In the High Court of Punjab and Haryana at Chandigarh

CRA-D-671-DB-2013 (O&M)
Reserved on: 28.10.2024
Date of Decision: 19.11.2024

Kuldeep Singh @ Keepa and another .....Appellants

Versus

State of Punjab .....Respondent

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

Present: Mr. Nandan Jindal, Advocate
for the appellants.

Mr. Maninderjit Singh Bedi, Addl. A.G., Punjab.

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SURESHWAR THAKUR, J.

1. The instant appeal is directed against the impugned verdict, as made on 30.5.2013, upon Sessions Case No. 116 of 4.12.2007, by the learned Additional Sessions Judge, Sangrur, wherethrough in respect of charges drawn against the accused-appellants qua offences punishable under Sections 392 and 302 IPC, the learned trial Judge concerned, proceeded to record a finding of conviction against the accused-appellants.

2. Moreover, through a separate sentencing order of even date, the learned trial Judge concerned, sentenced both the convicts-appellants in the hereafter extracted manner-

Sr. no.	*Name of the convict*	*Offence*	*Sentence*
1.	*Kuldeep Singh @ Keepa*	*392*	*To undergo rigorous imprisonment for a period of five years and to pay a fine of Rs. 2,000 (Rs. Two Thousand) and in default of payment of fine, the convict shall undergo further rigorous imprisonment for six months*

	Kuldeep Singh @ 302 Keepa	*To undergo rigorous imprisonment for life and to pay a fine of Rs. 5,000 (Rs. Five Thousand) and in default of payment of fine, the convict shall undergo further rigorous imprisonment for one year.*
2.	*Jagtar Singh @ 392 Gora*	*To undergo rigorous imprisonment for a period of five years and to pay a fine of Rs. 2,000 (Rs. Two Thousand) and in default of payment of fine, the convict shall undergo further rigorous imprisonment for six months*
	Jagtar Singh @ 302 Gora	*To undergo rigorous imprisonment for life and to pay a fine of Rs. 5,000 (Rs. Five Thousand) and in default of payment of fine, the convict shall undergo further rigorous imprisonment for one year.*

3. All the above imposed sentences of imprisonment, were ordered to run concurrently However, the period of detention undergone by the accused-appellant, during the investigations, and, trial of the case, was, in terms of Section 428 of the Cr.P.C., rather ordered to be set off from the above imposed sentence(s) of imprisonment.

Factual Background

4. The genesis of the prosecution case, becomes embodied in the appeal FIR, to which Ex PA/1 is assigned. As per the prosecution case, on 22.03.2007, Inspector Daljit Singh, SHO of Police Station Sadar Sunam along with other police officials were present within the vicinity of village, Nangla in connection with patrolling, where complainant Reema Singh son of Gurbachan Singh Jat, resident of Nangla came, and, got recorded his statement to the effect that on 22.03.2007, he along with his father proceeded towards his village, after doing work in their fields, known as 'Dhak Wala'. His father proceeded towards the village, on bullock cart. When he reached near 'Wadda' bridge, thereupon at about 3.00/3.30 P.M., two clean shaven persons were standing near the canal bridge. He stopped

near them and they asked him about the drinking water. He pointed to the water pump across the bridge. In his statement, the complainant also gave full description of both the persons. The complainant further stated thereins, that when he reached about two acres ahead of the bridge, he heard a noise of bursting of cracker. He though that the tyre of motor cycle Bhagwan Singh son of Bachan Singh, who is his cousin and was returning from the fields on his motor cycle make Bajaj, migh have been burst. He did not return, as he though that his father, who was on the same way on his bullock cart, and, he would bring the motorcycle of Bhagwan Singh by keeping the same on his cart. However, after a while, both the said persons proceeded towards his village, Nangla after crossing him on the red colour motorcycle. Subsequently, when he reached his house, one Darshan Singh, Electrician informed him that two unknown persons had snatched the motorcycle of Bhagwan Singh and also caused injuries to him. The complainant further stated that the aforesaid persons had snatched the motor cycle of Bhagwan Singh. Bhagwan Singh was got admitted in the hospital by his father after arranging a vehicle. On the basis of the said statement, an offence under Section 382/34 of IPC was found to be made out and a ruqa was sent to the police station for registration of an FIR.

