

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

600

**(i) CRA-D-484-2019 (O&M)
Date of Decision: 06.02.2023**

SIMARJIT SINGH @ TINKU

-Appellant

Versus

STATE OF PUNJAB

-Respondent

**(ii) CRA-D-640-2019 (O&M)
Date of Decision: 06.02.2023**

SONU MASIH

-Appellant

Versus

STATE OF PUNJAB

-Respondent

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

Argued by: Ms. Nidhi Garg, Advocate
for the appellant in CRA-D-484-2019.

Mr. Hitesh Malik, Advocate
for the appellant in CRA-D-640-2019.

Ms. Monika Jalota, Sr. DAG, Punjab.

KULDEEP TIWARI, J.

1. Both these appeals arise out of the same facts and a common judgment dated 02.04.2019, therefore, they are being taken together and decided accordingly.

2. The present appeals have been directed at the instance of appellants/accused, against the verdict of conviction, and, order of sentence dated 02.04.2019, rendered by the learned Additional Sessions

Judge, Amritsar, in case FIR No.33 dated 23.03.2016, registered under Sections 302/201/472/34 of IPC, at Police Station Majitha, District Amritsar, whereby, they have been convicted for the offences punishable under Sections 302 read with Section 34, and, 201 of IPC, and, have been awarded sentence as under:-

Offence under Section	Period (R.I.)	Fine	In Default
302 read with Section 34 of IPC	R.I. for life	Rs.10,000/-	R.I. for 6 months
201 of IPC	R.I. for 7 years	Rs.5,000/-	R.I. for 5 months

Both these sentences were ordered to run concurrently.

FACTUAL MATRIX

3. The prosecution story unfolds from the statement (Ex.P1) of the complainant Usha Kumari (PW1) (hereinafter referred to as the 'complainant'), which was recorded by Insp./S.H.O., Inderjit Singh (PW13) (hereinafter referred to as the 'Investigation Officer'). For ready reference, the statement (Ex.P1) of the complainant is reproduced hereunder:-

“Stated that I am resident of above-noted address and earn my livelihood by doing labour work. My husband died in 2011. I have 4 daughters and 2 sons. My 4 daughters are elder, and, out of them, my youngest daughter Rekha Kumari was aged about 22 years, who was married to Simarjit Singh @ Tinku s/o Roor Singh, Mazbi Sikh r/o Abadi Rorhi, Ward No.1, Majitha, about 4 years back. Immediately after marriage, my son-in-law Simarjit Singh @ Tinku suspected the character of my daughter and used to give beating to my daughter and teased her. My daughter Rekha Kumari has a son,

namely, Diljaan Singh, aged about 2 years. My son-in-law usually used to oust my daughter from her matrimonial house after giving her beatings and every time I got effected compromise between them, with the intervention of respectables of the Village, and, sent her back to her in-laws house. Now, since 19.3.2016, my daughter Rekha has been missing from her in-laws' house and when I asked my son-in-law about whereabouts of my daughter many times, he replied that he does not know where is she. I am fully confident that my daughter Rekha Kumari has been killed by my son-in-law Simarjit Singh @ Tinku, and, he disposed of her dead body. I was coming to inform police, and, you have met me. Action be taken.”

On the basis of the above statement, the present FIR was registered against the appellant/accused Simarjit Singh @ Tinku.

INVESTIGATION PROCEEDINGS

4. After registration of the FIR, the Investigation Officer commenced the investigation and started searching for the accused. On 24.03.2016, upon receipt of a secret information, the appellant/accused Simarjit Singh @ Tinku was arrested. Upon interrogation, he suffered a disclosure statement (Ex.P9), on 24.03.2016, wherein, he confessed his crime and also disclosed the role of co-appellant/accused Sonu Masih, and, in pursuance thereof, he got recovered the dead body of his wife Rekha Kumari, which was buried near a drain, in Village Maddipur. The recovered dead body was taken into possession vide recovery memo (Ex.P10), and, the recovery was witnessed by ASI Jasbir Singh, ASI Pal

