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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.A. 47/2004**

% ***Date of Judgment: 18th February, 2016***

HARI BAHADUR @ HARI

..... Appellant

Through: Mr. Braham Singh, Advocate

Versus

STATE

..... Respondent

Through: Ms. Aashaa Tiwari, APP for State.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL).

1. The matter was passed over once as none was present on behalf of the appellant and taken up post lunch.
2. Mr. Braham Singh, Advocate who is present in court is appointed as Amicus Curiae in the matter.
3. The present appeal has been filed by the appellant under Section 374 of the Code of Criminal Procedure against the judgment dated 12.11.2003 and order on sentence dated 15.11.2003 passed by the Additional Sessions Judge by which the appellant has been convicted under Section 302 of the Indian Penal Code and sentenced to undergo imprisonment for life.
4. The brief facts of the case, as noticed by the Trial Court are as under:

“On 27.8.99 when SHO Inspector R.S. Nehra was to move for the VVIP route duty, Hari Bahadur @ Hari resident of WZ-113, Naraina village, Delhi met him in the police station and disclosed that he has killed his sister (Muhboli) Vishnu in his room at his house no. WZ-113, village Naraina by strangulating her throat. On this disclosure vide DD no.18A SI Sunil Kumar along with const. Yogender Kumar went for inquiry to WZ-113 village Naraina. In the meantime Nar Bahadur and landlord Prem Singh

also arrived at the spot. In their presence the key of the room was taken from Hari Bahadur and lock of the room was got opened and they went inside the room. There a dead body of the deceased Vishnu W/o Nar Bahadur was found lying by the side of a wall. There was silky chord around the neck of the deceased tied twice which was having a strong knot, back side. The inspector through wireless called Additional SHO Inspector Sudhir Kumar for taking over the inquiry who along with const. Phool Kumar reached at the spot where ASI Hukam Singh with const. Balwan Singh also reached. Inspector Sudhir Kumar recorded the statement of Nar Bahadur, husband of deceased Vishnu. Nar Bahadur in his statement disclosed that for one month she was living with his brother Hari Bahadur as she had quarrelled with him (Nar Bahadur) and living separately with Hari Bahadur who is a resident of Nepal and presently living at WZ-113, Village Naraina. He also disclosed that Hari Bahadur came to him around at 5:30 AM .on that day at his house informed that he was fed up with the activities Of Vishnu, therefore, he was going to finish himself also. He tried to stop Hari Bahadur but Hari Bahadur ran away. Thereafter he was coming in search of Hari Bahadur and his wife and found the police at the spot i.e. WZ-113, Village Naraina. In view of this statement, a case of offence u/s. 302 IPC was made out. The Inspector prepared a Tahrir and through constable Rajinder Singh got recorded the FIR. The crime team was called at the spot for examination. Photographs were taken through photographers. After the examination of the spot, the site plan was prepared. The notebook was lying near the dead body. In this notebook on the rear cover it was written that he could not bear his insult, therefore, he has killed her and he will also not live. The notebook was seized. The dead body was sent for post mortem to Safdarjang hospital. The statements of witnesses were recorded. During the investigation Hari Bahadur confessed that due to activities of his sister (Muhboli Behan) has murdered her by strangulating her throat. The disclosure statement was recorded and accused was arrested. In the post mortem report Doctor gave the cause of death strangulation by ligature. Scaled site plan was got prepared through Draftsmen. The notebook and specimen hand writing was sent to FSL Malviya Nagar for examination and the accused was committed for trial.

The formal charge against the accused was framed on 2.8.2000 under section 302 of IPC which was read over and explained to the

accused and the accused Hari Bahadur pleaded not guilty and claimed trial."

