

**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR**

**BEFORE**

**JUSTICE SUJOY PAUL**

**&**

**JUSTICE PRAKASH CHANDRA GUPTA**

**CRIMINAL APPEAL No. 1023 OF 2011**

**BETWEEN :-**

**RAMPHAL S/O INDRA LODHI, AGED  
ABOUT 25 YEARS, OCCUPATION-  
LABOUR, R/O VILLAGE UMARI, P.S.  
BRIJPUR, DISTRICT PANNA (M.P.)**

**....APPELLANT**

***(BY SHRI SURENDRA VERMA WITH SHRI SANJAY SINGHAI, ADVOCATES  
FOR THE APPELLANT)***

**AND**

**STATE OF MADHYA PRADESH**

**.....RESPONDENT**

***(BY SHRI ARVIND SINGH, GOVERNMENT ADVOCATE)***

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Reserved on : 14/12/2022

Pronounced on : 20/12/2022

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*This Criminal Appeal having been heard and reserved for judgment, coming on for pronouncement this day, **Justice Sujoy Paul** pronounced the following :*

**J U D G M E N T**

This is an appeal filed under section 374(2) of the Code of Criminal Procedure (Cr.P.C.) questioning the judgment passed by learned

Special Court (Atrocities), Panna in Special Case No.01/2010 dated 10.3.2011 whereby the appellant was held guilty for committing offence under Section 302 and 201 of Indian Penal Code (IPC) and directed to undergo life imprisonment with fine of Rs.1,00,000 with default stipulation.

**Factual background :**

2. As per the prosecution story, on 09.10.2009, Shyambihari, son of Ramdeen Gond lodged a missing report in Police Station Brijpur that his father is missing from 07.10.2009. Missing report was lodged at No.8/09 and Head Constable Kamlesh Singh was directed to investigate the matter. During investigation, witnesses Chandan Gond stated that Jagga @ Jagprasad and Ramphal Lodhi may be involved in commission of crime. At this stage, further investigation was handed-over to SHO, Police Station, Brijpur i.e. Shri Udaybhan Singh. During investigation, appellant Ramphal Lodhi was interrogated by police and in turn, he informed that he alongwith his companions viz. Jagga @ Jagprasad, Mahesh, Chintaman and Ramvishwas Lodhi killed Sarpanch Ramdeen Gond in the night of 09.10.2009 at around 10-11 O'clock. He further informed that Ramdeen had illicit relation with wife of Ramvishwas i.e. Smt. Ramkali because of which there was serious grievance in Lodhi community. After murdering Ramdeen Gond, they tied his body with stones and thrown the body in a well.

3. On the basis said information furnished by appellant, the police with the help of villagers recovered the body of deceased from a well situated in the land of a villager namely Dadna Lodh. The dead body was

identified by Samar Bahadur (PW15) and Shyambihari (PW18). The police registered the crime for committing offence under Sections 302 and 201 read with 34 of IPC alongwith Section 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The *Panchayatnama* of the dead body was prepared. The post mortem report was obtained. Another *Panchnama* of recovery of dead body from well was prepared. To show that the well belongs to Dadna Lodh, another *Panchnama* was prepared. The 'site map' was also prepared and sample of water of said well was seized. Appellant was arrested. During the course of investigation, certain other recoveries were made from other co-accused persons. After completion of investigation, challan was filed. In turn, the matter was committed to the Special Court. All the accused persons abjured their guilt and prayed for conducting a full-fledged trial.

4. The Court below framed three questions for its determination. After recording evidence and hearing the parties, the impugned judgment was passed whereby except appellant all other accused persons were acquitted.

**Submission of counsel for the appellant :**

5. Shri Surendra Verma, learned counsel for the appellant submitted that although the judgment is running in 55 pages and is pregnant with 86 paragraphs, the singular material point for determination of this Court is whether appellant can be held guilty solely on the basis of recovery of dead body at the instance of appellant. Heavy reliance is placed on para-80 to 82 of the impugned judgment to bolster the submission that appellant was held guilty on the singular reason that he informed the police regarding dead body of Ramdeen in the well of Dadna Lodh. No

other circumstance or chain of circumstances were established. In absence thereof, the Court below has erred in basing its judgment solely on the said ground.