Investigation proceedings

5. During the course of investigations, the investigating officer reached the spot and took into possession blood stained earth. Rough site plan of place of occurrence was prepared. Case property was deposited in police Malkhana. On 23.03.2007, Hari Singh Ex Sarpanch disseminated information regarding death of Bhagwan Singh at Amar Hospital, Patiala, upon which, offence under Section 302 IPC was added. Autopsy of the dead

body of Bhagwan Singh was got conducted. On 01.04.2007, Section 392 IPC was added in place of Section 382 IPC. On 03.07.2007, complainant Reema Singh got recorded his supplementary statement, in which, apart from reiterating his earlier version, he further stated that when he went ahead, both the clean shaven persons after firing upon Bhagwan Singh snatched his motor cycle make CT 100 bearing No. PB13B-2421 of red colour. They had also snatched the mobile of Bhagwan Singh made of Noka-2300 having No. 94630-15823 and on 22.03.2007, Bhagwan Singh died and from the very beginning he was in the search of accused persons and now he came to know that the person who fired upon Bhagwan Singh was Jagtar Singh son of Major Singh, resident of Khadal Kalan and the other person was Kuldeep Singh @ Keepa son of Baldev Singh caste Jat, resident of Kahangarh, P.S.Bareta. On the basis of this statement of complainant, accused Kuldeep Singh and Jagtar Singh were nominated in the present case as accused. During the police remand of accused in case bearing FIR no.58 of 01.06.2007, under Section 392/394/34 IPC and 25/27/54/59 of Arms Act, P.S.City Sunam, the accused were also arrested in the present case. The disclosure statements of the accused became recorded, and, pursuant to the said made disclosure statements, accused-appellant Kuldeep Singh got recovered a motorcycle, whereas accused-appellant Jagtar Singh got recovered a .315 bore pistol. After conclusion of investigations, the investigating officer concerned, proceeded to institute a report under Section 173 of the Cr.P.C., before the learned committal Court concerned.

Committal Proceedings

6. Since the offence under Section 302 IPC was exclusively triable by the Court of Session, thus, the learned committal Court concerned,

through a committal order made on 21.11.2007, hence proceeded to commit the accused to face trial before the Court of Session.

Trial Proceedings

7. The learned trial Judge concerned, after receiving the case for trial, after its becoming committed to him, made an objective analysis of the incriminatory material, adduced before him. Resultantly, he proceeded to draw charges against the accused-appellants for the offences punishable under Section 392 and under Section 302 IPC. The afore drawn charges were put to the accused-appellant, to which they pleaded not guilty, and, claimed trial.

8. In proof of its case, the prosecution examined 13 witnesses, and, thereafter the learned Public Prosecutor concerned, closed the prosecution evidence.

9. 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. Though, the accused chose to adduce defence evidence, however, they did not lead any witness into the witness box.

Submissions of the learned counsel for the appellants

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 has further argued, that the identity of the present accused-appellants has not been proved, as the star prosecution witness i.e. Reema Singh (PW-2) has testified that he came to know about the identity of the present accused only upon 2-3 months elapsing since the happening of the alleged occurrence. He

has also argued, that during the course of investigations being made into the appeal FIR, thus no valid test identification parade became conducted. The said fact is argued by him to be also admitted by PW-12 Inspector Harjinder Singh. Therefore, it is contended that the first time identification made, in Court, rather of the convicts-appellants by the prosecution witnesses concerned, thus gathers no evidentiary efficacy, as the imperative prior thereto test identification parade of the accused-appellants, rather never became conducted. Furthermore, the learned counsel for the appellant has argued that since PW-2 Reema Singh and PW-3 Gurbachan Singh, are the relatives of deceased Bhagwan Singh, thereupon their testimonies cannot be relied upon, as they have rendered an interested tainted account vis-a-vis the crime event.

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 the instant appeal, as preferred by the convicts-appellants be dismissed.