Singh, and, Joginderpal Singh, Naib Tehsildar, Majitha. The dead body was identified by Lajwant Singh and Gurcharan Singh. The dead body was sent for post mortem examination. On the same day, i.e. 24.03.2016, the Investigation Officer received another secret information, whereupon, the co-appellant/accused Sonu Masih was also arrested. Subsequently, on 26.03.2016, the appellant/accused Simarjit Singh @ Tinku suffered another disclosure statement (Ex.P16), and, in pursuance thereof, he led the police party to his residence and got recovered the motorcycle bearing No.PB-02-CH-4928, which was used for transporting the dead body. The recovered motorcycle was taken into possession vide recovery memo (Ex.P18). On the same day, i.e. 26.03.2016, the co-appellant/accused Sonu Masih also suffered a disclosure statement (Ex.P17), and pursuant thereto, he led the police party to the house of appellant/accused Simarjit Singh @ Tinku, and, got recovered the spade (iron Kahi), which was used for digging the pit, wherein the dead body was buried. The recovered spade was seized vide memo (Ex.P19). The rough site plan was recovered. The statements of witnesses, under Section 161 Cr.P.C., were recovered. After completion of the investigation, the Final Report, under Section 173 Cr.P.C., was filed before the concerned Illaqa Magistrate. Finding the case exclusively triable by the court of Sessions, the learned Illaqa Magistrate committed the case to the court of Sessions vide committal order dated 09.09.2016.

PROCEEDINGS OF TRIAL COURT

5. Finding a prima facie case, both the appellants/accused were

charge-sheeted for commission of offences punishable under Sections 302, 201, and, 472 of IPC. The prosecution, in order to prove its case, examined as many as 14 witnesses. The statements of both the appellants/accused, under Section 313 Cr.P.C., were recorded, wherein, they pleaded innocence and alleged false implication while denying all the allegations levelled against them.

6. The learned trial Court, after completion of trial, recorded the verdict of conviction, and, order of sentence dated 02.04.2019, whereby, both the appellants/accused have been convicted for the charges framed against them under Sections 302 read with Section 34, and, 201 of IPC.

SUBMISSIONS BY COUNSELS FOR THE PARTIES

7. The learned counsel for the appellant/accused Simarjit Singh @ Tinku argued that the entire case is based upon circumstantial evidence, and, the prosecution has not been able to prove all the links in chain of circumstances, so as to conclusively establish the guilt of the appellant/accused. Therefore, the appellant/accused deserves to be acquitted by extending him the benefit of doubt. She further argued that the alleged recoveries, as shown to have been effected at the instance of the appellant/accused, do not stand cogently proved, as required by law. The learned Trial Court has convicted the appellant/accused merely on the basis of conjectures and surmises. Furthermore, by referring to certain contradictions in the testimonies of complainant Usha Kumari (PW1), Gurcharan Singh (PW2), and, Sukhwinder Kaur (PW3), she argued that

such contradictions are fatal to the prosecution's case and accordingly, has posed a challenge to the drawing of a verdict of conviction qua appellant/accused, it being unsustainable in the eyes of law.

8. The learned counsel appearing on behalf of the co-appellant/accused Sonu Masih argued that he has been roped in the present case solely on the basis of disclosure statement of co-appellant/accused Simarjit Singh @ Tinku. The dead body was got recovered by Simarjit Singh @ Tinku pursuant to his disclosure statement and not by him. He further argued that even the disclosure statement of the appellant/accused, allegedly made by him, is not admissible in the eyes of law, as no incriminating material was discovered in pursuance thereof, which could connect him with the commission of the present crime. Even otherwise, the recovery, as effected subsequent to disclosure statement of the appellant/accused, is of a spade, which cannot in any manner establish his guilt.