5. The prosecution in all examined 13 witnesses. One witness was examined by the defence. The statement of the appellant was recorded under Section 313 of the Code of Criminal Procedure wherein the appellant denied the allegations made against him and alleged false implication and claimed to be tried.
6. Mr. Braham Singh learned counsel appearing on behalf of the appellant submits that the impugned order is contrary to the facts and is based upon conjectures and surmises.
7. Counsel for the appellant argued that the First Information Report Ex.PW11/A cannot be relied upon in view of the provisions of Section 25 of the Evidence Act and was kept out of the consideration by the trial court.
8. The counsel for the appellant submits that the testimony of Nar Bahadur PW2 is not a reliable or truthful piece of evidence and is contradictory to the version given by S.I. Sunil Kumar PW5 and Insp. R. S. Mehra PW6. It is further clarified that PW2 in his testimony categorically deposed that appellant Hari Bahadur gave him the keys of jhuggi and he is the one who opened the lock. However, PW5 and PW6 had testified that appellant gave keys to PW5 and he opened the same.
9. The counsel further submits that it is a settled law that no credence can be placed on the extra judicial confession of the appellant Hari Bahadur and the trial court committed gross error in relying on such a confession.
10. Counsel for the appellant strongly urged that the case of the prosecution is based on circumstantial evidence; there is no direct evidence available on record. The counsel for the appellant submitted that there are material

contradictions and improvements in the statement made to the police which cast a serious doubt in the case projected by the prosecution.

11. The learned counsel for the appellant also contended that the alleged recoveries made in the present case did not connect the appellant Hari Bahadur with the crime. The presence of the appellant at the place of occurrence is highly doubtful which is further corroborated by the testimony of PW1 Prem Singh and DW1 Ashok Kumar.
12. Lastly, counsel for the appellant urged that even if the allegations against the appellant are believed to be true, the case falls under Section 304 Part II of the Indian Penal Code and not under Section 302 of the Indian Penal Code. The incident took place at the spur of the moment and the appellant had not acted in a cruel and unusual manner therefore, the appellant should be convicted under Section 304 Part-II of the Indian Penal Code on the period already undergone.
13. Per contra, Ms. Aashaa Tiwari learned APP for the State submits that the prosecution has been able to establish its case beyond any shadow of doubt. The counsel for the State vehemently supported the case of the prosecution and submitted that the testimony of all the prosecution witnesses unerringly point towards the guilt of the appellant herein.
14. The counsel for the State further submitted that the alleged incident is corroborated by the testimony of PW2 Nar Bahadur in which he categorically deposed that on the fateful day he saw the dead body lying by the side wall of the room.
15. Lastly, learned counsel for the State submits that the evidence produced on record clearly establishes the guilt of the appellant and the learned trial court has rightly convicted the appellant for the offence punishable under section 302 of the Indian Penal Code, hence the impugned judgement does not call for any interference.

16. We heard the learned counsel for the parties and perused the record and also examined in detail the judgment rendered by the trial court.
17. Before we deal with the rival submissions of the parties, we deem it appropriate to refer the testimonies of the material witnesses in detail. The case of the prosecution rests on the testimonies of PW2 Nar Bahadur and PW6 Insp. R. S. Nehra.
18. PW2 Nar Bahadur in his testimony deposed as under:

“On 27.08.99 Hari Bahadur, present in the court, came to me around 5:30 AM in the morning and told me that being annoyed by the activities of my wife Vishnu he had killed by her threatening. On hearing this I tried to apprehend him but he ran away. My wife Vishnu was residing with him for the last one month before this incident and Hari Bahadur was her Dharam Bhai and she had strained relations with me. Thereafter I went to WZ-113, there I found the police officer present, Hari was produced before me second time and he gave me the keys of his Jhuggi from which I opened the Jhuggi, in the Jhuggi of Hari Bahadur dead body of my wife was lying towards the right side wall.”

19. PW6 Inspector R. S. Nehra in his testimony deposed as under:

*“On 27.08.99, at 6:45 AM I was going on VVIP Road. At the gate of P.S. a person namely Hari Bahdur, present in the court today told me that he has killed his Muhboli sister by strangulating in his room in village Naraina.....
I took him to WZ-113 village Naraina, at second floor in the corner where his landlord and husband of the deceased were present. SI Sudhir Kumar and Const. Yogeshwere also present there. I asked for the key. Hari took out keys of his room and SI Sunil Kumar opened the door where the dead body of a women with nylone thing rope was tied with her neck twice in the neck.”*

20. There is no doubt that in the present case, there is no eye-witness. It is a case based upon circumstantial evidence. In case of circumstantial evidence, the onus lies upon the prosecution to prove the complete chain of events which shall undoubtedly point towards the guilt of the accused.

