

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

**The Hon'ble Justice Debangsu Basak
&
The Hon'ble Justice Prasenjit Biswas**

**C.R.A.(DB) 114 of 2022
With
IA No: CRAN 1/2022**

Gyan Sagar Sharma

-Versus-

The State of West Bengal

For the Appellants : Mr. Sandipan Ganguly, Sr. Adv.
Mr. Hafiz Ali, Adv.,
Ms. Manasurta Mukherjee, Adv.

For the State : Mr. Madhusudan Sur, Adv.,
Mr. Dipankar Pramanick, Adv.

Hearing concluded on : July 31, 2025

Judgment On : August 12, 2025

Prasenjit Biswas, J:-

1. The impugned judgment and order of conviction and sentence dated 06.05.2022 and 07.05.2022 passed by the learned Additional Sessions Judge, Baruipur, South 24-Parganas in connection with Sessions Trial No. 10(06)/2015 arising out of the S.T. (CIS) No. 125 of 2016 (G.R. No. 2884/2014) is assailed in this appeal.

2. By passing the impugned judgment and order this appellant was found guilty for commission of offence punishable under Sections 302 and 201 of the Indian Penal Code and was sentenced to suffer rigorous imprisonment for life and to pay fine of Rs. 10,000/-, in default of payment of fine to undergo further rigorous imprisonment of three months for commission of offence punishable under Section 302 of the Indian Penal Code. This appellant was further sentenced to suffer rigorous imprisonment for five years and to pay fine of Rs. 2000/- and in default of payment of fine to suffer further rigorous imprisonment of one month for committing offence punishable under Section 201 of the Indian Penal Code.

3. Being aggrieved by and dissatisfied with the said impugned judgment and order of conviction, the present appeal is preferred at the behest of the appellant.

4. The inception of the prosecution case is an extra judicial confession made by a minor co-accused. The written complaint lodged by Gautam Pandey (informant) at the exhumation place at Rania with the I.C., Sonarpur Police Station is to the effect that the informant and other local people came to know from other accused Bablu Yadav that he along with others including this appellant murdered one Madan Roy two years ago by firing a gun at him and thereafter, this appellant along with others chopped the body of Madan Roy into pieces and kept it into bags and then buried the same near the house of the appellant.

5. It appears from G.D.E. No. 918 dated 08.06.2014 that the Sonarpur Police Station received a telephonic message from an unknown person stating that one person towards the close associate of this appellant Gyan Sagar Sharma namely, Bablu Yadav (other minor accused) of Rania disclosed that on 08.06.2014 this appellant murdered one Madan Roy about two years ago and

the dead body was kept concealed under the earth. Thereafter, I.C. of the said Police Station gave a requisition to S.D.O., Baruipur to depute an Executive Magistrate for digging the place for exhumation of dead body. The land near the house of this appellant was exhumed on 09.06.2014 in presence of the Executive Magistrate (PW16) and exhumation was conducted with the interference of the Sonarpur Police Station and in presence of local people. On such exhumation two bags were recovered from underneath the earth at the boundary of the land of this appellant and the acquitted accused Debendranath Dwibedi and from that two bags of skeleton of a human body, one mud-stained black pant, one old sports shoe red and white colour mixed with mud, one key, one black colour whistle with string were recovered. Just after exhumation PW1 (Gautam Pandey) who remained present at the spot lodged the written complaint on 09.06.2014 at the exhumed place at Renia. The said written complaint was received by the Officer-in-Charge. Thus, the criminal law was set in motion against this appellant and the other accused persons on that date at around 15.55 hrs. referring a G.D.E. No. 1035 on the day.

6. The G.D.E. No. 918 dated 08.06.2014 was not treated as written information with the Police Station in view of Section 154 of Cr.P.C. and the same was not considered as FIR for starting a criminal case by the Police Station.

7. PW16, the Executive Magistrate has stated in his evidence that as per order of S.D.O., Baruipur, he being the Executive Magistrate performed magisterial duty of disinter of a dead body claimed to be of one Sri Madan Roy of Renia under Sonarpur Police Station. It is said by this witness that the process has been started at around 10.30 A.M. and at about 3 P.M. some disintegrated bones were found in the bags at the courtyard of this appellant and during the process of inquest at that place only 137 numbers of bones (including disintegrated parts) were found which included the scalp, lower jaw, ribs and other human bones. As per statement of this witness the inquest was done at the spot in presence of witnesses namely, Gautam Pandey (PW1), Bikram Pandey (PW10). On cross-examination, this witness reiterated the same fact that the exhumation was started at around 10.30 A.M. and it was continued with spade and thereafter one JCP was used at around 2.30 P.M.

on that day for exhumation and the skeleton was found after exhumation by JCP at around 3 P.M.

