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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CRA-D-1161-DB-2013
Reserved on: 18.09.2024
Pronounced on: 24.09.2024

Tarun SharmaAppellant

Versus

State of HaryanaRespondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Argued by: Ms. Ekta Thakur, Advocate
for the appellant.

Mr. Anmol Singh Hayer, Advocate
for the applicant (in CRM-29796-2024).

Mr. P.P.Chahar, Sr. DAG, Haryana.

SURESHWAR THAKUR, J.

CRM-29796-2024

1. The application is allowed and the Registration Certificate of Car No. HR-07P-0502, Make Alto Lxi, is released to the appellant for its renewal subject to the condition that the original Registration Certificate of the said car, after its renewal shall be submitted in the Court.

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2. The instant appeal is directed by the convict-appellant, against the verdict of conviction, as made on 26.08.2013, by the learned

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Additional Sessions Judge, Ambala, upon, Session Case No. 11-SC of 2012, wherethrough, in respect of charge drawn for offence punishable under Section 302/34 IPC, he made a finding of conviction against the accused.

3. Moreover, through a separate sentencing order drawn on 26.08.2013, the learned trial Judge concerned, proceeded to impose upon the convict (supra) both sentence(s) of imprisonment as well as of fine, but in the hereinafter extracted manner :-

Section 302 of IPC	Rigorous imprisonment for life and to pay a fine of Rs. 5,000/-. In default of payment of fine, he shall also undergo S.I. For three months.
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4. The convict-appellant becomes aggrieved from the above drawn verdict of conviction, besides also, become aggrieved from the consequent thereto sentences of imprisonment, and, of fine as became imposed upon him, by the learned convicting Court concerned, and hence has chosen to institute thereagainst the instant appeal before this Court.

Factual background

5. The genesis of the prosecution case, becomes embodied in the appeal FIR, to which Ex.P36 is assigned.

6. The case of the prosecution is that on 01.04.2012 an information regarding admission of Munish Kumar to GMCH Sector-32, Chandigarh on sustaining injuries in a quarrel was received at Police Station Mullana. On receipt of this information, Som Nath SI along with Dharam Pal HC moved for there but they came to know that

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the injured has been referred to PGI Chandigarh for treatment. Thereafter, they approached there and moved an application regarding the fitness of injured Manish Kumar, who was found fit to make the statement, therefore, his statement was recorded in which he had stated that he was the resident of Village Jahangirpur, P.S. Mullana and was doing a private job. On 31.03.2012 at about 10.00 PM, he along with his brother Amit was coming from Ambala by car. When they reached near Mullana, then a Scorpio car and an Alto car overtake his car and signaled him to stop. He stopped his car. Then, three persons alighted from the car, who were having sticks in their hands and they broke his car. The name of two persons were Bitoo and Sanjay and other two persons belonged to Krishna Transport. Amongst them, the name of one was Tarun Sharma and the other was not known to him but he was having a beard on his face. They attacked upon him and Tarun caused knife blow upon the right side of his stomach. Sanjay caused knife blow upon his head. Bitto and the other person who was having beard apprehended him. They beat him mercilessly. He raised alarm "MAAR DIYA MAAR DIYA". Amit was confined into the car. After the occurrence they took his mobile and purse with them. Thereafter, his brother Amit called his friends who helped him and got him admitted at CHC Mullana. Thereafter, he was referred to Government Hospital, Ambala Cantt and then to General Hospital, Ambala City. Subsequently, he was referred to GMCH, Sector-32, Chandigarh and thereafter was referred to PGI Chandigarh. Complainant sought action against the

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accused persons. On receipt of the said information, the instant First Information Report was registered.

Investigation proceedings

7. In due course of investigation, the accused were arrested. Statements of witnesses were recorded. 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 proceedings

8. Finding the offence punishable under Section 302 of the IPC, to be exclusively triable by the Court of Session, thus the learned committal Court, vide order dated 16.08.2012 committed the case for trial to the Court of the learned Session Judge, Ambala.

Trial Court Proceedings

9. On finding a *prima facie* case, charge under Sections 302/34 IPC, became framed, against the accused concerned, to which they pleaded not guilty, and, claimed trial.

10. In support of the prosecution case, the prosecution examined twenty five witnesses. After completion of recording of the depositions of the prosecution witnesses, the learned Additional Sessions Judge, Ambala drew proceedings under Section 313 of the Cr.P.C., but therein, the accused claimed false implication, and, pleaded innocence. The accused did not examine any witness in their defence.

