AFR
Reserved on :24.04.2019
Delivered on :24.10.2019

Court No. - 34

Case :- JAIL APPEAL No. - 7304 of 2017

Appellant :- Raju Lahri @ Satnami
Respondent :- State Of U.P.
Counsel for Appellant :- From Jail,Santosh Kumar Yadav
Counsel for Respondent :- G.A.

Hon'ble Sudhir Agarwal,J.
Hon'ble Rajendra Kumar-IV,J.

(Delivered by Hon'ble Rajendra Kumar-IV,J.)

1. Accused-appellant stood for trial in Sessions Trial No. 13 of 2011 (State v. Raju Lahri & Satnami, Case Crime No. 438 of 2010), under Section 302, Police Station Sector-39, NOIDA, Gautam Budha Nagar, pending in the Court of Additional Sessions Judge / Special Judge, SC/ST Court, NOIDA, Gautam Budh Nagar and came to be convicted by the said Court vide judgment and order dated 01.06.2017 and 03.06.2017, sentencing him under Section 302 IPC to undergo imprisonment for life and fine of Rs. 5,000/-. Appellant sought interference of this Court by filing this Jail Appeal from Jail through Jail Superintendent concerned.

2. Prosecution story, in brief, as emerged from First Information Report (hereinafter referred to as 'FIR') and factual matrix of the case is that PW-1, Jai Chand, submitted a written report, Ex. Ka-1, in the Police Station Sector 39, NOIDA, Gautam Budh Nagar stating that near Gurukripa Block, Sector 127, some labours of Chattisgarh were residing in hut. Out of whom, one family of Sita Ram was also residing there. His son, Raju accused-appellant, and his concubine wife Smt. Saraswati victim were also residing in a separate hut. There was some quarrel / dispute between them everyday. On the fateful day i.e. 11.07.2010 at about 11:00, in the night, both had taken meal and were present in the hut. When both involved in some domestic issue, accused-appellant, Raju,

attacked victim Smt. Saraswati with Hammer and Sickle (darati) with intention to kill her causing serious injuries on the head of victim. On hearing noise, neighbours gathered and tried to capture accused-appellant but he ran away from the spot. People around the seen had witnessed the incident well. Victim died on spot and her body is lying in hut.

3. On the basis of written report Ex.Ka-1, chick FIR, Ex.Ka-8 was registered by Constable Balram Singh, as Case Crime No. 438 of 2010 under Section 302 IPC against the accused-appellant. Entry of case was made by PW-5 as HC Satpal Singh in General Diary; copy whereof is Ex. Ka-9.

4. On the direction of PW-10, PW-3 SI Kasmir Singh, held inquest over the dead body of Smt. Saraswati and prepared inquest report Ex. Ka-2 and other relevant papers relating thereto.

5. PW-4, Dr. Naresh Raj, conducted autopsy over dead body of Smt. Saraswati, aged about 35 years, wife of Raju and prepared postmortem report Ex. Ka-7, expressing his opinion that death was possible half to one day prior to postmortem due to coma on account of ante-mortem head injury. Doctor found following ante-mortem injuries on the body of deceased, which read as under :-

i. *Incised wound 2.5cm x 0.3cm x bone deep just above the inner end of left eyebrow.*

ii. *Incised wound 3cm x 0.3cm x bone deep 1.5cm above the inner end of right eyebrow.*

iii. *Lacerated wound 2cm x 3cm x bone deep on the upper part of the back of the head.*

iv. *Lacerated wound 3cm x 1.5cm x bone deep on the lower part of the back of the head.*

v. *Lacerated wound 3.5cm x 2cm x bone deep just behind the left ear.*

vi. *Contusion 3cm x 4cm just below left knee.*

6. PW-10, Inspector Ram Ji Lal Bharti, undertook investigation, visited spot, prepared side plan Ex.Ka-19, recorded statement of

Informant, collected blood stained and simple earth, prepared memo thereof Ex.Ka-10.

