

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRA-D-1124-DB-2015
Date of decision: 01.11.2021**

Neeraj

.....Appellant

Versus

State of Haryana

.....Respondent

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr. Dinesh Arora, Advocate,
and Mr. Nikhil Vats, Advocate,
for the appellant.

Mr. Ankur Mittal, Addl. A.G., Haryana
and Mr. Saurabh Mago, AAG, Haryana.

Mr. Vikas Kumar, Advocate,
for the complainant.

Ritu Bahri, J.

This appeal has been filed against the judgment dated 14.07.2015 passed by the Sessions Judge, Faridabad, whereby accused-appellant (Neeraj) has been convicted and sentenced to undergo imprisonment for life and to pay a fine of Rs.75,000/- for commission of an offence punishable under Section 302 IPC. He has been further sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.5000/- for commission of offence punishable under Section 25 of the Arms Act. Out of the aforesaid amount of fine, an amount of Rs.75,000/- has been ordered to be paid to the legal heirs of the deceased as compensation under Section

Brief facts of the case are that on 27.10.2012, at about 10.30 P.M., P/SI Ajay Kumar was present at Police Post, Sector-3, Faridabad, where he received a telephonic message from Police Station, Sector-7, Faridabad to the effect that one Deepak son of Murti Ram, resident of village Faridpur, after sustaining fire-arm injury in Jachcha Bachcha Hospital, Sector-3, Faridabad, had been hospitalised in Sarvodya Hospital, Sector-8, Faridabad. Upon receiving this information, P/SI Ajay Kumar along with ASI Sunil Kumar and Constable Sunil Kumar rushed to Police Station, Sector-7, Faridabad and obtained ruqa. Thereafter, they visited at Sarvodya Hospital, Sector-8, Faridabad and moved an application for recording statement of the injured. The doctor on duty informed that since no surgeon was available there, so after giving primary treatment, the injured had been referred to some other hospital. There, one Girraj, a co-villager of Deepak, informed that family members of injured had taken him to AIIMS Trauma Centre, New Delhi. After getting MLR of the injured from Sarvodya Hospital, the Investigating Officer reached AIIMS Trauma Centre, New Delhi. However, the doctor on duty gave information that the injured was not fit to make the statement. On 28.10.2012, the Investigating Officer reached at the spot, where complainant Dharambir, an employee of Jachcha Bachcha Swasthaya Kendra, was found present and got recorded his statement to the effect that he was resident of village Deegh. On 27.10.2012, when he was on duty on the first floor of the hospital, at about 9.00 P.M., he heard shrieks of Deepak Kaushik, Ambulance Driver of the hospital. Upon this, he looked downstairs and found that Deepak had come upto the middle portion of the stairs and apprised him that somebody had fired upon him and had fled away. In the meantime, Nirmal, a staff nurse and Dr. Shalini Jain reached at the spot.

They immediately called an ambulance and shifted Deepak to Sarvodya Hospital. After giving primary treatment, the doctors referred him to some other hospital. In the meantime, family members of the injured also reached at hospital and took him to AIIMS Trauma Centre, New Delhi for treatment. Before Deepak could divulge the names and numbers of assailants, he became unconscious.

On the basis of statement made by complainant Dharambir, FIR No.569 dated 28.10.2012, under Section 302 read with Section 34 IPC and 25 of Arms Act, was registered at Police Station, Sector-7, Faridabad. Investigation was conducted by P/SI Ajay Kumar. Empty bullet and clothes were taken in police possession. During investigation of FIR No.12 dated 15.01.2013, under Sections 307, 353, 332,186 IPC and Section 25 of Arms Act, registered at Police Station, Sadar, Ballabgarh, accused Neeraj (appellant herein) made a disclosure statement regarding his involvement in this case. Accordingly, he was arrested in this case on 18.01.2013. In his statement, he further stated that one Yogender was also involved in this case. As per the disclosure statement, Yogender and Neeraj had come on a motorcycle in order to shoot Deepak. Yogender was present with a motorcycle at the small gate of the hospital. He further disclosed that due to family grudge, at about 8.50 P.M., he had fired on Deepak. During investigation, pistol used by Neeraj and motorcycle bearing registration No. HR-51-AC-4352, used in the occurrence, were also recovered. On completion of investigation, report under Section 173 Cr.P.C. was prepared and presented in Court against both the accused. Copies of challan and other documents were supplied to the accused-appellant free of costs, as envisaged under Section 207 Cr.P.C.

