2023:PHHC:161666-DB

In the High Court for the States of Punjab and Haryana at Chandigarh

CRA-D-761-DB-2018(O&M)
Date of Decision:- 15.12.2023

Shokeen ……Appellant

Versus

State of Haryana …..... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL
HON'BLE MR. JUSTICE GURBIR SINGH

Present:- Mr. Mansur Ali, Mr. Chajju Khan and Mr. Imran Ali, Advocates for the appellant.

Mr. S.S. Pannu, Addl. A.G. Haryana.

* * * * *

GURVINDER SINGH GILL, J.

1. The appellant Shokeen assails judgment dated 11.7.2018 as well as order dated 12.7.2018 passed thereto by learned Additional Sessions Judge, Mewat vide which the appellant has been held guilty of having committed an offence punishable under Section 302 IPC and under Section 25 of the Arms Act and has been sentenced as under :-

Offence	Imprisonment	Fine	In default of fine
302 IPC	Imprisonment for life	Rs. 80,000/-	R.I. of one year
25 Arms Act	R.I. for two years	Rs. 20,000/-	

2. The matter arises out of FIR No. 99 dated 30.4.2016 lodged for offences under Section 302, 109/34 IPC and under Section 25 of the Arms Act at Police Station Ferozepur Jhirka at the instance of complainant Israil (father of deceased) wherein he alleged that on 30.4.2016 *'Gauna Ceremony'* of Lala @ Yahya son of Deenu was being celebrated in their neighbourhood. On the night of 29.4.2016, on account of the happy occasion, music was being played by DJ. The complainant alongwith his daughter Swaliya, aged 13 years, went to the house of Deenu to participate in the function. His nephew Aas Mohd. son of Ismail and several other persons of the village were watching the performance by the DJ. The complainant alleged that Hakku son of Deenu called his colleagues Shokeen, Sakeem and Naseem telephonically who came there around 1:30 A.M. on their motorcycle and started dancing in a vulgar manner. When the complainant objected to the same then Shokeen took out his country-made pistol and aimed at complainant's daughter, who was standing by his side. It is alleged that Naseem and Sakeem exhorted Shokeen to shoot at her and that they would take care of the consequences and upon which Shokeen fired at complainant's daughter Swaliya on her forehead and on account of the said shot, she fell down and died at the spot. A stampede took place and during which Shokeen, Naseem and Sakeem fled away from the spot alongwith country-made pistol on a motorcycle. Complainant's daughter Swaliya died on account of the firearm shot.

3. Upon receipt of said information by the police, a police party headed by SI Sheesh Ram reached at the spot. Inquest proceedings were conducted. The dead body was subjected to post-mortem examination. Statement of

witnesses were recorded under Section 161 Cr.P.C. Shokeen was arrested by the police on 1.5.2016. During interrogation, he suffered disclosure statement, pursuant to which he got recovered a country-made pistol alongwith a live as well as one fired cartridge.

4. Upon conclusion of investigation, challan was presented against the accused/appellant Shokeen on 28.7.2016 in the Court of Sub-Divisional Judicial Magistrate, Ferozepur Jhirka who upon finding that from the facts it appeared to be an offence under Sections 302, 109/34 IPC and Section 25 of the Arms Act, committed the case to the Court of Session vide order dated 8.9.2016 and the matter was entrusted to the Additional Sessions Judge, Mewat.

5. The learned Additional Sessions Judge, Mewat upon finding that the accused had *prima facie* committed an offence punishable under Section 302, 109/34 IPC and offence under Section 25 of the Arms Act framed charges against the accused accordingly to which the accused pleaded not guilty and claimed trial.

6. The prosecution, in order to substantiate its case, examined as many as 11 prosecution witnesses. PW-1 Head Constable Tejveer stated that on 1.5.2016, he was posted as Constable at Ferozepur Jhirka and on which date Shokeen/appellant was arrested by SI Sheesh Ram and was interrogated pursuant to which he suffered disclosure statement (Ex.PW-1/A) admitting his guilt.

