



In the High Court of Punjab and Haryana at Chandigarh

CRA-D-946-2022 (O&M)

Reserved on: 25.10.2024

Date of Decision: 5.11.2024

Neelkanth

.....Appellant

Versus

State of Haryana

.....Respondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present: Mr. Dharamvir Sharma, Advocate
for the appellant.

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

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the impugned verdict, as made on 6.8.2022, upon case bearing CIS No. SC/369/2017, by the learned Additional Sessions Judge, Karnal, wherethrough in respect of charges drawn against the accused qua offences punishable under Sections 376, 302, 201 IPC, and, under Sections 3(2)(v) of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act of 1989'), the learned trial Judge concerned, proceeded to record a finding of conviction against the accused-appellant for offences punishable under Sections 302 and 201 IPC. However, the accused-appellant was acquitted of the charges framed against him qua offences punishable under Section 376 IPC and Section 3(2)(v) of the Act of 1989.

2. Moreover, through a separate sentencing order dated 9.8.2022, the learned trial Judge concerned, imposed upon, the convict both sentence(s) of imprisonment as well as sentence(s) of fine, but in the



hereinafter extracted manner:

<i>Offences under Section</i>	<i>Imprisonment (Rigorous)</i>	<i>Fine</i>	<i>In default of payment of fine (Rigorous)</i>
302 IPC	Imprisonment for life	Rs. 10,000/- (Rs. Ten thousand only)	One month
201 IPC	2 years	Rs. 5,000/- (Rs. Five thousand only)	15 days

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

4. The State of Haryana has not filed any appeal before this Court against the verdict of acquittal, as became recorded by the learned trial Judge concerned, viz-a-viz the charges drawn qua commission of offences punishable under Section 376 IPC and Section 3(2)(v) of the Act of 1989. Therefore, the said verdict of acquittal has acquired a binding and conclusive effect.

Factual Background

5. The genesis of the prosecution case, becomes embodied in the appeal FIR, to which Ex. P23 is assigned. As per the prosecution case, on 14.7.2017, SI Ramphal, Incharge Police Station, Nissing, upon receiving a telephonic information regarding dead body of a female lying near bus stand of village Kuchhpura, SI Ramphal alongwith other police officials, thus reached the crime spot. Thereafter, crime scene team was called at the spot. The report prepared in the said regard is Ex.-P-21. After sometime,

complainant Phool Kumar son of Shri Mange Ram, resident of village



Sirsal, Police Station Nissing, District Karnal, reached the spot and identified the dead body to be of his wife Rani. Thereafter, aforesaid Phool Kumar moved a complaint to the effect that he belongs to Scheduled Caste community, and, Neelkanth Pandir, resident of village Sirsal, Rohtash son of Shri Gangwa, Vipin son of Shri Neelkanth along with some other persons after committing rape upon his wife had murdered her. He further alleged therein, that in order to dispose of the dead body, Vipin son of Neelkanth alongwith others had thrown the dead body of his wife in the bushes near village Kuchpura. The complainant had further alleged that he and his family were extended threats by one Jagdish and other persons involved in the crime. On the basis of the said complaint, formal FIR bearing No.222 dated 14.07.2017 under sections 201, 302 IPC and under sections 3 (2) (v) of SC/ST Act became registered with Police Station Nissing.

Investigation proceedings

6. During the course of investigations, the spot was inspected by FSL team, Madhuban. Besides the deadbody, one white coloured plastic container 250 ML on which DICHLORVOS 76%, EC SCHIRIVAN was written which was containing some left out medicine/substance, a mobile phone Make Nokia 1600 of white and black colour with one SIM bearing No. 85698-58270 was also found at the spot. Froth was oozing out from the mouth of the dead body, which was lifted with the help of cotton swab and was put in a plastic container. All the articles (supra) were taken into police possession. Subsequently, further investigation of this case was handed over to DSP Assandh. The dead body of deceased Rani was handed over to SI Ramphal for post-mortem examination. Then, post-mortem examination on the dead body of the deceased Rani was got conducted on 15.07.2017. The



Doctor had handed over the sealed parcels to DSP Assandh, along with sample seal and PMR No.GJ/98/17 dated 15.07.2017, which were taken by the police in possession vide recovery memo.