7. PW-8 Inspector Rakesh Singh, after transfer of earlier Investigating Officer, undertook investigation in his hand, arrested accused, recorded disclosure statement and on the pointing out of accused-appellant, recovered Hammer and one Darati allegedly used in the commission of offence from beneath of bushes, and, completing entire remaining formalities of investigation, submitted charge sheet Ex.Ka-14 against the accused under Section 302 I.P.C. before Chief Judicial Magistrate concerned.

8. Case, being exclusively trial by Court of Sessions, was committed to Sessions Judge, wherefrom, it was transferred to Additional Sessions Judge / Special Judge, SC/ST Court, NOIDA, Gautam Budh Nagar for disposal in accordance with law.

9. Trial Court framed charge on 01.02.2011 against accused-appellant under Section 302 IPC, which reads as under :-

> "**<u>आरोप</u>**
>
> *मैं वीर नायक सिंह तृतीय अपर जिला एवं सत्र न्यायाधीश गौतमबुद्धनगर आप अभियुक्त राजू को निम्न आरोप से आरोपित करता हूँ–*
>
> *यह कि दिनांक – 10.07.2010 को समय – 23:00 बजे, स्थान– झुग्गी झोपडी सैक्टर 127 चौकी क्षेत्र ओखला अन्तर्गत थाना– सै0 39 नोएडा गौतमबुद्धनगर में प्रार्थी /वादी जयचन्द्र के बनायेनुसार आप अभियुक्त ने अपनी रखैल पत्नी सरस्वती पर हथौडा व दरौती हमला कर दिया, जिससे सरस्वती को गम्भीर चोटें आयी और उसकी मृत्यु हो गई। इस प्रकार आपने उसकी हत्या कारित की। आपका यह कृत्य* ***धारा– 302*** *भारतीय दण्ड संहिता के अन्तर्गत दण्डनीय है और इस न्यायालय के प्रसंज्ञान में है।*
>
> *एद्दद्वारा आप अभियुक्त को निर्देशित किया जाता है कि उपरोक्त आरोप का परीक्षण इस न्यायालय द्वारा कर दिया जायेगा।*
>
> *"I, Vir Nayak Singh, III Additional District and Sessions Judge, Gautam Buddh Nagar, charge you i.e. accused Raju with following charge :-*
>
> *That, on 10.07.2010 at time 23.00 Hrs, at Jhuggi Jhopadi Sector 127 Chowki Area Okhala under Se. 39*

Noida, Gautam Buddh Nagar, as per the statement of applicant / complainant Jaychandra, you – the accused assaulted your keep wife Saraswati with hammer and sickle, due to which Saraswati sustained grievous injuries and died. In this manner, you committed her murder. This act of yours is punishable under Section 302 of Indian Penal Code and within the cognizance of this Court.

You- the accused are hereby directed that the aforementioned charge shall be tried by this Court."

(English Translation by Court)

10. Accused-appellant pleaded not guilty and claimed trial.

11. In order to substantiate its case, prosecution examined as many as ten witnesses in the following manner :-

Sr. No.	Name of PWs	Nature of witness	Paper proved
1	Jai Chand	Fact	Ex. Ka-1 and 2
2	Parvati	Facts	------
3	Kashmir Singh, SI	Formal	Ex.Ka-2, 3, 4, 5 and 6
4	Dr. Naresh Raj	Formal	Ex.Ka-7
5	Satpal Singh	Formal	Ex.Ka-8 and 9
6	Balram	Fact	Ex.Ka-2, 10 and 11
7	Gopal Singh	Fact	Ex.Ka-10 and 11
8	Rakesh Kumar Singh	Formal	Ex.Ka-13 and 14
9	R.S. Gautam	Formal	Ex.Ka-17, 18 and 19
10	Ram Ji Lal Bharti-IO	Formal	Ex.Ka-19

12. In the statement under Section 313 recorded by Trial Court, accused -appellant denied prosecution story in toto; entire story is said to be wrong; claimed false implication but did not choose to lead any defence evidence.

