

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

% Reserved on: 2nd September, 2022
Decided on: 17th October, 2022

+ **CRL.A. 890/2019**

MOHD. GULFAM

.... Appellant

Represented by: Mr. Salim Malik, Mr. Niyaj Ahmed
Faroozi, Ms. Shavana, Advs.

versus

STATE NCT OF DELHI

.... Respondent

Represented by: Mr. Mukesh Kumar, APP for State.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

HON'BLE MR. JUSTICE MINI PUSHKARNA

MUKTA GUPTA, J.

1. By this appeal, the appellant challenges the impugned judgment dated 19th December, 2018 whereby the Learned Additional Session Judge-03 convicted the appellant for offences punishable under Section 364/302/201 Indian Penal Code (IPC) and the order on sentence dated 30th January, 2019 directing the appellant to undergo life imprisonment along with a fine of ₹1,00,000/- under Section 302 IPC, in default to undergo simple imprisonment for a period of three years and further sentence to undergo rigorous imprisonment for a period of five years along with a fine of ₹10,000/- under Section 201 IPC, in default to undergo simple imprisonment for a period of one year and further sentenced to undergo rigorous

imprisonment for a period of ten years along with a fine of ₹20,000/- under Section 364 IPC, in default to undergo simple imprisonment for a period of three years.

2. Appellant Mohd. Gulfam assails the impugned judgment on the grounds that the learned Trial Court referred the part of disclosure statement of appellant in para 53 & 54 of the impugned judgment, which is not admissible in evidence. Para 53 of the impugned judgment is also contrary to law. The alleged incident had taken place on 26th June, 2011, the dead body was found on 27th June, 2011 however the FIR was lodged on 29th June, 2011. Since 1st January, 2011 to 26th June, 2011 only two calls were made on 22nd June, 2011 and 26th June, 2011 hence it cannot be said that there was proximity between the deceased and the appellant. Further, SI Dinesh (PW-14) should not have been allowed to depose in respect of facts which were stated before him by the witnesses under Section 161 Cr.P.C. during the course of investigation. Learned counsel for the appellant further contends that nothing adverse was found in the FSL report. The alleged garments were not taken into possession. The neighbors were not examined as witnesses and no recovery of weapon of offence took place. The appellant has no history of prior criminal cases and he has been in the judicial custody for more than eight years now.

3. On the other hand, Ld. APP for the State submits that the accused had a clear motive behind committing the murder of the deceased, Azeema. The deceased was in relationship with the appellant Mohd. Gulfam, who was residing in the same vicinity and was pressurising and threatening him to get married to her. On the day when the deceased went missing, she had gone with the appellant on his motorcycle. The appellant led the Police Team to

the place of murder and also the place of scuffle between him and the deceased. Appellant was arrested only after the analysis of the Call Detail Records of his mobile phone which became available to the police on 21st July, 2011. Ct. Shiv Kumar (PW-7), Abdul Aziz (PW-5), SI Dinesh Kumar (PW-14) and Insp. Vivekanand (PW-19) have deposed about the arrest of the appellant. Abdul Aziz, father of the deceased (PW-5) identified the deceased daughter through the photograph during investigation. Sabista Khatoon (PW-2) though declared partly hostile, deposed that she facilitated telephonic conversation between the deceased and accused. The pant and T-shirt which the appellant was wearing at the time of the incident were recovered from the cooler inside his house at the instance of the appellant. Appellant went missing for several days after the incident. Learned APP for the State further contends that the recovery of the accused's purse from the spot of scuffle clearly establishes his presence at the spot of scuffle which was around 100-150 metres from where the dead body was recovered. Reliance is placed on the case cited as AIR 1991 SC 1853 Khujji @ Surendra Tewari Vs. State of MP.

4. Case of the prosecution in nutshell is that in the evening of 26th June, 2011, Alma/ Complainant's (PW-3) daughter namely Azeema left the house at about 6-6:30 PM to go to the house of her friend with a plastic box containing Kunda (Mithe Puyye) and failed to return back home. Complainant visited the house of one Chanchal, friend of her deceased daughter, who told her that the deceased had gone with appellant Mohd. Gulfam and one Shahjad. Thereafter, the complainant went to the house of the appellant where she met his sister who showed her ignorance at the course of events. On the same night, parents of accused Mohd. Gulfam came

to the house of complainant and threatened her about kidnapping her elder daughter and also offered her to take ₹50,000/- for not reporting or disclosing the matter to police or any other authority. The complainant further proved the photograph of her deceased daughter (Ex. PW3/A). Thus, FIR No. 191/2011 was lodged on 29th June, 2011 on the complaint of mother of Azeema (deceased) about her being missing since 26th June, 2011 at 6:30 PM, though inadvertently the date of missing was typed as 25th June, 2011 in the said FIR.