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11. After conclusion of the trial, as, became entered into the FIR (supra), by the learned Additional Sessions Judge, Ambala, the latter proceeded to make the afore verdict of conviction, and, also made the consequent therewith sentence(s) (supra), upon, the accused-appellant, whereas, he made a finding of acquittal qua accused Sandeep Sharma, Balwinder @ Bitto and Deepak Bhardwaj.

12. Since no appeal became preferred against the verdict of acquittal qua accused Sandeep Sharma, Balwinder @ Bitto and Deepak Bhardwaj, therefore, the said verdict qua the afore accused becomes binding and conclusive.

Submissions of the learned counsel for the convict-appellant.

13. The learned counsel for the aggrieved convict-appellant herein, has vigorously argued before this Court, that the impugned verdict of conviction, and consequent therewith sentences (supra), as imposed, upon the convict-appellant, both become ridden with a gross infirmity of gross mis-appreciation, and non-appreciation of the evidence, existing on record. Therefore, she has argued that the appeal be accepted, and, the verdict, as challenged before this Court, be quashed, and set aside.

Submissions of the learned State Counsel

14. On the other hand, the learned State counsel has argued that the appreciation of evidence, as made by the learned Convicting Court, is merit-worthy, and, that it does not require any interference being made by this Court.

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Case based on the statement of deceased Munish Kumar (Dying Declaration).

15. Prior to the deceased-Munish Kumar, ultimately succumbing to the injuries, he made a dying declaration, wherein, he inculpated the convict-appellant. Prior to the deceased Munish Kumar making a dying declaration, as carried in Ex. P34, he was declared fit, by the doctor concerned, to make a statement.

16. However, for the reasons to be assigned hereinafter, this Court comes to the conclusion, that the dying declaration, as embodied in Ex. P34, is worthy of acceptance. The prime reason being that the police official concerned, on 01.04.2012, thus moved an application, to which Ex. P32 becomes assigned, rather before the doctor concerned, whereby he sought an opinion from the doctor concerned qua whether the injured was fit to make a statement. The doctor concerned, made his apposite opinion on 01.04.2012 (Ex.P33), wherein, the injured was declared fit to make a statement. The makings of Ex.P32 (application for opinion) and Ex.P33 occur on the very same day when the declarant, through a dying declaration, as embodied in Ex. P34, rather inculpated the convict. Though, the doctor concerned, who made an opinion qua the fitness of the accused was not examined by the prosecution. However, when the investigating officer, who stepped into the witness box as PW-17, has in his testification proven, that on the relevant day, he moved an application Ex.P32 before the doctor concerned for seeking an opinion as to whether the injured was fit to make a statement or not, and the doctor concerned vide his opinion

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Ex.P33 thus declaring the injured fit to make his statement. Therefore, the statement of the deceased Munish Kumar (Ex. P34), becomes a potent piece of evidence, as it is a validly made dying declaration, and, thereto a grave evidentiary solemnity is to be assigned.

17. Importantly also, when the apposite declaration of fitness as made by the doctor concerned, vis-à-vis the injured deceased, thus was made in the presence of the Investigating Officer, thereby, when he was competent to prove the signatures of the doctor, especially given the same becoming made in his presence. Resultantly credence is to be assigned to the testification of the investigating officer, who apart from his proving qua his moving an application Ex.P32, did also prove that the doctor wrote the declaration of fitness, as embodied in Ex.P33.

18. Now assuming that the said declaration of fitness was forged, thereupon, suggestions by the defence to the said extent, rather were required to be meted to the Investigating Officer concerned, thus during the course of makings of cross examination(s) upon him. However, no such suggestion(s) became meted to the investigating officer concerned, during the course of his becoming subjected to cross examination by the learned defence counsel. Since thereby, the said objection became waived nor also when the signatures of the doctor on the said made apposite declaration of fitness, appertaining to the injured, being enabled to make a statement, relating to the cause of the fatal injuries, thus became proven to be forged. Thereby, irrespective of the doctor not stepping into the witness box to prove his authoring

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the said made declaration, whereby he made an opinion qua the fitness of the injured to make a statement, rather given the investigating officer thus evidently seeing the doctor, thus signing the said declaration, whereupon, he but naturally became competent to state qua the said apposite declaration being authored by the doctor concerned, thereupon, the same acquires complete evidentiary value.

