

sheet is nothing but a final report of the police officer under Section 173(2)CrPC It is an opinion or intimation of the investigating officer to the court concerned that on the material collected during the course of investigation, an offence appears to have been committed by the particular person or persons, or that no offence appears to have been committed.

24. Coming back to the facts of the case in hand, from the perusal of the impugned order, it is clear that while passing the same, learned Magistrate has considered the statement of complainant u/s 161 and 164 Cr.P.C. The opposite party no. 2 in her statement u/s 161 Cr.P.C. made allegation of outraging the modesty against her father-in-law but in her statement u/s 164 Cr.P.C., she made allegation of attempt to rape against her father-in-law with further allegation that same could be verified from CCTV camera footage but neither the police has recovered the CCTV camera footage nor the first informant has given the same to the police. In such circumstances, the Magistrate took cognizance u/s 354 Cr.P.C. on the basis of an uncontroverted allegation. Similarly, there is no allegation of beating against the sister-in-law. The only allegation against them is that they used to taunt her. So far as not taking cognizance u/s 406 I.P.C. is concerned, from the perusal of statement u/s 161 and 164 of opposite party no. 2, there is no such allegation which prima facie attracts the offence u/s 406 I.P.C.

25. Therefore, this Court does not find any illegality in the impugned order passed by the learned Magistrate by

which it refused to take cognizance of the offence u/s 376, 511 and 406 I.P.C.

26. Accordingly, the present application is dismissed.

(2025) 4 ILRA 811
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 09.04.2025

BEFORE

THE HON'BLE VIVEK KUMAR BIRLA, J.
THE HON'BLE PRAVEEN KUMAR GIRI, J.

Criminal Appeal No. 275 of 1986

Bandu Ram

...

...Appellant

Versus

State of U.P.

...Respondent

Counsel for the Appellant:

Sri R.N. Lal, Sri Akshay Kumar Shukla, Sri Gaurav Singh, Sri Ravindra Pal Singh Kashyap

Counsel for the Respondent:

A.G.A.

(A) Criminal Law - Murder - Appeal against conviction - Extra-Judicial Confession - Indian Penal Code, 1860 - Section 302 - Evidence Act, 1872 - Sections 8 & 27 - The Code of criminal procedure, 1973 - Sections 161 & 313 - Extra-judicial confession voluntarily made to village Chowkidar and supported by recovery of weapon with human blood - Evidence of hostile witnesses admissible to the extent found credible - Hostile witnesses' partial reliability upheld - Adverse inference drawn from refusal to give specimen signature - Hostile witness - Extra-judicial confession - Adverse inference - Conviction can be sustained on extra-judicial confession corroborated by

recovery and conduct of accused. (Para -4, 6, 7, 20, 43-48,54,55,56,59-61)

Accused admitted killing his wife over suspicion of character - handed over weapon to police - confession corroborated by forensic evidence - prompt FIR lodged by Chowkidar (P.W.-1) - who later turned hostile. (Para - 4-7, 20, 47, 60)

HELD: -Accused's extra-judicial confession, recovery of blood-stained weapon and refusal to provide specimen signature corroborated guilt. Hostile witnesses' usable testimony relied upon. Conviction under Section 302 IPC upheld. (Para -59-61)

Criminal appeal dismissed. (E-7)**LIST OF CASES CITED: -**

1. Surya Baksh Singh Vs St. of U.P., (2014) 14 SCC 222
2. Jai Prakash Singh Vs St. Of Bihar & anr. , (2012) 4 SCC 379
3. Pradeep Narayan Madgaonkar & ors. Vs St. of Maha., 1995 (4) SCC 255
4. Karamjit Singh Vs St. (Delhi Administration), (2003) 5 SCC 291
5. Girja Prasad Vs St. of M.P. (2007) 7 SCC 625
6. Prakash Chand Vs St. (Delhi Administration), (1979) 3 SCC 90
7. A.N. Venkatesh Vs St. of Karn., (2005) 7 SCC 714
8. Ashwani Kumar @ Ashu & anr. Vs St. Of Punj., (2015) 6 SCC 308
9. Som Dutt Vs St. of Punj., 2019 SCC Online P&H 759
10. Bhagwan Dass Vs St. (NCT of Delhi), (2011) 6 SCC 396
11. Rajesh Yadav & anr. Etc. Vs St. of U.P. (2022) 12 SCC 200
12. Digamber Vs St. of Maha., 2023 SCC Online SC 531

(Delivered by Hon'ble Praveen Kumar Giri, J.)

1. While reserving the judgement on 20.03.2025, this Court has passed the following order:

“1. List revised. No one appears on behalf of the appellant to press the present appeal.

2. Vide order dated 29.07.2024, Shri Anurag Mishra, Advocate was appointed as Amicus Curiae to argue the matter and he has also obtained the paper-book.

3. As per the latest office report, the sole surviving appellant has been served through his daughter-in-law.

4. We find that vide order dated 05.02.2024, when no one appears for the appellant, bailable warrant was issued against the appellant.

5. As per office report dated 04.03.2024, the appellant has appeared before the lower court and later released on bail.

6. Today, again no one one appears for the appellant including the Amicus Curiae even though notice has been served.

7. In **Surya Baksh Singh vs. State of Uttar Pradesh, (2014) 14 SCC 222**, the Hon'ble Apex Court has held that it is always not necessary to adjourn the matter in case both appellants or his counsels/lawyers are absent and the Court can decide the appeal on merits after perusal of the record and the judgement of the trial Court. It has further been observed that if the case is decided on merits in the absence of the appellant, the higher court can remedy the situation. It has also been observed that appointment of Amicus Curiae is also on the discretion of the court.

