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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 18th January, 2023Decided on: 11th May, 2023

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CRL.A.134/2019**PAWAN KUMAR**

..... Appellant

Represented by: Mr. Sunil Chaudhary, Adv.
(DHCLSC)

versus

STATE

..... Respondent

Represented by: Mr Laksh Khanna, APP for the State
SI Suresh Kumar and Nitin PS new
Usman Pur.**CORAM:****HON'BLE MS. JUSTICE MUKTA GUPTA****HON'BLE MS. JUSTICE POONAM A. BAMBA****MUKTA GUPTA, J.**

1. By this appeal, the appellant challenges the judgment of learned Trial Court dated 19th September, 2018 whereby the appellant was held guilty for murder of his wife Meena ("deceased") by slitting her throat with a knife and also the order on sentence dated 26th September, 2018 whereby the appellant was directed to undergo rigorous imprisonment for life along with fine of ₹20,000/- in default whereof, rigorous imprisonment for 1 year for offence punishable under Section 302 of the Indian Penal Code, 1860 ("IPC").

2. Case of the prosecution is that on 12th April, 2014, at about 4.00 AM, the appellant made a call to the police from mobile No.8750988081 and informed that "*mene apni aurot ka murder kar diya hai jiska naam Meena*

hai” which was recorded in the PCR form (Ex.PW-4/A), pursuant to which, ASI Garib Das (PW-22) along with staff reached Gali No.15, Sudamapuri and started searching for house as the house number was not provided by the caller/appellant. Thereafter, ASI Garib Das talked to the caller/ appellant and when he reached house No. C-44/300, he was asked to come inside and on the second floor of the house, ASI Garib Das met the appellant and also found dead body of a female lying in a naked condition. Appellant produced the knife with which he stated to have committed the murder of his wife/ deceased from under the pillow of his bed which was seized (Ex.PW-29/B). Crime team was called at the spot. IO/Insp. Mahavir Singh (PW-31) prepared the *rukka* and got the FIR No. 343/2014 dated 12th April, 2014 under Section 302 IPC at PS New Usmanpur (Ex.PW-12/B) registered. Dead body was sent for post mortem examination to GTB Hospital and the appellant was arrested by the IO/ Insp. Mahavir Singh (PW-31).

3. Dr. Neha Gupta (PW-15) at the GTB Hospital conducted the post mortem examination on the deceased and tendered her report (Ex.PW-15/A) and opined:

“External Antemortem Injuries:

1. *Incised cut throat wound of size 11 x 0.5 cm. x 3 cm present horizontally over neck, 9.5 cm below chin 4.5 cm above supra sterna notch. The right end 8 cm below right angle of mandible and left end is 4 cm below left angle of mandible. The right end is 6 cm from midline and left end is 5 cm away from midline left end of wound shows tailing. The wound goes cutting skin, subcutaneous tissue muscles of neck, cutting the carotid sheath structures including large blood vessels of neck bilaterally cutting trachea, esophagus and making a cut fracture over the body of C4 cervical vertebrae Extravasation of blood present throughout the tract.*

2. *Incised wound 2 x 0.1 cm x 0.5 cm present over right acrominum vertically.*
3. *Incised wound 4 x 0.2 cm x 0.8 cm present horizontally over right shoulder top 12 cm from midline.*
4. *Incised wound 7 x 0.1 cm x 0.5 cm present obliquely over right shoulder front 11 cm from midline, upper midline end is touching injury No. 3.*
5. *Incised stab wound 4.6 x 0.2 cm x 12 cm present horizontally over left side back, medial angle acute 2 cm from midline, 12 cm above natal left. Direction of wound goes upwards medially forwards. Track of wound goes cutting skin, subcutaneous tissue, muscles of the back and paravertebral vessels on the left side with Extravasation of blood present throughout the tract and in retroperitoneal space.*
6. *Incised stab wound 3 x 0.2 cm x 10.5 cm present horizontally over right side flank, 11 cm above anterior superior iliac spine and 14 cm from midline. Direction of wound goes upwards, medially forward cutting the skin subcutaneous tissue, 10th intercostal space, lower end of right kidney. Right lobe of liver and diaphragm with extravasation of blood throughout tract.*
7. *Incised wound L-shaped 1.5 x 0.1 cm .0.3 cm present over medial aspect of 2nd left knuckle.*

Time since death: About one and a half days.

Cause of death: Haemorrhagic shock as a result of ante-mortem injury to neck associated blood vessels and abdomen produced by sharp edged weapon. Injury No. 1, 5 and 6 are sufficient to cause death individually and collectively in the ordinary course of nature."

