

CRA-D-755-DB-2013 (O&M),
CRA-D-1143-DB-2013 (O&M)
CRA-D-1356-DB-2013 (O&M)
CRR-2712-2013 (O&M)

-1-

2024:PHHC:167069-DB



In the High Court of Punjab and Haryana at Chandigarh

1.

CRA-D-755-DB-2013 (O&M)
Reserved on: 13.11.2024
Date of Decision: 10.12.2024
- Ranbir

.....Appellant
- Versus
- State of Haryana

.....Respondent
2.

CRA-D-1143-DB-2013 (O&M)
- Anil

.....Appellant
- Versus
- State of Haryana

.....Respondent
3.

CRA-D-1356-DB-2013 (O&M)
- Lalit

.....Appellant
- Versus
- State of Haryana

.....Respondent
4.

CRR-2712-2013 (O&M)
- Jasbir Singh

.....Petitioner
- Versus
- Lalit and others

.....Respondents

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

Argued by: Mr. Ankur Malik, Advocate
for the appellant (in CRA-D-755-DB-2013).

Mr. Vishal Goel, Advocate (Legal Aid Counsel)
for the appellant (in CRA-D-1143-DB-2013).

Mr. Nakul Sharma, Advocate (Legal Aid Counsel)
for the appellant (in CRA-D-1356-DB-2013)

Ms. Shubreet Kaur, Advocate (Legal Aid Counsel)
for the petitioner (in CRR-2712-2013).

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



SURESHWAR THAKUR, J.

1. Since all the appeals (supra) and the criminal revision petition (supra) arise from a common verdict, made by the learned trial Judge concerned, hence all of them are amenable for a common verdict being made thereons.
2. All the appeals (supra) are directed against the impugned verdict, as made on 24.5.2013, upon case Sessions case bearing No. 22 of 7.8.2012, by the learned Additional Sessions Judge, Jind, wherethrough in respect of charges respectively drawn against the accused qua offences punishable under Sections 120-B, 302, 392, 449, 34 IPC and under Section 25 of the Arms Act, 1954, thus the learned trial Judge concerned, proceeded to record a finding of conviction against accused-appellants.
3. Moreover, through a separate sentencing order dated 28.5.2013, the learned trial Judge concerned, imposed upon, the convicts-appellants both sentence(s) of imprisonment as well as sentence(s) of fine, but in the hereinafter extracted manner:-

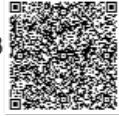
Under Section 120-B IPC read with Section 302 IPC and 449 IPC Imprisonment for life and fine of Rs. 10,000/- each. In default of payment of fine, defaulting convict shall further undergo rigorous imprisonment for one year.

Convicts Lalit and Anil are further sentenced as under:-

Under Section 449/34 IPC Rigorous imprisonment for ten years and fine of Rs. 5,000/- each. In default of payment of fine, defaulting convict shall further undergo rigorous imprisonment for six months.

Under Section 302/34 IPC for murder of Savita Imprisonment for life and fine of Rs. 10,000/- each. In default of payment of fine, defaulting convict shall further undergo rigorous imprisonment for one year.

Under Section 302/34 IPC for murder of Sumit Imprisonment for life and fine of Rs. 10,000/- each. In default of payment of fine, defaulting convict shall further undergo rigorous



imprisonment for one year.

Under Section 392 IPC

Imprisonment for seven years and fine of Rs. 10,000/- each. In default of payment of fine, defaulting convict shall further undergo rigorous imprisonment for one year.

4. All the above imposed sentences of imprisonment upon convicts-appellants Lalit and Anil, were ordered to run concurrently. However, the period of detention undergone by the convict, 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.

5. Complainant Jasbir Singh has preferred criminal revision petition bearing No. **CRR-2712-2013** seeking modification of the order of sentence (supra), to the effect that the sentence of capital punishment be awarded to the accused-respondents.

Factual Background

6. The genesis of the prosecution case, becomes embodied in the appeal FIR, to which Ex. PJ is assigned. As per the prosecution case, on 6.4.2017, Inspector/SHO Rohtash Singh (PW-14) along with other police officials including ASI Ram Niwas No. 522 (PW-7), HC Jai Bhagwan, constable Mahipal was on patrolling duty in Grain Market, Julana, in a government vehicle bearing registration No. HR-56-7941 driven by EASI Vajinder Singh. Complainant Jasbir Singh @ Pawan son of Satyawar, resident of Ward No. 12 Julana met him and made a statement to the effect, that he was in the business of gold and diamond trading. He was married to Savita about 9 years prior to that day and had two sons, namely Sumit aged

8 years and the younger son is Nitish.



