10. Pending application(s), if any, shall also stand disposed of."

17. In the instant case, we definitely find that the arrest memo does not contain any column for the ground of the arrest of the petitioner. Thus, there being a definite non-compliance of the mandate of Section 50 of the Cr.P.C. and Article 22(1) of the Constitution of India, we are of the view that the arrest of the petitioner be declared illegal and all subsequent arrest memos be quashed and also the remand orders be set-aside.

18. We have not interfered with the charge-sheet which has been submitted. The Court may continue with the proceedings in accordance with law as per the charge-sheet.

19. For the reasons given above, the writ petition stands ***allowed***.

20. This judgment be sent to the office of the Director General of Police who would circulate it amongst all the police personnel of the State of Uttar Pradesh. We are getting this circulation done as a technical error in many of the arrests is resulting in the declaration of the arrests as illegal.

(2025) 5 ILRA 1203
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 30.05.2025

BEFORE

THE HON'BLE SAUMITRA DAYAL SINGH, J.
THE HON'BLE SANDEEP JAIN, J.

Criminal Appeal No. 370 of 1991

Taley Hasan & Anr. ...Appellants
Versus
State of U.P. ...Respondent

Counsel for the Appellants:
Imran Mabood Khan, Khalilullah Khan, Shyam Shanker Pandey

Counsel for the Respondent:
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(A) Criminal Law - Murder and Rape based on Circumstantial Evidence - Admissibility of extra-judicial confession and recovery without proper disclosure under Section 27 Evidence Act - Indian Penal Code, 1860 - Sections 302, 376 & 201 - Evidence Act, 1872 - Section 27 - Recovery of weapon and extra-judicial confession must be proven strictly through admissible and cogent evidence - Extra-judicial confession alone cannot justify conviction in absence of corroboration - Recovery without proper disclosure statement fails the test of Section 27 and cannot alone form basis of conviction - Suspicion, however strong, cannot substitute proof beyond reasonable doubt in circumstantial evidence cases - Conviction cannot be sustained where the prosecution fails to establish a complete chain of circumstances and the evidence presented consists of doubtful recoveries and unreliable extra-judicial confessions.(Para - 60,61,75)

Two minor girls went missing on 17.05.1987 - their decomposed bodies were recovered on 21.05.1987 - appellants arrested thereafter and allegedly confessed and led to recovery of weapons and belongings of deceased - accused allegedly confessed before villagers and led to recovery of 'daratis' and an earring - conviction based on extra-judicial confession and recoveries - Medical opinion could not ascertain cause of death; no direct evidence or eyewitnesses. (Para - 3 to 13, 41 to 42)

HELD: - Conviction of the appellants cannot be sustained on uncorroborated extra-judicial confession and inadmissible recoveries. Prosecution failed to establish complete chain of circumstances to prove guilt beyond reasonable doubt. **Conviction and sentence set aside.** (Para - 41, 50 to 52, 54 to 60,78)

Appeal allowed. (E-7)

List of Cases cited:

1. Earabhadrappa Vs St. of Karn., (1983) 2 SCC 330

2. Bodhraj Vs St. of J & K, (2002) 8 SCC 45

3. Ramanand @ Nandlal Bharti Vs St. of U.P., (2022) SCC OnLine SC 1396

4. Subramanya Vs St. of Karn., (2023) 11 SCC 255

5. Rajesh & anr. Vs St. of M.P. , (2023) 15 SCC 521

6. Sharad Birdhichand Sarda Vs St. of Maha., (1984) 4 SCC 116

7. Hanumant Vs St. of M.P., (1952) 2 SCC 71

8. Shivaji Sahabrao Bobade & anr. Vs St. of Maha., (1973) 2 SCC 793

9. Raj Naykar Vs St. of Chattis. (2024) 3 SCC 481

10. Dudh Nath Pandey Vs St. of U.P. (1981) 2 SCC 166

11. Mustkeem Vs St. of Raj. (2011) 11 SCC 724

12. Sahoo Vs St. of U.P., 1965 SCC OnLine SC 60

13. Jagta Vs St. of Har., (1974) 4 SCC 747

14. Kishore Chand Vs St. of H.P., (1991) 1SCC 286

15. Sahadevan Vs St. of T.N. (2012) 6 SCC 403

16. Mohammed Fasrin Vs State (2019) 8 SCC 811

(Delivered by Hon'ble Saumitra Dayal Singh, J.
&
Hon'ble Sandeep Jain, J.)

1. Heard Sri Shyam Shanker Pandey, learned counsel for the appellants and Ms. Archana Singh, learned AGA for State.

2. The present criminal appeal arises from the judgement and order dated 27.02.1991, passed by Sri Brahm Singh, learned II Additional Sessions Judge, Rampur in Sessions Trial No.101 of 1988 (State Vs. Taaley Hasan and another), arising out of Case Crime No.133 of 1987, under Section 376 & 302/201 I.P.C., Police Station-Shahabad, District Rampur, whereby, the present appellants have been convicted and sentenced to undergo life imprisonment for the offence under Section 302 I.P.C., to undergo rigorous imprisonment of five years for offence under Section 376 I.P.C. and to undergo one year rigorous imprisonment for the offence under Section 201 I.P.C. All the sentences were directed to run concurrently as below:-

"Accused Taley Hasan and Gulab convicted under Section 302 IPC are sentenced to life imprisonment each and they were further sentenced to five years RI for their conviction under Section 376 IPC. Again, they were sentenced for one year RI under Section 201 IPC. All the sentences shall run concurrently."

3. Prosecution story emerged on a missing person report filed on 19.05.1987 by 'J', the uncle of 'T'-one of the two girls. The report stated, 'K' and another girl, 'T', had left their home in the afternoon of 17.05.1987 to cut grass. Both girls, aged about 10 and 8 years respectively, did not return home by late evening. A search was undertaken by 'J' and other villagers of Madiyan Badey. It did not yield any fruitful result. Thereafter, on 21.05.1987, the dead bodies of 'K' and 'T' were recovered from

a pond near the river Ganges. Both bodies were in a late stage of decomposition. Further, clothes of 'K' were recovered on the same day and were marked as Ex.Ka-29, at the trial. Certain personal belongings of 'T' were also recovered near her dead body and marked as Ex.Ka-26 at the trial. Additionally, on 21.05.1987, blood-stained and plain soil was recovered from the vicinity of the dead body of 'K'. That Recovery Memo is Ex.Ka-28 at the trial.

4. According to the prosecution story, following the discovery of the dead bodies of the deceased, rumours arose (at the village), implicating the present appellants in the occurrence. It appears, these rumours led to the appellant being apprehended. After their arrest, appellant Taley Hasan is alleged to have led the police to a sugarcane field belonging to Amar Singh, where he purportedly committed rape upon 'K'.

5. On 21.05.1987, the dead bodies of the deceased 'K' and 'T' were subjected to inquest. The inquest report for 'K' indicates the body was in an advanced stage of decomposition and was putrefied. As for clothing, it was noted, both upper and lower garments were present on the body, as were certain bangles worn by the deceased. Similarly, the inquest report for deceased 'T' revealed that her lower garment was present on the body, while the rest of the body was naked. Bangles were found on the right hand. The two inquest reports are exhibited as Ex.Ka-19 and Ex.Ka-18, respectively, at the trial.