6. Ex.P/23 is a memo prepared under Section 27 of the Indian Evidence Act, 1872 (Evidence Act). Samar Bahadur (PW15) and Shyambihari (PW18) are the witnesses to the said memo. Learned counsel for the appellant urged that when this memo was prepared on 12.10.2009 (at 11:30 O'clock), the appellant was in police custody. Thus, no confession statement contained in this memo can be used against him.

7. Shri Surendra Verma, learned counsel further submits that Devideen (PW3) deposed that he came to know through villagers that Ramphal informed the police that he alongwith other accused persons murdered Ramdeen and thrown his body in Dadna Lodh's well. He expressed his inability even to name the villager who had given him the aforesaid information. He further deposed that police did not interrogate the appellant in his presence. The next reliance is on the statement of Chandan Singh Gond (PW5). This witness deposed that police interrogated the appellant in his and villagers' presence. The appellant informed the police that he along with accused persons strangulated Ramdeen by means of '*safi*' and thrown his body by tying it with stones in the said well. The reliance on this statement is to show that such a statement cannot be used against appellant in the teeth of Section 25 of the Evidence Act because it was given in police custody.

8. The statement of Gendalal (PW11) is relied upon for the same purpose to show that Ramphal in police custody informed about the

incident of murder and throwing the body in the well. The statement of Munna (PW13) was also relied upon for the same purpose. Samar Bahadur (PW15) is the son-in-law of the deceased and he also deposed in the same fashion that during investigation by police, Ramphal informed him about murder and throwing the body in the well. Shyambihari (PW18) is the son of the deceased. His statement is also in the same line. Thus, on more than one occasion, learned counsel for the appellant argued that the memo prepared under Section 27 of the Evidence Act (Ex.P/23), by no stretch of imagination, can be used to affirm the conviction. Moreso, when there is no circumstance or chain of circumstances indicating the involvement of appellant. At best, submits Shri Verma that appellant can be held guilty for committing offence under Section 201 of IPC. For this offence, appellant has already undergone sentence of a period more than what has been prescribed in Section 201 of IPC. Thus, appellant deserves exoneration for committing offence under Section 302 of IPC.

**9.** The statement of Uday Bhan Singh (PW23) is referred to show that he nowhere deposed that appellant had murdered the deceased person. Nothing has been recovered from the appellant. 'Last seen' theory is disbelieved by the Court in para-82 of the judgment.

**10.** During the course of argument, Shri Verma initially, argued that Ex.P/3 dated 12.10.2009 (prepared at 14:05 O'clock) is captioned as 'शव निकालनेवालों का पंचनामा' and therefore, it cannot be treated as discovery/recovery memo. However, later on, he fairly submitted that the caption of the memo is irrelevant. It is not the form but the substance

which matters, therefore, this, Ex.P/3 can be treated as discovery/recovery memo.

11. Learned counsel for the appellant has taken pains to take us to the statements of Gorelal (PW2), Motilal (PW4), Chandan Singh Gond (PW5), Dadna Lodh (PW7), Munna @ Batti (PW13), Samar Bahadur (PW15) and Shyambihari (PW18) to establish that all these witnesses candidly described about the place of well which shows that it was in an open space and accessible to all. Thus, any recovery of dead body from an open space, cannot be used against present appellant alone.

12. **AIR 2015 SCW 6123 (Mehboob Ali and Anr. vs. State of Rajasthan)** is relied upon to show that memo prepared under Section 27 cannot be used against the appellant. It is submitted that the law laid down by Privy Council in **Pulukuri Kottaya and Ors. vs. Emperor [AIR 1947 PC 67]** is still a good law and consistently followed by the Courts.

13. **AIR 1964 SC 1563 (Dahyabhai Chhaganbhai Thakkar vs. State of Gujarat)** is referred in support of argument that burden of proof lies on the shoulder of prosecution and appellant was under no obligation to show how dead body reached in Dadna Lodh's well. For the same purpose, **AIR 1972 SC 716 (Dr. S.L. Goswami vs. The State of M.P.)** is referred. **AIR 1971 SC 2016 (Bakshish Singh vs. The State of Punjab)** is pressed into service. Para-8 of which reads as under :-

“8. Therefore the only incriminating evidence against the appellant is his pointing the place where the dead body of the deceased had been thrown. This, in our opinion, is not a conclusive circumstance though undoubtedly it raises a strong suspicion against the

appellant. Even if he was not a party to the murder, the appellant could have come to know the place where the dead body of the deceased had been thrown. Further, as mentioned earlier, at the bank of the river where the dead body was thrown into the river, there were broken teeth and parts of the human body lying. Hence anyone who saw those parts could have inferred that the dead body must have been thrown into the river near about that place.”

