

THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved On: 10.07.2017
Judgment Pronounced On: 26.09.2017

CRL.A.303/2012

RAVINDER KUMAR CHAUHAN ... Petitioner
Through: Mr. Ajay Verma and Mr. Narsingh
Narain, Advocates

versus

STATE ... Respondent
Through: Mr. Ravi Naik, APP for the State

CORAM:
HON'BLE MR JUSTICE SIDDHARTH MRIDUL
HON'BLE MR JUSTICE NAJMI WAZIRI

J U D G M E N T

SIDDHARTH MRIDUL, J.

1. The present appeal instituted under the provisions of section 374 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'CrPC'), assails the judgment and order on sentence dated 09.08.2011, rendered by the *Ld. Additional Sessions Judge, Delhi*, in Sessions Case no.137/09.

2. By way of the impugned judgement and order on sentence dated 09.08.2011, Ravinder Kumar Chauhan (hereinafter referred to as 'appellant') was convicted and sentenced under the provision of section 302 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') to life imprisonment along with a fine of Rs.5,000/-. In default of payment of fine, the appellant has been sentenced to undergo simple imprisonment for a further period of 3 months. However, the benefit of the provision under section 428 CrPC has been granted to the appellant.

3. The fulcrum of the case of the prosecution is that the appellant suspected the character of his wife, Ms. Madhu (hereinafter referred to as the 'deceased'), and in view thereof committed the murder of the latter on 11.08.2009 by strangulating her with an *angocha* (cloth) [Ex.P1]. The murder was committed on the second floor of House bearing No.K-115 Vijay Vihar, Phase-II, Delhi (hereinafter referred to as the 'tenanted premises/crime spot') where the appellant used to reside with the deceased and their children as tenants.

4. The appellant after committing the murder of the deceased made an extra-judicial confession to Amarjeet Singh (PW-8), the owner of House no.K-115 Vijay Vihar, Phase-II, Delhi (hereinafter referred to as 'House

no.K-115'). The appellant was perturbed when he confessed to PW-8, that he had murdered the deceased and was going to the Police Station to report the same. Thereafter, the appellant confessed to the Duty Officer at the Police Station, Head Constable Kailash Chand (PW-7), that he had murdered the deceased as she was characterless. DD entry no.42A [Ex.PW-7/A] was recorded on the basis of the confession made by the appellant, which was assigned to Sub-Inspector Madan Lal (PW-15).

Pursuant to the recording of the diary entry, PW-15 along with Constable Satbir went to the tenanted premises, where PW-8 was also present. Inspector Sunil Kumar Sharma (PW-11) and Constable Ravinder (PW-13) also reached there. The appellant led the police officials as well as PW-8 to the second floor of the tenanted premises and pointed towards the dead body of the deceased lying in a room [vide pointing out memo Ex.PW-28/F]. Thereafter, PW-11 prepared the rukka [Ex.PW- 11/A] and PW-13 was sent to the Police Station for registration of a case. An F.I.R. bearing no.259/09 dated 11.08.2009, for the offence punishable under the provision of section 302 IPC, was registered.

The site plan was prepared [Ex.PW-11/B] and the crime team was called. The exhibits including the *angocha* [Ex.P1] stated to be ligature

material was seized vide seizure memo Ex.PW-8/B; one vegetable cutting knife vide seizure memo Ex.PW-8/C; and broken bangles vide seizure memo Ex.PW-8/A, were seized by PW-11. The appellant was arrested vide arrest memo Ex.PW-8/D and his personal search was conducted vide memo Ex.PW-11/C. PW-11 recorded the disclosure statement of the appellant [Ex.PW-8/E]. After the inquest proceedings, post-mortem on the dead body of the deceased was conducted. The post-mortem report is Ex.PW-10/A. The medical examination of the appellant was also conducted.

5. At the trial, the prosecution examined 16 witnesses in support of its case. The appellant in his defence has not led any evidence. However, the appellant in his statement under Section 313 of the CrPC, whilst retracting from the alleged confession made by him to PW-8 and PW-7, has stated that he has been falsely implicated in the present case by the police, and PW-8 has falsely deposed against him as he wanted to save the real culprit, one Manoj Kumar. It has been further stated by the appellant that he was not present with the deceased at the tenanted premises at the time of the commission of the murder, as he had gone to drop his children off at his parents house at Nand Nagri, and upon his return he found his deceased/wife, lying dead.

6. It would be urged by learned counsel appearing on behalf of the appellant that the DD Entry No.42A cannot be read into evidence against him.

7. In order to buttress this submission, reliance would be placed on the decision of the Hon'ble Supreme Court in ***Aghnoo Nagesia v. State of Bihar***, reported as AIR 1966 SC 119.

8. It would be further urged on behalf of the appellant that PW-8 is a planted witness, inasmuch as, there was no reason for the appellant to make a confession to him; as they were not friendly with each other. Further, it was unusual of PW-8 to not report to the police about the confession made to him by the appellant.

9. In order to substantiate this submission, reliance would be placed on the decision of the Himachal Pradesh High Court in ***Nirmal Singh v. State of Himachal Pradesh***, reported as 1987 CriLJ 1644.

10. Learned counsel would then invite the attention of this Court to the articles recovered at the instance of the appellant, to asseverate that the recoveries so made were tainted, inasmuch as, neither were they evidenced by an independent witness nor were chance prints lifted from the weapon of

offence. Furthermore, the weapon of offence [Ex.P1] was recovered from an open space, accessible to others.

11. In order to buttress this submission, reliance would be placed on the decisions of the Hon'ble Supreme Court in *Bahadul v. State of Orissa* reported as (1979) 4 SCC 376; *Anter Singh v. State of Rajasthan* reported as (2004) 10 SCC 657; and *Dudh Nath Pandey v. State of U.P.*, reported as 1981 AIR 911.

12. Further, learned counsel would urge that no motive can be attributed to the appellant for the commission of the murder of the deceased.

13. Also it would be submitted that the non-examination of the said Manoj Kumar casts a serious doubt on the case of the prosecution. Lastly, it would be contended that conviction cannot be based on the purported extra-judicial confession made by him to PW-8.

14. In order to support this submission, reliance would be placed on the decision in *Pratap Dehury v. State of Orissa*, reported as (2000) 18 OCR 633.

15. Per contra, learned Additional Public Prosecutor, whilst supporting the impugned judgment in its entirety, would urge that the findings of the Ld. Trial Court require no interference. It would be asseverated that there is no

requirement in law that the person to whom the confession has been made should be known to the accused for a definite period of time. Further, it would be submitted that the case of the prosecution has been proved beyond reasonable doubt by way of cogent material on record and certain minor lapses on the part of the prosecution, while conducting the investigation, cannot absolve the appellant of his guilt.