Furthermore, in case of circumstantial evidence, where the prosecution relies upon an extra judicial confession, the court has to examine the same with a greater degree of care and caution. It is a settled principle of criminal jurisprudence that an extra judicial confession is a weak piece of evidence. Wherever the Court, upon due appreciation of the entire prosecution evidence, intends to base a conviction on an extra judicial confession, it must ensure that the same inspires confidence and is corroborated by other prosecution evidence. If, however, the extra judicial confession suffers from material discrepancies or inherent improbabilities and does not appear to be cogent as per the prosecution version, it may be difficult for the court to base a conviction on such a confession. In such circumstances, the court would be fully justified in ruling such evidence out of consideration.

21. One pertinent point has been raised by the learned Counsel appearing for the appellant that the details of the incident given out in the FIR (Ex.PW11/A) does not amount to a confession. It has been submitted that so far as this statement of appellant Hari Bahadur is concerned, it could not be used as an evidence in the case, because it amounts to confession to the Police and such a retracted confession to the Police cannot be used in evidence. This statement can only be relied upon under Section 8 of the Evidence Act and the statement can be treated as evidence regarding the conduct of the appellant.

The learned counsel for the State submitted that the said statement can be treated as a confession because at the relevant time, the investigation did not commence.

EXTRA JUDICIAL CONFESSION

22. It is no doubt that the evidentiary value of the extra judicial confession depends upon trustworthiness of the witness before whom such a

confession is made. It is basically in realm of appreciation of evidence and a question of fact to be decided in the facts and circumstance of each case.

23. In *Balwinder Singh v. State of Punjab* 1995 Supp. (4) SCC 259, the Hon'ble Supreme Court observed; the principle that an extra judicial confession, by its very nature is rather a weak type of evidence and requires appreciation with a great deal of care and caution. Where an extrajudicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance.
24. In *Pakkirisamy v. State of T.N.* (1997) 8 SCC 158, the Apex Court held that it is well settled that it is a rule of caution that the court would generally look for an independent reliable corroboration before placing any reliance upon such extra judicial confession.
25. While explaining the dimensions of the principles governing the admissibility and evidentiary value of an extra judicial confession, the Hon'ble Supreme Court in *State of Rajasthan v. Raja Ram*, (2003) 8 SCC 180 stated the principle that an extra judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. The Court, further expressed the view that such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused.

26. In the case of *Aloke Nath Dutta v. State of W.B. (2007) 12 SCC 230*, the Hon'ble Supreme Court, while holding the placing of reliance on extra judicial confession by the lower courts in absence of other corroborating material, as unjustified, observed as under:

"87. Confession ordinarily is admissible in evidence. It is a relevant fact. It can be acted upon. Confession may under certain circumstances and subject to law laid down by the superior judiciary from time to time form the basis for conviction. It is, however, trite that for the said purpose the court has to satisfy itself in regard to: (i) voluntariness of the confession; (ii) truthfulness of the confession; (iii) corroboration.

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89. A detailed confession which would otherwise be within the special knowledge of the accused may itself be not sufficient to raise a presumption that confession is a truthful one. Main features of a confession are required to be verified. If it is not done, no conviction can be based only on the sole basis thereof."

27. In the instant case, the appellant in his extra judicial confession before PW2 Nar Bahadur stated that the appellant came to him at around 5:30 A.M. and told him that being annoyed by the activities of the deceased he killed her by strangulation. Thereafter after reaching the spot PW2 found the dead body of his wife lying upon the side wall and there was reshamb dori tied with the strong knot from the back of the deceased. Furthermore, on the disclosure of the appellant the dead body was recovered. However, it would not be safe to rely upon the same until there are other circumstances and evidence supporting this fact.