**(Emphasis Supplied)**

14. Reliance is also placed on **AIR 1975 SC 573 (Bishan Dass vs. State of Punjab)** in which it is ruled that it is for the prosecution to establish its case and silence of accused cannot be a ground to convict him. Lastly, reliance is placed on **AIR 2022 SC 466 (Bijender alias Mandar vs. State of Haryana)** in support of contention that availability of circumstance enumerated in para-16 of this judgment alone can form circumstantial evidence. **AIR 2022 SC 2542 Chandrapal vs. State of Chhattisgarh (Earlier M.P.)** is relied upon to submit that extra judicial confession is a weak piece of evidence, therefore, must be viewed with circumspection.

**Submission of Government Advocate :**

15. *Per contra*, Shri Arvind Singh, learned Government Advocate drew the attention of this court on *Dehati Nalisi*. He also placed reliance on autopsy report to demonstrate the cause of death. The death is homicidal in nature. To establish it further, statement of Dr. Arun Jain (PW20) was relied upon which gathers further force as per Diatom Report (Ex.P/57).

16. The next reliance is on the statement of Samar Bahadur (PW15) and Shyambihari (PW18). It is submitted that these witnesses have clearly proved Ex.P/3 and Ex.P/23. The statement of Chandan Singh Gond (PW5) was also relied upon. By placing reliance on **Viran Gyanlal Rajput v. State of Maharashtra (2019) 2 SCC 311** and **Harinder Singh v. State of Punjab (2019) 20 SCC 321**, it is urged that Court below has not committed any error of fact or law in convicting the appellant.

17. Parties confined their arguments to the extent indicated hereinabove.

18. We have heard the parties at length and perused the record.

**Findings :**

19. A plain reading of impugned judgment dated 10.03.2011 shows that learned Court below has devoted 86 paragraphs and the judgment is running in 55 pages. Out of five accused persons, except present appellant, all were acquitted by Court below. Learned counsel for both the parties during the course of hearing fairly admitted that the reasons for holding the present appellant as guilty are mentioned in para-81 to 83 of the impugned judgment.

20. In para-80 of the impugned judgment, a finding is recorded that no prosecution witness has deposed that appellant was 'last seen' with the deceased. In para-81, the Court below placed reliance on the statement of prosecution witnesses Devideen (PW-3), Chandan Singh Gond (PW5), Gendalal (PW-11), Santosh (PW-12), Munna @ Batti (PW13), Samar Bahadur (PW-15), Shyambihari (PW-18) & Uday Bhan Singh (PW-23)



and opined that Ramphal while in custody of police informed that dead body of Ramdeen is available in the well of Dadna Lodh (PW-7). Upon this discovery of fact, the body of Ramdeen was recovered from the well of Dadna Lodh. The pivotal question for determination is whether on the basis of this evidence, the appellant's conviction can be affirmed. The ancillary question strenuously raised by learned counsel for the appellant is whether all the facts mentioned in the memorandum prepared under Section 27 of the Evidence Act can form basis for appellant's conviction. By taking aid of Sections 25 and 26 of Evidence Act, it was urged that since appellant was in the custody of police at the time of preparation of memorandum Ex.P-23, his statement / facts disclosed is admissible only to the extent the language employed in Section 27 so permits. This point, in our opinion, needs serious consideration.

21. Before dealing with the rival contentions, it is apposite to consider relevant provisions of Evidence Act -

**“3. “Fact”.** —“Fact” means and includes—

- (1) any thing, state of things, or relation of things, capable of being perceived by the senses;
- (2) any mental condition of which any person is conscious.

**Section 25. Confession to police officer not to be proved.**—No confession made to a police officer, shall be proved as against a person accused of any offence.

**Section 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.

**Section 27. How much of information received from accused may be proved.** - 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.”

