

In the High Court of Punjab and Haryana at Chandigarh

1. CRA-D-1106-2022
Reserved on: 25.10.2024
Date of Decision: 6.11.2024

Baljinder Kaur alias Preeti Appellant

Versus

State of Punjab Respondent

2. CRA-D-62-2023

Gurjant Singh alias Janta Appellant

Versus

State of Punjab Respondent

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

Present: Ms. Vibha Dhiman, Advocate
for the appellant (in CRA-D-1106-2022)

Mr. Saurav Bhatia, Advocate
for the appellant (in CRA-D-62-2023).

Mr. Darshan Singh Malwai, Addl. A.G., Punjab.

SURESHWAR THAKUR, J.

1. Since both the above appeals arise from a common verdict, made by the learned trial Judge concerned, hence both the appeals (supra) are amenable for a common verdict being made thereons.

2. Both the appeals (supra) are directed against the impugned verdict, as made on 20.09.2022, upon Sessions Case No.74 of 15.02.2018,

respect of charges drawn against the accused qua offences punishable under Sections 302/34 of the IPC, thus the learned trial Judge concerned, proceeded to record a finding of conviction against appellants-convicts. Moreover, through a separate sentencing order of even date, the learned trial Judge concerned, sentenced the appellants-convicts in the hereinafter extracted manner:

Convict Baljinder Kaur

<i>Under section</i>	<i>Sentence</i>
302/34 IPC	<i>To undergo rigorous imprisonment for life and to pay fine of Rs.50,000/- (Rupees fifty thousand) and in default of payment of fine, to undergo rigorous imprisonment for a period of six months.</i>

Convict Gurjant Singh

<i>Under section</i>	<i>Sentence</i>
302/34 IPC	<i>To undergo rigorous imprisonment for life and to pay fine of Rs.50,000/- (Rupees fifty thousand) and in default of payment of fine, to undergo rigorous imprisonment for a period of six months.</i>

3. The period spent in prison by the convicts, thus during the investigation or trial of the case, was, in terms of Section 428 of Cr.P.C., ordered to be set off from the above imposed substantive sentence(s) of imprisonment, upon the convicts.
4. The accused-convicts become aggrieved from the above drawn verdict of conviction, besides also, become aggrieved from the consequent thereto sentence(s) of imprisonment, and, of fine as became imposed, upon them, by the learned convicting Court concerned, and, hence have chosen to institute thereagainst their respective criminal appeals.

Factual Background and investigation

5. The genesis of the prosecution case becomes embodied in the appeal FIR, to which Ex.P7 is assigned. The narrations carried in Ex.P7 are,

that on 03.08.2017 Inspector Rajwant Singh along with police party was present at Delhi Railway Phatak Village Gobindgarh Ludhiana, on government vehicle, bearing registration No.PB-10FV-5966, in connection with patrolling and checking the suspected persons, where SI Dhanwant Singh, HC Balbir Singh, HC Rupinder Singh and PHG Tilak Raj, met Inspector Rajwant Singh, joined the police party and they held a naka and started checking the suspected persons.

6. During checking, complainant Gurpreet Singh came before Inspector Rajwant Singh and got his statement recorded to the effect that he is running a shop under the name and style of Golden Group Building Material at Dehlon Road Sahnewal, Ludhiana, and his uncle (taya) namely Hardev Singh is residing nearby his house and his daughter namely Kuldeep Kaur is married in village Ajnod about 25 years ago and after two years of her marriage, she died and no child was born out of her wedlock. Thereafter, his uncle (taya) Hardev Singh adopted a child but the said child was abnormal and handicapped and thereafter, his aunt (tayi) too died in the year 2012 but his uncle was residing with the said abnormal child and was engaged in the avocation of agriculture. On that day, at about 10.30 A.M he went to the house of his uncle and knocked the gate of the house but nobody opened the gate as the same was locked from inside and he went towards the back gate of the house and the same was open. When he entered the house then he saw that his uncle was lying on the floor and his both legs were cut and were tied with piece of cloth of yellow colour. One blood stained karat (iron strip) was lying in the room, one blood stained screw driver was also lying near the window of the room and marks of blows with karat (iron strip) and screw driver were on the neck of Hardev Singh and there were some

other marks of injuries on the body of Hardev Singh owing to which he has died, and thereby the murder of Hardev Singh was committed by some unknown person by entering into the room in the intervening night of 02/03-08-2017 and after committing the murder of Hardev Singh, they fled away from the spot. Thereafter, he disclosed to his relatives regarding the murder of his uncle Hardev Singh. Thereafter, Inspector Rajwant Singh sent ruqa to the concerned police through C-Pawandeep Singh for registration of FIR against unknown persons under Section 302 and 34 Indian Penal Code.

