



In the High Court of Punjab and Haryana at Chandigarh

1. CRA-905-DB-2006
Reserved on: 23.9.2024
Date of Decision: 01.10.2024

Darshan Singh and Others Appellants

Versus

State of Haryana Respondent

2. CRA-20-DB-2007

Sheo Narain and Others Appellants

Versus

State of Haryana Respondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Argued by: Mr. K.D.S. Hooda, Advocate
for the appellants (in CRA-905-DB-2006).
Mr. Kapil Aggarwal, Advocate
for appellants No. 2 and 3 (in CRA-20-DB-2007).
Proceedings against appellant No. 1 in CRA-20-DB-2007 stand
abated vide order dated 07.11.2023.

Mr. Pawan Girdhar, Addl. A.G., Haryana.

Mr. Deepak K. Sharma, Advocate
for the complainant.

SURESHWAR THAKUR, J.

1. Since both the criminal appeals (supra) arise from a common judgment, therefore, they are amenable for a common verdict becoming recorded thereons.
2. Both the appeals (supra) are directed respectively by the convicts-appellants, against the verdict of conviction, as made on



24.10.2006, by the learned Sessions Judge, Fatehabad, upon, Session Case No. 89 of 2002, wherethrough, in respect of charges drawn for offences punishable under Sections 148, 302/149, 307/149, 325/149 and 323/149 of the IPC, he made a finding of conviction against the accused.

3. Moreover, through a separate sentencing order drawn on 28.10.2006, the learned trial Judge concerned, proceeded to impose upon the convicts (supra) both sentence(s) of imprisonment as well as of fine, but in the hereinafter extracted manner :-

“3. Keeping in view the nature of the offence and the attending circumstances of the case, all the convicts are sentenced to undergo life imprisonment for having committed offence punishable under section 302 read with section 149 Indian Penal Code and to pay a fine of Rs.10,000/- each for having committed the above said offence. In default of payment of fine, the defaulter shall further undergo simple imprisonment for a period of three months.

4. All the convicts mentioned above are sentenced to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs 5,000/- each for having committed offence punishable under section 307 read with section 149. Indian Penal Code. In default of payment of fine, the defaulter shall further undergo simple imprisonment for a period of two months.

5. All the convicts are further sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs 1000/- each for having committed offence punishable under section 325 read with section 149 Indian Penal Code. In default of payment of fine, the defaulter shall further undergo simple imprisonment for a period of 15 days.

6. All the convicts are also sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs 500/- each for having committed offence punishable under



section 323 read with section 149 Indian Penal Code. In default of payment of fine, the defaulter shall further undergo simple imprisonment for a period of seven days.

7. All the convicts are further sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs 1000/- each for having committed offence punishable under section 148 Indian Penal Code. In default of payment of fine, the defaulter shall further undergo simple imprisonment for a period of 15 days.”

8. All the sentences shall run concurrently.

4. The convicts-appellants become aggrieved from the above drawn verdict of conviction, besides also, become aggrieved from the consequent thereto sentences of imprisonment, and, of fine as became imposed upon them, by the learned convicting Court concerned, and hence have chosen to institute thereagainst the instant appeal before this Court.

Factual background

5. The genesis of the prosecution case, becomes embodied in the appeal FIR, to which Ex. P45 is assigned. As per the prosecution version, Mahabir Singh, Subhash, Vinod, Sat Narain and Krishan sons of Bhagirath reside in a Dhani at about 2 Kms. Away from Bhuna. They are cultivating their land jointly and are having joint mess and residence. Out of the total holding, they have set up a garden on an area measuring 20 acres. The accused were having grouse against the complainant party for utilizing the water for their fields, which was meant for garden. On 3.6.2002, Mahabir etc. had turn of water. Vinod went to the garden and diverted the flow of water in it. After diverting the water, he started for his other field across the road. While going to the other field, he was crossing the road and was



