

IN THE HIGH COURT AT CALCUTTA
Criminal Miscellaneous Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Bibhas Ranjan De

CRA 60 of 2020

With

CRAN 3 of 2021

Tarun Santra alias Tore

Vs.

The State of West Bengal

For the Appellant : Mr. Angshuman Chakraborty, Adv.
Mr. Avik Ghatak, Adv.
Mr. Amit Ranjan Pati, Adv.
Mr. S. S. Saha, Adv.

For the State : Mr. Saibal Bapuli, Ld. APP
Mr. Bibasan Bhattacharya, Adv.

Heard on : August 2, 2022
Judgement on : August 11, 2022

DEBANGSU BASAK, J.:-

1. The appellant has assailed the judgement of conviction dated December 19, 2019 and the order of sentence dated December 20, 2019 passed by the Additional Sessions Judge, Fast Track 1st Court, Alipore, South 24 Parganas in Sessions Trial No. 01(02) of 2016 arising out of Sessions Case No. 09 (11) of 2015.

2. By the impugned order of conviction, the appellant has been found guilty of offences under Section 302/201 of the Indian Penal Code, 1860 and 27(1) of the Arms Act. The appellant has been sentenced to rigorous imprisonment for life by the impugned order of sentence dated December 20, 2019.

3. The case of the prosecution is that, the father of the victim had lodged a written complaint dated November 10, 2012 which had been registered as Budge Budge Police Station Case No. 352/12 dated November 10, 2012 under Section 498A/ 302/ 201/ 34 of the Indian Penal Code, 1860. According to the prosecution, the appellant had murdered the victim on November 9, 2012. The victim had succumbed to gunshot injuries. The fire arm had been recovered on the leading statement made by the appellant. The post mortem report of the victim had confirmed the death of the victim by reason of the gunshot injury suffered.

4. The police case had been committed for trial where, charges were framed against three accused including the appellant. The three accused including the appellant have been charged with, physical and mental torturing the deceased and thereby committing an offence punishable under Section 498A of the Indian Penal Code, 1860 and murdering the deceased and thereby committing an offence punishable under Section 302 of

the Indian Penal Code, 1860 read with Section 34 of the Indian Penal Code 1860 and in furtherance of the common intention about the knowledge of the murder, caused evidence of the offence to disappear and thereby committed an offence punishable under Section 201 of the Indian Penal Code, 1860 read with Section 34 of the Indian Penal Code, 1860.

5. At the trial, the prosecution had examined 22 witnesses. The prosecution had relied upon various documents which have been marked as Exhibit. The prosecution had also relied upon material exhibits. The appellant had been examined under Section 313 of the Criminal Procedure Code, 1973 on August 14, 2019 by the Learned Trial Judge.

6. Learned Advocate appearing for the appellant has drawn the attention of the Court to the contents of the written complaint dated November 10, 2012 being exhibit 1. He has submitted that, the written complaint was lodged by the mother of the victim who was examined as prosecution witness No. 1. The written complaint being exhibit 1 does not contain any allegations with regard to Section 498A of the Indian Penal Code, 1860 as against the appellant or any of the accused. He has submitted that, the appellant had been acquitted of the charges under Section 498A

of the Indian Penal Code 1860 read with Section 25(1)(a) of the Arms Act.

7. Learned advocate appearing for the appellant has submitted that, Inquest Report of the deceased had been prepared on November 10, 2012 by a sub-inspector of police who was examined as prosecution witness No. 18. In such Inquest Report, the prosecution witnesses No. 1 and 4 had signed on the same. That apart, another person namely Chironjit Ghorui had signed such Inquest Report. However, Chironjit Ghorui had not been tendered as a prosecution witness at the trial.

8. Learned Advocate appearing for the appellant has drawn the attention of the Court to the Inquest Report being exhibit 9 He has submitted that, the Inquest Report states that there were injuries on the body of the deceased and that there were two holes on her face and below both ears. The Inquest Report did not mention of any kind of bullet injury being sustained by the deceased. He has contrasted the Inquest Report with the post mortem report being exhibit 7. He has submitted that the gunshot injury appearing in the post mortem report being exhibit 7 does not find place in the Inquest Report being exhibit 9. According to him, therefore, the prosecution has failed to

establish beyond reasonable doubt the cause of death of the victim.

