THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Appellate Jurisdiction)

DATED : 9th June, 2025

DIVISION BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE
THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

Crl.A. No.32 of 2024

Appellant : Navin alias Nar Bahadur Baraily

versus

Respondent : State of Sikkim

Appeal under Section 374(2) of the
Code of Criminal Procedure, 1973

Appearance

Mr. Kazi Sangay Thupden, Advocate (Pro Bono Legal Aid Counsel) for the Appellant.

Mr. Yadev Sharma, Additional Public Prosecutor with Ms. Pema Bhutia, Assistant Public Prosecutor for the State-Respondent.

JUDGMENT

Meenakshi Madan Rai, J.

1. Whether the Appellant committed the murder of the victim, his grandmother, is the question that craves determination in the instant matter.

2. The Court of the Learned Sessions Judge, Special Division-I, Gangtok District, Sikkim, vide the impugned Judgment and Order on Sentence, both dated 30-08-2024, in Sessions Trial Case No.01 of 2023 (*State of Sikkim* vs. *Navin alias Nar Bahadur Baraily*), convicted the Appellant of the offence under Section 302 of the Indian Penal Code, 1860 (for short, "IPC") and sentenced him to undergo simple imprisonment for life and to pay a fine of ₹ 500/- (Rupees five hundred) only.

3. Before embarking on the merits of the matter, for clear comprehension, a brief summation of the Prosecution narrative is essential. The Appellant then aged about 29 years, attacked the

victim, his grandmother, aged about 82 years, with a sharp object on her throat on 01-11-2022, around 1130 hours, at *Majhi Gaon*. She was evacuated to the Rangpo PHC by her relatives where they reached at around 1155 hours. The Doctor on Duty PW-2, informed the Station House Officer (SHO), Rangpo PS, via "Call Book Intimation", that, a lady had been brought dead to the PHC with her throat cut, which could possibly be homicidal. At around 1224 hours, the SHO Rangpo PS, also received information from Lnk Dawa Tamang, PW-18 about the assault. At around 1259 hours, the Appellant was apprehended near the riverside and brought to the Rangpo PS by PW-18, with the help of other persons of the locality, including off duty India Reserve Battalion (IRBn) personnel, who were off duty and reside in the same colony as the deceased and the Appellant.

(i) Investigation was endorsed to PW-22, the IO of the case, who on completion of the investigation filed Charge-Sheet against the Appellant, under Sections 302/201 of the IPC. Charge was framed against the Appellant under Section 302 of the IPC by the Trial Court, to which he entered a plea of "not guilty" and claimed trial. Such plea was followed by the examination of twenty-two witnesses of the Prosecution, to prove its case beyond reasonable doubt. The Appellant was afforded the opportunity of explaining the incriminating evidence appearing against him as provided by Section 313 of Code of Criminal Procedure, 1973, in which he claimed innocence. After hearing the final arguments of the parties and considering the evidence on record, the Learned Trial Court pronounced the impugned Judgment of conviction and Order on Sentence.

4. While concluding that the Appellant was responsible for the murder, the Learned Trial Court observed as follows;

(i) the testimonies of PWs 4, 5, 6, 7 and 20 establish that the Appellant, his sister, his niece and the deceased used to reside together at *Majhi Gaon* at the relevant time.

(ii) The evidence of PWs 1, 9, 10 establish that at the time of the incident they saw the Appellant and the deceased together.

(iii) PW-1, PW-9, PW-10 and PW-18 all heard a lady scream. PW-10 saw the Appellant standing near the old lady who was on the ground. The Appellant looked towards them and fled towards the riverside. PW-10 and PW-18 both noticed a profusely bleeding cut injury on the neck of the deceased.

(iv) Thereafter, PW-18 went in pursuit of the Appellant along with people from the locality.

(v) MO-1, a surgical blade was furnished by the Appellant on enquiry by one person from him about the weapon of offence employed. MO-1 was identified by PW-1, PW-2 and PW-9 as the article found in the possession of the Appellant. It was retrieved from him, by PW-18, Dawa Tamang (plainclothes Constable) as deposed by PW-10.

(vi) PW-2 found blood stains on the clothes of the Appellant, i.e., red sleeveless vest MO-2 and blue jeans pant, MO-3 which were identified by PWs 1, 2, and 10 as the same clothes worn by the Appellant on the relevant day.

