

MRC-2-2022 &  
CRA-D-250-2022

CNR No: PHHC010318592022  
2026:PHHC:185793-DB



IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

MRC-2-2022 &  
CRA-D-250-2022

State of Haryana ...Appellant

Versus

Hem Raj ...Respondent

|                         |                           |                                      |                |
|-------------------------|---------------------------|--------------------------------------|----------------|
| JUDGMENT<br>RESERVED ON | JUDGMENT<br>PRONOUNCED ON | OPERATIVE PART<br>PRONOUNCED OR FULL | UPLOADED<br>ON |
| 26.08.2026              | 07.10.2026                | FULL PRONOUNCED                      |                |

CORAM: JUSTICE ANOOP CHITKARA  
JUSTICE HARMEET SINGH DEOL

Present: Mr. Rahul Mohan, Additional Advocate General, Haryana  
Mr. Karan Sharma, Deputy Advocate General, Haryana  
Mr. Shiva Khurmi, Deputy Advocate General, Haryana.  
Mr. Yuvraj Shandilya, Assistant Advocate General, Haryana.

...For the State of Haryana

Mr. Partap Singh, Advocate  
Mr. Kulwant Singh Dhanora, Advocate  
Ms. Kritika Mandhan, Advocate  
Mr. Manav Sharma, Advocate  
Ms. Harshita Sanghwan, Advocate and  
Mr. Harsh, Advocate

...For the appellant/convict

Mr. G.S. Punia, Sr. Advocate, with  
Ms. Harveen Kaur, Advocate  
Mr. Sanjeev Sharma, Advocate and  
Mr. T.P.S. Bawa, Advocate

...Amicus for the convict

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ANOOP CHITKARA, J.

|         |            |                |              |
|---------|------------|----------------|--------------|
| FIR No. | Dated      | Police Station | Section      |
| 313     | 16.06.2018 | Barwala        | 302, 201 IPC |

|                                          |                   |
|------------------------------------------|-------------------|
| <u>Sessions Case No. 78 of 2018</u>      |                   |
| CIS number before the Sessions Court     | SC/472/2018       |
| CNR No.                                  | HRHS01-10157-2018 |
| Date of Decision                         | 07.03.2022        |
| Date of order on the quantum of sentence | 14.03.2022        |

|                             |                                         |
|-----------------------------|-----------------------------------------|
| Name of the accused/convict | Hem Raj                                 |
| Conviction under Sections   | 302 <sup>1</sup> , 201 <sup>2</sup> IPC |

| Sentence imposed upon the convict – Hem Raj |                                                            |             |                                        |
|---------------------------------------------|------------------------------------------------------------|-------------|----------------------------------------|
| Section                                     | Sentence of imprisonment                                   | Fine in INR | Sentence in default of payment of fine |
| 302 IPC                                     | DEATH SENTENCE<br>He be hanged by the neck till he is dead |             | -                                      |
| 201 IPC                                     | RI for 07 years                                            | 10000/-     | Imprisonment for 01 year               |

1. Seeking confirmation of the death sentence, the Trial Court had sent the above-mentioned reference to this Court under §366<sup>3</sup> of the Code of Criminal Procedure, 1973, [CrPC, 1973], [renumbered as §407 BNSS, 2023], and challenging the convictions and the consequent sentences as captioned above, the convict also came before this Court by filing the present Criminal Appeal under §374(2)<sup>4</sup> CrPC, 1973 [renumbered as §415 BNSS, 2023].

2. **RELEVANT FACTS:**

3. On the morning of June 16, 2018, Arjun Dev Mehta (Examined as PW-1 and also examined as PW-16), the Sarpanch of the village Gaibipur, District Hisar, Haryana, made a phone call to the Police Station Barwala to report that a headless corpse of an unknown child had been found by Ram Bilas (PW-2) lying in his fields. Based on this information, the police officials arrived at village Gaibipur. SI Suresh Kumar (PW-17), the Investigating Officer, recorded Ram Bilas's statement under §154 CrPC [renumbered as §173 BNSS, 2023] [(Ext P-1, p. 105 of TCR (Trial Court Record))].

4. Ram Bilas (PW-2) told the police that he had taken agricultural fields on lease, and in some fields, he had cultivated *Jowar* (Sorghum, a millet). At 6 AM, he noticed a child's body, without a head, in the fallow field. There were no clothes on the dead body. The severed head was lying near a trench adjacent to the *Jowar* fields. The blood-stained Kachhi and T-shirt were also lying near a trench, and pieces of bones were scattered nearby. Ram Bilas estimated the age of the child to be about two and a half years and told

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<sup>1</sup> §302. Punishment for murder.  
<sup>2</sup> §201. Causing disappearance of evidence of offence, or giving false information to screen offender.  
<sup>3</sup> §366. Sentence of death to be submitted by Court of Session for confirmation.  
<sup>4</sup> §374. Appeals from convictions.

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police that the child was murdered and thrown in the fields to destroy the evidence and sought legal action against the culprit.

5. The information was recorded under §154 of the CrPC, 1973 (Ext P-1) and was forwarded to the Police Station Barwala with an endorsement (Ext P-2) on it. The duty officer, PW-8 Ram Singh, registered a formal FIR (Ext P-21, pp. 141-143 of TCR) for offenses punishable under §§302 and 201 of the IPC, 1860. The Investigating Officer also forwarded a copy of the FIR to the concerned Judicial Magistrate under §157 of the CrPC [renumbered as §176 of BNSS, 2023].

6. The Investigating Officer, PW-17 SI Suresh Kumar (pp. 235-239 of TCR) testified that on June 16, 2018, he collected a blood-stained T-shirt and Kachhi (underpants) from the place of occurrence and also collected blood-stained mud. The T-shirt and *Kachhi* (underpants) were left unsealed for identification, and blood-stained mud was placed in a small plastic container, sealed with seal impression 'SK', and taken into possession with memo Ext P-3 (p. 107 of TCR), which was attested by Head Constable Vinod Kumar (PW-3, pp. 147-163 of TCR) and Constable Pankaj (PW-6, pp. 173-175 of TCR).

7. After that, SI Suresh Kumar (PW-17) prepared an inquest report under §174 of the CrPC, 1973 [renumbered as §194 of BNSS, 2023] (Ext P-31, pp. 163-167 of TCR) and handed it over to Head Constable Vinod Kumar (PW-3), along with an application (Ext P-30, pp. 159-161) to take the dead body for its post-mortem examination. According to the Inquest Report (Ext P-31) dated June 16, 2018, the dead body was identified by Gian Devi (*Also referred to as Gyan Devi*) (PW-4), sister of Suman, and Meena Devi (PW-5), sister of Hem Raj, as Siva (Deceased) (*Also referred to as Seeva and Shiva*), son of Nirbhay.

8. PW-3, Head Constable Vinod Kumar, stated that after conducting the postmortem, the doctor handed him the postmortem report along with the viscera, two jars and three envelopes.

9. PW-20, Dr. Vijay Kumar Vohra, (pp. 257-263 of TCR) in his examination-in-chief, tendered the copy of the postmortem report (Ext PW-21/A, pp. 253-255 of TCR) in evidence and stated that he had gone through the chemical examiner's report and the FSL report of diatom examination today in Court, and stated that the cause of death in this case is failure of function of brain due to head injury as a result of skull fractures, and may not be due to ante mortem drowning.

10. As per the Postmortem Report, Ext PW-20/A (pp. 253-255 of TCR), the probable time between death and Postmortem examination was 2-4 days.

11. On June 19, 2018, Suman (PW-7), wife of Nirbhay, was produced before the Judicial Magistrate Ist Class (JMIC), Hisar, to record her statement under §164 of the CrPC (Ext P-

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19, pp. 133-137 of TCR) [renumbered as §183 of BNSS, 2023]. She stated that on June 13, 2018, between 8:30 and 9:00 p.m., Hem Raj killed Siva by slamming him onto the road and then by hitting him with a *Kassi* (Hoe). When she tried to save him, Hem Raj threatened her, telling her to stay still or he will kill her and her family. Hem Raj then threw her son into the fields.

12. The Investigating Officer PW-14 ASI Inder Singh (pp. 209-223 of TCR) testified that he had arrested Hem Raj on June 20, 2018.

13. On June 21, 2018, the accused Hem Raj made a disclosure statement about the commission of the crime, and about the concealment of *Kassi* at Faridabad, with which he had cut the child into two pieces, and the said statement was recorded as Ext P-5 (p. 111 of TCR). On this, the police team proceeded towards Faridabad, and when they reached a place known as Bahadurgarh, the accused Hem Raj made a subsequent disclosure that he had concealed *Kassi* in the Jowar field near the spot of the crime, and the said disclosure statement was recorded thereafter as Ext P-6 (p. 113 of TCR). On the next day, i.e., June 22, 2018, the accused Hem Raj led the police team and got discovered the *Kassi* (Hoe) (P-11 (M.O)) (Sketch P-8, p. 117 of TCR) from the Jowar fields, vide memo Ext P-9 (p. 119 of TCR).

14. On July 10, 2018, vide application Ext P-27 (p. 153 of TCR), the Investigating Officer, PW-14, ASI Inder Singh, produced Suman (PW-7), the mother of the deceased Siva, to obtain her blood sample for matching her DNA with the DNA of the genetic material obtained and preserved by the doctors during the postmortem examination of the child's body. Vide memo Ext P-28 (p. 155 of TCR), the Medical Officer of the Government Hospital took Suman's blood sample. PW-22, Dr. Pawan Kumar (pp. 279-281 of TCR), proved the extraction of Suman's blood and tendered in evidence memo Ext P-30, i.e., the record of taking the blood.

15. PW-10 HC Upender Singh (p. 197 of TCR) tendered his statement in evidence through affidavit Ext PW-10/A (pp. 193-195 of TCR), in which it is stated that he was posted as MHC in the police station Barwala and was in charge of the Moharar Malkhana. On June 16, 2018, SI Suresh Kumar (PW-17) deposited sealed parcels with him. On July 10, 2018, a blood sample for DNA examination was deposited, and on June 22, 2018, through Constable Manoj, HC Upender Singh forwarded a box containing viscera along with PMR documents to the Chemical Examiner, Karnal, for analysis. He firmly stated that the contents of the same were not tampered with while in his possession.

16. PW-13, Devender Singh, the then SHO of the Barwala Police Station, (p. 207 of TCR) stated that after completion of the investigation, on Aug 23, 2018, he prepared a

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report under §173 of the CrPC [renumbered as §193 of BNSS, 2023] against the accused Hem Raj.

17. By order dated Jan 18, 2019, the charges (pp. 133-135 of TCR) for the commission of offenses punishable under §§302 and 201 IPC were framed against the accused Hem Raj. The prosecution succeeded, and by the above-mentioned impugned judgment and order, the accused Hem Raj was convicted for murder and awarded a death sentence and was also convicted for the destruction of evidence and sentenced to rigorous imprisonment for seven years and a fine of Rs. 10,000/-.

18. An analysis of the evidence and the submissions of the Ld. Counsel for the convict, the Ld. Amicus for the convict, and the Ld. Counsel for the State would lead to the following outcome.

**19. IDENTIFICATION OF DEAD BODY:**

20. According to the prosecution's case, Suman (PW-7) was the mother of the child whose dead body was found in the fields of PW-2 Ram Bilas (p. 143 of TCR).

21. PW-7 Suman testified that she was married to Nirbhay of Aurangabad, Buxar, Bihar, who worked as a laborer with her at Radhika Mills, and that a son named Siva was born out of their wedlock. After the son's birth, her husband Nirbhay returned to Bihar, where he solemnized marriage with another woman. After that, she began living alone in Hisar. She stated that her son Siva was missing from the house from June 13, 2018, and that after two days, his dead body was recovered by the police. She further stated that she identified her son's clothes (pp. 177-183 of TCR).

22. A reference to the statements of PW-8 (p. 185 of TCR), PW-9 (p. 187 of TCR), PW-10 (p. 197 of TCR), PW-11 (p. 199 of TCR), PW-12 (p. 205 of TCR), PW-13 (p. 207 of TCR), PW-14 (p. 209 of TCR), PW-15 (p. 229 of TCR), PW-17 (p. 235 of TCR), PW-18 (p. 243 of TCR), PW-20 (p. 257 of TCR), and PW-21 (p. 267 of TCR) reveal that at the beginning of their statements, the words "I know English" were written, whereas these words are not written in the statements of PW-1 to PW-7, and the statements of PW-1 to PW-7 are also written in *Devnagari* script (*Hindi*), because apparently these witnesses did not know English.

23. The testimony of PW-7 Suman was recorded in *Devanagari* script (*Hindi*) as well as in English, whereas her signatures are only in the English version.

24. As per the English version (pp. 177-183 of TCR), PW-7 Suman stated as follows, "from 13.06.2018 my son Seeva was missed from the house and after two days his dead

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body was recovered by police and on information I identify the close of my son I do not know who have committed murder of my son Seeva.” (at p. 177 of TCR).

25. However, the statement of PW-7, recorded in *Devanagari* script (*Hindi*), (pp. 33-44 of *Nathi* (Tagged) A-1 of the Trial Court Record) when translated into English, would read as follows: “On 13.6.18, my son Siva was missing from the house, and after two days, the police recovered his body. Upon receiving the information, I identified my son. I do not know who murdered my son.” (at p. 34 of TCR).

26. The objective behind recording the testimonies in *Hindi* of those witnesses who did not understand English was to comply with the provision of §277 of CrPC, 1973 [renumbered as §312 of BNSS, 2023], which reads as follows:

*277. Language of record of evidence.—In every case where evidence is taken down under section 275 or 276,—*

*(a) if the witness gives evidence in the language of the Court, it shall be taken down in that language;*

*(b) if he gives evidence in any other language, it may, if practicable, be taken down in that language, and if it is not practicable to do so, a true translation of the evidence in the language of the Court shall be prepared as the examination of the witness proceeds, signed by the Magistrate or presiding Judge, and shall form part of the record;*

*(c) where under clause (b) evidence is taken down in a language other than the language of the Court, a true translation thereof in the language of the Court shall be prepared as soon as practicable, signed by the Magistrate or presiding Judge, and shall form part of the record:*

*Provided that when under clause (b) evidence is taken down in English and a translation thereof in the language of the Court is not required by any of the parties, the Court may dispense with such translation.*

27. In State of Punjab v. Harinder Singh etc, CrA. 802 of 2002, Apr 09, 2015, a Division Bench of Punjab and Haryana High Court observed,

[39]. We now come to the issue which we have referred to earlier in this judgment, of erroneous/callous recording/translation of evidence in trial Courts. In this particular case, as in some other cases, we have pointed out extensive differences between the English and the vernacular versions of the testimonies given in Court by different witnesses.

In terms of section 277 (b) of the Code of Criminal Procedure, 1973, the evidence recorded in Court may, if practicable, be taken down in the language in which it is given and if it is not practicable to do so, a true translation of the evidence, in the language of the Court, is to be prepared as the examination of the witness proceeds, signed by the Magistrate or the Presiding Judge. Rule 3 of Part E of Chapter 1, Vol.3 of the Rules & Orders of this Court is essentially to the same effect, though with reference made to the provisions of the old Code of Criminal Procedure, 1898.

As is the normal practice, in the States of Punjab and Haryana, the language of the District Courts being English, the testimony of a witness,

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whether delivered in Hindi or Punjabi, is simultaneously translated in Court, as the deposition proceeds. Subsequently, the translated version is "retranslated" into Hindi or Punjabi, as the case may be, i.e. the language in which the testimony has been given by the witness.

This very often results in too many mistakes, even in the English version itself, which sometimes makes no sense at all and, when compared with the Punjabi or Hindi version, there often results a large confusion and, especially as seen in the present case, the facts recorded in English and the Hindi/Punjabi version, are sometimes completely contradictory to each other.

28. In Ashok S/O Ankalu Jangam (In Jail) v. The State of Maharashtra, Cr.A 56 of 2015, Dec 02, 2016, a Division Bench of Bombay High Court observed,

[7]. Law on the point is in Sections 277 and 278 of the Criminal Procedure Code, Court has to record evidence in language of court if Judgment appeal witness deposes in that language. If he deposes in other language, it can be recorded in that language, if possible. Otherwise, it's true translation in the language of the court is to be prepared at same time as witness continues to depose. Procedure to be followed after recording is in Section 278. Said evidence needs to be read over to witness in the presence of the accused, if in attendance, or of his pleader, if he appears by pleader, and, if necessary, can be corrected. If any witness denies the correctness of any part of the deposition when the same is read over to him, the Court may, instead of correcting the evidence, make a memorandum thereon of the objection to it by the witness and add such remarks as it thinks necessary. The provisions of Section 278(3) are important in present matter. Where the record of the evidence is in a language different from that in which it has been given and the witness does not understand that language, the same is to be interpreted to him in the language in which it was given, or in a language which he understands. In earlier i.e. old Criminal Procedure Code (Act V of 1898), these provisions were in Section 360 therein.

29. In Naim Ahamed v. State (NCT of Delhi), [2023] 1 S.C.R. 1061, Jan 30, 2023, the Supreme Court holds,

[p. 1077] [23]. At this juncture, it may be noted that during the course of hearing it was brought to the notice of the Court that the deposition of the prosecutrix was recorded by the trial court in English language though she had deposed in her vernacular language. In this regard, a reference of Section 276 and Section 277 of Cr.P.C. needs to be made, which reads as under:

xxx.

[24]. We are apprised that in some of the trial courts the depositions of the witnesses are not being recorded in their language and are being recorded in English language only, as may be translated by the Presiding officer. In our opinion, the evidence of the witness has to be taken down in the language of the court as required under Section 277 Cr.P.C. If the witness gives evidence in the language of the court, it has to be taken down in that language only. If the witness gives evidence in any other language, it may, if practicable, be taken down in that language, and if it is not practicable to do so, a true translation of the evidence in the language of the court may be prepared. It is only when the witness gives evidence in English and is taken down as such, and a translation thereof in the language of the court is not required by any of

the parties, then the court may dispense with such translation. If the witness gives evidence in the language other than the language of the court, a true translation thereof in the language of the court has to be prepared as soon as practicable.

[25]. The evidence of the witness has to be recorded in the language of the court or in the language of the witness as may be practicable and then get it translated in the language of the court for forming part of the record. However, recording of evidence of the witness in the translated form in English language only, though the witness gives evidence in the language of the court, or in his/her own vernacular language, is not permissible. As such, the text and tenor of the evidence and the demeanor of a witness in the court could be appreciated in the best manner only when the evidence is recorded in the language of the witness. Even otherwise, when a question arises as to what exactly the witness had stated in his/her evidence, it is the original deposition of the witness which has to be taken into account and not the translated memorandum in English prepared by the Presiding Judge. It is therefore directed that all courts while recording the evidence of the witnesses, shall duly comply with the provisions of Section 277 of Cr.PC.

30. In the statement of PW-7 Suman recorded in *Hindi*, it is not mentioned that she had identified the clothes of her son but simply stated that she identified her son. Thus, the foundational question that arises is whether the dead body was identifiable without clothes.

31. PW-3 Head Constable Vinod Kumar tendered in evidence a T-shirt as Ext P-12 (MO) and Kachhi as Ext P-13 (MO). However, despite the clothes having been recovered from the spot and before the examination of PW-7 Suman, they had already been tendered in evidence; they were not put to PW-7 Suman for identification, despite Suman being the most competent witness to identify her child's clothes and further to testify that her son Siva was wearing these clothes on the day when he went missing.

32. PW-3 Head Constable Vinod Kumar stated that the deceased was identified by one Meena Devi (PW-5) and another lady (PW-4) Gyan Devi, who claimed to be the deceased Siva's *Maasi* (Mother's sister). (p. 163 of TCR).

33. PW-4 Gyan Devi (Suman's sister) stated that her nephew Siva was murdered. She went to General Hospital, Hisar, where she identified her nephew's body. (pp. 165-167 of TCR). PW-4 Gyan Devi did not add anything further, and the Court declared her a hostile witness. In response to leading questions from the Public Prosecutor, she denied making Ext P-15 and stated that she had never given such a statement to the Police. She denied telling the Police that her sister Suman had told her that Hem Raj would taunt Siva, calling him the son of *Bihari*, and that this would lead to a scuffle, and that, because of this, he killed Siva. She denied compromising the matter with the accused. In cross-examination, she stated that she did not know what had happened from June 13, 2018, to June 16, 2018, because she was at her house in Hisar during those days.

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34. During the investigation, the Investigator SI Suresh Kumar (PW-17) recorded statement of Meena Devi (PW-5) (Hem Raj's sister) under §161 CrPC) [renumbered as §180 BNSS, 2023], (Ext P-16, p. 125 of TCR regarding the recovered clothes, in which Meena Devi stated that she had given these clothes to Siva. However, when Meena Devi testified as PW-5, she stated that Siva was her nephew and that, upon receiving news of his murder, she went to the fields, where she identified her nephew's dead body. Meena Devi did not state that she identified Siva by the clothes that she had given to Siva. (pp. 169-171 of TCR).

35. PW-5 Meena Devi further stated that, other than this, she did not know anything about the present case. The Court declared her a hostile witness and the Public Prosecutor cross-examined her. PW-5 Meena Devi denied portions 'A' to 'A' of her statement (Ext P-16) recorded by the police and stated that she never made such a statement. She denied making a statement to the police that her sister-in-law would usually tell her on the phone that Hem Raj taunted Siva, calling him the son of a *Bihari*, which caused scuffle among family members and led to Siva's killing.

36. The alternative way to identify the dead body to be that of Siva was to identify the clothes or to link the blood of the victim's mother with the bloodstains present on the clothes lying close to the child's body.

37. PW-3 Head Constable Vinod Kumar, in his cross-examination, stated that bones were lying at a distance of about 50 paces from the dead body and the T-shirt was lying 15 paces from the bones on the western side; and *Kachhi* (Underpants) was lying 15 paces from the T-shirt.

38. PW-6 Constable Pankaj stated that SI Suresh Kumar (PW-17) took into possession one blood-stained T-shirt and one blood-stained *Kachhi* (Underpants) of white color. He explicitly stated that the T-shirt and *Kachhi* (Underpants) were kept unsealed for identification.

39. In photograph P-2, a T-shirt of white color base with purple color prints, and the inscription "*No Goal*" is clearly readable, and the T-shirt is identifiable. In photograph P-7, a small-sized underpants (*Kachhi* /knickers) is visible.

40. Given the above, except for the clothes, there is no other evidence to identify the deceased as Siva. To establish substantive evidence, the clothes, T-shirt Ext P-12 (MO) and the underpants, Ext P-13 (MO), were required to be identified by Siva's mother, PW-7 Suman, to state that her son Siva was wearing those when he went missing. As discussed above, in PW-7's statement recorded in English, she stated that she identified his clothes;

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however, in PW-7's statement recorded in *Hindi*, she did not state that she identified her son's clothes but only stated that she identified her son.

41. In State through CBI v. Mahendra Singh Dahiya, [2011] 1 S.C.R. 1104, 2011-INSC-80, Jan 28, 2011, the Supreme Court holds,

[p. 1146] [37.] We may also notice that prosecution had allegedly recovered the clothes Namita had taken on the trip. Namita's wedding dress was stated to have been recovered as part of the clothings. The High Court, in our opinion, correctly observed that ordinarily a woman would not carry her wedding dress on her honeymoon trip. The High Court also notices that though the prosecution had taken custody of all the clothes which Namita had taken with her on the honeymoon trip, they were not produced at the trial for identification by the witnesses. Only photographs of the clothings, which had been allegedly taken on 12th June, 1979 i.e. after 16 days, were produced.

