



In the High Court of Punjab and Haryana at Chandigarh

1. Murder Reference No. 1 of 2024
Reserved on: 13.11.2024
Date of Decision: 05.12.2024

State of Haryana Prosecutor

Versus

Sunil Respondent

2. CRA-D-1297-2024 (O&M)

Sunil Appellant

Versus

State of Haryana Respondent

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

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

Mr. Varinder Singh Rana, Advocate
for the respondent (in MRC No. 1 of 2024) and
for the appellant (in CRA-D-1297-2024).

SURESHWAR THAKUR, J.

1. This judgment shall dispose of Murder Reference No. 1 of 2024 made by Additional Sessions Judge (Fast Track Special Court for the offences under the POCSO Act, 2012), Gurugram, for making confirmation of death sentence awarded to convict-appellant Sunil; as well as Criminal Appeal No. D-1297 of 2024, preferred by the convict (supra) against the judgment of conviction dated 3.2.2024 and order of sentence dated 21.2.2024, passed by the Additional Sessions Judge (Fast Track Special Court for the offences under the POCSO Act, 2012), Gurugram.



2. CRA-D-1297-2024 (supra) is directed against the impugned verdict, as made on 3.2.2024, upon case bearing No. SC/963/2018, by the learned Additional Sessions Judge (Fast Track Special Court for the offences under the POCSO Act, 2012), Gurugram, wherethrough in respect of charges respectively drawn against the accused-appellant qua offences punishable under Section 6 of the Protection of Children From Sexual Offences Act, 2012 (in short 'the POCSO Act') (in alternative under Section 376AB IPC) and under Section 302 IPC, thus the learned trial Judge concerned, proceeded to record a finding of conviction against the appellant-convict.

3. Moreover, through a separate sentencing order dated 21.2.2024, the learned trial Judge concerned, sentenced the convict-appellant to capital punishment for an offence punishable under Section 376AB IPC. The learned convicting Court concerned, also sentenced the convict-appellant to capital punishment for an offence punishable under Section 302 IPC, besides also imposed, upon the said convict-appellant sentence of fine, as comprised in a sum of Rs. 25,000/-. The fine amount (supra), upon its realization, was ordered to be paid to the father of the child victim.

4. In addition, the trial Court concerned, awarded Rs. 10 lacs to the dependents of the victim as final compensation. The said amount was directed to be disbursed to the parents of the victim in equal proportion i.e. Rs. 5 lacs to each parent i.e. the mother (PW-8) and father (PW-10). The same was directed to be paid by the learned Chief Judicial Magistrate, District Legal Aid Services Authority, Gurugram out of the Women Victims Compensation Fund in the bank account of the parents of the victim.



5. Both the above imposed sentences of imprisonment upon the convict-appellant, were ordered to run concurrently but the period of detention undergone by the appellant-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.

Factual Background

6. The genesis of the prosecution case, becomes embodied in the appeal FIR, to which Ex. P-3 is assigned. It is narrated in Ex. P-3, that on 12.11.2018, a telephonic information was received from Control Room, Gurugram in the Police Station Sector-65, Gurugram that a dead body of small girl child was lying in the vacant shops in front of Kushalsad Mandir and requested to send police. On this information, S.I. Braham Parkash along with A.S.I. Krishan No. 194, HC Pardeep No. 142, Constable Bhaag Singh No. 4794 and L/Constable Renu No. 2857 reached at the spot, where 'M' father of deceased girl child/complainant (name withheld) got his statement recorded to the police alleging therein that he had been hailing from District West Dinajpur (West Bengal), and presently he along with his family was residing on rent in Jhuggis/shanties, and, was earning his livelihood by doing labour work. He has four children, two sons and two daughters and out of whom his eldest son and younger daughter 'R' were residing along with him in the said Jhuggi. He alleged that he used to leave his home at about 9:00 A.M. for his work and his wife used to leave the home at about 06:00 A.M. for doing cleanliness work in the houses. He alleged that on the date of incident i.e. on 11.11.2018, as per routine they left the home for work and both his children were at home. He alleged that his neighbour informed his employer that his daughter 'R' had gone missing. He



alleged that after receiving the said information he rushed towards his Jhuggi and enquired about his daughter 'R', upon which his neighbour girl children aged 6-7 years 'R' (name withheld) and 'P'(name withheld) informed him that a boy, namely, Sunil son of Leelawati, who had come to reside there since 2-3 days ago had touched their cheeks. He also told them that they were very pretty girls and tried to give them 10/-, to which they both refused, however, he took away his daughter/victim 'R' aged 3 years (name withheld), to buy eatables for her from the shop.

7. He further alleged that he along with his wife searched the victim but she could not be traced out and accused was also missing. He further alleged that today i.e. on that date 12.11.2018 at about 08:00 A.M., he saw many persons along with police were gathered in front of the vacant shops situated on the non-metallic road (katcha path) in front of Kushalsadh Mandir and there in one corner victim 'R' was lying dead in nude condition. He alleged that the face of the victim 'R' was covered with plastic polythene, a brick was lying upon her head and her clothes were lying at one side and lot of blood had been oozed out from her private parts. He further alleged that accused had murdered the victim 'R' after committing penetrative sexual assault/rape upon her. He prayed for taking Legal action against the culprit. On the above statement of the complainant, the appeal FIR became registered.

