2026:DHC:5132-DB

*   **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 28.04.2026
Pronounced on: 18.06.2026

\+   **CRL.A. 927/2004**

GIR RAJ .....Appellant
Through: Ms.Aashaa Tiwari, Adv.

versus

THE STATE NCT OF DELHI .....Respondent
Through: Mr.Aman Usman, APP with Mr.Manvendra Yadav, Adv. with Insp. Narender, PS Nangloi

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

NAVIN CHAWLA, J.

1. The instant appeal has been preferred by the appellant, challenging the judgment dated 25.08.2004 passed by the learned Additional Sessions Judge, Delhi in Sessions Case No. 26/2001, arising out of FIR No.283/1998, Police Station Nangloi, New Delhi, *vide* which the appellant has been convicted for the offence punishable under Section 302 of the Indian Penal Code, 1860 (hereinafter referred to as '*IPC*').

2. The appellant further challenges the Order on Sentence dated

03.09.2004 passed by the learned Trial Court, whereby the appellant has been sentenced to imprisonment for life along with a fine of Rs.3,000/-, and in default of payment of the fine, the appellant was to undergo simple imprisonment for one month.

CASE OF THE PROSECUTION:

3. Briefly stated, the case of the prosecution is as under:

i. On the intervening night of 12/13.05.1998 at 01:05 A.M., a DD entry no. 32A was recorded at PS Nangloi based on information received from a PCR Van that a murder had taken place in DCP Farm House, Hiran Kudna Mod.

ii. On receipt of such information, Sub-Inspector Anil Gandhi (PW-17) along with Constable Dharmender (PW-3) and Constable Gurdayal (PW-8) reached the DCP Farm House, wherefrom it was revealed that the incident had taken place in Ram Sons Farm House, Hiran Kudna Mod.

iii. Upon reaching at Ram Sons Farm House, they went inside and at the side of one room they found one gadda having blood stains lying on the floor. One machine used for chura cutting, one chair on which a transistor was kept, one pair of hawai chappal, and some other articles were also found lying there. The deceased or eyewitnesses were not found available there.

iv. Upon interrogation, it was ascertained that the injured person, namely, Harbhajan Singh (hereinafter referred to as '*deceased*') was taken to DDU Hospital by the PCR Van.

v. Thereafter, PW-17/*SI Anil Gandhi* left PW-3/*Ct. Dharmender* at

the place of incident and went to the DDU Hospital. Upon reaching there, he obtained the MLC of the deceased, wherein the deceased had been declared as brought dead by the doctors. No eyewitness was found even at the hospital.

vi. As the case at hand was found to be one of murder, PW-17/*SI Anil Gandhi* made an endorsement on the DD No. 32A and sent the *rukka* to the Police Station for registration of the case, whereafter FIR No. 283/1998 was registered.

vii. PW-18/*Insp. H.K. Singh,* SHO Nangloi also reached the spot. He inspected the site and called and recorded the statement of PW-16/*Jaipal Singh* who was working as a labourer in the DC Farm, from where the call was made to the police by the appellant.

viii. In the meantime, PW-17/*SI Anil Gandhi* returned to the spot of the incident from the hospital. The owner of the farm house PW-5/*Vinod Kumar,* along with PW-1/*Uday Bhan* and PW-2/*Maan Singh,* also reached the spot.

ix. From the spot, PW-18 seized the mattress and blood stained bricks.

x. Inquest proceedings on the dead body were conducted and inquest report (Ex. PW-18/B) was prepared.

xi. It is further the case of the prosecution that during interrogation, the appellant confessed about the guilt and was arrested. He was brought to the Police Station and on his detailed interrogation, he gave a disclosure statement (Ex. PW-2/B) admitting to

having murdered the deceased and the circumstances under which he had committed the offence. He also disclosed that he could get recovered the *Gadala* (iron rod) which was used as the weapon of offence, from one of the rooms at the farm house (Ex. PW-2/F).

xii. It is alleged that thereafter, the appellant led the police party to the tube-well room of the farm house and from there he got recovered the *gadala*, which was blood stained, from underneath the gunny bag of dungs. Opinion of the Doctor, who had conducted the post mortem of the deceased, was taken and statements of other witness were recorded. The seized articles were also sent to the FSL for their report.