7. The complainant further stated that on that day i.e. 6.4.2012, at about 8.30 A.M., he alongwith his friend Satish had gone to Jind for some personal work while his wife and both sons were at his house. At about 12.58 noon, his younger son Nitish rang him on mobile phone and informed him about the murder of his mother and qua the kidnapping of his brother, and, also informed to him that the assailants were three in number. On that information, he and his friend Satish reached his house and found that his younger son was present outside his house, who was frightened. He further stated that when he went inside the house, he found that his wife Savita was lying dead smeared with blood, having knife injuries on her neck and other parts of the body. He opened the box of Diwan (single bed), lying in the room and found that his elder son Sumit was lying dead on the beddings, who was without pants and stool had come and there were nail (keel) marks. On checking his house, he found that substantial jewellery and cash amount alongwith 60/70 cartridges of 12 bore, 40/50 cartridges of 32 bore, ear-rings, gold chain, 4 gold rings of her wife had been taken away by the assailants. He also stated that he was of the firm belief that Ranbir (accused) son of Ram Sarup r/o Shah Mandi (Ambala), who was his maternal uncle, alongwith his companions conspired and committed robbery in his house and on the protest of his wife and son Sumit, they both became murdered. Amongst assailants one is Anil son of Dharambir who is the nephew of Ranbir. He also stated that he sent information to his village Dhigana in his relations whereupon his uncle Surinder (PW-2) son of Chander r/o village Dhigana also reached at the spot. Police met him at Mandi gate where he made statement. On the basis of the said statement, the appeal FIR became



registered.

Investigation proceedings

8. During the course of investigations, vide memo Ex. PB, the relevant articles were taken in police possession from the spot including a gold ear ring, a mobile phone and blood stained knife. Statements of the witnesses were recorded. Rough site plan Ex.PEE of the place of occurrence was prepared. Inquest proceedings Ex.PU on the dead body of Sumit and Ex.PY on the dead body of Savita were conducted at the spot. Dead bodies of Sumit and Savita were sent to General Hospital, Jind with applications Ex. PS and Ex. PY for conducting autopsy. Subsequently, Sections 302, 449, 392 IPC and 25 of the Arms were added in this case. The investigation was then carried out by Hira Lal SI (PW-15) and thereafter by SI/SHO Ram Chander (PW12) Accused Ranbir was arrested on 10.4.2012, who during interrogation suffered a disclosure statement Ex. PDD on 11.4.2012 wherein he named his co-accused Anil, Lalit and Rohit and that they had hatched a conspiracy. Thereupon, accused Anil and Rohit (declared juvenile) were arrested on 12.4.2012 and the robbed articles were recovered from them. Accused Lalit was arrested on 5.6.2012, from whom a purse and cash amount of Rs. 1080/- was recovered. 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

9. Since the offence under Section 302 of the IPC was exclusively triable by the Court of Session, thus, the learned committal Court concerned, through a committal order made on 3.8.2012, hence proceeded to commit



the accused to face trial before the Court of Session.

Trial Proceedings

10. The learned trial Judge concerned, after receiving the case for trial, after its becoming committed to him, made an objective analysis of the incriminatory material, adduced before him. Resultantly, he proceeded to draw charges against all accused under Sections 120-B read with Section 449 and 302 IPC. The learned trial Judge concerned, also drew charges against accused Lalit, Anil and Rohit for the offences punishable under Sections 449/34, 302/34 IPC (for committing the murder of Savita), 302/34 IPC (for committing the murder of Sumit) and under Section 392 IPC, besides also drew charge against accused Lalit for commission of an offence punishable under Section 25 of the Arms Act. The afore drawn charges were put to the accused, to which they pleaded not guilty, and, claimed trial.

11. In proof of its case, the prosecution examined 15 witnesses, and, thereafter the learned Public Prosecutor concerned, closed the prosecution evidence.

12. 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. The accused led two defence witnesses into the witness box.

