IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-D-18-DB-2004 (O&M)
Date of Decision: 04.03.2025

TILLAN @ TRILOK

... Appellant

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Keshav Pratap Singh, Advocate with
Mr. Tarun Kumar Hooda, Advocate and
Mr. Nitin Sausanwal, Advocate
for the appellant.

Mr. Ranvir Singh Arya, Addl. A.G., Haryana.

****

JASJIT SINGH BEDI, J.

The present appeal has been filed against the judgment of conviction and order of sentence dated 05.11.2003 passed by the Sessions Judge, Faridabad.

2. The FIR was registered on 03.09.2000, the judgment of conviction and order of sentence passed by the Sessions Judge, Faridabad is dated 05.11.2003, the appeal was filed on 12.12.2003 and the matter is being taken up for hearing now i.e. after a period of more than 21 ½ years from the date of registration of the FIR.

3. The brief facts of the prosecution case are that complainant-Mahender Singh son of Sukhpal was a resident of Palwal. He had four brothers who were residing separately. His brother Krishan Kumar was

unmarried and used to reside alone in his old house whereas he was residing in Kalra Colony, Palwal. On 03.09.2000 at about 6.30 a.m., he was present at his house. Brij Mohan son of Mannu, resident of Gorella Mohalla, Palwal informed him that Krishan Kumar had received head injuries and was lying dead in the street opposite the house of Sewak Ram Mahajan, resident of Gupta Ganj, Palwal. After that the complainant alongwith his brother Kanhiya reached there and found the dead body of his brother Krishan Kumar. He was having injuries on his head which were bleeding. Krishan Kumar deceased was not keeping good company and due to that reason, he was unmarried. The complainant suspected that his murder had been committed by his wayward friends. He also came to know that his brother had gone to watch 'Rasleela' on the preceding night and after that he was murdered. A statement Ex.PA was made by Mahender to the police which led to the registration of formal FIR Ex. PA/2 after making an Ex. PA/1. The investigations commenced. A rough site plan of the place of occurrence Ex.PJ was prepared. Sample of blood was lifted from the place of occurrence which was taken into possession vide recovery memo Ex. PB. Postmortem was performed on the body of Krishan Kumar and a report Ex. PC was collected. The accused were arrested and out of them, Tillan alias Trilok made a disclosure statement Ex.PC and on the basis of which he got recovered one iron pipe which was taken into possession vide recovery memo Ex.PD. A site plan of the place of recovery Ex.PD/2 was prepared. Other accused namely Bhimsen, Sudesh, Gabbar and Shiv Dutt also made disclosure statements Ex. PN, Ex. PO, EX.PP and Ex.PQ

respectively and on the basis of which they pointed towards the place of occurrence vide memos Ex.PN/1, Ex.PO/1. Ex./PP/1 and Ex.PQ/1. Statements of witnesses were recorded. After receipt of the report of FSL Ex.PH and collecting other incriminating evidence, the challan was submitted to Court.

4. On commitment, the accused were charged for the commission of offences punishable under Sections 148, 302 read with Section 149 IPC to which they pleaded not guilty and claimed trial.

5. In order to prove its case, the prosecution examined 13 witnesses and the gist of their depositions are as under:-

Mahender Kumar (complainant) was examined as PW1 and reiterated the contents of the FIR. In addition, he stated that he had witnessed the recording of the disclosure statement regarding concealment of the weapon of offence and the subsequent recovery thereof. He also stated that in the month of September, 1999 his brother Krishan Kumar had been subjected to a murderous assault in which the present appellant/Tillan alias Tirlok had been challaned and the case was pending in the Court of the Sessions Judge, Faridabad and listed for hearing for 27th of that month in which his brother had been murdered. In his cross-examination he stated that had not disclosed in the FIR that his brother Krishan Kumar was to appear as a witness against Tillan alias Tirlok accused in an earlier case.

Vishnu was examined as PW2 who stated that accused Sudesh made an extra-judicial confession before him on 10.09.2000 that he along

with three of his co-accused had encircled Krishan Kumar and his co-accused Tillan alias Tirlok had given the blow on the head of Krishan Kumar with an iron pipe.