[p. 1147] [38.] ...The High Court, in our opinion, correctly recorded the conclusion that on consideration of the relevant evidence of the witnesses and various documents on record, the prosecution had miserably failed to establish the recovery of clothes or shoes by means of any cogent and reliable evidence.

42. Even if Suman had been declared a hostile witness, the clothes, nevertheless, could have been proved through her by showing them to her during the trial, as the testimony of a hostile witness is not effaced in its entirety.

43. If any portion of Suman's testimony had established the identity of the child's clothes, then it would certainly have been a relevant fact and admissible in evidence; however, during the trial, the prosecution never got the clothes, T-shirt Ext P-12 (MO) and the underpants, Ext P-13 (MO), identified by Suman (PW-7) as having been worn by Siva when he went missing. Nor did the Trial Judge exercise the statutory power under §165 of the Indian Evidence Act, 1872 [renumbered as §168 of BSA, 2023], by putting questions to PW-7 Suman or by ordering the production of the clothes to be put to her.

44. PW-5 Meena Devi stated in her cross-examination that the body was naked and could not be identified because it had decomposed.

45. PW-2 Ram Bilas, in his cross-examination, stated that only the lower half portion of the body was in the field, from which no identification of the deceased was possible. (p. 105 of TCR).

46. PW-16 Arjun Dev, the local village Sarpanch, in his cross-examination conducted on Mar 04, 2021, explicitly testified that the dead body was not identifiable. (pp. 231-233 of TCR).

47. SI Suresh Kumar (PW-17, pp. 235-239 of TCR) claims to have taken photographs of the dead body with his mobile phone, which he tendered in evidence as Mark P-1 to P-11.

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Photographs P-1 (p. 457 of TCR) and P-8 (p. 471 of TCR) show that the body had only legs and the lower portion of the torso, below the chest. Photographs P-10 (p. 475 of TCR) and P-11 (p. 477 of TCR) show that the head was only a skull of small size, without any scalp, hair, ears, eyes, lips.

48. A reference to the Crime Scene Visit Report (Ext P-29, p. 157 of TCR) reveals that the body was in the fallow portion of the agricultural field, unladen with the *jowar* crop having been harvested. Photograph-2, printed in the report (Ext P-29), shows that only the lower half of the body, below the chest, was present, and Photograph-7 shows that the head was only a skull, without any scalp.

49. PW-18, Dr. Ajay Kumar, Assistant Director (pp. 243-245 of TCR), who had examined the scene of crime, stated that on June 16, 2018, he had visited the spot of occurrence and inspected the scene-of-crime along with the dead body to collect all relevant physical evidence. He prepared a scene-of-crime visit report with photographs and tendered the same in evidence as Ext P-29 (p. 409 of TCR). In cross-examination, PW-18, Dr. Ajay Kumar, stated that the dead body was not in an identifiable position.

50. PW-20 Dr. Vijay Kumar Vohra, Professor and HOD, Forensic Medicine, Maharaja Agrasen Medical College, (MAMC) Agroha, who conducted the post-mortem examination, in his cross-examination, stated as follows:

*“The dead body was putrefied and incomplete dead body of a male child. Only the lower 2/3 portion of abdomen, both lower limbs, posterior wall of the lower most portion of the chest were present. The head, neck, both upper limbs, the whole of front of chest, major portion of posterior wall of chest, upper 1/3 of the abdomen up to the level of last thoracic vertebrae were missing from the body.”*

*“As per postmortem report, there was linear fracture of the frontal bone of the skull on the right side was present, radiating from the broken margin of skull just anterior coronal suture. There was also an irregular fracture of left occipital bone of the skull 2 c.m. below the suture line. Definitely I cannot say that the skull is of the same lower body of the child. Again said that, it may be of the same child. According to cranium and spinal cord, scalp, skull is missing. Self stated, as per PMR skull was lying beside the dead body when the police brought the dead body for post mortem examination. On a decomposed body, post mortem can be done. The conclusion of this medical report is that it was dead body of a male child in a stage of putrefaction and the cause of death has already mentioned above.”*

51. Thus, it is evident from the testimonies of the above-mentioned witnesses, the photographs and the FSL reports that the corpse was not identifiable.

52. As of date, the conclusive scientific evidence establishing the biological parentage of a child is obtained by conducting a DNA test.

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53. In Dharam Deo Yadav v. State of U.P., [2014] 11 S.C.R. 650, 2014-INSC-265, Apr 11, 2014, the Supreme Court holds,

[p. 674] [p. 34] ...The most important role of DNA profile is in the identification, such as an individual and his blood relations such as mother, father, brother, and so on. Successful identification of skeleton remains can also be performed by DNA profiling.

54. The report of FSL, Haryana, Madhuban, Karnal, dated Oct 14, 2021, is Ext PY (p. 451 of TCR) and the conclusion of the DNA reads as follows:

*“The autosomal STR analysis indicates that DNA profile was not obtained in item no. 1 (Bone) which may be due to degradation of DNA or presence of PCR inhibitors which is also indicated by the poor quality of DNA obtained after extraction. Hence DNA profile of item no. 3 (Blood) could not be compared with the item no. 1(Bone) and hence no opinion could be given in this case.”*

55. The doctors did extract the genetic material during the postmortem and even collected a blood sample from PW-7 Suman; however, the laboratory reported that the genetic material from the body had disintegrated due to poor postmortem collection and could not be connected.

56. According to the FSL report, Ext PX (pp. 447-449 of TCR), the T-shirt and knickers were stained with blood, and the serological analysis indicated that the blood on the T-shirt and knickers was of human origin. However, that alone is insufficient to establish the filial relationship between the deceased child and PW-7 Suman.

57. Nevertheless, in view of the various circumstances pointing towards the identity of the missing child, who was the only child found to be missing in the area, and the approximate age of the body, in all likelihood, Suman was the child’s mother.

58. Given all the above, the fact that the dead body is of Siva is neither disproved nor proved beyond a reasonable doubt. Thus, the dead body was most probably Siva's, but the same cannot be said with absolute certainty. In this context, evaluating the other evidence becomes crucial.

**59. EVIDENTIARY VALUE OF THE IDENTIFICATION OF CLOTHES FROM THE ACCUSED WHEN HE WAS IN THE POLICE CUSTODY:**

60. The Investigating Officer, PW-14 ASI Inder Singh (pp. 209-223 of TCR), stated that on June 21, 2018, Hem Raj was taken out of the police lockup. In the presence of PW-3 Head Constable Vinod, Constable Manjeet, and Constable Mohan, the accused Hem Raj voluntarily made a disclosure statement, Ext P-5 (p. 111 of TCR), which they signed and PW-14 attested. Thereafter, the accused was produced before the JMIC to seek police remand to recover the *Kassi* used in the offense, and police remand was granted. Subsequently, the accused was taken to Faridabad to recover the *Kassi* used in the offense,

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but at a place known as Bahadurgarh, the accused allegedly voluntarily made another disclosure statement, Ext P-6 (p. 113 of TCR), which PW-14 ASI Inder Singh signed, and Head Constable Vinod Kumar (PW-3) and Constable Mohan witnessed.

61. According to this disclosure statement, Ext P-6, in addition to the other disclosures, the accused Hem Raj allegedly said that after killing the child, he had buried the body in the earth and could identify the clothes which Siva was wearing.

62. Based on the disclosure statement, Ext P-6, on June 22, 2018, the accused Hem Raj identified the blood-smeared clothes of the deceased, i.e., T-shirt, Ext P-12 (MO), and the Kachhi (underpants), Ext P-13 (MO), vide Memo Ext P-7.

63. The most glaring deficiency in the conduct of the trial is that even though PW-3, Head Constable Vinod Kumar, had already tendered in evidence T-shirt as Ext P-12 (MO) and Kachhi (underpants) as Ext P-13 (MO), both clothes recovered from a place very close to the spot from where the child's dead body was recovered, but the prosecution still failed to have the clothes, i.e., the T-shirt and the underpants, identified by PW-7 Suman, to enable her to testify that her son Siva wore them when she last saw him alive.

64. A court of law has to conduct its proceedings, and make its determinations, in the light of the admissible evidence which is laid before it; and nothing ought to be taken into account in reaching a verdict or finding which is not supported by admissible evidence (1) what facts may be properly led in order to determine in a criminal case the guilt or innocence of an accused person; and (2) how, and by whom and in what circumstances, such facts may be presented to the court.<sup>5</sup>

65. In England, the test of admissibility of confessions is voluntariness. Admissibility is a matter of law and is for the judge to decide without the assistance and in the absence of the jury. A confession of a crime is only admissible in evidence against the accused where it is shown by the prosecution that it was voluntary, i.e. that "it has not been obtained from him either by fear of prejudice or hope of advantage exercised or held out by a person in authority." It is for the judge to decide by holding a "trial within a trial" in the absence of the jury whether the confession is admissible, and the accused is entitled to give evidence and call witnesses to show it was not voluntary.<sup>6</sup>

66. The position in India with regard to confessions is different from the common law laid down in England. There is a statutory bar against confessions by the accused in police custody under §26 of the Indian Evidence Act, 1872. There is no subsection of the

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<sup>5</sup> Harris's *Criminal Law* 591 (Ian McLean, Peter Morrish, ed., 22nd ed., Universal Law Publishing Co. Pvt. Ltd.).

<sup>6</sup> Harris's, *Criminal Law* 610-611 (Ian McLean, Peter Morrish, ed., 22nd ed., Universal Law Publishing Co. Pvt. Ltd.).

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confessions to a voluntariness test in India, and the admissibility of confessions is not left for the judge to decide by holding a “trial within a trial”.

67. It shall be relevant to refer to Section 26 of the Indian Evidence Act, 1872, which reads as follows:

§26. Confession by accused while in custody of police not to be proved against him.— No confession made by any person whilst he is in the custody of a police-officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

68. In Santosh @ Bhure v. State (G.N.C.T.) of Delhi, [2023] 7 S.C.R. 719, 2023-INSC-443, Apr 28, 2023, a three-Judge bench of the Supreme Court holds,

[pp. 748-749] [43]. As far as admissibility of the confessional statement of the two accused in respect of suicide letter being written by Neeraj is concerned, the same being made by an accused before the police would be hit not only by Sections 25 and 26 of the IEA, 1872 but also by Section 162 of the Code because only that much of the disclosure/confessional statement is admissible as relates distinctly to the fact discovered. Since the suicide letter was discovered on 12.09.2000, that is, much before the disclosures allegedly made on 23.09.2000 and 25.09.2000, the disclosure qua the suicide letter, in our view, is not admissible in evidence.

69. In Rajendra Singh and Others v. State of Uttaranchal Etc., [2025] 10 S.C.R. 342, 2025-INSC-1193, Oct 07, 2025, the Supreme Court holds,

[p. 351] [31]. A simple reading of all the three provisions conjointly reveals that the first two provisions are substantive, whereas Section 27 is in the nature of an exception. Sections 25 and 26, at one hand, provide that no confession made to a police officer or to any person while in custody of the police, shall be admissible against a person accused of any offence, on the other hand, Section 27 provides an exception to the above provisions. It states that so much of the information, received from an accused person in custody of the police, whether in the nature of confession or otherwise, as related distinctly to the fact thereby discovered, may be admissible. This means that not all information disclosed by a person in police custody is required to be proved as against the accused person; only that part which distinctly relates to the discovery of a fact is admissible and can be proved.

70. Sections 25 and 26 are manifestly intended to hit at an evil, viz., to guard against the danger of receiving in evidence testimony from tainted sources about statements made by persons accused of offences.<sup>7</sup>

71. The accused, Hem Raj, was in police custody when he identified the clothes. Such identification by the accused while in police custody amounted to a confession, and no confession can be proved given the statutory bar under §26 of the Indian Evidence Act, 1872 [renumbered as §23 of BSA, 2023]. As such, the memo Ext P-7 regarding the accused's identification of the clothes and the similar testimonies of the police officials

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<sup>7</sup> Supreme Court of India, Constitutional Bench, (Majority View), State of Uttar Pradesh v. Deoman Upadhyaya, [1961] 1 SCR 14, p. 29; 1960-INSC-107, May 6, 1960.

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stating that the accused, while in police custody, had identified the child's clothes, lack legal sanctity.

72. Resultantly, given the statutory bar and in light of the judicial precedents mentioned above, identification of the child's clothing by the accused while the accused was in police custody is legally inadmissible.

**73. WHAT WAS THE MAGNITUDE OF BURDEN UPON THE ACCUSED TO EXPLAIN THE DEATH OF THE CHILD, BECAUSE THE CHILD, BEFORE GOING MISSING, WAS RESIDING WITH THE ACCUSED?**

74. Both PW-7 Suman and DW-1 Lachman (pp. 311-315 of TCR), brother of Hem Raj, testified that Siva had died.

75. According to the PMR, the time between death and the postmortem was reported as 2-4 days, which corresponds to the period between the child's disappearance and the recovery of the body.

76. It shall be relevant to refer to §§101 & 106 of the Indian Evidence Act, 1872 [renumbered as §§104 & 109 BSA, 2023], which reads as follows:

*§101. Burden of proof. — Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.*

*§106. Burden of proving fact especially within knowledge. — When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.*

77. In Shambu Nath Mehra v. The State of Ajmer, [1956] 1 SCR 199, 1956-INSC-15, Mar 12, 1956, a three-judge bench of the Supreme Court, explaining the scope of §106 of the Evidence Act in criminal trial, holds,

[pp. 203-204] This lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are “especially” within the knowledge of the accused and which he could prove without difficulty or inconvenience. The word “especially” stresses that. It means facts that are *pre-eminently* or *exceptionally* within his knowledge. If the section were to be interpreted otherwise, it would lead to the very startling conclusion that in a murder case the burden lies on the accused to prove that he did not commit the murder because who could know better than he whether he did or did not. It is evident that that cannot be the intention and the Privy Council has twice refused to construe this section, as reproduced in certain other Acts outside India, to mean that the burden lies on an accused person to show that he did not commit the crime for which he is tried. These cases are Attygalle v.

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Emperor [AIR 1936 PC 169] and Seneviratne v. R. [(1936) 3 All ER 36, 49].

78. In Nagendra Sah v. State of Bihar, CrA 1903 of 2019, Sep 14, 2021, the Supreme Court holds,

[p. 12] [19]. Under Section 101 of the Evidence Act, whoever desires any Court to give a judgment as to a liability dependent on the existence of facts, he must prove that those facts exist. Therefore, the burden is always on the prosecution to bring home the guilt of the accused beyond a reasonable doubt. Thus, Section 106 constitutes an exception to Section 101.

79. In The State of Madhya Pradesh v. Balveer Singh, [2025] 2 S.C.R. 836; 2025-INSC-261, Feb 24, 2025, the Supreme Court holds,

[p. 84] [76]. Section 106 cannot be invoked to make up the inability of the prosecution to produce evidence of circumstances pointing to the guilt of the accused. This section cannot be used to support a conviction unless the prosecution has discharged the onus by proving all the elements necessary to establish the offence. It does not absolve the prosecution from the duty of proving that a crime was committed even though it is a matter specifically within the knowledge of the accused and it does not throw the burden on the accused to show that no crime was committed. To infer the guilt of the accused from absence of reasonable explanation in a case where the other circumstances are not by themselves enough to call for his explanation is to relieve the prosecution of its legitimate burden. So, until a prima facie case is established by such evidence, the onus does not shift to the accused.

80. Given the above, the quality of evidence adduced in this trial would not shift the burden on the accused under §106 of the Indian Evidence Act, 1872, on account of the uncertainty of the evidence.

**81. EYE-WITNESS ACCOUNT OF PW-7 SUMAN:**

82. On June 19, 2018, Suman (PW-7), who mentioned herself as the wife of Nirbhay, was produced before the JMIC, Hisar, to record her statement under §164 of the CrPC, 1973. When the Court questioned her about her competency, Suman stated that she is 24 years old and a resident of Shahjahanpur, Uttar Pradesh. She further stated that she has a child named Siva and that they are six siblings, namely Rajkumar, Sulochana, Gyan Devi (PW-4), Radha, Kiran, and herself. The JMIC was satisfied that she was competent and not under any duress. The Court administered an oath to Suman, and she made a statement under §164 of the CrPC (Ext P-19, pp. 133-137 of TCR).

83. As per Ext P-19, her statement recorded under §164 of the CrPC, Suman stated on oath that she works on a thread-making machine at Radhika Mills, Hansi. Around three months ago, she became friends with Hem Raj, who drives a JCB. On Apr 14, 2018, Hem Raj brought her to his house, and her two-year-old son, Siva, was with her. Hem Raj told her that Siva was the son of a *Bihari*, that he would not keep him, and that he would kill

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him. On June 13, 2018, between 8:30 and 9:00 p.m., Hem Raj slammed Siva onto the road and then killed him by hitting him by a *Kassi* and when she tried to save her child, Hem Raj threatened her, telling her to stand still; otherwise, he would kill her and her family. After that, Hem Raj threw her son into the fields. The next day, at 5:00 a.m., she left for her sister Gyan Devi's house at Vinod Nagar, Hisar. Hem Raj had threatened her that if she revealed this incident to anyone, he would kill her. Suman signed her statement, which was also signed by the concerned JMIC and bears the date Jun 19, 2018.

84. The concerned JMIC, testified as PW-19, tendered in evidence the statement recorded by him under §164 CrPC as Ext P-19 and also endorsed his signature on it as Ext P-30. In cross-examination, he stated that the witness was not under any pressure whatsoever, before giving the statement and was given 20 to 30 minutes to think over before recording her statement. (pp. 249-251 of TCR).

85. PW-7 Suman was declared a hostile witness, and the Public Prosecutor put leading questions to her. She admitted that the Magistrate had recorded her statement under §164 CrPC, Ext P-19, and that she had signed it, but claimed she made it under duress due to existing threat from her relatives. She denied that Ext P-19 was willfully made without any threats or pressure, or that she had compromised the matter with the accused outside court and had falsely testified to save the accused from punishment. Thus, she admitted making such a statement, (Ext P-19, pp. 133-137 of TCR), but stated that it was recorded under the threat of her relatives and stated that it was incorrect that she had made the statement Ext P-19 willfully before the learned Magistrate, without any threat or pressure from any quarter. She also denied the contents of Ext P-18, which were put to her, but admitted that she was produced before the Magistrate to record her statement under §164 CrPC. Suman further admitted that on July 10, 2018, she was produced before the Judicial Magistrate Ist Class, (p. 131 of TCR), where her statement, Ext P-20 (p. 139 of TCR), was recorded in Court, which bears her signature. She also admitted that her blood sample was obtained at the Civil Hospital, Hisar, on July 10, 2018.

86. Although PW-7 Suman admitted her signatures on Ext P-19, under §164 CrPC, she denied that she had compromised the matter with the accused outside the Court to save him from legal punishment. She denied that the accused, present in Court, committed the murder of her son in her presence, or that the accused Hem Raj threatened her with dire consequences.

87. Suman (PW-7), while deposing under §164 CrPC, blamed the accused Hem Raj for murdering her son, but while testifying at trial, she absolved the accused Hem Raj. In her cross-examination by the Defense, (at p. 183 of TCR), Suman stated that the statement she gave in Court (referring to the present day's testimony during the trial) was made without

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any pressure from any side. Suman also denied that the accused buried the dead body of her son after committing his murder.

88. Despite PW-7 Suman's admission that she was under duress when she made her statement under §164 CrPC, the unrebutted testimony of PW-19, the Judicial Magistrate concerned, it cannot be said that PW-7 Suman had made her statement under §164 CrPC under any duress or compulsion.

89. The proposition of law that needs to be explained is the evidentiary value of a witness's statement recorded under §164 of the CrPC [§183 of BNSS, 2023] vis-à-vis the testimony of the same witness recorded during the trial.

90. Section 164 CrPC, relevant for the adjudication of the present matter, reads as follows:

§164. Recording of confessions and statements.—(1) Any Metropolitan Magistrate or Judicial Magistrate may, whether or not he has jurisdiction in the case, record any confession or statement made to him in the course of an investigation under this Chapter or under any other law for the time being in force, or at any time afterwards before the commencement of the inquiry or trial:

(5) Any statement (other than a confession) made under sub-section (1) shall be recorded in such manner hereinafter provided for the recording of evidence as is, in the opinion of the Magistrate, best fitted to the circumstances of the case; and the Magistrate shall have power to administer oath to the person whose statement is so recorded.

91. The version of the victim's mother recorded under §164 of the CrPC (Ext P-19) was not a confession but falls within the category of a statement.

92. It shall be appropriate to refer to the relevant judicial precedents propounded by the Supreme Court regarding the evidentiary value of a statement recorded under §164 CrPC:

93. In Ram Kishan Singh v. Harmit Kaur and Anr., CrA 106 of 1970; [1972] 3 SCC 280, Dec 9, 1971, the Supreme Court holds,

[8]. A statement under Section 164 of the Code of Criminal Procedure is not substantive evidence. It can be used to corroborate the statement of a witness. It can be used to contradict a witness.

94. In R. Shaji v. State of Kerala [2013] 3 S.C.R. 1172; 2013-INSC-72, Feb 04, 2013, the Supreme Court holds,

[p. 1193] [14]. Evidence given in a court under oath has great sanctity, which is why the same is called substantive evidence. Statements under Section 161 Cr.P.C. can be used only for the purpose of contradiction and statements under Section 164 Cr.P.C. can be used for both corroboration and contradiction. In a case where the magistrate has to perform the duty of recording a statement under Section 164 Cr.P.C., he is under an obligation to elicit all information which the witness wishes to disclose, as a witness who may be an illiterate, rustic villager may not be aware of the purpose for which he has been brought, and what he must disclose in

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his statements under Section 164 Cr.P.C. Hence, the magistrate should ask the witness explanatory questions and obtain all possible information in relation to the said case.

[pp. 1193-1194] [15]. So far as the statement of witnesses recorded under Section 164 is concerned, the object is two fold; in the first place, to deter the witness from changing his stand by denying the contents of his previously recorded statement, and secondly, to tide over immunity from prosecution by the witness under Section 164. A proposition to the effect that if a statement of a witness is recorded under Section 164, his evidence in Court should be discarded, is not at all warranted. (Vide: Jogendra Nahak & Ors. v. State of Orissa & Ors., AIR 1999 SC 2565; and Assistant Collector of Central Excise, Rajamundry v. Duncan Agro Industries Ltd. & Ors., AIR 2000 SC 2901).

[p. 1194] [16]. Section 157 of the Evidence Act makes it clear that a statement recorded under Section 164 Cr.P.C., can be relied upon for the purpose of corroborating statements made by witnesses in the Committal Court or even to contradict the same. As the defence had no opportunity to cross-examine the witnesses whose statements are recorded under Section 164 Cr.P.C., such statements cannot be treated as substantive evidence.

95. The jurisprudence concerning a statement under Section 164 CrPC is fairly clear—Such a statement is not considered as a substantive piece of evidence, as substantive oral evidence is one which is deposited before the Court and is subjected to cross-examination.<sup>8</sup>

96. The evidentiary value of a statement recorded under §164 CrPC [§183 BNSS, 2023] cannot be equated with the statement of such a witness recorded under CHAPTER X (OF THE EXAMINATION OF WITNESSES) of the Indian Evidence Act, 1872, which corresponds to the CHAPTER IX (OF WITNESSES) of BSA, 2023, because statements under these chapters recorded before the Court on oath are done in the presence of the accused, and when the accused has been exempted from the personal appearance, then in the presence of their representative(s). The major difference between statements recorded under §164 CrPC [§183 BNSS, 2023] before the Magistrate on oath and a witness's testimony during trial is the absence of the accused or their representation during the recording of a §164 CrPC statement, subject to the exceptions of §299 CrPC, 1973 [§335 BNSS, 2023]. Further, the legislature did not draft the language of §164 CrPC, 1973 or of §183 BNSS, 2023 to substitute such a statement for substantive evidence on par with a statement made on oath during trial in the presence or representation of the accused, who has an opportunity to cross-examine the witness and create doubt about their credibility. Thus, testimony recorded during trial stands on the highest pedestal and is ordinarily accepted as credible and reliable evidence unless impeached, or found to be from an incompetent witness, or shown to have been given under duress.