**(Emphasis Supplied)**

22. In order to understand the correct interpretation of Section 27, first, reliance was placed by learned counsel for the appellant on the Privy Council judgment in the case of **Pulukuri Kottaya (Supra)**. We find substance in the argument of Shri Surendra Verma, learned counsel for the appellant that judgment of **Pulukuri Kottaya (Supra)** has been consistently described by Supreme Court as *locus classicus*. [See : **(2005) 11 SCC 600 State (NCT of Delhi) v. Navjot Sandhu alias Afsan Guru (para-120)**]. The legal journey after the judgment of **Pulukuri Kottaya (Supra)** shows that there are divergent views and approaches by Courts while interpreting and understanding the language employed in Section 27 of the Evidence Act. An interesting conundrum came for consideration before the Supreme Court whether under Section 27, ‘facts’ means only physical or material facts or it can be extended by bringing ‘mental facts’ within the purview of Section 27 of the Evidence Act. In **AIR 1962 SC 1116 Udai Bhan v. State of U.P.**, the Apex Court ruled as under :

“128.... ‘11....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.”

**(Emphasis Supplied)**

This para makes it clear that discovery of 'fact' brings within its ambit - (i) relevant object (ii) place from where the said object is produced and (iii) knowledge of the accused as to its existence. Component No.(iii) above is in the realm of a 'mental fact'. After considering relevant Supreme Court judgments on the point, in **Navjot Sandhu (Supra)**, the Apex Court noted as under :

“139. ... ‘37. How did the particular information lead to the discovery of the fact? No doubt, recovery of dead body of Dipak from the same canal was antecedent to the information which PW 44 obtained. If nothing more was recovered pursuant to and subsequent to obtaining the information from the accused, there would not have been any discovery of any fact at all. But when the broken glass piece was recovered from that spot and that piece was found to be part of the tail lamp of the motorcycle of A-2 Guruji, it can safely be held that the investigating officer discovered the fact that A-2 Guruji had carried the dead body on that particular motorcycle up to the spot.’ (Damu case[State of Maharashtra v. Damu, (2000) 6 SCC 269 : 2000 SCC (Cri) 1088] , SCC p. 283)”

**(Emphasis Supplied)**

**23.** Pausing here for a moment, it is noteworthy that in the instant case, all the prosecution witnesses whose names find place in para-81 of the impugned judgment, unequivocally stated that the appellant while in police custody stated that the dead body of Ramdeen lies in the well of Dadna Lodh (PW-7). This information given by him is reduced in writing in the shape of memorandum prepared under Section 27 of the Evidence Act (Ex.P/23) on 12.10.2009 at 11:30 O'clock. It is on this information

given by appellant, 'लाश निकालनेवालों का पंचनामा' (Ex.P/3) was prepared on 12.10.2009 at 14: 05 O'clock. Through 'शव शनाख्तगी पंचनामा' (Ex.P/22) the dead body was identified in the presence of four witnesses and same was prepared at 14:40 O'clock. Samar Bahadur (PW15) and Shyambihari (PW18) signed the memorandum as witnesses. In Ex.P/23, as per information given by appellant, it is mentioned that dead body of Ramdeen was tied with stones and then it was thrown in the well of Dadna Lodh.

24. Reverting back to the quagmire, the question is as to whether the aforesaid 'fact' gathered through memorandum Ex.P/23 can be proved and admissible in evidence and if yes, to what extent.

25. In (2010) 7 SCC 263 (Selvi Vs. State of Karnataka), it was held as under :

"However, Section 27 of the Evidence Act incorporates the "theory of confirmation by subsequent facts" i.e. statements made in custody are admissible to the extent that they can be proved by the subsequent discovery of facts. It is quite possible that the content of the custodial statements could directly lead to the subsequent discovery of relevant facts rather than their discovery through independent means. Hence such statements could also be described as those which "furnish a link in the chain of evidence" needed for a successful prosecution."

**(Emphasis Supplied)**

As per this judgment, a statement given by accused in custody can be proved based on discovery of a subsequent fact. It is not always

necessary to discover a fact/material through independent means. Moreso, when the said fact is within the exclusive knowledge of accused person only. Indisputably, as per *ratio decidendi* of **Selvi (Supra)**, ‘theory of confirmation’ by subsequent facts was judicially recognized. In **Madhu Vs. State of Kerala (2012) 2 SCC 399**, it was ruled as under :-

“The rationale behind Section 27 of the Evidence Act is, that the facts in question would have remained unknown but for the disclosure of the same by the accused. The 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 Evidence Act.”

