2025 INSC 927

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 3343 OF 2025
(Arising out SLP (Crl.) No. 10595 of 2025)

NARAYAN YADAV **...APPELLANT**

VERSUS

STATE OF CHHATTISGARH **...RESPONDENT**

J U D G M E N T

J.B. PARDIWALA, J.,

For the convenience of exposition, this judgment is divided into the following parts:-

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1. Leave granted.

2. This appeal arises from the judgment and order passed by the High Court of Chhattisgarh in Criminal Appeal No. 1538 of 2021 dated 16.01.2025 (*hereinafter* referred to as "**Impugned Judgment**") by which the appeal preferred by the appellant herein against the judgment and order of conviction passed by the Trial Court came to be partly allowed by altering the conviction of the appellant herein from Section 302 of the Indian Penal Code, 1860 (for short, "**the IPC**") to Section 304 Part I of the IPC.

A. FACTUAL MATRIX

3. The appellant (original accused) himself lodged a First Information Report (FIR) dated 27.09.2019 with Korba Kotwali Police Station, District Korba, which came to be registered for the offence punishable under Section 302 of the IPC. The FIR reads thus:

> *"On 27.09.2019 I came to the P.S. Kotwali on the orders of Chowki Incharge for getting the Nalsi number in Crime No. 0/19 for the offence under Sections 302 and 380 IPC respectively. Nalsi number detailed that I am residing in the house of my relative Rajnath Yadav situated near the Pump House, Korba. I earn my livelihood as a milk supplier. I started work with Ram Babu Sharma, Thekedar past 15-20 days. Ram Babu Sharma used to call me for having drink at his house. Ram Baby invited me at his place on 24.09.2019. I went to his house at about 9.30 PM situated at Parshuram Nagar. We both sat and drank. Meanwhile I showed my girlfriend's pic from my mobile. Then he said that get your girlfriend at my place and leave her with me for one night. Hearing this quarrel started between us and we started to fight. Then I picked up a knife kept in his house for cutting vegetables and inflicted blows on*

his neck and stomach in anger and killed him by hitting a log of wood on his head, legs and private part. Thereafter I dragged his dead body near the bedside and covered it with a cloth that I took out from an almirah. Then I ransacked his room and took away his purse containing Rs. 7000 and keys of the Bolero car. I locked the room from outside and got the Bolero outside and locked the main door and ran towards Bilaspur in Bolero. I met with an accident at Raipur Road, ahead of Bilaspur. When I regained consciousness in morning I found myself in Saragaon Hospital where my mother and Yuvraj Yadu both were present. Today morning I came to Korba after getting discharged from the hospital. I informed about the incident to my mausa Rajnath Yadav, Rahul Chaudhari and Anuj Yadav and also informed the CSEB Chowki. Then I went to Ram Babu's house with police people and pointed out the dead body. My vehicle is at the place of accident. I am filing the report. Investigation to be done."

4. Upon registration of the FIR, lodged by the appellant himself, at the concerned Police Station referred to above, the investigation commenced. It appears that the investigating officer, after arresting the appellant, took him to the house of the deceased. After breaking open the house, the dead body of the deceased was found lying in a pool of blood inside his residence. A *panchnama* of the scene of offence was prepared in the presence of *panch* witnesses. The knife allegedly used by the appellant to inflict injuries on the deceased was recovered from the place of occurrence, i.e., the deceased's house. The clothes and other articles were also collected in presence of the *panch* witnesses by preparing a *panchnama*, and were sent to the Forensic Science Laboratory for chemical analysis. The clothes of the appellant were discovered at his instance from

the residence of his uncle, Rajnath Yadav, by drawing a *panchnama*.

5. The inquest *panchnama* of the dead body of the deceased was drawn in the presence of the *panch* witnesses. The body of the deceased was then sent for post-mortem examination. The post-mortem report Exhibit-PW 34 recorded the following injuries found on the body of the deceased:

> *"1. An incised wound was present on the right Side of his forehead measuring 6 X 2 cm, deep to the bone, in a vertical position.*
> *2. An incised wound was present on the left side of his forehead, the size of which was 3 X 1 cm, deep to the bone, in a vertical position.*
> *3. An incised wound was present on the skin of the right parietal bone of the head, which was 4 X 2 cm, deep to the bone, in a vertical position.*
> *4. An incised lesion was present on the skin of the left parietal bone, which was 5 X 2 cm in size, deep to the bone, in a vertical position, which was on the middle part of parietal bone.*
> *5. An incised wound was present on the anterior part of the abdomen at the iliac fossa part which was 4 X 2 X 2 cm in size.*
> *6. An incised wound was present on the upper right side of the chest, below the clavicle bone, the size of which was 4 X 2 deep to the upper part of the lung."*

6. The cause of death, as stated in the post-mortem report and duly proved by Dr. R.K. Divya (PW-10), was shock resulting from excessive bleeding from the right side of the chest and injury to the upper lobe of the right lung.

7. Upon completion of the investigation, chargesheet came to be filed by the investigating officer, and the filing of chargesheet for the

offence enumerated above culminated in the Sessions Case No. 9 of 2020.

8. The Sessions Judge, Korba, proceeded to frame charge against the appellant for the offences mentioned above. The appellant pleaded not guilty to the charge and claimed to be tried. In the course of trial, the prosecution examined the following witnesses:
   i. PW-1, Rahul Kumar Chaudhari, *panch* witness (turned hostile);
   ii. PW-2 Kamlesh Kumar, son of the deceased;
   iii. PW-3 Ravishanker Sriniwas, *panch* witness;
   iv. PW-4 Rampradeep Sharma, *panch* witness;
   v. PW-5 Ramniwas Sharma, *panch* witness;
   vi. PW-6 Jalashwar Sakar, *panch* witness;
   vii. PW-7 B.R. Chaudhary, Police witness
   viii. PW-8 Sudama Prasad, Police witness
   ix. PW-9 Ashok Pandey, Police witness
   x. PW-10 Dr. R.K. Divya, Medical Officer who performed post-mortem
   xi. PW-11 Hemant Patle, Police witness

9. The prosecution also adduced a few documentary evidence.

10. Upon completion of the recording of the oral evidence, further statement of the appellant was recorded under Section 313 of the Code of Criminal Procedure, 1973. In his statement, the appellant claimed that he had been falsely implicated in the alleged crime and asserted his complete innocence.

