

In the High Court of Punjab and Haryana at Chandigarh

CRA-D-1136-2022 (O&M)
Reserved on: 25.9.2024
Date of Decision: 01.10.2024

Suresh Appellant

Versus

State of Haryana Respondent

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

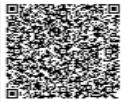
Present: Ms. Neha Jain, Advocate (Legal Aid Counsel)
for the appellant.

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

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the impugned verdict, as made on 31.10.2022, upon Sessions Case No. 03 of 2018, by the learned Sessions Judge, Sonipat, wherethrough in respect of charges drawn against the accused qua offence punishable under Sections 302 and 307 read with Section 34 IPC and under Sections 25 and 27 of the Arms Act, the learned trial Judge concerned, proceeded to record a finding of conviction against the accused-appellant Suresh. However, the co-accused namely, Mandeep and Parvesh were acquitted of the charges framed against them.
2. Moreover, through a separate sentencing order dated 4.11.2022, the learned trial Judge concerned, sentenced the convict in the hereafter extracted manner-

<i>Name of the accused</i>	<i>Offence under Section</i>	<i>Period of sentence (RI)</i>	<i>Fine imposed</i>	<i>Period of sentence in default of payment of fine</i>
Suresh	302 IPC	Life imprisonment	Rs. 25,000/-	Nine months (SI)
	25 Arms Act	Two years	Rs. 25,000/-	Four months (SI)



	27 Arms Act	Five years	Rs. 5,000/-	Six months (SI)
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3. All the above imposed sentences of imprisonment, 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.

Factual Background

4. The genesis of the prosecution case, becomes embodied in the appeal FIR, to which Ex PY is assigned. As per the prosecution case, on 2.9.2017, on receipt of an information from FIMS Hospital, Sonipat regarding arrival of dead body of Sunny son of Satpal in the hospital, ASI Ranbir along with HC Kuldeep, HC Veerpal and HC Chand reached the hospital concerned where complainant Room Ram met them, and got recorded his statement (Ex. PW-6/A), which becomes extracted hereinafter.

“That he is resident of village Busana. He along with his brother-in-law (sala) Sunny son of Satpal and Sunil son of Virender, residents of village Butana working for a contractor at Indira Gandhi Airport Cargo. On 02.09.2017, they were going for their duty in Sunny's car bearing registration No. DL-2FE-0058 make Santro of black colour, which was driven by Sunny and complainant and Sunil were sitting on the rear seat of the car. Complainant was sitting behind Sunny and Sunil was sitting behind conductor seat. At about 08.00 p.m. when they reached near Kali Mandir, Bahalgarh Road, in the meanwhile, a car bearing registration No. DL-2CV-9288 of red colour make Maruti 800 obstructed their way. Sunny stopped the car and three young boys alighted from the red car and came towards their car. Sunny told him that it was Suresh son of Ved Singh and his wife had died in an accident with his car. In the meantime, one of the boy smashed the wind screen of



their santro car with an iron rod. Suresh pointed a pistol on the right side temple of Sunny and fired three rounds. Sunny tried to stop him and in the process, fourth bullet hit him on the hand. The third boy fired at Sunny from the other side. Sunil got off the car and started running. One of the boys while firing followed him. Sunny died at the spot and he took him to FIMS Hospital where doctor declared him dead on arrival. He had concealed himself on the back seat to save himself from the gun shots. All the three boys along with their weapons and car fled towards village Rathdhana. He prayed that appropriate action be taken against the accused.”

On the basis of the said statement, the appeal FIR was registered.

Investigation proceedings

5. During the course of investigations, place of occurrence was inspected, site plan was prepared. The accused were arrested and their disclosure statements became recorded on the basis of which recoveries were made. After conclusion of investigations, the investigating officer concerned, proceeded to institute a report under Section 173 of the Cr.P.C., before the learned committal Court concerned.

Committal Proceedings

6. Since the offences under Sections 302 and 307 of the IPC were exclusively triable by the Court of Session, thus, the learned committal Court concerned, through a committal order made on 20.12.2017, hence proceeded to commit the accused to face trial before the Court of Session.