PROCEEDINGS BEFORE THE LEARNED TRIAL COURT

4. Upon completion of the investigation, a charge-sheet was filed against the appellant for the offence punishable under Section 302 of the IPC.

5. The learned Trial Court, *vide* order dated 21.05.1999, framed the following charges against the appellant:-

> *"That on the night intervening 12/13-5-98 at Ramsons Farm, near DCP Farm House, at Hiran Kudni turn, Main Rohtak Road, Delhi, within the jurisdiction of P.S.Nangloi, you with intention of causing the death of Harbhajan Singh s/o Ram Khiulari, inflicted injuries on his person with 'Ghedala' and caused his death and thereby committed his murder, an offence punishable Under Sec. 302 IPC and within my cognizance.*
> *I hereby direct that you be tried by this court*

under the aforesaid offence"

6. The appellant pleaded not guilty to the aforesaid charge and claimed trial.

7. In order to prove its case, the prosecution examined 21 witnesses.

8. Statement of the appellant under Section 313 of the Cr.P.C. was recorded on 01.05.2004, in which he pleaded innocence. He stated that on hearing loud voice from the DCP Farm side, he went towards it and gave a whistle. Some persons had been running, whom he could not recognise as it was dark. He then found the dead body of the deceased. He informed Vinod, the owner of the Ram Sons Farm House, about the incident. Vinod expressed his inability to come to the farm at that time, so he informed the police on telephone. He stated that he was being falsely implicated in this case due to jealousy.

IMPUGNED ORDER OF CONVICTION:

9. As noted hereinabove, the learned Trial Court found the appellant guilty of the charge. The learned Trial Court observed that though there was no direct evidence to establish the prosecution's case, it rested on the basis of the last seen theory, disclosure statement of the appellant, and the consequent recovery of the weapon.

10. The learned Trial Court opined that one of the circumstances which went against the appellant was that PW-6/*Hari Singh* had seen the deceased and the appellant together on 12.05.1998 at around noon, and on the intervening night of 12/13.05.1998, the deceased was

murdered.

11. The learned Trial Court has also observed that the prosecution was able to prove the motive for the said commission of offence, from the testimony of PW-7/*Ram Khilari*, who had categorically deposed that the appellant was disappointed and angry at the deceased for having an evil eye on his wife and had, under frustration, threatened PW-7/*Ram Khilari* to advise the deceased or else the appellant would kill the deceased. The learned Trial Court also noted that the testimony of PW-7/*Ram Khilari* found support from the testimony of PW-6/*Hari Singh,* who had stated that he had seen the deceased and appellant quarrelling on the above-mentioned issue. The learned Trial Court further opined that the examination of the wife of the appellant was not necessary, as the allegation of the deceased having an evil eye for her was proved through the testimony of PW-6/*Hari Singh* and PW-7/*Ram Khilari*.

12. Additionally, the learned Trial Court has held that the articles seized from the spot of the alleged offence had blood stains belonging to 'Group B' as per FSL report (Ex. Pz).

13. The learned Trial Court, on the aspect of the recovery of the *gadala*, has observed that the appellant, who had been interrogated two-three times by the police in the Police Station in front of PW-2/*Man Singh,* who was the independent witness, had later given a disclosure statement (Ex PW-2/E), consequent to which the weapon of offence, that is the *gadala*, was recovered and produced by him from the tube-well room underneath the gunny bag. The appellant had also

identified the weapon, which was taken into the custody of the police *vide* memo Ex. PW-2/D, and that PW-2/*Man Singh* was in no way an interested witness and that there was no reason for him to depose falsely against the appellant.

14. The learned Trial Court further noted that since there were no injuries caused to the appellant, the same indicated that there was no fight or combat that took place between the appellant and the deceased and it was only the appellant who had acted in the most cruel and unnatural manner. Therefore, the appellant could not have taken the defence under Exception 4 of Section 300 of the IPC. It also showed that there were no outside assailants.

15. Lastly, the learned Trial Court observed that, as per the testimony of PW-4/*Dr. Komal Singh*, the death of the deceased was due to a head injury caused by a blunt weapon which could have been the recovered weapon of offence/*Gadala*.