6. On 22.05.1987, Dr. Arun Gupta conducted two autopsy examinations on the dead bodies of 'K' and 'T'. The autopsy reports of 'K' is Ex.Ka-3 at the trial, whereas the autopsy report of 'T' is Ex.Ka-4 at the trial. The autopsy report of 'K' records a below:

"Body is highly decomposed stage, hairs easily pull out. Teeth loose in the socket skin at several places eaten up by maggots large amount of maggots crawling all over the body. mouth half open. eyes closed. Eye ball soften external genitals eaten up by maggots of size of 2 c.m. Skin of back and buttocks completely absent. ribs exposed on back side. Skin of foot of the lower leg eaten by the maggots muscles exposed."

7. The autopsy report of 'T' records as below:

"2 c.m. long maggots crawling all over the body in large numbers, body is in advance stage of decomposition. Scalp, hairs and skin overall face absent. Skull and face bone exposed. Eye balls absent. Nasal cartilage absent. Teeth loose in socket. Abdominal wall and all visceras absent. Skin over the chest absent. Ribs exposed. Skin and muscles are absent at part of right thigh and right lower leg maggots crawling. Tibia and fibula of left lower leg exposed at its upper aspect left upper arm is separated from the body. Humerus radius and ulna (only bones) lying loose carpels, metacarpals and phalanges of right hand absent. Right upper arm skin is eaten up by maggots. Nails loose."

8. Those autopsy reports are also on record and those are admitted documents. The clothes and personal belonging of the deceased 'K' and 'T' were sent to forensic examination.

9. According to forensic report, one sickle recovered contained blood marks.

The clothing sent for forensic examination revealed presence of human blood. However all blood detected on the items sent for forensic examination was found disintegrated. The forensic report is Ex.Ka-33, at the trial.

10. During investigation, the two appellants were arrested. Also, the two extra judicial confessions are claimed to be recorded-one before a villager Pooran (P.W.-2 at the trial) and the other 'M', father of 'T' (P.W.-5 at the trial).

11. On 28.05.1987, the appellant Taley Hasan is claimed to have disclosed to the I.O., the place where he allegedly committed rape on 'K'. Upon search, the Investigating Officer Sri B.N. Mishra (P.W.-8 at the trial), recovered an earring/steel 'Kundal' of 'K', from that place. That Recovery Memo dated 28.05.1987 is Ex.Ka.5 at the trial. It was witnessed by Khemkaran (P.W.-4 at the trial), 'M' (P.W.-5 at the trial), Ram Prasad (P.W.-6 at the trial) and Babu Ram (P.W.-3 at the trial).

12. On 28.05.1987, the appellant-Gulab also led Sri B.N. Mishra (P.W.-8 at the trial) to the recovery of a sharp-edged weapon, 'darati' (sickle) with a wooden handle/grip, identified as Ex.Ka-1 at the trial. On the same day, another 'darati' (sickle), described as blood-stained, was recovered by Sri B.N. Mishra (P.W.-8) at the pointing out of the accused-Taley Hasan. The Recovery Memo for this item was witnessed by Khemkaran (P.W.-4 at the trial), 'M' (P.W.-5 at the trial), Ram Prasad (P.W.-6 at the trial), and Babu Ram (P.W.-3 at the trial), and is identified as Ex.Ka-2 at the trial.

13. In such circumstance, the investigation was completed and charge sheet was submitted to the Court.

14. Upon the case being committed for trial to the Court of Sessions, following charges came to be framed against the two appellants :-

"प्रथम :- यह कि दिनांक 17.5.87, को समय किसी समय अज्ञात स्थान वहद जंगल ग्राम बदे मडेयान के उत्तर की तरफ गंगा की झाड़ थाना शाहबाद जिला रामपुर के अंतर्गत आप लोगो ने वादी की पुत्रिया नाबालिग 'K' और 'T' के साथ बलात्कार करके उनकी हत्या कर दी, और ऐसा करके आप लोगो ने ऐसा अपराध किया जो आई.पी.सी. की धारा 302 के अन्तर्गत दन्डनीय अपराध है, और इस सत्र न्यायालय के प्रसंगान में है ।

द्वितीयः- यह कि उपरोक्त दिनांक समय एवं स्थान पर आप लोगो ने वादी की पुत्रिया 'K' एवं 'T' की हत्या करके उसकी लाश को छिपाने का प्रयास किया, और कानून की गिरफ्त से अपने आपको बचाने के लिए आप लोगो के हत्या के सबूत को छिपाने का प्रयत्न किया, और उसके द्वारा आप लोगो ने ऐसा अपराध किया जो आइ.पी.सी. की धारा 201 के अन्तर्गत दन्डनीय अपराध किया, जो इस सत्र न्यायालय के प्रसंगान में है।

तृतीयः- यह कि उपरोक्त दिनांक समय एवं स्थान पर आप लोगो ने वादी की लड़की 'K' मृतक के साथ बलात्कार किया, और उसके द्वारा आपने ऐसा अपराध किया, जो आइ.पी.सी. की धारा 376, के अन्तर्गत दन्डनीय अपराध है, और इस सत्र न्यायालय के प्रसंगान में है। "

15. At the trial, besides the documentary evidence, the prosecution examined ten witnesses. First, 'J', the uncle of 'T', who was the first informant, was examined as P.W.-1. During his examination-in-chief, he proved that 'K' was the daughter of 'B' (P.W.-3). He deposed that 'K' aged 11 years and 'T' aged 8 years had left their home at around 12:00 noon to gather grass for their cattle. He narrated, though the girls did not frequently go out for that purpose, they had gone out for that purpose, on 17.05.1987. Their dead bodies were discovered after about five days, about 1 k.m. away from the village, in a village pond. He had sent the village Chaukidar Shiv Lal (not examined at the

trial), to inform the Police about the same. He proved, he had got the First Information Report lodged. He further proved, he recognized 'K' and 'T' from the clothing that was available on their dead body. At the same time, he denied, he had learnt about the involvement of the present appellants from the other villagers.

16. During his cross examination, he admitted that earlier he had been employed by one Aga Sahab S/o Nabban Sahab. He further claimed that he had left that job. On question being put to him, he stated- mostly Village Pradhan were elected from the family of Nabban Sahab. On further question, he admitted, the present Pradhan belonged to the 'Ghosi' caste and that the present appellants i.e. accused persons also belonged to that caste. He specifically admitted, the lower garment of 'T' were found present on her dead body at the time of its discovery. He denied the suggestion that he had lodged the First Information Report under the influence of Aga Sahab.

