



2026:AHC:29747-DB

A.F.R.

Judgment reserved on 16.12.2025

Judgment delivered on 11.02.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. 235 of 1984

Radha Charan Sharma

Appellant

Versus

State of U.P.

Respondent

Counsel for Appellant	:	Vishesh Kumar (Amicus Curiae)
Counsel for Respondent	:	A.G.A.

Court No. - 45

HON'BLE RAJIV GUPTA, J.
HON'BLE DEVENDRA SINGH-I, J.

(Delivered by Hon'ble Rajiv Gupta, J.)

1. Heard Shri Vishesh Kumar, learned Amicus Curiae for the appellant, learned AGA for the State and perused the trial court record.

2. The instant criminal appeal has been filed against the judgment and order dated 19.01.1984, passed by learned Sessions Judge, Mathura in Sessions Trial No. 65 of 1983 (State of U.P. Vs. Radha Charan Sharma), arising out of Case Crime No. 36 of 1983, under Section 302 IPC, Police Station Raya, District Mathura, whereby the accused-appellant has been convicted for the offence under Section 302 IPC and awarded the sentence of life imprisonment.

3. In the instant case, the information about the incident, in question, was given by the accused-appellant himself

through a written report submitted by him in the Police Station Raya on 02.02.1983 at 7:30 AM, which was registered vide Case Crime No. 36 of 1983, under Section 302 IPC. The FIR particularly reveals that in the night at about 12:00 O'clock, the informant had a quarrel with his wife Pramila and she threatened him that within 2-3 days, she will get her killed. The said conversation could not be tolerated by him and in a fit of anger, he struck a *farsa* blow on her neck causing her instantaneous death. However, in the late hours of the night, he could not approach the Police Station to lodge the report but has now come to register the report.

4. On the basis of the said written report (Exhibit Ka-5) given by the accused-appellant himself, a chik FIR (Exhibit Ka-6) was drawn and its corresponding G.D. entry was also made, carbon copy whereof has been marked as Exhibit Ka-7.

5. After registration of the said FIR in the presence of Second Officer Mahendra Pal Singh (PW-6), investigation of the said case was entrusted to him. He thereafter recorded the statement of Head Moharrir Kamal Kishor Mishra and thereafter, recorded the statement of accused Radha Charan Sharma, who was also present in the Police Station itself. In the said statement, the accused-appellant made a disclosure that a *farsa*, by which, he had killed his wife, could be got recovered by him, as such, he was taken into custody and the Investigating Officer alongwith the accused-appellant reached at his house, where number of persons were present. Out of them, Har Prasad and Resham Lal were appointed as witnesses and in front of them, the accused-appellant went into the *Kotha* and from inside the *Kotha*, he brought a blood-stained *farsa* and handed it over to the Investigating Officer, which has been marked as Material Exhibit-1. The said *farsa* was taken into possession and its recovery memo was prepared, which has been proved and marked as

Exhibit Ka-4 and signed by the witnesses as well as accused-appellant himself, which was later sent for the chemical examination.

6. The Investigating Officer thereafter conducted an inquest on the person of the deceased and prepared the inquest memo, which has been proved and marked as Exhibit Ka-10. The dead body was lying near the outer door of the *Kotha*, the photograph of which has been prepared and the same has been proved and marked as Exhibit Ka-11 and Ka-12. He thereafter sealed the dead body and sent it for the post-mortem.

7. The Investigating Officer thereafter collected the blood-stained earth and plain earth from the place, where the dead body was lying and took it in his possession and prepared its recovery memo, which has been proved and marked as Exhibit Ka-13.

8. An autopsy was conducted on the person of the deceased- Pramila on 03.02.1983 by the Medical Officer Dr. S.S. Saraswat (PW-4). The Doctor has noted following injuries on the person of the deceased :-

(i). Incised wound 4 cm x 1 cm x muscle deep on the lower part of right pinna and right side of face just near the angle of right mandible bone. Oblique.

(ii). Incised wound 8 cm x 3 cm x bone deep on right side of upper part of neck at the junction with head 3 cm below the right ear. Transverse bone cut underneath.

(iii). Incised wound 2 cm x 1/2 cm x muscle deep on the right side of lower jaw just anterior to angle of right mandible bone. Oblique.

(iv). Incised wound 1 cm x 1/4 cm x muscle deep on the left cheek 0.5 cm above left angle of mouth. Oblique.

(v). Incised wound 7 cm x 2 cm x bone deep on the right side of head, 9 cm above right ear. Transversely oblique. Bone cut underneath.

(vi). Multiple abrasions with contusions 9 cm x 5 cm area on the lateral aspect of right shoulder and arm.

(vii). Multiple linear abrasions 2 cm x 9 cm. area on the back 7 cm x 1/2 cm.

(viii). Incised wound 2 cm x 1/2 cm x muscle deep on the back of right thigh lower part. Transverse.

9. The right ear was found cut at pinna. The right parietal and occipital bones were found cut. Membrane and mind were found lacerated. The right posterior cranial fossa was also found fractured. In the stomach 3 ozs. whitish fluid was found. Small intestines were empty. In Large intestines faecal matter and gases were found.

10. The Doctor took off a Sari, a Sweater, a Peti-Coat, a Nose-Pin, Bichhiya from the dead-body and sealed the same in a packet which was handed over to the constable who had brought the dead-body. In the opinion of the Doctor the death was the result of the coma due to the ante-mortem injuries. The Doctor proved the post-mortem report Exhibit Ka-8, which was prepared by him at the time of conducting the post-mortem examination.

11. In the opinion of the Doctor, cause of death was noted to be coma, due to the aforesaid injuries.

12. The Investigating Officer then recorded the statement of the witnesses Har Prasad and Resham Lal. The extract of the statement of Resham Lal has been drawn and marked as Exhibit Ka-14.

13. The Investigating Officer inspected the place of incident and prepared the site plan, which has been proved and marked as Exhibit Ka-15. He also recorded the statement of one Mahendra Pal Sharma (PW-1) on 7th February, 1983, who handed him over two letters, which were sealed and proved and marked as Exhibits Ka-2 and Ka-3 and recovery memo was also prepared, which has been proved and marked as Exhibit Ka-16.

14. On the same day, the Investigating Officer recorded the statement of the witness Shyam Babu, who also handed over him a letter, which has been proved and marked as Exhibit Ka-1, which too was sealed and its recovery memo was prepared, which has been proved and marked as Exhibit Ka-17.

15. The Investigating Officer Mahendra Pal Singh conducted the investigation till 07.02.1983 and thereafter, investigation was entrusted to Sub Inspector Ravindra Pal Singh, who, after concluding the investigation, submitted the charge-sheet against the accused-appellant on 19.02.1983, which has been proved and marked as Exhibit Ka-18.