9. Learned advocate appearing for the appellant has drawn the attention of the Court to the post-mortem report. He has submitted that, the doctor conducting the post-mortem report had been examined as prosecution witness No. 10. He has referred to the post-mortem report being Exhibit 7 and submitted that, the cause of death has been stated to be due to gunshot injury, anti-mortem and homicidal in nature. He has referred to the deposition of prosecution witness No. 14 before whom, the victim was brought. According to the learned advocate appearing for the appellant, prosecution witness No. 14 did not state that he found bullet injuries on the dead body. He has referred to the testimony of the prosecution witness No. 10. He has submitted that, neither the bullet nor its casing were recovered.

10. Learned advocate appearing for the appellant has referred to the deposition of the prosecution witness No. 16. He has submitted that, prosecution witness No. 16 being the firearm examiner had submitted a report with regard to the examination of the alleged offending weapon. In his deposition, the prosecution witness No. 16 has stated that, the report does not contain a mention of the ammunition used in the murder.

11. Learned advocate appearing for the appellant has submitted that, the prosecution has failed to prove that the victim died due to gunshot injury. The prosecution had failed to produce the bullet causing the injury. The prosecution had failed to produce any ballistic report linking the bullet with the injury and the firearm used.

12. Learned advocate appearing for the appellant has submitted that, the prosecution did not produce any eyewitness to the incident. The prosecution had relied upon circumstantial evidence. According to him, the prosecution had relied upon motive, proving the place of occurrence, recovery of an offending weapon, and presence of the appellant at the place of occurrence as circumstances to establish the guilt of the appellant. He has submitted that, the prosecution had failed on every of such score to prove the charges beyond reasonable doubt as against the appellant.

13. Learned advocate appearing for the appellant has contended that, the prosecution had failed to prove the motive of the murder. He has referred to the deposition of the prosecution witness Nos. 1 and 2 and submitted that, the appellant was spending his life plying vehicles and had sufficient income. The appellant used to send his daughters to the prosecution witness

No. 1 was the maternal grandmother of the daughters of the appellant. Such evidence has been corroborated by the prosecution witness No. 4.

14. Learned advocate appearing for the appellant has contended that, the prosecution had failed to establish the place of occurrence. He has referred to the evidence of prosecution witness No. 21, prosecution witness Nos. 1 and 3 as also the sketch map of the place of occurrence being Exhibit 13. He has submitted that, Exhibit 13 would demonstrate that, they were neighbouring houses. The investigating officer being the prosecution witness No. 21 had failed to interrogate any of the neighbours. The prosecution had failed to examine any neighbours during the trial.

15. With regard to the recovery of the weapon used in the murder, learned advocate appearing for the appellant has submitted that, the incident occurred on November 9, 2012 and that the appellant was arrested on November 10, 2012 whereas the offending weapon was shown to be recovered on November 21, 2012, that is, after 10 days. He has referred to the deposition of prosecution witness Nos. 4, 9, 11 and 13 who were witnesses to the seizure of the murder weapon. He has submitted that, each of such witnesses have described the place of recovery of the

firearm differently thereby raising serious doubt as to the actual place of recovery. Therefore, no reliance can be placed on the evidence put forth on behalf of the prosecution as to the place of recovery of the murder weapon.

16. Learned advocate appearing for the appellant has submitted that, no prosecution witness had seen the appellant at the place of occurrence. He has referred to the deposition of prosecution witness Nos. 1 and 4 who had admitted that, the appellant being a driver was not in his home on all days. Therefore there is nothing on record placed by the prosecution to establish that, the appellant had been at the place and time of the occurrence of the event.

17. Learned advocate appearing for the appellant has taken the trouble of drawing the attention of the Court to the deposition of various witnesses which according to him, contains contradictions. According to him such contradictions are fatal to the case of the prosecution. He has contended that, on an overall scrutiny of the evidence as a whole, the conviction of the appellant on the basis of the materials on record cannot be sustained.

18. In support of the contention that, the recovery of the firearm was not made in accordance with law, learned advocate

appearing for the appellant has relied upon **1995 Volume 3 Supreme Court Cases 217 (Amarjit Singh @ Babbu v. State of Punjab)**, **1979 Supreme Court Cases Volume 4 Supreme Court Cases 346 (Bahadul @ Ghanshyam Padhan v. State of Orissa)**, **1998 Volume 8 Supreme Court Cases 525 (Jasbir Singh v. State of Punjab)**, **2011 Volume 11 Supreme Court Cases 754 (Sk. Yusuf v. State of West Bengal)**, **2019 Volume 6 Supreme Court Cases 804 (Guman Singh v. State of Rajasthan)**, **2004 Volume 10 Supreme Court Cases 657 (Anter Singh v. State of Rajasthan)**, and **2022 Supreme Court Cases Online SC 883 (Shahaja @ Shahajan Ismail Mohd. Shaikh vs. State of Maharashtra)**. He has relied upon **2008 Volume 3 Supreme Court Cases 210 (Sattatiya @ Satish Rajanna Kartalla v. State of Maharashtra)** on the issue of circumstantial evidence. He has contended that, the appellant should be acquitted.

