

Neutral Citation No. - 2024:AHC:108105-DB

A.F.R.

Reserved on : 24.05.2024

Delivered on : 4.7.2024

Court No. - 46

Case :- CAPITAL CASES No. - 10 of 2023

Appellant :- Tarun Goel

Respondent :- State of U.P.

Counsel for Appellant :- Ashutosh Singh, Rahul Srivastava

Counsel for Respondent :- A.G.A.

Hon'ble Arvind Singh Sangwan,J.

Hon'ble Ram Manohar Narayan Mishra,J.

(Per Hon'ble Arvind Singh Sangwan,J.)

1. Reference No. 9 of 2023 has been made by the Court of Additional Sessions Judge/ Special Judge (Dacoity Affected Area), Court No.6, Firozabad for confirmation of death sentence awarded to appellant Tarun Goel vide judgment of conviction dated 24.4.2023, holding the appellant guilty of offence (in Sessions Trial No.877 of 2022 arising out of Case Crime No.220 of 2022), under Sections 302, 307, 394, 411 & 506 of Indian Penal Code (hereinafter referred to as 'IPC') and the order of sentence dated 25.4.2023 vide which, the appellant was awarded death sentence, to be hanged till death under Section 302 of IPC with a fine of Rs.20,000/-and in case of default of payment of fine, to undergo further additional imprisonment for one year; under Section 307 of IPC, the appellant was awarded life imprisonment along with a fine of Rs.20,000/-and in case of default of payment of fine, to undergo further additional imprisonment for one year; under Section 394 of IPC, the appellant was awarded life imprisonment along with a fine of Rs.20,000/-and in case of default of payment of fine, to undergo further additional imprisonment for one year; under Section 411 of IPC, the appellant was awarded three years imprisonment along

with a fine of Rs.5,000/-and in case of default of payment of fine, to undergo further additional imprisonment for three months; under Section 506 of IPC, the appellant was awarded seven years imprisonment along with a fine of Rs.5,000/- and in case of default of payment of fine, to undergo further additional imprisonment for three months. All the sentences were to run concurrently. The appellant has also filed jail appeal.

2. The Reference and Appeal were admitted. The Trial Court's record is received and paper books are ready.

3. Heard Sri Rajiv Lochan Shukla, Sri Ashutosh Singh, Sri Shashank Pandey, learned counsel for appellant, Sri Rahul Srivastava, learned Amicus Curie for the appellant, Sri A.N. Mulla and Sri Kailash Prakash Pathka, learned AGA for the State and perused the material placed on record.

4. With the assistance of learned counsel for the parties, the entire evidence is re-scrutinized and re-appreciated.

5. Facts of the case are that informant- Arpit Jindal (PW-1) s/o Lokesh Kumar Agarwal, resident of Mohalla Arya Nagar, Lane No.9, Police Station Firozabad North, District Firozabad gave a written complaint to S.H.O. Police Station Firozabad North, District – Firozabad stating that “Today on 1.4.2022 at about 2:15 p.m. I, Arpit Jindal son of Lokesh Kumar Agarwal, my mother- Sobha Jindal wife of Lokesh Kumar Agarwal, my cousin brother Chandan Agarwal son of Rakesh Kumar Agarwal, my cousin sister Astha Agarwal d/o Rakesh Kumar Agarwal, my cousin sister Akansha Mittal wife of Manish Mittal, my maternal aunt Sarita Agarwal wife of Rakesh Kumar Agarwal, my nephew Arnav Goel son of Tarun Goel and my another nephew Anshuman Mittal son of Manish Mittal had gone to D. Bharat Cinema, Firozabad for

watching a movie. At about 4:30 p.m. our neighbour Bhatiya called on my mother's mobile phone that some incident has taken place in your house and we should immediately rush back to our home. We all left the movie in between and while entering our house, saw that our maid servant Renu Sharma wife of Narendra Sharma, resident of Tapa Path (Kaushalya Nagar) was lying in unconscious and injured condition. On entering inside the house, I saw that in the room, my grandmother is lying dead and blood was spread over the bed. The jewellery and money lying in the house were missing. When we thoroughly looked, we saw that about 70 to 75 thousand rupees, four gold bangles, one gold earring, two gold rings and one silver coin were missing. My grandmother used to keep the bundles of currency note carefully. Some unknown miscreants has committed the loot of money and jewellery and has committed murder of my grandmother by causing injuries to the maid servant. By calling an ambulance, the injured maid servant was sent to the hospital. My grandmother is lying dead on the bed, therefore, it is requested that my report be recorded and legal action be taken".

6. Thereafter, the police registered chik FIR-Exhibit-Ka-4 on the written compliant-Exhibit-K-1, dated 2.4.2022. The police started the investigation and on the same day i.e. on 2.4.2022, recorded a recovery memo / arrest memo and recovery of a screwdriver and blood stained cloths of accused along with cash of Rs.77620/- and jewellery consisting of four gold bangles, two gold rings, one earring of yellow metal, one 20 rupee dollar note and one white metal note from accused.

7. This recovery memo (Exhibit Ka-7) which was prepared by Sanjay Kumar Dubey, Investigating Officer, bears signature of informant -Arpit Jindal as a witness. As per this recovery memo,

the police party came to the house of appellant- Tarun Goel who was found present and he was informed that Case Crime No.220 of 2022 under Section 394/302 of IPC is registered and the Investigating Officer has suspicion against him. Therefore, Tarun Goel was asked to co-operate and Tarun Goel while keeping his head cool from under the bedding lying over a bed produced the cash and jewellery looted in the incident and confessed that it is the same money and jewellery which he had snatched by committing murder of his grandmother-in-law. While counting the money, 57 notes of 10 rupees total Rs.570/-, 200 note of 20 rupees total Rs.4000/-, 107 note of 50 rupees total amount Rs.5350/-, 321 note of 100 rupees total Rs.32100/-, 8 note of 200 rupees total amount Rs.1600/-, 64 note of 500 rupees total amount Rs.32,000/- and 1 note of 200 rupees total Rs.200/- were recovered at the spot. The witnesses namely, Arpit and Himanshu on seeing the jewellery stated that the same is of their maternal grandmother and they also identified a packet of new notes which has red colour mark. They stated that their maternal grandmother used to perform Pooja on festival of Diwali. All these currency notes which belonged to their maternal grandmother and jewellery were taken in possession by keeping in a separate plastic boxes. Tarun Goel stated that he confess his offence and had handed over money, jewellery, T-shirt and lower pant which were blood stained and were washed and dried. He handed over the T-shirt, lower and one screwdriver by which he committed murder of his maternal grandmother. The screw driver was concealed in dickey of Activa scooter and recovered from Activa scooter no.UP-15 CV-5735. The screwdriver was having blood stains. Lower, T-shirt and screwdriver were also taken in possession by the police and kept in separate packets and were sealed, bearing a sample seal. Thereafter, on the basis of the evidence collected at the spot, the

accused was arrested at 10:00 p.m. The recovery memo was prepared by Sanjay Kumar Dubey, Investigating Officer. Thereafter, the Investigating Officer prepared the inquest report and recovered the dead body which was sent to postmortem examination. After completing other formalities, the challan was presented against the appellant.

8. On completing the investigation, the charge-sheet against accused-Tarun Goel under Section 302, 307, 394, 411 and 506 of IPC. was submitted before the Court. Thereafter, copy of the charge-sheet was supplied to the accused and charges were framed under the aforesaid sections which were read over to the accused. However, he did not plead guilty and claimed trial.

9. The Trial Court, in prosecution evidence examined, informant- Arpit Jindal (PW-1) who stated on the line of information given in the FIR which was recorded on the basis of the written complaint given by him, Exhibit-Ka-1. He stated that on the same day i.e. on 2.4.2024, the jewellery and money was recovered from the house of accused Tarun Goel which was concealed under the bedding lying over a bed. At that time, Himanshu was also with him along with the police. He identified that Tarun Goel as the same person from whom the recovery was effected. He proved the recovery memo made by the police regarding screwdriver and blood stained earth and a white metal twenty rupees dollar note having serial no.6-A/1 and it bears the signature.

10. In cross examination, this witness stated he had not witnessed how incident took place. Regarding the incident, there was no CCTV footage and while recording the complaint (Ex.-Ka-1), he has not stated about the involvement of Tarun Goel. He further stated that after police has reached at the house of Tarun

Goel, he also reached there along with his cousin brother, Himanshu. He further stated that when they reached at the house of Tarun Goel, police had already recovered the items. They stayed at the house of Tarun Goel for about 5-10 minutes and he and Himanshu came back from the house of Tarun Goel and the police also came back. The police did not stay at the house of the accused after recovering the articles. This witness stated that inquest report/ Panchnama was prepared at about 6:00 p.m., which is at Serial No.9A/15 to 17. He, Rakesh, Pradeep Kumar Jindal, Himanshu Agarwal and Manish Mittal were the punches. He had signed the inquest report which he identified. He stated that Kamla Devi was his grandmother. He further stated that the articles which were recovered by the police were released in his favour by the Court. He had brought the same before the Court and some of the currency notes have been spent and the some are left which he had brought.

11. With the permission of the Court, the case property was opened from which four gold bangles, two lady gold rings and one gold earring were found. All these articles were exhibited as Ex.1 to Ex-7. One silver earring and twenty rupees dollar notes was exhibited as Exhibit-8. One sealed plastic container received from the police station was also opened from which photocopies of the recovered notes was there, in which 111 notes of 500 having value of Rs.55,500/- and on 17 pages, 68 notes of 500 having value of Rs.34000 was there. There were total 46 pages which were exhibited as Ex.-9 to Ex.-55. There were two papers of 2000 notes and 200 notes of 5 rupees, 100 notes of 5 rupees, the total of Rs. 5500/- which were exhibited as Ex.-58 to Ex.-60. The plastic cane and tape were exhibited as Ex.-59 & Ex.-60 and the clothe was exhibited as Ex.-61. He further stated that the police has taken the

recovered articles to the police station and he and Himanshu accompanied the police. He stayed in the police station for three hours. The compliant was scribed by his brother-in-law and the recovery proceedings were done in the police station in their presence. During this entire proceedings, the accused was sitting at in the police station and PW-1 and Himanshu signed on the recovery proceedings. He stated that he has no knowledge when the police sealed the recovered articles, however, the same were not sealed in his presence and only he had signed the documents. He further stated that the currency notes which were recovered, were released by the Court in his favour and the photocopies of currency notes was got done by the police at his expenses. Currency notes which were returned to him, their photocopies were produced in the Court.

12. This witness, on showing the recovery memo, stated that as per the recovery memo 64 notes of Rs.500 hundred are shown and he admitted that from the Police Station 111 and 68 i.e. 179 notes of Rs.500 were recovered. He pleaded ignorance as to how the police has produced excessive currency notes over and above the recovery memo.

