

A.F.R.

Neutral Citation No. - 2025:AHC:117537-DB

Court No. - 44**Case :-** CRIMINAL APPEAL No. - 2233 of 2015**Appellant :-** Manjeet Kumar**Respondent :-** State of U.P.**Counsel for Appellant :-** Awadh Pratap Singh, Sukhvir Singh**Counsel for Respondent :-** Sunil Vashisth, Sushil Shukla

With

Case :- CRIMINAL APPEAL No. - 2073 of 2015**Appellant :-** Gaurav Singh**Respondent :-** State of U.P.**Counsel for Appellant :-** Neeraj Kumar Sharma, Rajiv Lochan Shukla**Counsel for Respondent :-** A.C. Srivastava, Sunil Vashisth**Hon'ble Saumitra Dayal Singh, J.****Hon'ble Madan Pal Singh, J.**

1. Heard Sri Sukhvir Singh, learned counsel for the appellant-Manjeet Kumar and Sri Rajiv Lochan Shukla alongwith Sri Shashank Pandey, learned counsel for the appellant-Gaurav Singh, Ms. Archana Singh, learned AGA-I for the State and Sri Sunil Vashisth alongwith Sri Sushil Shukla learned counsel for the informant.

2. Both appeals arise from the judgment and order dated 12.05.2015 passed by Fast Track Court No. 2/Additional Sessions Judge, Ghaziabad in Sessions Trial No. 1227 of 2013 (State Vs. Manjeet Kumar and Gaurav Singh). Thereby, both appellants have been convicted for the offence under Section 302 IPC. They have been sentenced for life and fined Rs. 25,000/- each with default sentence of

one year. Also, both appellants have been convicted for the offence under Section 201 IPC. They have been sentenced for seven years each and fined Rs. 10,000/- each with default sentence of six months. The appellant Manjeet Kumar has also been convicted for the offence under Section 376 IPC and has been awarded life sentence with fine Rs. 20,000/- together with default sentence of one year. All the sentences are directed to run concurrently.

3. The appellant Gaurav Singh was granted bail on 30.08.2017, at the same time, bail was denied to the appellant-Manjeet Kumar by the order of a coordinate bench. On his second bail application being allowed vide order dated 27.07.2022 passed by a coordinate bench of this Court, the informant side approached the Supreme Court. On 28.04.2023, the Supreme Court expedited the hearing of the appeal. Today, the case is listed under the category of cases in which hearing has been expedited by the Supreme Court. Accordingly, the appeals have been heard.

4. The prosecution story emerged thus. First, on 09.04.2013 one Sachin Chaudhary (stranger to this case) made a Written Report at Police Station Kavinagar, Ghaziabad reporting that a dead body of an unknown 22 year old girl was lying behind Tanushree farm house. The said application is Ex.Ka-17 at the trial. On that application, Inquest was conducted at 11.00 a.m. without reference to any police case registered (upto that time), on 09.04.2013. The Inquest Report is Ex.Ka7 at the trial. It was prepared by S.I. Vijay Kumar Sharma (P.W.-8 at the trial). Thereafter, autopsy examination was conducted on the unidentified dead body by Dr. S.S Chaudhary (P.W.-7 at the trial), on 09.04.2013 at 15:20 hours. Therein the doctor observed that death may have occurred about a day earlier. Rigor mortis had passed. Frothy blood had oozed from the mouth and nose of the deceased. Death had been caused by asphyxia as a result of ante mortem strangulation. He reported the following ante mortem injuries:

“Brownish black abrasion 17 x 9 cm in front of neck 7 cm from left ear and 5 cm from right ear.

Hyoid bone present”

The Autopsy Report is Ex.Ka-6 at the trial.

5. Thereafter, Sandeep Tomar (P.W.-2 at the trial) made a Written Report to the Police Station Kavinagar, Ghaziabad at around 8.00 p.m. on 09.04.2013. It is Ex. Ka-2 at the trial. On that Written Report, First Information Report was registered at the Police Station Kavinagar, Ghaziabad at about 20:15 hours, on 09.04.2013. The First Information Report is Ex. Ka-1 at the trial. According to that, the deceased Renu aged about 24 years, was the sister of the first informant Sandeep Tomar (P.W.-2). Prior to the occurrence she lived in a tenanted accommodation of Hansraj Taneja (not examined at the trial) described as 6/22 Sector-A, Chiranjeev Vihar, Ghaziabad. The previous night at about 8.00 p.m. the deceased went with the accused Manjeet Kumar in his Scorpio car. Her dead body was discovered lying behind Tanushree farm house in the morning on 09.04.2013. It was recovered as an unidentified dead body. On the face of it, the deceased had been strangled. The first informant also assigned motive to the accused Manjeet Kumar - for reason of pressure applied by the latter on the deceased, to marry her. That marriage was not possible as both parties were residents of the same village. After making the prayer to register a case, the first informant further narrated that the deceased was not agreeable to the marriage.

6. Both the appellants were arrested on 15.04.2013 by S.I. R.P. Singh (P.W.-12 at the trial) from a house at Gangapuram, Ghaziabad. Upon their arrest the accused led to recoveries from a house belonging to Gaurav Singh namely Apartment D109, Govind Vihar, Ghaziabad of an Alto car, (Material Exhibit No. 23) described to have been used by the appellants to dispose of the dead body of the deceased after wrapping it in a quilt. According to the prosecution story, that car had blood stains. That

Recovery Memo is Ex. Ka-13 at the trial. Also, three other recoveries were made one of blood stained and plain earth (Ex. Ka-14 at the trial), of blood stained rexine used on a sofa (Ex. ka-15 at the trial) and third of blood stained slipper described to be belonging to the deceased (Ex.Ka-16 at the trial).

7. Though dead spermatozoa were discovered in the vaginal slide drawn from the deceased, no DNA report was obtained thereon. Also, no serological or other scientific report exists to establish either physical presence of the deceased inside the house from where recovery of blood stained earth, blood stained rexine and blood stained slipper were recovered (Ex. Ka-14, 15 and 16) or from the Alto car described to have been used to transport the dead body of the deceased, from the place of occurrence to the place where that dead body was discovered. Also, the Scorpio car wherein the deceased was last seen with the accused Manjeet Kumar was not recovered nor any recovery of quilt was made (in which the dead-body is described to have been wrapped and disposed of).

8. In such facts, upon completion of investigation, the police submitted chargesheet (Ex. Ka-20 at the trial), against both appellants. Upon the case being committed for trial, the learned Sessions Judge framed the following charges against the accused persons:

Against appellant-Manjeet Kumar:

“1. यह कि दिनांक 08.04.2013 को समय करीब 20.00 बजे स्थान मकान नं० डी 109 गोविन्द विहार डी पी एस स्कूल के बराबर में जिला गाजियाबाद की हद में आपने अपने जीजा गौरव के साथ एक राय होकर वादी की बहन कु० रेनु तौमर को उसके किराये वाले मकान से स्कार्पियो गाड़ी से ले जाकर पैर से गला दबाकर उसकी हत्या कारित कर दी। इस प्रकार आपने भा०दं०सं० की धारा 302 के अन्तर्गत दण्डनीय अपराध कारित किया जो कि न्यायालय के प्रसंज्ञान में है।

2. यह कि उपरोक्त दिनांक समय पर आपने वादी की बहन कु० रेनू तौमर की हत्या कर के उसके शव को सनील की रजाई में बांधकर अपराध के साक्ष्य का विलोपन करने के आशय से तनुश्री फार्म हाउस के पीछे फेंक दिया। इस प्रकार आपने भा०दं०सं की धारा 201 के अन्तर्गत दण्डनीय अपराध कारित किया जो कि न्यायालय के प्रसंज्ञान में है।

3. यह कि आपके ने शादी शुदा होते हुए वादी की बहन कु० रेनू तौमर को अपने साथ शादी करने का झासा देकर उसके साथ शारीरिक सम्बन्ध स्थापित कर उसके साथ उसकी हत्या से पूर्व तक बलात्संग किया। इस प्रकार आपने भा०दं०सं० की धारा 376 के अन्तर्गत दण्डनीय अपराध कारित किया जो कि न्यायालय के प्रसंज्ञान में है।”

Against appellant-Gaurav Singh

“1. यह कि दिनांक 08.04.2013 को समय करीब 20.00 बजे स्थान मकान नं० डी 109 गोविन्द विहार डी पी एस स्कूल के बराबर में जिला गाजियाबाद की हद में आपने अपने साले मंजीत कुमार के साथ एक राय होकर वादी की बहन कु० रेनू तौमर को उसके किराये वाले मकान से स्कार्पियों गाड़ी से ले जाकर गला दबाकर उसकी हत्या कारित कर दी। इस प्रकार आपने भा०दं०सं० की धारा 302 के अन्तर्गत दण्डनीय अपराध कारित किया जो कि न्यायालय के प्रसंज्ञान में है।

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9. At the trial, besides the above documentary evidence, the prosecution relied on oral evidence of twelve witnesses. First, Constable Mohanvir Singh was examined as P.W.-1. He proved the registration of the First Information Report and the corresponding G.D. entry.

10. Next, Sandeep brother of the deceased Renu was examined as P.W.-2. He proved that the deceased was his elder sister aged about 24 years. She was preparing for Civil Services Examination. At that time she was residing at the tenanted accommodation described as 6/22 Sector-A, Chiranjeev Vihar, Ghaziabad. In the morning of 09.04.2013 he tried to contact the deceased on her mobile number but could not contact her. He went to her house in the evening but she was not present. He then contacted the landlord of the premises namely, Hansraj Taneja, his wife Vimla Taneja and servant Ajay. They told him that the deceased had gone out with the accused Manjeet Kumar in his Scorpio car alongwith an unknown person, the previous night between 7.30-8.00 p.m. He disclosed the vehicle number UP14-PB-3784. On gaining that information, he reached Kavinagar Police Station and described his missing sister. The police told him about the dead body of an unidentified women, discovered that morning. On gaining that information, he reached the Hindon Mortuary and identified the dead body that of his sister Renu. He identified both the appellants Manjeet Kumar and Gaurav Singh in the dock. Then, he proved the motive for the occurrence namely physical relationship established by the accused Majeet Kumar with the deceased Renu on a false promise of marriage. He admitted to intimate relationship formed between the appellant Manjeet Kumar and the deceased Renu. Next, he proved that the appellants had destroyed the dead body of the deceased by throwing it behind Tanushree farm house. He also proved the submission of his Written Report on which the FIR was registered. Further, he proved phone number of the deceased as also his own number. Last, he proved that he later came to know that the other person who accompanied Manjeet Kumar - when the deceased was last seen with him was Gaurav Singh.

11. It is noteworthy that the said witness made no attempt to prove that the occurrence of rape and/or murder of the deceased Renu was caused at

Apartment No. D-109, Govind Vihar, Police Station Kavinagar. He also did not make any attempt to prove any of the recoveries made by the police, from that place.

12. Thereafter, Radhey Shyam, the maternal uncle of the deceased and her brother Sandeep (P.W.-2) was examined as P.W.-3. He proved that his sister Kunti Devi (mother of the deceased) was suffering from a spinal disease. He had visited her on 07.04.2013 at Galand. He stayed there overnight to enquire about well being of Kunti Devi. Without any further disclosure, he stated, on 08.04.2013 he alongwith the younger brother of his brother-in-law (husband of Kunti Devi) namely Vijay Kumar (P.W.-5 at the trial), left for Manesar, Gurgaon, to look for a suitable boy to marry the deceased Renu, to. They decided to leave at 4:00 - 4:30 p.m. As they left for Manesar, Gurgaon at 4:00 p.m. on a motorcycle, they first went to Govindpuram on the request of Vijay Kumar. They stayed for two - two and half hour. Thereafter, they started for Gurgaon via Hapur Chungi. At about 8:30 p.m. they stopped at a traffic signal upon a red light. A Scorpio car parked on their right. It was driven by the accused Manjeet Kumar and Renu (the deceased) was sitting beside him (i.e. closest to the witness). Also, another boy was sitting at the back seat of that vehicle. However, he did know him from before. Yet he now identified that person as Gaurav (in the dock).