19. Be that as it may, the hallmark of gravest evidentiary solemnity becoming assignable to it is, qua it, being provenly authored by the deceased, and, that too when he was in the fittest mental state to make it. Since the above statement was made by him, during the course of his receiving treatment at the hospital concerned, wherein, he assigned an incriminatory role to the accused in the extant crime event. Moreover, when the original of the dying declaration is carried in Ex. P34, therefore, it comprises the apt primary evidence, in respect of the incriminatory echoings made therein against the accused concerned.

20. Moreover, reiteratedly the apposite best proof in respect of authenticity of its contents, besides in respect of the then fit cognitive abilities, of the declarant, thus becomes comprised in the apposite opinion Ex. P33, wherein, the declarant has been unrebuttedly declared to be fit to make a statement. Resultantly, and reiteratedly, the dying declaration, as made by deceased Munish Kumar, is to be concluded, to be free from any vices of hers being coached, and, goaded to make it. In nutshell, the proven dying declaration, as embodied in Ex. P34, does constitute a potent incriminatory evidence

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against the convict-appellant and, also hence therebys, the charge drawn against him, becomes proven to the hilt.

DISCLOSURE STATEMENT OF ACCUSED AND CONSEQUENT THERETO RECOVERY.

21. During the course of investigations, being made into the appeal FIR, convict Tarun Sharma made a signed disclosure statement on 19.04.2012, to which Ex. P27 is assigned. The signed disclosure statement, as made by the accused is ad verbatim extracted hereinafter.

*“In the presence of following witnesses, above named accused Tarun sharma in police custody made disclosure statement without any pressure that on dated 31.03.2012 at about 10pm, in front of my office Krishna Goods Carrier, Munish & Ashok Bakshi R/o Jahangirpur came in their Maruti Car and told our car driver that installment of car was not paid. My father asked them, in which capacity you have come to check the documents. At this there was an argument between them. Munish & Ashok Bakshi ran away to mullana in their maruti Car No.HR-50-0067 after pushing my father. Then we took my Alto Car No.HR07P-0502, which was occupied my brother Deepak, father Sandeep, and Balwinder Singh @ Shunty to chase out Munish etc and near the Devi Mandir Mullana, after putting our car in front of the car of Munish Kumar, we surrounded Munish Kumar and etc. Munish was driving the car. **I inflicted knife blow in the stomach of Munish.** My father Sandeep and Deepak gave danda blows injuring Munish and also used danda to broke the glass of Car No.HR-50-0067. Balwinder @ Shunty gave slap and blows to him. **I can get recover the knife with***

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which I inflicted injuries to Munish Kumar and Car No.HR-07P-0502 behind my office namely New Krishna Goods Carrier, in old service station which nobody knows about it except me and I can get the same recovered from demarcation. I recorded the statement in Panchkula for my safety but now I am giving my true statement which is signed by me and Balwinder Singh. ”

22. The disclosure statement (supra), carries thereons the signature of the convict concerned. In his signed disclosure statement (supra), convict, confessed his guilt in inflicting injuries on person of the injured/deceased, hence with the recovered weapon of offence. The further speaking therein is qua his keeping, and, concealing the incriminatory weapon of offence. Moreover, the said signed disclosure statement does also make speakings about his alone being aware about the location of his hiding and keeping the same, and, also revealed his willingness to cause the recovery of the incriminatory weapon, to the investigating officer concerned, from the place of his hiding, and, keeping the same.

23. Significantly, since the appellant has not been able to either ably deny his signatures as occur on the exhibit (supra) nor when he has been able to prove the apposite denial. Moreover, since he has also not been able to bring forth tangible evidence but suggestive that the recovery is either contrived or invented. Therefore, the exhibit (supra) is *prima facie* concluded to be holding the utmost evidentiary tenacity.

24. Significantly also, since post the making of the said signed disclosure statement, becoming made, thus by the convict to

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the investigating officer concerned, he through recovery memo Ex.P6, thus caused the recovery of the weapon of offence i.e. knife to the investigating officer concerned. Consequently, when the said made recovery is also not suggested by any cogent evidence to be planted recovery. Resultantly, the effect thereof, is that the valid recovery was made vis-a-vis the incriminatory weapon of offence by the convict, to the investigating officer concerned. In sequel, the makings of the valid signed disclosure statement, by the convict besides the pursuant thereto effectuation(s) of valid recovery of the incriminatory weapon of offence, thus by the convict-appellant to the investigating officer concerned, but naturally *prima facie* corroborates and supports the case of the prosecution.