**(Emphasis Supplied)**

26. This judgment in **Madhu (Supra)** is cited further to describe the import and meaning of Section 27 of the Evidence Act. A particular ‘fact’ would have remained unknown unless disclosed by the accused and this discovery of ‘fact’ is a truth for which a Court must endeavour to search and take assistance from that. Interestingly, this kind of ‘fact’ disclosed by accused was held to be an exception to the mandate contained in Section 25 and 26 of the Evidence Act. Thus, it is crystal clear that Section 27 of the Evidence Act is applicable if the confessional statement leads to the *discovery of some new fact*. If this interpretation is applied in the factual matrix of present case, it will be clear like cloudless sky that appellant gave an information about availability of dead body of Ramdeen in the well of Dadna Lodh. Based on this information, dead body of Ramdeen was recovered from the said well. Thus, a ‘mental fact’ was disclosed by the appellant and pursuant thereof, the discovery of body was established.

Judgments of **Selvi (Supra)** and **Madhu (Supra)** were considered by Supreme Court in **Navaneethakrishnan v. State, (2018) 16 SCC 161**.

**27.** In **Mohd. Inayatullah Vs. State of Maharashtra (1976) 1 SCC 828** it was poignantly held as under :-

“11. Although the interpretation and scope of Section 27 has been the subject of several authoritative pronouncements, its application to concrete cases is not always free from difficulty. It will therefore be worthwhile at the outset, to have a short and swift glance at the section and be reminded of its requirements.

12. The expression “provided that” together with the phrase “whether it amounts to a confession or not” show that the section is in the nature of an exception to the preceding provisions particularly Sections 25 and 26. It is not necessary in this case to consider if this section qualifies, to any extent, Section 24, also. It will be seen that the *first* condition necessary for bringing this section into operation is the *discovery of a fact*, albeit a relevant fact, in consequence of the information received from a person accused of an offence. The *second* is that the discovery of such fact must be deposed to. The *third* is that at the time of the receipt of the information the accused must be in police custody. The *last* but the most important condition is that only “so much of the information” as relates *distinctly* to the fact *thereby* discovered is admissible. The rest of the information has to be excluded. The word “distinctly” means “directly”, “indubitably”, “strictly”, “unmistakably”. The word has been advisedly used to limit and define the scope of the provable information. The phrase “distinctly relates to the fact thereby discovered” is the linchpin of the provision. This phrase refers to

that part of the information supplied by the accused which is the *direct* and *immediate* cause of the discovery. The reason behind this partial lifting of the ban against confessions and statements made to the police, is that if a fact is actually discovered in consequence of information given by the accused, it affords some guarantee of truth of that part, and that part only, of the information which was the clear, immediate and proximate cause of the discovery. No such guarantee or assurance attaches to the rest of the statement which may be indirectly or remotely related to the fact discovered.

*13. \*At one time it was held that the expression "fact discovered" in the section is restricted to a physical or material fact which can be perceived by the senses, and that it does not include a mental fact (see Sukhan v. Emperor [Sukhan v. Emperor, AIR 1929 Lah 344] and Ganu Chandra Kashid v. Emperor [Ganu Chandra Kashid v. Emperor, 1931 SCC OnLine Bom 50 : AIR 1932 Bom 286]). Now it is fairly settled that the expression "fact discovered" includes not only the physical object produced, but also the place from which it is produced and the knowledge of the accused as to this\* [Ed.: Emphasis has been supplied to the matter between two asterisks.]*

[Note appended by Editorial is worth reading:]”

