* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 20.08.2026
Pronounced on: 05.11.2026
Uploaded on: 05.11.2026

\# **CNR No. DLHC010057952002**
\+ **CRL.A. 264/2002**

YASHPAL .....Appellant

Through: Mr.Vinayak Bhandari, Mr.Ishaan Phukan, Advs. (DHCLSC)

versus

STATE (GOVT. OF N.C.T. OF DELHI) .....Respondent

Through: Mr. Hitesh Vali, APP with Insp. Manoj Dalal, PS Sultanpuri.

\# **CNR No. DLHC010058002002**
\+ **CRL.A. 269/2002**

BANARSI DASS .....Appellant

Through: Mr.J.M. Kalia, Mr.Dhruv Kalia, Mr.Siddhartha Shukla and Ms.Lavanya Kalia, Advs.

versus

STATE (GOVT. OF N.C.T. OF DELHI) .....Respondent

Through: Mr. Hitesh Vali, APP with Insp. Manoj Dalal, PS Sultanpuri.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

NAVIN CHAWLA, J.

1. The present appeals have been preferred by appellants, Yashpal (Crl.A. 264/2002) and Banarsi Dass (Crl.A. 269/2002), challenging

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the judgment of conviction dated 31.01.2002 passed by the learned Additional Sessions Judge, Delhi (hereinafter referred to as the 'Trial Court') in Sessions Case No. 46/1999, arising out of FIR No. 736/1998 registered at Police Station Sultan Puri, whereby the appellants have been convicted for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC').

2. The appellants also challenge the order on sentence dated 31.01.2002 passed by the learned Trial Court, whereby the appellants have been sentenced to undergo imprisonment for life and to pay a fine of Rs. 2,000/- each for the offence punishable under Section 302 read with Section 34 of the IPC. In default of payment of the said fine, they have been sentenced to undergo further rigorous imprisonment for a period of three months.

CASE OF THE PROSECUTION:

3. Briefly stated, the case of the prosecution is as under:

i. Information was received on 13.10.1998, at about 08:35 p.m., regarding a murder having taken place at C-1/3, Sultan Puri. The said information was recorded *vide* DD No. 34-A (Ex.PW-1/A). Pursuant thereto, PW-13/*SI B.N. Mishra* along with PW-15/*Constable Ashok Kumar* proceeded to the spot.

ii. Upon reaching the spot, they found the blood-soaked body of the deceased- Hari Chand in the *gali* between the Government Higher Secondary School, BC Block and Ambedkar Park. The deceased was found to have sustained

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multiple wounds and injuries on his head, neck, chest and back. A cycle of the make 'Atlas' was also found lying at a distance of about 50 paces from the body of the deceased. No eye-witness was found present at the spot. The deceased was removed to the hospital.

iii. PW-13/*SI B.N. Mishra* made an endorsement (Ex.PW-13/A) on the DD No. 34-A and sent the same through PW-15/*Constable Ashok Kumar* for registration of the case, and FIR No. 736/1998 (Ex.PW-1/B) was registered under Section 302 of the IPC. The investigation was thereafter handed over to PW-20/*Additional SHO Sushil Kumar*.

iv. PW-20/*Additional SHO Sushil Kumar* seized a sample of the blood-stained earth, a *hawai chappal,* earth control and the cycle, and prepared the seizure memo (Ex.PW-9/A).

v. The prosecution alleged that further investigation revealed that PW-8/*Ratan Lal*, the brother-in-law of the deceased, was an eye-witness and had seen that appellants Yashpal and Banarsi Dass and the co-accused Virender (who has been acquitted by the learned Trial Court by the impugned order of conviction) had attacked the deceased with a sword in his presence.

vi. The body of the deceased was sent for post-mortem examination, and the examination was conducted by PW-18/*Dr. K. Goel* on 14.10.1998, who prepared the Post-Mortem Report (Ex.PW-18/A). In the Post-Mortem Report, it was opined that the deceased had sustained multiple external injuries caused by