16. On the basis of the said charge-sheet, learned Magistrate had taken cognizance, however, since the case was exclusively triable by the court of Sessions, it was committed to the court of Sessions, where it was numbered vide Sessions Trial No. 65 of 1983 (State of U.P. Vs. Radha Charan Sharma). Consequent thereto, on 20.04.1983, learned Sessions Judge, Mathura framed the charge against the accused-appellant under Section 302 IPC, which was read out and explained to him in Hindi, who abjured the said charge, pleaded not guilty and claimed to be tried.

17. During the course of trial, the prosecution in order to bring home the guilt against the accused-appellant, examined as many as two witnesses of fact and three other formal witnesses. Their testimony in brief is enumerated below :-

18. P.W.-1 Mahendra Pal Sharma is the maternal uncle of the deceased, who had handed over two letters written by the deceased herself, which have been proved and marked as Exhibits Ka-2 and Ka-3, which are said to be in the handwriting of the deceased, which according to him, has been received a little earlier before the murder of the deceased. The letter (Exhibit Ka-1) was sent to her father Shankar Lal at his address, which was

addressed to her sister Indresh, whereas letter (Exhibit Ka-2) was sent to him. He further testified that after going through the letter (Exhibit Ka-2), which was received on 28.01.1983, it became difficult for him to hold on for the next day as the contents of the letter very serious. Consequent thereto, on the very next day i.e. on 29.01.1983, he left his village in the morning and reached Hardua Ganj and thereafter, reached Raya at 6:00 PM and stayed at the house of Radha Ballabh, in whose house, accused-appellant was a tenant and used to live with his niece Pramila as well as Manju, niece of the accused-appellant, however, none of the three met him there. The other tenants however met him, who informed him that the accused had already left day before yesterday alongwith two others. He thereafter returned to Aligarh and then, went to his brother-in-law's house at Ghazipur and informed him about the entire incident and then, returned back to his village. On first day of the month, his brother-in-law Shankar Lal received a letter (Exhibit Ka-1) and on receiving the said letter, his brother-in-law reached the Village Imlani and met him. After going through the said letter, on the next day, he sent his brother Satendra to Badhaun to bring back Pramila, however, on reaching Raya, it was revealed that Pramila had already been done to death by her husband and her dead body was lying in the Police Station. When Satendra visited the Police Station, he found that Radha Charan was put in the lock-up and the dead body had been sent to Mathura for an autopsy and thereafter was taken to Imlani. Later, when the police met him, then he had handed over the three letters (Exhibits Ka-1 to Ka-3) to the Police.

19. PW-1, in his cross-examination, has testified that he reached Raya on 29th and not on 28th as the letter was received by him on 28th itself. He further testified that he had informed the Investigating Officer on first day of the month, that Shankar Lal had received a letter, who came to him, then he had sent Satendra to Badhaun, however subsequently, it was revealed

that Pramila has been done to death by her husband, however, if the said factum has not been stated in his statement recorded by the Investigating Officer, he can not offer any reason for it absence. Before receiving the letters (Exhibits Ka-2 and Ka-3), he had no personal knowledge that there was some matrimonial discord between Pramila and her husband Radha Charan. The letter (Exhibit Ka-3) was received in January, 1983, however, he does not remember its exact date. The letter (Exhibit Ka-2) was received earlier to the letter (Exhibit Ka-3). The accused is M.A., B.Ed and is not a cynic. He further denied the suggestion that Gudiya was unhappy out of the said marriage.

20. PW-2 Har Prasad is another witness of recovery of *farsa* from the house of the accused Radha Charan. He, in his testimony, testified that wife of Radha Charan was killed about nine months back, however, said murder had not occurred in his presence. The accused Radha Charan had taken out of a blood-stained *farsa* from his *Kotha* in his presence and handed it over to the Police, however, he can not identify the said *farsa*. On showing the said *farsa* to the witness, he testified that he can not state that this is the same *farsa*, which was handed over by the accused to the Police, however, the *farsa* was sealed in his presence by the Investigating Officer, whose recovery memo was prepared at the spot and he had signed it as a witness, which has been proved and marked as Exhibit Ka-4, containing his signatures. At the relevant time, Resham Lal was also present with him and he also signed the recovery memo in his presence.

21. During the course of cross-examination, he stated that his house is situate, leaving one house between the accused house. In the morning, it was revealed that Radha Charan had killed his wife and had gone to the Police Station. He further denied that he has given any affidavit in the court nor he knows what an affidavit is. About 2-1/2 months back, he came to the

court but did not come in the court room. He was brought by the brother of Radha Charan, who wrote something on a paper, which was singed by him, however, he does not know the contents of the said paper. On his attention been drawn to an Application, marked as Kha-2, he stated that it is signed by him at two places and once, it was signed in the court. On his attention been drawn the affidavits, marked as Kha-3 and Kha-4, he stated that said affidavits has been signed by him at four places. On his attention been drawn to his vakalatnama, marked as 14-Kha-1, he stated that it has been signed by him. He further testified that he does not remember if any counsel got his signatures on the register, may be he has signed it, however, the counsel had not read out the paper to him. He does not know any counsel Daudayal Agrawal but stated that he came in the court to file the papers alongwith counsel, however, he could not identify him. He does not remember, if any question was put to him by the Judge. Counsel had asked to sign the papers before the court, which he did. On the relevant date, Radha Charan at about 10-11:00 AM had handed over a *farsa*. He further denied the suggestion that he had submitted an affidavit and it is also wrong to state that under the pressure of the Investigating Officer, he is denying to have filed an affidavit.

22. P.W.-3 Kamal Kishor Mishra, was the Moharir in the Police Station on the relevant date i.e. 02.02.1983, on the basis of a written report handed over to him by the accused Radha Charan, he had drawn the chik FIR. The said written report was drawn and signed by the accused, on the basis of which, the chik FIR was prepared, which has been proved and marked as Exhibit Ka-6. On the basis of which, corresponding G.D. Entry No.14 was also prepared, which has been proved and marked as Exhibit Ka-7. After registering the case, he had taken the accused into custody and put him in the lock-up.

23. During the course of cross-examination, he testified that from the midnight dated 1/2-2-1983 up to 7:30 in the morning, no cognizable report was lodged nor after registering the report, in question, any other report was lodged till 11:30 AM. He further denied the suggestion that the information in respect of the incident was received by him at the Police Station in the night itself, on the basis of which, Investigating Officer had reached the place of incident. He further denied that the accused was called to the Police Station from Raya for interrogation and his written report (Exhibit Ka-5) was got forcefully scribed. The sealed *farsa* was deposited in the Police Station by the Investigating Officer on 02.02.1983 in the evening at 5:00 PM, which was sent in the Maal Khana on 10.02.1983. The accused was also brought to the Police Station at 5:00 PM alongwith Investigating Officer. He had further stated that the accused was sent to the jail on 03.02.1983 at 6:00 PM and thereafter, sealed *farsa* could not be deposited in the Sadar Maal Khana for some reasons and was brought back by Constable Bahuran Singh and thereafter, till 10.02.1983, it was not sent back to the Maal Khana, for which, no explanation could be offered. He further stated that he does not remember if any reason was assigned by Constable Bahuran Singh to return back the crime weapon- *farsa*.