In paragraph 26 of the said judgement, it was held that it is always not essential for the High Court to appoint Amicus Curiae, paragraphs 24 and 26 of the said judgement whereof are quoted as under:

“24. It seems to us that it is necessary for the Appellate Court which is confronted with the absence of the convict as well as his Counsel, to immediately proceed against the persons who stood surety at the time when the convict was granted bail, as this may lead to his discovery and production in Court. If even this exercise fails to locate and bring forth the convict, the Appellate Court is empowered to dismiss the appeal. We fully and respectfully concur with the recent elucidation of the law, profound yet perspicuous, in *K.S. Panduranga v. State of Karnataka*, (2013) 3 SCC 721. After a comprehensive analysis of previous decisions our learned Brother had distilled the legal position into six propositions:

19.1. that the High Court cannot dismiss an appeal for non-prosecution simpliciter without examining the merits;

19.2. that the Court is not bound to adjourn the matter if both the Appellant or his Counsel/lawyer are absent;

19.3. that the court may, as a matter of prudence or indulgence, adjourn the matter but it is not bound to do so;

19.4. that it can dispose of the appeal after perusing the record and judgment of the trial court.

19.5. that if the accused is in jail and cannot, on his own, come to court, it would be advisable to adjourn the case and fix another date to facilitate the appearance of the Appellant-accused if his lawyer is not present, and if the lawyer is absent and the court deems it appropriate to appoint a lawyer at the State expense to assist it, nothing in law would preclude the court from doing so; and

19.6. that if the case is decided on merits in the absence of the Appellant, the higher court can remedy the situation.

25 ...

26. Reverting back to the facts of the present case a perusal of the impugned order makes it abundantly evident that the High Court has considered the case in all its complexities. The argument that the High Court was duty-bound to appoint an amicus curiae is not legally sound. Panduranga correctly considers *Mohd. Sukur Ali v. State of Assam* (1996) 4 SCC 729 as per incuriam, inasmuch as the latter mandates the appointment of an amicus curiae and is thus irreconcilable with *Bani Singh vs. State of U.P.* (1996) 4 SCC 720. In the case in hand the High Court has manifestly discussed the evidence that have been led, and finding it of probative value, has come to the conclusion that the conviction is above Appellate reproach correction and interference. In view of the analysis of the law the contention raised before us that it was essential for the High Court to have appointed an amicus curiae is wholly untenable. The High Court has duly undertaken the curial responsibility that fastens upon the Appellate Court, and cannot be faulted on the approach adopted by it. In this respect, we find no error.?”

(Emphasis supplied)

8. Under such circumstances, we proceed to consider the present appeal on merits with the help of Shri Amit Sinha, learned AGA-I for the State.

9. Judgment Reserved.”

2. We have carefully perused the record and judgment of the trial court and have heard Shri Amit Sinha, learned AGA-I in support of the prosecution case.

3. The present appeal has been filed challenging the judgment and order dated

20.01.1986 passed by Sri B.K. Srivastava, Sessions Judge, Rampur in Sessions Trial No.122 of 1985 arising out of Case Crime No. 249 under Section 302 IPC at Police Station- Shahjad Nagar, District- Rampur, convicting and sentencing the appellant Bandu Ram to life imprisonment under Section 302 IPC.

4. **Prosecution story**, in brief is that the village Chowkidar Sumeri (complainant) who is neighbour of accused Bandu Ram, on 17.12.1984, at about 10:00 A.M., hearing the noise of hot talks between the accused and his wife, he went to the house of the accused and came to know that the couple had gone to their field to see something located in their field. Being the village Chowkidar, he went towards the field to see the couple then at about 11:00 P.M., the accused met him on the way outside the village who was coming from his field. The complainant enquired about his wife. Thereupon, the accused told him that his wife was of bad character and had sold the ornaments of the house, hence, he had killed her in the field. Thereafter, the complainant along with some villagers went to the field and saw the dead body of the deceased Ram Shri lying near puyal. After this the complainant went to the police station to lodge the report of the incident.

5. The alleged incident of murder occurred on 17.12.1984 at about 11:00 P.M. in the field of the accused and on 18.12.1984 at 01:00 A.M. (night), on the oral information of the village Chowkidar, prompt first information report was lodged as Case Crime No. 249 under Section 302 IPC at Police Station- Shahjad Nagar, District- Rampur.

6. Head Constable Prempal Singh (P.W.-6) prepared the check report and its entry was also duly made in the G.D. being its carbon copy. The Check FIR was signed by the village Chowkidar.

7. On 18.12.1984, at about 02:30 A.M., the husband of the deceased reached at the police station and produced a signed report admitting guilt about killing of his wife. He handed over the blood stained sharp edged weapon i.e. Gandasa as well as country made pistol along with two live cartridge and four empty cartridge to the police.

8. On the same date i.e. 18.12.1984, police prepared memo in respect of handing over of weapon as well as two live cartridge and four empty cartridge along with one country-made pistol. Police also found blood stains on the clothes worn by the accused-husband, therefore, the clothes were also taken in the custody by the police and its memo was prepared. Sweater, Kamij, Payjama, and blood stained sharp edged weapon, Gandasa were sent to the Forensic Science Laboratory for ascertaining the human blood.

9. On the same date i.e. 18.12.1984, the Investigating Officer i.e. P.W.-7 reached on the spot and found that dead body of Ram Shri was lying in the field.

10. On the same date i.e. 18.12.1984, the Investigating Officer (P.W.-7) recorded the statement of Head Constable, Prempal Singh (P.W.-6) who had scribed the F.I.R. and had also recorded the statements of informant Sumeri (Chowkidar), Sewa Ram (P.W.-3) and Hotey Lal (P.W.-4) under Section 161 Cr.P.C.

11. On the same date i.e. 18.12.1984, in the early morning at 07:00 A.M., the Investigating Officer prepared Panchayatnama mentioning that proper light was not in the night, therefore, Panchayatnama was prepared in the morning in presence of witnesses Aangan Lal, Sewa Ram, Hotey Lal and Dal Chand and in the Panchayatnama, it has been mentioned that the first information report was lodged by P.W.-1 Sumeri (Chowkidar).

12. On the same date i.e. 18.12.1984, the police collected blood stained earth along with blood stained blouse, dhoti, peti coat, braid, earring, brass ring, pair of toe ring, copper amulet and bangles (in pieces) and the same were sent to forensic science laboratory and in the Forensic Science Laboratory Report/Serological Report, it has been found that there was human blood on these items.