25. However, yet for assessing the vigor of the said made disclosure statement and consequent thereto made recovery, it is apt to refer to the principles governing the assigning of creditworthiness to the said made disclosure statement and to the consequent thereto made recovery. The principles governing the facet (supra), become embodied in paragraphs Nos.23 to 27 of a judgment rendered by the Hon'ble Apex Court in **Criminal Appeal Nos.1030 of 2023, titled as "Manoj Kumar Soni V. State of Madhya Pradesh", decided on 11.08.2023,** relevant paragraphs whereof become extracted hereinafter.

*23. The law on the evidentiary value of disclosure statements under Section 27, Evidence Act made by the accused himself seems to be well established. The decision of the Privy Council in **Pulukuri Kotayya and others vs. King-Emperor** holds the field even today wherein it was*

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held that the provided information must be directly relevant to the discovered fact, including details about the physical object, its place of origin, and the accused person's awareness of these aspects. The Privy Council observed:

The difficulty, however great, of proving that a fact discovered on information supplied by the accused is a relevant fact can afford no justification for reading into s. 27 something which is not there, and admitting in evidence a confession barred by s. 26. Except in cases in which the possession, or concealment, of an object constitutes the gist of the offence charged, it can seldom happen that information relating to the discovery of a fact forms the foundation of the prosecution case. It is only one link in the chain of proof, and the other links must be forged in manner allowed by law.

*24. The law on the evidentiary value of disclosure statements of co-accused too is settled; the courts have hesitated to place reliance solely on disclosure statements of co-accused and used them merely to support the conviction or, as Sir Lawrence Jenkins observed in **Emperor vs. Lalit Mohan Chuckerburty**, to “lend assurance to other evidence against a co-accused”. In **Haricharan Kurmi vs. State of Bihar**, this Court, speaking through the Constitution Bench, elaborated upon the approach to be adopted by courts when dealing with disclosure statements:*

13. ...In dealing with a criminal case where the prosecution relies upon the confession of one accused person against another accused person, the proper approach to adopt is to consider the other evidence against such an accused person, and if the said evidence appears to be satisfactory and the court is inclined to hold that the said evidence may sustain the charge framed against the said accused person, the court turns to the confession with a view

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to assure itself that the conclusion which it is inclined to draw from the other evidence is right.

25. *In yet another case of discrediting a flawed conviction under Section 411, IPC, this Court, in **Shiv Kumar vs. State of Madhya Pradesh** overturned the conviction under Section 411, declined to place undue reliance solely on the disclosure statements of the co-accused, and held:*

24. *..., the disclosure statement of one accused cannot be accepted as a proof of the appellant having knowledge of utensils being stolen goods. The prosecution has also failed to establish any basis for the appellant to believe that the utensils seized from him were stolen articles. The factum of selling utensils at a lower price cannot, by itself, lead to the conclusion that the appellant was aware of the theft of those articles. The essential ingredient of mens rea is clearly not established for the charge under Section 411 IPC. The prosecution's evidence on this aspect, as they would speak of the character Gratiano in Merchant of Venice, can be appropriately described as, "you speak an infinite deal of nothing." [William Shakespeare, Merchant of Venice, Act 1 Scene 1.]*

26. *Coming to the case at hand, there is not a single iota of evidence except the disclosure statements of Manoj and the co-accused, which supposedly led the I.O. to the recovery of the stolen articles from Manoj and Rs.3,000.00 from Kallu. At this stage, we must hold that admissibility and credibility are two distinct aspects and the latter is really a matter of evaluation of other available evidence. The statements of police witnesses would have been acceptable, had they supported the prosecution case, and if any other credible evidence were brought on record. While the recoveries made by the I.O. under Section 27, Evidence Act upon the disclosure statements by Manoj, Kallu and the other co-accused could be held to have led*

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to discovery of facts and may be admissible, the same cannot be held to be credible in view of the other evidence available on record.