11. The Trial Court, upon overall appreciation of both oral as well as the documentary evidence on record, reached the conclusion that the prosecution had proved its case beyond reasonable doubt, and accordingly, it held the appellant guilty of the offence of murder and sentenced him to undergo life imprisonment.

12. The appellant being aggrieved by the judgment and order of conviction passed by the Trial Court, preferred an appeal before the High Court. The High Court partly allowed the appeal and altered the conviction of the appellant from Section 302 of the IPC to Section 304 Part I of the IPC, giving benefit of *Exception 4* to Section 300 of the IPC.

13. In such circumstances referred to above the appellant is before this Court with the present appeal.

B. ANAYLYSIS

14. Having heard the learned counsel appearing for the parties and having gone through the materials on record the only question that falls for our consideration is whether the High Court committed any error in passing the Impugned Judgment.

15. The entire judgment of the High Court could be termed as erroneous on several grounds, there are errors apparent on the face of the Impugned Judgment. The first misstep was that the High Court examined the medical evidence on record in detail and then proceeded to directly corroborate it with the contents of the FIR lodged by the appellant himself. In doing so, the High Court

fully convinced itself that the appellant's statements in the form of a confession, as contained in the FIR, were entirely corroborated by the medical evidence. Consequently, the Court concluded that the appellant had committed the alleged crime. In arriving at such a conclusion, the High Court overlooked some fundamental principles of criminal jurisprudence.

a. Confessional FIR is not Admissible in Evidence

16. The FIR was exhibited in evidence (Exhibit P-14) through the oral evidence of the investigating officer PW-9, Ashok Pandey. PW-9 proved his signature on the FIR and also identified the signature of the first informant i.e., the appellant-herein. However, the other contents of the FIR could not have been proved through the testimony of the investigating officer. A plain reading of the FIR indicates that it contains a confession by its maker i.e., the appellant-herein, regarding the commission of the alleged offence.

17. A statement in an FIR can normally be used only to contradict its maker as provided in Section 145 of the Indian Evidence Act, 1872 (for short, "**the Act of 1872**"), or to corroborate his evidence as envisaged in Section 157 of the Act of 1872. In a criminal trial, however, neither of these is possible as long as the maker of the statement is an accused in the case, unless he offers himself to be examined as a witness [See: ***Nisar Ali* v. *State of U.P.*, 1957 SCC OnLine SC 42**]. J.L. Kapur, J. speaking for the three-Judge Bench in that decision has observed:

> *"A first information report is not a substantive piece of evidence and can only be used to corroborate the statement of the maker under Section 157, Evidence Act, or to contradict it under Section 145 of that Act.*

It cannot be used as evidence against the maker at the trial if he himself becomes an accused, nor to corroborate or contradict other witnesses. In this case, therefore, it is not evidence."

(Emphasis supplied)

18. The High Court failed to take into consideration two landmark decisions of this Court – one in ***Faddi* v. *State of M.P.***, **1964 SCC OnLine SC 123**, and the other in ***Aghnoo Nagesia* v. *State of Bihar***, **1965 SCC OnLine SC 109**.

19. In ***Faddi*** (*supra*), this Court stated that:

"*If the FIR given by the accused contains any admission as defined in Section 17 of the Evidence Act there is no bar in using such an admission against the maker thereof as permitted under Section 21 of the Act, provided such admission is not inculpatory in character. In the judgment their Lordships distinguished Nisar Ali case [AIR 1957 SC 366] in the following lines:*

> *"But it appears to us that in the context in which the observation is made and in the circumstances, which we have verified from the record of that case, that the Sessions Judge had definitely held the first information report lodged by the co-accused who was acquitted to be inadmissible against Nisar Ali, and that the High Court did not refer to it at all in its judgment, this observation really refers to a first information report which is in the nature of a confession by the maker thereof. Of course, a confessional first information report cannot be used against the maker when he be an accused and necessarily cannot be used against a co-accused*."

(Emphasis supplied)

20. In ***Aghnoo Nagesia*** (*supra*), this Court sounded a note of caution that when the statement in the FIR given by an accused contains incriminating materials and it is difficult to sift the exculpatory portion therefrom, the whole of it must be excluded from evidence.

21. In ***Faddi*** (*supra*), the issue before this Court was whether the FIR lodged by the accused himself therein was admissible in evidence. In the facts of the said case, this Court held that the objection to the admissibility of the FIR lodged by the appellant was not sound, as the FIR only contained a few admissions, and those admissions did not amount to a confession so as to render the entire FIR inadmissible in evidence. We quote the relevant observations made by this Court in ***Faddi*** (*supra*) as under:

> "*14. It is contended for the appellant that the first information report was inadmissible in evidence and should not have been therefore taken on the record. In support, reliance is placed on the case reported as Nisar Ali v. State of U.P [AIR 1957 SC 366]. We have considered this contention and do not see any force in it.*
> *15. The report is not a confession of the appellant. It is not a statement made to a police officer during the course of investigation. Section 25 of the Evidence Act and Section 162 of the Code of Criminal Procedure do not bar its admissibility. The report is an admission by the accused of certain facts which have a bearing on the question to be determined by the Court viz. how and by whom the murder of Gulab was committed, or whether the appellant's statement in Court denying the correctness of certain statements' of the prosecution witnesses is correct or not. Admissions are admissible in evidence under Section 21 of the Act. Section 17 defines an admission to be a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact,*

and which is made by any of the persons, and under the circumstances, thereafter mentioned, in the Act. Section 21 provides that admissions are relevant and may be proved as against a person who makes them. Illustrations (c), (d) and (e) to Section 21 are of the circumstances in which an accused could prove his own admissions which go in his favour in view of the exceptions mentioned in Section 21 to the provision that admissions could not be proved by the person who makes them. It is therefore clear that admissions of an accused can be proved against him.

