



In the High Court of Punjab and Haryana at Chandigarh

CRA-D-522-DB-2013 (O&M)
Reserved on: 04.11.2024
Date of Decision: 14.11.2024

Akhilesh Paswan Appellant

Versus

State of Haryana Respondent

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

Present: Mr. Sudershan Thakur, Advocate (Legal Aid Counsel)
for the appellant.

Mr. Pardeep Prakash Chahar, Sr. DAG, Haryana.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the impugned verdict, as made on 5.4.2013, upon Sessions Case No. 9 of 2011, by the learned Sessions Judge, Panchkula, wherethrough in respect of charges drawn against the accused qua offence punishable under Sections 302, 307, 324, 506 IPC, the learned trial Judge concerned, proceeded to record a finding of conviction against the accused-appellant.
2. Moreover, through a separate sentencing order dated 8.4.2013, the learned trial Judge concerned, sentenced the convict-appellant in the hereafter extracted manner-

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|---------------|---|
| (i) 302 IPC | <i>Imprisonment for life and also pay a fine of Rs. 5000/-. In default of payment of fine, he shall further undergo imprisonment for six months.</i> |
| (ii) 307 IPC | <i>Imprisonment for seven years and also pay a fine of Rs. 5000/-. In default of payment of fine, he shall further undergo imprisonment for six months.</i> |
| (iii) 324 IPC | <i>Imprisonment for two years.</i> |
| (iv) 506 IPC | <i>Imprisonment for one year.</i> |



to run concurrently However, the period of detention undergone by the accused-appellant, during the investigations, and, trial of the case, was, in terms of Section 428 of the Cr.P.C., rather ordered to be set off from the above imposed sentence(s) of imprisonment.

Factual Background

4. The genesis of the prosecution case, becomes embodied in the appeal FIR, to which Ex PA/2 is assigned. As per the prosecution case, Sunita made a complaint Ex.PA to the police on 21.8.2011 to the effect that Akhilesh son of Dashrath resident of village Birhama, District Bihar had been working for them for the last two years. On the fateful night, after having dinner, she alongwith her children had come out of the house for a stroll. Her husband had also gone to the nearby market. Her mother-in-law Shanti was alone in the house with the servant. When she reached the main gate of her house, she heard the cries of her mother-in-law. She immediately ran inside the house alongwith two daughters aged 9 years and 7½ years, whereupon she found that the lights of her mother-in-law's room had been switched off. She switched on the lights, and, found that her mother-in-law was lying on the floor and Akhilesh was inflicting injuries on her stomach with a scissor. The complainant out of fright started shouting. Akhilesh caught hold of the legs of the mother-in- law and dragged her towards the bathroom. The complainant ran forward to save her mother-in-law on which Akhilesh inflicted injuries on her face with the scissor. Akhilesh also attacked her daughters and inflicted injuries upon them. He was brandishing the scissor and was threatening them. He managed to run away. The complainant came out of the house and shouted and asked for help. Her cries attracted several persons. Parveen, her husband also arrived on the scene on



her call and the incident was narrated to him. The neighbours called in an ambulance. Shanti was taken to the hospital but she was declared dead. The complainant disclosed that she and her mother-in-law had at times scolded their servant when he was found negligent in performing his duties and she suspected that this could be the reason for the attack. On the basis of the said statement, the appeal FIR was registered.

Investigation proceedings

5. During the course of investigations, a dog squad and the crime team was summoned. A photographer was also called. Post-mortem of deceased Shanti Devi was got conducted from General Hospital, Sector-6, Panchkula and her dead body was handed over to her relatives. After seeking the opinion of the doctor regarding the injuries suffered by the daughters of the complainant, an offence under Section 307 IPC was also added. A team was sent to Bihar and the accused was arrested. He suffered a disclosure statement and demarcated the spot and got the plier recovered from his room. The police also recovered blood stained clothes of the accused and one dismantled scissor from the nearby park. The weapon of offence and the clothes were sent to the FSL concerned. After conclusion of investigations, the investigating officer concerned, proceeded to institute a report under Section 173 of the Cr.P.C., before the learned committal Court concerned.

Committal Proceedings

6. Since the offences under Sections 302 and 307 of the IPC were exclusively triable by the Court of Session, thus, the learned committal Court concerned, through a committal order made on 3.12.2011, hence proceeded to commit the accused to face trial before the Court of Session.