9. Per contra, the learned State counsel has relied upon the recoveries, as effected at the instance of both the appellants/accused, pursuant to their respective disclosure statements, to support the verdict of conviction. She also placed reliance upon the statements of complainant Usha Kumari (PW1), Gurcharan Singh (PW2), and, Sukhwinder Kaur (PW3), in order to prove the purported motive behind commission of the present crime, as well as upon the statement of Ashok Kumar (PW10), to prove the involvement of both the appellants/accused. Further, by referring to the respective disclosure statements of both the

appellants/accused as well as the recovery memo of dead body (Ex.P10), she argued that the deceased had died an unnatural death as there were injury marks on her face and neck. Lastly, she argued that the entire links in the chain of circumstances stands fully established and proved by the prosecution, and, there is no perversity or illegality in the judgment of conviction, as recorded by the learned trial Court, which may not warrant any interference.

10. The present case is based upon circumstantial evidence, therefore, we have to examine all the links in the chain of circumstances, which have been strived to be proved by the prosecution, to conclusively bring home the guilt of the appellants/accused. The Supreme Court, in its judgment passed in ***Sharad Birdhichand Sarda Vs. State of Maharashtra, (1984) 4 SCC 116***, has laid down five cardinal principles, which are essential for recording a finding of conviction, in a case based upon circumstantial evidence, principles whereof are extracted hereunder:-

“153. xxx xxx xxx

(1) The circumstances from which the conclusion of guilt is to be drawn should be fully established.

xxx xxx xxx

(2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

(3) The circumstances should be of a conclusive nature and tendency.

(4) They should exclude every possible hypothesis except the one to be proved, and

(5) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

On the touchstone of above settled legal proposition, let us examine all the circumstantial evidences, as led by the prosecution.

**(I) DISCLOSURE STATEMENTS AND RECOVERIES
EFFECTED IN PURSUANCE THEREOF**

11. The prosecution has examined the Investigation Officer of the present case as PW13, who deposed with regard to receipt of secret information on 24.03.2016, whereupon, the appellant-accused Simarjit Singh @ Tinku was arrested. During interrogation, the appellant-accused Simarjit Singh @ Tinku suffered a disclosure statement (Ex.P9), on 24.03.2016, wherein, he confessed to have murdered his wife Rekha Kumari on 19.03.2016 by strangulating her, and thereafter, he along with co-appellant/accused Sonu Masih carried her dead body on a motorcycle to Village Maddipur, where they dug a pit near a drain and buried her dead body therein. He further disclosed that only he and the co-appellant/accused knows about the place, where the dead body was buried, and, he offered to get demarcated the said place. In pursuance of such disclosure statement (Ex.P9), he led the police party and got recovered the dead body of his wife Rekha Kumari, which was buried near a drain, in Village Maddipur. The entire procedure of recovery was videographed, and, the recovered dead body was taken into possession vide recovery memo (Ex.P10), which was witnessed by ASI Jasbir Singh

and ASI Pal Singh, besides, an independent witness, i.e. Joginderpal Singh, Naib Tehsildar, Majitha, who was examined as PW14. The dead body was identified by Lajwant Singh and Gurcharan Singh.

12. The Investigation Officer (PW13) further deposed that on the same day, he received another secret information and thereupon, the co-appellant/accused Sonu Masih was also arrested.

13. During the course of interrogation, on 26.03.2016, the appellant-accused Simarjit Singh @ Tinku suffered another disclosure statement (Ex.P16), wherein, he also implicated co-appellant/accused Sonu Masih for commission of murder of Rekha Kumari, and, disclosed that on 19.03.2016, he, with common intention of his cousin, i.e. co-appellant/accused Sonu Masih, murdered his wife Rekha Kumari by strangulating her and thereafter, carried her body on a motorcycle to Village Maddipur for its disposal. He further disclosed that he can get recovered the motorcycle, which was used in transportation of the dead body. In pursuance of such disclosure statement (Ex.P16), he led the police party to his residence and got recovered the motorcycle bearing No.PB-02-CH-4928, which was taken into possession vide recovery memo (Ex.P18).