Thereafter, finding a prima facie case, charge under Section 302 read with Section 34 IPC and Section 25 of Arms Act was framed against the accused-appellant, to which, he pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined ASI Balbir Singh (PW-1), ASI Anoj Kumar (PW-2), Inspector Manoj Kumar (PW-3), Rakesh Kaushik (PW-4), Dharambir (PW-5), Dr. Atul Kumar (PW-6), HC Sanjay Kumar (PW-7), Deepak (PW-8), ESI Kanhiya Prasad (PW-9), Constable Jeet Kumar (PW-10), HC Mahavir Singh (PW-11), Hari Shanker (PW-12), ASI Sunil Kumar (PW-13), HC Sehdev (PW-14), HC Fakruddin (PW-15), ASI Sumer Singh (PW-16), ASI Ram Prakash (PW-17), SI Ajay Kumar (PW-18), Constable Sonu Kumar (PW-19), Pawan Sharma (PW-20) and Dr. Sanjay Kumar (PW-21).

On conclusion of the prosecution evidence, statement of the accused under Section 313 Cr. P.C. was recorded, wherein entire incriminating evidence was put to them. However, they denied the same and pleaded false implication in the case at the instance of one Daya Chand. No evidence was led in defence.

Trial Court, after going through the evidence led by the prosecution, convicted and sentenced accused-appellant.

In the present case, disclosure statement Ex.PT suffered by accused Neeraj during investigation of FIR No.12 dated 15.01.2013 is made basis for recovery of pistol Ex.P5 and cartridges Ex.P2 to Ex.P6 vide memo Ex.PU/1. Rough site plan was proved on record as Ex.PU/2. Further, as per the testimony of ASI Sumer Singh (PW-16), recovery of country made pistol as well as live cartridges had been got effected by the accused from his house. Testimony of ASI Sumer Singh (PW-16) has been further

corroborated by HC Fakruddin (PW-15) and ASI Ram Prakash (PW-17). Postmortem report has been proved as Ex.PZ. Recovery of cartridge was effected vide memo Ex.PF. As per recovery memo Ex.PP, bullet was found in the clothes of the deceased and was not extracted from the dead body. The said bullet has been described in the FSL report Ex.PO as Mark BC/1 stated to have been recovered from the bed sheet of deceased. The Country made pistol, which was got recovered by accused Neeraj, has been proved on record as Mark W/1. Empty cartridge and one button of shirt were taken in possession vide memo Ex.PF. This recovered empty cartridge has been mentioned in the FSL report Ex.PO as Mark C/1.

As per laboratory examination, products of combustion of smokeless powder were detected from the country made pistol MarkW/1 (chambered for 7.65 mm/032” cartridges). Test findings were done in the laboratory from the pistol Mark W/1 and its firing mechanism was found in working order. Cartridge case Mark C/1 and 7.65 mm fired bullet Mark BC/1 had been fired from the country made pistol mark W/1. The Sessions Court gave a finding that the prosecution had been able to lead evidence to establish that the country made pistol Ex.P5, which the accused had got recovered, was used in the occurrence and it was found from the clothes of the deceased. Further the empty cartridge, which was recovered from the spot, had been fired from the said pistol Ex.P5.

The prosecution relied upon the testimony of Rakesh Kaushik, brother of deceased Deepak (PW-4) and Hari Shanker (PW-12). In his statement, Hari Shanker (PW-12) had stated that he had seen the accused on 27.10.2012, at 9.00 P.M., while proclaiming that he had done the job near Jachcha-Bachcha hospital, where the occurrence had taken place.

Thereafter, he (accused) had run away on a motorcycle along with his co-accused Yogender. The prosecution has further relied upon the testimony of Rakesh Kaushik (PW-4), real brother of deceased-Deepak, who had deposed to the effect that accused-Neeraj was nursing a grudge against Deepak as he was instrumental in conviction of the father of Neeraj. Further as per the deposition of ASI Sumer Singh (PW-16), on 18.01.2013, accused Neeraj was arrested, who had already been arrested in case bearing FIR No.15/2013, registered at Police Station, City Ballabgarh and FIR No.4/2013, registered at Police Station, Bhupani. On 18.01.2013, when Neeraj was interrogated, he suffered a disclosure statement Ex.PW. Thereafter, he demarcated the place of occurrence vide memo Ex.PV/1. On 21.01.2013, Neeraj suffered another disclosure statement Ex.PT disclosing that the country made pistol and its cartridges were kept concealed in his house and he could get recovered the same. He got recovered one pistol of 0.32/7.65 bore along with seven cartridges and a magazine. After preparing sketch Ex.PU, those were taken into possession vide memo Ex.PU/1.