7. Subsequently, Inspector Rajwant Singh went to the spot and prepared rough site plan and on the spot team of Dog Scot and Finger Prints Expert's Team and Government Photographer were called who clicked the photographs of the dead body of Hardev Singh. Thereafter, Inspector Rajwant Singh took the blood stained earth with the piece of cloth and same was put into the plastic box and prepared parcel and sealed the same with his seal bearing impression RS and the same was taken into police possession and Inspector Rajwant Singh also took into police possession the piece of yellow colour cloth, turban and blood stained pillow and put the same in a bora and prepared the parcel and sealed the same with his seal bearing impression RS. Thereafter, IO also took into police possession Karat and screw driver and put the same in cloth and prepared the parcel and sealed the same with his seal bearing impression RS and seal after use handed over to SI Baldev Singh. Thereafter, dead body of Hardev Singh sent to Civil Hospital for postmortem. Thereafter, IO recorded the statement of witnesses present there and checked the CCTV cameras installed outside the shops near the house of deceased Hardev Singh and taken into police possession the photocopy of RC of Acura Honda bearing registration No. PB-10BZ-

3559 which was found lost from the house of Hardev Singh. After checking the CCTV Footage, it came to the knowledge of Inspector Rajwant Singh that one lady wearing black colour kurta and white colour pajami along with one boy wearing white coloured shirt and blue coloured jean were seen turning towards the house of Hardev Singh and directions were given to prepare the footage of recording. Thereafter, he along with other police police officials went to Civil Hospital and prepared form No.25.35(1) A and conducted the postmortem of Hardev Singh on 4.8.2017.

8. Thereafter, Inspector Rajwant Singh was transferred to police line, Ludhiana and further investigation of the present case was entrusted to Inspector Surinder Singh and during the investigation Inspector Surinder Singh recorded the supplementary statement of the complainant and in his statement, he recorded that the accused persons after committing the murder of Hardev Singh thus also committed the theft of cash, of Aactiva Scooter and of gold ornaments. Upon which, IO Inspector Surinder Singh added Section 460 IPC and deleted Sections 302 and 34 IPC. Thereafter, Pankaj Kumar owner of shop under the name and style of Shiva Enterprises Telecom and L/SI Harpreet Kaur produced the DVDs and CCTV Footage which were taken into police possession and also the statements of witnesses became recorded under Section 161 Cr.P.C. Thereafter, IO showed the footage of CCTV Cameras to neighbours of deceased Hardev Singh, but owing to muffled faces of the accused persons, their identification therein could not be made.

9. Thereafter on 23.8.2017 Kulwant Singh came before the IO and got his statement recorded to the effect that on 21.8.2017, he came to Court Complex Ludhiana with regard to his domestic work and on returning at

about 6.30 P.M., he went to Pandata Da Dhaba for having tea where one lady along with one boy was sitting on the corner and they were talking about committing the murder of an old person, on the intervening night of 02/03-08-2017 at village Gobindgarh and theirs also committing theft of cash, gold ornaments and of Aactiva Scooter, and that they parked the said activa scooter at Bus Stand Parking and that the same is lying parked there. They were also talking with each other that they took the said activa with them to their village. After hearing the conversation, he also saw that lady and subsequently found that the said lady is known to one Laly wife of Thakur Singh resident of village Gobindgarh, and the said lady is the sister of said Laly wife of Thakur Singh and her name is Baljinder Kaur and that the name of the boy is Gurjant Singh and besides they are residents of Village Rajasansi, District Amritsar. Thereafter, IO sent special report to higher officials and went to Bus Stand Ludhiana and checked the CCTV footage and he found that accused Baljinder Kaur and Gurjant Singh parked the Aactiva on 02.08.2017 at about 11.08 a.m in the parking of bus Stand and thereafter, IO gave direction to prepare the DVD of CCTV footage and also recorded the statements of witnesses.