Subhash Chand was examined as PW3. He stated that he was a Counsellor of Ward 21. On 10.09.2000, none of the accused had come to his house at that day. He was declared hostile. In his cross-examination by the PP he stated that Gabbar alias Dinesh and Bhimsen were his neighbours but he was not on visiting terms with them. He stated that it was incorrect that he had not supported the prosecution case because of the fear of Tillan alias Tirlok. He denied that Gabbar alias Dinesh and Bhimsen had visited his house on 10.09.2000 or that they had made a confessional statements before him of all the accused committing the murder of the deceased.

Kanhiya Lal was examined as PW4. He stated that the deceased Krishan Kumar was his younger brother. On 03.09.2000 he along with his elder brother Mahender Kumar had gone to Gupta Ganj where the dead body of their brother was lying. Bloodstained earth was taken from the spot and he had witnessed the recovery memo along with his brother Mahender Kumar. In his cross-examination he stated that his brother was a vagabond person and therefore, he had met his fate.

Dr. B.L. Chimpa, Medical Officer, PHC Alawalpur was examined as PW5. He found the following injuries on the person of the deceased:-

1. *Lacerated wound over vartax, 6 cm x 1 cm size clotted blood present, bone deep, underlying bone fractured, brain matter coming out through the wound.*
2. *Incised wound over right parietal region, 4 cm x 1 cm bone deep, clotted blood of present, underlying bone fractured, margin of wound clean and regular, everted. Spindle shape.*
3. *Incised wound over parietal region 2 cm x 1 cm size, scalp deep, clotted blood present. Injury is 2 cm anterior to injury no.2.*
4. *Incised wound 2 x 1/2 cm in size, scalp deep, clotted blood present, clean and regular margin spindle shape over forehead .5 cm above the right eye.*
5. *Incised would 2 cm 1/2 cm skin deep, clotted blood present, clean and regular margin, spindle shape, 2 cm above the right eye brow.*
6. *Incised wound 2-1/2 cm x ½ cm skin deep, clotted blood present over lateral angle of left eye, clean and regular margin.*
7. *Incised wound 2 x 1/2 cm skin deep, over right eye brow, clean and regular margin, clotted blood present.*
8. *Incised wound over right shoulder, 4 x 1/2 cm skin deep, clean and regular margin, clotted blood present.*

All the injuries are antemortem in nature. All other organs are healthy.

Opinion:-

In my opinion the cause of death in this case was due to coma, shock and haemorrhage as a result of injuries no.1, 2 and 3. These injuries were antemortem in nature and sufficient to cause death in ordinary course of nature.

PW6-HC Kanhiya Lal and PW7-Constable Munna Lal tendered their evidence by way of affidavit.

Narender Kumar, Photographer was examined as PW8. He stated that he had taken the photographs Ex.P1 to P3 the negatives of which were Ex.P4 to P6.

Brij Mohan was examined as PW9 who stated that on 03.09.2000 he had informed Mahender Kumar brother of the deceased that the dead body of Krishan Kumar were lying in front of the Gher of Ram Lal Sewak. On his information, Mahender Kumar had come to the spot.

Manoj Kumar, Draftsman was examined as PW10 and he stated that on 07.09.2000 he had prepared the scaled site plan (Ex.PG) on the asking of Ram Chand, ASI.

Brij Mohan, Ahlmad of the Court of Sessions, Faridabad was examined as PW11 who stated that he had brought the summoned file titled State Versus Tirlok Chand in FIR No.398 of 1999 U/s 323/325/307 IPC and 506 IPC, P.S. City Palwal. As per the record, vide order dated 27.09.2000, PW Krishan Kumar (now deceased) was reported to have expired and his name was struck off from the list of witnesses. As per the record, in FIR No.398 of 1999 Raju was examined as PW-1 and Kanhiya Lal was examined as PW-2 both the witnesses were declared hostile. Tillan alias Tirlok (accused) was acquitted by the Court of Addl. Sessions Judge, Faridabad vide judgment dated 10.05.2001.

