2026 INSC 217

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). OF 2026
(Arising out of SLP (Crl.) No (s). 1977 of 2026)

POORANMAL ....APPELLANT(S)

VERSUS

THE STATE OF RAJASTHAN & ANR. ....RESPONDENT(S)

J U D G M E N T

Mehta, J.

1. Heard.

2. Leave granted.

3. The appellant, Pooranmal[1], along with one Ladu Lal faced trial in Sessions Case No. 33 of 2010 before the Court of the Additional Sessions Judge, (Women Atrocities Cases), Bhilwara, Rajasthan[2]. Both the accused were convicted by the trial Court *vide* judgment and order dated 8th February, 2012, for the offence punishable under Sections 302/34 of the

[1] Hereinafter, referred to as "appellant-Pooranmal".
[2] Hereinafter, referred to as "trial Court".

Indian Penal Code, 1860[3] [Sections 103 (1)/3(5) of the Bhartatiya Nyaya Sanhita, 2023[4]] and were sentenced to undergo life imprisonment and fine of Rs. 5,000/- with default stipulation. Both the accused were also convicted for the offence punishable under Section 201 of the IPC [Section 238 of the BNS] and sentenced to undergo seven years rigorous imprisonment and fine of Rs. 5,000/- with default stipulation. Both the sentences were ordered to run concurrently.

4. The common appeal being DB Criminal Appeal No. 238 of 2012 preferred by the accused persons against their conviction stands rejected by the High Court of Judicature for Rajasthan at Jodhpur[5] *vide* judgment and order dated 16th March, 2018. It may be mentioned here that Ladu Lal assailed the said judgment of the High Court by preferring Special Leave Petition (Crl.) No. 1071 of 2022, which has been dismissed by this Court *in limine vide* order dated 7th February, 2022.

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[3] Hereinafter, referred to as 'IPC'.
[4] Hereinafter, referred to as 'BNS'.
[5] Hereinafter, referred to as 'High Court'.

5. The appellant-Pooranmal who was unable to prefer an appeal owing to poverty and lack of access to legal assistance, has now filed the present appeal through legal aid.

6. *Vide* order dated 28th January, 2026, we took note of the distinguishing features *inter se* between the case of the appellant-Pooranmal and that of the co-convict Ladu Lal and issued notice in the present appeal. The case of the prosecution as against the co-convict Ladu Lal was based on recoveries as well as the reverse burden of proof as provided under Section 106 of the Indian Evidence Act, 1872[6] (Section 109 of the Bharatiya Sakshya Adhiniyam, 2023[7]). In contrast, insofar as the appellant-Pooranmal is concerned, the prosecution's case rests purely on recoveries and call detail records. It was in these circumstances and remaining conscious of the dismissal of the special leave petition preferred by the co-convict Ladu Lal, that we deemed it appropriate to entertain the special leave petition filed on behalf of the appellant-Pooranmal through legal aid,

[6] Hereinafter, referred to as 'Evidence Act'.
[7] Hereinafter, referred to as 'BSA'.

notwithstanding the significant delay of 2749 days, which stands condoned by the aforesaid order.

BRIEF FACTS

7. Succinctly stated, the facts relevant and essential for disposal of this appeal are noted hereinbelow.

8. The case as set up by the prosecution is that the appellant-Pooranmal along with the co-convict Ladu Lal, committed murder of Aruna, wife of Ladu Lal, in the latter's house on the night intervening 2nd March, 2010 and 3rd March, 2010.

