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

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Judgment Reserved on: 28.03.2019
Judgment pronounced on: 14.05.2019

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CRL. A. 273/2004

TIRATH SINGH YADAV Appellant

Through: Mr. Jitendra Sethi, Advocate with
Mr. Hemant Gulati, Advocate.

Versus

STATE Respondent

Through: Ms. Aashaa Tiwari, APP for State.

WITH

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CRL. A. 279/2004

CHAMAN SINGH YADAV @ CHAMAN Appellant

Through: Mr. Deepika Mishra, Advocate.

Versus

STATE Respondent

Through: Ms. Aashaa Tiwari, APP for State.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE VINOD GOEL

VINOD GOEL, J:

1. By these appeals, the appellants have challenged the impugned judgment dated 20.03.2004 passed by the court of the learned Additional Sessions Judge, Delhi, ('ASJ') in Session Case No.100/2000 (1/2003) vide FIR No.371/2000, Police Station Vasant Kunj, whereunder both of them were convicted under Section 302 read with Section 34 of the Indian Penal Code, 1860 ('IPC') and order on sentence dated 29.03.2004, sentencing them to undergo life imprisonment and pay a fine of Rs.1,000/- each and in default, to undergo simple imprisonment for a period of two months.

2. As per the case of the prosecution, the deceased, Ram Singh @ Lallan Yadav, the appellant, Tirath Singh Yadav (A-1) and Chaman Yadav (A-2) were employed by Bhupinder Kumar Kalra (PW-1) at his dairy farms No.37-38 and 23-22. The son of the deceased, namely, Raju Yadav (PW-2) used to stay with his father at the dairy farm and was prone to waste a lot of water from the tubewell. A-1 and A-2 used to object to the deceased's son wasting the water. This caused an altercation one day which led the accused persons threatening the deceased that they would kill him if his son continued to cause such wastage.

3. As per the further case of the prosecution, on the intervening night of 21/22.06.2000, the deceased was murdered by A-1 and A-2 which was witnessed by two employees of the said dairy farm, Moti Lal (PW-16) and Sukhlal Yadav (PW-6). One Mr. Satish, driver of the Tata Tempo 407 (PW-5), who came at the spot to load buffalos on

that night, found the deceased lying unconscious and informed the owner Raju Kalra. The dairy owner and his brother came there and informed the police pursuant to which a PCR van reached the spot. The deceased was taken to Safdarjung Hospital where he was declared 'brought dead'. The post-mortem on the body of the deceased was conducted on 23.06.2000. The post-mortem report states the cause of death as '*shock, head injury and other associated injuries ante-mortem in nature, caused by the application of blunt force from a blunt object collectively sufficient to cause death in the ordinary course of nature*'.

4. Both the accused persons were arrested on 23.06.2000. In their separate disclosure statements, both of them disclosed that they had murdered the deceased on the intervening night of 21/22.06.2000. A-1 disclosed that A-2 had physically incapacitated the deceased while sleeping and he himself had hit the deceased with the *sabal* due to which he became unconscious. He disclosed that he had concealed the *sabal* and could get the same recovered. He also disclosed that he could get his associate arrested. A-2 disclosed to the Investigating Officer (IO) that he had physically incapacitated the deceased while he was sleeping and A-1 had hit the deceased with a *sabal* made of iron as a result of which the deceased became unconscious. He also disclosed that A-1 has concealed *sabal* and he could get his associate (A-1) arrested. Both disclosure statements bear the signatures of two witnesses, PW-1 and Ct. Shiv Lal (PW-15). The Arrest Memo of A-1 and A-2 are Ex. PW 17/D and Ex. PW 17/C respectively. The

Personal Search Memo of A-1 and A-2 are Ex. PW 15/E and Ex. PW 15/D respectively.

5. On 23.06.2000, vide Pointing Out-cum-Seizure Memo of the shirt (Ex. PW 1/D and Ex. PW 1/F), A-1 and A-2 got recovered their respective blood stained shirts which they were wearing at the time of commission of the crime, in the presence of PW-1 and PW-15. On the same day, the A-1 got recovered the *sabal* in the presence of PW-1 and PW-15 vide Seizure Memo marked as Ex. PW 1/E.