24. P.W.-4 Dr. S.S. Saraswat is the Medical Officer, who had conducted an autopsy on the person of the deceased on 03.02.1983 and had prepared the post-mortem report, which has been proved and marked as Exhibit Ka-8. He had noted eight injuries on the person of the deceased, which has been noted in the post-mortem report and has already been discussed in the earlier part of the judgment. The genuineness of the said document was admitted by the prosecution. While making internal examination, the doctor found that the right parietal and occipital bone of the deceased were cut and right posterior cranial fossa was fractured and the cause of death was injuries sustained by

the deceased. PW-4 further testified that he had examined the *farsa* (Material Exhibit-1) with his own hands and since, edges of *farsa* were not sharp, as such, such injuries could not have been caused by the said *farsa*, which were found on the body of the deceased, however, if the edges of the *farsa*, in question, is sharpened, then the said injuries could have been caused by it but the state, in which, the *farsa* is and on being used, such injuries could not be caused by it, which though may cause incised wound but its margin would be contused, however, in the instant case, margins have been found to be clean cut. The relevant papers were sent alongwith the dead body and the injuries on the person of the deceased were sufficient to cause death of the deceased. At this stage, said witness has been declared hostile and an opportunity was given to the Public Prosecutor to cross-examine him.

25. On being cross-examined by the Public Prosecutor, PW-4 Doctor testified that he has not pointed out in his report that the margins of the incised wounds were clean cut, rather it was not written, if margins were found to be clean cut or contused. Only on the basis of his memory, he had stated that the margins in the instant case were clean cut and more so, because the wounds were found to be cutting the bones. He further testified that if by the said *farsa* (Material Exhibit-1) is forcefully hit, then bones could be cut.

26. On being cross-examined by the accused, PW-4 stated that blade of the said *farsa* is rough at some places, while plain at some places but is not sharp. He further stated that he could not state as to how many blows were inflicted to cause the injuries on the body of the deceased. Injuries nos. 6 & 7 could be caused by fall or by lathi-danda

27. P.W.-5 Resham Lal is another witness of recovery of *farsa* brought out by the accused Radha Charan, who, in his

testimony, has candidly stated that no *farsa* was recovered in his presence. On the next day, when the dead body was taken away at about 4:00 PM, a constable came to him and stated that the paper, on the basis of which, blood test was to be done, has been spoiled and therefore, requested him to sign another paper, consequently, he signed the said paper. At the relevant time, when the paper was signed, he was present in his field mowing the grass. At the relevant time, when he had signed the paper, nothing was written on it and it was a plain paper. On his attention been drawn to recovery memo of blood-stained *farsa* (Exhibit Ka-4), he admitted that the said paper contains his signatures. However, On his aforesaid testimony, the said witness was declared hostile and the Public Prosecutor was requested to cross-examine him.

28. During his cross-examination, he testified that he had heard that the wife of Radha Charan has been killed. After the said incident, Investigating Officer came in his village at about 10-11:00 AM. Accused Radha Charan was also present there, however, he does not know if Radha Charan came with the Investigating Officer or was already present in the village. He was also a *Panch* witness of the inquest. On the said date, Investigating Officer had also collected the blood-stained earth and plain earth from the place of incident and prepared its recovery memo, which was signed by him. Har Prasad was also one of the *Panch* witness and his signatures were also obtained on the inquest memo in his presence, however, recovery of blood-stained earth was not signed by him in his presence. At about 4:00 PM, he signed the inquest and recovery memo of the blood-stained earth. On the relevant date, Radha Charan did not produce the *farsa* in his presence. On the relevant date and time, the police got his signatures on two papers. The Investigating Officer did not interrogate him nor recorded his statement. He

denied the factum that he gave any statement to the Investigating Officer. To quote :-

“(i). मैंने पंचायतनामा पर दस्तखत करीब चार बजे किये और उसी समय मिट्टी के कागज पर भी दस्तखत किये।

(ii). राधा चरन ने उसी समय मेरे सामने कोठे से फरसा निकाल कर नहीं दिखाया था। उस दिन पुलिस ने मेरे दस्तखत केवल दो कागजों पर कराये।

(iii). अन्दर दरोगा जी ने मुझसे कभी कोई पूछताछ नहीं की। मुझे याद नहीं है कि दरोगा जी ने मेरा कोई बयान लिखा या नहीं। मैंने दरोगा जी को ये बयान नहीं दिया था कि आपने मेरे सामने मुलजिम राधा चरन से एक अदद फरसा जिसके फल पर खून लगा है, अन्दर वाले कोठे के उत्तरी-पश्चिमी कोने से निकालकर आपको दिया। जिसकी फर्द आपने लिखी व फरसा को एक कपड़े में रखकर सील किया। गवाह को बयान उपरोक्त पढ़कर सुनाया गया तो उसने कहा कि मैंने दरोगा जी को ये बयान नहीं दिया, मैं नहीं कह सकता कि उन्होंने मेरा ये बयान कैसे लिख लिया।

(iv). मैंने इस मुकदमें में पहले भी बयान हलफी लगाया था, मेरे सामने कोई फरसा, राधा चरन ने निकालकर पुलिस को नहीं दिया। मैं बयान हलफी देने स्वयं ही आया था, मुझे मुलजिम का भाई अथवा कोई नहीं लाया था। बयान हलफी दाखिल करने के लिए दाऊ दयाल वकील किया था, जिनको 20 रुपए मैंने दिये थे। ये बयान हलफी लगाने मैं इसलिए आया था कि मेरे घरवाले मुझे परेशान करते थे कि तुम तारीख पर कचहरी चले जाते हो और कोई घर का काम नहीं होता है, इसलिए मैंने सोचा कि बयान हलफी देने से कचहरी आने से छुट्टी हो जावेगी। ऐसी बात नहीं है कि मुलजिम के घरवाले मुझे परेशान कर रहे थे कि तुम बयान हलफी दे दो क्यों कि पता नहीं कि तुम तारीख पर क्या कहो क्या नहीं कहो। जो बयान हलफी दाखिल करने में मैंने खर्चा किया वो मुझे आज तक किसी ने नहीं दिया। ये कहना गलत है कि मैं राधा चरन को बचाने के लिए झूठ बोल रहा हूँ।”

29. On being cross-examined by the accused, he testified that he alongwith Har Prasad had come to file an affidavit and the affidavit was read out to him as well as Har Prasad. The Oath Commissioner, who swore the affidavit had also read out the same to him as well as Har Prasad.

