

In the High Court of Punjab and Haryana at Chandigarh

1. **CRA-D-1000-DB-2013**
Reserved on: 09.01.2025
Date of Decision: 24.01.2025

Ashok @ Gunga @ Sarpanch and others

.....Appellants

Versus

State of Haryana

.....Respondent

2. **CRA-D-111-DB-2013 (O&M)**

Naresh @ Pappu

.....Appellant

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE VIKAS SURI

Argued by: Ms. Ishima Randhawa, Advocate
for the appellants (amicus curiae).

Mr. Ankur Mittal, Addl. AG Haryana with
Mr. P.P. Chahar, Sr. DAG, Haryana,
Mr. Saurabh Mago, DAG, Haryana,
Mr. Gaurav Bansal, DAG, Haryana and
Mr. Karan Jindal, DAG, Haryana.

SURESHWAR THAKUR, J.

1. Since both the above appeals arise from a common verdict, made by the learned trial Judge concerned, hence both the appeals (supra) are amenable for a common verdict being made thereons.

2. Both the appeals (supra) are directed against the impugned verdict, as made on 15.10.2012, upon Sessions Case bearing No.77 of 2008/2011, by the learned Additional Sessions Judge, Rohtak, wherethrough

in respect of charges drawn against the accused for an offence punishable

under Section 460 of the IPC, besides under Section 25/54/59 of the Arms Act, thus the learned trial Judge concerned, proceeded to record a finding of conviction against appellants-convicts Ashok @ Gunga, Naresh @ Pappu, Tutia and Prem @ Risalu for an offence punishable under Section 460 of the IPC, whereas, he convicted the appellant Naresh @ Pappu for an offence punishable under Sections 25/54/59 of the Arms Act. Moreover, the remaining co-accused namely Naresh @ Nareshi and Pappu were acquitted from the charges (supra), as became drawn against them. Moreover, through a separate sentencing order of 22.10.2012, the learned trial Judge concerned, sentenced the appellants-convicts in the hereinafter extracted manner.

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Therefore, keeping in view the facts and circumstances of the case, convicts Ashok @ Gunga, Naresh @ Pappu, Tutia and Prem @ Risalu are sentenced to undergo rigorous imprisonment for life each and to pay a fine of Rs.10,000/- each and in default of payment of fine, they shall undergo rigorous imprisonment for six months each, under Section 460 of the Indian Penal Code. Accused Naresh @ Pappu is also sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.5,000/- under Section 25/54/59 of Arms Act and in default of payment of fine, he shall further undergo rigorous imprisonment for a period of three months.

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3. The above imposed sentences of imprisonment, were ordered to run concurrently qua appellant Naresh @ Pappu. The period spent in prison by the convicts, thus 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 convicts.

4. Since all the accused-convicts became aggrieved from the above drawn verdict of conviction, besides also, became aggrieved from the

consequent thereto sentence(s) of imprisonment, and, of fine as became imposed, upon them, by the learned convicting Court concerned, thereupon they chose to institute thereagainst their respective criminal appeals, before this Court i.e. CRA-D-1000-DB-2013 and CRA-D-111-DB-2013.

5. The State of Haryana has not challenged the verdict of acquittal against the other co-accused namely Naresh @ Nareshi and Pappu, either before this Court or before the Hon'ble Apex Court, as such the verdict of acquittal rendered *qua* them has acquired binding and conclusive effect.