13. On the same date i.e. 18.12.1984, the Investigating Officer prepared topographical report (Ext. Ka-6) of the field where the dead body of the deceased was lying.

14. On the same date i.e. 18.12.1984, post-mortem was conducted on the dead body of the deceased by Dr. B.M. Saxena and following injuries were found on the dead body of the deceased:

“1- Incised wound 20 cm x 10 cm into bone deep over left side neck. All the vessels and muscles are cut underneath the injury.

2- Incised wound 2 cm x 0.5 cm into scalp deep over right side head, 10 cm above right eye brow.

3- Incised wound 3 cm x 0.5 cm into muscle over right angle of jaw.

4- Incised wound 6 cm x 4 cm into muscle over back of left shoulder.

5- Incised wound 2 cm x 0.5 cm into muscle deep over back of left forearm middle.

6- Incised wound 2 cm x 0.5 cm into skin deep over back of left elbow joint

7- Incised wound 3 cm x 0.5 cm into muscle deep over left palm.”

The Doctor had opined that the cause of death was shock and hemorrhage as a result of ante mortem injuries.

15. The investigation was completed by the Investigating Officer and charge-sheet under Section 302 IPC has been submitted against the accused-appellant, Bandu Ram, husband of the deceased.

16. Learned Judicial Magistrate took cognizance on the charge-sheet and committed the case to the court of Session after compliance of Section 207 Cr.P.C.

17. Learned Sessions Judge framed charges under Section 302 IPC against the accused-appellant. The accused denied the charges framed against him and sought trial.

18. The prosecution, in order to prove its case, has examined 8 witnesses namely, PW-1 Sumeri (complainant); PW-2 Kripal, villager/neighbourer of the accused; PW-3, Sewa Ram, villager/neighbourer of the accused; PW-4, Hotey Lal, villager/neighbourer of the accused; P.W.-5 Akhatar, owner of the tea-stall located nearby the police station; P.W.-6 Head constable/Head Moharir Prempal Singh; P.W.-7 S.O. Yogendra Pal Ahlawat and P.W.-8 Constable Genda Singh.

19. In addition to the aforesaid, the prosecution produced certain documents, which were exhibited during the trial as (i) First Information Report as Ext. Ka.1 (ii) Written Report as Ext. Ka.26 (iii) Recovery Memo of country-made pistol, live and empty cartridges and blood stained 'Gandasa' as Ext. Ka.3 (iv) Recovery Memo of blood stained clothes as Ext. Ka.4 (v) Recovery Memo of 'Hawai Chappal' as Ext. Ka.7 (vi) Recovery Memo of blood stained and plain puwal as Ext. Ka.8 (vii) Recovery Memo of blood stained and plain earth as Ext. Ka.9 (viii) Recovery Memo of ornaments as Ext. Ka.17-A (ix) Statement of Sumeri as Ext. Ka.19 (x) Statement of Shoba Ram as Ext. Ka.20 (xi) P.M. Report as Ext. Ka. 21 (xii) Report of Vidhi Vigyan Prayogshala as Ext. Ka. 22 (xiii) Panchayatnama as Ext. Ka. 10 (xiv) Charge-sheet (Mool) as Ext. Ka. 18 (xv) Affidavit of Maharaj Singh as Ext. Ka. 23 (xvi) Affidavit of Lalta Prasad as Ext. Ka. 24 (xvii) Affidavit of Hetram Singh as Ext. Ka. 25.

20. Sumeri (P.W.-1) who is the informant of the present case, in his statement recorded under Section 161 Cr.P.C., on 18.12.1984, stated that he heard his neighbour Bandu Ram (appellant) and his wife arguing on some point and when he went to their house, he found that they had gone to their field later when he went to the field to look for them, in the way at about 11:00 A.M. he saw Bandu Ram was returning then he accosted the appellant and enquired about his wife. Thereupon appellant told him that his wife was of bad character and had sold the ornaments of the house hence, he had killed her in the field.

However, when he was called to depose, he had not supported the prosecution version and turned hostile.

21. Kripal (P.W.-2) has deposed that he had last seen the deceased in the company of the accused. This witness had heard the appellant telling the Chowkidar that he had killed his wife. Relevant extracts of his deposition reads as under:

“बांदू राम हाजिर अदालत को जानता हूँ इसकी बीबी मृतका रामश्री को भी जानता था। चाज 9,10 महीने हुये 17-12-84 की बात है कि रात में करीब 10 बजे मे मूलचन्द्र के मकान के पिछवारे झाड़ा फिरने गया था तब बांदू और उसकी औरत को साथ-साथ अताई नगर की तरफ जाते देखा था उधर ही बांदू का खेत है। थोड़ी देर बाद उसी तरफ से मैंने हाय की चीख सुनी। तभी चोकीदार सुम्मेरी सोभा राम और छोटे लाल उसी और जाते दिखे तभी बांदू राम उधर से गडासा लिये हुये आया चोकीदार ने इस्से पूछा कि तू अपनी बीबी को साथ लेकर गया था वह कहा है तो इसने बचाया कि उस साली को मार आया।

यह सुनकर सुम्मेरी बगैरा लाश की ओर चले गये और बांदू भाग गया। बांदू के अपनी पत्नी से ताल्लुकात खुशगवार नहीं थे लडाईं रहेती थी, मै रजा टेक्स्टाइल्स मे काम करता हूँ डियूटी से छूटकर 7,8 बजे गाव आया था मेरा पेट ठीक नहीं था इस लिये मै रात मे झाड़ा फिरने गया था। बांदू घटना के समय व अब भी शिवा पेपर मिल धमोरा मे काम करता है।”

In cross-examination, this witness withstood to his earlier statement.