30. P.W.-6 Mahendra Pal Singh is the first Investigating Officer, who, in his testimony, has stated that in February, 1983, he was posted as Second Officer at the Police Station Raya and in his presence, the FIR was registered, which has been proved and marked as Exhibit Ka-6, which contains his

signatures. The investigation of the said case was entrusted to him, who thereafter recorded the statement of the Head Moharrir Kamal Kishor Mishra at the Police Station and since, the instant case was got registered at the instance of accused Radha Charan himself, who too was present in the Police Station, as such, his statement was also recorded in the Case Diary, which has been proved and marked as Exhibit Ka-9. The accused made a disclosure to get the crime weapon- *farsa* recovered, as such, he was taken into custody and brought to village Bhaisara, at his house, where large number of persons were present, out of them, Har Prasad and Resham Lal were appointed as witnesses and the accused, in their presence, went inside the *Kotha* and brought out a blood-stained *farsa* (Material Exhibit-1) and handed it over to him. He prepared its recovery memo, which has been proved and marked as Exhibit Ka-4 and got it signed by Har Prasad and Resham Lal. He further denied the suggestion that the signatures of Resham Lal were obtained on the next date by sending a constable, on which, *fard* recovery memo has been prepared. The said *farsa* was recovered in the morning at 10:00 AM, which was later sent by the second Investigating Officer Ravindra Pal Singh for chemical examination, the chemical examination report of which is available on record, marked as Exhibit Ka-23. After making the recovery of *farsa*, he had conducted an inquest on the person of the deceased and prepared the inquest memo, which has been proved and marked as Exhibit Ka-10. Thereafter, he prepared the photo *nash* and challan *nash*, which have been proved and marked as Exhibits Ka-11 and Ka-12 and thereafter, dead body was sent for post-mortem through two constables Suresh Singh and Lala Ram. He further testified that the place, where dead body was kept, blood had fallen and from such place, he had collected the blood-stained earth and plain earth and prepared its recovery memo, which has been proved and marked as Exhibit Ka-13. He recorded the statement of Har Prasad and

Resham Lal and other *Panch* witnesses. The statement of Resham Lal has been proved and marked as Exhibit Ka-14. The site plan has been prepared by him, which has been proved and marked as Exhibit Ka-15. On 07.02.1983, he recorded the statement of Mahendra Pal Sharma, who had handed over him two letters (Material Exhibits-2 and 3), which was sealed by him and its recovery memo was also prepared, which has been proved and marked as Exhibit Ka-16. On the same day, he also recorded the statement of Shyam Babu, who handed over him a letter marked as Material Exhibit Ka-1, which was sealed by him and its recovery memo was also prepared by him, which has been proved and marked as Exhibit Ka-17, which has been signed by Shyam Babu.

31. On being cross-examined, he testified that he recorded the statement of some witnesses, living in the vicinity of house of the accused but did not record the statement of Ramji Lal, Ram Kishan, Lekhraj, Hetram or Ram Singh, the houses of which, he has shown in the site plan prepared by him, which has been proved and marked as Exhibit Ka-15. He further stated that he had gone in the village only twice, first on 01.02.1983 and next on 07.02.1983 but no one amongst them met him, however, again he corrected himself and stated that infact on 07.02.1983, he had not gone in the village rather the statement of all the witnesses that were recorded on 07.02.1983, has infact been recorded in the Police Station itself. He further testified that on 02.02.1983, nobody has informed that they had heard the cries of Pramila in the night or had seen the accused leaving his house, however, in the statement of sister-in-law of the deceased, it has been noted that on the day of incident, accused was at his house. The name of sister-in-law of the deceased is Vimlesh, who lives separately but her house is attached with that of accused Radha Charan and Vimlesh is the wife of Ram Kishan, whose house is situate in the west as shown in the site plan. The boundary walls of Ram

Kishan and the accused Radha Charan are the same and it has only one exit. The Investigating Officer further testified that the relevant time of recovery, when the accused went inside the *Kotha*, he was standing at its doorstep, which was placed in the wall, where the dead body was lying and the *farsa* was not visible. The said *farsa* was kept in the north-western corner, however, he did not consider it necessary to find out, if the *farsa* was hidden in some object or it was simply kept there. No one accompanied the accused inside the *Kotha* and he alone went inside it. Resham Lal and Har Prasad were present with him at the doorsteps, where the dead body was kept. The place, where they were standing, was about 14 feet long and on the said place, only three persons were present and others were outside the courtyard. In *fard* recovery memo, marked as Exhibit Ka-4, there is some gap between the *Tahreer* and the signatures but it is not much. He further denied the suggestion that the plain papers were got signed by the witnesses and then, the recovery memo was subsequently prepared on it. He further denied the suggestion that information of the murder was reported in some other manner and on getting the said information, he reached the village and arrested the accused and took him to the Police Station and thereafter, written report was forcefully got scribed, which has been proved and marked as Exhibit Ka-5. He further denied the suggestion that just to create an evidence, fake blood marks were put on the *farsa* (Material Exhibit-1). Nobody's statement has been recorded in the Case Diary as a link evidence, moreover, the statement of Constable Bahuran Singh has also not been recorded. Further, there is no mention in the Case Diary that the *farsa* was sent to Maal Khana on 03.02.1983 but could be not deposited there, however, the same may have been mentioned in the General Diary.

32. After recording the testimony of the prosecution witnesses, statement of the accused-appellant Radha Charan has

recorded under Section 313 Cr.P.C. by putting all the incriminating circumstances to him. The accused-appellant denied all the incriminating circumstances and claimed that he has been falsely implicated.

33. In his defence, accused-appellant had got examined one Daudayal Agrawal, Advocate as DW-1, who, in his testimony, has testified that he is a practising Advocate in Collectorate, Mathura. On 02.08.1983, he had prepared the affidavits of Resham Lal, son of Shiv Lal and Har Prasad, son of Nattha Ram, resident of Bhaisara, Police Station Raya. Exhibit Kha-1 is a vakalatnama, which bears the signatures of Har Prasad as well as Resham Lal. Exhibit Kha-2 is an application, which bears the signatures of Resham Lal as well as of Har Prasad. Exhibit Kha-3 is an affidavit of Har Prasad, whereas Exhibit Kha-4 is an affidavit of Resham Lal bearing their respective signatures, which has been identified by him. The said affidavits were read out to both the deponents Har Prasad and Resham Lal and the same were prepared as per their instructions. Thereafter, the said affidavits were sworn before the Oath Commissioner.

34. On being cross-examined, DW-1 Daudayal Agarwal testified that he was very well acquainted with Har Prasad and Resham Lal and also the person, who was accompanying them and on his pointing out, he had identified Har Prasad and Resham Lal, however, he does not remember as to who had identified the two deponents. He further denied the suggestion that brother of the accused Radha Charan had brought the two deponents and on their instance, application and affidavits were prepared.