Factual Background

6. The genesis of the prosecution case becomes embodied in the appeal FIR, to which Ex.P39 is assigned. The narrations carried in Ex.P39 are, that on 17.5.2007, an information from Police Post New Bus Stand, Rohtak was received in Police Station Urban Estate, Rohtak through telephone to the effect that Ravi @ Monu son of Ramesh Kumar, resident of Uttam Vihar, Rohtak, was admitted in PGIMS, Rohtak owing to fire arm injuries. On this information, ASI Banarsi Dass, Incharge, Police Post, New Bus Stand, Rohtak along with other police officials reached PGIMS, Rohtak and collected ruqa to the effect that Ravi was already dead. ASI Banarsi Dass recorded the statement of Ramesh Kumar son of Sube Singh, resident of Uttam Vihar Colony, Rohtak to the effect that he was running STD Booth under the name and style of M/s Monu Enterprises. In the night of 17.5.2007 at about 3.00 a.m., he and his wife Rajbala and son Ravi @ Monu were sleeping in their room at their residence. From the courtyard some noise was heard by them on which they came out in the courtyard. There was no light. In the courtyard, they saw three young persons in the darkness. He along with his wife and son, caught hold two persons and raised alarm. Third boy

jumped on the wall. Those two persons and they (complainant and others) were grappling with each other. Third boy fired fire shot upon them and caused injury on the forehead of his son Ravi alias Monu. In the meantime, on hearing noise, his tenant Naresh Kumar Nanda son of Ram Singh came out. Then, the third boy who was on the wall gave two more fire shots, but they escaped. While they were busy in saving Monu, in the meantime, those two persons also fled away from the spot after jumping over the wall in the street. His son Monu became unconscious. He and Naresh after arranging some vehicle, took Monu to PGIMS, Rohtak, where he was declared dead by the doctors. On the basis of aforesaid statement, the instant case was registered. Statements of the witnesses were recorded. Accused were arrested and after completion of necessary formalities of the investigation, the challan/report under Section 173 Cr.P.C. were prepared and presented in the court for trial.

Committal Proceedings

7. Since the offence punishable under Section 460 of the IPC, was exclusively triable by the Court of Session, thus, the learned committal Court concerned, through a committal order made on 10.04.2008, hence proceeded to commit the accused to face trial before the Court of Session.

Trial Proceedings

8. The learned trial Judge concerned, after receiving the case for trial, made an objective analysis of the incriminatory material, adduced before him. Resultantly, he proceeded to draw a charge against accused, for the commission of an offence punishable under Sections 460 IPC, besides under Section 25 of the Arms Act. The afore drawn charges were put to the accused, to which they pleaded not guilty, and, claimed trial.

9. In proof of its case, the prosecution examined 33 witnesses, and, thereafter the learned Public Prosecutor concerned, closed the prosecution evidence. After the closure of prosecution evidence, the learned trial Judge concerned, drew proceedings, under Section 313 of the Cr.P.C., but thereins, the accused pleaded innocence, and, claimed false implication. However, they did not lead any witness defence evidence.

Submissions of the learned counsel for the appellants-accused

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

Submissions of the learned State counsel

11. On the other hand, the learned State counsel has argued before this Court, that the verdict of conviction, and, consequent thereto sentence(s) (supra), as become imposed upon the convicts-appellants, are well merited, and, do not require any interference, being made by this Court in the exercise of its appellate jurisdiction. Therefore, he has argued that both the appeals, as preferred by the convicts-appellants, be dismissed.

Analysis of the deposition of eye witnesses to the occurrence who respectively stepped into the witness box as PW-5 and PW-24

12. Both the witnesses (supra), in their respectively made depositions, as comprised in their respective examinations-in-chief, ascribed to the convicts-appellants, thus the incriminatory role, inasmuch as, with theirs wielding the respective incriminatory weapons of offence, theirs hence giving firearm injury to the deceased Ravi alias Monu.

that both of them, though were not aware of the identity(ies) of the convicts-appellants. However, yet the PWs (supra) identified the appellants when they made their respective appearances before the learned trial Judge concerned. The (supra) respective identifications, as made by the PWs (supra), thus upon the appellants making their respective appearances before the learned trial Judge concerned, rather has remained unrebutted. Therefore, when also there is apparently no efficacious cross-examination made upon both the eye witnesses (supra), thus suggesting, that the present convicts-appellants, thus were mis-identified or qua they were not participants in the crime event, nor when any affirmative answer thereto became meted, thus by the eye witnesses (supra). Therefore, the first time identification, by them thus in Court vis-a-vis the respective identities of the convicts concerned, rather even without prior thereto any valid test identification parade being held, rather does not make the apposite identifications, rendered only in Court to be lacking in any evidentiary vigor.

