ground would be adding insult to injury.”

iv) In **Sheo Shankar Singh v. State of Jharkhand**⁵, the Apex

Court held as follows:

“42. ...Deficiencies in investigation by way of omissions and lapses on the part of investigating agency cannot in themselves justify a total rejection of the prosecution case. In Ram Bihari Yadav v. State of Bihar and Ors [(1998) 4 SCC 517] this Court while dealing with the effect of shoddy investigation of cases held that if primacy was given to such negligent investigation or to the omissions and lapses committed in the course of investigation, it will shake the confidence of the

⁴. (1995) 5 SCC 518

⁵. (2011) 3 SCC 654

people not only in the law enforcing agency but also in the administration of justice.”

v) In **Ankush Maruti Shinde v. State of Maharashtra**⁶, the Apex Court held as follows:

“Before parting with the present order, we strongly deprecate the conduct on the part of the investigating agency and the prosecution. Because of such lapses, and more particularly in not defective investigation, the real culprits have gone out of the clutches of the law and got scot free.”

vi) In **State of Gujarat v. Kishanbhai**⁷, the Apex Court gave certain directions with regard to the defect/faulty investigation in paragraph Nos.22 and 23 and the same are relevant and are extracted below:

“22. Every acquittal should be understood as a failure of the justice delivery system, in serving the cause of justice. Likewise, every acquittal should ordinarily lead to the inference, that an innocent person was wrongfully prosecuted. It is therefore essential that every State should put in

⁶. (2009) 6 SCC 667

⁷. (2014) 5 SCC 108

place a procedural mechanism which would ensure that the cause of justice is served, which would simultaneously ensure the safeguard of interest of those who are innocent. In furtherance of the above purpose, it is considered essential to direct the Home Department of every State to examine all orders of acquittal and to record reasons for the failure of each prosecution case. A standing committee of senior officers of the police and prosecution departments should be vested with aforesaid responsibility. The consideration at the hands of the above committee, should be utilised for crystallising mistakes committed during investigation, and/or prosecution, or both. The Home Department of every State Government will incorporate in its existing training programmes for junior investigation/ prosecution officials course-content drawn from the above consideration. The same should also constitute course-content of refresher training programmes for senior investigating/prosecuting officials. The above responsibility for preparing training programmes for officials should be vested in the same Committee of senior officers referred to above. Judgments like the one in hand (depicting more than ten glaring lapses in the

investigation/prosecution of the case), and similar other judgments, may also be added to the training programmes. The course-content will be reviewed by the above Committee annually, on the basis of fresh inputs, including emerging scientific tools of investigation, judgments of Courts, and on the basis of experiences gained by the Standing Committee while examining failures, in unsuccessful prosecution of cases. We further direct, that the above training programme be put in place within 6 months. This would ensure that those persons who handle sensitive matters concerning investigation/prosecution are fully trained to handle the same. Thereupon, if any lapses are committed by them, they would not be able to feign innocence when they are made liable to suffer departmental action for their lapses.

23. On the culmination of a criminal case in acquittal, the concerned investigating/prosecuting official (s) responsible for such acquittal must necessarily be identified. A finding needs to be recorded in each case, whether the lapse was innocent or blameworthy. Each erring officer must suffer the consequences of his lapse, by appropriate departmental action, whenever called

for. Taking into consideration the seriousness of the matter, the official concerned may be withdrawn from investigative responsibilities, permanently or temporarily, depending purely on his culpability. We also feel compelled to require the adoption of some indispensable measures, which may reduce the malady suffered by parties on both sides of criminal litigation. Accordingly, we direct the Home Department of every State Government, to formulate a procedure for taking action against all erring investigating/prosecuting officials/officers. All such erring officials/officers identified, as responsible for failure of a prosecution case, on account of sheer negligence or because of culpable lapses, must suffer departmental action. The above mechanism formulated would infuse seriousness in the performance of investigating and prosecuting duties, and would ensure that investigation and prosecution are purposeful and decisive. The instant direction shall also be given effect to within 6 months.”