16. The Privy Council, in very similar circumstances, held long ago in Dal Singh v. King Emperor [LR 44 IA 137] such first information reports to be admissible in evidence. It was said in that case at p. 142:

> *"It is important to compare the story told by Dal Singh when making his statement at the trial with that what he said in the report he made to the police in the document which he signed, a document which is sufficiently authenticated. The report is clearly admissible. It was in no sense a confession. As appears from its terms, it was rather in the nature of an information or charge laid against Mohan and Jhunni in respect of the assault alleged to have been made on Dal Singh on his way from Hardua to Jubbulpur. As such the statement is proper evidence against him.…*
>
> *It will be observed that this statement is at several points at complete variance with what Dal Singh afterwards stated in Court. The Sessions Judge regarded the document as discrediting his defence. He had to decide between the story for the prosecution and that told for Dal Singh."*

Learned counsel for the appellant submits that the facts of that case were distinguishable in some respects from the facts of this case. Such a distinction, if any, has no bearing on the question of the admissibility of the report. The report was held admissible because it was not a confession and it was helpful in determining the matter before the Court.

17. In Nisar Ali case [AIR 1957 SC 366] Kapur, J. who spoke for the Court said, after narrating the facts:

> *"An objection has been taken to the admissibility of this report as it was made by a person who was a co-accused. A first information report is not a substantive piece of evidence and can only be used to corroborate the statement of the maker under Section 157, Evidence Act, or to contradict it under Section 145 of that Act. It cannot be used as evidence against the maker at the trial if he himself becomes an accused, not to corroborate or contradict other witnesses. In this case, therefore, it is not evidence."*

It is on these observations that it has been contended for the appellant that his report was inadmissible in evidence. Ostensibly, the expression 'it cannot be used as evidence against the maker at the trial if he himself becomes an accused' supports the appellant's contention. But it appears to us that in the context in which the observation is made and in the circumstances, which we have verified from the record of that case, that the Sessions Judge had definitely held the first information report lodged by the co-accused who was acquitted to be inadmissible against Nisar Ali, and that the High Court did not refer to it at all in its judgment, this observation really refers to a first information report which is in the nature of a confession by the maker thereof. Of course a confessional first information report cannot be used against the maker when he be an accused and necessarily cannot be used against a co-accused. Further, the last sentence of the above-quoted observation is significant and indicates what the Court meant was that the first information report lodged by Qudratullah, the co-accused, was not evidence against Nisar Ali. This Court did not mean — as it had not to determine in that case — that a first information report which is not a confession cannot be used as an admission under Section 21 of the Evidence Act or as a relevant statement under any other provisions of that Act. We find also that this

observation has been understood in this way by the Rajasthan High Court in State v. Balchand [AIR 1960 Raj 101] and in State of Rajasthan v. Shiv Singh [AIR 1962 Raj 3] and by the Allahabad High Court in Allahdia v. State [1959 All LJ 340] .

18. We therefore hold that the objection to the admissibility of the first information report lodged by the appellant is not sound and that the Courts below have rightly admitted it in evidence and have made proper use of it."

(Emphasis supplied)

22. We now proceed to look into the decision of this Court in **Aghnoo Nagesia** (*supra*). The following observations of this Court at paragraphs 9 to 18 are relevant and are quoted below:-

"9. Section 25 of the Evidence Act is one of the provisions of law dealing with confessions made by an accused. The law relating to confessions is to be found generally in Ss. 24 to 30 of the Evidence Act and Ss. 162 and 164 of the Code of Criminal Procedure, 1898. Sections 17 to 31 of the Evidence Act are to be found under the heading "Admissions". Confession is a species of admission, and is dealt with in Ss. 24 to 30. A confession or an admission is evidence against the maker of it, unless its admissibility is excluded by some provision of law. Section 24 excludes confession caused by certain inducements, threats and promises. Section 25 provides: "No confession made to a police officer shall be proved as against a person accused of an offence". The terms of S. 25 are imperative. A confession made to a police officer under any circumstances is not admissible in evidence against the accused. It covers a confession made when he was free and not in police custody, as also a confession made before any investigation has begun. The expression "accused of any offence" covers a person accused of an offence at the trial whether or not he was accused of the offence when he made the confession. Section 26 prohibits

proof against any person of a confession made by him in the custody of a police officer, unless it is made in the immediate presence of a Magistrate. The partial ban imposed by S. 26 relates to a confession made to a person other than a police officer. Section 26 does not qualify the absolute ban imposed by S. 25 on a confession made to a police officer. Section 27 is in the form of a proviso, and partially lifts the ban imposed by Ss. 24, 25 and 26.It provides that when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved. Section 162 of the Code of Criminal Procedure forbids the use of any statement made by any person to a police officer in the course of an investigation for any purpose at any enquiry or trial in respect of the offence under investigation, save as mentioned in the proviso and in cases falling under sub-s. (2), and it specifically provides that nothing in it shall be deemed to affect the provisions of S. 27 of the Evidence Act. The words of S. 162 are wide enough to include a confession made to a police officer in the course of an investigation. A statement or confession made in the course of an investigation may be recorded by a Magistrate under S. 164 of the Code of Criminal Procedure subject to the safeguards imposed by the section. Thus, except as provided by S. 27 of the Evidence Act, a confession by an accused to a police officer is absolutely protected under S. 25 of the Evidence Act, and if it is made in the course of an investigation, it is also protected by S. 162 of the Code of Criminal Procedure, and a confession to any other person made by him while in the custody of a police officer is protected by S. 26, unless it is made in the immediate presence of a Magistrate. These provisions seem to proceed upon the view that confessions made by an accused to a police officer or made by him while he is in the custody of a police officer are not to be trusted, and should not be used

in evidence against him. They are based upon grounds of public policy and the fullest effect should be given to them.