9. The written report of the incident (Ex. P-40) was lodged by none other than Ladu Lal before the Station House Officer, Police Station Bijolia alleging *inter alia* that he was sleeping in the drawing room of his house with his son Devender. His wife, Smt. Aruna, was sleeping in the adjacent room. At about 1:30 am, he got up to attend the call of nature and found that his room was bolted from outside. He tried calling Smt. Aruna on her mobile number, but she did not respond. On this, he called his brother, Satyanarayan (PW.2), and upon receiving no response, he called his acquaintance Shankar Singh Rathore, posted as constable at the Police Station

Bijolia. Thereafter, some people gathered at the spot and opened his room from outside. Upon proceeding to the adjoining room, they found Smt. Aruna lying on the bed with visible injuries, including a wound on her left temple, along with signs of struggle. On checking closely, they realised that Smt. Aruna was dead. The almirah situated near the dead body was lying open, and a sum of approximately Rs. 4 lakh was missing therefrom. Ladu Lal alleged in the report that some unknown persons had murdered his wife by inflicting injuries on her head and requested the police to take action. On the basis of said report, FIR No. 28 of 2010 came to be registered at the Police Station Bijolia under Section 460 of the IPC (Section 331(8) of the BNS). The usual investigation was undertaken. The dead body was subjected to inquest proceedings and subsequently forwarded to the Medical Jurist for postmortem examination.

10. During the course of investigation, Ladu Lal was interrogated and looking to his evasive response, the needle of suspicion turned towards him and he was accordingly arrested. Ladu Lal made a confession/disclosure statement (Ex. P-42) and based thereupon, the appellant-Pooranmal was also

apprehended in the present case. The Investigating Officer, Dalpat Singh (PW.22)[8], thereafter effected recoveries of a blood-stained shirt and a sum of Rs.46,000/-, in furtherance of the disclosure statements made by the appellant-Pooranmal.

11. The Investigating Officer (PW.22) collected the call details of mobile Nos. 978****222 and 977****299 belonging to the accused persons, which led to the conclusion that the appellant-Pooranmal and Ladu Lal were continuously in contact with each other, proximate to the probable time of the incident.

12. Upon conclusion of investigation, chargesheet came to filed against two accused persons *i.e.* the appellant-Pooranmal and Ladu Lal for the offences punishable under Sections 302/34 and 201 of the IPC [Sections 103 (1)/3(5) and 238 of the BNS]. Since the offence punishable under Section 302 of the IPC [103 (1) of the BNS] was exclusively triable by the Court of Sessions, the case was committed and made over to the Court of the Additional Sessions Judge, (Women Atrocities Cases), Bhilwara, Rajasthan for trial. The trial Court framed charges against both the

[8] Hereinafter, referred to as 'Investigating Officer (PW.22)'.

accused who pleaded not guilty and claimed trial. The prosecution examined twenty-four witnesses (PW.1 to PW.24) and exhibited fifty-five documents (Ex. P-1 to P-55) along with seven articles (Ex. A-1 to A-7) to prove its case.

13. The accused, upon being questioned under Section 313 of the Code of Criminal Procedure, 1973 [Section 351 of the Bharatiya Nagarik Suraksha Sanhita, 2023] denied the prosecution allegations and claimed to be innocent. Three witnesses (DW.1 to DW.3), and eight documents (Ex. D-1 to D-8) were exhibited in defence.

14. As stated above, the trial Court *vide* judgment and order dated 8th February, 2012 convicted and sentenced the appellant-Pooranmal and the co-accused for the offences mentioned above.[9]

15. The appeal preferred by the appellant-Pooranmal against his conviction has been rejected by the High Court *vide* judgment and order dated 16th March, 2018 and hence, this appeal by special leave.

[9] *Supra* para 3.

SUBMISSIONS ON BEHALF OF THE APPELLANT

16. Learned counsel appearing for the appellant-Pooranmal, vehemently and fervently contended that the conviction of the appellant-Pooranmal recorded by the trial Court, and affirmed by the High Court, is based purely on conjectures and surmises. It was submitted that the prosecution's case rests entirely on circumstantial evidence and that there is no credible or reliable evidence on record of the case so as to connect the appellant-Pooranmal with the alleged crime.