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a sharp-cutting weapon. It was opined that "*all injuries are ante-mortem in nature, caused by sharp, cutting weapon. Injuries no.1 & 2 are caused by relatively heavy cutting sharp weapon. All other injuries are caused by sharp, cutting, penetrating, flat weapon. All injuries are caused by other party. Cause of death is asphyxia consequent upon choking of airway (Trachea) by blood clots and Hemorrhagic shock consequent upon injuries to the Heart, liver & neck vessels. Injuries no. 3, 4, 5, 8 & 9 are sufficient to cause death in ordinary course of nature individually or collectively. Time since death is about 17 hrs.*".

vii. Thereafter, the body of the deceased was handed over to his relatives.

viii. On 18.10.1998, three accused persons, that are, appellants Yashpal and Banarsi Dass and the co-accused Virender were arrested, and their disclosure statements were recorded (Ex.PW-8/A, Ex.PW-8/B, and Ex.PW-8/C). Appellants Yashpal and Banarsi Dass and the co-accused Virender then led the police party to the house of appellant Banarsi Dass at H.No. C-3/145, Sultan Puri, from where appellant Banarsi Dass got a sword recovered from underneath a cot. This information was recorded *vide* the pointing-out memo (Ex.PW-8/F). They also led the police party to Wazirabad Bridge over the river *Yamuna,* from where appellant Banarsi Dass had allegedly thrown his clothes after the incident. This information was recorded *vide* the pointing-out memo

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(Ex.PW-8/D), however, the clothes of appellant Banarsi Dass could not be recovered.

ix. The appellants and the co-accused Virender were then taken to the police station, where the clothes of appellant Yashpal were taken into possession as they seemed to have some blood stains and were alleged to be the same clothes which he had worn at the time of the incident. Accordingly, seizure memo (Ex.PW-9/C) was prepared.

x. The appellants were then sent for their medical examination, and their Medical Reports (Ex.PW-14/A, PW-10/A and PW-10/B) were prepared. It was found that appellant Yashpal had a stitched wound on his left thumb. Accordingly, appellant Yashpal was again sent for a final medical opinion upon his left thumb injury, however, no opinion could be given on the duration of the said injury or the weapon by which it had been caused. The same was recorded *vide* his Medical Report (Ex. PW-14/B).

xi. On 08.12.1998, the recovered sword, the alleged weapon of the offence, was shown to PW-18/*Dr. K. Goel*, who opined (Ex.PW-18/D) that two of the injuries on the body of the deceased were possible to have been inflicted by the said weapon or by a similar type of weapon.

xii. FSL Report dated 31.05.1999 (Ex.PW-20/F) opined that there was presence of human blood of the same blood group as that of the deceased on the recovered sword and on the clothes of appellant Yashpal.

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4. Upon completion of investigation, Charge-Sheet was filed against the appellants and the co-accused Virender.

PROCEEDINGS BEFORE THE LEARNED TRIAL COURT:

5. The learned Trial Court, *vide* the order dated 11.10.1999, framed the following charge against the appellants:

> *"That on 13.10.98 at about 7.30p.m. at BC block, Govt. Sr. Secondary School near Ambedkar Park, within the jurisdiction of P.S. Sultanpuri, you all in furtherance of your common intention committed murder by causing the death of Hari Chand and thereby committed an offence punishable under section 302/34 IPC and within my cognizance.*
> *And I hereby direct that you all be tried by this court for the said offence"*

6. The appellants pleaded not guilty and claimed trial.

7. In support of its case, the prosecution examined 20 witnesses, including PW-8/*Ratan Lal*, who is stated to be an eye-witness to the incident.

8. Thereafter, the statements of the appellants were recorded under Section 313 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') on 05.11.2001, wherein they denied all the incriminating evidence appearing on record against them, and stated that the prosecution witnesses were interested witnesses and were deposing falsely. Appellant Yashpal stated that he had been falsely implicated in the present case on account of the enmity between appellant Banarsi Dass and the deceased, and his association with appellant Banarsi Dass. Appellant Banarsi Dass also stated that there was some enmity

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between him and the deceased and that he had been falsely implicated in the present case on account of such enmity. He stated that the deceased had illicit relations with his sister, which was objected to by him and his family members, and had also led to disputes between them, resulting in even police reports being lodged.