10. Section 154 of the Code of Criminal Procedure provides for the recording of the first information. The information report as such is not substantive evidence. It may be used to corroborate the informant under S. 157 of the Evidence Act or to contradict him under S. 145 of the Act, if the informant is called as a witness. If the first information is given by the accused himself, the fact of his giving the information is admissible against him as evidence of his conduct under S. 8 of the Evidence Act. If the information is a non-confessional statement, it is admissible against the accused as an admission under S. 21 of the Evidence Act and is relevant, see Faddi v. State of Madhya Pradesh, Cri. Appeal No. 210 of 1963, dated 24-1-1964: (AIR 1964 SC 1850), explaining Nisar Ali v. State of U. P., (S) AIR 1957 SC 366 and Dal Singh v. King Emperor, 44 Ind App 137: (AIR 1917 PC 25). But a confessional first information report to a police Officer cannot be used against the accused in view of S. 25 of the Evidence Act.

11. The Indian Evidence Act does not define "confession". For a long time, the Courts in India adopted the definition of "confession" given in Art. 22 of Stephen's Digest of the Law of Evidence. According to that definition a confession is an admission made at any time by a person charged with crime, stating or suggesting the inference that he committed that crime. This definition was discarded by the Judicial Committee in Pakala Narayanaswami v. Emperor, 66 Ind App 66 at p. 81: (AIR 1939 PC 47 at p. 52). Lord Atkin observed:

> *".....no statement that contains self exculpatory matter can amount to confession, if the exculpatory statement is of some fact which if true would negative the offence alleged to be confessed. Moreover, a confession must either admit in terms the offence, or at any rate substantially all the facts which constitute the offence. An admission of a gravely incriminating*

fact, even a conclusively incriminating fact, is not of itself a confession, e.g., an admission that the accused is the owner of and was in recent possession of the knife or revolver which caused a death with no explanation of any other man's possession." These observations received the approval of this Court in Palvinder Kaur v. State of Punjab (1), 1953 SCR 94 at p. 104; (AIR 1952 SC 354 at p. 357). In State of U. P. v. Deoman Upadhyaya, (1961) 1 SCR 14 at p. 21: (AIR 1960 SC 1125 at pp. 1128-1129). Shah, J., referred to a confession as a statement made by a person stating or suggesting the inference that he has committed a crime.

12. Shortly put, a confession may be defined as an admission of the offence by a person charged with the offence. A statement which contains self-exculpatory matter cannot amount to a confession, if the exculpatory statement is of some fact which, if true, would negative the offence alleged to be confessed. If an admission of an accused is to be used against him, the whole of it should be tendered in evidence and if part of the admission is exculpatory and part inculpatory, the prosecution is not at liberty to use in evidence the inculpatory part only. See Hanumant Govind v. State of M. P. 1952 SCR 1091 at p. 1111: (AIR 1952 SC 343 at p. 350) and 1953 SCR 94 : (AIR 1952 SC 354). The accused is entitled to insist that the entire admission including the exculpatory part must be tendered in evidence. But this principle is of no assistance to the accused where no part of his statement is self-exculpatory; and the prosecution intends to use the whole of the statement against the accused.

13. Now, a confession may consist of several parts and may reveal not only the actual commission of the crime but also the motive, the preparation, the opportunity, the provocation, the weapons used, the intention, the concealment of the weapon and the subsequent conduct of the accused. If the confession is tainted the taint attaches to each part of it. It is not permissible in law to separate one part and to admit

it in evidence as a non-confessional statement. Each part discloses some incriminating fact, i.e., some fact which by itself or along with other admitted or proved facts suggests the inference that the accused committed the crime, and though each part taken singly may not amount to a confession, each of them being part of a confessional statement partakes of the character of a confession. If a statement contains an admission of an offence, not only that admission but also every other admission of an incriminating fact contained in the statement is part of the confession.

14. If proof of the confession is excluded by any provision of law such as S.24, S. 25 and S. 26 of the Evidence Act, the entire confessional statement in all its parts including the admissions of minor incriminating facts must also be excluded, unless proof of it is permitted by some other section under as S. 27 of the Evidence Act. Little substance and content would be left in Ss. 24, 25 and 26 if proof of admission of incriminating facts in a confessional statement is permitted.

15. Sometimes, a single sentence in a statement may not amount to a confession at all. Take a case of a person charged under S. 301-A of the Indian Penal Code and a statement made by him to a police officer that "I was drunk: I was driving a car at a speed of 80 miles per hour. I could see A on the road at a distance of 80 yards; I did not blow the horn: I made no attempt to stop the car; the car knocked down A". No single sentence in this statement amounts to a confession; but the statement read as a whole amounts to a confession of an offence under S. 304-A of the Indian Penal Code, and it would not be permissible to admit in evidence each sentence separately as a nonconfessional statement. Again, take a case where a single sentence in a statement amounts to an admission of an offence. 'A' states "I struck 'B' with a tangi and hurt him". In consequence of the injury 'B' died. 'A' committed an offence and is chargeable under various sections of the Indian Penal Code. Unless he brings his case within one of the recognised exceptions, his statement amounts to an

admission of an offence, but the other parts of the statement such as the motive, the preparation, the absence of provocation, concealment of the weapon and the subsequent conduct, all throw light upon the gravity of the offence and the intention and knowledge of the accused, and negatives the right of private defence, accident and other possible defences. Each and every admission of an incriminating fact contained in the confessional statement is part of the confession.