16. On a cumulative assessment of the aforesaid circumstances, the learned Trial Court concluded that the prosecution had successfully established its case. The relevant extract from the impugned judgment of the learned Trial Court is as under:

> *"49. From the evidence and circumstances of this case; motive; recovery of weapon of offence consequent upon the discl. statement; last seen evidence, undisputed and natural presence of the accused at the time of incident on the spot pointing to hisinvolvement in the killing of the deceased have definitely beenestablished. The circumstances taken cumulatively point to the only hypothesis guilt of the accused as there is no material onrecord*

> *pointing towards his innocence. So, I have no hesitation to hold that the prosecution had successfully brought home the guilt of the accused.*
> *In the result, accused Gir Raj S/o Ram Khilari is convicted U/s 302 IPC."*

17. Aggrieved by the conviction and the Order on Sentence passed by the learned Trial Court, the appellant has preferred the present appeal before this Court.

SUBMISSIONS MADE BY THE LEARNED COUNSEL FOR THE APPELLANT:

18. Ms.Aashaa Tiwari, the learned counsel for the appellant, submits that in the absence of any eyewitnesses or direct evidence, the conviction of the appellant was based on the last seen theory, motive, and the other circumstantial evidence put forth by the prosecution. She submits that as per the testimony of PW-6/*Hari Singh*, about 15-20 days prior to the date of the incident, in the morning, PW-6/*Hari Singh* had seen the deceased and the appellant quarrelling with each other and that he had separated both of them and had told the appellant not to quarrel with the deceased. She points out that during his cross-examination, PW-6/*Hari Singh* had deposed that he does not remember the day on which he had seen the deceased and the appellant quarrel. He further stated that his earlier statement about the quarrel had not been made voluntarily as he was under the pressure of the IO.

19. She then refers to the testimony given by PW-7/*Ram Khilari*,

father of the deceased, wherein he had deposed that the appellant had visited the house of PW-7/*Ram Khilari* in his village and had told him that the deceased used to remain present at his house frequently. PW-7/*Ram Khilari* had also deposed that he told the appellant that he did not like the deceased staying at the house of the appellant frequently. The appellant then told him that his wife feels that the deceased had an evil eye for her and warned PW-7/*Ram Khilari* to make the deceased understand or else he would murder the deceased. He, however, could not remember the date of the visit of the appellant to his house. He also admitted that he had never seen the deceased talking to the wife of the appellant. He also admitted that the mother of the appellant or any other of his relations had never complained to him that the deceased used to remain present in appellant's house or that the deceased used to have an evil eye on appellant's wife. He, in spite of the alleged threat from the appellant, did not complain to the village panchayat. The learned counsel for the appellant submits that from the above, it is apparent that PW-7/*Ram Khilari* has been planted as a witness to falsely show a motive for the appellant to murder the deceased.

20. She submits that as far as the recovery of the weapon used in the said offence was concerned, the same was recovered pursuant to the alleged disclosure statement given by the appellant in the presence of PW-2/*Man Singh* and PW-17/*SI Anil Gandhi*. She submits that the said disclosure statement is only admissible under Section 27 of the Indian Evidence Act, 1872 (hereinafter referred to as '*the Act*') to the

limited extent of the statement given by the appellant regarding him getting the weapon recovered from the place of the incident, and not regarding his guilt in the commission of the offence in the present case. She places reliance on ***Ramanand @ Nandlal Bharti v. State of Uttar Pradesh*** (2023) 16 SCC 510, while contending that the officer failed to depose regarding the exact words uttered by the appellant in his alleged disclosure, therefore, the same does not stand proved.

21. She submits that as per the FSL report, the parcel 06 contained the metallic rod '*gadala*', however, no blood was detected on the same. Even as per the testimony of PW-4/*Dr. Komal Singh*, she deposed that the injury caused to the deceased could have been caused by a blunt object or by the *saria*/rod. She submits that therefore, there was no conclusive proof of the murder being caused by the *gadala* allegedly recovered at the pointing of the appellant.

22. She contends that even though as per the testimony of PW-2/*Man Singh*, the appellant had admitted his guilt of committing the offence in the present matter, however, the said admission of guilt is not admissible as it had been allegedly made when the appellant was in custody. The confession made by the appellant to PW-17/*SI Anil Gandhi* is also not admissible.