16. We have heard the learned counsel appearing on behalf of the parties and perused the entire case record.

17. There is admittedly no eye witness to the murder of the deceased. No direct evidence has been brought to the notice of the Court in the present case. The present is a case of circumstantial evidence and, therefore, it would be profitable to refer to the legal position with regard to the proving a case based on circumstantial evidence. In ***Sharad Birdichand Sharda v. State of Maharashtra***, reported as 1984 AIR SC 1622, the Hon'ble Supreme Court whilst placing reliance on the five golden principles enunciated in its decision in ***Hanumant v. State of Madhya Pradesh***, reported as AIR 1952 SC 343, elaborated the nature, character and essential proof required in criminal cases which rest on circumstantial evidence. The relevant paragraphs of the report have been extracted hereinbelow:

“152. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is *Hanumant v. State of Madhya Pradesh* [AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129] . This case has been uniformly followed and applied by this Court in a large number of later decisions up-to-date, for instance, the cases of *Tufail (Alias) Simmi v. State of Uttar Pradesh* [(1969) 3 SCC 198 : 1970 SCC (Cri) 55] and *Ramgopal v. State of Maharashtra* [(1972) 4 SCC 625 : AIR 1972 SC 656] . It may be useful to extract what Mahajan, J. has laid down in *Hanumant case* [AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129] :

“It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.”

153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be” established. There is not only a grammatical but a legal distinction

between “may be proved” and “must be or should be proved” as was held by this Court in *Shivaji Sahabrao Bobade v. State of Maharashtra* [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 CrLJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

“Certainly, it is a primary principle that the accused *must* be and not merely *may* be guilty before a court can convict and the mental distance between ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.”

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.

155. It may be interesting to note that as regards the mode of proof in a criminal case depending on circumstantial evidence, in the absence of a corpus delicti, the statement of law as to proof of the same was laid down by Gresson, J. (and concurred by 3 more Judges) in *King v. Horry* [1952 NZLR 111] thus:

“Before he can be convicted, the fact of death should be proved by such circumstances as render the commission of the crime morally certain and leave no ground for reasonable doubt: the circumstantial evidence should be so cogent and

compelling as to convince a jury that upon no rational hypothesis other than murder can the facts be accounted for.”

156. Lord Goddard slightly modified the expression “morally certain” by “such circumstances as render the commission of the crime certain”.

157. This indicates the cardinal principle of criminal jurisprudence that a case can be said to be proved only when there is certain and explicit evidence and no person can be convicted on pure moral conviction. *Horry case* [1952 NZLR 111] was approved by this Court in *Anant Chintaman Lagu v. State of Bombay* [AIR 1960 SC 500 : (1960) 2 SCR 460 : 1960 Cri LJ 682] . *Lagu case* [AIR 1960 SC 500 : (1960) 2 SCR 460 : 1960 Cri LJ 682] as also the principles enunciated by this Court in *Hanumant case* [AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129] have been uniformly and consistently followed in all later decisions of this Court without any single exception. To quote a few cases — *Tufail case* [(1969) 3 SCC 198 : 1970 SCC (Cri) 55] , *Ramgopal case* [(1972) 4 SCC 625 : AIR 1972 SC 656] , *Chandrakant Nyalchand Seth v. State of Bombay* [Criminal Appeal No 120 of 1957, decided on February 19, 1958] , *Dharambir Singh v. State of Punjab* [Criminal Appeal No 98 of 1958, decided on November 4, 1958 printed on green papers in bound volumes] . There are a number of other cases where although *Hanumant case* [AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129] has not been expressly noticed but the same principles have been expounded and reiterated, as in *Naseem Ahmed v. Delhi Administration* [(1974) 3 SCC 668, 670 : 1974 SCC (Cri) 198, 200 : (1974) 2 SCR 694, 696] , *Mohan Lal Pangasa v. State of U.P.* [(1974) 4 SCC 607, 609 : 1974 SCC (Cri) 643, 645 : AIR 1974 SC 1144, 1146] , *Shankarlal Gyarasilal Dixit v. State of Maharashtra* [(1981) 2 SCC 35, 39 : 1981 SCC (Cri) 315, 318-19 : (1981) 2 SCR 384, 390 : 1981 Cri LJ 325] and *M.G. Agarwal v. State of Maharashtra* [AIR 1963 SC 200 : (1963) 2 SCR 405, 419 : (1963) 1 Cri LJ 235] — a five-Judge Bench decision.”

(Emphasis supplied.)

18. In view of the dictum of the Hon'ble Supreme Court in ***Sharad Birdhichand Sharda*** (*supra*), the important circumstances which this Court has to take into consideration for the adjudication of the present appeal are as follows:

- (a) Whether the appellant had the opportunity or occasion to commit the crime?
- (b) Whether the deceased victim died of the injuries caused to her by the weapon of offence?
- (c) Whether the weapon of the offence was recovered from his possession or at his instance?
- (d) Whether the appellant had motive to kill his wife, the deceased?

19. Before proceeding to examine the evidence on record, it would be pertinent to examine the legal position *qua* the evidentiary value of a confession made by an accused to a police officer.

20. In ***Nisar Ali v. State of Uttar Pradesh*** reported as AIR 1957 SC 366, the Hon'ble Supreme Court whilst dealing with the objection *qua* the admissibility of the First Information Report lodged by the co-accused, observed as follows:

“2. The facts which have given rise to the appeal are that Sabir was murdered on May 11, 1951 at about 6.30 p.m. The first information report was made by Qudrat Ullah the other accused at 6.45 p.m. the same day i.e. within about 15 minutes of the occurrence. The prosecution case was that there was an exchange of abuses between the deceased and the appellant near the shop of the first informant, Qudrat Ullah. The cause of the quarrel was that on the evening of the occurrence while Qudrat Ullah was sitting on his shop and the deceased was sitting just below the shop, the appellant came out of his house and on seeing him, the deceased asked him as to why he was in such a “dishevelled condition”, which annoyed the appellant and gave rise to an exchange of abuses. On hearing this noise, the prosecution witnesses arrived at the spot and saw the appellant and the deceased grappling with each other. The appellant is stated to have asked Qudrat Ullah to hand over a knife to him which Qudrat Ullah did; this knife is Ex. ‘II’, with which the appellant stabbed the deceased and then fled away. As a result of the injuries the deceased fell down in front of Qudrat Ullah's shop; some witnesses have stated that he fell on the wooden plank in front of the shop. Qudrat Ullah picked up the knife which had been dropped by the appellant, put the deceased in a rickshaw and took him to the hospital from where he went to the police station and made the first information report. 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 Section 157 of the Evidence Act or to contradict it under Section 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 supplied.)

21. Whilst distinguishing its decision in *Nisar Ali (Ibid.)* on the facts; the Hon’ble Supreme Court in *Faddi v. State of M.P.* reported as AIR 1964 SC 1850, admitted in evidence the First Information Report lodged by the

accused, it being non-confessional in nature. The relevant paragraphs of the report are reproduced hereinbelow:

“15. 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 Section 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 Section 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 Section 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 Section 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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17. In *Nisar Ali case* [AIR 1957 SC 366] Kapur, J. who spoke for the Court said, after narrating the facts:

“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 Section 157, Evidence Act, or to contradict it under Section 145 of that Act. It cannot be used as evidence against the maker at the trial if he himself becomes an accused, not to corroborate or contradict other witnesses. In this case, therefore, it is not evidence.”