ASI Ram Kumar was examined as PW12, he has referred to different facets of the investigation including recording of the disclosure statement of the accused leading to the recovery of an iron pipe. He admitted during cross-examination that while recording the FIR on the statement of Mahender Singh, a fact that had come on record was that the deceased was a vagabond kind of person, was in bad company and resided separately. On

account of his conduct, he had not been married till the age of 27 years. However, no investigation had been conducted regarding the character of the deceased. He denied the suggestion that it was a blind murder.

HC Mahavir Singh was examined as PW13 and stated that the MHC had handed over to him the special report to be delivered to the higher authorities. On the same day, he had delivered the same to the Illaqa Magistrate, DSP Palwal, SSP Faridabad and DIP, Gurgaon without wasting any time.

6. When all this evidence was put to the accused while recording their statements under Section 313 Cr.P.C. they denied the version of the prosecution in toto and pleaded false implication. A specific plea was taken by them that the deceased was keeping bad company and as a result of which he had to face consequences. Since the police could not solve the blind murder so, they were implicated in this case by planting recoveries. They also tendered in evidence copy of the judgment dated 10.05.2001 as Ex.DX.

7. Based on the evidence led, Gabbar alias Dinesh, Bhimsen, Sudesh, Shiv came to be acquitted whereas accused/appellant came to be convicted and sentenced by the Court of Addl. Sessions Judge, Faridabad vide judgment and order of sentence dated 05/10.11.2003 as under:-

Offence under Section	**Sentence RI/SI**	**Fine**	**RI/SI in default of payment of fine**
302 IPC	Life imprisonment	Rs.10,000/-	----

8. It is the aforementioned judgment, which is under challenge, in the present appeal.

9. The learned counsel for the accused/appellant contends that it is a case of a blind murder. As per the FIR, the accused/appellant was a vagabond and kept bad company. Because of his bad character, he was not married despite being of the age of 27 years. The complainant had a suspicion that the deceased had been murdered due to some reason by his wayward friends. However, during the course of investigation, the prosecution had changed its version and the motive that was set up by it was that the accused/appellant had murdered the deceased as he was to depose against the accused/appellant in a trial emanating out of FIR No.398 of 1999 U/s 323/325/307 IPC and 506 IPC, P.S. City Palwal. PW12-ASI Ramesh Kumar, the Investigating Officer had admitted that no investigation had been conducted regarding the character of the deceased which might have led his bad charactered friends to commit the murder. He contends that even if the motive was accepted to be as suggested by the prosecution, the said fact in itself was not sufficient to affix the guilt of the accused/appellant as the chain of circumstantial evidence was not complete.

He further contends that an iron pipe has been shown to be recovered from the accused. Though, it was bloodstained, the blood group was not mentioned in the FSL report. Further, the injuries suffered by the deceased were incised wounds which could not have been caused by the recovered weapon which was a blunt one. No opinion of the doctor was sought as to whether the weapon allegedly recovered from the

accused/appellant could have caused the injuries on the deceased. Therefore, the recovery of the weapon also does not further the case of the prosecution.

As regards the extra-judicial confession, it is his contention that the co-accused of the accused/appellant who had allegedly made those confessions stand acquitted. Further, Subhash Chand (PW3) had turned hostile. Therefore, the said confessions cannot inculpate the present accused/appellant.

He thus contends that the present appeal be allowed and the accused/appellant be acquitted of the charges framed against him.

10. On the other hand, the learned State counsel contends that though in the FIR, suspicion had been raised on the bad charactered friends of the deceased, during the course of investigation, it transpired that the accused/appellant had committed the offence so as to prevent the deceased from deposing against him in a trial emanating out of FIR No.398 of 1999 U/s 323/325/307 IPC and 506 IPC, P.S. City Palwal. As the deceased had been murdered, he was unable to appear in the said case and the accused/appellant came to be acquitted in the above case. Therefore, there was a strong motive on the part of the accused/appellant to have committed the offence. Additionally, he contends that there is the corroborative evidence of the weapon of offence having been recovered on the basis of the disclosure statement made by the accused/appellant. He thus contends that as the chain of circumstantial evidence was complete and clearly inculpated the accused/appellant, the present appeal was liable to be dismissed.