Investigation proceedings

8. During the course of investigations, crime Scene was inspected by the FSL team. Evidence were collected from the spot and converted the same into parcels and same were taken into police possession vide recovery



occurrence and prepared a rough site plan of the site of crime Ex. P-19. The place of occurrence was got photographed. Inquest proceedings u/s 174 Cr.P.C. was conducted. The dead body was taken to General Hospital and kept in mortuary and postmortem examination of dead body was conducted and P.M.R. Report was handed over to the investigating officer concerned. Case property in sealed parcels was handed over by the doctors, and, was taken into police possession vide recovery memo Ex.P-21 and was deposited in R.F.S.L. Bhondsi and F.S.L. Madhuban for examination. CCTV footage in the cameras installed in nearby vicinity were checked, in which accused was seen while taking the victim and thereafter coming back alone and the footage was taken in a pen drive (Ex.P1). On 19.11.2018, accused Sunil was arrested and interrogated. During interrogation, accused suffered his disclosure statement (Ex.P-22) admitting his guilt. In pursuance of his disclosure statement, accused demarcated the place of occurrence vide demarcation memo (Ex.P-23) and got recovered his clothes (underwear, pants and sweater) from the hills of Magarpur situated in Jhansi and which were worn by him at the time of commission of offence. The clothes were put in separate sealed parcels and were taken into police possession vide recovery memo (Ex. P11). Statements of witnesses were recorded. 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.

Trial Proceedings

9. The learned trial Judge concerned, after receiving the case for trial, made an objective analysis of the incriminatory material, adduced before her. Resultantly, on 22.12.2018, she proceeded to draw charges



against the accused-appellant for offences punishable under Section 6 of the POCSO Act (in the alternative Section 376 IPC) and under Section 302 IPC. The afore drawn charges were put to the accused, to which he pleaded not guilty, and, claimed trial.

10. Subsequently on 9.4.2021, an amended charge sheet was served upon the accused for the commission of offences punishable under Section 6 of the POCSO Act (in the alternative Section 376AB IPC) and under Section 302 IPC. The afore drawn charges were put to the accused, to which he pleaded not guilty, and, claimed trial.

11. In proof of its case, the prosecution examined 26 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. Though, the accused chose to lead evidence in his defence, however, he did not lead any witness into the witness box.

Submissions of the learned counsels for the convict-appellant

13. The learned counsels 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. 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. The above submissions become rested on the following grounds-

(i) That the appellant has been falsely involved in the instant



(ii) That the entire case of the prosecution is based on circumstantial evidence, which has not been proved by the prosecution.

(iii) That in the CCTV footage produced by the prosecution, the accused is not visible, and, that the PEN drive (Ex. P-1) has been planted upon the accused-appellant.

(iv) He has further argued, that the appellant has been illegally and arbitrarily sentenced to death, as the learned trial Court concerned, failed to consider that the instant case does not fall within the ambit of the rarest of rare cases.

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 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.

Circumstantial evidence based case rested on the depositions of PW-1, PW-2 and PW-3, who in their testifications propagated a version qua theirs last seen the accused and the deceased together.

15. PW-1 Anil, in his examination in chief, has made echoings, that the complainant along with his family was staying in his neighbouring jhuggi. He further deposed that on 11.11.2018 at about 10.00-10.30 A.M., when he was present near his jhuggi area, then he saw that the appellant, who also lived in his neighbourhood, was going with the child victim. The said witness in a casual manner inquired from the appellant, as to where he was going with the girl, whereupon the appellant told him that he was taking

the child victim with him to provide her some eatables as her parents were



not at home. Thereafter the victim and the accused went ahead. PW-1 further testifies that in the evening, he heard about the missing of the victim. When the said witness went to inquire to the complainant, thereupon the complainant revealed that the victim was missing from the jhuggi, since morning, and, earlier to that the victim was seen in the company of girls T and R, playing near the jhuggi area. PW-1 further deposed that they all made search for the victim but could not locate her. On the next day i.e. on 12.11.2018, they received an information from the public regarding the dead body of the victim lying near Kushalsad Mandir area, whereupon he along with the complainant and a large number of persons from their locality, thus went to that place. The said witness also deposed that he saw the dead body of the victim lying near the vacant shop in a naked condition, besides noticed that several injury marks were present on her body, and, that blood was oozing from her private parts. PW-1 further testified that at that time he recollected that in the morning of the previous day, he had seen the victim in the company of the accused, and, thereupon he immediately shared the said information with the complainant. PW-1 has also identified the accused in Court, and, the said identification then made by the said witness of the accused in Court, remained unbelied. As such therebys the factum of the accused being known to the witness (supra) becomes cogently established, besides therebys, thus there was no necessity qua prior thereto any valid test identification parade being conducted, nor therebys the first time identification in Court of the accused by the witness (supra) suffers from any infirmity.

16. Since neither any suggestions, became put to PW-1 during the latter's cross-examination, suggestive that his speakings (supra) in his examination-in-chief qua his last seeing together the accused concerned,



and, the deceased, rather at the apposite site, hence proximate to the crime site, thus are uncreditworthy, nor when any answers favourable to the accused, thus emanated from PW-1. Thus, the effect of no suggestions (supra) becoming meted to PW-1, during the latter's cross-examination, thus to bely the efficacy of the above candidly spoken facts, is that, it leads to an inference that the defence concedes to PW-1 last seeing together the deceased and the accused, thus in the vicinity of the crime site. The effect thereof is but naturally, qua the apposite last seeing together theory, as espoused by PW-3, thus acquiring the firmest evidentiary vigour.

17. The prosecution has also led PW-2 and PW-3 into the witness box, both of whom were aged 5 years. After the learned trial Judge concerned, ascertaining their competence to testify, from theirs rendering intelligible answers to the relevant queries, as became put to them, thus declared that both the witnesses were competent to depose as witnesses, resultantly permitted them to testify before her.