5. Upon receipt of information from Duty officer at PS Khajuri Khas, first IO S.I. Dinesh Kumar (PW-14) searched for the missing girl but failed to trace her. On 01st July, 2011, father of the missing girl namely Abdul Aziz (PW-5) informed the investigating officer that his neighbor namely Mohd. Gulfam was also missing for several days and that he had come back about one or two days back. On the said suspicion, the investigating officer visited the house of Mohd. Gulfam and interrogated him. The appellant stated that he had gone to attend the marriage of his friend's cousin in Moradabad on 27th June, 2011 and had returned back on 29th June, 2011. After analyzing the call detail record of Mohd. Gulfam, the investigating officer noticed that Mohd. Gulfam's phone was switched off from 26th June, 2011 from 19:12:59 hours till 19:46:59 on 05th July, 2011. During interrogation, appellant stated that his sim card fell down and for this reason his mobile phone was switched off. On analysis of the call detail record it was also found that one Sabista Khatoon (PW-2) had received several calls from the number of the appellant. Sabista Khatoon informed that the deceased and appellant used to talk to each other and the deceased used to make a missed call from her phone to the appellant and thereupon the appellant used to call deceased on

her phone. She further informed that on 26th June, 2011, at about 4-4:30 PM, deceased Azeema had a conversation with the accused and at about 6-6:30 PM, deceased told Sabista that Mohd. Gulfam was taking her to introduce to her “khala” and had agreed to marry her. She further stated that she noticed appellant standing at the corner on his motorcycle and deceased accompanied him on the same. On the same day, appellant Mohd. Gulfam was arrested. Thereafter, investigation was assigned to Insp. Vivekanand (PW-19) on 21st July, 2011.

6. According to Inspector Vivekanand, Gulfam disclosed that he used to talk to the deceased, Azeema using a Nokia Mobile Phone. He had used Bajaj Discover motorcycle to take the deceased near Simbhawali where the offence took place. Both the said articles were thereafter seized. In pursuance of his disclosure statement, appellant led the IO along with SI Dinesh (PW-14), Ct. Shiv Kumar (PW-7) and father of the deceased Abdul Aziz (PW-5) to his house situated at 551, D Block, Gali no.8, Kacchi Khajuri, Delhi. Accused further led them to the 2nd floor and got recovered one gray-blackish color pant and one t-shirt having green, black & blue strips. He stated that he had worn these clothes at the time of incident and the same were washed by him. In pursuance of information disclosed by appellant Gulfam, verification was done at Simbhawali where SI Promod Choudhary (PW-16) of PS Simbhawali informed that FIR No. 218/11 was registered at PS Simbhawali on 27th June, 2011 as a dead body of a girl and some articles were recovered from a sugarcane field of Hazi Gufran in Village Vait. Thereafter, Gulfam led them to 50-60 meters on Vait Furri Road and a pointing out memo was prepared in the sugarcane field of Hazi Gufran. He further led them to another place in the field i.e., 100-150 meters away from

the above said place and got recovered his dark brown purse which fell down during the quarrel with the deceased. On showing the recovered articles i.e., clothes of girl (kurta, pajami and dupatta), one pair of slippers, one nose pin, four ear pins, one plastic box and one black thread and photograph to Abdul Aziz (PW- 5), he stated that the same belonged to his daughter Azeema (deceased). Inspector Vivekanand (PW-19) further stated that despite several efforts, the weapon of offence could not be recovered.

7. The postmortem of the deceased was conducted on 28th June, 2011 at about 3:30 PM at District Hospital, Mathura, U.P., by Dr.Subhash Chand Gupta (PW-9), Chief Medical Superintendent who exhibited the report as Ex.PW-9/A. The following ante mortem external injuries were found on the deceased:

- i. *Stab wound present over the neck anteriorly, laterally posteriorly with a gap 3cm. Stab wound size measurement 25cm x 3cm. All deeper structures were cut, wound reached up to the bone. The stab wound was 6cm below the right ear, 7cm below the chin and 5.5cm below the left ear.*
- ii. *Horizontal stab wound was present over the abdomen, which was 3cm above umbilicus up to right flank. Size of wound was 18cm x 7 cm deeper to peritoneum. All abdominal viscera came out.*

8. It was opined by Dr.Subhash Chand Gupta (PW-9) that the cause of death was due to shock and hemorrhage as a result of antemortem injury. Dead body was two days old. All injuries were caused due to a fine and a sharp object. The post mortem report further noted that Bowel loops and intestinal loops were injured. Peritoneal Cavity was having faecal contents with blood. Buckle cavity was having 15/15 teeth. Stomach was injured and

was having 200ml semisolid. Both small and large intestine were injured and pale. Liver was congested. Right kidney was injured. Uterus was empty and non-gravid.