Trial Proceedings

7. The learned trial Judge concerned, after receiving the case for trial, after its becoming committed to her, made an objective analysis of the incriminatory material, adduced before her. Resultantly, she proceeded to draw charges against the accused for the offences punishable under Sections 302, 307, 324 and under Section 506 IPC. The afore drawn charges were put to the accused-appellant, to which he pleaded not guilty, and, claimed trial.

8. In proof of its case, the prosecution examined 16 witnesses, and, thereafter the learned Public Prosecutor concerned, closed the prosecution evidence.

9. After the closure of prosecution evidence, the learned trial Judge concerned, drew proceedings, under Section 313 of the Cr.P.C., but therein, the accused pleaded innocence, and, claimed false implication. Though, the accused chose to adduce defence evidence, however, he did not lead any witness into the witness box.

10. As above stated, the learned trial Judge concerned, proceeded to convict the accused-appellant for the charge(s) (supra), as became drawn against him, and, also as above stated, proceeded to, in the hereinabove manner, impose the sentence(s) of imprisonment, as well as of fine, upon the accused-appellant.

Submissions of the learned counsel for the appellant

11. The learned counsel for the aggrieved convict-appellant has argued before this Court, that both the impugned verdict of conviction, and, the consequent thereto order of sentence, thus require an interference. He supports the above submission on the ground, that they are based on a gross misappreciation, and, non-appreciation of evidence germane to the charge.



The said submissions are hinged on the following grounds.

(a) That with the results qua the apposite examinations, as made by the FSL concerned, borne in report bearing Ex.PX, thus omitting to record a conclusive finding qua the stains of blood occurring on the incriminatory items, rather matching with the blood group of the deceased. Consequently, it is argued, that thereby the recovery, as became made of the incriminatory item(s), especially of the broken scissors, when remained unmatched with the blood group of the deceased, thereby no evidentiary tenacity becoming garnered by the recoveries of the incriminatory items, as became sent for examination(s) to the FSL concerned.

(b) That since the recovery of a dismantled piece of scissor(s) was made from an accessible place, whereas, the recovery of the said discovered fact, in pursuance to the making of a disclosure statement rather was required to be effected from a place unaccessible to the public, besides was required to be effected from a place within the exclusive knowledge of the accused-appellant, whereins, it became hidden or camouflaged. Therefore, he has argued, that the recovery from an open place, as became effected of a broken scissor(s), thus is an inefficacious recovery, besides is required to be concluded to be a manipulated recovery, on the ground, that it became planted at the site of recovery.

(c) Though during the course of trial, a propagation was raised by the convict-appellant, that he was a juvenile at the time of the commission of offence, thereby an effective order, thus was required to be made on the said application. However, since no effective order has been recorded on the said application, thereupon, the trial as became entered upon the present accused-appellant, who at the stage of commission of offence,



rather was a juvenile, thus is a vitiated trial.

12. Consequently, he has argued that the impugned verdict of conviction, and, the consequent thereto order of sentence, as became recorded by the learned trial Court concerned, are required to be quashed and set aside.

Submissions of the learned State counsel

13. On the other hand, the learned State counsel has argued before this Court, that the verdict of conviction, and, consequent thereto sentence(s) (supra), as become imposed upon the convict, are well merited, and, do not require any interference, being made by this Court in the exercise of its appellate jurisdiction. Therefore, he has argued that the instant appeal, as preferred by the convict-appellant be dismissed.

Analysis of the depositions of the eye witnesses to the occurrence, who respectively stepped into the witness box as PW-1 and PW-3

14. Complainant Sunita, who is the purported eye witness to the occurrence, stepped into the witness box as PW-1, and, deposed that her elder daughter was 9 years old and the younger daughter was 7 years old. She along with her husband Parveen and mother-in-law Shanti were residing together. She further deposed that she had a servant namely Akhilesh i.e. the present appellant, who had been working in their house for the last two years. She further deposed, that on 20.8.2011, she along with her children went for a walk after having dinner, whereas, her husband had gone to the market. Thereafter on return when they were near the main gate of the house, she heard the cries of her mother-in-law, upon which she along with her children went inside. She noticed that the lights of her mother-in-law's room were switched off. She further deposed that upon switching on the

lights, she saw that appellant Akhilesh was inflicting scissors blows upon



her mother-in-law. Subsequently, the appellant forcibly tried to drag her mother-in-law inside the bathroom. She also deposed that when she tried to rescue her mother-in-law, thereupon the appellant also inflicted scissor blows upon her face, which in fact struck the right side of her forehead, underneath her left eye, on her right forearm and on the right side of her stomach. Thereafter the accused came out of the room and inflicted injuries upon her daughters and fled away from the spot. Therefore, the supra voicings made by PW-1, in her examination-in-chief, qua the genesis of the prosecution case, are naturally in complete alignment with her previously made statement, in writing, to which Ex.PA becomes assigned. Moreover, though she was subjected to the ordeal of a grilling cross-examination by the learned counsel for the accused, but she remained unscathed in the said ordeal.