(vii) *En route* to the riverside, PW-6 recovered a mobile phone, MO-6 lying on the ground which he handed over to PW-18. The articles were later formally seized by PW-12. PW-6 corroborated the evidence of PW-18 with regard to the seizure of the

Material Objects, i.e., MOs 1, 6 and 7. PWs 6, 7, 13 and 20 were the witnesses to seizure of the above MOs and the blood samples, MO-4 MO-8, MO-13 and MO-15.

(viii) The Appellant was taken to the Rangpo PS by PW-22 PI Pradeep Chettri and PW-12 PI Sameer Pradhan, accompanied by PW-18 (Dawa Tamang).

(ix) PW-13 and PW-20 proved that, in their presence, the Police collected the blood samples of the deceased MO-13 and MO-15, from the place of occurrence and sealed both in the presence of PW-20.

(x) PW-2, the Medical Officer on duty on 01-11-2022 at Rangpo Public Health Centre (PHC) examined the victim and opined that she was "brought dead". PW-2 suspected it to be a case of homicide and informed the Rangpo PS vide "Call Book Intimation" Exhibit P-1/PW-2.

(xi) The Appellant voluntarily informed PW-2, during his medical examination, that, he had used a surgical blade to injure the victim, which resulted in her fatality. PW-2 found the Appellant medically fit at the time of his medical examination on 01-11-2022 and 02-11-2022.

(xii) PW-2 identified MO-4 as the two pieces of gauze containing air-dried blood, obtained by her from the Appellant, during his medical examination.

(xiii) PW-17 the Scientist at the Central Forensic Science Laboratory (CFSL), Kolkata, established that MOs 1, 2, 3, 6, 7 articles belonging to the Appellant, contained blood stains which matched the dried blood samples MO-8, of the deceased.

(xiv) Although they were declared hostile by the Prosecution, the Court took into consideration the relevant evidence of PW-3 and PW-5 about the Appellant producing the surgical blade MO-1, containing blood stains, from his pocket.

(xv) The Court also considered the evidence of PW-11, the Doctor, who conducted the autopsy on the victim and found an incised wound on her and opined that, the cause of death was to the best of his knowledge, due to shock and haemorrhage as a result of the cut injury in her throat. PW-11 identified MO-8 two filter papers which contained the blood samples of the deceased, collected by him.

(xvi) PW-14, the Head Constable proved that on 19-11-2022 he had submitted one sealed box MO-12, containing the Material Exhibits listed in Exhibit P-19/PW-14 to the office of the Deputy General of Police (*sic*, Deputy Inspector General of Police), Crime Branch, CID, Police HQ, Gangtok (hereinafter, "DIG, Crime Branch, PHQ").

(xvii) PW-14 proved that, on 28-06-2023, he received the sealed box MO-12, containing the Case Exhibits, along with the opinion report, from the office of the DIG, Crime Branch, PHQ.

(xviii) The evidence of PWs 15 and 19 and the contents of Exhibit P-21/PW-15, Movement Order and Exhibit P-22/PW-15 Authorisation Letter, established that both PWs 15 and 19 were authorised to proceed to the CFSL, Kolkata to deliver the articles and later collect the examined Case Exhibits from the CFSL along with opinion/report, which they complied.

(xix) PW-16, according to the Court, had proved that on 01-11-2022 the Officer-in-Charge PW-12, handed over to him the

sealed Case Exhibits, seized by the PW-22 Investigating Officer (IO). PW-16 entered the details of the Case Exhibits in the *Malkhana* Register, Exhibit P-23/PW-16 as per the details mentioned in the Seizure Memo furnished PW-12.

(xx) PW-16 proved that all the Case Exhibits in a sealed and packed condition were received by the Rangpo PS from CFSL and forwarded to the Court, through Head Constable PW-14.

(xxi) The Court thus concluded *inter alia* that, the circumstantial evidence produced by the prosecution unerringly pointed to the guilt of the Appellant and had thereby proved beyond reasonable doubt that, the death of Suk Maya alias Man Maya Biswakarma, the victim, had been caused by the Appellant.

