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STATE OF MADHYA PRADESH

v.

PHOOLCHAND RATHORE

(Criminal Appeal Nos. 1315-1316 of 2023)

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APRIL 28, 2023

**[SANJAY KISHAN KAUL, MANOJ MISRA AND
ARAVIND KUMAR, JJ.]**

Penal Code, 1860 – ss. 302 and 201 – Acquittal under – Prosecution rested its case on the circumstances, inter-alia, (a) the accused bore a grudge against his wife for keeping jewellery with her sister (PW8); (b) on the fateful day, during day time, accused on that count, quarrelled with PW8 and threatened to kill the deceased and set the house on fire; (c) in the evening of that fateful day, the accused quarrelled with the deceased and took her with him on a bicycle, while extending threats that he would kill her; (d) later, that evening, the deceased was found in a seriously injured condition; (e) the deceased died on account of those injuries; and (f) blood-stained clothes etc. were recovered at the instance of the accused thereby making the chain complete – Trial Court convicted the accused and death penalty was awarded to the accused – High Court gave accused benefit of doubt to the accused and acquitted him – On appeal, held: Reason of the quarrel that deceased had kept her jewellery with her sister (PW8) was not found proved – As prosecution evidence revealed that jewellery was returned back – Thus, prosecution failed to prove motive – There appears no reason for accused to carry stones from the spot and hide them in his hut and leaving blood-stained stones near railway line – As far as blood stained clothes are concerned, PW4 stated that her father (accused) on return had washed those clothes and spread them to dry – How could they be recovered from hut – So, the recovery of the blood-stained clothes etc. was doubtful – Police prepared two memorandums (disclosure statement, as per the memorandum (Ex.P-9), at Seoni Trisection, witnessed by PW6 and the recovery memo (Ex.P-10), was prepared at accused's hut near railway line at the same time also witnessed by PW-6) – Both memorandums were prepared at the same time and different places, meaning all papers were signed at one go rendering the entire exercise of disclosure

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- A *and consequential discovery/recovery doubtful – Alleged extra judicial confession made by the accused to PW4 was neither disclosed in the FIR nor in the previous statement of PW4 made during investigation – Extra judicial confession also not proved beyond reasonable doubt – Also, accused and the deceased were noticed quarrelling with each other at about 1630 hours and soon thereafter, the appellant took deceased on his cycle – As per prosecution deceased was found injured at around 2000 hours, there was quite a large time-gap for other intervening factors to operate – Therefore, motive, disclosure, recovery and extra judicial confession was not proved beyond reasonable doubt.*
- B *Constitution of India – Art. 136 – When it appears that the High Court has on an absolutely wrong process of reasoning and a legally erroneous and perverse approach to the facts of the case and ignoring some of the most vital facts, acquitted the respondent and the order of acquittal passed by the High Court has resulted in a grave and substantial miscarriage of justice, extraordinary jurisdiction under Article 136 of the Constitution of India may rightfully be exercised.*

Dismissing the appeals, the Court

- E **HELD:** 1. The prosecution relied on the following circumstances: (a) Motive; (b) Disclosure Statement and Recovery; (c) Extra Judicial Confession; and (d) Accused taking the deceased with him and soon thereafter the deceased was found in an injured state [Para 24][618-G]
- F 2. (a) Motive
- F *According to the prosecution, the appellant and the deceased used to quarrel because the deceased had kept her jewellery with her sister. However, the above reason for the quarrel was not found proved because the prosecution evidence led revealed that the jewellery had already been returned back*
- G *much before the date of the incident. Therefore, to prove motive, during trial, prosecution developed another story, which is, that the appellant desired his wife to claim a share in her ancestral property which resulted in quarrels. This motive neither appealed to the High Court nor to this Court. [Para 24 (i)][619-A-C]*
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(b) Disclosure Statement and Recovery

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The disclosure statement, as per the memorandum (Ex.P-9), was prepared at Seoni Trisection and witnessed by PW6; the recovery memo (Ex.P-10), was prepared at accused's hut near railway line in Model village at 1400 hours 02.02.2010 and the same was witnessed by PW6. Interestingly, PW6 is the only public witness of disclosure and recovery to be examined and he has not supported the prosecution case. What is even more interesting is that the other seizure memorandum prepared in respect of lifting blood-stained saree, gravel, slippers etc. from near the railway line, that is the spot from where the deceased was lifted, was prepared at 1400 hours on 02.02.2010. How could it be possible that the police prepared two memorandums at the same time at different places. The answer to it lies in the testimony of PW6, a witness to both, who stated that he was made to sign the papers at the police station. Meaning thereby that all papers were prepared at one go rendering the entire exercise of disclosure and consequential discovery/recovery doubtful. Not only that, there appears no cogent reason for the accused to carry stones from the spot and hide them in his hut while leaving several blood-stained stones near the railway line. In such circumstances, it appears to us that those stones were picked from the spot near the railway track to show recovery from the hut. Insofar as the recovery of blood-stained clothes is concerned, in addition to the above reasons, the same is doubtful also because of the statement of PW4 that her father on return had washed those clothes and had spread them to dry over the cattle shed in the house therefore, how could they be recovered from the hut. It be noted that the house is shown located in the village, whereas the hut is shown in the field at quite a distance from the house. For all the reasons above, the High Court was justified in doubting the recovery of blood-stained clothes etc. at the instance of the accused from the hut and on the basis of a disclosure statement made by him. [Para 24 (ii)][620-C-H; 621-A-B]