7. PW-2 Constable Anil Kumar stated that on 30.4.2016, he had joined investigation with Investigating Officer Sheesh Ram, during the course of which three blood stained stones and blood stained soil was taken into

possession vide recovery memo Ex. PW-2/A. He further deposed that on 2.5.2016, the accused Shokeen, pursuant to his disclosure statement made earlier on 1.5.2016, got recovered a country-made pistol alongwith a live cartridge and an empty cartridge from village *Amarsingh ka Baas* falling under the jurisdiction of Police Station Sikri.

8. PW-3 Dr. Ravi Kant Sinha, Medical Officer, Civil Hospital Mandikhera, who had conducted the post-mortem examination on dead body of complainant's daughter proved the post-mortem report as Ex.PW-3/A.

9. PW-4 Isrial, who is the complainant stated in tune with the allegations levelled by him in the FIR to the effect that on the night intervening 29th and 30th of April 2016, when he alongwith his daughter was present in the house of Deenu in connection with festivities of *'Gauna ceremony'*, he had objected to the vulgar dance performed by Shokeen, Naseem and Sakeem and upon which Shokeen aimed and fired at his daughter leading to her death. However, his cross-examination was deferred and subsequently, when he was cross-examined, he stated in absolute contradiction of his examination-in-chief and stated that he could not identify the assailant who had fired at his daughter.

10. PW-5 Draftsman Dharampal, who had prepared the scaled site plan (Ex.PW-5/A) of the spot proved the same.

11. PW-6 Aas Mohd., who is an eye-witness as per the FIR stated that on 29.4.2016, when he alongwith his brother had gone to watch DJ program in the house of Deenu, he had heard noise of firing at about 1:30 a.m. He stated that at that time several persons were dancing and that some unknown person had fired at his cousin sister Swaliya and that the accused present in the Court

was not the person who had fired. The said witness was declared hostile and was cross-examined by the prosecution.

12. PW-7 Inspector Kartar Singh stated that on 16.7.2016, upon completion of investigation, he had prepared report under Section 173 Cr.P.C. PW-8 Constable Suraj and PW-9 Constable Mehar Chand are formal witnesses who had handled the case property and have stated that as long as the same remained in their possession, they did not tamper with the same. PW-10 SI Sheesh Ram is the Investigating Officer who has stated in detail about the investigation conducted by him and has proved various documents prepared during the course of investigation. PW-11 Dr. Vinod Kumar Singh, Senior Scientific Officer, Scene of Crime, FSL has stated that he had visited the spot of occurrence on 30.4.2016 and had examined the same scientifically and had made his report Ex.PW-11/A.

13. Upon closure of prosecution evidence, the statement of accused was recorded in terms of Section 313 Cr.P.C. wherein the entire incriminating evidence was put to the accused/appellant to enable him to explain the same but the appellant denied the entire prosecution case in toto and took a plea that he has been falsely implicated. The accused, however, did not lead any evidence.

14. The trial Court, upon appraisal of the evidence on record, held that the prosecution had led sufficient evidence to establish the charges framed against the accused and thus, held that the accused had committed offence punishable under Section 302 IPC and under Section 25 of the Arms Act and accordingly sentenced him to undergo imprisonment for life, apart from imposing fine vide judgment dated 11.7.2018 and order dated 12.7.2018.

15. The learned counsel for the appellant, while assailing the impugned judgment, submitted that the accused has falsely been implicated in the present case and that there is not even an *iota* of evidence to connect him with the alleged occurrence. It has been submitted that out of the two eye-witnesses examined by the prosecution, while one i.e. PW-6 Aas Mohd. has completely resiled, the other witness i.e. the complainant though did depose against the appellant in his examination-in-chief but when he stepped into the witness box for cross-examination, he also turned hostile and did not support the case of prosecution. The learned counsel has further submitted that no sanctity can be attached to the alleged recovery of pistol, a live cartridge and an empty cartridge at the instance of the accused pursuant to his alleged disclosure statement and that it is very convenient for the police to foist a country-made pistol or cartridges on an accused. It has been submitted that it remains unexplained as to why the accused would store a used cartridge, as is alleged to have been recovered at the instance of the appellant.