Daya Chand had been elected as village Sarpanch in June, 2010 and family of Rakesh Kaushik had supported Daya Chand in the said election. Mahesh, father of Neeraj, was against Daya Chand in the election. Conviction of Mahesh Chand in criminal case bearing FIR No.75 dated 23.05.2007, under Sections 148, 149, 323, 325, 506, 307 and 212 IPC, registered at Police Station, Bhupani, vide judgment dated 27.02.2012 Ex.PM passed by the Additional Sessions Judge, Faridabad, became the main course of grudge between Neeraj and Deepak. In that case, Mahesh had been convicted for causing injuries on the person of Tulsi Ram, Hari Chand and Killu, father, brother and uncle (*tau*) of Sarpanch Daya Chand.

Dharambir-complainant had made a statement Ex.PE and while appearing as PW-5, he stated that he had seen the deceased while he was climbing the stairs of the hospital. He apprised him that someone had fired at him and fled away from the spot. Statement of PW-5 further shows that he was fired from back. Dr. Sanjay Kumar (PW-21), deposed that on 29.10.2012, he had conducted the postmortem examination on the dead body of Deepak. He proved the postmortem report as Ex.PZ. He also gave opinion Ex.PZ/1 on 08.03.2013 in respect of entry wound and exit wound. He further deposed that possibility of entry wound on the posterior aspect (back) and the exit wound on the anterior aspect (chest) of the deceased could not be ruled out. Appellant Neeraj had been convicted keeping in view the deposition of Rakesh Kumar (PW-4) and Hari Chand (PW-12) coupled with the recovery made pursuant to the disclosure statement made by him while in custody in case FIR No.04 dated 05.01.2013, under Sections 307, 323 read with Section 34 IPC and Section 25 of Arms Act, registered at Police Station, Bhupani Ex.PL.

Co-accused Yogender has been acquitted as he was never identified by witness Hari Shanker in his statement. Hence, his presence as well as identity was not established. With respect to the recovery of motorcycle, mark TVS Apache, ASI Sumer Singh (PW-16) had deposed that during investigation, accused Yogender had suffered a disclosure statement Ex.PS on 21.01.2013 and thereafter, the said motorcycle was got recovered by him from the room adjacent to his house in village Deegh, which was taken in possession vide memo Ex.PV/2. Statement of ASI Sumer Singh (PW-16) corroborated the testimony of HC Fakruddin (PW-15) and ASI Ram Prakash (PW-17). The trial Court observed that a perusal of recovery

memo Ex.PV/2 shows that the registration number of the said motorcycle had not been mentioned. Engine number, chassis number and Mark TVS Apache have been mentioned. PW-16 had stated that it was a stolen motorcycle and in that regard, a case had been registered at Police Station, Central, Faridabad. However, accused Yogender had been acquitted in that case vide judgment dated 05.09.2013 passed by the Judicial Magistrate Ist Class, Faridabad. Hence, Yogender had been acquitted in this case by extending the benefit of reasonable doubt.

Learned counsel for the appellant has vehemently argued that presence of Hari Shanker (PW-12) is unnatural and improbable, as the incident, in the present case, took place on 27.10.2012, at about 9.00 P.M., whereas witness Hari Shanker went to the police station to get his statement recorded under Section 161 Cr.P.C., after a gap of almost two months i.e. on 20.12.2012. Explanation given by him is that earlier he did not want to disclose this thing, but later on, he gave true facts to the police as per his inner voice. Learned counsel further argued that although, Neeraj was nursing a grudge against Deepak on account of the conviction of his father Mahesh in FIR No. 75 dated 23.05.2007, registered at Police Station, Bhupani, yet statement made by Hari Shanker (PW-12) that he had seen Neeraj coming out of the gate of the hospital and stating Yogender that he had done the job, is highly doubtful and untrustworthy. Had the grudge been there and Hari Shanker, who is related to Deepak, was aware about the grudge, he could not have kept quiet for almost two months after Deepak was shot in the hospital. He has further argued that the prosecution has made an attempt to get the second opinion from the investigating agency only to give padding against accused-appellant Neeraj. Learned counsel for