9. The appellants did not lead any evidence in their defence.

FINDINGS OF THE LEARNED TRIAL COURT:

10. The learned Trial Court, by the impugned judgment of conviction, held that the prosecution had proved its case against appellants Yashpal and Banarsi Dass beyond reasonable doubt and, accordingly, convicted them for the offence punishable under Section 302 read with Section 34 of the IPC.

11. The learned Trial Court opined that the prosecution had failed to establish last seen evidence and further held that PW-8/*Ratan Lal* was not an eye-witness to the incident, however, the recovery of the sword at the instance of appellant Banarsi Dass was found to be credible. The learned Trial Court also placed reliance on the 'strong circumstance' that the clothes worn by appellant Yashpal had human blood matching with that of the deceased and that the left thumb of appellant Yashpal was found to have a stitched wound, thereby corroborating his disclosure statement. It was observed as under:

> *"It is not in dispute that the present witness is brother-in-law (Jija) of the deceased. If he had seen the accused person attacking him the natural reaction should have been that he should have raised noise. He should have also chased the accused persons instead this*

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witness went to the house of his in laws and informed his other brother-in-law Vijay about the alleged incident. When this witness reached the place of occurrence and the accused persons had left as has come in his evidence then natural reaction of this witness would have been to inform the police and to make arrangements for immediate removal of the injured to the Hospital. He has not done so. In these circumstances the presence of this witness having witnessed the alleged incident does not inspire the confidence of the court and his evidence to that extent is liable to be dis-carded.

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....I find force in the submissions made by the counsel for the accused that there is no evidence of last seen having been proved by the prosecution. In view of this I come to the conclusion that there is no last seen evidence and Rattan Lal is not an eye witness as alleged by the prosecution.

Now coming to the second point with regard to the recovery of sword at the instance of the accused persons. It has been submitted by counsel for the accused that recovery of sword is not proved by the prosecution. He has submitted that PW11 even though has admitted his signatures on the disclosure statement Ex.PW8/A, PW8/B and PW8/C but he has stated that his signatures were obtained by the police on certain blank papers. He has submitted that this witness when cross examined by Ld. APP has denied that the accused persons got recovered sword which was seized vide memo Ex.PW8/F. He has submitted that the prosecution has thus failed to prove the recovery of sword beyond any shadow of reasonable doubt. This argument of Ld. Counsel for the accused does not appeal to me in view of the fact that PW8 Rattan Lal in his examination-in-chief had stated that all the accused persons were arrested after three days of the incident. It has also come in evidence that disclosure statements were made by the

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accused which are Ex.PW8/A, PW8/B and PW8/C which bears his signatures at point-A. It has also come in evidence-that three accused led the police party to the house of accused Banarsi and from under the cot a sword was got recovered which was taken in police possession vide memo Ex.PW8/F. The sword is Ex.P-1. In the light of this categorical statement made by PW8 the recovery of sword at the instance of the accused cannot be doubted.

It has been further submitted by the counsel for the accused that all the accused including Yashpal were arrested on 18.10.98. It has been further submitted that at the time of arrest the accused Yashpal was reportedly wearing the same clothes which he was wearing at the time of alleged incident. He has submitted that it does not appeal to reason that for four days the accused will continue to wear the same clothes having blood stains after committing the alleged crime. In this regard it may be mentioned that Shirt Ex.P-2 and Pant Ex.P-3 which the accused was wearing at the time of alleged incident were seized by the police after arrest of the accused vide memo Ex. PW9/C. These clothes where sent to FSL and the blood group was found of Group-B which was the blood group of the deceased Hari Chand. In the disclosure statement made by the accused by Yashpal he stated that at the time when accused Banarsi was giving sword blow on Hari Chand he also sustained injuries on his thumb and fingers. After the arrest the accused was sent for medical examination and as per the medical examination of accused Yashpal Ex. PW14/A the left thumb was found stitched which corresponds to the disclosure statement made by the accused. This is a strong circumstance against the accused on which reliance can safely be placed. Regarding the recovery of sword it may be mentioned that the same was sent to the doctor who conducted post-mortem on the body of the deceased vide his report Ex.PW18/A. The weapon of offence

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was produced before him on 8.12.98 and a sketch was prepared by him which is Ex.PW16/D and in his opinion injures No. 1 & 2 mentioned in post mortem report on the body of Hari Chand was possible by the said weapon. The request for opinion is Ex.PWI8/C on the back of the same his opinion is Ex.PWI8/D. This means that injury no. 1 and 2 were possible by this sword Ex.P-1. This sword was also sent for chemical examination and as per the CFSL report Ex.PW20/D and Ex.PW20/E the human blood group was found that was of B-group which tallied with the blood group of the deceased. These circumstantial evidence both against accused Banarsi and accused Yashpal is sufficient which persuades me to rely on the same and come to the conclusion that these persons were responsible for intentionally killing deceased Hari Chand.