16. If the confession is caused by an inducement, threat or promise as contemplated by S. 24 of the Evidence Act, the whole of the confession is excluded by S. 24. Proof of not only the admission of the offence but also the admission of every other incriminating fact such as the motive, the preparation and the subsequent conduct is excluded by S. 24. To hold that the proof of the admission of other incriminating facts is not barred by S. 24 is to rob the section of its practical utility and content. It may be suggested that the bar of S. 24 does not apply to the other admissions, but though receivable in evidence, they are of no weight, as they were caused by inducement, threat or promise. According to this suggestion, the other admissions are relevant but are of no value. But we think that on a plain construction of S. 24, proof of all the admissions of incriminating facts contained in a confessional statement is excluded by the section. Similarly, Ss. 25 and 26 bar not only proof of admission of an offence by an accused to a police officer or made by him while in the custody of a police officer but also admissions contained in the confessional statement of all incriminating facts related to the offence.

17. A little reflection will show that the expression "confession" in Ss. 24 to 30 refers to the confessional statement as a whole including not only the admissions of the offence but also all other admissions of incriminating facts related to the offence. Section 27 partially lifts the ban imposed by Ss. 24, 25 and 26 in respect of so much of the information whether it amounts to a confession or

not, as relates distinctly to the fact discovered in consequence of the information, if the other conditions of the section are satisfied. Section 27 distinctly contemplates that an information leading to a discovery may be a part of the confession of the accused and thus fall within the purview of Ss. 24, 25 and 26. Section 27 thus shows that a confessional statement admitting the offence may contain additional information as part of the confession. Again, S. 30 permits the Court to take into consideration against a co-accused a confession of another accused affecting not only himself but the other co-accused. Section 30 thus shows that matters affecting other persons may form part of the confession.

18. If the first information report is given by the accused to a police officer and amounts to a confessional statement, proof of the confession is prohibited by S. 25. The confession includes not only the admission of the offence but all other admissions of incriminating facts related to the offence contained in the confessional statement. No part of the confessional statement is receivable in evidence except to the extent that the ban of S. 25 is lifted by S. 27."

(Emphasis supplied)

23. The legal position, therefore, is this – a statement contained in the FIR furnished by one of the accused in the case cannot, in any manner, be used against another accused. Even as against the accused who made it, the statement cannot be used if it is inculpatory in nature nor can it be used for the purpose of corroboration or contradiction unless its maker offers himself as a witness in the trial. The very limited use of it is, as an admission under Section 21 of the Act of 1872, against its maker alone, and only if the admission does not amount to a confession.

24. To put the aforesaid in simpler terms, an FIR of a confessional nature made by an accused person is inadmissible in evidence against him, except to the extent that it shows he made a statement soon after the offence, thereby identifying him as the maker of the report, which is admissible as evidence of his conduct under Section 8 of the Act of 1872. Additionally, any information furnished by him that leads to the discovery of a fact is admissible under Section 27 of the Act of 1872. However, a non-confessional FIR is admissible against the accused as an admission under Section 21 of the Act of 1872 and is relevant.

25. Thus, the first error that the High Court committed was to read the contents of the FIR lodged by the appellant into evidence. As observed earlier, the FIR lodged by the appellant amounts to a confession, and any confession made by an accused before the police is hit by Section 25 of the Act of 1872. There was no question at all for the High Court to seek corroboration of the medical evidence on record with the confessional part of the FIR lodged by the appellant.

26. Once we say that the contents of the FIR are hit by Section 25 of the Act of 1872, being a confession before a police officer, the only remaining evidence on record is the medical evidence and the oral evidence of the *panch* witnesses.

b. Evidence of an Expert Witness is only Advisory in Nature

27. At this stage, we may look into some curious findings recorded by the High Court in its Impugned Judgement. We quote the relevant paragraphs as under:

> "*16. Now, the next question for consideration would be whether the accused/appellant herein is the perpetrator of the crime in question, which the learned trial Court has recorded in affirmative by relying upon the testimony of Dr. R.K. Divya (PW-10), who conducted post-mortem had opined that the cause of death is shock due to right side of haemothorax due to laceration of apex lobe of right lung secondary to incised wound over upper part of right side of front of chest. The Doctor ultimately opined through his report the nature of death to be homicidal. Thus, on the basis of testimony of Dr R.K. Divya (PW-10), it is clear that it is the appellant herein who on the fateful date and time has caused grievous injuries to the deceased, due to which he died. As such, the learned trial Court has rightly held that it is the appellant/accused who has caused injuries over the body of the deceased and caused his death. Accordingly, we hereby affirm the said finding.*
> *26. Conviction of the appellant is based on the evidence of Dr. R.K. Divya (PW-10), who has conducted postmortem on the body of deceased, vide Ex.P/34 and he found following injuries on the dead body of the deceased.*
> *27. According to Dr. R.K. Divya (PW-10). the cause of death of deceased is shock due to right side of haemothorax due to laceration of apex lobe of right lung secondary to incised wound over upper part of right side of front of chest and nature of death was homicidal. It has been also opined by the concerned Doctor that the injury caused to the deceased has been by the sharp edged weapon and the same may be caused by knife.*
> *28. Reverting to the facts of the present case, in light of principles of law laid down by their Lordships of*

the Supreme Court in the above stated judgments, it is quite vivid that the appellant himself has lodged a First Information Report alleging that, on the date of incident, some quarrel took place between the appellant and the deceased on the ground of showing the photograph of his girlfriend to the deceased and the deceased stated to bring his girlfriend and left her with him for one night, then out of anger and on sudden quarrel, the appellant assaulted the deceased with a knife on his chest, by which, he received grievous injury and died on the same day of the incident on account of excessive bleeding due to injury on his chest. It further appears from the fact on record that appellant after committing the crime in question, has lodged the report and upon his memorandum some incriminating articles have been recovered from his instance and upon further investigation, second memorandum has been recorded, by which, his clothes were recorded. It is apparent that though there was no premeditation on the part of the appellant to cause death of deceased, but he had given false version."