the appellant further argued that the disclosure statement made by Neeraj while in custody in another case i.e. FIR No.12 dated 05.01.2013, cannot be made basis for his conviction. FIR No.12 dated 05.01.2013, in which he had been arrested, had been got registered by Daya Chand, Sarpanch of the village and as per the evidence already on record, there was enmity between the two factions. Family of Neeraj was against Daya Chand in the elections and Deepak along with his relatives, including Hari Shanker, had supported Daya Chand in the said elections.

Learned counsel for the appellant has referred to the judgment passed by Hon'ble the Supreme Court in **Sushil vs. State of U.P.**, 1995 (1) RCR (Criminal) 158 on the proposition that enmity is a double edged weapon, which cuts both way. It may constitute a motive for commission of crime and at the same time, it may also provide a motive for false implication. He has further referred to the decisions given by Hon'ble the Supreme Court in **Anter Singh vs. State of Rajasthan**, Criminal Appeal No.1105 of 1997 (decided on 05.02.2004) and **Indra Dalal vs. State of Haryana**, 2015 (3) Recent Apex Judgments (R.A.J.) 584. In **Indra Dalal's** case (supra), it was held that confession made by the accused before police after his arrest would be inadmissible even if, no objection was taken by defence for admitting it in defence. Finally, learned counsel for the appellant has referred to the judgment passed in **Yogesh vs. State of Haryana**, 2021 (2) RCR (Criminal) 653, wherein law on the question of circumstantial evidence has been considered and it is held that recoveries by themselves, in the absence of any other material evidence on record, will not be a ground for pointing towards the guilt of the accused. 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.

Learned State counsel, on the other hand, has argued that enmity between the families of accused Neeraj and Deepak is writ large as the father of Neeraj had been convicted vide judgment dated 27.02.2012 Ex.PM. Further, recovery of pistol and the cartridges was effected pursuant to the disclosure statement made by Neeraj. The bullet, which was found from the body of the deceased and was given by the hospital authorities, matched with the country-made pistol recovered from the accused, as per the FSL report Ex.PO. He argued that this evidence is sufficient to show that Neeraj was having the pistol, which he used to kill Deepak and the version of Hari Shanker (PW-12), even if given after two months, completes the chain of evidence. In this background, the judgment of conviction does not require any interference.

Mahesh, father of appellant-Neeraj, was convicted in a criminal case in FIR No.75 dated 23.05.2007, under Sections 148/149/323/325/506/307/212 IPC, vide judgment dated 27.02.2012, Ex.PM, and was sentenced to undergo rigorous imprisonment for seven years. A perusal of this judgment, Ex.PM, shows that Mahesh along with his brother Vishnu, armed with rods and Hari Chand, Harchand, Deepak Naresh, Kapil, armed with *lathis*, inflicted injuries on the family members of Hari Chand-complainant. There was dispute with respect to possession of a plot. A compromise had been effected, but accused were nursing a grudge against Hari Chand and his family members. In this backdrop, they caused injuries to complainant-Hari Chand and his father Tulsi Ram. In that case, Neeraj (appellant herein) being minor was facing trial before the Juvenile

Justice Board, Faridabad. This judgment further shows that Tulsi Ram, Hari Chand and Kallu were father, brother and uncle of Sarpanch Daya Chand. Deepak's family had supported Daya Chand in the elections. As per the version given by Rakesh Kaushik (PW-4), Daya Chand was elected as Sarpanch in June, 2010 and his family had supported him. Mahesh etc. were against Daya Chand in the said election. Hence, at best, it could be a case, where family of deceased-Deepak had supported Daya Chand in the elections. As per the version of Rakesh Kaushik (PW-4), appellant-Neeraj, after conviction of his father vide judgment dated 27.02.2012 Ex.PM, was nursing a grudge against the family members of Deepak. Enmity between the families of Neeraj and Deepak was existing on account of the elections of Gram Panchayat in the village.