11. We have heard the learned counsel for the parties and gone through the record.

12. The case against the accused/appellant is based on circumstantial. In ***Ramanand @ Nandlal Bharti Versus State of Uttar Pradesh, 2022 AIR Supreme Court 5273***, in the context of circumstantial evidence, the Hon'ble Supreme Court held as under:-

> *"46. Although there can be no straight jacket formula for appreciation of circumstantial evidence, yet to convict an accused on the basis of circumstantial evidence, the Court must follow certain tests which are broadly as follows:*
>
> *1. Circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established;*
>
> *2. Those circumstances must be of a definite tendency unerringly pointing towards guilt of the accused and must be conclusive in nature;*
>
> *3. The circumstances, if 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*
>
> *4. 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 but should be inconsistent with his innocence. In other words, the circumstances should exclude every possible hypothesis except the one to be proved."*
>
> (Emphasis supplied)

13. Thus, it is evident from the tests laid down by the Hon'ble Apex Court that in order to sustain conviction the planks of circumstantial evidence taken cumulatively must unerringly point towards the guilt of an accused.

14. Coming back to the facts of the present case, we must examine the evidence on record to establish as to whether the chain of circumstantial evidence is so complete so as to unerringly point towards the guilt of the accused/appellant.

15. Firstly, is the evidence of motive. Admittedly, as per the FIR, the initial motive was that the deceased was a vagabond who associated with similar kind of people and might have been done to death by those criminal minded people. Later, during the course of investigation it transpired that an earlier FIR had been registered in which the present accused/appellant was an accused and the deceased was to depose as a witness and in order to prevent him from doing so, the deceased had been murdered. In fact, pursuant to the death of the deceased, the accused/appellant was acquitted in the said earlier case. So apparently, the motive on the part of the accused/appellant to commit the offence is indeed very strong.

16. As regards the law laid down by the Hon'ble Supreme Court with respect to the evidentiary value of motive:-

In ***N.J. Suraj Versus State represented by Inspector of Police, 2004(11) SCC 346,*** it was held as under:-

> *"4. Now, the only circumstance which remains is that the accused has a motive for the commission of the offence which alone cannot form the basis for conviction as it is well settled that in a case of*

circumstantial evidence, the circumstances should be such so as to lead to only one irresistible conclusion, which is incompatible with the innocence of the accused. This being the position, we are of the view that the prosecution has failed to prove its case beyond reasonable doubt and the High Court was not justified in upholding the convictions of the appellant."

(emphasis supplied)

In ***Sampath Kumar Versus Inspector of Police, Krishnagiri, 2012(2) RCR (Criminal)***, it was held as under:

"*14. In the present case the testimony cannot be wholly reliable or wholly unreliable. He is not a chance witness who had no reason to be found near the deceased at the time of the occurrence. There is evidence to show that Palani (PW7) used to sleep with the deceased-Senthil in the verandah of the house. What makes it suspect is that the witness has, despite being a natural witness, made a substantial improvement in the version without their being any acceptable explanation for his silence in regard to the fact and matters which was in his knowledge and which would make all the difference in the case. The Court would, therefore, look for independent corroboration to his version, which corroboration is not forthcoming. All that is brought on record by the prosecution is the presence of a strong motive but that by itself is not enough to support a conviction especially in a case where the sentence can be capital punishment. In N.J. Suraj v. State represented by Inspector of Police, (2004)11 SCC 346, the prosecution case was based entirely upon circumstantial evidence and a motive. Having discussed the circumstances relied upon by the prosecution, this Court rejected motive which was the only remaining circumstance relied upon by the prosecution stating that the presence of a motive was not enough for supporting a conviction, for it is well-settled that the chain of circumstances should be such as to lead to an irresistible conclusion, that is incompatible with the innocence*

of the accused. To the same effect is the decision of this Court in Santosh Kumar Singh v. State through CBI., 2010(4) RCR (Criminal) 593 : 2010(5) Recent Apex Judgments (R.A.J.) 518 : (2010)9 SCC 747 and Rukia Begum v. State of Karnataka, 2011(3) RCR (Criminal) 745 : 2011(4) Recent Apex Judgments (R.A.J.) 306 where this Court held that motive alone in the absence of any other circumstantial evidence would not be sufficient to convict the appellant. Reference may also be made to the decision of this Court in Sunil Rai @ Paua and Ors. v. Union Territory, Chandigarh, 2011(3) RCR (Criminal) 636 : 2011(4) Recent Apex Judgments (R.A.J.) 164 . This Court explained the legal position as follows :

"In any event, motive alone can hardly be a ground for conviction. On the materials on record, there may be some suspicion against the accused but as is often said suspicion, howsoever, strong cannot take the place of proof."