7. On 16.07.2017, the dead body of deceased Rani was handed over to her legal heirs for cremation. During investigations, accused Neelkanth was arrested. On 19.07.2017, the investigation of this case was handed over to Inspector/SHO Diwan Singh. During investigations, identification memo of the place of occurrence was prepared. The shopkeeper who had sold the poisonous substance to accused Neelkanth was joined in investigations. The footage of CCTV Camera installed in the shop of Rajesh Wood Works, Nissing, was obtained in the presence of Sunil Kumar, owner of the said shop and in the CCTV footage, Neelkanth was seen going with deceased Rani on motorcycle from Nissing. Thereupon, CDs of the footage was got prepared and hard disk of the camera was also taken, which were converted into sealed parcel sealed with the seal of DS. The seal after use was handed over to HC Rajesh Kumar. Both the CDs and hard disk were taken by the police in their possession vide recovery memo. Subsequently, further investigation of this case was handed over to Dalbir Singh DSP Assandh on 24.08.2017 and during the investigation, Vipin son of Neelkanth, Suresh Kumar, Mahender Kumar sons of Rishi Kesh and Ved Kumari alias Vedo wife of Neel Kanth were found innocent, and, Sections 376-D/34 IPC were deleted. After conclusion of investigations, the investigating officer concerned, proceeded to institute a report under Section 173 of the Cr.P.C., before the learned Court concerned.

Trial Proceedings

8. Subsequently, the learned trial Judge concerned, made an



objective analysis of the incriminatory material, adduced before her. Resultantly, she proceeded to draw charges against the accused-appellant for the offences punishable under Sections 376, 302, 201 IPC and under Section 3(2)(v) of the Act of 1989. The afore drawn charge was put to the accused-appellant, to which he pleaded not guilty, and, claimed trial.

9. In proof of its case, the prosecution examined 21 witnesses, and, thereafter the learned Public Prosecutor concerned, closed the prosecution evidence after tendering into evidence the FSL report, to which Ex. P-37 becomes assigned.

10. 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. In defence, the accused tendered into evidence documents Ex. DA to Ex. DC.

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

Submissions of the learned counsel for the appellant

12. The learned counsel for the aggrieved convict-appellant has argued before this Court, that both the impugned verdict of conviction, and, the consequent thereto order of sentence, thus require an interference. He supports the above submission on the ground, that they are based on a gross misappreciation, and, non-appreciation of evidence germane to the charge. He has further argued before this Court, that the appellant has been falsely implicated in the present case, as the proceedings were started by the police



by believing the statement of Jagdish (PW-8), who was already having enmity with the appellant, and, litigations were already going on between them. Furthermore, the learned counsel has argued that the electronic evidence i.e. CCTV footage (Ex. MO/1), wherein, the deceased was seen going on a motorcycle with the appellant, is inadmissible in law, as the same was presented without a statutory certificate, as envisaged under Section 65 of the Evidence Act, and, that too when PW-7, who is the witness of the said footage, has turned hostile.

13. The learned counsel has also argued that the present case is not a case of murder but is a case of suicide, as the deceased had lodged a complaint against Jagdish (PW-8) regarding commission of rape upon her. However, when the police did not take any action against the said Jagdish, thereupon the deceased committed suicide.

14. He has further argued that since no external injury marks were found either on the neck or on the cheeks of the deceased, thereby the poison which became detected in the viscera of the deceased, thus did not become administered through application of force by the accused-appellant, upon the deceased.

Submissions of the learned State counsel

15. 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

16. The foremost link in the chain of incriminatory circumstances becomes comprised in the CCTV footage, which was existing at the shop of PW-7 Sunil Kumar, wherein, the accused-appellant was seen riding the motorcycle, and, the deceased was seen to be occupying the pillion thereof.