Singh, Uggarsain, Mohinder, Subhash, Chhelu Ram, Hanuman, Sheo Narain, Rohtash, Om Parkash and Atma Ram came there in a truck bearing registration No. HNH-5115. They parked the truck near the garden and alighted from it. Darshan Singh and Sarwan were armed with gandasis; Uggarsain was armed with an iron rod whereas the remaining accused were armed with lathis. Darshan Singh exhorted that they would not allow Vinod to utilize the water meant for garden for their fields. Hearing the sound of commotion, Mahabir also came out of his Dhani and reached near the spot. Darshan Singh opened the attack and gave a gandasi blow to Vinod on his head. Sarwan gave another gandasi blow to Vinod on his head. Uggarsain gave a blow with iron rod on the right arm of Vinod. Mohinder gave a lathi blow to Vinod on his right thigh. On receipt of the injuries, Vinod fell down. In the meantime, Mahabir intervened. At this. Subhash gave a lathi blow to Mahabir hitting him on his head. Chhelu gave lathi blows on the left and right shoulder of Mahabir. Sheo Narain gave a lathi blow on his left shoulder. Hanuman gave a lathi blow to Mahabir on his right arm. Rohtash gave a lathi blow on the left knee whereas Atma Ram and Om Parkash gave lathi blows to Mahabir hitting him on his back. The alarm raised by Mahabir attracted Subhash and Ankur. Subhash took out his licensed gun from the Dhani and fired in the air. Hearing the sound of gun shot, all the accused sped away with their respective arms in the truck. Subhash and Ankur arranged a vehicle and took Vinod and Mahabir to Primary Health Centre, Bhuna where both of them were medico-legally examined and were given first aid. Keeping in view the seriousness of the injuries, Vinod was referred to General Hospital, Fatehabad. However, the persons attending him took Vinod to V.K. Neuro Hospital, Hisar where he remained admitted up till his



death i.e. 16.6.2002. According to the prosecution, Vinod died due to the injuries received by him in the abovesaid occurrence. Mahabir was also got admitted in the said hospital who had also received grievous injuries on his head, hands and ribs. However, he was discharged after treatment.

Investigation proceedings

6. After completion of investigation by the investigating officer concerned, into the FIR (supra), he instituted an affirmative report under Section 173 Cr.P.C., before the learned Committal Judge concerned.

Committal proceedings

7. Finding the offence punishable under Section 302/307 of the IPC, to be exclusively triable by the Court of Session, thus the learned committal Court, vide order dated 14.08.2002 committed the case for trial to the Court of learned Sessions Judge, Fatehabad.

Trial Court Proceedings

8. On finding a *prima facie* case, charge under Sections 148, 302/149, 307/149, 325/149 and 323/149 of the IPC became framed, against the accused concerned, to which they pleaded not guilty, and, claimed trial.

9. In support of the prosecution case, the prosecution examined fourteen witnesses. After completion of recording of the depositions of the prosecution witnesses, the learned Sessions Judge, Fatehabad, drew proceedings under Section 313 of the Cr.P.C., but therein, all the accused except accused Sarwan Singh, claimed false implication, and, pleaded innocence. The accused examined Dr. D.L. Bansal as DW-1 in their defence.

10. Accused Sarwan Singh in his statement under Section 313

Cr.P.C. pleaded that on 03.06.2002, he was working in his field at the time



of occurrence. Vinod deceased armed with a gandasi and Mahabir with a lathi came there and diverted the flow of water of a watercourse illegally towards their garden. He objected to it. So, there was exchange of hot words. He was having a kasiya and was cutting unwanted grass with the help of Kasiya. Mahabir and Vinod attacked him and started causing injuries to him. Other accused were not present and they have been falsely involved in this case due to party faction.

11. After conclusion of the trial, as, became entered into the FIR (supra), by the learned Additional Sessions Judge, Fatehabad, the latter proceeded to make the afore verdict of conviction, and, also made the consequent therewith sentence(s) (supra), upon, the accused-appellants.

Submissions of the learned counsel for the convicts-appellants.

12. The learned counsel for the aggrieved convicts-appellants herein, have vigorously argued before this Court, that the impugned verdict of conviction, and consequent therewith sentences (supra), as imposed, upon the convicts-appellants, both become ridden with a gross infirmity of gross mis-appreciation, and non-appreciation of the evidence, existing on record. Therefore, they have argued that the appeal be accepted, and, the verdict, as challenged before this Court, be quashed, and set aside.

Submissions of the learned State Counsel and the learned counsel for the complainant.

13. On the other hand, the learned State counsel and the counsel for the complainant have argued that the appreciation of evidence as made by the learned Convicting Court, is merit-worthy, and, that it does not require any interference being made by this Court.