Incident, in the present case, took place on 27.10.2012 when deceased-Deepak was shot by an unknown person while he was working in the hospital. With respect to the said incident, first time, chance witness Hari Shanker (PW-12) made a statement Ex.DA to the police under Section 161 Cr.P.C. on 20.12.2012 i.e. after a gap of almost two months. The said statement is reproduced as under:-

“Statement of Hari Shankar son of Sh. Pyare Lal, caste Brahmin, r/o H.No.26, Yadav Colony, Gali No.2, Ballabgarh, P.S. City Ballabgarh, Faridabad, u/s 161 Cr.P.C.

Stated that I am resident of the aforesaid address and do my own work and permanent resident of Village Shahpur Kala, PS Sadar Ballabgarh. On dated 27.10.2012, at about 9.00 o'clock in the night, I was coming towards my house on foot from village Sihi, so that I can catch three wheeler from Tigaon Road and at about 9.00 o'clock in the night, when I reached at the adjoining road of ESI Hospital Jaccha Baccha Kendra, Sec-3, Ballabgarh, then I saw that one boy Neeraj came out running from the small gate of hospital and one boy who was standing on the small gate of hospital with start motorcycle Apache, Neeraj s/o Mahesh Dutt r/o Village Faridput was also sitting on that motorcycle and both boys in precipitately were fled away

from there on motorcycle. Motorcyclist's face was muffled. His fact I could not recognize. I have relation in village Faridpur because of that I knew Neeraj very well. Later on I came to know that on that night Deepak of Faridpur, who was driver in the ESI Hospital, Ballabgarh, was shot dead by someone. I was trying to disclose this truth, but due to having my relation in Faridpur, I was not able to reveal the truth. Today, after felt my inner voice I came before you for revealing the true facts. Statement got recorded, heard and found correct.

Sd/-
Hari Shanker

Sd/-
Sumer Singh, ASI
CIA, Sec-30, FBD
Dt.20.12.2012”

As per the statement given by Hari Shanker, he had seen Neeraj coming out of the hospital and going away with another boy, who was waiting for him outside the hospital on a motorcycle, make “Apache”. He further stated that he had some relations in village Faridpur and he knew Neeraj very well. However, keeping in view his relations in the village, he kept quite and did not reveal the truth. After recording his statement on 20.12.2012, FIR No.04 dated 05.01.2013 was registered on a statement made by Daya Chand. His allegation was that Neeraj son of Mahesh had fired upon him with a pistol with an intention to kill and the bullet had hit him on the left arm and ribs of left side. He saved his life by running. He did not know the other two persons, who had run behind him. After registration of this FIR, Neeraj was arrested and while he was in police custody, a disclosure statement was made by him on 21.01.2013 Ex.PT. In this disclosure statement, he stated that on 27.10.2012, he and one Yogender, resident of village Deeg, Police Station Sadar Ballabgarh, came to Ballabgarh on an Apache motorcycle. He had contacted Yogender on his mobile number 9711544333 from his mobile number 8395954138 for killing Deepak at ESI Hospital, Sector 3, Ballabgarh. Yogender stood at the small gate of hospital with his motorcycle and Neeraj went inside the

hospital with his pistol. Thereafter, he shot at Deepak and went away. He kept concealed his pistol in an almirah, which was lying in a room of his house at village Faridpur. After the incident, he had thrown the SIM of his mobile No.8395954138 due to fear of being caught. Apart from the disclosure statement Ex.PT, disclosure statement Ex.PS of Yogender was recorded on 21.01.2013. He gave his statement on the same lines as given by Neeraj. He stated that his motorcycle was parked in his house and he could get the same recovered. He was having mobile No.9711544333 at the time of incident. He left the house on 05.11.2012 due to the fear of being caught. He had thrown his mobile on the way to Chandigarh. Yogender was in custody in another case, which was registered on account of stealing the motorcycle, make Apache. In the said case, he had been acquitted vide judgment dated 05.09.2013. Interestingly both the disclosure statements have been recorded on the same day while Yogender and Neeraj (appellant) were in custody in two separate set of FIRs. With respect to the case of Yogender, he has been acquitted keeping in view that Hari Shanker (PW-12) had not identified him (Yogender) at the place of occurrence as he had muffled face. Hence, on the basis of recovery of motorcycle, make Apache, he could not be linked with the incident of killing Deepak on 27.10.2012. As per recovery memo Ex.PV/2, registration number of the motorcycle had not been mentioned. Even, chassis number or engine number had not been obtained from the office of concerned Regional Transport Officer to ascertain the genuineness of the same. Keeping in view that vide judgment dated 05.09.2013 Yogender had been acquitted in case FIR No.214, titled as 'State Vs. Yogender', for stealing the motorcycle, it was held that the prosecution could not connect him (Yogender) with the occurrence beyond

the shadow of reasonable doubt.