ADMISSION UNDER SECTION 21 OF THE EVIDENCE ACT

28. Another question which has arisen for determination is whether the First Information Report given by the appellant is admissible in evidence or not

and conduct of the appellant /complainant by whom the First Information Report is given, can be admissible in evidence.

29. The prosecution has relied on the admission made by the appellant before the concerned police witness Insp. R.S Mehra (SHO). The counsel for the appellant contended that the statement made by the appellant to PW6 Insp. R.S. Mehra does not fall within the purview of Section 21 of the Indian Evidence Act.
30. Before dealing the submission made by the appellant herein, it would be necessary to refer Section 21 of the Indian Evidence Act which is as under:

“21. Proof of admissions against persons making them, and by or on their behalf:

Admissions are relevant and may be proved as against the person who makes them or his representative in interest; but they cannot be proved by or on behalf of the person who makes them or by his representative in interest, except in the following cases:—

(1) An admission may be proved by or on behalf of the person making it, when it is of such a nature that, if the person making it were dead, it would be relevant as between third persons under section 32.

(2) An admission may be proved by or on behalf of the person making it, when it consists of a statement of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.

(3) An admission may be proved by or on behalf of the person making it, if it is relevant otherwise than as an admission.”

31. In ***Nisar Ali Vs. The State of Uttar Pradesh*** reported in ***1957 Cri LJ 550***, the Hon’ble Supreme Court made the following observations:

"An objection has been taken to the admissibility of this report as it was made by a person who was a co-accused. A first information report is not a substantive piece of evidence and can only be used to corroborate the statement of the maker under s. 157, Evidence Act, or to contradict it under s. 145 of that Act. It cannot be used as evidence against the maker at the trial if he himself becomes an accused, nor to corroborate or contradict other witnesses. In this case, therefore, it is not evidence."

(Emphasis added)

32. However, in the case of ***Faddi Vs. State of Madhya Pradesh*** reported in ***1964 SCR 312***, the accused was charged with murder of his stepson. He lodged an FIR wherein he stated that he had seen the dead body floating in a well, which statement was found to be incorrect. The Supreme Court has held as under:

"14. The report is not a confession of the appellant. It is not a statement made to a police officer during the course of investigation. Section 25 of the Evidence Act and s. 162 of the Code of Criminal Procedure do not bar its admissibility. The report is an admission by the accused of certain facts which have a bearing on the question to be determined by the Court, viz., how and by whom the murder of Gulab was committed, or whether the appellant's statement in Court denying the correctness of certain statements of the prosecution witnesses is correct or not. Admissions are admissible in evidence under s. 21 of the Act. Section 17 defines an admission to be a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, thereafter mentioned, in the Act. Section 21 provides that admissions are relevant and may be proved as against a person who makes them. Illustrations (c), (d) and (e) to s. 21 are of the circumstances in which an accused could prove his own admissions which go in his favour in view of the exceptions mentioned in s. 21 to the provision that admissions could not be proved by the person who makes them. It is therefore clear that admissions of an accused can be proved against him.

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It is on these observations that it has been contended for the appellant that his report was inadmissible in evidence. Ostensibly, the expression „it cannot be used as evidence against the maker at the trial if he himself becomes an accused” supports the appellant’s contention. But it appears to us that in the context in which the observation is made and in the circumstances, which we have verified from the record of that case, that the Sessions Judge had definitely held the first information report lodged by the co-accused who was acquitted to be inadmissible against Nisar Ali, and that the High Court did not refer to it at all in its judgment, this observation really refers to a first information report which is in the nature of a confession by the maker thereof. Of course a confessional first information report cannot be used against the maker when he be an accused and necessarily cannot be used against a co-accused. Further, the last sentence of the above-quoted observation is significant and indicates what the Court meant was that the first information report lodged by Qudratullah, the coaccused, was not a evidence against Nisar Ali. This Court did not mean — as it had not to determine in that case — that a first information report which is not a confession cannot be used as an admission under Section 21 of the Evidence Act or as a relevant statement under any other provisions of that Act. We find also that this observation has been understood in this way by the Rajasthan High Court in State v. Balchand and in State of Rajasthan v. Shiv Singh and by the Allahabad High Court in Allahdia v. State.”

