

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CRA-D-201-2019 (O & M)

Reserved on: 01.02.2023

Pronounced on: 10.02.2023

SANTOSH TIWARI

.....Appellant

Versus

STATE OF HARYANA

.....Respondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Argued by: Mr. Rajesh Lamba, Advocate
for the applicant-appellant.

Mr. Raman Sharma, Addl. A.G., Haryana.

SURESHWAR THAKUR, J.

1. The learned Sessions Judge, Faridabad through a verdict drawn on 13.02.2019, upon SC No. 18 of 2018, proceeded to, in respect of charges drawn against the accused for an offence punishable under Section 302 read with Section 34, of the IPC, hence made a verdict of conviction, upon, the convict.

2. However, through the verdict (supra), the learned trial Judge concerned, acquitted co-accused Sangeeta Devi, qua a charge drawn against her for the commission of an offence punishable under Section 302/34 IPC.

3. Moreover, through a separate sentencing order drawn on 13.02.2019, the learned trial Judge concerned, imposed upon the convict, the sentence of life imprisonment qua an offence punishable under Section 302 IPC, besides imposed upon him, a sentence of fine comprised in a sum of Rs. 10,000/-, and, in default of payment of fine amount, he sentenced the convict to undergo rigorous imprisonment extending upto a term of three months.

4. Further, he ordered that the period spent in custody during investigation, or, trial, be in consonance with the provisions of Section 428 Cr.P.C, set off, from the above imposed term of the substantive sentence(s) of imprisonment.

5. The convict becomes aggrieved from the verdict of conviction (supra), and, also becomes aggrieved from the consequential thereto sentence(s) (supra), as became imposed upon him, by the learned Convicting Court, resultantly he becomes led to institute thereagainst the instant appeal before this Court.

6. The State of Haryana has not constituted any appeal before this Court, hence challenging the verdict of acquittal, as made qua co-accused Sangeeta Devi, in respect of a charge, as became drawn against her, for the commission of an offence punishable under Section 302/34 IPC. Thus, the above verdict of acquittal acquires a binding, and, conclusive effect. Therefore, this Court is required to make an adjudication only upon the appeal (supra).

Factual Background.

7. The genesis of prosecution case, becomes embodied in the appeal FIR, to which Exhibit PG is assigned. The informant one Deepu (PW-13) has made narrations therein that, he was working as a

foreman in Bansal Metal Factory. In the mid-night of 10/11.12.2017, he was present in his factory. Lalit Kumar (deceased) son of Bisheshar, a native of Bihar, used to work in the said factory for the last 15-20 days. In the mid-night at 1.30 -2.00 AM, Santosh Tiwari, who resides in front of Gali No.7, Sarurpur Industrial Area knocked the gate of the factory. The said Santosh Tiwari was holding Lalit and told that he (Lalit Kumar) had entered his house to commit theft and that he (Santosh) had thrashed him. At this, the informant (Deepu) told Santosh Tiwari that in case Lalit had committed theft, then he (Santosh Tiwari) should call the police. After saying so, he closed the factory gate. Santosh Tiwari was telling at that time that he alongwith her mother had caused injuries to Lalit. At that time, Arjun, a co-worker in the factory was also present who had seen this occurrence. Deepu further told that in the morning, he found dead body of Lalit Kumar lying at the gate of the factory. Deepu prayed for taking action against Santosh Tiwari and his mother, as Lalit Kumar had died due to the injuries caused to him by the said persons. On the above said statement, to which Ex. PR was assigned, SI Satya Dev recorded police proceedings Ex.PS and sent the same to the police station through EHC Sunder for registration of FIR, at which formal FIR Ex. PG was recorded by ASI Hardayal PW9, who also put his endorsement Ex. PG/1 on the margin of Ex. PS.

Investigation Proceedings.

8. The investigation was put in motion. SI Satya Dev then prepared rough site plan Ex. PT of the place, where dead body was lying. He called Shyam Photographer, who snapped photographs (Ex.P1 to Ex. P9). Ms. Manisha (PW1). Sr. Scientific Officer came at

the crime scene for detecting physical evidence and prepared her report Ex. PA. SI Satya Dev initiated inquest proceedings and prepared report Ex. PQ/2. Jal Parkash (PW5), the owner of Bansal Metal Factory produced the attendance register of its workers for the months of November and December, 2017. Attested copies Ex. PE and Ex. PF thereof were taken into possession vide memo Ex. PD prepared by SI Satya Dev and attested by ASI Mahesh Kumar and Jai Prakash. SI Satya Dev further recorded statements under Section 161 Cr.PC of Duli Chand (PW6/A) and of Parveen (Ex.PW7/A). The dead body was sent to B.K. Hospital through EHC Sunder, where application Ex. PQ was moved on 12.12.2017 for conducting the post-mortem examination. A Board of Doctors consisting of Dr. Manish Dayal (PW11) and Dr. Rajesh Dhiman conducted the autopsy and prepared post-mortem report Ex. PQ/1. A sealed parcel containing clothes of the deceased besides copy of post-mortem report handed over by the doctor were taken in possession vide memo Ex. PH prepared by SI Satya Dev and attested by ASI Mahesh Kumar.

