

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No.1004 of 2013**

- Satyanarayan Mahobia S/o Late Ram Sevak Aged About 35 Years R/o Gunderdehi, Ward No. 5, Ps Gunderdehi, Distt. Balod C.G., Chhattisgarh

---- Appellant**Versus**

- State Of C.G. Through Sho, Ps Gunderdehi, Distt. Balod C.G. , Chhattisgarh

---- Respondent

For Appellant	:	Shri B. P. Singh, Advocate
For Respondent/State	:	Ms. K. Tripti Rao, Panel Lawyer

D.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Rajani Dubey

Order on Board**Per Manindra Mohan Shrivastava, J.****11/12/2018**

This appeal is directed against the impugned judgment of conviction and order of sentence dated 31-08-2013 passed by the Fifth Additional Sessions Judge, Durg in Sessions Trial No.130/2012, whereby and whereunder the **appellant-Satyanarayan Mahobiya** has been held guilty for commission of offence under Section 302 and 201 of IPC and sentenced him, as described below:-

Section-302 IPC Rigorous Imprisonment for one year and fine of Rs.500/-, in default of payment of fine, the appellant has to undergo additional Rigorous Imprisonment for six month

Section-201 IPC Rigorous Imprisonment for five year and fine of Rs.500/-, in default of payment of fine, the appellant has to undergo additional Rigorous Imprisonment for six month

All the sentences were ordered to run concurrently.

2. The prosecution story, as unfolded from the impugned judgment and records of the case is that the FIR was lodged by the appellant himself in the police station Gunderdehi on 23-04-2012 at 7 pm in the morning, in which, it was stated that the appellant doubted the character of his wife and therefore, in the night, he assaulted and murdered his wife and thereafter, the dead body was thrown in a nearby deserted house. The police reached the spot and morgue was also recorded. Inquest over the dead body was prepared and the dead body was sent for postmortem. Dr. Dinesh Pagariya, PW-4 conducted postmortem and prepared postmortem report in Ex.P-18. Further case of the prosecution is that according to the prosecution, it was the appellant, who had killed his own wife and the clothes worn by the appellant were seized. The pillow cover from the house of the appellant and clothes of the deceased were also seized. Further case of the prosecution is that memorandum under Section 27 of the Evidence Act was also taken and it is the case of the prosecution that on the basis of the statement given by the appellant, knife and its holder was recovered from under the well at the instance of the appellant. Upon completion of investigation, charge sheet was filed and the trial Court framed charges against the appellant for alleged commission of offence under Section 302 & 201 of IPC. The appellant having abjured guilt, was put to trial. Though, there is no direct evidence, the learned trial Court relying upon the prosecution case of there being motive for the appellant to kill his wife, recovery of blood stained clothes of the appellant and pillow cover from the house of the appellant as also recovery of knife said to have been used in the alleged commission of offence, held the appellant guilty of commission of offence and sentenced him, as described above.

3. Assailing correctness and validity of the impugned judgment of conviction

and order of sentence, learned counsel for the appellant argued that the prosecution has failed to bring home the guilt of the appellant beyond reasonable doubt. He would submit that the FIR, Ex.P-25, said to be lodged in the police station in presence of the police officers by the appellant himself, cannot be used against him. He would further argue that the present is not a case where the dead body was found in the house of the appellant, so as to require the appellant to explain as to how his wife died homicidal death, upon receiving multiple injuries. Learned counsel for the appellant further argued that the witnesses of memorandum, on the basis of which, knife is said to have been recovered, have turned hostile and the prosecution has not been able to prove the case against the appellant on the basis of seizure made by the prosecution. He would further submit that as far the Forensic Science Laboratory Report is concerned, the clothes of the appellant have not been found to be tainted with human blood, much less blood of the deceased. He would further argue that the presence of "B" group blood in the pillow cover allegedly recovered from the house of the appellant, has no incriminating value, because the prosecution has failed to prove that "B" was the blood group of the blood of the deceased. In any case, it is contended, the witnesses of seizure of pillow cover have also turned hostile. On the other hand, the appellant has come out with a plea of *alibi* by examining Sheikh Nabi, DW-1, who has clearly deposed that a day before the date of incident, the appellant had gone along with this witness, Sheikh Nabi to another village and they all stayed overnight and on the next morning, they reached their village and thereafter, the appellant went to his house and he found that his wife was found dead. Therefore, the conviction of the appellant deserves to be set aside. In support of his contention, learned counsel for the appellant relied upon the decisions of the Supreme Court in the case of ***Aghnoo Nagesia v. State of Bihar, AIR 1966 SC 119 and Debapriya Pal v.***