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In view of my above discussion, I hold the accused Banarsi and Yashpal guilty of intentionally committing the murder of Hari Chand u/s 302/34 I.P.C. and convict them accordingly."

12. As regards the co-accused Virender, the learned Trial Court opined that there was no circumstantial evidence connecting him with the alleged offence. The learned Trial Court observed that even otherwise, as per the disclosure statements, the only role assigned to him was to keep a watch so that no police official may come. He was, accordingly, extended the benefit of doubt and acquitted of the charges levelled against him.

13. Thereafter, the impugned order on sentence dated 31.01.2002 was passed by the learned Trial Court, imposing the sentence, as noted hereinabove on the appellants.

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14. Aggrieved of the impugned judgment of conviction and the order on sentence, the appellants have preferred the present appeals.

SUBMISSIONS OF THE LEARNED COUNSEL FOR APPELLANT YASHPAL:

15. The learned counsel for appellant Yashpal submits that the learned Trial Court has erroneously convicted the appellant despite absence of any evidence establishing meeting of minds or previous concert between the appellants. He submits that neither last seen evidence nor any motive has been established against the appellant, therefore, the judgment of conviction and the order on sentence deserve to be set aside.

16. He submits that PW-8/*Ratan Lal* was projected to be the sole eye-witness to the offence, however, the learned Trial Court itself rejected his testimony and did not accept him as an eye-witness. He submits that once the testimony of PW-8/*Ratan Lal* is discarded, there is no evidence establishing the presence of appellant Yashpal at the place of the incident or connecting him with the commission of the offence.

17. The learned counsel submits that it was the prosecution's case that appellant Yashpal, along with appellant Banarsi Dass and co-accused Virender, had gone to the house of the deceased and called him out. However, the appellants were not identified by PW-11/*Vijay*, the brother of the deceased, or PW-12/*Smt. Bahoti*, the mother of the deceased. He submits that PW-11/*Vijay* had denied that appellant Yashpal had come to the house to call the deceased.

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18. He submits that the learned Trial Court has erred in relying upon the recovery of blood-stained clothes from appellant Yashpal, as it is highly improbable that appellant Yashpal would continue to wear the same blood-stained clothes for four-five days after the incident, without making any efforts to discard or conceal them.

19. The learned counsel also relies upon the testimony of PW-9/*Head Constable Arvind,* who did not state that the clothes of appellant Yashpal had blood stains; the testimony of PW-16/*SI Vinay Singh,* who stated that he could not remember where the clothes of the appellant were taken into possession; and the testimony of PW-8/*Ratan Lal,* who stated that he does not recollect any clothes being seized from the appellant.

20. He submits that the learned Trial Court has erred in placing reliance on the blood detected on the clothes of appellant Yashpal, and on the recovered sword, as the same is not an unique identification of a person. He submits that the blood group 'B' is a very broad classification and the prosecution has failed to establish any specific forensic link connecting the appellant to the commission of the offence. He also submits that, in these circumstances, the possibility of fabrication cannot be ruled out.

21. He submits that the learned Trial Court has also erred in placing reliance upon the injury on the thumb of appellant Yashpal and in observing that the same corroborates with his disclosure statement, wherein he had stated that he had sustained a thumb injury with the sword. He submits that the prosecution has failed to establish the time when the said injury was caused or the weapon which had caused it.

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22. He further draws attention to the fact that no fingerprints were lifted from this recovered sword.