17. The learned counsel urged that the recovery of the blood-stained shirt allegedly made at the instance of the appellant-Pooranmal does not inspire confidence. The call detail records cannot be admitted in evidence because the mandatory certificate under Section 65-B of the Evidence Act [Section 63 of the BSA] was never proved.

18. The learned counsel further contended that the recovery of the currency notes cannot be treated to be incriminating because there is no credible evidence to show that these currency notes had, as a matter of fact, been given to the appellant-Pooranmal

by the co-convict Ladu Lal for committing the murder of Smt. Aruna.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

19. *Per contra*, learned counsel representing the State opposed the submissions advanced by the appellant's counsel. It was submitted that the special leave petition filed by the co-convict against the self-same impugned judgment, having been rejected by this Court, there is no reason for this Court to take a different view in the case of the appellant-Pooranmal.

20. It was further submitted that the Investigating Officer (PW.22) has given unimpeachable evidence proving the grave incriminating recoveries of the blood-stained shirt and the currency notes made at the instance of the appellant-Pooranmal. The shirt upon being examined at the serological department of the Forensic Science Laboratory[10] tested positive (FSL Report Ex. P-49) for the presence of the same blood group (O) as that of the deceased-Aruna. The appellant-Pooranmal failed to offer any explanation as to how the shirt worn by him at the time of the incident was bearing stains of the same blood group

[10] Hereinafter, referred to as 'FSL'.

as that of the deceased-Aruna. The failure of the appellant-Pooranmal to offer any explanation to this gravely incriminating circumstance requires drawing of adverse inference.

21. It was further submitted that the call detail records are gravely incriminating. The appellant-Pooranmal failed to offer any explanation for the extensive contact with the main accused Ladu Lal proximate to the time of the occurrence. Thus, these incriminating call detail records were rightly relied upon by the trial Court and the High Court for drawing the inference of guilt against the appellant-Pooranmal.

22. It was further contended that the call detail records were proved by the nodal officers of the service providers, *i.e.* Vibhor Rastogi (PW.23) and Saurabh Kumar (PW.24) and hence, non-production of the certificate under Section 65-B of the Evidence Act [Section 63 of the BSA] pales into insignificance. Mere non-production of the certificate under Section 65-B of the Evidence Act [Section 63 of the BSA] in this case cannot be treated to be fatal to the prosecution's case, particularly, when the call detail records have been duly proved by examining the

employees of the service providers *i.e.*, Vodafone and Bharati Hexacom Ltd./Bharati Heckjakom Ltd.

23. The learned counsel also urged that the appellant-Pooranmal hails from a poor family and as such, his being in possession of such a large sum of money soon after the incident is a gravely incriminating circumstance for which the appellant-Pooranmal could not offer any explanation. Thus, by virtue of Section 106 of the Evidence Act [Section 109 of the BSA], the burden shifted on to the appellant-Pooranmal to explain as to how he came into possession of the huge sum of money recovered from his house pursuant to the disclosure made by him under Section 27 of the Evidence Act [Proviso to Section 23 of the BSA].

24. On the aforesaid grounds, learned counsel submitted that the concurrent and well-reasoned findings recorded against the accused by the trial Court and affirmed by the High Court, *i.e.* convicting the appellant-Pooranmal and upholding his conviction do not warrant interference. He thus implored the Court to dismiss the appeal.

ANALYSIS AND DISCUSSION

25. We have heard and considered the submissions advanced by learned counsel for the appellant-Pooranmal and learned standing counsel appearing for the State. We have also carefully perused the impugned judgments and sifted the evidence available on record.