13. He further proved that the paternal uncle of Renu i.e. Vijay Kumar (P.W.-5) enquired from Manjeet Kumar where he was taking Renu to? The accused Manjeet Kumar replied that he was going to drop Renu to her village house at Galand as her mother was seriously ill. He also proved that in that interval he had also enquired from Renu (deceased) about her well being. He did not prove any reply that may have been given to him by Renu. However, he proved that thereafter he alongwith Vijay Kumar (P.W.-5) continued for Gurgaon on their motorcycle. There

they met the prospective groom for the deceased Renu on 09.04.2013. They liked him and called home i.e. Galand from a telephone booth. Then, they learnt that Renu was dead. When they reached back Galand, they learnt that Manjeet alongwith his accomplice had killed Renu. By the time they reached the dead body of Renu had been cremated. He also proved that his statement was recorded by the police. Thus, the witness brought forth the evidence of last seen at about 8:00 – 8:30 p.m. on 08.04.2013 and at the same time he proved that he first learnt that the appellants had caused the occurrence only after he returned to Galand on 10.04.2013 - after the dead body of the deceased Renu had been cremated.

14. Next, Dr. Mahesh Kumar Tomar was examined as P.W.-4. He proved that the vaginal slide drawn from the dead body of the deceased Renu established presence of dead spermatozoa. He proved that the said report established that the deceased had experienced sexual intercourse before her death.

15. Next, Vijay Kumar, the paternal uncle of the deceased Renu and Sandeep (P.W.-2) was examined as P.W.-5. He proved that the deceased was his niece and that his sister-in-law (*Bhabhi*) Kunti Devi was suffering from spinal disorder for which she was being treated. The younger brother of Kunti Devi namely Radhey Shyam (P.W.-3) had arrived at Galand on 07.04.2013. On 08.04.2013 the said Radhey Shyam (P.W.-3) disclosed that his nephew Amit Kumar at Manesar, Gurgaon had suggested a boy for marriage with the deceased Renu. Radhey Shyam (P.W.-3) also asked the witness Vijay Kumar to accompany him to explore that matrimonial proposal. They both agreed to leave at around 4:00 – 4:30 p.m. They first went to Govindpuram to visit his relative Satveer Singh where they stayed for two and half hour and from there they restarted for Gurgaon at about 8:30 p.m. They reached Hapur Chungi where they had stopped at a red light. There a Scorpio vehicle, bearing Registration No. 3784 (full number not disclosed) stopped to their right. He saw the accused Manjeet Kumar

was driving that vehicle while his niece the deceased Renu was sitting beside him and another boy was sitting on the back seat. He could not recognise him. Notably, he did not make any dock identification of the accused Gaurav Singh.

16. He further proved that he enquired from the accused Manjeet Kumar, the purpose of his journey with Renu. The latter replied that he was going to drop Renu at her mother's place as she was very ill. At that, the traffic light turned green. Radhey Shyam drove left from the crossing and both proceeded for Gurgaon, therefrom.

17. At Gurgaon they met Ankit Kumar and thereafter the prospective groom whom they liked. On 09.04.2013 at about 10:00 – 10:30 p.m., he called his home at Galand and spoke to his brother Ajay Kumar (P.W.-9), the father of the deceased to apprise him of the development. In return, he learnt that the deceased Renu had been murdered.

18. Thereafter, he alongwith Radhey Shyam (P.W.-3) left for Galand, the next day. They reached after the dead body of the deceased Renu had been cremated. There was talking in the village that the appellant Manjeet Kumar had murdered Renu.

19. Notably, he did not prove the date and time when he met the prospective groom for Renu. At the same time, he proved that he learnt that Manjeet may have caused the occurrence after he returned to Galand.

20. Thereafter, Satendra Giri (Assistant Clerk) was examined as P.W.-6. He proved the G.D. entries and receipt of Written Report submitted by Sandeep (P.W.-2) etc.

21. Thereafter, Dr. S.S. Chaudhary, the doctor who conducted the autopsy examination was examined as P.W.-7. He proved the injuries (noted above) as also the hyoid bone was fractured and confirmed the presence of congested and clotted blood in the respiratory passage of the deceased.

22. Thereafter, Sub-Inspctor Vijay Kumar Sharma was examined as P.W.-8. He proved the Inquest Report.

23. Next, Ajay Kumar (father of the deceased) was examined as P.W.-9. He proved that the occurrence was caused on 08.04.2013 when the deceased Renu was a tenant of Hansraj Taneja at House No. 6/22, Sector – A. She was preparing for Civil Services Examination. On the date of the occurrence at about 7:30 – 8:00 p.m. the accused Manjeet took the deceased Renu in his Scorpio car bearing Registration No. UP14 – PB – 3784 and threw her dead body behind Tanushree farm house, after killing her.

24. Next, he proved, on 15.04.2013, the Investigation Officer R.P. Singh and others met him and Brijesh at about 1:00 p.m. They asked him and Brijesh to accompany him to Gangapuram. There they walked on a '*Kachcha*' road and reached the house of the appellant Gaurav where the police personnel arrested Gaurav Singh and Manjeet Kumar at about 1:30 p.m. Upon enquiry made by the police, the accused confessed to the crime and further disclosed that they had used the Alto car to dispose of the dead body of the deceased after wrapping it in a quilt. Also, he proved the recovery of Alto car.

25. Thereafter, he further proved that the police personnel took him and Brijesh to D-109 Govind Vihar where the deceased was done to death. The lock of the house was opened by the accused person and the police were shown the place where the deceased had been killed. Thereafter, the police personnel recovered samples of blood stained and plain floor as also rexine of the sofa. He also proved the recovery of an old green coloured slipper of foot size 5 from that place, belonging to the deceased. He also proved certain photographs taken from that place. Those were proven as Material Exhibits 14 to 22.

26. Thereafter, he proved motive. In that he narrated, one and half year earlier, the accused Manjeet Kumar had harassed the deceased - by pressuring her to marry him. To continue her studies and for societal pressures and also for fear of Manjeet Kumar, no police report was made at that time. However, complaints were made to the father of Manjeet Kumar. It led to a Panchayat in the village wherein the father of Manjeet Kumar had been called. However, he refused to abide by the Panchayat.

27. Next, he proved that the deceased did not wish to marry Manjeet Kumar and that she had never expressed such wish to him. Rather the accused Manjeet Kumar used to commit obscenities with the deceased. On such bad behaviour offered by Manjeet Kumar, the witness arranged for the tenanted (separate) accommodation for his daughter Renu. However, the accused Manjeet Kumar continued to meet her there in their absence.

28. Thereafter, the said witness proved that the accused Manjeet Kumar had strong criminal history and that many cases of sexual harassment and physical assault were registered against him including one case involving sexual harassment on a Scheduled Caste girl, in which proceedings had been stayed by the High Court.

29. Thereafter, he proved that another case was registered against him with respect to an occurrence involving the owner and employees of Dream Palace Pilkhuwa, wherein the accused Manjeet Kumar had suffered a bullet injury on his teeth. He also proved that the said Manjeet Kumar had been beaten by the local Pandit community but that issue was resolved by a village lawyer. Last, he proved that the deceased was inflicted with Polio on her left foot for which she had been treated. He also proved that his statement was recorded during investigation.

30. Thereafter, Sachin Chaudhary, the person who discovered the dead body of the deceased Renu (in unknown), was examined as P.W.-10. He proved that discovery.

31. Next, Sub-Inspector Subodh Kumar Saxena was examined as P.W.-11. He proved the arrest of the appellants and the recoveries arising from their alleged disclosures.

32. Last, the Investigation Officer, R.P. Singh was examined as P.W.-12. He proved the investigation.

33. Thereafter, statements of the appellants were recorded under Section 313 Cr.P.C. In that, the accused Manjeet Kumar suggested that the entire investigation was collusive and not fair and that he had been falsely implicated on suspicion, arising from animosity.

34. In that evidence, the learned Court below has convicted both accused-appellants under Section 302 and 201 IPC. Additionally, it has convicted the accused appellant Manjeet Kumar under Section 376 I.P.C.

35. Sri Sukhvir Singh learned counsel for the main accused-Manjeet Kumar would submit that the entire prosecution story is based purely on circumstantial evidence. In that the prosecution did not lead evidence of last seen through the landlord of the deceased namely Hansraj Taneja or his wife Vimal Taneja or their servant Ajay. Therefore, it was not established that the deceased left in the company of the main accused-Manjeet Kumar on 08.04.2013 at around 7.30-8.00 p.m., from her house. Even if the doubtful evidence of last seen led by Radhey Shyam (P.W.-3) and Vijay Kumar (P.W.-5) is considered, no other link in the unbroken chain of evidence required to be established by the prosecution to sustain the conviction, is proven. Second, in that regard, heavy reliance has been placed on the fact proven by Dr. S.S. Chaudhary (P.W.-7) who during his cross-examination clearly proved that rigor mortis had passed and that the

death may have been caused in the evening on 08.04.2013. Thus, reasonable doubt exists if Radhey Shyam (P.W.-3) and Vijay Kumar (P.W.-5) could have seen the deceased alive around 8.30 p.m., that day, as narrated by them. He has placed reliance on a decision of a coordinate bench of this Court in **Sanju and Another (Neutral Citation No.-2019:AHC71499-DB)** wherein it has been observed as below:

“...

48. Coming to the second question that the medical evidence does not support the prosecution case, we find that the Doctor who conducted the autopsy on the body of the deceased namely, P.W. 4 Doctor Bharat Bhusan has clearly opined that deep foul smell was coming from the body of the deceased and further that the dead body of the deceased was having blisters and the skin had peeled off at various places. The tongue was protruding. On entire examination the death of the deceased may have taken place much earlier than the time suggested by the prosecution.

49. On the strength of the aforesaid symptoms, as noted by P.W. 4 the autopsy surgeon, learned counsel for the appellants submits that the occurrence has not taken place at the time mentioned in the F.I.R. Therefore, by reason of the above, P.W. 1 Jodhapal Singh is not an eye-witness of the occurrence. The deceased had been done to death much earlier by unknown assailants and no one was present to witness the commission of crime. Elaborating their submissions, they jointly submit that according to the famous author on Medical Jurisprudence, J.P. Modi, such conditions in the dead body, as in the present case, occur after the expiry of a period of 24-48 hours during winter season and 18-36 hours during summer season from the time of occurrence. According to P.W. 1, the occurrence took place on 11.8.2006 at 5:30 am. The dead body of the deceased was placed for postmortem on 12.8.2006 at 2:30 pm. i.e. after 33 hours. P.W. 4 has himself suggested that the occurrence might have taken place in the night of 10/11.8.2006 at around 2 or 2:30 pm.

50. It would also be relevant to mention here that as per the prosecution case, the dead body was not left unattended for hours, rather, it was immediately attended to as P.W.-1, brother-in-law of the deceased was present at the time of occurrence, the F.I.R. was lodged within three hours, and the inquest started within the next two and half hours. The family members and other residents of the village had collected soon after the incident. Forming of blisters, peeling off the skin and foul smell coming from the

dead body as reported in the post-mortem report would be symptom mere akin and likely in a case where dead body is left unattended for hours. Since we have discarded the oral testimony of P.W. 1, therefore, we have meticulously examined the medical evidence to look for corroboration of the testimony of P.W. 1. However, nothing substantial has turned in favour of the prosecution.