6. To bring home the guilt of the accused persons, the prosecution examined 17 witnesses in all. The learned ASJ recorded the statements of A-1 and A-2 separately under Section 313 of the Code of Criminal Procedure, 1973 ('Cr.PC') wherein they pleaded their innocence. Both of them chose not to lead any evidence in their defence.

7. We have heard the learned counsel for the appellants and the learned APP for the State.

8. PW-6 and PW-16, who were working in the dairy where crime was committed, have turned hostile and did not support the case of the prosecution. PW-6 testified that he knew the deceased as well as the accused persons as they were working at the dairy of Raju Yadav and he himself was working in dairy No.61-64. He further stated that on 16.06.2000, he went to his native place and returned on 27.06.2000. On his return, he came to know that Ram Singh @ Lallan Yadav had died. He stated that he does not know who had killed the deceased. The testimony of PW-16 was recorded on 12.07.2002. He stated that about two years before, he was working on the dairy of PW-2 at

Village Maksoodpur. He stated that he does not know Ram Singh @ Lallan Yadav @ Lambu Yadav (the deceased). He stated that he did not see the incidence of murder as he was living at some other place. Nothing could come out in their respective cross-examination conducted by the learned APP that would have helped the case of the prosecution. By impugned judgment, the learned ASJ having noticed that both the eye-witnesses have turned hostile, convicted the appellants on the basis of circumstantial evidence.

9. In ***Gagan Kanojia v. State of Punjab***; (2006) 13 SCC 516, the Supreme Court summarized the following principles required to be followed while basing a conviction on circumstantial evidence:-

“(1) 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.

(2) Circumstantial evidence can be reasonably made the basis of an accused person's conviction if it is of such character that it is wholly inconsistent with the innocence of the accused and is consistent only with his guilt.

(3) There should be no missing links but it is not that every one of the links must appear on the surface of the evidence, since some of these links may only be inferred from the proven facts.

(4) On the availability of two inferences, the one in favour of the accused must be accepted.

(5) It cannot be said that prosecution must meet any and every hypothesis put forward by the accused however far-fetched and fanciful it might be. Nor does it mean that prosecution evidence must be rejected on the slightest

doubt because the law permits rejection if the doubt is reasonable and not otherwise.”

10. Since the learned APP in her arguments has referred to Section 27 of the Indian Evidence Act, 1872 (‘IEA’), it would be prudent to refer to Sections 25, 26, and 27 of IEA, which read as under :-

“25. Confession to police officer not to be proved.—

No confession made to a police officer, shall be proved as against a person accused of any offence.

26. Confession by accused while in custody of police not to be proved against him.—

No confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

Explanation — In this section “Magistrate” does not include the head of a village discharging magisterial functions in the Presidency of Fort St. George or elsewhere, unless such headman is a Magistrate exercising the powers of a Magistrate under the Code of Criminal Procedure, 1882.

27. How much of information received from accused may be proved.—

Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.”

11. While reiterating the principles embodied in Sections 25 and 26 of IEA, in ***Indra Dalal v. State of Haryana; (2015) 11 SCC 31***, the Supreme Court held as under :-

*“16. The philosophy behind the aforesaid provision is acceptance of a harsh reality that confessions are extorted by the police officers by practising oppression and torture or even inducement and, therefore, they are unworthy of any credence. **The provision absolutely excludes from evidence against the accused a confession made by him to a police officer. This provision applies even to those confessions which are made to a police officer who may not otherwise be acting as such.** If he is a police officer and confession was made in his presence, in whatever capacity, the same becomes inadmissible in evidence. This is the substantive rule of law enshrined under this provision and this strict rule has been reiterated countless by this Court as well as the High Courts.* (emphasis added)

12. The scope of Section 27 of the IEA was elaborated by the Supreme Court in *Anter Singh v. State of Rajasthan; (2004) 10 SCC 657* which reads as under:

*“14. The expression “provided that” together with the phrase “whether it amounts to a confession or not” shows that the section is in the nature of an exception to the preceding provisions particularly Sections 25 and 26. It is not necessary in this case to consider if this section qualifies, to any extent, Section 24, also. **It will be seen that the first condition necessary for bringing this section into operation is the discovery of a fact, albeit a relevant fact, in consequence of the information received from a person accused of an offence. The second is that the discovery of such fact must be deposed to. The third is that at the time of the receipt of the information the accused must be in police custody. The last but the most important condition is that only “so much of the information” as relates distinctly to the fact thereby discovered is admissible. The rest of the information has to be excluded. The word “distinctly”***

means “directly”, “indubitably”, “strictly”, “unmistakably”. The word has been advisedly used to limit and define the scope of the provable information. The phrase “distinctly” relates “to the fact thereby discovered” and is the linchpin of the provision. This phrase refers to that part of the information supplied by the accused which is the direct and immediate cause of the discovery. The reason behind this partial lifting of the ban against confessions and statements made to the police, is that if a fact is actually discovered in consequence of information given by the accused, it affords some guarantee of truth of that part, and that part only, of the information which was the clear, immediate and proximate cause of the discovery. No such guarantee or assurance attaches to the rest of the statement which may be indirectly or remotely related to the fact discovered. (See Mohd. Inayatullah v. State of Maharashtra (1976) 1 SCC 828).” (emphasis added)

13. In view of the provisions of Sections 25 and 26 of the IEA and the law laid down by the Supreme Court in Indra Dalal's case (supra), confession of the guilt made by the accused in their disclosure statements while in police custody being inadmissible in evidence, cannot be used against them. However, Section 27 of the IEA is an exception to Sections 25 and 26 of the IEA. It provides that any fact discovered in consequence of the information received from a person accused of any offence while in the custody of a police officer as relates distinctly to the fact thereby discovered, is admissible.

14. In the instant case, PW-1, who is the owner of the dairy, has been examined by the prosecution to prove the arrest of the accused persons, their disclosure and recovery of the articles. He reached the spot pursuant to the information given by PW-5, a tempo driver. He

found his employee Ram Singh in an injured condition lying on a cot in front of dairy No.23. He called the police by dialing No.100. The PCR van removed the deceased to Safdarjung Hospital. The police recorded the statement of PW-1 (Ex. PW 1/A).

15. The prosecution examined PW-1 who testified as under :-

‘.....On the next day i.e. on 23.6.2000 both the accused persons were arrested by the police. Accused Chamman Singh was arrested from near bus stand near village Maksood Pur while accused Tirath Singh was arrested from railway station New Delhi in the evening. Both the accused were interrogated by the police in my presence and both the accused admitted that they both had killed Ram Singh @ Lallan and they also disclosed separately that they had kept the sabal the weapon of offence in the store of the dairy and they also disclosed that they had concealed their blood stained clothes in the same store and they can get the same recovered. The disclosure statement of accused Tirath Singh is Ex. PW 1/B and bears my signatures at point A and the disclosure statement of accused Chaman Singh is Ex. PW 1/C and bears my signatures at point A. Both the accused persons then led us to the store of the dairy No.22 and pointed out towards the store and took out his blood stained shirt which he alleged to be wearing at the time of the commission of the offence, and he also took out the sabal, the weapon of the offence from the same store and these articles were sealed in the parcel and were seized by the police. The shirt was taken into possession vide recovery memo Ex. PW 1/D while the sabal was taken into possession vide memo Ex. PW 1/E and bears my signatures at point A. Accused Chaman Singh also got recovered his blood stained clothes from the store which is used for keeping the fodder and the same was

also sealed/taken into possession vide recovery memo Ex. PW 1/F and same bears my signatures at point A.

The pointing out memo of Tirath Singh of Dairy No.22 is Ex. PW 1/G and which also bears my signatures at point A. At this stage, a sealed parcel is opened which is having the seal of FSL. The sabal is Ex. P1 which was got recovered by the accused persons.”