17. Pooran was examined as P.W.-2. During his examination-in-chief, he failed to recognize the appellants. He was declared hostile and presented for cross-examination by the prosecution. In that, initially he feigned ignorance but later correctly identified the appellants as persons known to him. He then set out to prove the extra judicial confession made to him by the appellants. In that he stated as below : -

"इनमें से एक के बाप का नाम मन्नू है, दूसरे के बाप का नाम याद नहीं आ रहा। इनमें से एक का नाम ताले हसन व दूसरे का गुलाब है। मैने इन्हे सबसे पहले तब देखा जबकि ये पकड़े गये। इन्होंने पहले मुझसे यह कहा था "जो होना था हो गया। अब फैसला करादो।" कितने दिन पहले कहा था, याद नहीं। मेरे गांव के पास की 'K' व 'T' लड़कियों का कत्ल हुआ था। उपरोक्त दोनो मुलाज़िम ने मुझसे कहा था "हमसे ग़लती हो गई। हमने इन लड़कियों के साथ बुरा काम किया और उन्हे जान से मार दिया। हमें इस बात की माफ़ी करा दो।"

18. On being allowed to be cross-examined by the defence, he clarified that the accused persons had met him at about 12:00 noon. He further stated, they were accompanied by father of one of them, namely, Mangoo. However, he did not specify the exact parentage of either appellant. On being questioned, he stated, he was alone at that time and that he had told the appellants that he would get them a pardon by the police, if possible. He further stated, he neither went to the police nor to the parents of the deceased. Also, the police did not ask him any thing. He did not approach the father of the deceased and he also did not make any statement to the police. Yet, he denied that the appellants had not gone to him or that he was making a false deposition for the reason of his caste leanings.

19. Thereafter, 'B', the father of 'K' was examined as P.W.-3. He did not add to the deposition made by 'J'. However, during his cross-examination he did state that he learnt that the appellants were involved in the occurrence and that they first committed rape on the deceased. Yet, to the next question, he claimed, he had not been informed by any one else about the occurrence. On a further question, he admitted, at present the Village Pardhan and the present appellants belongs to 'Ghosi' caste. Also, he denied, he had voted for Khan Sahab of Rampur in the Pradhan election apparently referring to the same person, his brother 'J' described as Nabban Sahab.

20. Thereafter, 'K' the villager was examined as P.W.-4. Besides the general

facts as to the disappearance of the two deceased girls, he narrated, their dead bodies were discovered on the fifth day. He further admitted, the 'Panchayatnama' was drawn by the Investigating Officer. As to the recovery of 'daratis' (sickles), he denied, that the same were recovered in his presence. He claimed to have remained present at the Police Station, where he signed the documents.

21. He was not declared hostile. On being offered for cross-examination, he further stated, 'B', 'M' and 'R' had also put their signature on Ex.Ka-1 and Ex.Ka.2 i.e. the Recovery Memo of two 'daratis' (sickles), at the Police Station. According to him, both accused were present at the Police Station, at that time. He claimed ignorance if the accused persons had been taken out of the Police Station at that time. Yet, he maintained that the other witnesses had not gone out of the Police Station with the Investigating Officer.

22. 'M', father of 'T', was examined as P.W.-5. Besides proving the facts leading to the disappearance of the two girls, he claimed (during his examination-in-chief itself), the earring/steel 'Kundal' of 'K' was recovered from near her dead body by the Investigating Officer, whereas the 'daratis' (sickles) were recovered from the sugarcane field.

23. Thereafter, he further proved the extra judicial confession claimed to have been made by both the appellants. That he described as below:

"ताले हसन और गुलाब ने मेरे सामने दरोगा को यह बयान दिया कि ताले हसन ने कहा "मैने 'K' के साथ गलत काम किया तो वह मर गई।"

24. He further proved the extra judicial confession of Gulab as below :-

"गुलाब ने कहा कि " 'T' ने कहा कि मै घर जाकर कह दूँगी" तो मैने उसे लाठी मारी और उसके दांत तोड़ दिये और दूसरी लाठी मारकर उसका हाथ तोड़ दिया, जब लड़की चिल्लाने लगी तो उसकी दराती से गर्दन काट दी।"

25. He further identified the bigger 'darati' (sickle) as belonging to 'T'. He also disclosed, it was discovered from the corner of the sugarcane field at the pointing out of appellant-Gulab. The other 'darati' (sickle) was recovered from the agricultural field of Girja Singh at the pointing out of appellant-Taley Hasan. During his cross-examination, he denied, he was not present when the recovery was made. He stated, the Investigating Officer along with the appellants and witnesses, had gone to the spot where the two 'daratis' (sickles) and the earring/steel Kundal were recovered. He also proved the recovery of clothes, etc. As to the Village Pradhan, he admitted, the current Gram Pradhan belonged to the 'Ghosi' caste, whereas the earlier Gram Pradhan came from the family of Al-Hasan, who had a 'Kothi' (mansion) at Rampur. He admitted, the said person lost the election of Gram Pradhan to Pyarey Ghosi. At the same time, he denied, he was a supporter of (Khan Sahab) and that a false case had been lodged by him and 'J' at the instigation of the said Khan Sahab.

26. Another villager 'R' was examined as P.W.-6. He described, the place from where the dead bodies of 'K' and 'T' were discovered, was used as a grazing ground by the appellants and also by him and all other villagers. During his cross-examination, he claimed besides the discovery of dead bodies nothing else was recovered. However, he admitted, he was

present at the time of recovery of dead bodies of 'K' and 'T'.

27. Thereafter, Dr. Arun Gupta was examined as P.W.-7. He proved the autopsy report. He further proved that the dead bodies of 'K' and 'T' were about five days old. Their teeth had become loose. The skin was peeling and the bodies were infected with maggots. There were no discernible marks of injury, on the highly decomposed bodies of 'K' and 'T'. He also proved that the cause of death could not be ascertained. It was disclosed, any clothing found on the dead body was turned over to the Police Station. With respect to dead body of 'T', he further noted, the upper half of the left hand of that dead body was found disjointed from the body.

28. Thereafter, Sri B.N. Mishra, the S.H.O., was examined as P.W.-8. During his examination-in-chief, he proved the recoveries, both of the 'daraties' (sickle) and of the earring/steel 'Kundal'.

29. Thereafter, Sri N.B. Pant was examined as P.W.-9. He proved the facts with respect to the recovery of the dead bodies and other related articles and proceedings.

30. S.I. S.C. Tomar, the I.O. was examined as P.W.-10. He proved the recovery of the blood-stained earth, etc. He also proved the extra judicial confession made by the appellants to Pooran on 28.05.1987.

31. Thereafter, the statements of the accused-appellants were recorded under Section 313 Cr.P.C. The learned court below heard the parties and, thereafter, passed the impugned order.

32. Submission of the learned counsel for the appellants is, the learned court below erred in law by convicting the appellants for the heinous offence of rape solely on the strength of the extra judicial confession and the recovery of two 'daratis'. One of the 'daratis' was described as blood-stained. Both were recovered at the pointing out of the appellants, along with the recovery of one earring/steel 'Kundal' belonging to 'K'.

33. Thus, it has been submitted, the charge framed against the appellants was never proved by cogent and material evidence collected by the prosecution. It being a case of circumstantial evidence and not direct evidence, the prosecution should not have been relieved of its burden to establish that the appellants had committed rape on the deceased girls and had killed them, thereafter. If the confessional statement is excluded, the only piece of evidence that survives is the recovery. That by itself may only offer a strong ground for suspicion but not proof necessary for conviction.