PW-15 also gave her subsequent opinion (Ex.PW15/B) that injury number 1 to 7 mentioned in the PM report, were possible by the knife produced or any other similar weapon.

4. After completion of investigation, chargesheet was filed and the appellant was charged for offence punishable under Section 302 IPC, and to

establish its case, prosecution examined 32 witnesses, and defence evidence in the form of one defence witness was also led.

5. Learned counsel for the appellant assails the impugned judgment on the ground that the prosecution failed to complete the chain of circumstances against the appellant and thus, appellant is entitled to the benefit of doubt and hence, should be acquitted in the present case. Learned counsel for the appellant contended that there was no motive for the appellant to commit the present offence rather, as per PW-1, the appellant and the deceased shared good relation. Although parents of the deceased, PW-9 and PW-10, stated that the appellant used to ill treat the deceased, however, no complaint was ever lodged by them in this regard and therefore, the testimony of PW-9 and PW-10 is of no use. It was further contended that the recovery of weapon of offence is suspicious and the possibility of planting the same cannot be ruled out. It was submitted that the sketch of the knife (Ex.PW-29/A) and seizure of knife (Ex.PW-29/B) by SI Sonal Raj bears the FIR number and the particulars of the present case although the same were prepared before sending the *rukka*. The sketch of the knife (Ex.PW-29/A) does not show the blood spots on the knife however, Ct. Lachchi Ram (PW-30) deposed that SI Sonal Raj had shown blood spot on the knife. It was pointed out that the seizure memo (Ex.PW-29/B) does not bear the signature of the appellant. The knife was allegedly kept by SI Sonal Raj in a polythene sheet before being converted into a *pullanda*, however, no polythene sheet was found when the *pullanda* was opened by the FSL officer. As per the record, the knife was deposited by Sonal Raj as his name is mentioned in column no.3 of Ex.PW-20/A, however, as per the version of the prosecution, the knife was deposited by

IO/Insp. Mahavir Singh. Ct. Lachchi (PW-30) stated that he had signed the cloth *pullanda* of the knife, however, the cut open *pullanda* of knife was not carrying his signature. Furthermore, neither any bill nor any sample knife, nor any CCTV footage was produced by Sh. Vikas Arora (PW-3) to prove that the appellant visited his shop or purchased the recovered knife from him.

6. It was further contended on behalf of the appellant that the recovery of mobile phone of Micromax make with no. 8750988081 from which the appellant made a call to the police is also doubtful. As per the seizure memo (Ex.PW-29/D), the said mobile was handed over by the appellant to IO/Insp. Mahavir and in his cross examination, IO denied the suggestion that the mobile was handed over to him by SI Sonal Raj. However, as per SI Sonal Raj (PW-29) and Lachchi Ram (PW-30), the mobile was seized by SI Sonal Raj. Further, the above-said mobile number was registered in the name of the brother of the deceased and there is no evidence on record to establish the appellant's possession of the said mobile. Further, even the spectrograph opinion given by PW-28 was not proved and the same was rightly disbelieved by the learned Trial Court in the impugned judgment. It was contended by the learned counsel for the appellant that even the last seen theory is not applicable to the present case as there is no concrete evidence that the deceased was last seen with the appellant other than a mere vague statement of PW-2 that she went to the second floor on 11th April, 2014 at about 9-9.30 PM and saw the appellant alone with the deceased. It was contended that no fingerprints of the appellant were found on the recovered knife and no explanation in this regard has been brought forth, because of which it is improbable that the appellant did in fact use the recovered knife.

It was pointed out by the learned counsel for the appellant that the figure “342” is interpolated as figure “343” on various documents i.e. the site plan (Ex.PW-31/A), sketch and seizure memo of knife (Ex.PW-29/A & B respectively), seizure memo of mobile phone (Ex.PW-29/D) and seizure memo of other exhibits (Ex.PW-29/E), seizure memo of blood gauze and ornaments (Ex.PW-29/F and Ex.PW-30/A respectively), seizure memo of bed sheets (Ex.PW-30/B), pointing out memo (Ex.PW-31/C) and also on disclosure statement (Ex.PW-29/I).