14. On the same day, i.e. 26.03.2016, the co-appellant/accused Sonu Masih also suffered a disclosure statement (Ex.P17), wherein, he made disclosure on the same lines of appellant/accused Simarjit Singh @ Tinku qua murder of Rekha Kumari, with common intention, and, subsequent transportation and burial of the dead body near a drain, in

Village Maddipur. He also offered to get the spade (Kahi) recovered, which was used for digging the pit, and, pursuance thereto, he led the police party to the house of appellant/accused Simarjit Singh @ Tinku, and, got the spade (iron Kahi) recovered, which was seized vide memo (Ex.P19).

(II) MEDICAL EVIDENCE

15. To prove the cause of death of the deceased, the prosecution has examined Dr. Satnam Singh Gill, Medical Officer, Civil Hospital, Amritsar, as PW4. He stated that on 25.03.2016, upon an application (Ex.P5) being moved by the Investigation Officer for conducting the post-mortem of the dead body, Dr. Rajinder Arora, S.M.O., Civil Hospital, Amritsar, constituted a Board of Doctors for the said purpose, which comprised him, Dr. Maninder Singh and Dr. Nisha Bhagat. He proved on record the Post Mortem Report as Ex.P6. Upon conducting the post-mortem on the dead body, the following observations were recorded by the Board of Doctors:-

“The length of the body was 62 inches. It was dead body of moderately nourished female, wearing blue lining shirt, orange payjama and blue underwear. Dried mud was present all over the body. Rigor mortis was absent. Postmortem staining was absent. Upon examination of dead body, we found that reddish brown frothy fluid coming out from oral cavity. No mud was present in oral cavity. Greenish discoloration present all over the abdomen.

On dissection of mouth, pharynx and esophagus--
Reddish brown frothy fluid coming out from oral cavity.

No mud was present in oral cavity. On dissection of thorax-- Greenish discoloration was present all over the chest and both lungs and heart sent for histopathological examination. No blood was present in the heart.

On dissection of abdomen--Small intestine and large intestine were sent for chemical examination. Liver, spleen, both kidneys were sent for chemical examination and histopathological examination. Uterus was sent for histopathological examination.

The probable time that elapsed between injuries and death was to be declared later. The probable duration between death and post-mortem examination was within one week.”

He further stated that no poison was detected upon examination of the chemical examiner’s report, and, the histopathology report. According to the histopathology report, the deceased was pregnant and uterus showed foetus of 14.5 cm length. However, the cause of death could not be ascertained, even from the chemical examiner’s report, and, the histopathology report.

16. This Court has also examined the Post Mortem Report (Ex.P6), perusal whereof depicts that, no definite cause for death of the deceased was spelt out therein by the doctors, owing to lapse of time. However, from the aforesaid observations recorded by board of doctors, as well as, an observation recorded in the Post Mortem Report “*Peripheral Edema around neck present. Colour of the skin around neck is greenish black*”, this Court can safely conclude that the deceased had died an unnatural death. Also, what further strengthens the factum of her suffering an unnatural death, is the recovery of her dead body, which was

buried near a drain, by the appellants/accused.

(III) MOTIVE

17. To discharge the onus of proving the motive behind commission of the present crime, the prosecution has examined complainant Usha Kumari as PW1, who proved on record her statement (Ex.P1), based whereupon, the present FIR was registered. She stated that her daughter Rekha (since deceased) was married to the appellant-accused Simarjit Singh @ Tinku four years back, and, a son was born out of their wedlock. However, after the marriage, the appellant-accused Simarjit Singh @ Tinku started beating her daughter, and, he also used to oust her from the matrimonial house, as he doubted her character. Every time, she used to send her daughter back to the matrimonial house with the intervention of respectables. However, in March, 2016, she came to know that her daughter went missing from the matrimonial house, whereupon, she enquired about her from the appellant-accused Simarjit Singh @ Tinku, but, he did not give any satisfactory reply. Thereupon, she searched her daughter at her own level, however, could not get to know anything about her. Finally, being fully confident about involvement of the appellant-accused Simarjit Singh @ Tinku behind the missing of her daughter, she got lodged the present FIR. After about three days of lodging the FIR, the appellant-accused Simarjit Singh @ Tinku got recovered the dead body of her daughter, which was buried near a drain, in Village Maddipur. The defence counsel put her to incisive and lengthy cross-examination, wherein, it surfaced that her daughter, during

her lifetime, had moved a complaint against the appellant-accused Simarjit Singh @ Tinku, at the Police Post, situated at Dadupura Road, and thereafter, a compromise was arrived at between them.