13. He stated that in the recovery memo, 9 notes of Rs.200/- are mentioned whereas he received 5 notes of Rs.200/-. In recovery, there are 321 notes of Rs.100/- whereas, he received 5 notes of Rs.100/-. He received 2 notes of Rs.2000/- but the same was not shown in the recovery memo. On the sealed copy, Case No. 4061 was mentioned and no one has signed it. The C.J.M. has made endorsement on 6.4.2022.

14. This witness further stated that he had received the currency notes as per the order of the Court and he has submitted the

coloured photocopy of the same in the Court along with affidavit marked as 20B/1 to 21B/100 which are Ex.Ka-9 to Ex.Ka-108.

15. Similarly, the coloured copies of twenty rupees notes were marked as 22B/1 to 22B/193 which are Ex.108 to 301. The photocopies of fifty rupees notes were marked as 23B/1 to 23B/100 which are Ex.302 to 402. Coloured copy of ten rupees notes were marked as 24B/1 to 24B/50 which are Ex.403 to 452.

16. He further stated that as per the order of the Court, he got the photostate copies and till date, the Investigating Officer did not get the copies of the notes. He prepared copies on 2.9.2022 and submitted in the Court on 5.9.2022. He further stated that accused-Tarun Goel was doing work of sale of sanitary articles and, in connection of his business, he used to go to Delhi. Accused-Tarun Goel used to keep a bag regarding his business separately, in which, he had a diary along with sample articles and money. This witness stated that he had also gone to Delhi with Tarun Goel on some occasions but in the Police Station he had not seen any such bag. He stated that Tarun Goel is in the business of sanitary since childhood and running his business in the name of Pari Traders.

17. PW-1 further stated that for the last one year, he was also doing sanitary business and before that he was doing business of ready made clothes. He stated that he acquired experience of sanitary work from Tarun Goel and used to visit various places in Delhi with Tarun Goel. He stated that he and Tarun Goel trusted each other and they even dealt in the giving and taking of money. He further stated that writing regarding recovery of the articles was made in the Police Station. This witness admitted “this is correct that he was owing money towards accused-Tarun Goel”.

He denied a suggestion that due to business rivalry, he has falsely implicated Tarun Goel.

18. Renu Sharma (PW-2), the injured witness, stated that one year prior to the incident, she was working in the house of Kamla Devi and used to cook food. However, her services were terminated later on.

19. On 1.4.2022, Kamla Devi called her on mobile phone and she reached at 2.00 PM. Thereafter, family members of Kamla Devi had gone to watch a movie in Bharat Talkies by directing her to take care of Amma Ji (grandmother). After they left and at about 2.15 p.m. Tarun Goel came. She knew Tarun Goel previously as he is the son-in-law of Amma Ji. She opened the door. Tarun Goel directly went to the room of Amma Ji and asked her to prepare tea. When she prepared tea, he told her to keep it and he will take it himself. He further informed Amma Ji was sleeping and after making tea, she went to the other room to take rest. At 4.00 PM, Tarun Goel called her and she saw that Amma Ji was lying dead and Tarun Goel was carrying a screwdriver and when she asked him what he had done, he told her to keep her mouth shut otherwise she would also be killed. Thereafter, Tarun Goel stated that she should also be killed and with a piece of mirror, he caused injuries on her head, arms and neck. He had caused injuries to her and had killed Amma Ji and her bedding was blood stained. This witness further stated that when she pleaded, what is her fault and why Tarun Goel was giving her beating, he stated that since she was a witness, he would not leave her. Thereafter, she fell down and Tarun Goel went away. She gained consciousness after some time. Then she called Jitendra Bhatiya, a neighbour, who was standing on the roof and told him about the incident. Uncle Bhatiya Ji said, "open the door", then she

told him that her both hands were injured and with the help of her mouth, she had opened the door. Some other person also came inside and they took her to the hospital. In the Court she identified Tarun Goel and stated that he is the same person who has killed Amma Ji and caused injuries to her.

20. In cross examination, this witness stated that after one year, she was removed from service and thereafter, for the first time, Kamla Devi, by making a phone call called her. The daughter-in-law of Kamla Devi namely Sobha had met with an accident and received injury on her hand. After she recovered, services of PW-2 were terminated.

21. She further stated that deceased-Kamla Devi made a phone call from her phone as she used to keep a mobile phone with her. She further stated that on the date of incident, PW-2 was also keeping a mobile phone and when she reached the house of Kamla Devi, she was carrying a mobile phone. She used to talk to aunty while coming for work. She stated that she only had number of Aunty in her mobile phone, however, the same was not stored. She further stated that she had not suffered any injury on her own.

22. Tarun Goel stayed at the place of occurrence for about three hours. There is a kitchen on the side of the room of Amma Ji and from the room, there is a passage leading to the small roof from where house of Jitendra Bhatiya is visible. There was latch on the door which can be opened from one hand and she had opened the latch with one hand and called Bhatiya Ji. She again stated that she opened it with her mouth. She stated that she told Bhatiya Ji about incident when Tarun Goel had left and she was in a position to get up.

23. She further stated that at the time of incident, she was pregnant and in the incident, her child got aborted and she got

treatment from Government Hospital, Firozabad and informed about the same to the police but she cannot tell why police has not recorded this in the statement. She denied that no such incident has taken place.

24. Dr. Siddharth Yadav (PW-3) who prepared the medico legal report of Renu (PW-2) recorded the following injuries :

चोट नं०-1 घाव में टाँके लगे हुए थे। 1 cm के बायी हाथ पर थी और 5cm कलाई के ऊपर।

चोट नं०-2 टाँके लगे हुए 4 cm सिर पर उल्टे कान से 12 से०मी ऊपर।

चोट नं०-3 खुरसट की लाइन 1 से०मी० सीधी कोहनी पर थी।

चोट नं० 4 खुरसट 3 से०मी० सीधी तरफ गर्दन पर सीधे कान से 7 से०मी० नीचे थी।

चोट नं०-5 फटा हुआ घाव 1x1 से०मी० गर्दन पर सीधी तरफ 9 से०मी० सीधे कान से नीचे था।

चोट नं०-6 फटा हुआ घाव 1x1 से०मी० सीधी तरफ पीछे कन्धे पर

चोट नं० 7 सीधे कन्धे पर दर्द की शिकायत थी जिसके लिये x-Ray की एडवाइज दी गयी।

चोट नं०-8 उल्टी हाथ पहली उँगली में दर्द की शिकायत थी। ”

25. This witness stated that he cannot give any opinion regarding injury Nos.1 & 2. Injury Nos. 3 to 8 are caused by hard and blunt weapon and are simple injuries. X-ray was advised qua injury No.7. The injuries were ¼ day old. This witness proved the Medico Legal Report as Ex.Ka-2.

26. In cross examination, he stated that he met the injured after stitches were given to her and none of the injuries was grievous in nature.

27. Dr. Anurag Gupta (PW-4) who conducted the postmortem of Kamla Devi recorded the following injuries :

“चोट नं०-1 विभिन्न इनसाइण्ड वून्ड गले एवं जबड़े के उल्टी तरफ 13 X 8 cm गितनी में 6 औंसत आकार 1 X 1.5 cm मसल तक गहरी चोट पायी गयी।

चोट नं०-2 एकाधिक *Incised wound* गले के सीधी तरफ 7×4 cm क्षेत्र में गिनती में चार चोटों का औसत आकार $1 \times 1 \frac{1}{2}$ cm माँस पेशियों तक गहरी चोटें पायी गयी।

चोट नं०-3 एकाधिक *Incised wound* छाती पर एवं पेट के ऊपरी भाग में आगे की तरफ 25×25 क्षेत्र में गिनती में आठ औसत आकार $1 \times 1 \frac{1}{2}$ cm माँस पेशियों तक गहरी पायी गयी।

चोट नं०-4 *Abraded Contusion* कंधे के उल्टी तरफ आगे की ओर 10×4 cm क्षेत्र में पायी गयी।

चोट नं०-5 रेखिका का आकार *Abrasion* लम्बाई में 16 cm पीठ के ऊपरी भाग में *Scapula bone* उल्टी तरफ थी। नीचे की ओर जाती हुयी पीठ के ऊपरी भाग में सीधी तरफ चोट पायी गयी।

चोट नं०-6 8×6 cm आकार का *Contusion* पीठ के सीधे भाग में पायी गयी।

आन्तरिक परीक्षण:-

1- सिर:-कोई चोट नहीं।

झिल्लियाँ एवं रक्त वाहिनियाँ पेल थी मस्तिष्क का वजन 1250 /ग्राम एवं *Pale* पायी गयी।

गले की स्थिति गले के आन्तरिक उरकों की स्थिति इस प्रकार उसमें *Incised wound* पाया गया।

अन्य उपस्थितियों की स्थिति में जमा हुआ खून *Larynx* एवं श्वास की नली के चारों ओर पाया गया। *Hyoid bone* में कोई परिवर्तन नहीं पाया गया।

छाती की स्थिति:- 3-8 पसलियों में फुरेक्चर पाया गया जो सीधी ओर की थी। *Plura* सीधे ओर की *Lacerated* पायी गयी। छाती की केविटी में जमा हुआ एवं फुरी रक्त लगभग आधा लीटर पाया था।

फैफड़ो सीधी ओर 350 ग्राम *Lacerated* थे। और उल्टी ओर 325 /ग्राम *Pale* थे। हृदय दोनों चैम्बर खाली पाये गये जिसका वजन 175 ग्राम पाया गया।

उदर:- उदर शिस्ती की दशा में *incised wound* पाया गया। आमाशय में पेस्टी फूड पाया गया। छोटी आँत में आधा पचा हुआ खाना बड़ी आँत में गैस एवं *Fecal Mattal?* पाया गया।

लीवर 1300 ग्राम *Pale* पाया गया स्प्लीन 150 ग्राम पेल पायी गयी गुर्दा दाहिनी ओर 90 ग्राम *Pale* बायी ओर 80 ग्राम *Pale* मृत्यु का संभावित समय $\frac{3}{4}$ दिन, मृत्यु का कारण रक्त श्राव एवं *Shock* से आयी चोटों के कारण मृत्यु होना संभव है। ”

28. He further stated that that on the neck, one incised wound was found and blood was deposited around the breathing chord and *Larynx* and there was no injury on *hyoid bone*. 3 to 8 ribs were

fractured on the front side. The death occurred $\frac{3}{4}$ days before. The wearing clothes of the victim, Maxi, Blouse, Petikot, two foot-rings, one white mettled earring, one yellow coloured nose pin and one black string were handed over to the police official who had brought the dead body.

29. This witness proved the postmortem report as Ex.Ka-3.

30. In cross examination, he stated that injury No.1 can be caused by any sharp edged weapon. Similarly, injuries No.2 and 3 were also caused with sharp edged weapon. He stated that if many sharp edged weapons are lying on the earth and victim fall on such injuries can also be sustained and injury No.4 to 6 may be caused because of dragging or falling. There were fractures on right side of the ribs and no other fracture was found on other part of the body.