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<sup>8</sup> Supreme Court of India, Vijaya Singh v. State of Uttarakhand [2024] 11 SCR 906, Para 27; 2024-INSC-905, Nov 25, 2024.

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97. In the present case, Suman, when testifying during the trial, took a U-turn from her statement recorded under §164 CrPC. Suman was neither arraigned as an accused nor was she even a suspect. In the substantive evidence that came from PW-7 Suman's testimony during the trial, she did not level any accusations against Hem Raj; instead, she absolved him of the guilt attributed to him *vis-à-vis* his role in the commission of the crime.

98. Although Suman (PW-7) was declared hostile as she had resiled from her statement made under §164 CrPC, but it does not discredit her entire statement made on oath during the trial.

99. In State of Punjab v. Hari Singh & Anr., [1974] 3 S.C.R. 725; 1974-INSC-67, Mar 21, 1974, the Supreme Court holds,

[pp.731-732] [H-E] As human testimony, resulting from widely different powers of observation and description, is necessarily faulty and even truthful witnesses not infrequently exaggerate or imagine or tell half truths the Courts must try to extract and separate the hard core of truth from the whole evidence. This is what is meant by the proverbial saying that courts must separate "the chaff from the grain". If, after considering the whole mass of evidence, a residue of acceptable truth is established by the prosecution beyond any reasonable doubt the Courts are bound to give effect to the result flowing from it and not throw it overboard on purely hypothetical and conjectural grounds...

100. In C. Muniappan & ors. v. State of Tamil Nadu, [2010] 10 S.C.R. 262; 2010-INSC-553, Aug 30, 2010, the Supreme Court holds,

[p. 310] [69]. It is settled legal proposition that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross examine him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent that their version is found to be dependable on a careful scrutiny thereof.

101. In Paramjeet Singh @ Pamma v. State of Uttarakhand, [2010] 11 SCR 1064; 2010-INSC-647, Sep 27, 2010, the Supreme Court holds,

[p. 1081] [17]. The fact that the witness was declared hostile at the instance of the public prosecutor and he was allowed to cross examine the witness furnishes no justification for rejecting en bloc the evidence of the witness. However, the court has to be very careful, as *prima facie*, a witness who makes different statements at different times, has no regard for the truth. His evidence has to be read and considered as a whole with a view to find out whether any weight should be attached to it. The court should be slow to act on the testimony of such a witness; normally, it should look for corroboration to his testimony. (Vide : State of Rajasthan v. Bhawani & Anr: (2003) 7 SCC 291).

[pp. 1082-1083] [22]. In view of the above, it is evident that the evidence of a person does not become effaced from the record merely because he has turned hostile and his deposition must be examined more cautiously to find out as to what extent he has supported the case of the prosecution.

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102. In Ramesh Harijan v. State of UP, [2012] 6 SCR 688; 2012-INSC-243, May 21, 2012, the Supreme Court holds,

[p. 705] [18]. It is a settled legal proposition that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross examine him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent that their version is found to be dependable on a careful scrutiny thereof. (Vide: Bhagwan Singh v. The State of Haryana, AIR 1976 SC 202; Rabindra Kumar Dey v. State of Orissa, AIR 1977 SC 170; Syad Akbar v. State of Karnataka, AIR 1979 SC 1848; and Khujji @ Surendra F Tiwari v. State of Madhya Pradesh, AIR 1991 SC 1853).

103. In Dev Raj v. State of Chhattisgarh, [2016] 3 S.C.R. 323; 2016-INSC-554, Jul 25, 2016, the Supreme Court holds,

[p. 332] [19]. The evidence of a witness who has been declared hostile can be relied if there are some other material on the basis of which said evidence can be corroborated. More so, that part of evidence of a witness as contained in examination-in-chief, which remains unshaken even after cross-examination, is fully reliable even though the witness has been declared hostile.

104. In Goverdhan & Anr. v. State of Chhattisgarh, [2025] 1 S.C.R. 657; 2025-INSC-47, Jan 09, 2025, a three-Judge bench of the Supreme Court holds,

[p. 669] [19]. As per Section 3 of the Indian Evidence Act, 1872, a fact can be said to have been proved when, after considering the matters before it, the court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act up on the supposition that it exists. The court undertakes this exercise of examining whether the facts alleged including the particular criminal acts attributed to the accused are proved or not.

105. In K.P. Tamilmaran v. The State by Deputy Superintendent of Police, [2025] 4 S.C.R. 1865; 2025-INSC-576, Apr 28, 2025, the Supreme Court holds,

[pp. 1882-1883] [31]. The phrase ‘hostile witness’ is commonly used in criminal jurisprudence and court proceedings. We too cannot escape the blame of using the term ‘hostile witness’ in our judgment. We do it for pragmatic reasons. Some words like ‘hostile witness’ in this case are now a part of our legal vocabulary. There is no point in inventing or substituting new words or phrases, at least in the present case, and we leave that for the future. But what is necessary, however, is to explain the meaning of the term as it is now to be understood. The phrase ‘hostile witness’ has come to be used for a witness who gives a statement contrary to the story of the side for which he/she is a witness. All the same, because a witness has supported some, though not all, aspects of a case, it would not automatically mean that this witness has to be declared ‘hostile’. A party can cross-examine its own witness under Section 154 Evidence Act, even without getting a declaration of ‘hostility’. The only restriction to cross-examination under Section 154 Evidence Act is that the party, who seeks to cross-examine its own witness, must obtain the leave of the Court. Whether there is a declaration of ‘hostility’ or not, one thing is clear that evidence of witness, who has been cross-examined under Section 154 Evidence Act by the party who called such witness,

cannot be washed off entirely and it is for the Court to see what can be retrieved from such evidence.

[p. 1883] [32]. This can be understood from another aspect. We shall now refer to the definition of the term ‘evidence’ given under Section 3 of the Evidence Act. It reads as follows:

“Evidence” - “Evidence” means and includes –

(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence;

(2) all documents including electronic records produced for the inspection of the Court; such documents are called documentary evidence.” (Emphasis Provided)

[p. 1883] [33]. The statements made by a witness in Court, including in cross-examination, either conducted by the opposite party or by the party who produced the witness, would come under the definition of ‘evidence’ under Section 3 of the Evidence Act, since this evidence has come before the Court with its permission. Moreover, there is no specific bar under the Evidence Act which mandates that such evidence has to be discarded. Thus, it would form part of the entire evidence which the Court can examine while arriving at its decision, and it is for the Court to determine what value has to be given to that piece of evidence or how such evidence has to be used in a given case.

[pp. 1883-1884] [34]. Viewed from a different perspective, the rejection of the entire testimony of a prosecution witness, who has been cross-examined by the prosecution, would not only harm the case of the prosecution but perhaps also of the defence in a given case. This is because as the law stands today, the benefit of the testimony of such witness can be taken by both the prosecution and the defence, allowing them to use it to build their case [See: *Paulmeli v. State of T.N.* (2014) 13 SCC 90, *Ramesh Harijan v. State of U.P.* (2012) 5 SCC 777]. In any case, ultimately, it will be the cause of justice that will suffer if the testimony of such witness is totally discarded. It is, therefore, rightly left to the discretion of the Court to test the evidentiary value of such a testimony.

[p. 1884] [35]. Here, we may also take note of Section 155 of the Evidence Act<sup>9</sup> which allows a party, with permission of the Court, to impeach the credibility of its own witness as per the procedure laid down therein.

[pp. 1884-1885] [36.] It is though trite and much overstated but the maxim “*falsus in uno, falsus in omnibus*”<sup>10</sup>, is not applicable to our criminal justice system. It is for the Court to distinguish the wheat from the chaff while dealing with the depositions of a hostile witness. Courts can rely upon that part of the deposition of a hostile witness which is corroborated by other evidence on record.

106. In light of the preceding binding precedents, the statement of a hostile witness is not wholly effaced and has to be approached with caution and is subject to corroboration from the other credible evidence that has come on the record in the trial.

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<sup>9</sup> §155. Impeaching credit of witness

<sup>10</sup> *false in one thing, false in everything.*

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107. A witness turning hostile by resiling from a previous statement recorded during the investigation or under §164 and/or §299 of the CrPC does not, by itself, discredit the entire testimony because the possibility of the defiance which appears to be hostility might sprout from genuine factors, such as fading memory, and stem from nervousness, anxiety, duress, or external pressure. Courts nevertheless approach a hostile witness's testimony with caution, and may accept a separable portion as reliable evidence, depending on the witness' overall credibility, the surrounding facts and circumstances, and its consistency with the rest of the evidence on record. Even portions of the testimony contrary to the earlier statement may be relied upon, subject to corroboration by other credible evidence on record, and in compliance with the procedure under §§145, 155, & 157 of the IEA, 1872 [renumbered as §§148, 158, & 160 of the BSA 2023]. Such reliance is appropriate after analyzing the overall credibility of the testimony, the extent of the discrepancies, whether the variations were non-material, and the impact on the crux of the evidence.

108. In Alauddin & Ors. v. The State of Assam & Anr., [2024] 6 S.C.R. 20; 2024-INSC-376, May 03, 2024, the Supreme Court holds,

[p. 26] [7.] When the two statements cannot stand together, they become contradictory statements. When a witness makes a statement in his evidence before the Court which is inconsistent with what he has stated in his statement recorded by the Police, there is a contradiction. When a prosecution witness whose statement under Section 161 (1) or Section 164 of CrPC has been recorded states factual aspects before the Court which he has not stated in his prior statement recorded under Section 161 (1) or Section 164 of CrPC, it is said that there is an omission. There will be an omission if the witness has omitted to state a fact in his statement recorded by the Police, which he states before the Court in his evidence. The explanation to Section 162 CrPC indicates that an omission may amount to a contradiction when it is significant and relevant. Thus, every omission is not a contradiction. It becomes a contradiction provided it satisfies the test laid down in the explanation under Section 162. Therefore, when an omission becomes a contradiction, the procedure provided in the proviso to sub-Section (1) of Section 162 must be followed for contradicting witnesses in the cross-examination.

[p. 28] [9.] ...It must be noted here that every contradiction or omission is not a ground to discredit the witness or to disbelieve his/her testimony. A minor or trifle omission or contradiction brought on record is not sufficient to disbelieve the witness's version. Only when there is a material contradiction or omission can the Court disbelieve the witness's version either fully or partially. What is a material contradiction or omission depends upon the facts of each case. Whether an omission is a contradiction also depends on the facts of each individual case.

109. In Manjunath v. State of Karnataka, [2023] 14 S.C.R. 727; 2023-INSC-978, Nov 06, 2023, the Supreme Court holds,

[p. 753] [22]. For an eye-witness to be believed, his evidence, it has been held, should be of sterling quality. It should be capable of being taken at face value...

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110. Thus, it would be perilous to rely on Suman's statement recorded under §164 CrPC, 1973, while ignoring her statement recorded as PW-7, on oath during the trial, only because she did not prove the case set up by the prosecution.

**111. THE DISCLOSURE STATEMENT RENDERED BY THE ACCUSED STANDS DISPROVED:**

112. The case set up by the prosecution is that Hem Raj was arrested on the evening of June 20, 2018. On the next day, i.e., on June 21, 2018, he made a disclosure statement, Ext P-5 (p. 111 of TCR), and volunteered to get *Kassi* (Hoe) recovered from a field where he was working, which was near Faridabad, and with which, after slamming the child on the road, he cut the child's dead body into two pieces and buried it in the earth. After that, he was taken to Faridabad, but on the way, at a place named Bahadurgarh, he made another similar disclosure statement, Ext P-6 (p. 113 of TCR), in which he stated that the *Kassi* had been concealed in the fields of Ram Bilas.

113. PW-3 HC Vinod Kumar, in his examination-in-chief, stated that accused Hem Raj was again interrogated, and, during the interrogation, the accused Hem Raj made another disclosure statement, Ext P-6, at Bus-stand Bahadurgarh. Thereafter, they brought the accused Hem Raj to Police Station Barwala and lodged him in the police lockup. (pp. 147-163 of TCR)

114. The Investigating Officer, PW-14 ASI, Inder Singh (p. 211 of TCR), testified that on June 21, 2018, the accused Hem Raj was taken out of the police lockup in the presence of Head Constable Vinod (PW-3) and Constable Manjeet. Hem Raj voluntarily made a disclosure statement, Ext P-5, (p. 111 of TCR), which he signed before HC Vinod Kumar (PW-3). HC Vinod Kumar (PW-3) also signed it as a witness, and PW-14 ASI Inder Singh attested the disclosure statement. Pursuant to this disclosure statement, Ext P-5, Hem Raj was being taken to Faridabad to unsheathe the recovery of *Kassi* (Ext P-11 (M.O)); however, on the way at Bahadurgarh, Hem Raj made another disclosure statement, Ext P-6. It shall be appropriate to extract the relevant statement of the Investigator, PW-14, which reads as follows,

*"He was taken to Faridabad for recovery of the Kassi which was used in the offence, but on the way at Bahadurgarh, he suffered another disclosure statement Ex.P6 and the accused signed the statement before HC Vinod Kumar and C. Mohan as witnesses. Same is attested by me. At that point of time, we returned back to Barwala and as per the disclosure statement on the next day, accused in pursuance to his disclosure statement ..."*

115. According to the testimonies of PW-3 HC Vinod Kumar and PW-14 ASI Inder Singh, the disclosure statement Ext P-6 was signed at Bahadurgarh by the accused and the witnesses, and at that point they returned to Barwala. However, perusal of Ext P-6 shows it

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is a computer-typed, printer-generated document, whereas, as per the Investigator, PW-14, the accused made the disclosure statement at Bahadurgarh while traveling to Faridabad; after that, Ext P-6 was signed, and 'at that point' they returned. If the disclosure statement was made at Bahadurgarh, how did it get typed and printed, and who was carrying the laptop, printer, and UPS? The prosecution does not allege that the statement was typed at a nearby document center, a nearby Police Station, or any office, and that such and such person typed it on a computer and took a printout.

116. Given the above, there is no explanation as to how Ext P-6, the disclosure statement made by the accused on the way to Faridabad, was typed on a computer, its printout taken, and signed, which would mean that, at that point in time, the Police should have had access to a computer and a printer, but it is not their case that, in their vehicle, they were carrying a laptop, a UPS, and a printer. Consequently, Ext P-6 appears to be fabricated. This foundational defect in Ext P-6 undermines its truthfulness as to whether the accused had, in fact, made any such disclosure statement or whether it was concocted; hence, no reliance can be placed on Ext P-6. Resultantly, the fact of the making of the disclosure statement in Ext P-6 by the accused Hem Raj at Bahadurgarh is disproved.

**117. IDENTIFICATION AND DEMARCATION OF THE PLACE OF OCCURRENCE OF CRIME BY THE ACCUSED:**

118. The Investigating Officer, PW-14 ASI Inder Singh, stated that on June 22, 2018, the accused led the police party to the place of occurrence and had it identified and demarcated vide Memo Ext P-10. However, because the spot where the dead body was recovered was already known to the villagers and the Police, the re-identification of the spot, which did not lead to the discovery of any new relevant fact, is not a relevant piece of evidence.

119. In the present case, it remains undisputed that the dead body was found before the accused's disclosure statement.

120. In Sahab Singh alias Satpal v. State of Haryana, Cr.A 4158 of 2026, 2026-INSC-945, Sep 2, 2026, the Supreme Court holds,

[pp. 23-24] [38]. The prosecution has placed strong reliance on the alleged disclosure statement (Ex. PT). It may be noticed that there is no discovery of a fact or recovery of any incriminating article made pursuant to the alleged disclosure statement. The alleged identification of the spot of the incident is merely an identification of an area which was already known to the police, of which even a site plan had already been prepared on 12.03.2007. As such, no reliance can be placed on the alleged disclosure statement (Ex. PT).

[40]. Confession made to a police officer is not admissible, except in terms of section 27 of the Indian Evidence Act, 1872 which lays down that when there is a discovery of a fact, in consequence of information received from an accused, so much of an information as distinctly related

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to the fact thereby discovered may be proved. In the present case no new fact is discovered. As per the prosecution the accused is alleged to have identified the spots, which as noticed above were already in the knowledge of the prosecution. Thus the alleged disclosure statement cannot be taken into consideration.

121. 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.<sup>11</sup> In so far as discovery of the crime scene is concerned, the same was already a discovered fact, and therefore, the disclosure has no evidentiary value.<sup>12</sup>

**122. DISCLOSURE STATEMENT OF THE ACCUSED IS NOT IN CONFORMITY WITH THE CONDITION IN WHICH THE BODY WAS FOUND:**

123. According to the disclosure statements Ext P-5 and Ext P-6, the accused told the police that after slamming the child on the road, he took the child's dead body to the fields, where he cut it into two pieces with a *Kassi* (Hoe) and buried it in the earth. Even if these disclosure statements, Ext P-5 and P-6, are hypothetically treated as admissible, the account still contradicts the crime-scene report and the post-mortem report. According to the Crime Scene Visit Report, Ext P-29 (p. 409 of TCR), the dead body was not found buried but lying in an open fallow field, and only the lower half of the body, below the chest, was present, and the head was only a skull, without any scalp.

124. If the disclosure statement was factually correct, the body should have had two parts, upper and lower.

125. PW-20, Dr. Vijay Kumar Vohra, stated that, "*The marks of nibbling are present of the margins of the missing tissues, which all dirty, putrified, and irregular.*" The Doctor further noticed as follows, "*The list of injuries notes that a few maggots of IInd instar, white in color, were present crawling on the body. PW-20 also stated that only the lower 2/3<sup>rd</sup> portion of abdomen with both lower limbs and posterior wall of the lower most portion of the chest are present. The head, neck, both upper limbs, the whole of front of chest, major portion of post wall of chest, upper 1/3<sup>rd</sup> of abdomen up to the level of last thoracic vertebrae are missing from the body.*"

126. Except for nibbling at the margins of the missing tissues, the doctor did not report any animal bites on any part of the body, including the toes and penis, and noted no signs of ant, rat, mongoose, or dog bites, or of piercing by the beaks of crows or vultures. The prosecution does not claim that any animal exhumed the body by pulling it up and ate its upper portion. If that were true, there would be tooth marks on the lower portion as well,

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<sup>11</sup> Supreme Court of India, *Bodh Raj @ Bodha and ors. v. State of Jammu and Kashmir*, [2002] SUPP. 2 S.C.R. 67; 2002-INSC-360, p.79-80, Sep 3, 2002.

<sup>12</sup> Supreme Court of India, *Didar Singh v. State of Haryana*, 2026-INSC-726, Para 30, July 14, 2026.

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because, according to the disclosure statement, both parts were buried. The lower portion of the body was almost intact, but the upper portion was missing, and the investigators recovered only a few bone fragments and a skull without scalp. Neither the Investigator nor the Scene of Crime report mentions dug-up earth where the corpse had been buried, which would have been easily visible. If an animal such as a dog had pulled it out, there should have been a pit, dragging marks, and most likely bloodstains. Such marks were also not noticed by the doctor who conducted the post-mortem examination.

127. The fact that the dead body was not eaten by dogs, rats, mongooses, crows, or vultures indicates that, in all probability, it was thrown into the fallow field either early morning on June 16, 2018, or the previous night. Had the dead body been there since the night of June 13, it would have been preyed upon by crows and vultures in the open fallow field, and even rats would have nibbled the body, especially the toes and penis, which are visible in the photographs. The postmortem examination does not state that any of these parts were nibbled or eaten away.

128. Additionally, in both the disclosure statements Ext P-5 and P-6, the accused confessed that after slamming the child to death, he took the body to the fields, where, with the *Kassi* (Hoe), he cut it into two pieces and buried it in the earth. If true, the bleeding portions would have been covered with mud. However, the doctors did not mention any traces of mud on the body or its exposed flesh, nor did they note the body being smeared with mud. If it had been buried under the surface of the Earth, then the soil, dirt, or traces of organic matter would have stuck to the cut surfaces. Thus, the *modus tollens* would disprove the consequent of the expected outcome, which demonstrates that the theory of the underlying premise, i.e., of burial, must be false.

129. In Viran Gyanlal Rajput v. The State of Maharashtra, Cr.A 1558-1559 of 2018, Dec 05, 2018, a three-judge bench of the Supreme Court, in the facts that the dead body of the victim was buried about 2 feet under the ground and was in a naked condition with a red *odhani* (dupatta) tied around the neck, held as follows,

[p. 14] The matching of the mud recovered from the spot of recovery of the victim's body with the mud stains on the pants of the appellant is also highly incriminating, as rightly held by the Trial Court and the High Court.

130. In Avinash Datta Chavhan v. State of Maharashtra, Cr.A 839 of 2019, 24 Feb 2021, Bombay High Court observed,

[pp. 32-33] [43.] The entire investigation conducted in the present matter appears to be tainted and there are serious lacunas in the investigation. The arrest panchanama of the accused appellant does not bear the signatures of Panch witnesses. The Investigating Officer has mentioned in his evidence that the matchbox was recovered at the instance of the appellant. According to the prosecution, it was buried in a groove. The match box was taken out by the appellant by removing the mud with the

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help of sickle. Naturally mud particles ought to have been there on the matchbox. However, no mud particles were found on the said matchbox and the said matchbox did not show any sign of the usage of matchsticks. The photographs brought on record by the prosecution do not show Kardoda on the spot. They also did not show the graph or sketch (prepared) on the spot, where the dead body was lying. The absence of particles of soil on the clothes of the dead body also create doubt of the prosecution case.

131. In Ramkirat Munilal Goud v. State of Maharashtra Etc, [2025] 6 S.C.R. 513; 2025-INSC-702, May 07, 2025, a three-Judge bench of the Supreme Court holds,

[p. 542] [71]. The only so-called incriminating scientific report (Exh. 105) against the accused appellant was pertaining to the comparison of the soil/ mud on the sole of the pair of shoes recovered at the instance of the accused appellant and the specimen soil recovered from the pond where the dead body of the child victim was found.

[pp. 542-543] [74]. In any event, even if it is held that the soil/mud found on the shoes of the accused appellant tallied with the soil found in the pond, that would be just an indication of the fact that the accused appellant may have visited the area surrounding the pond at some point of time.

132. The absence of soil, dirt, traces of organic matter, or mud particles on the severed portions of the victim's body itself clearly indicates that the story of the body being buried in a pit, and the pit remaining unlocated, is inherently untenable and throws light upon the apparent inconsistencies between the disclosure statement rendered and the condition of the corpse upon recovery.

**133. EVIDENCE QUA DISCOVERY OF KASSI:**

134. PW-14 ASI Inder Singh stated that on June 22, 2018, accused Hem Raj, pursuant to his disclosure statement, led the police party to the field of Ram Bilas, son of Ramkishan, resident of Gaibipur, and recovered the *Kassi* (Hoe) [Ext P-11 (M.O.)] used in the offense, which was taken into police possession vide recovery memo Ext P-9 (p. 119 of TCR). The *Kassi* was allegedly recovered from the *Jowar* fields of Ram Bilas (PW-2), but Ram Bilas was neither associated with the recovery of *Kassi* nor were any reasons assigned for his non-association.