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(c) Extra Judicial Confession to PW4

The alleged extra judicial confession made by the accused to PW4 was neither disclosed in the FIR nor in the previous statement of PW4 made during investigation. PW4 was confronted

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- A with that omission during her deposition in court. That apart, the testimony of PW4 with regard to the accused returning home, making extra judicial confession, changing clothes, washing blood-stained clothes and spreading them to dry has been found unreliable and shaky by the High Court for cogent reasons extracted above, which do not appear perverse as to warrant an interference. Thus, the circumstance of extra judicial confession is also not proved beyond doubt. [Para 24 (iii)][621-C-E]

(d) Accused taking the deceased from home on a bicycle

When the court peruse the detailed reasons recorded by

- C the High Court in its judgment to hold that the testimony of PW4 is not of a stellar quality as to merit conviction solely on its basis, this Court finds no perversity in the High Court's conclusion as may warrant a reversal of acquittal into a conviction in exercise of jurisdiction under Article 136 of the Constitution. At what time the accused had taken the deceased on his bicycle is not clear
- D from the testimony of PW4 though, from the first part of her testimony, it appears that the accused and the deceased were noticed quarrelling with each other at about 1630 hours and soon thereafter, the appellant took the deceased on his cycle. If, from that, the event of taking the deceased on bicycle at about 1630 hours there is still quite a large time-gap between 1630 hours and 2000 hours for other intervening factors to operate. In light thereof, considering that the place of occurrence was an open place and the other circumstances (i.e. motive, disclosure, recovery and extra judicial confession) were not proved beyond reasonable doubt, shifting the burden on the accused to explain
- E the circumstances in which the deceased sustained injuries, or to demonstrate that he parted company of the deceased, would not be justified in the facts of the case. [Para 24 (iv)][621-H; 622-A-B; 623-A-D]

G *State of U.P. v. Sahai & Others (1982) 1 SCC 352; State of M.P. & Others v. Paltan Mallah & Others (2005) 3 SCC 169 : [2005] 1 SCR 710; Basheera Begam v. Mohd. Ibrahim & Others (2020) 11 SCC 174: [2020] 3 SCR 562 – referred to.*

Case Law Reference

H (1982) 1 SCC 352	referred to	para 20
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[2005] 1 SCR 710

referred to

para 21

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[2020] 3 SCR 562

referred to

para 22

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos.1315-1316 of 2023.

From the Judgment and Order dated 11.12.2015 of the High Court of M.P. Principal Seat at Jabalpur in CRLR Nos.1292 and 02 of 2015.

Pashupathi Nath Razdan, Mrs. Anuradha Mishra, Vikas Bansal, Advs. for the Appellant.

Yashraj Singh Deora (Amicus Curiae), Abhishek Singh, Adv. for the Respondent.

The Judgment of the Court was delivered by

MANOJ MISRA, J.

1. Leave granted.

2. These appeals are by the State of Madhya Pradesh against the judgement and order of the High Court of Madhya Pradesh at Jabalpur (for short “the High Court”) dated 11.12.2015 in Criminal Appeal No.1292 of 2015 connected with Criminal Reference No.2 of 2015 whereby, the order of conviction and sentence including death penalty awarded to the respondent by the Court of District and Sessions Judge, Anuppur in Sessions Trial No.72 of 2010, under sections 302 and 201 of the Indian Penal Code, 1860 (for short “IPC”) has been set aside and the respondent has been acquitted.

3. To have a clear understanding of the issues raised in these appeals a brief description of the prosecution case and the evidence led by the prosecution would be apposite.

Introductory Facts

4. The prosecution story narrated in the first information report (FIR), lodged by deceased’s brother Kamla (PW2), is that the accused-respondent was unhappy that his wife Sundariya (the deceased) had kept her jewellery with her sister Jaimatiya Bai (PW-8); on the fateful day i.e. 01.02.2010, at around 1400 hours, the accused came to the house of PW2, while PW8 was there, fought with PW8 and told her that he would kill Sundariya and set the house on fire; when PW2 returned from his shop at around 1900 hours, on getting the above information, he