9. On 13.12.2017, accused Santosh Tiwari was arrested and got medico-legally examined. On 14.12.2017, accused Sangeeta was arrested. She was interrogated by SI Satya Dev in the presence of ASI Mahesh Kumar (PW10) and Lady Constable Renu. Said accused Sangeeta disclosed that in the midnight of 10/11.12.2017, she was sleeping with her family in her rented house. At about 12.00 in the night, she heard noise of her son Santosh Tiwari calling '*Chor-Chor*'. She came out and saw that in another room, a thief had entered, who had bolted the door from inside and that her son Santosh Tiwari was asking him to come out but that thief, whose name was later on

revealed as Lalit, started breaking the cement sheet of the roof. Santosh Tiwari climbed the roof but by that time, the thief had broken the cement sheet. As Santosh Tiwari asked him why he was breaking the roof, that person opened the room and tried to flee by jumping from the Southern wall of the house, at which she (Sangeeta) caught hold of his legs. In the meantime, Santosh Tiwari reached there after jumping. The thief Lalit Kumar tried to flee and then she gave two slaps to him. As the thief tried to flee, Santosh Tiwari caused various injuries to him with baseball bat on his hips, thighs, calves etc. The baseball bat was broken and then Santosh Tiwari caused injuries to him with wicket of cricket. Hearing the commotion, some people gathered. Santosh Tiwari alongwith those persons left the thief at Bansal Metal Factory and that in the morning, she came to know that Lalit Kumar had died on account of the injuries caused by her and her son Santosh. Accused Sangeeta stated that she could demarcate the place, where injuries were caused to the deceased. Said disclosure statement Ex. PJ suffered by accused Sangeeta and recorded by SI Satya Dev was witnessed by Lady Constable Renu & ASI Mahesh. Accused Sangeeta then led the police team to the place of crime and identified the same regarding which spot memo Ex. PL was prepared.

10. Further, on interrogation, accused Santosh Tiwari suffered disclosure statement Ex.PK, admitting his being caused injuries to deceased Lalit Kumar, who had entered his house. He also disclosed that he alongwith the neighboring people had taken Lalit Kumar to Bansal Metal Factory and that on knocking the door, supervisor came out, who was told about the attempt of theft made by their factory man,

at which that Supervisor, named, Deepu told that in case Lalit Kumar

had committed theft, then he should be handed over to the police and then Deepu closed the factory gate. Accused Santosh Tiwari disclosed further that he left Lalit in front of the factory and went to his home. At about 3.00/3.15 AM, Parveen, the son of landlord of their house, asked him as to what he has done to the thief and when he told that he was left in a street. Parveen told him that in case the thief had not been taken inside the factory, then he be handed over to the police and matter be reported. Accused disclosed that at his request, Parveen also came and called the police. Later on, he came to know that Lalit Kumar had died. Accused Santosh Tiwari disclosed further that he had concealed the broken baseball bat and the wicket of the cricket, with which he had caused injuries to Lalit Kumar, in the rented house of his friend Vikas Pandey in Bhiwadi (Rajasthan) and that he could get the same recovered. He also stated that he could get the spot of causing injuries to Lalit Kumar demarcated. Said disclosure statement Ex. PK suffered by accused Santosh Tiwari and recorded by SI Satya Dev was attested by ASI Mahesh.

11. On 15.12.2017 as accused Santosh Tiwari was being taken for recovery, he suffered supplementary disclosure statement stating that apart from causing various injuries to Lalit, he had pressed his neck at the time of causing injuries to him. He further stated that he had in fact concealed the broken baseball bat and the wicket of the cricket under the bed of his room, regarding which nobody else has the information. Said disclosure statement Ex.PM suffered by accused Santosh Tiwari was attested by ASI Mahesh. Pursuant to the above said disclosure statement, accused Santosh Tiwari led the police team to the disclosed place and got recovered two pieces of baseball bat and a

wicket of cricket. Their sketches Ex. PN and Ex. PN/1 were prepared. Their measurements were taken and the same were then converted into sealed parcels, which were taken in possession vide memo Ex. PN/2. Accused also demarcated the place of crime, regarding which spot identification memo Ex. PO was prepared. Site plan Ex. PV of the place of recovery was also prepared. All the memos were attested by ASI Mahesh. On the same day i.e. 15.12.2017, SI Satya Dev moved an application Ex PU to the Medical Officer of B.K. Hospital Faridabad seeking opinion regarding the exact cause of death of deceased Lalit to which Dr. Manish Dayal gave his opinion on 16.12.2017, as embodied in Exhibit PQ/3.