22. Sewa Ram (P.W.-3), in his statement under Section 161 Cr.P.C., had stated that Chowkidar Sumeri, who is from our village called us to go towards the fields. Thereafter, I along with Hotey went towards the field and on the way, we met Bandu Ram. Sumeri enquired the appellant about his wife, he told that I have killed my wife. She is lying on straw in the field. It was known that yesterday evening Bandu Ram and his wife had a fight over something and their dispute has been going on since before. Bandu Ram was holding Gandasa and a pistol in his hand that time.

However, when this witness appeared to depose in the court, he had also not

supported the prosecution version and turned hostile.

23. Hotey Lal (P.W.-4), who was also the witness of Panchayatnama, had deposed as under:

“ बांदू राम मुलजिम हाजिर अदालत को जानता हूँ यह हमारे गांव का है इसकी बीबी रामश्री को भी जानता था। रामश्री का कत्ल करीब 10 महीने हुये होगया। कत्ल की रात सुम्मेरी चौकीदार मेरे घर पर आया और मुझे व सेवा राम को लेकर गश्त लगाने को चला। जब हम लोग मूल चन्द्र के मकान के पिछवाड़े पहुँचे तो सामने से बांदू राम मुलजिम हाजिर अदालत हाथ में मैं गंडासा लिये हुये आता दिखाई दिया तब सुम्मेरी जो हम लोगो मे सब से आगे था ने बांदू राम को रोका। पूछने पर उसने बताया कि वह अपनी औरत का कत्ल करके आ रहा है और बताया कि लाश अपने चक मे पयाल के ढेर मे डाल आया है यह बताकर बांदू राम चला गया। हम लोग फिर बांदू के खेत पर गये वहां पर बांदू की औरत की लाश पड़ी थी उसके एक पैर मे हवाई चप्पल पहनी हुई थी ओर एक चप्पल अलग पड़ी हुई थी। मैने वहां पर और कुछ नही देखी।

बांदू राम की इसकी औरत से पटती नही थी खूब झगडा होता था मेरा घर पास मे है मै बराबर झगडा सुनता था उसके लिये खाना भी नही बनाती थी यह खुद बनाता था। रामश्री की लाश का दरोगाजी मे पचायतनामा तइयार किया था। उसमे मै गवाह था। ”

24. Akhtar (P.W.-5), claims to have a tea-stall near the police station. He deposed that he had seen the accused-appellant going to the police station with Gandasa. He had also stated that he did not know the accused by name.

25. Head Constable Prempal Singh (P.W.-6), in his deposition proved that the F.I.R. was lodged by Sumeri (P.W.-1) and he prepared the other Fards. Further, he deposed about the production of the written report by the accused along with blood-stained Gandasa, country made pistol, two live cartridges and four empty cartridges.

26. S.O. Yogendra Pal Singh Ahlawat (P.W.-7), Investigating Officer of the case,

deposed about the entire work done during the course of investigation. He deposed, on 18.12.1984, I was posted as Police Station Incharge at Police Station- Shahjahan Nagar. On that day at 01:A.M. Sumeri Chowkidar lodged an F.I.R. (Ext. Ka-1) of the incident in my presence. Head Constable Prempal wrote the report. Thereafter I along with SI Atar Singh and other officials left for the village Atai Nagar, where I found the dead body of Ram Shri lying in the field of the accused but due to lack of sufficient light, I could not make the Panchayatnama of the dead body in the night. I have taken the statement of Hotey Lal and Sewa Ram at spot. I got the Panchayatnama of the dead body done through SI Atar Singh in morning and I had prepared the site plan (Ex. Ka- 6). The dead body was lying on the puyal, there was blood and a pair of slippers lying nearby, I had taken the blood stained earth, puyal and plain soil from the spot in custody and marked them as Ex. 14 to 17. Dead body of the deceased was sent for the post mortem along with copy of Check report and relevant documents. Then I came to know that the accused was in the police station and he had to be questioned. After reaching the police station, I took the statement of the accused. Then I took the statements of Head Constable Prempal, Constable Genda Singh and Constable Rajveer Singh and P.W.-5 Akhtar and another. Then I went back from the police station to the place of the incident and stayed there for the night.

27. This witness further deposed that in the morning on 18.12.1984 at about 8:30 A.M., he took statements from a few people in the neighbourhood and took into custody blouse, dhoti, petticoat, braid, earring, ring, pair of toe rings, amulet and bangles (in pieces) found on the body of the deceased and marked them as Ex. 5 to

13. The clothes of the accused and Gandasa etc. were sent to the Chemical examiner for examination and he had not found any overwriting in the thumb impression of Sumeri (P.W.-1) in the Check Report. In cross-examination, he withstood the depositions made in the examination-in-chief. This witness even denied a suggestion put to him that he had obtained the thumb impression on a white paper and thereafter he had himself written the report of Sumeri.

28. Genda Singh (P.W.-8) stated that he was present at the police station, when the accused surrendered along with blood-stained Gandasa. He has also stated about taking in possession the blood-stained clothes of the accused.

29. After prosecution evidence was completed, the accused was put to question under Section 313 of Cr.P.C. wherein the accused appellant had stated that he was falsely implicated, the witnesses which were produced had given false statements.

30. At the end of the trial, after hearing the arguments on behalf of prosecution and the defence, the Trial Court convicted the accused-appellant as above.

31. The ground as taken before the trial court is that in the morning following the night of occurrence, appellant was sleeping in his Baithak, when he was awakened by the policemen, who told him that his wife had been killed and the policemen further asked him to name the culprit. As he had shown his inability to give out the name of the culprit, the policemen falsely implicated

him. He has further alleged that his relations with his wife were quite cordial.

32. Before the trial court, it was also pleaded by the accused that F.I.R. has not been proved and motive has also not been proved.

33. Further ground taken before the learned trial court is that the order of conviction is not sustainable as the P.W.-1, Chowkidar/Complainant and P.W.-3, Sewa Ram have not supported the prosecution case and were declared hostile. There is no eye-witness of the alleged incident and prosecution has falsely implicated the appellant. The case is based on the extra judicial confession which is a very weak piece of evidence and is not sustainable in the eye of law. The learned Sessions Judge has misread the evidence adduced in favour of the prosecution and the prosecution has failed to prove its case beyond all reasonable doubts.