10. On 24.08.2017, IO along with police party was present at Sahnewal, Ludhiana chowk where Sarup Singh @ Billa son of Ranjit Singh came before IO and produced the DVD of CCTV footage of bus stand parking. Thereafter, IO alongwith police party reached at village Rajasansi Distt. Amritsar, and inquired the whereabouts of the accused persons and then one boy and one lady were seen coming from the village of Rajasansi on Aactiva scooter and IO stopped them and on asking, they disclosed their names as Baljinder Kaur and Gurjant Singh and they were arrested by the IO

and activa scooter bearing registration No. PB-10BZ-3559 was also taken into police possession. IO prepared the rough site plan and on the spot, accused Gurjant Singh admitted that he along with Baljinder Kaur committed murder of Hardev Singh, on the intervening night of 02/03-08-2017 and also admitted that he had committed theft of cash, of gold ornaments and of Activa scooter of Hardev Singh, and that the said cash and golden ornaments have been hidden by them in Rajasansi and he can get the same recovered. On the demarcation of accused Gurjant Singh, thus the said cash, golden ornaments were recovered by the police party and were taken into police possession by the investigating officer concerned, who sealed the same with seal of IO 'SS'. After completion of investigation and other formalities, the *challan* under Section 460 of IPC was filed in Court. However, the charge was framed under Section 302 read with Section 34 of the IPC.

Committal Proceedings

11. Since the offences punishable under Section 302 of the IPC, were exclusively triable by the Court of Session, thus, the learned Committal Court concerned, through making a committal order, hence proceeded to commit the accused to face trial before the Court of Session.

Trial Proceedings

12. The learned trial Judge concerned, after receiving the case for trial, made an objective analysis of the incriminatory material, adduced before him. Resultantly, he proceeded to draw a charge against accused, for the commission of offences punishable under Sections 302, 34 of the IPC. The afore drawn charges were put to the accused, to which they pleaded not guilty, and, claimed trial.

13. In proof of its case, the prosecution examined 17 witnesses, and, thereafter the learned Public Prosecutor concerned, closed the prosecution evidence. After the closure of prosecution evidence, the learned trial Judge concerned, drew proceedings, under Section 313 of the Cr.P.C., but thereins, the accused pleaded innocence, and, claimed false implication. However, they did not lead any witness in their defence evidence.

Submissions of the learned counsel for the appellants-convicts

14. The learned counsels for the aggrieved convicts-appellants have argued before this Court, that the impugned verdict of conviction, and, consequent thereto order of sentence, thus require an interference. They support the above submission on the ground, that it is based on a gross misappreciation, and, non-appreciation of evidence germane to the charge.

15. To support the said submission, he argues that since in the FIR the names of the accused were not recorded, thereby the inculcation drawn against the accused is unmeritworthy, thus *inter alia* on the following grounds:

a) That since the faces of the accused in the CCTV footage were covered, thereby unless prior to the identification of the accused becoming made, in Court, thus a valid test identification parade became conducted, wherein, the accused became identified by the prosecution witnesses concerned, thereupon the identification made in Court of the accused rather is a frailty made identification, and, to which no credence can be assigned.

b) The extra judicial confession made to PW-16 (Kaushal Kumar) carries no evidentiary tenacity on the ground that it

purportedly inculpatates only Baljinder Kaur and it does not inculcate accused Gurjant Singh.