vii) In **Harijana Thirupala v. Public Prosecutor**⁸, the Apex Court held in paragraph No.11, which is relevant and the same is extracted as follows:

“11. The case of the prosecution must be judged as a whole having regard to the totality of the evidence. In appreciating the evidence the approach of the court must be integrated not truncated or isolated. In other words, the impact of evidence in totality on the prosecution case or innocence of accused has to be kept in mind in coming to the conclusion as to the guilt or otherwise of the accused. In reaching a conclusion about the guilt of the accused, the court has to appreciate, analyse and assess the evidence placed before it by the yardstick of probabilities, its intrinsic value and the animus of witnesses....”

viii) In **Rammi @ Rameshwar v. State of Madhya Pradesh**⁹, the Apex Court held as follows:

“...But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his

⁸. (2002) 6 SCC 470

⁹. (1999) 8 SCC 649

version that the court is justified in jettisoning his evidence. But too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.”

ix) In **Appabhai v. State of Gujarat**¹⁰, the Apex Court held as under:

“The Court while appreciating the evidence must not attach undue importance to minor discrepancies. The discrepancies which do not shake the basic version of the prosecution case may be discarded.”

27. Admittedly, the Investigating Officer did not examine Smt. Soniya Sharma. Perusal of record would reveal that when PW.1, her daughter (PW.4), co-sister and other inmates of the building reached the scene of offence at about 12:30 hours, whereas she has lodged Ex.P1 - report with police only at 2.00 P.M. and according to her, she contacted her husband, who in turn, informed to their relatives. Then

¹⁰. AIR 1988 SC 696

she went to the police station and gave Ex.P1 - report to the police at 2.00 P.M. The prosecution did not examine the husband of PW.1. Further, the Investigating Officer did not collect any call data. At the same time, the accused did not explain the cause of death of the deceased in terms of Section - 106 of the Indian Evidence Act, 1872, and on coming to know about the death of his wife, he did not give report with police. He was apprehended by the police on 09.07.2015 at Railway Station, Secunderabad while he was going to his sister's house. Admittedly, the death happened at the house of the deceased and the accused. PWs.1 and 2 specifically deposed that they saw respondent No.2 herein - accused leaving the scene of offence in hurried manner and, thereafter, they found the deceased lying in pool of blood. Even then, there is no explanation from the accused. It is also not in dispute that PW.10 recorded the statements of PW.5, daughter of the deceased and the accused twice. But, only one statement was furnished to the accused. There is discrepancy with regard to the phone number used by the accused and the deceased as is evident from Exs.D1 and D2 and the deposition of PW.5.

28. There is no dispute with regard to legal position that the appellate Court while setting aside the judgment of trial Court acquitting the accused has to be relatively slow. At the same time, the appellate Court has to consider the aforesaid aspects.

29. During the course of hearing of the present appeal, it came to the notice of this Court that the very same judgment of acquittal dated 21.10.2016 passed by the learned Metropolitan Sessions Judge, Hyderabad, in **Sessions Case No. 99 of 2016**, had already been subjected to scrutiny before this Court at the instance of the State in **Criminal Appeal No. 388 of 2017**, and that the said appeal came to be dismissed by a Division Bench, thereby affirming the acquittal. The existence of the earlier appellate decision, rendered on the same judgment and arising out of the same prosecution, has a direct bearing on the maintainability and scope of the present appeal and necessitates examination of the matter in the context of judicial discipline.

30. The said appeal was heard and decided by a Co-ordinate Division Bench of this Court on 29.04.2025.

31. In the said appeal, the State contended that the trial Court erred in acquitting the accused despite the evidence of PW.1 and PW.4 regarding the presence of the accused at the scene, and that the evidence of PW.5 was improperly discarded. The State further argued that the circumstantial evidence was sufficient to establish the guilt of the accused.