27. While property seizure memos could have been a reliable piece of evidence in support of Manoj's conviction, what has transpired is that the seizure witnesses turned hostile right from the word 'go'. The common version of all the seizure witnesses, i.e., PWs 5, 6, 11 and 16, was that they were made to sign the seizure memos on the insistence of the 'daroga' and that too, two of them had signed at the police station. There is, thus, no scope to rely on a part of the depositions of the said PWs 5, 6, 11 and 16. Viewed thus, the seizure loses credibility.

26. Furthermore, in a judgment rendered by the Hon'ble Apex Court in **Criminal Appeal No.2438 of 2010, titled as "Bijender @ Mandar V. State of Haryana", decided on 08.11.2021**, the relevant principles governing the assigning of creditworthiness become set forth in paragraph 16 thereof, paragraph whereof becomes extracted hereinafter.

16. We have implored ourselves with abounding pronouncements of this Court on this point. It may be true that at times the Court can convict an accused exclusively on the basis of his disclosure statement and the resultant recovery of inculpatory material. However, in order to sustain the guilt of such accused, the recovery should be unimpeachable and not be shrouded with elements of doubt. We may hasten to add that circumstances such as (i) the period of interval between the malfeasance and the disclosure; (ii) commonality of the recovered object and its availability in the market; (iii) nature of the object and its

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relevance to the crime; (iv) ease of transferability of the object; (v) the testimony and trustworthiness of the attesting witness before the Court and/or other like factors, are weighty considerations that aid in gauging the intrinsic evidentiary value and credibility of the recovery. (See: *Tulsiram Kanu vs. The State; Pancho vs. State of Haryana; State of Rajasthan vs. Talevar & Anr and Bharama Parasram Kudhachkar vs. State of Karnataka*).

27. Furthermore, in another judgment rendered by the Hon'ble Apex Court in *Special Leave Petition (Criminal) No.863 of 2019, titled as "Perumal Raja @ Perumal V. State, Rep. By Inspector of Police", decided on 03.01.2024*, the relevant principles governing the assigning of creditworthiness become set forth in paragraphs 22 to 25 thereof, paragraphs whereof become extracted hereinafter.

22. However, we must clarify that Section 27 of the Evidence Act, as held in these judgments, does not lay down the principle that discovery of a fact is to be equated to the object produced or found. The discovery of the fact resulting in recovery of a physical object exhibits knowledge or mental awareness of the person accused of the offence as to the existence of the physical object at the particular place. Accordingly, discovery of a fact includes the object found, the place from which it was produced and the knowledge of the accused as to its existence. To this extent, therefore, factum of discovery combines both the physical object as well as the mental consciousness of the informant accused in relation thereto. In *Mohmed Inayatullah v. State of Maharashtra*¹², elucidating on Section 27 of the Evidence Act, it has been held that the first condition imposed and necessary for bringing the

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section into operation is the discovery of a fact which should be a relevant fact in consequence of information received from a person accused of an offence. The second is that the discovery of such a fact must be deposited to. A fact already known to the police will fall foul and not meet this condition. The third is that at the time of receipt of the information, the accused must be in police custody. Lastly, it is only so much of information which relates distinctly to the fact thereby discovered resulting in recovery of a physical object which is admissible. Rest of the information is to be excluded. The word 'distinctly' is used to limit and define the scope of the information and means 'directly', 'indubitably', 'strictly' or 'unmistakably'. Only that part of the information which is clear, immediate and a proximate cause of discovery is admissible.

23. The facts proved by the prosecution, particularly the admissible portion of the statement of the accused, would give rise to two alternative hypotheses, namely, (i) that the accused had himself deposited the physical items which were recovered; or (ii) only the accused knew that the physical items were lying at that place. The second hypothesis is wholly compatible with the innocence of the accused, whereas the first would be a factor to show involvement of the accused in the offence. The court has to analyse which of the hypotheses should be accepted in a particular case.

24. Section 27 of the Evidence Act is frequently used by the police, and the courts must be vigilant about its application to ensure credibility of evidence, as the provision is vulnerable to abuse. However, this does not mean that in every case invocation of Section 27 of the

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Evidence Act must be seen with suspicion and is to be discarded as perfunctory and unworthy of credence.