Submissions of the learned State counsel

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

For the reasons to be assigned hereinafter the above said submissions warrant rejection, and are rejected as such

17. Though in the FIR the names of the accused are not mentioned but the non-mentioning therein, thus the names of the accused rather is inconsequential, hence on the hereinafter grounds:

a) The best scientific evidence or electronic evidence becomes comprised in CCTV footage (Ex.PW7/A), whereons, becomes made the statutory certification as envisaged in Section 65-B of the Indian Evidence Act. Since therein the faces of the accused are clearly discernible and also become proved to be so discernible, thus by the prosecution witnesses concerned. Resultantly therefroms, the inference(s), is that, qua the exculpatory effect, if any, qua in one of the CCTV footage(s), rather the faces of the accused being muffled, wherebys arose a prior imperative necessity for a valid test identification parade becoming conducted by the investigating officer concerned, thus for assigning evidentiary vigor to the subsequently made identification, in Court, of the accused by the prosecution

witnesses concerned, but rather becoming completely underwhelmed. Moreover, contrarily the effect of the pivotal evidence (supra), especially when the same also becomes cogently proven, is that, thereby to the considered mind of this Court, thus the prosecution cogently establishing to the hilt the trite incriminatory factum that the crime site became visited by the accused, and by none other.

b) The purported exculpatory effect vis-a-vis co-accused Gurjant Singh, as arises, from his not making any extra judicial confession to PW-16, whereas, the said extra judicial confession becoming made only by accused Baljinder Kaur, but also thereby rather not marshalling any evidentiary tenacity. Contrarily, the said extra judicial confession, as made by accused Baljinder Kaur to PW-16, when is evidently made to her friend or confidante. Moreover, when PW-16 in his examination-in-chief, thus voices that it was infact made before him, thereupon when the said echoing made by PW-16 in his examination-in-chief rather remains unrebutted during the course of his facing a scathing cross-examination. Consequently, the said made extra judicial confession naturally gathers evidentiary efficacy vis-a-vis co-accused Baljinder Kaur, whereby it also lends corroboration to the CCTV footages, whereons, the statutory certification is made by the certificate providers, besides when unrebuttedly therein occur the faces of both the accused.

Signed disclosure statement of convict Gurjant Singh @ Janta

Ex. PW7/I

18. During the course of investigations, being made into the appeal FIR, convict-appellant Gurjant Singh, made a signed disclosure statement, to which Ex.PW7/I is assigned. The signed disclosure statement, as made by the accused is ad verbatim extracted hereinafter.

“x x x x x

Hence out of this money I had purchased material to construct my house with some money and remaining 20000/- rupees and a chain of gold are hidden inside our village Rajasansi District Amritsar by digging soil in a corner on the right side of the house after making a bundle of cloth and tying it in a plastic polythene and have kept it concealed. About which only I know which I can go with you and get it recovered on demarcation. Memo u/s 27 EV Act was written vide separate memo. Memo of disclosure statement has been signed by accused and witnesses.

x x x x x”

Disclosure statement of convict Baljinder Kaur @ Preeti
Ex. PW7/J

19. During the course of investigations, being made into the appeal FIR, convict-appellant Baljinder Kaur alias Preeti, she made a signed disclosure statement, to which Ex.PW7/J is assigned. The signed disclosure statement, as made by the accused is ad verbatim extracted hereinafter.

“x x x x x

I have kept concealed one Iron Rod in my residential room in the tore under the articles regarding which I have the exclusive knowledge. I can get the same recovered. Memo was prepared and witnesses put their signatures under the same.

x x x x x”

20. The disclosure statements (supra), carry thereons the signatures, of the convicts concerned. In their signed disclosure statements (supra), convicts, confessed their guilt in committing murder of Hardev Singh, besides was stealing cash amount and gold ornaments. The further speaking therein is qua their keeping, and, concealing the cash amount and gold

ornaments. Moreover, the said signed disclosure statements do also make speakings about theirs alone being aware about the location of theirs hiding and keeping the same, and, also revealed their willingness to cause the recovery of the incriminatory items, to the investigating officer concerned, from the respective places of theirs hiding, and, keeping the same.

21. Significantly, since the appellants have not been able to either ably deny their signatures as occur on Exs.PW7/I and PW7/J, nor when they have been able to prove the apposite denial. Moreover, since they have also not been able to bring forth tangible evidence but suggestive that the recoveries are either contrived or invented. Therefore, all the memos are concluded to be holding the utmost evidentiary tenacity.