32. Upon re-appreciation of the entire oral and documentary evidence, the Division Bench noted that PW.1 and PW.4 were not eyewitnesses, that the incident occurred inside a dwelling house, and that the inmates of the house, particularly one Sonia Sharma, were not examined, which was held to be fatal to the prosecution case.

33. The Division Bench further took note of serious investigative lapses, including non-examination of occupants of the building, suppression of earlier statements of PW.5, non-furnishing of such statements to the accused, non-collection of call data records, contradictions regarding seizure and sealing of material objects, and unexplained delay in dispatch of the FIR to the Magistrate.

34. The Division Bench held that the aforesaid lapses went to the root of the prosecution case and materially affected the fairness of the trial. It was also observed that the blood-stained articles, though containing blood of group “O+”, were not scientifically linked to the accused.

35. Relying upon the settled principles governing appeals against acquittal, including the decisions of the Apex Court in **Ravi Sharma v. State (NCT of Delhi)**¹¹ and **Ghurey Lal v. State of Uttar Pradesh**¹², the Division Bench held that the view taken by the trial Court was a possible and reasonable view, and that no compelling or substantial reasons existed to interfere with the acquittal. Consequently, Criminal Appeal No. 388 of 2017 was dismissed, and the judgment of acquittal passed by the trial Court was affirmed

36. This Court has carefully perused the judgment rendered by the Division Bench of this Court in **Criminal Appeal No. 388 of 2017**, Upon an independent examination of the material available and

¹¹. (2022) 8 SCC 536

¹². (2008) 10 SCC 450

the grounds urged in the present appeal, this Court finds itself unable to fully concur with certain aspects of the reasoning adopted in the earlier judgment, particularly with regard to the appreciation of the evidence of PW.5 and the application of Section 106 of the Indian Evidence Act in the facts of the present case.

37. In the considered view of this Court, the manner in which the testimony of PW.5, the daughter of the deceased and the accused, has been evaluated, and the extent to which investigative lapses were treated as fatal, raises substantial questions touching upon the correct approach to circumstantial evidence in offences occurring within the matrimonial home.

38. This Court is also of the opinion that the scope and applicability of Section 106 of the Indian Evidence Act, in cases where the death occurs within the four walls of a shared household but in the presence of multiple family members, requires authoritative reconsideration, as divergent views appear to exist on the issue.

39. However, it is equally well settled that judicial discipline and propriety mandate that a Bench of co-equal strength cannot take a view contrary to, or inconsistent with, the view already expressed by another Division Bench of this Court on the same set of facts and issues.

40. The core issue which arises for consideration in the present appeal is not the re-appreciation of evidence on merits, but the extent of authority of a co-ordinate Bench to differ from a prior decision rendered by another Division Bench on the same subject matter, and the correct procedural course to be adopted when such disagreement arises.

41. The principle of judicial discipline and propriety has been consistently recognised as a foundational pillar of the administration of justice. The doctrine mandates that certainty, consistency, and institutional coherence must prevail over individual perceptions of correctness.

42. In **Central Board of Dawoodi Bohra Community v. State of Maharashtra**¹³, the Constitution Bench authoritatively summarised the law governing precedential discipline. It was unequivocally held that a Bench of co-equal strength cannot disagree with or overrule a decision of another Bench of equal strength; the only permissible course is to express doubt and refer the matter to a larger Bench.

43. The Constitution Bench further clarified that judicial discipline does not inhibit the development of law, but channels it through an orderly hierarchical process, ensuring that conflicting views do not coexist at the same judicial level.