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19. We therefore hold that the objection to the admissibility of the first information report lodged by the appellant is not sound and that the Courts below have rightly admitted it in evidence and have made proper use of it."

33. It would be useful to refer to a decision in the case of **Aghnoo Nagesia v. State of Bihar**, reported at AIR 1966 SC 119, wherein it was held as under:

“Now, a confession may consist of several parts and may reveal not only the actual commission of the crime but also the motive, the

preparation, the opportunity, the provocation, the weapons used, the intention, the concealment of the weapon and the subsequent conduct of the accused. If the confession is tainted, the taint attaches to each part of it. It is not permissible in law to separate one part and to admit it in evidence as a non-confessional statement. Each part discloses some incriminating fact i.e. some fact which by itself or along with other admitted or proved facts suggests the inference that the accused committed the crime, and though each part taken singly may not amount to a confession, each of them being part of a confessional statement partakes of the character of a confession. If a statement contains an admission of an offence, not only that admission but also every other admission of an incriminating fact contained in the statement is part of the confession.

If proof of the confession is excluded by any provision of law such as Section 24, Section 25 and Section 26 of the Evidence Act, the entire confessional statement in all its parts including the admissions of minor incriminating facts must also be excluded, unless proof of it is permitted by some other section such as Section 27 of the Evidence Act. Little substance and content would be left in Sections 24, 25 and 26 if proof of admissions of incriminating facts in a confessional statement is permitted.

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If the first information report is given by the accused to a police officer and amounts to a confessional statement, proof of the confession is prohibited by Section 25. The confession includes not only the admission of the offence but all other admissions of incriminating facts related to the offence contained in the confessional statement. No part of the confessional statement is receivable in evidence except to the extent that the ban of Section 25 is lifted by Section 27.” (Emphasis Supplied)

34. In yet another decision rendered in the case of ***Bheru Singh vs. State of Rajasthan*** reported in (1994) 2 SCC 467 the accused was charged with the offence of having murdered his wife, two daughters and three sons. The accused lodged a First Information Report wherein he confessed to

his having murdered his wife and children. He also referred to the mode of committing murders and also mentioned that his sister-in-law was present at that time.

35. The Supreme Court in ***Bheru Singh*** (supra) has made the following observation:

“15. In this case the first information report Ex. P-42 was admittedly lodged by the appellant himself at the police station and was recorded by Sh. Durga Shankar Sharma PW17. A perusal of the report shows that to a large extent it is confessional in nature. Can it, as a whole or any part of it, be admitted into evidence against the appellant?”

16. A confession or an admission is evidence against the maker of it so long as its admissibility is not excluded by some provision of law. Provisions of Sections 24 to 30 of the Evidence Act and of Section 164 of the Cr.P.C. deal with confessions. By virtue of the provisions of Section 25 of the Evidence Act, a confession made to a police officer under no circumstance is admissible in evidence against an accused. The section deals with confessions made not only when the accused was free and not in police custody but also with the one made by such a person before any investigation had begun. The expression "accused of any offence" in Section 25 would cover the case of an accused who has since been put on trial, whether or not at the time when he made the confessional statement, he was under arrest or in custody as an accused in that case or not. Inadmissibility of a confessional statement made to a police officer under Section 25 of the Evidence Act is based on the ground of public policy. Section 25 of the Evidence Act not only bars proof of admission of an offence by an accused to a police officer or made by him while in the custody of a police officer but also the admission contained in the confessional statement of all incriminating facts relating to the commission of an offence. Section 26 of the Evidence Act deals with partial ban to the admissibility of confessions made to a person other than a police officer but we are not concerned with it in this case. Section 27 of the Evidence Act is in the nature of a proviso or an exception, which partially lifts the ban imposed by Sections 25 and 26 of the Evidence Act and makes admissible so much of such information, whether it amounts to a confession or not, as relates to the fact

thereby discovered, when made by a person accused of an offence while in police custody.