22. Significantly also since post the making of the said signed disclosure statements, becoming made, thus by the convicts to the investigating officer concerned, both of them through recovery memos Exs.PW7/K and PW7/L, thus caused the recoveries of the cash amount and of the gold ornaments thus to the investigating officer concerned. Consequently, when the said made recoveries are also not suggested by any cogent evidence to be planted recoveries. Resultantly, the effect thereof, is that, their valid recoveries were made vis-a-vis the incriminatory items by the convicts, to the investigating officer concerned. In sequel, the makings of the valid signed disclosure statements, by the convicts besides the pursuant thereto effectuation(s) of valid recoveries hence of the cash amount and of the gold ornaments, thus by both the convicts, to the investigating officer concerned, but naturally corroborates and supports the (supra) incriminatory link in the chain of circumstances.

23. However, yet for assessing the vigor of the said made disclosure statements and consequent thereto made recoveries, it apt to refer to the principles governing the assigning of creditworthiness to the said made disclosure statements and to the consequent thereto made recoveries. The principles governing the facet (supra), become embodied in paragraphs Nos.23 to 27 of a judgment rendered by the Hon'ble Apex Court in **Criminal Appeal Nos.1030 of 2023, titled as "Manoj Kumar Soni V. State of Madhya Pradesh", decided on 11.08.2023**, relevant paragraphs whereof become extracted hereinafter.

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

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

*24. The law on the evidentiary value of disclosure statements of co-accused too is settled; the courts have hesitated to place reliance solely on disclosure statements of co-accused and used them merely to support the conviction or, as Sir Lawrence Jenkins observed in **Emperor vs. Lalit Mohan Chuckerburty**, to "lend assurance to other evidence against a co-accused". In **Haricharan Kurmi vs. State of Bihar**, this Court, speaking*

through the Constitution Bench, elaborated upon the approach to be adopted by courts when dealing with disclosure statements:

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

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

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

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

Section 27, Evidence Act upon the disclosure statements by Manoj, Kallu and the other co-accused could be held to have led to discovery of facts and may be admissible, the same cannot be held to be credible in view of the other evidence available on record.

27. While property seizure memos could have been a reliable piece of evidence in support of Manoj's conviction, what has transpired is that the seizure witnesses turned hostile right from the word 'go'. The common version of all the seizure witnesses, i.e., PWs 5, 6, 11 and 16, was that they were made to sign the seizure memos on the insistence of the 'daroga' and that too, two of them had signed at the police station. There is, thus, no scope to rely on a part of the depositions of the said PWs 5, 6, 11 and 16. Viewed thus, the seizure loses credibility.

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

16. We have implored ourselves with abounding pronouncements of this Court on this point. It may be true that at times the Court can convict an accused exclusively on the basis of his disclosure statement and the resultant recovery of inculpatory material. However, in order to sustain the guilt of such accused, the recovery should be unimpeachable and not be shrouded with elements of doubt. We may hasten to add that circumstances such as (i) the period of interval between the malfeasance and the disclosure; (ii) commonality of the recovered object and its availability in the market; (iii) nature of the object and its relevance to the crime; (iv) ease of transferability of the object; (v) the testimony and trustworthiness of the attesting witness before the Court and/or other like factors, are weighty consideraions that aid in gauging

*the intrinsic evidentiary value and credibility of the recovery. (See: **Tulsiram Kanu vs. The State; Pancho vs. State of Haryana; State of Rajasthan vs. Talevar & Anr and Bharama Parasram Kudhachkar vs. State of Karnataka**).*

25. Furthermore, in another judgment rendered by the Hon'ble Apex Court in **Special Leave Petition (Criminal) No.863 of 2019, titled as "Perumal Raja @ Perumal V. State, Rep. By Inspector of Police", decided on 03.01.2024**, the relevant principles governing the apposite 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.

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

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

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

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

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

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

Court become completely satisfied that the investigating officer concerned, did record, thus a fabricated apposite previously made statement in writing, thereby the Courts would be led to declare that the said made apposite resilings are well made resilings by the eye witness concerned, thus from his previously made statement in writing.

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

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

which alike, a frailty rendered eye witness account to the extent (supra), vis-a-vis the prosecution case based upon eye witness account rather unfolds qua the ante mortem injuries or other injuries as became entailed on the apposite regions of the body(ies) concerned, thus not being a sequel of users thereovers of the recovered weapon of offence, thereby 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, thereby the said signed disclosure statement and the consequent thereto recovery, thus may also lose their evidentiary vigor. Even the said rule has to be carefully applied depending upon the facts, circumstances, and, the adduced evidence in every case.