28. The High Court should have been mindful of the fact that a doctor is not a witness of fact. A doctor is examined by the prosecution as a medical expert for the purpose of proving the contents of the post-mortem report and the medical certificates on record, if any. An expert witness is examined by the prosecution because of his specialized knowledge on certain subjects, which the judge may not be fully equipped to assess. The evidence of such an expert is of an advisory character. The credibility of the expert witness depends on the reasons provided in support of his conclusions, as well as the data and material forming the basis of those conclusions. An accused cannot be held guilty of the offence of murder solely on the basis of medical evidence on record. So far as

the *panch* witnesses are concerned their depositions do not inspire any confidence.

29. Most of the *panch* witnesses turned hostile. If at all, the public prosecutor wanted to prove the contents of the *panchnama*s after the *panch* witnesses turned hostile, he could have done so through the evidence of the investigating officer. However, the investigating officer also failed to prove the contents of the *panchnama*s in accordance with law. Thus, there is nothing on record by way of evidence relating to any discovery of fact is concerned. In other words, no discovery of fact at the instance of the appellant, relevant and admissible under Section 27 of the Act of 1872, has been established.

c. Implication of Section(s) 27 and 8 of the Act of 1872

30. The learned counsel appearing for the State, strenuously urged before us to take into consideration the conduct of the appellant which, according to him, is relevant under Section 8 of the Act of 1872. He led stress on the following circumstances:

i. The appellant himself went to police station and lodged the FIR;

ii. While, at the scene of offence *panchnama* was being drawn, appellant pointed out that the body of the deceased was lying in between the two walls inside the house of the deceased;

iii. The appellant led the Investigating Officer and the *panchnama* witnesses to the house of his uncle, Rajnath Yadav, and pointed out the place where he had kept his clothes worn at the time of the incident.

iv. A bloodstain was also found on the shirt of the appellant, however, the learned counsel fairly conceded that there is nothing to indicate that the bloodstain matched with the blood group of the deceased.

31. The first and most fundamental flaw in the testimony of all the aforementioned prosecution witnesses is that none of them have specifically deposed to the exact statement allegedly made by the appellant, which purportedly led to the discovery of a fact relevant under Section 27 of the Act of 1872.

32. Section 27 of the Act of 1872 reads thus:

> "*27. How much of information received from accused may be proved.—Provided that, when any fact is deposed to as discovered inconsequence 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.*"

33. The conditions necessary for the applicability of Section 27 of the Act of 1872 are:

i. That consequent to the information given by the accused, it led to the discovery of some fact;

ii. The fact discovered must be one which was not within the knowledge of the police and the knowledge of the fact for the first time was derived from the information given by the accused;

iii. The discovery of a fact which is the direct outcome of such information;

iv. Only such portion of the information as connected with the said discovery is admissible;

v. The discovery of the fact must relate to the commission of some offence.

34. In the aforesaid context, we may refer to and rely upon the decision of this Court in ***Murli* v. *State of Rajasthan***, reported in **(2009) 9 SCC 417**, which held that the contents of the *panchnama* are not the substantive piece of evidence. It reads thus;

> "*34. The contents of the panchnama are not the substantive evidence. The law is settled on that issue. What is substantive evidence is what has been stated by the panchas or the person concerned in the witness box.*[…]"
>
> (Emphasis supplied)

35. In the aforesaid context, our attention was drawn to a decision of this Court in the case of **A. N. Venkatesh & Anr. v. State of Karnataka**, reported in **(2005) 7 SCC 714**, which states thus:

> "*9. By virtue of Section 8 of the Evidence Act, the conduct of the accused person is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact. The evidence of the circumstance, simpliciter, that the accused pointed out to the police officer, the place where the dead body of the kidnapped boy was found and on their pointing out the body was exhumed, would be admissible as conduct under Section 8 irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 or not as held by this Court in Prakash Chand v. State (UT of Delhi) [Prakash Chand v. State (UT of Delhi), (1979) 3 SCC 90 : 1979 SCC (Cri) 656] . Even if we hold that the disclosure statement made by the appellant-accused (Exts. P-15 and P-16) is not admissible under*

Section 27 of the Evidence Act, still it is relevant under Section 8."

(Emphasis supplied)

36. In this context, we deem it necessary to sound a note of caution. While the conduct of an accused may be a relevant fact under Section 8 of the Act of 1872, it cannot, by itself, serve as the sole basis for conviction, especially in a grave charge such as murder. Like any other piece of evidence, the conduct of the accused is merely one of the circumstances the court may consider, in conjunction with other direct or circumstantial evidence on record. To put it succinctly, although relevant, the accused's conduct alone cannot justify a conviction in the absence of cogent and credible supporting evidence.

d. Incorrect application of *Exception 4* to Section 300 of the IPC

37. We could have concluded the judgment at this stage by allowing the appeal and thereby acquitting the appellant of all the charges against him. However, we consider it necessary to make certain observations regarding *Exception 4* to Section 300 of the IPC. We wish to explain why the High Court could not have invoked *Exception 4* to Section 300 of the IPC and altered the conviction from Section 302 to 304 Part I of the IPC. Had there been any other oral or documentary evidence on record connecting the appellant herein with the alleged crime, we would have dismissed his appeal. Even while dismissing his appeal and holding him guilty of the offence of murder, we would not have been in a position to interfere with the erroneous application of *Exception 4*, as there is no appeal at the instance of the State challenging the

acquittal under Section 302 of the IPC. Nevertheless, it is necessary to explain why the High Court committed an error in bringing the case within *Exception 4* of Section 300 of the IPC.