5. Before this Court, Learned Counsel for the Appellant raised the contentions that *(a)* the articles alleged to have been seized from the Appellant, i.e., MO-1, MO-6, MO-7, were in fact seized from the possession of PW-18 and not from the Appellant, raising doubts about its origin. *(b)* That, the seizure of MO-1 raises doubts about the veracity of the Prosecution case as PW-1 stated that PW-18 took MO-1 from the possession of the Appellant, while PW-18 stated that the Appellant handed over MO-1 to him. *(c)* The Appellant was forwarded for medical examination to the Rangpo PHC, at 02.50 p.m. under Police escort and thereby Police custody, but the Prosecution relies on the alleged voluntary extra-judicial confession of the Appellant, whereby he confessed to PW-2 that he had injured the victim, which resulted in her death. This alleged statement relied on by the Learned Trial Court is in fact inadmissible in evidence, having been made whilst he was in Police custody and thus hit by the provisions of Section 26 of the Indian Evidence Act,

1872 (for short "IEA"). *(d)* The evidence of PW-1, who deposed that, on seeing them the Appellant stated that, he wanted to surrender and walked towards them, PW-2 who under cross-examination by the Prosecution stated that the Appellant told them that he wanted to surrender before the Police, PW-5, who under cross-examination by the Prosecution stated that the Appellant told Dawa Police, PW-18, that he cut the throat of the deceased by using the surgical blade and the evidence of PW-18 that, the Appellant took out one surgical blade from the back pocket of his pants and told them that he had cut the old lady with the said article, are all inadmissible in evidence having been made when he was in Police custody, PW-18 being a Police personnel and having apprehended the Appellant. Strength was garnered from the observation of the Supreme Court in ***Perumal Raja alias Perumal*** vs. ***State, Rep. By Inspector of Police***[1] where in a similar context, it was reasoned that, the so called confession were *ex facie* inadmissible in evidence as the accused persons were presented at the Hospital by the Police Officers, having been arrested in the said case. The Supreme Court was therefore not inclined to accept the admission of the accused as incriminating pieces of evidence, relevant under Section 21 of the IEA. *(e)* It was next contended that there was a delay of twenty-eight days in forwarding the Material Objects to the RFSL for scientific examination and the chain of custody of the Material Objects lacks documentation. The CFSL guidelines with regard to custody of Material Objects were also not complied with rendering the MOs exhibited by the Prosecution as inconsequential. *(f)* MOs 2 and 3 instead of being seized by the Police was seized by the Doctor

[1] 2024 SCC OnLine SC 12

(PW-2) and made over to PW-22 I.O., sans a Seizure Memo as also MO-8 which was obtained by PW-11 and made over to PW-22 without a Seizure Memo. These circumstances vitiate the Prosecution case making the evidence unreliable. Strength on this count was drawn from the decision of the Supreme Court in ***Allarakha Habib Memon and Others*** vs. ***State of Gujarat***[2]. *(g)* The next contention was that PW-20 is a stock witness and his evidence lent no credence to the Prosecution case, towards this end reliance was placed on ***Dharamveer Prasad*** vs. ***State of Bihar and Another***[3]. *(h)* That, no Test Identification Parade (TIP) was conducted to establish the identity of the Appellant as he was unknown to the Prosecution witnesses, reliance was placed on ***Abdul Waheed Khan alias Waheed and Others*** vs. ***State of A.P.***[4], where the Supreme Court elucidated the purpose of conducting a TIP. It was urged that in view of the anomalies that have been pointed out in the Prosecution case, the Appellant deserves an acquittal by setting aside the impugned Judgment and Order on Sentence.

6. *Per contra*, the Learned Additional Public Prosecutor contended that, the Prosecution witnesses including PW-1, PW-9, PW-10 and PW-18, unequivocally identified the Appellant and also stated that the Appellant was present at the riverside and in possession of MO-1, which they all witnessed. The evidence of PWs 1, 9 and 10 further corroborates the sequence of events of the incident and the fact that the Appellant fled from the place of occurrence after he assaulted the victim. The prolonged interaction of these witnesses with the Appellant thereby proves that they

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[2] (2024) 9 SCC 546
[3] (2020) 12 SCC 492
[4] (2002) 7 SCC 175

recognise him, which establishes his identity. There is no reason to doubt it in light of the evidence produced. The forensic report of PW-17 supports the Prosecution case that the wearing apparels of the Appellant contained the victim's blood samples, while the recovery of MO-6 and MO-7 was proved by PW-6, augmented by the Appellant admitting to PW-1, PW-2, PW-9 and PW-10 of his complicity in the offence by way of the extra-judicial confession. For an extra-judicial confession to be considered by the Court, the primary requirement is the voluntariness of the Appellant's statement which has been duly proved by the aforementioned PWs. The evidence unerringly points to the guilt of the Appellant, therefore the impugned Judgment and Order on Sentence warrant no interference.