9. During the course of trial, 19 prosecution witnesses and on the other hand one defence witness, Sh. Mehraj (DW-1) were examined. Sabista Khatoon (PW-2), Abdul Aziz, father of the deceased (PW-5), Ct. Shiv Kumar (PW-7), SI Dinesh Kumar, first IO of the case (PW-14) and Inspector Vivekanand (PW-19) are the material witnesses of the prosecution. Statement of accused was recorded under section 313 CrPC. Accused admitted in his statement that deceased used to make missed calls to him and that he and Sabista used to live in the same gali. He also admitted that he led the way to recoveries but had not committed the murder of the deceased, Azeema. He stated that his purse was not recovered from the spot of alleged scuffle, but the police had taken the purse and his clothes from his mother. He further stated that the deceased did not meet him on the day of alleged incident. In his statement appellant further accepted as correct that the Police reached the place of incident at the instance of appellant when Police staff of Simbhawali confirmed that they found a dead body of a female there. He also admitted that the father of the deceased identified the plastic dabba carried by the deceased and the tabeez worn by her. He also admitted to the recovery of mobile phone bearing No. 9650511106 from his possession during his personal search.

10. In his statement under Section 313 Cr.P.C., the appellant took the plea that on the fateful day he had gone to the marriage at Moradabad, however he led no evidence in this regard. This plea of alibi taken by the appellant was not proved by him. In response to the question that his phone was

switched off from 26th June, 2011 at 19:12:55 seconds to 5th July, 2011 at 19:46:59 seconds appellant admitted the said fact and stated that he had changed the SIM of his mobile phone and inserted a new SIM which he has purchased a month before, when he went to attend the marriage in Moradabad and put back the old SIM from which he used to talk to the deceased. Though he admitted that he used to talk to the deceased in the manner that a missed call used to be received on his phone, however he denied any love affair between the two of them. He also admitted that the deceased used to live in the same gali as his.

11. Deposition of Alma, the complainant and mother of the deceased was recorded as PW3 who reiterated her version stated in the Ruqqa. Father of the deceased, Abdul Aziz (PW-5) corroborated the statement of Alma/ Complainant's (PW-3). He also stated that the appellant got recovered his clothes which were worn by him at the time of the incident from his house which were lying inside the water cooler. The witness further stated that police interrogated the accused in his presence after about 20-22 days of the alleged incident and arrested him thereafter.

12. Ct. Shiv Kumar (PW-7) is a witness to the arrest and pointing out memo prepared at the instance of the accused where the dead body had been recovered. He is also a witness to recovery of wallet of the accused at the spot. He further deposed about the site plans related to two places i.e., place of scuffle and place of murder at little distance. He identified before the court, the clothes of victim, her tabeez, nose pin, bangles, chappals and plastic dabba. He further identified the clothes of accused allegedly worn by him at the time of alleged offence which were washed later and were recovered at the instance of the appellant hidden in a cooler inside the house.

In his cross examination, he denied having knowing the accused previously.

13. Case of the prosecution is based on circumstantial evidence. One of the crucial witness of the prosecution is Sabista Khatoon (PW-2) who though has not fully supported the case of the prosecution, however, deposed that Gulfam used to reside in her street and used to visit deceased Azeema who used to reside on the first floor of their house as tenant. She stated that Azeema used to make missed call from her mobile phone to her Saheli, who used to return the call. Sabista later came to know that the missed calls were made to Gulfam. Though she did not remember the date, however on the day of incident Azeema came to her and demanded mobile phone of her husband and stated that she had to make missed call to her friend whereafter she left and at that time she was carrying one lunch box of plastic and while going at about 6 – 6.30 PM she stated that “*abhi aa Rahi hun, apni Saheli ko kunde (mithe puyee) dekar*”. She further stated that around 10 – 10.30 PM sister of Azeema came to her when she informed her that Azeema had gone to her friend by making the missed call. On the asking of the sister she showed her the mobile phone number on which the missed call was made, which the sister noted. She stated that her mobile number was 9899046131 and that the SIM of her mobile number phone was in the name of Abdul Hai who is the cousin of her husband Mahfooj Alam. She identified her mobile phone of Videocon make dark grey colour which was seized by the IO.