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- A telephoned Madhuri (PW4), daughter of Sundariya, who informed PW2 that her father had taken her mother on a bicycle towards the field while making utterances that he would kill her. On receipt of information from PW4, PW2 came to the village where Sundariya resided and went to search her out with the help of Manoj (not examined) and PW2's brother-in-law Mathura (PW3). During the course of search, they found the deceased lying seriously injured between the railway tracks. They, therefore, rushed her to Jaithari Hospital but, on way, she succumbed to her injuries. The FIR was promptly lodged at P.S. Jaithari on 01.02.2010 at 2130 hours expressing suspicion against the respondent (i.e. the accused) of having killed his wife.
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- C 5. As per arrest memo (Ex. P-11), the accused was arrested on 02.02.2010, at about 1240 hours, from Seoni Tri-section. Vide Ex. P-9, on the same day i.e. 02.02.2010, at 1300 hours, a disclosure statement of the accused was recorded wherein, he assured recovery of stones (*gitti*) and blood-stained pant and shirt kept in his hut. Pursuant thereto,
- D vide seizure memo (Ex. P-10), on 02.02.2010, at 1400 hours, a moss coloured full shirt and dark brown full pant with blood stains on them, three blood-stained stones with hair stuck on it and one old hero jet cycle were recovered from that hut.
- E 6. Interestingly, on the same day, at the same time i.e. 1400 hours, vide Ex. P-12, another seizure was made from near the railway line of 5 blood-stained gravel (*gitti - stone*), 5 plain gravel (*gitti - stone*), blood stained red coloured saree and *chappals*.
- F 7. On completion of the investigation, a charge-sheet was laid against the appellant and, after taking cognizance thereon, the case was committed to the Court of Session. The Sessions Court charged the appellant for committing murder of his wife on 01.02.2010 at 2000 hours, punishable under section 302 IPC, and of concealing blood-stained stones/ shirt/pant and cycle used in the offence with a view to remove evidence thereof, punishable under Section 201 IPC. The accused pleaded not guilty and claimed trial.
- G **Prosecution Evidence**
- H 8. As there existed no eyewitness account of the murder, the prosecution rested its case on circumstances, *inter alia*, (a) the accused bore a grudge against his wife for keeping jewellery with her sister (PW8); (b) on the fateful day, during day time, accused on that count, quarrelled

with PW8 and threatened to kill the deceased and set the house on fire; (c) in the evening of that fateful day, the accused quarrelled with the deceased and took her with him on a bicycle, while extending threats that he would kill her; (d) later, that evening, the deceased was found in a seriously injured condition; (e) the deceased died on account of those injuries; and (f) blood-stained clothes etc. were recovered at the instance of the accused thereby making the chain complete. To prove these circumstances, the prosecution examined 12 witnesses. Gist of their testimony is noticed below:

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(i) **PW-1 - Ganga Bai**

She is the aunt of the accused. She did not support the prosecution case and was accordingly declared hostile. Nothing much turns on her testimony.

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(ii) **PW-2 – Kamla Singh Rathore (the informant)**

He deposed about — receipt of information, at 1900 hours, of the quarrel that took place on the fateful day during day time; search operation; discovering the deceased, at around 2000 hours, in an injured condition near railway track; rushing her to the hospital; the deceased succumbing to her injuries on way to the hospital; and lodging of the FIR. During cross-examination, PW2 admitted that no quarrel/fight took place in his presence. On being questioned as to how PW2 communicated with PW4 on that fateful day, PW2 stated that PW4 had used mobile of some third person but could not disclose his name or number.

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(iii) **PW-3 – Mathura Prasad Rathore**

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He corroborated PW2's statement that the deceased was found lying near the railway tracks and from there she was rushed to Hospital though she succumbed to her injuries on way.

(iv) **PW-4 – Madhuri Singh Rathore (Daughter of the deceased)**

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She is the star witness. She deposed about — fights between her father (the accused) and mother (the deceased); her returning from maternal uncle's home at 1630 hours and noticing her father and mother fighting/

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- A quarrelling and, later, her father forcibly taking her mother on his cycle to the fields. PW4 also stated that she followed them up to the village pond but, on being scolded, she came back and that near the pond, she met Sushila (PW-12), her paternal aunt, to whom she narrated the incident.
- B Whereafter, on coming back, she made a phone call to her maternal uncle (PW2). Then her maternal uncle called back to know the whereabouts of her mother. When she told him that her father had taken her mother and had asked her to remain in the house, her maternal uncle came to the village in search of her mother. PW4, during her deposition, added that in between her father had returned alone and had told her that he had killed her mother.

- C During cross-examination, PW4 admitted that the ornaments that were kept by her mother with her aunt (i.e. mother's sister) were returned by her aunt eight days before the incident. She also admitted that on the fateful day she gave her examination from 1100 hours till 1500 hours and that, at present, she is living with her maternal uncle. PW4 was also confronted with her previous statement wherein there was an omission regarding confession made by her father.

E (v) **PW-5 – Dr. Sunil Khanna (Autopsy Surgeon)**

- F He proved the autopsy report (Ex.P-8) wherein he recited eight lacerated wounds, ante mortem in nature, caused by hard and blunt object within 24 hours of examination conducted on 02.02.2010 at 1100 hours. According to his opinion, deceased died within 24 hours of the examination, on account of head injuries leading to haemorrhage, resultant shock and cardio respiratory failure.

- G During cross examination, he stated that if train is moving and any person, walking on foot, gets dashed by the train then such injuries may occur.

- H This witness was re-examined and questioned by Court. At that stage, the witness stated that if injuries were sustained during a train accident then it might reflect fracture on face. He accepted the possibility of injuries being caused as a result of assault with *Gitti* (Gravel - small stones).

(vi) **PW-6 – Shivkumar Rathore**

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He is a witness to the disclosure statement and seizure of blood-stained clothes etc. He, however, did not support the prosecution case and was therefore declared hostile. During cross-examination he admitted his signature on the memorandum(s) but claimed that his signatures were obtained by the police at the police station without informing him about the contents of the documents.