31. Kishan Singh (PW-5) stated that he prepared the chik F.I.R. at Serial No. 3A/1 to 3A/3 which bears signature of the S.H.O. and was exhibited as Ex.Ka-4. He has made entry in G.D. vide Rapat No. 4 on 2.4.2022. Copy of which is at Serial No. 9A/27 which Ex.Ka-5.

32. In cross examination, he stated that he dictated F.I.R. to the Computer Clerk Atul Bhargav and has mentioned so in the opening of the F.I.R. The complaint was brought by informant along with two ladies. The F.I.R. was registered against unknown persons and at that time, the accused was not in custody. He denied a suggestion that on the direction of the higher official, he registered ante time F.I.R. and G.D.

33. PW-6, Inspector, Sanjeev Kumar Dubey stated that he was the Investigating Officer and prepared CD No. 1 on 2.4.2022. Thereafter, he inspected the spot and prepared '*naksha nazri*' on

the asking of the informant, which is at Sl. No. 5-A/1. He had prepared and signed the same and same was exhibited as K-6. He further stated that he has recorded the statement of eye witness Renu Sharma, arrested the accused, recovery memo of the article which is at Sl No. 6-A and was exhibited as K-7. He stated that the witness from the public had signed this Exhibit K-7. He further stated that field unit which prepared report is also mentioned and after recording statement of Tarun Goel, the accused, section 307, 506 and 411 I.P.C. were added and Panchayatnama was prepared. This witness further stated that G.D. No. 2 dated 6.4.202, the Panchayatnama dated 1.4.2022 signed by five witnesses was recorded which is at Sl No. 9-A/15-17. The same was exhibited as Ex-K-8. He had prepared photograph of the dead body, reports of Inspection and letter to the CMO, Firozabad for post mortem which was exhibited as K-9 to 12. Vide GD No. 3 dated 4.9.2022. He investigated eye witness Renu Shamra and other witnesses. Vide G.D. No. 4 dated 13.4.2022, he made request to the Court for comparison of the finger print and DNA sample of the accused Tarun Goel for matching with the scientific finger print, blood stained sample collected from the spot vide G.D. No. 6 dated 17.4.2022. He presented MLR of Renu Sharm and postmortem report of Kamla Devi.

34. According to G.D. No. 7 dated 18.4.2022, the order of the Court for DNA test of Tarun Goel's finger print was obtained vide G.D. No. 8 dated 19.4.2022. A copy of order of the Court for DNA examination of the accused was submitted to the CMO, Firozabad. This witness further stated that vide G.D. No. 9 dated 5.5.2022, CMO Dr. Naveen alongwith staff went to the District Prison and taken blood sample of the accused Tarun Goel and the same was handed over to him/I.O. and Head Moharrir of the police station was directed that blood sample and the sample recovered by

Forensic Team at the place of occurrence be sent to Forensic Lab vide G.D. No. 10 for the purpose of matching of examination, he recovered the articles which was signed by the public witness Himansu and sent to the Forensic Science Lab, Agra. Thereafter, the statement of doctor who conducted the postmortem was recorded in G.D. No.11 and charge-sheet was presented before the Court on 14.5.2022 vide Exhibit No.13. This witness further stated that:

इस मुकदमें से सम्बन्धित माल एक प्लास्टिक की बोरी में न्यायालय के समक्ष पेश किया गया जिसे न्यायालय के अनुमति से खोला गया। एक अदद रक्त रंजित दुपट्टा नौकरानी रेनु शर्मा प्लास्टिक में पैक है। जिस पर घटना स्थल प्राप्त हुआ लिखा है। प्लास्टिक की थैली पर वस्तु प्रदर्श-451, दुपट्टा पर वस्तु प्रदर्श-452 डाला गया पॉलीथीन में वेडशीट का टुकड़ा निकला, थैली पर वस्तु प्रदर्श 453 तथा बैडशीट के टुकड़े पर वस्तु प्रदर्श 454 डाला गया। तथा सादा बैडशीट के टुकड़े पर वस्तु प्रदर्श - 455 डाला गया। एक प्लास्टिक की थैली में रक्त रंजित चप्पल निकली थैली पर वस्तु प्रदर्श-456 तथा चप्पलों पर 457 व 458 डाले गये। एक सफेद प्लास्टिक की थैली में दो कड़ा दो चूड़ी टूटी हुयी निकली जो फॉरेंसिक टीम ने मेरे सामने कब्जे में लिये थे प्लास्टिक की थैली वस्तु प्रदर्श 459 व कड़ों पर 460,461 तथा चूड़ी टूटी पर 462,463 डाले गये। एक प्लास्टिक की पॉलीथीन रक्त रंजित कांच का टुकड़ा निकला, थैली पर वस्तु प्रदर्श 464 व काँच के टुकड़ों पर वस्तु प्रदर्श 465 डाले गये एक पॉलीथीन में सादा कांच का टुकड़ा निकला थैली पर 466 तथा सादा काँच के टुकड़ों पर वस्तु प्रदर्श 467 डाले गये। एक पालीथीन में मृतका के दो टाप्स पीली धातु के निकले पॉलीथीन पर वस्तु प्रदर्श 468 तथा टाप्सो पर 469,470 डाले गये। एक पालीथीन में रक्त रंजित पैर का एक मौजा निकला, पॉलीथीन पर वस्तु प्रदर्श 471 तथा मौजा पर वस्तु प्रदर्श 472 डाला गया फिंगर प्रिन्ट जिस पर प्रदर्श क-473 डाला गया एक पटला रक्त रंजित निकला जिस पर वस्तु प्रदर्श 474 डाला गया एक पॉलीथीन में चाय दानी छन्नी निकली थैली पर वस्तु प्रदर्श 475 तथा छलनी पर 476 डाले गये एक पालीथीन

में 4 स्टील का चाय का ग्लास निकला पालीथीन पर वस्तु प्रदर्श 477 तथा ग्लास पर 478 डाले गये। तथा चाय दानी पर 479 तथा पौलीथीन पर 480 डाला गया। एक प्लास्टिक की थैली में मृतका के बाल निकले थैली पर वस्तु प्रदर्श 481 तथा बालों पर 482 डाला गया एक थैली में खून आलूदा मिट्टी निकली प्लास्टिक की थैली में मृतका के दाये व बाये स्वैप व सादा स्वैप निकले पौलीथीन 485 तथा स्वैप पर 486 दूसरी पौलीथीन पर 487 व 488 डाले गये एक थैली में नौकरानी क स्वैप निकले पौलीथीन पर 489,490,491 डाले गये दूसरी पौलीथीन नौकरानी के स्वैप सादा निकले थैली पर वस्तु प्रदर्श 492 स्वैप पर 493, 494 डाले गये। उपरोक्त प्रदर्श मेरे समक्ष व मेरी उपस्थिति में फोरेंसिक टीम द्वारा लिये गये थे जिसको मैंने सत्यापित किया है। एक प्लास्टिक के डिब्बा में आला कत्ल पेचकश निकला डिब्बे पर मेरे व गवाहान व अभियुक्त के हस्ताक्षर है। डिब्बे पर वस्तु प्रदर्श 495 व पेचकश पर वस्तु प्रदर्श 496 डाला पेचकश पर खून लगा है। जिससे घटना कारित हुयी थी। एक सील मारकीन के कपडे में जिस पर अ०सं० 220/22 से सम्बन्धित है। जिस पर मेरे व गवाहान तथा अभियुक्त के हस्ताक्षर है। मारकीन कपडे पर वस्तु प्रदर्श 497 व नीली कलर का लोअर वस्तु प्रदर्श 498 टी शर्ट 499 डाला जो रक्त रंजित है। जो घटना के समय अभियुक्त पहने था।

35. In cross examination, this witness stated at that time many people of the vicinity had gathered and injured Renu Sharma was taken to hospital by government ambulance, however he did not remember who accompanied her. This witness stated that during investigation nothing came on record regarding giving or handing over of money between informant and the accused. The case property relating to the case was sent to Forensic Lab for examination and its report was not received when the charge sheet was filed and even till date report is not on record. He further stated that the maid servant Renu Sharma had left the job and only on the date of incident she was called back at work. He did not try to recover mobile phone of Renu Sharma and same is not

mentioned in the inquiry report. He did not try to find out if prior to the incident or after the incident Renu Sharma talked to how many persons on mobile phone. He denied suggestion that he has created evidence and submitted the charge sheet.

36. PW-7, Constable Mohan Singh stated that he alongwith constable Anjali has taken the deceased Kamla Devi for postmortem. Doctor had given cloths worn by the deceased which were sealed. Seal and clothes were marked as Ex. 500-506. In cross examination he stated that the I.O. did not record his statement.

37. Thereafter the statement of the accused under section 313 Cr.P.C. was recorded in which all incriminating evidence was put to him. He denied that he was present at the spot and stated that at that time, he was doing marketing and visited 3-4 shops. He denied that he has caused any injury to Renu Shama and he has looted the articles and money. Regarding question no. 9 that as per FSL report Ex.35-A his DNA matched with the hair and blood found at the spot, this witness that by extending threat his hair were taken in the police station and even blood was taken. He had no knowledge if blood stained screw driver were recovered from him.

38. Regarding question no. 12, he stated that he has suffered loss of money in gambling and his father-in-law used to help him and he has not committed any offence.

39. No defence evidence was led. Thereafter trial court held the appellant guilty for offence punishable under Section 302, 307, 394, 411 and 506 IPC and sentenced him to death penalty, to be hanged till death.

40. The trial court has thus made a reference for confirmation for the death sentence. The appellant has also filed a jail appeal.

41. Heard learned counsel for the appellant, learned counsel for the State and with their help the entire trial record is re-appreciated and re-scrutinised.

42(a). Learned counsel for the appellant has argued that the alleged recovery of the articles is not in consonance with Section 27 of the Evidence Act. The counsel submits that as per the prosecution, when the police team came to the house of the appellant, they already had an information that the articles are to be recovered from the appellant. The counsel drawn a reference to the recovery memo Ex.Ka.7 dated 02.04.2022 which is a joint recovery memo as well as the arrest memo. It is stated in Ex. Ka-7 that I.O. along with witnesses reached the house of accused Tarun Goyal and informed him that FIR for committing the murder is registered and police has information that he is in possession of articles looted from the deceased. Upon this, the accused told the I.O. that he has concealed the currency notes and jewellery under the bed and got it recovered. The counsel has referred to the Section 27 of the Evidence Act which read as under:

"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."

Learned counsel has referred to the judgment of the Supreme Court in ***Subramanya Vs. State of Karnataka, 2022 0 AIR (SC) 5110*** to submit that where the police has recovered the articles and clothes of the accused by drawing a recovery memo under Section 27 of the Evidence Act, the following conclusion was made:

“76. Keeping in mind the aforesaid evidence, we proceed to consider whether the prosecution has been able to prove and establish the discoveries in accordance with law. [Section 27](#) of the Evidence Act reads thus:

“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.”