17. Where the first information report is given by an accused himself to a police officer and amounts to a confessional statement, proof of the confession is prohibited by Section 25 of the Evidence Act. No part of the confessional statement can be proved or received in evidence, except to the extent it is permitted by Section 27 of the Evidence Act. The first information report recorded under Section 154 Cr.P.C. is not a substantive piece of evidence. It may be used to corroborate the informant under Section 157 of the Evidence Act or to contradict him under Section 145 of the Evidence Act in case the informant appears as a witness at the trial. **Where the accused himself lodges the first information report, the fact of his giving the information to the police is admissible against him as evidence of his conduct under Section 8 of the Evidence Act and to the extent it is non-confessional in nature, it would also be relevant under Section 21 of the Evidence Act** but the confessional part of the first information report by the accused to the police officer cannot be used at all against him in view of the ban of Section 25 of the Evidence Act.

19. From a careful perusal of this first information report we find that it discloses the motive for the murder and the manner in which the appellant committed the six murders. The appellant produced the bloodstained sword with which according to him he committed the murders. In our opinion the first information report Ex. P-42, however is not a wholly confessional statement, but only that part of it is admissible in evidence which does not amount to a confession and is not hit by the provisions of Section 25 of the Evidence Act. The relationship of the appellant with the deceased; the motive for commission of the crime and the presence of his sister-in-law PW 11 do not amount to the confession of committing any crime. Those statements are non-confessional in nature and can be used against the appellant as evidence under Section 8 of the Evidence Act. The production and seizure of the sword by the appellant at the police station which was bloodstained, is also saved by the provisions of the Evidence Act. However, the statement that the sword had been used to commit the murders as well as the manner of committing the crime is clearly inadmissible in evidence. Thus, to the limited extent as we have noticed above

and save to that extent only the other portion of the first information report Ex. P-42 must be excluded from evidence as the rest of the statement amounts to confession of committing the crime and is not admissible in evidence.”

36. A reading of the observations made in the case of **Bheru Singh** (supra) would show that the First Information Report cannot wholly be treated as a confessional statement but only that part of the report is admissible in evidence, which does not amount to a confession and is not hit by the provisions of Section 25 of the Evidence Act.
37. In the case of **Bheru Singh** (supra), the Supreme Court of India has held in para 19 reproduced above that the relationship of the appellant with the deceased, the motive for commission of the crime and the presence of the sister-in-law did not amount to confession of committing any crime.
38. The production and seizure of the sword by the appellant in the Police Station, which was blood stained was also saved by the provisions of the Evidence Act. However, the statement that the sword was used to commit murders as well as the manner of committing the crime was held to be clearly inadmissible in evidence.
39. In this case, the appellant went to the Police Station and disclosed that he had killed his sister (*mooh boli*) Vansha in his room at his house no.WZ113, Village Narayna, by Strangulating her throat.
40. Accordingly, the relationship of the appellant with the deceased would not amount to a confession and can be used against the appellant as an evidence under Section 8 of the Evidence Act, however, the statement that he strangled her would be clearly inadmissible in evidence.
41. In the light of the aforesaid dictum and joint reading the provisions of Sections 8 and 21 of the Evidence Act it is established by law that First Information Report is the statement of the maker of the report at the

Police Station before the Police Officer, recorded in the manner provided by the Code of Criminal Procedure. The First Information Report is admissible under Section 21 as evidence in part.

STATEMENT UNDER SECTION 313 OF THE CODE OF CRIMINAL PROCEDURE

42. The appellant Hari Bahadur in his statement recorded under Section 313 deposed as under:

"Q.4 It is further in evidence that at the time you were residing in WZ-113 Naraina Village and deceased Vishnu wife of Nar Bahadur was also residing with you for the last one month before this incidence and that she had strained relation with her husband

A. It is correct to say that the deceased was residing with me and it is correct that she had strained relation with her husband.

Q.15 It is further in evidence that IO seized one copy vide EX.PW1/A on which Vishnu and Hari Bahdur is written and that insult could not be tolerated. Hence he had killed her and she will not live and he will also not live. She is my sister. Hari Gurran.