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(vii) **PW-7 – Kiran @ Rambai**

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She is another daughter of the deceased. She stated that at the time of the incident, she was in the house of her maternal uncle namely, Kamla Rathore, at Jaithari. During cross examination, she stated that disputes between her father and mother used to take place but they used to get resolved.

(viii) **PW-8 – Jaimatiya Bai Rathore**

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She is sister of the deceased Sundariya. She deposed that the dispute between the deceased and her husband was on account of ancestral properties coming from deceased's mother side. She stated that she does not have any other information about the incident. At this stage, the witness was declared hostile and was allowed to be cross-examined by the prosecution.

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During cross-examination, at the instance of prosecution, she stated that there was theft at Sundariya's place therefore, for security reasons, Sundariya had kept her gold and silver at her house which, a week before the incident, were sent by her to the house of Sundariya. She also stated that the accused had come to her house and had threatened to kill Sundariya and set the house on fire.

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During cross-examination at the instance of the accused, upon a suggestion that a family dispute was going on, PW8 stated the accused was pressurising the deceased to take a share in her ancestral property from her brother and since she was not agreeing to it, the accused had a dispute with her.

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A (ix) **PW-9 – Rajiv Singh**

He was the *Halqa Patwari* (Revenue Circle Inspector/ Lekhpal) who inspected the crime scene under orders of the Tehsildar and prepared the spot *panchnama* (Ex. P-13) as also site plan (Ex. P-14) of the place from where the deceased was taken in an injured condition to the hospital.

B (x) **PW-10 – Ashok Kumar Rathore**

He is son of PW2 who brought his vehicle to take the deceased along with PW2 to the hospital. He corroborated the evidence that the deceased succumbed to her injuries on way to the hospital.

C (xi) **PW-11 – Satish Dwivedi - Investigating Officer**

He proved the various stages of investigation including registration of the FIR on 01.02.2010 at 2130 hours. Interestingly, as per his deposition, he visited the site on 02.02.2010 and vide seizure memo (Ex.P-12) lifted blood-stained gravel, plain gravel, blood-stained saree and two slippers from the spot. He deposed about — arresting the accused vide memo Ex.P-11; recording his disclosure vide Ex.P-9; and effecting recovery vide memo (Ex.P-10). He stated that sealed articles were sent for forensic examination. He also produced the recovered articles as material exhibits.

During cross-examination, though PW11 admitted knowing PW2 (informant) from before but denied the suggestion that he conspired with PW2 to falsely implicate the accused. In paragraph 25 he stated that saree was not found on the body of the deceased. He also admitted that a new railway track was being laid there and in that connection machines were there. However, he denied the suggestion that in connection with laying new track hundreds of workers (labourers) were there. In paragraph 32 he denied the suggestion that the accused had reached the police station on 01.02.2010 itself. He also denied the suggestion that the alleged arrest, disclosure and recovery at the instance of the accused are bogus.

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In respect of the distance between Seoni Trisection and Seoni village, PW11 denied the suggestion that the distance between the two is of 6 km. Rather, claimed it to be 600 meters. He also admitted that the witnesses of the memorandum were not residents of Seoni Trisection.

(xii) **PW-12 – Sushila (Sister-in-Law of the Deceased)** B

PW-12 disclosed no knowledge about the prosecution case and was therefore declared hostile.

Forensic Reports

9. In addition to the oral testimony of the witnesses, forensic reports confirmed presence of human blood on saree, shawl, petticoat, blouse, shirt and stone. Likewise, blood was found on the gravel recovered from the place of occurrence though its origin could not be determined as it had disintegrated. Similarly, the classification of the blood could not be made as it had disintegrated.

Statement under section 313 Cr.P.C.

10. The incriminating circumstances appearing in the prosecution evidence were put to the accused while recording his statement under section 313 of the Code of Criminal Procedure, 1973 (for short “Cr.P.C.”) The accused denied the incriminating circumstances and claimed that he has been falsely implicated.

Findings of the Trial Court

11. The Trial Court found the following incriminating circumstances proved — (a) the deceased was assaulted, abused and forcibly taken by the accused on a bicycle and she did not return thereafter rather, two hours later, was found in badly injured condition; (b) the accused made extra judicial confession of his guilt to his daughter (PW4); (c) human blood was found on the clothes recovered; and (d) except bald denial no explanation was offered by the accused. According to the trial court, the said circumstances constituted a chain so far complete that it established beyond doubt that it was the accused and no one else who committed the crime. To conclude as above, the Trial Court placed reliance on the testimony of PW-4. Upon finding the accused guilty, the trial court convicted the accused and awarded death penalty to him under section 302 IPC and 7 years RI under section 201 IPC. For confirmation of death penalty, a reference was made to the High Court under section

- A 366 Cr.P.C., which was registered as Reference No.2 of 2015. In the meantime, the accused filed criminal appeal against the order of conviction and sentence, which gave rise to Criminal Appeal No.1292 of 2015 before the High Court. The appeal and the reference were connected and decided together by the High Court vide impugned judgment and order dated 11.12.2015.

