

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-162-2023 (O&M)
Reserved on: 25.10.2024
Date of decision: 6.11.2024

RAM MEHAR

...Appellant

Versus

STATE OF HARYANA

...Respondent

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

Present: Mr. Pranav Chamoli, Advocate
for the appellant.

Mr. Pradeep Prakash Chahar, Sr. DAG, Haryana.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the verdict drawn on 15.01.2020, upon Sessions Case No.63, of 2017, by the learned Additional Sessions Judge, Hisar, wherethrough, in respect of a charge drawn for an offence punishable under Section 302 of the IPC, he recorded a verdict of conviction against the convict-appellant. Moreover, through a separate sentencing order of 16.01.2020, the learned trial Judge concerned imposed, upon, the convict-appellant both sentence(s) of imprisonment as well as sentence(s) of fine, but in the hereinafter extracted manner.

“5. The convict has been proved to have committed murder of a young boy without any provocation on his part. The convict is, thus, sentenced to undergo Rigorous Imprisonment for life and to pay fine of Rs.25,000/- for the commission of offence punishable under Section 302 IPC. In default of payment of fine, he shall further undergo Simple Imprisonment for a period of two years.”

2. The period spent in prison by the convict during investigation or trial was, in terms of Section 428 of Cr.P.C., ordered to be set off from the above imposed substantive sentence(s) of imprisonment, upon the convict.

3. The convict becomes aggrieved from the above drawn verdict of conviction besides also becomes aggrieved from the above drawn order of sentence, thus, he is led to institute thereagainst the instant appeal before this Court.

FACTUAL BACKGROUND

4. The genesis of the prosecution case is embodied in the appeal FIR to which Ex.P1 is assigned. It is recorded therein, that on 07.06.2017 a telephonic message was received in the police station from Anil son of Mehtab Yadav, resident of Kishangarh, owner of Jannet Hotel that Ali Khan is lying dead on a cot under a shed in Jannet Hotel at Daroli Road, Adampur. Upon this, Station House Officer Pawan Kumar alongwith Assistant Sub Inspector Krishan Kumar No. 775, Head Constable Rohtash No. 1142 and Constable Anil Kumar No.1597 reached at Jannet Hotel by official vehicle bearing Registration No. HR39B/3804 being driven by Exemptee Head Constable Rakesh No. 690, where Feroz Khan, father of deceased met him and got recorded his statement alleging therein that he hails from village Gordah, District Jhapa, Nepal and presently residing at Jawarhar Nagar, Mandi Adampur. His son Ali Khan, aged about 17 years, was working as a cook at Jannet Hotel for the last about one month and used to sleep at the hotel in the night. On 07.06.2007 Anil son of Mehtab Yadav, resident of Kishangarh, owner of Jannet Hotel came to his house and told him that his son Ali Khan is lying dead at a cot under a shed in Jannet Hotel. He noticed that there were two sharp injuries on right side of head and right eye of his son. Ram

Mehar son of Jai Singh, resident of Mandi Adampur was also working with his

son at Jannet Hotel who is now missing. Ram Mehar committed murder of his son Ali Khan in the night. A request for taking necessary action against the accused was made. Upon this, a ruqa was sent to the police station through Constable Anil Kumar No.1597 for the registration of the case.

INVESTIGATION

5. Upon receipt of the ruqa in the police station, a formal FIR for the commission of offence punishable under Section 302 IPC was registered against the accused. Investigation was set in motion. Statements of witnesses under Section 161 Cr.P.C were recorded. Site plan of place of occurrence was prepared. Blood stained earth, clothes smeared with blood and other articles were taken into possession from the spot. Post mortem on the body of the deceased was got conducted. On 08.06.2017 accused Ram Mehar was arrested. In pursuance of his disclosure statement, accused got recovered one iron pipe and his blood smeared shirt from the house of his father-in-law Partap situated at village Kairanwali, Sirsa. Site plan of place of recovery was prepared. Accused also got demarcated the place of occurrence. The case property was sent to Forensic Science Laboratory, Madhuban for examination. On completion of usual formalities of investigation, report under section 173 Cr.P.C. was submitted before the court of Area Magistrate, Hisar against accused Ram Mehar for the commission of an offence punishable under Section 302 IPC.