18. The prosecution has also examined Gurcharan Singh, uncle of deceased Rekha, as PW2, who also deposed on the same lines as of complainant Usha Kumari (PW1), regarding the deceased being given beatings, and, being ousted from the matrimonial house by appellant-accused Simarjit Singh @ Tinku, because of suspicion over her character. Even during his cross-examination, he stated that quarrels between the deceased and the appellant-accused Simarjit Singh @ Tinku took place in his presence also, and, he was many a time instrumental in getting compromise effected. However, during cross-examination, he also admitted that the deceased had no dispute, whatsoever, with the co-appellant/accused Sonu Masih.

19. The next witness examined by the prosecution for the aforesaid purpose is Sukhwinder Kaur, PW3, who also reiterated the version as became narrated in the testimonies of complainant Usha Kumari (PW1) and Gurcharan Singh (PW2). In addition thereto, she also specifically stated that the appellant-accused Simarjit Singh @ Tinku had, many a time, threatened to kill the deceased. When she was put to cross-examination by the defence counsel, nothing material could be elicited therefrom to impeach the veracity of her testimony.

20. Therefore, collectively analyzing the statements of all the aforesaid three witnesses, this Court does not find any material

contradictions therein, and, it can also safely be concluded that their statements are credible, and, worthy to be placed reliance upon. The motive against the appellant-accused Simarjit Singh @ Tinku, behind commission of the present crime, stands categorically proved by the aforesaid statements, however, no motive, whatsoever, becomes assigned therein, to the co-appellant/accused Sonu Masih.

(IV) LAST SEEN ALIVE

21. The most important witness, for this purpose, as examined by the prosecution is Ashok Kumar (PW10), who stated that on 19.03.2016, at about 08:30 p.m., while returning to Amritsar from Fatehgarh Churian, when he reached near Bus Stand, Majitha, he saw both the appellants-accused going on a motorcycle, and, the deceased was sitting in between them on the motorcycle, but, she was unconscious at that time. His examination-in-chief becomes extracted hereunder:-

“I have been doing business of property dealer. I am having good relations with the family of deceased Rekha, who was married with Simarjit Singh @ Tinku, accused present in the court. On 19.3.2016, at about 8.30 PM, I was coming back from Fatehgarh Churian to Amritsar. When I reached near Bus Stand Majitha, I saw Simarjit Singh and Sonu Masih, both accused present in the court, going on motor-cycle. Rekha wife of Simarjit Singh was also seen by me while sitting in between both accused on the motor-cycle, but, she was not conscious at that time. Upon my asking, Simarjit Singh told me that they are taking his wife Rekha to Bajwa Hospital, Majitha, as she was not feeling well. Later on, I came to know that both accused present in the court have

committed murder of Rekha and had buried her dead body somewhere. Thereafter, I approached the police and got recorded my statement.”

During cross-examination, he stated that he had met the appellant-accused Simarjit Singh @ Tinku along with the deceased many times. He further deposed that though, the deceased was not his relative, yet, deceased was known to him as her family members used to do whitewash at his residence, which makes it clear that he was familiar to them.

22. Therefore, from the testimony of Ashok Kumar (PW10), it stands amply proved that both the appellants/accused were last seen carrying the deceased, on a motorcycle, after killing her. It is not the case of the prosecution that the deceased was last seen alive in the company of both the appellants/accused and was killed thereafter, rather, it is the case of the prosecution that after killing her, she was carried by both the appellants/accused, on a motorcycle, when they were sighted by Ashok Kumar (PW10).

REASONS

23. We have examined the entire record of the learned trial Court as well as the impugned verdict of conviction. We find that the learned trial Court has rightly convicted the appellant/accused Simarjit Singh @ Tinku for committing the murder of his wife Rekha Kumari, however, we do not find any material against the co-appellant/accused Sonu Masih regarding his involvement in the murder of deceased Rekha Kumari.