12. Statements of various witnesses were recorded under Section 161 Cr.P.C. After completion of investigations by the investigating officer concerned, into the FIR (supra), he instituted an affirmative report under Section 173 Cr.P.C., before the learned Committal Judge concerned.

Committal Court Proceedings.

13. As the offence under Section 302 IPC was exclusively triable by the Court of Session, therefore, the learned committal Court, committed vide order dated 26.03.2018, the case for trial, to the Court of the learned Sessions Judge, Faridabad.

Trial Court Proceedings.

14. On finding a prima facie case, charge under Section 302 read with Section 34 of the IPC became framed, against the accused, and, to which he pleaded not guilty, and, claimed trial.

15. In support of the prosecution case, the prosecution examined fifteen witnesses. After completion of recording of the

depositions of the prosecution witnesses, the learned Sessions Judge, Faridabad drew proceedings, under Section 313 of the Cr.P.C., but therein, the accused claimed false implication, and, pleaded innocence. In his defence, the accused examined one witness i.e. Pankaj Mishra.

16. After conclusion of the trial, as, became entered upon the FIR (supra), by the learned Sessions Judge, Faridabad, the latter proceeded to make the afore verdict of conviction, and, also made the consequent therewith sentence(s) (supra), upon, the present appellant.

Submissions of the Learned counsel for the convict-appellant.

17. The learned counsel appearing for the convict-appellant has submitted with much vigor before this Court, that no credence can be assigned, to the respectively made disclosure statement(s), by the accused concerned, and, as become respectively embodied in Ex.PK and Ex.PM, nor to the consequent thereto recoveries, as became made through memo Ex.PN/2. He submits that thereupon the above link(s) in the chain of circumstances, as erected by the prosecution against the accused, do become completely weakened. He supports the above argument, through his also making an allusion to the testification made by the complainant, who stepped into the witness box as PW-13. He submits that though PW-13 testified that on 10.12.2017 at about 1.30-2.00 A.M., one Santosh Tiwari alongwith other persons, had come to the company gate alongwith deceased Lalit, and, also that, at that time the deceased Lalit was seen by him to be nabbed by Santosh. Moreover, PW-13 further testifies that the said Santosh Tiwari, then revealed to them, that since the deceased Lalit, had committed theft in his house, therefore, he had nabbed Lalit and had also belabored him. He also makes reference to the subsequent thereto speakings made by PW-13,

in his examination-in-chief, wherein he echoes, that then they told Santosh Tiwari, that he may either take him back to his house or hand over the deceased Lalit to the police. He also thereafter refers, to one Santosh Tiwari, then apprising the persons concerned, that he alongwith his mother has belabored Lalit, and that, at the time of the above extra judicial confession being made by one Santosh Tiwari, he echoes that, then one Arjun co-worker of the company alongwith other workers were present at the relevant place. Furthermore, since PW-13 speaks that at the relevant time, Santosh Tiwari had taken Lalit from there, leading him to close the company gates, but yet in the morning the dead body of Lalit Kumar was found lying in front of the company gate. Nonetheless, he submits that since PW-13, in his cross examination speaks, that at the relevant time, 10 to 15 persons, had also come alongwith deceased Lalit and Santosh to the company gate. Therefore, though in his examination-in-chief, he speaks that after his closing, the company gate, and, thereafter but on his advice accused Santosh Tiwari taking deceased Lalit in his company, but though prima facie PW-13, does propagate his last seeing the accused and the deceased together, especially when on the subsequent day, the body of the deceased Lalit was found lying in front of the company gate. Moreover, also he submits that though accused Santosh Tiwari, did extra judicially confess to him, that he alongwith his mother had belabored Lalit. However, he submits that since in his cross examination, PW-13, has spoken, that at the time of making of the above extra judicial confession by accused Santosh Tiwari before him, in respect of both he, and, his mother belaboring Lalit, qua then rather deceased Lalit being alive. Resultantly, he submits that since there were

also at the relevant time, about 10 to 15 persons available at the company gate, and when he has not spoken, that whether such 10 to 15 persons, who were then available alongwith accused Santosh Tiwari besides alongwith deceased Lalit, but rather at the company gate, did also leave the relevant place alongwith the accused Santosh Tiwari, and, deceased. Therefore, he submits that the above omission on the part of PW-13, in his testification, does lead to a vital incriminatory link getting snapped, inasmuch as, the one relating to whether only Santosh Tiwari and deceased Lalit Kumar, did leave the company gate together, and or, whether even alongwith them, 10 to 15 persons, who were also available alongwith them, at the relevant time, and, at the company gate, rather did also accompany both. Therefore, he submits that the above omission, to hence speak the above relevant fact, does causes an apt disruption in the potency, if any, of the prime incriminatory link, qua both accused and the deceased being last seen together, and or, that whether only the accused and the deceased were together last seen by PW-13, but also a doubt arises, qua rather all the other 10 to 15 persons, who were also available at the relevant time, at the company gate, did also depart therefrom alongwith them. Consequently, he submits that the benefit of doubt is to be assigned to the accused.