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High Court Findings

- 12. The High Court set aside the judgment and order of the trial court and acquitted the appellant. While doing so, it discussed the testimony of prosecution's star witness i.e. PW 4 in paragraphs 29 and 30 and did
- C not find the prosecution evidence reliable and trustworthy for the reasons recorded by it in paragraphs 31, 32, 33, 34 and 35 of its judgment, which are extracted below:-

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"31. This statement of Madhuri (PW-4) the main witness to the case becomes doubtful in view of the several omissions and contradictions contained therein. The first is the fact that she states that her father took her mother forcibly on the cycle and while doing so he was seen by Ganga Bai (PW-1) and Sushila (PW-12) but both these witnesses have clearly denied this fact or any knowledge about the incident and have been declared hostile.

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Secondly, this witness Madhuri (PW-4) in her statement, on the one hand, states that her father came back after committing the crime in bloodstained clothes, changed them in the night of 1.2.2010, hid them in the cattle shed and thereafter washed the clothes in the morning of the next day and spread them to dry on the roof whereas in the same paragraph she has stated that her father the accused appellant was arrested in the night of the incident i.e.

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1.2.2010 from the 'nala' with an axe in his hand. Thirdly, it is also apparent that she states that her father hid the clothes in the house itself and subsequently he washed and dried them in the house itself whereas the bloodstained clothes of the accused appellant are said to have been seized from the hut situated in the field vide seizure memo Exhibit P-9 and seizure panchnama Exhibit P-10. The statement of Madhuri (PW-4) is in direct conflict with and in contradiction of the prosecution story which in turn makes it clear that one of them is false thereby casting a deep shadow of doubt on the case against the appellant.

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32. From a perusal of the aforesaid facts and circumstances it is A also clear that:

(1) the statement made by Madhuri (PW-4) is unreliable and is full of embellishments, exaggerations as well as contradictions and omissions on account of the fact that her statement regarding fighting between the appellant on account of jewellery is apparently false in view of the clear and specific statement of Jaimataiya Bai (PW-8) who has emphatically stated that she had returned the jewellery eight days before the incident; B

(2) her statement regarding constant fighting between her parents on account of the jewellery is not corroborated and supported by her elder sister Kiran @ Rambai (PW-7) who has in fact stated that the fight between her parents was usual and normal fight between husband and wife; C

(3) that she has stated that her father, after committing the crime, returned back with bloodstained clothes, hid them in the cattle shed, changed his clothes and went away and thereafter washed his clothes in the morning of the next day after the incident i.e. on 2.2.2010 whereas in the same breath she has also asserted that her father was arrested on the same night of the incident itself i.e. on 1.2.2010 by the police with an axe in his hand whereas there is no mention in her statement to the effect that her father had gone to the field with an axe in his hand or that he had taken the axe after the incident from the cattle shed. D

(4) There is also material contradiction in her statement to the effect that she had gone to her maternal uncle's house to give her examination whereas in her own statement she has stated that her mother told her to go to her maternal uncle's house. F

(5) Her statement is also quite unnatural inasmuch as she has stated the fact that she rang her maternal uncle Kamal (PW-2) informing him about the incident but did not inform her paternal uncle or any of her neighbours or persons residing nearby. G

33. It is also pertinent to note that a bare perusal of the case diary statement of Madhuri, Exhibit P-38, and the statement made by her in Court clearly indicates that there is omission and H

- A contradiction in regard to the alleged extra-judicial confession made by the accused to Madhuri (PW-4) as she has not stated anything about any such extra-judicial confession in her case diary statement. In fact, this contradiction and omission, deficiency and weakness in the statement of Madhuri (PW-4) has also been taken note of by the court below in paras 33 and 44 of its judgment but the court below has chosen to ignore the same on the ground that there is a mistake committed by the prosecutor in recording of her statement and the interest of justice demands that the omissions and contradictions be ignored.
- C 34. The fact that her father had taken her mother forcibly to the field and had told her that he would murder her mother but she did not inform this fact to either her paternal uncle who is her neighbour or any other neighbour residing nearby or any other person residing in the locality or her acquaintance except her maternal uncle who was residing 2 kms away also casts a shadow of doubt upon her statement as this conduct is unnatural. The aforesaid omissions, contradictions and embellishments in the statement of Madhuri (PW-4) when read with the uncorroborated and unsupported unnatural statements made by her to the effect that her father told her on three occasions that he would murder her mother and after committing the crime again came back and confessed to the commissions of the crime which confession was not disclosed by her in her case diary statement makes it clear that her statement cannot be said to be of unimpeachable and sterling quality and cannot be relied upon as it does not satisfy the tests laid down by the Supreme Court in the above referred judgments.
- F 35. In view of the aforesaid detailed analysis of the evidence of Madhuri (PW-4) we arrive at a conclusion that her statement is full of embellishments, exaggerations and material discrepancies and, therefore, we find ourselves unable to pick out the grain of truth from the falsehood of her statement.”
- G 13. In addition to above, the High Court noticed that neither younger sister of Madhuri (PW4) nor neighbours or members of the locality were produced as witnesses to lend assurance to the prosecution story. Further, the original motive for the crime was a dispute arising from keeping of jewellery by the deceased with her sister, whereas the statement of prosecution witnesses established that the jewellery had been returned
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much before the incident, therefore, there existed no cogent motive for the crime. In paragraph 40 of the judgment, the High Court observed that the recovery of blood-stained clothes and stones was doubtful because the seizure witness Shiv Kumar Rathore (PW6) had categorically denied seizure of those articles in his presence and had stated that his signatures were obtained at the police station. Moreover, the evidence recorded revealed that the accused was arrested in the night of 01.02.2010 itself. The High Court also noticed that the FSL report Ex.P-35 could not confirm the blood group on the clothes as to match it with the deceased. Otherwise also, once the seizure of articles became doubtful and as per the statement of PW4 the accused had washed off those clothes and had kept them in the house to dry, the entire prosecution story in respect of seizure of blood-stained clothes from the hut was rendered doubtful. Taking a conspectus of the circumstances highlighted above, the High Court opined that the case set up by the prosecution appeared extremely unnatural and hard to believe. The High Court therefore discarded the circumstance of seizure of stones and blood-stained clothes from the hut of the accused and upon finding that there were glaring contradictions in the prosecution case, irreconcilable in nature, gave the benefit of doubt to the accused.