23. She further places reliance on ***State of Rajasthan v Hanuman***, 2025 SCC OnLine SC 1387, to contend that the lack of proof of motive and the recovery of the weapon, when taken in conjunction, does not complete the chain of circumstances alleged against the appellant.

24. She concludes by submitting that in the absence of any eyewitness, the non-admissibility of the confession of guilt by the appellant, and no blood having been found on the weapon of offence, the appellant should be acquitted of the charge framed against him and the impugned judgment and order on sentence should be set aside.

SUBMISSIONS OF THE LEARNED ADDITIONAL PUBLIC PROSECUTOR FOR THE STATE:

25. On the other hand, Mr. Aman Usman, the learned APP, submits that the circumstance of the last seen theory stood successfully established through the testimony given by PW-2/*Man Singh,* as he had categorically deposed that he had seen the appellant and the deceased on the night of the incident.

26. He further contends that the testimony of PW-16/*Jaipal Singh* establishes that there was a PCR call made pursuant to which the police arrived at the spot of the offence. He further contends that the appellant has failed to provide an explanation regarding how and from where 6-7 people could have entered the farmhouse at night, which was a barbed premise, as no sign of forced entry was evident at the place of the incident. He also contends that there was no evidence of anyone jumping from the boundary-wall fitted with barbed wire and that the appellant had also failed to explain as to why the intruders would only attack the deceased and not him.

27. He points out that a disclosure statement need not be in writing in all cases, and only the information based on which the recovery was

made was admissible. He submits that PW-2/*Man Singh* had proved the disclosure statement made by the appellant. He further proved that the appellant had led the investigating team to the tube-well room from where the *gadala,* that is the weapon of offence, was recovered. He submits that the recovery of the weapon at the instance of the appellant is a strong incriminating circumstance admissible under Section 27 of the Act. In support of his submission, he places reliance on ***Neelu @ Nilesh Koshti v. State of Madhya Pradesh,*** 2026 SCC OnLine SC 278. He submits that PW-2/*Man Singh* is an independent witness.

28. He contends that the prosecution had established a strong motive for the said offence through the testimonies of PW-6/*Hari Singh* and PW-7/*Ram Khilari.* PW-6/*Hari Singh* had deposed that prior to the said incident in question, the appellant had quarrelled with the deceased on the issue of the deceased casting an evil eye on the wife of the appellant and also had threatened to kill the deceased. The testimony of PW-6/*Hari Singh* has been corroborated by the testimony of PW-7/*Ram Khilari,* who had also deposed that the appellant and the deceased had a strained relationship.

29. He further submits that PW-4/*Dr. Komal Singh* had deposed that the death of the deceased was due to coma, which was a result of the injury caused to the deceased by a blunt object, and that it was sufficient to cause death in the ordinary course of nature. She had also deposed that the said injury could have been caused by the weapon of offence. While placing reliance on ***Gurmej Singh & Ors v. State of***

Punjab, 1991 Supp (2) SCC 75, he submits that it is a settled law that in cases of blunt injuries, no certain or definite medical opinion regarding the exact weapon used can invariably be given, and medical evidence, being opinion evidence, cannot override reliable ocular testimony. He further submits that in the present case, recovery has been effected at the specific instance of the accused, who, in the presence of PW-2/*Man Singh*, admitted to using the same. Thus, the Court is required to consider the same as the weapon of offence.

30. The learned APP concludes by submitting that in view of the aforesaid, the prosecution has proved its case beyond reasonable doubt, as the homicidal death of the deceased stood proved by the medical evidence, the circumstance of last seen stood established through the testimony of PW-2/*Man Singh*, motive to murder the deceased had been proved by the testimonies of PW-6/*Hari Singh* and PW-7/*Ram Khilari*, disclosure statement and recovery of the weapon of offence were proved by the testimony of PW-2/*Man Singh* and the investigating officers and the false explanation regarding the incident given by the appellant pointing to his guilt. Therefore, the conviction of the appellant is liable to be upheld.

ANALYSIS & FINDINGS:

31. We have considered the submissions made by the learned counsels for the parties.

32. From the above narration of the case of the prosecution as also the submissions of the learned counsels, it is evident that the case

against the appellant is based on circumstantial evidence. Even as per the prosecution, there is no eye-witness to the incident.