Trial Proceedings

7. The learned trial Judge concerned, after receiving the case for trial, after its becoming committed to him, made an objective analysis of the

incriminatory material, adduced before him. Resultantly, he proceeded to



draw charges against all the accused for the offences punishable under Section 302 read with Section 34 IPC and under Section 307 read with Section 34 IPC. Moreover, accused Parvesh @ Pasti and accused-appellant Suresh were also charged for the commission of offence punishable under Sections 25 and 27 of the Arms Act. The afore drawn charge was put to the accused, to which they pleaded not guilty, and, claimed trial.

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

9. After the closure of prosecution evidence, the learned trial Judge concerned, drew proceedings, under Section 313 of the Cr.P.C., but therein, the accused pleaded innocence, and, claimed false implication. The accused chose to adduce defence evidence, and led one witness into the witness box.

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

Submissions of the learned counsel for the appellant

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

Submissions of the learned State counsel

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.

Reasons for dismissing the instant appeal

13. For the reasons to be assigned hereinafter the contentions (supra), as become raised before this Court, by the learned counsel for the appellant rather are unworthy of acceptance, and, thereby they are rejected. Consequently, finding no merit in the instant appeal, the same is hereby dismissed, and, the verdict of conviction, and, consequent thereto sentence of imprisonment, and of fine, as imposed upon the convict-appellant are maintained, and, affirmed.

Analysis of the depositions of the eye witnesses to the occurrence, who respectively stepped into the witness box as PW-6 and PW-7

14. Complainant Roop Ram, who is the alleged eye witness to the occurrence, stepped into the witness box as PW-6, and, deposed that on 3.9.2017, he had received the information regarding the death of deceased Sunny in the hospital concerned. However, since he deposed that the accused present in the Court were not involved in the murder of deceased Sunny, and, that he had never given any complaint to the police. Therefore, the said witness was declared hostile.

15. After the said witness becoming declared hostile, he was subjected to cross-examination by the learned Public Prosecutor concerned. During the course of his being put to cross-examination by the learned Public Prosecutor concerned, though therein he stated that the complaint



signature over the complaint (supra), and, explained that his signatures were obtained by the police on blank papers with regard to inquest proceedings and for the post mortem examination formalities.

16. The inference to be drawn from the factum of the witness (supra) during the course of his cross-examination by the learned Public Prosecutor concerned, thus admitting qua Ex. PW6/A bearing his signatures, is that, the deposition made in his examination-in-chief whereby, he resiled from the earlier made statement to the police, rather is required to be declared as inadmissible. The reason for forming the above conclusion generates from the factum, that in terms of Sections 91 and 92 of the Indian Evidence Act, provisions whereof stand extracted hereinafter, thus upon a witness admitting the occurrence of his valid signatures on a scribed document, thereupon, the witness concerned becomes rather estopped from orally detracting from the contents of the document, whereons, he admits his signatures. Therefore, the existence of valid signatures over a scribed document but makes all the contents borne therein, to be readable or admissible in evidence, rather than any parole evidence contra thereto being declared to be admissible in evidence.

17. Though, the said witness after admitting the occurrence of his valid signatures over Ex. PW6/A testified, that the said signatures were obtained by the police on blank papers on the pretext that they were required for inquest proceedings, and, for completion of post-mortem examinations formalities. However, even the said explanation provided by the witness (supra) qua the existence of his valid signatures over Ex. PW6/A, is but pretextual. The reason for forming the said inference ensues from the factum, that since no complaint became made by the witness (supra) in



sequel of his making them on pretext (supra), thus on blank papers. Resultantly, the omission (supra) necessarily brings home a clear, and, candid inference, that the said explanation is a sheer invention, and, concoction on the part of PW-6, and no evidentiary sanctity is required to be assigned theretos.

91. Evidence of terms of contracts, grants and other dispositions of property reduced to form of document—When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

Exception 1.—When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.

Exception 2.— Wills may be proved by the probate.

92. Exclusion of evidence of oral agreement— When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:

Proviso(1)—Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, 1 [want or failure] of consideration, or mistake in fact or law.

Proviso(2)—The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.

Proviso(3)—The existence of any separate oral agreement,



constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved. Proviso(4)–The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

Proviso(5)–Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved: Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract.

Proviso(6)–Any fact may be proved which shows in what manner the language of a document is related to existing facts.”