15. Significantly, since a wholesome reading of her testification, as carried in her examination-in-chief, and, in her cross-examination, does not unfold, qua thereins rather becoming carried any rife improvements or embellishments viz-a-viz his previously recorded statement, in writing, nor when her testification suffers from any further taint of its being ridden with any *intra se* contradiction, thus *intra se* her examination-in-chief, and, her cross-examination, therefore, utmost sanctity is to be assigned to her testification.

16. The deposition of PW-1 is supported by the deposition of the other eye witness to the occurrence, namely Pratibha aged 7½ years, who is the daughter of the complainant, and, who stepped into the witness box as PW-3 after hers becoming declared to be competent to testify. The echoings occurring in the examination-in-chief of PW-3 are in complete harmony



with the echoings, as became rendered in respect of the crime event by PW-1. Though, upon the said witness becoming subjected to the ordeal of an exacting cross-examination, she acquiesced to the suggestion that she has been tutored by her father to make a statement. Resultantly, on the said premise, an argument is raised by the learned counsel for the appellant, that the testification of the said witness is uncreditworthy. Nonetheless if the said submission is of some worth, yet its vigour also becomes denuded.

17. The reason for making the said conclusion, spurs from the factum, that since the eye witness to the occurrence, namely, Sunita (PW-1) has rendered an untainted ocular account vis-a-vis the crime event. In sequel, even if, any purported blemish ingrains the testification of PW-3, who otherwise is a child witness, thereby the effect of the said purported blemish, but naturally becomes underwhelmed in the taint-free rendition of a worthy ocular account qua the crime event, thus by PW-1.

Signature disclosure statement of convict-appellant
Akhilesh Paswan Ex. PF/2

18. During the course of investigations, being made into the appeal FIR, convict-appellant Akhilesh Paswan, thus made his signature disclosure statement, to which Ex. PF/2 becomes assigned. The signature disclosure statement, as made by the accused is *ad verbatim* extracted hereinafter.

“x x x x

At about 4.00 P.M. in the evening a person gave lot of money in a packet to Parveen Kumar. Greed developed in my mind. I opened a nut of the scissor kept in my room with the plier and kept one piece of scissor under my bed. At about 9.00 P.M. during night Shanti Devi, Sunita Devi and children were given food by me.



Cleaned the utensils. Sunita went away outside alongwith her both children. Parveen went to the market. I started watching TV in the room of Shanti Devi. I asked key from Shanti Devi of the locker who had refused to give the key of the locker. I gave many blows upon Shanti Devi with a piece of scissor with intent to kill her, who cried heavily. Then I threw away Shanti Devi by dragging her feet to the bathroom. Sunita and her children reached at the spot. That Sunita tried to save Shanti Devi then I gave blow with scissor on the face of Sunita. Then I attacked with the scissor upon both the children. All ran away outside by crying. Due to fear I went to roof and took out the bag and thrown it backside on the road and passing through kitchen and jumped over the back wall and went to park at Rally Chowk. I removed the blood stained clothes, other clothes were worn from the bag and I left the bag, blood stained clothes and scissor there and ran away to Bihar. Sunil friend who lived in Agra, his name was falsely disclosed. I did not know him. I in the greed of money murdered Shanti Devi by attacking with the scissor and also attacked upon Sunita and her children. That I can demarcate that Park Rally Chowk by going there with you where I kept the bag, blood stained clothes and piece of scissor and the plier with which I opened the nut of scissor, that plier I myself kept in the Almirah at H. No. 575, sector 12, Panchkula in the room, in which I resided over the roof which I can get recovered by going with you.”

19. Pursuant to the above made signed disclosure statement, the convict-appellant Akhilesh Paswan ensured the recovery of one plier, which was taken into police possession, through recovery memo, to which Ex. PF becomes assigned. The supra plier became used by the convict-appellant to dismantle the potentialized weapon of offence i.e. the scissor(s).