17. In the said regard, the prosecution has examined Inspector Diwan Singh as PW-15, who deposed that on 19.7.2017, he had gone to the shop in the name and style of Rajesh Wood Works, Nissing, for the inspection of CCTV footage installed at the shop (supra). Upon checking the said CCTV footage, in the presence of the proprietor of the said shop, namely Sunil Kumar (PW-7), it was found that on 14.7.2017, at about 8:37:58 A.M., accused Neelkanth was astride on his motorcycle, and, was going towards Karnal from Nissing, whereas, deceased Rani was occupying the pillion thereof. He converted the said CCTV footage in two CDs. The same were converted into a parcel, which was sealed with the seal bearing impression 'DS', and, the said parcel was taken into possession vide memo Ex. P2. PW-15 has further deposed that on the same day, he visited the shop of Devi Dayal (PW-2), proprietor of Dev Pesticides, situated in front of Bus Stand Nissing and got recorded his statement. The said witness also identified the CD Ex. MO/1 and hard disc drive Ex. MO/2, besides also identified the CD Ex. MO/3, which was prepared by him with the help of mechanic from the CCTV footage installed at the shop of Sunil Kumar. When the said CDs. MO/1 and MO/3 were played in Court, the said witness identified the accused along with deceased Rani with both being astride on a motorcycle.

18. The prosecution has also examined PW-7 Sunil Kumar,



Shopkeeper, who deposed that he is running a furniture house in the name of Rajesh Wood Works in front of Bus Stand, Nissing. He further deposed that on 19.7.2017, the police along with a mechanic came to his shop, and, asked him to check his CCTV camera, installed at his shop. After checking the CCTV camera by the police officials, they asked him to hand over the CCTV footage of 14.7.2017. Subsequently, they prepared two CDs from the the footage enclosed in CCTV camera, and, also took the hard disk of his CCTV camera, and, the same were converted into a sealed parcel. The said witness has also identified CD (Ex. MO/1) and hard disk (Ex. MO/2). He further deposed that CDs (Ex. MO/1 and Ex. MO/3) are the same which became prepared by the IO with the help of a mechanic at his shop. However, thereafter the said witness turned hostile, and, upon his cross-examination by the learned Public Prosecutor, the said witness deposed that he has not made any statement Ex. P-27 to the police.

19. The prosecution has further examined PW-2 Devi Dayal, who deposed that he has a shop of pesticides in the name of Dev Pesticides in Nissing, District Karnal. The said witness further deposed that appellant Neelkanth was his regular customer for the last 6-7 years and he used to purchase pesticides from his shop for his fields. PW-2 further deposed that on 14.7.2017 at about 8.15/8.30 A.M., appellant Neelkanth came to his shop and purchased a bottle containing Nuvan Badal 76 insecticides/medicine, for Rs. 120/- and promised him to pay the said amount on the next morning. The said witness also deposed that he had handed over an attested copy of his licence Ex. P-3 and attested copy of bill Ex. P-4 in the name of appellant Neelkanth, to the police.

20. However, the best electronic evidence (supra) to support the



incriminatory links (supra) becomes rendered infirm, thus on the ground that the statutory certification, as ordained by Section 65-B of the Indian Evidence Act, provisions whereof become extracted hereinafter, remaining unmade thereons, thus by the service provider concerned.

“Section 65B - Admissibility of electronic records.

(1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence or any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely:--

(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing



information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether--

*(a) by a combination of computers operating over that period; or
(b) by different computers operating in succession over that period; or*

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers,

all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say, --

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

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

(5) For the purposes of this section,

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment; --



(b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.”

21. Be that as it may, even if the said link becomes feeble, yet the hereafter trite underscorings, do emerge as appertaining to (a) the collection of the poisonous substance becoming made from the crime site through recovery memo Ex. P-30, (b) the adduction into evidence of the receipt Ex. P4, relating to the purchase thereof being made by the accused-appellant from the shop of the stockist i.e. PW-2, (c) the recovered vial after becoming retrieved from the sealed cloth parcel, the same on becoming shown to the prosecution witness concerned, the latter cogently proving that the empty bottle enclosing therein the poisonous substance concerned, was as a matter of fact, purchased from the shop concerned.