7. On the other hand, learned APP for the State submitted that the impugned judgment of the learned Trial Court is based on proper appreciation of the evidence against the appellant, thus the present appeal be dismissed. The learned APP relied upon the following facts having been proved by the prosecution:

- i. That the appellant and the deceased were residing alone on the intervening night of 11th-12th April, 2014 as deposed by Panna Lal (PW-1) who was the landlord of the place of incident i.e. 2nd floor of H.No. C-44/300, Gali No. 15, Sudama Puri 4½ Pushta, Usmanpur, Delhi-110053. PW-1 deposed that only the deceased and the appellant were residing at the said premises as the appellant had dropped his child at the house of his mother about one and half months before the incident.
- ii. After the alleged incident the appellant himself made a phone call to the PCR about committing the offence of murder of his wife and calling the police.
- iii. That the appellant was present at the scene of crime as deposed by SI Garib Das (PW-22) and also the landlady of the house

Puran Devi (PW-2), who opened the door to PW-22 at the morning on 12th April, 2014.

- iv. The weapon of offence, i.e. the knife, was recovered at the instance of the appellant from the room itself where the dead body was lying. The Crime Team report (Ex.PW-18/A) also corroborates the fact that the bloodstained knife was recovered from the spot and even the photos of the crime scene (Ex.PW-8/A1-32) show that the knife was found and recovered at the spot.
- v. That as per the subsequent opinion of Dr.Neha (PW-15), the injuries found on the body of the deceased were possible by the weapon recovered.
- vi. That as per the FSL Report (Ex.PW-32/A), B group blood of the deceased was found on the knife recovered (Ex. S10) and the underwear of the appellant (Ex. S7).
- vii. That as regards the motive, parents of the deceased Gokul Prasad (PW-9) and Dayawati (PW-10) categorically deposed that the appellant used to ill treat their daughter and harass her.
- viii. That furthermore, the appellant has failed to provide any cogent explanation as to the death of his wife/ deceased within the tenanted premises/ house in his statement under Section 313 of the Code of Criminal Procedure, 1973 (Cr.P.C), which forms an additional link in the chain of circumstances and in this regard, reliance was placed on the decision in 2006 (3) ACR 3150 (SC) Trimukh Maroti Kirkan vS. State of Maharashtra.

8. In response to the contentions of the appellant, learned APP for the State submitted that apart from the parents of the deceased, Panna Lal (PW-1) categorically deposed that there used to be some quarrel between the appellant and the deceased and that he visited the appellant and the deceased to sort the matter and also stated that about 1½ months prior to the incident he saw the appellant and deceased quarreling during the jagran organized by the father-in-law of the appellant and thus it cannot be said that the appellant did not have any motive to commit the offence. It was further countered by learned APP that lapses in the investigation, if any, in the present matter cannot be a ground for acquittal of the appellant for which reliance was placed on the decision in (2010) 9 SCC 567 C. Muniappan & Ors. vs. State of Tamil Nadu. Contention on behalf of the appellant that PW-9 was an unreliable witness was countered by placing reliance on the decision in AIR 1983 SC 753 Bharwada Bhoginibhai Hirjibhai vs. State of Gujarat as merely because PW-9 was unable to remember certain minor details would not make him an unreliable witness as the witnesses cannot be expected to possess a photographic memory. Further, PW-1 categorically deposed that he had inducted appellant as a tenant as the father-in-law of the appellant was known to him, therefore, neither any rent agreement was executed between the parties nor was any tenant verification carried out. Qua the contention that the appellant did not make the call to the PCR from mobile No.8750988081 and that the said number was in the name of Yashpal Singh (PW-11), it was countered that the recording of the PCR call was seized vide seizure memo (Ex.PW-25/B) and permission of the Court was sought before taking the voice sample of the appellant (Ex.PW-31/F) and consequently, sent for FSL examination wherein it was opined that the

specimen voice sample of the appellant matched with the voice of the PCR caller (Ex.PW-28/A).

9. Having heard both the parties at length and perusing the record, the following evidence emerges.

10. Panna Lal (PW-1) deposed that he had given his ground floor and second floor of H.No.C-44/300, Gali No.15, Sudamapuri, 4½ Pushta, Usmanpur on rent. He had given one room on the second floor to Pawan and stated to have known the appellant through his father-in-law. The appellant used to reside with his wife and son. He stated that the relation between the appellant and his wife/deceased were good however, they used to quarrel sometime and about 1- 1½ month prior to the date of incident the appellant and the deceased quarreled in a *jagran* organized by appellant's father-in-law. He stated that he used to hear noise of quarrel between the appellant and his wife few times and that he visited them to sort out the matter. On 11th April, 2014 the appellant was with his wife in his room and there was no other person and in the morning of 12th April, 2014 at about 4.00 AM he left for his morning walk and closed the door from outside as the door had a central lock and a spare key was with his wife and when he came back at about 7.00-7.15 AM he saw crowd and police gathered outside his house. In his cross-examination he stated that the child/son was dropped by the appellant with his own mother about 1-1½ month prior to the incident.