13. Ultimately, case came to be heard and decided by Additional Sessions Judge / Special Judge, SC/ST Court, NOIDA, Gautam Budh Nagar, who after hearing learned counsel for parties and analysing entire evidence (oral and documentary) led by prosecution, found accused

guilty, convicted and sentenced, as stated above.

14. Sri Santosh Kumar Yadav, learned Amicus Curiae for appellant assailed order of conviction and sentence advancing following submissions :-

i. PW-1 admittedly is not an eyewitness. he is only Informant of the incident.

ii. PW-2 did not support the prosecution story and turned hostile, therefore, no conviction can be based.

iii. Alleged eye-witness have not been produced from the side of prosecution.

iv. There is no motive of incident to accused-appellant to commit murder of his wife. Link of circumstantial evidence is not complete.

v. There are several contradictions in the statements of witnesses, which may render prosecution doubtful.

vi. Prosecution has failed to establish its case beyond reasonable doubt against accused-appellant and he is entitled to benefit of doubt.

vii. Discloser statement before police is not admissible in evidence. Alleged recovery of Hammer and Sickle (Darati) is not supported by public witnesses.

15. Learned AGA vehemently opposed submissions made by learned Amicus Curiae and submitted that accused is named in FIR; incident took place in the hut and dead body was found in the house of accused-appellant; accused-appellant has not submitted any proper explanation, therefore, perception under Section 106 Indian Evidence Act goes against him; blood stained Hammer and Sickle (Darati) allegedly used in the incident have been recovered at the pointing out of accused by Police; as per report of F.S.L., blood ws found on Hammer and Daranti and appeal is

liable to be dismissed.

16. Although time, date and place of death of victim and manner of injuries found on the body of deceased could not be disputed from the side of accused-appellant but according to learned counsel for accused-appellant, he is not responsible for committing murder of his wife Saraswati. Even otherwise, time, date, place and death of Smt. Saraswati stands established from the evidence of PW-1, PW-2 and PW-3 as well as statement under Section 313 of accused-appellant.

17. Thus the only question remains for consideration of this Court is "whether accused-appellant has committed murder of Smt. Saraswati and Trial Court rightly convicted him or not?"

18. Now, we may proceed to consider briefly the evidence led by prosecution and some important decision on this points.

19. General depositions of witnesses goes to show that PW-1 is not eye-witness; no eye-witness has been produced by prosecution in support of its case; PW-2 did not support prosecution case and turned hostile; PW-5, Constable Satyapal Singh, is only scribe of G.D. Ex.Ka-9; PW-6, Balram, is a witness of Fard Ex.Ka-10 which is of blood stained and simple earth and witness of inquest Ex.Ka-2; and PW-7, Gopal Singh, is a witness of Fard of blood stained and simple earth who proved memos thereof. Thus here is a case founded on circumstantial evidence.

20. PW-1 deposed that on 10.07.2010 at about 11:00 pm, in the night, Raju and his wife were present in his hut. He suspected character of Smt. Saraswati and attacked her with Hammer and Daranti with intention to kill her due to which she received serious injuries in the head; on hearing noise persons arrived at spot and tried to apprehend him but he made good escape; PW-1 was informed by labourers on telephone whereupon he went to the spot and saw dead body of Saraswati lying in the hut; Police came to spot and held inquest over dead body of Saraswati before him and got signature on inquest report; and witnesses proved inquest report as

Ex.Ka-2. In cross-examination he stated that information of incident was intimated to him by his clerk (Muneem) on telephone whereupon he arrived at spot and saw body lying in the earth in hut. From the statement of this witness, it appears that he is not an eye witness but proved that Saraswati was murdered in the house of accused appellant and her body was lying there.