Submissions of the learned counsels for the convicts-appellants

13. The learned counsels for the aggrieved convicts-appellants have argued before this Court, that both the impugned verdict of conviction, and, the consequent thereto order of sentence, thus require an interference. They support the above submission on the ground, that they are based on a gross



misappreciation, and, non-appreciation of evidence germane to the charge.

They rest the above submission on the ground(s)-

(i) That the case of the prosecution is full of contradictions and improvements.

(ii) That the present case is based on circumstantial evidence and there is no direct evidence against the appellants to connect them with the alleged occurrence.

(iii) That the alleged conspiracy has not been proved by the prosecution, and, that the appellants have been implicated in the present FIR only on the basis of suspicion.

Submissions of the learned State counsel

14. 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 convicts-appellants, 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 appeals (supra), as preferred by the convicts-appellants be dismissed.

Submissions of the learned counsel for the complainant/petitioner

15. The learned counsel for the complainant has argued that since the present case pertains to a pre-planned and cold blooded murder of a woman and a child aged 8 years, therefore the trial Court concerned has erred by not awarding capital punishment to the accused-respondents. Therefore, it is prayed that the order of sentence (supra), awarded to the accused-respondents, be modified to the extent that capital punishment be awarded to them.



Analysis of the deposition of the complainant (PW-1)

16. Complainant Jasbir stepped into the witness box as PW-1. The said witness deposed that on 6.4.2012, at about 8.30 A.M., he and Satish had visited Jind for personal work, and, at about 12.58 noon he received a telephonic call from his son Nitish, whereby he informed him that his mother (wife of the complainant) had been killed and his brother had been taken away by three assailants. Thereupon, he along with Satish reached at his house and found that Nitish, who was frightened and nervous, was standing outside. The dead body of his wife Savita was lying in the kitchen, with knife injuries on her neck, chest and both parts of the body. He further deposed that when he went inside the room of his house and opened the box of the bed, he found that dead body of his son Summit, without pant, and, wearing only shirt was lying there and his stool had come out. PW-1 further deposed that his son had suffered nail pointed injuries on his neck. His house was completely ransacked and all the almirahs were lying open. The said witness also testified that his licenced DOGA type gun of .12 bore with small barrel and a pistol of 32 bore, 50-60 cartridges of .12 bore and 30-40 cartridges of 32 bore, were also found missing. The ear rings, a gold chain and four gold rings of his wife were also missing. He further deposed that Ranbir son of Ram Sarup, who is his maternal uncle hatched a conspiracy with one Anil along with his other companions to commit robbery in his house. The said witness also identified accused Ranbir and Anil, who were present in the Court.

17. In his examination-in-chief (supra), the said witness has voiced a narrative, qua the genesis of the prosecution case, which is in complete



becomes assigned. Though, he was subjected to the ordeal of a grilling cross-examination by the learned counsel for the accused, but he remained unscathed in the said ordeal.

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

19. Be that as it may, since the witness (supra), does not in his examination-in-chief propagate the theory of his last seeing together the accused and the deceased, nor when he unfolds therein the incriminatory link qua the accused extra judicially confessing their guilt before him. Though, for the absences of the supra, the unblemished testification rendered by the complainant while his stepping into the witness box as PW-1, does not garner any worthwhile evidentiary effect. However, for the hereafter reasons, even the omissions (supra) do not yet restrain this Court, from affirming the impugned verdict of conviction and consequent thereto sentence(s), as became imposed upon the convicts-appellants by the learned trial Judge concerned.

**I. Signatures disclosure statement of convict-appellant
Ranbir Ex. PDD**

20. During the course of investigations, being made into the appeal FIR, convict-appellant Ranbir, thus made his signature disclosure statement, to which Ex. PDD becomes assigned. The relevant portion of the



signed disclosure statement, as made by the accused is *ad verbatim* extracted hereinafter.