11. Puran Devi (PW-2), wife of Panna Lal (PW-1) stated that when police arrived at her house in the morning of 12th April, 2014, she opened the door after which the police came inside the house and went upstairs where appellant was standing on the second floor near the *jaal* with an aim to

escape. In her cross-examination she stated that on 11th April, 2014 she went upstairs at about 9.00-9.30 PM.

12. Gokul Prasad (PW-9) who was the father of the deceased deposed that the appellant was a habitual drunkard and gambler, and soon after marriage the appellant started beating his daughter/deceased and the appellant did not allow to meet him to his daughter/deceased. In 2009 a male child was born to her daughter. In the year 2013, he brought his daughter and her son to his house in Delhi. After about 5-6 months, the appellant along with his mother and some persons of the village pressurized him for return of the deceased but he refused and did not send the deceased with the appellant. Thereafter the appellant visited his house several times, apologized to him and requested to send the deceased with him. The appellant asked for one more opportunity on which he arranged a house for the appellant on rent in his neighbourhood where the appellant started living with the deceased and the appellant started working at Gandhi Nagar. On 1st January, 2014 the appellant took his son Aditya to his village and left him with his mother and despite protest, the appellant did not bring the child back. On 12th April, 2014, he (PW-9) was informed by his neighbours about killing of his daughter on which he along with his wife reached the house of his daughter/deceased where the daughter was found dead. He identified the body of his daughter and the same was handed over to him (Ex.PW-9/B and Ex.PW-9/A respectively). In his cross-examination, he stated that he was enduring misconduct of the appellant for the sake of his daughter. He further stated that gifts and presents were given by him as per prevailing customs and tradition and out of his free will and wish. He denied the suggestion that the minor son of his deceased daughter was sent

with the consent of his daughter for proper care as his daughter used to go away for job. Dayawati (PW-10) corroborated the version of her husband.

13. Vikas Arora (PW-3) testified that the appellant purchased a knife for domestic use from his shop on 10th April, 2014 and also stated that the appellant insisted on buying a big knife for cutting coconut/pumpkin. In his cross-examination he stated that he had a CCTV camera at his shop but the appellant came to his shop at the time when he had just opened his shop and by that time, he had not switched on the CCTV camera.

14. ASI Garib Das (PW-22) stated that on 12th April, 2014 at about 4.30 AM he received a call regarding murder on which he along with his staff reached Gali No.15 at Sudamapuri and as no house number was mentioned he started searching the house. He talked to the caller on the given mobile number and while talking he proceeded to the gali and on reaching house No.C-44/300, the caller asked him to come inside the said house. The landlady opened the door and thereafter he went to the second floor of the house where the appellant met him and in that room dead body of a lady was lying in a naked condition. In the meantime, SI Sonal Raj reached the spot and he handed over the appellant to him and left the spot.

15. SI Sonal Raj (PW-29) stated that on 12th April, 2014 at about 4.25 AM he received DD No.10A regarding murder on which he along with Ct. Lachchi Ram reached House No.C-44/300, Gali No.15, 4½ Pushta, Sudamapur, Usmanpur and on reaching the second floor of the said house ASI Garib Das met him and produced appellant before him. Inside the room, dead body of a female was found lying on the floor in a semi-naked condition with cut mark on her neck. He also found stab injuries on the back and shoulder of the deceased and recovered the knife at the instance of

the appellant from under the pillow near the dead body, which was seized vide seizure memo Ex.PW-29/B. There were bloodstains on the said knife. Thereafter, he called the crime team at the spot. IO/Insp. Mahavir Singh prepared the *rukka* (Ex.PW-29/C) on which FIR was got registered. He handed over one mobile phone of make MICORMAX to IO which was seized vide seizure memo PW-29/D. He prepared the transcript of the conversation (Ex.PW-2/J) pertaining to DD No.10A dated 12th April, 2014 and collected the CD of the said recording along with certificate under Section 65B of the Indian Evidence Act, 1872. In his cross-examination he stated that the knife was lying in an open condition and was not discovered pursuant to the disclosure statement of the appellant and that the knife was seized before sending the *rukka*. He further stated that no chance prints were found by the crime team on the knife. He further stated that no municipal number of the house was mentioned in the DD No.10A and on reaching Gali No.15, near nala, he found one PCR van parked there and that ASI Garib Das signaled him from the second floor of one house to come upstairs. He further stated that the figure “342” was inadvertently written in documents Ex.PW-29/I, Ex.PW-31/C, Ex.PW-29/B, Ex.PW-30/B, Ex.PW-30/A, Ex.PW-29/F, Ex.PW-29/E, Ex.PW-29/D and Ex.PW-29/A. He further stated that he did not show the blood spots on the knife in sketch (Ex.PW-29/A) and the same was kept in a polythene sheet as it is with blood spots and thereafter converted into *pullanda*.