7. Due consideration has been afforded to the arguments advanced before us, the documents including the evidence and the impugned Judgment have been carefully perused.

8. Dealing first with the non-holding of the TIP and thus the alleged nebulous identity of the Appellant, it is relevant to notice that PW-1 heard a lady scream loudly on 01-11-2022, at around 11 a.m. when he along with his colleagues were resting in their barracks after their night duty. He witnessed the Appellant dressed in MO-2, in a state of panic, who on noticing PW-1 and his colleagues, loosened his grip on the lady, who fell to the ground while he fled towards the riverside. PW-3 was declared hostile and under cross-examination by the Appellant asserted that his statement was not recorded by the Police in connection with this case. He nevertheless admitted that the Appellant had shown him a blood stained surgical knife near the river, which was handed over to

PW-18. PW-9 a colleague of PW-1, also saw the Appellant, running towards the river, after they heard a lady screaming opposite their barracks. PW-10 corroborated the evidence given by PWs 1 and 9 in this context. PW-18 fortified their evidence on the identity of the Appellant. It thus emerges that these witnesses have seen the Appellant not only at the crime scene but also at the riverside where he had fled. They have evidently had a prolonged interaction with him, affording them adequate time and opportunity to identify him. The Supreme Court in ***Matru alias Girish Chandra*** vs. ***The State of Uttar Pradesh***[5] propounded that identification tests do not constitute substantive evidence and are primarily meant for the purpose of helping the investigating agency with an assurance that their investigation is on the correct path. The identification can only be used as corroborative evidence of the statement in Court.

(i) It may be elaborated here that the purpose of holding TIP is to assist the investigating agency with an assurance that their progress with the investigation into the offence is on the right track, and to ensure that a wrong person is not identified as the perpetrator of the offence. That, the memory of the witnesses is reliable with regard to the identification of the Appellant. However, it is not necessary when the accused is arrested at the place of occurrence, enabling witnesses to identify the accused by way of his physical features and other special features and thereafter producing him before the Police. Such an encounter provides sufficient time for the witnesses to look at and identify the accused. TIP is therefore, not imperative in every case, but is only for the purpose of preventing mistaken identity. In ***Abdul Waheed Khan***

[5] (1971) 2 SCC 75

(*supra*) relied on by the Appellant the afore-detailed principles have been enumerated. The credible and cogent evidence of the above Prosecution Witnesses with graphic details, thereby establishes the identity of the Appellant. We do not find any reason to doubt the Prosecution case on this aspect.

9. Addressing the issue of extra-judicial confession, the Appellant was taken to PW-2 for his medical examination, before whom he voluntarily disclosed that he had injured the victim, using a surgical blade, upon which she succumbed to her injury. Although Exhibit P-2/PW-2, the medical requisition, bears the date, 01-11-2022, the time is not recorded. As per PW-2 she examined him at 02.50 p.m. As per the I.O., the Appellant was apprehended by locals at the river banks at around 12.55 hours. The Arrest Memo, Exhibit P-31/PW-22, indicates that the Appellant was arrested on 01-11-2022, at 16.08 hours. He was therefore sent to PW-2 before the formal arrest. That having been said, would the mere forwarding of the Appellant by the Police, for medical examination, under Police escort, render his extra-judicial confession to PW-2 inadmissible in evidence and was the Appellant in Police custody or not at 02.50 p.m., in view of the fact that he was formally arrested only at 16.08 hours as per the Arrest Memo, Exbt P-31/PW-22.