8. Exhibit-13 is this sketch map prepared by the Investigating Officer (PW17) which shows that the exhumation place was in the boundary land of the wife of the acquitted accused Debendranath Dwibedi.

9. In this case, an extra-judicial confession was made by the minor accused Bablu Yadav before the informant, Gautam Pandey (PW1), Gopal Das (PW2), Bholanath Mondal (PW3), Sanjab Dey (PW4), Satyanarayan Prasad Shaw (PW5), Sunil Jha (PW6), Benod Singh (PW7), Amit Shaw (PW9) and Bikram Pandey (PW10) and all these witnesses have categorically stated in their evidences that they heard the incident from the said Bablu Yadav when Bablu went in Yubha Sangha Club and confessed that he along with other accused persons including this appellant murdered the victim Madan Roy. These witnesses heard the said incident from Bablu Yadav wherein he disclosed that this appellant murdered Madan Roy (victim) by gunshot injury.

10. Mr. Sandipan Ganguly, learned Senior Advocate for the appellant said that the purported murder said to have taken place in November, 2012 and suddenly two years later the co-accused, Bablu Yadav is stated to have walked into a club and made the said confession. The said delay creates a doubt about its credibility. It is further said by the learned Advocate that there is discrepancy in the evidences of those witnesses before whom the accused Bablu Yadav made confession. PW6 and PW9 stated that they heard the extra judicial confession of Bablu Yadav on 08.06.2014, whereas PW1 and PW3 heard the extra judicial confession on 09.06.2014 and PW4, PW5, PW7 and PW10 had not stated specific date on which the accused Bablu Yadav made extra judicial confession. It is further assailed by the learned Advocate that the Investigating Officer had prayed for showing Bablu Yadav as arrested in connection with the case on 13.06.2014 and accordingly it becomes impossible on the part of the accused Bablu Yadav to make any extra judicial confession on 08.06.2014. As per submission of the learned Advocate that if Bablu Yadav had already been in police custody on 08.06.2014 in connection with Sonarpur P.S. Case No.

846/2014 dated 08.06.2014, then he could not possibly have made the extra judicial confession either on 08.06.2014 or 09.06.2014 before these witnesses. It is said that it also does not transpire from the evidences on record that Bablu Yadav was acquainted with any of the witnesses who heard his confession. In support of his contention on this point, learned Advocate has placed reliance upon a decision rendered by the Hon'ble Apex Court in case of *Panchovs- State of Haryana* reported in (2011) 10 SCC 165.

11. It is trite law that extra-judicial confession, if true and voluntary, can be relied upon by the Court to convict the accused of the commission of the crime alleged despite inherent weakness or it can be used as an item of evidence and cannot be ignored when shown that such confession was made before a person who has no reason to state falsely and to whom it is made in circumstances which tend to support the statement. In such situation, the Court has to be satisfied that it is voluntary and is not the result of inducement, threat or promise envisaged under Section 24 of the Evidence Act or was brought about in suspicious circumstances to circumvent Sections 25 and 26 and the Court is required to look

into the surrounding circumstances to find out as to whether such confession is not inspired by any improper or co-lateral consideration or circumvention of law suggesting that it may not be true.

12. In this case, PW1 informant who lodged the complaint has stated in his evidence that the minor accused Bablu Yadav disclosed to him that Bablu along with this appellant and other accused persons committed murder of Madan Roy (victim) and dead body was cut into pieces and buried. It is further said by this witness that at the time of digging, pant, shirt and one shoe of the victim were also recovered from the place where exhumation was done. This PW1 lodged a written complaint at the place wherefrom skeleton was exhumed. The said written complaint was written by the scribe Bikram Pandey (PW10) as per submission of this PW1. The said FIR is marked as exhibit 1 in this case. This witness at the time of giving deposition before the Trial Court identified the shoe of the Madan Roy which is marked as MAT Exhibit-1 and stated that he had seen the victim wearing that shoe. This PW1 identified the mud-stained black pant, the plastic bag, body parts of the victim

which were recovered by police and two 'cutteries' by which the body of Madan Roy was cut into pieces. This PW1 in his evidence stated about motive of the murder and stated that the accused Bablu Yadav disclosed before this witness that this appellant about two years ago fired Madan Roy (victim) by gun as the appellant had illicit relationship with the wife of Madan Roy, namely Sabitri Roy (other accused). In course of giving deposition this PW1 has stated that the skeleton of the victim was exhumed from the land of the acquitted accused Debendranath Dwibedi which is situated just adjacent to the house of the appellant. In cross-examination, this PW1 stated that the victim Madan Roy was found missing since last two years prior to his skeleton was exhumed.