16. IO/Insp. Mahavir Singh (PW-31) stated that on receipt of information regarding murder of a lady, he reached the spot at second floor of house No.C-44/300, Gali No.15, Sudamapuri at about 6.00-6.15 AM where SI Sonal Raj, ASI Jagbir Singh, Ct. Lachchi Ram and Ct. Ram Avtar were

present. Dead body of the deceased was lying on the floor of the room along with blood. The appellant produced mobile phone of make Micromax to him which was seized vide seizure memo Ex.PW-29/D. From the spot, he lifted blood in a gauze (Ex.PW-29/F) and also seized bloodstained earth control, earth control, broken bloodstained wall plaster, broken wall plaster vide seizure memo Ex.PW-29/E. He also seized bloodstained blue and while mattress, bloodstained *gudri*, bloodstained yellow mattress, bloodstained green and blue pillow, bloodstained pillow, bloodstained white pillow, bloodstained white shirt, one brown pant and one bloodstained *chunni* vide seizure memo Ex.PW-30/B. Further ornaments i.e. one pair silver *payjeb*, brown stained red thread with one artificial locket, four *bichhway* having red, green and violet coloured stones, one golden nose pin, one golden ring and one pair of golden earring were removed from the body of the deceased and seized vide seizure memo Ex.PW-30/A. Body of the deceased was sent to mortuary at GTB Hospital. He prepared the site plan Ex.PW31/A, arrested the appellant (Ex.PW-29/G) and recorded the disclosure statement of the appellant (Ex.PW-29/I). In his cross-examination he stated that all the memos and documents were prepared by SI Sonal Raj at his instance as he had a small plaster on his right thumb. He denied that the phone was handed over to him by SI Sonal Raj. There was no documentary proof of the tenancy of the appellant. He further stated that the shopkeeper Vikas Arora from whom the appellant purchased the knife did not have any document to show sale of knife by him to the appellant and that he did not check the stock of the said shopkeeper to ascertain whether the knives similar to the one recovered at the instance of the appellant, were available at his shop or not.

17. HC Jai Pal Singh (PW-4) deposed that on 12th April, 2014 at about 4.15 AM a PCR call was received from mobile No.8750988081 and the caller/appellant informed “*maine apni aurat ka murder kar diya he jiska naam Meena hai*” and “*mujhe poora pata nahi pata, mai Aligarh se Delhi rehne aaya hoon*”. The appellant further disclosed his address as 4½ Pushta, Som Bazar, Nalapar, Gali No.15.

18. HC Mahaveer Singh (PW-7) deposed that he searched for chance prints but the same could not be found at the scene of crime as also on the knife found lying at the spot.

19. As per the FSL (biology) report (Ex.PW-32/A & B), the blood found on the underwear of the appellant as also on the recovered knife tallied with the ‘B’ group blood of the deceased. Further as per the FSL (Physical) report (Ex.PW-28/A), the specimen speech sample of the appellant and the audio file of DD No.10A were found to be of the same person i.e. the appellant with higher probability.

20. In his statement under Section 313 Code of Criminal Procedure, 1973 (“Cr.P.C.”), the appellant stated that he and his wife resided in the tenanted room. He denied having any concern with the Micromax mobile as also with mobile no.8750988081 and that the said number belongs to his brother-in-law Yashpal. He denied having given any information to the police. He stated that due to untimely death of his wife, he has been falsely implicated in the present case at the instance of his brother-in-law and other in-laws in connivance with the police.