33. The circumstantial evidence alleged against the appellant can be divided into three categories, which are as under:

(a) motive, which is stated to be the evil eye of the deceased on the wife of the appellant;

(b) the discovery of the weapon of the offence, that is, *gadala* on the disclosure and pointing out of the appellant; and,

(c) last seen, that is, except for the appellant and the deceased, there was no one else in the farm house and the defence given by the appellant that 6-7 persons had jumped over the boundary wall to access the farm house and murder the deceased was not believable.

34. We shall now consider the above circumstances alleged against the appellant for bringing home the guilt.

<u>Motive:</u>

35. As far as the motive is concerned, the prosecution placed reliance on PW-6/*Hari Singh* and PW-7/*Ram Khilari*. PW-6, in his statement recorded on 20.09.2000, stated that about 15-20 days before the incident, the appellant had visited his house, and in the morning, when PW-6/ *Hari Singh* came back to his house after leaving milk, he saw that the appellant and the deceased were fighting. He heard the appellant saying that he will not leave the deceased alive as he had an evil eye on his wife. He states that he separated them and made the

appellant understand not to quarrel as he was elderly, however, the appellant is alleged to have stated that he will take revenge from the deceased. On 17.11.2000, when he was recalled for further examination, he, however, stated that his previous statement was not made voluntarily and he had been pressurized by the investigating officer to make the said statement.

36. The learned APP has submitted that PW-6/*Hari Singh* had been won over by the appellant as his sister is married to the younger brother of the appellant. That may be so, however, as PW-6/*Hari Singh* did not finally support the case of the prosecution about the motive, his testimony can be of no assistance to the prosecution. We even otherwise have some doubt about his initial statement as it does not stand to reason why the appellant and the deceased would continue to work in the same farm house when they were so inimical to each other.

37. As far as PW-7/*Ram Khilari* is concerned, he is the father of the deceased. Though because of being a relation of the deceased, he can be loosely termed as an 'interested witness', however, his testimony cannot be totally disregarded on this account. His testimony would, however, have to be scrutinized a little more minutely to rule out any element of bias towards false implication.

38. He states that about 15-20 days prior to the incident, the appellant had visited his village. The appellant also belongs to the same village. He also visited the house of the witness. Interestingly, he states that it is he who told the appellant '*on account of our love and*

affection' that the deceased generally remains present at the house of the appellant and the wife of the appellant calls the deceased through her children. He further allegedly told the appellant that the deceased also takes his food at the house of the appellant. He states that he also told the appellant that he did not like his son/the deceased to so often visit and stay at the house of the appellant. At this, the appellant told the witness that he also had heard about this and did not like the same. He also told that his wife had informed him of the same and had told him that the deceased keeps an evil eye on her. The appellant is also alleged to have told the witness that he should make the deceased understand, otherwise he would murder him. The witness states that on this, he told the appellant that they have a long association and have been taking food together as also working together, so the appellant himself should advise the deceased about the matter. He also told him that he would advise the deceased accordingly, upon which the appellant got up suddenly in anger and told him that he would kill the deceased. He states that he did not give any importance to these words '*out of love and affection*'.

39. If we are to believe the above testimony of PW-7/*Ram Khilari*, in spite of the appellant clearly stating that he would murder the deceased/his son, the witness did nothing; made no complaint to the police or anyone else; and did not even caution the deceased. In his cross-examination, he also stated that he had never seen the deceased talking with the wife of the appellant, thereby contradicting himself when he had earlier stated that it was he who told the appellant that his

son used to visit the house of the appellant regularly.

40. From a complete reading of his testimony, PW-7/*Ram Khilari* does not come out to be a reliable witness and therefore, it must be held that the prosecution has failed to prove the motive of murder beyond reasonable doubt.

<u>Disclosure and Recovery:</u>

41. As noted hereinabove, it is also the case of the prosecution that during the interrogation, the appellant had disclosed that he had murdered the deceased and could get the weapon of offence, that is, *gadala* recovered from the farm house. The disclosure statement was recorded as Ex.PW-2/E, with PW-17/*SI Anil Gandhi* and PW-2/*Maan Singh* being the witness thereto. The prosecution further alleges that pursuant to the said disclosure, and on the pointing of the appellant, the weapon of offence, that is, *gadala* was recovered from a room in the farm house having the tube well, from underneath a gunny bag of dung cakes. The Recovery Memo is Ex.PW-2/D, again with the same two witnesses.