18. PW-2 deposed that one day in the morning she along with the victim and 'R' (PW-3) were playing together outside their jhuggi, where the appellant came and pulled her cheeks, and, told them that they are good girls, and, that he would give them money to buy some eatables. However, she and 'R' (PW-3) refused the same and kept silent. She further states that thereafter the accused took the victim along with him by saying that he would buy eatables for her and also for them. The said witness further deposed that she knows the accused as he was living in their neighbourhood. The said witness also identified the accused present in the Court.

19. PW-3 deposed that when on Sunday she along with her friends i.e. the victim and 'T' (PW-2) were playing outside their jhuggi, then the



appellant came and pulled the cheeks of 'T' (PW-2), and, told them that they are good girls, and, that he would give them money to buy some eatables. She further deposed that the accused asked her to go with him but she refused to do so. In the meantime, the accused started talking with the victim and took her with him by saying that he would buy eatables for her. The said witness also identified the accused present in the Court.

20. The statements of both the prosecution witnesses (supra) do lend the fullest corroboration to the testification made by PW-1, who alike PW-2 and PW-3 have efficaciously propagated the theory of last seeing together of the accused and the deceased. Fortifying vigour to the above is firmly secured, thus from both the witnesses (supra), during the course of theirs respectively becoming subjected to an exacting cross-examination, rather theirs remaining unscathed in the said ordeal.

21. The testimonies of the witnesses (supra) also become corroborated by the CCTV footage of 11.11.2018, which became taken into possession by the investigating officer concerned, in a pen drive, to which Ex.P-1 becomes assigned, and, which also became taken into possession vide recovery memo Ex. P-2, wherein, on the day of occurrence, the accused was seen to be taking away the victim along with him. Moreover, PW-22 Inspector Suman, SHO, P.S. Women West, Gurugram has deposed that she has collected CCTV footage in the pen drive (Ex. P-1) from the camera installed at the main gate of the society situated near the place of occurrence. She has also proved the recovery of the said pen drive Ex. P-2. The said witness has also proved the statutory certificate (Ex. P-31) issued under Section 65-B of the Indian Evidence Act by the Property Manager of the society concerned, with respect to the pen drive, thereby the said



adduced electronic evidence becomes both readable and admissible in evidence, besides also becomes a cogent incriminatory evidence for drawing a firm incrimination against the accused.

Thumb marked disclosure statements of convict-appellant to which respectively Ex. P-22 and Ex. P-8 become assigned

22. During the course of investigations, being made into the appeal FIR, convict-appellant Sunil, on 20.11.2018 thus made his signed disclosure statement, to which Ex. P-22 becomes assigned. The relevant portion of the signed disclosure statement, as made by the accused is *ad verbatim* extracted hereinafter.

“x x x x

I used to work as a Labourer. When I used to live with my sister, a Bengali Family use to live in Slum opposite to slum of my sister Sita. Whose one little girl ‘R’ aged about 3-4 Years used to lived there. That little girl used to come often to my sister's slum to watch TV. At that time, I used to touch cheeks and other wrong places of that little girl with bad intentions. On 11, November 2018, at around 10 AM in morning, I was at my Sister's slum. The girls from the slum opposite was playing with two other little girls near the slums. When I asked the little girl ‘R’ while touching on her cheeks to eat something she came with me. I took her to old shop (Tin) near Kushalsaadh Temple where all the shops were vacate and there was no person nearby. I took ‘R’ inside a shop and removed all her clothes. I made that little girl lay down after removing her clothes and started doing wrong act. She started crying. I pressed her mouth with my hand and did wrong act from front and back side of her. She started crying when I was doing wrong act with her. I hit her head and legs with brick. This made her dead. I inserted a wooden piece inside her vagina while doing wrong act with her. I placed bricks lying there on her breast and stomach on her body. Covered her face by plastic bag. I left removed clothes of that girl over there. I walked from there leaving the girl in dead state and reached direct Railway Station Gurugram. And I left for Old Delhi Railway Station from there. Where I stayed for 4 days at old Delhi Railway Station. After that I came to Jhansi sitting in a train. On dated 19.11.2018 I went to the Magarpur village of my Brother in law from Jhansi railway station. I went to village of my brother in law Mangpur from Jhansi Railway Station. When I reached Magarpur Railway Station, I took bath and changed all my clothes and buried all the clothes worn at the time of incident under the stones near a track little further from the railway station. I walked on foot towards the house of my brother in law. I have kept hidden all clothes worn by me at the time of incident near railway station



Magarpur. I can get you recovered all the clothes by walking with you and I can get demarcated the places from where I had taken away the little girl and where I killed her after doing wrong acts.

x x x x

23. Subsequently on 22.11.2018, convict-appellant Sunil, made an amended signed disclosure statement, to which Ex. P-8 becomes assigned. The relevant portion of the said signed disclosure statement, is *ad verbatim* extracted hereinafter. However, the underlined portion thereof is of evidentiary worth, as subsequent thereto, through recovery memo Ex. P-11), recovery of the incriminatory items became effected by the accused to the investigating officer concerned.