26. Suffice it to say that, as emerging from the impugned judgments of the trial Court and the High Court, the case of the prosecution pertaining to the murder of Smt. Aruna is based purely on circumstantial evidence. Insofar as the appellant-Pooranmal is concerned, the prosecution's case rests upon following three incriminating circumstances: -

i. Call detail records indicating continuous and frequent conversation between the appellant-Pooranmal and co-convict Ladu Lal corresponding to the time of the incident.

ii. The recovery of blood-stained shirt, having same blood group as that of Smt. Aruna, in furtherance of the disclosure made by the appellant-Pooranmal under Section 27 of the Evidence Act [Proviso to Section 23 of the BSA].

iii. The recovery of currency notes totalling Rs.46,000/-, purportedly paid by co-convict Ladu Lal to the appellant-Pooranmal for committing murder of Smt. Aruna.

27. The law governing cases resting on circumstantial evidence is no longer *res integra*. It would, therefore, be apposite to advert to the salient principles enunciated by this Court in ***Sharad Birdhichand Sarda v. State of Maharashtra***[11], wherein the parameters for appreciation of circumstantial evidence have been authoritatively and succinctly laid down:-

> **"153.** A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:
>
> **(*1*) the circumstances from which the conclusion of guilt is to be drawn should be fully established.**
>
> It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in *Shivaji Sahabrao Bobade* v. *State of Maharashtra* [(1973) 2 SCC 793] where the observations were made: [SCC para 19, p. 807] "Certainly, it is a primary principle that the accused *must* be and not merely *may*

[11] (1984) 4 SCC 116.

> be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."
> **(*2*) 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,**
> **(*3*) the circumstances should be of a conclusive nature and tendency,**
> **(*4*) they should exclude every possible hypothesis except the one to be proved, and**
> **(*5*) 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."**
> (Emphasis Supplied)

28. Bearing the aforesaid principles in mind, we shall now proceed to examine and analyse the evidence led by the prosecution to prove the circumstances relied upon by it for bringing home the guilt of the appellant-Pooranmal.

I. RECOVERY OF CURRENCY NOTES

29. At the outset, we may take note of the fact that there is a grave discrepancy regarding the exact amount of currency notes recovered by the Investigating Officer (PW.22) purportedly in

furtherance of the disclosure statement made by the appellant-Pooranmal.

30. Whilst in the examination-in-chief, the Investigating Officer (PW.22) deposed that the appellant-Pooranmal furnished an information under Section 27 of the Evidence Act [Proviso to Section 23 of the BSA] regarding receipt of the amount of Rs.46,000/- (Ex. P-44) from Ladu Lal pursuant to a plan to commit the murder of Smt. Aruna.

31. The Investigating Officer (PW.22) further stated that in consequence of the said disclosure, as also another disclosure pertaining to the shirt allegedly worn at the time of the incident, the appellant-Pooranmal led the police party to his residence and got recovered a shirt (suspected to be blood-stained) kept in an iron box. The said recovery was reduced into writing *vide* memo (Ex. P-9), and the shirt was sealed at the spot. Further as per the information given by the appellant-Pooranmal, a sum of Rs.46,000/- was recovered from his house and was seized *vide* memo (Ex. P-13). The said amount was also sealed at the spot.

32. In cross-examination, the Investigating Officer (PW.22) admitted that though on the chit of material

exhibit (Ex. P-52), the currency notes were mentioned as Rs.46,000/-, but when the notes were counted in Court, it was noticed that the amount was Rs.46,145/-. The Investigating Officer (PW.22) admitted that there was no mention of these extra Rs.145 on the packet marked as (Ex. P-52).

33. Thus, the very factum of recovery of the currency notes comes under a grave cloud of doubt. That apart, mere recovery of currency notes, in the absence of any cogent evidence establishing a clear nexus between the said amount and the crime, would not by itself constitute an incriminating circumstance against the appellant-Pooranmal. Thus, the said circumstance was wrongly treated to be incriminating by the trial Court as the recovery itself is doubtful and additionally, the mere recovery of currency notes cannot constitute incriminating evidence in absence of corroborative evidence.