13. In case of Pancho (supra) the Apex Court held that an extra-judicial confession can be used against its maker, but as a matter of caution, courts need to look for corroboration to the same from other evidence on record. An extra-judicial confession, though weak in nature, is not inadmissible in evidence, but if such a confession is found to be voluntary, truthful, and made in a fit state of mind, it can be relied upon and may even form the sole basis for conviction,

provided it inspires confidence and is corroborated by other circumstantial or substantive evidence. It is the settled position of law that conviction can be based on extra-judicial confession if it is found to be voluntary and truthful.

14. In the present case, the accused Bablu Yadav made extra-judicial confession before the witnesses, who are the independent witnesses. The accused voluntarily confessed to having committed the offence, without any threat, inducement, or coercion. The said statement is corroborated by the recovery of the bones of a dead body, clothes of the accused and the weapon of offence pursuant to the disclosure made by the accused persons. The witnesses were subjected to thorough cross-examination but nothing adverse could be elicited to discredit the voluntariness or truthfulness of the confession.

15. The witnesses like Gopal Das (PW2), Bholanath Mondal (PW3), Sanjab Dey (PW4), Satyanarayan Prasad Shaw (PW5), Sunil Jha (PW6), Benod Singh (PW7), Amit Shaw (PW9) and Bikram Pandey (PW10) have stated in the evidence in the same voice of the complainant/informant (PW1) that they heard from the accused

Bablu Yadav when he came in Yubha Sangha Club and confessed that Bablu along with the appellant and other accused persons committed murder of Madan Roy (victim). The witnesses before whom Bablu Yadav had made extra-judicial confession amongst them some of those witnesses said that they heard from Bablu Yadav about the incident on 08.06.2014 and some of the witnesses said that they heard it from Bablu Yadav on 09.06.2014. It is said by the learned Advocate for the appellant that as there is discrepancy about the date of extra judicial confession and as such, the depositions made by these witnesses are not creditworthy. In our opinion, for such discrepancy about the dates stated by these witnesses, their depositions cannot be discarded and this may happen at the time of giving deposition by the witnesses before the Trial Court and such mistakes should be considered as minor discrepancies. On the basis of such extra judicial confession made by the accused Bablu Yadav, the concerned police station took steps and on exhumation bones and other articles were recovered. The Trial Court, upon due appreciation of the entire prosecution evidences, is of the opinion that the same inspires confidence and is

corroborated by other prosecution evidences. The words of the witnesses are clear, unambiguous and clearly convey that the accused is the perpetrator of the crime. It does not suffer from material discrepancies or inherent improbabilities and does appear to be cogent as per the prosecution version. In such circumstances, the trial court is fully justified in accepting such evidence.

16. PW13, Abhijit Roy, son of the victim is the only eye-witness to the incident of murder of Madan Roy. This PW13 has stated in his evidence that in the month of November, 2012, this appellant Gyansagar Sharma committed murder of his father by inflicting gunshot injury. The motive for murder as stated by this witness is that the victim was an auto-rickshaw driver and took a loan of Rs. 20,000/- from this appellant and his father used to repay Rs. 300/- per day. But, when the victim failed to make such payment on some occasions, this appellant used to give threat after coming to their house. This PW13 has further stated in his evidence that on the date of incident at about 9.30/10.00 P.M. the accused came to their house being accompanied by other accused persons and at that time his father was standing outside their house. It is said that this

appellant and his companion started jostling with the victim and this appellant Gyansagar Sharma fired at his father. This witness has stated that being afraid he took back his mother (one of the accused persons) to home and he heard from the accused Ranjit Sharma, son of the appellant that the dead body of his father was cut into pieces and was buried behind the factory of this appellant. This PW13 disclosed at the time of giving deposition stated as to why he could not report the matter to anyone and stated that the accused Ranjit Sharma, son of this appellant threatened this witness with dire consequences. In cross-examination, this PW13 stated that on the relevant date of the incident the victim returned to home and was standing at the courtyard of their house after refreshment. It was reiterated by this witness in cross-examination that his father remained at the courtyard for about an hour and he did not return into the house and then the incident of this case took place.