21. PW-2, Smt. Parvati, did not support prosecution case and turned hostile. She deposed that victim Saraswati was a married lady and remained 15-20 days with her son (accused-appellant); her son lived separately; on the day of incident, she was sleeping in her hut which is far away from the hut of her son; when police called her, she arrived at hut of accused-appellant and saw one dead body was lying; and she did not know that dead body was of Saraswati; witness was declared hostile and cross-examined by prosecution in which she admitted accused-appellant to be her son. Therefore, it appears that she was trying to save her son.

22. PW-3, SI Kashmir Singh, deposed that due to dark in the night, inquest could not be conducted. In the next morning at about 7:00 pm, he held inquest over dead body of Smt. Saraswati before witness and prepared inquest report and sent dead body for postmortem.

23. PW-6, Balram, deposed that on receiving information about death of Saraswati, he reached on the spot. Police collected simple blood stained earth from spot before him; and he did his signature on memo Ex.Ka-10. Witness also proved inquest report.

24. PW-7 Gopal Singh proved memo of blood stained and simple earth and one lamp which was enlightened in the hut in the night of incident.

25. Both these witness are not witnesses of fact but they proved the place of incident and inquest report of victim. From the statement of above witnesses, it stands proved that in the fateful night, accused and victim were in the hut and victim was assassinated and her dead body was found in hut.

26. In the statement under Section 313 Cr.P.C. accused-appellant himself admitted that he was present with victim in the hut on the fateful night and he assaulted her with hammer for the reasons that victim developed illicit relation ship one Bihari, who used to sell vegetables and did not cook food daily for him.

27. Admittedly, the case of prosecution rests upon circumstantial evidence. There is no eye witness of the incident. None has come forward to prove that accused-appellant killed his wife. PW-10 arrested accused, recorded his disclosure statement and recovered Hammer and Darati with blood, on the pointing out of accused-appellant, from beneath the bushes. F.S.L. report dated 18.06.2011 reveals that recovered article Hammer and Darati contained spots of blood.

28. In a case, which rests on circumstantial evidence, law postulates twin requirements to be satisfied. First, every link in chain of circumstances, necessary to establish the guilt of accused, must be established by prosecution beyond reasonable doubt; and second, all circumstances must be consistent only with guilt of accused.

29. In the case in hand there is no eye witness of occurrence. Case of prosecution rests on circumstantial evidence. There cannot be any dispute as to the well settled proposition that the circumstances from which the conclusion of guilt is to be drawn must or “should be” and not merely “may be” fully established. The facts so established should be consistent only with the guilt of the accused, that is to say, they should not be explicable through any other hypothesis except that the accused was guilty. Moreover, the circumstances should be conclusive in nature. There must be a chain of evidence so complete so as to not leave any reasonable ground for a conclusion consistent with the innocence of the accused, and must show that in all human probability, the offence was committed by the accused.

30. In **Hanumant Govind Nargundkar & Anr. v. State of M.P., AIR**

1952 SC 343, a basic judgment of Supreme Court on appreciation of evidence, when a case depends only on circumstantial evidence, where Court said:

> *"... **circumstances should be of a conclusive nature** and tendency and they should be **such as to exclude every hypothesis but the one proposed to be proved**..... it must be such as to show that **within all human probability the act must have been done by the accused.**"*

31. In ***Hukam Singh v. State of Rajasthan, AIR 1977 SC 1063***, Court said, where a case rests clearly on circumstantial evidence, inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with innocence of accused or guilt of any other person.