17. In consequence, the attribution of incrimination in Ex. PW-6/A, which is admittedly the signed document of PW-6, thus holds immense evidentiary vigour, irrespective of the said witness during his examination-in-chief rather reneging from the contents thereof.

18. Furthermore, the consequent effect thereof, is that, the incrimination made therein against the accused does hold immense evidentiary solemnity, especially when the genesis of the prosecution case becomes founded upon scribed complaint Ex. PW-6/A, which resulted in the registration of the FIR, to which Ex. PY is assigned.

19. PW-7 Sunil Kumar, is the another eye witness to the occurrence, who has also not supported the prosecution case. He deposed that his statement never became recorded by the police, and, that he was not aware about the fact relating to the instant case. He also denied that the statement Ex. PW-7/A was made by him to the police, as such he was also declared hostile. After his becoming declared hostile, he was subjected to cross-examination by the learned Public Prosecutor concerned.



20. During the course of his cross-examination by the learned Public Prosecutor concerned, no elicitations became unearthed from the said witness, wherebys it could be firmly stated, that the resilings made by the witness (supra) were ill made resilings from his previously made statement Ex. PW-7/A.

21. Be that as it may, the prime reason for discounting the exculpatory deposition, as made by PW-7, is grounded in the factum, that though the other eye witness to the occurrence PW-6, and, who is also the complainant-informant, has resiled from his previously made statement in writing to the police. However, when for reasons (supra), this Court has declared the said resilings to be not worthy of acceptance. In consequence, since the previous signed statement made by PW-6, thus underwhelming the unsigned previous signed statement made by PW-7. Resultantly, the resilings, as made by PW-7 from his previously made statement to the police officer concerned, thus become inconsequential, and/or therebys has no exculpatory effect.

Signed disclosure statement of convict-appellant
Suresh Ex. PW-9/E

22. During the course of investigations, being made into the appeal FIR, convict-appellant Suresh, thus made his signed disclosure statement, to which Ex. PW-9/E becomes assigned. The signed disclosure statement, as made by the accused is *ad verbatim* extracted hereinafter.

“x x x x

On 23 July 2017 my wife Kamlesh was coming from Gohana Side on her Scooty meanwhile a black coloured Santro Car bearing No. DL-2FE-0058 which was driven by Sunny S/o Kripal Singh R/o Butana had caused an accident by hitting. In this accident my



wife had died. I felt great sorrow of this. To avenge the death of my wife I met with my friend Parvesh @ Pesty S/o Dharampal, caste jat, R/o Rathdhana, District Sonapat and Mandeep S/o Balwan Singh, caste Brahmin, R/o Badoli, Distt. Sonapat and made a plan to eliminate Sunny. Sunny used to go to Delhi on his duty in his Santro car bearing No. DL-2FE-0058 in the evening, everyday. In accordance to their plan on 02.09.2017 at about 7.30 PM I, Parvesh @ Pesty S/o Dharampal, caste jat, R/o Rathdhana, District Sonapat and Mandeep S/o Balwan Singh, caste Brahmin, R/o Badoli, Distt. Sonapat riding in my car bearing No. DL- 2CV-9288 Maruti-800 coloured red reached at Turn of Sector-3 Sonapat and started waiting for Sunny there. I had loaded my licenced pistol, I had given my 315 bore loaded pistol to Parvesh @ Pesty and Mandeep had shiny iron rod. As usual Sunny came from there in his Santro car bearing No. DL-2FE-0058 at about 7.45 PM. Two more boys also along with him. We started chasing him, when he reached Bahalgarh road near Kali Ka Mandir at about 8.00 P.M. I overtook and stopped my red coloured Maruti 800 car bearing No. DL-2CV-9288 his car, Sunny stopped his car, we immediately got down from our car and went towards their car. In accordance to our plan Mandeep hit the front windshield of Sunny's car with his shiny iron rod due to which front windshield of the car was broken, I reached towards Sunny and fired three gun-shots on him. Sunny tried to stop with his right hand then I fired fourth gun-shot on his hand, Parvesh ran after the boy by firing towards him who escaped from the conductor side. He narrowly escaped due to light darkness. Then all three of us fled away with our respective weapons by sitting in our car towards Rathdhana. Due to fear of being caught, I had left my Maruti- 800 car bearing No. DL-2CV-9288 unclaimed near the dirty drain near our village and fled away from there. I can demarcate that place where the car was left and where gun shots were fired. I have concealed the licenced pistol by which I fired gun shots on Sunny in my residential house in village Rathdhana, nobody knows about it except me. I can get it recovered by demarcation. The gun which I had given to Parvesh @ Pesty S/o Dharampal, caste jat, R/o Rathdhana,



District Sonapat, remains with him. Only he can tell you about it and only Mandeep S/o Balwan Singh caste Brahmin, R/o Vill. Badoli, District Sonapat can tell you about the iron rode by which he had broken the wind shield of the car.”