17. It is assailed by the learned Advocate of the appellant that delayed examination of eye witness is fatal and he placed reliance upon a decision of the Apex Court in case of **Joseph @ Jose Vs.**

State of Kerala¹. In the said report the conduct of the eye witness who remained silent for a long time, and his failure to disclose the facts to the persons who had gathered near the place where the deceased lay injured, created a serious doubt about the truthfulness of the witness. The facts of the present case are different where PW13 stated reasons for remaining silent. This witness stated in his evidence that he could not report the matter to anyone immediate to the incident as the accused Ranjit Sharma threatened him with dire consequence. It is trite law that the delay in recording the statement of witnesses by itself cannot be a ground to discard their testimony, especially when their presence at the place of occurrence is established and their evidence is otherwise found credible. Unless serious prejudice is shown to have been caused to the accused or the delay is unexplained and unnatural, mere delay in examination is not fatal. The explanation offered is that the witness was in a state of trauma and fear. The witness (PW 13) has been subjected to detailed cross-examination. Nothing has been elicited to discredit the version of the witness or to show that

¹ (2003) 11 SCC 223

the delay in examination led to any prejudice or that the witness had been tutored or planted. The testimony of PW-13 is found to be cogent, consistent, and corroborated by other evidence such as medical findings and the recovery of the weapon and other material exhibits. In view of the settled position of law and the facts of the case, this Court is of the considered opinion that the delay in examining PW-13 is neither unexplained nor suspicious, and it does not in any manner impair the credibility of the witness. The testimony of a witness cannot be discarded solely on the ground of delayed examination if it is otherwise found to be natural, trustworthy, and corroborative of other circumstances. The submission made by the learned Advocate for the appellant regarding delayed examination of PW-13 is not sustainable. The testimony is accepted as reliable and forms part of the basis for conviction.

18. As per evidence of PW1, the minor accused Bablu Yadav disclosed before that witness that this appellant about two years ago fired Madan Roy by gun as he had illicit relationship with the wife of the victim and this was the motive as this witness heard

from the accused Bablu Yadav. Whereas PW13, a son of the appellant has stated in his evidence that the appellant murdered his father as his father had taken a loan of Rs. 20,000/- from the appellant and thereafter was unable to repay the same. As per submission of the learned Advocate for the appellant that the prosecution version as regards motive is thus diametrically opposed to each other and the two versions in the instant case are independently exclusive of each other and there is no other reliable evidence on record by reference to which the truthfulness of either version can be tested. As per submission of the learned Advocate for the appellant that it is well settled that one piece of unreliable evidence cannot be used to corroborate another piece of unreliable evidence and accordingly, neither the extra judicial confession, nor the evidence of eye-witness (PW13) is reliable.

19. No doubt it is a sound principle to remember that every criminal act was done with the motive but its corollary is not that no criminal offence would have been committed, if prosecution has failed to prove the precise motive of the accused to commit it. When the prosecution succeeded in showing the possibility of some ire for

the accused towards the victim, the inability to further put on record the manner in which such ire would have swelled up in the mind of the offender to such a degree as to impel him to commit the offence cannot be construed as a fatal weakness of the prosecution. Motive is helpful in understanding why a crime was committed, but it is not a sine qua non (essential) for conviction, especially if the eye-witness's account is trustworthy. A contradiction between witnesses only on motive, without affecting the core evidence regarding who committed the offence, is generally not fatal to the prosecution's case. It is a settled legal proposition that even if the absence of motive, as alleged, is accepted that is of no consequence and pales into insignificance when direct evidence establishes the crime. Therefore, in case there is direct trustworthy evidence of witnesses as to commission of an offence, motive loses its significance. Therefore, if the genesis of the motive of the occurrence is not proved, the ocular testimony of the witnesses as to the occurrence could not be discarded only on the ground of absence of motive, if otherwise the evidence is worthy of reliance. Discrepancy in motive among prosecution witnesses does not vitiate

the prosecution case when there is reliable and consistent direct evidence proving the incident.

20. Learned counsel appearing for the appellant has contended that the discrepancy as to motive creates a dent in the credibility of the prosecution witnesses. However, we are not persuaded with this submission since we observed hereinabove that the discrepancy in the motive cannot be regarded as a ground for vitiating the prosecution case and when there is reliable and consistent direct evidence proving the incident. PW13 has stated before the learned Magistrate at the time of recording his statement under Section 164 of Cr.P.C. that this appellant, Gyansagar Sharma and his associate assaulted his father Madan Roy in his home on 09.11.2012 and this appellant shot his father and stated therein that his mother (another accused) had illicit relationship with the appellant but he did not state said fact before this Court. It could be understood in such a manner that being a son it became impossible for him to disclose about the illicit relationship of his mother with the appellant in open court during evidence taking process. He disclosed about the illicit relationship of his mother before the

Magistrate, at the time of recording his statement. At that stage there was no discrepancy between the extra judicial confession and PW13.