II. RECOVERY OF BLOOD-STAINED SHIRT

34. The second incriminating article recovered at the instance of the appellant-Pooranmal was the blood-stained shirt which upon being analysed at the FSL purportedly gave a positive test for the presence

of the same blood group (O) as that of the deceased-Aruna. From the evidence of the Investigating Officer (PW.22), it transpires that the recovery of the shirt was effected in furtherance of the disclosure statement of the appellant-Pooranmal *(*Ex. P-43). The recovery memo of the shirt was proved as (Ex. P-9).

35. We may observe that the appellant-Pooranmal herein was a free bird since the day of incident *i.e.* from intervening night of 2nd and 3rd March, 2010 until 4th March, 2010, when he came to be formally arrested in connection with the present case, after being implicated by the co-convict Ladu Lal. The recovery memo (Ex. P-9) indicates that the appellant-Pooranmal had meticulously concealed the shirt in an iron box and when the same was recovered, it was bearing blood stains. To our mind, it is highly improbable and unnatural that the appellant-Pooranmal, who was a free bird, would have taken such great pains to conceal the shirt so meticulously rather than simply destroying it by burning. Furthermore, even if the appellant-Pooranmal was desirous of preserving the shirt, all that was required to obliterate the blood stains was to wash the same.

Hence, we are of the firm view that the recovery of the shirt is totally unreliable.

36. The recovery of the shirt was held to be incriminating based on the FSL report (Ex. P-49) as per which the blood stains on the shirt tested positive for the presence of O blood group being the same as that of the deceased-Aruna. For treating the FSL report (Ex. P-49) to be admissible, the prosecution would have to prove the complete chain of custody establishing the sanctity of the sealed articles right from the time of the seizure till the time they reached the FSL. In this regard, we would like to refer to the evidence of the following witnesses:-

a. Mathura Singh (P.W.19)

37. Mathura Singh (PW.19), the Head Constable in-charge of the *malkhana* at Police Station Bijolia, stated that on 6th March, 2010 the Investigating Officer (PW.22) deposited blood-stained tissues and shirt in a sealed cloth bag. An entry to this effect was made in the *malkhana* register at Serial No. 227. On 7th March, 2010, the Investigating Officer (PW.22) deposited a sealed bag containing 46 notes of Rs.1,000/- each, totalling Rs. 46,000/-. The witness

(PW.19) stated that these articles, which also included the articles/samples recovered from the crime scene and the t-shirt recovered at the instance of the co-convict Ladu Lal, bearing marks A, B, C, L, M (totalling five), were forwarded with constable Surender Singh (PW.16) to SP office Bhilwara on 15th March, 2010 for being deposited at the FSL accompanied by requisite documents. However, because the FSL forwarding letter was not yet prepared, the said articles were returned and handed back to said witness (PW.19) who redeposited the same in the *malkhana* with an endorsement made in the *malkhana* register (Ex. P-37).

38. These very articles were again taken out from the *malkhana* on 18th March, 2010 and handed over to Surender Singh (PW.16) for delivery to FSL. Surender Singh (PW.16) proceeded to Udaipur and deposited the samples at the FSL on 19th March, 2010. He thereafter returned on 20th March, 2010 along with the receipt evidencing such deposit.

39. The witness (PW.19) was confronted with the *malkhana* entry in his cross-examination and stated as below: -

> "It is wrong to say that I had given the material to Surendra Singh on 12.3.10 for taking to F.S.L. and that due to some shortage in it, the material were returned on 15.3.l0. Ex.D.3 The copy of the Malkhana which was attached with the challan in the file, in the C-D part of which it is written that the material were sent on 12.3.10 is wrong."

b. Surendra Singh (P.W.16)

40. The Carrier Constable, Surender Singh (PW.16), emphatically stated that he carried the *malkhana* articles to the FSL on 18th March, 2010, deposited them at the FSL, Udaipur on 19th March, 2010 and brought back the receipt. In his cross-examination, the witness (PW.16) stated that he did not recollect taking the same articles to the S.P. office on 12th March, 2010. He was confronted with the *malkhana* register (Ex. D-3), which records that he had been handed the samples on 12th March, 2010 and had attempted to deposit them at the S.P. Office on 15th March, 2010. However, he feigned ignorance as to the said entry recorded in the official document (Ex.D-3).