Case dependent upon the testimony of eye witness-complainant PW-8.

14. For proving the charges (supra) drawn against the convicts, the prosecution made reliance upon the deposition of the ocular witness to the occurrence, who stepped into the witness box, as PW-8. The contents of the examination-in-chief, as rendered by PW-8 are ad verbatim extracted hereinafter.

We are five brothers. My other brothers are Subhash, Vinod, Sat Narain and Krishan. We are all living in a Dhani near a canal minor at a distance of 2 k.m. from Bhuna by the side of Ratia road. We have set up a garden in the area of 20 acres by the side of our Dhani. On 3.6.2002 my brother Vinod diverted the water in our garden field and started going across the road to look after the other field at about 10.30 a.m. In the meanwhile Darshan, Sarwan, Ugersain, Mahender sons of Om Parkash, Subhash son of Rohtash, Om Parkash, Rohtash, Atma Ram sons of Patram, Chhelu, Hanuman and Sheo Narain sons of Bhagi Ram, all the accused today present in the court came there in a truck belonging to Darshan Singh etc. The truck No. was HNH-5115. They parked their truck at some distance from our garden and all alighted from the bus. Darshan singh and Sarvan armed with gandasis, Ugersain was armed with an iron rod and the rests of the accused were carrying lathies. Darshan Singh objected to my brother Vinod that if he would utilise the water meant for his garden in his other field then they would not permit him to do so. I also reached the spot on hearing the Rola. Darshan Singh opened the attack on Vinod by giving him a gandasi blow in the head in order to kill him followed by Sharvan causing another gandasi blow in the head of Vinod. Ugersain gave an iron rod blow to Vinod hitting him on the right arm and Mahender gave a lathi blow on the right thigh of Vinod who fell down as a result of these injuries. Thereafter I raised alarm and Subhash gave a lathi blow hitting me in my head, Chhelu Ram gave a lathi blow on my right shoulder. Chhelu Ram gave a lathi blow on my left



shoulder. Then Hanuman gave a lathi blow on my right arm. Sheo Narain also gave a lathi blow on my right hand again said on my left hand. Rohtash gave a lath blow on my left knee. Atma Ram and Om Parkash gave a lathi blow to me hitting on my back. On hearing our alarm my brother Subhash and his son Ankur came to the spot. Subhash fired a shot in the air from his gun in order to rescue us. There upon all the accused ran away from the spot in the truck carrying their respective weapon and they also threatened to kill us in future as we were saved on that day.

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15. PW-8 also suffered the ordeal of an exacting cross examination, and, yet during the course thereof, the defence counsel failed to elicit from him, any echoing qua the deposition(s) (supra), as, comprised in his examination-in-chief rather being engineered, false, or, contrived. Therefore, completest credence is to be assigned to the deposition of PW-8.

Corroboration lent to the statement of PW-8 by the deposition of PW-11 and analysis of the testification(s).

16. The statement of PW-8 is fully corroborated by the deposition of PW-11. He too, has spoken therein qua his witnessing the commission of the penal act by the accused upon the victim. Even during the ordeal of a rigorous cross-examination, to which he was subjected to, he remained unscathed.

17. A conjoint analysis of the testification(s), as made by the ocular witnesses (supra), to the relevant occurrence suggests, that their respectively made statements are not ridden with any taint of theirs making any gross improvements or embellishments vis-a-vis their respectively recorded previous statements in writing. Moreover, their respectively made testification(s) are also free from any taint of any intra-se contradiction(s)



intra-se their respectively made testification(s). Moreover when they also render unblemished inter-se corroboration(s) to their respectively rendered ocular accounts qua the penal occurrence. Thus, completest credence is to be meted to their respectively made testification(s). Therefore, on the basis of the respectively made testification(s), by the credible ocular witnesses to the occurrence, thus, the charge against the accused but stands fully established.

**Signed disclosure statement(s) of the accused and pursuant
thereto recoveries**

18. During the course of investigations, being made into the appeal FIR, convicts-appellants, made their respective signed disclosure statements, to which respectively Ex. P-47, Ex. P-51, Ex. P-52, Ex. P-53, Ex. P-63, Ex. P-74, Ex., P-78, Ex. P-84 and Ex. P-85 become assigned.