21. It has been argued by the defence that the prosecution witness, being the son of the deceased, did not speak about the alleged illicit relationship between his mother and the accused during his deposition, and hence, an adverse inference should be drawn regarding the prosecution case. However, this Court is unable to accept such an argument. It must be appreciated that human relationships are complex, and in matters involving allegations of an illicit or immoral relationship, particularly against a mother, a son may experience emotional trauma, societal shame, and inner conflict, making it extremely difficult for him to speak openly in a public forum such as a courtroom. In the Indian social and cultural context, a son may naturally refrain from making such statements out of respect for the memory of his mother, concern for family honour, or emotional distress, especially when such issues involve sensitive and stigmatizing allegations.

22. This PW13 had specifically stated before the Investigating Officer (PW15) that on 09.11.2012 this appellant fired at his father. Although, this witness failed to state the said date at the time of giving deposition, it appears from the evidence of PW13 that at the time of incident of this case he was a student of class-VII and after the incident when he used to stay at his home he had no talk with 'para' people and this witness did not inform about the incident to anyone of his relations, friends and teachers out of fear of his life. One relevant fact which has emerged from the deposition of this witness, where he stated that after the incident of this case till the date of his giving deposition his mother dressed up like a married woman which indicates that the wife of the victim knew about the incident but he did not disclose the said fact to anybody. After appreciation of the evidence of PW13, it can be said that he was the witness to the incident of murder of his father. There is no evidence brought on record by the side of the defence/appellant (herein) that this witness had any hostile relation with the appellant or he was tutored to say about the incident against the accused person. There

is no such reason for which it can be said that this witness impleaded this appellant falsely with the offence.

23. PW7, Benod Singh has stated that this appellant was residing with the wife of the victim in his house. This witness is one of the persons before whom the minor accused Bablu Yadav made extra-judicial confession about the murder of the victim Madan Roy by this appellant and others including him. It further appears that at the time of incident PW13 was aged about 15 years and as such, reliance can be made upon his testimony and the reason for not disclosing the incident to anybody out of fear. This witness along with his mother, are the only person who witnessed the incident. So, there is no question of citing any other person as witness to the incident. The learned Advocate has said that DNA examination of the bones recovered did not tie it to that of the deceased. It is further said by the learned Advocate that although it could be ascertained to DNA examination that the bones belonged to a member of the male gender but mere result of DNA examination to the effect of sex determination of the bones cannot give rise to an inference that the bones were of the deceased Madan Roy.

24. PW18 (Dr. Mrs. Soma Roy), who is an Assistant Director and Scientist at CFSL, Kolkata has stated in her evidence that as per her observation no proper amplifications of the autosomal STRs, the genetic profile could be done due to highly degraded DNA. But sex determination marker was amplified successfully and the result showed that it belonged to a male individual.

25. We are of the opinion that where there is consistent evidence, including recovery of skeleton of dead body and wearing apparels, shoes etc., the absence of conclusive forensic identification does not negate the prosecution case. It is true that the identity of the dead body could not be established by the forensic expert, however, the overwhelming evidence including recovery of wearing apparels and the ocular evidence (PW13) as well as extra judicial confession made by the other accused Bablu Yadav before the witnesses clearly establishes the identity of the deceased. Absence of conclusive DNA evidence is not fatal where there is cogent eye-witness pointing to the identity of the deceased. It is true that the forensic examination has affirmed that the recovered bones remains are of a male individual. However, the said examination does not

conclusively establish the identity of the deceased as the victim in the present case. The absence of direct forensic identification, such as DNA matching with known samples, does not necessarily render the prosecution case doubtful, especially when there exists strong evidence pointing toward the identity of the deceased. It is a settled position in law that identity of a deceased may also be established through evidence in the absence of conclusive medical or forensic identification. Hence, while the forensic expert could not definitively identify the skeletal remains as belonged to the victim, the cumulative effect of the surrounding circumstances, including evidence of PW13 and the confession made by the accused Bablu Yadav before the witnesses and recovery of wearing apparels, shoes etc. sufficiently establishes the identity of the deceased. It is not out of place to mention that it is true that the identity of the dead body could not be conclusively established by the forensic expert. The report of the forensic science laboratory merely opined that the bones recovered belonged to a male individual by the process of sex determination marker. However, the prosecution in this case is not solely depended on the forensic confession of identity. In the

present case, the ocular evidence (PW13) and the evidences of PW2, PW3, PW4, PW5, PW6 and PW7 formed a consistent, coherent and unbroken chain that unerringly points towards the identity of the deceased. Furthermore, recovery of the choppers by which the dead body of the victim was cut into pieces was effected at the instance of the accused and the same were identified by the witnesses.