18. That since the body of the deceased, was not recovered at the instance of the accused, but was recovered in front of the gate of factory, hence prior to the makings of disclosure statement(s), by the convict accused. Resultantly, he submits since the recovery of the body of the deceased was not made, rather at the instance of the accused, but was made from an open place, thus, it leads to a conclusion that one

amongst 10 to 15 other persons, who departed at the relevant time alongwith both the deceased and accused, from the company gate, rather may have taken to murder the deceased, and, may have also taken to place the body of the deceased, in front of the company gate, which is an open place and besides is a un-secluded place.

19. That since in the postmortem report, to which Exhibit PQ/1 becomes assigned, the doctor who made an autopsy on the body of the deceased, has in Exhibit PQ/3 thereof, opined qua the demise of the deceased, ensuing from Asphyxia arising from strangulation. However, he submits that the said made opinion by PW-11, about the cause of demise of the deceased, is not related at all with the recoveries, as made through memo comprised in Ex.PN/2, hence at the instance of the accused, to the investigating officer concerned. He argues that even if the ante mortem injuries are echoed in Exhibit PQ/1, yet the said ante mortem injuries occurring on the body of the deceased rather may be related to the accused belaboring the deceased, in consequence to the latter burgling his house, and, that since the said event, did occur prior to both the deceased and accused being last seen by PW-13, and, but yet then the deceased was evidently alive. Therefore, even if the accused extra judicially confessed to PW-13 about his and his mother belaboring the deceased, yet the said extra judicial confession, as, made by the accused before PW-13, inculcates the accused only with respect to his belaboring the deceased, and, which but resulted in the occurrences of ante mortem injuries on the body of the deceased. However, he submits that the said ante mortem injuries are neither related to the extra judicial confession nor to the cause of the demise of the deceased, inasmuch as, the demise of the deceased being a sequel of

Asphyxia caused by strangulation. Consequently, he submits that the recoveries as made subsequent to the signed disclosure statement(s) by the accused, to the investigating officer concerned, relate only to such ante mortem injuries, but do not relate to the accused fatally strangulating the deceased.

Submissions made by the Learned State Counsel.

20. On the other hand, the learned State counsel has contended with much force before this Court, that the appreciation of evidence, as made by the learned trial Judge concerned, is merit-worthy, as it is planked upon a worthy appraisal of evidence germane to the charge. Thus, he submits that the impugned verdict of conviction, and, also the consequent thereto order of sentence, do not require any interference being made by this Court.

Circumstantial Evidence based case.

21. The doctor who conducted an autopsy on the body of the deceased Lalit stepped into the witness box as PW-11. During the course of his examination-in-chief, he proved the post mortem report, as became authored by him, and, by its co-author one Dr. Rajesh Dhiman. He also proved the existence thereons of the valid signatures of Dr. Rajesh Dhiman. The post mortem report is assigned Exhibit PQ/1. The relevant observations, as become narrated in Exhibit (supra) are extracted hereinafter.

“ Brownish contusion of size 1 x 1 cm lateral to left eye and similar abrasion of size 1 x 1 cm, 1 cm lateral to right eye and below right eye.

Abrasion of size 6 x 4.5 cm on the back of mid of left thigh.

Abrasion of size 2.5 x 3 cm. on left lower back.

Abrasion of size 1 x 1 cm on ulnar lower back.

Bluish contusion on the mid of ulnar aspect of right wrist.

Bluish contusion on the mid of ulnar aspect of right forearm.

Multiple brown abrasions of the back of meta carpo pharyngeal joints of middle and ring finger of right hand.

Abrasion of size 0.5 x 0.4 cm on mid forehead.

Brownish abrasion 1 x 0.2 cm on left knee.

Brownish abrasion on back of left thumb and index finger."

22. He has also during the course of his examination-in-chief, proven that the cause of demise of the deceased was a sequel of his being strangled leading to fatal asphyxia. The said opinion was assigned as Ex.PQ/3, opinion whereof is extracted hereafter.

"1. The deceased died due to asphyxia due to strangulation due to anoxia to brain. So, the injuries sustained on the deceased, are not amounting to cause of death.