14. We have heard learned counsel for the parties and have perused the record.

Submissions on behalf of the Appellant

15. The learned counsel for the appellant submitted that this is a case where a daughter has deposed against her own father. The testimony of PW-4 is straightforward and coupled with other evidences establishes beyond doubt the following:

- (i) that there used to be fights/quarrels between the deceased and the accused;
- (ii) that on the fateful day, there was a quarrel between the two; and
- (iii) that soon after the quarrel the deceased was taken on a bicycle by the appellant to the field and shortly thereafter near the hut/field of the accused, on a railway track, the deceased was found in a seriously injured state suggesting that she was badly assaulted.

- A 16. It was argued that the High Court wrongly discarded the entire statement of PW4 upon noticing that she was not truthful on certain aspects, namely,—the accused had returned alone from the field wearing blood-stained clothes, changed his clothes in the house, washed them and made an extra judicial confession to PW4. It was contended that
- B *falsus in uno, falsus in omnibus* doctrine is not applicable in India therefore, the High Court ought to have severed the unreliable part from the remaining part, noticed above, and examine whether the remaining part on its own could sustain conviction, particularly, when there was no explanation forthcoming from the accused as to where he was during that period and how his wife sustained those injuries. It was argued that
- C the evidence that the accused took the deceased on cycle to the field and shortly thereafter, near the field, in between railway tracks, the deceased was found with multiple injuries, by itself, in absence of any explanation from the accused as to when he parted company of the deceased, was sufficient to record conviction.
- D 17. In addition to the above, the learned counsel for the appellant submitted that it is a case where the deceased had died at around 2000 hours on 01.02.2010, the FIR was promptly lodged at 2130 hours narrating the circumstances in which the incident occurred and those circumstances have been confirmed by the testimony of prosecution witnesses therefore,
- E even if subsequent story of confession/recovery is discarded, the proven circumstances by itself form a chain so complete as to sustain conviction of the accused as justifiably recorded by the trial court. Consequently, it was prayed, the judgment and order of the High Court be set aside and the Trial Court's judgment and order be restored.

Submissions on behalf of the respondent -accused

- F 18. Per contra, the learned counsel for the respondent submitted that the view taken by the High Court is a plausible view and is not perverse as to warrant an interference under Article 136 of the Constitution of India. It was urged that the High Court is a final court of fact and the view of the High Court is not in ignorance of any evidence or by misreading any piece of evidence. Its view being a plausible view, based on analysis of the evidence, no interference with it is called for, particularly when the case rests on circumstantial evidence.
- G 19. It was also urged that the testimony of PW4, when read as a whole, does not inspire confidence as it is found unreliable on several
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aspects therefore, being the sole witness of the circumstance that the deceased was taken from home by the accused, could not on its own form the basis of conviction. More so, when the original motive stood not proved giving rise to possibility of false implication on account of property dispute with informant (PW2) as would be clear from the statement of PW8, which possibility gains support from the statement of the Investigating Officer (PW11) that he had known the informant (PW2) from before. More so, when a false arrest/disclosure and recovery was set up. It was also argued that the public witnesses examined by the prosecution have disclosed about the arrest of the accused in the night itself whereas, the police witnesses have tried to disclose his arrest on the next day leaving them opportunity to plan a case against him. For all the reasons above, it was prayed, the view taken by the High Court is a plausible view, not liable to be interfered.

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Discussion and Analysis

20. Having considered the submissions and perused the record, before we proceed further, it would be useful for us to notice the law as to when it would be appropriate for this Court, exercising its power under Article 136 of the Constitution of India, to reverse an acquittal into a conviction. Normally, the Court is reluctant to interfere with an order of acquittal. But when it appears that the High Court has on an absolutely wrong process of reasoning and a legally erroneous and perverse approach to the facts of the case and ignoring some of the most vital facts, acquitted the respondent and the order of acquittal passed by the High Court has resulted in a grave and substantial miscarriage of justice, extraordinary jurisdiction under Article 136 of the Constitution of India may rightfully be exercised (*See: State of U.P. v. Sahai & Others*¹).