26. The hand sketch map with index shows that the place of exhumation is at the boundary of the land of the appellant Gyansagar Sharma and the acquitted accused Debendranath Dwibedi. PW2, Gopal Das stated in his cross-examination that there is an iron grill factory near the place of occurrence which belonged to this appellant.

27. PW7, Benod Singh stated that the accused Bablu Yadav disclosed that he (Bablu) along with this appellant and other accused person brought the dead body of Madan Roy near the house of this appellant and cut the dead body into pieces and buried in nearby land. This witness said that the police was informed about the matter by PW2 and that place which is nearby to the house of this appellant was excavated by the police in

presence of the Magistrate and this witness and on excavating two bags were recovered. This witness at the time of giving deposition before the Trial Court identified the recovered black pant and shoe and he could identify the same as he had seen the victim while wearing said pant and shoe. It appears from the evidence on record that the prosecution proved that the articles have been recovered on exhumation from the exhumed place which is near to the grill factory to the appellant. The recovery has been made within the boundary of the land of the accused Debendranath Dwibedi. It is not the case of the defence that those articles were not recovered from the place during exhumation. So, it is proved that the pant, shoe etc. along with bones had been recovered from the said exhumed place.

28. PW11, Kanai Nayak, the seizure witness has stated in his evidence that on 19.08.2014 a little after 10 P.M. the police along with this appellant came to village Renia and recovered one chopper from jungle besides house of this appellant in his presence and seized the same by preparing a seizure list and this witness put signature on the seizure list.

29. PW12, Manik Sanfui, the witness to the seizure of another chopper as shown by the appellant and the minor co-accused Ranjit Sharma. It is said by this witness that on 19.08.2014 at about 10.05/10.00 P.M. when he was sitting in Yuba Sangha Club at Rennia Arabindranagar, then the police came there and asked him to accompany them for recovery of chopper from jungle and they accompanied the police personnel and then police recovered two choppers from jungle as shown by this appellant and the other accused Ranjit Sharma from back side of the house of this appellant which was seized by the police personnel by taking his signature on the said list.

30. It is contended by the learned Advocate that there is doubt about the recovery of choppers as shown by the accused and it is contrary to the provision of Section 27 of the Evidence Act and cannot be relied upon to be a circumstance against the appellant because of the fact that the said recovery was made after two years and recovered from an open space which turns the recovery vitiated and this recovery is not on the basis of previous statements made to the police by the appellant. Moreover, there is discrepancy with

regard to the recovery. There are two different versions of the independent witnesses amongst whom PW1 stated that a chopper was recovered at the instance of the appellant from a jungle behind the house of the appellant on 19.08.2014 and on the other hand PW12 has stated about the recovery of two choppers as shown by this appellant and the other accused Ranjit Sharma. Whereas PW17 (I.O.) has contradicted the two independent witnesses and stated that the recovery was made from the house of the appellant. It is said by the learned Advocate that the recovery was made on the basis of a leading statement given by the other accused Ranjit Sharma as per evidence of PW17. As per submission of the learned Advocate that the pivotal fact is making of the statement of the police which it leads to the recovery but in this case there is no statement discloses the fact/material to be discovered in record which indicates a serious lacking in the prosecution case. The recovery is not on the basis of a previous statement made to the police by the appellant. Moreover, said recovered choppers were not sent for FSL examination to prove that the choppers recovered at

the instance of the appellant was used in the commission of the crime.

31. In support of his contention, learned Advocate placed reliance upon the decisions of the Hon'ble Apex Court rendered in case of **Boby -vs- State of Kerala**² and in the case of **Nikhil Chandra Mondal -vs- State of West Bengal**.³

32. In this case, undoubtedly two choppers have been recovered by leading discovery of this appellant and the accused Ranjit Sharma. It is trite law that leading to the recovery of the weapon was recovered while the accused was in custody and recovery thereof is a fact which is admissible in evidence under Section 27 of the Indian Evidence Act. The basic idea embedded in Section 27 of the Indian Evidence Act is the doctrine of the confirmation by subsequent offence and the doctrine was founded on the principle that if any fact is discovered in search made on the strength of any information obtained from the prisoner then such discovery is the information which is to be treated as true. The information might be

² (2023)15 SCC 760

³ (2023) 6 SCC 605

confessional in nature but discovery in fact becomes a reliable evidence. So, in this case the recovery of the choppers is relevant in view of Sections 8 and 27 of the Evidence Act and can form the chain of evidence.