32. In ***Sharad Birdhichand Sarda v. State of Maharashtra, AIR 1984 SC 1622,*** Court, while dealing with a case based on circumstantial evidence, held that onus is on prosecution to prove that chain is complete. Infirmity or lacuna, in prosecution, cannot be cured by false defence or plea. Conditions precedent before conviction, based on circumstantial evidence, must be fully established. Court described following condition precedent :-

> *(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The **circumstances concerned 'must or should' and not 'may be' established.***
>
> *(2) the facts so established should be consistent only with the **hypothesis of the guilt of the accused**, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.*
>
> *(3) the circumstances should be of a conclusive nature and tendency.*
>
> *(4) they should exclude every possible hypothesis except the one to be proved, and*
>
> *(5) there must be a **chain of evidence so complete as not to leave any reasonable ground** for the conclusion consistent with the innocence of the accused and must*

> *show that in all human probability the act must have been done by the accused.* ***(emphasis added)***

33. In **Ashok Kumar Chatterjee v. State of Madhya Pradesh, AIR 1989 SC 1890**, Court said:

> *"...when a case rests upon circumstantial evidence such evidence must satisfy the following tests :-*
>
> *(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;*
>
> *(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;*
>
> *(3) the circumstances, taken cumulatively; should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and,*
>
> *(5) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence."*
>
> ***(emphasis added)***

34. In **C. Chenga Reddy and Others v. State of Andhra Pradesh, 1996(10) SCC 193**, Court said:

> ***"In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused*** *and totally inconsistent with his innocence."*
>
> ***(emphasis added)***

35. In **Bodh Raj @ Bodha and Ors. v. State of Jammu and Kashmir, 2002(8) SCC 45** Court said :

> *"(1) the* ***facts*** *alleged as the* ***basis of any legal inference must be clearly proved and beyond reasonable doubt*** *connected with the factum probandum;*

> *(2) the **burden of proof is always on the party who asserts** the existence of any fact, which infers legal accountability;*
>
> *(3) in all cases, whether of direct or circumstantial evidence the **best evidence must be adduced** which the nature of the case admits;*
>
> *(4) in order to justify the inference of guilt, the **inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation,** upon any other reasonable hypothesis than that of his guilt*
>
> *(5) **if there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted.**"*
>
> ***(emphasis added)***

36. The above principle in respect of circumstantial evidence has been reiterated in subsequent authorities also in **Shivu and Another v. Registrar General High Court of Karnataka and Another, 2007(4) SCC 713 and Tomaso Bruno v. State of U.P., 2015(7) SCC 178.**

37. In **State of Punjab versus Karnail Singh, (2003)11 SCC 27,** Court observed that law does not enjoin duty on prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on prosecution is to lead such evidence which it is capable of leading.

38. It is a case where an offence has taken place inside the privacy of the house, in the circumstances where accused has all opportunity to plan and commit offence at the time and in circumstances of his choice. Thus it will be extremely difficult for prosecution to lead evidence to establish guilt of accused if strict compliance of circumstantial evidence as noticed above, is insisted upon by Court.

39. Here it is necessary to keep in mind Section 106 of Indian Evidence Act, 1872 (hereinafter referred to as 'Act, 1872') which says when any fact is especially within the knowledge of any person the burden of proving that fact is upon him.

40. Accused was present in the hut with victim in the fateful night as proved by prosecution witnesses. Later on he disappeared after crime. Dead body of Saraswati was found by PW-3 in the hut, who prepared inquest report. Hence it was only accused who could explain circumstances in which Saraswati died. Burden of Section 106 of Act, 1872 lay upon accused who has failed to discharge.

41. In **Trimukh Maroti Kirkan v. State of Maharashtra**, **2006 (10)SCC 681.** Court has held that where an accused is alleged to have committed murder of his wife and prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence has taken place in the dwelling home where husband also normally resided, if accused does not offer any explanation how wife received injuries or offers an explanation which is found to be false, it is a strong circumstances which indicates that he is responsible for commission of the crime.

42. In **Nika Ram v. State of Himachal Pradesh, AIR 1972 SC 2077,** it was observed that the fact that the accused alone was with his wife in the house when she was murdered there with 'khokhri' and the fact that the relations of the accused with her were strained would, in the absence of any cogent explanation by him, point to his guilt.