16. The Arrest Memo of A-1, Ex. PW 17/D is dated 23.06.2000. It is important to note that it does not mention the place and time of his arrest and indicates :-

“5. Place of Arrest: Near
6. Date of Arrest: 23.6.2000
7. Time of Arrest: ”

17. Similarly, the Arrest Memo of A-2, Ex. PW 17/C dated 23.06.2000, does not indicate the specific dairy from which he was arrested. Time of his arrest is also not mentioned. It indicates :-

“5. Place of Arrest: Dairy Masoodpur
6. Date of Arrest: 23.06.2000
7. Time of Arrest: ”

18. PW-1 claimed that A-1 and A-2 were arrested in his presence but surprisingly, the Arrest Memo of A-1 and A-2, Ex. PW 17/D and Ex. PW 17/C respectively, do not bear his signatures. The IO (PW-17) has also not explained as to why his signatures were not obtained. Both these arrest memos bear the name of only one witness, that is, PW-15 and again surprisingly, only the Arrest Memo of A-1 bears his signatures. The arrest memo of A-2 does not bear signatures of the sole witness though his name is mentioned on the document. The

personal search memo of A-1 (Ex. PW 15/E) dated 23.06.2000 though bears the name of PW-15, does not bear his signatures. The personal search memo of A-2 (Ex. PW 15/D) bears the signatures of the only witness, that is, PW-15. A-1 and A-2 were arrested in the presence of PW-1, but it is also not explained as to why his signatures were not obtained by the IO on the personal search memos of A-1 and A-2. Non-mentioning of the place and time of arrest of A-1 and A-2 and non-obtaining of the signatures of PW-1 on the arrest memo and personal search memo certainly creates a doubt on the veracity of the case of the prosecution.

19. PW-1 has testified that both the accused persons have disclosed that after committing the crime, they had concealed their blood stained clothes in the fodder store and could get the same recovered. However, the disclosure statements of A-1 and A-2, Ex. PW 1/B and Ex. PW 1/C respectively, nowhere so indicate. The seizure memo of the shirts of the A-1 (Ex. PW 1/D) and A-2 (Ex. PW 1/F) mention that blood stained shirts were got recovered by A-1 and A-2 on the basis of their disclosure statements, Ex. PW 1/B and Ex. PW 1/C which, in fact, is not reflected in the disclosure statements. As per the disclosure statement of A-2 (Ex. PW 1/C), he had only disclosed that the *sabal* was concealed by A-1 and he could get A-1 arrested. He never volunteered to get anything recovered. Only A-1 disclosed in his disclosure statement, Ex. PW 1/B that he could get the *sabal* recovered. However, PW-1 testified that '*the sabal is Ex. P1 which was got recovered by the accused persons*'. The weapon of offence,

that is, *sabal* was not found to bear any blood at the time of recovery. Further, PW-7, Dr. Chander Kant, who conducted the post-mortem on the body of the deceased had opined in his cross-examination that the ante-mortem injuries from 1 to 8 could not be caused by the *sabal* of iron. He stated that *'At this stage, a sealed parcel having the seal of the court is opened and it is found to contain a sable of iron. In my opinion, the antemortem injuries from 1 to 8 could not be produced by this weapon. The antemortem injuries No.1 to 6 are caused by application of blunt force from fists and 7 and 8 are likely to be caused by use of iron rod or a lathi.'*

20. As per the FSL report, Ex. PX, PY and PZ, the blood group 'AB' was detected on one of the shirts only, that is, S-6 and not on S-5. The report indicate 'AB' blood group of the deceased which was found on S4a (*Baniyan*), S4b (*Lungi*) and S4c (*Shawl*) which were seized vide Memo, Ex. PW 15/A from the *Charpai* (Cot) on which the deceased was lying. But there is no evidence whether the shirt S-6 belongs to A-1 or A-2.