21. As per the prosecution the first circumstance against the appellant is that after committing the alleged offence, the appellant himself made a phone call to the PCR from mobile number 8750988081 informing about

the commission of offence which was duly recorded. According to the prosecution this statement made by the appellant would be admissible in evidence, for the reason, it was neither made in the presence of the police nor while the appellant was in the custody of police, however, to connect the appellant to the said statement, the prosecution was required to prove that the mobile number 8750988081 belonged to the appellant and that voice in the phone call was of the appellant. In this regard, prosecution examined Dr.C.P.Singh, Assistant Director (Physics), FSL as PW-28 who exhibited his report vide Ex.PW-28/A. This voice of the speaker in Ex.Q1 was opined to be the voice of the same person with high probability as in Ex.S1. The transcription of the recording in Ex.Q1 was as under:-

“Case FIR No. 343/14 Dt.12-4-14 u/s. 302 IPC P.S.New Usmanpur

At 100 No. PCR Call-Transcription

1. Pawan:- Kaun si jagah se bol rahe ho haal philhaal
2. Pawan:-4 ½ Pusta Som Bazar kitne time per aa jaoge
3. Pawan:- Murder ho gaya hai abhi
4. Pawan:- Ek aurat ka
5. Pawan:- Maine kiya hai
6. Pawan:- Pawan
7. Pawan:- Kitne time per aa jaoge
8. Pawan:- 4 ½ Pusta Som Bazar Naala par
9. Pawan:- Ye lagta hai Khajuri aur Shastri Park k beech
- 10.Pawan:- Haan Khajuri lagta hai shayad
- 11.Pawan:- Meena
- 12.Pawan:- 24 Saal
- 13.Pawan:- Mera hee hai-8750988081
- 14.Pawan:- Haan-27-28 ker lo
- 15.Pawan:- Abhi jail bhej dena turant
- 16.Pawan:- Muje nahi pata naale par hee aa jaana
- 17.Pawan:- Muje jaankari nahi hai. Mai abhi haal philhaal aaya hun
- 18.Pawan:- Gaon se

19.Pawan:- Aligarh k paas

20.Pawan:- Sathni...Sathni

21.Pawan:- Gaon Sathna, Thana-Iglas, Zila Aligarh, U.P.”

22. In view of the report of the witness PW-28, it is clear that the voice in the PCR call belonged to the appellant. It may be noted that he clarified that instead of seal impression “MS”, it was inadvertently mentioned as “SR” by him in his report which he clarified from the original file which he had brought. Further, though the appellant denied any nexus with the Micromax mobile number 8750988081, however, the said phone was recovered at his instance vide seizure memo Ex.PW-29/D.

23. Section 25 of the Indian Evidence Act reads 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.”

24. Section 25 of the Indian Evidence Act bars the proof of any confession made to a Police Officer against a person accused of any offence. The said bar is partially lifted in Section 27 of the Indian Evidence Act wherein so much of such information which relates distinctly to the fact thereby discovered may be proved. The issue that arises is whether a transcribed conversation between the appellant and the Police Control Room would be admissible in evidence or would be hit by Section 25 of the Indian Evidence. Act. Dealing with the issue whether a letter containing a confession addressed to a Police Officer would entail a bar created by Section 25 of the Indian Evidence Act, the majority decision of the Hon’ble Supreme Court in AIR 1966 SC 1906 Sita Ram vs. State of Uttar Pradesh in

the form of opinion of Hon'ble Mr. Justice J.R. Mudholkar speaking for himself and Hon'ble Chief Justice A.K. Sarkar held:

"7. In addition to this circumstantial evidence the prosecution placed reliance upon Ex. Ka 9. This is a letter dated September 14, 1962 addressed to the "Sub-Inspector" and bears the signature of the appellant in Urdu. It reads thus:

"I have myself committed the murder of my wife, Smt Sindura Rani. Nobody else perpetrated this crime. I would appear myself after 20 or 25 days and then will state everything. One day the law will extend, its hands and will get me arrested. I would surrender myself.

sd/-

*in Urdu Sita Ram Narola,
14th September, 1962."*

8. *On the back of this letter is written the following:*

"It is the first and the last offence of my life. I have not done any illegal act nor I had the courage to do that, but this woman compelled me to do so and I had to break the law."

This letter was found on a table near the dead body of Sindura Rani. It was noticed by the Sub-Inspector Jagbir Singh, PW 16 and seized in the presence of three persons who attested the seizure memo and were later examined as witnesses in the case. The prosecution has established satisfactorily that the letter is in the hand-writing of the appellant and that the signature it bears is also that of the appellant. Learned counsel for the appellant has challenged the admissibility of this letter on the ground that it amounts to a confession to a police officer and that, therefore, Section 25 of the Evidence Act renders it inadmissible in evidence. We do not think that the objection is well-founded. No doubt, the letter contains a confession and is also addressed to a police officer. That cannot make it a confession made to a police officer which is within the Bar created by Section 25 of the Evidence Act. The police officer was not nearby when the letter was written or knew that it was being written. In such circumstances quite obviously the letter

would not have been a confession to the police officer if the words "Sub-Inspector" had not been written. Nor do we think it can become one in similar circumstances only because the words "Sub-Inspector" had been written there. It would still have not been a confession made to a police officer for the simple reason that it was not so made from any point of view.