43. In **Ganeshlal v. State of Maharashtra, (1992) 3 SCC 106** the appellant was prosecuted for the murder of his wife which took place inside his house. It was observed that when death had occurred in his custody, appellant is under an obligation to give a plausible explanation for the cause of her death in his statement under Section 313 Cr.P.C. The mere denial of prosecution case coupled with absence of any explanation were held to be inconsistent with the innocence of accused, but consistent with the hypothesis that the appellant is a prime accused in the commission of murder of his wife.

44. So far as the argument regrading motive is concerned, we are not impressed with the argument made by learned counsel for the accused-appellant for the reasons that in statement under Section 313 Cr.P.C. accused himself admitted that victim had an illicit relationship with one Bihari and did not provide food to him therefore, he assaulted her with hammer.

45. In so far as discrepancies, variation and contradiction in the prosecution case are concerned, we have analysed entire evidence in consonance with the submissions raised by learned counsel's and find that the same do not go to the root of the case.

46. In **Sampath Kumar v. Inspector of Police, Krishnagiri, (2012) 4 SCC 124,** Court has held that minor contradictions are bound to appear in the statements of truthful witnesses as memory sometimes plays false and sense of observation differs from person to person.

47. We lest not forget that no prosecution case is foolproof and the same is bound to suffer from some lacuna or the other. It is only when such lacunae are on material aspects going to the root of the matter, it may have bearing on the outcome of the case, else such shortcomings are to be ignored. Reference may be made to a recent decision of the Apex Court (3 Judges) in **Smt. Shamim v. State (GNCT of Delhi), 2018 (10) SCC 509.**

48. Learned counsel for the appellant contended that statement of accused appellant claimed to have been made to I.O. is not admissible in evidence, therefore, same cannot be treated to be an admission. We have no objection in accepting the said contention. In fact while considering evidence, we have not taken into account this statement and neither it has been treated as evidence of admission nor admissible in evidence, but under Section 27 such part of statement which results in recovery of certain material on the pointing out by accused while in custody of Police, is admissible in evidence and to that extent, statement of appellant which

has been treated to be his information on the basis whereof Hammer and Darati were recovered by Police is admissible under Section 27. We have taken only this fact as an evidence and part of the chain of evidence to reach the conclusion of guilt against the appellant.

49. Section 27 of Act, 1872 provides for how much of information received from accused who is in custody of police may be proved. It reads 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."*

50. Aforesaid provision is by way of proviso to Sections 25 and 26 of Act, 1872. An statement even by way of confession made in police custody which distinctly relates to the fact discovered is admissible in evidence against the accused.

51. In **Delhi Administration v. Bal Krishan and Ors., 1972(4) SCC 659,** Court said that Section 27 permits proof of so much of information which is given by persons accused of an offence when in custody of a Police Officer as relates distinctly to the fact thereby discovered, irrespective of whether such information amounts to a confession or not. Sections 25 and 26 of Act, 1872 provides that no confession made to a Police Officer whether in custody or not can be proved as against the accused. Section 27, therefore, is proviso to above Sections and statement even by way of confession, which distinctly relates to the fact discovered is admissible as evidence against accused in the circumstances stated in Section 27.

52. In **Mohmed Inayatullah v. The State of Maharashtra, 1976(1) SCC 828,** Court observed that though interpretation and scope of Section 27 has been subject of consideration in several authoritative

pronouncement but its application to concrete cases is not always free from difficulty. In order to make its application swift and convenient Court considered the provision again and said:

> *“12. The expression "Provided that" together with the phrase "whether it amounts to a confession or not" shows that the section is in the nature of an exception to the preceding provisions particularly Sections 25 and 26. It is not necessary in this case to consider if this section qualifies, to any extent, Section 24, also. It will be seen that the first condition necessary for bringing this section in to operation is the discovery of a fact, albeit a relevant fact, in consequence of the information received from a person accused of an offence. The second is that the discovery of such fact must be deposed to. The third is that at the time of the receipt of the information the accused must be in police custody. The last but the most important condition is that only "so much of the information" as relates distinctly to the fact thereby discovered is admissible. The rest of the information has to be excluded. The word "distinctly" means "directly", “indubitably", "strictly", "unmistakably". The word has been advisedly used to limit and define the scope of the provable information. The phrase "distinctly relates to the fact thereby discovered" is the linchpin of the provision. This phrase refers to that part of the information supplied by the accused which is the direct and immediate cause of the discovery. The reason behind this partial lifting of the ban against confessions and statements made to the police, is that if a fact is actually discovered in consequence of information given by the accused, it affords some guarantee of truth of that part, and that part only, of the information which was the clear, immediate and proximate cause of the discovery. No such guarantee or assurance attaches to the rest of the statement which may be indirectly or remotely related to the fact discovered.”*

53. Idea behind Section 27 has been explained by Court in para 20 of judgment in **Bodh Raj @ Bodha and Ors. v. State of Jammu and**

Kashmir (supra) as under:

> *"20. If all that is required to lift the ban be the inclusion in the confession information relating to an object subsequently produced, it seems reasonable to suppose that the persuasive powers of the police will prove equal to the occasion, and that in practice the ban will lose its effect. The object of the provision i.e. Section 27 was to provide for the admission of evidence which but for the existence of the section could not in consequence of the preceding sections, be admitted in evidence. It would appear that under Section 27 as it stands in order to render the evidence leading to discovery of any fact admissible,* ***the information must come from any accused in custody of the police****. The requirement of police custody is productive of extremely anomalous results and may lead to the exclusion of much valuable evidence in cases where a person, who is subsequently taken into custody and becomes an accused, after committing a crime meets a police officer or voluntarily goes to him or to the police station and states the circumstances of the crime which lead to the discovery of the dead body, weapon or any other material fact, in consequence of the information thus received from him. This information which is otherwise admissible becomes inadmissible under Section 27 if the information did not come from a person in the custody of a police officer or did come from a person not in the custody of a police officer.* ***The statement which is admissible under Section 27 is the one which is the information leading to discovery****. Thus, what is admissible being the information, the same has to be proved and not the opinion formed on it by the police officer. In other words,* ***the exact information given by the accused while in custody which led to recovery of the articles has to be proved****. It is, therefore, necessary for the benefit of both the accused and prosecution that information given should be recorded and proved and if not so recorded,* ***the exact information must be adduced through evidence****. The* ***basic idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation by***

> ***subsequent events***. *The doctrine is founded on the principle that if any fact is discovered as a search made on the strength of any information obtained from a prisoner,* ***such a discovery is a guarantee that the information supplied by the prisoner is true***. *The information might be confessional or non-exculpatory in nature but if it results in discovery of a fact, it becomes a reliable information. It is now well settled that recovery of an object is not discovery of fact envisaged in the section. Decision of Privy Council in Palukuri Kotayya v. Emperor AIR 1947 PC 67 is the most quoted authority for supporting the interpretation that the "****fact discovered" envisaged in the section embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect****. (see State of Maharashtra v. Danu Gopinath Shirde and Ors. 2000 CriLJ 2301). No doubt, the information permitted to be admitted in evidence is* ***confined to that portion of the information which "distinctly relates to the fact thereby discovered"****. But the information to get admissibility need not be so truncated as to make it insensible or incomprehensible. The extent of information admitted should be consistent with understandability. Mere statement that the accused led the police and the witnesses to the place where he had concealed the articles is not indicative of the information given."*
>
> ***(Emphasis Added)***

54. Similar issue has been considered recently in **Raju Manjhi v. State of Bihar, AIR 2018 SC 3592.** Therein Court held that Act, 1872 provides that even when an accused being in the custody of police makes a statement that reveals some information leading to the recovery of incriminating material or discovery of any fact concerning to the alleged offence, such statement can be proved against him. Court held that recoveries of used polythene pouches of wine, money, clothes, chains and bangle were all made at the disclosure by the accused which corroborates his confessional statement and proves his guilt and such confessional

statement stands and satisfies the test of Section 27 of Act, 1872.