Analysis of the deposition of the witnesses to the occurrence, who respectively stepped into the witness box as PW-2 and PW-3

12. Complainant Reema Singh stepped into the witness box as PW-2, and, deposed that about one year and five months ago, he along with his father had gone to their fields at Dhakwala. After doing agriculture work, when he was returning to his village on a bicycle, whereas, his father was coming on a bullock cart, thereupon at about 3.00/3.30 P.M, when he reached near thebridge of canal known as Wadda Pull, he saw two clean

shaven persons standing there. They asked him about the availability of drinking water, upon which he told them that a water pump is installed near the bridge. He further deposed, that when he reached at a distance of two killas from the said bridge, he heard the sound of bursting of a cracker. He thought that the tyre of the motorcycle of his cousin namely Bhagwan Singh, must have burst, and, as such, he proceeded towards his village. The said witness further deposed, that after some time both the above said persons passed through him while being atop on a red colour motorcycle. Subsequently, when he reached home, after sometime, one Darshan Singh came to his house and informed him that two persons had snatched the motorcycle of his cousin Bhagawn Singh and had also caused injuries to him. He also deposed that he believed that the persons (supra) had snatched the motorcycle of his cousin and had caused injuries to him. Thereupon, he reached the phirni of the village, where his father reached on the bullock cart, with injured Bhagwan Singh lying on it, and, their neighbours took Bhagwan Singh to the hospital at Sunam in a vehicle.

13. An analysis of the statement of the witness (supra), who however, is not an eye witness to the occurrence, but rather who purportedly last saw only the accused, but he did not see together the accused and the deceased, thus irrespective of his rendering an account vis-a-vis the prosecution case, rather bereft of any gross improvements or embellishment over his previously made statement in writing, yet the same does not for the reasons to be assigned hereinafter assign the fullest support to the prosecution case.

(a) The witness (supra) being unknown to the accused, thereupon he was required to, in his previously made statement in writing

before the investigating officer concerned, thus reveal the key characteristic features of both the accused.

(b) In the said event, the investigating officer concerned, may have been led to embark upon holding a valid test identification parade, whereins, PW-2 may have been led to identify the accused-appellants. Subsequently, the identification made by him in Court of both the accused-appellants, thus may have held evidentiary solemnity.

(c) Though the witness (supra) appears to have, in his previously recorded statement in writing, thus disclosed that two clean shaven persons were last seen by him. Moreover, it also appears that post the witness (supra) last seeing the accused, thus he received an intimation from one Darshan Singh (Electrician), that two persons had snatched the motorcycle of his cousin Bhagwan Singh, and, had also caused injuries to him. In addition, he also states, that when he reached home, that then he saw that his father was carrying the injured Bhagwan Singh, thus on the bullock cart, which he was also occupying.

(d) Be that as it may, the witness (supra) evidently did not see together the accused and the deceased. However, through the prima facie linkage inter se his last seeing the accused proximate to the crime event, and, subsequently with his receiving an intimation from one Darshan Singh about the occurrence (supra), and, thereafter with his discovering that the deceased Bhagwan Singh was lying in an injured state, on the bullock cart, whereons, his father returned home, thus the prosecution prima facie has therebys established that there is evidence of participation of the accused in the crime event.

(e) Moreover, though the said witness, did also reveal, to the investigating officer concerned, in his previously made statement in writing, that the accused were clean shaven. Though therebys some characteristic features of the accused were revealed by the witness (supra) to the investigating officer concerned, but the supra revelations are inadequate descriptions of the otherwise required key physical attributes of the accused, which were peculiar only to them, wherebys the investigating officer concerned, may have been led during the course of investigations, rather to hold a valid test identification parade, whereins, the witness (supra) may have been facilitated to identify the accused.

(f) Nonetheless, the prosecution witness (supra) identified the accused in Court, and, yet without a prior thereto valid test identification parade becoming conducted, thereupons the first time identification in Court by the witness (supra) of the accused-appellants but obviously appears to be an extremely frailly made identification.

(g) The further reason for dispelling the credit of the said witness arises from the factum, that the post his seeing the accused atop a motorcycle, thus his receiving an intimation from one Darshan Singh (Electrician), that the accused had snatched the motorcycle of his cousin, and, had also caused injuries to him. The said intimation by Darshan Singh to the witness (supra) but naturally appears to become erected upon Darshan Singh purportedly eye witnessing the crime event, wherebys the prosecution was required to cite the said Darshan Singh thus as a witness, besides was required to lead him to the witness box. However, since the prosecution has omitted to cite said Darshan Singh either as a prosecution witness, nor has ensured his stepping into the witness box, therebys the omissions (supra) on

the part of the prosecution, thus has caused a grave dent vis-a-vis the veracity of the deposition made by PW-2 Reema Singh. In consequence, no credit can be assigned to the deposition of PW-2 Reema Singh.