22. Since the above best evidence remains unrebutted either through effective suggestions being meted to the prosecution witness concerned, and/or if meted, since they became denied, whereafter no further evidence became adduced to bely the purchase of the bottle, by the accused from PW-2, wherein, became enclosed the poisonous substance concerned. Consequently, thereby, irrespective of the fact, that the electronic evidence is infirm, and/or lacks evidentiary vigour, yet the above best evidence, thus clinchingly proving to the hilt the charge in respect whereof the impugned verdict of conviction, and, consequent thereto



sentences of imprisonment, and, of fine became imposed upon the appellant.

Signatures disclosure statement of convict-appellant
Neelkanth Ex. P-25

23. During the course of investigations, being made into the appeal FIR, accused-appellant Neelkanth, thus made his signature disclosure statement, to which Ex. P-25 becomes assigned. The relevant portion of the incriminatory echoings carried therein, become *ad verbatim* extracted hereinafter.

“x x x x

“Thereafter I thought that Jagdish has also been saved in rape case and he also get registered a case against me in police station Nissing. Thereafter keeping a grudge against Jagdish and in order to trap him, I made a plan and on 14.7.2017, at about 8/8:30 a.m. I took Rani with me on my motorcycle No. HR08D-3460 Hero Honda CD Deluxe and reached in Nissing from my village Sirsal and I purchased poisonous pesticides i.e. Nuvan 250 ml for Rs.120/- from Devi Dyal son of Bhawar Pal, caste Mahajan resident of Nissing, and then by alluring I brought her in Batoda near Bus Stand Village Kuchpara and forced her to drink said nuvan poisonous insecticide so that the allegations of murder of Rani be leveled upon Jagdish son of Kailash Chander and on allegations of murder of Rani, Jagdish will go in Jail. Being relative, I already know that the Bhatoda and Koop where I drink poison to Rani are in the land owned by Jagdish son of Kailash, Ved Parkash and their brothers, residents of village Kuchpara. Rani died because of poisonous substances which I forced to consume. I with my motorcycle ran away from the spot. The disclosure which I made that I have parked the motorcycle at the house of my Bua's son namely Bhan Dass son of Hari Prem Chand, resident of Ruhana, District Muzaffar Nagar, that was made so that the police may not recover said motorcycle. The truth is that I have kept concealed my motorcycle inside the tubewell room in my fields and except myself no other person is having knowledge and I can get the same recovered. I had also kept concealed the mobile bearing No. 94676-25015 with which I used to



talk with Rani on her mobile No. 85698-58270, that mobile phone also kept concealed in said tubewell room and I can get the same recovered by demarcating that place.”

24. Pursuant to the above made signed disclosure statement, the convict-appellant Neelkanth ensured the recovery of one motorcycle make Hero Honda CD Deluxe bearing registration No. HR08G-3460, and of a black coloured mobile Phone make Lava along with SIM bearing No. 94676-2015, which were taken into police possession, through recovery memo, to which Ex. P-26 becomes assigned.

25. The disclosure statement (supra), carries thereons the signature, of the convict-appellant. In his signed disclosure statement (supra), the convict, confessed his guilt in committing the crime. 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 items, 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 signatures 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 signed disclosure statement, thus by the convict to the investigating officer



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 signed 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 apposite 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 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.

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, therebys 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 signed disclosure statement or the consequent thereto recovery, unless both fall foul of the above principles, besides unless the said principles become proven by the defence. Contrarily, in case the disclosure statement and the consequent thereto recovery enclosed in the respective memos, do not fall foul of the above principles rather when they become cogently established to link the accused with the relevant charge. Resultantly, if the said comprises but a pivotal incriminatory link for proving the charge drawn against the accused, thereby the snatching of the above incriminatory link from the prosecution, through straightaway rejecting the same, but would result in perpetration of injustice to the victim or to the family members of the deceased, as the case may be.

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 recoveries (supra) did not lead to the discovery of the apposite fact from the relevant place of hiding, thus only within the exclusive knowledge of the accused.

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 thereby 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, thereby theretos immense evidentiary tenacity is to be assigned. Moreover, when the memos (supra) also lend corroboration to the medical account, thereby through all the links (supra), the charge drawn against the accused becomes proven to the hilt.