135. According to Ext PX (pp. 447-449 of TCR), the FSL report stated that blood was detected on Exhibit 2, *Kassi*, but the origin of the blood on *Kassi* could not be determined because the material had disintegrated.

136. Additionally, the *Kassi* was never shown to PW-20 Dr. Vijay Kumar Vohra, who had conducted the post-mortem examination, to have his opinion as to whether the body was cut into two portions using the *Kassi* [Ext P-11 (M.O.)] or not.

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137. In Ishwar Singh v. State of U.P., Cr.A Nos. 6 and 21 of 1975, Aug 04, 1976, the Supreme Court holds,

[8]. ...The evidence of Sub-Inspector Karam Chand (P.W. 8) is that a ballam was recovered from Ishwar Singh's house, and a bhala from Harpal's. Dr. Mathur who said that the fatal injury "might have been" caused by a ballam, admitted on cross-examination that he did not know the difference between a ballam and a bhala. By ballam he meant "such weapon as is sharp edged on both sides, pointed, and less than 2 cm. in width" and he added that "if a bhala is of this very shape this injury is possible." It is not disputed that ballam and bhala are weapons of a similar type. Had the doctor seen the weapons seized from the houses of Ishwar Singh and Harpal, it might have been possible for him to say which of them caused the injury. But the weapons seized were not shown to the doctor. In Kartarey v. State of U.P. (at pp. 80-81) this Court emphasized the importance of eliciting the opinion of the medical witness who had examined the injuries of the victim.

It is the duty of the prosecution, and no less of the Court, to see that the alleged weapon of the offence, if available, is shown to the medical witness and his opinion invited as to whether all or any of the injuries on the victim could be caused with that weapon. Failure to do so may sometimes, cause aberration in the course of justice.

138. In Amar Singh v. The State (NCT of Delhi), [2020] 8 S.C.R. 751; 2020-INSC-587, Oct 12, 2020, a three-judge bench of the Supreme Court holds,

[p. 765] [28]. Dr. M.S. Sagar in his Post-Mortem report has opined that the cause of death was due to shock due to multiple ante mortem injuries caused by sharp edged weapon and injuries No. 11 and 14 were individually and collectively sufficient to cause death in ordinary course of nature. He further opined in his statement that injuries have been caused by sharp edged weapon and since no weapon was shown to him, he has not given any opinion. Admittedly the tip of knife which was recovered on the disclosure statement of accused appellant Inderjeet Singh was broken and it was not pointed but blunt. Whether the type of stab and incised wound found on the body of the deceased could have been inflicted by a knife with a broken tip, is in our opinion, extremely doubtful. The opinion of the Doctor has not been obtained as to whether such injuries could have been caused by knife with a broken tip by showing him the same.

139. The prosecution's failure to show the *Kassi* to PW-20 Dr. Vijay Kumar Vohra and seek his opinion is a serious lapse. It was the prosecution's duty to put it to medical experts. Had the weapon been shown to him, he could have opined whether the body could have been cut into two pieces with it? Was the alleged weapon connected with the crime?

**140. PARAMETERS FOR ADMISSIBILITY OF A STATEMENT UNDER §27 OF THE INDIAN EVIDENCE ACT, 1872:**

141. To appreciate the evidentiary value of the retracted disclosure statements, it is appropriate to refer to §27 of the Indian Evidence Act, 1872, [corresponds to §23 of the BSA, 2023] and to the relevant judicial precedents laid down by the Supreme Court regarding a statement recorded under the proviso.

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142. Section 27 of the Indian Evidence Act, 1872, [Corresponds to §23 proviso BSA, 2023], reads as follows,

§27. How much of information received from accused may be proved.—  
Provided that, when any fact is discovered in consequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

143. In Pulukuri Kottaya and Others v. Emperor, AIR 1947 PC 67; 1946 SCC OnLine PC 47, Dec 19, 1946, the four-Judge Bench of the Privy Council holds,

[p. 262] ...it is fallacious to treat the “fact discovered” within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that “I will produce a knife concealed in the roof of my house” does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added “with which I stabbed A” these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant.

144. In Ramkishan Mithanlal Sharma v. State of Bombay, [1955] 1 SCR 903; 1954-INSC-99, Oct 22, 1954, a three-Judge Bench of the Supreme Court holds,

[p. 924] The expression “whether it amounts to a confession or not” has been used in order to emphasise the position that even though it may amount to a confession that much information as relates distinctly to the fact thereby discovered can be proved against the accused. The section seems to be based on the view that if a fact is actually discovered in consequence of information given some guarantee is afforded thereby that the information was true and accordingly can be safely allowed to be given in evidence. But 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. [*Kottaya v. Emperor*].

145. In State of Uttar Pradesh v. Deoman Upadhyaya, [1961] 1 SCR 14; 1960-INSC-107, May 6, 1960, a Constitutional Bench of the Supreme Court holds, [Majority View],

[p. 29] ...If s. 27 renders information admissible on the ground that the discovery of a fact pursuant to a statement made by a person in custody is a guarantee of the truth of the statement made by him, and the legislature has chosen to make on that ground an exception to the rule prohibiting proof of such statement, that rule is not to be deemed unconstitutional, because of the possibility of abnormal instances to which the legislature might have, but has not extended the rule. The principle of admitting evidence of statements made by a person giving information leading to the discovery of facts which may be used in evidence against him is manifestly reasonable. The fact that the principle is restricted to persons in custody will not by itself be ground for holding that there is an attempted hostile discrimination because the rule of admissibility of

evidence is not extended to a possible, but an uncommon or abnormal class of cases.

146. In State of Bombay v. Kathi Kalu Oghad, [1962] 3 S.C.R. 10; 1961-INSC-229, Aug 04, 1961, an eleven-Judge bench of the Supreme Court holds,

[pp. 33-34] The information given by an accused person to a police officer leading to the discovery of a fact which may or may not prove incriminatory has been made admissible in evidence by that Section. If it is not incriminatory of the person giving the information, the question does not arise. It can arise only when it is of an incriminatory character so far as the giver of the information is concerned. If the self-incriminatory information has been given by an accused person without any threat, that will be admissible in evidence and that will not be hit by the provisions of cl. (3) of Art. 20 of the Constitution for the reason that there has been no compulsion. It must, therefore, be held that the provisions of s. 27 of the Evidence Act are not within the prohibition aforesaid, unless compulsion has been used in obtaining the information.

[p. 35] The compulsion in this sense is a physical objective act and not the state of mind of the person making the statement, except where the mind has been so conditioned by some extraneous process as to render the making of the statement involuntary and, therefore, extorted. Hence, the mere asking by a police officer investigating a crime against a certain individual to do a certain thing is not compulsion within the meaning of Art. 20 (3). Hence, the mere fact that the accused person, when he made the statement in question was in police custody would not, by itself, be the foundation for an inference of law that the accused was compelled to make the statement. Of course, it is open to an accused person to show that while he was in police custody at the relevant time, he was subjected to treatment which, in the circumstances of the case, would lend itself to the inference that compulsion was, in fact, exercised. In other words, it will be a question of fact in each case to be determined by the Court on weighing the facts and circumstances disclosed in the evidence before it. In view of these considerations, we have come to the following conclusions :-

(1) An accused person cannot be said to have been compelled to be a witness against himself simply because he made a statement while in police custody, without anything more. In other words, the mere fact of being in police custody at the time when the statement in question was made would not, by itself, as a proposition of law, lend itself to the inference that the accused was compelled to make the statement, though that fact, in conjunction with other circumstances disclosed in evidence in a particular case, would be a relevant consideration in an enquiry whether or not the accused person had been compelled to make the impugned statement.

(2) The mere questioning of an accused person by a police officer, resulting in a voluntary statement, which may ultimately turn out to be incriminatory, is not 'compulsion'.

(3) 'To be a witness' is not equivalent to 'furnishing evidence' in its widest significance; that is to say, as including not merely making of oral or written statements but also production of documents or giving materials which may be relevant at a trial to determine the guilt or innocence of the accused.

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(4) Giving thumb impressions or impressions of foot or palm or fingers or specimen writings or showing parts of the body by way of identification are not included in the expression 'to be a witness'

(5) 'To be a witness' means imparting knowledge in respect of relevant facts by an oral statement or a statement in writing, made or given in Court or otherwise.

(6) 'To be a witness' in its ordinary grammatical sense means giving oral testimony in Court. Case law has gone beyond this strict literal interpretation of the expression which may now bear a wider meaning, namely, bearing testimony in Court or out of Court by a person accused of an offence, orally or in writing.

(7) To bring the statement in question within the prohibition of Art. 20(3), the person accused must have stood in the character of an accused person at the time he made the statement. It is not enough that he should become an accused, any time after the statement has been made.

147. In Udai Bhan v. State of UP, [1962] SUPP. 2 S.C.R. 830, 1962-INSC-30, Jan 29, 1962, the Supreme Court holds,

[pp. 835-837] Thus, s. 27 partially removes the ban placed on the reception of confessional statements under s. 26. But the removal of the ban is not of such an extent as to absolutely undo the object of s. 26. All it says is that so much of the statement made by a person accused of an offence and in custody of a police officer, whether it is confessional or not, as relates distinctly to the fact discovered is proveable. Thus, in this case taking the recovery memos the statements in regard to the key was this that the appellant handed over the key and said that he had opened the lock of the shop of the complainant with that key. The handing over of the key is not a confessional statement but the confession lies in the fact that with that key the shop of the complainant was opened and, therefore, that portion will be inadmissible in evidence and only that portion will be admissible which distinctly relates to the fact discovered i.e., the finding of the key. Similarly, the recovery of the box is proveable because there is no statement of a confessional nature in that memorandum.

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Thus it appears that s. 27 does not nullify the ban imposed by s. 26 in regard to confessions made by persons in police custody but because there is the added guarantee of truthfulness from the fact discovered the statement whether confessional or not is allowed to be given in evidence but only that portion which distinctly relates to the discovery of the fact. A discovery of a fact includes the object found, the place from which it is produced and the knowledge of the accused as to its existence.

148. In K. Chinnaswamy Reddy v. State of Andhra Pradesh, [1963] S.C.R. 412; 1962-INSC-216, July 25, 1962, a three-judge Bench of the Supreme Court holds,

[p. 421] Let us then turn to the question whether the statement of the appellant to the effect that "he had hidden them (the ornaments)" and "would point out the place" where they were, is wholly admissible in evidence under s. 27 or only that part of it is admissible where he stated that he would point out the place but not that part where he stated that he had hidden the ornaments. The Sessions Judge in this connection relied on Pulukuri Kotayya v. King-Emperor where a part of the statement leading to the recovery of a knife in a murder case was held inadmissible

by the Judicial Committee. In that case the Judicial Committee considered s. 27 of the Indian Evidence Act, which is in these terms :-

"Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved."

This section is an exception to ss. 25 and 26, which prohibit the proof of a confession made to a police officer or a confession made while a person is in police custody, unless it is made in immediate presence of a magistrate. Section 27 allows that part of the statement made by the accused to the police "whether it amounts to a confession or not" which relates distinctly to the fact thereby discovered to be proved. Thus even a confessional statement before the police which distinctly relates to the discovery of a fact may be proved under s. 27. The Judicial Committee had in that case to consider how much of the information given by the accused to the police would be admissible under s. 27 and laid stress on the words "so much of such information... as relates distinctly to the fact thereby discovered" in that connection. It held that the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. It was further pointed out that "the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact." It was further observed that-

"Information as to past user, or the past history of the object produced is not related to its discovery in the setting in which it is discovered."

This was exemplified further by the Judicial Committee by observing-

"Information supplied by a person in custody that 'I will produce a knife concealed in the roof of my house' leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. If however to the statement the words be added 'with which I stabbed A', these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant."

If we may respectfully say so, this case clearly brings out what part of the statement is admissible under s. 27. It is only that part which distinctly relates to the discovery which is admissible; but if any part of the statement distinctly relates to the discovery it will be admissible wholly and the court cannot say that it will excise one part of the statement because it is of a confessional nature. Section 27 makes that part of the statement which is distinctly related to the discovery admissible as a whole, whether it be in the nature of confession or not. Now the statement in this case is said to be that the appellant stated that he would show the place where he had hidden the ornaments. The Sessions Judge has held that part of this statement which is to the effect "where he had hidden them" is not admissible. It is clear that if that part of the statement is excised the remaining statement (namely, that he would show the place) would be completely meaningless. The whole of this statement in our opinion relates distinctly to the discovery of ornaments and is admissible under s. 27 of the Indian Evidence Act. The words "where he had hidden them" are not on a par with the words "with which I stabbed the deceased" in the example given in the judgment of the Judicial Committee. These words (namely, where he had hidden them) have

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nothing to do with the past history of the crime and are distinctly related to the actual discovery that took place by virtue of that statement. It is however urged that in a case where the offence consists of possession even the words "where he had hidden them " would be inadmissible as they would amount to an admission by the accused that he was in possession. There are in our opinion two answers to this argument. In the first place, s 27 itself says that where the statement distinctly relates to the discovery it will be admissible whether it amounts to a confession or not. In the second place, these words by themselves though they may show possession of the appellants would not prove the offence, for after the articles have been recovered, the prosecution has still to show that the articles recovered are connected with the crime, i. e. in this case, the prosecution will have to show that they are stolen property. We are therefore of opinion that the entire statement of the appellant (as well as of the other accused who stated that he had given the ornament to Bada Sab and would have it recovered from him) would be admissible in evidence and the Sessions Judge was wrong in ruling out part of it. Therefore, as relevant and admissible evidence was ruled out by the Sessions Judge, this is a fit case where the High Court would be entitled to set aside the finding of acquittal in revision, though it is unfortunate that the High Court did not confine itself only to this point and went on to make rather strong remarks about other parts of the evidence.

149. In Jaffer Hussein Dastgir v. State of Maharashtra, [1970] 2 S.C.R. 332; 1969-INSC-232, Sep 11, 1969, a three-judge bench of the Supreme Court holds,

[p. 336] [D–F] Section 27 is a proviso to section 26 and makes admissible so much of the statement of the accused which leads to the discovery of a fact deposed to by him and connected with the crime, irrespective of the question whether it is confessional or otherwise. The essential ingredient of the section is that the information given by the accused must lead to the discovery of the fact which is the direct outcome of such information. Secondly, only such portion of the information given as is distinctly connected with the said recovery is admissible against the accused. Thirdly, the discovery of the fact must relate to the commission of some offence. The embargo on statements of the accused before the police will not apply if all the above conditions are fulfilled.

[p. 341] [C–D] In the result although the statements might otherwise have been admissible in evidence, that there was no discovery of a fact connecting the appellant with the receipt of the diamonds which were stolen within the meaning of s. 27 of the Evidence Act because the police already knew that the third and or the fourth accused had the diamonds.

150. In Thimma @ Thimma Raju v. State of Mysore [1971] 1 SCR 215; 1970- INSC-82, Apr 02, 1970, a three-judge bench of the Supreme Court holds,

[p. 225] [D–E] ...Once a fact is discovered from other sources there can be no fresh discovery even if relevant information is extracted from the accused and courts have to be watchful against the ingenuity of the investigating officer in this respect so that the protection afforded by the wholesome provisions of ss. 25 and 26 of the Indian Evidence Act is not whittled down by mere manipulation of the record of case diary. It would, in the circumstances, be somewhat unsafe to rely on this information for proving the appellant's guilt...

151. In H.P. Admn. v. Om Prakash [1972] 2 SCR 765; 1971-INSC-340, Dec 07, 1971, the Supreme Court holds,

[p. 776] [C–D] We are not unaware that Section 27 of the Evidence Act which makes the information given by the accused while in custody leading to the discovery of a fact and the fact admissible, is liable to be abused and for that reason great caution has to be exercised in resisting any attempt to circumvent, by manipulation or ingenuity of the Investigating Officer, the protection afforded by Sec 25 and Sec 26 of the Evidence Act. While considering the evidence relating to the recovery we shall have to exercise that caution and care which is necessary to lend assurance that the information furnished and the fact discovered is credible.

152. In Nandini Sathpathy v. Dani (P.L.) and Anr, [1978] 3 S.C.R. 608; 1978-INSC-80, Apr 07, 1978, a three-judge bench of the Supreme Court, through Justice Krishna Iyer, holds,

[p. 631] [E–H] There is one touch of nature which makes the judicial world kin - the love of justice-in-action and concern for human values. So, regardless of historical origins and political borrowings, the framers of our Constitution have cognised certain pessimistic poignancies and mellow life meanings and obligated judges to maintain a 'fair state-individual balance' and to broaden the fundamental right to fulfil its purpose, lest frequent martyrdoms reduce the article to a mock formula. Even silent approaches, furtive moves, slight deviations and subtle ingenuities may erode the article's validity unless the law out-laws illegitimate and unconstitutional procedures before they find their first firm footing. The silent cause of the final fall of the tall tower is the first stone obliquely and obviously removed from the base. And Art. 20(3) is a human article, a guarantee of dignity and integrity and of inviolability of the person and refusal to convert an adversary system into an inquisitorial scheme in the antagonistic antechamber of a police station. And in the long run, that investigation is best which uses strategems least, that policeman deserves respect who gives his fists rest and his wits restlessness. The police are part of us and must rise in peoples' esteem through firm and friendly, not foul and sneaky strategy. The police reflect the State, the State society. The Indian legal situation has led to judicial concern over the State v. individual balance.

153. In State of Maharashtra v. Damu & Ors., [2000] 3 SCR 880; 2000-INSC-273, May 01, 2000, the Supreme Court holds,

[p. 897] [B–D] 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 in 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. Hence the legislature permitted such information to be used as evidence by restricting the admissible portion to the minimum. It is now well-settled that recovery of an object is not discovery of a fact as envisaged in the Section. The decision of Privy Council in Pullukurri Kottayya v. Emperor, AIR 1947 PC 67 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.

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154. In Anter Singh v. State of Rajasthan, [2004] 2 S.C.R 123; 2004-INSC-88, Feb 05, 2004, the Supreme Court holds,

[p. 129] [C–D] Though recovery from an open space may not always render it vulnerable, it would depend upon factual situation in a given case and the truthfulness or otherwise of such claim. In the case at hand the recovery was made from an open space visible from the place where the dead body was lying and at a close proximity. It is not clear from evidence that it was hidden in such a way so as making it difficult to be noticed.

[p. 132] [A–E] The various requirements of the Section can be summed up as follows:

- (1) The fact of which evidence is sought to be given must be relevant to the issue. It must be borne in mind that the provision has nothing to do with question of relevancy. The relevancy of the fact discovered must be established according to the prescriptions relating to relevancy of other evidence connecting it with the crime in order to make the fact discovered admissible.
- (2) The fact must have been discovered.
- (3) The discovery must have been in consequence of some information received from the accused and not by accused's own act.
- (4) The persons giving the information must be accused of any offence.
- (5) He must be in the custody of a police officer.
- (6) The discovery of a fact in consequence of information received from an accused in custody must be deposed to.
- (7) Thereupon only that portion of the information which relates distinctly or strictly to the fact discovered can be proved. The rest is inadmissible.

155. In Geejaganda Somaiah v. State of Karnataka, Appeal (Crl.) 311 of 2007, Mar 12, 2007, the Supreme Court holds,

[p. 5] Section 25 of the Evidence Act mandates that no confession made to a police officer shall be proved as against a person accused of an offence. Similarly Section 26 of the Evidence Act provides that confession by the accused person while in custody of police cannot be proved against him. However, to the aforesaid rule of Sections 25 to 26 of the Evidence Act, there is an exception carved out by Section 27 the Evidence Act providing that when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved. Section 27 is a proviso to Sections 25 and 26. Such statements are generally termed as disclosure statements leading to the discovery of facts which are presumably in the exclusive knowledge of the maker. Section 27 appears to be based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true and accordingly it can be safely allowed to be given in evidence.

As the Section is alleged to be frequently misused by the police, the courts are required to be vigilant about its application. The court must ensure the credibility of evidence by police because this provision is vulnerable to abuse. It does not, however, mean that any statement made in terms of the aforesaid section should be seen with suspicion and it cannot be discarded only on the ground that it was made to a police

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officer during investigation. The court has to be cautious that no effort is made by the prosecution to make out a statement of accused with a simple case of recovery as a case of discovery of fact in order to attract the provisions of Section 27 the Evidence Act.

156. In Mani v. State of T.N. [2008] 1 SCR 228; 2008-INSC-19, Jan 08, 2008, the Supreme Court holds,

[21]. The discovery is a weak kind of evidence and cannot be wholly relied upon on and conviction in such a serious matter cannot be based upon the discovery.

157. In Musheer Khan @ Badshah Khan & Anr. v. State of MP, [2010] 2 S.C.R. 119; 2010-INSC-64, Jan 28, 2010, the Supreme Court holds,

[69]. The limited nature of the admissibility of the facts discovered pursuant to the statement of the accused under Section 27 can be illustrated by the following example: Suppose a person accused of murder deposes to the police officer the fact as a result of which the weapon with which the crime is committed is discovered, but as a result of such discovery no inference can be drawn against the accused, if there is no evidence connecting the knife with the crime alleged to have been committed by the accused.

158. In Smt. Selvi & Ors v. State of Karnataka, [2010] 5 SCR 381; 2007-INSC-520, May 05, 2010, a three-Judge bench of the Supreme Court holds,

[92.] The concerns about the 'voluntariness' of statements allow a more comprehensive account of this right. If involuntary statements were readily given weightage during trial, the investigators would have a strong incentive to compel such statements - often through methods involving coercion, threats, inducement or deception. Even if such involuntary statements are proved to be true, the law should not incentivise the use of interrogation tactics that violate the dignity and bodily integrity of the person being examined. In this sense, 'the right against self-incrimination' is a vital safeguard against torture and other 'third-degree methods' that could be used to elicit information. It serves as a check on police behaviour during the course of investigation. The exclusion of compelled testimony is important, otherwise the investigators will be more inclined to extract information through such compulsion as a matter of course. The frequent reliance on such 'short-cuts' will compromise the diligence required for conducting meaningful investigations. During the trial stage, the onus is on the prosecution to prove the charges levelled against the defendant and the 'right against self- incrimination' is a vital protection to ensure that the prosecution discharges the said onus.

159. In Madhu v. State of Kerala, [2012] 2 S.C.R. 986; 2012-INSC-27, Jan 13, 2012, the Supreme Court holds,

[pp. 1021-1022] [H-D] As an exception, Section 27 of the Indian Evidence Act provides that a confessional statement made to a police officer or while an accused is in police custody, can be proved against him, if the same leads to the discovery of an unknown fact. The rationale of Sections 25 and 26 of the Indian Evidence Act is, that police may procure a confession by coercion or threat. The exception postulated under Section 27 of the Indian Evidence Act is applicable only if the confessional statement leads to the discovery of some new fact. The relevance under the exception postulated by Section 27 aforesaid, is

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limited " ... as it relates distinctly to the fact thereby discovered.... ". The rationale behind Section 27 of the Indian Evidence Act is, that the facts in question would have remained unknown but for the disclosure of the same by the accused. Discovery of facts itself, therefore, substantiates the truth of the confessional statement. And since it is truth that a court must endeavour to search, Section 27 aforesaid has been incorporated as an exception to the mandate contained in Sections 25 and 26 of the Indian Evidence Act.