Nevertheless, there is enough evidence available on record, which establishes that the co-appellant/accused Sonu Masih helped his cousin, i.e. appellant/accused Simarjit Singh, in transporting and burying the dead body.

24. Let us give individual findings for our forming the above opinion qua both the appellants/accused in the present case.

25. Firstly, let us deal with the role of appellant/accused Simarjit Singh @ Tinku, who had subsequent to his arrest, made a disclosure statement (Ex.P9), on 24.03.2016, wherein, he confessed to have murdered his wife Rekha Kumari on 19.03.2016 by strangulating her, and thereafter, he along with co-appellant/accused Sonu Masih carried her dead body on a motorcycle to Village Maddipur, where they buried her dead body near a drain. In pursuance of his disclosure statement (Ex.P9), he got recovered the dead body of his wife Rekha Kumari, which was buried near a drain, in Village Maddipur. The entire procedure of recovery was videographed, and, it was also witnessed by an independent witness, i.e. Joginderpal Singh, Naib Tehsildar, Majitha, who was examined as PW14 by the prosecution. Therefore, no room for any doubt is left regarding the genuineness of the recovery proceedings of the dead body. Thereafter, on 26.03.2016, he made another disclosure statement (Ex.P16), wherein, he disclosed that on 19.03.2016, he, with common intention of his cousin, i.e. co-appellant/accused Sonu Masih, murdered his wife Rekha Kumari by strangulating her and thereafter, carried her dead body on a motorcycle to Village Maddipur for its disposal. In

pursuance of such disclosure statement (Ex.P16), he got recovered the motorcycle bearing No.PB-02-CH-4928.

26. As already discussed above in detail, the motive against the appellant/accused Simarjit Singh @ Tinku, behind commission of murder of his wife, also stands proved from the testimonies of complainant Usha Kumar (PW1), Gurcharan Singh (PW2), and, Sukhwinder Kaur (PW3), who deposed therein that he used to give beatings to the deceased and also used to oust her from the matrimonial house, as he suspected about her character.

27. Furthermore, the case of the prosecution, against the appellant/accused Simarjit Singh @ Tinku, also gains strength from the un-impeached testimony of Ashok Kumar (PW10), who had, for the last time, seen him and the co-appellant/appellant Sonu Masih taking the deceased somewhere, in an unconscious condition, on a motorcycle. Therefore, all the links, in the chain of circumstances, which are proved on record by the prosecution, beyond any reasonable doubt, leaves no doubt that Rekha Kumari was killed by appellant/accused Simarjit Singh @ Tinku.

28. Now, let us advert to the role of the co-appellant/accused Sonu Masih, who had also upon his arrest, made a disclosure statement (Ex.P17), wherein, he made disclosure on the same lines as made by the appellant/accused Simarjit Singh @ Tinku qua murder of Rekha Kumari, with common intention, and, burial of the dead body. Pursuant to such disclosure statement, he got recovered a spade (iron Kahi), allegedly used

for digging the pit, wherein, the dead body was buried, and, that is the only recovery effected from him. Except such disclosure statement, there is no evidence available on record, to connect him with the commission of the present crime.

29. Now, we consider it apt to evaluate the evidentiary value of the so-called disclosure statement (Ex.P17), as made by the appellant/accused Sonu Masih. A perusal of this disclosure statement, and, the recovery effected pursuant thereto, shows that the only admissible part of this statement, is his disclosure about his concealing the spade, which was later got recovered by him. The rest of the contents of his disclosure statement are directly hit by provisions of Section 25 of the Indian Evidence Act (hereinafter referred to as 'Act'). Normally, presumption of falsity is attached to the confession made under circumstances, as provided in Sections 24 and 25 of the Act. Sections 24 and 25 of the Act prescribe the circumstances, which make a confession inadmissible. However, exception to these provisions is prescribed in Section 26 of the Act, according to which, a confession made by any person whilst being in custody of a Police Officer can be proved against such person, if such confession is made in the immediate presence of a Magistrate. Section 27 of the Act appears to be a proviso to Sections, 24, 25 and 26 of the Act and makes admissible so much part of the statement of accused made whilst being in police custody, which leads to discovery of facts, as deposed by him, and, link the same with the crime. For ready reference, Sections 25, 26, and, 27 of the Act, are reproduced as under:-