23. Pursuant to the above made signed disclosure statement, the convict-appellant Suresh ensured the recovery(ies) of one RC of the car bearing No. DL-2CV-9288, one pistol 32 bore, and, arms licence, which were taken into police possession, through recovery memo, to which Ex. PW-9/O becomes assigned.

24. The disclosure statement (supra), carries thereons the signature, of the convict-appellant. In his signed disclosure statement (supra), the convict, confessed his guilt in inflicting injuries on the person of the deceased, hence with the recovered weapon. The further speaking therein is qua his keeping, and, concealing the incriminatory weapons of offence. Moreover, the said signed disclosure statement does also make speakings about his alone being aware about the location of his hiding and keeping the same, and, also revealed his willingness to cause the recovery of the incriminatory weapon, to the investigating officer concerned, from the place of his hiding, and, keeping the same.

25. 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.

26. Significantly also, since post the making of the said signed disclosure statement, becoming made, thus by the convict to the



investigating officer concerned, his through the recovery memo (Ex. PW-9/O), thus caused the recovery of the weapon of offence to the investigating officer concerned. Consequently, when the said made recovery is also not suggested by any cogent evidence to be a planted recovery. Resultantly, the effect thereof, is that the valid recovery was made vis-a-vis the incriminatory weapon of offence 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 of the incriminatory weapon of offence, thus by the convict to the investigating officer concerned, but naturally *prima facie* corroborates and supports the case of the prosecution.

27. 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.

28. 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



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**).*

29. Furthermore, in another judgment rendered by the Hon'ble Apex Court in **Special Leave Petition (Criminal) No.863 of 2019, titled as "Perumal Raja @ Perumal V. State, Rep. By Inspector of Police", decided on 03.01.2024**, the relevant principles governing the assigning of creditworthiness become set forth in paragraphs 22 to 25 thereof, paragraphs whereof become extracted hereinafter.

22. However, we must clarify that Section 27 of the Evidence Act, as held in these judgments, does not lay down the principle that discovery of a fact is to be equated to the object produced or found. The discovery of the fact resulting in recovery of a physical object exhibits knowledge or mental awareness of the person accused of the offence as to the existence of the physical object at the particular place. Accordingly, discovery of a fact



*includes the object found, the place from which it was produced and the knowledge of the accused as to its existence. To this extent, therefore, factum of discovery combines both the physical object as well as the mental consciousness of the informant accused in relation thereto. In **Mohmed Inayatullah v. State of Maharashtra**¹², elucidating on Section 27 of the Evidence Act, it has been held that the first condition imposed and necessary for bringing the section into operation is the discovery of a fact which should be a relevant fact in consequence of information received from a person accused of an offence. The second is that the discovery of such a fact must be deposed to. A fact already known to the police will fall foul and not meet this condition. The third is that at the time of receipt of the information, the accused must be in police custody. Lastly, it is only so much of information which relates distinctly to the fact thereby discovered resulting in recovery of a physical object which is admissible. Rest of the information is to be excluded. The word 'distinctly' is used to limit and define the scope of the information and means 'directly', 'indubitably', 'strictly' or 'unmistakably'. Only that part of the information which is clear, immediate and a proximate cause of discovery is admissible.*

23. The facts proved by the prosecution, particularly the admissible portion of the statement of the accused, would give rise to two alternative hypotheses, namely, (i) that the accused had himself deposited the physical items which were recovered; or (ii) only the accused knew that the physical items were lying at that place. The second hypothesis is wholly compatible with the innocence of the accused, whereas the first would be a factor to show involvement of the accused in the offence. The court has to analyse which of the hypotheses should be accepted in a particular case.