16. The learned counsel further submitted that although the trial Court has given much weightage to the report of the FSL pertaining to the ballistic examination of the allegedly recovered country-made pistol but the said reports (Ex.PX & Ex. PY) of FSL cannot be looked into as no opportunity whatsoever was ever afforded to the appellant to cross-examine the expert. The learned counsel in order to hammer forth his aforesaid submission places reliance upon *2010 (9) SCC 286 – Keshav Dutt verus State of Haryana*; *2013 (8) RCR (Criminal) 3004 – Sunil Kumar versus State of Punjab* and *1995(2) KLT 659 – P.C. Poulose versus State of Kerala.*

17. On the other hand, the learned State counsel submits that the present case is apparently a case where the appellant has been successful in winning over the complainant and the witnesses and that it is well settled that the testimony of even a hostile witness can be looked into and that a part of the statement, which is found to be convincing and finds some corroboration from some other evidence can be relied upon. The learned State counsel further submitted that Section 293 Cr.P.C clearly mandates that the report of Government Scientific Experts as specifically defined in sub-section (4) can be used as evidence in any inquiry, trial or other proceedings under the Cr.P.C. and the expert is not to be summoned at the mere asking of the prosecution or the defence but can be summoned only if the Court thinks fit to summon him in a given case. It has further been submitted that it is only if a special request for cross-examination is made by the accused that he may be called for his cross-examination and since no such request was ever made by the accused in the present case, there is no ground to discard expert's testimony, which fully lends corroboration to the case of the prosecution.

18. This Court has considered rival submissions addressed before this Court. The issues raised may be crystallized as under :

(i) whether the statement of complainant PW-4 Israil who supported the case of prosecution in examination-in-chief but resiled during cross-examination, can be relied upon ?

(ii) whether the disclosure statement (Ex. PW-1/A) made by accused is of any advantage to prosecution ?

(iii) whether the report of FSL (Ex.PX), in the absence of cross-examination of expert is admissible in evidence and can be relied upon ?

Testimony of resiled witness :

19. The foremost issue raised before this Court is as to whether the testimony of complainant PW-4 Israil deserves to be relied upon or not, given the fact that he resiled from his earlier statement during cross-examination. The learned counsel for the appellant would contend that as PW-4 (complainant) has totally resiled in his cross-examination, his statement is to be discarded in toto. The statement of PW-4 towards examination-in-chief and his cross examination which were recorded on 11.5.2017 and on 12.12.2017 respectively are reproduced herein-under:

EXAMINATION-IN-CHIEF : (Recorded on 11.5.2017)

"Stated that in the intervening night of 29th-30th day of fourth month year 2016 DJ program was going on in the house of Deenu son of Ismu, Yahya son of Deenu on the occasion of *Gauna*. I alongwith my daughter Sualiya had gone there to watch DJ program. Aashu and Arif were also present there. Deenu son of Hakmuddin called three companions namely Shokeen son of Jai Singh, r/o village Ghatmika, Rajasthan, Naseem son of Mubeen r/o Beewa and Sakim son of Janu r/o Beewa who came on DJ and started doing nude dance. When I objected then Shokeen put country made pistol on daughter Sualiya. Hakmuddin, Sakim and Naseem said that open fire we will manage thereafter. Thereupon Shokeen shot fire which hit forehead of my daughter then she fell down and stampede had taken place. When we became busy in care of my daughter Sualiya meanwhile Shokkin, Hakku, Nasim and Sakim fled away from the spot. Sualiya succumbed to injuries at the spot. My daughter was murdered on the instructions of Hakku, Nasim and Sakim and they are responsible to the death of Sualiya. I reported the matter before police and my statement Ex.PW4/A was recorded which bears my thumb impression. Accused Shokeen is present in the Court.

XXXXXXXXXXXXXX by Sh. Liyakat Ali, Advocates for accused.

Cross-examination is deferred as prosecution has moved an application u/s 319 Cr.P.C.

RO&AC

(Shashi Chauhan)
Addl. Sessions Judge, Mewat
(Exclusive Court)
11.5.2017

CROSS-EXAMINATION : (Recorded on 12.12.2017)

XXXXXXXXXXXXXX by Sh. Liyakat Ali, Advocates for accused.