State of West Bengal, AIR 2017 SC 1246 as also decisions of this Court in the case of ***Brijpal vs. State of Chhattisgarh, 2003(2) CGLJ 68*** and ***Khilawan Kumar vs. State of Chhattisgarh, 2009(3)CGLJ 14 (DB)***.

4. On the other hand, learned State counsel would support the impugned judgment of conviction and order of sentence by submitting that even though, there is no direct evidence, the FIR, to the extent it talks of illicit relation between the appellant's wife (deceased) with other person and the appellant and the deceased having strained relations and the appellant having motive to kill his wife, is reliable. The next submission of learned State counsel is that even though, the independent witnesses of seizure of knife and clothes of the appellant may not have supported the case of the prosecution, the Investigating Officer. R. K. Sahu, PW-14, has reliably stated regarding seizures having been made from the appellant and the place, as stated in various seizure memo Ex.P-5, P-6, P-7 & P-8. Therefore, the learned trial Court has rightly drawn inference from these established facts, circumstances and evidence that the appellant had killed his wife in his own house, and the dead body was thrown in a nearby dilapidated house. Learned State counsel would further argue that once human blood is found on the full pant worn and seized from the possession of the appellant, he is required to explain as to how his clothes were sustained with human blood. He would also submit that there is clinching evidence that the pillow cover was found having contained human blood of "B" group. Therefore, all these evidence taken together lead to inference that in all probability, it is the appellant and the appellant alone, who must have killed his own wife.

5. We have heard learned counsel for the parties and perused the records.

6. As far as homicidal death of the deceased Radha Mahobiya is concerned, the same is not substantially in dispute, in view of the evidence of Dr. Dinesh

Pagariya, PW-4, who has conducted postmortem and proved his postmortem report in evidence, Ex.P-18. He has stated overwhelmingly regarding the injuries sustained by the deceased, which shows that the deceased had sustained number of stab injuries on various parts of the body including left lung, heart and ribs were also found broken. Upon examination of the injuries and the manner, in which, it was given, doctor opined that the deceased died as a result of cardio-respiratory arrest due to hemorrhagic shock on account of injuries to vital organs, which was ante-mortem in nature and according to him, death was homicidal.

7. We have gone through the said evidence and found that what has been stated regarding nature and extent of injury could not be impeached in his cross-examination. Even otherwise, having seen the records of the case, nature of injuries and the extent, we have no doubt in our mind that death was homicidal in nature.

8. The question, which arises for consideration, is as to whether the prosecution has succeeded in proving beyond reasonable doubt that this is the appellant and the appellant alone, who killed his own wife. As the case of the prosecution rests only on circumstantial evidence, the prosecution was required to prove all the circumstances so as to form a complete chain to lead to the hypothesis of guilt. It is well settled legal position that unless the circumstantial evidence form a complete chain leading to reasonable inference that in all probability, accused and the accused alone must have committed the offence, conviction on circumstantial evidence may not be sustained. The accused may have committed the offence, is mere suspicion short of truth. Unless it is converted into truth on proof of clinching and incriminating circumstantial evidence, conviction on the basis of circumstantial evidence would be impermissible under the law.

9. Keeping in view aforesaid legal position, we shall examine the evidence relied upon by the prosecution to hold the case against the appellant.

10. According to the prosecution, it was the appellant, who himself went to the police station and the FIR was lodged at his instance, in which, the entire story including the motive of murder has been stated. Though, reliance has been placed on this FIR as strong incriminating evidence to support the prosecution case, we have no hesitation to hold that the FIR could not be used as incriminating material against the appellant.