24. Section 27 of the Evidence Act is frequently used by the police, and the courts must be vigilant about its application to ensure credibility of evidence, as the provision is vulnerable to



abuse. However, this does not mean that in every case invocation of Section 27 of the Evidence Act must be seen with suspicion and is to be discarded as perfunctory and unworthy of credence.

25. The pre-requisite of police custody, within the meaning of Section 27 of the Evidence Act, ought to be read pragmatically and not formalistically or euphemistically. In the present case, the disclosure statement (Exhibit P-37) was made by the appellant – Perumal Raja @ Perumal on 25.04.2008, when he was detained in another case, namely, FIR No. 204/2008, registered at PS Grand Bazar, Puducherry, relating to the murder of Rajaram. He was subsequently arrested in this case, that is FIR. No.80/2008, which was registered at PS Odiansalai, Puducherry. The expression “custody” under Section 27 of the Evidence Act does not mean formal custody. It includes any kind of restriction, restraint or even surveillance by the police. Even if the accused was not formally arrested at the time of giving information, the accused ought to be deemed, for all practical purposes, in the custody of the police.

30. 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.

31. 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.

32. 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.

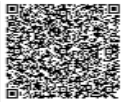
33. Moreover, in case the Court, in the above manner, becomes satisfied about the well made resilings by the eye witness concerned, to the crime event, thereupon the Court may consequently draw a conclusion, that the recoveries made in pursuance to the disclosure statement made by the accused, even if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

34. To a limited extent also if there is clear cogent medical account, which alike, a frailty rendered eye witness account to the extent (supra), vis-a-vis the prosecution case based upon eye witness account rather unfolds qua the ante mortem injuries or other injuries as became entailed on the apposite regions of the body(ies) concerned, thus not being a sequel of users thereovers of the recovered weapon of offence. Resultantly therebys too, the apposite signed disclosure statement and the consequent thereto recovery, when may be is of corroborative evidentiary vigor, but when other adduced prosecution evidence, but also likewise fails to connect the recoveries with the medical account. In sequel, thus therebys the said signed disclosure statement and the consequent thereto recovery, thus may also loose their evidentiary vigor. Even the said rule has to be carefully applied depending upon the facts, circumstances, and, the adduced evidence in every case.

35. 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



when in pursuance thereto able recoveries are made.

36. 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.

37. 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.

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.”

38. 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.

39. Now coming the facts at hands, 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.

40. 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.

41. Consequently, when therebys the above evident facts rather do not fall foul of the above stated/underlined principles in the verdicts (supra). Consequently, both the disclosure statement, and, the consequent thereto recoveries, when do become efficaciously proven, therebys theretos immense evidentiary tenacity is to be assigned. Preeminently also when thus they do corroborate the rendition of credible eye witness account vis-a-vis the crime event. Moreover, when the memos (supra) also lend corroboration also to the medical account, therebys through all the links (supra), the charge drawn against the accused becomes proven to the hilt.

Post-mortem report

42. The post-mortem report, to which Ex. PW-1/B is assigned, became proven by PW-1. PW-1 in his examination-in-chief, has deposed that on his making an autopsy on the body of deceased Sunny, thus his noticing thereons the hereinafter ante mortem injuries-

“1. Punctured lacerated wound of size 0.7x0.7 cm present on right temporal region 10 cm superior to tragus of right ear, with blackened inverted margins (entry wound). On exploration the track of wound goes posteriorly and downwards, causing fracture of right temporal bone, puncturing brain matter fracturing mid cranium going up to joint of occipital bone and vertebral bone, where a metallic bullet was found. Bullet was recovered and handed over to police in sealed vial enclosed in sealed pullinda. Blood and blood clots present in creanial cavity.

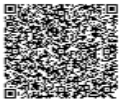
2. A punctured lacerated wound of size 0.6x0.6 cm with inverted and blackened margin present on anterior aspect helix of right ear pinna (entry wound).