14. Moreover, even if assumingly irrespective of identifications, made in Court by the PWs (supra), vis-a-vis the present appellants, thus upon their making respective appearances before the learned trial Judge concerned, though remained unrebutted or remained unimpeached, whereby though prima facie there was an imperative necessity cast upon the investigating officer concerned, to during the course of investigations becoming conducted into the crime event rather to hold a valid test identification parade, wherein, the PWs (supra) identified the accused. Resultantly, the subsequent thereto identification, as made in Court, thus may acquire evidentiary tenacity.

15. However, even if a valid test identification parade became not

conducted by the investigating officer concerned, during the course of his holding investigations into the crime event, wherein, the PWs (supra) identified the appellants, yet the non-conducting thereof, does not beget any inference, that the testifications rendered by the eye witnesses (supra) rather loosing their creditworthiness. The reasons being;

- a) Since validly made recoveries become effected from the appellants, in pursuance to their making effective efficacious disclosure statements.
- b) The recovery of pistol through recovery memo at the instance of the appellants to the investigating officer concerned, when has been pronounced by the ballistic expert to be used in the crime event. Resultantly thereby the effect, if any, of the apposite first time identifications being made vis-a-vis respective identities of the appellants thus without prior thereto a valid test identification parade being conducted by the investigating officer concerned, during the course of his holding investigation, thus does not acquire any iota of significance nor thereby either the credible testification of the PWs rather loose their respective credibility(ies) nor for the hereinafter assigned reasons, thus suffer any emaciation.

16. Be that as it may, an incisive and wholesome reading of the depositions of the said eye witnesses to the occurrence unfolds that; a) both of them did not either grossly improve nor grossly embellished upon their previously recorded statements in writing, b) both of them have in respect of the crime event thus made a version in complete alignment with the version embodied in the FIR, c) both of them have narrated an ocular account vis-a-

contradiction. Resultantly, thereby the eye witness account as became rendered by them vis-a-vis the crime event, rather is to be assigned the completest evidentiary vigor, whereby the prosecution has been able to cogently establish the charge drawn against the accused.

Signature disclosure statements of the accused and pursuant thereto recoveries

17. During the course of investigations, being made into the appeal FIR, convicts-appellants, made their respective signature disclosure statements, to which Exs.P2, P3, P15, and P26, become respectively assigned.

18. The disclosure statements (supra), carry thereons the signatures, of the convicts concerned. In their signature disclosure statements (supra), convicts, confessed their guilt in inflicting injuries on the persons' of the injured and deceased, hence with the recovered weapons. The further speaking therein is qua theirs keeping, and, concealing the incriminatory weapons of offence. Moreover, the said signature disclosure statements do also make speakings about theirs alone being aware about the location of theirs hiding and keeping the same, and, also revealed their willingness to cause the recovery of the incriminatory weapons, to the investigating officer concerned, from the place of theirs hiding, and, keeping the same.

19. Significantly, since the appellants have not been able to either ably deny their signatures as occur on Exs.P2, P3, P15, and P26 nor when they have been able to prove the apposite denial. Moreover, since they have also not been able to bring forth tangible evidence but suggestive that the recoveries are either contrived or invented. Therefore, all the memos are concluded to be holding the utmost evidentiary tenacity.

disclosure statements, becoming made, thus by the convicts to the investigating officer concerned, each of them through recovery memos Ex.P6, P8, P17, and P33, thus caused the recoveries of the weapons of offence to the investigating officer concerned. Consequently, when the said made recoveries are also not suggested by any cogent evidence to be planted recoveries. Resultantly, the effect thereof, is that the valid recoveries were made vis-a-vis the incriminatory weapons of offence by the convicts, to the investigating officer concerned. In sequel, the makings of the valid signed disclosure statements, by the convicts besides the pursuant thereto effectuation(s) of valid recoveries of the incriminatory weapons of offence, thus by each of the convicts to the investigating officer concerned, but naturally corroborates and supports the unblemished and credible eye witness account (supra), as becomes rendered vis-a-vis the crime occurrence, thus by the ocular witnesses (supra).