15. Suffice it to say although, according to the appellants the question of the appellant-Velu having the motive to harm the deceased-Senthil for falling in love with his sister, Usha did not survive once the family had decided to offer Usha in matrimony to the deceased-Senthil. Yet even assuming that the appellant-Velu had not reconciled to the idea of Usha getting married to the deceased-Senthil, all that can be said was that the appellant-Velu had a motive for physically harming the deceased. That may be an important circumstance in a case based on circumstantial evidence but cannot take the place of conclusive proof that the person concerned was the author of the crime. One could even say that the presence of motive in the facts and circumstances of the case creates a strong suspicion against the appellant but suspicion, howsoever strong, also cannot be a substitute for proof of the guilt of the accused beyond a reasonable doubt."

(emphasis supplied)

In ***Ramanand @ Nandlal Bharti Versus State of Uttar Pradesh, 2022 AIR Supreme Court 5273***, it was held as under:

> *"87. It is a settled principle of criminal jurisprudence that in a case based on circumstantial evidence, motive for committing the crime on the part of the accused assumes greater importance. This Court in various decisions has laid down the principles holding that motive for commission of offence no doubt assumes greater importance in cases resting on circumstantial evidence than those in which direct evidence regarding commission of offence is available. It is equally true that failure to prove motive in cases resting on circumstantial evidence is not fatal by itself. However, it is also well settled and it is trite in law that absence of motive could be a missing link of incriminating circumstances, but once the prosecution has established the other incriminating circumstances to its entirety, absence of motive will not give any benefit to the accused.*
>
> *88. Having regard to the nature of the evidence on record, there is something to indicate that the accused appellant had illicit relationship with Manju and wanted to settle in life marrying Manju. As noted above, in the past accused appellant had got engaged with Manju and was on the verge of getting married. At the relevant point of time when the accused appellant got engaged with Manju, it appears that one and all including the deceased Sangeeta were consenting parties. There is nothing on record to indicate that at the time of engagement of accused appellant with Manju, the deceased Sangeeta had raised hue and cry or had opposed such decision of her husband. Of course, this is something which is very personal. If at all we believe the illicit relationship of the accused appellant with Manju, then it is possible that the deceased Sangeeta might be an absolutely helpless lady and could not have done anything in that regard. However, the moot question is should this*

motive by alone be held sufficient to convict the accused appellant for the alleged crime and sentence him to death.

89. In the case of Sampath Kumar v. Inspector of Police Krishnagiri, (2012) 4 SCC 124, decided on 02.03.2012, this Court held as under:

> *"29. In N.J. Suraj v. State [(2004) 11 SCC 346 : 2004 SCC (Cri) Supp 85] the prosecution case was based entirely upon circumstantial evidence and a motive. Having discussed the circumstances relied upon by the prosecution, this Court rejected the motive which was the only remaining circumstance relied upon by the prosecution stating that the presence of a motive was not enough for supporting a conviction, for it is well settled that the chain of circumstances should be such as to lead to an irresistible conclusion, that is incompatible with the innocence of the accused.*
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> *30. To the same effect is the decision of this Court in Santosh Kumar Singh v. State [(2010) 9 SCC 747 : (2010) 3 SCC (Cri) 1469] and Rukia Begum v. State of Karnataka [(2011) 4 SCC 779 : (2011) 2 SCC (Cri) 488 : AIR 2011 SC 1585] where this Court held that motive alone in the absence of any other circumstantial evidence would not be sufficient to convict the appellant. Reference may also be made to the decision of this Court in Sunil Rai v. UT, Chandigarh [(2011) 12 SCC 258 : (2012) 1 SCC (Cri) 543 : AIR 2011 SC 2545] . This Court explained the legal position as follows: (Sunil Rai case [(2011) 12 SCC 258 : (2012) 1 SCC (Cri) 543 : AIR 2011 SC 2545] , SCC p. 266, paras 3132)*
>
> *"31. ... In any event, motive alone can hardly be a ground for conviction.*
>
> *32. On the materials on record, there may be some suspicion against the accused, but as is often said, suspicion, howsoever strong, cannot take the place of proof."*