19. The disclosure statements (supra), carry thereons the signatures, of the convicts concerned. In their signed disclosure statements (supra), convicts, confessed their guilt in inflicting injuries on persons' of the injured and deceased, hence with the recovered weapons. The further speaking therein is qua theirs keeping, and, concealing the incriminatory weapons of offence. Moreover, the said signed disclosure statements do also make speakings about theirs alone being aware about the location of theirs hiding and keeping the same, and, also revealed their willingness to cause the recovery of the incriminatory weapons, to the investigating officer concerned, from the place of theirs hiding, and, keeping the same.

20. Significantly, since the appellants have not been able to either ably deny their signatures as occur on the exhibits (supra) nor when they have been able to prove the apposite denial. Moreover, since they have also not been able to bring forth tangible evidence but suggestive that the



recoveries are either contrived or invented. Therefore, all the exhibits are *prima facie* concluded to be holding the utmost evidentiary tenacity.

21. Significantly also, since post the making of the said signed disclosure statements, becoming made, thus by the convicts to the investigating officer concerned, each of them through their respective recovery memos bearing Ex. P-49, Ex. P-55, Ex. P-58, Ex. P-61, Ex. P-65, Ex. P-76, Ex. P-80, Ex. P-87 and Ex. P-90, thus caused the recoveries of the weapons of offence to the investigating officer concerned. Consequently, when the said made recoveries are also not suggested by any cogent evidence to be planted recoveries. Resultantly, the effect thereof, is that the valid recoveries were made vis-a-vis the incriminatory weapons of offence by the convicts, to the investigating officer concerned. In sequel, the makings of the valid signed disclosure statements, by the convicts besides the pursuant thereto effectuation(s) of valid recoveries of the incriminatory weapons of offence, thus by each of the convicts to the investigating officer concerned, but naturally *prima facie* corroborates and supports the case of the prosecution.

22. However, yet for assessing the vigor of the said made disclosure statements and consequent thereto made recoveries, it is apt to refer to the principles governing the assigning of creditworthiness to the said made disclosure statements and to the consequent thereto made recoveries. The principles governing the facet (supra), become embodied in paragraphs Nos. 23 to 27 of a judgment rendered by the Hon'ble Apex Court in **Criminal Appeal Nos.1030 of 2023, titled as "Manoj Kumar Soni V. State of Madhya Pradesh", decided on 11.8.2023**, relevant paragraphs whereof



become extracted hereinafter.

23. *The law on the evidentiary value of disclosure statements under Section 27, Evidence Act made by the accused himself seems to be well established. The decision of the Privy Council in **Pulukuri Kotayya and others vs. King-Emperor** holds the field even today wherein it was held that the provided information must be directly relevant to the discovered fact, including details about the physical object, its place of origin, and the accused person's awareness of these aspects. The Privy Council observed:*

The difficulty, however great, of proving that a fact discovered on information supplied by the accused is a relevant fact can afford no justification for reading into s. 27 something which is not there, and admitting in evidence a confession barred by s. 26. Except in cases in which the possession, or concealment, of an object constitutes the gist of the offence charged, it can seldom happen that information relating to the discovery of a fact forms the foundation of the prosecution case. It is only one link in the chain of proof, and the other links must be forged in manner allowed by law.

24. *The law on the evidentiary value of disclosure statements of co-accused too is settled; the courts have hesitated to place reliance solely on disclosure statements of co-accused and used them merely to support the conviction or, as Sir Lawrence Jenkins observed in **Emperor vs. Lalit Mohan Chuckerburty**, to “lend assurance to other evidence against a co-accused”. In **Haricharan Kurmi vs. State of Bihar**, this Court, speaking through the Constitution Bench, elaborated upon the approach to be adopted by courts when dealing with disclosure statements:*

13. *...In dealing with a criminal case where the prosecution relies upon the confession of one accused person against another accused person, the proper approach to adopt is to consider the other evidence against such an accused person, and if the said evidence appears to be satisfactory and the court is inclined to hold that the said evidence may sustain the charge framed against the said accused person, the court turns to the confession with a view to assure itself that the conclusion which it is inclined to draw from the other*



evidence is right.