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 co-accused, was not 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* [AIR 1960 Raj 101] and in *State of Rajasthan v. Shiv Singh* [AIR 1962 Raj 3] and by the Allahabad High Court in *Allahdia v. State* [1959 All LJ 340].”

(Emphasis supplied.)

22. The Hon'ble Supreme Court in *Aghnoo Nagesia* (*supra*), whilst approving the principles of law enunciated in its earlier decision in *Faddi* (*supra*), proceeded to determine whether the confessional F.I.R. lodged by the accused or any portion of it is admissible in evidence. It was observed as follows:

“9. Section 25 of the Evidence Act is one of the provisions of law dealing with confessions made by an accused. The law relating to

confessions is to be found generally in Sections 24 to 30 of the Evidence Act and Sections 162 and 164 of the Code of Criminal Procedure, 1898. Sections 17 to 31 of the Evidence Act are to be found under the heading “Admissions”. Confession is a species of admission, and is dealt with in Sections 24 to 30. A confession or an admission is evidence against the maker of it, unless its admissibility is excluded by some provision of law. Section 24 excludes confessions caused by certain inducements, threats and promises. Section 25 provides: “No confession made to a police officer, shall be proved as against a person accused of an offence”. The terms of Section 25 are imperative. A confession made to a police officer under any circumstances is not admissible in evidence against the accused. It covers a confession made when he was free and not in police custody, as also a confession made before any investigation has begun. The expression “accused of any offence” covers a person accused of an offence at the trial whether or not he was accused of the offence when he made the confession. Section 26 prohibits proof against any person of a confession made by him in the custody of a police officer, unless it is made in the immediate presence of a Magistrate. The partial ban imposed by Section 26 relates to a confession made to a person other than a police officer. Section 26 does not qualify the absolute ban imposed by Section 25 on a confession made to a police officer. Section 27 is in the form of a proviso, and partially lifts the ban imposed by Sections 24, 25 and 26. It provides that when any fact is proved to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved. Section 162 of the Code of Criminal Procedure forbids the use of any statement made by any person to a police officer in the course of an investigation for any purpose at any enquiry or trial in respect of the offence under investigation, save as mentioned in the proviso and in cases falling under sub-section (2), and it specifically provides that nothing in it shall be deemed to affect the provisions of Section 27 of the Evidence Act. The words of Section 162 are wide enough to include a confession made to a police officer in the course of an investigation. A statement or confession made in the course of an investigation may be recorded by a Magistrate under Section 164 of the Code of Criminal Procedure subject to the safeguards imposed by the section. Thus, except as provided by Section 27 of the Evidence Act, a confession by an accused to a police officer is absolutely protected under Section 25 of

the Evidence Act, and if it is made in the course of an investigation, it is also protected by Section 162 of the Code of Criminal Procedure, and a confession to any other person made by him while in the custody of a police officer is protected by Section 26, unless it is made in the immediate presence of a Magistrate. These provisions seem to proceed upon the view that confessions made by an accused to a police officer or made by him while he is in the custody of a police officer are not to be trusted, and should not be used in evidence against him. They are based upon grounds of public policy, and the fullest effect should be given to them.

10. Section 154 of the Code of Criminal Procedure provides for the recording of the first information. The information report as such is not substantive 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 Act, if the informant is called as a witness. If the first information is given by the accused himself, the fact of his giving the information is admissible against him as evidence of his conduct under Section 8 of the Evidence Act. If the information is a non-confessional statement, it is admissible against the accused as an admission under Section 21 of the Evidence Act and is relevant, see *Faddi v. State of Madhya Pradesh* [Criminal Appeal No. 210 of 1963 decided on January 24, 1964] explaining *Nisar Ali v. State of U.P.* [AIR 1957 SC 366] and *Dal Singh v. King-Emperor* [LR 44 IA 137]. But a confessional first information report to a police officer cannot be used against the accused in view of Section 25 of the Evidence Act.

11. The Indian Evidence Act does not define “confession”. For a long time, the courts in India adopted the definition of “confession” given in Article 22 of *Stephen's Digest of the Law of Evidence*. According to that definition, a confession is an admission made at any time by a person charged with crime, stating or suggesting the inference that he committed that crime. This definition was discarded by the Judicial Committee in *Pakala Narayanaswami v. King-Emperor* [(1939) LR 66 IA 66, 81]. Lord Atkin observed:

“...no statement that contains self exculpatory matter can amount to confession, if the exculpatory statement is of some fact which if true would negative the offence alleged to be confessed. Moreover, a confession must either admit in terms the offence, or at any rate substantially all the facts which

constitute the offence. An admission of a gravely incriminating fact, even a conclusively incriminating fact, is not of itself a confession, e.g., an admission that the accused is the owner of and was in recent possession of the knife or revolver which caused a death with no explanation of any other man's possession.”

These observations received the approval of this Court in *Palvinder Kaur v. State of Punjab* [(1953) SCR 94, 104] . In *State of U.P. v. Deoman Upadhyaya* [(1961) 1 SCR 14, 21] Shah, J. referred to a confession as a statement made by a person stating or suggesting the inference that he has committed a crime.

12. Shortly put, a confession may be defined as an admission of the offence by a person charged with the offence. A statement which contains self-exculpatory matter cannot amount to a confession, if the exculpatory statement is of some fact which, if true, would negative the offence alleged to be confessed. If an admission of an accused is to be used against him the whole of it should be tendered in evidence, and if part of the admission is exculpatory and part inculpatory, the prosecution is not at liberty to use in evidence the inculpatory part only. See *Hanumant v. State of U.P.* [(1952) SCR 1091, 1111] and *Palvinder Kaur v. State of Punjab* [(1953) SCR 94, 104] . The accused is entitled to insist that the entire admission including the exculpatory part must be tendered in evidence. But this principle is of no assistance to the accused where no part of his statement is self-exculpatory, and the prosecution intends to use the whole of the statement against the accused.

13. 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.

14. 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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16. If the confession is caused by an inducement, threat or promise as contemplated by Section 24 of the Evidence Act, the whole of the confession is excluded by Section 24. Proof of not only the admission of the offence but also the admission of every other incriminating fact such as the motive, the preparation and the subsequent conduct is excluded by Section 24. To hold that the proof of the admission of other incriminating facts is not barred by Section 24 is to rob the section of its practical utility and content. It may be suggested that the bar of Section 24 does not apply to the other admissions, but though receivable in evidence, they are of no weight, as they were caused by inducement, threat or promise. According to this suggestion, the other admissions are relevant, but are of no value. But we think that on a plain construction of Section 24, proof of all the admissions of incriminating facts contained in a confessional statement is excluded by the section. Similarly, Sections 25 and 26 bar not only proof of admissions of an offence by an accused to a police officer or made by him while in the custody of a police officer but also admissions contained in the confessions statement of all incriminating facts related to the offence.