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

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

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

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

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

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

A conjoint reading of all these three Sections clearly depicts that a confession made before a police officer, which is otherwise inadmissible, however, becomes admissible in evidence when the information given by accused to the Investigation Officer concerned does lead to discovery of a fact, thereupon. But, only that portion of information can be proved, which relates, distinctively or strictly, to the facts discovered. Rest of the statement would be treated as confession made before police, consequently, hit by provision of Section 25 of the Act.

30. On the touchstone of the above discussed legal provisions, this Court finds that the disclosure statement made by appellant/accused Sonu Masih, before police, is only admissible to the extent that he led the

Investigation Officer to the place where he had hidden the spade and got it recovered therefrom, whereas, rest of the statement is inadmissible, as hit by provisions of Section 25 of the Act.

31. The recovery which was effected from the appellant/accused Sonu Masih is only linked and attached to the fact that it was used for burying the dead body, and, that tool was not used in commission of murder.

32. Also, no motive has been assigned or proved against the appellant/accused Sonu Masih. In fact, Gurcharan Singh (PW2), who was examined by the prosecution as one of the witnesses to prove the motive, has categorically admitted that the appellant/accused Sonu Masih had no dispute whatsoever with the deceased.

33. The only admissible evidence against the appellant/accused Sonu Masih is the testimony of Ashok Kumar (PW10), who had lastly seen him and the co-appellant/accused Simarjit Singh with the deceased. However, as already elaborately discussed above, it is nowhere the case of the prosecution that Ashok Kumar (PW10) had last seen Rekha Kumari alive in the company of both the appellants/accused, rather, the case of the prosecution is that, after killing Rekha Kumari, her dead body was transported by both the appellants/accused, on a motorcycle, and during such transportation, they were sighted by Ashok Kumar (PW10). The theory of “last seen alive” has been elaborately discussed in numerous judgments rendered by Supreme Court and this Court. Mere invocation of last seen theory, without there being any other

corroborative evidence establishing all the requisite links in the chain of circumstances, would not *ipso facto* shift the burden upon accused. In the judgment passed in case titled ***Surajdeo Mahto and anr. Vs. State of Bihar, AIR 2021 SC 3643***, the Hon'ble Supreme Court has held as under:-

29. *The case of the prosecution in the present case heavily banks upon the principle of 'Last seen theory'. Briefly put, the last seen theory is applied where the time interval between the point of when the accused and the deceased were last seen together, and when the victim is found dead, is so small that the possibility of any other person other than the accused being the perpetrator of crime becomes impossible. Elaborating on the principle of "last seen alive", a 3-judge bench of this Court in the case of Satpal v. State of Haryana, (2018) 6 SCC 610 has, however, cautioned that unless the fact of last seen is corroborated by some other evidence, the fact that the deceased was last seen in the vicinity of the accused, would by itself, only be a weak kind of evidence. The Court further held:*

".....Succinctly stated., it may be a weak kind of evidence by itself to found conviction upon the same singularly. But when it is coupled with other circumstances such as the time when the deceased was last seen with the accused, and the recovery of the corpse being in very close proximity of time, the accused owes an explanation under Section 106 of the Evidence Act with regard to the circumstances under which death may have taken place. If the accused offers no explanation, or furnishes a wrong explanation, absconds, motive is established, and there is corroborative evidence available inter alia in

the form of recovery or otherwise forming a chain of circumstances leading to the only inference for guilt of the accused, incompatible with any possible hypothesis of innocence, conviction can be based on the same. If there be any doubt or break in the link of chain of circumstances, the benefit of doubt must go to the accused. Each case will therefore have to be examined on its own facts for invocation of the doctrine."