2. The probable duration of time elapsed between the post-mortem examination and time of death is within 48 hours, as already mentioned in PMR/95/MD/CH/2017 dated 12.12.2017 at page 6.

3. As the postmortem rigor mortis was well developed and postmortem lividity was fixed so, time of death is variable, possibility of time of death between 24 hours or so which cannot be ruled out.

4. The deceased died due to anoxia of brain due to asphyxia due to strangulation is evident by abrasion of size 2 x 1.5 cm on front of neck and and brownish contusion of size 2.3 cm. x 0.5 cm on front of mid of neck left side and on further dissection ecchymosis is present on belly of pre-tracheal muscles and left sterno clavicular mastoid muscle underneath which is major left carotid artery which supplies to blood to brain. Any force which obstructs supply to brain for more than 3 minutes leads to permanent damage to brain cells.

5. A person who have suffered anoxia of brain leads to Hypoxic encephalopathy leading to loss of consciousness cerebral edema and eventually conning of brain & which affects apneustic and

vasomotor centre of hind brain leading to cardio respiratory suppression and eventually death. This period may vary if the person is not immediately given medical attention. Such patient may remain in coma for several days."

Disclosure Statement(s) and Recovery Memo(s).

23. The accused initially made a signed disclosure statement to which Exhibit PK is assigned, contents whereof are ad-verbatim extracted hereinafter.

"In the presence of following witnesses today on dated 14-12- 2017 aforesaid accused Santosh Tiwari S/o Shashinand while in police custody without any pressure, greed and fear voluntarily disclosed that On dated 10/12/2017 after finishing my duties at Sapros Industries Pvt. Limited. Plot No. 45, Sector 25, Faridabad in the night at 10.00 came at my aforesaid rented house. After having my meals alongwith my parents, brother and sister I was seeing the TV in my room. In the night at about 12.00 o clock I had gone to bathroom which is built with bricks in the corner for urinating. Then I found that light is switched on in our another room. Then in order to switch of the light I went to the room and found room was bolted from inside. I saw from the window that articles of iron almirah were scattered and one person was stealing the articles from there. I asked him to come out. I will not beat you. But that person did not came out and sat on the fridge kept in room and started breaking the cement sheet of roof. I went up the roof. In the meantime that person had broken the cement sheet. Then I asked him why are you breaking the roof then that boy immediately went and opened the door of the room and tried to jump the wall in the south of our house. But my mother caught hold both the legs of that boy. In the meantime I also reached near my mother. That person tried to flee then

I gave one two slaps to him. That person tried to ran again then I gave beatings on his hips, calves from behind with baseball bat kept in our house. While beating bas ball bat had broken. Then I also gave beatings with the wicket used in playing cricket. I made call to Praveen son of my landlord. On hearing the noise a lot of people had gathered there and Praveen son of our landlord also reached there. On asking that boy told his name Lalit Kumar and also told that he is from Bihar and works as Supervisor in Bansal Metal Factory Gall No. 5. Industrial Area Sarurpur and resides there. On saying by the people gathered there I took Lalit Kumar to Bansal Metal Factory. We knocked the gate of factory then supervisor of factory and one another boy came out. I asked them whether this boy is from your factory. This boy was making attempt for theft in our house. We apprehended him and gave beatings. Then Deepu Kumar Supervisor said if he had committed theft then hand over him to police. Supervisor did not let Lalit inside the factory. As I was coming back then supervisor closed the gate of factory. I left that Lalit Kumar in front of that factory in Gali No. 5. Then at about 3/3.15 a.m. Praveen son of my landlord asked me what have I did with that thief. I told him that we leave him in Gali No.5 in front of that factory. Then Praveen called me 4/5 times as to check whether factory persons took him in or not. Otherwise call the police and hand him to the police. I told Praveen that brother am frightened please you should also come. Upon which brother Praveen came there and called the police. Later on we came to know that Lalit had died. I and my mother Sangeeta Devi have given beatings to Lalit Kumar. Baseball bat and wicket used in playing cricket by which inflicted injuries, have kept those in the rented house of my friend Vikas

Pandey at Bhiwadi, Rajasthan. Except me nobody else knew about it. If you took me to Bhiwadi then I can get it recover. I can demarcate those place i.e. the room where I saw Lalit Kumar stealing in my room and my mother caught feet of Lalit kumar while jumping from wall and the place where I leave Lalit Kumar in Gali No. 5. Disclosure statement of accused has been recorded. Upon which accused and witness put their signatures.”