19. Learned advocate appearing for the state has contended that, the prosecution had proved its case and established the guilt of the appellant beyond all reasonable doubt. He has referred to the evidence of the 22 prosecution witnesses. He has drawn the attention of the Court to the evidence on record that, there were two girl children of the appellant. He has drawn the

attention of the court to the evidence on record stating that, disputes and differences arose between the appellant and the victim wife with regard to birth of female children. He has submitted that, the victim was subjected to severe torture physically and mentally.

20. Learned advocate appearing for the State has drawn the attention of the Court to the evidence of the post-mortem doctor. He has submitted that, the post-mortem doctor had stated in his evidence that the death was caused due to the effects of gunshot injury, ante mortem and homicidal in nature, the measurement and dimensions of the noted injuries on the body of the victim suggested firing from a close range and that the gunshot injury was sufficient to cause her death.

21. Learned advocate appearing for the state has submitted that, the murder weapon was recovered on the leading statement made by the appellant and in presence of prosecution witness Nos. 4, 11, 12, 13 and 15. He has referred to the deposition of such witnesses and submitted that, such witnesses were consistent as to the fact of recovery as also the place of the recovery.

22. Learned advocate appearing for the state has drawn the attention of the Court to the evidence of prosecution witness No.

16. He is submitted that, prosecution witness No. 16 was posted as the Reserved Inspector of Police. He had examined the seized weapon and prepared a corresponding report which was marked as Exhibit 8. Prosecution witness No. 16 had in his evidence opined that, the murder weapon seized on the leading statement made by the appellant was fully operational and was capable of endangering human life, if used.

23. Learned advocate appearing for the State has drawn the attention of the Court to the deposition of prosecution witness No. 7 who is a neighbour. He has pointed out that, the prosecution witness No. 7 has stated that, on the day following the incident, he met the appellant and his family members at the burning that when they fled away.

24. Learned advocate appearing for the state has submitted that, although the prosecution has not been able to produce any eyewitness to the incident of murder, however, the prosecution had succeeded in proving the guilt of the appellant beyond reasonable doubt on the basis of circumstantial evidence. He has submitted that, the judgement of conviction and the order of sentence should be upheld by this Hon'ble Court.

25. The mother of the victim who had deposed as prosecution witness No. 1 lodged the police complaint dated November 10,

2012. In the police complaint, being Exhibit 1, the mother of the victim had stated that, on November 9, 2012 at around 12 O' clock at the night, Ajit Santra the father of her son-in-law came to her house and started calling her and her family members. She had opened the door when Ajit Santra had told her that the victim had fallen upon the bike which was kept inside the room and got head injury and that she was bleeding incessantly. On receiving such news, she had gone to her son-in-law's house where she did not find her daughter. There she received the news that her daughter had been taken to a doctor's chamber. When she was waiting at the house of her son-in-law, she suddenly found the dead body of her daughter being brought off. On asking, she came to know that her daughter had expired. She had complained that the appellant, his father, and the mother of the appellant had murdered her daughter by beating her up. She had further stated that on November 10, 2012, around 7.15 A.M, the family members of the appellant had taken the dead body of her daughter secretly to the crematorium for the purpose of cremation, without informing her.

26. In her deposition, prosecution witness No. 1 had stated that the deceased was her youngest daughter. She had been given in marriage to the appellant eight years back. She had stated that

the marriage was an arranged marriage and that there was no dowry demand from the side of the accused persons although she had given her daughter gold ornaments at the time of her marriage voluntarily. She had stated that two daughters were born out of such marriage. Her daughter had died on November 9, 2012 at her matrimonial home. She had stated that on November 9, 2012 at night the father of the appellant had come to her house when they were sleeping. The father of the appellant had woken her up and informed her that her daughter had received cut injury on her throat while falling down from the motor bike. Having learnt of such fact, she and her husband had gone to the matrimonial house of their daughter. They did not find their daughter. They were informed by the father of the appellant that their daughter had been taken to the nearby nursing home. They were waiting at the matrimonial house of their daughter when the dead body of their daughter was brought on a stretcher. Having seen the dead body of their daughter they were shocked and could not inform the police at once. On the next day, she had informed the police and lodged the complaint which was marked as Exhibit 1. She had identified the accused including the appellant. In cross-examination, she has stated that the appellant was employed as a driver of a car and that the

appellant did not stay at his home at night frequently as he had to go out of his home with his vehicle.