160. In Jafarudheen & Ors. v. State of Kerala, [2022] 5 SCR 721; 2022-INSC-464, Apr 22, 2022, the Supreme Court holds,

[pp. 750-751] [30]. Section 27 of the Evidence Act is an exception to Sections 24 to 26. Admissibility under Section 27 is relatable to the information pertaining to a fact discovered. This provision merely facilitates proof of a fact discovered in consequence of information received from a person in custody, accused of an offense. Thus, it incorporates the theory of "*confirmation by subsequent facts*" facilitating a link to the chain of events. It is for the prosecution to prove that the information received from the accused is relatable to the fact discovered. The object is to utilize it for the purpose of recovery as it ultimately touches upon the issue pertaining to the discovery of a new fact through the information furnished by the accused. Therefore, Section 27 is an exception to Sections 24 to 26 meant for a specific purpose and thus be construed as a proviso.

[p. 751] [31]. The onus is on the prosecution to prove the fact discovered from the information obtained from the accused. This is also for the reason that the information has been obtained while the accused is still in the custody of the police. Having understood the aforesaid object behind the provision, any recovery under Section 27 will have to satisfy the Court's conscience. One cannot lose sight of the fact that the prosecution may at times take advantage of the custody of the accused, by other means. The Court will have to be conscious of the witness's credibility and the other evidence produced when dealing with a recovery under Section 27 of the Evidence Act.

161. In Ramanand @ Nandlal Bharti v. State of Uttar Pradesh, [2022] 5 S.C.R. 162; 2022-INSC-1075, Oct 13, 2022, a three-judge bench of the Supreme Court holds,

[pp. 194-195] [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.

[pp. 195-196] [54]. The reason why we are not ready or rather reluctant to accept the evidence of discovery is that the investigating officer in his oral evidence has not said about the exact words uttered by the accused at the police station. The second reason to discard the evidence of discovery is that the investigating officer has failed to prove the contents of the discovery panchnama. The third reason to discard the evidence is that even if the entire oral evidence of the investigating officer is accepted as it is, what is lacking is the authorship of concealment. The fourth reason to discard the evidence of the discovery is that although one of the panch witnesses PW-2, Chhatarpal Raidas was examined by the prosecution in the course of the trial, yet has not said a word that he had also acted as a panch witness for the purpose of discovery of the weapon of offence and the blood stained clothes. The second panch witness namely Pratap though available was not examined by the prosecution for some reason. Therefore, we are now left with the evidence of the investigating officer so far as the discovery of the weapon of offence and the blood stained clothes as one of the incriminating pieces of circumstances is concerned. We are conscious of the position of law that even if the independent witnesses to the discovery panchnama are not examined or if no witness was present at the time of discovery or if no person had agreed to affix his signature on the document, it is difficult to lay down, as a proposition of law, that the document so prepared by the police officer must be treated as tainted and the discovery evidence unreliable. In such circumstances, the Court has to consider the evidence of the investigating officer who deposed to the fact of discovery based on the statement elicited from the accused on its own worth.

[p. 196] [55]. Applying the aforesaid principle of law, we find the evidence of the investigating officer not only unreliable but we can go to the extent to saying that the same does not constitute legal evidence.

[p.196] [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.

162. In Dinesh Kumar v. The State of Haryana, [2023] 4 SCR 220; 2023-INSC-493, May 04, 2023, the Supreme Court holds,

[pp. 228-230] [8]. ...If the disclosure has been made by the accused to the police while he was in their custody and such a disclosure leads to discovery of a fact then that discovery is liable to be read as evidence against the accused in terms of Section 27 of the Act. All the same, the distinguishing feature of such a discovery must be that such a disclosure

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must lead to the discovery of a “distinct fact”. The recovery of the stolen tractor, the place where the murder was committed and the place where body was thrown in the canal were facts which were already in the knowledge of the police, since it is the case of the prosecution that the co-accused Mange Ram, who was arrested by the police 2 days preceding the arrest of the present appellant, had earlier led to the same discoveries on 12th, 13th & 14th of May, 2000. So, this disclosure and discovery made thereafter cannot be read against the present appellant. There cannot be a “discovery” of an already discovered fact!

163. In Manoj Kumar Soni v. State of MP [2023] 11 S.C.R. 246; 2023-INSC-705, Aug 11, 2023, the Supreme Court holds,

[p. 256] [21]. A doubt looms: can disclosure statements *per se*, unaccompanied by any supporting evidence, be deemed adequate to secure a conviction? We find it implausible. Although disclosure statements hold significance as a contributing factor in unriddling a case, in our opinion, they are not so strong a piece of evidence sufficient on its own and without anything more to bring home the charges beyond reasonable doubt.

164. In Allarakha Habib Memon v State of Gujarat, [2024] 8 SCR 345; 2024-INSC-590, Aug 08, 2024, the Supreme Court holds,

[p. 375] [45]. ...Thereafter, all the accused-appellants conveyed their willingness to show the place of the offence and thereafter, *panchnama* as per Section 27 of the Evidence Act was prepared. Since the place of incident was also known to police, this disclosure is irrelevant.

165. In Govind v. State of Haryana, [2025] 12 SCR 206; 2025-INSC-1318, Nov 14, 2025, the Supreme Court holds,

[pp. 214-215] [15]. As per Section 25 of the Evidence Act, the confession given in the Police custody, cannot be proved against a person accused of an offence unless it is given in the immediate presence of the Magistrate. However, Section 27 deals with how much of the information as received from the accused, in Police custody may be proved.

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On a glance of the language of the said section [27 IEA], which starts with the expression “provided that”, it is apparent that this Section is an exception to the preceding Sections 25 and 26. The language further indicates that when any fact is deposed to as discovered in consequence of information received from a person who is in custody of the Police in connection of an offence, it must relate distinctly to the fact so discovered. For relevancy, the “*facts thereby discovered*” is preceded with the words “*so much of such information, whether it amounts to confession or not as relates distinctly*”. Special emphasis must be given to the word ‘*distinctly*’. The word “distinctly” has its own importance which is a derivative of the word ‘distinct’. As per Concise Oxford English Dictionary [Concise Oxford English Dictionary (10th Edition, Revised in 2002, Edited by Judy Pearsall)] it means recognizable, different in nature, individual or separate, readily distinguishable by the senses. As per Advance Law Lexicon [P Ramanatha Aiyar, Advanced Law Lexicon (3rd Edition, 2005)], “distinctly” means clearly, explicitly, definitely, precisely, unmistakably, in a distinct manner. Therefore, “distinctly”, as used in Section 27, is meant to exclude certain language and to limit and confine the information which may be proved within definite limits and not necessarily to include everything which may relate

to that information. The said word “distinctly” indicates directly, indubitably, strictly and unmistakably, apparently, used in Section 27 to limit and define the scope of probable information. Therefore, only that much information as is clearly connected with the fact discovered can be treated as relevant under the phrase ‘*facts discovered*’.

166. The protection granted to an accused under §27 of the Indian Evidence Act, 1872 was elevated to a wider, more expansive protection under Chapter III of the Constitution of India. Article 20 of the Constitution of India guarantees a fundamental right of protection in respect of conviction for offences and sub-clause (3) of Art. 20 reads as follows: “No person accused of any offence shall be compelled to be a witness against himself.”

167. 'To be a witness' means imparting knowledge in respect of relevant facts by an oral statement or a statement in writing, made or given in Court or otherwise.<sup>13</sup> 'To be a witness' is not equivalent to 'furnishing evidence' in its widest significance; that is to say, as including not merely making of oral or written statements but also production of documents or giving materials which may be relevant at a trial to determine the guilt or innocence of the accused.<sup>14</sup> To bring the statement in question within the prohibition of Art. 20(3), the person accused must have stood in the character of an accused person at the time he made the statement—It is not enough that he should become an accused, any time after the statement has been made.<sup>15</sup>

168. The principle of admitting evidence of statements made by a person giving information leading to the discovery of facts which may be used in evidence against him is manifestly reasonable.<sup>16</sup> The concerns about the ‘voluntariness’ of statements allow a more comprehensive account of this right—If involuntary statements were readily given weightage during trial, the investigators would have a strong incentive to compel such statements - often through methods involving coercion, threats, inducement or deception.<sup>17</sup> We are not unaware that Section 27 of the Evidence Act which makes the information given by the accused while in custody leading to the discovery of a fact and the fact admissible, is liable to be abused and for that reason great caution has to be exercised in resisting any attempt to circumvent, by manipulation or ingenuity of the Investigating Officer, the protection afforded by Section 25 and Section 26 of the Evidence Act.<sup>18</sup> Sections 25 and 26 are manifestly intended to hit at an evil, viz., to guard against the danger

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<sup>13</sup> Supreme Court of India, Eleven-Judge bench, State of Bombay v. Kathi Kalu Oghad, [1962] 3 S.C.R. 10, [p. 33-34], Sub-para (5); 1961-INSC-229, Aug 04.

<sup>14</sup> Supreme Court of India, Eleven-Judge bench, State of Bombay v. Kathi Kalu Oghad, [1962] 3 S.C.R. 10, [p. 33-34], Sub-para (3); 1961-INSC-229, Aug 04.

<sup>15</sup> Supreme Court of India, Eleven-Judge bench, State of Bombay v. Kathi Kalu Oghad, [1962] 3 S.C.R. 10, [p. 33-34], Sub-para (7); 1961-INSC-229, Aug 04.

<sup>16</sup> Supreme Court of India, Constitutional Bench, State of Uttar Pradesh v. Deoman Upadhyaya, [Majority View], [1961] 1 SCR 14, p. 29; 1960-INSC-107, May 6, 1960.

<sup>17</sup> Supreme Court of India, Three-Judge bench, Selvi & Ors v. State of Karnataka & Anr, [2010] 5 SCR 381, para 92; 2007-INSC-520, May 05, 2010.

<sup>18</sup> Supreme Court of India, H.P. Admn. v. Om Prakash, [1972] 2 SCR 765, [p. 776][C-D]; 1971-INSC-340, Dec 07, 1971.

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of receiving in evidence testimony from tainted sources about statements made by persons accused of offences.<sup>19</sup>

169. The mere questioning of an accused person by a police officer, resulting in a voluntary statement, which may ultimately turn out to be incriminatory, is not 'compulsion'.<sup>20</sup> An accused person cannot be said to have been compelled to be a witness against himself simply because he made a statement while in police custody, without anything more.<sup>21</sup> Thus, s. 27 partially removes the ban placed on the reception of confessional statements under s. 26—But the removal of the ban is not of such an extent as to absolutely undo the object of s. 26.<sup>22</sup> The court has to be cautious that no effort is made by the prosecution to make out a statement of accused with a simple case of recovery as a case of discovery of fact in order to attract the provisions of Section 27 the Evidence Act.<sup>23</sup> Once a confessional statement of the accused on facts is found to be involuntary, it is hit by Article 20(3) of the Constitution, rendering such a confession inadmissible.<sup>24</sup>

170. The onus is on the prosecution to prove the fact discovered from the information obtained from the accused.<sup>25</sup> There cannot be a “discovery” of an already discovered fact!<sup>26</sup> Once a fact is discovered from other sources there can be no fresh discovery even if relevant information is extracted from the accused and courts have to be watchful against the ingenuity of the investigating officer in this respect so that the protection afforded by the wholesome provisions of ss. 25 and 26 of the Indian Evidence Act is not whittled down by mere manipulation of the record of case diary.<sup>27</sup>

171. The basic idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events.<sup>28</sup> Section 27 appears to be based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true and accordingly it can be safely allowed to be given

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<sup>19</sup> Supreme Court of India, Constitutional Bench, State of Uttar Pradesh v. Deoman Upadhyaya, [Majority View], [1961] 1 SCR 14, p. 29; 1960-INSC-107, May 6, 1960.

<sup>20</sup> Supreme Court of India, Eleven-Judge bench, State of Bombay v. Kathi Kalu Oghad, [1962] 3 S.C.R. 10, [p. 33-34], Sub-para (2); 1961-INSC-229, Aug 04.

<sup>21</sup> Supreme Court of India, Eleven-Judge bench, State of Bombay v. Kathi Kalu Oghad, [1962] 3 S.C.R. 10, [pp. 33-34], Sub-para (1); 1961-INSC-229, Aug 04.

<sup>22</sup> Supreme Court of India, Udai Bhan v. State of UP, [1962] SUPP 2 SCR 830, p. 835- 837; 1962 INSC 30, Jan 29, 1962.

<sup>23</sup> Supreme Court of India, Geejaganda Somaiah v. State of Karnataka, Appeal (Crl.) 311 of 2007, [p. 5], Mar 12, 2007.

<sup>24</sup> Supreme Court of India, Ashish Jain v. Makrand Singh & Ors, [2019] 1 SCR 345, para 21; 2019-INSC-47, Jan 14, 2019.

<sup>25</sup> Supreme Court of India, Jafarudheen & Ors. v. State of Kerala, [2022] 5 SCR 721, para 31; 2022-INSC-464, Apr 22, 2022.

<sup>26</sup> Supreme Court of India, Dinesh Kumar v. The State of Haryana, [2023] 4 SCR 220, [p. 229], Para 8; 2023-INSC-493, May 04, 2023.

<sup>27</sup> Supreme Court of India, Three-judge bench, Thimma @ Thimma Raju v. State of Mysore, [1971] 1 SCR 215, [p. 225][D-E]; 1970 INSC 82, Apr 02, 1970

<sup>28</sup> Supreme Court of India, State of Maharashtra v. Damu & Ors., [2000] 3 SCR 880, [p. 89] (B-D); 2000-INSC-273, May 01, 2000.

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in evidence.<sup>29</sup> The rationale behind Section 27 of the Indian Evidence Act is, that the facts in question would have remained unknown but for the disclosure of the same by the accused.<sup>30</sup>

172. The exception postulated under Section 27 of the Indian Evidence Act is applicable only if the confessional statement leads to the discovery of some new fact.<sup>31</sup> It is for the prosecution to prove that the information received from the accused is relatable to the fact discovered.<sup>32</sup> [I]t is fallacious to treat the “fact discovered” within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact.<sup>33</sup>

173. The expression "whether it amounts to a confession or not" has been used in order to emphasise the position that even though it may amount to a confession that much information as relates distinctly to the fact thereby discovered can be proved against the accused.<sup>34</sup> The essential ingredient of the section is that the information given by the accused must lead to the discovery of the fact which is the direct outcome of such information— Secondly, only such portion of the information given as is distinctly connected with the said recovery is admissible against the accused—Thirdly, the discovery of the fact must relate to the commission of some offence.<sup>35</sup> For relevancy, the “facts thereby discovered” is preceded with the words “so much of such information, whether it amounts to confession or not as relates distinctly”—Special emphasis must be given to the word ‘distinctly’—The word “distinctly” has its own importance which is a derivative of the word ‘distinct’.<sup>36</sup> Therefore, “distinctly”, as used in Section 27, is meant to exclude certain language and to limit and confine the information which may be proved within definite limits and not necessarily to include everything which may relate to that information—The said word “distinctly” indicates directly, indubitably, strictly and unmistakably, apparently, used in Section 27 to limit and define the scope of probable

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<sup>29</sup> Supreme Court of India, Geejaganda Somaiah v. State of Karnataka, Appeal (Crl.) 311 of 2007, [p. 5], Mar 12, 2007.

<sup>30</sup> Supreme Court of India, Madhu v. State of Kerala, [2012] 2 S.C.R. 986, [pp. 1021-1022] [H-D]; 2012-INSC-27, Jan 13, 2012.

<sup>31</sup> Supreme Court of India, Madhu v. State of Kerala, [2012] 2 S.C.R. 986, [pp. 1021-1022] [H-D]; 2012-INSC-27, Jan 13, 2012.

<sup>32</sup> Supreme Court of India, Jafarudheen & Ors. v. State of Kerala, [2022] 5 SCR 721, [30]; 2022-INSC-464, Apr 22, 2022.

<sup>33</sup> Privy Council, Four-Judge Bench, Pulukuri Kottaya and Others v. Emperor, AIR 1947 PC 67, p. 262, 1946 SCC OnLine PC 47, Dec 19, 1946.

<sup>34</sup> Supreme Court of India, Three-Judge Bench, Ramkishan Sharma v. State of Bombay, [1955] 1 SCR 903; 1954-INSC-99, Oct 22, 1954.

<sup>35</sup> Supreme Court of India, Three-judge bench, Jaffer Hussein Dastgir v. State of Maharashtra, [1970] 2 S.C.R. 332, [p. 336] [D-F]; 1969-INSC-232, Sep 11, 1969.

<sup>36</sup> Supreme Court of India, Govind v. State of Haryana, [2025] 12 SCR 206, Para 15; 2025-INSC-1318, Nov 14, 2025.

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information—Therefore, only that much information as is clearly connected with the fact discovered can be treated as relevant under the phrase ‘facts discovered’.<sup>37</sup>

174. The limited nature of the admissibility of the facts discovered pursuant to the statement of the accused under Section 27 can be illustrated by the following example: Suppose a person accused of murder deposes to the police officer the fact as a result of which the weapon with which the crime is committed is discovered, but as a result of such discovery no inference can be drawn against the accused, if there is no evidence connecting the knife with the crime alleged to have been committed by the accused.<sup>38</sup> The information might be confessional or non- inculpatory in nature, but if it results in discovery of a fact it becomes a reliable information—Hence the legislature permitted such information to be used as evidence by restricting the admissible portion to the minimum.<sup>39</sup> But if to the statement the words be added “with which I stabbed A” these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant.<sup>40</sup> The words “where he had hidden them” are not on a par with the words “with which I stabbed the deceased” in the example given in the judgment of the Judicial Committee.<sup>41</sup> These words (namely, where he had hidden them) have nothing to do with the past history of the crime and are distinctly related to the actual discovery that took place by virtue of that statement.<sup>42</sup> The handing over of the key is not a confessional statement but the confession lies in the fact that with that key the shop of the complainant was opened and, therefore, that portion will be inadmissible in evidence and only that portion will be admissible which distinctly relates to the fact discovered i.e., the finding of the key.<sup>43</sup>

175. The silent cause of the final fall of the tall tower is the first stone obliquely and obliviously removed from the base—And Art. 20(3) is a human article, a guarantee of dignity and integrity and of inviolability of the person and refusal to convert an adversary system into an inquisitorial scheme in the antagonistic antechamber of a police station—And in the long run, that investigation is best which uses stratagems least, that policeman deserves respect who gives his fists rest and his wits restlessness—The police

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<sup>37</sup> Supreme Court of India, Govind v. State of Haryana, [2025] 12 SCR 206, Para 15; 2025-INSC-1318, Nov 14, 2025.

<sup>38</sup> Supreme Court of India, Musheer Khan v. State of MP, [2010] 2 S.C.R. 119, [69]; 2010-INSC-64, Jan 28, 2010.

<sup>39</sup> Supreme Court of India, State of Maharashtra v. Damu & Ors., [2000] 3 SCR 880, [p. 89] (B-D); 2000-INSC-273, May 01, 2000.

<sup>40</sup> Privy Council, Four-Judge Bench, Pulukuri Kottaya and Others v. Emperor, AIR 1947 PC 67, p. 262, 1946 SCC OnLine PC 47, Dec 19, 1946.

<sup>41</sup> Privy Council, Four-Judge Bench, Pulukuri Kottaya and Others v. Emperor, AIR 1947 PC 67, p. 262, 1946 SCC OnLine PC 47, Dec 19, 1946.

<sup>42</sup> Supreme Court of India, Three-judge Bench, K. Chinnaswamy Reddy v. State of Andhra Pradesh, [1963] S.C.R. 412, [p. 421], 1962-INSC-216, July 25, 1962.

<sup>43</sup> Supreme Court of India, Udai Bhan v. State of UP, [1962] SUPP 2 SCR 830, p. 835- 837; 1962 INSC 30, Jan 29, 1962.

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are part of us and must rise in peoples' esteem through firm and friendly, not foul and sneaky strategy.<sup>44</sup>

176. In other words, the mere fact of being in police custody at the time when the statement in question was made would not, by itself, as a proposition of law, lend itself to the inference that the accused was compelled to make the statement, though that fact, in conjunction with other circumstances disclosed in evidence in a particular case, would be a relevant consideration in an enquiry whether or not the accused person had been compelled to make the impugned statement.<sup>45</sup>

177. Before analyzing the disclosure statement, whether its contents were proved by the investigator, or whether the discovered article was lying in an accessible open place and within a foreseeable proximity, such a stage would only arrive if the disclosure and discovery pass the following six-fold test.

178. Six-Fold Test or Sextipartite<sup>46</sup> test<sup>47</sup>:

- 1) Disclosure of information must be made by the person already arraigned as an accused for the commission of the said offence<sup>48</sup>.
- 2) Such an accused must be in custody for that offence when making the disclosure.<sup>49,50</sup>
- 3) The accused must have disclosed voluntarily<sup>51</sup>, without compulsion<sup>52</sup>, coercion, threats, inducement or deception.<sup>53</sup>
- 4) Such information must disclose a fact relevant to the crime.<sup>54</sup>
- 5) The information must have been distinctly<sup>55</sup> connected with the fact discovered.<sup>56</sup>

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<sup>44</sup> Justice Krishna Iyer, Supreme Court of India, Three-judge bench, Nandini Sathpathy v. Dani (P.L.) and Anr., [1978] 3 S.C.R. 608, [p. 631] [E-H]; 1978-INSC-80, Apr 07, 1978.

<sup>45</sup> Supreme Court of India, Eleven-Judge bench, State of Bombay v. Kathi Kalu Oghad, [1962] 3 S.C.R. 10, [pp. 33-34], Sub-para (1); 1961-INSC-229, Aug 04.

<sup>46</sup> Oxford University Press. (n.d.). Sextipartite, adj. In Oxford English dictionary. Retrieved Aug 23, 2026, from <https://doi.org/10.1093/OED/9499291168>.

<sup>47</sup> State of Haryana v. Arun and Ors., MRC-9-2023, Neutral Citation 2026-PHHC-119432-DB, Aug 26, 2026.

<sup>48</sup> Supreme Court of India, Eleven-Judge bench, State of Bombay v. Kathi Kalu Oghad, [1962] 3 S.C.R. 10, [pp. 35], Sub-para (7); 1961-INSC-229, Aug 04.

<sup>49</sup> Supreme Court of India, Eleven-Judge bench, State of Bombay v. Kathi Kalu Oghad, [1962] 3 S.C.R. 10, [pp. 33-34], Sub-para (7); 1961-INSC-229, Aug 04.

<sup>50</sup> Supreme Court of India, Constitutional Bench, State of Uttar Pradesh v. Deoman Upadhyaya, [Majority View], [1961] 1 SCR 14, p. 29; 1960-INSC-107, May 6, 1960.

<sup>51</sup> Supreme Court of India, Ashish Jain v. Makrand Singh & Ors., [2019] 1 SCR 345, para 21; 2019-INSC-47, Jan 14, 2019.

<sup>52</sup> Art 20(3)— No person accused of any offence shall be compelled to be a witness against himself.

<sup>53</sup> Supreme Court of India, Three-Judge bench, Selvi & Ors v. State of Karnataka & Anr., [2010] 5 SCR 381, para 92; 2007-INSC-520, May 05, 2010.

<sup>54</sup> Supreme Court of India, Anter Singh v. State of Rajasthan, [2004] 2 S.C.R 123, [132 A – E] sub-paras (1), (5), (6); 2004-INSC-88, Feb 05, 2004.

<sup>55</sup> Supreme Court of India, Three-Judge Bench, Ramkishan Sharma v. State of Bombay, [1955] 1 SCR 903, p. 924; 1954-INSC-99, Oct 22, 1954.