Post-mortem report

43. The post-mortem report, to which Ex. P-35 is assigned, became proven by PW-20 Dr. G. Jayvardhan. PW-20 in his examination-in-chief, has deposed that he along with Dr. Kunal Khanna, Forensic Medicine Expert, and, Dr. Manisha, J.R. Gyane, thus had conducted an autopsy on the dead body of deceased Rani. He also made a speaking in his examination-in-chief, that the cause of demise of the deceased was owing to organo phosphorus pesticide poisoning. The said witness further opined that there is no evidence of vaginal penetration but the possibility thereof cannot be ruled out.

44. Importantly the said recoveries when become combined with the inferences made by this Court in paragraph 21 (supra), thus lead to the conclusion, that the recovery of the motorcycle, as became evidently effected from a secluded or from a desolate place, and/or from a place where it was not required to be parked, qua thereby the concealment of the motorcycle, rather is a stark portrayal of the convict, thus demonstrating but in its becoming hidden, rather an ill-conduct hence inconsistent with his innocence. Thereupon the unrebutted purchase of the poisonous substance, by the accused from the commercial establishment of PW-2, which became consumed by the deceased, is to be construed, hence for further reasons



hereafter, to not become voluntarily consumed by the deceased, rather the same becoming forcibly administered by the accused-appellant, to the deceased.

Report of the FSL concerned, to which Ex. P28 becomes assigned

45. Through memo No. 116-SPL dated 25.7.17, five sealed cloth parcels became sent, through Constable Sanjeev Kumar-1439 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) 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. and seal impression	Description of parcel(s)
1.	6-MO	<i>One sealed cloth parcel enclosing a cardboard box containing following exhibits- PMR No- GJ/98/17 dated: 15.7.17 Viscera of deceased: Rani W/o Phool Kumar <u>Exbt-1a:</u> Stomach, parts of small and larger intestines <u>Exbt-1b:</u> Parts of lungs, liver, spleen and kidney. <u>Exbt-1c:</u> Blood from heart approx 10 ml. <u>Exbt-1d:</u> Saline preservative approx 15 ml.</i>
2.	1-MO	<i>One sealed glass tube stated to contain vaginal swab.</i>
3.	3-MO	<i>One sealed cloth parcel stated to contain clothes of the deceased.</i>
4.	2-AS	<i>One sealed cloth parcel enclosing a white plastic bottle labeled as ‘SHRIVAR-Dichlorovos 76% EC’. <u>Exbt-4:</u> Some green coloured liquid approx. 70 ml.</i>
5.	2-AS	<i>One sealed cloth parcel enclosing a plastic dibbi containing exhibit-5. <u>Exbt-5:</u> A cotton swab having some cream coloured material stuck on it.</i>



Note- Parcels No. 2 and 3 were sent in original to Biology Division for its examination.

Laboratory Examination

Chemical test and techniques were employed to detect common gaseous and volatile poison, metallic poisons, inorganic ions, plant poison, pesticides and drugs in exhibits-1a to 1d, 4 and 5. Based upon the examination carried out in the laboratory, the results are given as under:-

Results of examination

1. *Dichlorovos (an Organophosphorous pesticide) was detected in exhibits-1a, 1b, 1c, 4 and 5.*
2. *No common poison could be detected in exhibit-1d.”*

46. The prosecution has also examined PW-17 Dalbir Singh, Senior Scientific Officer (Chemistry), who has proved the report (supra). He has deposed in his examination-in-chief, that the sealed parcel(s) containing (i) glass tube stated to be containing vaginal swab (Ex. MO-6), (ii) clothes of deceased (Ex. MO-7, Ex. MO-8, Ex. MO-9), (iii) plastic bottle labeled as SHRIVAR-Dichlorovos 76% (Ex. MO-10) and (iv) plastic box having a cotton swab were the same which became received by him in the FSL concerned, thus in an untampered condition.