COMMITTAL PROCEEDINGS

6. Since the afore offence was exclusively triable by the Court of Session, thus vide committal order dated 22.08.2017 the learned Judicial Magistrate Ist Class, Hisar, committed the accused to face trial before the Court of Session.

TRIAL PROCEEDINGS

7. The prosecution examined as many as 11 witnesses and, subsequently, the public prosecutor closed the prosecution evidence. After the closure of the prosecution case, the learned trial Judge drew proceedings under Section 313 Cr.P.C., wherein, the accused pleaded innocence, and, claimed false implication. However, he did not choose to lead any defence evidence.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE APPELLANT

8. The learned counsel for the aggrieved convict-appellant has argued before this Court, that the impugned verdict of conviction, and, the consequent thereto order of sentence, thus require an interference. They support the above submission on the ground, that it is based on a gross misappreciation, and, non-appreciation of evidence germane to the charge.

9. He rests the said submission, on the premise, that the weapon used for the commission of offence was an iron pipe, as such only a blunt injury was causable by the user of the said weapon, on the body of the deceased, whereas, the doctor declared the injuries to be ante mortem incised wounds. Resultantly, he submits that the recovered weapon of offence has remained unconnected with the fatal incised wounds, as became entailed upon the body of the deceased.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

10. The learned State counsel has argued that the impugned verdict of conviction, and, consequent thereto sentence (supra), as became imposed upon the convict by the learned trial Judge concerned, is merit worthy, as the same do not suffer from any taint of any gross mis-appreciation or non-appreciation of any evidence germane to the charge. Therefore, he contends that the impugned verdict of conviction be maintained, and, affirmed by this Court.

CIRCUMSTANTIAL EVIDENCE BASED CASE, BASED ON THEORY OF LAST SEEN PROPAGATED BY PW-8, THE SAID PROPAGATION IS THE INITIAL/PRIMARY LINK IN THE CHAIN OF INCRIMINATORY CIRCUMSTANCES AS ERECTED BY THE PROSECUTION AGAINST THE ACCUSED

11. The theory of last seeing of the accused and the deceased together, is propagated by PW-4 Anil Kumar. PW-4 in his examination-in-chief has echoed that he is running a hotel in the name of Janat Hotel located at Daroli Road, Adampur, which is being look after by him and his father. Deceased Ali Khan was working in his hotel as cook and accused Ram Mehar was also working as servant/waiter. Both used to stay in the hotel during night. He further echoed therein that usually, he closes his hotel at about 9:30 p.m., and while going home, he used to hand over the keys of the hotel to deceased Ali Khan. He continued to testify that as usual, on 06.06.2017 at about 9/9:30 p.m., after closing the hotel, he handed over the keys to the deceased Ali Khan and went home. He further stated that when one the next day i.e. on 07.06.2017 at about 6:30/6:45 p.m., when he came to his hotel, he found that dead body of Ali Khan, was lying on a cot under a shed of the hotel, and, the dead body was having injuries on the head and eyes. Upon which, he went to the house of deceased Ali Khan and after narrating the incident, he took the father of the deceased Firoz Khan to the hotel. Accused Ram Mehar whom he had left with Ali Khan on the previous night at the time of closing the hotel rather was not found present at the crime site, whereupon suspicion arose and resulted in his reporting the incident to the police. Therefore, the above made echoings in his examination-in-chief, thus PW-4 erected the incriminatory link qua his last seeing together the accused and the deceased.

12. The above witness was subjected to the ordeal of a rigorous cross-examination. However, no successful unearthings were made therein, rather by

the learned defence counsel, but suggestive, that the above testification(s), as made by him, in his examination-in-chief, rather were either false, contrived or concocted. Therefore, naturally immense evidentiary credit, is to be assigned to the testification of PW-4. Resultantly, an inference is garnered, that the accused and the deceased were last seen together by PW-4. Importantly since both the accused and the accused were last seen together on the relevant night, whereas, PW-4 on the subsequent morning discovered the body of the deceased in the hotel. Moreover, when unrebutted evidence becomes adduced in proof of the incriminatory facts (supra), besides when no plausible explanation becomes rendered by the accused, about his absence from the crime site, subsequent to the crime event. Resultantly, therebys also inference becomes erected, that as such with the accused evidently fleeing from the crime site, thus his personifying conduct inconsistent with his innocence. Therefore, the natural corollary thereof, is that, the cogent link (supra) in the chain of incriminatory circumstances as becomes erected by the prosecution against the accused, but obviously becoming cogently established by the prosecution.