35. In such facts, learned trial court, after analysing the evidence adduced during the course of trial and considering the submissions made by the accused and the prosecution, has held the appellant guilty of the offence charged with and

accordingly convicted him under Section 302 IPC and awarded the sentence of life imprisonment.

36. Being aggrieved and dissatisfied by the said judgment and order, the instant criminal appeal has been preferred by the appellant.

37. Challenging the impugned judgment and order, learned Amicus Curiae for the appellant has submitted that the trial court has completely misread, misappreciated and misinterpreted the evidence on record and has illegally recorded the findings of conviction and sentence against the appellant, which is bad in law and liable to be set-aside.

38. Learned Amicus Curiae for the appellant has next submitted that though instant case is based on circumstantial evidence and in a case based on circumstantial evidence, motive is of great significance, however, in the present case, the prosecution has miserably failed to prove the 'motive' of the accused for committing such serious offence of causing the death of his own wife. Moreover, to prove the factum of motive against the appellant, the prosecution has placed implicit reliance upon the three letters said to be written by the deceased herself, addressed to her father (who has not been produced at all) as well as her maternal uncle- Mahendra Pal Sharma (PW-1), however, when we carefully go through the contents of the said letters, it is evident that the necessary inference that could, at the most, be drawn from the said letters is, that the deceased Pramila was not living happily with her husband-accused-appellant Radha Charan and there has been stray incidents of torturing and beating her, however, merely in the backdrop of the said circumstance, it can not be said to be a strong motive to commit the offence of murder of the deceased, however, the trial court, by placing implicit reliance upon the said letters, has treated the conduct of the accused to be strong motive against the appellant and on that basis has illegally and erroneously recorded the

findings of conviction and sentence against the appellant, which is bad in law and is liable to be set-aside.

39. It is further pointed out by the learned Amicus Curiae that the trial court while recording the findings in respect of motive has categorically held that “from all the facts coming out of these letters, written by the deceased herself, it can be said that the accused-appellant ‘could’ be the person, who committed the murder of the deceased.”

40. Criticizing the said findings recorded by the trial court, learned Amicus Curiae for the appellant has submitted that infact, there is a big gap between the findings of “could have” and “must have” committed the murder of the deceased, particularly in a case based on circumstantial evidence.

41. In ***Sharad Birdhichand Sarda Vs. State of Maharashtra reported in (1984) 4 SCC 116***, the Hon’ble Apex Court has laid down the following five golden principles i.e. the *panchsheel* of the proof of a case based on circumstantial evidence :-

“(i). The circumstances from which the conclusion of guilt is to be drawn should be fully established. There is not only a grammatical but a legal distinction between ‘may be proved’ and ‘must be or should be proved’. It is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.

(ii) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

(iii) the circumstances should be of a conclusive nature and tendency,

(iv) they should exclude every possible hypothesis except the one to be proved, and

(v) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

42. However, in the instant case, the trial court by completely ignoring the aforesaid five golden principles of law, in a most arbitrary and whimsical manner, has recorded the findings of conviction and sentence against the appellant, which is wholly illegal and against the settled principle of law and is therefore liable to be set-aside.

43. Learned Amicus Curiae for the appellant has next submitted that the trial court, while recording the findings of conviction and sentence against the accused-appellant, has held that written report handed over by the accused-appellant himself in the Police Station, can not be said to be wholly inadmissible in evidence and can be relied upon to record the findings of conviction and sentence against the accused-appellant. The said findings recorded by the trial court is also against the settled principle of law laid down by the Hon'ble Apex Court in several of its decisions, wherein it has been categorically held that an FIR of confessional nature made by an accused person is inadmissible in evidence against him. The trial court has committed an apparent error of law by relying upon the contents of the FIR lodged by the accused-appellant himself, being admissible piece of evidence. Thus, the said view taken by the trial court in this regard, is patently illegal, against the settled principle of law and as such, the impugned judgment and order passed by the trial court is wholly illegal, unsustainable and bad in law and is therefore liable to be set aside.

44. Learned Amicus Curiae for the appellant has next submitted that even recovery of the crime weapon- *farsa* shown to be made at the pointing out of the accused-appellant has not been cogently and clearly established by the prosecution and there are number of loop-holes in relying upon the said piece of evidence, however, the trial court by placing implicit reliance upon the said piece of evidence of recovery of *farsa*, to be proved, has recorded the findings of conviction against the accused-appellant, which is bad in law and is therefore liable to be set aside.

45. Learned Amicus Curiae for the appellant has next submitted that the findings recorded by the trial court convicting the accused-appellant is further based on the circumstance, that the accused-appellant has not been able to explain his conduct and the circumstance, under which, his wife has been done to death within the four-corners of his house, which is an incriminating circumstance sufficient to prove his guilt as envisaged under Section 106 of Indian Evidence Act, however, the said findings is also based on misreading and misappreciation of evidence on record and is therefore wholly illegal and erroneous and is liable to be set-aside.

46. Learned Amicus Curiae for the appellant has next submitted that it is well settled principle of law that before relying upon the aforesaid piece of evidence, the prosecution is required to cogently and clearly prove that the accused was at or around his residence at the relevant time, in the absence of which, the said provisions can not be invoked.

47. Learned Amicus Curiae for the appellant has next submitted that before invoking the provisions contained in Section 106 of the Indian Evidence Act, the prosecution is required to first establish the foundational facts so as to shift the burden of proof upon the accused. If the prosecution fails to establish the foundational facts, invoking the provisions of Section 106 of the

Indian Evidence Act would be improper. However, in the present case, when we go through the entire evidence, we find that the prosecution has miserably failed to establish the foundational facts before invoking the provisions of Section 106 of the Indian Evidence Act to shift the burden of proof upon the accused, yet the trial court, by placing implicit reliance upon the said piece of evidence, has recorded the findings of conviction against the accused-appellant, which is bad in law and is therefore liable to be set aside.

48. Per contra, learned AGA for the State has supported the prosecution story and has submitted that the motive, suggested by the prosecution in the form of the letters written by the deceased herself, is admissible in evidence, which cogently and clearly establishes the factum of motive and in the backdrop of which, the accused-appellant had committed the murder of the deceased. Relying thereupon, the trial court has rightly convicted and sentenced the accused-appellant by the impugned judgment and order, which order does not suffer from any illegality nor can be said to be an erroneous approach and therefore, the same can not be set-aside and is liable to be affirmed by this Court.

49. Learned AGA for the State has further supported the findings of the trial court, wherein, it has been held that the alleged report (Exhibit Ka-5) can be considered to be an admissible piece of evidence to establish the guilt against the accused-appellant and therefore, the findings of conviction recorded by the trial court based on such admissible piece of evidence, is just, proper and legal and do not call for any interference by this Court.