25. *In yet another case of discrediting a flawed conviction under Section 411, IPC, this Court, in **Shiv Kumar vs. State of Madhya Pradesh** overturned the conviction under Section 411, declined to place undue reliance solely on the disclosure statements of the co-accused, and held:*

24. ..., the disclosure statement of one accused cannot be accepted as a proof of the appellant having knowledge of utensils being stolen goods. The prosecution has also failed to establish any basis for the appellant to believe that the utensils seized from him were stolen articles. The factum of selling utensils at a lower price cannot, by itself, lead to the conclusion that the appellant was aware of the theft of those articles. The essential ingredient of mens rea is clearly not established for the charge under Section 411 IPC. The prosecution's evidence on this aspect, as they would speak of the character Gratiano in Merchant of Venice, can be appropriately described as, "you speak an infinite deal of nothing." [William Shakespeare, Merchant of Venice, Act 1 Scene 1.]

26. *Coming to the case at hand, there is not a single iota of evidence except the disclosure statements of Manoj and the co-accused, which supposedly led the I.O. to the recovery of the stolen articles from Manoj and Rs.3,000.00 from Kallu. At this stage, we must hold that admissibility and credibility are two distinct aspects and the latter is really a matter of evaluation of other available evidence. The statements of police witnesses would have been acceptable, had they supported the prosecution case, and if any other credible evidence were brought on record. While the recoveries made by the I.O. under Section 27, Evidence Act upon the disclosure statements by Manoj, Kallu and the other co-accused could be held to have led to discovery of facts and may be admissible, the same cannot be held to be credible in view of the other evidence available on record.*

27. *While property seizure memos could have been a reliable piece of evidence in support of Manoj's conviction, what has transpired is that the seizure witnesses turned hostile right from*



the word 'go'. The common version of all the seizure witnesses, i.e., PWs 5, 6, 11 and 16, was that they were made to sign the seizure memos on the insistence of the 'daroga' and that too, two of them had signed at the police station. There is, thus, no scope to rely on a part of the depositions of the said PWs 5, 6, 11 and 16. Viewed thus, the seizure loses credibility.

23. Furthermore, in a judgment rendered by the Hon'ble Apex Court in **Criminal Appeal No.2438 of 2010, titled as "Bijender @ Mandar V. State of Haryana", decided on 08.11.2021**, the relevant principles governing the assigning of creditworthiness become set forth in paragraph 16 thereof, paragraph whereof becomes extracted hereinafter.

*16. We have implored ourselves with abounding pronouncements of this Court on this point. It may be true that at times the Court can convict an accused exclusively on the basis of his disclosure statement and the resultant recovery of inculpatory material. However, in order to sustain the guilt of such accused, the recovery should be unimpeachable and not be shrouded with elements of doubt. We may hasten to add that circumstances such as (i) the period of interval between the malfeasance and the disclosure; (ii) commonality of the recovered object and its availability in the market; (iii) nature of the object and its relevance to the crime; (iv) ease of transferability of the object; (v) the testimony and trustworthiness of the attesting witness before the Court and/or other like factors, are weighty considerations that aid in gauging the intrinsic evidentiary value and credibility of the recovery. (See: **Tulsiram Kanu vs. The State; Pancho vs. State of Haryana; State of Rajasthan vs. Talevar & Anr and Bharama Parasram Kudhachkar vs. State of Karnataka**).*

24. Furthermore, in another judgment rendered by the Hon'ble Apex Court in **Special Leave Petition (Criminal) No.863 of 2019, titled as "Perumal Raja @ Perumal V. State, Rep. By Inspector of Police", decided**



on 03.01.2024, the relevant principles governing the assigning of creditworthiness become set forth in paragraphs 22 to 25 thereof, paragraphs whereof become extracted hereinafter.