21. 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.

22.

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 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**).*

23. 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 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.

24. 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 employed by the investigating officer.

25. 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.

26. 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.

27. 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 thereby 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.

28. 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.

29. 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.

30. 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 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.

31. 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.”

32. 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.

33. Now coming 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 disclosure (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.

34. 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.

35. 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 recoveries, when do become efficaciously proven, therebys theretos immense evidentiary tenacity is to be assigned. Preeminently also when thus they do corroborate the rendition of credible eye witness account vis-a-vis the crime event. Moreover, when the memos (supra) also 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)

36. The autopsy upon the body of deceased Ravi alias Monu was conducted on 17.05.2007 by PW-22. PW-22 has proven *qua* his, authoring Ex.P54, as relates to the autopsy as made upon the body of deceased.

37. Moreover, he has proven that the cause of death of deceased Ravi alias Monu, was owing to shock and haemorrhage and injury to vital organ i.e. brain as a result of firearm injury described in the post mortem report. All the injuries were declared to be ante mortem in nature and were declared to be sufficient to cause death in ordinary course of life. The relevant ante mortem injuries as noticed by PW-22 on the body of deceased are extracted hereinafter.

midline 8 cm above the left supraorbital ridge 12 cm above and interior to tragus of left ear. Abrasion collar present. There was signing off scalp hair and blackening and – tattooing present around the wound in a circumference of about 2 cm on dissection hematoma present in the layers of scalp below the injury. There was corresponding hole present in the skull with surrounding bone fractured on further dissection track of bullet directed posteriorly, medially and towards right going through left cerebral hemisphere and right cerebral hemisphere going towards to occipital region on the right. Bullet recovered in the posterior most part of right occipital region of skull inner part. One small metallic piece also recovered from skull just below the entry wound inside the skull. All the underlying brain tissues contused and haemorrhage present bilateral.

2. A lacerated wound 3 x 1 cm size on the left parietal region of scalp 5 cm lateral to midline 10 cm above the upper end of ear clotted blood below the wound present in the scalp.

3. A bluish contusion around the right eye present with diffuse swelling of lids.

4. An abrasion 4 x 1 cm reddish brown on the under surface of chin.

5. A contusion red in colour 4 x 1.5 cm on the anterior aspect of upper 1/3 of left arm.

6. An abrasion reddish brown 3 x 0.5 cm on the anterior aspect of middle 1/3 on left forearm.

7. A C.A red 2 x 0.5 cm on the lower 1/3 of post aspect of left forearm.

8. A contusion red in colour 15 x 2 cm on the anterior chest wall on left side obliquely placed 6 cm lateral to left nipple at 4.0' clock position lower and 10 cm lateral to umbilicus on left side.

9. An abrasion 0.5 x 0.3 cm on the knuckle of left middle finger.

10. A contusion red in colour 17 x 4 cm on the anterior aspect of right elbow going below on the interior aspect of forearm.

11. An abrasion 4 x 0.3 cm red on the anterior aspect of middle

1/3 of right forearm.
12. A contused abrasion 1 x 0.5 cm red in colour on the anterior aspect of left knee.”

FSL REPORT

38. Cotton wool swab, T-shift and Cargo jeans pant became sent to the FSL concerned, through Ballistic Division. After examinations being made at the FSL concerned, *qua* the contents of the sealed parcels, thus the expert concerned, drew the hereinafter extracted results.