Signed disclosure statement of convict Ram Mehar
Ex. P12

13. During the course of investigation, being made into the appeal FIR, convict-appellant Ram Mehar, made a signed disclosure statement, to which Ex.P12 is assigned. The signed disclosure statement, as made by the accused is ad verbatim extracted hereinafter.

“x x x x x

I concealed blood stained t-shirt, iron pipe having T in the room of house of my father in law Partap Singh and nobody except me knows about it. I can get the same recovered from the house of my father in law Partap situated at village Kairawali Distt. Sirsa after demarcation. I can also get demarcated the place where I inflicted injury to Ali Khan and committed his murder.

Disclosure statement of accused stands prepared. On disclosure statement, aforesaid accused Ram Mehar and witnesses put their respective signatures.

x x x x x”

14. The disclosure statement (supra), carries thereons the signatures, of the convict concerned. In his signed disclosure statement (supra), convict Ram Mehar, confessed his guilt in inflicting injuries on person of the deceased, hence with the recovered weapon. The further speaking therein is qua his keeping, and, concealing the incriminatory weapon of offence. Moreover, the said signed disclosure statement does also makes 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.

15. Significantly, since the appellant has not been able to either ably deny his signatures as occur on Ex.P12 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 said memo is concluded to be holding the utmost evidentiary tenacity.

16. Significantly also since post the making of the said signed disclosure statement, by the convict to the investigating officer concerned, the convict concerned, through recovery memo Ex.P14, thus caused the recovery of the weapon of offence to the investigating officer concerned. Consequently, when the said made recovery is also not suggested by any cogent evidence to be a planted recovery. Resultantly, the effect thereof, is that a valid recovery being made vis-a-vis the incriminatory weapon of offence thus by the convict, to the investigating officer concerned. In sequel, the making of the valid signed

disclosure statement, by the convict concerned, besides the pursuant thereto effectuation of valid recovery of the incriminatory weapon of offence, thus by the convict concerned, to the investigating officer concerned, but naturally corroborates and supports the unblemished and credible last seen together account (supra).

17. However, yet for assessing the vigor of the said made disclosure statements and consequent thereto made recoveries, it apt to refer to the principles governing the assigning of creditworthiness to the said made disclosure statements and to the consequent thereto made recoveries. 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 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 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 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.

18. 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 apposite 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 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***).

19. 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 apposite assigning of apposite 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***, elucidating on Section 27 of the Evidence Act, it has been held that the first condition imposed and necessary for bringing the 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 deposed 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 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.

20. 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;
- 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 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 signed disclosure statement and the consequent thereto recovery being made, that thereby the recovered items or the discovered fact, rather becoming planted onto the relevant site, through a stratagem becoming employed by the investigating officer.

21. 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.

22. 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, thereby the Courts would be led to declare that the said made apposite resilings are well made

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

23. 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.

24. 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, thereby the said signed disclosure statement and the consequent thereto recovery, thus may also lose their evidentiary vigor. Even the said rule has to be carefully applied depending upon the facts, circumstances, and, the adduced evidence in every case.

25. 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, thereby they acquire grave evidentiary vigor, especially when in pursuance thereto able recoveries are made.

26. 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 apart from proving the above genre of charges, thus also becomes 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.

27. 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, thereby 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, whereafter 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.

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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.”

28. 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, therebys 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.

29. Now coming to the facts at hands, since the disclosure statements and the consequent thereto recoveries 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 memos nor also when it has been proven that the said memos are fabricated or engineered, besides when it is also not proven that the recoveries (supra) did not lead to the discovery of the apposite fact from the relevant place of hiding, thus only within the exclusive knowledge of the accused.

30. 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.