17. A little reflection will show that the expression “confession” in Sections 24 to 30 refers to the confessional statement as a whole including not only the admissions of the offence but also all other admissions of incriminating facts related to the offence. Section 27 partially lifts the ban imposed by Sections 24, 25 and 26 in respect of so much of the information whether it amounts to a confession or not, as relates distinctly to the fact discovered in consequence of the information, if the other conditions of the section are satisfied. Section 27 distinctly contemplates that an information leading to a discovery

may be a part of the confession of the accused and thus fall within the purview of Sections 24, 25 and 26. Section 27 thus shows that a confessional statement admitting the offence may contain additional information as part of the confession. Again, Section 30 permits the Court to take into consideration against a co-accused a confession of another accused affecting not only himself but the other co-accused. Section 30 thus shows that matters affecting other persons may form part of the confession.

18. 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.

19. Our attention is not drawn to any decision of this Court or of the Privy Council on the question whether apart from Section 27, a confessional first information report given by an accused is receivable in evidence against him. Decisions of the High Courts on this point are hopelessly conflicting. They contain all shades of opinion ranging from total exclusion of the confession to total inclusion of all admissions of incriminating facts except the actual commission of the crime. In *Harji v. Emperor* [AIR 1918 Lah 69] and *Noor Muhammad v. Emperor* [(1925) 90 IC 148] the Lahore High Court held that the entire report formed a single connected story and no part of it had in *Emperor v. Harman Kisha* [(1935) ILR 59 Bom 120] the Bombay High Court held that the entire confessional report dealing with events on the night of the offence was hit by Section 25, and it could not be said that portions of it dealing with the motive and the opportunity were not parts of the confession. In *King-Emperor v. Kommoju Brahman* [(1940) ILR Patna, 301, 308, 314] the Patna High Court held that no part of the confessional first information report was receivable in evidence, the entire report formed a single connected story and no part of it had any meaning or significance except in relation to the whole, and it would be wrong to extract parts of the statement and treat them as relevant. This case was followed in *Adi Moola Padayachi v. State* [(1960) MWN 528] and the Court admitted only the portion of the confessional first information report

which showed it was given by the accused and investigation had started thereon. In *State of Rajasthan v. Shiv Singh* [AIR 1952 Rajasthan, 3] the Court admitted in evidence the last part of the report dealing with the movements of the accused after the commission of the offence, but excluded the other parts of the statement including those relating to motive and opportunity. In *Legal Remembrancer v. Lalit Mohan Singh Roy* [(1922) ILR 49 Cal 167] the Calcutta High Court admitted in evidence the narrative of the events prior to the night of the occurrence disclosing the motive of the offence. This case was followed by the Nagpur Court in *Bharosa Ramdayal v. Emperor* [AIR 1941 Nag 86] . In *Kartar Singh v. State* [AIR (1952) Papsu 98] the Court admitted in evidence the introductory part and the portion narrating the motive and the opportunity. In *Ram Singh v. State* [(1952) ILR 2 Rajasthan 93] the Rajasthan High Court held that where it is possible to separate parts of the first information report by an accused from that in which he had made a confession, that part which can be so separated should be admitted in evidence, and on this view, admitted a part of the report relating to motive and subsequent conduct including the statement that the accused had left the deceased lying wounded and breathing in the *tibari* and there was no hope of her surviving and he had come having covered her with a cloth. In *Lachhuman Munda v. State of Bihar* [AIR 1964 Patna 210] the Patna High Court admitted in evidence portions of the first information report relating to the motive, the opportunity and the entire narrative of events before and after the crime. This case was followed in the judgment under appeal. Some of the decided cases took the view that if a part of the report is properly severable from the strict confessional part, then the severable part could be tendered in evidence. We think that the separability test is misleading, and the entire confessional statement is hit by Section 25 and save and except as provided by Section 27 and save and except the formal part identifying the accused as the maker of the report, no part of it could be tendered in evidence.

20. We think, therefore, that save and except Parts 1, 15 and 18 identifying the appellant as the maker of the first information report and save and except the portions coming within the purview of Section 27, the entire first information report must be excluded from evidence.

21. Section 27 applies only to information received from a person accused of an offence in the custody of a police officer. Now, the Sub-Inspector stated he arrested the appellant after he gave the first information report leading to the discovery. Prima facie therefore, the

appellant was not in the custody of a police officer when he gave the report, unless it can be said that he was then in constructive custody. On the question whether a person directly giving to police officer information which may be used as evidence against him may be deemed to have submitted himself to the custody of the police officer within the meaning of Section 27, there is conflict of opinion. See the observations of Shah, J. and Subba Rao, J. in *State of U.P. v. Deoman Upadhyaya* [(1961) 1 SCR 14, 21] . For the purposes of the case, we shall assume that the appellant was constructively in police custody and therefore the information contained in the first information report leading to the discovery of the dead bodies and the *tangi* is admissible in evidence. The entire evidence against the appellant then consists of the fact that the appellant gave information as to the place where the dead bodies were lying and as to the place where he concealed the *tangi*, the discovery of the dead bodies and the *tangi* in consequence of the information, the discovery of a blood-stained chadar from the appellant's house and the fact that he had gone to Dungi Jharan Hills on the morning of August 11, 1963. This evidence is not sufficient to convict the appellant of the offences under Section 302 of the Indian Penal Code.”

(Emphasis supplied.)

23. The legal position laid down in *Aghnoo Nagesia* (*supra*) was not brought to the notice of the Hon’ble Supreme Court in *Bheru Singh v. State of Rajasthan* reported as (1994) 2 SCC 467, the former being of a larger bench.

24. Incongruous with its decision in *Aghnoo Nagesia* (*supra*), the Hon’ble Supreme Court in *Bheru Singh* (*supra*) observed as follows:

“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 CrPC 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.

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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.”

(Emphasis supplied.)

25. A co-ordinate bench of this Court in *Mukesh v. State* being Criminal Appeal No. 615 of 2008, whilst discussing the legal position in relation to

the evidentiary value of a confessional F.I.R., took note of the apparent conflict between the decisions in *Aghnoo Nagesia* (*supra*) and *Bheru Singh* (*supra*). The relevant portions of the report are extracted hereinbelow:

“27. The legal principle which emerges from Faddi's case (*supra*) is that, where the accused himself lodges the first information report, the fact of his giving information of the crime to the police is admissible against him as evidence of his conduct under Section 8 of Evidence Act and that if the first information report is a non-confessional statement the same can be used against him as an admission under Section 21 of Evidence Act.