20. The disclosure statement (supra), carries thereons the signature, of the convict-appellant. In his signed disclosure statement (supra), the



deceased, hence with the supra incriminatory weapon. The further speaking therein is qua his keeping, and, concealing the supra incriminatory item i.e. the plier. Moreover, the said signed disclosure statement does also make speakings about his alone being aware about the location of his hiding and keeping the same, and, also revealed his willingness to cause the recovery of the supra incriminatory item, to the investigating officer concerned, from the place of his hiding, and, keeping the same.

21. Significantly, since the appellant has not been able to either ably deny his signatures as occurs on the exhibit (supra) nor when he has been able to prove the apposite denial. Moreover, since he has also not been able to bring forth tangible evidence but suggestive that the recovery(ies) is/are either contrived or invented. Therefore, the recovery memo (Ex. PF) is *prima facie* concluded to be holding the utmost evidentiary tenacity.

22. Moreover also, since post the making of the said signed disclosure statement, thus by the convict to the investigating officer concerned, he through the recovery memo (Ex. PF), thus caused the recovery of the incriminatory item to the investigating officer concerned. Consequently, when the said made recovery(ies) is/are also not suggested by any cogent evidence to be planted recovery(ies). Resultantly, the effect thereof, is that, valid recovery(ies) was/were made vis-a-vis the supra incriminatory item i.e. of plier by the convict, to the investigating officer concerned. In sequel, the making of the valid signed disclosure statement, by the convict besides the pursuant thereto effectuation of valid recovery(ies) of the supra incriminatory item(s), thus by the convict to the investigating officer concerned, but naturally *prima facie* corroborates and supports the case of the prosecution.



23. However, yet for assessing the vigor of the said made disclosure statement and consequent thereto made recovery, it is apt to refer to the principles governing the assigning of creditworthiness to the said made disclosure statement and to the consequent thereto made recovery. 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.

24. 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 apposite 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**).*

25. 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.

26. 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.

27. 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.

28. 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, thereby 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.

29. 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 thereby 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.

30. To a limited extent also if there is clear cogent medical account,



which alike, a frailly 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.

31. 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.

32. 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.

33. Consequently, since the statutory provisions enclosed in Section



hereinafter, do not assign statutory admissibility to a simpliciter/bald confession made by an accused, thus before the police officer, rather during 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.”

34. 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, thereby 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.

35. Now coming to the facts at hand, since the disclosure statement and the consequent thereto recovery i.e. of plier does 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 disclosure (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.

36. Therefore, for the reasons to be assigned hereinafter, though prima facie, the effect of recovery of the potentialized weapon of offence i.e. of the scissor(s), but is outside the contours of principles (supra), inasmuch as, the recovery of the dismantled scissor(s) rather was made from an open and accessible place. Consequently, when the principles (supra) underline the necessity qua the recovery of the fact being effected from the place exclusively within the knowledge of the convict, wherein, he has hidden or camouflaged, thus the discovered or, the recovered fact. Contrarily when the dismantled scissor(s) became recovered from the open place. Consequently thereby prima facie no efficacy is required to be assigned to the recovery of the dismantled piece of scissors, as became effected through recovery memo Ex. PD.



37. Be that as it may, since the paramount ocular account rendered vis-a-vis the crime event, thus for the reasons (supra) becomes assigned creditworthiness. Consequently, thus the effect of lack of evidentiary tenacity becoming marshalled by recovery of a dismantled scissors, as became effected through recovery memo Ex. PD, rather becomes totally insignificant.

38. Moreover, since evidently the potentialized weapon of offence i.e. the scissor(s) became dismantled, as such with the user of a plier by the convict-appellant. Therefore, if the plier became confessed to be used by the convict-appellant thus to dismantle the potentialized weapon of offence i.e. the scissor(s). Resultantly, the inference therefroms, is that, the undisputed effective recovery, thus for reasons (supra) hence of the said plier, as, used by the convict-appellant, for dismantling the potentialized weapon of offence i.e. the scissor(s), when became effected but in pursuance to the making of a disclosure statement of the convict-appellant, rather from a desolate place or from a place within the exclusive knowledge of the present convict-appellant. In sequel, when an effective recovery of the plier became effected, thus at the instance of the convict-appellant to the investigating officer, thereby become fostered the hereinafter inference-

(a) That the plier becoming used by the convict-appellant to dismantle the potentialized weapon of offence i.e. the scissor(s), but irrespective of the fact that the recovery of the said potentialized weapon of offence rather becoming effected from an open and accessible place.