41. On a holistic appreciation of the evidence of these two witnesses, it becomes clear that there is a grave discrepancy regarding the safe-keeping/chain of custody of the *muddamal* articles. It is clearly

discernible from the evidence of Mathura Singh (PW.19) that the *muddamal* articles were sent out of the police station prior to 18th March, 2010, to be precise on 15th March, 2010, but the same were returned from the FSL because of some defects. The precise reason for return of the *muddamal* articles is not forthcoming in the evidence of the prosecution witnesses. The Carrier Constable (PW.16) categorically denied having carried the samples on any date prior to 18th March, 2010.

42. The entry made in the *malkhana* register (Ex. D-3) with which both the witnesses were confronted, completely demolishes the versions of PW.19 and PW.16. In this entry, it is clearly recorded that the *muddamal* articles were forwarded to the FSL on 12th March, 2010. Utter failure of the prosecution to disclose as to the reasons for which the samples were returned from the FSL breaches the unbroken chain of custody mandatorily required to prove the safe keeping of the *muddamal* articles.

43. In ***Karandeep Sharma alias Razia alias Raju v. State of Uttarakhand***[12], this Court

[12] 2025 SCC OnLine SC 773.

emphasised that for a DNA/FSL report to be acceptable and reliable, the prosecution must establish an unbroken chain of custody and demonstrate that the samples remained duly sealed and untampered throughout, and held as follows:-

> "54. In order to make the DNA report acceptable, reliable and admissible, the prosecution would first be required to prove the sanctity and chain of custody of the samples/articles right from the time of their preparation/collection till the time they reached the FSL. For this purpose, the link evidence would have to be established by examining the concerned witness.
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> 55. Evidently, there is not even a semblance of evidence on record to satisfy the Court that the samples/articles collected from the dead body of the child-victim and those collected from the appellant which were later forwarded to the FSL were properly sealed or that the same remained in a self-same condition right from the time of the seizure till they reached the FSL. No witness from the FSL was examined by the prosecution to prove that the samples/articles were received in a sealed condition. Hence, there is every possibility of the samples being tampered/manipulated by the police officers so as to achieve a favourable result from the FSL, thereby, inculpating the appellant in the crime."

44. In view of the analysis of evidence made above, we are of the firm view that the requisite link evidence essential to prove the safe-keeping and sanctity of the *muddamal* articles is lacking and the chain of custody has been breached beyond reprieve, thereby,

making the FSL report (Ex. P-49) redundant and a worthless piece of paper.

45. Moreover, this Court in ***Allarakha Habib Memon v. State of Gujarat***[13], expounded that even if the FSL report establishes that the blood group detected on the article recovered at the instance of the accused matches that of the deceased, such circumstance by itself is not sufficient to link the said accused with the crime. This Court observed as follows:-

> "42. The trial court as well as the High Court heavily relied upon the FSL reports (Exts. 111-115) for finding corroboration to the evidence of the eyewitnesses and in drawing a conclusion regarding culpability of the appellants for the crime. We may reiterate that the testimony of the so-called eyewitnesses has already been discarded above by holding the same to be doubtful. **Thus, even presuming that the FSL reports (Exts. 111-115) conclude that the blood group found on the weapons recovered at the instance of the accused matched with the blood group of the deceased, this circumstance in isolation, cannot be considered sufficient so as to link the accused with the crime.**
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> 43. In this regard, reliance can be placed on the judgment of Mustkeem v. State of Rajasthan [Mustkeem v. State of Rajasthan, (2011) 11 SCC 724 : (2011) 3 SCC (Cri) 473] , wherein this Court held that sole circumstance of recovery of bloodstained weapon cannot form the basis of