27. The brother of the deceased had deposed as prosecution witness No. 2. He had stated that the appellant had murdered his sister on November 9, 2012 by using a fire arm. He had stated that, after the birth of the second daughter, problems at the matrimonial home of his sister started. The accused persons used to taunt his sister for giving birth to two daughters. The accused person used to mentally and physically torture his sister. They use to beat her up also. That apart, the prosecution witness No. 2 has corroborated the statements made by the prosecution witness No. 1 with regard to the father of the accused coming to their house and informing them of the accident that their sister suffered on November 9, 2012. In addition thereto, prosecution witness No. 2 had stated that in the early morning of November 10, 2012 they received information from neighbours that the accused person took away the body of his sister to Akra Cremation Ghat. Then they went to the Budge Budge Police Station and had lodged the complaint. On such complaint, the police had taken action and stopped the cremation of the body of his sister.

28. The father of the victim had deposed as prosecution witness No. 3. He had stated that after marriage his daughter was treated well for about one year. Then the first child was born. Since the child was female the accused was not happy with the birth of a female child. They started mistreating her. He persuaded the matrimonial family of his daughter to accept the fate and lead a happy life. Then his daughter had given birth to the second female child. This had enraged the accused persons. They had started to torture the deceased physically. His daughter used to come to the paternal house and had him informed about such physical assault. He had corroborated the statements of the prosecution witnesses Nos. 1 and 2 about events taking place on November 9, 2012. In addition thereto, he had stated that, the appellant and his friends took the dead body to the Akra Cremation Ghat. In cross-examination, he had stated that the appellant was a car driver and that on some days he was not able to come back home.

29. Another brother of the victim had deposed as the prosecution witness No. 4. He had witnessed the seizure of the fire arm. He had signed the seizure-list. He had identified his signature on the seizure-list which was marked as Exhibit 5. He had described the place from where the fire arm was seized.

30. A neighbour of the parents of the victim had deposed as prosecution witness No. 5. He had stated that after receiving information that the body of the victim was taken to the Akra Cremation Ground he had gone there. He had stated that, the family of the appellant took the dead body for cremation to such cremation ground. In cross-examination, he had said that when he went to the Akra Cremation Ground he did not find any member of the family of the appellant. Similarly, prosecution witness No. 6 was another neighbour who stated in his deposition that, he did not see any family member of the appellant at the morgue. However, prosecution witness No. 7 who is another neighbour of the father of the victim had stated that, when he went to the cremation ground, he found the appellant and other members of the family of the appellant including the brother of the appellant there. He had stated that after they saw him, they fled away and on being asked, appellant had confessed his guilt by saying that he committed the crime after taking liquor. In cross-examination, prosecution witness No. 7 had initially stated that, he disclosed such facts for the first time in Court and thereafter claimed that he stated such facts before the police.

31. Prosecution witness No. 9 is one of the other seizure-list witness who had deposed at the trial. He had described the place from where the fire arm was recovered by the police.

32. The doctor performing the post mortem on the body of the victim had been examined as prosecution witness No. 10. He had stated that the victim was identified to him by a police constable. He had stated that, on examination of the body of the deceased he had found a gunshot injury with burning and tattooing at the skin, chin and ear lobe. He had also found an exit wound on the right side of the face. He had stated that in his opinion the death was caused to the effects of gunshot injury, ante mortem and homicidal in nature. He has stated that as both burning and tattooing were there and entry and exit wound was almost same in measure and dimension, therefore, the shot was fired from a close range. He had stated that, the gunshot injury was sufficient to cause death. In cross-examination, the appellant could not elicit anything favourable from prosecution witness No. 10.

33. Another seizure-list witness of the fire arm had deposed as prosecution witness No. 11. He had described the place from where the fire arm was seized. Another police constable who had witnessed the seizure of the fire arm had deposed as prosecution witness No. 12. He had also described the place from where the

fire arm was seized. He had identified the fire arm and the plastic packet. In cross-examination he had stated that the plastic packet does not contain his signature.

34. A retired police personnel who had witnessed the seizure of the fire arm deposed as prosecution witness No. 13. He had also described the place from where the fire arm was seized. He had identified the fire arm in Court. In cross-examination, he had stated that he did not put any signature on the fire arm and could not say whether such fire arm was available in market or not.

35. The medical officer on duty at the primary health center had deposed as prosecution witness No. 14 and stated that, he referred the victim for post mortem for assessing the cause of death.