It is correct that at the time of incident there was darkness. There were lots of people around there as a programme was going on at that time. I could not identify that person who had fired upon my daughter. I had mentioned the name of accused Shokeen in Ex.PW4/A due to misunderstanding. It is wrong to suggest that in collusion with the accused I am deposing falsely.

RO&AC

(Shashi Chauhan)
Addl. Sessions Judge, Mewat
12.12.2017"

20. On perusal of the testimony of PW-4, it is invincible that in examination-in-chief, he has supported the prosecution story in entirety but in the cross-examination he has taken the path of prevarication. The question as regards reliability upon statement of a hostile witness came up before a three Judges Bench of Hon'ble Supreme Court, in *Bhagwan Singh v. State of Haryana, (1976) 1 SCC 389*, wherein it laid down that even if a witness is characterised as a hostile witness, his evidence is not completely effaced. The said evidence remains admissible in the trial and there is no legal bar to base a conviction upon his testimony, if corroborated by other reliable evidence.

21. In *Khuji @ Surendra Tiwari v. State of Madhya Pradesh, (1991) 3 SCC 627*, Hon'ble Supreme Court, after referring to the authorities in *Bhagwan Singh* (supra), *Rabindra Kumar Dey v. State of Orissa, (1976)4 SCC 233* and *Syad Akbar v. State of Karnataka, (1980) 1 SCC 30*, opined that the evidence of such a witness cannot be effaced or washed off the record altogether, but the same can be accepted to the extent it is found to be dependable on a careful scrutiny thereof.

22. Hon'ble Supreme Court, in *C. Muniappan v. State of T.N., (2010) 9 SCC 567*, after referring to a plethora of judgments held as under:

> "83. Thus, the law can be summarised to the effect that the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence."

23. Recently, when the same question again came up before Hon'ble Apex Court in *Rajesh Yadav v. State of U.P., (2022) 12 SCC 200*, Hon'ble Supreme Court, while relying upon while relying upon *Bhagwan Singh's case*(supra), *Khujji's case*(supra) and *C. Muniappan's case* (supra), reiterated the position of law while stating as under:

> "22. The expression "hostile witness" does not find a place in the Evidence Act. It is coined to mean testimony of a witness turning to depose in favour of the opposite party. We must bear it in mind that a witness may depose in favour of a party in whose favour it is meant to be giving through his chief-examination, while later on change his view in favour of the opposite side. Similarly, there would be cases where a witness does not support the case of the party starting from chief-examination itself. This classification has to be borne in mind by the Court. With respect to the first

> category, the Court is not denuded of its power to make an appropriate assessment of the evidence rendered by such a witness. Even a chief-examination could be termed as evidence. Such evidence would become complete after the cross-examination. Once evidence is completed, the said testimony as a whole is meant for the court to assess and appreciate qua a fact. Therefore, not only the specific part in which a witness has turned hostile but the circumstances under which it happened can also be considered, particularly in a situation where the chief-examination was completed and there are circumstances indicating the reasons behind the subsequent statement, which could be deciphered by the court. It is well within the powers of the court to make an assessment, being a matter before it and come to the correct conclusion."

24. It is painful, to note that while examination-in-chief of PW-4 was recorded on 11.5.2017, he was cross-examined on 12.12.2017 i.e. after a whopping delay of 7 months. There is nothing on record to justify the said delay. The recording of cross-examination was unduly prolonged, affording all the time to accused and his supporters to win him over. These facts will have to be taken into consideration while considering the evidentiary value of his evidence. Keeping in view the consistent view of the Hon'ble Supreme Court, we are of the opinion that it would be safe to rely on that part of the statement of this witness, which is corroborated by other evidence on record. Since the prosecution, in order to lend corroboration to version of complainant, relies upon the factum of recovery of the weapon of offence at the instance of the accused and on the report of FSL, the same are being discussed separately herein-under.