24. A reading of the above made disclosure statement, though reveals, that therein the convict Santosh Tewari, had confessed his belaboring the deceased through his using a base ball bat, but therein the accused, did not confess his committing the murder of deceased nor obviously did he cause the recovery of the relevant incriminatory evidence, obviously as the cause of demise of the deceased is Asphyxia, rather arose from strangulation. Therefore, prima facie, the above made inculpatory disclosure statement, is not related, to the charge drawn against the accused.

25. However, subsequently through a disclosure statement, to which Exhibit PM is assigned, contents whereof are extracted hereinafter, though also he did as earlier done by him, confessed his belaboring the deceased, through his using a base ball bat, but he made echoings therein, that the base ball bat which was used by him, for belaboring the deceased had been broken, and, also the wickets used for playing cricket, had both being hidden by him, under his bed at his residential house, and, that none else except him rather has knowledge of the respective places of their keeping and hiding, by him. Moreover, he also evinced his readiness to cause the recovery of the above concealed items, from the places of their hiding(s), and, concealment(s)

by him. Therein, he also confessed his guilt in his strangulating the deceased. However, the said disclosure statement which is made subsequent to the earlier disclosure statement rather may not carry immense evidentiary worth. The reason becomes comprised in the factum, that in the initially recorded disclosure statement, to which Exhibit PK, is assigned, the accused did not confess his guilt, in strangulating the deceased, and but naturally if he has done so, hence in the subsequently recorded disclosure statement, the said subsequent confession does prima facie become vulnerable to the deepest scepticism. The reason becomes comprised in the factum, that a reading of the cross examination, of the Investigating Officer, who stepped into the witness box as PW-15, discloses, that in Inquest Report, to Exhibit PQ/2 is assigned, no injuries were found around the neck region of the deceased. Moreover, since in the initially made disclosure statement by the accused, and, to which Exhibit PK is assigned, he did not confess his strangulating the deceased. Therefore, it appears that the investigating officer, then did not scribe in the initially made disclosure statement, rather the above incriminatory participation (supra), of the accused, qua his committing the murder of the deceased. However, it appears that after the making of an autopsy, on the body of the deceased, and, thereins observations occurring qua injuries occurring in and around the neck region of the deceased, that the investigating officer concerned, scribed echoings, in the subsequently made disclosure statement of the accused, with unfoldings, therein qua the accused confessing his murdering the deceased through his strangulating the neck of the deceased. Therefore, the learned defence counsel had put suggestions to PW-15, that the said subsequently made

confession of guilt by the accused in his disclosure statement, to which Exhibit PM, is assigned, rather became prepared merely to implicate the accused or was made by the accused on compulsion and exertion becoming exercised upon him.

26. Even though, there may not be any direct evidence in respect of the investigating officer concerned, exerting pressure or compulsion upon the accused to make the above confession, in his disclosure statement, to which Exhibit PM is assigned, but yet the omission of reflection of neck injuries in Inquest Report, Exhibit PQ/2, and, subsequently there appearance(s) in the post mortem report, does leave much room for doubt, that the marks of strangulation in and around, the neck region of the deceased, did occur in the interregnum, inter-se the preparation of the Inquest Report Exhibit PQ/2, and, the post mortem report, to which Exhibit PQ/1 is assigned. The consequence of the above doubts seeping into the manner of occurrence of neck injuries, on the neck of the deceased, does lead to a further sequel, that the said neck injuries were not authored by the accused, rather such injuries may have been authored by some person other than the accused. Moreso, when in compatibility with the above inference, also a suggestion became meted to the investigating officer. Resultantly, it has to be but concluded that the subsequently made disclosure statement by the accused, as carried in Exhibit PM, though, revealing qua his murdering the deceased through his strangulating him, is but a result of sheer concoction arising from the investigating officer concerned, coercing the deceased to make the above confession, and, only to support the injuries revealed in the post mortem report, to occur around the neck region of the deceased, injuries whereof were not

revealed in the earlier thereto prepared Inquest Report, Exhibit PQ/2. Furthermore, the said injuries being noticed in post mortem report Exhibit PQ/1, and, subsequently thereto occurring the drawings of disclosure statement Exhibit PM, resultantly Exhibit PQ/1, is to be but concluded to be so drawn merely to falsely implicate the accused.

“In the presence of following witnesses today on dated 15-12- 2017 aforesaid accused Santosh Tiwari S/o Shashinand while in police custody without any pressure, greed and fear voluntarily disclosed that On dated 10-11/12/2017 in the mid night, thief whose name was lateron known as Lalit kumar who was working and residing in Bansal Metal Factory, who entered in my room I pressed his neck and gave slaps to him. I gave beatings on his hips, calves from behind with baseball bat kept in our house: My mother had stopped Lalit kumar by holding his legs while jumping from the wall and also gave him slaps. On dated 14-12-2017 in my disclosure statement due to fear I have falsely told that baseball bat and wicket used in playing cricket by which I gave beating to Lalit kumar had hide them at the rented house of my friend Vikas Pandey at Bhiwadi Rajasthan. The truth is that the baseball bat which had broken and wicket used in playing cricket I have hide them under my bed at my residential house. Except me nobody else knew about it. By leading I can get them recover. Supplementary Disclosure statement of accused has been recorded. Upon which accused and witness put their signatures.”