**(Emphasis Supplied)**

**28.** A minute reading of this judgment shows that in order to apply Section 27 of the Evidence Act, following conditions are required to be satisfied – *Firstly*, discovery of a fact which must be a relevant fact founded upon the information received from accused of an offence; *Secondly*, discovery of that fact must be deposed; *Thirdly*, at the time of

gathering such information, the accused must be in police custody; and *Fourthly*, the information to the extent it relates distinctly to the fact thereby discovered alone is admissible. Remaining information deserves to be excluded. Pertinently, the judgment of **Pulukuri Kottaya (Supra)** was taken note of in the said judgment in **Mohd. Inayatullah (Supra)**. In **Charandas Swami Vs. State of Gujarat and others (2017) 7 SCC 177**, the Apex Court considered the previous judgments of Supreme Court and also the judgments of Privy Council in **Pulukuri Kottaya (Supra)**. After taking note of history of case laws on the subject, the Supreme Court came to hold that ‘mental state’ or ‘knowledge in relation to certain things’ are also admissible as per Section 27 of the Evidence Act provided necessary ingredients as mentioned in **Mohd. Inayatullah (Supra)** are satisfied.

29. Importantly, in the case of **Charandas Swami (Supra)**, the disclosure statement of Accused 3 was recorded by Investigating Officer (I.O.) in *Panchnama* (Ex.188). The said accused led the police party to the spot where dead body was dumped by him. The information regarding existence of dead body was exclusively within the personal knowledge of Accused 3. The trial Court and High Court accepted the case of prosecution that disclosure made by Accused 3 about the location where the dead body of Gadadharanandji was dumped by him, was admissible under Section 27 of the Evidence Act. (See: para-58).

30. After taking note of previous judgments, the Apex Court opined that view taken by Court below is correct regarding, admissibility of disclosure of spot where dead body of Gadadharanandji was dumped by Accused 3. Thus, the Apex Court considered the information given by



accused persons regarding availability of dead body and gave its stamp of approval to the finding of the Court below that such statement is indeed admissible.

**31.** In **Viran Gyanlal Rajput v. State of Maharashtra, (2019) 2 SCC 311** it was ruled thus :

“**15.** .....Moreover, the argument that the recovery of the dead body at the instance of the appellant is highly suspicious cannot be sustained either, since it is clear from the testimony of the witnesses that the body was recovered from a spot which could only have been within the knowledge of the person who hid the body to begin with. This is also fortified by the lack of any explanation by the appellant regarding the recovery of the body and the circumstance of the victim being last seen around him. To add to this, even the clothes of the deceased were recovered at the instance of the appellant, from a spot around 200 m from Kamthekarwadi, from a pit which had been covered with a stone. This again is a location of which only the perpetrator of the offence could have had knowledge.”

**(Emphasis Supplied)**

**32.** It was clearly held that recovery was made based on statement of accused when he was in custody. If accused volunteered to show the place where he had hidden the material, it cannot be disbelieved merely because such information is given after few days from the date of incident. If accused has given information belatedly, I.O. cannot be blamed for the same.

**33.** In **Harinder Singh @ Hira Vs. State of Punjab (2019) 20 SCC 321**, a disclosure statement was made by the appellant/accused that he had buried the dead body of Gurdev Singh (deceased) in the field of Suba Singh in village Chamiani and he said that he could get the body recovered. This statement was given to S.I. Gurmukh Singh and ASI Gurbax Singh. In continuance thereof, the accused dug out the body from the place disclosed. The Apex Court considered this circumstance for proving the case of prosecution and opined in para- 16.3 that-

“16.3. That the body of the deceased Gurdev Singh was recovered at the instance of appellant-accused Harinder Singh in the presence of various witnesses including Naib Tahsildar Amarjit Singh (PW 11).”

**(Emphasis Supplied)**

**34.** The common string in all these cases shows that a ‘mental fact’ also forms part of ‘fact’ as per Section 3 of the Evidence Act. The portion of confession / statement whereby location of dead body was disclosed is clearly admissible. Moreover, when there is nothing to suggest that such statement is obtained under threat or coercion. Interestingly, learned counsel for the appellant placed heavy reliance on the recent judgment of Supreme Court in **Bijender (Supra)**. In the beginning of para-16 of this judgment, the Apex Court opined that *‘it may be true that at times the Court can convict an accused exclusively on the basis of his disclosure statement and the resultant recovery of inculpatory material’*. The parameters laid down in para-16 which is reproduced herein, in our considered opinion are satisfied in the present case.