(i) At this juncture, apposite reference is made to ***Kishore Chand*** vs. ***State of Himachal Pradesh***[6] the question that arose before the Court was whether extra-judicial confession made by an accused to a village Pradhan in the company of whom the accused was left, by the Police Officer, after apprehending him, would be said to have been made while in Police custody. While answering the question in

[6] (1991) 1 SCC 286

the affirmative a two Judges Bench of the Supreme Court held as follows and also observed therein as to why such a statement would be inadmissible in evidence;

> **"8.** Admittedly PW 10 and the appellant do not belong to the same village. From the narrative of the prosecution story it is clear that PW 27, and PW 10 came together and apprehended the appellant from his village and was taken to Jassur for identification. After he was identified by PW 7 and PW 8 it was stated that he was brought back to Gaggal village of PW 10 and was kept in his company and PW 27 left for further investigation. Section 25 of the Evidence Act provides that no confession made to a police officer shall be proved as against a person accused of any offence. Section 26 provides that no confession made by any person while he is under custody of the police officer, unless it be made in the immediate presence of a magistrate, shall be proved as against such person. Therefore, the confession made by an accused person to a police officer is irrelevant by operation of Section 25 and it shall (*sic* not) be proved against the appellant. Likewise the confession made by the appellant while he is in the custody of the police shall not be proved against the appellant unless it is made in the immediate presence of the magistrate, by operation of Section 26 thereof. Admittedly the appellant did not make any confession in the presence of the magistrate. The question, therefore, is whether the appellant made the extra-judicial confession while he was in the police custody. It is incredible to believe that the police officer, PW 27, after having got identified the appellant by PW 7 and PW 8 as the one last seen in the company of the deceased would have left the appellant without taking him into custody. It is obvious, that with a view to avoid the rigour of Sections 25 and 26, PW 27 created an artificial scenario of his leaving for further investigation and kept the appellant in the custody of PW 10, the Pradhan to make an extra-judicial confession. Nothing prevented PW 27 to take the appellant to a Judicial Magistrate and have his confession recorded as provided under Section 164 of the CrPC which possesses great probative value and affords an unerring assurance to the court. It is too incredulous to believe that for mere asking to tell the truth the appellant made voluntarily confession to PW 10 and that too sitting in a hotel. The other person in whose presence it was stated to have been made was not examined to provide any corroboration to the testimony of PW 10. Therefore, it would be legitimate to conclude that the appellant was taken into the police

> custody and while the accused was in the custody, the extra-judicial confession was obtained through PW 10 who accommodated the prosecution (*sic* appellant). Thereby we can safely reach an irresistible conclusion that the alleged extra-judicial confession statement was made while the appellant was in the police custody. It is well settled law that Sections 25 and 26 shall be construed strictly. Therefore, by operation of Section 26 of the Evidence Act, the confession made by the appellant to PW 10 while he was in the custody of the police officer (PW 27) shall not be proved against the appellant. In this view it is unnecessary to go into the voluntary nature of the confession etc.**"**

10. In ***Ram Singh*** vs. ***Sonia and Others***[7] the Supreme Court observed *inter alia,* that, the crucial test as to whether an accused is in police custody when his confession is recorded is whether at that time he is a free man or his movements are controlled by the police, either by themselves or through some agencies employed by them, for the purpose of securing the confession. A temporary absence of a policeman or a police officer would not terminate his custody and the accused shall be deemed to be in the custody of the police in such circumstances.

11. Thus, on the anvil of the observations above, evaluating the word 'custody', which has not been defined in the IEA, the implication is that there must be some restraint or surveillance, upon the liberty of the citizen, either directly or indirectly, caused by the Police, it does not necessarily mean custody after formal arrest. In the present case the evidence of PWs 1, 5, 6, 7, 9 and 10 reveals that the Appellant was apprehended on the river banks, by several persons including PW-18 a Police personnel. As per PW-1, when he and his colleagues reached the riverside they were informed by two small boys that, the Appellant was sitting by the river. Some other persons also arrived there. On seeing them the Appellant stated

[7] (2007) 3 SCC 1

that he wanted to surrender and walked towards them. The cross-examination of PW-3 revealed that the accused told him and the IRBn personnel, who accompanied him, that, he wanted to surrender *before the Police*. The evidence of PW-4 corroborated that of PW-3. PW-5 evidently had no personal interaction with the Appellant. As per PW-6, when they enquired about the incident from the Appellant, he showed the blade (MO-1), which he took out from his pocket and informed them that he had cut his grandmother with the same blade. As per PW-9 the Appellant told them that "*he tried to kill since long and on the said day he killed*". The surgical blade was taken out by the Appellant from his pocket and as per PW-9 handed over to "*one plainclothes duty personnel*". PW-10 deposed that some people of the locality asked the Appellant about the incident, upon which he took out one surgical blade from his pocket and told them that he slit the lady's neck with the blade. PW-18 fortified the evidence of all the aforementioned witnesses with regard to the self-incriminating confession made by the Appellant. The all important query which prevails upon us now is whether the identity of PW-1, PW-9 and PW-18 as Police personnel was in the knowledge of the Appellant. From an examination of all relevant witnesses it appears that the Appellant was unaware of their identity as the Appellant's evidence reveals that he wanted to surrender "before the police", despite the presence of the three Police personnel. While navigating through the circumstances in the Prosecution evidence, we are not inclined to consider the extra-judicial confession made by the Appellant to PW-2, as he was, without a doubt in Police custody then having been accompanied by a Police constable for his medical examination, upon which Section