11. In this regard, the decision of the Supreme Court in the case of **Aghnoo Nagesia** (supra) authoritatively pronounced that the contents of FIR could not be used as incriminating material against the accused, in case, where the prosecution comes out with the case that the FIR was lodged by the accused himself. In this regard, the legal position as adumbrated by Their Lordships in the Supreme Court, are reproduced as under:-

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 [ss. 24 to 30](#) of the Evidence Act and [ss. 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 ss. 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 [s. 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 [S. 26](#) relates to a confession made to a person other than a police officer. [Section 26](#) does not qualify the absolute ban imposed by [s. 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 [ss. 24, 25 and 26](#). It provides that when any fact is proved to be 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 Order investigation, save as mentioned in the proviso and in cases falling under sub-s (2), and it specifically provides that nothing in it shall be deemed to affect the provisions of [S. 27](#) of the Evidence Act. The words of [s. 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 [s. 164](#) of the Code of Criminal Procedure subject to the safeguards imposed by the section. Thus, except as provided by [s. 27](#) of the Evidence Act, a confession by an accused to a police officer- is absolutely protected under [s. 25](#) of the Evidence Act, and if it is made in the course of an investigation, it is also protected by [s. 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 [S. 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 [s. 157](#) of the Evidence Act or to contradict him under [s. 145](#) of the Act, if the informant is called a,,; 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 s. 8 of the Evidence Act. If the information is a non-confessional statement, it is admissible against the accused as an admission under [s. 21](#) of the Evidence Act and is relevant, see [Faddi v. The State of Madhya Pradesh](#)(1) explaining [Nisar Ali v. State of U.P.](#) (1) and [Dal Singh v. King Emperor](#)(1). But a confessional first information report to a police officer cannot be used against the accused in view of [S. 25](#) of the Evidence Act.

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 at p.1111:(AIR 1952 SC 343 at p.350) and [Palvinder Kaur v. The State of Punjab](#), 1953 SCR 94 (AIR 1952 SC 354). 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 [s. 24](#), [s. 25](#) and [s. 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 [s. 27](#) of the Evidence Act. Little substance and content would be left in [ss. 24, 25 and 26](#) if proof of admissions of incriminating facts in a confessional statement is permitted.

15. Sometimes , a single sentence in a statement may not amount to a confession at all. Take a case of a person charged under [s. 304-A](#) of the Indian Penal Code and a statement made by him to a police officer that "I was drunk; I was driving a car at a speed of 80 miles per hour; I could see A on the road at a distance of 80 yards; I did not blow the horn; I made no attempt to stop the car; the car knocked down A." No single sentence in this statement amounts to a confession, but the statement read as a whole amounts to a confession of an offence under [S.304-A](#) of the Indian Penal Code, and it would not be permissible to admit in evidence each sentence separately as a non- confessional statement. Again, take a case where a single sentence in a statement amounts to an admission of an offence. 'A' states "I struck 'B' with a tangi and hurt him." In consequence of the injury 'B' died. 'A' committed an offence and is chargeable under various sections of the Indian Penal Code. Unless he brings his case within one of the recognised exceptions, his statement amounts to an admission of an offence, but the other parts of the statement such as the motive, the preparation, the absence of provocation, concealment of the weapon and the subsequent conduct, all throw light upon the gravity of the offence and the intention and knowledge of the accused, and negatives the right of private defence, accident and other possible defenses. Each and every admission of an incriminating fact contained in the confessional statement is part of the confession.

16. If the confession is caused by an inducement, threat or promise as contemplated by [s. 24](#) of the Evidence Act, the whole of the confession is excluded by [s. 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 [s. 24](#). To hold that the proof of the admission of other incriminating facts is not barred by [s. 24](#) is to rob the section of its practical utility-and content. It may be suggested that the bar of [S. 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 [s. 24](#), proof of all the admissions of incriminating facts contained in a confessional statement is excluded by the section. Similarly, [ss. 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 confessional statement of all incriminating facts related to the offence.

17. A little reflection will show that the expression "confession" in [ss. 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 [ss. 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 ss. 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, [s. 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."

12. Having so explained the principle of law applicable with regard to admissibility of FIR said to be lodged by the accused himself, Their Lordships conclusively held as below:-

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 [s. 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 [s. 25](#) is lifted by [Section 27](#)."