25. The pre-requisite of police custody, within the meaning of Section 27 of the Evidence Act, ought to be read pragmatically and not formalistically or euphemistically. In the present case, the disclosure statement (Exhibit P-37) was made by the appellant – Perumal Raja @ Perumal on 25.04.2008, when he was detained in another case, namely, FIR No. 204/2008, registered at PS Grand Bazar, Puducherry, relating to the murder of Rajaram. He was subsequently arrested in this case, that is FIR. No.80/2008, which was registered at PS Odiansalai, Puducherry. The expression “custody” under Section 27 of the Evidence Act does not mean formal custody. It includes any kind of restriction, restraint or even surveillance by the police. Even if the accused was not formally arrested at the time of giving information, the accused ought to be deemed, for all practical purposes, in the custody of the police.

28. Now the principles set forth therein are that the defence, is required to be proving;

i) That the disclosure statement and the consequent thereto recovery being forged or fabricated through the defence proving that the discovery of fact, as made in pursuance to a signed disclosure statement made by the accused to the investigating officer, during the term of his custodial interrogation, rather not leading to the discovery of the incriminatory fact;

ii) That the fact discovered was planted;

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- iii) It was easily available in the market;
- iv) It not being made from a secluded place thus exclusively within the knowledge of the accused.
- v) The recovery thereof made through the recovery memo in pursuance to the making of a disclosure statement, rather not being enclosed in a sealed cloth parcel nor the incriminatory item enclosed therein becoming sent, if required, for analyses to the FSL concerned, nor the same becoming shown to the doctor concerned, who steps into the witness box for proving that with the user of the relevant recovery, thus resulted in the causings of the fatal ante mortem injuries or in the causing of the relevant life endangering injuries, as the case may be, upon the concerned.
- vi) That the defence is also required to be impeaching the credit of the marginal witnesses, both to the disclosure statement and to the recovery memo by ensuring that the said marginal witnesses, do make speakings, that the recoveries were not made in their presence and by making further speakings that they are compelled, tutored or coerced by the investigating officer concerned, to sign the apposite memos. Conspicuously, despite the fact that the said recovery memos were not made in pursuance to the accused leading the investigating officer to the site of

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recovery. Contrarily the recovery memo(s) becoming prepared in the police station concerned.

vii) The defence adducing evidence to the extent that with there being an immense gap *inter se* the making of the signatred disclosure statement and the consequent thereto recovery being made, that therebys the recovered items or the discovered fact, rather becoming planted onto the relevant site, through a stratagem employed by the investigating officer.

29. Therefore, unless the said defence(s) are well raised and are also ably proven, thereupon the making of a disclosure statement by the accused and the consequent thereto recovery, but are to be assigned credence. Conspicuously, when the said incriminatory link in the chain of incriminatory evidence rather is also the pivotal corroborative link, thus even in a case based upon eye witness account.

30. Be that as it may, if upon a prosecution case rested upon eye witness account, the eye witness concerned, resiles therefrom his previously made statement. Moreover, also upon his becoming cross-examined by the learned Public Prosecutor concerned, thus the judicial conscience of the Court become completely satisfied that the investigating officer concerned, did record, thus a fabricated apposite previously made statement in writing, therebys the Courts would be led to declare that the said made apposite resilings are well made resilings

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by the eye witness concerned, thus from his previously made statement in writing.

31. Moreover, in case the Court, in the above manner, becomes satisfied about the well made resilings by the eye witness concerned, to the crime event, thereupon the Court may consequently draw a conclusion, that the recoveries made in pursuance to the disclosure statement made by the accused, even if they do become ably proven, yet therebys may be the said disclosure statement, and, the consequent thereto made recoveries also loosing their evidentiary tenacity. The said rule is not a straitjacket principle, but it has to be carefully applied depending upon the facts, circumstances and evidence in each case. Tritely put in the said event, upon comparative weighings being made of the well made resilings, thus by the eye witness concerned, from his previously made statement in writing, and, of the well proven recoveries made in pursuance to the efficaciously proven disclosure statement rendered by the accused, the Court is required to be drawing a conclusion, as to whether evidentiary tenacity has to be yet assigned to the disclosure statement and the pursuant thereto recovery memo, especially when they become ably proven and also do not fall foul from the above stated principles, and/or to the well made resiling by the eye witness concerned, from his previously recorded statement in writing. Emphatically, the said exercise requires an insightful apposite comparative analyses being made.