Value of Disclosure Statement of accused :

25. It is the case of prosecution that while the occurrence took place on the night intervening 29th and 30th of April 2016, the accused was arrested on 1.5.2016 and upon interrogation he made disclosure statement (EX.PW1/A) confessing his guilt and as regards having concealed the country-made pistol in fodder room near the house of his uncle. It is further the case of prosecution that the accused, in furtherance of his disclosure statement led the police party to the place where he had kept the pistol concealed and got the same recovered alongwith one live cartridge and an empty cartridge. It is further the case of prosecution that upon examination of the pistol and the fired cartridge by the ballistic expert at FSL, it was reported that the recovered fired cartridge had been fired from the recovered pistol.

26. In *Dhananjoy Chatterjee alias Dhana v. State of West Bengal, 1994(2) SCC 220,* it has been held that entire statement made by an accused person before the police is inadmissible in evidence being hit by Sections 25 and 26 but that part of his statement which led to the discovery of the articles is clearly admissible under Section 27 of the Act. It is also held that the Court must disregard the inadmissible part of the statement and take note only of that part of his statement which distinctly relates to the discovery of the articles pursuant to the disclosure statement made by the accused. It is further held that the discovery of the fact in this connection includes the discovery of an object found, the place from which it is produced and the knowledge of the accused as to its existence.

27. A similar view has been expressed by Hon'ble Apex Court in *Gola Konda Venkateswara Rao v. State of A.P., 2003(9) SCC 277,* while holding that a

disclosure statement of an accused leading to recovery of crime articles from concealed place gets fortified and confirmed by such discovery and therefore, the information as regards articles recovered cannot be held to be held false. The relevant extract reads as under:

> "14. The provisions of Section 27 of the Evidence Act are 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 consequently the said information can safely be allowed to be given in evidence because if such information is further fortified and confirmed by the discovery of articles or the instrument of crime and which leads to the belief that the information about the confession made as to the articles of crime cannot be false. (See ***S.C. Bahri v. State of Bihar (AIR 1994 Supreme Court 23420 at page SC 2448).*** As already noticed M.O.3, M.O.4, and M.O.5 were retrieved from the well with the help of swimmers, as there was a water level of 6 ½ feet. M.O.2, M.O.6 and M.O.8 are the pieces of langa dug out and unearthed at the disclosure of the appellant. These materials were not found lying on the surface of the ground but they were found inside the well, which is 6 ½ feet deep of water, with the help of swimmers and were found after being dug out and unearthed only after place was pointed out by the appellant. It is not found from the place where public can have free access. Therefore, there is no reasonable apprehension with the material exhibits being planted to rope in the appellant with the crime."

28. Hon'ble Supreme Court in *Pawan Kumar v. State of U.P., (2015) 7 SCC 148*, while discussing the scope of admissibility of information furnished by accused in terms of Section 27 in context of Section 25 of the Evidence Act held as follows:

> " …… It is settled principle of law that statements made by an accused before a police official which amount to confession is barred under Section 25 of the Evidence Act. This prohibition is, however, lifted to some extent by Section 27.
>
> …….. In the light of Section 27 of the Evidence Act, whatever information given by the accused in consequence of which a fact is discovered only would be admissible in the evidence, whether such information amounts to confession or not……....

> …… Simply denying their role without proper explanation as to the knowledge about those incriminating materials would justify the presumption drawn by the courts below as to the involvement of the accused in the crime. The confession given by the accused is not the basis for the courts below to convict the accused, but it is only a source of information to put the criminal law into motion. Hence, the accused cannot take shelter under Section 25 of the Evidence Act."

29. As already noted above, in the instant case the discovery of the pistol was pursuant to the disclosure statement made by the accused immediately after the arrest and the offending arm was recovered at the place pointed out by the accused which had been concealed under fodder. The said place was neither a public place nor could be said to be known to all. Further, there is no mandate of law that the disclosure statement has to be made in the presence of an independent witnesses so as to be admissible in evidence. Rather custodial interrogation of an accused is normally never done in public. The disclosure statement and the recovery effected in pursuance thereof stands more than amply proved from the consistent testimonies of PW-1 HC Tejveer Singh, PW-2 C.Anil Kumar and PW-10 SI Sheesh Ram. The said police officials had done so in discharge of their official duties and had no enmity with accused so as to falsely implicate him. As such, the contention of the learned counsel that no independent witness was associated at the time of recording disclosure statement does not carry any weight and is rejected. As such, the factum of recovery of the pistol at the instance of the accused, shortly after the occurrence from a place which is not accessible to all is a fact which cannot be brushed aside easily. Rather, it is a strong circumstance against the accused, which coupled with other circumstance could certainly be helpful to the case of prosecution.