27. Though, in pursuance to the above made disclosure statement, he did through recovery memo, as comprised in Ex.PN/2, rather cause the makings of the above recoveries. Moreover, even though, for want of denials by the accused about the authenticity of his signatures, as carried in the disclosure statement(s) (Supra), rather evidentiary sanctity is assigned to the said disclosure statements. Moreover, even though, since the consequent thereto recoveries, also

recovery witnesses rather has emerged. However, for the reasons to be assigned hereinafter, this Court, is of the firm opinion, that the cause of demise of the deceased, as spelt in post-mortem report, inasmuch as, the deceased suffering his demise from his becoming strangled, and, but leading to his being fatally asphyxiated, is not for reason (supra) related to either the above said disclosure statement(s) nor to the consequent thereto recoveries, as made through recovery memo Ex.PN/2.

28. The reason for making the above made inference also ensues from this Court, making a keen and incisive appraisal of the deposition of PW-13, who has propagated the theory of his last seeing the deceased, and, the accused together.

Analysis of the Deposition of PW-13.

29. PW-13 in his examination-in-chief, has spoken about his alongwith other persons seeing the accused and the deceased together on 10.12.2017, at about 01.30-02.00 A.M., and, that the above fact occurred at the company gate. He also speaks that then, he alongwith the others had noticed that the accused had nabbed the deceased, and, that he had spoken before him, and others, that he had done so, as the accused burgled his house. Moreover, subsequently he also speaks, that on his asking, the accused and the deceased returned from the company gates, and, that in the morning, when he became awakened, qua the dead body of deceased Lalit being found in front of the company gate, but since he has spoken that on the above date and time, of the previous night, the accused did extra judicially confessed before him, that he alongwith his mother had belabored the deceased. Therefore though from the above statement carried in the examination-in-chief of PW-13, the prosecution, has attempted to link the accused with the murder of

the deceased, inasmuch as, PW-13 speaking about his last seeing the accused, and, the deceased together. However, the above made propagation by the prosecution is not acceptable to this Court.

30. The reason for forming the above inference, ensues from the factum, that a reading of his cross examination reveals, that at the relevant time, besides the accused, the deceased, and, PW-13, there were also about 10-15 other persons there, rather available at the Company gate. Therefore, there was an imperative requirement for the prosecution to also lead cogent evidence, through, after asking for leave from the learned trial Judge concerned, for making further re-examinations of PW-13, to ensure that PW-13, steps into the witness box, for his further re-examination. The above recourse could hence ensure the emanation(s) of clarification(s) from him whether all those 10 to 15 persons, who were available at the crime site alongwith deceased Lalit and accused Santosh Tiwari, did also depart alongwith the accused, and the deceased, when the latters, had both departed from the company gate. However, the above recourse was never adopted by the learned Public Prosecutor concerned, whereas, only upon the adoption of the above recourse by the learned Public Prosecutor, and, thereafter on eruption of the above clarification from PW-13, may be evidence may have emerged, whether any of such 10-15 persons, had last seen the accused and deceased together, and or, whether any of the 10-15 persons who departed alongwith the deceased and the accused from the company gates, had not last seen the accused and deceased together, but had last seen one or two of the said 10-15 persons together with the accused. However, the above evidence is grossly amiss, as the above recourse was never adopted nor obviously, the above trite

evidence did emerge. Therefore, the effect, of want of emergence(s) of the above trite evidence, is that, thereupon, one or two amongst the 10 to 15 persons, who departed alongwith accused and the deceased from the company gate, may have committed the murder of the deceased. If so, the benefit of doubt is to be assigned to the accused. An immense fortification to the above inference, becomes sparked from the factum, that the body of the deceased was not recovered at the instance of the accused, but it was recovered at an open place, in front of the company gate, and, recovery of the body of the deceased from an open place, resulted in the registration of an FIR. Therefore, if the accused had committed the murder of the deceased, he would definitely have not left the body of the deceased at an open place, but could have taken to hide or conceal the same at a site or a place, about which he had exclusive knowledge, and, to which site he would have but after his confessing his guilt in committing the murder of the deceased, rather led the investigating officer concerned. Thus, from the above inference, a further inference is marshaled that the confession of guilt, as made by the accused in his disclosure statement about his strangulating the deceased also becomes further completely enfeebled.