34. As to the direct evidence of extra judicial confession, it has been stated, no prior relationship of trust or any other circumstance was proven by the prosecution that might lend credibility to the prosecution narration that the appellants may have made such confession to Pooran, who is not related to either party and who may have held no position of trust, or to 'M', the father of 'T'. Referring to these statements, it has been argued, the substance of the confession as proven by Pooran and 'M' presents two different accounts narrated by two different witnesses, about the same occurrence. That renders the extra judicial confession inherently inconsistent and doubtful.

35. As to the recoveries, it has been contended, the same are also not free from doubt. While 'M' claimed, the recoveries were made as disclosed and proven by the Police, Khemkaran (P.W.-4) and 'B' (P.W.-3) did not prove the recovery of the earring belonging to 'K'. However, 'M', who is the father of 'T', tried to prove that recovery as well. Similarly, with respect to the recovery of the 'daraties', it has been claimed, at least one witness, namely, Khemkaran (P.W.-4), who happens to be an independent witness, did not support the prosecution story regarding the recoveries of the 'daraties'. According to him, neither the accused persons nor the witnesses left the Police Station to make those recoveries.

36. In such doubtful facts, it has been stated, the learned court below has erred in convicting the appellants for the heinous offence under Sections 302 & 376 read with Section 201 I.P.C.

37. On the other hand, learned A.G.A. would submit that the occurrence was promptly reported by 'J', the uncle of 'T'. 'K' and 'T' went missing in the evening of 17.05.1987. Their families and other villagers searched for them on 17.05.1987 and 18.05.1987. When the girls could not be found, a missing person report was lodged on 19.05.1987. The police also could not search out the girls. In such circumstances, upon the discovery of their dead bodies from a village pond near the river Ganges on 21.05.1987, FIR was registered and investigation began. Since the bodies were in a highly decomposed state, the cause of death could not be ascertained. Additionally, as the private parts of both bodies had completely decomposed, no opinion could be formed regarding commission of rape. However, blood-stained earth was recovered from the place where the dead bodies were found, clearly indicating that the girls had been murdered.

38. As to the recoveries, it has been submitted, besides the clothing worn by 'K' and 'T', three other items were recovered. All these recoveries were made at the pointing out of the appellants. Specifically, earring/steel 'Kundal' belonging to 'K' was recovered from a sugarcane field at the pointing out of the accused Taley Hasan. This disclosure statement was duly proven by the Investigating Officer S.C. Tomar (P.W.-10), as recorded on the Case Diary and marked as exhibit, including Ex.Ka.30, Ex.Ka.31, and Ex.Ka.32. There is no reason to doubt Ex.Ka.5, as it was properly proven. Further, the two 'daraties', one belonging to 'K' and the other to 'T', were also recovered at the pointing out of the appellants. The larger 'darati' belonging to 'K' was recovered at the pointing out of appellant Gulab, while the other was recovered at the pointing out of appellant Taley Hasan. That 'darati' was blood-stained. The Recovery Memos for these items were also proven at the trial as Ex.Ka-1 and Ex.Ka-2.

39. In the context of these recoveries, the extra-judicial confession was made by the two appellants. This confession was proven by Pooran (P.W.-2) and by 'M' (P.W.-5). Since the extra-judicial confessions made by the two appellants are corroborated by the recovery of the three items noted above, it has been stressed, there is sufficient evidence to uphold the conviction, both for the offence under Section 376 I.P.C. and the heinous offence under Section 302 I.P.C.

40. In that regard, reference has been made to the undisputed facts and

circumstances of the offence, wherein two minor girls went missing on 17.05.1987, while they had gone to get grass for their cattle. Their bodies were later found in a pond near a grazing ground, that was proven to be used by others, including the present appellants. This fact was established by Ram Prasad (P.W.-6). Being a case arising on circumstantial evidence, the Court may not require the same quality of evidence that would be expected in a case of direct evidence. Since the appellants could not offer any defence evidence and it could not cast doubt on the prosecution account of the recoveries or the extra-judicial confessions, only one conclusion can be drawn-that the appellants were responsible for the occurrence involving the rape and murder of the two minor girls.

41. Having heard learned counsel for the parties and having perused the record, it is evident, the case originated on circumstantial evidence. Thus, the prosecution admits that the two girls, 'K' and 'T', went missing on 17.05.1987 and could not be traced until 19.05.1987. At that stage, no suspicion arose against the present appellants. This fact is apparent and it remains undisputed to the prosecution, inasmuch as it is the own case of the prosecution that a missing person report was lodged against unknown miscreants. Then, according to Pooran (P.W.-2) and 'M' (P.W.-5), extra-judicial confessions were by the appellants made to these two witnesses, confessing that they had committed the offence. Thereafter, the appellants may have been arrested on 28.05.1987, ten days after the occurrence. Upon their arrests, recoveries of two 'daratis' were made.

42. It is also true that with respect to those recoveries, disclosure statements were recorded in two Recovery Memos dated 28.05.1987, namely, Ex.Ka.1 and Ex.Ka.2. The 'darati' recovered at the pointing out of Taley Hasan had some blood stain. At the same time, the forensic/serological report does not establish that the said blood was of human origin. It is clearly recorded in the forensic report submitted by FSL, Agra dated 02.12.1989 (Ex-33) that the blood sample found on that 'darati' was disintegrated. With respect to the third recovery of the earring/steel 'Kundal' claimed to have been recovered at the pointing out of Taley Hasan (Ex.Ka.5), it may be noted, that Recovery Memo does not claim to contain a disclosure statement concerning the recovery of that earring/steel 'Kundal' of 'K'. On the contrary, the narration contained in that Recovery Memo is that the accused Taley Hasan volunteered to show to the Investigating Officer the spot, where he had committed rape. Upon the police party reaching that spot, they found the earring/steel 'Kundal' that was identified as belonging to 'K'. The Recovery Memo further narrates, the earring/steel 'Kundal' was identified to be of 'K' by 'B', the father of 'K'. The witnesses to that Recovery Memo are Khemkaran (P.W.-4), 'M' (P.W.-5), Ram Prasad (P.W.-6), and 'B' (P.W.-3).

43. On the recovery, especially of assault weapon and the requirement of Section 27 of the Indian Evidence Act, 1872, in **Earabhadrappa vs State of Karnataka, (1983) 2 SCC 330**, the Supreme Court observed as below:

"8. For the applicability of Section 27 therefore two conditions are prerequisite, namely (1) the information must be such as has caused discovery of the fact; and (2) the information must "relate

distinctly" to the fact discovered. In the present case, there was a suggestion during the trial that PW 26 had prior knowledge from other sources that the incriminating articles were concealed at certain places and that the statement Ex. P-35 was prepared after the recoveries had been made and therefore there was no "fact discovered" within the meaning of Section 27 of the Evidence Act. We need not dilate on the question because there was no suggestion made to PW 26 during his cross-examination that he had known the places where the incriminating articles were kept. That being so, the statement made by the appellant Ex. P-35 is clearly admissible in evidence."