“x x x x

Now about 3-4 days before Deepawali, I came to slums built in Guga Colony sector- 66, Gurugram to meet my mother and sister, where I used to come often. Hence I knew the children of the nearby slums. On 11-11-2018 my mother and sisters went to work from the slum then I drank alcohol. After drinking alcohol I felt in my heart to do wrong act then I came to 3 girls R, P and R who were playing near slums to whom I took out 10 rupees from my pocket and showed them and said that I will get you something. R and P has refused. R aged about 3-4 years took ten rupees which I picked up in my lap and on the luring her of getting something, at around 11 O'Clock in the morning. I took the girl 'R' to the vacant shops in front of Kushalsadh temple and after took off the clothes of the girl 'R' when I started doing wrong act, she started screaming, then I closed her mouth and did wrong act with her from front and back side then I inserted a stick into her urination area and hit her with brick and tied a foil on her mouth and bricks were placed on the body and ran away from there and left the dead body of 'R' and started wondering here and there in Temple, Gurudwara and Railway station, in the fear of caught. Wherever free food was available, I would eat there and sleep. After few days while going to my sister Omwati's in-laws house at Magarpur District Jhansi, the clothes wearing at the time of crime were buried in the stones and bushes in the hills near village Magarpur and had worn other clothes. No one except me could tell about the clothes worn in the crime, which I can got recover after demarcating them from the mountains of Magarpur. And apart from this I have committed many similar incidents at different places.

x x x x



24. Pursuant to the above made signed disclosure statement, the convict-appellant ensured the recovery of a bag containing his clothes, which he was wearing at the time of the crime incident, which was taken into police possession, through recovery memo, to which Ex. P-11 becomes assigned.

25. The disclosure statement (supra), carries thereons the thumb marks, of the convict-appellant. In his signed disclosure statement (supra), the convict, confessed his guilt in committing rape upon the deceased, and, also his inflicting injuries on the person of the deceased, hence with the bricks and stick. The further speaking therein is qua his keeping, and, concealing the incriminatory items. 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 incriminatory weapon, to the investigating officer concerned, from the place of his hiding, and, keeping the same.

26. Significantly, since the appellant has not been able to either ably deny his thumb marks, as occurs on the exhibit (supra) nor when he has been able to prove the apposite denial. Moreover, since they 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 exhibit(supra) is *prima facie* concluded to be holding the utmost evidentiary tenacity.

27. Significantly also, since post the making of the said disclosure statement, thus by the convict to the investigating officer concerned, he through the recovery memo (Ex. PW-11), 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 convict, to the investigating officer concerned. In sequel, the making of the valid thumb marked disclosure statement, by the convict besides the pursuant thereto effectuation of valid recovery(ies) of the incriminatory items, thus by the convict to the investigating officer concerned, but naturally *prima facie* corroborates and supports the case of the prosecution.

28. 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.*

29. 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**).*

30. 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.

31. 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.

32. 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.

33. 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.

34. 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



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.

35. 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.



36. 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.

37. 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.

38. 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.”

39. 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.

40. Now coming to the facts at hand, since the disclosure statement and the consequent thereto recovery 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 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.

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

42. Consequently, when therebys the above evident facts rather do not fall foul of the above stated/underlined principles in the verdicts (supra). Consequently, both the disclosure statement, and, the consequent thereto recovery, when do become efficaciously proven, therebys theretos immense evidentiary tenacity is to be assigned. Preeminently also when thus they do corroborate the rendition of a credible account vis-a-vis the theory of last seeing together of the accused and the deceased, as becomes propagated through the prosecution witnesses (supra). Moreover, when the memos (supra) also lend corroboration to the medical account, therebys through all the links (supra), the charge drawn against the accused becomes proven to the hilt.

43. In addition, when in pursuance to his above made disclosure statement, the accused also led the police party to the place of occurrence, where he committed the murder of the child victim after committing rape upon her, whereupon the crime site became demarcated vide memo Ex. P-23. Resultantly, the said memo also comprises of potent incriminatory link in the chain of incriminatory circumstances, as becomes erected by the prosecution, wherebys the charge against the accused becomes cogently established.



Post-mortem report

44. The post-mortem report, to which Ex. P5/A is assigned, became proven by Dr. Jyoti Sabharwal (PW-6) and Dr. Deepak Mathur (PW-13). Both the witnesses (supra) in their examination-in-chief, have deposed that on theirs along with other board members, making an autopsy on the body of the deceased victim, thus their noticing thereons the hereinafter ante mortem injuries-

- “1. Multiple Bruise, varying between 3 cm x 2 cm to 1x1 cm over B/L upper back over scapular region, reddish in colour.
2. Multiple Bruise, varying between 4 cm x 2 cm to 2x2 cm over B/L lower back over lumbar region, reddish in colour.
3. Bruise 5 cm x 4 cm mid chest anteriorly over lower 1/3 of sternal area, reddish in colour.
4. Multiple confluent bruises, 5 x 3 cm to 1x1 cm over anterior upper 1/3 of B/L thighs, reddish in colour.
5. Circular perianal bruise around anal orifice. 3 cm radius from anas, 5 mm wide, reddish in colour.
6. Bruise 7 x 5 cm over left forehead and temporal scalp.

On dissection sub scalp extravasation of blood correspondingly with depressed fracture, 5 x 2 cm of left temporal bone with bright red clotted blood.”

Internal examination:- Left Parieto-Temporal Edh and Sdh and in organ of general hymen torn, 10 cm long blood stained wooden stick recovered from the vagina seen tearing the posterior cervix with about 300 ml partly clotted blood seen in the pelvis.”

45. Furthermore, both the witnesses (supra) also made a speaking in their examinations-in-chief, that the cause of demise of the deceased was owing to head injury with shock and haemorrhage following the ante mortem blunt force impact to the head and penetrating blunt weapon injury into the genitalia.