38. Section 299 of the IPC explains culpable homicide as, causing death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that the act complained of is likely to cause death. The first two categories require the intention to cause death, or the likelihood of causing death. While, the third category confines itself to the knowledge that the act complained of is likely to cause death. On the facts of this case, the offence of culpable homicide is clearly made out.

39. Section 300 of the IPC explains murder and it provides that culpable homicide is murder if, the act by which the death is caused is done with the intention of causing death, or the act complained of is so imminently dangerous that it must in all probability cause death, or "such bodily injury as is likely to cause death". There are some exceptions when culpable homicide is not murder and we are concerned with *Exception 4* which reads:

> "*Exception 4. - Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner." Explanation. - It is immaterial in such cases which party offers the provocation or commits the first assault.*"

40. *Exception 4* to Section 300 of the IPC applies in the absence of any premeditation. This is very clear from the words used in the provision itself. It contemplates that the sudden fight must occur in the heat of passion, or upon a sudden quarrel. The Exception deals with a case of provocation not covered by *Exception 1*, although it would have been more appropriately placed after that exception. It is founded upon the same principle, as both involve the absence of premeditation. However, while *Exception 1* involves total deprivation of self-control, *Exception 4* refers to that heat of passion which clouds a person's sober reason and urges them to commit acts they would not otherwise commit. There is provocation in *Exception 4*, as there is in *Exception 1*, but the injury caused is not the direct consequence of that provocation. In fact, *Exception 4* addresses cases where, notwithstanding that a blow may have been struck or provocation given at the outset of the dispute, regardless of how the quarrel originated, yet the subsequent conduct of both parties' places them on an equal footing with respect to guilt.

41. A "sudden fight" implies mutual provocation and the exchange of blows on both sides. In such cases, the homicide committed is clearly not attributable to unilateral provocation, nor can the entire blame be placed on one side. If it were, *Exception 1* would be the more appropriate provision. There is no prior deliberation or intention to fight; the fight breaks out suddenly, and both parties are more or less to blame. One party may have initiated it, but had the other not aggravated the situation by their own conduct, it may not have escalated to such a serious level. In such scenarios, there

is mutual provocation and aggravation, making it difficult to determine the precise share of blame attributable to each participant. The protection of *Exception 4* may be invoked if death is caused: (a) without premeditation; (b) in a sudden fight; (c) without the offender having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the deceased.

42. To bring a case within *Exception 4*, all the ingredients mentioned therein must be satisfied. It is important to note that the term "fight" occurring in *Exception 4* to Section 300 of the IPC is not defined in the IPC. A fight necessarily involves two parties – *it takes two to make a fight*. The heat of passion requires that there must be no time for the passions to cool, and in such case, the parties may have worked themselves into a fury due to a prior verbal altercation. A fight is a combat between two and more persons, whether with or without weapons. It is not possible to enunciate any general rule as to what constitutes a "sudden quarrel". This is a question of fact, and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of *Exception 4*, it is not enough to show that there was a sudden quarrel and no premeditation. It must also be shown that the offender did not take undue advantage or act in a cruel or unusual manner. The expression "undue advantage" as used in the provision means "unfair advantage".

43. From the above conspectus, it emerges that whenever a court is confronted with the question whether the offence is "murder" or

"culpable homicide not amounting to murder", it will be convenient to approach the problem in three stages. The question to be considered at the first stage is, whether the accused committed an act which caused the death of another person. Proof of a causal connection between the act of the accused and the resulting death leads to the second stage, for considering whether that act of the accused amounts to "culpable homicide" as defined in Section 299 of the IPC. If the answer to this question is, *prima facie*, found in the affirmative, the next stage involves considering the application of Section 300 of the IPC. At this stage, the court must determine whether the facts proved by the prosecution bring the case within the ambit of any of the four clauses of the definition of "murder" contained in Section 300. If the answer to this is in the negative, the offence would be "culpable homicide not amounting to murder", punishable under either the first or the second part of Section 304, depending respectively on whether the second or the third clause of Section 299 is applicable. However, if the answer is in the positive, but the case falls within any of the exceptions enumerated in Section 300, the offence would still be "culpable homicide not amounting to murder", punishable under the Part I of Section 304 of the IPC.

44. In ***State of Andhra Pradesh* v. *Rayavarapu Punnayya & Anr.***, reported in **(1976) 4 SCC 382**, this Court, while drawing a distinction between Section 302 and Section 304, held as under:-

> "*12. In the scheme of the Penal Code, "culpable homicide" is genus and "murder" its specie. All "murder" is "culpable homicide" but not vice- versa. Speaking generally, "culpable homicide" sans*

"special characteristics of murder", is "culpable homicide not amounting to murder". For the purpose of fixing punishment, proportionate to the gravity of this generic offence, the Code practically recognises three degrees of culpable homicide. The first is, what may be called, "culpable homicide of the first degree". This is the greatest form of culpable homicide, which is defined in Section 300 as "murder". The second may be termed as "culpable homicide of the second degree". This is punishable under the first part of Section 304. Then, there is "culpable homicide of the third degree". This is the lowest type of culpable homicide and the punishment provided for it is, also, the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the second part of Section 304."

(Emphasis supplied)

45. In ***Budhi Singh* v. *State of Himachal Pradesh***, reported in (**2012) 13 SCC 663**, this Court has held as under:-

"*18. The doctrine of sudden and grave provocation is incapable of rigid construction leading to or stating any principle of universal application. This will always have to depend on the facts of a given case. While applying this principle, the primary obligation of the court is to examine from the point of view of a person of reasonable prudence if there was such grave and sudden provocation so as to reasonably conclude that it was possible to commit the offence of culpable homicide, and as per the facts, was not a culpable homicide amounting to murder. An offence resulting from grave and sudden provocation would normally mean that a person placed in such circumstances could lose selfcontrol but only temporarily and that too, in proximity to the time of provocation. The provocation could be an act or series of acts done by the deceased to the accused resulting in inflicting of injury. Another test that is applied more often than not is that the behaviour of the assailant was that of a reasonable person. A fine distinction*

has to be kept in mind between sudden and grave provocation resulting in sudden and temporary loss of selfcontrol and the one which inspires an actual intention to kill. Such act should have been done during the continuation of the state of mind and the time for such person to kill and reasons to regain the dominion over the mind. Once there is premeditated act with the intention to kill, it will obviously fall beyond the scope of culpable homicide not amounting to murder....."