14. Abdul Hai (PW6) who was owner of SIM card 9899046131 deposed that this number was provided by him to his brother Mahtooz Alam and his wife Sabista Khatoon who were both using the same. From the call detail records (Ex.PW11/B) of the Airtel SIM No. 9650511106 used by the appellant which was recovered from his personal search and in his name, the

following calls were made and received in June 2011 to and from mobile number 9899046131 used by Sabista Khatoon:-

Date	From	To	Time	Duration (S)	Call Type
01.06.2011	9650511106	9899048131	20:52:41	45	OUT
18.06.2011	9650511106	9899048131	20:35:54	350	OUT
22.06.2011	9650511106	9899048131	21:21:16	63	OUT
22.06.2011	9650511106	9899048131	21:24:19	648	OUT
22.06.2011	9899048131	9650511106	21:51:06	13	IN
26.06.2011	9899048131	9650511106	16:38:27	53	IN

15. The CDR analysis of the two mobile phones would thus show that on 26th June, 2011 at about 4:38 PM a call was made from the mobile phone with Sabista to that of appellant's mobile number thereby corroborating the version of Sabista that the deceased and appellant used to call each other. Contention of learned counsel for the appellant that there being merely two calls would not show the relationship between the appellant and the deceased deserves to be rejected in view of the CDR analysis of the appellant and Sabista Khatoon (PW-2).

16. Further, after Azeema went missing the appellant was also not available at his residence for 4/5 days from 26th June, 2011. Though the appellant in his statement under Section 313 Cr.P.C. took the plea that during this period he went to Moradabad to attend a marriage, however no defence evidence was led nor was new SIM number which was purportedly used during this period provided by the appellant to prove that he was at Moradabad. Hence the plea of alibi taken by the appellant could not be

substantiated. This conduct of the appellant of absconsion is an additional link in the chain of circumstances.

17. Further, after the appellant was arrested pursuant to the disclosure statement, he led the Police party to the place in the sugarcane fields near village Vait, Simbhawali, Uttar Pradesh. It is on the pointing out of the place of incident further information was received and on cross-checking it was revealed that a dead body of one lady was recovered on 27th June, 2011 in which regard SI Yashbir Singh (PW-18) and Insp. Pramod Chaudhary (PW-16) deposed. When the photograph of the deceased, the tiffin box, sleepers and tabeez which were lying near the body were shown to the father of the deceased, he identified the same to be that of the deceased. This disclosure by the appellant about the place of incident which further led to the information regarding recovery of the dead body from the said field on 27th June, 2011 is admissible under Section 27 of the Indian Evidence Act.

18. It is trite law that for application under Section 27 of the Indian Evidence Act, recovery of a physical object is not necessary. The said provision embodies the doctrine of confirmation by subsequent event. Thus, an information received from the accused which leads to a fact discovered as a result of investigation pursuant thereto, which fact was not in the knowledge of the police officer prior thereto, would be admissible in evidence against the said accused. Dealing with this issue, Hon'ble Supreme Court in the decision reported as (2005) 11 SCC 600 State (NCT of Delhi) Vs. Navjot Sandhu held as under:-

“121. The first requisite condition for utilising Section 27 in support of the prosecution case is that the investigating police officer should depose that he discovered a fact in consequence of the information received from an accused person in police

custody. Thus, there must be a discovery of fact not within the knowledge of police officer as a consequence of information received. Of course, it is axiomatic that the information or disclosure should be free from any element of compulsion. The next component of Section 27 relates to the nature and extent of information that can be proved. It is only so much of the information as relates distinctly to the fact thereby discovered that can be proved and nothing more. It is explicitly clarified in the section that there is no taboo against receiving such information in evidence merely because it amounts to a confession. At the same time, the last clause makes it clear that it is not the confessional part that is admissible but it is only such information or part of it, which relates distinctly to the fact discovered by means of the information furnished. Thus, the information conveyed in the statement to the police ought to be dissected if necessary so as to admit only the information of the nature mentioned in the section. The rationale behind this provision is that, if a fact is actually discovered in consequence of the information supplied, it affords some guarantee that the information is true and can therefore be safely allowed to be admitted in evidence as an incriminating factor against the accused. As pointed out by the Privy Council in Kottaya case [AIR 1947 PC 67 : 48 Cri LJ 533 : 74 IA 65] : (AIR p. 70, para 10)

“clearly the extent of the information admissible must depend on the exact nature of the fact discovered”

and the information must distinctly relate to that fact. Elucidating the scope of this section, the Privy Council speaking through Sir John Beaumont said : (AIR p. 70, para 10)

“Normally the section is brought into operation when a person in police custody produces from some place of concealment some object, such as a dead body, a weapon, or ornaments, said to be connected with the crime of which the informant is accused.”