26 of the IEA kicks into place. However, the extra-judicial confession made before the other Prosecution Witnesses as already discussed are voluntary extra-judicial confessions and can well be accepted and considered for the purposes of his conviction.

12. While addressing the arguments regarding the seizures of the MOs, the formal seizure of MO-1 was made by PW-12. The then SHO, Rangpo PS, who deposed that he seized MOs 1, 6 and 7 from the possession of PW-18 (who had produced the Appellant before the Rangpo PS) duly preparing a Seizure Memo Exbt. P-6/PW-6 in the presence of independent witnesses PW-6 and PW-7. This evidence was corroborated by PW-18. The Appellant was also present at the time of the seizure. Although it may relevantly be noticed that, PW-7 deposed that MOs 1, 6 and 7 were lying on the table of PW-12, when he was summoned to the PS to witness the seizure. PW-18 himself testified that, the Appellant took out MO-1 from his trouser pocket near the river and on his asking handed over MO-1 to PW-18. He along with the Appellant then reached the crime scene and the Appellant was taken to the PS by the I.O. PW-22 and PW-12 accompanied by PW-18. From the evidence that has been extracted hereinabove, we are of the considered view that no suspicion arises with regard to the seizure of MO-1 as the Prosecution witnesses have given categorical evidence on the recovery and seizure. The seizure of the blood stained MOs 6 and 7 find fortification in the evidence of PWs 6, 7 and 12.

(i) MO-4, 2 ml. of dried blood sample of the Appellant was collected by PW-2, inserted into MO-5 (envelope) and handed over to the Police as also MO-2 and MO-3 wearing apparels of the Appellant. No cross-examination was conducted with regard to the

absence of Seizure Memos on MOs 2, 3 and 4 being handed over to PW-22 by PW-2 and such objection has been raised in Appeal for the first time.

(ii) PW-11 proved the collection of MO-8 in two numbers (collectively) as the filter papers which contained the blood samples of the deceased and MO-9 the envelope containing MO-8. These facts stood undecimated under cross-examination of the witnesses. Although no Seizure Memo was prepared for MOs 8 and 9, here too, no cross-examination was conducted. There are no major contradictions in the evidence with regard to the seizures which would strike at the root of the Prosecution case or render the seizures inadmissible in evidence.

13. The next argument pertained to the chain of custody of the Material Objects detailed hereinabove. PW-12 was cross-examined with regard to MOs 1, 6 and 7, but no question was put to him about the chain of custody. PW-14, was the Head Constable posted at the Rangpo PS at the relevant time, who submitted MO-12 one sealed box containing the Case Exhibits to the DIG, Crime Branch, PHQ, on 19-11-2022. He identified Exhibit P-19/PW-14 as the same scanned copy of Case Exhibit details, with the seal and signature of the Inspector General of Police, on the box. On 28-06-2023 PW-14 received back the Exhibits, along with the original opinion, from the Office of the DIG, Crime Branch, PHQ, which he identified as Exhibit P-20/PW-14. These facts stood the test of cross-examination.

(i) PW-15 and PW-19 were responsible for taking the Case Exhibits to the CFSL, Kolkata, vide the Movement Order, dated 30-05-2023, issued by the DIG, Crime Branch, PHQ. On 08-06-2023,

the DIG, Crime Branch, PHQ issued another Authorisation Letter to PWs 15 and 19, directing them to collect the Case Exhibits with the opinion/report from the Office of the Director, CFSL, Kolkata, which they complied with.

(ii) PW-15 and PW-19 admitted to the absence of Handing and Taking Over Memos with regard to the Exhibits ferried to and fro by them, however the existence of the Authorisation Letters and compliance by PW-15 and PW-19 thereto remained undemolished.