34. The ground taken in the memo of appeal is that the conviction and the sentence is against the weight of the evidence on record; in contrary to law; and is too severe.

35. Per contra, learned A.G.A. has submitted that it is a case of filing prompt F.I.R. and extra-judicial confession made by the accused-appellant not only before the police personnel but also before the P.W.-1, P.W.-3 and P.W.-4. He further submits that accused was last seen in between 10 to 11 P.M. on 17.12.1984 in the company of the deceased. Accused-appellant was immediately seen coming out from the field after the incident. Thereafter, he made extra-judicial confession to P.W.-1 about killing his wife. In the report of Chemical Examiner, it has been found that

the blood stain was found on the clothes of the accused tallied with those found on the clothes of the deceased.

36. Learned AGA further submitted that the couple was not on good terms with each other. The accused-appellant has also doubt about the character of his wife. Hotey Lal (P.W.-4) has also deposed about the strained relations of the accused with his wife. On the date of incident i.e. 17.12.1984, the couple were arguing on some point and later they went to locate some thing in the field where, the accused had killed his wife.

37. We find that the incident occurred at 11:00 P.M. at the night of 17.12.1984 in respect of murder of wife of the convicted appellant and prompt F.I.R. was lodged by the Village Chowkidar, after a gap of about two hours i.e. at 1:00 A.M at night of 18.12.1984. The first information report was lodged on the basis of oral Tehreer/report but thumb impression of the informant was obtained and the same was proved by the Head Constable/Scribe of the F.I.R.

38. In respect of promptly lodged F.I.R., the Supreme Court in **Jai Prakash Singh v. State Of Bihar And Another , (2012) 4 SCC 379, in paragraph No. 12,** has observed as under:

12. The FIR in criminal case is a vital and valuable piece of evidence though may not be substantive piece of evidence. The object of insisting upon prompt lodging of the FIR in respect of the commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of actual culprits and the part played by them as well as

the names of eye- witnesses present at the scene of occurrence. If there is a delay in lodging the FIR, it looses the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of large number of consultations/deliberations.

Undoubtedly, the promptness in lodging the FIR is an assurance regarding truth of the informant's version. A promptly lodged FIR reflects the first hand account of what has actually happened, and who was responsible for the offence in question. (Vide: Thulia Kali v. The State of Tamil Nadu, AIR 1973 SC 501; State of Punjab v. Surja Ram, AIR 1995 SC 2413; Girish Yadav & Ors. v. State of M.P., (1996) 8 SCC 186; and Takdir Samsuddin Sheikh v. State of Gujarat & Anr., AIR 2012 SC 37).

39. On 18.12.1984, the accused-appellant also gave an application at the police station and handed over a country made pistol along with a blood stained Gandasa which were alleged to be used in the commission of crime. The Gandasa along with other items were sent to the forensic examination by the Investigation Officer. In Forensic Science Laboratory Report (FSL), it had come that there is human blood on the Gandasa. The weapon of offence was handed over to the police by the accused at 2.30 A.M. in the night, therefore, there was no possibility of any witness present in the police station, therefore, police is the genuine witness of the memo of recovery of the country made pistol of 12 Bore along with two live cartridges and four empty cartridge and blood stained sickle (Gandasa). On fard baramadgi, there is also signature of the accused-appellant and

Constable Genda Singh (P.W.-8) and Head Constable Prempal Singh (P.W.-6).

40. So far as the reliability of the evidence of police personnel are concerned, the Apex Court in **Pradeep Narayan Madgaonkar & others v. State of Maharashtra, 1995 (4) SCC 255, in paragraph No.11**, has held as under :

“The evidence of the official (police) witnesses cannot be discarded merely on the ground that they belong to the police force and are, either interested in the investigation of the prosecuting agency but prudence dictates that their evidence needs to be subjected to strict scrutiny and as far as possible corroboration of their evidence in materials particulars should be sought. Their desire to see the success of the case based on their investigation, requires greater care to appreciate their testimony.”

41. In **Karamjit Singh vs. State (Delhi Administration), (2003) 5 SCC 291, in paragraph No.8** Hon’ble Supreme court has observed that :

“ The testimony of police personnel should be treated in the same manner as testimony of any other witness and there is no principle of law that without corroboration by independent witnesses their testimony cannot be relied upon. The presumption that a person acts honestly applies as much in favour of police personnel as of other persons and it is not a proper judicial approach to distrust and suspect them without good grounds. It will all depend upon the facts and circumstances of each case and no principle of general application can be laid down ”

42. In **Girja Prasad v. State of M.P. (2007) 7 SCC 625** Hon’ble Supreme Court in paragraph No.25, observed as under:

“It is well-settled that credibility of witness has to be tested on the touchstone of truthfulness and trustworthiness. It is quite possible that in a given case, a Court of Law may not base conviction solely on the evidence of Complainant or a Police Official but it is not the law that police witnesses should not be relied upon and their evidence cannot be accepted unless it is corroborated in material particulars by other independent evidence. The presumption that every person acts honestly applies as much in favour of a Police Official as any other person. No infirmity attaches to the testimony of Police Officials merely because they belong to Police Force. There is no rule of law which lays down that no conviction can be recorded on the testimony of Police Officials even if such evidence is otherwise reliable and trustworthy. The rule of prudence may require more careful scrutiny of their evidence. But, if the Court is convinced that what was stated by a witness has a ring of truth, conviction can be based on such evidence.”

43. In the Instant case handing over of weapon used in the commission of crime before the police officials is treated as conduct under Section 8 of the Evidence Act.

44. Section 8 of the Evidence Act is quoted below:

“Section 8: Motive, preparation and previous or subsequent conduct.

Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Explanation 1. -- The word conduct in this section does not include statements, unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2. -- When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant."