... ”

36. Third, it has been submitted, Sachin Chaudhary (P.W.-10) who first discovered the dead body of the deceased lying behind Tanushree farm house proved (during his cross-examination) that both slippers were on the feet of the deceased, at that time. Therefore, recovery of a slipper from inside the house of the appellant Gaurav Singh is clearly planted.

37. Fourth, recovery of blood stained floor/earth, rexine of sofa and slippers has been doubted. In absence of any serological and/or forensic report to prove that any of those items was stained with blood of the deceased or with human blood, the recovery does not prove any circumstance in the chain of evidence that may lead to a singular conclusion that the appellant Manjeet Kumar had caused the occurrence.

38. Fifth, in absence of strong circumstantial evidence led, motive remains relevant. Here, it has been submitted, the prosecution has relied on a non-existent motive inasmuch as admittedly the appellant-Manjeet Kumar is disclosed to be married from before. Therefore, there could have been no pressure by him (upon the deceased), to marry him. Therefore, the motive cited is fallacious and non-existent. Further, no evidence was led to establish existence of any animosity between the parties.

39. Sixth, the evidence of last seen brought by Radhey Shyam (P.W.-3) and Vijay Kumar (P.W.-5) has been wholly doubted. They are pure chance witnesses got up by the prosecution. They were not present at the Hapur Chungi road crossing at 8:30 p.m. on 08.04.2013. Their conduct during that time, immediately after that and later after they learnt of the murder of the deceased is wholly unnatural. They are wholly unreliable.

40. Sri Rajiv Lochan Shukla learned counsel for the accused-Gaurav Singh has adopted the submissions advanced by Sri Sukhvir Singh. He would add, the case of appellant-Gaurav Singh stands on much better footing inasmuch as neither he was identified nor he had any motive to cause such an occurrence. It has been stressed, Gaurav Singh was not identified either by Hansraj Taneja, his wife Vimla Taneja or their servant Ajay. Therefore, Sandeep (P.W.-2) disclosed in the FIR that the main accused Manjeet Kumar was accompanied by another person. Next, Vijay Kumar (P.W.-5) did not identify the accused Gaurav Singh even in Court. No Test Identification Parade was conducted. Though, Radhey Shyam (P.W.-3) and Vijay Kumar (P.W.-5) who claimed that they had seen the deceased in the company of the appellant Gaurav alongwith Manjeet, Radhey Shyam (P.W.-3) identified Gaurav in the dock only. Yet, Sandeep (P.W.-2) who was examined before Radhey Shyam (P.W.-3) [and Vijay Kumar (P.W.-5)], deposed that he had learnt (later) that Gaurav was also involved in the occurrence.

41. Next, he has doubted the prosecution story first on the strength of evidence led by S.I. Subodh Kumar Saxena who arrested the accused persons and made recoveries from the house of the appellant-Gaurav Singh. Referring to his cross-examination statement, it has been stressed, admittedly no member of public was present at that time. Though he proved recovery of the Alto car, he omitted to record presence of blood stains in the Recovery Memo (of that car). Though the Court examined that Material Exhibit No. 23, namely the Alto Car, it did not record any observation as to presence of any blood stain on it. In any case, in absence of any serological report and in absence of any DNA test report *qua* the dead spermatozoa recovered from inside the vaginal cavity of the deceased, the circumstantial evidence of presence of blood of the deceased on the Material Exhibits, is not proven. Next, it has been submitted, a wholly unbelievable prosecution story has emerged wherein

blood is disclosed splurged at many places and on many items such as floor, sofa set, slippers worn by the deceased and even the Alto car. In the context of death caused by strangulation such large quantities of blood may never splurge. Absolutely no incised or lacerated wound had been caused to the deceased. To that extent the prosecution story is wholly imagined and false. Further, in the same context, it has been submitted, once the prosecution narrated that the dead body of the deceased was wrapped in a quilt, carried in the Alto car and thrown behind Tanushree farm house, neither blood may have spilled in the car nor the prosecution proved recovery of that quilt.

42. Last, Radhey Shyam (P.W.-3) and Vijay Kumar (P.W.-5) both witness of last seen acted wholly unnaturally in narrating that they - of their own, started off from Galand to Manesar in Gurgaon in search of a suitable boy to whom the deceased may be married. In the context of proven fact that the family of the deceased was aware of her intimate relationship with the main accused Manjeet Kumar that had existed for about 1-½ 2 years before the occurrence, Radhey Shyam (Mama) and Vijay Kumar (Chacha) of the deceased would not have embarked on that exercise, without it being first suggested to them by the parents of the deceased. Second, it is equally unnatural that though Radhey Shyam (P.W.3) who is the 'Mama' of the deceased who disclosed that he travelled to Galand a day earlier to ascertain the well being of his sister Kunti Devi and who may have stayed with her overnight, would have been so gullible to believe the appellant Manjeet Kumar (who he claimed to have briefly met at a traffic intersection at 8.30 p.m. on 08.04.2013), that Kunti Devi was so unwell that the accused Manjeet Kumar was therefore going to drop the deceased to her house in Galand. Even if that is believed, it is quite incredible that having witnessed the deceased in the company of Manjeet Kumar, Radhey Shyam (Mama) and Vijay Kumar (Chacha) of the deceased would have then continued their journey to Manesar at Gurgaon to search for a groom

for the deceased, without informing the family of the deceased, at Galand that the deceased was still continuing her association with the main accused Manjeet though others in the family were trying to arrange her marriage elsewhere and though acrimony between the parties had arisen earlier owing to such relationship being established and being maintained by the deceased with the main accused Manjeet Kumar.

43. Then, it is further wholly unnatural, having met the boy/prospective groom at Gurgaon either that day or the next, neither Radhey Shyam nor Vijay Kumar made a phone call to the family of the deceased at Galand to apprise them about that development earlier than the telephone call described to have been first made at around 10:00 in the night of 09.04.2013. What makes that part of the story completely unbelievable is – having learnt that he deceased had been killed, they would have neither shared knowledge of last seen with the family of the deceased, at that time nor they would reach Galand early enough on 10.04.2013, to be able to attend her cremation. Reliance has been placed on **Lahu Kamlakar Patil & Anr. Vs. State of Maharashtra, (2013) 6 SCC 417**, wherein it has been observed as below :

“ ...

26. From the aforesaid pronouncements, it is vivid that witnesses to certain crimes may run away from the scene and may also leave the place due to fear and if there is any delay in their examination, the testimony should not be discarded. That apart, a court has to keep in mind that different witnesses react differently under different situations. Some witnesses get a shock, some become perplexed, some start wailing and some run away from the scene and yet some who have the courage and conviction come forward either to lodge an FIR or get themselves examined immediately. Thus, it differs from individuals to individuals. There cannot be uniformity in human reaction. While the said principle has to be kept in mind, it is also to be borne in mind that if the conduct of the witness is so unnatural and is not in accord with acceptable human behaviour allowing variations, then his testimony becomes questionable and is likely to be discarded.”

44. In the above context, it has also been emphasised that both Radhey Shyam (P.W.-3) and Vijay Kumar (P.W.-5) also proved that they learnt that the main accused Manjeet had caused the occurrence only after they reached Galand where there was some talk amongst the villagers that Manjeet Kumar had caused the occurrence. If those witnesses had actually last seen the deceased with the accused Manjeet Kumar, they would not have relied on the rumours in the village Galand. Rather, they would have first disclosed to the family of the deceased including her brother Sandeep (P.W.-2) or her father Ajay Kumar (P.W.-9) or other members of that family that they had last seen the deceased with Manjeet in his car on 08.04.2013.

45. Then, reliance has been placed on the fact that neither the vehicle Scorpio was recovered nor its registration number was ever disclosed by the informant side till before evidence was received by the learned trial court. In that, the registration number appeared suddenly during the examination-in-chief of Sandeep (P.W.-2). In any case, upon enquiry made by the learned trial court from the office of Regional Transport Officer it transpired that the registration number UP14 – PB – 3784 had not been issued till the date of the evidence being received. The learned trial court has acted with manifest illegality amounting to perversity in disbelieving the same.

46. Then, challenge has also been raised to the recoveries of Alto car, slipper, blood stained earth and blood stained rexine of sofa. No compliance of Section 27 of the Indian Evidence Act was made. Neither there exists disclosure statement made Part – I nor there exists disclosure statement made Part – II nor there is any independent witness. While Sandeep (P.W.-2) narrated that he informed Ajay Kumar (P.W.-9) and required him to meet up with the police, Ajay Kumar (P.W.-9) narrated that he was picked up by the police party and required to accompany

them. Thereafter, the accused were arrested and he was shown the place. He also did not prove that the accused made any additional statement as may satisfy the requirement of Section 27 of the Indian Evidence Act. Reliance has been placed on **Subramanya Vs. State of Karnataka, (2022) SCC Online SC 1400**.

47. Next, it has been submitted, the mandatory requirement of Section 313 Cr.P.C. has been violated in this case. Wholesome evidence led at the trial was confronted to the appellants.

48. Further, neither the material Ex.-23 i.e. Alto car nor any such specific circumstance was confronted to the appellants. In that regard, reliance has been placed on a decision of a coordinate bench of this Court in **Sonu @ Paua @ Beedi & Anr. Vs. State of U.P., Neutral Citation 2023:AHC:217190-DB**, wherein it has been observed as below :

“...

33. When the entire statement in the question-answer form is put as the circumstance, it would be difficult for the accused to come up with his defence or the explanation in respect of the substance of evidence led against him. Section 313 Cr.P.C. is by now well-recognized as conferring an important right upon the accused to explain the circumstances put against him by the prosecution in the form of evidence to elicit his reply. Unless questions are put in the manner required in law such circumstance cannot be relied upon against the accused.

34. The manner in which statement of accused is recorded under Section 313 Cr.P.C., without formulating the question and confronting the accused with the circumstances, which has surfaced against him in respect of charges levelled has clearly denied opportunity to the accused to explain the circumstances.”

49. Last, it has been submitted, motive ascribed is non-existent. Referring to the cross-examination statement of Sandeep (P.W.-2), it has been asserted that existence of physical intimacy between deceased and the accused Manjeet Kumar was known to and proven by the said witness. Second, he proved, though initially the deceased Renu did not like the

main accused Manjeet Kumar but later she started liking him. He further proved that the appellant Manjeet Kumar had pressured her to marry him and that there was 'Panchayat' to settle that dispute between the families. However, no 'Panchayat' came to be proved. Then, he proved that he was aware that his sister Renu had formed physical intimacy with Manjeet Kumar and he did not like that and it had occurred to him that Manjeet Kumar be taught a lesson. He had also learnt that the deceased was maintaining her relationship with the main accused Manjeet Kumar who used to meet her even while the deceased resided at the tenanted accommodation of Hansraj Taneja. Therefore, he and his father Ajay Kumar (P.W.-9) even tried to convince the deceased to not meet the accused Manjeet Kumar. Then, reference has been made to the cross-examination statement of Ajay Kumar (P.W.-9), father of the deceased who also maintained and he disapproved the continuing relationship of the deceased with the main accused Manjeet Kumar. Thus, besides the general legal principle that motive is a double edged weapon, in the present case, the informant side had motive to commit 'honour killing' but the appellants had none. In any case, the appellant Gaurav Singh is a complete stranger. He has been completely falsely implicated on no evidence.