31. Suffice it to say although, according to the appellants the question of the appellant Velu having the motive to harm the deceased Senthil for falling in love with his sister, Usha did not survive once the family had decided to offer Usha in matrimony to the deceased Senthil. Yet even assuming that the appellant Velu had not reconciled to the idea of Usha getting married to the deceased Senthil, all that can be said was that the appellant Velu had a motive for physically harming the deceased. That may be an important circumstance in a case based on circumstantial evidence but cannot take the place of conclusive proof that the person concerned was the author of the crime. One could even say that the presence of motive in the facts and circumstances of the case creates a strong suspicion against the appellant but suspicion, howsoever strong, also cannot be a substitute for proof of the guilt of the accused beyond reasonable doubt."

[Emphasis supplied]

90. Thus, even if it is believed that the accused appellant had a motive to commit the crime, the same may be an important circumstance in a case based on circumstantial evidence but cannot take the place as a conclusive proof that the person concerned was the author of the crime. One could even say that the presence of motive in the facts and circumstances of the case creates a strong suspicion against the accused appellant but suspicion, howsoever strong, cannot be a substitute for proof of the guilt of the accused beyond reasonable doubt.

91. The fact that we have ruled out the circumstances relating to the making of an extra judicial confession and the discovery of the weapon of offence as not having been established, the chain of circumstantial evidence snaps so badly that to consider any other circumstance, even like motive, would not be necessary."

(Emphasis supplied)

17. Secondly, is the alleged recovery of a bloodstained iron pipe on the disclosure statement of the accused/appellant. The bloodstains on the pipe do not reveal the blood group. Further, no opinion was sought from the doctor whether this pipe could have been used to inflict the injuries on the deceased.

18. As regards the recovery of a weapon on the disclosure statement of an accused/appellant and its evidentiary value, the Hon'ble Supreme Court:-

In ***Dudh Nath Pandey Versus State of U.P., AIR (1981) SC 911***, held as under:-

> *"15. Were this a case of circumstantial evidence, different considerations would have prevailed because the balance of evidence after excluding the testimony of the two eye-witnesses is not of the standard required in cases dependent wholly on circumstantial evidence. Evidence of recovery of the pistol at the instance of the appellant cannot by itself prove that he who pointed out the weapon wielded it in offence. The statement accompanying the discovery is woefully vague to identify the authorship of concealment, with the result that the pointing out of the weapon may at best prove the appellant's knowledge as to where the weapon was kept. The evidence of the Ballistic expert carries the proof of the charge a significant step ahead, but not near enough, because at the highest, it shows that the shot which killed Pappoo was fired from the pistol which was pointed out by the appellant. The evidence surrounding the discovery of the pistol may not be discarded as wholly untrue but it leaves a few significant questions unanswered and creates a sense of uneasiness in the mind of a Criminal Court , the Court of conscience that it has to be : How could the appellant have an opportunity to conceal the pistol in broad-day light on a public thoroughfare ? If he re-loaded the*

pistol as a measure of self protection, as suggested by the prosecution, why did he get rid of it so quickly by throwing it near the Hathi Park itself ? And how come that the police hit upon none better than Ram Kishore (P. W 4) to witness the discovery of the pistol ? Ram Kishore had already deposed in seven different cases in favour of the prosecution. and was evidently at the beck and call of the police."

(Emphasis supplied)

In ***Aloke Nath Dutta & others Versus State of West Bengal, 2007(1) RCR (Criminal) 468***, it was held as under:-

"52. It is, however, disturbing to note that a confession has not been brought on records in a manner contemplated by law. Law does not envisage taking on record the entire confession by marking it an exhibit incorporating both the admissible and inadmissible part thereof together. We intend to point out that only that part of confession which is admissible would be leading to the recovery of dead body and/or recovery of articles of Biswanath, the purported confession proceeded to state even the mode and manner in which Biswanath was allegedly killed. It should not have been done. It may influence the mind of the court.