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

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

33. Consequently, since the statutory provisions enclosed in Section

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, therebys when there is a statutory recognition of admissibility to a confession, as, made by an accused before a police officer, but only when the confession, as made by the accused, before the police officer concerned, but becomes made during the term of his spending police custody, 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.

Xxx

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

34. Significantly, it would not be insagacious to straightaway oust the said made signed disclosure statement or the consequent thereto recovery, unless both fall foul of the above principles, besides unless the said principles become proven by the defence. Contrarily, in case the disclosure statement and the consequent thereto recovery thus enclosed in the respective memos, do not fall foul of the above principles rather when they become cogently established to link the accused with the relevant

charge. Resultantly, if the said comprises but a pivotal incriminatory link for proving the charge drawn against the accused, thereby the snatching of the above incriminatory link from the prosecution, through straightaway rejecting the same, but would result in perpetration of injustice to the victim or to the family members of the deceased, as the case may be.

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

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

37. Consequently, when thereby the above evidently proven incriminatory facts, rather do not fall foul of the above stated/underlined principles encapsulated in the verdicts (supra). Consequently, both the disclosure statements, and, the consequent thereto recoveries, when do become efficaciously proven, thereby theretos immense evidentiary tenacity is to be assigned. Moreover, when the memos (supra) lend corroboration also to the medical account, thereby through all the links (supra), the charge drawn against the accused becomes proven to the hilt.

EXTRA JUDICIAL CONFESSION MADE BY ACCUSED BEFORE PW-16

38. The makings of an extra judicial confession by the accused, before PW-16, is also a vital link in the chain of circumstantial evidence, as, becomes erected by the prosecution against the accused. The prosecution for proving, the makings of an extra judicial confession, by the accused before PW-16, wherebys she extra judicially confessed, thus before PW-16, rather her incriminatory participation, in the crime event, thus obviously led the PW (supra), to step into the witness box. In his deposition as comprised in his examinations-in-chief, he testified that on 20.08.2017, when both (supra), came his his house, thereupons accused Baljinder Kaur extra judicially confessed to him that she had committed a mistake by committing the murder of some person namely Hardev Singh. He further testifies that she further intimated him that since he is known to the police, thereupon he should take her to the police. He told her that she should come on the subsequent day, as he was busy on that day but thereafter she did not come to him.

39. Though, the said witnesss became subjected to the ordeal of an exacting cross-examination, but no elicitations were made from him by the learned defence counsel, wherefrom any inference may become mobilized, that he has either wilted under or succumbed, to the exacting cross-examination as became made upon him, nor when a closest reading of his cross-examination(s), thus discloses, that therein he denied all the above speakings, as became made by him, in his examination-in-chief. Resultantly, therebys he renders able proof qua the makings of an extra judicial confession before him, thus by the accused (supra). Therefore, the said incriminatory link in the chain of circumstance, did become invincingly

proven by the prosecution.

40. Now when at the time of the making of (supra), extra judicial confession by accused Baljinder Kaur before PW-16, the latter in his examination-in-chief, has testified that co-accused Gurjant Singh was also present, thereupon especially when the said fact remains unrebutted, thereby it is to be concluded that irrespective of only to accused Baljinder Kaur making an extra judicial confession, thus also then co-accused Gurjant Singh tacitly making along with accused Baljinder Kaur, rather an extra judicial confession before PW-16. Emphasizingly when this Court has for the reasons (supra) established that both valid disclosure statements, besides the valid recoveries as became effected at their respective instances to the investigating officer concerned, but convincingly proved the charges drawn against the accused.

MEDICAL EVIDENCE (POST MORTEM REPORT)

41. An autopsy upon the body of deceased Hardev Singh was conducted on 04.08.2017 by PW-5A, along with Dr. Savita besides with the other members of the board. PW-5A has proven *qua* hers, authoring Ex.PW5/A, as relates to the autopsy as made upon the body of the deceased.

42. This witness has also proven *qua* the cause of death of deceased, was owing to hemorrhage and shock as a result of injury to vital organs, that is vessels of neck and injuries described, which were sufficient to cause death in the ordinary course of nature. The injuries were declared to be ante mortem in nature. The relevant ante mortem injuries, as noticed by PW-5A, on the body of deceased are extracted hereinafter.