3. *A lacerated wound 1x1 cm present on posterior aspect of helix right ear pinna (exit wound).*
4. *A punctured lacerated wound 0.6x0.6 cm with blackened inverted margins present on anterior aspect of conch of right ear (entry wound).*
5. *A lacerated wound of size 1x1 cm with everted present on posterior aspect of conch of right ear (exit wound).*
6. *A punctured lacerated wound with inverted blackened margins of size 0.6x0.6 cm present on dorsal aspect of right hand at root of right index finger (Entry wound). The track of wound goes medially downwards causing fracture of underlying bones.*
7. *A lacerated wound 1x1 cm present on palmar aspect of right hand 1 cm below the root of right middle finger with everted margins (exit wound)."*

43. Furthermore, PW-1 also made a speaking in his examination-in-chief, that the cause of demise of the deceased was owing shock and haemorrhage as a result of injuries caused to vital organ i.e. brain, which were stated to be ante mortem in nature, and, also sufficient to cause death in the ordinary course of nature. He further deposed that after conducting post-mortem on the dead body of the deceased, he had handed over the bullet (Ex.P-1) taken out from the body of the deceased. When the said witness was shown the bullet (Ex. P-1), after opening the parcel in the Court, he deposed that it was the same bullet which he had handed over to the police after taking it out from the dead body of the deceased. He further deposed that the cause of death was owing to fire arm injury.

44. The above made echoings by PW-1, in his examination-in-chief, became never challenged through any efficacious cross-examination, being made upon him, by the learned defence counsel. Therefore, the



opinion, as made by PW-1 qua the demise of the deceased thus acquires formidable force. Consequently, the above echoings, as made by PW-1, in his examination-in-chief, do relate, the fatal ante-mortem injuries to the time of the crime event hence taking place at the crime site.

Report of the ballistic expert Ex. PX.

45. The apposite recoveries, as became made through recovery memos, were sent in eight sealed cloth parcels to the ballistic expert concerned. After the ballistic expert making an examination of the items, as became sent to him in the sealed cloth parcels, he made the hereinafter extracted opinion, to which Ex. PB, is assigned.

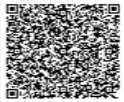
“X X X X

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

The seals on the parcels were found intact and tallied with the specimen seals as per forwarding authority.

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

Parcel No.	No. and seal impression	Description of parcel(s)
I.	5 of Doctor	Stated to contain clothes of deceased Sunny. (Sent to Serology Division)
II.	6 of R.S.	Containing four 7.65 mm fired cartridge cases and two 7.65 mm fired bullets stated to have been recovered from the place of occurrence. (Cartridge cases marked as C/1 to C/4 and bullets marked as BC/1 and BC/2 by me)
III.	6 of R.S.	Stated to contain blood lifted from place of occurrence. (Sent to Serology Division in original packing).
IV.	5 of R.S.	Stated to contain blood stained piece of seat lifted from place of occurrence. (Sent to Serology Division in original packing)
V.	6 of Doctor	Contained one 7.65 mm fired bullet, stated to have been taken out from the body of deceased Sunny. (Bullet marked as BC/3 by me).
VI.	6 of R.S.	Stated to contain blood stained piece of window of car lifted from place of occurrence. (Sent to Serology Division in original packing).
VII.	6 of R.S.	Contained one 7.65 mm pistol bearing No.



		RP-101625 2000 of Indian Ordinance Factories along with one 7.65 mm live cartridge stated to have been recovered from accused Suresh. (Pistol marked as W/1 by me)
VIII.	6 of R.S.	Contained one .30-06” Sporting Rifle No. 076102964 of RFI-IN-2011 along with magazine, one .30-06” fired cartridge case and one .30-06” live cartridge, stated to have been recovered from accused Parvesh. (Rifle marked as W/2 and cartridge case marked as C/5 by me)

Laboratory Examination

Products of combustion of smokeless powder were detected from the barrel of 7.65 mm pistol marked as W/1 and .30-06” rifle marked as W/2. Test firings were done in the laboratory from 7.65 mm pistol marked as W/1 and .30-06” rifle marked as W/2. Their firing mechanisms were found in working order.

The class as well as individual characteristic marks present on 7.65 mm fired cartridge cases marked as C/1 to C/4, 7.65 mm fired bullets marked as BC/1 to BC/3, .30-06” fired cartridge case marked as C/5 and those on test fired cartridge cases & test fired bullets fired from 7.65 mm pistol marked as W/1 and .30-06” rifle marked as W/2 were examined, compared and inter-compared under stereo and comparison microscope with their respective bore/calibre.