21. In *State of M.P. & Others v. Paltan Mallah & Others*², reiterating the same view it was observed:

“8. ... This being an appeal against acquittal, this Court would be slow in interfering with the findings of the High Court, unless there is perverse appreciation of the evidence which resulted in serious miscarriage of justice and if the High Court has taken a plausible view this Court would not be justified in interfering with the acquittal passed in favour of the accused and if two views are possible and the High Court had chosen one view which is just

¹(1982) 1 SCC 352

²(2005) 3 SCC 169

- A and reasonable, then also this Court would be reluctant to interfere with the judgment of the High Court.”
22. In a recent decision rendered by this Court in *Basheera Begam v. Mohd. Ibrahim & Others*³, it was observed:
- B “190. ... Reversal of a judgment and order of conviction and acquittal of the accused should not ordinarily be interfered with unless such reversal/acquittal is vitiated by perversity. In other words, the court might reverse an order of acquittal if the court finds that no person properly instructed in law could have upon analysis of the evidence on record found the accused to be “not guilty”....”
- C 23. Seen in light of the decisions above, we would examine whether there is any perversity in the view taken by the High Court while converting conviction into an acquittal. Admittedly, this is a case based on circumstantial evidence. There is no direct eye witness account of the murder. The body of the deceased was not found within the confines of her house but in the open on a railway track. In such circumstances to sustain a conviction the court would have to consider—(i) whether the circumstances relied by the prosecution have been proved beyond reasonable doubt; (ii) whether those circumstances are of a definite tendency unerringly pointing towards the guilt of the accused; (iii) whether those circumstances taken cumulatively form a chain so far complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused; (iv) whether they are consistent only with the hypothesis of the accused being guilty; and (v) whether they exclude every possible hypothesis except the one to be proved.
- D F 24. We shall now examine as to what were the circumstances relied by the prosecution and as to how they were sought to be proved. Additionally, we shall examine as to how the High Court dealt with the evidence on those circumstances with a view to find out whether there is any perversity in its view/ reasoning warranting an interference. In the instant case, the prosecution relied on the following circumstances:
- E G (a) Motive; (b) Disclosure Statement and Recovery; (c) Extra Judicial Confession; and (d) Accused taking the deceased with him and soon thereafter the deceased was found in an injured state. We shall examine each of these circumstances, separately, herein below—

³(2020) 11 SCC 174
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(i) **Motive:** A

According to the prosecution, the appellant and the deceased used to quarrel because the deceased had kept her jewellery with her sister. However, the above reason for the quarrel was not found proved because the prosecution evidence led revealed that the jewellery had already been returned back much before the date of the incident. Therefore, to prove motive, during trial, prosecution developed another story, which is, that the appellant desired his wife to claim a share in her ancestral property which resulted in quarrels. This motive neither appealed to the High Court nor to us because, firstly, it was an improvement in the prosecution story; secondly, not much evidence was laid to substantiate the same; and, thirdly, if the wife is killed how could her husband derive interest in the property. Thus, in our view, the prosecution failed to prove the motive set out by it. No doubt absence of motive by itself may not be sufficient to dislodge the prosecution case if the other proven circumstances could form a chain so complete as to indicate that in all human probability it is the accused and no one else who committed the crime but, in a case based on circumstantial evidence, motive plays an important part. Because, not only it makes the story believable but also helps the court in fortifying an inference which may be drawn against the accused from other attending circumstances.

(ii) **Disclosure Statement and Recovery** F

The prosecution placed heavy reliance on recovery of blood-stained clothes and stones from the hut of the accused on the basis of disclosure made by him. The disclosure as well as recovery has been refuted by the accused as also by PW-6 who is a witness to it. The High Court has noticed that there is material contradiction in the statement of prosecution witnesses with regard to the time when the accused was arrested. The public witnesses examined by the prosecution indicated that the accused was arrested in the night of 01.02.2010 itself, whereas the police witnesses/documents disclosed his arrest on 02.02.2010 at 1240 hours G

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- A at Seoni Trisection. What may be interesting is the time sequence of arrest, recording of disclosure statement and preparing of recovery memos.
- B According to police witnesses and papers, the arrest was effected on 02.02.2010 at 1240 hours; the disclosure statement was recorded on 02.02.2010 at 1300 hours and recovery was effected on 02.02.2010 at 1400 hours. The arrest of the accused was shown from a place known as Seoni Trisection whereas the public witnesses including PW4 stated that the accused was arrested in the night of 01.02.2010 from a *Nala* (drain) where he was hiding with an axe. The disclosure statement, as per the memorandum (Ex.P-9), was prepared at Seoni Trisection and witnessed by PW6; the recovery memo (Ex.P-10), as per memorandum, was prepared at Phoolchand's (accused's) hut near railway line in Model village at 1400 hours and the same too, was witnessed by PW6. Interestingly, PW6 is the only public witness of disclosure and recovery to be examined and he has not supported the prosecution case.
- C What is even more interesting is that the other seizure memorandum prepared in respect of lifting blood-stained saree, gravel, slippers etc. from near the railway line, that is the spot from where the deceased was lifted, was prepared at 1400 hours on 02.02.2010. How could it be possible that the police prepared two memorandums at the same time at different places. The answer to it lies in the testimony of PW6, a witness to both, who stated that he was made to sign the papers at the police station. Meaning thereby that all papers were prepared at one go rendering the entire exercise of disclosure and consequential discovery/recovery doubtful. Not only that, there appears no cogent reason for the accused to carry stones from the spot and hide them in his hut while leaving several blood-stained stones near the railway line. In such circumstances, it appears to us that those stones were picked from the spot near the railway track to show recovery from the hut.
- D Insofar as the recovery of blood-stained clothes is concerned, in addition to the above reasons, the same is doubtful also because of the statement of PW4 (Madhuri)
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that her father on return had washed those clothes and had spread them to dry over the cattle shed in the house therefore, how could they be recovered from the hut. It be noted that the house is shown located in the village, whereas the hut is shown in the field at quite a distance from the house. For all the reasons above, the High Court was justified in doubting the recovery of blood-stained clothes etc. at the instance of the accused from the hut and on the basis of a disclosure statement made by him.