77. The first and the basic infirmity in the evidence of all the aforesaid prosecution witnesses is that none of them have deposed the exact statement said to have been made by the appellant herein which ultimately led to the discovery of a fact relevant under Section 27 of the Evidence Act.

78. If, it is say of the investigating officer that the accused appellant while in custody on his own free will and volition made a statement that he would lead to the place where he had hidden the weapon of offence, the site of burial of the dead body, clothes etc., then the first thing that the investigating officer should have done was to call for two independent witnesses at the police station itself. Once the two independent witnesses would arrive at the police station thereafter in their presence the accused should be asked to make an appropriate statement as he may desire in regard to pointing out the place where he is said to have hidden the weapon of offence etc. When the accused while in custody makes such statement before the two independent witnesses (panchwitnesses) the exact statement or rather the exact words uttered by the accused should be incorporated in the first part of the panchnama that the investigating officer may draw in accordance with law. This first part of the panchnama for the purpose of Section 27 of the Evidence Act is always drawn at the police station in the presence of the independent witnesses so as to lend credence that a particular statement was made by the accused expressing his willingness on his own free

will and volition to point out the place where the weapon of offence or any other article used in the commission of the offence had been hidden. Once the first part of the panchnama is completed thereafter the police party along with the accused and the two independent witnesses (panchwitnesses) would proceed to the particular place as may be led by the accused. If from that particular place anything like the weapon of offence or blood stained clothes or any other article is discovered then that part of the entire process would form the second part of the panchnama. This is how the law expects the investigating officer to draw the discovery panchnama as contemplated under Section 27 of the Evidence Act. If we read the entire oral evidence of the investigating officer then it is clear that the same is deficient in all the aforesaid relevant aspects of the matter.”

It is submitted that in the light of the same, the prosecution has failed to prove that the recovery was effected in terms of Section 27 of the Evidence Act.

(b) It is next argued that the I.O. has stated that the accused confessed for committing the offence before him and stated that he has washed his blood stained clothes but the screwdriver was having blood stains. The counsel submits that as per the ***Subramanya Vs. State of Karnataka (supra)***, recovery of weapon of offence, in the first part of recovery memo cannot be read in evidence as no explanation is given how the police got the information that accused was in possession of the articles looted from the house of the deceased, on the basis of which the police entered the house of the accused. It is submitted that there was no independent witness to the recovery and the informant himself was cited as witness in the recovery memo. The police did not record any separate statement of the accused before effecting the recovery or preparing the Panchayatnama of recovery and rather in a casual manner, it is shown that the recovery memo and the arrest memo which is a joint memo, which is not permissible under the law. It is

next argued that the investigation carried out in this case regarding the involvement of the appellant is highly doubtful.

(c) Learned counsel has referred to C.D. No.4 dated 02.04.2022 which read as under:

"श्रीमान जी मुकदमा उपरोक्त में घटना स्थल पर बुलाये गये फिल्ड यूनिट टीम फिरोजाबाद द्वारा घटना से एकत्रित किये गये साक्ष्य की रिपोर्ट उपलब्ध करायी लिस्ट का अवलोकन किया तो 1. एक अदद खून आलूदा 2. एक अदद बेड सीट का टूकड़ा रक्त रंजीत 3. एक अदद बेड सीड का टुकड़ा सादा 4. एक अदद नौकरानी रेनू शर्मा का रक्त रंजीत दुपट्टा 5. एक जोड़ी रक्त रंजीत चप्पल 6. बाल काले कलर के 7. टूटी फूटी चूड़िया व कड़े 8. एक अदद रक्त रंजीत काँच का टूकड़ा 9. एक अदद सादा काँच का टूकड़ा 10. एक अदद पीली धातु के कान के टोक्स 11. एक अदद रक्त रंजीत पैरो के मोजे 12. 07 चान्स फिंगर प्रिंट 13. एक अदद रक्त रंजीत पटला 14. एक अदद चाये दानी व छल्लो 15. एक अदद इस्टील का ग्लास जिसमे चाय भरी हुयी 16. नौकरी सोनू शर्मा के दाहिने व बाये हाथ का स्वैव एक 17. अदद मोबाइल 18. मृत्तिका कमला देवी उम्र 74 वर्ष का दाहिने व बाये हाथ का स्वैव उपलब्ध कराया। जिसे अकब से थाना हाजा के रो०आम० में दाखिल किया जायेगा।"

It is argued that in this C.D. it is recorded that the Field Unit Team of F.S.L. Firozabad has provided the report of evidence collected at the spot. The list was prepared according to which 18 articles were taken in possession. The counsel argues that the original list was never produced before the court and only the C.D. entry is relied upon by the prosecution. The counsel submits that in this C.D. entry there is mention of black colour hair at S.No.6 but there is no mention that the same were collected from the hand of the deceased, a finding recorded by the trial court forming basis of conviction of the appellant. The counsel next argues that another important link evidence which is not produced on record, is the copy of the letter which was sent by the S.H.O. to the F.S.L. Agra for comparison of the hair with the blood sample of the appellant.

(d) The counsel submits that it is mentioned in C.D. No.6 dated 14.5.2022 as under:

"अवलोकन दाखिला माल..... मुकदमा उपरोक्त में प्रकाश में आये अभियुक्त तरुण गोयल पुत्र अशोक गोयल नि० म०न० 195 बंगला एरिया सदर बाजार मेरठ हाल पता लोहिया नगर गलीन० 02 वाटिका रिसोर्ट के पीछे थाना उत्तर फिरोजाबाद के बल्ड सैम्पल एवं मृतिका कमला देवी के हाथों से मिले सिर के कुछ बालों को वास्ते कराने डी.एन.ए. परीक्षण विधि विज्ञान प्रयोगशाला आगरा में केस फाइल न० RFSL(AGRA)/1856/DNA/154/22 दिनांक 09.05.2022 को CO NAGAR FIROZABAD के आदेशानुसार है०का० 824 राजकुमार द्वारा दाखिल किया गया है जिसे मनोज कुमार वर्मा लैब एस्सिस्टेंट द्वारा रिसिव किया गया है दाखिल सम्बन्धी रिसिविंग सम्बन्धि छायाप्रति संलग्न सी.डी. की जाती है।"

It is argued that the blood sample of the accused and the hair recovered from the hand of the deceased Kamla Devi were sent for Forensic Science Lab, Agra vide Letter No. 1856 dated 09.05.2022, as per order of the court. Counsel submits that copy of this forwarding letter no. 1856 was never produced before the trial court.

(e) The counsel submits that though it has come on record that the I.O. moved an application before the C.J.M. for taking blood sample of the appellant for the purpose of D.N.A. examination of his fingerprint, however, the operative part of the order of the C.J.M.- Firozabad is read as under:

"आदेश

विवेचक का प्रार्थना पत्र स्वीकार किया जाता है। तदनुसार मुख्य चिकित्साधिकारी, फिरोजाबाद को आदेशित किया जाता है कि वह प्रकाश में आये अभियुक्त तरुण गोयल उपरोक्त के डी०एन०ए० एवं फिंगर प्रिंट मिलान हेतु सैम्पल लेने हेतु किसी योग्य चिकित्साधिकारी को आदेशित करें तथा सैम्पल विवेचक को उपलब्ध करायें, जिससे कि सैम्पल को नियमानुसार डी०एन०ए० परीक्षण हेतु भेजा जा सके। तदनुसार विवेचक आवश्यक पैरवी करें।"

It is argued that the C.J.M. has directed for taking the blood sample of appellant and fingerprint of appellant for D.N.A. examination

vide order dated 18.04.2022, however, no permission was granted to take the hair of the appellant as sample for matching with the hair allegedly recovered from the hand of Kamla Devi. The counsel submits that even in the application filed by the I.O. before the C.J.M., there was no request to take the sample of the hair of the appellant and only blood sample was taken. The counsel has drawn a reference in the statement of the appellant under Section 313 of Cr.P.C. that while he was in police custody, forcibly his hair were taken and blood sample was also drawn. The counsel submits that in the absence of the two link evidence i.e. the original evidence report prepared by the Field Unit as well as the copy of the letter no. 1856 by which the hair recovered from the hand of Kamla Devi along with blood sample of the appellant was sent to F.S.L. is not on record.

(f) The counsel has then referred to the report of F.S.L. and the operating part of the report read as under:

“पत्रांक: 1856-DNA-154/22

अप०सं०: 220/22

राज्य बनाम - तरुण

गोयल

धारा: 394/302/307/506/411 IPC

थाना- फिरोजाबाद

नोर्थ

उपर्युक्त मामले से सम्बन्धित प्रदर्श प्रयोगशाला में दिनांक 09/05/2022 को विशेष वाहक द्वारा प्राप्त हुये।

सील का विवरण

कुल दो, एक समुद्रित प्लास्टिक डिब्बा व एक समुद्रित थर्माकोल बॉक्स जिन पर मुद्रा (Signature SI UPP) की छाप नमूनानुसार अक्षत थी।

प्रदर्शों का विवरण

01-बॉल । प्लास्टिक पॉउच में, । एक समुद्रित प्लास्टिक डिब्बा में।

02- रक्त नमूना (EDTA + Plain Vail में) । एक समुद्रित थर्माकोल बॉक्स में- अभियुक्त तरुण गोयल से।

परीक्षण परीणाम

प्राप्त प्रदर्शों (1) व (2) का डी०एन०ए० परीक्षण किया गया।

स्रोत प्रदर्श (1) का डीएनए प्रोफाइल, स्रोत प्रदर्श (2) (अभियुक्त तरुण गोयल) के समान व पुरुष मूल का पाया गया।

(HID & Y-STR KITS)

डी०एन०ए० परीक्षण में जैनेटिक एनालाइजर व जीन मैपर साफ्टवेयर का प्रयोग किया गया।

उक्त परीक्षण में मानक विधियाँ प्रयोग में लायी गयीं।

नोट:- समस्त प्रदर्शों को परीक्षण उपरान्त एक समुद्रित बण्डल में वापस लौटाया जा रहा है। ”

Learned counsel has submitted that in this report there is no mention that the hair, in the plastic pouch at S.No.1 were recovered from the hand of the deceased. It is submitted that if it was so mentioned in the application by the I.O. with reference to the Field Unit Report, there would be a complete chain of evidence and since the report of the F.S.L. did not describe that the hair sent for examination were recovered from the hand of the deceased, the defence taken by the appellant that his hair were taken during the police custody raises a doubt on the prosecution version and the trial court has not relied upon a plausible defence explanation.