13. Though, learned State counsel would submit that the dead body was recovered at the instance of the appellant and it was the appellant, on whose disclosure, FIR was lodged, including disclosure of the dead body notwithstanding any formal disclosure made under [Section 27](#) of the Evidence

Act, we are not inclined to accept the submission. The FIR is said to be lodged at the police station at 7 AM in the morning and the memorandum of the appellant was recorded under Section 27 of the Evidence Act at 07.35 AM, which is clear from the memorandum of recovery of knife, Ex.P-8. The Investigating Officer, R. K. Sahu, PW-14 has stated in his evidence that the proceedings drawn in this case, clearly reflects that the FIR was recorded and prepared and the appellant was taken into custody and memorandum, Ex.P-8 in respect of recovery of knife, was prepared. On facts, it is, therefore, clear that even before the appellant was taken into custody, the FIR was recorded. If that be so, in view of the aforesaid decision of the Supreme Court in the case of **Aghnoo Nagesia** (supra), even for the purpose of Section 27 of the Evidence Act, the FIR could not be looked into.

14. Looking to the observations made in the judgment of **Aghnoo Nagesia** (supra), we have considered apposite to extract the relevant guidelines, as under:-

27. "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."

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15. In a recent decision of this Court in the case of **Motilal Chaturvedani vs. State of Chhattisgarh, (Criminal Appeal No.828 of 2013, decided on 04-12-2018)** relying upon the decision of the Supreme Court in the case of **Manoranjan Singh vs. State of Delhi, (1998) 3 SCC 523**, we have held that unless the accused is taken into custody, Section 27 of the Evidence Act cannot be attracted nor can it be said that recovery was made at the instance of the

accused.

16. In the aforesaid decision, it has been held:-

21. “We have no hesitation in accepting the submission of the counsel for the appellant that Section 27 of the Evidence Act would not be attracted in so far as the recovery of dead body is concerned in view of what has been held by the Supreme Court in the case of **Manoranjan Singh** (supra). In that case, it was found that no offence was registered against the accused when he was taken to the police station for interrogation nor was any accusation made against him. He was not in the custody of the police, therefore Section 27 of the Evidence Act was found not applicable and it could not be said that the recovery was made at the instance and the disclosure statement of the accused therein.”

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17. In any case, in the present case, the prosecution evidence itself belies the prosecution story of recovery of the dead body at the instance of the appellant, because the prosecution witnesses Shankar Lal Yadav, PW-1 and Santosh Kumar Netam, PW-2, both have stated that when they reached the place, where the dead body was lying, crowd had also gathered and then followed the police. Curiously enough, the Investigating Officer, R. K. Sahu, PW-14 himself states that he had also sent a policeman to the place, where the dead body was lying and after his return, FIR was recorded, but that means the location of the dead body was already known. For all these reasons, it cannot be said that the dead body was recovered at the instance of the appellant, rather we are inclined to hold that for the limited purpose of recovery of the dead body at the instance of the appellant, FIR may not be looked into as it is not admissible in evidence. Even according to the prosecution case, the dead body was recovered from another house, which was in dilapidated condition. There is no evidence brought on record, which shows that the dead body was found from a place

which was in exclusive physical possession of the appellant and not any other person.

18. In order to prove that the appellant has murdered his wife and threw the dead body at the location, wherefrom it was found, the prosecution has relied upon the seizures made from the house of the appellant, which importantly include the pillow cover allegedly seized by the Investigating Officer vide Ex.P-6, in presence of independent witnesses. This pillow cover claims to have been recovered from the house of the appellant, but the independent witnesses of seizure i.e. Shankar Lal Yadav, PW-1 and Santosh Kumar Netam, PW-2 have not supported the prosecution case. The aforesaid two witnesses have, in fact, not even supported memorandum statement having been given by the appellant or seizure of any of the article, Ex.P-5, P-7 & P-8 from the appellant in their presence. This pillow cover, which is said to be recovered from the house of the appellant, is found to be sustained with blood of "B" group as per Ex.P-34, but we find that there is no evidence to prove that the aforesaid was the blood group of the deceased. In the absence of any such match, the Forensic Science Laboratory report of the pillow cover loses its incriminating value.

Likewise, clothes of the appellant, namely Full Pant, alleged to be recovered from the appellant, is also said to be stained with human blood and this by itself, would not lead to involvement of the appellant in the commission of offence, unless there are other clinching circumstantial evidence to prove the guilt of the appellant.