50. On the other hand, learned AGA would submit, it is a case of circumstantial evidence. The prosecution may not be burdened to prove each and every aspect of the story on the strength of direct evidence. To the extent, direct evidence of last seen exists and to the extent recoveries of slipper of the deceased and other blood stained item exist, the prosecution may not be burdened to establish anything further. The defence has completely failed to establish that the accused persons parted company with the deceased. Therefore, no benefit may arise to them on that count. As to the time of death, it has been stressed, no undue reliance may be placed on the statement of the doctor that death may have been

caused six hours earlier. It remains an expert opinion which may not be cited to disbelieve the ocular evidence. Since, Radhey Shyam (P.W.-3) identified the appellant Gaurav Singh as one of the accused persons sitting inside the Scorpio car when the deceased was last seen with the appellant Manjeet Kumar, the fact that the other witness Vijay Kumar (P.W.-5) could not identify him, lost relevance. As to motive, it has been submitted, existence of illicit relationship between the appellant Manjeet Kumar and the deceased was established. The informant side had tried to distance the appellant Manjeet Kumar from the deceased and had therefore placed her at a tenanted accommodation. Because the deceased was not willing to marry the appellant, Manjeet Kumar proceeded to kill the deceased. In that, his close relative Gaurav Singh played an active role, as was also proved by the prosecution. All other submissions advanced by learned counsel for the appellants are trivial as may not be accepted to disbelieve the prosecution story.

51. Similar submissions have been advanced by Sri Sunil Vashisth alongwith Sri Sushil Shukla, learned counsel for the informant. In addition, it has been submitted, merely because some defect may exist in the Recovery Memo, it may not be cited to defeat the case of the prosecution. A deficiency in the investigation or on part of the Investigation Officer, may not be given undue weightage, to doubt the prosecution story.

52. Further, it has been submitted, doubt with respect to evidence of motive may not be sufficient to disbelieve the prosecution story based on circumstantial evidence. Similarly, lack of Serological Report may not be enough to doubt the prosecution story. Further, the fact that Hansraj Taneja or his wife or servant were not examined would also not lead to failure of the prosecution story. Reliance has been placed on **Sunil Clifford Daniel Vs. State of Punjab, (2012) 11 SCC 205**.

53. Having heard learned counsel for the parties and having perused the record, in the first place it has to be noted - the prosecution story is based solely on the circumstantial evidence. In that, the most crucial and the start point is the evidence of last seen. According to the prosecution story (as narrated in the FIR), the deceased was last seen with the accused Manjeet Kumar and another, by her landlord Hansraj Taneja, yet Hansraj Taneja was not examined at the trial. It is equally true that though Sandeep Tomar (P.W.-2) claimed (during his examination-in-chief) that the deceased was last seen with the accused Manjeet Kumar and another, by Hansraj Taneja, his wife Vimla Taneja and their servant Ajay, neither of those persons was examined at the trial. Thus, the fact of last seen as narrated in the FIR was not proved at the trial.

54. Second, though it may have been wholly permissible for the prosecution to bring up other witness of last seen, who emerged during the course of investigation, here, Radhey Shyam (P.W.-3) and Vijay Kumar (P.W.-5), the place where those two witness claim to have last seen the deceased in the company of the appellants is a public place, on a public road that too at a traffic crossing wherein the witnesses were seated on a motorcycle being driven by Radhey Shyam,(P.W.-3) as proven by Vijay Kumar (P.W.-5), during his cross-examination. Both witness proved that they stopped at a traffic light. In that they had a brief opportunity to see the deceased in the company of the accused and a brief opportunity to interact with the deceased and one of the accused Manjeet Kumar. In that, Vijay Kumar (P.W.-5) spoke to the appellant Manjeet Kumar and enquired where he was taking the deceased to? The accused Manjeet Kumar is described to have replied that he was taking the deceased to her mother's house at Galand. That occurrence was a pure chance occurrence, and nothing more.

55. Seen in that light, we find in the entirety of the evidence led by the prosecution through close relatives of the deceased namely Sandeep Tomar (P.W.-2), the brother of the deceased; Ajay Kumar, (P.W.-9), the father of the deceased, Radhey Shyam (P.W.-3), a '*Mama*' of the deceased and Vijay Kumar (P.W.-5), a '*Chacha*' of the deceased, it was unequivocally proven (i) deceased had formed intimate physical relations with the main accused Manjeet Kumar long before the occurrence (ii) both were in that relationship for almost one and half to two years before the occurrence (iii) though initially the deceased had declined overtures made by the main accused Manjeet Kumar, later she consented and formed that relationship (iv) the family of the deceased was opposed yet, the deceased continued her relationship with the main accused Manjeet Kumar (v) in that circumstance, the family of the deceased placed her in a tenanted accommodation of Hansraj Teneja, ostensibly to distance her from the main accused Manjeet Kumar (vi) despite such efforts made, the deceased used to meet Manjeet Kumar against the wishes of her brother Sandeep Tomar (P.W.-2) and her father Ajay Kumar (P.W.-9) (vii) arising from that conduct of the deceased both her brother Sandeep Tomar (P.W.-2) and her father Ajay Kumar (P.W.-9) were unhappy. Sandeep Tomar (P.W.-2) went to the extent of proving that he wanted to teach Manjeet Kumar a lesson.

56. In those proven facts, we examine the conduct of Radhey Shyam (P.W.-3) and Vijay Kumar (P.W.-5), the only two witnesses of last seen. In that, Vijay Kumar (P.W.-5), a '*Chacha*' of the deceased claimed to be resident of Galand itself i.e. where the family of the deceased resided, including Sandeep Tomar (P.W.-2) and Ajay Kumar (P.W.-9). Radhey Shyam (P.W.-3) a '*Mama*' of the deceased had reached Galand on 07.04.2013 to enquire about the well being of his sister Kunti Devi (the mother of the deceased). He stayed there overnight. Then, on 08.04.2013 he alongwith Vijay Kumar (P.W.-5) decided to travel to Gurgaon at the

suggestion of the latter - in search of a suitable boy to whom the deceased may be married. Yet, they first went to Govindpuram in Ghaziabad at around 4:00 – 4:30 p.m. where Vijay Kumar (P.W.-5) had some (unspecified) work. They stayed there for two to two and half hour and then commenced their journey on a motorcycle driven by Radhey Shyam (P.W.-3).

57. By very nature of that occurrence, it has been clearly disclosed to the Court that the two witness Radhey Shyam (P.W.-3) and Vijay Kumar (P.W.-5) were not in any hurry to rush to Gurgaon. But for the unspecified work at Govindpuram, they would not have any occasion to reach Hapur Chungi intersection, on their way to Gurgaon, from Galand. Yet, they reached that place and had to stop at the traffic light at the exact moment when the accused arrived. Also, Radhey Shyam (P.W.-3) having stayed with his sister Kunti Devi overnight at Galand, he was naturally fully aware of her current medical condition. Yet, neither those witnesses made any effort nor Sandeep Tomar (P.W.-2) nor Ajay Kumar (P.W.-9) made any effort to establish that Kunti Devi suffered any grave or serious ailment between 4:00 – 4:30 p.m. when Radhey Shyam (P.W.-3) and Vijay Kumar (P.W.-5) left Galand at 8:00-8:30 p.m., when those two witness claim to have last seen the deceased with the main accused Manjeet Kumar and another. The fact that they went in another direction first, also indicates that they went without any sense of urgency arising from the ill health of Kunti Devi.

58. Second, in view of the intimate relationship of the deceased with the main accused that lasted one and half to two years from before and which the deceased was not willing to break despite strong opposition by her family leading to her being placed in a tenanted accommodation of Hansraj Taneja, away from her home at Galand, it is unnatural to accept that a '*Mama*' and '*Chacha*' who were travelling together in search of a

groom for the deceased girl would have casually overlooked that continued presence of the deceased in the company of the accused Manjeet Kumar and proceeded with their journey. Neither they made any effort to stop the deceased to accompany the appellant Manjeet Kumar nor they thought necessary to inform the family of the deceased at Galand about the same. It is also unnatural to accept that the two uncles of the deceased would have accepted the statement attributed to the accused Manjeet Kumar on its face value that he was going to drop the deceased at Galand as her mother was unwell. Both were aware of the current condition of Kunti Devi, they having last seen her barely four hours earlier. Yet, they did not make any effort to ascertain the well being of Kunti Devi nor they doubted the alleged statement attributed to Manjeet Kumar that Kunti Devi was so unwell that the deceased had to be taken to her. It is further unnatural to expect that no word was spoken by either of them to the deceased though she was closest to them, the Scorpio car having stopped to their right.

59. What is further unnatural is, having met the prospective groom either that day i.e. 08.04.2013 or the next day 09.04.2013, they chose to make the first phone call to the home of the deceased at Galand at around 10:00 p.m. on 09.04.2013, and not earlier. Assuming that they may not have found time earlier, it is wholly unnatural that in that circumstance the witnesses also forgot to tell the family of the deceased that they had last seen the deceased in the company of Manjeet Kumar at about 8:30 p.m., the previous evening i.e. 08.04.2013. More unnaturally, those witnesses also did not make any effort to travel back to Galand the same night or early next morning as may be have been wholly natural. Rather, they made no further contact either with P.W.-2 or P.W.-9. They picked their own time to reach only after the cremation had got over, the next day i.e. 10.04.2013. Even then both proved that they only heard talk/rumour in the village that the deceased had been done to death by Manjeet Kumar.

60. If those witnesses had last seen the deceased in the company of Manjeet Kumar at about 8:30 p.m. on 08.04.2013, their conduct thereafter would have been otherwise in the normal course of events. In any case, being thus aware, they would not have attributed the knowledge of occurrence to rumours heard but to their own understanding of the events only. In the proven facts of this case, they would have to be completely imprudent and disconnected with the ways of the world to not understand or suspect who the culprit may be if they had last seen the deceased at 8:30 p.m. in the company of Manjeet Kumar when her dead body was found early morning on 09.04.2013.

61. In view of such unnatural conduct proven on record, we have no hesitation to infer that the witness Radhey Shyam (P.W.-3) and Vijay Kumar (P.W.-5) had not seen the deceased in the company of the main accused Manjeet Kumar and Gaurav Singh on 08.04.2013 at Hapur Chungi Crossing, traffic light. While we may not disbelieve part of their story, that they were not at Galand till 10.04.2013, their chance presence set up by the prosecution at Hapur Chungi Crossing at 8.00-8:30 p.m. on 08.04.2013 cannot be believed. To that extent, we rely on **Lahu Kamlakar Patil & Anr. (supra)**. Thus, a reasonable doubt exists as to the evidence of last seen, as adduced.

62. Sandeep Tomar (P.W.-2) and Ajay Kumar (P.W.-9) who are real brother and father of the deceased are not witness of last seen. They relied on knowledge of facts acquired from Hansraj Taneja, his wife Vimla Taneja and their servant Ajay. In absence of those persons examined at the trial, the evidence led by Sandeep Tomar (P.W.-2) and Ajay Kumar (P.W.-9) is not admissible. It is merely a hearsay on the issue of last seen. Thus, there is absolutely no evidence of last seen, led by those witnesses.