(emphasis supplied)

44. Then, in **Bodhraj vs State of J & K, (2002) 8 SCC 45**, the Supreme Court further observed as below:

"18. Emphasis was laid as a circumstance on recovery of weapon of assault, on the basis of information given by the accused while in custody. The question is whether the evidence relating to recovery is sufficient to fasten guilt on the accused. Section 27 of the Indian Evidence Act, 1872 (in short "the Evidence Act") is by way of proviso to Sections 25 to 26 and a statement even by way of confession made in police custody which distinctly relates to the fact discovered is admissible in evidence against the accused. This position was succinctly dealt with by this Court in Delhi Admn. v. Bal Krishan [(1972) 4 SCC 659 : AIR 1972 SC 3] and Mohd. Inayatullah v. State of Maharashtra [(1976) 1 SCC 828 : 1976 SCC (Cri) 199 : AIR 1976 SC 483] . The words "so much of such information" as relates distinctly to the fact thereby discovered, are very important and the whole force of the section concentrates on them. Clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. The ban as imposed by the preceding sections was presumably inspired by the fear of the legislature that a person under police influence might be induced to confess by the exercise of undue pressure. If all that is required to lift the ban be the inclusion in the confession of information relating to an object subsequently produced, it seems reasonable to suppose that the persuasive powers of the police will prove equal to the occasion, and that in practice the ban will lose its effect. The object of the provision i.e. Section 27 was to provide for the admission of evidence which but for the existence of the section could not in consequence of the preceding sections, be admitted in evidence. It would appear that under Section 27 as it stands in order to render the evidence leading to discovery of any fact admissible, the information must come from any accused in custody of the police. The requirement of police custody is productive of extremely anomalous results and may lead to the exclusion of much valuable evidence in cases where a person, who is subsequently taken into custody and becomes an accused, after committing a crime meets a police officer or voluntarily goes to him or to the police station and states the circumstances of the crime which lead to the discovery of the dead body, weapon or any other material fact, in consequence of the information thus received from him. This information which is otherwise admissible becomes inadmissible under Section 27 if the information did not come from a person in the custody of a police officer or did come from a person not in the custody of a police officer. The statement which is admissible

under Section 27 is the one which is the information leading to discovery. Thus, what is admissible being the information, the same has to be proved and not the opinion formed on it by the police officer. In other words, the exact information given by the accused while in custody which led to recovery of the articles has to be proved. It is, therefore, necessary for the benefit of both the accused and the prosecution that information given should be recorded and proved and if not so recorded, the exact information must be adduced through evidence. The basic idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered as a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true. The information might be confessional or non-inculpatory in nature but if it results in discovery of a fact, it becomes a reliable information. It is now well settled that recovery of an object is not discovery of fact envisaged in the section. Decision of the Privy Council in Pulukuri Kottaya v. Emperor [AIR 1947 PC 67 : 48 Cri LJ 533 : 74 IA 65] is the most-quoted authority for supporting the interpretation that the "fact discovered" envisaged in the section embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect. (See State of Maharashtra v. Damu Gopinath Shinde [(2000) 6 SCC 269 : 2000 SCC (Cri) 1088 : 2000 Cri LJ 2301] .) No doubt, the information permitted to be admitted in evidence is confined to that portion of the information which "distinctly relates to the fact thereby discovered". But the information to get admissibility need not be so truncated as to make it insensible or incomprehensible. The extent of information admitted should be consistent with understandability. Mere statement that the accused led the police and the witnesses to the place where he had concealed the articles is not indicative of the information given."

(emphasis supplied)

45. Then, a three-judge bench of the Supreme Court in **Ramanand alias Nandlal Bharti vs State of Uttar Pradesh, (2022) SCC OnLine SC 1396**, further elaborated that principle in law and lucidly expressed the same as below:

"53. If, it is say of the investigating officer that the accused appellant while in custody on his own free will and volition made a statement that he would lead to the place where he had hidden the weapon of offence along with his blood stained 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 blood stained clothes or any other article is discovered then that part of the entire process would form the second part of the panchnama. This is how the law expects the investigating officer to draw the discovery panchnama as contemplated under Section 27 of the Evidence Act. If we read the entire oral evidence of the investigating officer then it is clear that the same is deficient in all the aforesaid relevant aspects of the matter.

56. 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 the present case, what we have noticed from the oral evidence of the investigating officer, PW-7, Yogendra Singh is that he has not proved the contents of the discovery panchnama and all that he has deposed is that as the accused expressed his willingness to point out the weapon of offence the same was discovered under a panchnama. We have minutely gone through this part of the evidence of the investigating officer and are convinced that by no stretch of imagination it could be said that the investigating officer has proved the contents of the discovery panchnama (Exh.5). There is a reason why we are laying emphasis on proving the contents of the panchnama at the end of the investigating officer, more particularly when the independent panch witnesses though examined yet have not said a word about such discovery or turned hostile and have not supported the prosecution. 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."

(emphasis supplied)

46. In **Subramanya vs State of Karnataka, (2023) 11 SCC 255**, the Supreme Court again explained the above principle as below:

"78. 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, the site of burial of the dead body, clothes, etc. then the first thing that the investigating officer should have done was to call for two independent witnesses at the police station itself. Once the two independent witnesses would arrive at the police station thereafter in their presence the accused should be

asked to make an appropriate statement as he may desire in regard to pointing out the place where he is said to have hidden the weapon of offence, etc. When the accused while in custody makes such statement before the two independent witnesses (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."

47. Recently, that principle has been reiterated by another three-judge bench decision of the Supreme Court in **Rajesh & Anr. vs State of Madhya Pradesh, (2023) 15 SCC 521.**

48. Thus we find, with respect to the recoveries of the two 'daratis', two Recovery Memo exist. From the perusal of those documents, it reveals that they also contain disclosure statement made by the accused persons. Yet, as to the fact of recovery made as disclosed by the prosecution, the prosecution case has been supported by the I.O. as well as by 'M' (P.W.-5). Also, 'M', who is the father of 'T', and 'B' (P.W.-3), the father of 'K', supported the three recoveries made. At the same time, Ram Prasad (P.W.-6) remained silent on the issue and made no deposition with respect to the recoveries. The third witness of these recoveries and the only independent witness Khemkaran (P.W.-4) completely disputed that part of the prosecution story, during his examination-in-chief, itself. He denied, that the two 'daratis' were recovered in his presence. Instead he stated, he and the other witnesses had stayed back at the Police Station and those recoveries were made. They only signed the Recovery Memos Ex.Ka-1 and Ex.Ka-2 at the Police Station. During his cross-examination, he maintained that statement and further clarified that the present appellants also remained at the Police Station, while those recovery were made, and that he was not aware that they had ever left the Police Station in connection to that recovery.

49. Though, during his examination-in-chief itself he had distanced himself from the recoveries made, he was never declared hostile and not subjected to cross-examination by the prosecution, to any extent. The prosecution may have missed that step, at the trial. While we may not disbelieve the recovery of the two 'daratis'

solely on the strength of the testimony of Khemkaran (P.W.-4), it does introduce a doubt in the prosecution story. We may hasten to add that we do not intend to classify or categorize this doubt as a reasonable doubt to throw out the entire prosecution story itself, on the strength of testimony of Khemkaran alone.