9. We agree with the High Court, therefore, that the confession contained in Ex. Ka-9 is admissible and that it is an additional circumstance which can be pressed in aid in support of the charge against the appellant. However, as already stated, even without this confessional statement there was sufficient material before the courts below on the basis of which the appellant's conviction could be sustained."

25. In Sita Ram (supra) though Justice R.S. Bachawat, however, differed on the issue and held that a confession can be made a Police Officer by an oral message to him over the telephone or the radio as also by a written message communicated to him through post, messenger or otherwise. The presence or absence of the Police Officer near the accused is not decisive on the question whether the confession is hit by Section 25 of the Indian Evidence Act. It was further held that though a confession made to a stranger in the presence of Police Officer is not hit by Section 25, however a written confession to a Police Officer invokes the ban of Section 25 even though it was not made in his presence. Therefore, a confessional letter written to a Police Officer and sent to him by post, messenger or otherwise is not outside the ban of Section 25 because the Police Officer was ignorant of the letter at the moment when it was being written.

26. Supreme Court in AIR 1966 SC 119 Aghnoo Nagesia vs. State of Bihar held that a confession or admission is evidence against the maker of it unless its admissibility is excluded by some provision of law; that section 25

does not exclude all statements by an accused to a police officer, but only confessions which are an admission in terms of the offence or at any rate substantially all the facts which constitute the offence. This section does not stand in the way of admitting the statement of an accused to a police officer, if such statement does not amount to a confession. Section 162, CrPC, should be considered along with section 25 of this Act while admitting any statement other than a confession, except as provided in section 27 which provides that a statement leading to the discovery of a fact is admissible. This section 25 protects the accused in respect of a confession made by him to a police officer, whereas section 162, CrPC, protects the accused if it is made during the course of investigation. The practice of introducing, in evidence a whole confession to a police, under the guise of discovery of fact under section 27, is deprecated by the Supreme Court in the above case. [*Hanumant v State of MP*, AIR 1952 SC 343].

27. In the present case the statement made by the appellant to the Police Control Room though being recorded in an automated manner but was also comprising of answers to the questions by the police officer at the Police Control Room, thus, the portion of the statement to the PCR official which amounts to confession will be hit by the bar imposed under Section 25 of the Indian Evidence Act. However, once, this statement is to be treated as not admissible being confessional before the Police Officer so much of it as it relates to the discovery of a fact would be admissible under Section 27 of the Indian Evidence Act. Thus, the fact that pursuant to the phone call of the appellant and his statement, the Police Officer reached the residence of the appellant and body of the deceased was discovered at the house along

with the mobile of the appellant, would be admissible under Section 27 of the Indian Evidence Act.

28. The second circumstance against the appellant was that the appellant was living with his wife (deceased) as a tenant in the house of Panna Lal as deposed to by Panna Lal (PW-1), his wife Puran Devi (PW-2) and father of the deceased Gokul Prasad (PW-9). Panna Lal clearly stated that on 11th April 2014, appellant was in his room, there was no other person and on the next morning, Panna Lal left at about 4.00 AM on 12th April 2014, when he locked the door from outside with the central lock, spare key of which was with his wife. He further deposed that when he came back, he saw that the crowd and police had gathered at his house. Even in his statement under Section 313 Cr.P.C, appellant stated that he and his wife were living in the tenanted accommodation. Even though, the knife (Ex.PW-29/B) was not recovered at the instance of the appellant, however, it was found from the same room where the dead body was lying, where the appellant was present, which fact would be relevant and admissible under Section 8 of the Indian Evidence Act. The knife was recovered from the spot as also noted in the crime team report exhibited as Ex.PW-18/A and duly testified by PW-18 Inspector Ravi Kumar. The Investigating Officer also recovered the bloodstained underwear of the appellant. The underwear of the appellant and knife duly marked as S-7 and S-10 respectively by the FSL expert, had blood of group 'B' which tallied with the blood group of the deceased.

29. Learned counsel for the appellant has vehemently contended that there is an interpolation in the FIR, for the reason, in some of the documents, FIR number has been noted as 342 instead of 343. The witnesses have clarified that the same was an inadvertent error and no cross

examination of PW-12 HC Rajender who registered the FIR on receipt of the *rukka* and exhibited the original register, was done nor even any suggestion was given to this witness that there was an interpolation in the FIR.