31. Since the above did not happen, therefore, the conclusion is that, the confession of guilt, as made by the accused, in his signed disclosure statement, even if it has some efficacy, is squarely related to his confessing before PW-13, about his belaboring the accused, and, it but for the above reasons, does not relate to his committing the murder of the deceased nor also the theory of PW-13 last seeing the accused and the deceased together, is an able link, to establish the guilt of the accused in his murdering the deceased, but is also only an incriminatory

link in respect of his belaboring the deceased, especially when at the relevant time, both the accused and the deceased though were together, but yet when for reason (supra), both left the company gate in the company of 10 to 15 persons, who were also then available at the crime site. Moreover, since the names of the said 10-15 persons have not been revealed by PW-13, nor such persons did thereafter stepped into the witness box, on an affirmative order being made on the prosecutor's application, cast under Section 311 Cr.P.C., and, nor obviously none spoke that one or duo of them, did ever last seeing the accused and the deceased together. Therefore, the theory of last seeing together of the deceased and the accused, as spoken by PW-13, does not lead, to a conclusion that the charge drawn against the accused, for an offence punishable under Section 302/34 IPC, is proven, but only leads to a conclusion that the accused is guilty for commission of offences punishable under Sections 323 and 325 IPC, as the ante mortem injuries were delivered on the body of the deceased, through users' thereons of the recovered weapon(s) of offence. Conspicuously also when all the links in the chain of incriminatory circumstances, as erected qua a charge drawn under Section 302/34 IPC, are but not efficaciously proven, whereas, all of them were required to be efficaciously proven against the accused.

32. Furthermore, the recoveries, as made through disclosure statement(s) are related only to the ante mortem injuries, as spelt (Supra) in the post mortem report. They do not for reasons (supra) relate to the cause of demise of the deceased, which has been opined (supra), rather to arise from the deceased becoming strangled leading to his becoming fatally asphyxiated.

Summarization of Principles.

1. In a case rested upon circumstantial evidence, the prosecution has to ably prove all the incriminatory links in the chain of circumstances. In case any of the potent links in the chain of circumstances remain not cogently proven, thereupon, the benefit of doubt is to be assigned to the accused.

2. If one of the prosecution witnesses propagates the theory of last seeing of the accused and the deceased together, but if the said propagated theory loses its probative vigor, on account of evidence emerging that both the accused and the deceased, were not last seen together, but other persons alongwith the accused and the deceased, did also depart along with them hence from the relevant place. Therefore, unless further evidence emerges, in the shape of one or the other of those persons, who last departed in the company of the deceased and the accused, rather suggesting that they had last seen the accused and the deceased together, that a verdict of acquittal can be pronounced upon the convict. However, in a situation, where there is no evidence in the shape of any of the persons who departed together from the relevant place alongwith the accused, and the deceased, rather stepping into the witness box, and, nor theirs making speakings that one or two of them, had last seen the accused and the deceased together, thereupon, too a verdict of acquittal may also be pronounced qua the accused.

3. In case, there are two disclosure statement(s) and both are contradictory. Furthermore, when there is a discrepancy inter-se the inquest report and the post mortem report, thereupon, the inter-se contradictions inter-se two disclosure statement(s), gets magnified, whereupon, much room for doubt opens qua the veracity of the

prosecution case, or becomes aroused, whereupon, the benefit of doubt is to be assigned to the accused.

Final order by this Court.

33. Consequently, there is merit in the appeal and the same is partly allowed. The convict is acquitted in respect of charges drawn against him for an offence punishable under Section 302 read with Section 34, of the IPC. The impugned verdict of conviction, and, the consequent therewith sentence(s) (supra), as become imposed upon the convict-appellant, by the learned convicting Court, also are set aside.

34. However, this Court finds/holds the accused-convict (supra), guilty for offences punishable under Sections 323/325 IPC, for belaboring the deceased Lalit, and, delivering ante mortem injuries, on the body of the deceased, through users' thereon of the recovered weapon(s) of offence.

35. Further, for deciding/pronouncing the quantum of sentence, upon the convict/appellant for an offence punishable under Sections 323/325 IPC, since as per custody certificate, dated 26.07.2021, the convict has undergone a total sentence of 4 years, 8 months and 9 days including remissions, as on that date. Therefore, the sentence qua commission of offences (supra), is pronounced to be the period already spent by the convict/appellant in prison. Moreover, the convict is also sentenced to a fine of Rs. 25,000/- and in default thereof, he is sentenced to further undergo for a term of three months.

36. The convict is ordered to be set at liberty, if not required in any other case but only subject to his depositing the fine amount.

37. The case property, if any, be dealt with in accordance with law, after the expiry of period of limitation for the filing of an appeal.

The records be forthwith sent down.

38. Since the main case itself has been decided, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

10.02.2023

kavneet singh

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