50. However, what is more pertinent is the doubt that arises with respect to the recovery of the earring/steel 'Kundal' of 'K'. Perusal of Ex.Ka.5 reveals, it contains no disclosure statement by the accused Taley Hasan that he had secreted the earring/steel 'Kundal' of 'K' at any place and that he volunteered to help the police, to recover it. Therefore, the mandatory requirement of Section 27 Indian Evidence Act was not fulfilled. Therefore, neither any information regarding that earring/steel 'Kundal' was furnished by either accused nor its consequential recovery may help the prosecution prove that Taley Hasan had committed rape on 'K'.

51. Second, though that Recovery Memo may have been proved at the trial by 'M' (P.W.-5), it may not be forgotten, he is the father of 'T'. The prosecution did not lead any evidence to establish that 'M' was in any way related to 'K'. On the contrary, according to 'J', 'K' was the daughter of 'B' (P.W.-3). In such circumstances, it is highly improbable, if 'M' could have identified the earring/steel 'Kundal' of 'K', at the trial. While the Recovery Memo (Ex.Ka.5) narrates, the earring/steel 'Kundal' belonged to 'K', it was not identified by her father, 'B' (P.W.-3). That witness did not lead any evidence at the trial to establish that the earring/steel 'Kundal' belonged to 'K'. In any case, recovery of that earring/steel 'Kundal', does not and it cannot lead to proof of rape or murder of 'K'.

52. In absence of disclosure statement of the accused Taley Hasan recorded in Recovery Memo dated 28.05.1987 Ex.Ka.5, the same does not fulfill the requirement of Section 27 of Indian Evidence Act. To that extent the recovery of the earring/steel 'Kundal' is of no relevance.

53. With respect to the prosecution case based on circumstantial evidence, the position of law was made clear in **Sharad Birdhichand Sarda Vs. State of Maharashtra (1984) 4 SCC 116**. In turn, in that decision, the Supreme Court relied on its earlier decision in **Hanumant Vs. State of Madhya Pradesh (1952) 2 SCC 71**. The law on the issue was then summarized and given the description of "panchseel of the proof" in **Shivaji Sahabrao Bobade and Another Vs. State of Maharashtra (1973) 2 SCC 793**. The above law has been considered and followed by the Supreme Court in a recent decision in **Raj Naykar Vs. State of Chattisgarh (2024) 3 SCC 481**. Referring to the above noted law, it has been observed as below:

"16. Undoubtedly, the prosecution case rests on circumstantial evidence. The law with regard to conviction on the basis of circumstantial evidence has very well been crystalised in the judgment of this Court in Sharad Birdhichand Sarda v. State of Maharashtra [Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116 : 1984 SCC (Cri) 487 : 1984 INSC 121] , wherein this Court held thus : (SCC pp. 184-85, paras 152-54)

"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. [Hanumant v. State of M.P., (1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091] 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. [Tufail v. State of U.P., (1969) 3 SCC 198 : 1970 SCC (Cri) 55] and Ram Gopal v. State of Maharashtra [Ram Gopal v. State of Maharashtra, (1972) 4 SCC 625] . It may be useful to extract what Mahajan, J. has laid down in Hanumant case [Hanumant v. State of M.P., (1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091] : (Hanumant case [Hanumant v. State of M.P., (1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091] , SCC pp. 76-77, para 12)

'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 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 [Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793 : 1973 SCC (Cri) 1033] where the observations were made : (SCC p. 807, para 19)

'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."

17. 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.

18. 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."

(emphasis supplied)

54. With that well-settled principle in mind, we may approach the facts in the present case. Admittedly, there is no evidence of last seen. Other than the alleged rape, no motive has been assigned by the prosecution. As to the commission of rape, there is no evidence/corroboration through forensic or medical evidence.

55. Therefore, what survives for our consideration is the relevance of the recovery of the two 'daratis' that has been proven to some extent, at least. Doubtful as those recoveries are, in view of the evidence led by Khemkaran (P.W.-4), the law on the issue is clear that the recovery of a murder weapon may be a relevant circumstance to be established in case based on circumstantial evidence. However, it may not be enough by itself to establish the guilt of the accused. The principle in that regard as laid down in **Dudh Nath Pandey Vs. State of U.P. (1981) 2 SCC 166** by the Supreme Court may be noticed as below:

15. Were this a case of circumstantial evidence, different considerations would have prevailed because the balance of evidence after excluding the testimony of the two eyewitnesses is not of the standard required in cases dependent wholly on circumstantial evidence. Evidence of recovery of the pistol at the instance of the appellant cannot by itself prove that he who pointed out the weapon wielded it in offence. The statement accompanying the discovery is woefully vague to identify the authorship of concealment, with the result that the pointing out of the weapon may at best prove the appellant's knowledge as to where the weapon was kept. The evidence of the ballistic expert carries the proof of the charge a significant step ahead, but not near enough, because at the highest, it shows that the shot which killed Pappoo was fired from the pistol which was pointed out by the appellant. The evidence surrounding the discovery of the pistol may not be discarded as wholly untrue but it leaves a few significant questions unanswered and creates a sense of uneasiness in the mind of a criminal court,

the Court of conscience that it has to be: How could the appellant have an opportunity to conceal the pistol in broad daylight on a public thoroughfare? If he reloaded the pistol as a measure of self-protection, as suggested by the prosecution, why did he get rid of it so quickly by throwing it near the Hathi Park itself? And how come that the police hit upon none better than Ram Kishore (PW 4) to witness the discovery of the pistol? Ram Kishore had already deposed in seven different cases in favour of the prosecution and was evidently at the beck and call of the police.

(emphasis supplied)

56. Also in **Mustkeem Vs. State of Rajasthan (2011) 11 SCC 724** Supreme Court has laid down as below:

25. With regard to Section 27 of the Act, what is important is discovery of the material object at the disclosure of the accused but such disclosure alone would not automatically lead to the conclusion that the offence was also committed by the accused. In fact, thereafter, burden lies on the prosecution to establish a close link between discovery of the material object and its use in the commission of the offence. What is admissible under Section 27 of the Act is the information leading to discovery and not any opinion formed on it by the prosecution.

(emphasis supplied)

57. Here, the vital aspect of murder was not established on any circumstantial evidence. The forensic and medical evidence were wholly inconclusive. Though, in the entirety of the circumstances, it may be accepted, the two girls 'K' and 'T' died of unnatural cause at the same time, it has not been established by the prosecution, on the strength of any circumstantial evidence or medical opinion, that they were done to death by the appellants with the 'darati' claimed to have been recovered at the pointing out of the appellants.

58. The presence of blood on one of the 'daratis' may also not be sufficient to hold that the appellants had used it to cause the murder of either of the two girls 'K' and 'T'. Recovery by itself, may only establish that as a fact the two appellants were aware where such 'daratis' (belonging to the girls 'K' and 'T'), were secreted. That knowledge may arise out of many circumstances, one of which may be that the same had been used to cause the unnatural death of the girls, 'K' and 'T'. That does not exclude other circumstances in which the appellants may have derived knowledge of the place where such 'daratis' may have been secreted.