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

MEDICAL EVIDENCE (POST MORTEM REPORT)

32. The autopsy upon the body of deceased Ali Khan was conducted on 07.06.2017 by PW-8 and PW-12 (Dr. Sachin Brar). PW-8 has proven *qua* his, authoring Ex.P7, as relates to the autopsy as made upon the body of deceased.

33. Moreover, he has proven that the cause of death of deceased Ali Khan, was owing to injury to vital organs i.e. brain. All the injuries were declared to be ante mortem in nature and were further declared to be sufficient to

cause death in ordinary course of life. The relevant ante mortem injuries as noticed by PW-8 on the body of deceased are extracted hereinafter.

“1. One incised wound of size 3x1 cm present over right eye brow with fracture of underlined bone and large hematoma over brain tissue with laceration of brain tissue over corresponding area of brain.

2. Bruise of red colour of size 6x2 cm present over right side of face, placed transversely.

3. Blacking of right eye with red tissue present on right eye.

4. Three incised wound of maximum size 7x1x1 cm present over right side of Pareto-temporal region of scalp. On further dissection underlined bone fracture was present. On further dissection sub dural hematoma present over brain.”

34. The incriminatory weapon(s) of offence(s) (Ex.P14) was shown to PW-8, thus during the course of his making his testification(s), before the learned trial Judge concerned. In his testification he has spoken that “the possibility of injury leading to death caused by this pipe cannot be ruled out.”. The effect of the above, is that, especially when no efficacious cross-examination was made upon the said prosecution witness, by the learned defence counsel, thus thereby, the defence conceding *qua* the said ante mortem injuries declared in PMR were, as such, inflicted on the relevant portion of the body of the deceased, with the users thereons, rather by the accused-Ram Mehar, thus of the recovered pipe (Ex.P14). Consequently, thereby medical evidence also corroborates the last seeing together account, as well as the recovery memos (*supra*).

35. In aftermath, the arguments (*supra*), raised by the learned counsel for the appellant that the recovered iron pipe was a blunt weapon, whereas, the doctor declaring the fatal incised wounds to be the cause of death thereby there is snapping of *inter se* connection *inter se* iron pipe (Ex.P-14) with the fatal incised wounds, thus does not hold any vigor.

FSL REPORT

36. Ex.P10 (blood stains collected with the help of cotton, blood stained piece of Dari, piece of pillow cover and pieces of Niwar of cot having blood stains) became sent to the FSL concerned, through C-Manoj. After examinations being made at the FSL concerned, *qua* the contents of the sealed parcels, thus the expert concerned, drew the hereinafter extracted results.

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<u>Parcel No.</u>	<u>No. & Seal impression</u>	<u>Description of parcel(s)</u>
1.	3-PK	<i>It contained exhibit-1a to 1d. Exhibit-1a. Two blue cloth piece stained with brownish stains. Exhibit-1b. Two light brown cloth piece stained with brownish stains. Exhibit-1c. One cotton wool piece/swab stained with brownish stains. Exhibit-1d. Two checked cloth piece stained with brownish stains.</i>
2.	3-PK	<i>It contained exhibit 2. Exhibit-2. One small grey plastic Niwar piece stained with brownish stains.</i>
3.	3-PK	<i>It contained exhibit-3 Exhibit-3. Cotton wool swab partially stained with dark brown stains.</i>
4.	3-PK	<i>It contained exhibit-4. Exhibit-4. One multicolored Dari cloth piece stained with dark brownish stains.</i>
5.	5-Doctor	<i>It contained exhibit-5a to 5b. Exhibit-5a. One multicolored striped T-shirt stained with dark brownish stains. Exhibit-5b. One blue jeans pants along-with brown belt stained with few small brownish stains.</i>
6.	3-PK	<i>It contained exhibit-6 Exhibit-6. One multicolored striped shirt stained with brownish stains.</i>
7.	3-PK	<i>It contained exhibit-7.</i>

Exhibit-7. One all metallic hollow pipe (approx. 59 cm.) having metallic ‘T’ part at one end stained with few small brownish stains.