With respect to the case of appellant-Neeraj, in his disclosure statement, he has clearly given his mobile number. No evidence had been led to show that any verification had been done with respect to the above said mobile number. As family of Deepak had supported Daya Chand in the election of Sarpanch, there was possibility that Neeraj was carrying a grudge against Deepak. Wife of Hari Shanker (PW-12) and mother of Deepak were related and were from the same village. Hari Shanker being close to the family of Deepak was aware about the friction between the families of Daya Chand and Mahesh (father of Neeraj). Keeping in view this fact, when Deepak was shot at in the hospital, it does not seem probable that Hari Shanker (PW-12) being close relation to him (Deepak) would have kept quiet for two months, especially when he had seen Neeraj coming out of the hospital. Moreover, Yogender (co-accused of appellant-Neeraj) had been acquitted by giving him the benefit of doubt, especially keeping in view that his presence had become doubtful as Hari Shanker (PW-12) could not identify him. There was no evidence that he was standing outside the hospital with his motorcycle. Hari Shanker (PW-12) had taken two months for giving his statement and identifying Neeraj. His statement as an eye witness cannot be made a ground for identifying Neeraj-Appellant being present at the time of the incident.

Since the deposition of Hari Shanker (PW-12) does not inspire confidence, the only evidence against appellant-Neeraj now, is the disclosure statement Ex.PT. In this regard, reference can be made to a judgment passed by Hon'ble the Supreme Court in **Indra Dalal vs. State of Haryana**, 2015 (3) RCR (Criminal) 342, wherein it has been observed that

the disclosure statement, which leads to the recovery, can be used against the accused. Such information, as given, must relate distinctly to the fact discovered. Hon'ble the Supreme Court was examining a case of confessional statement made by accused in another FIR. In para nos. 22, 23 and 24, it was observed as under:-

“22. The only portion of the information contained in the confessional statements that may be proved is provided under [Section 27](#) of the Evidence Act, which reads as under:

“27. How much of information received from accused may be proved. - Provided that, when any fact is proved to have been 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.”

23. It is clear that [Section 27](#) is in the form of proviso to [Sections 25](#) and [26](#) of the Evidence Act . It makes it clear that so much of such information which is received from a person accused of any offence, in the custody of a police officer, which has led to discovery of any fact, may be used against the accused. Such information as given must relate distinctly to the fact discovered. In the present case, the information provided by all the accused/ appellants in the form of confessional statements, has not led to any discovery. More starkly put, the recovery of scooter is not related to the confessional statements allegedly made by the appellants. This recovery was pursuant to the statement made by Harish Chander Godara. It was not on the basis of any disclosure statements made by these appellants. Likewise, insofar as confessional statement (Mark A) allegedly given by Jaibir is concerned, that is again in another FIR. We shall come to its admissibility separately. Therefore, the situation contemplated under [Section 27](#) of the Evidence Act also does not get attracted. Even if the scooter was recovered

pursuant to the disclosure statement, it would have made the fact of recovery of scooter only, as admissible under [Section 27](#) of the Evidence Act, and it would not make the so-called confessional statements of the appellants admissible which cannot be held as proved against them.