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(iii) **Extra Judicial Confession to PW4**

The alleged extra judicial confession made by the accused to PW4 was neither disclosed in the FIR nor in the previous statement of PW4 made during investigation. PW4 was confronted with that omission during her deposition in court. That apart, the testimony of PW4 with regard to the accused returning home, making extra judicial confession, changing clothes, washing blood-stained clothes and spreading them to dry has been found unreliable and shaky by the High Court for cogent reasons extracted above, which do not appear perverse as to warrant an interference. Thus, the circumstance of extra judicial confession is also not proved beyond doubt.

(iv) **Accused taking the deceased from home on a bicycle**

In respect of this circumstance, the only evidence is of PW4 i.e. the daughter of the accused and the deceased. Her evidence has been doubted by the High Court, inter alia, on the ground that the two witnesses Ganga Bai (PW1) and Sushila (PW12) have not supported her statement. PW4 stated that when she followed her parents who were going on a bicycle she met Sushila (PW12) and she narrated the incident to her. PW12, who appeared as a witness, denied having met PW4 on that fateful day. Similarly, Ganga Bai (PW1) who were to corroborate PW4 on that aspect was declared hostile. Even, if we assume that the testimony of those two witnesses would not damage the testimony of PW4 as they may have their own reasons for not supporting the prosecution case yet, when we peruse the detailed reasons recorded by the High Court in its judgment (i.e.

- A paragraphs 31 to 35 thereof) to hold that the testimony of PW4 is not of a stellar quality as to merit conviction solely on its basis, we find no such perversity in the High Court's conclusion as may warrant a reversal of acquittal into a conviction in exercise of jurisdiction under Article 136 of the Constitution.
- B The argument that doctrine *falsus in uno, falsus in omnibus* is not applicable in India hence PW4's testimony, even if not acceptable on certain aspects, could be relied to prove other circumstances, is not acceptable because the High Court, on basis of analysis of the entire evidence, has discarded the witness as not reliable while observing:
- “that her statement is full of embellishments, exaggerations and material discrepancies and, therefore, we find ourselves unable to pick out the grain of truth from the falsehood of her statement.”
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- D Further, even if we accept PW4's testimony that the accused, on that fateful day, took the deceased on a bicycle to the fields that by itself is not conclusive to indicate that he took her to kill her; because, admittedly, the accused held agricultural holding and it is quite possible that he may have taken his wife to assist him in the agricultural operations. It is common practice in villages for ladies to help their menfolk in agricultural operations. The allegation that while taking her a declaration was made that she would be killed does not inspire our confidence for the reason that the motive set out by the prosecution for such a quarrel has not been proved. Otherwise also, quarrels and disputes between husband and wife are every day phenomena and not such an event which may create a strong suspicion of an impending crime much less murder. More so, where, as in the present case, marriage is subsisting since long with children out of the wedlock. Further, this circumstance by itself is not so clinching as to conclusively point towards the guilt of the appellant by ruling out possibility of a third-party hand in the murder. In this regard, it be noticed that, as per the prosecution case, the deceased was found injured at around 2000 hours in an open area at some distance from
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the hut of the accused. At what time the accused had taken the deceased on his bicycle is not clear from the testimony of PW4 though, from the first part of her testimony, it appears that the accused and the deceased were noticed quarrelling with each other at about 1630 hours and soon thereafter, the appellant took the deceased on his cycle. If, from that, we put the event of taking the deceased on bicycle at about 1630 hours there is still quite a large time-gap between 1630 hours and 2000 hours for other intervening factors to operate. In light thereof, considering that the place of occurrence was an open place and the other circumstances (i.e. motive, disclosure, recovery and extra judicial confession) were not proved beyond reasonable doubt, shifting the burden on the accused to explain the circumstances in which the deceased sustained injuries, or to demonstrate that he parted company of the deceased, would not be justified in the facts of the case.

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25. For all the reasons above, if the High Court has extended the benefit of doubt to the accused, its view being a plausible view, in our opinion, does not call for any interference.

26. The appeals are, therefore, dismissed.

Ankit Gyan
(Assisted by : Kavya Agarwal and Mayank Batra, LCAs)

Appeals dismissed.