63. We may next look at the motive. As noted above, once it was proven by the prosecution that the appellant Manjeet Kumar was married from

before and it was also proven that the deceased had formed consensual intimate physical relationship with him that she chose to maintain over a long duration of one and half to two years or at least for a substantial time as had led the family of the deceased (who were opposed to such relationship) to move her out of their home and place her in a tenanted accommodation (though she was differently abled being inflicted with Polio on one leg), coupled with the fact that it was also proven by Sandeep Tomar (P.W.-2) that the deceased continued her illicit relationship with Manjeet Kumar while staying in that tenanted accommodation of Hansraj Taneja, the motive attributed to the appellant Manjeet Kumar is clearly non-existent. Once it was proven by the prosecution that the appellant Manjeet Kumar continued to maintain his illicit relationship with the deceased despite strong objection by her family, the prosecution may not maintain that therefore, the appellant Manjeet Kumar had a strong motive to murder the deceased. Thus, no motive has been proved against the accused Manjeet Kumar and absolutely no fact was proven to claim motive to Gaurav Singh.

64. In the absence of evidence of last seen and in absence of evidence of motive, what survives in the prosecution story is the recovery of alleged Alto car, slipper of the deceased, samples of floor/earth and rexine of a sofa, all allegedly stained with the blood of the deceased. Insofar as Alto car is concerned, the prosecution witness S.I. Subodh Kumar Saxena (P.W.-11) himself admitted that Recovery Memo does not record presence of blood stains on it. As to the other recoveries, there is absolutely no disclosure statement (Part-I) in the Recovery Memo relied by the prosecution. On the contrary, Ajay Kumar (P.W.-9) who is the witness of the recoveries proved that he was shown (by the police) the apartment where the occurrence was caused and the items recovered. Thus, he too did not prove to any extent, either that the accused made any disclosure that they may help the police recover the Alto car or the slipper of the

deceased or the blood stained floor/earth or the blood stained rexine of the sofa.

65. Therefore, we find that the requirement of section 27 of the Indian Evidence Act was not met in the present case with respect to the recoveries. Additionally, the learned trial Court has not made any observation as to presence of blood stains in the Alto car. Therefore, we are unable to place any credence on the recovered items, as materials corroborating the prosecution story. We are constrained to observe, the recoveries of items from the Apartment D109, Govind Vihar, Ghaziabad remain in the shadow of doubt.

66. On the recovery, especially of assault weapon and the requirement of Section 27 of the Indian Evidence Act, 1872, in **Earabhadrapa vs State of Karnataka, (1983) 2 SCC 330**, the Supreme Court observed as below:

“8. For the applicability of Section 27 therefore two conditions are prerequisite, namely (1) the information must be such as has caused discovery of the fact; and (2) the information must “relate distinctly” to the fact discovered. In the present case, there was a suggestion during the trial that PW 26 had prior knowledge from other sources that the incriminating articles were concealed at certain places and that the statement Ex. P-35 was prepared after the recoveries had been made and therefore there was no “fact discovered” within the meaning of Section 27 of the Evidence Act. We need not dilate on the question because there was no suggestion made to PW 26 during his cross-examination that he had known the places where the incriminating articles were kept. That being so, the statement made by the appellant Ex. P-35 is clearly admissible in evidence.”

(emphasis supplied)

67. Then, in **Bodhraj vs State of J & K, (2002) 8 SCC 45**, the Supreme Court further observed as below:

“18. Emphasis was laid as a circumstance on recovery of weapon of assault, on the basis of information given by the accused while in custody. The question is whether the

evidence relating to recovery is sufficient to fasten guilt on the accused. Section 27 of the Indian Evidence Act, 1872 (in short "the Evidence Act") is by way of proviso to Sections 25 to 26 and a statement even by way of confession made in police custody which distinctly relates to the fact discovered is admissible in evidence against the accused. This position was succinctly dealt with by this Court in *Delhi Admn. v. Bal Krishan* [(1972) 4 SCC 659 : AIR 1972 SC 3] and *Mohd. Inayatullah v. State of Maharashtra* [(1976) 1 SCC 828 : 1976 SCC (Cri) 199 : AIR 1976 SC 483] . The words "so much of such information" as relates distinctly to the fact thereby discovered, are very important and the whole force of the section concentrates on them. Clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. The ban as imposed by the preceding sections was presumably inspired by the fear of the legislature that a person under police influence might be induced to confess by the exercise of undue pressure. If all that is required to lift the ban be the inclusion in the confession of information relating to an object subsequently produced, it seems reasonable to suppose that the persuasive powers of the police will prove equal to the occasion, and that in practice the ban will lose its effect. The object of the provision i.e. Section 27 was to provide for the admission of evidence which but for the existence of the section could not in consequence of the preceding sections, be admitted in evidence. It would appear that under Section 27 as it stands in order to render the evidence leading to discovery of any fact admissible, the information must come from any accused in custody of the police. The requirement of police custody is productive of extremely anomalous results and may lead to the exclusion of much valuable evidence in cases where a person, who is subsequently taken into custody and becomes an accused, after committing a crime meets a police officer or voluntarily goes to him or to the police station and states the circumstances of the crime which lead to the discovery of the dead body, weapon or any other material fact, in consequence of the information thus received from him. This information which is otherwise admissible becomes inadmissible under Section 27 if the information did not come from a person in the custody of a police officer or did come from a person not in the custody of a police officer. The statement which is admissible under Section 27 is the one which is the information leading to discovery. Thus, what is admissible being the information, the same has to be proved and not the opinion formed on it by the police officer. In other words, the exact information given by the accused while in custody which led to recovery of the articles has to be proved. It is, therefore, necessary for the benefit of both the

accused and the prosecution that information given should be recorded and proved and if not so recorded, the exact information must be adduced through evidence. The basic idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered as a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true. The information might be confessional or non-inculpatory in nature but if it results in discovery of a fact, it becomes a reliable information. It is now well settled that recovery of an object is not discovery of fact envisaged in the section. Decision of the Privy Council in Pulukuri Kottaya v. Emperor [AIR 1947 PC 67 : 48 Cri LJ 533 : 74 IA 65] is the most-quoted authority for supporting the interpretation that the “fact discovered” envisaged in the section embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect. (See State of Maharashtra v. Damu Gopinath Shinde [(2000) 6 SCC 269 : 2000 SCC (Cri) 1088 : 2000 Cri LJ 2301] .) No doubt, the information permitted to be admitted in evidence is confined to that portion of the information which “distinctly relates to the fact thereby discovered”. But the information to get admissibility need not be so truncated as to make it insensible or incomprehensible. The extent of information admitted should be consistent with understandability. Mere statement that the accused led the police and the witnesses to the place where he had concealed the articles is not indicative of the information given.”

(emphasis supplied)

68. Then, a three-judge bench of the Supreme Court in **Ramanand alias Nandlal Bharti vs State of Uttar Pradesh, (2022) SCC OnLine SC 1396**, further elaborated that principle in law and lucidly expressed the same as below:

53. If, it is say of the investigating officer that the accused appellant while in custody on his own free will and volition made a statement that he would lead to the place where he had hidden the weapon of offence along with his blood stained clothes then the first thing that the investigating officer should have done was to call for two independent witnesses at the police station itself. Once the two independent witnesses arrive at the police station thereafter in their presence the accused should be asked to make an appropriate statement as he may desire in regard

to pointing out the place where he is said to have hidden the weapon of offence. When the accused while in custody makes such statement before the two independent witnesses (panch witnesses) the exact statement or rather the exact words uttered by the accused should be incorporated in the first part of the panchnama that the investigating officer may draw in accordance with law. This first part of the panchnama for the purpose of Section 27 of the Evidence Act is always drawn at the police station in the presence of the independent witnesses so as to lend credence that a particular statement was made by the accused expressing his willingness on his own free will and volition to point out the place where the weapon of offence or any other article used in the commission of the offence had been hidden. Once the first part of the panchnama is completed thereafter the police party along with the accused and the two independent witnesses (panch witnesses) would proceed to the particular place as may be led by the accused. If from that particular place anything like the weapon of offence or blood stained clothes or any other article is discovered then that part of the entire process would form the second part of the panchnama. This is how the law expects the investigating officer to draw the discovery panchnama as contemplated under Section 27 of the Evidence Act. If we read the entire oral evidence of the investigating officer then it is clear that the same is deficient in all the aforesaid relevant aspects of the matter.

56. The requirement of law that needs to be fulfilled before accepting the evidence of discovery is that by proving the contents of the panchnama. The investigating officer in his deposition is obliged in law to prove the contents of the panchnama and it is only if the investigating officer has successfully proved the contents of the discovery panchnama in accordance with law, then in that case the prosecution may be justified in relying upon such evidence and the trial court may also accept the evidence. In the present case, what we have noticed from the oral evidence of the investigating officer, PW-7, Yogendra Singh is that he has not proved the contents of the discovery panchnama and all that he has deposed is that as the accused expressed his willingness to point out the weapon of offence the same was discovered under a panchnama. We have minutely gone through this part of the evidence of the investigating officer and are convinced that by no stretch of imagination it could be said that the investigating officer has proved the contents of the discovery panchnama (Exh.5). There is a reason why we are laying emphasis on proving the contents of the panchnama at the end of the investigating officer, more particularly when the independent panch witnesses though examined yet have not said a word about such discovery or turned hostile and have not supported the prosecution. In order to enable the

Court to safely rely upon the evidence of the investigating officer; it is necessary that the exact words attributed to an accused, as statement made by him, be brought on record and, for this purpose the investigating officer is obliged to depose in his evidence the exact statement and not by merely saying that a discovery panchnama of weapon of offence was drawn as the accused was willing to take it out from a particular place.

(emphasis supplied)

69. In **Subramanya vs State of Karnataka, (supra)**, the Supreme Court again explained the above principle as below:

“78. If, it is say of the investigating officer that the appellant-accused while in custody on his own free will and volition made a statement that he would lead to the place where he had hidden the weapon of offence, the site of burial of the dead body, clothes, etc. then the first thing that the investigating officer should have done was to call for two independent witnesses at the police station itself. Once the two independent witnesses would arrive at the police station thereafter in their presence the accused should be asked to make an appropriate statement as he may desire in regard to pointing out the place where he is said to have hidden the weapon of offence, etc. When the accused while in custody makes such statement before the two independent witnesses (panch witnesses) the exact statement or rather the exact words uttered by the accused should be incorporated in the first part of the panchnama that the investigating officer may draw in accordance with law. This first part of the panchnama for the purpose of Section 27 of the Evidence Act is always drawn at the police station in the presence of the independent witnesses so as to lend credence that a particular statement was made by the accused expressing his willingness on his own free will and volition to point out the place where the weapon of offence or any other article used in the commission of the offence had been hidden. Once the first part of the panchnama is completed thereafter the police party along with the accused and the two independent witnesses (panch witnesses) would proceed to the particular place as may be led by the accused. If from that particular place anything like the weapon of offence or bloodstained clothes or any other article is discovered then that part of the entire process would form the second part of the panchnama. This is how the law expects the investigating officer to draw the discovery panchnama as contemplated under Section 27 of the Evidence Act. If we read the entire oral evidence of the investigating officer then it is clear that the same is deficient in all the aforesaid relevant aspects of the matter.”

70. Recently, that principle has been reiterated by another three-judge bench decision of the Supreme Court in **Rajesh & Anr. vs State of Madhya Pradesh, (2023) 15 SCC 521**.

71. Second, no Serological report exists to prove that the blood on any of the recovered items was of human origin, less so of the deceased. The quilt in which the dead body of the deceased was allegedly wrapped was not even recovered. Equally appalling is the fact that there is no forensic/ DNA report to trace the semen found in the vaginal swab report claimed to be of the accused Manjeet Kumar. Thus, both for reason of consensual relationship and also since absolutely, no evidence exists of rape committed on the deceased, that part of the prosecution story is wholly imagined.