23. He submits that the reliance upon the recovered sword is also misplaced, as it could not be connected with certain fatal injuries. He relies upon the statement of PW-18/*Dr. K. Goel* to submit that only injury nos. 1 and 2 could have been caused by the recovered sword. He further submits that PW-18/*Dr. K. Goel* did not definitively connect the recovered sword with the said two injuries, and had only opined that it was possible that the injuries had been caused by the recovered weapon.

24. He contends that the learned Trial Court has applied different standards of proof while considering the case of the appellant and the case of the co-accused Virender. While the co-accused Virender was acquitted by granting the benefit of doubt, finding no circumstantial evidence connecting him to the commission of offence, the appellant has been convicted on similar set of circumstances and evidence.

SUBMISSIONS OF THE LEARNED COUNSEL FOR APPELLANT BANARSI DASS:

25. The learned counsel for appellant Banarsi Dass submits that the findings of the learned Trial Court are unsustainable, as the conviction has been based primarily on the alleged recovery of the weapon of the offence, that is, the sword, however, there are material inconsistencies in the said recovery. While the recovery memo of the weapon was endorsed by PW-8/*Ratan Lal*, the alleged eye-witness, he admitted in his cross-examination that he had seen the sword for the first time at

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the police station and had come to know about its recovery only there. He further submits that although the recovery memo is also endorsed by the witness PW-11/*Vijay*, he denied in his cross-examination that the appellants had got the sword recovered.

26. Placing reliance on the judgments of the Supreme Court in ***State of Rajasthan v. Hanuman***, 2025 SCC OnLine SC 1387, and ***Allarakha Habib Memon etc. v. State of Gujarat***, 2024 INSC 590, the learned counsel submits that the recovery of the blood-stained weapon bearing the same blood group as that of the victim cannot, by itself, be considered sufficient to link the accused with the commission of the offence and, therefore, cannot be sufficient to establish the charge of murder.

27. He submits that PW-12/*Smt. Bahoti*, the mother of the deceased, has also not supported the prosecution's case and had failed to identify the appellants. Further, the prosecution has failed to establish the motive for commission of the offence, which assumes significance in a case based on circumstantial evidence. He submits that PW-12/*Smt. Bahoti* had merely stated that there had been a quarrel between the deceased and the appellant regarding the sister of appellant Banarsi Dass, however, the same is not sufficient to connect the appellant with the commission of offence.

28. He submits that where a case rests entirely on circumstantial evidence, the chain of circumstances must be so complete that every hypothesis but the one sought to be proved is excluded. He submits that in the present case, the evidence relating to recovery of weapon is insufficient to fasten guilt upon the appellant.

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29. He further submits that the exact information given by an accused while in custody has to be proved, and that a mere statement that the accused led the police to the place where he had concealed the articles is not indicative of the information given. In support, he relies upon the judgment of the Supreme Court in ***Raja Khan v. State of Chhattisgarh***, 2025 INSC 167.

SUBMISSIONS OF THE LEARNED ADDITIONAL PUBLIC PROSECUTOR:

30. On the other hand, the learned Additional Public Prosecutor for the State submits that the impugned judgment of conviction and order on sentence passed by the learned Trial Court suffer from no infirmity and deserve to be upheld.

31. The learned APP submits that the learned Trial Court has rightly placed reliance upon the recovery of the sword at the instance of appellant Banarsi Dass. He submits that the recovery is a material circumstance connecting appellant Banarsi Dass with the commission of the offence and has been duly proved by the prosecution. The recovery is further strengthened by the testimony of PW-18/*Dr. K. Goel,* who opined that two of the injuries on the body of the deceased could have been caused by the recovered sword. He further submits that the FSL Report also corroborates the recovered sword being the weapon of offence, as it opines that the blood detected on the sword was of the same blood group as that of the deceased. According to the learned APP, these circumstances, when considered together, indicate towards the guilt of appellant Banarsi Dass.

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32. As regards appellant Yashpal, the learned APP submits that the clothes worn by him and taken into possession at the police station were found to bear blood stains, and that the blood detected thereon was of the same blood group as that of the deceased. He further relies on the stitched wound found on the left thumb of appellant Yashpal as a relevant incriminating circumstance. He points out that the appellant himself, in his disclosure statement, stated that he had sustained the said injury with the sword while attacking the deceased. The learned APP submits that these circumstances, considered together, connect appellant Yashpal with the commission of the offence.