(g) Learned counsel further submits that even the report submitted by the C.J.M. in terms of the order of Magistrate dated 18.04.2022 has also not come on record. It is submitted that as per the lower court records, in C.D. No. 10, it is mentioned that the blood sample was provided by Dr. Naveen Kumar Jain by visiting the District Jail- Firozabad, however, the report in this regard is also not produced on record and the prosecution relies upon C.D.No. 10 only. This also raises a suspicion about the prosecution version. The counsel has argued that as per the complaint K1 forming basis of FIR Case No. 4, in the first part it is not mentioned that at the time PW-1 along with his family members had left to watch a movie, PW-2- Renu Sharma was present there and they had asked her to take care of his grand mother deceased Kamla Devi.

However, in the later part of the complaint it is mentioned that when they returned back they found that Renu Sharma was lying unconscious. Counsel submits that the police has not investigated the case in a manner as if PW-2, in conspiracy with her accomplices may have committed the offence and the statement of PW-2 is highly suspicious for the following reasons:

i) It is argued that PW-2 has stated that when appellant- Tarun Goyal came, he asked her to prepare tea and keep it there and thereafter, she went to take rest.

ii) The counsel submits that this witness has stated in examination-in-chief that she was working in the house of deceased Kamla Devi one year prior to the incident and later on her services were terminated. Only on the day of incident, Kamla Devi by making a phone call, from her phone to the phone of PW-2- Renu Sharma called her at home. The counsel has argued that this raises a suspicion on the manner in which, PW-2 was cited as a witness. The counsel submits that in cross-examination of the I.O.- PW-4- Sanjeev Kumar Dubey, it has come that he did not investigate the case to find out that prior to the incident and subsequently to the incident PW-2- Renu Sharma talked to how many persons, to find out her own involvement in commission of offence. The counsel submits that PW-2 has admitted that she used to keep mobile phone with her, all the time and Kamla Devi has called her on phone on the day of incident only. The counsel submits that this co-incidence of calling her by Kamla Devi on 01.04.2022 at about 2:00 PM when immediately thereafter, she was murdered that too when services of PW-2 were terminated one year ago, raises a suspicion about this co-incidence and her presence at spot.

iii) The counsel submits that as per PW-2 she sustained injuries on her both hands and then she called Jitendra Bhatia, a neighbour

who was standing on the roof and when he asked her to open the door she stated that both of her hands was injured and she opened the latch with her mouth and many people including Jitendra Bhatia came inside the house. The counsel submits that neither Jitendra Bhatia was cited as a witness nor any other person who came inside the house, were cited as witness by the police.

iv) The counsel has referred to the M.L.R. of PW-2 to submit that no such substantive grievous injury was found on her hand except that she was complaining of pain in one finger of one hand and there was stitched wound on the other hand, do not prove that she was not in a position to open the latch with her hands and she had made such statement just to escape the notice of the I.O. that he may not raise a suspicion on her presence. Counsel further submits that it has come in the statement of PW-1 that when they reached home, PW-2 Renu Sharma was lying unconscious and after the police reached there, by arranging the ambulance she was sent to hospital. PW-2 belied this entire version of PW-1 when she stated that immediately after when accused gave her injury she called Jitendra Bhatia, a neighbour and then she open the latch of the door and Jitendra Bhatia and another came at the spot and the police came and she was sent to hospital. This contradiction in the statement of PW-1 and PW-2 regarding the fact that PW-2 was found unconscious by PW-1 raises a suspicion about the prosecution case.

v) It is submitted that PW-2 has nowhere stated that when accused Tarun Goyal left her home, he was carrying any bag in which any articles like currency notes or jewellery was there. The counsel submits that such a heavy amount of bundle of notes cannot be carried without there being the small bag in the hands of the accused and this fact is not stated by PW-2. The counsel submits

that PW-2 has suffered only simple injuries and as per her version she was present in home when the accused Tarun Goyal caused multiple injuries to the deceased with a screwdriver and therefore, it is not believable that the deceased may not have raised hue and cry which was not heard by PW-2 as it is clear from the site plan that house was very small and PW-2 stated that after preparing the tea, she had gone to the side room where murder of deceased took place.

vi) The counsel further submits that the statement of PW-2 stands belied from another fact as she stated that after causing her injuries, accused ran away from the spot and in such event how the door was closed from inside as PW-2 stated that when she called Jitendra Bhatia, a neighbour he asked her to open the door which was closed from inside and with her mouth, she opened the latch. Counsel submits that all this show that the incident did took place not in the manner as stated by the prosecution and rather the role of PW-2 is very doubtful and she herself was a party in commission of offence with the help of her companions.

vii) Counsel submits that PW-2 has stated that she was pregnant at the time of incident but she had a miscarriage due to incident, however, this fact is not mentioned in her M.L.R. as reproduced above. Therefore, the statement of PW-2 is not reliable as she has even tried to gain sympathy of the court. The counsel submits that the accused was arrested on the same day and was medico legal examined, however, no defence injury was found on his body which shows that when murder assault was made on the deceased or on the injured witness PW-2, they did not try to defend themselves by causing any defence injury and this fact is also make the case doubtful.

viii) It is further submitted that as per the FIR version, PW-1 stated that while they were watching the movie, they received a phone call from the neighbour Jitendra Bhatia intimating that some untowards incident has taken place. Firstly, Jitendra Bhatia is not cited as a prosecution witness and secondly he being the neighbour knew that appellant is the grand son-in-law of the deceased and used to visit her house frequently and therefore, he was known to the next door neighbour Jitendra Bhatia but at the first instance he did not name him as an assailant and rather as per the information of PW-1 some unknown persons have committed the offence, as he intimated PW-1 that some untowards incident has taken place, thus all this show that PW-2 is not a natural witness.

(h) Counsel has next argued that neither bloodstained screwdriver which was used in commission of murder of the deceased-Kamla Devi nor the piece of mirror which was used to cause injury to PW-2, Renu Sharma, were sent for forensic science examination which also raises doubt. Counsel submits that in the entire investigation, the police did not join any independent witness including Jitendra Bhatia, the person who came at the place of occurrence at the first instance and in all the documents, it is the informant who alone is cited as a witness including recovery memo/arrest memo, as well as the inquest report.

(i) Counsel submits that in cross examination, PW-1 (informant) has stated that he owed money towards accused Tarun Goel and for that reasons, he had falsely implicated the appellant with a mala fide motive.

(j) Counsel submitted that PW-1 has not stated in the first part that when they left the home along with family members, they told Renu Sharma (PW-2) to take care of Kamla Devi but it is so stated

by PW-2 that when she reached home, the family members had gone to watch a movie by directing her to take care of Kamla Devi and this discrepancy is vital.

(k) Counsel submits that these two contradictory statements also raises suspicion regarding involvement of the appellant in the present case. It is next argued that vide C.D. No.3 dated 9.4.2022, the statement of Renu Sharma (PW-2) was recorded, in which, name of the appellant figured. However, much prior thereto, on the date of incident i.e. 1.4.2022 itself the appellant was arrested and recovery was effected at his residence. Counsel submits that the Police had failed to inform the source of information the basis of which, the appellant was involved in the case.

(l) Counsel submits that even the recovery effected from the appellant is highly discrepant. Counsel has referred to recovery-cum-arrest memo (Ex.Ka-7) wherein the description of the notes and the photocopy of the recovery effected, as per the description given by PW-1 in comparative manner show that more currency notes are produced before Trial Court than recovered as per recovery memo.

Counsel submits that it is very strange that the recovery which was effected from the spot is excess as per the recovery produced before the Court and there is no explanation given by the Investigating Officer or PW-1.

(m) It is also submitted that as per the case of PW-1, he has received back the currency notes and other articles on supurdari from the Court. However, the said order was never produced on record to show that the Trial Court has directed to file photocopies of the currency notes. Counsel submits that PW-1 has stated that he has got the coloured photocopies of currency notes on his own

after the amount was released in his favour. Whereas, in ordinary course, it was for the Investigating Officer to first get the currency notes photocopied and then release the same in favour of informant.

(n) Counsel referred to the statement of PW-1 where he stated that some of the currency notes, he has already spent and some he has in his possession. However, the jewellery was never produced before the Court at the time of cross examination of either PW-1 or PW-4 which also raises suspicion about recovery effected from the appellant.

(o) Counsel has next argued that as per the joint recovery/arrest memo, the police had prior information that the appellant is in possession of the articles. However, the source was not disclosed and secondly, no separate inquest report was prepared for the recovery of the articles. These currency notes and the jewellery in terms of Section 27A of the Evidence Act, 1872 and in view of the decision in *Subramanya Vs. State of Karnataka (supra)*.

(p) Learned counsel for the appellant next argued that PW-1 has failed to prove any motive to commit the murder and the recovery being highly discrepant was planted on the appellant because of the reason that he admitted that informant owed money to the appellant. Counsel has next argued that the Trial Court has failed to appreciate the theme of Section 313 of Cr.P.C. which reads as under :

“313. Power to examine the accused. - (1) In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court--

(a) may at any stage, without previously warning the accused put such questions to him as the Court considers necessary;

(b) shall, after the witnesses for the prosecution have been examined and before he is called on for his defence, question him generally on the case:

Provided that in a summons-case, where the Court has dispensed with the personal attendance of the accused, it may also dispense with his examination under clause (b).

*(2) No oath shall be administered to the accused when he is examined under sub-section (1). **Hussain***

(3) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them.

(4) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

(5) The Court may take help of Prosecutor and Defence Counsel in preparing relevant questions which are to be put to the accused and the Court may permit filing of written statement by the accused as sufficient compliance of this section.:"

Counsel has referred to all the questions asked to the appellant to submit that the same have been asked in a manner the Trial Court is asking the appellant to make a confessional statement. Counsel has argued that the purpose of Section 313 Cr.P.C. is to put all the incriminating evidence to the accused so that he may reply and lead his defence evidence to prove his innocence. It would be relevant to refer to statement of accused under Section 313 Cr.P.C. recorded by the Trial Court which reads as under :

"ब्यान अन्तर्गत धारा- 313 दं०प्र०सं०

नाम- तरूण गोयल पिता का नाम- श्री अशोक गोयल उम- 39 वर्ष, पेशा- बिजनेसमैन निवासी- मकान नम्बर 195 बंगला एरिया सदर बाजार मेरठ। हाल पता लोहिया नगर गली नम्बर 02 वाटिका सिरोट के पीछे, थाना उत्तर, फिरोजाबाद थाना- उत्तर जिला- फिरोजाबाद।

प्रश्न:-1 क्या आप द्वारा दिनांक 01/04/2022 को समय अपराह्न 2.15 बजे दिन से अपराह्न 4.30 बजे के मध्य प्रथम सूचना रिपोर्टकर्ता की दादी श्रीमती कमला देवी आयु लगभग 70 वर्ष की हत्या जेवरात व धनराशि की लूट के आशय से कारित की गयी, इस सम्बन्ध में आपको क्या कहना है?