28. What is meant by the word 'confession'?

29. The word 'confession' has not been defined in the Evidence Act. For a long time, Courts in India have adopted the definition of 'confession' given in Article 22 of Stephen's Digest of Law of Evidence. According to that definition, a confession is an admission made at any time by a person charged with crime, stating or suggesting the inference that he committed that crime. However, in the decisions reported as *R v. Jagrup* ILR 7 ALL 646 and *R v. Santya Bandhu* 4 Bom LR 633 Allahabad High Court and Bombay High Court respectively did not accept such a wider definition and gave a narrower meaning to the word 'confession' holding that only a statement which is a direct acknowledgement of guilt would amount to confession and that a statement which is merely an inculpatory admission which falls short of being admission of guilt would not amount to confession. The issue as to meaning of word 'confession' was ultimately settled by Privy Council in the decision reported as *Pakala Narayana Swami v. Emperor* 66 IA 66 where Lord Atkin observed as under:

“Moreover, a confession must either admit in terms the offence, or at any rate substantially all the facts which constitute the offence (sic offence). An admission of a gravely incriminating fact, even a conclusively incriminating fact, is not of itself a confession e.g. an admission that the accused is the owner of and was in recent possession of the knife or revolver which caused death with no explanation of any other man's possession. Some confusion appears to have been caused by the definition of confession in Article 22 of

Stephen's Digest of the Law of Evidence, which defines a confession as an admission made at any time by a person charged with crime stating or suggesting the inference that he committed that crime. If the surrounding articles are examined, it will be apparent that the learned author after dealing with admissions generally is applying himself to admissions in criminal cases, and for this purpose defines confessions so as to cover all such admissions, in order to have a general term for use in the three following articles: confession secured by inducement, made upon oath, made under a promise of secrecy. The definition is not contained in the Evidence Act, 1872; and in that Act it would not be consistent with the natural use of language to construe confession as a statement by an accused 'suggesting the inference that he committed' the crime."

30. The aforesaid observations of Lord Atkin in Pakala's case (supra) received the approval of a 3-Judge Bench of Supreme Court in the decision reported as Palvinder Kaur v. State of Punjab MANU/SC/0038/1952 : 1953 CriLJ 154.

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33. A perusal of the decisions of Supreme Court in Aghnoo and Bheru's cases (supra) shows that there is an apparent conflict between the two decisions. A further perusal of Bheru's case shows that Aghnoo's case (supra) and the legal position laid down therein that 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 was not brought to the notice of Supreme Court in Bheru's (case) supra.

34. Tested on the aforesaid anvil of law, the learned Trial Judge was perfectly justified in holding that the fact that the appellant gave information about the crime of the murder of the deceased to the police is admissible against the appellant as the same is evidence of his conduct under Section 8 of Evidence Act. However, the learned Trial Judge was not correct in holding that the recording contained in the DD entry Ex.PW-8/A that the appellant informed the police that the deceased was having illicit relations with his brother-in-law Bhanu is admissible in evidence for the reason the said recording is an incriminating fact against the appellant and all the incriminating facts

contained in a confessional statement are inadmissible in evidence as laid down by Supreme Court in Aghnoo's case (supra).

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45. In the instant case, the appellant came to the police station and made a confessional statement to HC Dilbagh Singh PW-8. From that very moment, the movements of the appellant got restricted for surely having told the police that he had murdered his wife, the appellant could not have left the police station against the wishes of the police officer(s) present there. As stated by the Orissa High Court in Paramhansa's case (supra), 'police custody' for the purposes of Section 26 commences as soon as the movements of the accused get 'restricted'; the appellant came into the 'custody' of a police officer the moment he made a confessional statement to HC Dilbagh Singh."

(Emphasis supplied.)

26. The legal position in relation to the evidentiary value of a confession made by the accused to a police officer can be culled out as follows:

- i. A non-confessional first information report can be used as an admission under Section 21 of the Evidence Act or as a relevant statement under any other provision of that Act.
- ii. A confession is an admission of the offence by a person charged with the offence.
- iii. 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 a part of the confession. It is not

permissible in law to separate a part of such a statement in order to admit it as a non-confessional statement.

- iv. If proof of the confession is excluded by any provision of law, 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 provision of law.
- v. If an admission of an accused is exculpatory and part inculpatory, the prosecution is not at liberty to use in evidence against the accused the inculpatory part only. The whole of the admission should be tendered in evidence.

However, this principle is of no assistance where no part of the statement of the accused is self-exculpatory.

- vi. A confessional first information report cannot be used against the maker, the co-accused, or to corroborate or contradict other witnesses.
- vii. If the confession is caused by an inducement, threat or promise, as contemplated under the provision of Section 24 of the Evidence Act, the whole of the confession is liable to be excluded.

- viii. In terms of the provision of Section 25 of the Evidence Act, a *confession made to a police officer* under any circumstance is not admissible in evidence against the accused. It covers a person accused of an offence at the trial whether or not he was an accused of the offence when he made the confession.
- ix. Section 26 prohibits proof against any person of a *confession* made by him *in the custody of a police officer*, unless it is made in the immediate presence of a Magistrate.
- Police custody for the purpose of Section 26 commences as soon as the movements of a certain person are restricted.
- x. Save and except as mentioned in the proviso, the provisions of Section 162 of the CrPC forbids for any purpose, the use of any statement made by any person to a police officer *in the course of an investigation*; at any enquiry or trial in respect of the offence under investigation.
- xi. Confessional or non-confessional information received from a person accused of an offence and *in the custody of a police officer*, insofar as, it relates distinctly to the fact discovered in consequence

thereof, may be proved in terms of the provision under Section 27 of the Evidence Act.

- xii. The fact of the first information report being given by the accused himself is admissible against him as evidence of his conduct under the provisions of Section 8 of the Evidence Act.

27. PW-7 was posted as duty officer at Police Station Vijay Vihar, on 11.08.2009, from 5 P.M. till 1 A.M. of the following morning. It has been deposed by PW-7 that the appellant came to the police station at about 6:05 P.M. and informed him that he has strangled his wife to death, as his wife was characterless. DD No.42A was recorded on the basis of the confession so made to PW-7. After recording the diary entry, PW-15 and Constable Satbir were sent to the crime spot.

28. On 11.08.2009, PW-15 was posted as Sub-Inspector at Police Station Vijay Vihar. It has been deposed by PW-15 that DD no.42A was recorded by the appellant to the effect that he has murdered the deceased. It has been further deposed by PW-15 that the appellant was perturbed when he came to the police station.

29. Insofar as the admissibility of the DD entry No.42A is concerned, the Trial Court has observed as follows:

- i) The information given by the accused that his wife was characterless is inadmissible in law in order to attribute to the appellant the motive for the commission of the crime.
- ii) The incriminating part of the said DD entry is not admissible but the part showing the conduct of the appellant is admissible. Therefore, the information given by the appellant to PW-7 that he had strangled his wife to death is admissible to show the conduct of the appellant immediately after the commission of the offence.

30. The information given by the appellant to PW-7, reduced into writing as DD entry no.42A and forming the basis of the registration of the F.I.R., is an admission by the appellant of the commission of the murder of the deceased. As soon as the appellant gave the said confessional statement to PW-7, the movements of the appellant were restricted and the appellant was in the 'custody' of the police.

31. The information given by the appellant to Head Constable Kailash Chand (PW-7) being an admission of the commission of the murder of the deceased; the admission along with every other admission of an

incriminating fact is liable to be rejected and is not admissible under the provisions of the Evidence Act.

32. In view of the foregoing, the Trial Court erred in holding that the DD entry no.42A, insofar as it relates distinctly to the information that he had strangled his wife to death, is admissible to show the conduct of the appellant immediately after the commission of the offence.