72. As to facts, we also find it strange that the vehicle Scorpio (in which the deceased is claimed to have been last seen with the appellant Manjeet), was never recovered. As to the identity and the role of the co-accused Gaurav Singh, we are equally not convinced that he was ever identified, in accordance with law. Both witnesses of last seen Radhey Shyam (P.W.-3) and Vijay Kumar (P.W.-5) maintained that they did not identify Gaurav Singh when they saw him seated on the back seat of the (not-recovered) Scorpio car. While Radhey Shyam (P.W.-3) identified him in the dock, Vijay Kumar (P.W.-5) did not identify him even in dock. Seen in that light, it is rendered wholly doubtful if in absence of any Test Identification Parade, Sandeep Tomar (P.W.-2) who is not an eye witness of last seen was ever told, either by Radhey Shyam (P.W.-3) or Vijay Kumar (P.W.-5), that the co-accused Gaurav Singh had also been spotted with the deceased and the appellant Manjeet Kumar on 08.04.2013, while they were travelling in the (non-recovered) Scorpio car. It is so because those two witness returned to Galand only after the cremation of the dead body of the deceased.

73. Then, as to the statement recorded under Section 313 Cr.P.C., neither Material Exhibit No. 23 (i.e. allegedly blood stained Alto car), was put to the accused nor it may be relied. We are pained to observe that instead of culling out adverse circumstances that the prosecution claimed to have proved and putting those exact adverse circumstances to the accused, the learned trial Court has extracted lump sum statements and put them to the accused and thus befuddled them or left them with no chance to offer any meaningful response to any adverse circumstance that the prosecution may claim to have proved and that the prosecution may seek to rely at the stage of hearing.

74. In that context, we note that the law on the issue is abundantly clear. Section 313 Cr.P.C. contains a provision of law that in effect is *pari materia* to the pre-existing Section 342 of the Code of Criminal Procedure, 1898. In that context, in **Tara Singh vs State, (1951) SCC OnLine SC 49**, it was observed as under:

“38. The whole object of Section 342 is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him. The questioning must therefore be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. Even when an accused person is not illiterate, his mind is apt to be perturbed when he is facing a charge of murder. He is therefore in no fit position to understand the significance of a complex question. Fairness therefore requires that each material circumstance should be put simply and separately in a way that an illiterate mind, or one which is perturbed or confused, can readily appreciate and understand. I do not suggest that every error or omission in this behalf would necessarily vitiate a trial because I am of opinion that errors of this type fall within the category of curable irregularities. Therefore, the question in each case depends upon the degree of the error and upon whether prejudice has been occasioned or is likely to have been occasioned.”

75. In **Jai Dev v. State of Punjab, AIR 1963 SC 612**, a three-judge bench of the Supreme Court elaborated on the test to be applied to determine if that provision of law had been fairly complied with. It was thus observed:

“21. ... The ultimate test in determining whether or not the accused has been fairly examined under Section 342 would be to enquire whether, having regard to all the questions put to him, he did get an opportunity to say what he wanted to say in respect of prosecution case against him. If it appears that the examination of the accused person was defective and thereby a prejudice has been caused to him, that would no doubt be a serious infirmity.”

76. Then, in **Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793**, another three-judge bench of the Supreme Court observed as below:

“16. ... It is trite law, nevertheless fundamental, that the prisoner's attention should be drawn to every inculpatory material so as to enable him to explain it. This is the basic fairness of a criminal trial and failures in this area may gravely imperil the validity of the trial itself, if consequential miscarriage of justice has flowed. However, where such an omission has occurred it does not ipso facto vitiate the proceedings and prejudice occasioned by such defect must be established by the accused. In the event of evidentiary material not being put to the accused, the court must ordinarily eschew such material from consideration. It is also open to the appellate court to call upon the counsel for the accused to show what explanation the accused has as regards the circumstances established against him but not put to him and if the accused is unable to offer the appellate court any plausible or reasonable explanation of such circumstances, the court may assume that no acceptable answer exists and that even if the accused had been questioned at the proper time in the trial court he would not have been able to furnish any good ground to get out of the circumstances on which the trial court had relied for its conviction.”

77. Then, in **Naval Kishore Singh v. State of Bihar, (2004) 7 SCC 502**, it was observed as below:

“5. The questioning of the accused under Section 313 CrPC was done in the most unsatisfactory manner. Under Section 313 CrPC the accused should have been given opportunity to explain any of the circumstances appearing

in the evidence against him. At least, the various items of evidence, which had been produced by the prosecution, should have been put to the accused in the form of questions and he should have been given opportunity to give his explanation. No such opportunity was given to the accused in the instant case. We deprecate the practice of putting the entire evidence against the accused put together in a single question and giving an opportunity to explain the same, as the accused may not be in a position to give a rational and intelligent explanation. The trial Judge should have kept in mind the importance of giving an opportunity to the accused to explain the adverse circumstances in the evidence and the Section 313 examination shall not be carried out as an empty formality. It is only after the entire evidence is unfurled the accused would be in a position to articulate his defence and to give explanation to the circumstances appearing in evidence against him. Such an opportunity being given to the accused is part of a fair trial and if it is done in a slipshod manner, it may result in imperfect appreciation of evidence.”

78. In **Asraf Ali V. State of Assam (2008) 16 SCC 328**, applying the same principle, to Section 313 Cr.P.C., the Supreme Court observed as below:

“Section 313 of the Code casts a duty on the court to put in an enquiry or trial questions to the accused for the purpose of enabling him to explain any of the circumstances appearing in the evidence against him. It follows as a necessary corollary therefrom that each material circumstance appearing in the evidence against the accused is required to be put to him specifically, distinctly and separately and failure to do so amounts to a serious irregularity vitiating trial, if it is shown that the accused was prejudiced.”

79. Next, in **Alister Anthony Pareira vs State of Maharashtra, (2012) 2 SCC 648**, then pre-existing law was noticed. Thereafter, it was observed as below:

“61. From the above, the legal position appears to be this: the accused must be apprised of incriminating evidence and materials brought in by the prosecution against him to enable him to explain and respond to such evidence and material. Failure in not drawing the attention of the accused to the incriminating evidence and inculpatory materials brought in by the prosecution specifically, distinctly and separately may not by itself render the trial against the accused void and bad in law; firstly, if having

regard to all the questions put to him, he was afforded an opportunity to explain what he wanted to say in respect of the prosecution case against him and secondly, such omission has not caused prejudice to him resulting in failure of justice. The burden is on the accused to establish that by not apprising him of the incriminating evidence and the inculpatory materials that had come in the prosecution evidence against him, a prejudice has been caused resulting in miscarriage of justice.”

80. That principle of law was again applied and followed by the Supreme Court in **Maheshwar Tigga v. State of Jharkhand**, AIR (2020) SC 4535.

81. In **Raj Kumar v. State (NCT of Delhi)**, (2023) 17 SCC 95 : 2023 SCC OnLine SC 609, the Supreme Court summarized the law under Section 313 Cr.P.C., in the following words:

“22. The law consistently laid down by this Court can be summarised as under:

22.1. It is the duty of the trial court to put each material circumstance appearing in the evidence against the accused specifically, distinctively and separately. The material circumstance means the circumstance or the material on the basis of which the prosecution is seeking his conviction.

22.2. The object of examination of the accused under Section 313 is to enable the accused to explain any circumstance appearing against him in the evidence.

22.3. The Court must ordinarily eschew material circumstances not put to the accused from consideration while dealing with the case of the particular accused.

22.4. The failure to put material circumstances to the accused amounts to a serious irregularity. It will vitiate the trial if it is shown to have prejudiced the accused.

22.5. If any irregularity in putting the material circumstance to the accused does not result in failure of justice, it becomes a curable defect. However, while deciding whether the defect can be cured, one of the considerations will be the passage of time from the date of the incident.

22.6. In case such irregularity is curable, even the appellate court can question the accused on the material circumstance which is not put to him.

22.7. *In a given case, the case can be remanded to the trial court from the stage of recording the supplementary statement of the accused concerned under Section 313CrPC.*

22.8. *While deciding the question whether prejudice has been caused to the accused because of the omission, the delay in raising the contention is only one of the several factors to be considered.”*

82. More recently, in **Naresh Kumar v. State of Delhi, (2024) SCC Online SC 1641**, the issue of material prejudice caused for reason of non-examination/inadequate disclosure made under Section 313 Cr.P.C., was again considered. Though the principle in law laid down in Raj Kumar (supra) was taken note of, it was specifically observed as below :

“21. We have already held that whether non-questioning or inadequate questioning on incriminating circumstances to an accused by itself would not vitiate the trial qua the accused concerned and to hold the trial qua him is vitiated it is to be established further that it resulted in material prejudice to the accused. True that the onus to establish the prejudice or miscarriage on account of non-questioning or inadequate questioning on any incriminating circumstance(s), during the examination under Section 313, Cr. P.C., is on the convict concerned. We say so, because if an accused is ultimately acquitted, he could not have a case that he was prejudiced or miscarriage of justice had occurred owing to such non-questioning or inadequate questioning.

22. In the light of the above view of the matter, we are inclined to consider the further question whether the non-questioning on the aforesaid twin incriminating circumstances to the appellant during his examination under Section 313, Cr. P.C., had caused material prejudice to him. The decision of this Court in State of Punjab v. Swaran Singh⁸, constrain us to consider one another factor while considering the question of prejudice. In Swaran Singh's case (supra), this Court held that where the evidence of the witnesses is recorded in the presence of the accused who had the opportunity to cross examine them but did not cross examine them in respect of facts deposed, then, omission to put question to the accused regarding the evidence of such witnesses would not cause prejudice to such an accused and, therefore, could not be held as grounds vitiating the trial qua the convict concerned...”

83. Thus, it may be safely inferred, in the first place, it was a requirement of law to confront the accused with the relevant adverse circumstance proven and relied against them or the inculpatory circumstances proven by the prosecution - to give the accused an opportunity to offer his response thereto. That remains a necessary concomitant of a fair trial. It inheres a reflection/extension of the principle *audi alteram partem*, arising from due enforcement of rule of natural justice.

84. First, at the stage of framing of charge, the accused is confronted with the nature of occurrence attributed to him, to allow him a fair opportunity to take a stand - whether guilty or not-guilty. Once the accused pleads not-guilty, the trial commences. The trial court receives evidence, to prove the charge framed against the accused, in his presence. It also allows the accused an opportunity to cross-examine the witnesses, who appears to prove various elements of the charge or the occurrence.

85. Upon prosecution evidence being complete, the statement under Section 313 Cr.P.C. is required to be recorded by way of the next stage of compliance of the rule of natural justice, to confront the accused with the exact nature of adverse circumstances, found proven against him. Unless inculpatory facts are first identified individually and specifically confronted to the accused, the risk of prejudice being caused to the accused, at the stage of leading defence evidence, and therefore hearing, may arise. What exact prejudice may arise, would depend on individual facts of each case.

86. To illustrate the point, we quote in *extenso* the statement of the accused Manjeet recorded under Section 313 Cr.P.C. in the present case. It reads as below:

“बयान मुल्जिम धारा 313 द.प्र.सं.