47. Be that as it may, the learned counsel for the appellant has argued that since no speakings occur in the post-mortem report about the existence of ante mortem external injuries on the body of the deceased. Resultantly, he has argued that since the cause of demise of the deceased becomes pronounced in the report of the chemical examiner concerned, to become sparked from hers consuming a poisonous substance, therefore, the verdict of conviction, as recorded against the appellant in respect of offences punishable under Sections 302 and 201 IPC, is required to be set aside, on the ground that the deceased had committed suicide.



48. However, for the reasons to be assigned hereinafter, the said submission(s) warrant(s) rejection.

(i) Firstly for the reason that this Court, has hereinabove concluded, that the appellant and the deceased had together visited the commercial establishment of PW-2, wherefrom the appellant had purchased the bottle of organo phosphorus pesticide, which ultimately became consumed by the deceased.

(ii) Secondly, for the further reason, but as a natural corollary thereto, the accused-appellant then nursed a *mens rea* to, through either surreptitiously administering poison to the deceased or his administering the same to her through application of pressure, hence murder the deceased.

(iii) Thirdly, as above stated, though there are no ante mortem external injuries either on the neck or on the cheeks of the deceased, wherebys it may become concluded, that no pressure became exerted by the accused upon the deceased, thus to forcibly administer poison to her. Nonetheless the absence of the said external injuries, thus to the objective mind of this Court, do become rendered blunted on the following counts-

(a) The doctor, who prepared post-mortem report (Ex. P-35), upon his stepping into the witness box as PW-20, his making speakings that the peelings' of skin occurring on the face of the deceased. Though ipso facto therebys, no firm conclusion, thus can be formed qua forcible administration of poison by the appellant to the deceased.

(b) Moreover though neither PW-20 in his examination-in-chief referred to Modi's Medical Jurisprudence, nor the learned trial Judge concerned, proceeded to seek elicitation from PW-20 qua whether in terms



of erudite (supra) work on medical jurisprudence, thus the said peelings' may become construable to arise from user of the blunt weapon on the relevant regions, and/or the said may become sequeled by a fall.

49. Be that as it may, even when the said endeavour remained unmade by both the supra, yet when Modis Medical text/work, on medical jurisprudence can yet at the appellate stage become judicially noticed by this Court, thus in terms of Section 56 of the Indian Evidence Act, provision whereof becomes extracted hereinafter.

“56. Facts judicially noticeable need not be proved.

No fact of which the Court will take judicial notice need be proved.”

50. Consequently therebys, the effect of neither PW-20 speaking about the manners of occurrence of peelings' of the skin of the deceased, nor the trial Judge concerned making elicitations from PW-20 about the cause of peelings, yet with Modi on Medical Jurisprudence, thus subscribing to the view that the said peelings may arise as a result of user on the relevant portion of the body rather of a blunt weapon or the same becoming sequeled by a fall. Therefore, the said peelings are to be concluded to be a sequel of either the accused pushing the deceased, so that she suffers a fall, and/or since no blunt weapon became recovered, his delivering a punch or a slap on the face of the deceased, wherebys some leeway became afforded to the appellant to administer poison to the deceased.

51. In the light of the above, the argument (supra) raised by the learned counsel for the appellant, that for the absence of any ante mortem external injuries on the neck and cheeks of the deceased, therebys the accused did not forcibly administer poison to the deceased, rather the



deceased voluntarily consumed the same, and, as such the appellant is not guilty for the offence of murder, rather it is a case of suicide, thus is an argument which does not warrant acceptance.

52. Moreover, when PW-15 Inspector Diwan Singh unrebuttedly deposed that in pursuance of the disclosure statement, made by accused-appellant Neelkanth, he led the police party to the place of occurrence, where he committed the murder of deceased Rani by administering poison to her, whereupon the crime site became demarcated vide memo Ex. P-1.

53. Therefore, the effect of the demarcation of the crime site being made at the instance of the accused-appellant, and, in respect whereof Ex. P-1 became drawn, is naturally that, Ex. P-1 is to be concluded to be a discovery of a fact, but pursuant to the making of an efficacious, and, proven disclosure statement by the accused. In sequel, the said also becomes a proven incriminatory link in the chain of incriminatory circumstances, as becomes erected by the prosecution.

Final order

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



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

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

November 5, 2024
Gurpreet

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