21. Following the ratio of the judgment of the Supreme Court in **Gagan Kanojia's case (supra)**, it can be said that in a case based solely on circumstantial evidence, the chain of circumstances has to be unabridged so as to be compatible with only one conclusion, that is, the guilt of the accused and if any missing link in the chain of circumstances gives rise to two inferences, then the inference favouring the accused must be accepted.

22. In the instant case, there are several missing links in the chain of

circumstances which went unnoticed by the learned ASJ while convicting the appellants. The recovery of the weapon of offence, that is, *sabal* does not support the case of the prosecution in view of the testimony of PW-7, Dr.Chander Kant, who testified that the ante-mortem injuries could not have been inflicted by the *sabal*. Moreover, the weapon of offence, that is, *sabal* was not having blood stains at the time of its recovery. The recovery of *sabal* has been made pursuant to the disclosure statement by A-1, whereas PW-1 testified that it was recovered at the instance of both, A-1 and A-2.

23. Both the accused persons in their respective disclosure statements never disclosed that they could get their respective shirts recovered and the shirts recovered vide recovery memo, Ex. PW 1/D and PW 1/F, purportedly on the basis of the disclosure statements, appear to have been planted. Only one shirt, S-6, was found bearing blood group 'AB' but it is not proved whether the said shirt belongs to A-1 or A-2. The time and place of arrest of both the accused are also not reflected in their respective arrest memos. The arrest and personal search memos of both the accused persons do not bear the signatures of PW-1, who claims to have been present at the time of their arrest. Though the personal search memo of A-1 and arrest memo of A-2, mention the name of the witness, PW-15, but he has not signed either of these documents.

24. In view of the aforesaid glaring gaps in the case of the prosecution, we are of the opinion that the prosecution has failed to prove the guilt of the appellants beyond any reasonable doubt.

25. Given the aforesaid facts and circumstances of the case, both the appellants are entitled to benefit of doubt. Both the appeals are accordingly allowed and the impugned judgment dated 20.03.2004 and the order on sentence dated 29.03.2004 are hereby set aside. Consequently, both the appellants are acquitted of the offences under Section 302 read with Section 34 IPC. The bail bonds and surety bonds furnished by the appellants stand discharged. The appellants shall comply with the requirements of Section 437A Cr.PC to the satisfaction of the trial court at the earliest. The Trial Court Record be returned together with a certified copy of the judgment. Copy of this judgment be sent to the concerned Jail Superintendent for updating the jail record.

26. The court further finds that the trial Court has not awarded any compensation to the legal representatives of the deceased under Section 357 of Cr.P.C. Meanwhile Section 357A Cr.P.C. has been incorporated w.e.f. 31.12.2009 and pursuant thereto, the Government of NCT of Delhi has framed the Victim Compensation Scheme. Therefore, we direct the Delhi State Legal Services Authority ('DSLISA') in terms of Section 357A (5) Cr.PC, to forthwith undertake an inquiry and within two months award and ensure disbursement of appropriate compensation to the family of the victim in terms thereof. For this purpose, a certified copy of this judgment shall be delivered forthwith to the Secretary, DSLISA with a further direction to submit a compliance report to this Court within three months from the date of receipt of the certified copy of this judgment. If no such compliance is

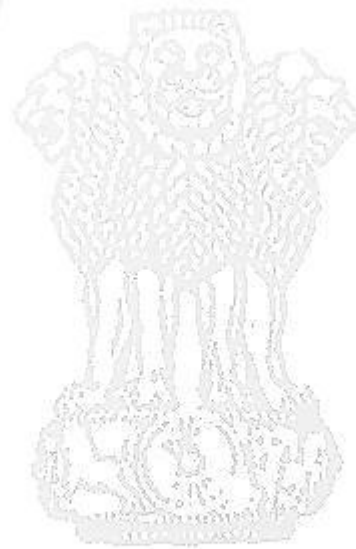
forthcoming within the time stipulated, the Registry will place a note before the roster Bench for further directions.

27. Both the appeals are disposed of.

(VINOD GOEL)
JUDGE

(HIMA KOHLI)
JUDGE

MAY 14, 2019
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