33. He further rebuts the contention of the appellants that the prosecution has failed to establish any motive for the commission of the offence. Placing reliance upon the testimony of PW-12/*Smt. Bahoti*, he submits that there was enmity between the deceased and appellant Banarsi Dass, arising out of a dispute concerning the sister of appellant Banarsi Dass. He submits that this enmity provided the motive for the commission of the offence. The learned APP further submits that appellant Yashpal was a friend and associate of appellant Banarsi Dass and this association with Banarsi Dass explains his participation in the commission of the offence.

34. He also submits that the testimony of the eye-witness, PW-8/*Ratan Lal* cannot be discarded in its entirety merely because he was not accepted by the learned Trial Court as a reliable witness. He submits that, to the extent that his testimony is corroborated by other evidence on record, particularly the recovery of the weapon, the same

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can be relied upon for establishing the circumstances against the appellants.

ANALYSIS AND FINDINGS:

35. We have considered the submissions made by the learned counsels for the parties and have also perused the record of the learned Trial Court.

36. The case of the prosecution was built on the testimony of PW-8*/Ratan Lal,* who was presented as an eye-witness to the offence. As has been noted hereinabove, the learned Trial Court itself disbelieved PW-8*/Ratan Lal* to be an eye-witness to the offence. The learned Trial Court also gave its reasons for the same. We may only note that those are only some of the reasons for which PW-8*/Ratan Lal* cannot be believed to be an eye-witness. In fact, if one sees his testimony as a whole, it becomes evident that he had not witnessed the incident but had come to know of the same only later.

37. The main plank on which the learned Trial Court, in spite of finding PW-8*/Ratan Lal* not to be an eye-witness to the offence, convicted the appellants, is the alleged recovery of the weapon of the offence, that is, a sword, at the disclosure and pointing out of appellant Banarsi Dass and the recovery of blood stained clothes worn by appellant Yashpal at the time of the offence and at the time of his arrest. The learned Trial Court also applied Section 27 of the Indian Evidence Act, 1872 (hereinafter referred to as, 'Evidence Act') and placed reliance on the alleged disclosure by appellant Yashpal regarding the cause of the injury suffered by him on his left

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38. As far as the disclosure and the recovery of the sword at the instance of appellant Banarsi Dass are concerned, it is well settled that in view of Sections 25 and 26 of the Evidence Act, a confessional statement made by an accused to a police official is not admissible. However, Section 27 of the Evidence Act carves out an exception to this principle. We quote Section 27 of the Evidence Act, as under:

> ***"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."*

39. The essential ingredients of Section 27 of the Evidence Act are three-fold. The same may be culled out as under:

> i. The information given by the accused must lead to the discovery of the fact which is the direct outcome of such information.
> ii. Only such portion of the information given as is distinctly connected with the said recovery is admissible against the accused.
> iii. The discovery of the facts must relate to the commission of such offence.

40. In ***Ramanand @ Nandlal Bharti v. State of Uttar Pradesh***, (2023) 16 SCC 510, the Supreme Court explained the pre-requisites for invocation of Section 27 of the Evidence Act, as under:

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

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investigating officer then it is clear that the same is deficient in all the aforesaid relevant aspects of the matter.

57. 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 bloodstained 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 bloodstained 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."

(Emphasis Supplied)"

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41. In the present case, the appellants and the co-accused are alleged to have given their disclosure statements on their arrest by the police on 18.10.1998. The disclosure statement of appellant Banarsi Dass is Ex.PW-8/B, which is alleged to be witnessed by PW-16/*SI Vinay Singh*, PW-8/*Ratan Lal*, the brother-in-law of the deceased, and PW-11/*Vijay*, the brother of the deceased.