19. The prosecution story of motive is also not supported by any of the prosecution witnesses. The prosecution has examined Rusai Lal Dewangan, PW-7, in whose house, the appellant lived along with his wife. He says that during the period, the appellant resided in his house, there was cordiality and affection between the appellant and his wife. Similar is the statement given by

Shashikant Choudhary, PW-8 that the appellant and his wife lived together in a cordial manner.

The mother of the deceased, Smt. Saroja Mahobiya, PW-5 and sister of the deceased, Chanchal Mahobiya, PW-6, both of them have given contradictory version of motive. Moreover, they claimed to have known about the incident from the appellant only, which shows that it was informed to them by the appellant, after the incident. Apparently, at that time, the appellant was also taken into custody by the police. Therefore, that also does not constitute admissible evidence, much less, any incriminating material against the appellant. The failure of the prosecution to bring about the matching evidence of blood group is fatal to the prosecution case, in view of what has been held by Their Lordships in the Supreme Court in the case of **Debapriya Pal** (supra), as under:-

7. "As far as recovery of bloodstained clothes is concerned, two public witnesses were examined who, purportedly, were the witnesses to the seizure list of wearing apparels of the appellant. These are PW 12 and PW 13. According to their deposition, they saw the policemen along with the accused person going to the house of the appellant and they also joined the police party. It is how they became the witnesses and were associated with the recovery. For the sake of argument, we are presuming that they were present at the time when the appellant brought bloodstained clothes from his house and gave the same to the police. What is material is the reliance on these bloodstained clothes for the culpability of the appellant herein. As per the prosecution, the blood group on these bloodstained clothes matched with the blood on the bedsheet on which the body of one of the deceased persons was found. The record reveals that though blood of both the deceased persons was drawn and sent for examination, it is not known as to what was the report thereupon and what was the blood group of the deceased persons. No such blood report has been produced. So much so, blood group of the accused persons was also not ascertained. Even if we presume that the blood on the bedsheet was that of the deceased, the possibility cannot be ruled out that the same blood group as of the appellant-accused thereof. Therefore, mere matching of the blood group on the bloodstained clothes, which was even on the bedsheet, would not lead to the conclusion that it is the appellant who had committed the crime. Same reasoning goes with the recovery of laptop as well. Merely because laptop belonging to the sister of the deceased Anusha Sarkar (*sic* was recovered from the house of the appellant) is not indicative that the appellant is responsible for the commission of the crime. Under Section 27 of the Evidence Act only so much of recovery, as a result of the disclosure statement, which directly pertains to the commission of

crime is relevant. Otherwise, such an evidence is barred under Section 25 of the Evidence Act. Recovery of laptop does not have any bearing. It is neither the weapon of crime nor it has any cause of connection with the commission of crime. The law on this aspect is succinctly said in *Jaffar Hussain Dastagir v. State of Maharashtra*, (1969) 2 SCC 872 : (AIR 1970 SC 1934) in the following manner:

“5. Under Section 25 of the Evidence Act no confession made by an accused to a police officer can be admitted in evidence against him. An exception to this is however provided by Section 26 which makes a confessional statement made before a Magistrate admissible in evidence against an accused notwithstanding the fact that he was in the custody of the police when he made the incriminating statement. Section 27 is a proviso to Section 26 and makes admissible so much of the statement of the accused which leads to the discovery of a fact deposed to by him and connected with the crime, irrespective of the question whether it is confessional or otherwise. The essential ingredient of the section is that the information given by the accused must lead to the discovery of the fact which is the direct outcome of such information. Secondly, only such portion of the information given as is distinctly connected with the said recovery is admissible against the accused. Thirdly, the discovery of the fact must relate to the commission of some offence.”

Similar is the view taken in two subsequent decisions **Khilawan Kumar** (supra) and **Brijpal** (supra).

20. In view of the above discussion, we are of the view that the prosecution has failed to prove its case beyond reasonable doubt so as to hold the appellant guilty by drawing an inference that it is the appellant, who must have killed his wife. The appellant is entitled to benefit of doubt.

21. Accordingly, the appeal is allowed. The impugned judgment of conviction and order of sentence passed by the learned trial Court is hereby set aside. The appellant is acquitted from the charges levelled against him and he shall be released forthwith.

SD/-
(**Manindra Mohan Shrivastava**)
Judge

SD/-
(**Rajani Dubey**)
Judge