A. It is incorrect that I was forced to write in Thana at the instance of the police in EX.PW1/A notebook.

Q.27 Do you want to say anything else?

A. Yes. On 24.08.1999 I was sent to Firozpur by my employer Sh. Ashok when I came back to Delhi at the R/O my employer Mr. Ashok Kumar at 7.30 AM on 27.08.1999 police came there alongh with Nar Bahadur apprehended me & implicated me in this false case."

43. In ***Mohan Singh vs. Prem Singh and Anr.*** reported in (2002) 10 SCC 236, the Hon'ble Supreme Court held as under:

"The Apex Court held that the statement made by the accused under Section 313 of the Code of Criminal Procedure can certainly be taken aid of to lend credence to the evidence led by the prosecution, but only a part of such statement under

Section 313 Code of Criminal Procedure cannot be made the sole basis of his conviction.”

44. In this connection, reference may also be made to ***Devender Kumar Singla v. Baldev Krishan Singla (2004) 9 SCC 15*** and ***Bishnu Prasad Sinha and Anr. v. State of Assam (2007) 11 SCC 467*** in which it was observed as under:

“The statement of the accused under Section 313 Code of Criminal Procedure for the admission of his guilt or confession as such cannot be made the sole basis for finding the accused guilty, the reason being he is not making the statement on oath, but all the same the confession or admission of guilt can be taken as a piece of evidence since the same lends credence to the evidence led by the prosecution.”

45. In ***Ashok Debbarma @ Achak Debbarma vs State of Tripura*** reported in ***(2014) 4 SCC 747***, the Hon'ble Supreme Court observed that the admission of guilt under Section 313 cannot be brushed aside and held as under:

"21. We are of the view that, under Section 313 statement, if the accused admits that, from the evidence of various witnesses, four persons sustained severe bullet injuries by the firing by the accused and his associates, that admission of guilt in Section 313 statement cannot be brushed aside.

*This Court in ***State of Maharashtra v. Sukhdev Singh and Anr. (1992) 3 SCC 700*** held that:*

since no oath is administered to the accused, the statement made by the accused under Section 313 Code of Criminal Procedure will not be evidence stricto sensu and the accused, of course, shall not render himself liable to punishment merely on the basis of answers given while he was being examined under Section 313 Code of Criminal Procedure. But, Sub-section (4) says that the answers given by the accused in response to his examination under Section

313 Code of Criminal Procedure can be taken into consideration in such an inquiry or trial. This Court in Hate Singh Bhagat Singh (supra) held that the answers given by the accused under Section 313 examination can be used for proving his guilt as much as the evidence given by the prosecution witness. In Narain Singh v. State of Punjab (1963) 3 SCR 678, this Court held that when the accused confesses to the commission of the offence with which he is charged, the Court may rely upon the confession and proceed to convict him."

46. Keeping in mind the testimonies discussed herein above we may notice that the appellant in his statement under Section 313 of Code of Criminal Procedure admitted that the deceased had strained relation with her husband and on the fateful day she was residing with him. It is further stated by the appellant that he was not forced to write in the police station. On the other hand the appellant failed to give any explanation in his defence on the note book seized by the police officials. It is also in evidence that PW7 Dr. Chander Kanta in his testimony deposed that the cause of death was due to strangulation by ligature and it was sufficient enough to cause death.
47. Therefore, having regard to the statement made by the appellant, which is partly admissible in evidence, the extra-judicial confession made by him, which stand duly corroborated by the statement made by the appellant under Section 313 of the Code of Criminal Procedure, we are of the view that the prosecution has able to connect the chain of events in commission of crime to the extent of culpable homicide not amounting to murder.

Whether the offence falls under the purview of Section 304 Part-II

48. Coming to the argument that instead of convicting the appellant for culpable homicide amounting to murder, his case would fall in the category of culpable homicide not amounting to murder. As even after accepting the prosecution view the alleged incident took place at the spur

of the moment and the act was not committed in a cruel and unusual manner.