30. *We may hasten to clarify that the fact of last seen should not be weighed in isolation or be segregated from the other evidence led by the prosecution. The last seen theory should rather be applied taking into account the case of the prosecution in its entirety. Hence, the Courts have to not only consider the factum of last seen, but also have to keep in mind the circumstances that preceded and followed from the point of the deceased being so last seen in the presence of the accused."*

Also, in the judgment passed in case titled ***Reena Hazarika Vs. State of Assam, (2019) 13 SCC 289***, the Hon'ble Supreme Court has held as under:-

"8. The essentials of circumstantial evidence stand well established by precedents and we do not consider it necessary to reiterate the same and burden the order unnecessarily. Suffice it to observe that in a case of circumstantial evidence the prosecution is required to establish the continuity in the links of the chain of circumstances, so as to lead to the only and inescapable conclusion of the accused being the assailant, inconsistent or incompatible with the possibility of any other hypothesis compatible with the innocence of the accused. Mere invocation of the last seen theory, sans

the facts and evidence in a case, will not suffice to shift the onus upon the accused under Section 106 of the Evidence Act, 1872 unless the prosecution first establishes a prima facie case. If the links in the chain of circumstances itself are not complete, and the prosecution is unable to establish a prima facie case, leaving open the possibility that the occurrence may have taken place in some other manner, the onus will not shift to the accused, and the benefit of doubt will have to be given.”

In the present case, the appellant/accused Sonu Masih was only seen carrying the deceased, on a motorcycle, along with the co-appellant/accused Simarjit Singh @ Tinku, and, apart from it or the disclosure statement, there is no other circumstantial evidence, either alleged or proved on record against him, which is capable of proving his involvement in killing Rekha Kumari, with common intention of the co-appellant/accused Simarjit Singh @ Tinku. As such, the onus does not shift upon the accused, rather, it stays upon the prosecution to prove his guilt, whereas, as discussed above, the prosecution has failed to do so. Therefore, at the most, the only role attributable to appellant/accused Sonu Masih is his involvement with the co-appellant/accused Simarjit Singh @ Tinku in burying the dead body, in order to conceal the crime of co-appellant/accused. He was an abettor with the principal accused in concealment of the dead body, therefore, attracts qua him the charge drawn for an offence punishable under Section 201 of the IPC. Conspicuously also, the above penal section relates not to the stage of the crime taking place, but, it relates to a stage when the crime is completed,

and, the accused concerned aids or facilitates the principal accused to dispense with or conceal the dead body through burying the same in a pit. As such, considering the totality of the facts and circumstances, the prosecution has miserably failed to bring home the guilt of appellant/accused Sonu Masih, qua the charge framed against him under Section 302 read with Section 34 of IPC. It would be apt to record here that the trial Court has not even framed the charge under Section 34 of IPC. However, we are not examining, at this place, the legality of the judgment of conviction, as recorded by the learned trial Court, under Section 302 read with Section 34 of IPC, in the absence of a specific charge being framed under Section 34 of IPC.

34. Therefore, in the absence of any convincing evidence available on record to connect the appellant/accused Sonu Masih with the commission of murder of the deceased, we deem it appropriate to set aside the judgment of conviction, inasmuch as it pertains to conviction of appellant/accused Sonu Masih, under Section 302 read with Section 34 of IPC, while maintaining his conviction under Section 201 of IPC, for lending a helping hand to the co-appellant/accused Simarjit Singh in disposing off the dead body.

CONCLUSION

35. In view of the aforesaid discussion, we do not find any merit in the appeal, bearing No. CRA-D-484-2019, preferred by the appellant-accused Simarjit Singh @ Tinku and accordingly, the same is hereby **dismissed**. However, the appeal, bearing No. CRA-D-640-2019,

preferred by the co-appellant/accused Sonu Masih is **partly allowed** to the extent that his conviction, under Section 302 read with Section 34 of IPC, is set aside, but, his conviction under Section 201 of IPC is maintained and upheld.

36. The appellants/accused, if not in custody, shall forthwith be taken into custody to honour rest of the sentence(s) imposed.

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

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

06.02.2023
devinder

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