50. Learned AGA for the State has further submitted that the conduct of the accused-appellant in not disclosing the fact as to how his wife was murdered in his own house, is also a

forceful circumstance to establish the guilty mind of the accused-appellant. Admittedly, accused-appellant is the husband of the deceased and the incident had taken place inside his house, as such, he had the best of the knowledge of the circumstance, under which, his wife was done to death in his own house, however, the accused-appellant has utterly failed to explain the fact and the circumstances as to how his wife was done to death inside his house, which is a strong circumstance against him and relying upon the said circumstance, the trial court has rightly convicted the accused-appellant, which findings can not said to be perverse and illegal and therefore, the same can not be set-aside by this Court.

51. Learned AGA for the State has further submitted that the recovery of crime weapon- *farsa* at the pointing out of the accused-appellant has also been cogently and clearly established by the prosecution and the trial court, relying upon the said piece of evidence, has rightly convicted the accused-appellant by passing the impugned judgment and order, which does not suffer from any illegality and therefore, the same can not be set-aside by this Court.

52. Having considered the rival submissions made by learned counsel for the parties and taking into consideration the evidence adduced during the course of trial and the findings recorded by the trial court, we find that the trial court has convicted and sentenced the appellant, primarily on the following grounds:-

(i). Motive for committing the offence.

(ii). The FIR lodged by the accused-appellant himself has been held to be an admissible piece of evidence and relying upon such evidence, the trial court has recorded the findings of conviction against the appellant.

(iii). The conduct of the accused before commission of the offence, failure on the part of the accused to explain as to how his own wife has been done to death within the four-corners of his house, of which, he had the special knowledge, particularly, in view of the provisions of Section 106 of the Indian Evidence Act,

(iv). Lastly the factum of recovery of crime weapon-*farsa* at the instance of the accused.

53. However, when we critically analyse the findings of the trial court based on the said evidence, on which, the impugned judgment and order of conviction and sentence has been passed, we find that the said findings recorded by the trial court, are based on surmises and conjectures and against the settled principle of law laid down by the Hon'ble Apex Court in several of its decisions.

54. The first fact, which has been considered by the trial court in the impugned judgement is that of 'motive' and by placing implicit reliance upon the said motive taking it, to have been proved, the findings of conviction has been recorded by the trial court against the appellant, however, when we critically analyse the said 'motive', we find that, infact, inference in respect of the said motive has been drawn by the trial court based on the three letters said to be written by the deceased herself prior to her death, which has been handed over by her maternal uncle PW-1 Mahendra Pal Sharma to the Investigating Officer and has been proved and marked as Exhibits Ka-1, Ka-2 and Ka-3, however, when we go through the contents of the said three letters, we find that it does not, infact, lend cogent evidence, from which, an unimpeachable inference can be drawn that it is the appellant and the appellant alone, who has committed the murder of the deceased. At the most, only thing that could be discerned from the said letters is the conduct of the accused with his wife prior to her death. Perusal of the said letters only shows that there was

some bitterness in the matrimonial relations between the husband and wife and in the backdrop of which, the deceased wanted to part company with the appellant.

55. In our opinion, it is germane to point out here that only on the basis of day-to-day conduct of the accused, no conclusive inference can be drawn to hold that the appellant would thus have strong motive to have committed the murder of the deceased, particularly, in a case based on circumstantial evidence. Even, the trial court while categorically recording the said findings has come to the conclusion that from all the facts coming out of these letters written by the deceased herself, it can be said that the accused 'could' be the person, who has committed the murder of the deceased.

56. Thus, from the said findings, it is evident that even the trial court is inconclusive in recording the said findings and only on the basis of suspicion and probability, which infact has not been cogently and clearly established, the said findings has been recorded by the trial court.

57. It is well settled principle of law that the suspicion, howsoever strong, it may be, cannot take the place of proof. More so, when there is a wide gap between the fact that the accused 'could have' or 'must have' committed the murder.

58. It is well settled principle of law that in a criminal trial, the prosecution is required to prove its case beyond all reasonable doubts against the appellant and only on the basis of findings based on suspicion and probability, the conviction can not be recorded.

59. Thus, in the backdrop of the aforesaid circumstances, the findings of conviction based on motive, recorded by the trial court is therefore perverse and illegal and as such, the same can not be sustained in law and is liable to be set

aside. The contrary view taken by the trial court is therefore bad in law and is liable to be set-aside.

60. The second ground, on which, the findings of conviction and sentence has been recorded by the trial court against the appellant, is based on the report of the incident of murder, which was lodged by the accused-appellant himself and is in his own handwriting, which has been held to be an admissible piece of evidence by the trial court. It is germane to point out here that the said findings recorded by the trial court on the basis of the aforesaid evidence is wholly misplaced and against the settled principle of law laid down by the Hon'ble Apex Court in a recent decision passed in the case of **Narayan Yadav Vs. State of Chhattishgarh reported in 2025 SCC OnLine SC 1603**, wherein the Hon'ble Apex Court, by relying upon the decisions passed in the cases of **Faddi Vs. State of M.P. reported in 1964 SCC OnLine SC 123** and **Aghnoo Nagesia Vs. State of Bihar reported in 1965 SCC OnLine SC 109**, has clearly held that :-

“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 proved to be 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*, ([1916-17](#)) [44 IA 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*, ([1938-39](#)) [66 IA 66](#) : ([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), ([1952](#)) [2 SCC 177](#): [1953 SCR 94](#): ([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.*, [\(1952\) 2 SCC 71:1952 SCR 1091](#): [\(AIR 1952 SC 343](#) at p. 350) and [\(1952\) 2 SCC 177: 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 [Penal Code, 1860](#) 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 Penal Code, 1860](#), and it would not be permissible to admit in evidence each sentence separately as a non-confessional 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 [Penal Code, 1860](#). 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.”

61. Thus, in the light of the aforesaid two decisions of the Hon’ble Apex Court, contents of the FIR lodged by the appellant can not be said to be an admissible piece of evidence. Thus, on such inadmissible evidence, findings of conviction can not be recorded by the trial court, however, contrary view taken by the trial court is against the aforesaid settled principle of law and is therefore liable to be set aside and is accordingly set-aside.