“x x x x

About 3/4 months ago, he started residing in a Kothi at Zirakpur after getting his possession vacated with the help of his companions, his nephew Anil son of Dharambir caste Jogi resident of Ferozpur Bangar. Lalit caste Badhi resident of Tepala and Rohit alias Bhaiya caste Chamar r/o of UP started living with him, as he was in the necessity of some persons. He usually received telephone calls from his maternal nephew Jasbir Singh alias Pawan Kumar Dhigana that he earned Rs. 30/35 lacs through company which has been kept at the house and he will start some big business. The speaker of telephone was made on and those three persons were made to hear. Anil had already gone at the house of Pawan at Julana. They made a plan some days back that they would reach his house at Julana and loot the cash and ornaments after overpowering the persons found at the house and would distribute amongst each other. On 6.4.12 was his date of hearing in Panchkula Court. He sent the aforesaid three boys at the house of Pawan Kumar at Julana as per the plan with a sweet box with the direction to enter the house on the pretext of relationship and to gist the cash and ornaments and to murder any person, if there was any hardship. Those three boys reached the house of Pawan Kumar at Julana and tried to loot the cash and ornaments wife and elder son of Pawan Kumar protested and they murdered wife of Pawan and his elder son with a knife and run away after looting huge amount and ornaments. He connected them only once and they narrated all facts to him. However, those boys did not meet him till today. The places of stay of those three boys are Zirakpur. Lucknow and Nasirabad in UP. Except him and those boys, no body else knew about it and he can get them arrested after pin pointing those places”

II. Signed disclosure statement of convict-appellant
Anil Ex. PD

21. During the course of investigations, being made into the appeal FIR, convict-appellant Anil, thus made his signed disclosure statement, to which Ex. PD becomes assigned. The signed disclosure statement, as



made by the accused is *ad verbatim* extracted hereinafter.

“x x x x

As per the plan, they purchased a knife from Zirakpur and reached Bus Stand, Julana on 6.4.12 and purchased a box of sweet. He had already visited the house of Jasbir alias Pawan Kumar. They reached the house of Jasbir alias Pawan Kumar at Julana and on reaching the house, they knocked the door and the door was opened by the wife of Jasbir alias Pawan Kumar. They sat in the drawing room and they were served water and she started preparing tea in the kitchen. As per the plan Lalit went to the kitchen with knife underneath the box. On reaching the kitchen, he pressed her mouth of the wife of Jasbir @ Pawan Kumar and inflicted knife blow in her stomach. She started crying and he rushed to the kitchen. Lalit said that she could not be over-powered. He should give knife blow and he is pressing her mouth. When Lalit aimed the knife towards him which hit his right hand fingers. He obtained knife from Lalit and inflicted one blow to her. He fears severe pain in his hand. Lalit received back the knife from him and inflicted many blows to her and she fell down and died. Lalit kept the knife on the slab of kitchen. On hearing the noise, younger son started running from the house, but Rohit over powered him. He became unconscious due to fear. Then the elder son woke up and started running, but Lalit caught hold him and murdered him by strangulation in the store and put his dead body in the double bed. His hand and clothes were stained with his blood and that of wife of Pawan Kumar @ Jasbir. He washed out at the time of washing his hand in the washbasin. Rohit and Lalit broke opened the Almirah. On search, the bundle of Rs 50/- in denomination and some notes of Rs 5/- in denomination were found in the Almirah. One neckless size ornament was found in a box. Lalit retained the cash. This neckless and two gold ear rings and one silver pajab taken out by Lalit from the body of wife of Pawan Kumar alias Jasbir were given to him. Then they run away and reached Bus Stand, Julana. Lalit gave Rs 2000/- to Rohit. Ornaments were with him and the remaining amount was with Lalit. They went to their respective place of stay He went to his house. He burnt his blood stained paint. He conceded his blood stained bushirt



in his residential house. He conceded the gold and silver ornament to his share underneath the drain (Khor) meant for tethering cattle duly warped in a polythene. Nobody else except him know about it. He can get the ornaments and bushirt recorded by pin pointing.”

22. Pursuant to the above made signed disclosure statement, the convict-appellant Anil ensured the recovery of a one black coloured bushirt having white green lining, which he was wearing at the time of the occurrence, which was taken into police possession through a recovery memo, to which Ex. PE becomes assigned.

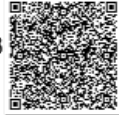
23. The convict-appellant Anil pursuant to his above made disclosure statement also ensured the recovery a polythene envelope containing two gold ear rings, two artificial bangles, one artificial neckless, one silver pin, one silver pajeb, silver chand, one silver ring, three silver chutakies, one gold ear ring weighing 4.560 mgs, all of which were taken into police possession, through a recovery memo, to which Ex. PF.