(b) That there occurring ample evidence on record qua the nexus inter se the making of an effective recovery of plier, thus with the



dismantled scissor(s), as such, the said inter se nexus does make waned the purported inefficacious recovery, if any, as became effected of the potentialized weapon of offence i.e. the scissor(s).

Post-mortem report

39. The post-mortem report, to which Ex. PG/2 is assigned, became proven by Dr. Sunil Gambhir (PW-5). PW-5 in his examination-in-chief, has deposed that on an autopsy being conducted on the body of deceased Shanti Devi by him along with Dr. Purnima, thus theirs noticing thereons the hereinafter ante mortem injuries-

“A. An incised wound of size 6 cms x 3 cms and about 3 cms apart another stab wound of size 3 cm x 2 cm x 3.5 cms was present on the left infra-clavicular regioin.

On dissecion there is ecchymosis underneath.

B. An abrasion of size 4 cms x 0.2 cms present on left shoulder.

C. A stab wound 3 cms x 1.0 cm x 2.5 cm and another 2.5 cm x 1.0 cms x 2.5 cms present on the left side of the neck, below the ear lobule underlying tissues shows ecchymosis.

D. A stab wound of size 1.5 cms x 0.7 cms x 2.5 cms present on the mid line of the neck, underlying tissues shows ecchymosis.

E. An incised wound of size 1.5 cm x 1 cm present on the right side of the neck just below the condyle of mandible underlying tissues shows ecchymosis.

F. An stab wound of size 3 cms x 2 cms x 3.5 cms present on the right side of the chest underlying tissues shows ecchymosis.

On further dissection the underlying lung showed laceration with evidence of ecchymosis of blood. There was blood collection on the right side of the chest. Two stab wound of size 10 cms x 4.5 cms x 5.5 cms and another 5 cms x 4 cms x 4.5



cms on the mid line of the abdomen 2 cms above the umbilicus omentum, intestine exposed.

On further dissection the liver, spleen shows laceration with ecchymosis of blood. There is collection of blood in the abdomen. A stab wound of size 3 cms x 1.5 cms x 2.5 cms present on the abdomen in the mid line, 2 cms below the umbilicus. On dissection there is ecchymosis on underneath.”

40. Furthermore, PW-5 also made a speaking in his examination-in-chief, that the cause of demise of the deceased was owing to effects of ante mortem injuries (supra). The said witness was also shown the scissors to which Ex. P-8 and Ex. P-10 are assigned, upon which he deposed that the injuries (supra) can be caused with the said weapon.

41. The above made echoings by PW-5, 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-9 qua the demise of the deceased, thus acquires formidable force. Consequently, the above echoings, as made by PW-9, 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. Resultantly therebys too, the purported blemished recovery of scissors becoming effected, thus also becomes waned.

MLRs of injured

42. Dr. Megha Mittal, who medico legally examined injured Sunita @ Isha, Garima and Pratibha, has stepped into the witness box as PW-6, and, during the course of her examination-in-chief, she has proven the MLRs of the said injured, to which respectively Ex. PH/1, Ex. PH/2 and Ex. PH/3 are assigned. She has also proven the existence of the hereinafter extracted



injuries on the persons of injured (supra).

“Injuries on the person injured Sunita

1. Incised wound on forehead above right eye. Clean cut with sharp edges and bleeding present. 3.5 cm x 3 cm x 2 cm.
2. Incised wound and hematoma surrounding left eye with tapering towards nose sharp clean cut edges. 3 x .2 x .5 cm.
3. Incised wound on right forearm posteriorly 3 cm x 1 cm x .2 cm with bleeding present and regular clean cut edges.
4. Hematoma 4 cm x 4 cm on left breast infraclavicular area with tenderness.

Injuries on the person injured Garima

1. Stab wound with sharp edges and bleeding present 3 x .8 cm x 1.2 cm deep on right side of back over scapular area. Subcutaneous tissue protruding out.
2. Incised wound spindle shape with taper. Subcutaneous tissue protruding out. Size 5 x 1 x .5 cm.

Injuries on the person injured Pratibha

1. Stab wound with sharp clean cut edges and present over left inframammary area and over ribcage 5 x 2.5 cm x 1 cm. Subcutaneous tissue protruding out and bleeding present.”