नाम मंजीत पिता/पति का नाम जयवीर सिंह
उम्र करीब 29 वर्ष पेशा- खेती निवासी ग्राम-गालन्द

थाना पिलखुआं जिला हापुड़

प्रश्न 1- अभियोजन का कथन है कि दिनांक 08-04-2013 को समय करीब 20.00 बजे स्थान मकान नं० डी. 109 गोविन्द विहार डी.पी.एस. स्कूल के बराबर में जिला गाजियाबाद में आपने सह अभियुक्त के साथ एक राय होकर वादी की बहन कु० रेनू तौमर को उसके किराये वाले मकान से स्कार्पियों गाड़ी से ले जाकर पैर से गली दबाकर उसकी हत्या कारि की तथा कु० रेनू तौमर की हत्या करके उसके शव को सनील की रजाई में बांधकर अपराध के साक्ष्य का विलोपन करने के आशय से तनुश्री फार्म हाउस के पीछे फेंक दिया, तथा आपने कु० रेनू तौमर को अपने साथ शादी करने का झासा देकर उसके साथ शारीरिक सम्बन्ध स्थापित कर उसकी हत्या से पूर्व तक कु० रेनू तौमर के साथ बलात्संग किया। इस सम्बन्ध में आपको क्या कहना है।

उत्तर: गलत है।

प्रश्न 2- आपने अभियोजन साक्षी पी० डब्लू01 मोहनवीर के बयान सुने। इस साक्षी ने अपने बयान में कहा है कि अप्रैल 2013 में मैं थाना कविनगर पर कम्प्यूटर लेखक के पद पर कार्यरत था। दिनांक 09-04-13 को ड्यूटी तैनात रहते समय 20.15 बजे उक्त केस के वादी संदीप तौमर द्वारा दी गई तहरीर के आधार पर थाने पर मु०अ०सं० 445/13 बनाम मंजीत आदि धारा 302,201 आईपी० सी० कायम करते हुये उक्त कुकदमें की चिक एफ० आई० आर० कम्प्यूटर पर मेरे द्वारा तैयार की गई। उक्त तहरीर के आधार पर कायम चिक एफ.आई.आर. पत्रावली पर मेरे सामने है। तसदीक करता हूँ। इस पर प्रदर्शक-1 डाला गया। इस सम्बन्ध में आपको क्या कहना है।

उत्तर- Anti-Time फर्जी कार्यवाही की गयी है।

प्रश्न-3 आपने अभियोजन साक्षी पी० डब्लू02 संदीप के बयान सुने। उक्त साक्षी ने अपने बयान में अभियोजन कथानक का समर्थन किया है तथा कहा है उक्त केस की मृतका कु० रेनू तौमर मेरी बड़ी बहन थी। घटना के समय उसकी उम्र करीब 24 वर्ष थी। घटना के समय मेरी बहन कु० रेनू तौमर हंसराज अनेजा निवासी 6/22 सैक्टर ए. चिरंजीव विहार गाजियाबाद के मकान में किराये पर रहकर सिविल सर्विसेज की तैयार कर रही थी। दिनांक 9-4-13 की सुबह मैंने अपनी बहन कु० रेनू तौमर को माबाईल नं०-8882727848 पर सम्पर्क करने का प्रयास किया, लेकिन मोबाईल पर सम्पर्क न होने के कारण मैं उसको मिलने के लिये हंसराज अनेजा निवासी चिरंजीव विहार के मकान पर शाम के समय आया तो मेरी बहन कु० रेनू तौमर मुझे वहां नहीं मिली। तब मुझे मकान मालिक हंसराज अनेजा व उसकी पत्नी विमला अनेजा व नौकर अजय ने बताया कि कल रात समय करीब 7.30-8.00 बजे मंजीत कुमार पुत्र जयवीर सिंह निवासी ग्राम गालन्द थाना मसूरी अपने एक अन्य साथी के साथ मेरे घर से कु० रेनू तौमर को अपनी स्कार्पियों गाड़ी में बुलाकर बैठाकर ले गया है। स्कार्पियों

रंग सफेद नं० यू०पी० 14 पी.बी.--3784 थी। उक्त सूचना मिलने पर मैं अपनी बहन को तलाश करता हुआ थाना कविनगर पहुंचा तथा मैंने थाने पर पुलिस वालों को अपनी बहन कु० रेनू तौमर का हुलिया, कद, काठी व एक पैर से अपंग होने की बात बताई। वहां मौजूद पुलिस वालों ने मुझे बताया कि आज सुबह तनुश्री फार्म हाउस एन.एच. 24 के पीछे एक अज्ञात लड़की का शव मिला है। जिसका शव पोस्ट मार्टम हेतु हिन्दन मोरचरी गाजियाबाद पर गया है। उक्त सूचना पर मैं हिन्दन मोरचरी पर पहुंचा, तथा वहां जाकर मैंने तनुश्री फार्म हाउस के पीछे मिलने वाली लड़की की शिनाख्त अपनी बहन कु० रेनू तौमर के रूप में की। मेरी बहन की हत्या हमारे ही गांव के हाजिर अदालत मुल्जिम मंजीत व उसके साथी हाजिर अदालत मुल्जिम गौरव ने की थी। मंजीत ने उक्त घटना को अंजाम देने से पहले मेरी बहन को शादी का झांसा देकर उससे शारीरिक सम्बन्ध बनाये हुये थे। उक्त घटना की तहरीर मेरे द्वारा लिखकर थाना कविनगर पर दिनांक 9-4-13 को दी गयी। उक्त तहरीर मेरे लेख व हस्ताक्षर में पत्रावली पर मौजूद है। तसदीक करता हूँ। इस पर प्रदर्शक 2 डाला गया। इस सम्बन्ध में आपको क्या कहना है। उक्त साक्षी आपके विरुद्ध साक्ष्य क्यों दे रहा है।

उत्तर-शक व रंजिश के कारण झूठी रिपोर्ट लिखायी है तथा झूठा बयान दिया है।

प्रश्न 4-आपने अभियोजन साक्षी पी० डब्लू ० 3 राधेश्याम के बयान सुने। इस साक्षी ने अपने बयान में कहा है कि दिनांक 08-04-13 को मैं तथा अपने जीजा अजय के छोटे भाई विजय कुमार के साथ अपनी भांजी रेनू तौमर के लिये लड़का देखने मोटर साईकिल से गोविन्दपुरम् गाजियाबाद से गुड़गांव जाने के लिये हापुड़ चुंगी गाजियाबाद पर समय करीब 8.30 बजे पहुंचे तो वहां चौराहे पर रैड लाईट होने के कारण ट्रैफिक रुका हुआ था, उसी दौरान हमारे सीधे हाथ पर एक स्कारपियो आकर रुकी। उस स्कारपियो को हाजिर अदालत मुल्जिम मंजीत चला रहा था, तथा उसके बराबर वाली आगे की सीट पर मेरी भांजी रेनू तौमर बैठी हुई थी, तथा एक लड़का गौरव बैठा था। स्कारपियो में इन्हे बैठे देखकर विजय कुमार जी ने मंजीत से पूछा कि रेनू को कहाँ लेकर जा रहा है, तो मंजीत ने कहा कि इसकी मां ज्यादा बीमार है, मैं रेनू को उसके गांव गालन्द छोड़ने जा रहा हूँ। दिनांक 9-4-13 को लड़का पसन्द आने के बाद विजय कुमार ने एस.टी.डी. से गालन्द अजय कुमार को घर परिवार में फोन किया तो पता चला कि रेनू तौमर खत्म हो गई है। जब हम गालन्द आये तो पता चला कि मंजीत और उसके एक साथी ने रेनू तौमर को खत्म कर दिया है। जब तक हम पहुंचे थे तब तक रेनू तौमर का अन्तिम संस्कार कर दिया गया था। उक्त घटना की बाबत दरोगाजी ने मेरा बयान लिया था। उक्त साक्षी के साक्ष्य के बारे में आपको क्या कहना है। उक्त साक्षी आपके विरुद्ध क्यों साक्ष्य दे रहा है।

उत्तर- वादी का रिश्तेदार होने के नाते झूठा बयान दिया है।

प्रश्न 5- आपने अभियोजन साक्षी पी० डब्लू04 डा० महेश कुमार तौमर के बयान सुने। इस साक्षी ने अपने बयान में कहा है कि अप्रैल 2013 में मैं जिला संयुक्त चिकित्सालय संजय नगर गाजियाबाद में पैथोलॉजिस्ट के पद पर तैनात था। उक्त केस की मृतका रेनू तौमर की मृत्यु के सम्बन्ध में थाने पर कायम मु०अ०सं० 445/13 धारा 302, 202 आई० पी० सी० के विवेचक द्वारा मृतका रेनू तौमर को पोस्टमार्टम उपरान्त वेजाईना इस्मीयक स्लाईड सीलबन्द अवस्था में परीक्षण हेतु पैथोलॉजी विभाग जिला संयुक्त चिकित्सालय संजय नगर गाजियाबाद में प्राप्त करायी गई। उक्त स्लाईड का मेरे द्वारा दिनांक 16-4-13 को परीक्षण करने के उपरान्त पैथोलॉजी रिपोर्ट नं०-249/13 तैयार की गई। मृतका रेनू तौमर की प्राप्त स्लाईड में परीक्षण उपरान्त डैड स्पेरेडलेजा दिखाई दिये थे। उक्त परीक्षण रिपोर्ट मेरे द्वारा विवेचक द्वारा उक्त सम्बन्ध में दिये गये प्रार्थना-पत्र की पुस्त पर तैयार की गई जो पत्रावली पर का०सं० 11 की पुस्त पर मेरे लेख व हस्ताक्षर में अंकित है, तथा मेरी मोहर भी अंकित है, शिनाख्त करता हूँ। इस रिपोर्ट पर प्रदर्शक-3 डाला गया। मेरी राय में मृतका रेनू तौमर की मृत्यु से पूर्व उसके साथ शारीरिक सम्बन्ध कारित किया गया है। उक्त केस में विवेचक द्वारा मेरा बयान लिया था। इस सम्बन्ध में आपको क्या कहना है।

उत्तर- फर्जी रिपोर्ट तैयार की है तथा झूठा बयान दिया है।

प्रश्न 6- आपने अभियोजन साक्षी पी० डब्लू 05 विजय कुमार के बयान सुने। इस साक्षी ने अपने बयान में पी० डब्लू04 राधेश्याम के साथ गुड़गांवा जाना तथा पी० डब्लू04 के कथन का समर्थन करते हुए अभियोजन कथानक का समर्थन किया है। इस सम्बन्ध में आपको क्या कहना है। उक्त साक्षी आपके विरुद्ध साक्ष्य क्यों दे रहा है।

उत्तर: वादी की परिवारीजन होने के कारण झूठा बयान दिया है।

प्रश्न-7 आपने अभियोजन साक्षी पी० डब्लू० 6 सी.सी. सतेन्द्र गिरी के बयान सुने। उक्त साक्षी ने अपने बयान में कहा है कि अप्रैल 2013 में मैं थाना कविनगर पर का० क्लर्क के पद पर तैनात होना तथा दिनांक 09-4-13 को को वादी संदीप तौमर द्वारा अपनी बहन कु० रेनू तौमर की हत्या के सम्बन्ध में दी गयी लिखित तहरीर जो पत्रावली पर प्रदर्शक-2 है, के आधार पर थाने पर मु०अ०सं० 445/13 बनाम मंजीत आदि धारा 302, 201 आई०पी०सी० करना बताया है, तथा उक्त मुकदमें का जी० डी० में खुलासा रपट नं०-61 समय 20.15 बजे दिनांक 9-4-13 को करना कहा है। उक्त असल जी. डी. आज मैं अपने साथ लाया हूँ। उक्त जी. डी. की कार्बन प्रति पत्रावली पर मेरे सामने है, मेरे लेख व हस्ताक्षर में है। तसदीक करता हूँ। इस पर प्रदर्शक-4 डाला गया। उक्त साक्षी ने एच.एम. अनीस अहमद को अपने साथ तैनात होना तथा उनके लेख हस्ताक्षर शिनाख्त किये हैं तथा जी. डी. की कार्बन प्रति को साबित किया है, जिसपर प्रदर्शक-5 डाला गया। इस सम्बन्ध में आपको क्या कहना है।