Admissibility of Expert's report without cross-examination :

30. In order to consider the contention of learned counsel for appellant as regards non-admissibility of expert's report on account of the accused not having been afforded an opportunity of cross-examining the said expert witness, it is apposite to refer to the provisions of Section 293 Cr.P.C., which read as under:

> **293. Reports of certain Government scientific experts.** -
>
> (1) Any document purporting to be a report under the hand of a Government scientific expert to whom this Section applies, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code.
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> (2) The Court may, if it thinks fit, summon and examine any such expert as to the subject-matter of his report.
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> (3) Where any such expert is summoned by a Court and he is unable to attend personally, he may, unless the Court has expressly directed him to appear personally, depute any responsible officer working with him to attend the Court, if such officer is conversant with the facts of the case and can satisfactorily depose in Court on his behalf.
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> (4) This section applies to the following Government scientific experts, namely :-
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> (a) any Chemical Examiner or Assistant Chemical Examiner to Government;
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> (b) the Chief Controller of Explosives;
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> (c) the Director of the Finger Print Bureau;
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> (d) the Director, Haffkeine Institute, Bombay;
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> (e) the Director [Deputy Director or Assistant Director] of a Central Forensic Science Laboratory or a State Forensic Science Laboratory;
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> (f) the Serologist to the Government.
>
> (g) any other Government Scientific Expert specified, by notification, by the Central Government for this purpose.

31. A Division Bench of this Court in *1982 PLR 566 Bhagwan Dass vs. State of Punjab* held as under :

> "14. On the larger canons of construction as well, it is not possible to accede to the view canvassed on behalf of the petitioners. A reading of Section 293 of the Code, as also the corresponding provisions of the earlier Section 510, plainly indicates the clear policy of the Legislature to obviate the examination of expert witnesses in this context and making their reports admissible *perse*. Reference to sub-section (3) would indicate that even where such an expert is summoned (unless expressly directed to appear personally), he may depute any other responsible officer working with him to depose about the same on his behalf. To read this provision so stringtly as to make every (or any) person handling the sample in the office of the Chemical Examiner, as a necessary witness, would, therefore, be in a way defeating the very purpose of the statute itself. It is plain that in practice it can hardly be possible to entrust all the samples to the Chemical Examiner himself or to the particular Analyst who may later come to examine the same. Therefore, the insistence upon obtaining the evidence or deposition of all employees of the Chemical Examiner's office, who would meanwhile be concerned with the safe transmission of the sample originally received, may well render nugatory the purpose underlying section 293 of the Code and inordinately delay the conclusion of criminal trials which, it is the policy of the law, to conclude expeditiously.
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> 15. Viewed from any angle, it seems to follow that Section 293 of the Code renders admissible the report of the Chemical Examiner as a whole, including the averments with regard to the condition of the sample and the seals thereon and the manner of its receipt. The answer to the second question, posed at the outset is, therefore, rendered in the affirmative."

32. In *2004(3) RCR(Criminal) 146 State of Punjab vs. Balraj Singh Takhar*, another Division Bench of this Court was posed a similar question while being confronted with an earlier judgment of Single Bench rendered in the case of *Nirmal v. State of Punjab, 2001(4) RCR (Criminal) 622*, In *Nirmal Singh's* case (supra), a Single Bench of this Court had held that a report of the handwriting expert, working in the Forensic Science Laboratory, would not be *per-se* admissible under Section 293 of the Criminal Procedure Code, 1973 unless the maker of the said report is summoned and examined as a witness and the other side is given opportunity to cross-examine the witness.