33. There is nothing in Section 27 of the Evidence Act which renders the statement of the accused inadmissible if recovery of the articles was made from any place which is open or accessible to others. It is a fallacious notion that when recovery of any incriminating article was made from a place which is open or accessible to others, it would vitiate the evidence under Section 27 of the Evidence Act. Any object can be concealed in places which are open or accessible to others. The person who hid it alone knows where it is until he discloses that fact to any other person. Hence the crucial question is not whether the place was accessible to others or not but whether it was ordinarily visible to others. If it is not, then it is immaterial that the concealed place is accessible to others. It is now well settled that the discovery of fact referred to in Section 27 of the Evidence Act is not the object recovered but the

fact embraces the place from which the object is recovered and the knowledge of the accused as to it.

34. In the case at hand, the fact discovered by the police with the help of the disclosure statements and the recovery of incriminating articles on the strength of such statements is that it was the appellant who concealed those choppers at the hidden places. It is immaterial that such statement of the accused is inculpatory because Section 27 of the Evidence Act renders even such inculpatory statements given to a police officer admissible in evidence by employing the words: "Whether it amounts to confession or not".

35. In the present case, the recoveries have been effected upon the statement of the accused. These recoveries, in our view, were made in furtherance to the statement of the accused who were in police custody and in the presence of independent witnesses. The aspect which the Court has to consider in the present case is whether these recoveries have been made in accordance with law and whether they are admissible in evidence or not, and most importantly, the link with and effect of the same vis-à-vis the

commission of the crime. We find nothing irregular in recovery of choppers leading to the statement made by the accused when they were in police custody. In case of Bobby (supra) the Apex court held that that basic idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered as a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true. The information might be confessional or non-inculpatory in nature but if it results in discovery of a fact, it becomes reliable information.

36. PW13, the witness to the incident has stated in his evidence that he heard from the accused Ranjit Sharma that the dead body was cut into pieces and was buried behind the factory of the appellant.

37. It is well settled that recovery of articles/choppers by leading discovery of the appellant and the accused can form an important link in the chain of evidence when corroborated by other circumstances such as forensic reports; eye-witness and it can

significantly continue to prove the guilt of the accused. So, the recovery of choppers which relates to the fact discovered becomes relevant and admissible. It is said by the learned Advocate for the appellant that there is no evidence that the appellant had a gun licence, nor was any gun seized from his possession and the post-mortem report; the bones recovered do not bear any gunshot injury.

38. In this case, PW13 son of the victim is the solitary eye-witness to the incident. It is well-settled that even evidence of sole eye witness can be sufficient to give conviction, if the witness is found to be wholly reliable. In this case, PW13 has inspired the confidence of the Court. His testimony is found to be clear, cogent and convincing and he said that this appellant fired at his father (victim) in his presence. There is no material discrepancy that would cause any doubt of the veracity of the evidence. The post-mortem doctor opined that the death of the subject was not natural. So, it could be said that the death of the victim was not natural because the body was cut into pieces. So, there is no confusion that the exhumed bones are the bones of human being and the subject was caused homicidal. We have already stated that it has come out that the

skeleton of the bones was of male person and the victim was a male. After appreciation of the evidences on record it cannot be denied that the exhumed bones are not of the deceased Madan Roy. During exhumation, a full black pant stained with mud had been recovered and it is marked as Material Exhibit-II in this case and it is said by these witnesses that the said black full pant used to wear by the deceased Madan Roy. The said description of the black full pant as recovered on exhumation matches with the description of the black full pant wore by the deceased which is appeared from the missing diary caused by the wife of the deceased (another accused).

39. It is said by the learned advocate for the appellant that PW16, Executive Magistrate has stated in his evidence that he did not see any black full pant etc. at the exhumation place but only with said evidence of PW16, the entire evidences brought on record, it cannot be thrown away. In examination of the accused under Section 313 of Cr.P.C. this appellant and the acquitted accused Debendranath Dwibedi could not explain why the said human bones in two bags along with pant and other 'alamats' were recovered from the place, which is within the boundary of the land of the wife of

Debendranath Dwibedi and near to the grill factory owned by this appellant. It is trite law that where the accused being asked offers no explanation or the explanation offered is found to be false, then it has formed an additional link and the chain of circumstances to point out the guilt. In the case in hand the incident of murder was happened on 09.11.2012 and the dead body was engraved in the buried place and it was done with clear notice and the assistance of the appellant and this accused person could not explain how the dead body was buried in that land.