III. Signed disclosure statement of convict-appellant
Lalit Ex. PBB

24. During the course of investigations, being made into the appeal FIR, convict-appellant Lalit, thus made his signed disclosure statement, to which Ex. PBB becomes assigned. The relevant portion of the signed disclosure statement, as made by the accused is *ad verbatim* extracted hereinafter.

“x x x x

After consultation with Ranbir Singh, they purchased a long size Knife from Zirakpur and on 06.04.2012 they reached Bus-stand, Julana, with the Knife for committing the crime. They purchased one sweet-box from bus stand, Julana, Anil had already visited the house of Pawan Dhigana. Anil got the door of house opened which was opened by a lady. Anil disclosure her as wife of Pawan,



Dhigana. They sat in the drawing room. Wife of Pawan served them water and then went to the Kitchen for preparing tea. He went to the kitchen with sweet-box with the knife concealed underneath it and sweet box was handed over to that lady and at once four knife blows were inflicted on that lady. She started crying. On hearing noise Anil rushed to the kitchen. He handed over the knife to Anil saying that he is pressing her mouth and he should give her knife blows. Anil caught hold the knife from blade side and the knife fell down. He pressed the mouth of that lady and Anil gave knife blows. Then he took the knife from Anil and inflicted many blows to that lady and she fell down on the floor. He placed that knife on the slab of kitchen. On hearing the noise, the younger son, who was sleeping rushed there and Rohit over powered him and he became unconscious and fell down on the floor. The elder son, who was sleeping, woke up and started running. He caught hold him and murdered him in the store by strangulation and put him in the double-bed. Then they searched the house and bundle of rupees 50/- in denomination one purse containing some notes of rupees 10/5 in denomination were recovered from the Almirah. Other companions also looted many articles. Then they rushed to bus stand Julana out of this amount, he gave rupees 2000 to Anil. The remaining amount was put in that purse. He concealed the blood stained pant, Shirt and purse underneath the clothes lying in a room of his house. Nobody else except him knew about it. He can get her purse with cash and his blood stained cloths recovered by pin pointing that place.”

25. Pursuant to the above made signed disclosure statement, the convict-appellant Lalit ensured the recovery of a blue coloured pant, which he was wearing at the time of the commission of crime, which was taken into police possession vide recovery memo Ex. PM. The said convict also ensured the recovery of a purse containing 20 notes in the denomination of Rs. 50/- and 8 notes in the denomination of Rs. 10/-, totalling Rs. 1080/-, and, one photo of Jasvir Singh alias Pawan, which were taken into police



possession through a recovery memo, to which Ex. PN becomes assigned.

26. The disclosure statements (supra), carry thereons the signed, of the convicts-appellants. In their signed disclosure statements (supra), the convicts, confessed their guilt in inflicting injuries on the person of both the deceased, and, in committing the robbery. The further speaking therein is qua his keeping, and, concealing the incriminatory items. 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 items, to the investigating officer concerned, from the place of theirs hiding, and, keeping the same.

27. 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 recovery(ies) is/are either contrived or invented. Therefore, the exhibits(supra) are *prima facie* concluded to be holding the utmost evidentiary tenacity.

28. Significantly also, since post the making of the said signed disclosure statements, thus by the convicts to the investigating officer concerned, he through the recovery memos (supra), thus caused the recovery of the incriminatory items 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 incriminatory items by the convicts, to the investigating officer concerned.



In sequel, the making of the valid signed disclosure statements, by the convicts besides the pursuant thereto effectuation of valid recovery(ies) of the incriminatory items, thus by the convicts to the investigating officer concerned, but naturally *prima facie* corroborates and supports the case of the prosecution.

29. However, yet for assessing the vigor of the said made disclosure statements and consequent thereto made recovery(ies), 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 recovery(ies). 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.

30. 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**).*

31. 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.

32. 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.



33. 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.

34. 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.

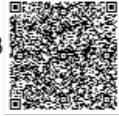
35. Moreover, in case the Court, in the above manner, becomes satisfied about the well made resilings by the eye witness concerned, to the crime event, thereupon the Court may consequently draw a conclusion, that the recoveries made in pursuance to the disclosure statement made by the accused, even if 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.

36. 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.

37. 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, thereby they acquire grave evidentiary vigor, especially when in pursuance thereto able recoveries are made.

38. 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.

39. 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 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, thereby 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, whereafter 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.”

40. Significantly, it would not be insagacious to straightaway oust the said made signaturred 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.