“16. We have implored ourselves with abounding pronouncements of this Court on this point. **It may be true that at times the Court can convict an accused exclusively on the basis of his disclosure statement and the resultant recovery of inculpatory material.** However, in order to sustain the guilt of such accused, the recovery should be unimpeachable and not be shrouded with elements of doubt. We may hasten to add that circumstances such as **(i)** the period of interval between the malfeasance and the disclosure; **(ii)** commonality of the recovered object and its availability in the market; **(iii)** nature of the object and its relevance to the crime; **(iv)** ease of transferability of the object; **(v)** the testimony and trustworthiness of the attesting witness before the Court and / or other like factors, are weighty considerations that aid in gauging the intrinsic evidentiary value and credibility of the recovery. (See: Tulsiram Kanu Vs. The State AIR 1954 SC 1; Pancho Vs. State of Haryana (2011) 10 SCC 165; State of Rajasthan Vs. Talevar and Anr. (2011)11 SCC 666 and Bharama Parasram Kudhachkar Vs. State of Karnataka (2014) 14 SCC 431).”

**(Emphasis Supplied)**

**35.** To elaborate, in the instant case, the period of interval between the incident and disclosure will not cause any dent to the prosecution story. Clause (ii), (iii) and (iv) mentioned in para-16 have no relevance in the factual matrix of the present case. So far clause (v) is concerned, the recovery is duly proved by I.O. Uday Bhan Singh (PW23), Samar Bahadur (PW15) and Shyambihari (PW18). Interestingly, these witnesses namely Samar Bahadur (PW15) and Shyambihari (PW18) proved Ex.P/3

and Ex.P/23 as well. Thus, there is no manner of doubt that dead body of Ramdeen was within the exclusive knowledge of present appellant and upon his disclosure, the said 'fact' was gathered by the prosecution and in furtherance thereof, the dead body was recovered from the well of Dadna Lodh (PW7).

36. The principle laid down by the Apex Court in **Dahyabhai Chhaganbhai Thakkar vs. State of Gujarat AIR 1964 SC 1563** and **Dr. S.L. Goswami vs. The State of M.P. AIR 1972 SC 716** cannot be disputed. Suffice it to say, these judgments relate to burden of proof which is certainly on the shoulders of the prosecution. In view of the foregoing detailed analysis, Section 27 memorandum to the extent indicated above can be used against the appellant. Thus, burden of proof was indeed discharged by the prosecution. So far judgment of **Bakshish Singh (Supra)** is concerned, the Apex court did not consider the aspect of 'mental fact' flowing from Section 3 of the Evidence Act. Apart from this, in the factual matrix of that case, the body was found in the river and broken teeth and parts of human body were lying on the bank of the river. Hence, Apex Court opined that anyone who saw those parts could have inferred that the dead body must have been thrown into the river near about that place. In this peculiar factual backdrop, the Apex Court did not believe the story of prosecution. The said judgment for these reasons, cannot be pressed into service. It is trite that a singular different fact may change the precedential value of a judgment. A judgment of the Court must be understood by taking into account the factual context of the case. [See : **Padma Sundara Rao v. State of T.N., (2002) 3 SCC 533, Ram**

**Prasad Sarma v. Mani Kumar Subba, (2003) 1 SCC 289 and Union of India v. Major Bahadur Singh, (2006) 1 SCC 368].**

37. In **Bhavnagar University v. Palitana Sugar Mill (P) Ltd. (2003) 2 SCC 111**, it was ruled that a singular different fact may change the precedential value of a judgment. Thus, the judgment of Apex Court in **Bakshish Singh (Supra)** is of no assistance to the appellant.

38. In view of the foregoing discussion, the judgment of **Mehboob Ali (Supra)** is also of no assistance because in this judgment also, the aspect of ‘mental fact’ was not taken into account. The Court below in the present case has not held the appellant as guilty on the basis of any extra judicial confession. Thus, the judgment of **Chandrapal (Supra)** is also of no help to the appellant. As analysed above, in our opinion, the Court below has rightly held the appellant as guilty for the offence committed under Section 302 of IPC. We are unable to hold that Court below has committed any error of fact or law in basing its judgment on the disclosure statement of appellant and recovery of dead body (inculpatory material) at the instance of the appellant. As a consequence, no case is made out for interference. The appeal fails and is hereby **dismissed**.

**(SUJOY PAUL)**  
**JUDGE**

**(PRAKASH CHANDRA GUPTA)**  
**JUDGE**