The above made echoings by PW-6 and by PW-13, in their



respective examinations-in-chief, became never challenged through any efficacious cross-examination, being made upon them, by the learned defence counsel. Therefore, the opinions, as made by the witnesses (supra) qua the demise of the deceased thus acquire formidable force. Consequently, the above echoings, as made by the doctors (supra), in their examination-in-chief, do relate, the fatal ante-mortem injuries to the time of the crime event hence taking place at the crime site, besides relate the said ante mortem injuries to the crime weapon i.e. the stick, which became removed by the doctor concerned, from the body of the deceased, and, which on becoming shown to the doctor concerned, became opined to the one with user whereof ante mortem injuries (supra) becoming entailed upon the body of the deceased.

Reports of the FSL concerned, and of the Serologist concerned, to which respectively Ex. PX and PX/1 become assigned

47. Through memo No. 30-5A dated 19.11.2018 four sealed cloth parcels became sent, through Ct. Rajesh Kumar No. 4835 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 the hereinafter extracted opinion.

“X X X X

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

Four sealed parcel(s). The seal(s) were intact and tallied with the specimen seal(s) as per forwarding authority’s letter.

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

Parcel No.	No. and seal impression	Description of parcel(s)
1.	5-Doctor	<i>It contained Exhibit-1 <u>Exhibit-1:</u> Two full pucca brick and one half pucca brick.</i>
2.	5-TP	<i>It contained Exhibit-2 <u>Exhibit-2:</u> Gauze pieces stained with brownish</i>



- stains described as blood.
3. 5-TP It contained Exhibit-3
Exhibit-3: Two small whitish polythene.
4. 2-Doctor It contained Exhibit-4
Exhibit-4: One small wooden stick stained with 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. Blood could not be detected on Exhibit-1 (Pucca brick).
2. Blood was detected on Exhibit-3 (Polythene).
3. Exhibit-2 (Gauze piece/Blood) and Exhibit-4 (Wooden stick) were stained with blood stains.”

Results of serological analysis of blood (Ex. PX/1)

Sr. No.	Name of exhibit	Origin	Group
2.	Gauze piece/Blood	Human	Inconclusive
3.	Polythene	Material disintegrated	
4.	Wooden stick	Human	Inconclusive

48. 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.

49. 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 therebys the Serologist concerned, becoming facilitated to make an able inter se matching, thereupon alone a firm inculpatory or a firm exculpatory opinion but could be recorded. However, though the opinion (supra), as made by the Serologist concerned, over the gauze piece/blood, polythene and wooden stick rather is inconclusive. Nonetheless, the said inconclusivity of opinion, for the reasons supra, is of no exculpatory worth.

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

50. Through memo No. 2190-R dated 13.11.2018 five sealed cloth parcels became sent, through Ct. Harbin Kumar No. 2677/GGM 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 the hereinafter extracted opinion.

“X X X X

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

Five sealed parcel(s). The seal(s) on the parcel(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.	No. & seal impression	Description of parcel(s)
I	5-TP	<i>Sealed cloth parcel containing exhibit 1a to 1d stated to be of deceased recovered from spot. <u>Exhibit-1a:-</u> One dirty blackish colored pyjami <u>Exhibit-1b:-</u> One dirty orange colored printed knickers. <u>Exhibit-1c:-</u> One dirty blackish colored baniyan. <u>Exhibit-1d:-</u> One dirty dark blue colored sweater.</i>
II	5-TP	<i>Sealed cloth parcel enclosing a plastic container containing exhibit 2a to 2c stated to be recovered from spot. <u>Exhibit-2a:-</u> One strand of hair wrapped in a</i>



paper stated to be hair recovered from brick placed near the dead body.

Exhibit-2b:- *Four strands of hair (small sized) wrapped in a paper stated to be hair recovered from brick placed near the dead body.*

Exhibit-2c:- *Three strands of hair (with roots) wrapped in a paper stated to be hair recovered from floor near the dead body.*

III	2-Motuary GH Gurgaon	Sealed plastic jar containing exhibit 3 stated to be of deceased Reshma. <u>Exhibit-3:-</u> <i>Two cottonwool swabs on sticks described as vaginal swabs.</i>
IV	2-Motuary GH Gurgaon	Sealed plastic jar containing exhibit 4 stated to be of deceased Reshma. <u>Exhibit-4:-</u> <i>Two cottonwool swabs on nail swabs of both hand nail tips.</i>
V	2-Motuary GH Gurgaon	Sealed plastic jar containing exhibit 5 stated to be of deceased Reshma. <u>Exhibit-5:-</u> <i>Two cottonwool swabs on sticks described as anal swabs.</i>

Laboratory Examination

Laboratory examination was carried out to detect the presence of semen/blood/skin on the exhibits 1a, 1b, 1c, 1d, 3, 4 and 5 performing chemical tests and microscopy. Hair in exhibit 2a, 2b and 2c were examined morphologically and microscopically to determine their species of origin. Based upon these examinations, the results obtained are given below:-

- 1. Semen could not be detected on exhibit-1a (Pyjama), exhibit-1b (Knickers), exhibit-1c (Baniyan), exhibit 1-d(Sweater), exhibit-3 (vaginal swabs) and exhibit-5 (Anal swabs).*
- 2. Blood was detected on exhibit-3 (vaginal swabs) and exhibit-5 (anal swabs). However, blood could not be detected on exhibit-1a (Pyjama), exhibit 1b(Knickers), exhibit-1c(Baniyan), exhibit-1d (Sweater) and exhibit-4 (Nail swabs).*
- 3. Skin could not be detected on exhibit-4 (Nail Swabs).*
- 4. Hair in exhibit-2a (hair recovered from brick placed near the dead body), exhibit-2b (hair recovered from brick placed near the dead body) and exhibit-2c (hair recovered from floor near the dead body) were identified to be human in origin.”*

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

51. Through memo No. 1133-D dated 23.11.2018 three sealed cloth parcels became sent, through Ct. Harbeen No. 2677/GGM 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 the hereinafter extracted opinion.