41. Now coming to the facts at hand, since the disclosure statements and the consequent thereto recovery(ies) 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 disclosures (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 concerned.

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

43. 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 statements, and, the consequent thereto recovery(ies), when do become efficaciously proven, therebys theretos immense evidentiary tenacity is to be assigned.

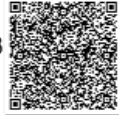
Post-mortem report

44. The post-mortem reports of deceased Sumit and of deceased Savita, to which respectively Ex. PT and PX are assigned, became proven by Dr. Anuj Sharma (PW-9). PW-9 in his examination-in-chief, has deposed that on an autopsy being conducted on the body of deceased Sumit, thus his noticing thereons the hereinafter ante mortem injuries-

“1. Contusion marks 13x0.7 cms on right lateral aspect of neck. On dissection hyoid bone and tracheal ring found fractured. Trachae contused and contained froath..

2. Abrasion of sized 1x0.8 cms, 0.6x0.4 cms, 0.4x0.3 ms on anterior aspects of neck. On dissection, fractured hyoid bone and tracheal ring found, minimal hematoma corresponding on the injury.”

45. Furthermore, PW-9 also made a speaking in his examination-in-chief, that the cause of demise of the deceased (supra) was owing to



asphyxia due to throttling/strangulation, which is stated to be ante mortem in nature, and, also sufficient to cause death in the ordinary course of nature.

46. PW-9 further deposed that on the same day, he also conducted an autopsy on the body of deceased Savita, and, noticed thereons the hereinafter ante mortem injuries-

- “1. Incised wound 13 cms x MD on anterior aspect of neck. On dissection underlying vessels and trachea found ruptured/cutted. Surrounding hematoma present.*
- 2. Incised wound 3 cms x 0.4 cms x Cavity deep on rt clavicular region. On dissection internal bone and organ found healthy. Clotted blood around wound present.*
- 3. Incised wound 3.8 cms x 0.8 cms x cavity deep present on rt upper chest. On underlying bone found healthy. On further dissection, incision found piercing rt lung upper lobe. Haemothorax found approx. 1.25 litres of blood in thoracic cavity.*
- 4. Incised wound 4 cms x 1.0 cm x cavity deep on rt side of lower chest, 2 cms from midline. On dissection underlying bone found healthy. On further dissection, rt lung found pierced. Corresponding blood present in thoracic cavity.*
- 5. Incised wound 1.5 cms x 0.7 cms x MD on lt side of chest in midclavicular line below lt breast. On dissection underlying bone and tissue found healthy.*
- 6. Incised wound of size 2.5 cms x 1 cm below lt axilla. Cavity deep. On dissection underlying bone found healthy. On further dissection underlying lt lung upper lobe found pierced. Haemothorax found.*
- 7. Incised wound of size 3.5 cms x 1.5 cms x MD below and lateral to injury No. 6. On dissection underlying bone and tissue found healthy.*
- 8. Incised wound of size 3.0 cms x 1.0 cms x 3 cms medial to above injury No. 7. On dissection underlying bone and tissue found healthy.*
- 9. Incised wound of size 1.5 cms x 0.5 cms x MD on left subcostal region. On dissection underlying bone and tissue found*



healthy.

10. Incised wound of size 4.0 cms x 1.5 cms x MD supras pubic region. On dissection underlying organs found healthy.

11. Incised wound of size 3.0 cms x 2.0 cms x MD at lower part of lt arm medially and horizontally placed. On dissection underlying bone and tissue found healthy. Corresponding hematoma present.

12. Incised wound of size 5.3 x MD at mid of lt arm medially placed. Clotted blood present. On dissection bone and tissue found healthy.

13. Incised wound of size 4.5 cms x 3 cms x MD 6 cms present on lat aspect lt forearm below elbow. On dissection underlying bone found healthy.

14. Incised wound of size 3 cms x 1.5 cms x MD present over mid aspect of lt wrist. On dissection underlying bone found healthy.

15. Incised wound 6 cm x 3 cm present over distal part of left forearm ventrally placed.”

47. The cause of demise of the deceased (supra) was opined to be owing to shock and haemorrhage, as a result of injuries (supra) to the vital organs, which were stated to be ante mortem in nature, and, also sufficient to cause death in the ordinary course of nature.