59. Further, by itself, the knowledge that the two 'daratis' were secreted at a particular place does not in any way, and it cannot in any way, lead to an inference that, therefore, the appellants had caused the unnatural death of the two girls, 'K' and 'T' with the use of those two 'daratis'. Plainly, it may remain only a suspicion but not proof of the fact that the 'daratis' had been used to cause the unnatural death of the deceased 'K' and 'T' or that those had been used by the appellants to cause such unnatural occurrence. Those two vital circumstances have not been proven by the prosecution. We are afraid the prosecution has not led any evidence to prove those circumstances.

60. What then survives is the direct evidence of extra-judicial confession. By way of principle, it cannot be denied, an extra-judicial confession is admissible

evidence. In a given case, it may be read in favor of the prosecution or it may even be found sufficient to secure a conviction. By way of principle, the law on the point has remained the same beginning from **Sahoo Vs. State of U.P. 1965 SCC OnLine SC 60**, as followed, wherein it was observed as below:

6. But, there is a clear distinction between the admissibility of an evidence and the weight to be attached to it. A confessional soliloquy is a direct piece of evidence. It may be an expression of conflict of emotion; a conscious effort to stifle the pricked conscience; an argument to find excuse or justification for his act; or a penitent or remorseful act of exaggeration of his part in the crime. The tone may be soft and low; the words may be confused; they may be capable of conflicting interpretations depending on witnesses, whether they are biased or honest, intelligent or ignorant, imaginative or prosaic, as the case may be. Generally they are mutterings of a confused mind. Before such evidence can be accepted, it must be established by cogent evidence what were the exact words used by the accused. Even if so much was established, prudence and justice demand that such evidence cannot be made the sole ground of conviction. It may be used only as a corroborative piece of evidence.

61. Yet, in **Jagta Vs. State of Haryana (1974) 4 SCC 747**, it was also recognized that the same may remain a weak piece of evidence. Then, in **Kishore Chand Vs. State of Himachal Pradesh (1991) 1 SCC 286**, the Supreme Court laid down a rule of caution to be exercised by courts while acting on an extra-judicial confession. In that regard, it was observed as below:

14. So far as the alleged extra judicial confession of the accused is concerned, the prosecution has relied upon the evidence of Ram Singh (PW 4). After having been taken through the evidence of that witness, we find the same to be lacking in credence and devoid of any ring of truth. The police was admittedly present in the office of the cooperative society in Village Farmana on the morning of January 15, 1972. We find no reason as to why the accused, instead of surrendering himself before the police, should go to the house of Ram Singh in Village Farmana, blurt out a confession before him and ask him to produce the accused before the police. Nothing has been shown to us as to why the accused could not himself go and appear before the police. We have mentioned above that an attempt has been made in this case to introduce the story of the recovery of ornaments belonging to Phul Pati deceased from the accused. The attempt of the investigating agency to introduce a false story about the removal of the ornaments of the deceased and their recovery from the accused would, in our opinion, also affect the credibility of the evidence regarding the extra judicial confession alleged to have been made to Ram Singh PW. The evidence about an extra judicial confession is in the nature of things a weak piece of evidence. If the same is lacking in probability as it is in the present case, there would be no difficulty in rejecting the same. We are, therefore, not prepared to place any reliance upon the evidence regarding the extra judicial confession of the accused.

15. Mr Marwah has argued on the basis of observations in some cases that the value of a confession should be judged by taking it along with other evidence adduced by the prosecution. This question, in our opinion, would arise only if there be reliable evidence about the making of the

confession. If, however, the Court finds the evidence on the point as to whether the accused at all made the confession to be unreliable and lacking in probability, no question need be considered as to what value would have been attached to the confession, if the evidence about the accused having made it had been found to be reliable and trustworthy. It is plain that the value of the confession can be gone into only if its existence is established by leading reliable evidence about the accused having made it.

(emphasis supplied)

62. Further, not to discard this type of evidence but perhaps to lay parameters of its reliability and use in a criminal trial, the Supreme Court further elaborated in Sahadevan Vs. State of T.N. (2012) 6 SCC 403 as below:

16. Upon a proper analysis of the abovereferred judgments of this Court, it will be appropriate to state the principles which would make an extra-judicial confession an admissible piece of evidence capable of forming the basis of conviction of an accused. These precepts would guide the judicial mind while dealing with the veracity of cases where the prosecution heavily relies upon an extra-judicial confession alleged to have been made by the accused:

(i) The extra-judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution.

(ii) It should be made voluntarily and should be truthful.

(iii) It should inspire confidence.

(iv) An extra-judicial confession attains greater credibility and evidentiary value if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.

(v) For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.

(vi) Such statement essentially has to be proved like any other fact and in accordance with law."

63. In the present facts, before we consider the extra-judicial confession, the background in which those confession had arisen should be noted briefly. 'J' (P.W.-1), the uncle of 'T'. During his cross-examination, he could not deny that he had earlier worked as a driver with one Aga Sahab S/o Nabban Sahab. He admitted, the family members of those persons were often elected as the Gram Pradhan. During his further cross-examination, he also admitted, the present appellants and the sitting Gram Pradhan belonged to another political alignment, being members of the 'Ghosi' caste.

64. Then, Pooran (P.W.-2) only proved the extra-judicial confession allegedly made to him by the two appellants. In that, he chose to use the exact words spoken by the appellants. Those are described as below:

"इनमें से एक के बाप का नाम मन्नू है, दूसरे के बाप का नाम याद नहीं आ रहा। इनमें से एक का नाम ताले हसन व दूसरे का गुलाब है। मैने इन्हे सबसे पहले तब देखा जबकि ये पकड़े गये। इन्होंने पहले मुझसे यह कहा था "जो होना था हो गया। अब फैसला कर दो।" कितने दिन पहले कहा था, याद नहीं। मेरे गांव के पास की 'K' व 'T' लड़कियों का कत्ल हुआ था। उपरोक्त दोनो मुलाज़िम ने मुझसे कहा था "हमसे ग़लती हो गई। हमने इन लड़कियों के साथ बुरा काम किया और उन्हे जान से मार दिया। हमें इस बात की माफ़ी करा दो।"

65. At the same time, 'M' (P.W.-5), who is the father of 'T' and a younger brother of 'J' also chose to prove the exact words spoken to him by the two accused. So far as the accused Taley Hasan is concerned, according to P.W.-5, he confessed as below:

"ताले हसन और गुलाब ने मेरे सामने दरोगा को यह बयान दिया कि ताले हसन ने कहा "मैने 'K' के साथ गलत काम किया तो वह मर गई।"

66. Insofar as accused Gulab is concerned, he described the confession as below:

"गुलाब ने कहा कि " 'T' ने कहा कि मै घर जाकर कह दूँगी" तो मैने उसे लाठी मारी और उसके दांत तोड़ दिये और दूसरी लाठी मारकर उसका हाथ तोड़ दिया, जब लड़की चिल्लाने लगी तो उसकी दराती से गर्दन काट दी।"

67. Plainly, though it may not have been necessary for the two witnesses to prove the exact words used by the accused appellants and we may give some margin for natural discrepancy that may arise if the same event or confession made were to be described by two different persons at two different times, what we may not overlook is material discrepancy in the facts described or confessed to. Insofar as Pooran (P.W.-2) is concerned, he narrated, the appellants confessed, whatsoever happened is past, and that they had made a mistake by committing a bad act ('bura kaam') with the girls and by killing them. However, 'M' (P.W.-5) narrated, Taley Hasan had confessed, 'K' died upon suffering rape, whereas Gulab confessed that 'T' had threatened to complain against the accused at her home. On that, she was assaulted with a lathi, that led to her broken teeth and fractured hand. When 'T' shouted for help, he assaulted her with the 'darati' on her neck, that killed her. Besides the difference in time and the circumstance in which the extra-judicial confessions are claimed to have been made, we also find that there is a material difference in the two confessions.