33. However, the fact that the appellant gave the information to PW-7, is admissible towards his conduct under the provision of Section 8 of the Evidence Act. Further, the statement made by PW-8 that when the appellant made the extra-judicial confession to him he was perturbed; PW-15 that the appellant was perturbed when he came to the police station; PW-11 that the appellant was perturbed when he first saw him i.e. at the tenanted premises, are also relevant to show the conduct of the accused.

34. When the investigation in a case is highly defective, it is to be examined as to whether there is any lapse by the I.O. and whether due to such lapse any benefit should be given to the accused. The law on this issue is well settled that the defect in the investigation by itself cannot be a ground for acquittal. If primacy is given to such designed or negligent investigations or to the omissions or lapses by perfunctory investigation, the faith and

confidence of the people in the criminal justice administration would be eroded. Where there has been negligence on the part of the investigating agency or omissions, etc. which resulted in defective investigation, there is a legal obligation on the part of the court to examine the prosecution evidence de hors such lapses, carefully, to find out whether the said evidence is reliable or not and to what extent it is reliable and as to whether such lapses affected the object of finding out the truth. Therefore, the investigation is not the solitary area for judicial scrutiny in a criminal trial. The conclusion of the trial in the case cannot be allowed to depend solely on the probity of investigation. [**Ref: State of Himachal Pradesh v. Jeet Singh**, reported as (1999) 4 SCC 370]

35. PW-11 has deposed that the appellant led PW-15, PW-8 and him to the tenanted premises and pointed out towards the dead body of the deceased lying in a room [Ex.PW-8/F]. Broken bangles and one *angocha* of white and red color [Ex.P1] were seized from the spot vide seizure memos Ex.PW-8/A and Ex.PW-8/B, respectively. Thereafter, the appellant got one vegetable cutting knife on the handle of which one small cloth was tied recovered from the roof of the tenanted premises, which was seized vide seizure memo Ex.PW-8/C.

36. PW-15 has also deposed on the same lines as PW-11 with respect to the recoveries of the broken bangles, *angocha* and the vegetable cutting knife.

37. It has been deposed by PW-8 that the appellant led him and the police officials to the tenanted premises where the deceased was lying dead. Police took into possession the bangles of the deceased of green and red colour and one towel type cloth/*gamcha* [Ex.P1] vide seizure memos Ex.PW-8/A and Ex.PW-8/B, respectively. However, PW-8 in his cross-examination has stated that he could not say whether Ex.P1 was having red colour.

38. In the post-mortem report it has been stated that death was due to asphyxia consequent upon ligature strangulation. An application was also made by PW-11 seeking subsequent opinion regarding the *angocha* [Ex.P1], as to whether it could have been used for strangulation [Ex.PW-11/J]. It was opined by PW-10 that injury on the body of the deceased could have been caused by Ex.P1 [Ex.PW-10/B].

39. PW-8 is an independent witness as neither was he interested in the outcome of the case nor was he in any way related with the appellant. PW-8 has attested, *inter alia*, all the recoveries made at the instance of the appellant, including the recovery of the weapon offence [Ex.P1] made from

the crime spot. PW-8 has also attested the pointing out memo [Ex.PW-8/F]. The recoveries were made and the pointing out memo was drawn on the date of the commission of the offence itself, viz. 11.08.2009. The discrepancies found in the ocular account of PW-8, PW-11 and PW-15, whilst speaking on the details of the colour of Ex.P1, are neither vital nor material in dimension. Moreover, the account of these witnesses *qua* the incident were recorded more than one and a half years after the date of the commission of the murder and cannot be expected to be corroborated with mathematical niceties. There may be minor variations, but that won't render the evidence of these witnesses unreliable. [**Ref: Leela Ram v. State of Haryana**, reported as (1999) 9 SCC 525]

40. The argument advanced on behalf of the appellant that the weapon of offence [Ex.P1] was recovered from an open space, which was accessible to others as well, is self-serving, inasmuch as, the weapon of offence was recovered from the tenanted premises of the appellant, viz. neither a public nor an open place accessible by others.

41. Insofar as the failure of the police to lift chance prints from the crime spot and the recoveries made therefrom is concerned; the recovery of the

broken bangles, *angocha* [Ex.P1] and the vegetable cutting knife has been proved beyond reasonable doubt *de hors* the report of the finger print expert.

42. In view of the foregoing, the recoveries made at the instance of the appellant cannot be termed as tainted.

43. The decision in ***Anter Singh*** (*supra*) is distinguishable on the facts of the present case, inasmuch as, in that report the recovery of the weapon of offence was made almost after 3 weeks, from the open place where the dead body was found; which was accessible and visible to anyone passing by. Moreover, in that case the witness to the recovery had turned hostile.

44. The reliance placed on the decision in ***Bahadul*** (*supra*) is also misplaced, inasmuch as, in that report the only circumstance left for consideration before the Hon'ble Supreme Court was the production of the cot by the appellant, all others having been rejected as unreliable.

45. Even the reliance placed on the decision in ***Dudh Nath Pandey*** (*supra*) is misplaced and is distinguishable on the facts of the present case. In that report the statement accompanying the discovery of the weapon of offence (pistol) was woefully vague to identify the authorship of concealment; the pistol was stated to have been concealed in broad daylight

on a public thoroughfare; and the discovery was witnessed by a witness who had already deposed in seven different cases in favour of the prosecution.

46. In relation to the motive for the commission of the murder of the deceased, it would be relevant to note that it is a sound principle that every criminal act is done with a motive but its corollary would not be that, no criminal offence has been committed if the prosecution fails to prove the precise motive of the accused to commit it. When the prosecution succeeded in showing the possibility of some ire for the accused towards the victim, the inability to further put on record the circumstances in which such ire would have swelled up in the mind of the offender; to a degree so as to impel him to commit the offence, cannot be construed as a fatal weakness in the case of the prosecution. [*Ref: State of H.P. v. Jeet Singh*, reported as (1999) 4 SCC 370]

47. PW-16 is the owner of House no.C-100, Vijay Vihar, Delhi and had let out the rooms therein to the tenants. One of the room was given to Manoj Kumar, who was a resident of Uttar Pradesh. It has been deposed by PW-16 that Manoj Kumar was residing therein with the deceased for about 1-1.5 months. After about 1 or 1.5 months the appellant came to PW-16 with a girl aged 10-11 years and told the latter that the deceased was his wife and she

was living illegally with Manoj Kumar in the room rented out by him. The appellant met the deceased in the room and requested her to go with him; and after about 1-2 days Manoj Kumar and the deceased left the room secretly without informing PW-16.

48. A suggestion was even put to PW-8 that the appellant had disclosed to him and the police that one Manoj Kumar with whom his wife was having illicit relation had committed the murder of the deceased. The suggestion was denied by PW-8.

49. Even otherwise, the appellant in his statement under the provision of Section 313 of the CrPC has admitted that the deceased (appellant's wife) developed some relations with Manoj Kumar and went on to live with him. However, after persuasion by the appellant, the deceased came back to the former and started avoiding Manoj Kumar. Thereafter, the appellant and deceased started to live happily.