“1. About seven abrasion present on the right side of nose about 0.5 CM x 0.5 CM.

2. 5 CM x 0.5 CM abrasion on left side of neck below angle

of cheek with surrounding two 0.5 x 0.5 CM abrasion.

3. 0.5 CM x 0.5 CM red colored marks on the neck, 3 anteriorly at the level of thyroid cartilage, 3 in supraclavicular or supra sternal notch, one each on both sides deep and rest 2 muscle deep. Another red mark on right supraclavicular region muscle deep. Another red mark on right side of neck below mastoid which is deep. 4 abrasions on left side of neck which are deep. 4 abrasions on left side of neck which are superficial 0.5 C x 0.5 CM 2 red marks 0.5 CM x 0.5 CM below left mastoid one muscle deep and the other one deep. On exploration of injury on anterior side of thyroid cartilage underlying platysmal tissue full of clot with ruptured trachea and neck muscles. On exploration of injury on suprasternal notch underlying hematoma present with rupture of pleura medially on left side. On exploration of lateral neck injuries underlying muscles full of blood till deep tissue and neck vessels ruptured.

4. About 9 abrasion on left side of abdomen in sub costal line 0.5 CM x 0.5 CM red in color.

5. 1.5 CM X 1.5 CM abrasion on right side of elbow dorsally.

6. 1.5 CM C 1.5 CM abrasion on left shoulder dorsally.”

FSL REPORT

43. Ex.P3 (blood stained screw driver and knife) became sent to the FSL concerned, through HC Jagjiwan Singh. After examinations being made at the FSL concerned, *qua* the contents of the sealed parcels, thus the expert concerned, drew the hereinafter extracted results.

“Xxx

Articles received: Three sealed parcels which were marked A, B and C in the laboratory each sealed with one seal of ‘RS’. The seals were found intact and tallied with the specimen seal impressions.

Parcel ‘A’ contained: The following exhibits alleged to be stained with blood:-

1. *Parna marked as A-1 in the laboratory.*
2. *Turban marked as A-2 in the laboratory.*
3. *Pillow with cover marked as A-3 in the laboratory.*

Parcel 'B' contained: Bandage alleged to be stained with blood.

Parcel 'C' contained: The following exhibits alleged to be stained with blood:

1. *Screwdriver marked as C-1 in the laboratory.*
2. *Knife marked as C-2 in the laboratory.*

RESULT OF EXAMINATION

The exhibits contained in parcels A, B and C are stained with human blood."

44. An analyses of the above made conclusions, as became drawn by the experts concerned, working at the FSL concerned, and but after theirs examining the contents of the sealed cloth parcels, as became sent there, does but naturally bring forth an inference, that the prosecution has hence invincibly proven, that the blood on the *Screwdriver and knife* in fact was human blood. Therefore, irrespective of the fact that the prosecution has been unable to bring forth evidence, that the blood occurring on the *Screwdriver and knife* rather was not belonging to the blood group of the deceased, yet therebys the said stains of blood on the *Screwdriver and knife* as also on the clothes (supra) are to be concluded to be of the blood group of the deceased, especially when no evidence became adduced by the defence, suggestive that the blood stains as borne on *Screwdriver and knife*, rather not belonging to the blood of the deceased, thus through the defence adducing the FTA card either of the deceased or of his family members.

FINAL ORDER

45. In consequence, the impugned verdict of conviction, and, also the consequent therewith order of sentence, as becomes respectively recorded, and, imposed, upon the appellants-convicts by the learned trial

Judge concerned, does not suffer from any gross perversity, or absurdity of gross mis-appreciation, and, non-appreciation of the evidence on record. In consequence, there is no merit in the apposite appeals, and, the same are dismissed. If the appellants are on bail, thus they are ordered to be forthwith taken into custody through the learned trial Judge concerned, forthwith drawing committal warrants against the accused.

46. Records of the Court below, be sent down forthwith. Case property, if any, if not required, be dealt with, and, destroyed after the expiry of the period of limitation.

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

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

November 6, 2024
Ithlesh

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