(Emphasis supplied)

46. In the case of ***Kikar Singh* v. *State of Rajasthan***, reported in **(1993) 4 SCC 238**, this Court held as under:-

"*8. The counsel attempted to bring the case within Exception 4. For its application all the conditions enumerated therein must be satisfied. The act must be committed without premeditation in a sudden fight in the heat of passion; (2) upon a sudden quarrel; (3) without the offender's having taken undue advantage; (4) and the accused had not acted in a cruel or unusual manner. Therefore, there must be a mutual combat or exchanging blows on each other. And however slight the first blow, or provocation, every fresh blow becomes a fresh provocation. The blood is already heated or warms up at every subsequent stroke. The voice of reason is heard on neither side in the heat of passion. Therefore, it is difficult to apportion between them respective degrees of blame with reference to the state of things at the commencement of the fray but it must occur as a consequence of a sudden fight i.e. mutual combat and not one side track. It matters not what the cause of the quarrel is, whether real or imaginary, or who draws or strikes first. The strike of the blow must be without any intention to kill or seriously injure the other. If two men start fighting and one of them is unarmed while the other uses a deadly weapon, the one who uses such weapon must be held to have taken an undue advantage denying him the*

entitlement to Exception 4. True the number of wounds is not the criterion, but the position of the accused and the deceased with regard to their arms used, the manner of combat must be kept in mind when applying Exception 4. When the deceased was not armed but the accused was and caused injuries to the deceased with fatal results, the Exception 4 engrafted to Section 300 is excepted and the offences committed would be one of murder. 9. The occasion for sudden quarrel must not only be sudden but the party assaulted must be on an equal footing in point of defence, at least at the onset. This is specially so where the attack is made with dangerous weapons. Where the deceased was unarmed and did not cause any injury to the accused even following a sudden quarrel if the accused has inflicted fatal blows on the deceased, Exception 4 is not attracted and commission must be one of murder punishable under Section 302. Equally for attracting Exception 4 it is necessary that blows should be exchanged even if they do not all find their target. Even if the fight is unpremeditated and sudden, yet if the instrument or manner of retaliation be greatly disproportionate to the offence given, and cruel and dangerous in its nature, the accused cannot be protected under Exception 4...."

(Emphasis supplied)

47. This Court, in the case of ***Surain Singh* v. *State of Punjab***, reported in **(2017) 5 SCC 796** has observed that:

"*The help of Exception 4 can be invoked if death is caused (a) without premeditation, (b) in a sudden fight, (c) without the offenders having taken undue advantage or acted in a cruel or unusual manner, and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the "fight" occurring in Exception 4 to Section 300, IPC is not defined in IPC..... A fight is a combat between two and more persons whether with or without*

weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in a cruel or unusual manner. The expression "undue advantage" as used in the provision means "unfair advantage"."

(Emphasis supplied)

48. Section 304 of the IPC prescribes the punishment for culpable homicide not amounting to murder. Part I of this Section provides that if the act by which death is caused is done with the intention of causing death, or causing such bodily injury as is likely to cause death, then the punishment may extend up to imprisonment for life. On the other hand, Part II of Section 304 provides that if the offending act is done with the knowledge that it is likely to cause death, but without any intention to cause death or to cause such bodily injury as is likely to cause death, then the punishment may extend to imprisonment for 10 years.

49. The High Court considered only the first part of *Exception 4* to Section 300 of the IPC. This part refers to the absence of premeditation in a sudden fight arising from a sudden quarrel in a heat of passion. However, it does not end there. The exception further requires that the offender must not have taken undue advantage or acted in a cruel or unusual manner. Having regard to the manner in which the assault was carried out, could it not

be said that the offender i.e., the appellant-herein took undue advantage and also could be said to have acted in a cruel or unusual manner. The deceased was unarmed, it was not mutual fight between two individuals that would bring the case within the ambit of *Exception 4*. The deceased was absolutely harmless when the appellant inflicted injuries all over his body indiscriminately.

50. Therefore, if at all the High Court intended to extend the benefit of any of the Exceptions to Section 300 of the IPC, it ought to have considered *Exception 1* of Section 300 of the IPC. However, it is not necessary for us to delve into *Exception 1* i.e., grave and sudden provocation since, we have already reached the conclusion that the case in hand is, one of no legal evidence and therefore, the appellant deserves to be acquitted. We refer to *Exception 1* merely to illustrate that, if at all, it was this exception that could have been examined. It is alleged that while the appellant and the deceased were consuming alcohol at the deceased's residence, the appellant showed the deceased a photograph of his girlfriend. The deceased allegedly made an obscene remark, "*get your girlfriend to my place and leave her with me for one night*." Such a statement might have provoked the appellant, who then picked up a vegetable-cutting knife lying in one corner of the house and inflicted injuries upon the deceased. This aspect could have been considered in that context.

C. CONCLUSION

51. In the overall view of the matter, we are convinced that the Impugned Judgement passed by the High Court of Chhattisgarh

in Criminal Appeal No. 1538 of 2021 dated 16.01.2025 is not sustainable in law.

52. In the result, this appeal succeeds and is hereby allowed.

53. The appellant is acquitted of all the charges, and he be set free forthwith if not required in any other case. The bail bonds stand discharged, if any.

54. The Registry shall circulate one copy each of this judgment to all the High Courts.

.....J.
(J.B. Pardiwala)

.....J.
(R. Mahadevan)

New Delhi:
5th August 2025.