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127. The crux of the ratio in Kottaya case [AIR 1947 PC 67 : 48 Cri LJ 533 : 74 IA 65] was explained by this Court in State of

Maharashtra v. Damu [(2000) 6 SCC 269 : 2000 SCC (Cri) 1088] . Thomas J. observed that : (SCC p. 283, para 35)

“The decision of the Privy Council in PulukuriKottaya v. Emperor [AIR 1947 PC 67 : 48 Cri LJ 533 : 74 IA 65] is the most quoted authority for supporting the interpretation that the ‘fact discovered’ envisaged in the section embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect.”

In Mohd. Inayatullah v. State of Maharashtra [(1976) 1 SCC 828 : 1976 SCC (Cri) 199] , Sarkaria, J. while clarifying that the expression “fact discovered” in Section 27 is not restricted to a physical or material fact which can be perceived by the senses, and that it does include a mental fact, explained the meaning by giving the gist of what was laid down in PulukuriKottaya case [AIR 1947 PC 67 : 48 Cri LJ 533 : 74 IA 65] . The learned Judge, speaking for the Bench observed thus : (SCC p. 832, para 13)

“Now it is fairly settled that the expression ‘fact discovered’ includes not only the physical object produced, but also the place from which it is produced and the knowledge of the accused as to this (see PulukuriKottaya v. Emperor [AIR 1947 PC 67 : 48 Cri LJ 533 : 74 IA 65] ; UdaiBhan v. State of U.P. [1962 Supp (2) SCR 830 : AIR 1962 SC 1116 : (1962) 2 Cri LJ 251]).”

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142. There is one more point which we would like to discuss i.e. whether pointing out a material object by the accused furnishing the information is a necessary concomitant of Section 27. We think that the answer should be in the negative. Though in most of the cases the person who makes the disclosure himself leads the police officer to the place where an object is concealed and points out the same to him, however, it is not essential that there should be such pointing out in order to make the information admissible under Section 27. It could very well be that on the

basis of information furnished by the accused, the investigating officer may go to the spot in the company of other witnesses and recover the material object. By doing so, the investigating officer will be discovering a fact viz. the concealment of an incriminating article and the knowledge of the accused furnishing the information about it. In other words, where the information furnished by the person in custody is verified by the police officer by going to the spot mentioned by the informant and finds it to be correct, that amounts to discovery of fact within the meaning of Section 27. Of course, it is subject to the rider that the information so furnished was the immediate and proximate cause of discovery. If the police officer chooses not to take the informant accused to the spot, it will have no bearing on the point of admissibility under Section 27, though it may be one of the aspects that goes into evaluation of that particular piece of evidence.

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144. In Bodhraj v. State of J&K [(2002) 8 SCC 45 : 2003 SCC (Cri) 201] this Court after referring to the decisions on the subject observed thus : (SCC p. 58, para 18)

“The words ‘so much of such information’ as relates distinctly to the fact thereby discovered, are very important and the whole force of the section concentrates on them. Clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate.”

19. Further, the appellant got recovered his purse of dark brown colour at a distance of 100 – 150 meters from the place of pointing out where the dead body was found and on checking the purse one driving license in the name of the appellant, one I-Card of school in the name of appellant, one cash memo of Bajaj motorcycle service station and ₹250 were found. On further verification it was found that the appellant got his motorcycle serviced from the said service station.

20. Considering the circumstantial evidence of the appellant talking to the deceased whereafter the deceased went to meet the appellant and on the next day on 27th June, 2011 her dead body was found at Simbhawali which place of incident was pointed out resulting in the discovery of the fact that on 27th June, 2011 dead body of Azeema was found there, coupled with the recovery of purse of the appellant near the place of incident, the opinion of the post-mortem doctor that on 28th June 2011 dead body was two days old, the explanation rendered by the appellant and his conduct of absconsion immediately after the incident, this Court is of the considered opinion that the prosecution has proved its case beyond reasonable doubt. Hence, this Court finds no error in the impugned judgment of conviction and order on sentence.

21. Appeal is accordingly dismissed.

22. Copy of the judgment be uploaded on the website of this Court and be also conveyed to the Superintendent Jail for intimation of the appellant.

(MUKTA GUPTA)
JUDGE

(MINI PUSHKARNA)
JUDGE

OCTOBER 17, 2022

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