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

23. *The facts proved by the prosecution, particularly the*



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

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

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



25. Now the principles set forth therein are that the defence, is required to be proving;

- i) That the disclosure statement and the consequent thereto recovery being forged or fabricated through the defence proving that the discovery of fact, as made in pursuance to a signed disclosure statement made by the accused to the investigating officer, during the term of his custodial interrogation, rather not leading to the discovery of the incriminatory fact;
- ii) That the fact discovered was planted;
- iii) It was easily available in the market;
- iv) It not being made from a secluded place thus exclusively within the knowledge of the accused.
- v) The recovery thereof made through the recovery memo in pursuance to the making of a disclosure statement, rather not being enclosed in a sealed cloth parcel nor the incriminatory item enclosed therein becoming sent, if required, for analyses to the FSL concerned, nor the same becoming shown to the doctor concerned, who steps into the witness box for proving that with the user of the relevant recovery, thus resulted in the causings of the fatal ante mortem injuries or in the causing of the relevant life endangering injuries, as the case may be, upon the concerned.
- vi) That the defence is also required to be impeaching the credit of the marginal witnesses, both to the disclosure statement and to the recovery memo by ensuring that the said



marginal witnesses, do make speakings, that the recoveries were not made in their presence and by making further speakings that they are compelled, tutored or coerced by the investigating officer concerned, to sign the apposite memos. Conspicuously, despite the fact that the said recovery memos were not made in pursuance to the accused leading the investigating officer to the site of recovery. Contrarily the recovery memo(s) becoming prepared in the police station concerned.

vii) The defence adducing evidence to the extent that with there being an immense gap *inter se* the making of the signed disclosure statement and the consequent thereto recovery being made, that thereby the recovered items or the discovered fact, rather becoming planted onto the relevant site, through a stratagem employed by the investigating officer.

26. Therefore, unless the said defence(s) are well raised and are also ably proven, thereupon the making of a disclosure statement by the accused and the consequent thereto recovery, but are to be assigned credence. Conspicuously, when the said incriminatory link in the chain of incriminatory evidence rather is also the pivotal corroborative link, thus even in a case based upon eye witness account.

27. Be that as it may, if upon a prosecution case rested upon eye witness account, the eye witness concerned, resiles therefrom his previously made statement. Moreover, also upon his becoming cross-examined by the learned Public Prosecutor concerned, thus the judicial conscience of the Court become completely satisfied that the investigating officer concerned,

did record, thus a fabricated apposite previously made statement in writing,



therebys the Courts would be led to declare that the said made apposite resilings are well made resilings by the eye witness concerned, thus from his previously made statement in writing.

28. Moreover, in case the Court, in the above manner, becomes satisfied about the well made resilings by the eye witness concerned, to the crime event, thereupon the Court may consequently draw a conclusion, that the recoveries made in pursuance to the disclosure statement made by the accused, even if they do become ably proven, yet therebys may be the said disclosure statement, and, the consequent thereto made recoveries also loosing their evidentiary tenacity. The said rule is not a straitjacket principle, but it has to be carefully applied depending upon the facts, circumstances and evidence in each case. Tritely put in the said event, upon comparative weighings being made of the well made resilings, thus by the eye witness concerned, from his previously made statement in writing, and, of the well proven recoveries made in pursuance to the efficaciously proven disclosure statement rendered by the accused, the Court is required to be drawing a conclusion, as to whether evidentiary tenacity has to be yet assigned to the disclosure statement and the pursuant thereto recovery memo, especially when they become ably proven and also do not fall foul from the above stated principles, and/or to the well made resiling by the eye witness concerned, from his previously recorded statement in writing. Emphatically, the said exercise requires an insightful apposite comparative analyses being made.

29. To a limited extent also if there is clear cogent medical account, which alike, a frailty rendered eye witness account to the extent (supra), vis-a-vis the prosecution case based upon eye witness account rather unfolds qua



the ante mortem injuries or other injuries as became entailed on the apposite regions of the body(ies) concerned, thus not being a sequel of users thereovers of the recovered weapon of offence. Resultantly therebys too, the apposite signed disclosure statement and the consequent thereto recovery, when may be is of corroborative evidentiary vigor, but when other adduced prosecution evidence, but also likewise fails to connect the recoveries with the medical account. In sequel, thus therebys the said signed disclosure statement and the consequent thereto recovery, thus may also loose their evidentiary vigor. Even the said rule has to be carefully applied depending upon the facts, circumstances, and, the adduced evidence in every case.

30. However, in a case based upon circumstantial evidence when the appositely made signed disclosure statement by the accused and the consequent thereto prepared recovery memos, do not fall foul, of the above stated principles, therebys they acquire grave evidentiary vigor, especially when in pursuance thereto able recoveries are made.