Report of the FSL concerned, to which Ex. PX becomes assigned

43. Through memo No. 36167 dated 8.9.2011, eight sealed cloth parcels became sent, through Constable Manoj Kumar-1/499 to the FSL concerned. The FSL concerned, thus upon making examinations of all the incriminatory items, as became sent to it in sealed cloth parcels, hence made thereons an opinion, opinion whereof, becomes *ad verbatim* extracted hereinafter.

“X X X X

Description of parcel(s) and condition of seal(s)

Eight sealed parcel(s). The seal(s) were found intact and



tallied with the specimen seal(s) as per forwarding authority’s letter.

Description of article (s) contained in parcel(s)

Parcel No.	and seal impression	Description of parcel(s)
1.	5-OP	It contained exhibit-1a to 1b <u>Exbt-1a:</u> One small cut piece of printed bed sheet stained with several large and small brownish stains. <u>Exbt-1b:</u> One greenish cap stained with few medium and small brownish stains.
2.	5-OP	It contained exhibit-2 <u>Exbt-2:</u> Damp and putrefied cotton wool swab.
3.	5-OP	It contained exhibit-2 <u>Exbt-3:</u> One broken/piece of scissor with yellow metallic grip.
4.	5-OP	It contained exhibit-4a to 4c. <u>Exbt-4a:</u> One striped shirt stained with several medium and small brownish stains. <u>Exbt-4b:</u> One brownish pants stained with few medium and small brownish stains. <u>Exbt-4c:</u> One white cotton banian stained with few medium and small brownish stains.
5.	5-NK	It contained exhibit-5a to 5b <u>Exbt-5a:</u> One multicolored lady shirt stained with few medium and small brownish stains. <u>Exbt-5b:</u> One printed salwar stained with few medium and small brownish stains.
6.	1-Doctor	It contained exhibit-6. <u>Exbt-6:</u> Dark brown putrefied liquid material (approx. 3ml) described as blood.
7.	3-Doctor	It contained exhibit-7a to 7b. <u>Exbt-7a:</u> One damp printed lady’s shirt stained with several large and small brownish stains. <u>Exbt-7b:</u> One damp printed salwar stained with several large and small brownish stains.

Laboratory Examination

Laboratory examinations were carried out to detect the presence of blood on the exhibits through chemical tests. Blood thus detected was subjected to serological tests to determine its species of origin. Based upon these examinations the results obtained are given below:-

- 1. Exhibit-1a (bed sheet piece) was stained with several large and small blood stains.



- 2. *Exhibit-1b (cap) was stained with several large and small blood stains.*
- 3. *Blood was detected on exhibit-2 (swab) and on exhibit-3 (Scissors piece).*
- 4. (i) *Exhibit-4a (shirt) was stained with few and large and small blood stains.*
(ii) *Exhibit-4b (Pants) and exhibit-4c (Banian), exhibit-5a (Lady’s shirt) and exhibit-5b (salwar) were stained with few medium and small blood stains.*
- 5. *Blood was detected in exhibit-6 (blood).*
- 6. *Exhibit-7a (Lady’s shirt) and exhibit-7b (salwar) were stained with several large and small blood stains.”*

Results of serological analysis of blood

Sr. No.	Name of exhibit	Origin	Group
1.	Bed sheet	Human	Inconclusive
1b.	Cap	Human	Inconclusive
2.	Cotton wool swab	Material Disintegrated	
3.	Scissor piece	Human	Inconclusive
4a.	Shirt	Human	Inconclusive
4b.	Pants	Human	Inconclusive
4c.	Banian	Human	Inconclusive
5a.	Lady’s shirt	Human	Inconclusive
5b.	Salwar	Human	Inconclusive
7.	Blood	Human	Inconclusive
7a.	Lady’s shirt	Human	Inconclusive
7b.	Salwar	Human	Inconclusive

“X X X X

Description of parcel(s) and condition of seal(s)

Received two sealed parcel(s) from Serology Division on 12.1.12. The seal(s) were intact as per the following note..

Description of article (s) contained in parcel(s)

Parcel No.	No. and seal impression	Description of parcel(s)
3	Three seals of SERO <u>Exbt-3</u>	<i>It contained OPC and exhibit-3 One detached blade of scissors with</i>



- FSL (H) yellow metallic grip about 129 cm.*
8. *Five seals of OP It contained one detached blade of scissors with yellow metallic grip about 27 cm and nut bolt. The blade is marked exhibit-8(a) and nut bolt is marked exhibit-8(b).*

Laboratory Examination

Detached blades with grip of scissors marked exhibit-3, 8(a) and nut bolt marked exhibit-8(b) were examined physically and under optical microscope. The following observations were made.