42. In ***Ramanand @ Nandlal Bharti*** (supra), the Supreme Court has explained the requisites of a disclosure/recovery under Section 27 of the Act, which are as under:

> *"**56.** If, it is say of the investigating officer that the appellant-accused 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 along with his bloodstained clothes 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 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. When the accused while in custody makes such statement before the two independent witnesses (panch witnesses) 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 (panch witnesses) 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 bloodstained 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.

59. *The requirement of law that needs to be fulfilled before accepting the evidence of*

discovery is that by proving the contents of the panchnama. The investigating officer in his deposition is obliged in law to prove the contents of the panchnama and it is only if the investigating officer has successfully proved the contents of the discovery panchnama in accordance with law, then in that case the prosecution may be justified in relying upon such evidence and the trial court may also accept the evidence….

…In order to enable the Court to safely rely upon the evidence of the investigating officer, it is necessary that the exact words attributed to an accused, as statement made by him, be brought on record and, for this purpose the investigating officer is obliged to depose in his evidence the exact statement and not by merely saying that a discovery panchnama of weapon of offence was drawn as the accused was willing to take it out from a particular place.

70. *What emerges from the evidence in the form of panchnama is that the appellant stated before the panch witnesses to the effect that "I will show you the weapon used in the commission of offence". This is the exact statement which we could read from the discovery panchnama and the investigating officer also could not have deposed as regards the exact statement other than what has been recorded in the panchnama. This statement does not suggest that the appellant indicated anything about his involvement in concealment of the weapon. Mere discovery cannot be interpreted as sufficient to infer authorship of concealment by the person who discovered the weapon. He could have derived knowledge of the existence of that weapon at the place through some other source. He may have even seen somebody concealing the weapon, and, therefore, it cannot be presumed or inferred that because a person discovered weapon, he*

was the person who concealed it, least it can be presumed that he used it. Therefore, even if discovery by the appellant is accepted, what emerges from the panchnama of the discovery of weapon and the evidence in this regard is that he disclosed that he would show the weapon used in the commission of offence. In the same manner we have also perused the panchnama, Ext. 32 wherein the statement said to have been made by the accused before the panchas in exact words is "the accused resident of Roghada Village on his own free will informs to take out cash and other valuables".

71. *What emerges from the evidence of the investigating officer is that the appellant-accused stated before him while he was in custody, "I may get discovered the murder weapon used in the incident". This statement does not indicate or suggest that the appellant-accused indicated anything about his involvement in the concealment of the weapon. It is a vague statement. Mere discovery cannot be interpreted as sufficient to infer authorship of concealment by the person who discovered the weapon. He could have derived knowledge of the existence of that weapon at the place through some other source also. He might have even seen somebody concealing the weapon, and, therefore, it cannot be presumed or inferred that because a person discovered the weapon, he was the person who had concealed it, least it can be presumed that he used it. Therefore, even if discovery by the appellant is accepted, what emerges from the substantive evidence as regards the discovery of weapon is that the appellant disclosed that he would show the weapon used in the commission of offence.*

73. *Thus, in the absence of exact words, attributed to an accused person, as statement*

> *made by him being deposed by the investigating officer in his evidence, and also without proving the contents of the panchnama (Ext. 5), the trial court as well as the High Court was not justified in placing reliance upon the circumstance of discovery of weapon.*
>
> ***77.*** *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."*