Based on the examinations carried out in the laboratory, the result of analysis is as under-

Result

1. The firing mechanism of .7.65 mm pistol marked as W/I and 30-06” rifle marked as W/2 were found in working order.
2. The 7.65 mm fired cartridge cases marked as C/1 to C/4 and 7.65 fired bullets marked as BC/1 to BC/3 have been fired from the 7.65 mm pistol marked as W/1 (recovered from accused Suresh) and not from any other firearm even of the same make and bore/calibre because every firearm has got its own individual characteristic marks.
3. The .30-06” fired cartridge case marked as C/5 has been fired from the .30-06” rifle marked as W/2 (recovered from accused Parvesh) and not from any other firearm even of the



same make and bore/calibre because every firearm has got its own individual characteristic marks

4. *The report in original from Serology Division is enclosed herewith.*

Note:- (i) *Exhibits examined in the Ballistic Division were resealed along with their original with the seal of AD BALL FSL.*

(ii) *One 7.65 live cartridge contained in parcel No. VII and one .30-06" live cartridge contained in parcel No. VIII have been used in test firing in laboratory"*

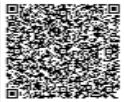
46. A reading of the hereinabove extracted opinion, thus vividly unveils, that the firing mechanism of 7.65 mm pistol marked as W/1 was found in working order. Furthermore, it also makes candid underlinings, that the fired cartridge cases marked as C/1 to C/4 and 7.65 fired bullets marked as BC/1 to BC/3, thus becoming fired from 7.65 mm pistol marked as W/1, and, that the firing of the said cartridge, thus not occurring from any other fire-arm. Consequently, thereby a firm opinion is made vis-a-vis the user of the recovered fire-arm by the accused. Thus, thereby the prosecution has proven, that the accused had, through firing the apposite bullets from 7.65 mm pistol, thus committed the murder of the deceased. Though, the accused-appellant in his defence examined the author of the FSL report (supra) as DW-1. However, in his cross-examination, the said witness admitted that the cartridges and fired bullets, as, recovered from the place of occurrence and the bullet recovered from the body of the deceased, have been fired from pistol marked as W/1, pistol whereof became recovered, thus at the instance of appellant Suresh. Since he has further stated that the said bullet did not become fired from any other firearm, as each firearm has got its individual characteristic marks. Consequently, the said speakings



47. Importantly also since the relevant cloth parcels also travelled in an untampered, and, unspoiled condition to the FSL concerned. Moreover, when for the reasons (supra), this Court has assigned probative sanctity to the signed disclosure statement, and, to the consequent thereto prepared recovery memo. Resultantly, the results of the examination(s) (supra), as made on the items enclosed in an untampered, and, unspoiled cloth parcels, when do clearly indicate the inculpatory role of the convict-appellant. Therefore, as but a natural corollary thereof, this Court is of the firm view, that the prosecution has been able to cogently establish the guilt of the accused-appellant in the relevant crime event.

48. Moreover also, the prosecution has been able to prove that the pistol recovered from appellant Suresh, was a licenced pistol, issued vide licence Ex PW-9/Q. A perusal of Ex. PW-9/N, the rough sketch prepared at the time of recovery of pistol, shows that Licence No. RP-101625 became mentioned on the said pistol. Furthermore, a perusal of the testimony of PW-12 who had brought the summoned record of arm licence No. 5437/DM/SNP of 2011, reveals that the said arm licence became issued in the name of the accused-appellant Suresh, besides discloses qua it relating to .32 bore pistol No. RP-101625. Therefore therebys, not only the possession of the said pistol by the accused-appellant but also its user by the accused-appellant, thus becomes cogently established.

49. Thus, conjoint readings of the report of the doctor concerned, who proved the apposite post-mortem report of the deceased concerned, with the efficaciously proven signed disclosure statement (Ex. PW-9/E) as made by the convict-appellant, and, also with the consequent thereto made valid recovery, through recovery memo (Ex.PW-9/O), does therebys foster



an inference, that therebys there is *inter se* corroboration *inter se* the medical account and the report of the ballistic expert, besides with the memos supra. In summa, this Court finds no gross perversity or absurdity in the appreciation of the adduced relevant evidence, as became made by the learned trial Judge concerned.

Final order

50. 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.

51. Records be sent down forthwith.

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

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

October 1st, 2024
Gurpreet

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