45. In **Prakash Chand v. State (Delhi Administration)**, (1979) 3 SCC 90, the Hon'ble Supreme Court in paragraph No. 8 has held as under:

*" 8.There is a clear distinction between The conduct of a person against whom an offence is alleged, which is admissible under **Section 8 of the Evidence Act**, if such conduct is influenced by any fact in issue or relevant fact and the statement made to a Police officer in the course of an investigating which is hit by Section 162 Criminal Procedure Code. What is excluded by Section 162 Criminal Procedure Code is the statement made to a Police officer in the course of investigation and not the evidence relating to the conduct*

of an accused person (not amounting to a statement) when confronted or questioned by a Police officer during (1) A.I.R.. 1969 A.P. 271. the course of an investigation. For example, the evidence of the circumstance, simpliciter, that an accused person led a Police officer and pointed out the place where stolen articles or weapons which might have been used in the commission of the offence were found hidden, would be admissible as conduct, under Section 8 of the Evidence Act, irrespective of whether any statement by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 of the Evidence Act "

46. In **A.N. Venkatesh v. State of Karnataka**, (2005) 7 SCC 714, The Apex Court in paragraph No. 9, has held as Under:

*"9. By virtue of **Section 8 of the Evidence Act**, the conduct of the accused person is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact. The evidence of the circumstance, simplicitor, that the accused pointed out to the police officer, the place where the dead body of the kidnapped boy was found and on their pointing out the body was exhumed, would be admissible as conduct under Section 8 irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 or not as held by this Court in **Prakash Chand Vs. State** (AIR 1979 SC 400). Even if we hold that the disclosure statement made by the accused appellants(Ex. P14 and P15) is not admissible under **Section 27 of the Evidence Act**, still it is relevant under Section 8. The evidence of the investigating officer and PWs 1, 2, 7 and PW4 the spot*

*mazhar witness that the accused had taken them to the spot and pointed out the place where the dead body was buried, is an admissible piece of evidence under Section 8 as the conduct of the accused. Presence of A-1 and A-2 at a place where ransom demand was to be fulfilled and their action of fleeing on spotting the police party is a relevant circumstance and are admissible under **Section 8 of the Evidence Act.**"*

47. The husband (appellant) himself had not lodged the F.I.R. in respect of murder of his wife rather he went to the police station, gave an application confessing his guilt and put his signature and when another signature was asked by PW-7 to compare his signature for the purpose of proving the document, the appellant refused to give his specimen. Therefore, **adverse inference** may be drawn against the accused-appellant. The post conduct of the appellant is also proving the case that he had not lodged the F.I.R. himself rather he promptly reached the police station along with weapon used in commission of the crime and had given the application dated 18.12.1984. The serological report also shows that there was human blood on the weapon and there is no occasion to the police to procure human blood in the night and send it for forensic examination and in forensic test, human blood was found on the clothes of the accused-appellant as well as on the weapon.

48. In **Ashwani Kumar Alias Ashu And Another v. State Of Panjab, (2015) 6 SCC 308**, in paragraph No.19, hon'ble Supreme Court has observed that "Refusal on the part of the accused to give his specimen handwriting must lead to **adverse inference** against him. While the recovery of weapon and the bloodstained items are

other circumstances leading to complete corroboration."

The relevant paragraph of the aforesaid judgement is quoted hereinunder :

*"19. The prosecution had made the witness available for test identification but the concerned accused had refused to participate in the test. Though there was no reason for such refusal and **adverse inference** could be drawn against the accused, we still looked for other corroborating material which is available in the form of extra judicial confession as deposed to by PW-7 Jasbir Singh and the incident which had happened at the dhaba of pahlwan as spoken by PW-5 Jagdeep Singh and PW-6 Harjeet Singh. The fact that a photograph of Jassi (Ext.P-38) was recovered pursuant to disclosure statement by Ashwani Kumar is another circumstance. That photograph (Ext.P-38) was recovered from Bolara Farm which was under the control of Anil Kumar. The description of Jassi in Gurumukhi on the back side of the photograph is crucial. **Refusal on part of Ashwani Kumar to give his specimen hand writing must lead to adverse inference against him.** The recovery of weapon, namely, kirpan which according to the doctor could have resulted in the injuries suffered by PW-15 Sukhwinder Singh and Jassi and the blood-stained seat cover are other circumstances lending complete corroboration. The communication by Ashwani Kumar and Anil Kumar with the number in Canada which itself was the source for the fax-message Ext.PAO is another circumstance. All these circumstances stand proved and clearly point in the direction of the guilt of Ashwani Kumar and Anil Kumar and additionally lend complete support to the testimony of and identification by PW 15*

Sukhwinder Singh. The courts below were therefore perfectly justified in finding Ashwani Kumar and Anil Kumar guilty of the offences under Sections 364/307 and 302 IPC."

49. In **Som Dutt v. State of Punjab, 2019 SCC Online P&H 759**, in paragraph No.10, the High court of Punjab & Haryana held that "refusing to give specimen writings, just to conceal their guilt, therefore, the court below have rightly drawn the **adverse inference** against the petitioners".

50. The Panchayatnama was conducted on 18.12.1984 in the morning at 8.30 A.M. and, in the Panchayatnama, it has also been mentioned that the first information report was lodged for the first time in the police station by PW-1, Sumeri (Village – Chowkidar), and the Panchayatnama was conducted after lodging the F.I.R. as Case Crime No. 221 of 1984 under Section 302 of IPC.

51. Hotey Lal (PW-4), though was not an eye-witness of the incident, but he was the witness of Panchayatnama and had supported the prosecution story as his statement under Section 161 Cr.P.C. was recorded in the night by the Investigating Officer wherein he disclosed that extra-judicial confession was made by the accused-appellant.

52. The Investigating Officer was also examined in the court as PW-7. He deposed that the F.I.R. was lodged **promptly**, he reached at the spot and recorded the statement of Hotey Lal on the same night and stated that the Panchayatnama could not be completed due to insufficient light. Thus, the deposition of PW-4 cannot be discarded as his statement under Section

161 Cr.P.C. was recorded in the night and he was also the witness of Panchayatnama.

53. PW-1, though was declared hostile and not supported the prosecution version but on his narration in the night, **prompt** F.I.R. was scribed by the Head Moharir who was examined as PW-6. Chowkidar (P.W.-3) of the village, is under obligation to give information of any incident took place in the village to the police station concerned.