<sup>56</sup> Supreme Court of India, Govind v. State of Haryana, [2025] 12 SCR 206, Para 15; 2025-INSC-1318, Nov 14, 2025.

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- 6) The fact that was discovered pursuant to the disclosure must not have already been discovered.<sup>57</sup>

179. Analyzing and appreciating in the light of the above, the making of the disclosure statements, the accused leading the police party to the *Jowar* field, the discovery of *Kassi*, and the connection of the *Kassi* to the commission of the alleged crime are not legally established and does not fall under the exceptions to §27 of the Indian Evidence Act, 1872.

180. Arjun Dev was examined twice, first as PW-1 (pp. 139-141 of TCR) and secondly as PW-16 (pp. 231-233 of TCR). The Court first examined Arjun Dev on May 24, 2019, but deferred further cross-examination. Arjun Dev was re-examined on Mar 4, 2021. The Trial Court passed a *zimini* order dated Mar 04, 2021, explaining that, due to inadvertence, Arjun's statement was again recorded as PW-16. An analysis of the above points out that when Arjun's statement was recorded as PW-16, even the Defense did not bring to the notice of the Trial Court that Arjun Dev's examination-in-chief as well as some cross-examination had already been recorded earlier as PW-1; thus, no adverse inference can be drawn from this oversight.

181. No prejudice can be caused to the accused or to anyone else if a witness is re-examined after a deferment and is assigned a new or different number.

**182. ARJUN DEV DOES NOT APPEAR TO BE A WHOLLY RELIABLE WITNESS AS THE HEREIN AFTER MENTIONED STATEMENTS MADE BY ARJUN DEV (PW-1 & PW-16) ARE SELF CONTRADICTORY.**

**183. CONTRADICTIONS IN THE TESTIMONIES GIVEN BY ARJUN DEV AS PW-1 & PW-16 PERTAINING TO THE DROWNING OF SIVA:**

184. PW-1, Arjun Dev, stated in his examination-in-chief that Madan Lal, son of Sooraj Bhan, and his brother Lachman, accompanied by their wives and Madan's aunt, Savitri, came to his house, and told him that Hem Raj had brought a lady named Suman along with a child aged three years, and that Hem Raj and Suman were drowning their child, and that they heard the noise of the child's crying.

185. To determine whether drowning symptoms were present, the Investigator had collected water samples from the drum at Hem Raj's house. PW-6 Constable Pankaj stated that on June 16, 2018, PW-17 SI Suresh Kumar collected water from a plastic drum inside the house and sealed it with seal impression 'SK'.

186. The bodily remains of the deceased, as well as the water sample collected from the drum, were sent to the Forensic Science Laboratory to determine whether diatoms were

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<sup>57</sup> Supreme Court of India, Three-judge bench, Thimma @ Thimma Raju v. State of Mysore, [1971] 1 SCR 215, [p. 225] [D-E]; 1970 INSC 82, Apr 02, 1970.

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present, which would be expected if the cause of death was drowning; however, diatoms were not found in the extracts from the child's body. The Forensic Science Laboratory report states that diatoms were detected in Exhibit 2, the water sample; however, diatoms could not be detected in Exhibit 1, the sternum. Exhibit 2 was a sealed cloth parcel containing dirty liquid in one plastic bottle that was collected from the room and Exhibit 1 contained putrefied fleshy material along with pieces of bone described as the sternum. (Ext P-33, p. 445 of TCR).

187. PW-20 Dr. Vijay Kumar Vohra, in his cross-examination, stated that the diatom examination report from FSL Madhuban detected diatoms in the water sample from the site but not in the deceased's sternum bone (Exhibit 1), implying that the child's death was probably not due to antemortem drowning. PW-20 Dr. Vijay Kumar Vohra further stated that, after reviewing the FSL reports, including the diatom examination, the cause of death in this case was failure of function of brain due to head injury as a result of skull fractures.

188. Thus, the version of Arjun Dev that the information was that the child was being drowned in the water drum has been found to be false by Scientific and Medical Evidence.

**189. CONTRADICTIONS IN THE TESTIMONIES GIVEN BY ARJUN DEV AS PW-1 & PW-16 PERTAINING TO THE NUMBER OF FAMILY MEMBERS:**

190. Arjun's testimonies recorded as PW-1 and PW-16 contain a material contradiction. While testifying as PW-1, Arjun Dev explicitly stated that Madan Lal, Lakshman, their wives, and Madan's aunt, Savitri, had visited his house around 9:00 PM. This fact was so important that a person would not normally forget it soon, because he noticed not just one person but five family members visiting his house at an odd hour.

191. However, while testifying as PW-16, Arjun Dev, in his examination-in-chief, stated that on June 13, 2018, around 9:00 PM, a family member of Hem Raj came to him and told him that Hem Raj had brought a lady and a child, was beating the child, and that the child was crying.

192. Thus, initially Arjun Dev stated that Hem Raj's family members had come to his home, and explicitly named them as Madan Lal, son of Sooraj Bhan, and his brother Lachman, along with their wives and Madan's aunt, namely Savitri. However, he later changed his version and stated that a family member of Hem Raj had come, and he did not mention other family members.

193. In State of Rajasthan v. Smt. Kalki and Anr., [1981] 3 SCR 504; 1981-INSC-94, Apr 15, 1981, Supreme Court holds,

[p. 507] [6]. ...In the depositions of witnesses there are always some normal discrepancies however honest and truthful they may be. These discrepancies are due to normal errors of observation, normal errors of

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memory due to lapse of time, due to mental disposition such as shock and horror at the time of the occurrence, and the like. Material discrepancies are those which are not normal, and not expected of a normal person.

194. Hem Raj's brother Lachman testified as DW-1; however, the Public Prosecutor did not cross-examine him as to whether he and his family members visited Arjun Dev's house on June 13, 2018, at around 9 PM. (*Lachman testified as DW-1, where the spelling is mentioned as Lachman. Thus, the reference to Lakshman should be read as Lachman, and vice versa*).

195. An analysis of the above reveals a material contradiction regarding whether Madan Lal, son of Sooraj Bhan, and his brother Lachman, along with their wives and Madan's aunt, namely Savitri, visited his house, or whether only one family member visited his house.

196. A witness speaks to his memory and not to his reasoning or his opinion.<sup>58</sup> Since Arjun Dev initially deposed from his memory the names of Hemraj's family members who had visited him at night, his subsequent contradiction on this very point that only a family member had visited him that night is a glaring contradiction and casts a serious doubt on his credibility.

**197. EVIDENTIARY VALUE OF DEFENCE WITNESSES:**

198. DW-1 Lachman testified that they were three brothers, himself, Madan, and Hem Raj, and that they had a sister named Suman. Madan has expired. Hem Raj used to drive a JCB. His brother Hem Raj had married a woman named Suman, who had a three-year-old son named Siva. Hem Raj brought her to the village and stayed with her and her child for 6/7 days. A wall separates Hem Raj's house from theirs. Hem Raj is a good-natured person; they never heard of any dispute between husband and wife, nor did they ever hear the child's voice. DW-1 further stated that Hem Raj would take Siva to purchase sweets. He explicitly testified that neither he nor his brother Madan ever complained to Sarpanch Arjun Dev that his brother Hem Raj beats the child. His brother never used to put the child in a water tub, and they never made any complaint to the Sarpanch of the village. He stated that Hem Raj did not kill the child, and that it is only revenge the Sarpanch has taken with them because their family did not cast a vote in his favor. (pp. 311-315 of TCR).

199. The Defense also examined Krishan, a co-villager of Hem Raj, as DW-2. He stated that his house is four or five houses away from Hem Raj. Hem Raj has two elder brothers: Lachman and Madan, and Madan has expired. Madan, Hem Raj, and their father lived together, and Lachman resided in another house. He stated that Hem Raj's conduct was

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<sup>58</sup> Courtney Stanhope Kenny, *Outlines of Criminal Law* 417 (G. Godfrey Phillips ed., 15th ed., Cambridge Univ. Press 1936).

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good; he had married a woman named Suman, who had a child. He had seen Suman and Siva many times. Hem Raj used to love Shiva. He often saw Hem Raj take Siva to the shop to buy sweets, etc. He had never heard of any dispute between Suman, Shiva, and Hem Raj. Madan and Hem Raj were quite friendly, and he had never seen them fighting with each other. He denied that Hem Raj had drowned the child Shiva in a drum. Hem Raj's father used to work in other places like Rajasthan and nearby villages. He used to do labor work. Hem Raj had not killed the child Siva. Arjun Dev, the Sarpanch of that village, played this game because Hem Raj and his family had not voted for him in the Sarpanch election, so he took revenge. (pp. 317-321 of TCR).

200. In Dudh Nath Pandey v State of UP, [1981] 2 S.C.R. 771; 1981-INSC-27, Feb 11, 1981, the Supreme Court of India holds,

[p. 779] [B–C] Defence witnesses are entitled to equal treatment with those of the prosecution. And, Courts ought to overcome their traditional, instinctive disbelief in defence witnesses. Quite often, they tell lies but so do the prosecution witnesses.

201. In Malkiat Singh and Ors. v. State of Punjab, [1991] 2 S.C.R. 256, 1991 INSC 98, April 10, 1991, a three-judge bench of the Supreme Court holds,

[p. 267] [A–B] Undoubtedly, ocular defence evidence, if it is not subjected to critical cross-examination, is entitled to the same weight as prosecution evidence. But merely because the prosecution, as usual, made insipid cross-examination, the defence evidence is not to be believed automatically. Witnesses may be prone to speak lies but circumstances will not. So even though the burden of the defence is not as heavy as of the prosecution, the oral evidence tendered by the defence must also be subjected to critical scrutiny and be considered in the light of the given facts and attending circumstances of the case and human probabilities.

[pp. 267-268] [H–B] It is settled law that corroboration is not a rule of law, but one of caution as an assurance. The conviction could be made on the basis of the testimony of a solitary witness. The occasion for the presence at the time of occurrence, opportunity to witness the crime, the normal conduct of the witness after the incident, the nearness of the witness to the victim, his pre-disposition towards the accused, are some of the circumstances to be kept in view to weigh and accept the ocular evidence of a witness. It is not the quantum of the evidence but its quality and credibility of the witness that lends assurance to the court for acceptance.

202. In State of UP v. Babu Ram, [2000] 2 S.C.R. 1201, 2000-INSC-212, Apr 11, 2000, the Supreme Court holds,

[p. 1211] [A–B] Depositions of witnesses, whether they are examined on the prosecution side or defence side or as court witnesses, are oral evidence in the case and hence the scrutiny thereof shall be without any predilection or bias. No witness is entitled to get better treatment merely because he was examined as a prosecution witness or even as a court witness. It is judicial scrutiny which is warranted in respect of the depositions of all witnesses for which different yardsticks cannot be prescribed as for those different categories of witnesses.

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203. In Munshi Prasad and ors. v. State of Bihar, [2001] SUPP. 4 S.C.R. 25, 2001-INSC-497, Oct 10, 2001, the Supreme Court holds,

[p. 31] [F–G] ...we wish to clarify that the evidence tendered by the defence witnesses cannot always be termed to be a tainted one by reason of the factum of the witnesses being examined by the defence. The defence - witnesses are entitled to equal respect and treatment as that of the prosecution. The issue of credibility and the trustworthiness ought also to be attributed to the defence witnesses at par with that of the prosecution - a lapse on the part of the defence witness cannot be differentiated and be treated differently than that of the prosecutors' witnesses.

204. In State of Haryana v. Ram Singh, [2002] 1 S.C.R. 208; 2002-INSC-25, Jan 15, 2002, the Supreme Court holds,

[p. 224] ...Incidentally be it noted that the evidence tendered by defence witnesses cannot always be termed to be a tainted one - the defence witnesses are entitled to equal treatment and equal respect as that of the prosecution. The issue of credibility and the trustworthiness ought also to be attributed to the defence witnesses at par with that of the prosecution.....Rejection of the defence case only by reason thereof is far too strict and rigid a requirement for the defence to meet - it is prosecutor's duty to prove beyond all reasonable doubts and not the defence to prove its innocence - this itself is a circumstance, which cannot but be termed to be suspicious in nature.

205. In Banti @ Guddu v. State of Madhya Pradesh, [2003] SUPP. 5 S.C.R. 119; 2003-INSC-598, Nov 04, 2003, the Supreme Court holds,

[p. 125] [E–F] It is true, the evidence of defence witness is not to be ignored by the courts. Like any other witnesses, his evidence has to be tested on the touchstone of reliability, credibility and trustworthiness particularly when he attempts to resile and speak against records and in derogation of his earlier conduct and behaviour. It after doing so, the Court finds it to be untruthful, there is no legal bar in discarding it.

206. In Sanjiv Kumar v. State of Punjab, Cr.A No. 880 of 2005, Nov 07, 2006, the Supreme Court holds,

[p. 14] We cannot lose sight to the principle that while the prosecution has to prove its case beyond reasonable doubt, the defence of the accused has to be tested on the touchstone of probability. The burden of proof lies on the prosecution in all criminal trials, though the onus may shift to the accused in given circumstances, and if so provided by law. Therefore, the evidence has to be appreciated to find out whether the defence set up by the appellant is probable and true.

[p. 16] It has been observed that defence witnesses are often untruthful, but that is not to say that in all cases defence witnesses must be held to be untruthful, merely because they support the case of the accused. The right given to the appellant to explain the incriminating circumstances appearing against him serves a purpose, and cannot be ignored outright. In every case the Court has to see whether the defence set up by the accused is probable, having regard to the totality of the facts and circumstances of the case. If the defence appears to be probable, the Court may accept such defence. This is primarily a matter of appreciation of evidence on record and no strait jacket formula can be enunciated in this regard.

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207. Given the quality of the prosecution's evidence, the statements of DW-1 and DW-2 cannot be outrightly thrown out of consideration, even though both were interested witnesses; however, there are no sufficient reasons to disbelieve the testimonies of the defense witnesses.

**208. DEFENSE WITNESSES CONTEND THAT ARJUN DEV HARBOURS ANIMOSITY AGAINST HEM RAJ AND HIS FAMILY:**

209. DW-1 and DW-2 first brought to light the defense version that Arjun Dev was inimical to Hem Raj's family. [B]ut no proof of bias can be given unless the witness has been cross-examined on the point, so as to have had an opportunity of explaining the circumstances.<sup>59</sup> When Arjun Dev was cross-examined as either PW-1 or PW-16, no one suggested that he was inimical to Hem Raj and his family because they had not voted for him in the Sarpanch election and, to take revenge, he falsely implicated them.

210. In Mahant Dharam Das v. State of Punjab, [1975] 3 S.C.R. 160; 1974-INSC-10, Jan 14, 1974, a four-judge bench of the Supreme Court holds,

[p. 173] [E] It is true that a denial of a right to be heard as expressed in the maxim *audi alteram partem* whether by legislative or executive action or in any other manner is abhorrent to a civilised society; it is destructive of the elementary principles of justice according to which every citizen has to be judged and is contrary to the cherished notions of the rule of law which is the sheet-anchor and the umbilicus of the democratic system of Government embodied in our Constitution.

211. In Madhymam Broadcasting Ltd. v. Union of India, [2023] 10 S.C.R. 595: 2023-INSC-324, Apr 05, 2023, the Supreme Court holds,

[p. 638] [C–D] ...The facet of *audi alteram partem* encompasses the components of notice, contents of the notice, reports of inquiry, and materials that are available for perusal. While situational modifications are permissible, the rules of natural justice cannot be modified to suit the needs of the situation to such an extent that the core of the principle is abrogated because it is the core that infuses procedural reasonableness.

212. In Krishnadatt Awasthy v. State of M.P., [2025] 1 S.C.R. 1173; 2025-INSC-126, Jan 25, 2025, a three-judge bench of supreme court holds,

[p. 1194] [36]. ...The principle of *audi alteram partem* lies at the very heart of procedural fairness, ensuring that no one is condemned or adversely affected, without being given an opportunity to present their case. The decision in Ridge v Baldwin [1964] AC 40, is regarded as a significant landmark decision in British administrative law and is often referred to as a magna carta of natural justice. This decision has resonated deeply in the Indian legal context where natural justice principles are firmly entrenched with constitutional guarantees.

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<sup>59</sup> Courtney Stanhope Kenny, *Outlines of Criminal Law* 427 (G. Godfrey Phillips ed., 15th ed., Cambridge Univ. Press 1936).

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[p. 1208] [68]. The principle of *audi alteram partem* is the cornerstone of justice, ensuring that no person is condemned unheard. This principle transforms justice from a mere technical formality into a humane pursuit.

213. In the absence of such a suggestion to Arjun Dev, when he was being examined on oath, the principle of *Audi Alteram Partem* would apply, and thus this portion of the Defence Witnesses' statement cannot be read in evidence.

**214. RELEVANCE OF PREVIOUS GOOD CHARACTER ATTRIBUTED TO HEM RAJ UNDER §53 OF INDIAN EVIDENCE ACT:**

215. The defense witnesses' examination portrayed Hem Raj as a person of good character who used to love Shiva and even got sweets for Shiva.

216. It shall be relevant to extract §53 of the Indian Evidence Act [renumbered as §47 of BSA], which reads as follows:

53. In criminal cases previous good character relevant.—In criminal proceedings, the fact that the person accused is of a good character, is relevant.

217. In Habeeb Mohummad v. State of Hyderabad, [1954] 1 S.C.R. 475; 1953-INSC-57, Oct 5, 1953, a three-judge bench of the Supreme Court holds,

[p. 494]. ...Under the provisions of section 53 of the Evidence Act evidence as to the character of an accused is always relevant in a criminal case. So is the evidence as to the state of his mind.

[p. 495]. ...In criminal proceedings a man's character is often a matter of importance in explaining his conduct and in judging his innocence or criminality. Many acts of an accused person would be suspicious or free from all suspicion when we come to know the character of the person by whom they are done. Even on the question of punishment an accused is allowed to prove general good character.

218. In Sardar Sardul Singh Caveeshar v. State of Maharashtra, [1964] 2 S.C.R. 378; 1963-INSC-61, Mar 18, 1963, three-judge bench of the Supreme Court holds,

[pp. 397-399] The question is what is the evidentiary value of good character of an accused in a criminal case. The relevant provisions are s. 53 and the Explanation to s. 55 of the evidence Act. They read:

Section 53. In criminal proceedings the fact that the person accused is of a good character is relevant.

Explanation to s. 55. In sections 52, 53, 54 and 55, the word "character" includes both reputation and disposition; but except as provided in section 54, evidence may be given only of general reputation and general disposition, and not of particular acts by which. reputation, or disposition were shown.

It is clear from the said provisions that the evidence of general reputation and general disposition is relevant in a criminal proceeding. Under the Indian Evidence Act, unlike in England, evidence can be given both of general character and general disposition. Disposition means the inherent qualities of a person; reputation means the general credit of the person amongst the public. There is a real distinction between reputation and

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disposition. manner: A man may be reputed to be a good man, but in reality he may have a bad disposition. The value of evidence as regards disposition of a person depends not only upon the witness's perspicacity but also on his opportunities to observe the person as well as the said person's cleverness to hide his real traits. But a disposition of a man may be made up of many traits, some good and some bad, and only evidence in regard to a particular trait with which the witness is familiar would be of some use. Wigmore puts the proposition in the following manner:

"Whether, when admitted, it should be given weight except in a doubtful case, or whether it may suffice of itself to create a doubt, is a mere question of the weight of evidence, with which the rules of admissibility have no concern."

But, in any case, the character evidence is a very weak evidence : it cannot outweigh the positive evidence in regard to the guilt of a person. It may be useful in doubtful cases to tilt the balance in favour of the accused or it may also afford a background for appreciating his reactions in a given situation. It must give place to acceptable positive evidence. The opinion expressed by the witnesses does credit to the accused, but, in our view, in the face of the positive evidence we have already considered, it cannot turn the scale in his favour.

219. The statements of the defense witnesses stating that the accused is a good person and loved the child, directly cast an aspersion on the prosecution's version that the accused used to taunt the child, and it renders the prosecution's case regarding ill-treatment meted out to the child at the hands of Hem Raj, highly improbable and unworthy of credence.

**220. ARJUN DEV'S TESTIMONY BEING HEARSAY EVIDENCE VIS-À-VIS ITS ADMISSIBILITY AS RES GESTAE:**

221. The proposition of law involved is when information falls within the category of hearsay evidence, whether to the extent of the investigation carried out and the evidence collected based on such information would become admissible and remain relevant?

222. Although the expression "hearsay evidence" is not defined under the Evidence Act, it is, nevertheless, in constant use in the courts.<sup>60</sup>

223. The rule against the admission of hearsay evidence is fundamental. It is not the best evidence, and it is not (except rarely) delivered on oath—The truthfulness and accuracy of a person whose words are spoken to by another witness cannot be tested by cross examination and the light which his demeanor would throw on his testimony is lost.<sup>61</sup>

224. On June 16, 2018, Sarpanch Arjun Dev (PW-1 & PW-16) received information from Ram Bilas (PW-2) that the half-dead body of a child was lying in his agricultural field. Upon receiving this information, Arjun Dev went to the fields, where he found a half-dead

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<sup>60</sup> Supreme Court of India, Five-Judge Bench, Neeraj Dutta v State (Govt. of N.C.T of Delhi), [2023] 2 S.C.R. 997; 2023-INSC-245, Dec 15, 2022.

<sup>61</sup> Harris's, *Criminal Law* 606 (Ian McLean, Peter Morrish, ed., 22nd ed., Universal Law Publishing Co. Pvt. Ltd.).

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body, along with the dismembered skull and blood stained clothes near a trench. He then informed the police, who arrived after some time. Arjun Dev told the police that the dead body of the child may be that of a member of the family of Hem Raj, about whom he had already informed the Childline<sup>62</sup> Hisar on June 13, 2018.

225. The Childline report, Ext P-23 (p. 145 of TCR), states that Arjun Dev reported that Mahabir was beating the child and the mother. However, during the trial, when Arjun Dev appeared as PW-1, he changed his earlier version and stated that Hem Raj and Suman were drowning the child. In his examination-in-chief (p. 139 of TCR), PW-1 specifically stated that Hem Raj's brothers, namely Madan Lal and Lakshman, along with their wives and Madan's aunt, Savitri, had visited his house and said that Hem Raj had brought a lady named Suman along with a child aged three years, and that Hem Raj and Suman were drowning their child.

226. It remains un rebutted that Arjun Dev had not himself seen the child being beaten or being drowned. Thus, this part of the testimony is inadmissible being hearsay evidence.

227. On June 13, 2018, Arjun Dev did not personally witness the beatings, and he was informed about a child being beaten by other people. Arjun Dev conveyed this information to Childline 1098. Thus, the information received by Childline No. 1098 was based on Arjun Dev's hearsay, and this information was also hearsay because he did not personally witness the beatings.

228. The primary question that arises is whether the information, which was entered in the record of Childline No. 1098, coupled with the call details record establishing the making of the calls, would make the following information admissible as res gestae as an exception to the rule of hearsay:

- (a) The making of the phone call by Arjun Dev to Childline and the return call to Arjun Dev by the Childline;
- (b) The contents of the information that were entered in the Childline records.

229. It shall be pertinent to refer to Harris's, *Criminal Law*<sup>63</sup>, which reads as follows:

All statements and conduct which are contemporaneous with or part of, a fact in issue or relevant to the issue can be proved in order to explain that fact. In Ratten v. The Queen, the Privy Council said that the test is whether the making of the statement was in some sense part of the transaction or event. The evidence maybe admitted if the statement producing it is made in such conditions (always being those of approximate but not exact contemporaneity) of involvement or pressure

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<sup>62</sup> <https://hisar.gov.in/childline-1098/> [Link created on Oct 06, 2026 at 08:08 Hrs.]