36. Another police personnel, who had witnessed the seizure of the fire arm had deposed as prosecution witness No. 15. He had identified the fire arm in Court. He had stated that the investigating officer seized the fire arm in the presence of the seizure-list witnesses.

37. The arms expert who had inspected the fire arm in questing had deposed as prosecution witness 16. He had stated that, he retired from police service as the Deputy Superintendent of Police

on November 26, 2012, he was posted as Reserve Inspector of Police at Alipore where he examined the fire arm in question and prepared his report. He had tendered his report which was marked as Exhibit 8.

38. The scribe of the First Information Report had deposed as prosecution witness No. 17. The police personnel who had conducted the inquest and prepared the inquest report had deposed as prosecution witness No. 18. The prosecution witness No. 19 had proved to sanction order under Section 27 of the Arms Act. Such sanction order had been marked as Exhibit 12. The scribe of the complaint being Exhibit 1 had deposed as prosecution witness No. 20. He had identified his handwriting and signature on such complaint.

39. The investigating officer of the police case had deposed as prosecution witness No. 21. He had stated about the police complaint and the First Information Report lodged on the basis thereof. He had stated that he examined the complainant under Section 161 of the Criminal Procedure Code. He had also examined the father of the victim, namely the prosecution witness No. 3. He had also examined available witnesses. He came to know that one dead body was taken to Akra Cremation Ground for cremation. Immediately, upon such knowledge, he had gone

and took custody of the dead body. He had stated that the persons who took the dead body fled away after seeing the police. The prosecution witness No. 3 had identified the dead body as that of Reba Santra, the victim. The dead body had been taken to Banjobheria Chorial Hospital where the victim had been declared as “brought dead”. Thereafter, an unnatural death case had been started. He had seized the wearing apparels of the deceased. He had examined Bablu Ghorui and Dilip Roy. He had visited the place of occurrence and prepared a rough sketch map with index. Rough sketch with index was marked as an exhibit at the trial as Exhibit 13. He had also examined further witnesses. He had seized blood soaked mud and controlled earth. He had identified the seizure list prepared which was marked as Exhibit 4. He had stated that he arrested Purnima Santra and Tarun Santra. He had identified the arrested persons.

40. The investigation officer who had deposed as prosecution witness No. 21, stated in his deposition that, prior to forwarding the appellant to Court, he gave a statement on the basis of which prosecution witness No. 21 prayed for police custody of the appellant. During police custody, the appellant made a statement. On the leading statement made by the appellant, the fire arm was recovered. He had the fire arm there inside one

polished bag kept under brick bags. The fire arm was seized after making a proper seizure-list. He had identified the seizure-list and signature in the seizure-list. He had also identified the fire arm which was marked as material exhibit 1. He had stated that, he had bagged the fire arm, recorded the statement of the witness and forwarded the appellant to Court with a prayer for adding Section 25 of the Arms Act. He had sent the fire arm so seized to the arms expert for examination. He had collected the post mortem report, conducted raid, and arrested other accused, submitted prayer for recording all witnesses under Section 164 of the Criminal Procedure Code. Thereafter, he had suffered fracture for which the case diary was handed over to another investigation officer.

41. The appellant had recorded statement under Section 313 of the Criminal Procedure Code. There, the appellant had stated that, the marriage between him and the deceased was solemnized after negotiations. In response to query with regard to evidence of the prosecution witness No. 3 he had stated that, on the next day he was not at the locale. He was out of his home after taking his car. When confronted with the evidence of prosecution witness No. 7 with regard to the happening of the morning of November 10, 2012, he had stated that, that day he was not there. In

response to the query recording the evidence of prosecution witness No. 21 with regard to the happening at the Akra Cremation Ground, the appellant had stated that he was not there. He had answered in the affirmative with regard to adducing evidence on his behalf. However, no evidence had been led by the appellant at the trial.

42. Some facts that have emerged at the trial which are uncontroverted may be summarized as follows:-

- i. The appellant and the victim Reba Santra had been married to each other with them having two female children out such wedlock.
- ii. Reba Santra had died out of gunshot injury on November 9, 2012. The death of Reba Santra due to gunshot injury had been established by the post mortem of Reba Santra being Exhibit 7 and the deposition of the Autopsy Surgeon conducting the post mortem being prosecution witness No. 10.
- iii. The parents of Reba Santra had been informed by the father of the appellant No. 2 in the mid-night of November 9, 2012 about an accident which Reba Santra had suffered.