54. So far as the the reliability of the statements/depositions of hostile witnesses are concerned, the Apex Court in **Bhagwan Dass v. State (NCT of Delhi), (2011) 6 SCC 396, in paragraph No. 18** has observed as under :

*" 18. No doubt Smt. Dhilllo Devi was declared hostile by the prosecution as she resiled from her earlier statement to the E police. However, as observed in **State: vs. Ram Prasad Mishra & Anr. : ,***

"7. ...The evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused, but can be subjected to close scrutiny and the F portion of the evidence which is consistent with the case of the prosecution or defence may be accepted."

*Similarly in **Sheikh Zakir vs. State of Bihar AIR 1983 SC 911** this Court held :*

"15. ... It is not quite strange that some witnesses do turn hostile but that by itself would not prevent a court from finding an accused guilty if there is otherwise acceptable evidence in support of the conviction."

55. In **Rajesh Yadav and another Etc. v. State of U.P. (2022) 12 SCC 200**, hon'ble Apex Court has dealt with the

evidentiality value of hostile witnesses. The relevant paragraphs are being reproduced herein as under;

“23. On the law laid down in dealing with the testimony of a witness over an issue, we would like to place reliance on the decision of this Court in *C. Muniappan v. State of T.N.*, (2010) 9 SCC 567:

“81. It is settled legal proposition that:

“6. ... the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof.” (*Vide Bhagwan Singh v. State of Haryana*, (1976) 1 SCC 389, *Rabindra Kumar Dey v. State of Orissa*, (1976) 4 SCC 233, *Syad Akbar v. State of Karnataka*, (1980) 1 SCC 30 and *Khujji v. State of M.P.*, (1991) 3 SCC 627, SCC p. 635, para 6.)

82. In *State of U.P. v. Ramesh Prasad Misra* [(1996) 10 SCC 360: 1996 SCC (Cri) 1278] this Court held that (at SCC p. 363, para 7) evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused but required to be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence can be relied upon. A similar view has been reiterated by this Court in *Balu Sonba Shinde v. State of Maharashtra* [(2002) 7 SCC 543: 2003 SCC (Cri) 112], *Gagan Kanojia v. State of Punjab* [(2006) 13 SCC 516: (2008) 1 SCC (Cri) 109], *Radha Mohan Singh v. State of U.P.* [(2006) 2 SCC 450: (2006) 1 SCC (Cri) 661], *Sarvesh Narain Shukla v.*

Daroga Singh [(2007) 13 SCC 360: (2009) 1 SCC (Cri) 188] and *Subbu Singh v. State* [(2009) 6 SCC 462: (2009) 2 SCC (Cri) 1106].

83. Thus, the law can be summarised to the effect that the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence.

84. In the instant case, some of the material witnesses i.e. B. Kamal (PW 86) and R. Maruthu (PW 51) turned hostile. Their evidence has been taken into consideration by the courts below strictly in accordance with law. Some omissions, improvements in the evidence of the PWs have been pointed out by the learned counsel for the appellants, but we find them to be very trivial in nature.

85. It is settled proposition of law that even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be disregarded. After exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution's witness. As the mental abilities of a human being cannot be expected to be attuned to absorb all the details of the incident, minor discrepancies are bound to occur in the statements of witnesses.” *Vide Sohrab v. State of M.P.*, [(1972) 3 SCC 751 : (1972) SCC (Cri) 819 : AIR 1972 SC 2020], *State of U.P. v. M.K. Anthony*, [(1985) 1 SCC 505 : 1985 SCC (Cri) 105], *Bharwada Bhoginbhai Hirjibhai v. State of Gujrat*, [(1983) 3 SCC

217 : 1983 SCC (Cri) 728 : AIR 1983 SC 753], *State of Rajasthan v. Om Prakash*, [(2007) 12 SCC 381 : (2008) 1 SCC (Cri) 411], *Prithu v. State of H.P.*, [(2009) 11 SCC 585 : (2009) 3 SCC (Cri) 1502], *State of U.P. v. Santosh Kumar*, [(2009) 9 SCC 626 : (2010) 1 SCC (Cri) 88] and *State v. Saravanan*, [(2008) 17 SCC 587 : (2010) 4 SCC (Cri) 580].

56. After perusal of the entire record, it reveals that **prompt** F.I.R. was lodged for the first time in the police station by P.W.-1 Sumair (hostile witness). The accused-appellant after committing the murder made extra-judicial confession not only before the police but also before P.W.-1, P.W.-3 and P.W.-4 that he has committed murder of his wife with the Gandasa. On the next day of incident at 02:30 A.M. (morning), the accused-appellant reached police station and handed over the Gandasa along with one country-made pistol and two live cartridge narrating the motive in writing to the police why he has committed murder. Blood stain was found not only on the Gandasa but also on the cloth worn by the accused-appellant and the same were taken by the police and were sent to the Forensic Laboratory and in the Forensic Report/Serological Report, it has come that there was human blood on these items.

57. In **Digamber v State of Maharashtra, 2023 SCC Online SC 531**, the Apex court in paragraph No. 26 has observed as under:

26. ‘‘Though the **extra-judicial** confession of the accused- Digambar cannot be taken into consideration, however, his conduct of going to the Police Station and surrendering before the Police can certainly be taken into consideration in view of Section 8 of the Indian Evidence

Act, 1872 (hereinafter referred to as ‘‘the Indian Evidence Act’’)’’

58. In **Bhagwan Dass (supra)**, Hon’ble Apex Court has observed as under:

‘‘15. The mother of the accused, Smt. Dhillo Devi stated before the police that her son (the accused) had told her that he had killed Seema. No doubt a statement to the police is ordinarily not admissible in evidence in view of Section 162(1) Cr.PC, but as mentioned in the proviso to Section 162(1) Cr.PC it can be used to contradict the testimony of a witness. Smt. Dhillo Devi also appeared as a witness before the trial court, and in her cross examination, she was confronted with her statement to the police to whom she had stated that her son (the accused) had told her that he had killed Seema. On being so confronted with her statement to the police she denied that she had made such statement.