24. At this juncture, let us discuss as to whether the disclosure/ confessional statement (Mark A) made by appellant Jaibir in another case would be relevant to prove the charge of conspiracy. It would be pertinent to point out that this statement is made by Jaibir much after the incident, when, naturally, the common intention had ceased to exist. On this ground alone it would not be admissible. We would like to refer to the judgment of this Court in [Mohd. Khalid v. State of West Bengal](#)[2] wherein this Court held: “33. In view of what we have said about the confessional statement it is not necessary to go into the question as to whether the statement recorded under [Section 164](#) of the Code has to be given credence even if the confessional statement has not been recorded under Section 15 of the TADA Act. However, we find substance in the stand of learned counsel for the accused- appellants that [Section 10](#) of the Evidence Act which is an exception to the general rule while permitting the statement made by one conspirator to be admissible as against other conspirator restricts it to the statements made during the period when the agency subsisted. [In State of Gujarat v. Mohd. Atik](#) [(1998) 4 SCC 351] it was held that the principle is no longer res integra that any statement made by an accused after his arrest, whether as a confession or otherwise, cannot fall within the ambit of [Section 10](#) of the Evidence Act. Once the common intention ceased to exist, any statement made by a former conspirator thereafter cannot be regarded as one made in reference to their common intention. In other words, the post-arrest statement made to a police officer, whether it is a confession or otherwise touching his involvement in the conspiracy, would not fall within the ambit of [Section 10](#) of the Evidence Act.”

Similarly, Hon'ble the Supreme Court in [***Anter Singh vs. State of***](#)

[***Rajasthan***](#), Criminal Appeal No.1105 of 1997 (decided on 05.02.2004),

while examining Section 27 of the Evidence Act, 1872, observed as under:-

“12. The scope and ambit of Section 27 of the Evidence Act were illuminatingly stated in [Pulukuri Kotayya v. Emperor](#) (AIR 1947 PC 67) in the following words, which have become locus classicus:

It is fallacious to treat the 'fact discovered' within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this and the information given must relate distinctly to this fact. Information as to past user or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that 'I will produce a knife concealed in the roof of my house' does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added 'with which stabbed A.', these words are inadmissible since they do not related to the discovery of the knife in the house of the informant." (p. 77)

13 The aforesaid position was again highlighted in [Prabhoo v. State of Uttar Pradesh](#) (AIR 1963 SC 1113).

14. Although the interpretation and scope of [Section 27](#) has been the subject of several authoritative pronouncements, its application to concrete cases in the background events proved therein is not always free from difficulty. It will, therefore, be worthwhile at the outset, to have a short and swift glance at [Section 27](#) and be reminded of its requirements. The Section says :

"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."

In the facts of the present case, it is unbelievable that Hari Shanker (PW-12) was present in the hospital and was an eye witness to the occurrence. Reference, at this stage, can be made to a judgment passed by Hon'ble the Supreme Court in [Yogesh Vs. State of Haryana](#), 2021 (2) RCR (Criminal) 653. That was a case of conviction of three accused. Out of

three witnesses, two had become hostile and did not support the case of

prosecution. Father of the victim was neither an eye witness to the occurrence nor he disclosed the identity of the accused, who had kidnapped the victim. The entire case was based on circumstantial evidence. While acquitting the accused, it was observed as under:-

“23. The law on the point of circumstantial evidence cases is very clear and as laid down by this Court in [Sharad Birdhichand Sarda v. State of Maharashtra](#), (1984) 4 SCC 116, the well settled principles are as under:-

“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 Sahebrao Bobade and another v. State of Maharashtra](#) [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 CrL LJ 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.”

Learned counsel for the appellant has informed that appellant-

Neeraj has been acquitted in case bearing FIR No.04 dated 05.01.2013,

1959, registered at Police Station Bhupani, District Faridabad Ex.PL. Since, the eye witness account given by Hari Shanker (PW-12) has now been discarded, the only evidence is the disclosure statement given by appellant-Neeraj on 21.01.2013 Ex.PT and this statement in itself, can only be used for the purpose of recovery of the pistol. If, the recovery of pistol is effected in the absence of any eye witness, who had come immediately after the incident, even the recovery of said pistol consequent upon making the disclosure statement cannot be made a ground to convict the accused (Neeraj) for the alleged commission of offence under Section 302 IPC.

In view of the above discussion, we are not in agreement with the view taken by the trial Court. The prosecution has not been able to prove its case beyond the reasonable doubt and the appellant is entitled to be given the benefit of doubt.

Resultantly, the present appeal is allowed; the impugned judgment of conviction dated 14.07.2015 and order of sentence dated 16.07.2015 passed by the Sessions Judge, Faridabad, are set aside. Accused-appellant, namely Neeraj, is acquitted of the charges framed against him. He be released forthwith, unless his custody is required in connection with any other crime.

(RITU BAHRI)
JUDGE

(ARCHANA PURI)
JUDGE

01.11.2021
ajp

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No