- iv. The parents of Reba Santra had gone to the matrimonial home of Reba Santra immediately upon receipt of such news.
- v. Reba Santra had been mentally and physically tortured at her matrimonial home due to her giving birth to two female children.
- vi. After the parents of Reba Santra had come to the matrimonial home of Reba Santra on November 9, 2012, they saw the dead body of Reba Santra.
- vii. The parents of Reba Santra had been informed by the father of the appellant that Reba Santra had been taken to a doctor's chamber/nursing home when they reached the matrimonial home of Reba Santra.
- viii. Appellants and family members of Reba Santra had received information that the appellant and his family members and friends had taken the dead body of Reba Santra for the purpose of cremation in the morning of November 10, 2012.
- ix. The mother of Reba Santra lodged the police complaint on November 12, 2012.

- x. The police had gone to the cremation ground from where, the body of Reba Santra had been recovered.
- xi. The body had been taken to the health center where Reba Santra was declared as “brought dead” and an unnatural death case was started by the police. The body had been sent for post mortem where, the opinion of the post mortem doctor was that Reba Santra died out of gunshot injury.
- xii. A fire arm was recovered on the basis of the appellant showing the police the firearm and the place where it had been kept concealed while in police custody and during a raid conducted by the police .

43. The contention of the appellant with regard to difference between the inquest report and the post mortem report does not have any substance. Inquest reports are not prepared by experts while the post mortem report is prepared by the Autopsy Surgeon performing the postmortem on the dead body. Since the inquest report is not prepared by an expert, there is no question of the appellant being given benefit of the doubt for the alleged

discrepancy between the inquest report and the post mortem report of the deceased.

44. Post mortem report being Exhibit 7 had stated that the death of Reba Santra was through gunshot injury, ante mortem and homicidal in nature. The bullet has not been recovered by the police. However, the police have recovered the fire arm used in the incident.

45. The police had recovered the firearm on the appellant pointing out the same and the place where it was kept concealed during a raid conducted with the appellant while he was in police custody. The appellant had been arrested on November 10, 2012. Initially, the police did not have police custody of the appellant. The police had obtained custody of the appellant on November 19, 2012. The appellant had identified the place where the firearm had been kept by him at the time of the recovery of the firearm on November 21, 2012. The recovery of the firearm had been witnessed by a number of witnesses who had deposed at the trial.

46. It has been contended on behalf of the appellant that, the recovery of the firearm was not in accordance with law. On behalf of the appellant, a number of authorities have been cited on such score. **Amarjit Singh @ Babbu (supra)** and **Jasbir Singh**

(supra) have been rendered under the provisions of the Terrorist and Disruptive Activities (Prevention) Act, 1987. In the facts of those cases, the police did not seize the weapon at the spot. In the facts of the present case, the police had seized the firearm after the appellant had identified the spot where the firearm was kept concealed. Immediately on seizure of the firearm, the same was kept in a sealed packet. The firearm had been sent to the expert for examination pursuant to an order of the court dated November 23, 2012. The firearm expert had stated in his report that, he had received the firearm in a sealed packet. The deposition of the firearm expert who had been examined as prosecution witness No. 16 at the trial and his report which was marked as an exhibit being Exhibit 8 at the trial establishes that, the firearm was sealed at the time of seizure and that, the firearm expert had received the firearm in a sealed cover pursuant to an order of the court.

47. Bahadul @ Ghanshyam Pradhan (supra) has observed that, fact of recovery of the weapon of murder is not admissible in absence of a statement under section 27 relating to the recovery of that weapon. In the facts of the present case, the police had obtained custody of the appellant on November 19, 2012 after his arrest on November 10, 2012. After obtaining police custody of

the appellant, the police conducted a raid with the appellant upon which, the firearm was recovered from the place identified by the appellant on November 21, 2012.

48. Sk. Yusuf (*supra*) has observed that, the nature of admissibility of the facts discovered pursuant to the statement of the accused under section 27 of the Indian Evidence Act, 1872 is very limited. If an accused informs to the police officer the facts as a result of which the weapon with which the crime was committed is discovered, and as a result of such disclosure, recovery of the weapon is made, no inference can be drawn against the accused, if there is no evidence connecting the weapon with the crime alleged to have been committed by the accused. Therefore, facts and circumstances of each case will govern as to whether, there is a connection between the weapon used in the murder discovered on the leading statement made by the accused with the accused in the crime of murder. In the facts of the present case, the connection between the appellant and the firearm recovered on his leading statement is there as will appear from the discussions here in. Circumstantial evidences have proved beyond reasonable doubt that, there is a connection between the appellant and the firearm recovered by his overt act and his act of murdering his wife.