14. Moreover, in case the prosecution had ensured that the charge becomes inflinchingly proven, thus through its ensuring the stepping into the witness box of a purported eye witness to the occurrence, namely Gurbachan Singh (PW-3), therebys the effects of the inferences (supra) but necessarily may have become effaced.

15. In the above regard, this Court is required to be analysing the deposition of PW-3, who is the purported eye witness to the occurrence. A reading of the deposition of PW-3, as comprised in his examination-in-chief, though underscores the factum, that though he has deposed in complete tandem with his previously made statement in writing. Moreover, though his testification also supports the genesis of the prosecution case, as become embodied in the appeal FIR (Ex. PA/1).

16. Be that as it may, yet without a valid test identification parade becoming conducted by the investigating officer concerned, during the course of investigations becoming held into the crime event, rather the said witness also identified the accused-appellants in Court, especially when the witness (supra) evidently was unaware of the respective identities of the accused. Resultantly therebys a dire necessity became cast upon the investigating officer concerned, to after ensuring that the witness (supra) in his previously made statement in writing, describes the key characteristic features of the accused, thus hold a test identification parade for thereins PW-3 identifying the accused. However, neither in the previously made statement by PW-3 before the investigating officer concerned, he described

the key characteristic features of the accused, nor a valid test identification parade was conducted by the investigating officer concerned, nor thereins the accused became identified by PW-3. Contrarily, the identification in Court of the accused was their first time identification, and, thereto no credence can be assigned.

17. Therefore, without the above peremptory necessities becoming embarked upon the investigating officer concerned, the witness (supra) identified the accused in Court. The said is a first time identification but without the imperative prior thereto, thus a valid identification of the accused being made by the witness (supra), but in a validly conducted identification parade by the investigating officer concerned. In sequel, the said identification, as made for the first time in Court by PW-3 of both the accused, is an infirmly made identification, and, whereto no reliance can be placed, nor therebys the echoings occurring in his examination-in-chief, do acquire any probative strength.

18. Though, the effects of the above may have been erased in case-

(a) The motorcycle (supra) whereons the accused were atop, became effectively recovered

(b) The mobile phone of the deceased, which became allegedly stolen by the accused also became recovered.

19. However, since for the hereafter reasons, the recovery of the motorcycle was an inefficacious recovery, besides when the mobile phone which the witness (supra) states to become allegedly stolen from the deceased, also remained efficaciously unrecovered. As such, the absence of making of effective recoveries respectively of the motorcycle, and, of the mobile phone, allegedly snatched by the accused from the deceased, thus

engenders an inference, that the PW-3 has rendered a weak eye witness account vis-a-vis the crime event, which is but to be completely discarded.

20. The witness (supra) did also in his testification depose that accused-appellant Kuldeep Singh had used .315 bore pistol, wherefrom, firearm pallets became fired. However, the said recovery was not made at the instance of the accused, thus from the site, which was only within his exclusive knowledge, rather the recovery of .315 bore pistol became effected from an open and accessible place. The said effectuation of recovery of the weapon of offence at the instance of accused Jagtar Singh @ Gora, to the investigating officer concerned, rather from an open and accessible place, makes the said effected recovery to be wanting in any legal efficacy.

<u>Signatured disclosure statement of convicts-appellants to which respectively Ex. PF and Ex. PW-12/B are assigned</u>

21. During the course of investigations, being made into the appeal FIR, convict-appellant Kuldeep Singh Keepa, thus made his signatured disclosure statement, to which Ex. PF becomes assigned. The signatured disclosure statement, as made by the accused is *ad verbatim* extracted hereinafter.

> *"x x x x*
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> *I have kept concealed a motorcycle marka Bajaj CD 100 colour red which I snatched from one person by causing him fire shot, due to fear of police, in the deserted place (Beer) in the lower space and covered with grass etc. and I only knew about it and can get the same recovered."*

22. Pursuant to the above made signatured disclosure statement, the convict-appellant Kuldeep Singh @ Keepa ensured the recovery of motorcycle of red colour make Bajaj CT 100 bearing registration No. PB-13Q-2421, which was taken into police possession, through recovery memo,

to which Ex. PG becomes assigned.