42. As noted hereinabove, PW-8/*Ratan Lal* has not been found to be a reliable eye-witness by the learned Trial Court. We have also noted hereinabove that apart from the reasons given by the learned Trial Court, we find that even otherwise, PW-8/*Ratan Lal* is not a reliable witness. Being the brother-in-law of the deceased, he is also an interested witness. Even otherwise, in his deposition, PW-8/*Ratan Lal* merely states that the accused persons made disclosure statements; what those disclosures were has not been stated by him. On the recovery, he states, "*thereafter the police party accompanied by the accused persons went to the house of Banarsi from where a sword was recovered from under the cot. The same was taken in police possession vide memo Ex.PW8/F.*". The same does not satisfy the test of Section 27 of the Evidence Act, as has been expounded by the Supreme Court, and reproduced by us hereinabove. In his cross-examination, he further states that the police did not prepare any sketch of the sword in his presence nor did they measure the sword. He states that he had neither seen the sword minutely at the time of recovery nor read anything etched on its handle. In his further cross-examination, he states that he came to know of the recovery of the

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sword at the Police Station when he was told so by the police and that he had seen the sword for the first time at the Police Station. In view of the above, the testimony of PW-8/*Ratan Lal* as a witness to the disclosure statements, or as a witness to the consequent recovery, does not inspire confidence.

43. The next witness to the alleged discovery and the pointing out is PW-11/*Vijay,* the brother of the deceased, who turned hostile and did not support the case of the prosecution. In his cross-examination, he denied that the appellants had made any disclosure statements or discovery in his presence. He also denied that the pointing out memo was prepared in his presence.

44. This leaves only the police witness, that is, PW-16/*SI Vinay Singh,* to prove the alleged disclosure statement and the pointing out memo. As far as the disclosure statement is concerned, PW-16/*SI Vinay Singh* simply states that the same were made by all the accused and were recorded in the form of Ex.PW-8/A, Ex.PW-8/B and Ex.PW-8/C. He also deposes regarding the alleged recovery of the sword from the house of appellant Banarsi Dass and the clothes worn by appellant Yashpal at the time of the offence as also at the time of his arrest.

45. At the outset, we would note that the offence was committed on 13.10.1998 and the accused were arrested on 18.10.1998, that is, after a period of 5 days. While it is the case of the prosecution that appellant Banarsi Dass had thrown the clothes worn by him at the time of offence near the Wazirabad Bridge, curiously, appellant Yashpal continued to wear the same clothes for five days, in spite of

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having blood spots on the same. This appears to be very improbable.

46. Further, at the time of their interrogation and the alleged disclosure statements, the blood spots on his clothes are not noticed by the police officers. The accused are first taken to the house of appellant Banarsi Dass and, thereafter, to the Wazirabad Bridge. It is only thereafter, when they returned to the Police Station, that blood stains on the clothes of appellant Yashpal are noticed by the police officials, and his clothes are seized. This again casts a doubt on the case of the prosecution.

47. On the seizure of the clothes from appellant Yashpal, two witnesses are cited. One being PW-16/*SI Vinay Singh*, who states that he does not remember at what place the clothes of appellant Yashpal were taken into police possession. The other witness to the seizure is PW-9/*HC Arvind*, who states that at the time of apprehension of the accused, the clothes worn by appellant Yashpal and co-accused Virender were taken into police possession, however, later stated that he does not remember if it was only the clothes of appellant Yashpal which were taken into possession by the police. PW-9/*HC Arvind* further states that he did not notice if there were any blood stains on the clothes seized or not, however, the seizure memo (Ex.PW-9/C) records that on the clothes seized, stains, which looked like blood, were seen.

48. The above discrepancies cast a grave doubt on the alleged disclosure statements and the consequential recoveries of the sword at the instance of appellant Banarsi Dass, as also upon the clothes worn by appellant Yashpal.

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49. In addition to the above, the learned Trial Court has also convicted the appellants also on the basis of the FSL Report, wherein it was opined that the recovered sword had traces of human blood of group B, which was also the blood group of the deceased. The learned Trial Court also relied on the opinion of PW-18/*Doctor K. Goel*, who had opined that the injury nos. 1 and 2 mentioned in the Post-Mortem Report of the deceased were possible by the said weapon or '*by similar type of weapon*'. In our view, the above circumstances could not lead to a finding beyond reasonable doubt that the sword recovered was the weapon of offence.

50. The deceased had suffered as many as 20 injuries. How the other injuries, which also included incised wounds, were caused, has not been explained by the prosecution.