उत्तर- एन्टी-टाइम फर्जी कार्यवाही की है।

प्रश्न-8- आपने अभियोजन साक्षी पी० डब्लू००७ डा० एस. एस. चौधरी के बयान सुने। उक्त साक्षी ने अपने बयान में कहा है कि दिनांक 09-04-13 को मैं जिला एम.एम.जी. अस्पताल गाजियाबाद में इमरजेन्सी मेडीकल आफिसर के पद पर कार्यरत था। उस दिन मेरे द्वारा अज्ञात महिला शव जिसकी उम्र करीब 22 वर्ष, जिसके शव को एस० ओ० कविनगर द्वारा सील्ड अवस्था में वास्ते पोस्टमार्टम भेजा गया था, जिस शव को का० 345 हरचरन, का० 3528 जयकुमार मय पुलिस प्रपत्र लेकर आये थे, का समय 5.20 बजे पी. एम. पर शव विच्छेदन किया गया था। शव की मृत्यु पश्चात की अकड़न समाप्त हो चुकी थी। आँखें बन्द थी, झाग युक्त खून मुँह व नाक से निकल रहा था। साक्षी ने कहा है कि पोस्टमार्टम करते समय मेरे द्वारा मृतका की शव परीक्षण रिपोर्ट तैयार की गई। उक्त असल पी० एम० रिपोर्ट व उसकी कार्बन प्रति पत्रावली पर मौजूद हैं। मेरे लेख व हस्ताक्षर में है। शिनाख्त करता हूँ। असल पी० एम० रिपोर्ट पर प्रदर्शक-6 डाला गया। मृतका की मृत्यु उसके शरीर पर मृत्यु के पूर्व आयी चोटों के कारण दम घुटने के कारण दिनांक 8-4-13 की रात्रि को समय करीब 9.00 बजे होना सम्भव है। इस सम्बन्ध में आपको क्या कहना है।

उत्तर- झूठा बयान दिया है।

प्रश्न-9- आपने अभियोजन साक्षी प्री० डब्लू००८ एस० आई० विजय कुमार शर्मा के बयान सुने। उक्त साक्षी ने अपने बयान में कहा है कि अप्रैल 2013 में मैं थाना कविनगर पर बतौर एस० आई० तैनात था। दिनांक 9-4-13 को थाना कविनगर पर सचिन चौध द्वारा एक अज्ञात लड़की उम्र 22 वर्ष की लाश तनूश्री फार्म हाउस के पीछे पड़ी होने की लिखित सूचना प्राप्त हुई। उक्त सूचना पर मैं का० हरचरण व जयकुमार के साथ थाने से रपट नं०-6 समय 6.15 ए. एम. पर दिनांक 9-4-13 को पंचायतनामा आदि की कार्यवाही हेतु खाना होकर घटनास्थल पर पहुंचा। वहां मौजूद जनता के व्यक्तियों से शव अज्ञात लड़की की शिनाख्त कराये जाने का काफी प्रयास किया, लेकिन शव की शिनाख्त न होने पर उस अज्ञात लड़की के शव को फोटोग्राफस कराये तथा मृतका की छाप अंगुल कराने हेतु रिपोर्ट दी तथा वहां मौजूद व्यक्तियों को पंचायतनामा नियुक्त कर मृतका के शव का पंचायतनामा व दीगर कागजात चिठ्ठी सी.एम०ओ०, चिठ्ठी एस.पी. ओ. छात अंगुल हेतु नमूना होहर, चालान लाश फार्म-13, फोटो लाश मेरे द्वारा तैयार कर मृतका के शव को सीलबन्द अवस्था में का० जयकुमार व हरचरण को सुपुर्द वास्ते पोस्टमार्टम किया। मृतका पंचायतनामा व दीगर कागजात उपरोक्त पत्रावली पर मेरे लेख व हस्ताक्षर में मौजूद है। तसदीक करता हूँ। पंचायतनामा पर प्रदर्शक-7, चिठ्ठी सी० एम० ओ० पर प्रदर्शक-8, चिठ्ठी एस.पी.ओ. पर प्रदर्शक-9, नमूना मोहर पर प्रदर्शक-10, फार्म-13 पर प्रदर्शक-11, फोटो लाश पर प्रदर्शक-12 डाला गया। पंचायतनामा के समय शव की शिनाख्त हेतु शव के 9 फोटो ग्राफस मेरे द्वारा खिचवाये गये, जो पत्रावली पर मेरे समक्ष मौजूद है। शिनाख्त करता हूँ। इन पर वस्तु प्रदर्श 1 ता 9 डाले गये।

उक्त केस में विवेचक द्वारा दिनांक 16-4-13 को मेरा बयान लिया गया था। इस सम्बन्ध में आपको क्या कहना है।

उत्तर- फर्जी कार्यवाही की गयी है तथा झूठा बयान दिया है।

प्रश्न-10- आपने अभियोजन पी० डब्लू० 9 अजय कुमार के बयान सुने। उक्त साक्षी ने अपने बयान में कहा है कि उक्त केस की मृतका रेनू तौमर मेरी बेटी थी। घटना दिनांक 8-4-13 की है। घटना के समय मेरी लड़की कु० रेनू तौमर चिरंजीव विहार के म० नं० 6/22 सै०-ए में हंसराज अनेजा के मकान में किराये पर रहकर सिविल सर्विसेज की तैयार शिखर अकाडमी गाजियाबाद में कर रही थी। घटना वाली दिनांक 8-4-13 को रात्रि के समय करीब 7.30-8.00 बजे मेरी लड़की रेनू तौमर को चिरंजीव विहार से हाजिर अदालत मुल्जिम मंजीत जो मेरे ही गांव का रहने वाला है, अपने एक अन्य साथी के साथ एक सफेद रंग की स्कारपियो नं० यू० पी०-14 पी.बी.-3784 में बिठाकर ले गया था, तथा ले जाकर गला दबाकर रेनू तौमर की हत्या कर उसकी लाश को तनूश्री फार्म हाउस के पीछे फेंक दिया था। इस घटना की जानकारी दिनांक 9-4-13 को पता चलने पर मेरे लड़के संदीप ने थाना कविनगर पर उसी दिन मुकदमा कायम कराया था। इस सम्बन्ध में आपको क्या कहना है। उक्त साक्षी आपके विरुद्ध साक्ष्य क्यों दे रहा है।

उत्तर- शक व रंजिश के कारण झूठा बयान दिया है।

प्रश्न-11-आपने अभियोजन साक्षी पी० डब्लू०-10 सचिन चौधरी के बयान सुने। उक्त साक्षी ने अपने बयान में कहा है कि दिनांक 9-4-13 को मैं सुबह के समय करीब पौने छः बजे घर से अपने खेतों की तरफ घूमने निकला था। उसी दौरान तनूश्री फार्म हाउस के पीछे जाने वाले कच्चे रास्ते जो अवन्तिका कालौनी गाजियाबाद को जाता है, पर एक अज्ञात लड़की जिसकी उम्र करीब 22 वर्ष थी, मृत अवस्था में पड़ी थी। उक्त अज्ञात शव मिलने की लिखित सूचना मेरे द्वारा थाना कविनगर को दी गई। उक्त तहरीर पत्रावली पर मेरे सामने है, मेरे लेख व हस्ताक्षर में है, तसदीक करता हूँ। इस पर प्रदर्शक-17 डाला गया। इस सम्बन्ध में आपको क्या कहना है।

उत्तर- झूठा बयान दिया है।

प्रश्न-12 आपने अभियोजन साक्षी पी० डब्लू० 11 एस० आई० सुबोध कुमार के बयान सुने। उक्त साक्षी ने अपने बयान में दिनांक 15-4-13 को करीब 13.30 बजे आपको पकड़ना बताया है। उक्त साक्षी के साक्ष्य के बारे में आपको क्या कहना है।

उत्तर- झूठा बयान दिया है।

प्रश्न-13-आपने अभियोजन साक्षी पी० डब्लू० 12 निरीक्षक आर० पी० सिंह के बयान सुने। उक्त साक्षी ने अपने बयान में कहा है कि मु० अ० सं० 445/13 दिनांक 9-4-13 समय 20.15 पर थाना कविनगर पर कायम हुआ, जिसकी तफतीश मैंने ग्रहण की। उक्त साक्षी ने अपने

बयान में नकल तहरीर का इन्द्राज जी.डी. में करना, तथा गवाहान के बयान अंकित करना, घटनास्थल का निरीक्षण कर नक्शानजरी अपने लेख व हस्ताक्षर में तैयार करना, जो पत्रावली पर है, जिस पर प्रदर्शक-17 डाला गया। पैथोलोजी रिपोर्ट के आधार पर मुकदमें में धारा 376 आई० पी० सी० का इजाफा करना बताया, तथा विवेचना उपरान्त अभियुक्त गौरव सिंह व मंजीत कुमार के विरुद्ध आरोप-पत्र सं०-255/13 धारा 302,201,376 भा०दं० सं० पर्याप्त साक्ष्य के आधार पर प्रेशित किया, जो इस समय मेरे सामने पत्रावली पर मौजूद है, मेरे हाथ का लिखा व दस्तखती है, शिनाख्त करता है। जिस पर प्रदर्शक-20 डाला गया। इस सम्बन्ध में आपको क्या कहना है। उत्तर-समस्त विवेचना वादी से मिलकर फर्जी तरीके से की गयी है मेरे विरुद्ध झूठा आरोपपत्र दाखिल किया है(अपठनीय) बरामदगी नहीं हुई है।

प्रश्न-14- आपके विरुद्ध मुकदमा क्यों चला।

उत्तर-शक व रंजिश के कारण झूठा मुकदमा चला।

प्रश्न 15- क्या सफाई देनी है।

उत्तर: जी हाँ।

प्रश्न 16- कुछ और कहना है।

उत्तर- मैं निर्दोष हूँ। मुझे झूठा फंसाया गया है।"

87. We also note that this has become a common error with the trial Courts in our State. At present, we are further pained to observe that such errors are being caused at the hands of Session Courts. The same requires an immediate correction before miscarriage of justice that is at risk as a consequence of that error may become a norm or so rampant as may become difficult to deal or contain. The learned Court below ought to have framed the above questionnaire more accurately. While we do not intend to limit the scope of that questionnaire and therefore clearly provide that our observation is only to exemplify and not to direct the learned trial court or to dictate to them, either the extent of that questionnaire, or to limit it to any specific question, we do provide that in form, structure and manner of questions being framed, each individual adverse circumstance proven against the accused must be separately/individually identified and put to the accused by way of each

question. In no case whole evidence received through any witness, is to be put to the accused.

88. In view of the above, appeal succeeds and is **allowed**. The impugned judgment and order dated 12.05.2015 is hereby set aside. In absence of evidence, the appellants are acquitted of the charges framed against them. They are on bail. They need not surrender. Their bail bonds and sureties are discharged, in case they are not wanted in any other case. The appellants are directed to furnish bail bonds in compliance of Section 437-A Cr.P.C. to the satisfaction of the Court concerned.

89. A copy of this judgment alongwith original record of the trial Court be transmitted to the Court concerned for necessary compliance. Compliance report be submitted to this Court, at the earliest. Office is directed to keep the compliance report on record.

Order Date :- 17.7.2025

Faraz/Abhilash

(Madan Pal Singh, J.) (S. D. Singh, J.)