23. Convict-appellant Jagtar Singh alias Gora, also made his signatured disclosure statement, to which Ex. PW-12/B becomes assigned. The signatured disclosure statement, as made by the accused is *ad verbatim* extracted hereinafter.

> *"In the presence of witnesses, accused Jagtar Singh alias Gora I police custody gave statement that he has kept concealed one country made pistol 315 bore, one live cartridge 315 bore duly wrapped in a polythene envelop, in backside of room of Bus Stand Chhajli. Only he knows about it and he can get recovered the same on his identification.*
>
> *x x x x "*

24. Pursuant to the above made signatured disclosure statement, convict-appellant Jagtar Singh @ Gora ensured the recovery of one country made 315 bore pistol, one country made cartridge 315 bore, duly wrapped in a polythene envelop, which were taken into police possession, through recovery memo, to which Ex. PW12/C becomes assigned.

25. The disclosure statements (supra), carry thereons the signature, of the convicts-appellants. In the signatured disclosure statements (supra), the convicts, confessed their guilt qua theirs keeping, and, concealing the incriminatory weapon of offence and the motorcycle. Moreover, the said signatured disclosure statements do also make speakings about their 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 weapon and motorcycle, to the investigating officer concerned, from the place of their hiding, and, keeping the same.

26. Significantly, since the appellants have not been able to either ably deny their signatures as occur on the exhibits (supra) 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 recovery(ies) is/are either contrived or invented. Therefore, the exhibit(supra) is *prima facie* concluded to be holding the utmost evidentiary tenacity.

27. Significantly also, since post the making of the said signatured disclosure statements, thus by the convicts to the investigating officer concerned, they through the recovery memos (supra), thus caused the recovery of the weapon of offence and of the motorcycle to the investigating officer concerned.

28. However, yet for assessing the vigor of the said made disclosure statements and consequent thereto made recovery(ies), it is apt to refer to the principles governing the assigning of creditworthiness to the said made disclosure statements and to the consequent thereto made recovery(ies). 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 11.8.2023***, 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:*
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> > *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.]*
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> *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.*
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> *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.*

29. 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 consideraions 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)****.*

30. 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.

31. Now the principles set forth thereins 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 signatured 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 signatured disclosure statement and the consequent thereto recovery being made, that therebys the recovered items or the discovered fact, rather becoming planted onto the relevant site, through a stratagem employed by the investigating officer.

32. 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.

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

34. 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.

35. 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. Resultantly therebys too, the apposite signatured 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. In sequel, thus therebys the said signatured 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.

36. However, in a case based upon circumstantial evidence when the appositely made signatured disclosure statement by the accused and the consequent thereto prepared recovery memos, do not fall foul, of the above

stated principles, therebys they acquire grave evidentiary vigor, especially when in pursuance thereto able recoveries are made.

37. The makings of signatured 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.

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

> "***25. Confession to police-officer not to be proved.***—*No confession made to a police-officer, shall be proved as against a person accused of any offence.*

x x x x x

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."*

39. Significantly, it would not be insagacious to straightaway oust the said made signatured 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.

40. In the instant case, though for effacing the effect of the above inferences, rather the hereafter(s) was the dire necessity-

(a) An efficacious recovery being effected by the accused to the investigating officer concerned, thus of the red colour motorcycle but from a desolate and secluded place.

41. However, the recovery of the supra motorcycle, as became effected through recovery memo Ex. PG, rather is lacking any evidentiary vigour, as the recovery of the motorcycle (supra) became effected from an open place, thus accessible to the public. Consequently, a conclusion arises that therebys the recovery of the motorcycle, as became effected from the

site, as disclosed in recovery memo Ex. PG, was a sequel of the said discovered or recovered fact, becoming both invented or contrived, and/or the said recovery being manipulated. Resultantly, no legal efficacy is to be assigned to the recovery memo (Ex. PG).