48. The above made echoings by PW-9, 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.

Reports of the FSL concerned, to which respectively Ex. PG and Ex. PH become assigned

49. Through RC Nos. 155 and 170 dated 16.4.2012 and 25.4.2012,

five sealed cloth parcels became sent, through Ct. Mahipal-598 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)

Five sealed parcel(s). The seal(s) were intact and tallied with the specimen seal(s) as per forwarding authority letters.

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

Parcel No.	No. and seal impression	Description of parcel(s)
I.	6 Doctor	<i>It contained exhibit-1a to 1d</i> <u>Exhibit-1a:</u> <i>One mahroon embroided lady’s shirt stained with dark brown stains.</i> <u>Exhibit-1b:</u> <i>One green salwar stained with dark brown stains.</i> <u>Exhibit-1c:</u> <i>One black underwear stained with brownish stains.</i> <u>Exhibit-1d:</u> <i>One white vaginal pad stained with brownish stains.</i>
II.	3-RS 1-AS	<i>It contained exhibit-2.</i> <u>Exbt-2:</u> <i>One knife (approx. 27 cm) with shiny metallic blade and black plastic hand grip with blue board blade cover marked LORD stained with dark brown stains along with hairs.</i>
III.	3-RS	<i>It contained exhibit-3.</i> <u>Exhibit-3:</u> <i>Cotton wool swab partially stained with brownish stains.</i>
IV.	3-HL	<i>It contained exhibit-4.</i> <u>Exhibit-4:</u> <i>Two golden colour metallic ear rings.</i>
V.	3-HL	<i>It contained exhibit-5.</i> <u>Exhibit-5:</u> <i>One checked shirt.</i>

Results of serological analysis of blood

Name of exhibit	Origin	Group
<i>Lady’s shirt</i>	<i>Human</i>	<i>Inconclusive</i>
<i>Salwar</i>	<i>Human</i>	<i>Inconclusive</i>
<i>Underwear</i>	<i>Human</i>	<i>Inconclusive</i>
<i>Vaginal pad</i>	<i>Human</i>	<i>Inconclusive</i>
<i>Knife</i>	<i>Human</i>	<i>Inconclusive</i>



<i>Cotton wool swab</i>	<i>Human</i>	<i>Inconclusive</i>
<i>Ear rings</i>	<i>Material Disintegrated</i>	
<i>Shirt</i>	<i>Material Disintegrated</i>	

50. 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 effectuation of recoveries through recovery memos Ex. PE, Ex. PF, Ex. PM and Ex. PN rather looses their evidentiary vigour.

51. 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 the investigating officer concerned, whereafters upon the latter sending the said supplied FTM card to the Serologist concerned, thus resulted in thereby the Serologist concerned, becoming facilitated to make an able inter se matchings.

52. Therefore, if only in the above event, thus 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.

53. However, yet in the wake of the Serologist concerned, rather not being purveyed the supra FTM card, whereby he thus 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, only the effects of validly drawn recovery memos (*supra*), thus may become construed to be unworthwhile, but yet subject to through adduction of further proof by the accused-appellants, that none other than the clothes whereons blood stains existed, were at the relevant time, thus adorned by the deceased.

54. 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 thereby 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 evidentiary worth of recovery memos (*supra*) rather loose their respective evidentiary tenacity.

55. In nutshell, there is vis-a-vis the crime event thus *inter se* corroboration *inter se* the recovery memos (*supra*) with the medical account, 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.

56. Therefore, with the afore observations, the criminal appeals (*supra*) filed by the convicts-appellants are dismissed.



57. Insofar as **CRR-2712-2013** filed by the complainant is concerned, since the instant case is not a rarest of the rare case, thus thereby this Court is constrained to not impose capital punishment, upon the convicts-appellants. Therefore, **CRR-2712-2013** is hereby dismissed.

Final Order

58. The result of the above discussion, is that, this Court does not find any merit in the appeals (supra) preferred by the appellants, and, is constrained to dismiss them. Consequently, all the appeals (supra) are dismissed. The impugned verdict of conviction, as becomes recorded upon the convicts-appellants, by the learned convicting/Trial Court, is maintained, and, affirmed. Moreover, the consequent thereto order of sentence is also affirmed. If the convicts 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.

50. **CRR-2712-2013** preferred by the complainant is dismissed.

60. 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.

61. Records be sent down forthwith.

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

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

December 10, 2024
Gurpreet