49. The counsel for the appellant has argued that the present case is squarely covered under Exception 4 of Section 300 of the Indian Penal Code, which reads as under:

"300. Murder-

Exception 1. - xxxx xxxx xxxx xxxx

Exception 2. - xxxx xxxx xxxx xxxx

Exception 3. - xxxx xxxx xxxx xxxx

Exception 4. - Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offenders having taken undue advantage or acted in a cruel or unusual manner.

Explanation- It is immaterial in such cases which party offers the provocation or commits the first assault."

50. Section 304 of the Indian Penal Code reads as under:

"304. Punishment for culpable homicide not amounting to murder:

Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

Section 304 consists of two parts, the first dealing with second degree culpable homicide and the second dealing with third degree culpable homicide as has been noted above."

51. In *Pulicherla Nagaraju @ Nagaraja Reddy v. State of Andhra Pradesh (2006) 11 SCC444* the Hon'ble Supreme Court enumerated some of the circumstances relevant to find out whether there was any intention to cause death on the part of the accused. The Apex Court observed as under:

“...Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls Under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters - plucking of a fruit, straying of cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no premeditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable Under Section 302, are not converted into offences punishable Under Section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable Under Section 302. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances: (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any pre-meditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special

circumstances with reference to individual cases which may throw light on the question of intention...”

52. The distinction between Section 304 Part I and Part II has been drawn by the Hon'ble Supreme Court in ***Alister Anthony Pereira v. State of Maharashtra (2012) 2 SCC 648***, in the following words:

“..... For punishment Under Section 304 Part I, the prosecution must prove: the death of the person in question; that such death was caused by the act of the accused and that the accused intended by such act to cause death or cause such bodily injury as was likely to cause death. As regards punishment for Section 304 Part II, the prosecution has to prove the death of the person in question; that such death was caused by the act of the accused and that he knew that such act of his was likely to cause death...”

53. In ***Vijay Ramkrishan Gaikwad V. State of Maharashtra: (2012) 11 SCC 592***, the Hon'ble Supreme Court made the following observations:

“The nature of the offence would certainly depend upon the other attendant circumstances which would help the court to find out definitely about the intention on the part of the accused. Such attendant circumstances could be very many, they being (i) whether the act was premeditated; (ii) the nature of weapon used; (iii) the nature of assault on the accused. This is certainly not an exhaustive list and every case has to necessarily depend upon the evidence available. ”

54. In the instant case, the incident in question took place at the spur of the moment without any premeditation and the act was committed in the heat of passion upon a sudden quarrel without the appellant having taken undue advantage or acting in a cruel or unusual manner. In our opinion there is considerable merit in this contention. We say so for three distinct reasons. Firstly, because even according to the prosecution version, there was no premeditation in the commission of the crime. There is not even a suggestion that the appellant had any enmity or motive to commit any offence against the deceased. As per the appellant it was the exchange of

hot words that provoked the appellant to commit the abovesaid act and the same escalated into a serious incident in the heat of the moment. The exchange of hot words in the quarrel over the activities of the deceased led to a sudden fight which in turn culminated in the deceased being strangled with the silk rope. Secondly, the case of the appellant squarely covered under exception because the weapon used was not lethal and the appellant had not acted in an unusual or cruel manner in the prevailing situation so as to deprive him of the benefit of Exception 4. Thirdly, because during the exchange of hot words between the deceased and the appellant all that was said by the appellant was that the deceased insulted him badly which resulted in sudden quarrel. It clearly shows that the intention of the appellant was at best to belabour her and not to kill her as such. The cumulative effect of all these circumstances, in our opinion, should entitle the appellant to the benefit of Exception 4 to Section 300 of the Indian Penal Code. Thus having considered all the incumbent factors, this court finds the appellant guilty under section 304 Part II of the Indian Penal Code.

55. As per the nominal roll, the appellant has already undergone 6 years 4 months and 16 days in addition to remission of 8 months and 20 days. In totality, the appellant has undergone 7 years and 36 days including remission.
56. With the above modification, the appeal is allowed in part with respect to the period already undergone.

G. S. SISTANI, J

SANGITA DHINGRA SEHGAL, J

February 18th 2016 gr//