X X X X

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

Three sealed parcel(s). The seal(s) on the parcel(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.	& seal impression	Description of parcel(s)
VI		Blood sample stated to be of Sunil- Forwarded as such in original to DNA Division, FSL. H.Madhuban.
VII	5-RK	Sealed cloth parcel containing exhibit 7 stated to be of Sunil. <u>Exhibit-7:-</u> One dirty brown colored underwear.
VIII	5-RK	Sealed cloth parcel containing exhibit 8a to 8c stated to be of Sunil. <u>Exhibit-8a:-</u> One dirty grey colored torn lower. <u>Exhibit-8b:-</u> One dirty light brown colored torn pants. <u>Exhibit-8c:-</u> One dirty multicolored sweater.

Laboratory Examination

Laboratory examination was carried out to detect the presence of blood/semen on the exhibits performing chemical tests and microscopy. Based upon these examinations, the results obtained are given below:-

1. Blood was detected on exhibit-8b (Pants). However, blood could not be detected on exhibit-7 (underwear), exhibit-8a (lower) and exhibit 8c(sweater).
2. Semen could not be detected on exhibit-7



(underwear), exhibit 8a(lower), exhibit-8b (pants) and exhibit-8c (sweater).”

Report of the DNA concerned, to which Ex. PZ/1 becomes assigned

52. The DNA specialist, upon making examinations of all the incriminatory items, as became sent to it in five sealed cloth parcels, hence made thereons the hereinafter extracted opinion.

“X X X X

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

Received five sealed parcel(s). Seals were intact and tallied with the specimen seal.

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

Parcel No.	No. & seal impression	Description of parcel(s)
1.	4-AK/RFSL (H) BHONDSI GGM	One sealed envelope labelled as 18/BH/B-1654, FIR No. 75/18 P.S. Sec-65, GGM, P-2, containing:- 2C). Three hair in white envelope, kept in a small plastic container marked as item No. 2C, 2A and 2B returned as such.
3.	4-AK/RFSL (H) BHONDSI GGM	One sealed envelope labelled as 18/BH/B-1654, FIR No. 75/18 P.S. Sec-65, GGM, P-3, containing:- 3). Two cut cotton wool damp & putrefied swab on sticks kept in a plastic container marked as item No. 3.
5.	4-AK/RFSL (H) BHONDSI GGM	One sealed envelope labelled as 18/BH/B-1654, FIR No. 75/18 P.S. Sec-65, GGM, P-5, containing:- 5). Two cut cotton wool damp & putrefied swab on sticks kept in a plastic container marked as item No. 5.
6.	2-RY	One cloth sealed vaccutainer vial labelled as RY/724/2018, B-638/18, stated to contain blood sample of Sunil, containing:- 6). Blood sample marked as item No. 6.
8.	4-AK/RFSL (H) BHONDSI GGM	One sealed envelope labelled as 18/BH/B-1654, FIR No. 75/18 P.S. Sec-65, GGM, P-8 (Ex-8b), containing:- 8B). One dirty cut light brown coloured pant marked as item No. 8B.

Result of Examination

DNA was extracted from item Nos. 2C, 3, 5, 6, and 8B and subjected to Autosomal STR analysis by using identifiler



plus kit. DNA profile obtained from item No. 2C, 3 and 5 is compared with DNA profile of item No 6 and 8B. The allelic pattern of item No. 2C, 3 and 5 matches with the allelic pattern of item No. 8b and does not match with the allelic pattern of item No. 6.

Conclusion

The Autosomal STR analysis indicates that DNA profile of stains on source of item No. 8B (Pants) is matching with the DNA profile of source of item No. 2C(Hairs), Source of item No. 3 (swab), source of item no. 5 (swab).”

53. The DNA specialist, after making the apposite inter se DNA profiling(s) of the above, came to a conclusion, that the DNA profile of the stains on source of item No. 8B (Pants) matches with the DNA profile of source of item No. 2C (hairs), source of item No. 3 (swab) and source of item No. 5 (swab). Imperatively the sources of the said items but becomes irrefutably borrowed from the accused. As such, the results of the findings (supra) recorded in the report of the DNA specialist, but completely connects the accused with the charged offence. Moreover, thereby the report (supra) of the DNA specialist, as carried in Ex. PZ/1, does completely prove the charges drawn against the accused. In addition, it supports the prosecution theory, as becomes propagated through the witnesses (supra) qua the apposite last seeing together, thus of the concerned, in proximity to the crime site, and, in proximity to the discovery therefrom of the dead body of the deceased minor child.

54. A reading of clause 4 of the FSL report (Ex. PY), clause whereof becomes extracted hereinafter, reveals that hair in exhibit-2a (hair as became recovered from brick placed near the dead body, exhibit -2b (hair recovered from brick placed near the dead body) and exhibit-2c (hair recovered from floor near the dead body) were identified to be human in



origin.

4. *Hair in exhibit-2a (hair recovered from brick placed near the dead body), exhibit-2b (hair recovered from brick placed near the dead body) and exhibit-2c (hair recovered from floor near the dead body) were identified to be human in origin.”*

55. However, the supra conclusion in Ex.PY, rather prima facie do not completely connect the accused with the charged offence, unless the said hair became also unfolded in the report of the DNA specialist, that there was compatibility inter se supra. In the said regard, the report of the DNA specialist, as embodied in Ex. PZ/1 is required to be thoroughly analyzed. The relevant portions of the said report become extracted hereinafter.