However, the Division Bench in *Balraj Singh Takhar's* case disagreed with the view taken in *Nirmal Singh's* case and held as under:

"20. With respect, but regretfully, we are unable to adopt the view expressed by the learned Single Judge, in the case of *Nirmal (supra)*, as a proposition of law. Various Clauses of sub-section (4) of Section 293 of the Code illustratively state which of the reports are admissible in evidence by their mere tender and it may not be necessary or obligatory on the part of any of the authorities to summon the author of the report it Court. Unambiguously purpose behind the provisions of Section 293 of the Code is to avoid appearance of the experts before the Court, provided they hold designated office in terms of section 293 of the Code. The view expressed in *Nirmal's case* (supra) appears to be somewhat in contradiction to the terms of provisions of Section 293 of the Code. The provisions provide that any document purporting to be a report under the hand of a Government Scientific expert to whom this section applies, may be used as evidence in any inquiry, trial or Court proceedings. The report of such Government Scientific Expert is *per se* admissible in evidence, provided the Government Scientific Expert, who is author of the report and should be specifically designated as Government Scientific Expert as enumerated under sub-section (4) of Section 293 of the Code. Director, Deputy Director or Assistant Director of a Central Forensic Science Laboratory or a State Forensic Science Laboratory is one of such designated experts whose report and analysis are admissible in evidence. In our opinion, it would not be necessary to summon the expert even to prove the said report. However, the power of the Court to summon and examine the expert, if the Court thinks it proper under sub-section (2) of the Section 293 of the Code cannot be restricted. The discretion of the Court would have to be exercised in consonance with the settled principles of law and keeping in view the facts and circumstances and subject matter of the report by the Court. The purpose of provision of Section 293 of the Code appears to liberalise encumbersome procedure and strict submission and proof of the report submitted by the Government Scientific Expert, as defined under the provisions of Section 293 of the Code. In our view, it may not be in consonance with the scheme of the amended provisions of Section 293 of the Code to require the report to be proved by production of the expert in Court, which would otherwise be covered under the provisions of the said sections. The view expressed in Nirmal's case (supra) appears to be neither in consonance with the provisions of section 293 of the Code nor in conformity with the law enunciated by the Hon'ble Apex Court in State of Maharashtra case (supra), upon correct application of the principle of *ratio decidendi.* The judgment of the Hon'ble Apex Court in ***State of Maharasthra v. Damu's case (supra)*** would not be a precedent in the facts and circumstances of

the present case. The view expressed in Nirmal's case imposes limitations or renders certain reports inadmissible which are not so spelt out in the section, in our humble view. This obviously would have the effect of rendering a document inadmissible, which otherwise would be admissible if tendered in accordance with law. What is expressed is the rule and implications are precluded. *"Expressum facit cessare tacitum"* is a well accepted principle of interpretation of statutes. Having given our serious consideration to the matter in issue, we hold that the view expressed in Nirmal's case (supra) to this extent is not a correct exposition of principle of law involved. It is to some extent opposed to the language of Section 293 read with sub-section (4) of the Code and the reliance upon the judgment of the Hon'ble Supreme Court in the case of State of Maharashtra (supra) probably was not quite proper. The view in Nirmal's case thus, would be *per incuriam* and therefore, is not a binding precedent."

33. A three Judges Bench of Hon'ble Supreme Court, in a recent case reported as *2023(3)RCR(Criminal) 310 Santosh @ Bhure vs. State (G.N.C.T.)*, reversed the finding of High Court which had discarded the report of Govt Expert for want of cross-examination. The relevant extract is reproduced herein-under:

"59. We shall now examine whether the specimens used for comparison were duly proved to be that of Neeraj. In the instant case, according to the prosecution evidence, the specimen signatures and handwritings of Neeraj were obtained during investigation. Memorandum/documents in connection therewith including the specimens were produced, proved and marked exhibits thereby proving that they were properly kept and dispatched to FSL along with the disputed suicide letter for obtaining expert opinion. Genuineness of those specimens have not been questioned by Neeraj. The only defence taken is that the specimens of handwriting and signature were obtained by compulsion. As we have already found that such objection was unsustainable therefore, once genuineness of the specimens was not disputed, the specimens were available for comparison and were rightfully used for obtaining expert report. In such a scenario, the net result would be that the FSL report, which was provided by a government scientific expert specified in Section 293 of the Code, was admissible regardless of the fact that the expert was not examined as a witness. More so, when the defence filed no application to summon the expert for cross-examination. Consequently, the finding of the High Court with regard to the FSL report being inadmissible is erroneous and is, accordingly, set aside".