40. It is a well-settled principle of criminal jurisprudence that non-recovery of the weapon of offence is not fatal to the prosecution case, if there is reliable and convincing ocular evidence. The absence of the weapon may create a gap in the chain of evidence, but it does not, in itself, nullify the entire case—particularly when there is a trustworthy eyewitness account of the crime. While the recovery of a weapon is useful in strengthening the prosecution case, it is only corroborative in nature. If recovery fails due to any reason (in this case the gun by which the deceased was shot dead), but the eyewitness account (PW13) is clear and trustworthy, the

court is not legally bound to acquit. The non-recovery of the offending weapon, such as a gun, does not by itself weaken the prosecution case to the extent of acquittal. PW13 who is the son of the deceased is a truthful and reliable eyewitness, who has seen the commission of the offence and whose testimony withstands scrutiny; conviction can be safely based on such evidence. The absence of recovery cannot override reliable direct evidence, and the focus must always remain on the credibility of the testimony presented before the court.

41. So, recovery of the weapon is not a sine qua non for conviction. It is only a corroborative piece of evidence, and the absence of such recovery cannot be treated as fatal to the prosecution if the substantive evidence, particularly the ocular testimony of witnesses, is found to be credible and consistent. In the present case, the prosecution has examined an eyewitness PW13, whose presence at the place of occurrence has been established and whose testimony is natural, coherent, and inspires confidence. No material contradiction or infirmity has emerged in cross-examination to discredit this witness. The ocular version is

also consistent with the Post Mortem Report which is marked as Exhibit in this case.

42. Therefore, the non-recovery of the weapon of offence does not, in any manner, dilute the strength of the prosecution case. When the testimony of a reliable witness is available and is sufficient to establish the guilt of the accused beyond reasonable doubt, conviction can be based solely on such testimony without insisting upon the recovery of the weapon. The defence argument on this count is, accordingly, rejected.

43. A criminal trial is primarily meant to ascertain the truth and determine whether the accused is guilty of the alleged offence. While a fair, impartial, and competent investigation is essential to uphold the rule of law, it is equally important that an accused is not acquitted solely due to lapses or irregularities in the investigation, if there is independent, credible, and trustworthy evidence available to prove guilt. There may be some minor defect in the investigation process and in the case of a defective investigation the court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on

account of the defect; to do so would tantamount to playing into the hands of the investigating officer. It is trite that if the lapse or omission is committed by the investigating agency or because of negligence the prosecution evidence is required to be examined de hors such omissions to find out whether the said evidence is reliable or not, the contaminated conduct of officials should not stand in the way of evaluating the evidence by the courts; otherwise the designed mischief would be perpetuated and justice would be denied to the complainant party. If substantive evidence exists and is found credible, conviction can be sustained despite lapses in investigation, ensuring that justice is not derailed due to procedural irregularities.

44. It is trite that before appreciating evidence of the witnesses examined in the case, it would be instructive to refer to the criteria for appreciation of oral evidence. While appreciating the evidence of a witness, the approach must be whether the evidence of witness read as a whole appears to have a ring of truth. Once that impression is found, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the

deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of the evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the Trial Court and unless the reasons are weighty and formidable, it would not be proper for the appellate court to reject the evidence on the ground of variations or infirmities in the matter of trivial details.

45. In this case, learned Advocate for the State submitted that there is no material in the record for which the impugned judgment

and order passed by the Trial Court may be interfered with. The prosecution has proved the case by cogent and satisfactory evidences that this appellant murdered the victim.

46. We have heard the learned counsels for the parties and considered their rival submissions made hereinabove and also went through the record with utmost circumspection. We have sufficiently examined the evidence of the material witnesses. We do not want to dilate further and to deal with each and every argument canvassed by the learned counsel for the appellant. Almost all these contentions were canvassed before the learned Trial Court and were rightly negatived.

47. In view of the above facts and circumstances and discussion made above we are of the opinion that there is nothing on record for which the judgment of the learned Trial Court is to be interfered with.

48. Accordingly, the instant appeal be and the same is hereby **dismissed.**

49. The impugned judgment and order of conviction passed by the learned Trial Court dated 06.05.2022 and 07.05.2022 passed in

connection with Sessions Trial No. 10(06)/2015 arising out of the S.T. (CIS) No. 125 of 2016 (G.R. No. 2884/2014) is hereby affirmed.

50. Consequently, the application if any filed in connection with this appeal is hereby rejected.

51. Let a copy of this order along with the Trial Court Record be sent down to the Trial Court immediately.

52. Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

[PRASENJIT BISWAS, J.]

53. I Agree

[DEBANGSU BASAK, J.]