51. In ***Hanuman*** (supra), the Supreme Court relying upon the earlier judgment in ***Raja Naykar v. State of Chhattisgarh***, (2024) 3 SCC 481, held that mere recovery of a blood-stained weapon, even bearing the same blood group of the victim, would not be sufficient to prove the charge of murder. The same was reiterated by the Supreme Court in ***Allarakha Habib Memon*** (supra), wherein it was held as under:

> ***"43.*** *The trial Court as well as the High Court heavily relied upon the FSL reports (Exhibits 111-115) for finding corroboration to the evidence of the eyewitnesses and in drawing a conclusion regarding culpability of the appellants for the crime. We may reiterate that the testimony of the so-called eyewitnesses has already been discarded above by holding the same to be doubtful. Thus. even presuming that the FSL reports(Exhibits 111-115)*

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conclude that the blood group found on the weapons recovered at the instance of the accused matched with the blood group of the deceased, this circumstance in isolation, cannot be considered sufficient so as to link the accused with the crime. In this regard. reliance can be placed on the judgment of ***Mustkeem alias Sirajudeen v. State of Rajasthan,*** *wherein this Court held that sole circumstance of recovery of bloodstained weapon cannot form the basis of conviction unless the same was connected with the murder of the deceased by the accused. The relevant portion is extracted hereinbelow:-*

> *"**19.** The AB blood group which was found on the clothes of the deceased does not by itself establish the guilt of the appellant unless the same was connected with the murder of the deceased by the appellants. None of the witnesses examined by the prosecution could establish that fact. The blood found on the sword recovered at the instance of Mustkeem was not sufficient for test as the same had already disintegrated.* ***At any rate, due to the reasons elaborated in the following paragraphs, the fact that the traces of blood found on the deceased matched those found on the recovered weapons cannot ipso facto enable us to arrive at the conclusion that the latter were used for the murder."*** *"*

52. For appellant Yashpal, apart from the recovery of the blood-stained clothes from him, which we find extremely doubtful as discussed hereinabove, the other circumstance taken into consideration by the learned Trial Court is his alleged disclosure of having suffered an injury on his thumb during the commission of the offence. This again, in our view, could not be taken as a

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circumstance against the appellant. The injury on the thumb of appellant Yashpal was a fact that was visible and was not a fact which would be discovered only at the instance of the appellant. How that injury was connected to the offence, has no independent corroboration apart from the own confessional statement of the appellant. Appellant Yashpal was medically examined twice over and in both the reports, that is, Ex.PW-14/A and Ex.PW-14/B, no definite opinion could be given on the age of the injury or upon the weapon that caused it.

53. As far as motive is concerned, it acts as a double edged sword; while on one hand it may complete the chain of circumstances against an accused, on the other, it may also lead to false accusation and implication in an offence, such accused being the easiest to implicate. The Court, therefore, has to be careful while joining the dots, including that of the motive, for finding whether a complete chain of circumstances has been established by the prosecution against the accused. In the present case, while there is a motive for appellant Banarsi Dass to commit the offence, and maybe also for appellant Yashpal as his friend, however, the same, in absence of other dots to connect, is insufficient to hold that it could only be the appellants who could have committed the murder of the deceased.

54. In view of the above, we find that the learned Trial Court has tried to complete the chain of circumstances against the appellants, which the prosecution had failed to establish. It is settled law that once the testimony of the eye-witness is not believed, the case would fall in the realm of circumstantial evidence and for convicting the

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accused on the basis of circumstantial evidence, the chain of circumstance must be so complete as to lead only to the hypothesis of guilt of the accused. In our view, the prosecution has failed to meet this test. In fact, the learned Trial Court had extended the benefit of doubt to the co-accused Virender, while proceeding to convict the appellants.

55. Given the above, the impugned judgment of conviction dated 31.01.2002 and the consequential order on sentence dated 31.01.2002 cannot be sustained. They are, accordingly, set aside. The appellants are acquitted of the charges, giving them the benefit of doubt.

56. The appeals are allowed in the above terms.

57. The bail bonds of the appellants shall, however, remain valid for a period of six weeks in terms of Section 481 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

58. A copy of this judgment be sent to the learned Trial Court and the concerned Jail Superintendent for information.

NAVIN CHAWLA, J

RAVINDER DUDEJA, J

NOVEMBER 5, 2026/ns/Yg

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