- 1. The blade along with grip marked exhibit-3 and 8(a) were having similar physical parameters, physical and microscopic appearance.*
- 2. Blades along with grip marked exhibit-3 and 8(a) were physically fitted among each other through the nut bolt marked exhibit-8(b).*

Based on the above examination and observation following opinion is given.

Opinion

Detached blades marked exhibit-3 and 8(a) could be the part of the same scissor.”

44. Though, a reading of the opinion, as made on the examined items reveals, that no conclusive opinion was made by the Serologist concerned, to the effect, that blood stains occurring on the incriminatory items being compatible with the blood stains of the deceased. However, the said inconclusivity is also of no worth, nor thereby the prime unblemished ocular account rendered vis-a-vis the crime event by PW-1, rather loses its evidentiary vigour.

45. The reason for so stating arise from the factum, that unless the blood group of the deceased, as detailed in the FTM card, appertaining to the deceased, thus became supplied by the family members of the deceased to



said supplied FTM card to the Serologist concerned, thus resulted in therebys the Serologist concerned, becoming facilitated to make able inter se matchings.

46. Therefore, in the above event, if there was but a facilitation to the Serologist concerned, to either (a) declare that there were wants of apposite compatible matchings or (b) he may have been led to declare that there were apposite compatible matchings.

47. However, in the wake of the Serologist concerned, rather not being purveyed the supra FTM card, thus he became precluded to make any effective apposite compatibilities, whereupons the apposite inconclusivity of opinion, rather cannot be construed to be a conclusive exculpatory opinion. On the contrary, if the supra facilitations became purveyed to the Serologist concerned, whereupon his becoming led to make a worthy exculpatory opinion, thereupon, the effects of rendition of any unblemished ocular account, may become construed to be unworthwhile, but yet subject to through adduction of further proof by the accused-appellant, that none other than the clothes whereons blood stains existed, were at the relevant time, thus adorned by the deceased.

48. Reiteratedly since there is no evidence on record, thus detailing that the family members of the deceased, supplied to the investigating officer concerned, the FTM card of the deceased, for therebys the Serologist concerned, becoming well facilitated to make the apposite matchings. Resultantly, the effect thereof, is none other than that there was lack of complete matchable material available with the Serologist concerned. Moreover, reiteratedly the further effect thereof, is that, the lack of conclusivity of opinion by the Serologist concerned, about the blood stains



occurring on the incriminatory items either belonging or not belonging to the deceased, but is of no firm exculpatory significance, nor thereby the rendition of an unblemished ocular account vis-a-vis the crime event by PW-1 rather loses its evidentiary tenacity.

49. In nutshell, there is vis-a-vis the crime event thus *inter se* corroboration *inter se* the rendered ocular account with the medical account,.

50. Moreover, the argument raised by the learned counsel for the appellant that since at the time of the commission of offence, he was a juvenile, and, as such he was required to be tried by the Juvenile Justice Board concerned, is also of no consequence, nor the supra argument raised by the learned counsel for the appellant, that since no effective order became passed by the learned trial Court concerned, on the relevant motion, thereby the trial is vitiated, is also of no telling exculpatory effect. The reason for stating so, becomes generated from the factum, that as a matter of fact, on the relevant motion, a conclusive and binding declining order became recorded on 15.3.2013, by the learned trial Judge concerned, whereby the appellant is estopped from making any oral challenge to the said passed order. In summa, this Court finds no gross perversity or absurdity in the appreciation of the adduced relevant evidence, as became made by the learned trial Judge concerned.

Final order

51. The result of the above discussion, is that, this Court does not find any merit in the instant appeal, and, is constrained to dismiss it. Consequently, the appeal is dismissed. The impugned verdict of conviction, as becomes recorded upon the convict-appellant, by the learned convicting Court, is maintained, and, affirmed. Moreover, the consequent thereto order



of sentence is also affirmed. If the convict is on bail, thereupon, the sentence as imposed upon him, be ensured to be forthwith executed by the learned trial Judge concerned, through his forthwith 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.

- 52. Records be sent down forthwith.
- 53. The miscellaneous application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

November 14th, 2024
Gurpreet

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