[13] (2024) 9 SCC 546.

conviction unless the same was connected with the murder of the deceased by the accused. The relevant portion is extracted hereinbelow : (SCC p. 730, para 19)

> "19. The AB blood group which was found on the clothes of the deceased does not by itself establish the guilt of the appellant unless the same was connected with the murder of the deceased by the appellants. None of the witnesses examined by the prosecution could establish that fact. The blood found on the sword recovered at the instance of Mustkeem was not sufficient for test as the same had already disintegrated. At any rate, due to the reasons elaborated in the following paragraphs, the fact that the traces of blood found on the deceased matched those found on the recovered weapons cannot ipso facto enable us to arrive at the conclusion that the latter were used for the murder."
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> (Emphasis Supplied)

46. Thus, even if the FSL report (Ex. P-49) shows that the blood found on the shirt allegedly recovered at the instance of the appellant-Pooranmal matches that of the deceased-Aruna, such finding would by itself not be incriminating in the absence of other cogent and corroborative evidence completing the chain of circumstances.

47. Thus, neither the recovery of the currency notes is reliable, nor the recovery of the shirt inspires confidence. In addition thereto, the link evidence

having not been proved, the FSL report (Ex. P-49) pales into insignificance.

III. CALL DETAIL RECORDS

48. The last and final piece of circumstantial evidence relied upon by the prosecution to bring home the charges against the appellant-Pooranmal pertains to the call detail records.

49. Section 65-B of the Evidence Act [Section 63 of the BSA] mandates that electronic evidence in form of a computer output (call detail records) can only be admitted in evidence upon satisfaction of the mandatory conditions prescribed under Section 65-B (4) of the Evidence Act [Section 63(4) of the BSA], which reads as follows: -

> **"(4)** In any proceedings where it is desired to give a statement in evidence by virtue of this section, **a certificate doing any of the following things, that is to say, --**
>
> (a) **identifying the electronic record containing the statement and describing the manner in which it was produced**;
>
> (b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;
>
> (c) dealing with any of the matters to which the conditions mentioned in sub-

> section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this subsection it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.
>
> (Emphasis supplied)

50. This position of law was cemented by this Court in the case of ***Anvar P.V. v. P.K. Basheer***[14]**,** wherein it was held as follows: -

> **"14.** Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65-A, can be proved only in accordance with the procedure prescribed under Section 65-B. Section 65-B deals with the admissibility of the electronic record. The purpose of these provisions is to sanctify secondary evidence in electronic form, generated by a computer. It may be noted that the section starts with a non obstante clause. Thus, notwithstanding anything contained in the Evidence Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document only if the conditions mentioned under sub-section (2) are satisfied, without further proof or production of the original. The very admissibility of such a

[14] (2014) 10 SCC 473.

document i.e. electronic record which is called as computer output, depends on the satisfaction of the four conditions under Section 65-B(2). Following are the specified conditions under Section 65-B(2) of the Evidence Act:

(*i*) The electronic record containing the information should have been produced by the computer during the period over which the same was regularly used to store or process information for the purpose of any activity regularly carried on over that period by the person having lawful control over the use of that computer;

(*ii*) The information of the kind contained in electronic record or of the kind from which the information is derived was regularly fed into the computer in the ordinary course of the said activity;

(*iii*) During the material part of the said period, the computer was operating properly and that even if it was not operating properly for some time, the break or breaks had not affected either the record or the accuracy of its contents; and

(*iv*) The information contained in the record should be a reproduction or derivation from the information fed into the computer in the ordinary course of the said activity.

15. Under Section 65-B(4) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied:

(*a*) There must be a certificate which identifies the electronic record containing the statement;

(*b*) The certificate must describe the manner in which the electronic record was produced;

(*c*) The certificate must furnish the particulars of the device involved in the production of that record;

(*d*) The certificate must deal with the applicable conditions mentioned under Section 65-B(2) of the Evidence Act; and

(*e*) The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.