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32. To a limited extent also if there is clear cogent medical account, which alike, a frailly rendered eye witness account to the extent (supra), vis-a-vis the prosecution case based upon eye witness account rather unfolds qua the ante mortem injuries or other injuries as became entailed on the apposite regions of the body(ies) concerned, thus not being a sequel of users thereovers of the recovered weapon of offence, therebys too, the apposite signed disclosure statement and the consequent thereto recovery, when may be is of corroborative evidentiary vigor, but when other adduced prosecution evidence, but also likewise fails to connect the recoveries with the medical account, therebys the said signed disclosure statement and the consequent thereto recovery, thus may also loose their evidentiary vigor. Even the said rule has to be carefully applied depending upon the facts, circumstances, and, the adduced evidence in every case.

33. However, in a case based upon circumstantial evidence when the appositely made signed disclosure statement by the accused and the consequent thereto prepared recovery memos, do not fall foul, of the above stated principles, therebys they acquire grave evidentiary vigor, especially when in pursuance thereto able recoveries are made.

34. The makings of signed disclosure statement and the consequent thereto recoveries, upon able proof becoming rendered qua both, thus form firm incriminatory links in a case rested upon circumstantial evidence. In the above genre of cases, the prosecution

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apart from proving the above genre of charges, thus also become encumbered with the duty to discharge the apposite onus, through also cogently proving other incriminatory links, if they are so adduced in evidence, rather for sustaining the charge drawn against the accused.

35. Consequently, since the statutory provisions enclosed in Section 25 of the Indian Evidence Act, provisions whereof becomes extracted hereinafter, do not assign statutory admissibility to a simpliciter/bald confession made by an accused, thus before the police officer, rather during the term of his suffering custodial interrogation, but when the exception thereto, becomes engrafted in Section 27 of the Indian Evidence Act, provisions whereof becomes extracted hereinafter. Therefore, therebys when there is a statutory recognition of admissibility to a confession, as, made by an accused before a police officer, but only when the confession, as made by the accused, before the police officer concerned, but becomes made during the term of his spending police custody, whereafters the said incriminatory confession, rather also evidently leads the accused, to lead the investigating officer to the place of discovery, place whereof, is exclusively within the domain of his exclusive knowledge.

“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.

Xxx

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

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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.”

36. Significantly, it would not be insagacious to straightaway oust the said made signed disclosure statement or the consequent thereto recovery, unless both fall foul of the above principles, besides unless the said principles become proven by the defence. Contrarily, in case the disclosure statement and the consequent thereto recovery enclosed in the respective memos, do not fall foul of the above principles rather when they become cogently established to link the accused with the relevant charge. Resultantly, if the said comprises but a pivotal incriminatory link for proving the charge drawn against the accused, thereby the snatching of the above incriminatory link from the prosecution, through straightaway rejecting the same, but would result in perpetration of injustice to the victim or to the family members of the deceased, as the case may be.

37. Now coming the facts at hands, since the disclosure statement and the consequent thereto recovery do become efficaciously proven by the prosecution. Moreover, when none of the marginal witnesses, to the said memos become adequately impeached rather for belying the validity of drawings of the memo(s) nor also when it has been proven that the said memo(s) are fabricated or engineered, besides when it is also not proven that the recovery (supra) did not lead to the

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discovery of the apposite fact from the relevant place of hiding, thus only within the exclusive knowledge of the accused.

38. Conspicuously also, when the said disclosure statement is but not a bald or simpliciter disclosure statement, but evidently did lead to the making of efficacious recovery(ies), at the instance of the accused, to the police officer concerned.

39. Consequently, when therebys the above evident facts rather do not fall foul of the above stated/underlined principles in the verdicts (supra). Consequently, both the disclosure statement, and, the consequent thereto recovery, when do become efficaciously proven, therebys theretos immense evidentiary tenacity is to be assigned. Moreover, when the memos (supra) also lend corroboration, thus to the medical account, therebys through all the links (supra), the charge drawn against the accused becomes proven to the hilt.

MLR of injured/deceased Munish Kumar.

40. Dr. Nand Kumar Jha, who medico legally examined the injured/deceased Munish, has stepped into the witness box as PW-10, and, during the course of his examination-in-chief, he has proven the MLR of the said injured-deceased, to which Ex. P21, is assigned. He also proved the existence thereons of his valid signatures. He has also proven the existence of the hereinafter extracted injuries on the person of injured Munish (since deceased).