“x x x x

1. 4-AK/RFSL One sealed envelope labelled as 18/BH/B-1654,
(H) FIR No. 75/18 P.S. Sec-65, GGM, P-2,
BHONDSI containing:-
GGM 2C). Three hair in white envelope, kept in a small
plastic container marked as item No. 2C, 2A and
2B returned as such.

x x x x

Conclusion

The Autosomal STR analysis indicates that DNA profile of stains on source of item No. 8B (Pants) is matching with the DNA profile of source of item No. 2C(Hairs), Source of item No. 3 (swab), source of item no. 5 (swab). ”

56. A circumspect reading of the above extracted conclusion, as made by the DNA specialist, after his making the relevant inter se matchings but reveals, that the hair strands, as became sent to him, for their examinations along with the hair strands of the accused, thus resulting in an affirmative opinion, but after his making the apposite inter se profilings. In other words, he has opined in his report that there existed compatibility inter se the hair, as became sent to him, and, as detailed in clause 4 of the report of the FSL (Ex. PY), thus with the hair strands of the accused, as became

sent for comparison therewith, to the DNA specialist. Therefore, when there



is completest irrefutable inter se compatibility inter se both, thereby the accused through the supra best scientific forensic evidence, thus becomes invincibly connected with the charged offences.

57. Be that as it may, the said best scientific evidence also lends corroboration to the theory of last seeing together of the accused and the deceased, as becomes spoken by the prosecution witnesses (supra). In sequel, when in a circumstantial evidence based case, the incriminatory link vis-a-vis the last seeing together of the accused, and, the deceased, is of grave importance. Therefore, when the said link is spoken by the supra credible witnesses, through theirs making untainted, and, unblemished testifications before the learned trial Judge. Consequently, the same acquires immense evidentiary vigour.

Rarest of rare case requiring imposition of capital punishment
upon the convict

58. Be that as it may, during the course of arguments, being addressed before this Court by the learned counsel for the convict-appellant, he has submitted to the extent, that the capital punishment, as imposed upon the convict-appellant, thus requires interference. He has supported the above submission through his canvassing that the instant case, does not fall within category of the rarest of the rare case, and, thereby in alteration to the imposition of capital punishment, thus the substantive sentence of life imprisonment, be imposed, upon the convict-appellant.

59. However, the above made argument addressed, does not appeal to the judicial conscience of this Court, and, is rejected. The learned trial Judge concerned, while awarding capital punishment to the accused-appellant, thus in the relevant paragraphs of the order of sentence,



paragraphs whereof become extracted hereinafter, has observed as under:-

“x x x x

13. In the instant case, the crime is aggravated penetrative sexual offence coupled with murder. The victim was a 3 years 9 months 5 days years old girl, who was neighbour of the accused. The doer of the crime is a 21 years old male of her neighborhood and he has committed the crime exploiting the trust of the innocent girl. The accused, in order to satisfy his sexual algolagnia and abnormal sexual desire, had deprived the life of a minor girl even at the bud. The Trial warrants special reasons as mandated under Section 354 (3) of the Code of Criminal Procedure. This Court, having held that the guilt of the accused proved, has to necessarily see whether death sentence is appropriate for the crime committed by the accused. Though Section 6 of the POCSO Act, 2012 and Section 302 IPC contemplate death or life imprisonment, the alternate sentence of death can be imposed for 'special reasons'.

14. The Hon'ble Supreme Court has also drawn up certain principles to determine the question, relating to sentencing policy in *Ramnaresh and others vs. State of Chhattisgarh* reported in (2012) 4 SCC 257, also in which it has also been reiterated that:

1. The Court has to apply the test to determine, if it was the rarest of rare case for imposition of a death sentence.

2. In the opinion of the Court, imposition of any other punishment, i.e., life imprisonment would be completely inadequate and would not meet the ends of justice.

3. Life imprisonment is the rule and death sentence is an exception.

4. The option to impose sentence of imprisonment for life cannot be cautiously exercised having regard to the nature and circumstances of the crime and all relevant considerations.

5. The method (planned or otherwise) and the manner (extent of brutality and inhumanity, etc.) in which the crime was committed and the circumstances leading to commission of such heinous crime.

15. Bearing in mind the above principles coupled with the guidelines given by Hon'ble the Supreme Court in *Bachan's* case, the evidence in this instant case has been assessed and considered, so as to come to a definite conclusion to ensure whether there was a balance consideration of aggravating and mitigating circumstances principles enumerated by Hon'ble the Supreme Court in *Hanuman*



Govind Nargudkas vs. State of M.P., reported in AIR 1952 SC 343 that "there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with innocence of the accused and must show that in all human probability, it must have been done by the accused. As per the circumstantial evidence, otherwise known as last seen together theory, there should be corroborative evidences to connect the accused with the crime and the most important of it is that it can be a conclusive evidence, if the time gap between the accused and the deceased seen together is very minimal." The Court now proceeds to prepare following chart in view of facts of present case.