Post-mortem report

42. The post-mortem report, to which Ex. PH is assigned, became proven by Dr. S.S.Obrey (PW-6). PW-6 in his examination-in-chief, has deposed that on an autopsy being conducted on the body of deceased Bhagwan Singh, thus his noticing thereons the hereinafter ante mortem injuries-

> *"1. Wound of entrance 0.5 x 0.5 cm caused by a fire arm present just above the centre of right eyebrow with abrasion collar, blackening and inverted margins. The forehead and upper half of the face was having small punctate blackish spots, scattered all over.*
>
> *2. Wound of exit 1 x 1 cm with everted margins present in the lower occipital region of the head on the right side with lot of clotted blood all around."*

43. Furthermore, PW-6 also made a speaking in his examination-in-chief, that the cause of demise of the deceased was owing to ante mortem injuries (supra), which were sufficient to cause death in the ordinary course of nature.

44. However, the opinion recorded in the above post-mortem report, for the reasons (supra) but is not linked to the incriminatory role, as such the opinion qua the cause of demise of the deceased, as voiced in the post-mortem report (supra), is also inconsequential, thus for returning a finding of guilt against the accused-appellants.

45. Moreover, .315 bore pistol along with live cartridges, as became allegedly recovered at the instance of the accused concerned, rather became never sent to the ballistic expert concerned, for the latter making an effective opinion thereon. The omission of sending of the recovered .315 bore pistol along with the live cartridges to the ballistic expert, thus is of critical importance. Though, the prosecution has examined PW-10 HC Ram Singh, who deposed that one country made pistol .315 bore along with one live cartridges were produced before him for checking, and, upon checking the said pistol was found in a workable condition.

46. However, the said opinion is an infirm opinion, as the said witness is not enunciated in Section 45 of the Indian Evidence Act, nor in Section 293 Cr.P.C., to be competent, thus as an expert to make an examination over any incriminatory material.

47. In a judgment rendered by the Apex Court in Criminal Appeal No. 206 of 2024, titled as Ram Singh versus The State of U.P., it has been held that the omissions to seek ballistic opinion and examination of the ballistic expert may be fatal to the prosecution case. The relevant paragraphs of the judgment (supra) become extracted hereinafter.

> *"24. On the aspect of non-examination of ballistic expert and its impact on the prosecution case, one of the earliest decisions of this Court was rendered in Gurucharan Singh Vs. State of Punjab, AIR 1963 SC 340. This Court observed that there is no inflexible rule that in every case where an accused person is charged with murder caused by a lethal weapon, the prosecution case can succeed in proving the charge only if an expert is examined. It is possible to imagine cases where the direct evidence is of such an unimpeachable character and the nature of the injuries disclosed by post-mortem notes is so clearly consistent with the direct evidence that the examination of a ballistic expert may not be regarded as essential. Where the direct evidence is not satisfactory or*

disinterested or where the injuries are alleged to have been caused by a gun and those prima facie appeared to have been inflicted by a rifle, undoubtedly the apparent inconsistency can be cured or the oral evidence can be corroborated by leading the evidence of a ballistic expert. However, in what cases the examination of a ballistic expert is essential for the proof of the prosecution case must naturally depend upon the circumstances of each case. This Court held as under:

> *41.... These observations do not purport to lay down an inflexible Rule that in every case where an accused person is charged with murder caused by a lethal weapon, the prosecution case can succeed in proving the charge only if an expert is examined. It is possible to imagine cases where the direct evidence is of such an unimpeachable character and the nature of the injuries disclosed by post-mortem notes is so clearly consistent with the direct evidence that the examination of a ballistic expert may not be regarded as essential. Where the direct evidence is not satisfactory or disinterested or where the injuries are alleged to have been caused with a gun and they prima facie appear to have been inflicted by a rifle, undoubtedly the apparent inconsistency can be cured or the oral evidence can be corroborated by leading the evidence of a ballistic expert. In what cases the examination of a ballistic expert is essential for the proof of the prosecution case, must naturally depend upon the circumstances of each case.…*

25. This issue was again examined by this Court in Sukhwant Singh Vs. State of Punjab, (1995) 3 SCC 367. In that case, this Court observed that though the police had recovered an empty cartridge from the spot and a pistol along with some cartridges were seized from the possession of the appellant at the time of his arrest, yet the prosecution did not send the recovered empty cartridges and the seized pistol to the ballistic expert for examination and expert opinion. This Court was of the view that if such opinion would have been called for, comparison could have been made which in turn could have provided link evidence between the crime and the accused. It was noted that this again was an omission on the part of

the prosecution for which no explanation was furnished. It was thereafter that this Court declared as follows:

> *21.... It hardly needs to be emphasised that in cases where injuries are caused by firearms, the opinion of the ballistic expert is of a considerable importance where both the firearm and the crime cartridge are recovered during the investigation to connect an accused with the crime. Failure to produce the expert opinion before the trial court in such cases affects the creditworthiness of the prosecution case to a great extent.*

25.1. Thus, in the aforesaid case, this Court emphasized that in cases where injuries are caused by firearms, the opinion of the ballistic expert becomes very important to connect the crime cartridge recovered during the investigation to the firearm used by the accused with the crime. Failure to produce expert opinion in such cases affects the creditworthiness of the prosecution case to a great extent.

26. However, in State of Punjab Vs. Jugraj Singh, (2002) 3 SCC 234, this Court opined that when there are convincing evidence of eyewitnesses, non-examination of the expert would not affect the creditworthiness of the version put forth by the eyewitnesses.

27. This Court considered the issue as to failure of the prosecution to recover the crime weapon and also non-examination of ballistic expert in Gulab Vs. State of U.P., (2022) 12 SCC 677. In that case, the deceased had sustained a gunshot injury with a point of entry and exit. In that case, prosecution had relied on the eyewitnesses' accounts of three eyewitnesses which were found to be credible. Therefore, non-recovery of the weapon of the offence would not discredit the case of the prosecution. After referring to the previous decisions, this Court opined that in the facts and evidence of the case, the failure to produce the report by a ballistic expert who could testify to the fatal injuries being caused by a particular weapon would not be sufficient to impeach the credible evidence of the direct witnesses.

28. In Pritinder Singh Vs. State of Punjab, (2023) 7 SCC 727, this Court in the facts and evidence of that case held that conviction could not be sustained. That apart, from not collecting any evidence

as to whether the gun used in the crime belonged to the appellant or not, even the ballistic expert had not been examined to show that the wad and pellets were fired from the empty cartridges of the appellant. In that case which was based on circumstantial evidence, it was held that when there was serious doubt as to credibility of the witnesses, the failure to examine ballistic expert would be a glaring defect in the prosecution case.

29. Thus, what can be deduced from the above is that by itself non-recovery of the weapon of crime would not be fatal to the prosecution case. When there is such non-recovery, there would be no question of linking the empty cartridges and pellets seized during investigation with the weapon allegedly used in the crime. Obtaining of ballistic report and examination of the ballistic expert is again not an inflexible rule. It is not that in each and every case where the death of the victim is due to gunshot injury that opinion of the ballistic expert should be obtained and the expert be examined. When there is direct eye witness account which is found to be credible, omission to obtain ballistic report and non- examination of ballistic expert may not be fatal to the prosecution case but if the evidence tendered including that of eyewitnesses do not inspire confidence or suffer from glaring inconsistencies coupled with omission to examine material witnesses, the omission to seek ballistic opinion and examination of the ballistic expert may be fatal to the prosecution case."

48. In consequence, the opinion (supra) voiced by PW-10 HC Ram Singh does not hold any presumption of truth much less, a rebuttable presumption of truth, besides no evidentiary value can be attached theretos.

Final order

49. The result of the above discussion, is that, this Court finds merit in the instant appeal, and, is constrained to allow it. Consequently, the instant appeal is allowed. The impugned judgment of conviction and the order of sentence(s), as recorded by the learned trial Judge concerned, are quashed, and, set aside. The appellants are acquitted of the charges framed

against them. The fine amount, if any, deposited by accused-appellants, be, in accordance with law, refunded to them. The personal, and, surety bonds of the accused-appellants shall stand forthwith cancelled, and, discharged. The case property be dealt with, in accordance with law, but after the expiry of the period of limitation for the filing of an appeal. The appellants, if in custody, and, if not required in any other case, be forthwith set at liberty. Release warrants be prepared accordingly.

50. Records be sent down forthwith.

51. The miscellaneous application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

November 19th, 2024
Gurpreet

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