34. The judgments relied upon by the counsel for the appellant will not hold ground in light of ratio of recent judgment by a three Judges Bench of Hon'ble Supreme Court, in *Santosh @ Bhure's* case (supra). It is noteworthy that in the present case the appellant never ever made any request for cross-examination of the expert. In these circumstances, there was no occasion for the trial Court to have summoned the expert for the purpose of cross-examination. As such this Court has no hesitation in holding that the report of FSL is not to be discarded and reliance can be placed upon the same.

35. Reverting back to the evidence on record, a perusal of examination-in-chief of the complainant reveals that he stated consistently with the first version that the accused had fired from a country-made pistol at forehead of his daughter. The said version finds corroboration from medical evidence as well. As per PW-3 Dr. Ravi Kant Sinha, he had conducted post-mortem examination alongwith Dr. Vikram Singh, Dr. Manish Khurana and Dr. Raveesh Kanodia on the dead-body and had opined that death was on account of fire-arm injury. The relevant extract from the Post-mortem report (Ex. PW-3/B) reads as under:

> " Remarks by Medical Officers:- In our opinion the cause of death in this case was hemorrhage and shock due to fire arm injury as described and it was sufficient to cause death in ordinary course of nature. The injuries were antemortem in nature."

36. The prosecution version further gets fortified from the factum of recovery of weapon of offence at the instance of the accused. The accused was arrested one day after the occurrence i.e. on 1.5.2016 and upon interrogation he made the disclosure statement (Ex.PW-1/A) wherein while admitting his guilt he disclosed that he had concealed the pistol in the fodder room near the house

of this uncle. Thereafter on next day i.e. on 2.5.2016, he led the police party to the said place and got the pistol and one live cartridge and fired cartridge recovered. The prompt recovery of weapon at the instance of accused leaves no room for suspicion as regards factum of recovery. Further, the ballistic report (Ex.PX) also is in tune with the case of prosecution. Under these circumstances where sufficient evidence is available to corroborate prosecution version, the statement of the complainant, despite his turning hostile during cross-examination can safely be relied upon. As already noticed above, it is apparently a case where the accused had been successful in winning over the complainant during the inordinate delay of 7 months in recording cross-examination after the examination-in-chief had been recorded.

37. Noticing this malady afflicting our judicial system, time and again, directions have been issued by Hon'ble Supreme Court to the effect that the trial Courts must carry out the mandate of Section 309 of the Criminal Procedure Code, 1973 to the effect that adjournments should be avoided. In *State of U.P. v. Shambhu Nath Singh and Others, (2001) 4 SCC 667,* Hon'ble Supreme Court observed that once examination of witnesses begins, the same has to be continued from day-to-day until all witnesses in attendance have been examined and that the Court has to record reasons for deviating from the said course. Again in *Vinod Kumar v. State of Punjab, (2015)3 SCC 220,* Hon'ble Supreme Court noted how unwarranted adjournments during the trial jeopardise the administration of Justice. Thus, it is well known that delay in recording statements of witnesses can prove hazardous to the case of prosecution. In the instant case also, though the complainant was won over at

a later stage but a part of his statement i.e. his examination-in-chief fully substantiates the case of prosecution and which also finds corroboration from factum of recovery of weapon (pistol) at the instance of accused shortly after occurrence and also from the report of ballistic expert, as already discussed above.

38. As an upshot of the discussion made above, we do not find any ground for setting aside the conviction of appellant. The impugned judgment dated 11.7.2018 and the order of sentence dated 12.7.2018 are upheld.

39. Finding no merit in appeal, the same is hereby dismissed.

(GURVINDER SINGH GILL)
JUDGE

15.12.2023 **(GURBIR SINGH)**
kamal **JUDGE**

Whether speaking/reasoned: **Yes**
Whether reportable: **Yes**