<sup>63</sup>Harris's, *Criminal Law*, p. 607 (Ian McLean, Peter Morrish , ed., 22nd ed., Universal Law Publishing Co. Pvt. Ltd.).

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as to exclude the possibility of concoction or distortion to the maker, or the disadvantage of the accused.

230. It shall be relevant to extract Section 6 of the Indian Evidence Act, which reads as follows:

*§6. Relevancy of facts forming part of same transaction.—Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.*

231. In Kali Ram v. State of Himachal Pradesh, [1974] 1 S.C.R. 722; 1973-INSC-173, Sep 24, 1973, a three-Judge Bench of the Supreme Court holds,

[p. 734] [D-F] Leaving aside the cases of statutory presumptions, the onus is upon the prosecution to prove the different ingredients of the offence and unless it discharges that onus, the prosecution cannot succeed. The court may, of course, presume, as mentioned in section 114 of the Indian Evidence Act, the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. The illustrations mentioned in that section, though taken from different spheres of human activity, are not exhaustive. They are based upon human experience and have to be applied in the context of the facts of each case. The illustrations are merely examples of circumstances in which certain presumptions may be made. Other presumptions of a similar kind in similar circumstances can be made under the provisions of the section itself. Whether or not a presumption can be drawn under the section in a particular case depends ultimately upon the facts and circumstances of each case. No hard and fast rule can be laid down. Human behaviour is so complex that room must be left for play in the joints. It is not possible to formulate a series of exact propositions and confine human behaviour within straitjackets. The raw material here is far too complex to be susceptible of precise and exact propositions for exactness here is a fake.

232. In Jagdish Narain and Anr. v. State of U.P., [1996] 3 S.C.R. 250; 1996-INSC-363, Mar 12, 1996, the Supreme Court holds,

[pp. 255-256] [H-A] When a witness testifies about what he heard from somebody else it is ordinarily not admissible in evidence being hearsay, but if the person for whom he heard is examined to give direct evidence within the meaning of Section 60 of the Evidence Act, the former's evidence would be admissible to corroborate the latter in accordance with Section 157 Cr.P.C.

233. In Gentela Vijayavardhan Rao and Anr. v. State of Andhra Pradesh, [1996] SUPP. 5 S.C.R. 273; 1996-INSC-954, Aug 28, 1996, the Supreme Court holds,

[pp. 281-282] [C-A] The principle or law embodied in Section 6 of the Evidence Act is usually known as the rule of *res gestae* recognised in English Law. The essence of the doctrine is that fact which, though not in issue, is so connected with the fact in issue "as to form part of the same transaction" becomes relevant by itself. This rule is, roughly speaking, an exception to the general rule that hearsay evidence is not admissible. The rationale in making certain statement or fact admissible under Section 6 of the Evidence Act is on account of the spontaneity and immediacy of such statement or fact in relation to the fact in issue. But it is necessary that such fact or statement must be part of the same transaction. In other

words, such statement must have been made contemporaneous with the acts which constitute the offence or atleast immediately thereafter. But if there was an interval, however slight it may be, which was sufficient enough for fabrication then the statement is not part of *res gestae*. In *R. v. Lillyman*, (1896) 2 Q.B. 167 a statement made by a raped woman after the ravishment was held to be not part of the *res gestae* on account of some interval of time lapsing between making the statement and the act of rape. Privy Council while considering the extent upto which this rule of *res gestae* can be allowed as an exemption to the inhibition against hearsay evidence, has observed in *Teper v. Reginam*, (1952) 2 All E.R. 447, thus:

"The rule that in a criminal trial hearsay evidence is admissible if it forms part of the *res gestae* is based on the propositions that the human utterance is both a fact and a means of communication and that human action may be so interwoven with words that the significance of the action cannot be understood without the correlative words and the dissociation of the words from the action would impede the discovery of the truth. It is essential that the words sought to be proved by hearsay should be, if not absolutely contemporaneous with the action or event, at least so clearly associated with it that they are part of the thing being done, and so an item or part of the real evidence and not merely a reported statement."

The correct legal position stated above needs no further elucidation.

234. In Balaram Prasad Agrawal v. State of Bihar & Ors, [1996] SUPP. 9 S.C.R. 752; 1996-INSC-1456, Dec 10, 1996, the Supreme Court holds,

[p. 767] [F-G] In other words the witness says about what he heard from outsiders. Section 60 of the Indian Evidence Act lays down that oral evidence must be direct. If it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it. The evidence before the court can be divided into original and unoriginal. The original is that which a witness reports himself to have seen or heard through the medium of his own senses. Unoriginal, also called derivative, transmitted, secondhand or hearsay, is that which a witness is merely reporting not what he himself saw or heard, not what has come under the immediate observation of his own bodily senses, but what he had learnt respecting the fact through the medium of a third person. Hearsay, therefore, properly speaking is secondary evidence of any oral statement.

235. In Javed Alam v. State of Chhattisgarh and Anr., [2009] 8 S.C.R. 398; 2009-INSC-762, May 08, 2009, the Supreme Court holds,

[p. 408] [9]. Section 6 of the Evidence Act is an exception to the rule of evidence that hearsay evidence is not admissible. The test for applying the rule of *res-gestae* is that the statement should be spontaneous and should form part of the same transaction ruling out any possibility of concoction.

236. In Bhairon Singh v. State of Madhya Pradesh, [2009] 9 S.C.R. 875; 2009-INSC-852, May 29, 2009, the Supreme Court holds,

[p. 888] [16]. The rule embodied in Section 6 is usually known as the rule of *res gestae*. What it means is that a fact which, though not in issue, is so connected with the fact in issue "as to form part of the same transaction" becomes relevant by itself. To form particular statement as

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part of the same transaction utterances must be simultaneous with the incident or substantial contemporaneous that is made either during or immediately before or after its occurrence.

237. In Krishan Kumar Malik v. State of Haryana, (2011) 8 S.C.R. 774; 2011-INSC-437, Jul 04, 2011, the Supreme Court holds,

[p. 793] [33]. As per the FIR lodged by the prosecutrix, she first met her mother Narayani and sister at the bus stop at Kurukshetra but they have also not been examined, even though their evidence would have been vital as contemplated under Section 6 of the Indian Evidence Act, 1872 (for short "The Act") as they would have been Res Gestae witnesses. The purpose of incorporating Section 6 in the Act is to complete the missing links in the chain of evidence of the solitary witness.

238. In State of Maharashtra v. Kamal Ahmed Mohammed Vakil Ansari & Ors., [2013] 5 S.C.R. 128; 2013-INSC-162, Mar 14, 2013, SC, the Supreme Court holds,

[p. 173] [29]. ...In our considered view, the test to determine admissibility under the rule of "res gestae" is embodied in words "are so connected with a fact in issue as to form a part of the same transaction". It is therefore, that for describing the concept of "res gestae", one would need to examine, whether the fact is such as can be described by use of words/phrases such as, contemporaneously arising out of the occurrence, actions having a live link to the fact, acts perceived as a part of the occurrence, exclamations (of hurt, seeking help, of disbelief, of cautioning, and the like) arising out of the fact, spontaneous reactions to a fact, and the like. It is difficult for us to describe illustration (a) under Section 6 of the Evidence Act, specially in conjunction with the words "are so connected with a fact in issue as to form a part of the same transaction", in a manner differently from the approach characterized above.

239. In Dhal Singh Dewangan v. State of Chhattisgarh, [2016] 8 S.C.R. 36; 2016-INSC-905, Sep 23, 2016, SC, a three-Judge Bench of the Supreme Court holds,

[pp. 58-59] [21]. The general rule of evidence is that hearsay evidence is not admissible. However, Section 6 of the Evidence Act embodies a principle, usually known as the rule of *res gestae* in English Law, as an exception to hearsay rule. The rationale behind this Section is the spontaneity and immediacy of the statement in question which rules out any time for concoction. For a statement to be admissible under Section 6, it must be contemporaneous with the acts which constitute the offence or at least immediately thereafter. The key expressions in the Section are " ... so connected ... as to form part of the same transaction."

240. In Govindaswamy v. State of Kerala, Suo Moto Review Petition (Crl.) No. 1 of 2016, Nov 11, 2016, a three-Judge Bench of the Supreme Court holds,

[6]. The very elaborate argument advanced on this score is capable of being answered by a reference to Section 6 and Illustration (a) thereof of the Evidence Act, 1872 which engrafts in the Evidence Act the principle of *res gestae*. The statement made by the middle-aged man to PWs 4 and 40 being contemporaneous and spontaneous and that also being the prosecution case and no attempt having been made to discredit this part of the evidence tendered, we are of the view that in a case where the liability of the accused is to be judged on the touchstone of the circumstantial evidence, the aforesaid part of the deposition of PWs 4 and 40 must go into the process of determination of the culpability of the

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accused to rule out any other hypothesis inconsistent with the guilt of the accused.

241. In Neeraj Dutta v State (Govt. of N.C.T of Delhi), [2022] 5 S.C.R. 104; 2022-INSC-1280, Dec 15, 2022, five-judges bench of the Supreme Court holds,

[p. 146] [39]. Section 60 of the Evidence Act requires that oral evidence must be direct or positive. Direct evidence is when it goes straight to establish the main fact in issue. The word “direct” is used in juxtaposition to derivative or hearsay evidence where a witness gives evidence that he received information from some other person. If that person does not, himself, state such information, such evidence would be inadmissible being hearsay evidence. On the other hand, forensic procedure as circumstantial or inferential evidence or presumptive evidence (Section 3) is indirect evidence. It means proof of other facts from which the existence of the fact in issue may be logically inferred. In this context, the expression “circumstantial evidence” is used in a loose sense as, sometimes, circumstantial evidence may also be direct.

242. It is important to notice that the rule only excludes evidence about such statements or conduct as are merely narratives of a fact that is in dispute in the litigation; but not evidence about such statements or conduct as actually constitutes such a fact, i.e. when “saying is doing”.<sup>64</sup>

243. PW-1 Arjun Dev states that the informants came to his house at around 9 P.M., and the CDR digital evidence records the calls at 9:32 P.M.; further, the information was entered in the Childline records on the same date.

244. PW-21, the Nodal Officer of Bharti Airtel Limited (pp. 267-269 of TCR), tendered the call detail records (CDR) for phone number xx153 32000, from which the call was received. PW-21 stated that there is one call at about 9:32 PM and tendered the CDR as Ext P-29 (pp. 411-417 of TCR).

245. Ext P-29, the call details record (CDR), establishes that a call was made from phone number XX153 32000 to phone number 1098 on June 13, 2018, at 21-32-07 hours, and the call duration was 210 seconds.

246. PW-14 ASI Inder Singh, vide application Ext P-26 dated June 30, 2018, bearing his signature, sought a report from the record of Childline No. 1098.

247. Arjun Dev mentions his phone number as XX153 32000, which is not disputed, and the Childline No. 1098, is also established in evidence.

248. Thus, the evidence of a phone call being made by Arjun Dev to Childline on June 13, 2018, at 9.32 P.M. is proved as forming part of the same transaction and is admissible as *res gestae*, an exception to the hearsay evidence.

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<sup>64</sup> Courtney Stanhope Kenny, *Outlines of Criminal Law* 437 (G. Godfrey Phillips ed., 15th ed., Cambridge Univ. Press 1936).

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**249. THERE IS NO ASSURANCE THAT KULDEEP HAD SPOKEN WITH LACHMAN AND NO ONE ELSE:**

250. PW-9 Kuldeep Sharma from Childline Hisar testified that on June 13, 2018, he received information on the Childline No. 1098 from Arjun Dev of village Gaibipur that in the village a boy named Mahabir had taken a woman with him and that they had a two-year-old boy named Siva. He also stated that Mahabir's relatives had told him that Mahabir had been beating the child and her mother, and that this could pose a threat to the child's life. (pp. 187-189 of TCR).

251. PW-9 Kuldeep Sharma stated in his examination-in-chief that the coordinator had recorded the information in Ext P-23 (p. 145 of TCR), which bears the signature of Pawan Kumar at Point A, which he identified. In cross-examination, PW-9 Kuldeep Sharma stated that all proceedings undertaken on receipt of a telephonic complaint are recorded in their register, but he did not bring any such register today. Regarding Ext P-23, he stated that it did not bear his signature or endorsements, that a person employed through an NGO had signed Ext P-23, and that Ext P-23 was not a procured document. He also denied that he had not received any such information on June 13, 2018, or that he had not made any phone call to Lachman, or that no telephonic conversation took place between him and Lachman.

252. In Ext P-23, the communication received from Childline No. 1098 mentions that on the next date, when Kuldeep Sharma spoke to Arjun Dev, Arjun Dev gave Lachman's phone number. When Kuldeep spoke to Lachman, he said that his brother beats his wife and the child, and that when they try to resolve it, he abuses them. Even the lady does not let them intervene. They left the house last night with the child, and as soon as they returned home, he would inform him.

253. PW-1, Arjun Dev stated that on June 13, 2018, at about 9:00 PM, when he was at home, Madan Lal, son of Sooraj Bhan, and his brother Lachman, along with their wives and Madan's aunt, namely Savitri, came to his house. They said that Hem Raj had brought a lady named Suman along with a child aged three years, and that Hem Raj and Suman were drowning the child, and they heard the noise of the child's crying.

254. On hearing this, Arjun Dev called Childline No. 1098 from his mobile number XX153 32000. After 10/15 minutes, he received a telephone call, and he was told to inquire about why Hem Raj and Suman were drowning the child. He did not enquire personally, but received information from Madan, s/o Suraj Bhan, about the whereabouts of Hem Raj, Suman, and the child, who told him that the accused Hem Raj and Suman, along with the child, had already left their house.

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255. Arjun Dev (PW-1) stated that the next day, after receiving a call from Kuldeep, he, who was in Chandigarh at the time, gave the helpline a phone number, claiming it was Lakshman's, as Lakshman is Hem Raj's brother. During cross-examination, Arjun Dev was asked to provide Lakshman's phone number. When Arjun Dev had given Lakshman's phone number, at that time he claimed that he was not at home; however, when asked to tell the phone number, Arjun Dev stated that he could not recall Lakshman's number. He further explained that Lakshman's mobile number was not saved on his phone, nor was it noted in any diary or on any paper he had with him. He further stated that Lakshman had never worked with him, and even on the day he made the statement on oath, he did not have Lakshman's phone number. Thus, if he was unaware of Lachman's phone number, the part of his statement that he had given Lachman's phone number is disproved.

256. Hence, it was Arjun Dev who had introduced Lachman and gave Kuldeep one phone number, XX919 48029. When Kuldeep called that number, the person who answered identified himself as Lakshman/Lachman. No other evidence was collected, including from the Telecom Operators, that establishes the subscriber's name for this mobile number.

257. Given the above, since Arjun Dev did not have Lachman's phone number on that day, when he was not in town and had stated that he had gone to Chandigarh, whose number did he give to Kuldeep, claiming that the said number was Lachman's? And someone also spoke with Kuldeep, claiming to be Lachman.

258. By the next morning, Arjun Dev had the time and opportunity to deliberate and concoct a story, but the Childline record, entered on June 13, 2018, would not lie. The Childline explicitly stated that the lady was with Mahabir and that the child was also with Mahabir. It also stated that Kuldeep had asked the Sarpanch to inquire by visiting Mahabir's house. Even the contents of Childline report Ext P-23 (p. 145 of TCR) mention the name Mahabir's house. However, Arjun Dev, while testifying as PW-1, stated that when he inquired, Hem Raj and Suman alongwith child had left the house. While testifying as PW-16, Arjun Dev stated that after 15 minutes he received a call and was asked to verify the whereabouts of Hem Raj and found that they were not available at their house.

259. Kuldeep testified that the next day, when he called Arjun Dev, Arjun told Kuldeep he was out of station and gave him a phone number, claiming it was a relative of Mahabir. Kuldeep then called the number given by Arjun Dev, and the person claimed to be Lakshman. However, when Lachman appeared as DW-1, the Public Prosecutor did not ask him whether he had received a phone call from Kuldeep on June 14, 2018.

260. This means that, in all likelihood, Arjun Dev manipulated the call, probably made himself appear not to be in the village, and provided another phone number to mislead the Childline.

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**261. EVIDENTIARY VALUE OF THE MENTION OF THE NAME ‘MAHABIR’ IN THE CHLDLINE RECORDS, AS THE PERSON WHO WAS BEATING THE CHILD:**

262. The Investigator had issued a notice to Childline 1098, and in response to that notice, vide reference number MRYDO/Hisar/CL/587/18, dated 30.6.18, a communication letter (Ext P-23, p. 145 of TCR) on their official letterhead was sent by Childline, Hisar, to the SHO of the Barwala police station, which, when translated into English, would read as follows,

*“Subject -In reply to notice regarding information in case no. 313, received from police station Barwala.*

*In reference to the above, it is informed that on 13.6.2018, at 9:37 at night, Arjun Dev, from his mobile number XX153 32000, gave information that in village Gaibipur, one boy named Mahabir, Caste Oad, has brought a lady from outside, and a child named Siva, aged 2 years, is with her. Mahabir’s family informed the Sarpanch that Mahabir is beating the mother of the child and the child. He is afraid that the child may be beaten to death, and they wanted to help the child; the entry regarding this information has been entered in their incoming call register as Case ID-190422.*

*On receipt of the above information, Kuldeep Sharma, a team member of the Childline team, made a phone call to Arjun Dev, Sarpanch-cum-Chairperson of the Village Level Childcare Committee, on his mobile number XX15332000 and spoke with him and told the Sarpanch to visit the house of Mahabir to ascertain the actual situation so that the Childline team is able to render possible help to the child. On this, the Sarpanch went to the house of Mahabir, but before the Sarpanch could reach Mahabir’s house, Mahabir, along with his wife and child, had already left the house. Sarpanch said they could not be found at their home and that, if they came back, he would inform him. After that, in the morning of 14-6-2018, Kuldeep Sharma, a member of the Childline team, Hisar, spoke with the Sarpanch on the phone. The Sarpanch told him he had gone to Chandigarh for work. The Sarpanch gave them the phone number of Mahabir’s family, which was XX91948029. Kuldeep Sharma, a member of the ChildLine team, made a phone call on the number provided by the Sarpanch and spoke with a family member of Mahabir, namely Lakshman, who informed that his brother administers beatings to the lady and the child, and whenever they would rescue them, he abuses him, and even the lady would not permit them to intervene. Since yesterday, both of them, along with the child, have run away from their house and have not returned; whenever they return, he will inform them about it. This information has been entered in the intervention form of Childline Hisar.”*

263. According to Ext P-23, the record of Childline no. 1098, dated June 13, 2018, at 9.37 P.M., mentions the name of the person who was beating the child as “Mahabir”, and not “Hem Raj”.

264. The information in the Childline record is so specific that it mentioned not only the perpetrator’s name as ‘Mahabir’, but also his caste as ‘Oad’. The information also mentioned the child, Siva, along with a lady, being with Mahabir. It was further stated that

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Mahabir's family members had informed the Sarpanch that Mahabir was administering beatings to the mother and the child.

265. Once it came to the attention of the Investigator and his Supervisory Officers that the person's name mentioned in the original complaint made to the Childline was 'Mahabir' rather than 'Hem Raj', it was a bare minimum requirement on their part to have carried out an investigation in this regard to ensure that the person whom they had already arrested was not innocent and that the recoveries that had been effected were not unconnected with the crime. The investigating agency did not even investigate whether 'Mahabir' was an alias of 'Hem Raj' or whether they were the same person.

266. At page No. 7 of the judgment, the Defense Counsel's submission is noted as stating that the prosecution did not lead any evidence to show that both Mahabir and Hem Raj are one and the same person. The Learned Additional Sessions Judge, in the impugned judgment (Para 9, pp. 5-8 at p. 7), while recording the contentions of the learned defense counsel, noted it as follows:

*(9) The said Sarpanch had also stated to Sh.Kuldeep Sharma PW9 of Child Helpline on 13.06.2018 that 'Mahabir' has brought a woman with him in the village and that they are having a two years old boy namely Shiva and that the relatives of 'Mahabir' have told him that 'Mahabir' is beating the child and mother and they disclosed that this can cause threat to the life of the child.... PW9 Sh.Kuldeep Sharma, Child Helpline Official has given the twist to the story as he has stated that Sh. Arjun Dev Mehta had named the person as Mahabir who has brought a woman alongwith child of three years in the village. It means that there is another person also and not Hemraj. The prosecution has not led evidence on this point that both Mahabir and Hemraj are one and the same person and has not mentioned the reasons for it.*

267. Further, the Learned Additional Sessions Judge, in the impugned judgment, while summarising the testimonies of the witnesses, has noted at para 13, pp. 11-12, as follows:

*(13) PW9 Kuldeep Sharma Child Help Line, Hisar official of child helpline, stated that on 13.06.2018, an information was received on the Child Help Line number 1098 through Arjun Dev of village Gaibipur that in the village a boy namely Mahabir has taken a woman with him and they are having a two year boy whose name is Shiva. He also informed that the relatives of Mahabir have told him that Mahabir has been beating the child and her mother and they disclosed that this can cause threat of the life of the child.... On this, he (PW9) has talked with Sarpanch Arjun Dev and inquired about the real facts and present situation so that child may be helped. Thereupon Sarpanch has reached to the house of Mahabir but he was not found and same was communicated to him (PW9) and the Sarpanch had given phone number of the relative of the Mahabir....*

268. A perusal of the entire judgment does not show that the Trial Court addressed the submissions regarding Mahabir. This is despite the Defense Counsel's contention that the prosecution did not lead evidence that Mahabir and Hemraj were one and the same person.

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269. The name recorded by Childline contains a material contradiction because the perpetrator's name was recorded as 'Mahabir' rather than 'Hem Raj'. These names do not have similar phonetic sounds. There is neither an iota of evidence nor any allegation that a poor audio connection or any other reason caused a wrong name to be recorded. These facts are relevant and are covered under the principles of Res gestae, under §6 of the Evidence Act as an exception to the Rule of hearsay under §60 of the Indian Evidence Act, due to the proximity and spontaneity of information and it being entered by an independent agency in its record and also through its proof by way of digital evidence depicting the exchange of phone calls.

270. It shall be relevant to extract §9 of the Indian Evidence Act, 1872, [renumbered as §7 of the BSA, 2023] and its relevant illustration, which read as follows:

§9. Facts necessary to explain or introduce relevant facts.—Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of any thing or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose.

*Illustration (e)* A, accused of theft, is seen to give the stolen property to B, who is seen to give it to A's wife. B says as he delivers it—"A says you are to hide this." B's statement is relevant as explanatory of a fact which is part of the transaction.

271. In Ram Dhar v. Union of India, R.F.A. 13-D of 1966, Aug 17, 1978, a Division Bench of the Delhi High Court observed,

[73]. Facts which support or rebut an inference suggested by a fact in issue or relevant fact" are themselves relevant under sec. 9. This part of section 9 is merely a paraphrase of section 11 which says that facts which make the existence of fact in issue or relevant fact highly probable or improbable are relevant and is founded on the same principle as that section [See Monir—Law of Evidence (5th ed. Vol. 1 p. 74-75] and Field—Law of Evidence Vol : 1 (9th ed. p. 600). Sir James Stephen, the framer of the section, said that he had designedly left some degree of latitude in the working of section 11 on account of variety of matters to which it might apply. Sections 9 and 11 are instances in the Act of sections overlapping each other. Stephen himself says: "These sections (S. 6-11) are designedly worded very widely and in such a way to overlap each other. Facts relevant under sec. 11 would in most cases be relevant under other sections. (Stephen—Introduction p. 72). One may, therefore, as well call s. 9 into aid.