49. On section 27 of the Indian Evidence Act, 1872, **Mustkeem @ Sirajudeen (supra)** has observed that, what is important is discovery of the material object at the disclosure of the accused but such disclosure alone would not automatically lead to the conclusion that the offence was also committed by the accused. It has observed that, burden lies on the prosecution to establish a close link between the discovery of the material object and its use in the commission of the offence. What is admissible under section 27 of the Indian Evidence Act, 1872 is the information leading to discovery and not any opinion formed on it by the prosecution.

50. In **Guman Singh (supra)** the court had found the evidence of the prosecution to be too weak to connect the accused with the offence. In such circumstances, the conviction against the appellant was set aside.

51. **Anter Singh (supra)** has considered the scope and ambit of section 27 of the Indian Evidence Act, 1872 and held as follows: –

“16. The various requirements of the section can be summed up as follows:

(1) The fact of which evidence is sought to be given must be relevant to the issue. It must be borne in mind that the provision has nothing to do with the question of relevancy. The relevancy of the fact discovered must be established according to the

prescriptions relating to relevancy of other evidence connecting it with the crime in order to make the fact discovered admissible.

(2) The fact must have been discovered.

(3) The discovery must have been in consequence of some information received from the accused and not by the accused's own act.

(4) The person giving the information must be accused of any offence.

(5) He must be in the custody of a police officer.

(6) The discovery of a fact in consequence of information received from an accused in custody must be deposed to.

(7) Thereupon only that portion of the information which relates distinctly or strictly to the fact discovered can be proved. The rest is inadmissible.”

52. *Shahaja @ Shahajan Ismail Mohd. Shaikh (supra)* has considered the facts of that case and found that even if the discovery by the appellant was accepted, it amounted to the appellant disclosing to show the weapon used in the commission of the offence.

53. The firearm had been discovered on the appellant identifying the firearm as well as identifying the place from where the firearm was kept concealed at the time of the raid on November 21, 2012 after the police had obtained his custody on November 19, 2012 subsequent to his arrest on November 10, 2012. The firearm had been sealed in a packet immediately on its recovery. The firearm

had been sent for examination by the Firearm expert pursuant to the order of the Court. The firearm expert had examined the firearm and submitted a report with regard thereto which had been marked as Exhibit 8 at the trial. He had stated in his report being Exhibit 8 that, he had received one improvised country made about eight MM bore firearms, measuring about total length 8.5 inches and barrel length about 5.5 inches, catch barrel, hammer, spring hammer, firing pin, trigger and wooden butt in sealed packet. He had examined such firearm on November 26, 2012. He had opined in Exhibit 8 that, the firearm could endanger human life if it is used and that it comes within the purview of the Arms Act. He has stated that after examination of the firearm, it was resealed in his presence under his seal, signature and sent to the learned jurisdictional Court through the officer in charge of the police station.

54. It has been contended on behalf of the appellant that, each of the prosecution witnesses who had claimed at the trial that, they had seen the seizure of the firearm, gave descriptions of different places from where the firearm had been recovered. With the deepest of respect, such contention has no substance in the facts and circumstances of the present case. On recovery of the firearm, a seizure list was prepared which had been marked as

Exhibit 5 at the trial. Exhibit 5 names two persons as seizure list witnesses namely Tufan Ghorui and Nitish Naskar. Both of them had deposed at the trial as prosecution witness No. 9 and 4 respectively. That apart, prosecution witness Nos. 11, 12, 13, and 15 had witnessed the recovery of the firearm on November 21, 2012 on the appellant showing the police the location where the firearm was concealed as also the firearm.

55. The firearm had been recovered from a hen coup belonging to the relative of the appellant. The prosecution witnesses have described the place from where the firearm was recovered by using different words to describe the same place. As the testimonies of the prosecution witnesses stand, it cannot be said that, the prosecution witnesses had described different places from where the firearm was recovered.

56. It has been contended on behalf of the appellant that, the prosecution did not produce any witness at the trial to claim that the appellant was present at the place of occurrence. In fact, it has been contended that, the place of occurrence has not been identified also.

57. The prosecution has been able to establish the place of occurrence through the evidence placed at the trial. The parents of the victim who have deposed as prosecution witnesses had

stated at the trial that, the father of the appellant had informed them that the victim had suffered an accident and had taken them to a place just outside the house of the appellant. The victim had been living at her matrimonial home with the appellant. The mother of the victim had seen the dead body of the victim being brought to the place where she was taken and made to wait. From such oral testimony, it can be said that, the prosecution has been able to establish the place of occurrence.