30. Further the prosecution having proved that the appellant and the deceased were living together when the deceased was found dead, the death being homicidal, onus shifts on the appellant under Section 106 of the Indian Evidence Act to explain how the deceased died. No explanation was given in this regard except stating that he was falsely implicated in the present case at the instance of his brother-in-law and other in-laws in connivance with the police.

31. Hon'ble Supreme Court in the decision of Trimukh Maroti Kirkan (supra) held as under:

“22. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime. In Nika Ram v. State of H.P. [(1972) 2 SCC 80:1972 SCC (Cri) 635: AIR 1972 SC 2077] it was observed that the fact that the accused alone was with his wife in the house when she was murdered there with “khukhri” and the fact that the relations of the accused with her were strained would, in the absence of any cogent explanation by him, point to his guilt. In Ganeshlal v. State of Maharashtra [(1992) 3 SCC 106: 1993 SCC (Cri) 435] the appellant was prosecuted for the murder of his wife which took place inside his house. It was observed that when the death had occurred in his custody, the appellant is under an obligation to give a plausible explanation

for the cause of her death in his statement under Section 313 CrPC. The mere denial of the prosecution case coupled with absence of any explanation was held to be inconsistent with the innocence of the accused, but consistent with the hypothesis that the appellant is a prime accused in the commission of murder of his wife. In State of U.P. v. Dr. Ravindra Prakash Mittal [(1992) 3 SCC 300:1992 SCC (Cri) 642: AIR 1992 SC 2045] the medical evidence disclosed that the wife died of strangulation during late night hours or early morning and her body was set on fire after sprinkling kerosene. The defence of the husband was that the wife had committed suicide by burning herself and that he was not at home at that time. The letters written by the wife to her relatives showed that the husband ill-treated her and their relations were strained and further the evidence showed that both of them were in one room in the night. It was held that the chain of circumstances was complete and it was the husband who committed the murder of his wife by strangulation and accordingly this Court reversed the judgment of the High Court acquitting the accused and convicted him under Section 302 IPC. In State of T.N. v. Rajendran [(1999) 8 SCC 679: 2000 SCC (Cri) 40] the wife was found dead in a hut which had caught fire. The evidence showed that the accused and his wife were seen together in the hut at about 9.00 p.m. and the accused came out in the morning through the roof when the hut had caught fire. His explanation was that it was a case of accidental fire which resulted in the death of his wife and a daughter. The medical evidence showed that the wife died due to asphyxia as a result of strangulation and not on account of burn injuries. It was held that there cannot be any hesitation to come to the conclusion that it was the accused (husband) who was the perpetrator of the crime”.

[Emphasis supplied]

32. Learned counsel for the appellant also contends that the prosecution has not been able to prove the motive. However, the motive stands proved by the testimonies of the parents of the deceased namely Gokul Prasad and

Dayawati, who deposed that the appellant used to ill-treat their daughter due to which they brought the deceased and her son to Delhi. Further Panna Lal, the landlord also stated that though the relation between the appellant and his wife were good but there used to be quarrel between them. Panna Lal also stated that appellant and deceased had a quarrel in a *jaagran* organized by appellant's father-in-law. Moreover, appellant and the deceased had started residing in Panna Lal's tenanted accommodation only 1½ month prior to the incident and thus, he could not have stated in detail as to the nature of relations between the appellant and the deceased. Hence, the testimony of Panna Lal will not prevail over the testimonies of the parents of the deceased who stated that the appellant used to drink and beat their daughter, due to his conduct, they brought the deceased to Delhi and after sometime, the appellant also shifted to Delhi, when they got the tenanted accommodation for the two of them.

33. Further, merely because chance prints were not lifted from the knife or PW-8 who took the photographs was not the person assigned to take photographs, is not sufficient to belie the case of the prosecution which is based on the cogent testimonies of the parents of the deceased, as also landlord and landlady of the house being PW-1 and PW-2 and the circumstances as noted above.

34. Considering the evidence led by the prosecution and the discussion aforesaid, this Court finds no error in the impugned judgment of conviction and order on sentence.

35. Appeal is accordingly dismissed.

36. Judgment be uploaded on the website of this Court and copy of the same be sent to the Superintendent Jail for updation of record and intimation to the appellant.

(MUKTA GUPTA)
JUDGE

(POONAM A. BAMBA)
JUDGE

MAY 11, 2023/‘ga’



नित्यमेव जयते