“1. There was a stab wound 4 cm x 2 cm. Oblique on posterior axillary line, lower lateral side of right chest with oozing of

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blood. Advised X-ray of chest PA and lateral view and Ultra Sonography of whole abdomen and surgeon opinion.

2. *There was a incised wound 4 c.m. X 1 c.m. On left side of lower lip and chin oblique with oozing of blood. Advised X-ray of lower jaw and ENT and dental opinion.*

3. *There was a lacerated wound 3 c.m. X 2 c.m. On left side of posterior part of perital region with oozing of blood. Advised X-ray of skull and surgeon opinion.*

41. The said witness was also shown the incriminatory weapon of offence i.e. danda and knife whereupon, and, vide his opinion comprised in Ex. P19, he stated that the possibility of injury No. 1 being caused by the weapon (knife Ex.MO/1) in a stab manner rather cannot be ruled out. Moreover, vide his MLR comprised in Ex. P21, he stated that the weapon used in causing injuries No. 1 and 2 was sharp, whereas, qua injury No. 3, it was blunt.

Post-mortem report

42. The post-mortem report, to which Ex. P43 is assigned, became proven by PW-18. PW-18 in his examination-in-chief, has deposed that on her making an autopsy on the body of deceased Munish, thus his noticing thereons the hereinafter ante mortem injuries-

1. *Stitched wound 5 cm long with stitches, on the right side of chest, 28 cm below the axilla and 29 cm right to the midline, obliquely placed. On opening the stitches, wound was partially healed. On dissection, the track of the wound was going medially, cutting underlying subcutaneous tissues and muscles, passing through intercostal space between 8th and 9th rib, then cutting underlying Pleura, then cutting diaphragm and then injuring right lobe of liver on superolateral aspect. Superio-lateral part of right lobe of liver showing*

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necrosis and softening with maximum depth of wound 5 cm. Clotted blood was present alongwith foul smelling pus on the liver.

2. *Stitched partially healed wound with one stitch 5cm. Long present on the left side of face, extending from lower lip and going downwards and outwards on to the face.*

3. *Stitched wound 3 cm. Long present on the left side of the head over parietal region, 10 cm above left ear and 16 cm from the left eyebrow.*

43. Furthermore, PW-18 also made a speaking in his examination in-chief, that the cause of demise of the deceased was owing to stab injury to the liver and its consequent fatal hemorrhagic and septicaemic shock. All the injuries (supra) were declared as ante mortem in nature.

44. The above made echoings by PW-18, in his examination-in-chief, became never challenged through any efficacious cross-examination, being made upon him, by the learned defence counsel. Therefore, the opinion, as made by PW-18 qua the demise of the deceased thus acquires formidable force. Consequently, the above echoing, as made by PW-18, in his examination-in-chief, does relate, the fatal ante-mortem injuries to the time of the crime event hence taking place at the crime site.

45. Conspicuously also when besettings of fatal *hemorrhagic and septicaemic shock* arising from delivering of a fatal stab injury to the liver of the deceased, thus has a direct link with the ante mortem injuries, as became pronounced by the doctor concerned, who conducted the post mortem on the body of the deceased.

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46. Thus, conjoint readings of the report of the doctors concerned, who respectively proved the apposite MLR, and, of the post-mortem report of the deceased concerned, thus with the efficaciously proven signed disclosure statement (Ex. P27) as made by the convict-appellant, besides also with the consequent thereto made valid recovery through recovery memo (Ex.P6), does thereby foster an inference, that thereby there is *inter se* corroboration *inter se* the dying declaration (Ex.P34) with the medical account, besides with the memos supra. In summa, this Court finds no gross perversity or absurdity in the appreciation of the adduced relevant evidence, as became made by the learned trial Judge concerned.

Final Order of this Court.

47. In consequence, there is no merit in the appeal, and, the same is dismissed. The impugned verdict, and, consequent therewith sentence(s) (supra), as imposed upon the convict by the learned Convicting Court, is affirmed and maintained.

48. If the convict (supra) is on bail, thereupon, the sentences(s) as imposed upon the convict-appellant, be ensured to be forthwith executed by the learned trial Judge concerned, through his forthwith drawing committal warrants.

49. 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 sent down forthwith.

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

(SURESHWAR THAKUR)
JUDGE

24.09.2024	(SUDEEPTI SHARMA)
	JUDGE
kavneet singh	Whether speaking/reasoned : Yes/No
	Whether reportable : Yes/No