43. Applying the above principles to the facts of the present case, we shall now test the evidence led by the prosecution in support of the alleged disclosure and recovery. PW-2/*Maan Singh* has stated that on receiving the information of the incident, he, along with his employer, PW-5/*Vinod Kumar Aggarwal*, reached the DDU Hospital, where they came to know about the death of the deceased. They met the appellant there. Thereafter, all of them, including the appellant, reached the farmhouse. At the farmhouse, the police conducted some investigation, including seizure of the blood stained *gadda*, blood-stained brick, and a normal brick. Thereafter, they all went to the Police Station where the police interrogated the appellant. The

appellant initially stated that 7-8 *badmash* had come to the farmhouse. Then the police took the appellant to the farmhouse, where they again interrogated him and during this interrogation, the appellant admitted his guilt and disclosed about the *gadala* being hidden by him in the room where tube-well was installed and that he could get it recovered. The witness stated that thereafter the appellant took them to the said tube-well room and produced the *gadala* after taking it out from below the gunny bag. He states that the appellant, on his arrest, was then searched by the police. He states that the appellant was arrested at the farm house at about 9/10 A.M. and the disclosure statement was written by the police at about 9 A.M.

44. From his statement, therefore, it is apparent that the Disclosure Statement (Ex.PW-2/E) was written at the farmhouse. It also appears that the arrest of the appellant was after the said disclosure and the recovery of the weapon.

45. On the other hand, PW-17/*SI Anil Gandhi*, the alleged second witness to the disclosure statement and the recovery, stated that in the course of investigation and interrogation of the appellant, the appellant confessed about the commission of the offence, on which he was arrested; his Personal Search Memo (Ex.PW-2/F) was drawn; and thereafter, he was brought to the Police Station. At the Police Station, he was again thoroughly interrogated and his Disclosure Statement (Ex.PW-2/E) was recorded, confessing about his guilt and relating the facts and circumstances, and also disclosing that he could get the weapon of offence recovered with which he had caused the murder of

the deceased and also point out the place of the incident. The witness stated that thereafter the appellant led the police party to the place of incident and got recovered the *gadala* from the room of a tube-well from underneath the gunny bag of dung cakes. He states that some blood stains were also found on the weapon of offence. Even in his cross-examination, he maintains that the Disclosure Statement was recorded at the Police Station at about 3:45 or 4 P.M.

46. Therefore, there is a clear discrepancy between PW-2*/Maan Singh* and PW-17/*SI Anil Gandhi* of the place where the alleged Disclosure Statement (Ex.PW-2/E) was recorded. While PW-2*/Maan Singh* maintains that it was recorded in the morning and at the farmhouse, PW-17/*SI Anil Gandhi* maintains that it was recorded in the evening and at the Police Station.

47. PW-18/*Insp. H. K. Singh*, the Investigating Officer also states that the alleged Disclosure Statement was made by the appellant at the Police Station. He also maintains that the *gadala* which was recovered at the incident of the appellant had blood stains.

48. Therefore, leave alone the exact statement made by the appellant, the three witnesses, which are PW-2*/Maan Singh*, PW-17/*SI Anil Gandhi* and PW-18/*Insp. H. K. Singh*, are also contradicting each other on the place where the disclosure statement was recorded. There is also a doubt if it was made pre or post the arrest of the appellant.

49. In addition, while the alleged Recovery Memo (Ex.PW-2/D) states that the *gadala* recovered had blood-like stains, and PW-17 and PW-18 also state that the *gadala* recovered had blood stains, the

gadala produced before the learned Trial Court did not have any blood stains, as was also admitted by PW-4/*Dr.Komal Singh*, who had deposed about the post-mortem. Even the CFSL Report (Ex.PY) states that the blood could not be detected on the *gadala* allegedly recovered at the behest of the appellant.

50. The learned APP has submitted that in a blunt injury, presence of blood on the weapon of offence is not essential. The said submission cannot, however, come to the aid of the prosecution in this case, as admittedly, the crime scene had blood of the deceased on the mattress as also on the brick. There is also a cut injury on the deceased, as disclosed in the Post-Mortem Report (Ex. PW4/A).

51. In addition to the above, barring the alleged Disclosure Statement, the *gadala* allegedly recovered at the behest of the appellant, is sought to be connected to the crime on the testimony of PW-4/*Dr.Komal Singh,* who had stated that injury present over the head of the deceased may be caused by the said weapon. However, in his cross-examination, he admitted that if any hard object other than the rod, that is, *gadala* is struck on the head of a man, laceration is possible followed by death by a *danda.*

52. In totality, therefore, in our view, the prosecution has been unable to prove the alleged disclosure and connect the weapon of offence to the incident beyond reasonable doubt.