16. It is further clarified that the person need only to state in the certificate that the same is to the best of his knowledge and belief. Most importantly, such a certificate must accompany the electronic record like computer printout, compact disc (CD), video compact disc (VCD), pen drive, etc., pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence. All these safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration, transposition, excision, etc. without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice.

17. Only if the electronic record is duly produced in terms of Section 65-B of the Evidence Act, would the question arise as to the genuineness thereof and in that situation, resort can be made to Section 45-A—opinion of Examiner of Electronic Evidence.

18. The Evidence Act does not contemplate or permit the proof of an electronic record by oral evidence if requirements under Section 65-B of the Evidence Act are not complied

with, as the law now stands in India."
(Emphasis Supplied)

51. Subsequently, this Court in ***Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal***[15]**,** reaffirmed and clarified the position laid down in ***Anvar P.V.*** *(supra)*, observing that the requirement of a certificate under Section 65-B of the Evidence Act [Section 63 of the BSA] for admissibility of electronic evidence is mandatory and cannot be dispensed with, and held as follows:-

> "**61.** We may reiterate, therefore, that the certificate required under Section 65-B(4) is a condition precedent to the admissibility of evidence by way of electronic record, as correctly held in *Anvar P.V.* [*Anvar P.V.* v. *P.K. Basheer*, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108], and incorrectly "clarified" in *Shafhi Mohammad* [*Shafhi Mohammad* v. *State of H.P.*, (2018) 2 SCC 801 : (2018) 2 SCC 807 : (2018) 2 SCC (Civ) 346 : (2018) 2 SCC (Civ) 351 : (2018) 1 SCC (Cri) 860 : (2018) 1 SCC (Cri) 865] . Oral evidence in the place of such certificate cannot possibly suffice as Section 65-B(4) is a mandatory requirement of the law. Indeed, the hallowed principle in *Taylor* v. *Taylor* [*Taylor* v. *Taylor*, (1875) LR 1 Ch D 426] , which has been followed in a number of the judgments of this Court, can also be applied. Section 65-B(4) of the Evidence Act clearly states that secondary evidence is admissible only if led in the manner stated and not otherwise.

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[15] (2020) 7 SCC 1.

To hold otherwise would render Section 65-B(4) otiose."

52. Admittedly, in the present case, the certificate under Section 65-B of the Evidence Act [Section 63 of the BSA] was not proved by the prosecution. In the absence of the certificate, mandatorily required under Section 65-B of the Evidence Act [Section 63 of the BSA], the call detail records become inadmissible in evidence and cannot be relied upon to support the prosecution's case.

CONCLUSION

53. In view of the discussion made above, we are of the opinion that the prosecution has miserably failed to establish a complete and coherent chain of incriminating circumstances so as to bring home the guilt of the appellant-Pooranmal. Neither were the so-called incriminating circumstances proved by cogent and admissible evidence, nor do they form an unbroken chain pointing unequivocally towards the guilt of the appellant-Pooranmal.

54. As an upshot of the above discussion, we have no hesitation in concluding that the prosecution has failed to bring home the charges against the

appellant-Pooranmal and the impugned judgments do not stand to scrutiny.

55. Consequently, conviction of the appellant-Pooranmal as recorded by the trial Court and affirmed by the High Court cannot be sustained. Hence, the impugned judgments are hereby set aside. The appellant-Pooranmal is acquitted of the charges. He is in custody and shall be released forthwith, if not wanted in any other case.

56. The appeal is accordingly allowed in the above terms.

57. Pending application(s), if any, shall stand disposed of.

.....J.
(VIKRAM NATH)

.....J.
(SANDEEP MEHTA)

.....J.
(N.V. ANJARIA)

NEW DELHI;
MARCH 10, 2026