50. The Trial Court in relation to the motive for the commission of the crime, has observed as follows:

“The testimony of PW-16 Mukesh Kumar, cross examination of PW-11 Inspector Sunil Kumar, suggestion given to PW-8 Amarjeet Singh during cross examination and statement of the accused u/s 313 Cr.P.C. combined together proved that accused was suspecting the character of his wife and this was the motive of the accused in committing the murder of the deceased.”

51. In view of the aforesaid deposition by PW-16 and the statement of the appellant under the provisions of Section 313 CrPC, it emerges that the Trial Court was not in error in holding that that the appellant suspected the character of the deceased, and that could have served as the motive for the commission of the crime. Therefore, the bald assertion of the appellant that there was no reason for him to commit the murder of the deceased is baseless and ought to be rejected.

52. Factors which need to be considered by the Courts before attaching value to an extra-judicial confession are, *inter alia*, whether it was made voluntarily; whether it was inspired by any improper or collateral consideration; the veracity of the witness before whom it is made and his position in relation to the person making the confession; time lapse between the occurrence and of making the confession; time and place of making it; circumstances in which it has been made; and the actual words of the confession. [**Ref: Nirmal Singh** (*supra*) and **Thimma v. State of Mysore**, reported as AIR 1971 SC 1871]

53. According to normal human psychology a person, unless he is a hardened criminal, has a natural tendency to unburden himself and share his terrible secrets with somebody else, after the commission of a grave offence,

especially, murder. However, having given time to ponder over it, the fear of consequence of conviction may start acting in restraint of one's natural impulse to confess. The desire to confess may also evaporate with the passage of time. [**Ref: Nirmal Singh (Ibid.)**]

54. PW-8 was running a DJ shop and used to reside at B-59, Vijay Vihar, Phase-II, Delhi and a portion of House no.K-115 was being used by PW-8 for the purpose of storage. PW-8 has testified that it takes 5 minutes from House no.K-115 to reach the police station or his residence. Furthermore, PW-8 has deposed that the appellant used to reside along with his wife and children on the second floor of the House no.K-115 and was the only tenant in the entire three-storey building. It has been further deposed by PW-8 that the appellant was not known to him prior to the creation of the tenancy and the appellant along with his wife and two children met him when the tenancy was created. Neither was any written agreement executed between the appellant and PW-8 nor was any rent paid, as the tenancy was created only 7-8 days prior to the date of the incident.

It has been further deposed by PW-8 that on 11.08.2009, at about 6/6:30 P.M., he was passing through the building comprising of the tenanted premises to check on his labour, when the appellant met him. PW-8 has

deposed that the appellant was perturbed and upon asking him as to where he was going, the latter himself disclosed that he had killed his wife and was going to the police station to inform about the same. It has been further deposed by PW-8 that he did not see any other person going to the tenanted premises. PW-8 has also denied the suggestion put to him that he came to the crime spot after being called by the police.

Further, PW-8 has deposed that when he was about to leave from the said house bearing no.K-115, Vijay Vihar, Phase-II, Delhi, the appellant reached there along with police personnel. Thereafter, the appellant, police officers and PW-8 went to the tenanted premises on the second floor; where the body of the deceased was found. The testimony of PW-8 was recorded by the police officials on the date of the incident itself.

55. PW-11 has deposed that on 11.08.2009, at about 6:15 P.M., after receiving information that a murder has been committed at House no.K-115, he reached there; where he found the appellant, PW-15 and PW-8 to be present.

56. PW-15 has also deposed that when he received DD entry no. 42A, he reached House no.K-115, and PW-8 was already present there.

57. Per contra, the appellant in his statement under the provision of Section 313 CrPC has deposed that, PW-8 has falsely implicated him as he wanted to save Manoj Kumar, the real culprit.

58. In relation to the extra-judicial confession allegedly made by the appellant to PW-8, the Trial Court has observed as follows:

“36. ...There is nothing in evidence suggesting that PW-8 Amarjeet Singh was having any ill will even remotely towards the accused or his testimony was motivated by improper purposes. The accused in clear, unambiguous words made extra judicial confession to the PW-8 Amarjeet Singh. The extra judicial confession made by the accused to PW-8 Amarjeet Singh conveyed that the accused was the perpetrator of the crime. The extra judicial confession made to PW-8 Amarjeet Singh is not a weak type of evidence. The accused in statement u/s 313 Cr.P.C stated that PW-8 Amarjeet Singh deposed against him as PW-8 Amarjeet Singh wanted to save real culprit. The defence as taken by the accused does not inspire any confidence. No suggestion was given to PW-8 Amarjeet Singh that he wanted to save real culprit Manoj. The testimony of PW-8 Amarjeet Singh inspire confidence and can be safely relied upon to prove the extra judicial confession made by the accused to PW-8 Amarjeet Singh. There is nothing in the testimony of PW-8 Amarjeet Singh which can dilute the credibility of the testimony of PW-8 Amarjeet Singh. The prosecution proved that the accused made extra judicial confession to PW-8 Amarjeet Singh which can be safely relied upon.”

59. On a conjoint reading of the testimony of PW-11 and PW-15, it cannot be disputed that PW-8 was present at House no. K-115, when the police officials reached there alongwith the appellant, subsequent to the recording of the DD entry No.42A. PW-8 has deposed that he did not notice any other

person going to the tenanted premises. According to the post-mortem report the time of death is around 5:30 P.M. The extra-judicial confession is stated to have been made by the appellant to PW-8 around 6-6:30 P.M and the DD entry No.42A has been recorded around 6:05 P.M.

60. Therefore, it can be reasonably inferred that the alleged confession has been made by the appellant to PW-8 immediately after the commission of the crime, as he was perturbed after strangulating the deceased to death.

61. The testimony of PW-8 that the appellant made a confession to him *qua* the commission of the murder of the deceased, has remained consistent and unshattered, despite having been cross-examined at length; and inspires confidence.

62. It shall be borne in mind that different witnesses react differently under different situations and there cannot be any set pattern or uniform rule of human reaction. [**Ref: Leela Ram (supra)**]. The mere fact that the PW-8 did not inform the police about the confession made to him by the appellant would not render his testimony liable to be discarded.

63. Furthermore, neither has any evidence been adduced by the appellant to show any reason for PW-8 to falsely implicate the appellant nor was any suggestion so given to him. There is also no evidence on record to show that

the appellant knew anyone else in the neighborhood, as he had shifted in the tenanted premises only 7-8 days prior to the commission of the offence. However, the appellant was acquainted with PW-8, the latter being the landlord of the tenanted premises.

64. In view of the foregoing, it cannot be said that PW-8 is a planted witness and no confession was made to him by the appellant, inasmuch as, *i)* the testimony of PW-8 has remained consistent and unshattered; *ii)* the presence of PW-8 at House no.K-115 has been established by the testimony of PW-11 and PW-15; *iii)* there was no reason for PW-8 to falsely implicate the appellant; *iv)* the confession was made immediately after the commission of the offence; *v)* save and except PW-8, the appellant was not acquainted with anyone else in the neighbourhood; and *vi)* the confession, insofar as the appellant disclosed to PW-8 that he was going to the police station to confess about the commission of the murder of the deceased, has been corroborated by the factum of registration of DD entry no.42A.