272. In Ram Bhawan Harijan v. State of U.P., Cr.A No. 5148 of 2025, Apr 23, 2026, a Division Bench of the Allahabad High Court observed,

[24]. Therefore, it can be concluded that Section 9 of the Indian Evidence Act, 1872 is a provision, designed to ensure that the evidentiary narrative is complete and intelligible. It recognizes five distinct categories of facts as relevant:

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- (i) those necessary to explain or introduce a fact in issue or relevant fact,
- (ii) those which support or issue or relevant fact, rebut an inference suggested by a fact in
- (iii) those which establish the identity of any person or thing whose identity is relevant,
- (iv) those which fix the time or place at which any fact in issue or relevant fact occurred, and
- (v) those which show the relation of parties by whom any such fact was transacted.

[25] ...Thus, Section 9 operates as a connective tissue in the law of evidence, bridging facts in issue with explanatory or corroborative circumstances, and ensuring that both persons and things are properly identified, contextualized, and tested within the judicial process.

273. Section 9 recognizes a class of facts whose relevance is not independent but derivative as they can create, increase, or diminish the probative value of other facts in issue or relevant facts. Such facts do not themselves prove or disprove anything in issue but permit facts to be adduced which support or rebut an inference suggested by a fact in issue or a relevant fact, and the discrepancy in the report squarely serves that purpose. Their relevance lies in their function rather than their substance; they are auxiliary to the foundational facts and gain legal significance only through their interrelation with one another.

274. The provision underpins that no fact speaks for itself, and that the judicial mind cannot appreciate a fact in vacuum. A basic fact, evaluated in isolation, may be unintelligible or may bear a meaning quite different from its true one. The law therefore permits evaluation of the circumstances that give the fact its context, so that inference is drawn from the entire picture and not from a fragment. At the same time, the section does not license the introduction of every circumstance that bears some loose or remote connection with the principal facts.

275. The Childline report, being a written record of the information received regarding the incident, is a relevant fact under §9 of the Indian Evidence Act, 1872, [renumbered as §7 of BSA, 2023] as it is necessary to explain a relevant fact, as the report names a person different from the accused as the alleged offender. That circumstance supports the inference that the person implicated at the earliest stage may not be the accused before the Court, and that the accused may be an entirely different individual. Further, the mention of the name Mahabir instead of Hem Raj in the Childline records rebuts the inference suggested by the fact in issue that Hem Raj has committed the murder, making it relevant under §9 of the Indian Evidence Act.

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276. Arjun Dev's oral testimony, being inconsistent with the written Childline report on a fact as material as the identity of the person named, cannot be relied upon to displace what stands recorded in writing.

277. Per the Latin maxims of evidence, *Vox emissa volat; litera scripta manet.* (The uttered voice flies; the written letter remains)<sup>65</sup> or, as it is otherwise put, *Vox audita perit, littera scripta manet.* (The heard word is lost, the written letter abides).<sup>66</sup>

278. A written record, by virtue of its permanence, has greater evidentiary weight than oral testimony, which remains susceptible to the frailties of memory, suggestions, and afterthoughts; accordingly, a contemporaneous written record that remains unimpeached must take precedence over a subsequent oral assertion that departs from it.

279. In the present case, the Childline report, being a written and contemporaneous record, mentions the name of Mahabir. This stands in contrast to the oral testimony of Arjun Dev, who instead deposes the name of Hem Raj.

280. In State of Punjab v. Jagir Singh and ors., (1974) 1 SCR 328; 1973-INSC-132, Aug 06, 1973, the Supreme Court holds,

[p. 337] A criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and phantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the crime with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures.

281. Mahabir was not a figment of imagination. The name of Mahabir was not introduced after the factum of the child's death had come to the notice but was recorded in the Childline register immediately after receiving the information on June 13, 2018, whereas the child's death had come to people's notice on the morning of June 16, 2018.

282. In the present case, the Childline report is the earliest documented version of events, and the identity of the offender recorded in it cannot be brushed aside as immaterial, since it introduces a reasonable doubt inconsistent with the identity of the accused. The variance

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<sup>65</sup> Black's Law Dictionary, Henry Campbell Black, Revised Fourth Edition, P. 1748, St. Paul, Minn. West Publishing Co. 1968. Retrieved Sep 20, 2026, from <https://www.latestlaws.com/wp-content/uploads/2015/04/Blacks-Law-Dictionary.pdf>.

<sup>66</sup> Dictionary of Latin Quotations, edited by H.T. Piley, p. 506, Bell & Daldy, (1866) London. Retrieved Sep 20, 2026, from [https://hermes.org.mk/wp-content/uploads/2020/11/18.%20Riley%20H.%20T.%20-%20Dictionary%20of%20Latin%20Quotations,%20Proverbs,%20Maxims%20and%20Mottos%20\(1866\).pdf](https://hermes.org.mk/wp-content/uploads/2020/11/18.%20Riley%20H.%20T.%20-%20Dictionary%20of%20Latin%20Quotations,%20Proverbs,%20Maxims%20and%20Mottos%20(1866).pdf)

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between the name recorded in the Childline report and the person convicted, therefore, goes to the root of the question of identity, and the inference arising from it must be given due weightage while appreciating the prosecution case.

283. It was incumbent upon the Investigating Officer and their Supervising Officers to have investigated about Mahabir and explained the same to do complete justice to the victim and the community. But there is no investigation worth the name: Who was this Mahabir? Where did he live? Whose phone number did Arjun Dev give? And who spoke to Kuldeep, impersonating Lachman?

284. Given the above, there is no reason to disbelieve the version recorded in the Childline 1098 record on June 13, 2018, which predates the discovery of the child's body on June 16, 2018.

**285. PROSECUTION'S FAILURE IN DISCHARGING THE BURDEN OF PROVING THE MERITS OF THE CASE BEYOND REASONABLE DOUBT:**

286. An analysis of the entire evidence not only creates doubt about the involvement of the accused but also indicates the absence of scientific evidence against him, and has an unexplained character named 'Mahabir'.

287. The common law position is that, if at the end of the proceedings there is a reasonable doubt in the mind of the court or an indictment in the minds of the jury, caused by evidence given by the prosecution or the defense, the prosecution has not discharged the burden upon them and the defendant is entitled to be acquitted—Where a party to proceedings seeks to establish some issue of fact as part of his case, it is said that the burden of proving the issue lies upon him. It is the general rule of principle that he who affirms it must prove.<sup>67</sup>

288. In Aher Raja Khima v. State of Saurashtra [1955] 2 SCR 1285; 1955-INSC-81, Dec 22, 1955, a three-Judge Bench of the Supreme Court [Majority View] holds,

[pp.1289-1290]. Now it may be possible to take two views of this statement but there are two important factors in every criminal trial that weigh heavily in favour of an accused person: one is that the accused is entitled to the benefit of every reasonable doubt and the other, an off-shoot of the same principle, that when an accused person offers a reasonable explanation of his conduct, then, even though he cannot prove his assertions they should ordinarily be accepted unless the circumstances indicate that they are false.

289. In Dahyabhai Chhaganbhai Thakker v. State of Gujarat, 1964(7) SCR 361; 1964-INSC-80, Mar 19, 1964, the Supreme Court holds,

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<sup>67</sup> Harris's, *Criminal Law* 592 (Ian McLean, Peter Morrish, ed., 22nd ed., Universal Law Publishing Co. Pvt. Ltd.).

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[p. 364] It is a fundamental principle of criminal jurisprudence that an accused is presumed to be innocent and, therefore, the burden lies on the prosecution to prove the guilt of the accused beyond reasonable doubt. The prosecution, therefore, in a case of homicide shall prove beyond reasonable doubt that the accused caused death with the requisite intention described in s. 299 of the Indian Penal Code. This general burden never shifts and it always rests on the prosecution.

290. In Shivaji Sahebrao Bobade & Anr. v. State of Maharashtra, [1974] 1 SCR 489; 1973-INSC-151, Aug 27, 1973, a three-Judge Bench of the Supreme Court holds,

[p. 493] [A–E] The cherished principles or golden thread of proof beyond reasonable doubt which runs thro' the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt. The excessive solicitude reflected in the attitude that a thousand guilty men may go but one innocent martyr shall not suffer is a false dilemma. Only reasonable doubts belong to the accused. Otherwise any practical system of justice will then break down and lose credibility with the community. The evil of acquitting a guilty person light-heartedly as a learned author [Glanville Williams in 'Proof of Guilt'. (2) [1934] L. R. 61 I.A., 398.6—L382 Sup.CD74.] has sapiently observed, goes much beyond the simple fact that just one guilty person has gone unpunished. If unmerited acquittals become general, they tend to lead to a cynical disregard of the law, and this in turn leads to a public demand for harsher legal presumptions against indicated 'persons' and more severe punishment of those who are found guilty. Thus too frequent acquittals of the guilty may lead to a ferocious penal law, eventually eroding the judicial protection of the guiltless. For all these reasons it is true to say, with Viscount Simon, that "*a miscarriage of justice may arise from the acquittal of the guilty no less than from the conviction of the innocent. ...*" In short, our jurisprudential enthusiasm for presumed innocence must be moderated by the pragmatic need to make criminal justice potent and realistic. A balance has to be struck between chasing enhance possibilities as good enough to set the delinquent free and chopping the logic of preponderant probability to punish marginal innocents. We have adopted these cautions in analysing the evidence and appraising the soundness of the contrary conclusions reached by the courts below. Certainly, in the last analysis reasonable doubts must operate to the advantage of the appellant. In India the law has been laid down on these lines long ago.

291. In Kali Ram v. State of Himachal Pradesh, [1974] 1 SCR 722; 1973-INSC-173, Sep 24, 1973, a three-Judge Bench of the Supreme Court holds,

[pp. 734- 735] [G–B] Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence. Rule has accordingly been laid down that unless the evidence adduced in the case is consistent only with the hypothesis of the guilt of the accused and is inconsistent with that of his innocence, the court should refrain from recording a finding of guilt of the accused. It is also an accepted rule that in case the court entertains reasonable doubt regarding the guilt of the accused, the accused must have the benefit of that doubt. Of course, the doubt regarding the guilt of the accused should be reasonable: it is not the doubt of a mind which is either so vacillating

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that it is incapable of reaching a firm conclusion or so timid that it is hesitant and afraid to take things to their natural consequences. The rule regarding the benefit of doubt also does not warrant acquittal of the accused by resort to surmises, conjectures or fanciful considerations.

292. In Shankarlal Gyarasilal Dixit v. State of Maharashtra, [1981] 2 SCR 384; 1980-INSC-237, Dec 17, 1980, a three-Judge bench of the Supreme Court holds,

[pp. 395-396] Our judgment will raise a legitimate query : If the appellant was not present in his house at the material time, why then did so many people conspire to involve him falsely ? The answer to such questions is not always easy to give in criminal cases. Different motives operate on the minds of different persons in the making of unfounded accusations. Besides, human nature is too willing, when faced with brutal crimes, to spin stories out of strong suspicions.

293. In State of UP v. Krishna Gopal & Anr., [1988] SUPP. 2 S.C.R. 391; 1988-INSC-221, Aug 12, 1988, the Supreme Court holds,

[p. 402-404] [13]. ...Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favorite other than truth. To constitute reasonable doubt, it must be free from an over emotional response. Doubts may be actual and substantial doubts as to the guilt of the accused-person arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common-sense. It must grow out of the evidence in the case.

The concepts of probability, and the degrees of it, cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an unmistakable subjective-element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust common-sense and, ultimately, on the trained intuitions of the judge. While the protection given by the criminal process to the accused persons is not to be eroded, at the same time, uninformed legitimisation of trivialities would make a mockery of administration of criminal justice.

294. Given all the above, the prosecution has failed to connect the accused as the perpetrator of the crime against the child.

**295. APPARENT DEFECT IN THE MANNER IN WHICH THE TRIAL WAS CONDUCTED, WHICH IS THAT THE STATEMENT OF THE ACCUSED UNDER §313 CrPC WAS NOT RECORDED AS PER PROVISIONS:**

296. The accused, in his statement recorded under §313 CrPC, [renumbered as §351 BNSS, 2023] stated that the case is false; the PWs have falsely deposed; he is innocent and falsely implicated in the case; and that nothing was recovered from him. A perusal of the statement under §313 CrPC, 1973, shows that the entire evidence was elicited only through questions Nos. 1 and 2. Question No. 3 asks why witnesses deposed against you, and the accused answers that the witnesses have deposed falsely. Question No. 4 asks why this case

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was registered against you, and the answer is that it's a false case and PWs have deposed falsely. Question No. 5 asks whether he wants to say anything else, and Hem Raj says he is innocent, has been falsely implicated in this case, and that nothing was recovered from him. Question No. 6 asks whether he wants to lead any defense evidence, and Hem Raj says yes.

297. The accused must be questioned separately about each material circumstance which is intended to be used against him.<sup>68</sup> It is the duty of the Trial Court to put each material circumstance appearing in the evidence against the accused specifically, distinctively and separately—The material circumstance means the circumstance or the material on the basis of which the prosecution is seeking his conviction.<sup>69</sup>

298. In Jai Dev v. The State of Punjab, [1963] 3 S.C.R 489; 1962-INSC-221; July 30, 1962, a three-Judge Bench of the Supreme Court holds,

[pp. 509-511] In support of his contention that the failure to put the relevant point against the appellant Hari Singh would affect the final conclusion of the High Court, Mr. Anthony has relied on a decision of this Court in Hate Singh Bhagat Singh v. State of Madhya Bharat, [A.I.R 1953 S.C. 468]. In that case, this Court has no doubt referred to the fact that it was important to put to the accused each material fact which is intended to be used against him and to afford him a chance of explaining it if he can. But these observations must be read in the light of the other conclusions reached by this Court in that case. It would, we think, be incorrect to suggest that these observations are intended to lay down a general and inexorable rule that wherever it is found that one of the point used against the accused person has not been put to him, either the trial is vitiated or his conviction is rendered bad. The examination of the accused person under s.342 is undoubtedly intended to give him an opportunity to explain any circumstances appearing in the evidence against him. In exercising its powers under s.342, the Court must take care to put all relevant circumstances appearing in the evidence to the accused person. It would not be enough to put a few general and broad questions to the accused, for by adopting such a course the accused may not get opportunity of explaining all the relevant circumstances. On the other hand, it would not be fair or right that the Court should put to the accused person detailed questions which may amount to his cross-examination. The ultimate test in determining whether or not the accused has been fairly examined under s. 342 would be to enquire whether, having regard to all the question put to him, he did get an opportunity to say what he wanted to say in respect of prosecution case against him. If it appears that the examination of the accused person was defective and thereby a prejudice has been caused to him, that would no doubt be a serious infirmity. It is obvious that no general rule can be laid down in regard to the manner in which the accused person should be examined under s. 342. Broadly stated, however, the true position appears to be that passion for brevity which may be content with asking a few omnibus general questions is as much inconsistent with the requirements of section 342 as anxiety for thoroughness which may dictate an unduly detailed and large number of questions which may amount to the cross-

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<sup>68</sup> Supreme Court of India, three-Judge Bench, Ajmer Singh v. The State of Punjab, [1953] 1 S.C.R 418;1952-INSC-73, p. 427, Dec 10, 1952.

<sup>69</sup> Supreme Court of India, Raj Kumar @ Suman v. State (NCT of Delhi), [2023] 5 S.C.R. 754, Para 16(i) at pp. 767-768, May 11, 2023.

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examination of the accused person. Besides, in the present case, as we have already shown, failure to put the specific point of distance is really not very material.

299. In Ajay Singh v. State of Maharashtra, [2007] 7 SCR 983; 2007-INSC-690, June 06, 2007, the Supreme Court holds,

[pp. 990- 991] [13]. The importance of observing faithfully and fairly the provisions of Section 313 of the Code cannot be too strongly stressed. It is not sufficient compliance to string together a long series of facts and ask the accused what he has to say about them. He must be questioned separately about each material substance which is intended to be used against him. The questionings must be fair and couched in a form which an ignorant or illiterate person will be able to appreciate and understand. Even when an accused is not illiterate, his mind is apt to be perturbed when he is facing a charge of murder. Fairness, therefore, requires that each material circumstance should be put simply and separately in a way that an illiterate mind, or one which is perturbed or confused, can readily appreciate and understand.

300. In Asraf Ali v. State of Assam, [2008] 10 S.C.R. 1115; 2008-INSC-840; July 17, 2008, the Supreme Court holds,

[pp. 1124 -1125] [13]. Section 313 of the Code casts a duty on the Court to put in an enquiry or trial questions to the accused for the purpose of enabling him to explain any of the circumstances appearing in the evidence against him. It follows as necessary corollary therefrom that each material circumstance appearing in the evidence against the accused is required to be put to him specifically, distinctly and separately and failure to do so amounts to a serious irregularity vitiating trial, if it is shown that the accused was prejudiced. The object of Section 313 of the Code is to establish a direct dialogue between the Court and the accused. If a point in the evidence is important against the accused, and the conviction is intended to be based upon it, it is right and proper that the accused should be questioned about the matter and be given an opportunity of explaining it.

301. In Suresh Sahu & Anr. v. The State of Bihar (now Jharkhand), [2025] 11 S.C.R 1839; 2025-INSC-1382, Nov 27, 2025, the Supreme Court holds,

[p. 1850] [18]. It is evident from the record that only three questions were put to each of the accused in their examination under Section 313 CrPC (Section 351 BNSS). These questions were framed in an extremely generic and mechanical manner, without articulating any of the specific incriminating circumstances appearing in the prosecution evidence.

[pp. 1850-1851] [19]. The purpose of recording the statement of an accused under Section 313 CrPC (Section 351 BNSS) is to make the accused aware of the circumstances as appearing against him in the prosecution case and to seek his explanation for the same. For this purpose, the accused must be informed of each and every incriminating circumstance which the prosecution intends to rely upon for bringing home the guilt of the accused. Omission to put material circumstances to the accused in the statement under Section 313 CrPC (Section 351 BNSS) would cause grave prejudice and may, in a given case, even prove fatal to the case of the prosecution. Of course, the appellate Court can rectify this error by requiring that a fresh statement under Section 313 CrPC (Section 351 BNSS) be recorded for removing the lacunae, if any, in this procedure. In the present case, on going through the statements of

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both the accused persons recorded by the trial Court under Section 313 CrPC (Section 351 BNSS) (*supra*), we find that these statements are almost a reproduction of the language of the charge and, in no manner, convey to the accused persons the incriminating circumstances/evidence produced by the prosecution so as to indict them for the crime. This defect goes to the root of the matter.

[p. 1855] [23]. Looking to the highly laconic and defective manner in which the statements of the accused-appellants were recorded under Section 313 CrPC (Section 351 BNSS) (*supra*), we could have remanded the matter to the trial Court for re-recording the said statements and for delivering a fresh judgment. However, considering the fact that more than 35 years have passed since the incident took place, we feel that it would be nothing short of an exercise in futility to direct such remand. We have, therefore, minutely sifted through the evidence on record and shall analyze the same to adjudicate as to whether the conviction of the accused-appellants is justified in the facts, circumstances and evidence as available on record.

302. Even if the accused did not deny his marriage with Suman and Suman did not deny either the murder or the identity of the dead body, the initial burden of establishing the case beyond a reasonable doubt still rested with the prosecution. The burden never shifted to the accused because of the quality of the evidence adduced in the investigation and proved during the trial; the uncertainty in the identification of the dead body; the insufficiency of the evidence linking the convict to the commission of the offense; and the child's mother absolving the convict Hem Raj as the perpetrator of the crime.

303. Because the other evidence does not lead to an analysis of guilt, no further discussion is warranted regarding the faulty examination of the accused under §313 CrPC.

304. One thing the prosecution did not explain is that the lower portion of the body is intact, and even the animals had not eaten it. However, the scalp is missing from the skull, and the upper portion of the torso, along with the arms, is also missing. The doctor who conducted the postmortem did not say that the skull was eaten away by animals. That means somebody might have removed the scalp from the skull. So, with the legs intact and the arms missing, the investigation should have ruled out other possibilities and determined how the scalp, arms, and the upper torso, including the heart, were not recovered, while the lower body remained intact. Had the body been buried and animals had taken it off, then certainly animals would have also eaten the lower portion of the body, including the genitals, which are intact and visible in the photographs, but the upper portion is cut and absolutely missing, and some bones are lying scattered.

305. Daniel J. Boorstin aptly elucidated that "The greatest enemy of knowledge is not ignorance, it is the illusion of knowledge."

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306. A gruesome murder of an innocent child, aged under three years of age, had been committed, with the body mutilated, the scalp removed from the skull, and the upper half of the torso and upper limbs missing.

307. Time buries the truth. Once buried, the truth sleeps deep, patient and intact, waiting to be recovered, but it mostly decays while in slumber, waiting in the dark. Even when the truth is extracted, its survival depends on how hopeful and meritorious the people involved are, whether protocols have been put in place by a system, that mediocrity has not yet plagued, and whether the gold from the standards has not yet been robbed. Our endeavor to unearth the truth begins here; against that eerie silence, where hope is fragile, but our Constitution harbors the belief that hope shall be rekindled one day, and the truth shall be discovered before it dies and is sucked into and permanently lost in the black hole.

308. The prosecution has failed to present legally admissible evidence connecting the accused to the commission of any offense beyond a reasonable doubt. The impugned judgment either failed to address material contradictions or addressed them improperly. Accordingly, the accused is entitled to the benefit of doubt. Consequently, the appellant's conviction and sentence are set aside, and he is acquitted of all the charges.

309. CRA-D-250-2022, Hem Raj v. State of Haryana is allowed on the terms mentioned in the preceding paragraph.

310. Murder Reference No. 2 of 2022, State of Haryana v. Hem Raj, is dismissed as infructuous due to the convict's acquittal.

311. The Registry is directed to initiate the process, either itself or through the concerned Court, for the above-mentioned Hem Raj's immediate release, who is directed to furnish a personal bond, and there shall be no requirement to furnish any surety bonds; however, the personal bond shall be in terms of §481 BNSS, 2023 [437-A CrPC, 1973].

312. The Trial Court shall order the destruction of all other case property in accordance with the rules, notifications, and office orders, if any, after six months from the pronouncement of this Judgment. If any SLP/Appeal/Review/Curative Petition is filed before the Supreme Court of India, then, as per its directions, if any, regarding the case property, and if no such directions are made, then after six months from the final order of the Hon'ble Supreme Court.

313. To comply with §412 BNSS, 2023 [371 CrPC, 1973], the proper officer of the High Court shall, without delay, send a copy of the order, under the seal of the High Court and attested with their official signature, to the Court of Session, either in physical mode or electronically.

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314. All matters are closed to the terms set forth in this verdict. All pending miscellaneous applications, if any, are disposed of.\*

(ANOOP CHITKARA)  
JUDGE

(HARMEET SINGH DEOL)  
JUDGE

Oct 07, 2026  
Jyoti Sharma

|                           |     |
|---------------------------|-----|
| Whether speaking/reasoned | YES |
| Whether reportable        | YES |

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\* The outstanding assistance of Research Associates, Ms. Anmol, Mr. Aryan Gupta, and Ms. Shreya Jain, is acknowledged.