31. The makings of signed disclosure statement and the consequent thereto recoveries, upon able proof becoming rendered qua both, thus form firm incriminatory links in a case rested upon circumstantial evidence. In the above genre of cases, the prosecution apart from proving the above genre of charges, thus also become encumbered with the duty to discharge the apposite onus, through also cogently proving other incriminatory links, if they are so adduced in evidence, rather for sustaining the charge drawn against the accused.

32. Consequently, since the statutory provisions enclosed in Section 25 of the Indian Evidence Act, provisions whereof becomes extracted hereinafter, do not assign statutory admissibility to a simpliciter/bald



the term of his suffering custodial interrogation, but when the exception thereto, becomes engrafted in Section 27 of the Indian Evidence Act, provisions whereof becomes extracted hereinafter. Therefore, therebys when there is a statutory recognition of admissibility to a confession, as, made by an accused before a police officer, but only when the confession, as made by the accused, before the police officer concerned, but becomes made during the term of his spending police custody, whereafters the said incriminatory confession, rather also evidently leads the accused, to lead the investigating officer to the place of discovery, place whereof, is exclusively within the domain of his exclusive knowledge.

“25. Confession to police-officer not to be proved.—No confession made to a police-officer, shall be proved as against a person accused of any offence.

x x x x x

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

33. Significantly, it would not be insagacious to straightaway oust the said made signed disclosure statement or the consequent thereto recovery, unless both fall foul of the above principles, besides unless the said principles become proven by the defence. Contrarily, in case the disclosure statement and the consequent thereto recovery enclosed in the respective memos, do not fall foul of the above principles rather when they become cogently established to link the accused with the relevant charge. Resultantly, if the said comprises but a pivotal incriminatory link for proving the charge drawn against the accused, therebys the snatching of the above



incriminatory link from the prosecution, through straightaway rejecting the same, but would result in perpetration of injustice to the victim or to the family members of the deceased, as the case may be.

34. Now coming the facts at hands, since the disclosure statements and the consequent thereto recoveries do become efficaciously proven by the prosecution. Moreover, when none of the marginal witnesses, to the said memos become adequately impeached rather for belying the validity of drawings of the memos nor also when it has been proven that the said memos are fabricated or engineered, besides when it is also not proven that the recoveries (supra) did not lead to the discovery of the apposite fact from the relevant place of hiding, thus only within the exclusive knowledge of the accused.

35. Conspicuously also, when the said disclosure statement is but not a bald or simpliciter disclosure statement, but evidently did lead to the making of efficacious recovery(ies), at the instance of the accused, to the police officer concerned.

36. Consequently, when therebys the above evident facts rather do not fall foul of the above stated/underlined principles in the verdicts (supra). Consequently, both the disclosure statement, and, the consequent thereto recoveries, when do become efficaciously proven, therebys theretos immense evidentiary tenacity is to be assigned. Preeminently also when thus they do corroborate the rendition of credible eye witness account vis-a-vis the crime event. Moreover, when the memos (supra) also lend corroboration also to the medical account, therebys through all the links (supra), the charge drawn against the accused becomes proven to the hilt.



MLRs of injured/deceased Vinod Kumar and of injured Mahabir

37. Dr. Suraj Kamboj, who medico legally examined the injured/deceased Vinod Kumar on 3.6.2002, has stepped into the witness box as PW-7, and, during the course of his examination-in-chief, he has proven the MLR of the said injured, to which Ex. P-14, is assigned. He has also proven the existence of the hereinafter extracted injuries on the person of injured Vinod Kumar (since deceased).

“1. There was incised wound 4 cm x ½ cm bone deep right parietal region. Fresh bleeding was present. Advised x-ray and Surgeon’s opinion.

2. There was incised wound 8 cm x ½ cm bone deep on right fronto parietal region. Crossing the midline. Fresh bleeding was present. X-rays and Surgeon’s opinion was advised.

3. There was a lacerated wound 1 cm x ¼ cm on right elbow. Fresh bleeding was present.

4. There was contusion 6 cm x 2 cm on right thigh in middle area was red and tender.”

38. The said witness opined that injuries No. 1 and 2 were caused by a sharp weapon, whereas injuries No. 3 and 4 were caused by blunt weapon.