16. We are of the opinion that the statement of Smt. Dhillo Devi to the police can be taken into consideration in view of the proviso to Section 162(1) Cr.PC, and her subsequent denial in court is not believable because she obviously had afterthoughts and wanted to save her son (the accused) from punishment. In fact in her statement to the police she had stated that the dead body of Seema was removed from the bed and placed on the floor. When she was confronted with this statement in the court she denied that she had made such statement before the police. We are of the opinion that her statement to the police can be taken into consideration in view of the proviso of Section 162(1) Cr.PC.

17. In our opinion the statement of the accused to his mother Smt. Dhillo Devi is an extra-judicial confession. In a very recent case this Court in *Kulvinder*

Singh & Anr. vs. State of Haryana Criminal Appeal No.916 of 2005 decided on 11.4.2011 referred to the earlier decision of this Court in State of Rajasthan vs. Raja Ram (2003) 8 SCC 180, where it was held (vide para 10) :

"An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. The value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. It is not open to any court to start with a presumption that extra-judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession. Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it. After subjecting the evidence of the witness to a rigorous test on the touch-stone of credibility, the extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility."

59. Though P.W.-1 and P.W.-3 has been declared hostile but the Chowkidar was duty bound to lodge F.I.R. and in the night, the I.O. has recorded the statement of P.W.-4 mentioning that due to improper light, Panchayatnama could not be taken in the night, therefore, it was conducted in the early morning and in the Panchayatnama, it has been mentioned that the first information report was lodged by P.W.-1, Sumeri Chowkidar.

60. It transpires that though prompt F.I.R. was lodged by P.W.-1 but later on he turned hostile so even he has **turned hostile**, looking to the **post conduct** and accused-appellant's **extra-judicial confession** and **handing over** of the blood stained weapon and blood stained cloth worn by the accused-appellant and the same were corroborated **in the Forensic Report** as well as refusal of accused-appellant to give signature to P.W.-6, Head constable/Head Moharir Prempal Singh, and extra-judicial confession made in writing before the police make **adverse inference** against the accused-appellant, thus, there is no infirmity in the judgment of the trial court.

61. Present appeal lacks merit and is, accordingly, **dismissed**. The conviction of surviving appellant- Bandu Ram is confirmed.

62. Since the surviving appellant-Bandu Ram is on bail, his bail bonds are cancelled and the sureties are discharged. He is directed to surrender before the court concerned within three weeks to undergo the punishment awarded.

63. Lower court record be sent to the concerned Court forthwith.

64. Let a copy of this order be communicated by the Registrar (Compliance) to the Court concerned for compliance and to proceed in accordance with law in case the accused fails to surrender.

(2025) 4 ILRA 827
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 28.04.2025

BEFORE

THE HON'BLE VIVEK KUMAR BIRLA, J.
THE HON'BLE PRAVEEN KUMAR GIRI, J.

Criminal Appeal No. 345 of 1984

Dheer Singh & Anr. ... Appellants
Versus
State of U.P. ...Respondent

Counsel for the Appellants:

Sri Sumit Goyal, Sri Rajrshi Gupta, Sri Rijwan,
 Sri Dileep Kumar (Sr. Adv.)

Counsel for the Respondent:

D.G.A., Sri Anurag Pathak

(A) Criminal Law - Murder - Direct evidence - Appeal from conviction - Intentional homicide using tractor - Indian Penal Code, 1860 - Sections 302 & 302/34 - Crushed victim under tractor wheels - Evidence of injured and independent eyewitness corroborated by medical and expert evidence - Common intention - Related Witness - Medical Corroboration - *Motive established-Ocular vs. Medical evidence* - Direct and cogent ocular and medical evidence proved guilt beyond reasonable doubt - Injured witness testimony has higher evidentiary value - related witness not inherently unreliable - Conviction under Section 302 IPC can be sustained where the prosecution case is supported by reliable injured eyewitness testimony, promptly lodged FIR, and medical and site

inspection evidence. (Para - 4,12,31,35,43-47)

Litigation regarding passage (rasta) was ongoing between complainant and accused - confrontation occurred where Mangat (deceased) was assaulted - complainant was also injured - While returning from police station after lodging report, accused and Yashpal followed on a tractor - Accused drove the tractor over deceased on exhortation of Yashpal - resulting in his death - FIR lodged promptly and medical/post-mortem evidence corroborated ocular version.(Para - 4, 5, 6, 12, 13, 31)

HELD: - Appellant was found guilty of intentionally driving tractor over deceased after prior enmity and assault.

Ocular evidence of injured and independent witnesses corroborated by post-mortem and expert opinion. Conviction under Section 302 IPC upheld. Accused directed to surrender and serve out sentence. (Para - 44-48)

Criminal appeal dismissed. (E-7)

LIST OF CASES CITED: -

1. Krishna Mochi & ors. Vs St. of Bihar, (2002) 6 SCC 81
2. Masalti Vs St. of U.P., AIR 1965 SC 202
3. Darya Singh Vs St. of Punj., AIR 1965 SC 328
4. Appabhai & anr. Vs St. of Guj., AIR 1988 SC 696
5. St. of A.P. Vs S. Rayappa & ors., (2006) 4 SCC 512
6. Pulicherla Nagaraju @ Nagaraja Reddy Vs St. of A.P., (2006) 11 SCC 444
7. Satbir Singh & ors. Vs St. of U.P., (2009) 13 SCC 790
8. Jayabalan Vs U.T. of Pondicherry, 2010 (68) ACC 308 (SC)
9. Dharnidhar Vs St. of U.P., (2010) 7 SCC 759