62. Now, it is further relevant to note here that the trial court, while recording the findings of conviction and sentence against the appellant, has also relied upon the provisions contained in Section 106 of the Indian Evidence Act regarding special knowledge of the facts to the accused about the incident. The trial court, relying upon the said provisions of law, has recorded the findings of conviction and sentence against the

appellant, which too, in our opinion, suffers from patent infirmity and illegality and is therefore liable to be set aside, inasmuch as, as per the settled propositions of law before invoking the provisions of Section 106 of the Indian Evidence Act, it is necessary for the prosecution to establish the foundational facts to shift the burden of proof upon the accused. In case, the Court finds that the prosecution fails to establish these foundational facts, rendering reliance upon Section 106 of the Indian Evidence Act, would be improper as held by the Hon'ble Apex Court in the case of ***State of Madhya Pradesh Vs. Balveer Singh reported in (2025) 8 SCC 545.***

63. Further, the Hon'ble Apex Court in the case of ***Manoj Rameshlal Chhabriya Vs. Mahesh Prakash Ahuja and Another reported in 2025 SCC OnLine SC 451*** has held that while invoking the provisions of Section 106 of the Indian Evidence Act, the onus was on the prosecution to lead such evidence, which would show that the accused was at or near his residence so as to attract the provisions of Section 106 of the Indian Evidence Act, however, in the present case, the prosecution has miserably failed to discharge the said onus, from which, an inference can be drawn that at the relevant time, the accused-appellant was present at his residence or somebody had seen the accused-appellant coming out or going into his house, in the absence of which, we are of the opinion that the provisions of Section 106 of the Indian Evidence Act can not be invoked in the instant case.

64. It is further germane to point out here that PW-1 Mahendra Pal Sharma, maternal uncle of the deceased, in his testimony, has candidly stated that the appellant Radha Charan used to live in his house alongwith his wife Pramila and niece Manju, however, the prosecution has not produced Manju as a witness so as to prove the fact that she had seen the appellant,

present in the house before or at the time of the incident, in the absence of which, the provisions of Section 106 of the Indian Evidence Act can not be invoked.

65. It is further germane to note here that in the testimony of the prosecution witnesses, it has been testified that apart from the accused-appellant Radha Charan, number of tenants also used to reside in the premises, where the accused-appellant used to reside, however, none of the said tenants have either been interrogated by the police or their evidence has been adduced before the trial court to prove the factum of appellant being present in his house or somebody seeing the appellant coming out or going into his house at the relevant time, when his wife was killed. It is further germane to point out here that no evidence has been led by the prosecution to prove that any of the tenants had seen the appellant present near or inside his house at the time of the incident. Even Smt. Vimlesh, the sister-in-law of appellant Radha Charan, who also used to reside in the same vicinity having a common boundary with that of the accused-appellant, has been withheld by the prosecution for the reasons best known to them. Thus, in the absence of these foundational facts, we are of the opinion that the provisions of Section 106 of the Indian Evidence Act can not be invoked in this case and the contrary findings recorded by the trial court basing the conviction and sentence thereupon, is therefore erroneous, illegal and bad in law and is liable to be set aside.

66. In the instant case, another ground, on which, the trial court has recorded the findings of conviction, is based on the recovery of crime weapon- '*farsa*' at the pointing out of the appellant Radha Charan. In this regard, the evidence led by the prosecution is the confessional statement of the accused-appellant recorded by the Investigating Officer, wherein, accused-appellant Radha Charan stated that the crime weapon- *farsa*, by

which, he had given a blow on the neck of his wife causing her death is kept inside the *Kotha* and he can get it recovered. Subsequently, on the basis of the said statement, the Investigating Officer accompanied the accused and reached the place of the incident and appointed Har Prasad and Resham Lal, the two witnesses for recovery of the said *farsa* and thereafter, in front of them, the accused Radha Charan went inside the *Kotha* and brought out a blood-stained *farsa* and handed it over to the Investigating Officer, on the basis of which, the Investigating Officer prepared the recovery memo and got it duly signed by the two witnesses, namely, Har Prasad and Resham Lal and accused-appellant Radha Charan himself, which has been proved and marked as Exhibit Ka-4.

67. In order to prove the recovery of *farsa*, the prosecution has produced the witness Har Prasad as PW-2, however, when we carefully go through his testimony, we find that he, in his examination-in-chief, stated that :-

“मुलजिम राधा चरन ने कोठे के अन्दर से निकाल कर पुलिस को मेरे सामने फरसा दिया था, वो फरसा खून से सना हुआ था। लेकिन मैं उस फरसे को नहीं पहचान पाऊंगा। गवाह को फरसा प्रदर्श-1 दिखाया गया तो उसने कहा कि मैं नहीं कह सकता कि जो फरसा मुलजिम ने निकालकर दिया था, वो यही फरसा था या नहीं। लेकिन जो फरसा मुलजिम ने निकालकर पुलिस को दिया था, उसे मौके पर ही दरोगा जी ने सील मोहर कर दिया था और उसकी लिखा-पढ़ी भी मौके पर वहीं की थी। उस पर मेरे भी गवाही के दस्तखत कराये थे। वो कागज प्रदर्श क-4 है जिस पर मेरे दस्तखत हो रहे हैं। उस समय मेरे साथ रेशम लाल भी मौजूद था। इस कागज पर उसने भी उसी समय मेरे सामने दस्तखत किये थे।”

68. On being cross-examined, PW-2 Har Prasad testified that he had not given any affidavit by appearing before the court and is not aware as to what affidavit is. About 2-1/2 months back, he attended the court but not this court. He was brought by the brother of Radha Charan, who got something

scribed on a paper and got it signed but he does not know what was written on the said paper. He also could not recollect as to how many papers were signed by him.

69. During further cross-examination, the attention of PW-2 Har Prasad was drawn to an application, marked as 12-Kha, whereupon he admitted that he had put his signatures on the said application at two places and once, it was signed in this court itself, when he had come to file the said documents. He further corrected himself and stated that earlier in his testimony, he had stated that he had not come to this court 2-1/2 months back, however, the same is incorrect. On his attention been drawn to his affidavit, marked as 13-Kha/3 and 13-Kha/4, he admitted that it has been signed by him at four places. He further testified that he could not recollect if any counsel got his signature on a register, however, no paper was read out to him by any counsel. He can not identify the counsel Daudayal Agrawal (DW-1), however, on being asked to sign the papers before the court, he had signed the papers.

70. Thus, from his testimony, it is evident that though the said witness is an important witness of the recovery of crime weapon- *farsa* alleged to be brought out by the appellant, however, while testifying before the court, the said witness is highly inconsistent and shaky. At one place, the said witness is denying to have given any affidavit, while at the other, he accepts to have signed the affidavit, which was filed before this court. Thus, being inconsistent witness, his testimony regarding recovery of crime weapon- *farsa* is shaky and therefore, no credence can be attached to his testimony, being an unreliable witness.

71. Now, other witness of recovery of crime weapon- *farsa* is PW-5 Resham Lal, however, in his testimony, he has not supported the prosecution story and candidly stated that no

recovery of crime weapon- *farsa* was made by the appellant Radha Charan, in his presence. He further testified that on the next day, on which, the dead body was taken away, a police constable had approached him and stated that the paper for blood test has been spoiled and the same is to be set right, as such, he may again sign the said paper, whereupon he signed the said paper. At the relevant time, when he signed the papers, it was a blank paper.