58. The prosecution has not produced any witness who had claimed that, the appellant was present at the place of occurrence on November 9, 2012. The parents of the victim after being informed by the father of the appellant that the victim had suffered an accident on the night of November 9, 2012 had gone to the matrimonial home of the victim. They had been shown the outside of the matrimonial home of the victim and the appellant as the place where the accident had occurred. When they reached such place, they did not see the victim. They were told to wait. Then after some time, they saw the body of the victim being brought to such place. Both the parents of the victim had stated in their deposition before the trial court that, they received information in the morning that the body of the victim was taken by the family members of the appellant and the appellant to the

crematorium. The police had recovered the body of the victim at the crematorium.

59. The body of the victim had been brought to the place just outside the matrimonial home of the victim and the appellant on the night of November 19, 2012 and the same was taken to the crematorium in the morning of November 10, 2012 with the parents of the victim claiming that, the appellant and his family members took the body of the victim to the crematorium on November 10, 2012.

60. At the trial, the appellant had in replies to two queries under section 313 of the Criminal Procedure Code claimed that he was not at the place of occurrence or at the places identified and at the time stated by the prosecution witnesses. The appellant has set up the defence of alibi by making such statements under section 313 of the Criminal Procedure Code. Under section 105 of the Indian Evidence Act, 1872, it is the obligation of the appellant to establish such alibi beyond reasonable doubt. The appellant has not produced any evidence to establish that, he was not at the place of the occurrence or at the crematorium on night of November 9, 2012 or in the morning of November 10, 2012 respectively.

61. The victim is the wife of the appellant. The victim was residing with the appellant at the time of the incident. The father of the appellant had informed the parents of the victim that the victim suffered an accident in the night of November 19, 2012. The parents of the victims saw the dead body of the victim being brought to the place just outside the matrimonial home of the victim on the night of November 19, 2012. It is for the appellant to disclose the circumstances of the death of the victim in view of the provisions of section 106 of the Indian Evidence Act, 1872. The appellant apart from trying to set up a defence of alibi, has not been able to establish, and in fact, did not even try to establish the circumstances under which the victim came to be murdered. On the contrary, the firearm capable of causing the injury as appearing on the body of the victim was recovered on the appellant showing the place where such firearm was kept.

62. *Sattatiya @ Satish Rajanna Kartalla (supra)* and *Mustkeem @ Sirajudeen (supra)* have observed that, where the case rests squarely on circumstantial evidence the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. It has also observed that, no doubt it is true that conviction can be based solely on

circumstantial evidence but it should be decided on the touchstone of law relating to circumstantial evidence.

63. In the facts and circumstances of the present case, the prosecution has been able to establish that the victim died out of gunshot injury caused by the firearm recovered on the appellant showing the police the firearm and the place where the firearm was concealed. The prosecution has been able to establish that the place of occurrence was just outside the matrimonial house of the victim and the appellant. The prosecution has also been able to establish that, there was matrimonial discord between the victim and the appellant by reason of the victim giving birth to 2 consecutive female children. It has also been established that, the body of the victim was brought initially to the place of occurrence at night on 9 November 9, 2012 and that the body of the victim was taken to the crematorium in the morning of November 10, 2012 where the police intervened and seized the body of the victim.

64. The appellant though being provided with the opportunity has not been able to produce anything on record to establish his alibi conclusively. He has not been able to explain the murder of his wife. In fact, it can be said that, the appellant had been involved in trying to destroy the evidence relating to the murder

of his wife by taking the dead body of the wife to the crematorium for the purpose of cremation.

65. Having appreciated the evidence brought on record by the prosecution and having considered the fact and circumstances of the present case, we are of the view that, the prosecution has been able to place on record sufficient evidence for the Court to draw inference of guilt as against the appellant. We have found that the evidence on record is totally incompatible with the innocence of the appellant.

66. In view of the discussions above, the trial court was correct in drawing an inference of guilt as against the appellant on the finding that, all incriminating facts and circumstances established at trial were totally incompatible with the innocence of the appellant.

67. In such circumstances, we find no reason to interfere with the judgement of conviction and order of sentence passed by the learned trial judge. We concur with the same.

68. CRA 60 of 2020 is dismissed. In view of the dismissal of the appeal, no order need be passed in the interim application being CRAN 3 of 2021. The same stands disposed of also.

69. Trial court records along with a copy of this judgement be remitted to the appropriate court forthwith.

70. Urgent Photostat certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

[DEBANGSU BASAK, J.]

71. I Agree.

[BIBHAS RANJAN DE, J.]