65. The reliance placed on ***Nirmal Singh*** (*supra*) is distinguishable on the facts of the present case, inasmuch as, in that case multiple confessions were made by the accused, firstly, to the person who arranged the marriage between him and the deceased after travelling a distance of 80-90 miles;

secondly, to a person who was completely unknown to him; and thirdly, to an omnibus witness who was present on every occasion. The confessions so made were discarded; they being not reliable.

66. Juxtaposed with the decision in *Nirmal Singh* (*supra*), the Hon'ble Supreme Court in *R. Kuppusamy v. State*, reported as (2013) 3 SCC 322, relied upon the extra-judicial confession made by the accused to the Administrative Officer of the village after the commission of the offence.

67. With regard to an extra-judicial confession, the following principles have been enunciated by the Hon'ble Supreme Court in *Sahadevan v. State of Tamil Nadu*, reported as 2012 (5) SCALE 415:

“22. ...The Principles

(i) The extra judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution.

(ii) It should be made voluntarily and should be truthful.

(iii) It should inspire confidence.

(iv) An extra judicial confession attains greater credibility and evidentiary value, if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.

(v) For an extra judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.

(vi) Such statement essentially has to be proved like any other fact and in accordance with law.”

Furthermore, the Hon'ble Supreme Court observed *qua* the evidentiary value of an extra-judicial confession in a case based on circumstantial evidence, as follows:

“12. 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. Further more, 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 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.”

68. A plain reading of the above principles would make it abundantly clear that an extra judicial confession can be safely made the basis for the conviction of an accused, in the event the same, (i) is made voluntarily; (ii) inspires confidence; (iii) is corroborated by a chain of cogent circumstances and prosecution evidence; and (iv) does not suffer from any material discrepancies and improbabilities.

69. In the present case, the confession voluntarily given by the appellant to PW-8 inspires confidence and does not suffer from any material discrepancies and improbabilities. Furthermore, the extra-judicial confession made by the appellant is corroborated by other cogent circumstances and prosecution evidence, as discussed hereinbefore.

70. The reliance placed on the decision in *Pratap Dehury v. State of Orissa*, reported as (2000) 18 OCR 633 is misplaced, inasmuch as, in that report the statements of the witnesses, before whom the purported extra-judicial confession was made, were contradictory.

71. In relation to the contention raised on behalf of the appellant that, non-examination of Manoj Kumar raises a serious doubt on the prosecution story, it would be relevant to note that the appellant was residing alongwith the deceased and his children at the tenanted premises. As per the testimony of the police officials and PW-8, when the appellant led them to the crime spot, the children of the deceased and the appellant were not present there. PW-8, who is a reliable witness and was present at House no.K-115 to check on his labour; around the time of the commission of the offence, has deposed that he had not seen any other person going to the tenanted premises. There was no sign of forcible entry either. Furthermore, PW-8 has denied the suggestion put to him that the appellant had disclosed to him that Manoj Kumar had committed the murder of the deceased.

72. In this behalf, the Ld. Trial Court has observed as follows:

“The testimony of PW-8 Amarjeet Singh has proved that the accused was present along with the deceased in the tenanted premises at the time of incident. There is no evidence to reflect the presence of any other third person at the time of incident in the tenanted premises. The

deceased was the wife of the accused. The accused was not happy with his wife i.e. the deceased due to her relation with Manoj Kumar. The deceased was found dead inside the house. There was no possibility of any external intruder. It is not explained by the accused under what circumstances the deceased has died. It is not explained how the three ligature marks came on the neck of the deceased. The cause of death is opined as strangulation by ligature excluding the possibility of any suicide. These facts are relevant under Section 106 of Evidence Act and are indicative of the fact that the accused has strangled his wife.”

73. A perusal of the testimony of PW-8 would reveal that neither Manoj Kumar nor any third person, apart from the appellant, was present with the deceased at the tenanted premises at the time of the commission of the offence and was liable to be examined by the prosecution.

Even otherwise, in a catena of decisions it has been held that in cases of non-examination of a person as a witness, the investigating-officer must be questioned to elicit the reasons and in the absence thereof, such an argument would not be entertained. [*Ref: Dahari and Ors. v. State of U.P.*, reported as (2012) 10 SCC 256; *Onkar and Another v. State of Uttar Pradesh*, reported as (2012) 2 SCC 273; *Manjit Singh and Another v. State of Punjab and Another*, reported as (2013) 12 SCC 746]. No such questions were put to PW-11/Investigating-officer.

74. Therefore, non-examination of Manoj Kumar by the prosecution does not raise suspicion against the version of the prosecution and does not

absolve the appellant of the criminal liability for the commission of the murder of the deceased; which is otherwise established by cogent material on record.

75. The burden of proving an alibi which may absolve the accused from the criminal liability lies upon the accused itself [**Ref: Gurcharan Singh v. State of Punjab**, reported as AIR 1956 SC 460].

76. In this behalf, it has not been deposed by Savita (PW-5), the mother in law of the deceased, that the appellant came to their house at Nand Nagri, on the day of the commission of the incident, to drop off his children.

77. Furthermore, the alibi raised by the appellant in his statement under the provision of Section 313 CrPC, that on the day of the commission of the murder of the deceased he had gone to drop off his children at his parents' house seems to be an afterthought, inasmuch as, it has not been proved by the evidence on record.

78. Therefore, the onus placed on the appellant, by virtue of the provision under Section 106 of the Evidence Act, to disclose as to what transpired in the tenanted premises leading to the death of the deceased due to asphyxia; being especially within the knowledge of the appellant, does not stand discharged; thus, providing an additional link in the chain of circumstances

which complete the chain, that the Appellant committed the murder of his wife by strangulation using an *angocha* [Ex.P1], as she was allegedly of loose morals.

79. The five golden principles expounded by the Hon'ble Supreme Court in *Hanumant* (*supra*) have been duly satisfied in the instant case. As a logical corollary, it follows that the murder of the deceased cannot be explained on any other hypothesis except the appellant's guilt. In other words, the prosecution has fulfilled all the essential requirements of a criminal case, which rests purely on circumstantial evidence.

80. In view of the foregoing, there appears to be no circumstance that warrants an interference of this Court with the finding of the Ld. Trial Court, save and except, to the extent an inference is sought to be drawn by the Trial Court from the conduct of the appellant; as discussed hereinbefore.

81. Consequently, the conviction of the appellant as recorded in the impugned judgment as well as the sentence awarded to him by way of the order on sentence, are upheld.

82. The present appeal is accordingly dismissed, with no order as to costs.

83. Copy of the judgment be supplied to the appellant through the Superintendent, Central Jail, Tihar and also be sent for updation of the records.

SIDDHARTH MRIDUL, J.

NAJMI WAZIRI, J.

SEPTEMBER 26, 2017
dn/ap