72. On his attention been drawn to Exhibit Ka-4, he admitted that it bears his signatures. Upon the said testimony, he was declared hostile and thereafter, he was permitted to be cross-examined by the public prosecutor. He categorically testified that Radha Charan did not got recovered the crime weapon- *farsa* from inside his *Kotha* and the police got his signatures only at two places. He further denied to have given any such statement to the Investigating Officer to the extent that the accused Radha Charan got recovered a blood-stained *farsa* from inside the *Kotha*, the recovery memo of which was prepared by the Investigating Officer and the same was sealed.

73. On his attention been drawn to his earlier statement, he denied to have given any such statement to the Investigating Officer. He further candidly testified that in the instant case, he had given an affidavit that no *farsa* was handed over by Radha Charan to the police and he himself had appeared to give the said affidavit and he further denied the suggestion that he is falsely deposing to rescue Radha Charan.

74. Now, when we further analyse the testimony of PW-2 Har Prasad and PW-5 Resham Lal in the light of the testimony of DW-1 Daudayal Agrawal, who in his statement, has categorically and candidly reiterated the factum of filing of the affidavits both by PW-2 Har Prasad and PW-5 Resham Lal alongwith an application, which has been marked as Exhibits

Kha-2, Kha-3 and Kha-4 clearly denying therein that Radha Charan handed over the crime weapon- *farsa* to the police in their presence, which further renders the prosecution story highly shaky and doubtful regarding the factum of recovery of crime weapon- *farsa* by the accused-appellant Radha Charan, which creates serious dent in the prosecution story and makes it incredible.

75. It is further germane to point out here that the factum of giving an affidavit by PW-2 Har Prasad and PW-5 Resham Lal has also been proved by DW-1 Daudayal Agrawal, Advocate, who had prepared their affidavits got it sworn by them and filed in the court, which has been proved and marked as Exhibit Kha-3. Vakalatnama of Resham Lal and Har Prasad as well as an application marked as Exhibits Kha-1 and Kha-2, denying the factum of recovery of *farsa* in their presence from the house of the accused-appellant has also been brought on record and is a relevant piece of evidence.

76. From the aforesaid testimony, it is evident that the manner, in which, the accused brought out the crime weapon- *farsa* from inside the *Kotha* of his house and handed it over to the Investigating Officer, who prepared its recovery memo, which has been proved and marked as Exhibit Ka-4, in our opinion, does not fulfil the requirement of a valid recovery as envisaged under Section 27 of the Indian Evidence Act. For a valid recovery under Section 27 of the Indian Evidence Act, either the crime weapon should have been recovered from the possession of the accused or on his pointing out, however, in the instant case, admittedly, the crime weapon- *farsa* has been brought out from the *Kotha* by the accused, while the Investigating Officer and the witnesses were standing out at the door-step, thus, the exact place, from where the recovery of the crime weapon- *farsa* has been made, has not been clinchingly and clearly established in the instant case, which

further renders the recovery of crime weapon- *farsa* doubtful. To quote :-“जिस समय मुलजिम अन्दर कोठे में गया तो मैं उस दरवाजे पर खड़ा हुआ था जो दोनों खनों के बीच की दीवार में है यानी उस खन में खड़ा था , जहां पर लाश पड़ी थी, वहां से वो फरसा दिखाई नहीं दे रहा था। वो फरसा उत्तरी-पश्चिमी कोने में रखा हुआ था। मैंने ये जानने की जरूरत नहीं समझी की फरसा कोने में किसी चीज में छिपा रखा था या वैसे ही रखा हुआ था।”

77. In respect of the factum of recovery of crime weapon- *farsa* and its keeping in safe custody for being sent for chemical examination, it is germane to point out here that even according to the prosecution own case, the crime weapon- *farsa* was shown to be handed over by the accused to the Investigating Officer on 02.02.1983 at about 10:00-11:00 AM and it was thereafter kept at the Police Station and sent to Maal Khana on 03.02.1983, however, it was returned back on 03.02.1983 itself at 5:45 PM and thereafter, was sent to the Maal Khana on 10.02.1983. No explanation whatsoever has been tendered by PW-3 Kamal Kishor Mishra as to in between the period from 02.02.1983 to 10.02.1983, where the crime weapon- *farsa* was kept, which further raises a big question mark about the veracity of the recovery of the crime weapon- *farsa* from the accused and its chemical examination report, upon which, implicit reliance has been placed by the trial court while recording the conviction.

78. Thus, in the backdrop of the aforesaid facts and circumstances of the case, even the factum of recovery of blood-stained *farsa* at the pointing out of the appellant and the F.S.L. report can not be said to be clinchingly proved by the prosecution against the appellant.

79. It is further germane to point out here that even otherwise also, it is well settled principle of law laid down by the Hon'ble Apex Court in several cases that mere recovery of weapon and F.S.L. report as in the present case, is not enough to

convict the accused, in the absence of corroborative evidence as held by the Hon'ble Apex Court in the case of ***Govind Vs. State of Haryana reported in 2025 SCC OnLine SC 2456.***

80. In view of foregoing discussions, we are of the opinion that the prosecution has miserably failed to prove the case beyond all reasonable doubts against the appellant and the findings recorded by the trial court convicting the appellant and sentencing him for the offence charged with is therefore set aside by allowing the appeal.

81. In the result, the instant criminal appeal succeeds and is hereby **allowed**. The impugned judgment and order dated 19.01.1984 passed by the trial court is **set aside**. The appellant is acquitted of all the charges and he be set free forthwith, if not wanted in any other case, subject to the compliance of Section 437-A of Cr.P.C. to the satisfaction of the trial court.

82. Let a copy of this judgment and order be forwarded to the trial court alongwith trial court record for information and necessary compliance.

(DEVENDRA SINGH-I, J.) (RAJIV GUPTA, J.)

February 11, 2026

Nadim

HIGH COURT OF JUDICATURE AT ALLAHABAD**CRIMINAL APPEAL No. 235 of 1984**

Radha Charan Sharma		Appellant
	Versus	
State of U.P.		Respondent

Counsel for Appellant	:	Vishesh Kumar (Amicus Curiae)
Counsel for Respondent	:	A.G.A.

Court No. - 45

HON'BLE RAJIV GUPTA, J.
HON'BLE DEVENDRA SINGH-I, J.

1. Shri Vishesh Kumar, Advocate was appointed an Amicus Curiae to argue the instant criminal appeal on behalf of the appellant. He has rendered valuable assistance to the Court.

2. The Court quantified Rs. 15,000/- to be paid to Shri Vishesh Kumar towards fees for the able assistance provided by him in hearing of the instant criminal appeal.

3. The said fees shall be paid to him by the Registry of this Court within a period of one month from today.

(DEVENDRA SINGH-I, J.) (RAJIV GUPTA, J.)

February 11, 2026

Nadim