68. Though we may not search for a doubt, by contrasting one confession with the other, what we may not accept is that the confessional statement as claimed by 'M' (to have been made by Gulab) does not find any corroboration whatsoever. Besides the fact that the injuries suffered by 'T' could not be proven due to the highly decomposed state of her dead body, the medical evidence also did not reveal any broken/fractured teeth or fractured hand. Further, no recovery of any lathi or hard/blunt object was made that may corroborate the extra-judicial confession allegedly proven by 'M' (P.W.-5). Plainly, we do not find, that extra-judicial confession is of such evidentiary value as may deserve our complete trust to hold the appellants guilty on its strength.

69. P.W.-2 also did not disclose any fact suggesting that he held a position of trust or authority with either the informant or the accused, that might have compelled the accused to confess to P.W.-2. Further, during his cross-examination, P.W.-2 stated he did not act on this confession and never approached the police or the deceased girls' families. The Court is left to speculate, why such a confession was made to P.W.-2. If the prosecution relies solely on the extra-judicial confession, its quality, tenor, and the circumstances surrounding must be such as leaves no doubt about its truthfulness and genuineness, to warrant a conviction. That is not the case, here.

70. Second, though 'M' is the father of 'T', and an extra-judicial confession made to such a person may have lent

credibility to the prosecution case as such a person might enjoy a position of authority if the accused were seeking mercy, that confession was not made to him. It was made to the Police Inspector and not to 'M'. He himself stated, the appellants Gulab and Taley Hasan made those confessions to the Police Inspector, in his presence. Therefore, the confession was not made to P.W.-5. Rather it was one that he had witnessed being made to the Police Inspector.

71. The Investigating Officer S.I. S.C. Tomar (P.W.-10) only proved the extra judicial confession (Ex.Ka.30) as recorded by him in the Case Diary. At the same time, such statement being part of the investigation and made before the police officer, it would not subscribe to the requirement of Section 30 of the Indian Evidence Act, 1872. That confession may not be admissible by way of evidence.

72. In **Mohammed Fasrin Vs. State (2019) 8 SCC 811**, the Supreme Court held as under:

"8. We, for the decision of this case, therefore, proceed on the premise that the confession is admissible. Even if it is admissible, the court has to be satisfied that it is a voluntary statement, free from any pressure and also that the accused was apprised of his rights before recording the confession. No such material has been brought on the record of this case. It is also well settled that a confession, especially a confession recorded when the accused is in custody, is a weak piece of evidence and there must be some corroborative evidence. The confession of the co-accused, which was said to be a corroborative piece of evidence, has been discussed above and is of no material value. Therefore, other than the two confessional statements — one of the co-accused and the other of the accused, the prosecution has gathered no evidence to link the appellant with the commission of the offence. As such, without going into the legality of the admissibility of the confession, we hold that even if these confessions are admissible then also the evidence is not sufficient to convict the accused."

(emphasis supplied)

73. Some consideration may also be offered to the allegation of rape committed. The prosecution case rests entirely on the extra-judicial confession. As noted, medical evidence could not be presented due to the highly decomposed state of the dead bodies of 'K' and 'T'. There was also no direct evidence of rape. Circumstantial evidence established both bodies were found clothed, at least over their lower limbs/half. The 'Panchayatnama' (Ex.Ka-18) for 'T', corroborates and records that the lower garments was on place over the dead body of 'T', though one leg was missing. Additionally, six bangles were found on the right hand of the body of 'T', but her upper body was found naked.

74. Insofar as 'K' is concerned, the 'Panchayatnama' (Ex.Ka-19) records that the clothing on the dead body of 'K' (the elder of the two girls), was intact. Her shirt and her lower garment/petticoat were found on her dead body. Additionally, four bangles were found on her left hand and three on her right. That may also not corroborate commission of rape. Admittedly, the dead bodies were discovered five days after the incident. They were in a highly decomposed state, as proven by the doctor-to the extent neither the cause of death nor any opinion as to

rape could be formed, as the relevant body parts had completely decomposed.

75. In view of these facts, when rape could not be affirmatively established, the motive remains undisclosed. Suspicion, however strong, may never replace proof necessary to persuade the Court to accept the existence of complete chain of circumstances. Unless the chain of evidence is found to be complete, no conviction may arise or be sustained on that count.

76. For the reasons noted above, we find that the learned trial court has erred in reaching an order of conviction in the absence of convincing evidence (either direct or circumstantial).

77. Consequently, the appeal succeeds and is **allowed**.

78. The judgement and order dated 27.02.1991, passed by the learned II Additional Sessions Judge, Rampur in Sessions Trial No.101 of 1988 (State Vs. Taaley Hasan and another), arising out of Case Crime No.133 of 1987, under Section 376 & 302/201 I.P.C., Police Station-Shahabad, District Rampur, is hereby **set aside.**

79. The appellants are acquitted of the charges for lack of evidence led by the prosecution. Since the appellants are in Jail, they be released forthwith subject to the condition that they are not wanted in any other case and subject to compliance of Section 437A Cr.P.C.

80. Let the trial court record along with a copy of this order be transmitted to the court concerned through Registrar (Compliance) forthwith and a copy of this order may also be sent to the Jail authorities concerned.

(2025) 5 ILRA 1224
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 30.05.2025

BEFORE

THE HON'BLE RAJIV GUPTA, J.
THE HON'BLE SAMIT GOPAL, J.

Criminal Appeal No. 1557 of 2020
With
Criminal Appeal No. 1558 of 2020

Naushad ...Appellant
Versus
State of U.P. ...Respondent

Counsel for the Appellant:
Kripa Shankar Mishra

Counsel for the Respondent:
G.A., A.N. Mulla, Shashi Shekhar Tiwari, Arun Kumar Pandey

(A) Criminal Law - Conviction on Circumstantial Evidence – Indian Penal Code, 1860 – Sections 364, 302/34 & 201 – Indian Evidence Act, 1872 – Sections 27 & 65-B – Principles governing conviction based solely on circumstantial evidence reiterated - The circumstances from which conclusion of guilt is sought to be drawn must be cogently and firmly established - that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused - should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with his innocence - Chain of circumstances incomplete, conviction cannot be sustained - Circumstantial evidence must be so complete as to exclude every hypothesis other than that of guilt of the