(iii) PW-22 the IO of the case, detailed the journey of the Case Exhibits, from seizure, to the Expert at the CFSL, Kolkata, in terms of the Movement Order, issued by the concerned authority and its return. The deposition of PW-14, PW-15 and PW-19 therefore find corroboration in the evidence of PW-22.

(iv) The CFSL Expert PW-17 deposed that, one sealed cloth packet forwarded by the DIG, Crime Branch, PHQ, was received by him through Special Messenger and the matter assigned to him for DNA analysis on 15-02-2023, which he commenced on the same day and completed on 28-02-2023. The articles MOs 1, 2, 3, 4, 6, 7, 8, 10, 13, 15 and 17 were identified by him. The witness at no point lamented that the Exhibits forwarded to him had either deteriorated or were rendered unfit for examination in any other manner nor was he aggrieved with the quantities forwarded for conducting the relevant scientific tests. It is not the Appellant's case that the articles were contaminated by the Prosecution by the delayed forwarding, to the detriment of the Appellant.

(v) Learned Counsel for the Appellant had relied on ***Dharamveer Prasad*** (*supra*) to augment his submission regarding the chain of custody. Having perused the matter, we find that it deals

with non-compliance of Section 42 of the Narcotic Drugs and Psychotropic Substances Act, 1985, which is irrelevant for the present purposes, the Act being self-contained and dealing with controlled substance, drug abuse and matters thereto. In ***Prakash Nishad alias Kewat Zinak Nishad*** vs. ***State of Maharashtra***[8] the Supreme Court was considering the delay in sending the samples, which remained unexplained, and raised the possibility of contamination and the concomitant prospect of diminishment in value which could not be reasonably ruled out. Consequently, it was observed that "without any delay" and "chain of custody" aspects which are indispensible to the vitality of such evidence were not complied with and accordingly, the DNA report was not taken into consideration by the Supreme Court.

(vi) In the present matter, despite a prolix cross-examination of PW-14, PW-15, PW-19 and PW-22, no question were put to the witnesses with regard to the chain of custody or the delay that occurred in forwarding the Material Objects to the CFSL for examination. In such circumstances, it cannot be assailed before the Appellate Forum for the first time. The CFSL guidelines pressed into service before this Court, were in fact never brought to the notice of the witnesses during their cross-examination.

(vii) The allegation that PW-20 is a stock witness is not borne by any evidence on record nor was any such evidence furnished by the Appellant.

14. In conclusion, it emerges that PW-2 admittedly failed to identify MO-4 as the blood sample of the Appellant. PW-17 although identified Exhibit 'J' as the two pieces of cotton gauze bearing the

[8] (2023) 16 SCC 357

blood samples of the Appellant (Exhibit P-29/PW-17), but made no mention of Exhibit 'J' in his report, except that along with Exhibit 'K' it was subjected to DNA isolation. Thus, no positive identification of Exhibit 'J' was made by PW-17. The Prosecution thereby failed to prove that MO-4 or Exhibit 'J' are the blood samples of the Appellant.

(i) Nonetheless, PW-17 found that the blood stains on the wearing apparels of the Appellant, being MO-2 and MO-3 were of the deceased, having compared them with Exhibit 'K' (MO-8) blood sample identified to be that of the deceased by PW-17. PW-17 not only found the blood of the victim on the wearing apparels of the Appellant, but also on the surgical blade (MO-1). The above evidence augmented by the evidence of the Appellant that he had cut his grandmother with a knife and sought to surrender before the Police establishes that the Appellant had committed the offence. Even if we are to exclude the extra-judicial confession, though made entirely voluntarily by the Appellant to the Prosecution witnesses, the other evidence on record unequivocally establishes the fact that the Prosecution has proved its case beyond reasonable doubt against the Appellant for committing the murder of his grandmother.

15. The impugned Judgment and Order on Sentence are accordingly upheld.

16. The Appeal is dismissed and disposed of.

17. No order as to costs.

18. Copy of this Judgment be forwarded to the Learned Trial Court for information along with its records.

19. A copy of this Judgment be made over to the Appellant/convict through the Jail Superintendent, Central Prison, Rongyek and to the Jail Authority for information.

(Bhaskar Raj Pradhan)
Judge
09-06-2025

(Meenakshi Madan Rai)
Judge
09-06-2025

Approved for reporting : **Yes**

ds/sdl