<u>Last Seen Evidence</u>

53. The prosecution also wants to bring home the charge against

appellant by contending that the appellant was alone with the deceased in the farmhouse, and his explanation that 7-8 intruders had jumped over the boundary wall, killed the deceased and then fled away, could not be accepted. The learned APP for the State vehemently contends that given the height of the boundary-wall along with barbed wire, and even otherwise there being no evidence of anyone jumping from the wall, this defence of the appellant was a complete moonshine. He has submitted that the appellant could also not explain why the intruders would not attack him but only attack the deceased.

54. On the first blush, the above submission of the learned APP for the State seems attractive, however, we have to remain mindful of the fact that in criminal jurisprudence, there is a distance to be travelled between suspicion and proof beyond reasonable doubt. It has been held by the Supreme Court in ***Ballu @ Balram @ Balmukund & Anr. v. The State of Madhya Pradesh***, (2024) 12 SCC 202 that suspicion cannot take the place of proof beyond reasonable doubt and the Court must travel the journey from 'suspicion' to the 'proof beyond reasonable doubt' before finding the accused guilty of the charge. We quote from the judgment as under:

> ***"10.*** *Undoubtedly, the prosecution case rests on circumstantial evidence. The law with regard to conviction on the basis of circumstantial evidence has very well been crystallised in the judgment of this Court in Sharad Birdhichand Sarda v. State of Maharashtra , wherein this Court held thus:*
>
> > *"152. Before discussing the cases relied upon by the High Court we would like to*

cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is Hanumant v. State of M.P. This case has been uniformly followed and applied by this Court in a large number of later decisions up-to-date, for instance, the cases of Tufail v. State of U.P. and Ram Gopal v. State of Maharashtra. It may be useful to extract what Mahajan, J. has laid down in Hanumant case:

> *'12. It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the 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. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.'*

153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

> *(1) the circumstances from which the conclusion of guilt is to be drawn*

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should be fully established.

It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra where the observations were made:

> *'19. … Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between "may be" and "must be" is long and divides vague conjectures from sure conclusions.'*

(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.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence."

(emphasis in original)

11. *It can thus clearly be seen that it is necessary for the prosecution that the circumstances from which the conclusion of the guilt is to be drawn should be fully established. The Court holds that it is a primary principle that the accused "must be" and not merely "may be" proved guilty before a court can convict the accused. It has been held that there is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved". It has been held that the facts so established should be consistent only with the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty. It has further been held that the circumstances should be such that they exclude every possible hypothesis except the one to be proved. It has been held that 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 probabilities the act must have been done by the accused.*

12. *It is settled law that the suspicion, however strong it may be, cannot take the place of proof beyond reasonable doubt. An accused cannot be convicted on the ground of suspicion, no matter how strong it is. An accused is presumed to be innocent unless proved guilty beyond a reasonable doubt."*

55. In the present case, the submissions of the learned APP for the State do raise grave suspicion against the appellant but, in our view, fall short of the proof beyond reasonable doubt.

56. It is the case of the appellant that on hearing some noise, he got up and saw 7-8 persons in the farmhouse; he whistled because of which these persons then ran away jumping over the wall. Except stating that given the height of the wall along with the barbed wire, this story does not seem plausible, there is no evidence which can completely rule it out to achieve the standard of proof beyond reasonable doubt of the appellant having committed the murder of the deceased. It is not for the accused to prove his innocence beyond reasonable doubt, but for the prosecution to prove the involvement of the accused in the offence beyond reasonable doubt. The prosecution has failed to satisfy this standard in the present case.

CONCLUSION

57. Keeping the above in mind, we are of the opinion that the prosecution had been unable to bring home the guilt of the appellant of having committed the murder of the deceased beyond reasonable doubt.

58. Accordingly, the appellant is acquitted of the charge framed against him. The judgment dated 25.08.2004 and the Order on Sentence dated 03.09.2004 are hereby set aside.

59. The appeal is, accordingly, allowed.

60. The bail bond and surety of the appellant are hereby discharged.

61. A copy of this Judgment be sent to the concerned Jail Superintendent and the learned Trial Court for necessary information and compliance.

NAVIN CHAWLA, J.

RAVINDER DUDEJA, J.

JUNE 18, 2026/ns/sg/as