55. In the present case, it is fully established that Saraswati was found dead in the hut. Evidence show that accused and Saraswati were present together in the hut in the fateful night and body of deceased was found there and accused disappeared after incident. The medical evidence show that death of Saraswati might have occurred due to ante-mortem injuries. In the statement under Section 313 Cr.P.C. accused himself has admitted that he attacked victim Smt. Saraswati with hammer which was recovered with blood by PW-8 Inspector Rakesh Kumar Singh on the pointing out of accused-appellant, therefore, there cannot be any hesitation to come to the conclusion that it was only the accused who was perpetrator of crime.

56. In the entirety of the facts and circumstances and legal prepositions discussed herein before, we are of considered view that prosecution has successfully proved its case beyond reasonable doubt against accused-appellant and Trial Court has rightly convicted him for having committed an offence under Section 302 IPC. No interference is warranted. Appeal lacks merit and liable to be dismissed.

57. So far as sentence of accused-appellant is concerned, it is always a difficult task requiring balancing of various considerations. The question of awarding sentence is a matter of discretion to be exercised on consideration of circumstances aggravating and mitigating in the individual cases.

58. It is settled legal position that appropriate sentence should be awarded after giving due consideration to the facts and circumstances of each case, nature of offence and the manner in which it was executed or committed. It is obligation of court to constantly remind itself that right of victim, and be it said, on certain occasions person aggrieved as well as society at large can be victims, never be marginalised. The measure of punishment should be proportionate to gravity of offence. Object of sentencing should be to protect society

and to deter the criminal in achieving avowed object of law. Further, it is expected that courts would operate the sentencing system so as to impose such sentence which reflects conscience of society and sentencing process has to be stern where it should be. The Court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against individual victim but also against society to which criminal and victim belong. Punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality which the crime has been perpetrated, enormity of crime warranting public abhorrence and it should 'respond to the society's cry for justice against the criminal'. [Vide: **Sumer Singh v. Surajbhan Singh and others, (2014) 7 SCC 323, Sham Sunder v. Puran, (1990) 4 SCC 731, M.P. v. Saleem, (2005) 5 SCC 554, Ravji v. State of Rajasthan, (1996) 2 SCC 175**].

59. Hence, applying the principles laid down in the aforesaid judgments and having regard to the totality of facts and circumstances of case, nature of offence and the manner in which it was executed or committed, we find that punishment imposed upon accused-appellant-Raju Lahri @ Satnami by Trial Court in impugned judgment and order is not excessive and it appears fit and proper and no question arises to interfere in the matter on the point of punishment imposed upon him.

60. In view of above discussion, **the appeal lacks merit and is dismissed**. Impugned judgement and order dated 01.06.2017 and 03.06.2017 passed by Additional Sessions Judge / Special Judge (S.C./S.T. Act), Gautam Budh Nagar in Session Trial No.13 of 2011 (State v. Raju Lahri @ Satnami) under Section 302 IPC, Police Station Sector 39 NOIDA, District Gautam Budh Nagar, is **maintained and confirmed**.

61. Lower Court record along with the copy of this judgment be sent immediately to Court and Jail Superintendent concerned for necessary

compliance and to apprise the accused forthwith. Compliance report be also submitted to this Court.

62. Before parting we provide that Sri Santosh Kumar Yadav, learned Amicus Curiae for appellant who assisted the Court very diligently, shall be paid counsel's fee as Rs. 11,500/-. State Government is directed to ensure payment of aforesaid fee through Additional Legal Remembrancer posted in the office of Advocate General at Allahabad, to him without any delay and, in any case, within one month from the date of receipt of copy of this judgment.

Order Date :- 24.10.2019
Akram