44. In **Mary Pushpam v. Telvi Curusumary**¹⁴, the Apex Court reiterated that when a co-ordinate Bench is confronted with a prior decision which it finds difficult to follow, it must respect the binding nature of that decision, while retaining the liberty to refer the issue to a larger Bench for authoritative resolution, It was further emphasised

¹³. (2005) 2 SCC 673

¹⁴. 2024 LiveLaw (SC) 12

that judicial discipline is not compromised by expressing disagreement, but is violated only when a co-ordinate Bench attempts to override or ignore an earlier binding decision. Relevant paragraph from the judgment is extracted below:

“1.The rule of ‘Judicial Discipline and Propriety’ and the Doctrine of precedents has a merit of promoting certainty and consistency in judicial decisions providing assurance to individuals as to the consequences of their actions. The Constitution benches of this court have time and again reiterated the rules emerging from Judicial Discipline. Accordingly, when a decision of a coordinate Bench of same High court is brought to the notice of the bench, it is to be respected and is binding subject to right of the bench of such co-equal quorum to take a different view and refer the question to a larger bench. It is the only of action open to a bench of co-equal strength, when faced with the previous decision taken by a bench with same strength.”

45. In **Hymad Pasha v. State of Andhra Pradesh**¹⁵, the Apex Court dealt with a situation where multiple appeals against the same

¹⁵. (2015) 15 SCC 651

judgment resulted in conflicting outcomes. The Court held that once an appeal against a judgment has been finally decided, any subsequent adjudication on the same subject matter by a co-ordinate Bench is non- est in law and a nullity. The Apex Court categorically observed that permitting a second adjudication on the same issues at the same judicial level would undermine finality, certainty, and public confidence in the judicial process.

46. The ratio in **Hymad Pasha**¹⁵ thus reinforces that institutional finality cannot be diluted, and if reconsideration is warranted, it must be done only through the mechanism of reference to a larger Bench.

47. In the present matter, the judgment of acquittal in **S.C. No. 99 of 2016** has already been examined and affirmed by a Division Bench of this Court in **Crl.A. No. 388 of 2017**.

48. While this Court, upon independent consideration, finds that certain aspects relating to the appreciation of circumstantial evidence, applicability of Section 106 of the Indian Evidence Act, faulty

investigation, lapses in investigation, merit reconsideration, judicial discipline restrains this Bench from recording a conflicting conclusion.

49. In view of the authoritative pronouncements referred to above, this Court is of the considered opinion that any departure from the view taken in Criminal Appeal No. 388 of 2017 can be undertaken only by a Bench of larger quorum, and not by a co-ordinate Bench with equal strength exercising appellate jurisdiction.

50. Consequently, the issue is not one of choice, but of constitutional obligation to adhere to precedential discipline, leaving the resolution of the perceived conflict to a larger Bench.

51. **CONCLUSION**

i. In view of the foregoing discussion and the legal principles governing judicial discipline and precedential hierarchy, this Court records that the judgment of acquittal dated **21.10.2016** passed in **S.C. No. 99 of 2016** has already been examined and affirmed by a Division Bench of this Court in **CrI.A.No.388 of 2017**.

ii. This Court, upon an independent examination of the grounds urged in the present appeal and the material placed on record, finds that certain substantial questions arise with respect to the appreciation of circumstantial evidence, the applicability of Section 106 of the Evidence Act, faulty/defect investigation etc., which, in the considered view of this Court, merit reconsideration.

iii. However, having regard to the settled position of law that a Bench of co-equal strength cannot take a view contrary to or inconsistent with a decision rendered by another Division Bench of this Court on the same subject matter, this Court is restrained by the principles of judicial discipline and propriety from expressing any final or operative conclusion on merits.

iv. In such circumstances, and in consonance with the law laid down by the Apex Court in the case referred above, this Court is of the considered opinion that the only legally permissible course is to **refer the matter to a Full Bench** for an authoritative pronouncement on the issues which arise for consideration.

v. Accordingly, the Registrar (Judicial-I) is directed to place the matter before the Hon'ble the Chief Justice for appropriate orders.

K. LAKSHMAN, J

VAKITI RAMAKRISHNA REDDY, J

10th February, 2025
Mgr