उत्तर:- मैं घटना स्थल पर था ही नहीं। मैं उस मार्केटिंग के लिए निकला था, मैं इस समय पर भोला स्नेटरी झील की पुलिया जलेसर रोड़ तथा तीन चार अन्य दुकानों पर भी गया था। घटना से मेरा कोई सम्बन्ध नहीं है।

प्रश्न:-2 क्या आपके द्वारा इसी घटना के दौरान श्रीमती रेनू शर्मा को भी जान से मारने के आशय से घायल किया गया, इस सम्बन्ध में आपको क्या कहना है?

उत्तर:- यह वह कैसे कह रही है, इसकी मुझे कोई जानकारी नहीं है। मेरी रेनू शर्मा से कोई दुश्मनी नहीं है, रेनू शर्मा मेरी पत्नी श्रीमती प्रेरणा गोयल के मामा के घर में काम करती है, इसलिए मैं इसे जानता हूँ।

प्रश्न:-3 आपके द्वारा कमला देवी की हत्या करने और श्रीमती रेनू शर्मा को मरा हुआ समझकर घर में रखे 70-75 हजार रुपये कमला देवी के हाथ की सोने की चार चूड़ी, कान के टाप्स, दो सोने की अंगूठी व एक चाँदी का सिक्का लूट लिया, इस सम्बन्ध में आपको क्या कहना है?

उत्तर:- मेरे ऊपर गलत आरोप लगाया है।

प्रश्न:-4 प्रथम सूचना रिपोर्टकर्ता अर्पित जिन्दल द्वारा लूटी गयी सामग्री की पहचान की गयी है, इस सम्बन्ध में आपको क्या कहना है?

उत्तर:- मेरे पास से कोई सामान बरामद नहीं हुआ। अर्पित से मेरी कोई दुश्मनी नहीं है, मैंने ही इन्हें सैन्टरी का व्यापार सिखाया है, वो इस घटना के बाद हमारा तलाक भी करवाना चाहते थे।

प्रश्न:-5 इस घटना में घायल श्रीमती रेनू शर्मा द्वारा अभियोजन साक्षी के रूप में इस तथ्य की पुष्टि की गयी है कि दिनांक 01/04/2022 को आप समय लगभग 2.15 बजे प्रथम सूचना रिपोर्टकर्ता के घर पहुँचे और आपके पहुँचने पर दरवाजा अभियोजन साक्षी संख्या-2 द्वारा दरवाजा खोला तथा घटना देखने पर अभियोजन साक्षी संख्या -2 को भी आपके द्वारा जान से मारने के आशय से शीशे के टुकड़ों से वार किये, इस सम्बन्ध में आपको क्या कहना है?

उत्तर यह कहना गलत है, यदि मैं मारता तो उसे जिन्दा क्यों छोड़ता। यह कहना गलत है।

प्रश्न:-6 अभियोजन साक्षी संख्या-2 द्वारा घटना में प्रयुक्त पेंचकस आपके हाथ में होने के तथ्य की पुष्टि की है और इसी पेंचकस श्रीमती कमला देवी की आपके द्वारा हत्या कारित की गयी, इस सम्बन्ध में आपको क्या कहना है?

उत्तर:- मैं इस सम्बन्ध में कुछ नहीं जानता।

प्रश्न:-7 दिनांक 02/04/2022 को अभियोजन साक्षी संख्या-1 की उपस्थिति में शाम करीब 6.00 बजे लूट का माल आपकी अभिरक्षा से बरामद किया गया, इस सम्बन्ध में आपको क्या कहना है?

उत्तर:- यह कहना गलत है।

प्रश्न:-8 आपके द्वारा सुनियोजित ढंग से प्रथम सूचना रिपोर्टकर्ता के समस्त परिवार के सदस्यों को भारत सिनेमा में फिल्म देखने के लिए भेजा और आपका आशय लूट कारित करने का था और इसी घटना को सफल बनाने के लिए आपके द्वारा श्रीमती कमला देवी की तथा श्रीमती रेनू शर्मा की हत्या करने की योजना बनायी, जिसमें श्रीमती कमला देवी की हत्या हो गयी और श्रीमती रेनू शर्मा घायल व बेहोश होने के बाद जिन्दा बच गयी, इस सम्बन्ध में आपको क्या कहना है?

उत्तर:- मैं टिकट नहीं लाया, मेरा बेटा अर्नव भी फिल्म देखने गया था। मैंने कोई योजना नहीं बनाई।

प्रश्न:-9 विधि विज्ञान प्रयोगशाला दस्तावेज 35अ के अनुसार घटनास्थल पर पाये गये बाल तथा खून का डी०एन०ए० परीक्षण किया गया, जो कि आपके डी०एन०ए० के समान पाया गया, इस सम्बन्ध में आपको क्या कहना है?

उत्तर:- मुझे डरा कर थाने पर सैम्पल के रूप में बाल तोड़ लिए थे, तथा खून भी निकाला था। इसके अतिरिक्त मुझे कोई जानकारी नहीं है कि पेंचकस व सीले पर मेरा खून व बाल पाये गये हों।

प्रश्न:-10 आप तथा मृतका श्रीमती कमला देवी के परिवार का क्या सम्बन्ध है और उसके द्वारा किस प्रकार घटना कारित की गयी, इस सम्बन्ध में आपको क्या कहना है?

उत्तर:- कमला देवी मेरे ससुर की सास है, तथा मेरी पत्नी की नानी है।

Hussain प्रश्न:-11 अभियोजन साक्षी संख्या-1 ता० 7 द्वारा अभियोजन कथानक/घटना घटित होने तथा घटना में प्रयुक्त सामान की बरामदगी के तथ्य की पुष्टि की गयी है, इस सम्बन्ध में आपको क्या कहना है?

उत्तर:- झूठा बयान दिए हैं।

प्रश्न:-12 आप अपराध के सम्बन्ध में कुछ और बताने की इच्छुक हो। यदि हाँ तो विवरण दीजिए?

उत्तर:- मुझे अजीब सा लगता है, मैं अपनी पत्नी व बच्चों को इसलिए नहीं बुलाता। मैं पहले मेरठ रहता था, वहाँ मेरे सट्टे में पैसे बर्बाद हो गए थे, इसलिए मैं यहाँ आ गया। मेरे ससुर मेरी मदद करते हैं। मैंने ऐसी कोई घटना कारित नहीं की। मेरे पिता से मेरा कोई सम्बन्ध नहीं है।

दिनांक:- 06/04/2023”

Counsel submits that question Nos. 1, 2, 3, 4 to 7 are in the shape of questionnaire asking the appellant either to admit or deny commission of offence which is not the mandate of Section 313 Cr.P.C.

In reply to question No.9, the appellant stated that by extending threat in the Police Station his hair were removed and blood sample was taken. Thus the counsel submits that in absence of proper recording of statements under Section 313 Cr.P.C. the appellant was not afforded proper opportunity of hearing.

(q) Learned counsel submits that the manner in which trial was conducted by the legal aid counsel reflects that he was not adequately experienced to deal with a trial under Section 302 of IPC and, therefore, he could not put all the relevant questions to the Investigating Officer as well as the PW-2 to give a suggestion that the incident was caused by her with her aides and the appellant has been falsely implicated. Similarly, the legal aid counsel did not object to the statement recorded under Section 313 of Cr.P.C.

Learned counsel for the appellant has referred to the judgment in **Mohd. Hussain Alias Zulfikar Ali vs. State (Government of NCT of Delhi), (2012) 2 SCC 584**, wherein it has been held as under :

*“Fundamental principles based on reason and reflection in no uncertain term recognize that the appellant haled into court in our adversary system of criminal justice and ultimately convicted and sentenced without a fair trial. There are high authorities of this Court which take this view and I do not deem it expedient to multiply and burden this judgment with those authorities as the same have been referred in the judgment of my learned Brother Dattu, J. except to refer to a judgment of this Court in the case of **Hussainara Khatoon & Others v. Home Secy., State of Bihar, (1980) 1 SCC 98**, in which it has been held as follows:*

"6.Now, a procedure which does not make available legal services to an accused person who is too poor to afford a lawyer and who would, therefore, have to go through the trial without legal assistance, cannot possibly be regarded as "reasonable, fair and just". It is an essential ingredient of reasonable, fair and just procedure to a prisoner who is to seek his liberation through the court's process that he should have legal services available to him....."

16. Having found that the appellant has been held guilty and sentenced to death in a trial which was not reasonable, fair and just, the next question is as to whether it is a fit case in which direction be given for the de novo trial of the appellant after giving him the assistance of a counsel."

(r) Counsel has lastly argued that the perusal of the zimni order of the Trial Court shows that report of the Forensic Science Laboratory was received after the last witness i.e. PW-7 was examined on 13.2.2023. It is argued that the F.S.L report was received by the Trial Court on 29.3.2023 and, therefore, the appellant has no occasion to cross examine the Investigation Officer on the basis of F.S.L. Report as he was never recalled back.

43. In reply, the learned State Counsel has submitted that the judgment in **Subramanya Vs. State of Karnataka (supra)** cited by

the learned counsel for the appellant is distinguishable as in the said judgment, the recovery was effected at the instance of the accused. The learned counsel has stated that on the date of incident i.e. 02.04.2022, vide C.D. No. 1 immediately after the occurrence, the complaint of PW-1 was recorded and thereafter, C.D. Nos. 2 and 3 were recorded in quick succession with regard to registration of chic FIR, Ex. K-1 vide C.D. No. 4, the complete details of the articles handed over by the Field Unit Team, F.S.L.- Firozabad was recorded in C.D. No.6 in which black coloured hair were recovered. The counsel submits that on the same day vide C.D. No. 7, site plan was prepared and C.D. No. 11, the statement of PW-2- Renu Sharma under Section 161 of Cr.P.C. was recorded in which she has narrated the complete incident and involvement of accused Tarun Goel. She has stated that she had seen a blood stained screwdriver in the hand of Tarun Goel as well as stated causing injury to her and the manner in which she had called the neighbour- Jitendra Bhatia.

44. Learned State Counsel submits that prior to effecting the recovery from the appellant vide C.D. No. 13, on the same day, the police has got the information through the statement of PW-2- Renu Sharma regarding committing the offence by accused Tarun Goel and therefore, there is no violation of procedure under Section 27 of the Evidence Act as the police on the basis of the statement of an eye witness had gone to the house of the appellant, after registration of the FIR and effected the recovery of looted articles as well as blood stained T-shirt, lower and the screwdriver.

45. The State Counsel has further argued that it is a case where the police as well as F.S.L. Team has promptly conducted the investigation and effected the recovery of looted articles and weapon of offence and blood stained clothes of the accused within

48 hours of the incident and therefore, the prosecution case is fully proved from the statement of PW-1- informant as well as PW-2- a witness.

46. The State Counsel submits that C.J.M.- Firozabad by passing an order dated 18.04.2022, on an application of the Investigating Officer, had granted permission to take blood sample of the appellant and thereafter, vide letter no. RFSL (Agra)/1856/DNA/154/22 dated 09.05.2022, blood sample and hair were sent to F.S.L.- Firozabad. Learned counsel submits that the same case file no. is mentioned in the report of F.S.L. The counsel has also referred to C.D. No.6 dated 14.05.2022 in which also the same case file number is also mentioned.