LABORTORY EXAMINATIONS

Laboratory examinations were carried out to detect the presence of blood on the exhibits through chemical tests. Blood thus detected was subjected to serological tests to determine its species of origin & Group. Based upon these examinations the results obtained are given below:-

1. Exhibit-1a (Cloth pieces), Exhibit-1b (Cloth pieces), Exhibit-1c (Cotton wool piece/swab) 1d (Dari piece), Exhibit-5a (T-shirt), Exhibit-5b (Jeans pants), Exhibit-6 (Shirt) and Exhibit-7 (Pipe) were stained with blood stains.

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Results of Serological Analysis of blood

<i>Sr. No.</i>	<i>Name of Exhibit</i>	<i>Origin</i>	<i>Group</i>
<i>1a.</i>	<i>Cloth pieces</i>	<i>Human</i>	<i>‘A’</i>
<i>1b.</i>	<i>Cloth pieces</i>	<i>Human</i>	<i>‘A’</i>
<i>1c.</i>	<i>Cotton wool piece/Swab</i>	<i>Human</i>	<i>‘A’</i>
<i>1d.</i>	<i>Cloth pieces</i>	<i>Human</i>	<i>‘A’</i>
<i>2.</i>	<i>Niwar piece</i>	<i>Human”</i>	<i>‘A’</i>
<i>3.</i>	<i>Swab</i>	<i>Human</i>	<i>‘A’</i>
<i>4.</i>	<i>Dari</i>	<i>Human</i>	<i>‘A’</i>
<i>5a.</i>	<i>T-shirt</i>	<i>Human</i>	<i>‘A’</i>
<i>5b.</i>	<i>Jeans pants</i>	<i>Human</i>	<i>‘A’</i>
<i>6.</i>	<i>Shirt</i>	<i>Human</i>	<i>‘A’</i>
<i>7.</i>	<i>Pipe</i>	<i>Human</i>	<i>‘A’</i>

37. An analysis of the above made conclusions, as became drawn by the experts concerned, working at the FSL concerned, and but after theirs examining the contents of the sealed cloth parcels, as became sent there, does but naturally bring forth an inference, that the prosecution has hence invincibly proven, that the blood on the *Pipe* in fact was human blood. Therefore, irrespective of the fact that the prosecution has been unable to bring forth evidence, that the blood occurring on the *Pipe* was not belonging to the blood group of the deceased, yet therebys the said stains of blood as occurring on the recovered *Pipe* thus are to be concluded to be of the blood group of the deceased, especially when no evidence became adduced by the defence, suggestive that the blood stains borne on *Pipe*

rather not belonging to the blood of the deceased, thus through the defence adducing the FTA card either of the deceased or of his family member.

38. Reiteratedly above medical evidence also supports the proven incriminatory link (supra) as relates to the theory of last seeing together of the accused with the deceased.

39. Therefore, also reiteratedly the submission (supra) of the learned counsel for the appellant, when does not overcome the efficacy of the credible propagation vis-a-vis the last seeing together of the accused and the deceased nor also when it fails to overcome the efficacy of the signed disclosure statement, especially when in pursuance thereto the apposite recovery became effected to the investigating officer. Therefore, the said submission completely loses its vigor. Moreover, conspicuously besides reiteratedly when a 'T' was attached to the weapon of offence, besides when upon the weapon of offence becoming shown to the doctor, his opining that "the possibility of injury leading to death caused by this pipe cannot be ruled out". Resultantly, it becomes invincingly proven that the accused had caused the incised fatal injury on the person of the deceased through the use of the recovered weapon of offence.

FINAL ORDER

40. In consequence, the impugned verdict of conviction, and, also the consequent therewith order of sentence, as becomes respectively recorded, and, imposed, upon the convict-appellant by the learned trial Judge concerned, do not suffer from any gross perversity, or absurdity of gross mis-appreciation, and, non-appreciation of the evidence on record. In consequence, there is no merit in the appeal, and, the same is dismissed. If the appellant is on bail, thereupon he is ordered to be forthwith taken into custody, through the learned trial Judge concerned, forthwith drawing committal warrants against the accused.

Case property, if any, be dealt with in accordance with law, but only after the expiry of the period of limitation for the filing of an appeal.

41. Records be sent down forthwith.

(SURESHWAR THAKUR)
JUDGE

6.11.2024

Ithlesh

(KULDEEP TIWARI)
JUDGE

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