39. On the same date, the said witness also medico legally examined injured Mahabir, and, has also proven the existence of the hereinafter extracted injuries on the person of injured Mahabir.

“1. There was a contusion 3 x 4 cm on right parietal region. Area was red and tender. X-ray was advised.

2. There was a contusion 2 cm x 3 cm on right shoulder/backside. Area was red and tender.

3. There was abrasion on left mid forearm on medial side. Area was red and tender.

4. There was an abrasion on dorsal of left wrist lateral side.



Area was red and tender. X-ray was advised.

5. *There was abrasion on anterior aspect of left knee. Area was red and tender.*

40. All the injuries were opined to be caused by a blunt weapon. However, the said witness was also shown the gandasis (supra) to which respectively Ex. P-26 (OM) and Ex. P-29 (MO) becomes assigned, whereupon he deposed that the injuries present on the person of injured/deceased Vinod, thus could be possible with the user of the said incriminatory weapons of offence. The said witness also deposed that he had declared that injury No. 1 on the person of injured Mahabir to be dangerous to life, as in the CT Scan report, there was depressed fracture.

Post-mortem report

41. The post-mortem report, to which Ex. P-43 is assigned, became proven by PW-12. PW-1 in his examination-in-chief, has deposed that on his and Dr. Varun Kawatra making an autopsy on the body of deceased Vinod Kumar, thus their noticing thereons the hereinafter extracted ante mortem injuries-

“1. There was a healed stitched wound present on the scalp measuring 4” on the right parital region, starting 3.5” from the right pinna. The other limb of the stitched wound measuring 3.5” was present on left parital region started 4” from left pinna. Both limbs were joined in the middle forming an angle of 150 degree. On palpation there was depression and abnormal mobility at the site of joining of two limbs, moreso on the right side.

On retracting the skull the underline subcutaneous tissue showed infiltration of blood. There was loose piece of fracture partial bone, moreso on the right side of the line of sutured wound right. The underlying meninges were torn and liquified brain substance was came out from the parital bone opening



which measuring 2" x 1½. There was linear fracture of parital bone right extended anteriorly from the opening of the skull which has been described earlier. Brain structure showed infiltration of blood.

2. *There was a scab on the right elbow measuring 1 cm x ¼ cm.*

3. *There was healed abrasion was present in the middle of the right thigh of size 6 cm x 2 cm.*

42. Furthermore, PW-12 also made a speaking in his examination-in-chief, that the cause of demise of the deceased was owing to shock and liquification of brain substance, as a result of head injury, which was stated to be ante mortem in nature, and, also sufficient to cause death in the ordinary course of nature.

43. The above made echoings by PW-12, in his examination-in-chief, became never challenged through any efficacious cross-examination, being made upon him, by the learned defence counsel. Therefore, the opinion, as made by PW-12 qua the demise of the deceased, thus acquires formidable force. Consequently, the above echoings, as made by PW-12, in his examination-in-chief, do relate, the fatal ante-mortem injuries to the time of the crime event hence taking place at the crime site.

44. Thus, conjoint readings of the report of the doctors concerned, who respectively proved the apposite MLR, and, of the post-mortem report of the deceased concerned, thus with the efficaciously proven signed disclosure statements (supra) as made by the convicts-appellants, besides also with the consequent thereto made valid recovery through recovery memos (supra), does thereby foster an inference, that thereby there is *inter se* corroboration *inter se* the ocular account with the medical account,



perversity or absurdity in the appreciation of the adduced relevant evidence, as became made by the learned trial Judge concerned.

Final Order

45. The result of the above discussion, is that, this Court does not find any merit in both the appeals preferred by the appellants, and, is constrained to dismiss them. Consequently, both the appeals are dismissed. The impugned verdict of conviction, as becomes recorded upon the convicts-appellants, by the learned convicting Court, is maintained, and, affirmed. Moreover, the consequent thereto order of sentence is also affirmed. If the convict-appellants are on bail, thereupon, the sentence as imposed upon them, be ensured to be forthwith executed by the learned trial Judge concerned, through his drawing committal warrants. The case property be dealt with, in accordance with law, but after the expiry of the period of limitation for the filing of an appeal.

46. Records be sent down forthwith.

47. The miscellaneous application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

October 01, 2024
Gurpreet

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No