47. The counsel has also referred to a certificate issued under Section 65 B of the Evidence Act with regard to proof all the documents mentioned in the certificate. This certificate includes all the C.D. and G.D. which are already exhibited as well as the reports of the doctor and order of the C.J.M.

48. It is next argued that the blood sample was drawn by the C.M.O. of Firozabad in terms of the order of C.J.M. and therefore, the defence raised by the accused that his blood sample and hair were forcibly taken in the police station, is an in fact an incorrect statement.

49. The counsel submits that it is clearly opined in the F.S.L. report, which is based on the scientific examination of Ex.1 (hair) and Ex.2 (blood sample) of appellant- Tarun Goel that the D.N.A. profile of the appellant has matched with the hair.

50. The State Counsel next argued that as per the post-mortem report of Kamla Devi, there are multiple incised wound caused

with the screwdriver in order to commit the murder of the deceased.

51. The counsel has also referred to post mortem report which suggest that 3-8 ribs on the right side of the deceased were fractured. It is argued that by exerting heavy pressure on the chest of deceased like by putting knee in order to commit the offence, the injuries were caused to the deceased and in that process, it was natural for the deceased to save herself by catching hold of the hair of the appellant which were found in the hand of the deceased. The counsel submits that the manner in which the fractures of eight ribs on the right side of the deceased is found in the post-mortem report, suggest that while causing multiple incised wound with the screwdriver on the upper part of the body of the deceased including chest, stomach, neck, jaw prove that the appellant by using force did not allow the deceased to move while she was lying in bed and in such circumstances, the deceased in her self-defence had caught hold of the hair of the accused and therefore, the prosecution case is duly supported by medical version. The counsel has next argued that PW-2 is a natural witness as her presence is not disputed by the appellant. It has come in the statement of PW-2 she was called by the deceased and was present in the house when Tarun Goel came to the house, after the informant and other family members have gone to watch a movie. Since PW-2 previously worked as a maid servant she was known to him and did not raise a suspicion on him at the first instance and only when she saw the accused carrying a blood stained screwdriver and clothes then she asked him why he has committed murder of Kamla Devi, upon which the accused attacked her while saying that she should also not be spared. PW-2 has stated that when she felt unconscious, the accused ran away. The injuries sustained by the accused by a piece of glass also suggest that she suffered injury nos. 1, 3, 6, 7 and 8 on

her hand and shoulder as she may have tried to save herself by raising her hand and the accused attacked her with a piece of mirror has caused injuries on her hand and shoulder. This also support her version that she has called a neighbour- Jitendra Bhatia for help and it is Jitendra Bhatia who called the mother of the informant, while they were watching movie that some untowards incident has taken place in their house. The counsel submits that the presence of PW-2 is well-proved at the spot.

52. The State Counsel has further argued that the statement of PW-1 that he had some money transaction with the appellant and owed some money, nowhere suggest that he is inimical towards him and rather submits that it has come in the statement of accused under Section 313 of Cr.P.C. that he lost entire money in gambling and his father-in-law was supporting him financially and therefore, there is no such enmity to involve the appellant falsely by the informant. The State Counsel has next argued that by following the procedure the DNA test was conducted and the report has been proved on record, in terms of Section 292 of Cr.P.C.

53. The counsel submits mere fact that Jitendra Bhatia- a neighbour gave information to family members of the informant was not cited as a witness cannot be taken as an adverse circumstances as being a neighbour he was not interested in becoming a witness. The counsel submits that during the examination-in-chief of the PW-1 the case property i.e. gold articles was produced and was exhibited as PW-1 to PW-7. Similarly, the coloured photocopies of the currency notes done with the permission of the trial court were also proved and exhibited by the informant- PW-1 as well as PW-4. The State Counsel submits that minor discrepancy in the total numbers of the currency notes did not affect the prosecution case as the recovery

has been duly proved by PW-1 and PW-4. It is argued that recovery was effected promptly from the house of the appellant and was never denied that the same is planted on him. As no such suggestion was given to PW-1 or PW-4. Regarding the statement under Section 313 of Cr.P.C., the State Counsel submits that the though some of the questions are not framed in a proper manner, however, in the remaining questions the entire evidence has been put to the accused including the report of the F.S.L.

54. It is also argued that the appellant was defended by the competent legal aid counsel has cross-examined all witnesses at length and has conducted the trial in a proper manner. It is argued that the appeal may be dismissed.

55. After hearing the counsel for the parties and on careful perusal and scrutinizing the entire evidence, this Court finds no merits so far in judgment of conviction of the appellant is concerned. However, the Court finds merit with regard to the order of sentence passed by the trial court for the following reasons:-

A. The prosecution has proved from the statement of PW-1-informant, Arpit Jindal that on 01.04.2022 at about 02:15 PM he along with some other family members including son of the appellant/accused- Tarun Goel had gone to watch a movie leaving PW-2 (a maid servant) to take care of his grandmother. After they left the home, the appellant came to the house of the deceased Kamla Devi and told PW-2- Renu Sharma (maid servant) to prepare tea for him. The counsel for the appellant could not dispute that previously Renu Sharma was working as a maid servant for a long time, therefore, she was known to all the family members of the deceased including the informant as well as the appellant-Tarun Goel who was the grandson-in-law of the deceased. Therefore, neither the identity of the appellant nor his presence at

the spot could be dispelled by the counsel for the appellant at the relevant time and place of occurrence.

B. The incident took place around 2:15 PM when the informant and other family members left home and at about 4:15 PM one of the neighbour- Jitendra Bhatia has called the mother of informant that some incident has taken place at his house and they should immediately rush back to home. The informant and other family members left the movie in between and rushed back to their house and found that PW-2- Renu Sharma (maid servant) was lying unconscious in injured condition and his grandmother- Kamla Devi is lying dead and blood was spread over the bed. The jewellery and money lying in the house was missing. The details of the jewellery and money of about Rs. 72,000-75,000/- was reported in the complaint given to the police promptly and chic FIR, Ex.Ka-4, on a written complaint Ex.K.1 was recorded on 02.04.2022, the police started investigation on the same day.

C. The Field Unit Team of F.S.L., Firozabad visited the spot and effected the recoveries which were recorded in C.D. No.4 as noticed above, at S.No. 6 black coloured hair were recovered. Thereafter, the police recorded the statement of injured PW-2 vide C.D. No. 11 in which she has given the complete description and she narrated the complete incident and involvement of accused/appellant- Tarun Goel. PW-2 has categorically stated that she had seen a blood stained screwdriver in the hand of Tarun Goel and finding that he has committed murder of Kamla Devi, she confronted him why he has done so, upon which Tarun Goel caused injury to PW-2 with a piece of mirror by saying that she should also be not spared as she has witnessed the incident. PW-2 became unconscious and thereafter, Tarun Goel left the place of the incident.

D. The ocular version of PW-2- eye witness is duly corroborated by the medical evidence as well as the F.S.L. report. The Field Unit Team of F.S.L. found black coloured hair which were recovered and handed over to the police as per C.D.No.4 wherein at S.No.6 it is specifically mentioned.

E. Later on, the Investigating Officer filed application for seeking permission of the C.J.M. to get the DNA test of blood sample of the appellant with the black coloured hair, upon which an order was passed by the C.J.M. obtain the blood sample, through C.M.O., Firozabad and vide letter no. 1856, the same was sent to F.S.L team. As per the F.S.L. report, the DNA of the appellant matched with the hair recovered at the spot.

F. Even the post-mortem report of the deceased suggests that multiple injuries were caused with the screwdriver recovered from the appellant on her stomach, chest and neck. Eight ribs on the right side of the body of the deceased was found fractured which suggests that Kamla Devi was lying on the bed and was overpowered by putting pressure on her ribs like by folding a leg or putting some other articles and in that process when the appellant was causing injuries to her, in self-defence the deceased had caught hold of the hair of the appellant which were found in her hand and matched with the blood sample of the appellant as per the F.S.L. report.

G. There is another clear evidence on record that after the statement of PW-2- Renu Sharma, the injured witness was examined by police under Section 161 of Cr.P.C. vide C.D. No.11 in which she disclosed that it is the appellant who committed the murder of Kamla Devi and taken away the money and jewellery. The police immediately visited the house of the appellant and recovered the looted money as well as gold articles like bangles

etc. The recovery was effected in presence of two witnesses, PW-1- Arpit Jindal and one Himanshu. While appearing as PW-1, the recovered case property i.e. four gold bangles, two lady gold rings, one gold earring were produced from the sealed envelop and was identified by PW-1 as Ex.1 to Ex.7 along with silver earring and silver note of Rs. 20\$. Even the currency which was recovered from the appellant (which was taken on supurdaginama by PW-1, after getting photocopies of the same and submitted it before the court) was identified by him and were exhibited. Even the blood stained clothes of the appellant i.e. T-shirt and lower which he had washed and the blood stained screwdriver were also recovered simultaneously, while effecting the recovery of the looted articles. Therefore, the prosecution has proved that the appellant committed the murder of Kamla Devi, his grandmother-in-law and grandmother of PW-1 and then caused injury to witness PW-2- Renu Sharma (maid servant) and took away money and gold articles, which were promptly recovered from his residence by the police after recording statement of PW-2- Renu Sharma, along with the weapon of offence and blood stained clothes.

H. The argument raised by the counsel for the appellant that the recovery is not effected in terms of Section 27 of the Evidence Act, as per *Subramanya Vs. State of Karnataka (supra)*, is not sustainable as facts of the said case are on different footing. The recovery in the said case was effected on the disclosure of the accused himself whereas, in the instant case, police first recorded statement of injured witness- PW-2- Renu Sharma (maid servant) who has given the complete narration of the incident caused by the appellant and thereafter effected the recovery from the house of the appellant immediately after the incident and therefore, the argument raised by the counsel for the appellant has no substance. The submission of the counsel for the appellant regarding the

presence of PW-2 at the spot and credibility of her statement is also not sustainable as she is an injured witness and her presence was never denied at the spot, in the cross-examination. She being the maid servant of the deceased on the previous occasion proved that she was known to all the family members including appellant-Tarun Goel. Her medico-legal-report also suggests that she suffered five injuries on her hand, elbow and shoulder as the appellant attacked her with a piece of mirror, she tried to save herself by raising her hands and suffered the injuries as reflected in the MLR.

I. The minor contradiction in the statement of PW-1 and PW-2 regarding taking of PW-2 to the hospital or opening the latch of the door are of no consequence.

J. The argument raised by the counsel for the appellant that PW-2 herself may have committed the offence with the help of her companion, do not find force as she herself is the injured witness and was called by the deceased herself to take care of her as her family members were going to watch a movie. The arguments of the counsel for the appellant in this regard is otherwise of no force as the articles taken away by accused were promptly recovered by the police from his residence along with blood stained clothes and weapon of offence.