Aggravating Circumstances	Mitigating Circumstances
<i>(i) The deceased is a child aged about 3 years 9 months 5 days</i>	<i>(1) The accused belonged to weaker socio-economic background</i>
<i>(ii) The body of deceased-child- victim was found in naked condition, having several injury marks on her body and blood was oozing out from her private parts and the doctor opined that the cause of death is head injury with shock and hemorrhage following ante mortem blunt force impact to the head and penetrating blunt weapon injury into the genitalia. Therefore, commission of rape and the injuries caused to the deceased before murder indicating brutal state of mind.</i>	<i>(ii) He is a person aged about 23 years.</i>
<i>(iii) The accused was the neighbour of the deceased child-victim. A relationship of trust and confidence has broken down.</i>	<i>(iii) His parents have already been expired. He is sole bread winner of the family.</i>
<i>(iv) Accused accompanying the child-victim seen going by holding her hand in whole CCTV footage, he was seeing taking away the child-victim at 11:31:28 hours and seen coming back while running at 11:54:55 hours, that no one could doubt on him. which reflects his state of mind.</i>	<i>(iv) He is having the liability of his younger brother and sister who are fully dependent upon him.</i>
<i>(v) After the incident, accused appearing normal but seen coming hack while running at 11:54:55 hours the CCTV Rootage, which indicates he has no repentance of the crime.</i>	



(vi) The deceased in her Innocence. being neighbour, accompanied him by trusted the accused and moving on his directions.	
(vii) Several F.L.Rs. Have been registered against the convict for the similar offences of aggravated penetrative sexual assault and murder of minor child girls of 3-5 years, out of which 3 FIRs are: 1) FI.R. No. 142 dated 15.06.2013 w/ss 363, 366A I.P.C. registered at PS. DLF Phase-1, Gurugram. 2) FLR. No. 1286 dated 24.11.2016 u/ss 346, 366 L.P.C. registered at P.S. Sadar, Gurugram. 3) F.I.R. No. 15 dated 06.01.2017 uss 346, 364, 302, 201 L.P.C. registered at P.S. Civil Lines, Gurugram	

Needless to say that after giving due consideration to the facts and circumstances of each case, for deciding just and appropriate sentence to be awarded for an offence, the aggravating and mitigating factors and circumstances in which a crime has been committed are to be delicately balanced on the basis of really relevant circumstances in a dispassionate manner by the Court. Such act of balancing is indeed a difficult task.

x x x x

16. In view of the above, the law laid down in catena of csses, in all fairness, the Court finds to have fulfilled all the touchstone to determine that it is one of the rarest of rare cases for imposition of death sentence, as imposition of any other punishment much less life imprisonment is completely insufficient and inadequate and would not meet the ends of justice. Taking into consideration the brutality of attack, the barbaric manner in which the deceased child was raped 'murdered' and the mental agony undergone by the parents, court finds that except death sentence, no other sentence will be adequate. Court has examined this case more carefully and having given anxious thought to the facts, it is found that the mitigating circumstances in favour of the accused herein is no match to the aggravating circumstances.

x x x x



In the present case, the brutal, barbaric and diabolic nature of the crime is evincible from the acts committed by accused viz. injuries upon the body of victim (deceased); attacking and killing her by bricks; committing violent sexual assault and his brutish behaviour by inserting 10 cms long wooden stick in her vagina. These acts itself demonstrate the mental perversion and inconceivable brutality committed by convict. He has betrayed the trust of a minor girl child, aged 3 years 9 months 5 days. She trusted him, being her neighbour. The convict took all care to commit the barbaric acts of rape and murder of the child, in extreme secrecy, and in a preplanned and cold-blooded manner. The crime was committed in a vacant shop situated near the Kushalsad Mandir. The barbaric crime was done in such a manner, that nobody ever catches hold of him. However, the evidence has established the guilt of the convict without any pale of doubt, by way of DNA reports, blood reports and forensic reports. The semen of convict was found on the belongings of victim and his DNA profile matched with the same.

18. The Courts of law hereby warn those who may plan to perpetrate such like offences in future. Gallows await them, in case they commit such an offence with the children of this society. They will be liquidated by the Law of land.

19. In view of the above discussion and the case law laid down in Machhi Singh's case (supra), Bachan Singh's case (supra) and Mohd. Mannan @Abdul Mannan's case (supra), Madan Gopal Kakkad's case(supra) and Vasant Sampat Dupare's case (supra), anything less than death sentence would be unjustified, in the peculiar circumstances of the present case. In view of barbarity of the offences committed by the convict, there is no reason to believe that he would be reformed and would not be a menace to the society. He does not deserve any mercy.”

x x x x”



60. The above well made observations by the learned convicting Judge concerned, whereby she was well led to sentence the convict-appellant to capital punishment, thus also appeal to the judicial conscience of this Court.

61. Evidently, the instant case appertains to the gruesome murder of a girl child but after committing rape upon her. It exemplifies dehumanized, besides monster like conduct of the convict-appellant. As such, for the supra reasons, and, also for the well made reasons by the learned trial Judge concerned, in hers sentencing the convict-appellant to capital punishment, this Court is coaxed to accept the Murder Reference. The death sentence imposed upon the convict-appellant, by the learned convicting Court, thus is confirmed. The District Magistrate is directed to, in terms of relevant provisions, forthwith appoint an Executioner, besides is also directed to draw the schedule for executing the sentence of capital punishment, upon, the convict-appellant

62. The sentence of capital punishment be executed after the elapse of the period of time for the filing of an appeal against the verdict (supra), and, the consequent thereto sentencing of the convict-appellant, to capital punishment.

Final order

63. Consequently, the Murder Reference No. 1 of 2024, is accepted. The death sentence imposed upon the convict-appellant, by the learned convicting Court, thus is confirmed.

64. However, the appeal filed by the convict-appellant bearing No. CRA-D-1297-2024 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 therewith order of sentence is also affirmed.

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

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

December 5th, 2024
Gurpreet

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