[See State of Maharashtra v. Damu S/o Gopinath Shinde & Others, 2000(2) RCR (Criminal) 781 (SC) : (2000) 6 SCC 269 at p. 282 - para 35]

53. In Anter Singh v. State of Rajasthan [(2004) 10 SCC 657], it was stated :

"11. The scope and ambit of Section 27 of the Evidence Act were illuminatingly stated in Pulukuri Kottaya v. Emperor in the following words, which have become locus classicus : (AIR p. 70, para 10)

"It is fallacious to treat the fact discovered within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of

the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that I will produce a knife concealed in the roof of my house does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added with which I stabbed A these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant."

[But see Dhananjoy Chatterjee @ Dhana v. State of West Bengal, 1994(1) RCR (Criminal) 429 (SC) : [(1994) 2 SCC 220 at p. 234-235]

54. Therefore, we would take note of only that portion of the confession which is admissible in evidence."

(Emphasis supplied)

In ***Alagupandi @ Alagupandian Versus State of Tamil Nadu, 2013(1) SCC (Cri) 1027***, it was held as under:-

"20. Statement of PW1, supported by the statements of PW11, PW6, PW14 and the recovery of the weapon of crime vide Exhibit M.O. 6, upon disclosure statement of the accused, completes the chain of events as stated in the case of the prosecution. Except the part of the disclosure statement of the accused which led to the recovery of the said knife, the rest of the statement of the accused would be inadmissible in evidence as per Section 27 of the Indian Evidence Act, 1872."

(Emphasis supplied)

In ***Ramanand @ Nandlal Bharti*** (supra), it was held as under:-

> *"74. In the aforesaid context, we would like to sound a note of caution. Although the conduct of an accused may be a relevant fact under Section 8 of the Evidence Act, yet the same, by itself, cannot be a ground to convict him or hold him guilty and that too, for a serious offence like murder. Like any other piece of evidence, the conduct of an accused is also one of the circumstances which the court may take into consideration along with the other evidence on record, direct or indirect. What we are trying to convey is that the conduct of the accused alone, though may be relevant under Section 8 of the Evidence Act, cannot form the basis of conviction.*
>
> *75. Thus, in view of the aforesaid discussion, we have reached to the conclusion that the evidence of discovery of the weapon and the blood stained clothes at the instance of the accused appellant can hardly be treated as legal evidence, more particularly, considering the various legal infirmities in the same."*
>
> (Emphasis supplied)

19. A perusal of the law as laid down by the Hon'ble Supreme Court is that in a case based on circumstantial evidence, motive is an essential plank of evidence and the absence of motive would certainly create a doubt in the prosecution case. However, it is also a settled proposition of law that motive in itself, without any other substantial evidence, even if strong is not sufficient to establish the guilt of an accused.

Further, the recovery of a weapon on the disclosure statement of an accused/appellant only establishes that the person making the disclosure statement was aware of where the weapon had been kept. However, the discovery of a weapon itself cannot lead to the allegation or prove that it was

the maker of the disclosure statement at whose instance the weapon was recovered who had wielded the same in the commission of the offence.

20. In the instant case, accepting the evidence of motive on the part of the accused/appellant and the recovery of the alleged weapon of offence at his instance, these two planks of circumstantial evidence do not cumulatively form a chain of circumstantial evidence so complete so as to unerringly point to the conclusion that it was the accused/appellant alone who had committed the offence in question.

21. In view of the aforementioned discussion, we have no hesitation in holding that the prosecution has not established its case beyond a shadow of doubt. Therefore, the instant appeal is accepted. The impugned judgment dated 05.11.2003 passed by the Sessions Judge, Faridabad is set aside and the accused/appellant is acquitted of the charges framed against him.

(JASJIT SINGH BEDI)
JUDGE

(GURVINDER SINGH GILL)
JUDGE

04.03.2025
JITESH

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