K. Another argument raised by the counsel for the appellant that PW-1 has admitted that he owed money to the appellant and therefore, the appellant is falsely implicated, and is also without any merit as nothing has come on the record from the side of the appellant as to how much money PW-1 has to pay the appellant. However, the appellant has admitted in his statement under Section 313 of Cr.P.C. that he has lost his money and business in gambling and his father-in-law was providing him financial help. Therefore, the Court finds no weight in the argument of counsel for the

appellant that PW-1 has falsely implicated the appellant being a family member due to money transaction. The preparation of joint recovery memo and arrest memo is an irregularity on the part of the Investigating Officer but it does not vitiate the prosecution case. Similarly, the few questions put to the appellant in affirmative while recording the statement under Section 313 of Cr.P.C. instead of putting the prosecution evidence to him is also an irregularity as in the remaining questions, the prosecution has put the appellant, the entire evidence i.e F.S.L/ DNA report as well as the recovery of the articles and causing injury to Renu Sharma- injured witness. Therefore, even if some of the questions are not considered proper in the statement under Section 313 of Cr.P.C. still the entire evidence has been put to the accused in the remaining questions and the same is not defective.

L. The prosecution has followed the proper procedure and after taking permission of the C.J.M., Firozabad for getting the DNA of the blood sample of the appellant with the hair recovered from the hand of the deceased, the blood sample was taken through C.M.O., Firozabad and was sent to R.F.S.L. vide letter no. 1856 dated 09.05.2022. This letter number is mentioned in the report of the F.S.L. itself. Not only this, the other documents were duly proved by issuing a certificate under Section 65B of the Evidence Act and all the C.D. and G.D. entries was duly exhibited along with the report of the doctor and order of the C.J.M. and therefore, the investigation was carried out in a scientific and legal manner.

M. The argument raised by counsel for the appellant that the neighbour- Jitendra Bhatia was not cited as a prosecution witness is also of no consequence as the injured witness PW-2 has duly supported the prosecution version. The last argument raised by the counsel for the appellant that a competent legal aid counsel was not

provided to the appellant is also of no avail as, while scrutinizing the evidence of all the PWs, the Court finds that the detailed cross-examination has been offered to all the prosecution witness putting the defence version. Therefore, finding no merit in the arguments of the counsel for the appellant, the judgment of conviction dated 24.04.2023 holding the appellant guilty of offence (in Sessions Trial No.877 of 2022 arising out of Case Crime No.220 of 2022), under Sections 302, 307, 394, 411 & 506 of IPC is upheld.

Order on Sentence:

56. The trial court while awarding the death penalty has taken notice of the Dacoity Affected Areas Act only because the special trial court is a designated special court under the Dacoity Affected Areas Act, however, no charge under the provisions of this Act was framed against the appellant and the appellant is awarded the death penalty under Section 302 of I.P.C. Therefore, it is relevant to refer to certain recent judgments of the Supreme Court on award of capital punishment.

57. The Supreme Court in the case *State of Maharashtra Vs. Nisar Ramzan Sayyed, 2017(2) R.C.R.(Criminal) 564*, has held that in case where a pregnant woman who along with a minor child was murdered, there are various circumstances pointing out certain lacuna, the death penalty should not be awarded and the judgment of Trial Court was modified to life imprisonment till natural life of the accused.

58. The Supreme Court in *State of U.P. Vs. Ram Kumar and others, 2017(5) R.C.R.(Criminal)785*, has held that taking consideration of facts and circumstances of the case, the capital punishment is to be converted into life imprisonment.

59. The Supreme Court in *Chhannu Lal Verma Vs. State of Chhattisgarh, 2019(5) R.C.R.(Criminal) 192*, has discussed the aggravating circumstances as well as mitigating circumstances which read as under : -

*“**Aggravating circumstances:** A court may, however, in the following cases impose the penalty of death in its discretion:*

(a) if the murder has been committed after previous planning and involves extreme brutality; or

(b) if the murder involves exceptional depravity; or

(c) if the murder is of a member of any of the armed forces of the Union or of a member of any police force or of any public servant and was committed—

(i) while such member or public servant was on duty; or

(ii) in consequence of anything done or attempted to be done by such member or public servant in the lawful discharge of his duty as such member or public servant whether at the time of murder he was such member or public servant, as the case may be, or had ceased to be such member or public servant; or

(d) if the murder is of a person who had acted in the lawful discharge of his duty under [Section 43](#) of the Code of Criminal Procedure, 1973, or who had rendered assistance to a Magistrate or a police officer demanding his aid or requiring his assistance under [Section 37](#) and [Section 129](#) of the said Code.”

***Mitigating circumstances:** In the exercise of its discretion in the above cases, the court shall take into account the following circumstances:*

(1) That the offence was committed under the influence of extreme mental or emotional disturbance.

(2) The age of the accused. If the accused is young or old, he shall not be sentenced to death.

(3) The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society.

(4) The probability that the accused can be reformed and rehabilitated. The State shall by evidence prove that the accused does not satisfy the conditions (3) and (4) above.

(5) That in the facts and circumstances of the case the accused believed that he was morally justified in committing the offence.

(6) That the accused acted under the duress or domination of another person.

(7) That the condition of the accused showed that he was mentally defective and that the said defect impaired his capacity to appreciate the criminality of his conduct.”

In this case, after upholding the conviction of the accused who were held guilty of committing murder of four persons with a knife, the Supreme Court commuted the death penalty to life imprisonment.

60. In ***Dnyaneshwar Suresh Borkar Vs. State of Maharashtra, 2019(2) R.C.R.(Criminal) 302***, it is held by Supreme Court that if the Court is inclined to award death penalty, then there must of exceptional circumstances warranting imposition of excess penalty. The Court should consider probability of reformation and rehabilitation of convict in the society as this is one of the mandates of special reason as per requirement of Section 354(3) Cr.P.C. It is also held in the judgment that when the DNA report is not done, an adverse inference should not be drawn. It is also held that the antecedents of the convict or that the pendency of one or more criminal cases against the convict, cannot be a factor of consideration for awarding death sentence and, therefore, has held that looking to the conduct of the convict, the capital sentence can be commuted .

61. The Supreme Court in ***Manoharan Vs. State by Inspector of Police, Variety Hall Police Station , Coimbatore, 2019AIR (Supreme Court) 3746***, has held that a balance sheet of aggravating and mitigating circumstances should be drawn while awarding death penalty and in doing so mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances while exercising judicial discretion. The Supreme Court while commuting death sentence to life imprisonment till his natural death without remission by upholding the conviction.

62. In *Veerendra Vs. State of Madhya Pradesh, 2022(3)R.C.R. (Criminal) 254*, the Supreme Court while upholding conviction under Section 364A, 376(2)(i), 302, 201 IPC regarding murder and rape of a minor girl, commuted the death sentence to life imprisonment with stipulation that the convict is not entitled to premature release or remission before undergoing imprisonment of thirty years.

63. In *The State of Haryana Vs. Anand Kindo & Another etc., 2022(4)R.C.R. (Criminal) 735*, the Supreme Court has again held that if there is any circumstance favouring the accused such as lack of intention to commit the crime, possibility of reformation, young age of the accused, accused not being a menace to the society and his clearly criminal antecedents, the death sentence can be commuted to life for a actual period of thirty years.

64. In Re: *Framing Guidelines Regarding Potential Mitigating Circumstances to be Considered While Imposing Death Sentences, 2023(1) R.C.R.(Criminal) 571* , the Supreme Court while deciding the issue regarding the same day sentence of capital sentence, held that the conviction will not be vitiated, however held that the hearing under Section 325(2) Cr.P.C., requires the accused and the prosecution, at their option, be given the meaningful opportunity which in usual course is not conditional upon time or dates granted for the same and should be qualitatively and quantitatively.

65. In *Sundar @ Sundarrajan Vs. State by Inspector of Police, 2023 Cri.L.R.(SC) 473*, the Supreme Court held that it is the duty of the Court to enquire into mitigating circumstances as well as to foreclose the possibility of reformation and rehabilitation before imposing the death penalty. It is also held that even though the crime committed by the accused is unquestionably grave and

unpardonable, it will not be appropriate to affirm the death sentence as 'rarest of rare' doctrine requires that the death sentence not be imposed only by taking into account the grave nature of crime but only if there is no possibility of reformation.

66. In *Ravindar Singh Vs. The State Govt. of NCT of Delhi, 2023 AIR (Supreme Court)2220, Digambar Vs. The State of Maharashtra, 2023 Cri. L.R. (SC) 564, Bhaggi @ Bhagirah @ Naran Vs. The State of Madhya Pradesh, 2024(1) Crimes 121*, the Supreme Court has commuted the death sentence despite holding that the offence committed was brutal or barbaric, however, considering the mitigating circumstances, the capital sentence was commuted to life for a fixed term of sentence.

67. In the instant case, the appellant has no criminal history and has stated that he has two young children and wife to support and has pleaded that he may be given pardon.

68. The appellant is aged about 45 years. Therefore, we unable to uphold the capital punishment awarded by the trial court as it is not a "rarest of rare" case for the following reasons:

a. The appellant is aged about 45 years and has two children and wife to support.

b. The trial court has not recorded any aggravating circumstances and has not scrutinized the case of the appellant in the light of mitigating circumstances. As appellant has no criminal history, the trial court has not recorded any finding how it is a rarest of the rare case.

c. The trial court has also not recorded the finding that there is no possibility of reformation and rehabilitation of appellant in the society.

d. The trial court has also not recorded any finding that accused is a menace to the society or he is having any criminal antecedents.

e. As noticed above, it has been held by the Supreme Court in *Nisar Ramzan Sayyed Case (Supra)*, *Ram Kumar and others, Chhannu Lal Verma, Dnyaneshwar Suresh Borkar, Manoharan Case (Supra)*, *Veerendra Case (Supra)*, *Anand Kindo & Another Case (Supra)*, *Ravindar Singh Case (Supra)*, *Digambar's Case (Supra)* and *Bhaggi @ Bhagirah @ Naran's Case (Supra)* that if the Court is inclined to award death penalty, there must be exceptional circumstance warranting imposition of excessive death penalty which cannot be reversed.

69. Therefore, the finding of the trial court on order of sentence is modified as it is not a "rarest of rare" case, even though the accused has committed a grave offence of murder, therefore, we are of the opinion that the death penalty awarded to the appellant should be commuted to the life imprisonment. However, the sentence of fine imposed by the Trial Court is upheld.

70. With the aforesaid modification, the appeal against the judgment of conviction is dismissed, however, the appeal qua order of sentence is modified and the reference and jail appeal are disposed of accordingly.

71. The accused-appellant is in custody. He will undergo the remaining sentence in accordance with law.

72. Record and proceedings be sent back to the Trial Court forthwith.

Order Date :-4.7.2024

Mukesh/DKS/SKS/Mohini