“Xxx

<u>Results of serological analysis of blood</u>		
<i>Sr. No.</i>	<i>Name of exhibit</i>	<i>Origin</i>
<i>I.</i>	<i>Cotton wool swab</i>	<i>Material disintegrated</i>
<i>4a.</i>	<i>T-shirt</i>	<i>Human</i>
<i>4b.</i>	<i>Cargo jeans pants</i>	<i>Human”</i>

39. An analyses 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 brings forth an inference, that the prosecution has hence invincibly proven, that the blood on the T-shirt and jeans pant 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 T-shirt and jeans pant, was not belonging to the blood group of the deceased, yet therebys the said stains of blood on the clothes (*supra*) 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 T-shirt and jeans pant rather not belonging to the blood of the deceased, thus through the defence adducing the FTA card of the deceased.

Report of Ballistic Expert

40. Moreover, when for reasons stated hereinafter, the report of the FSL concerned, which becomes extracted hereinafter, does also pronounce that the recovered firearm, as became sent for examination to the ballistic expert, thus in sealed cloth parcels, rather was the relevant firearm wherefrom the bullets, hence became fired, besides pronounces that the said firearm was in a working condition. In sequitur, with this Court assigning credence to the testification(s), of the ocular witness to the occurrence, and, when in tandem therewith, the ballistic expert, has also made an opinion qua the fired cartridge, becoming fired, from a country made pistol, as became recovered through recovery memo Ex.P33, at the instance of the accused concerned. Consequently, the charge drawn against the accused is to be concluded to become invincibly proven but only to the extent qua the findings of conviction as become recorded by the learned trial Court concerned.

“LABORATORY EXAMINATION

Products of combustion of smokeless powder were detected from barrels of Country made pistols marked W/1, W/2 and W/3 (each chambered for .315" cartridges). Test firings were done in the laboratory from Countrymade pistols marked W/1, W/2 & W/3. Their firing mechanism were found in working order.

The class as well as individual characteristic marks present on .315" fired cartridge case marked C/1, .315" misfired cartridges marked MC/1, MC/2, 315" fired bullet marked BC/1 and those on test fired cartridge cases and bullets fired from Country made pistols marked W/1 to W/3 were examined and compared under stereo and comparison microscope.

Based on the examination carried out in the laboratory,

the result of analysis is as under:-

RESULT

- 1. Country made pistols marked W/1 to W/3 (Ex.P68, Ex.P69 and Ex.P9) (each chambered for .315 cartridges) are firearms as defined in Arms Act 54 of 1959. Their firing mechanism were found in working order.*
- 2. The Country made pistols marked W/1 to W/3 (Ex.P68, Ex.P69 and Ex.P9) had been fired through.*
- 3 .315” fired cartridge case marked C/1 (Ex.P75) has been fired from Country made pistol marked W/3 Ex.P9 and not from any other firearm even of same make and bore/caliber, because every firearm has got its own individual characteristic marks.*
- 4. .315” fired bullet marked BC/1 (Ex.P57) has been fired from Country made pistol marked W/1 and not from any other firearm even of same make and bore/caliber (Ex.P68), because every firearm has got its own individual characteristic marks.*
- 5. Misfired cartridge marked MC/1 (Ex.P77) has missed-fire from Country made pistol marked W/1 (Ex.P68).*
- 6. One of the firing pin impression present on .315” misfired cartridge marked MC/2 (Ex.P13) tallied with the firing pin impression of country made pistol W/3 (Ex.P9).*
- 7. Report in original from Serology division is enclosed herein.”*

FINAL ORDER

41. In consequence, the impugned verdict of conviction, and, also the consequent therewith order of sentence, as becomes respectively recorded, and, imposed, upon the convicts-appellants by the learned trial Judge concerned, does 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 appeals, as such, both the appeals are dismissed. If the appellants are on bail, thereupon they are ordered to be forthwith taken into custody through the learned trial Judge concerned,

forthwith drawing committal warrants against the accused.

- 42. 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.
- 43. Records be sent down forthwith.
- 44. The miscellaneous application(s), if any, is/are, also disposed of.

(SURESHWAR THAKUR)
JUDGE

(VIKAS SURI)
JUDGE

24.01.2025
Ithlesh

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