

ORDER BELOW EXH.1**Date 26.05.2022**

1. In the present case, evidence of P.W. 12 Manoj Kashinath Zine was being recorded partly on the point that in his presence, accused had recorded his memorandum statement and thereafter at the instance of accused, stone used in the crime was seized. Accordingly, memorandum statement was marked as Exh. 65 and seizure panchanama was marked as Exh. 66.

2. After recording evidence on above point, learned Additional Public Prosecutor Shri. Khatri was intending to prove “**kurti panchanama**”. In view of that, he was intending to bring the fact on record through the evidence of P.W. 12 Manoj Zine that during investigation, on the basis of information given to the investigation officer by the accused, investigating officer was taken near the place of Bharat Traders Board, near Savitribai Mahavidyalay, Sindkhed Raja (where accused had called deceased Pradip to meet him on the day of incident). Thereafter, accused had taken investigation officer and panchas near the place of old Nagar Parishad Nagarpalika square, more particularly near the gate of Chikhali Urban Bank. Thereafter, accused had taken them to one ATM machine and thereafter taken them to “Gaurav Dhaba” where accused and deceased had consumed a liquor. Learned A.P.P. also wants to bring the fact on record in the evidence of above named witness P.W. 12 that on the day of incident accused had pointed out to the investigating officer the place of one forest area (where accused and

deceased Pradip again consumed liquor from one bottle of liquor). Accused also pointed out that bottle of water, two plastic glass which were used for drinking liquor at “Gaurav Dhaba”, and one empty bottle of liquor which were lying there. Those things were shown by accused to the Investigating Officer on the spot. In such background of the case, Learned A.P.P. wants to bring other relevant facts touching to the crime on record, by proving 'Kurti Panchanama'. The Learned A.P.P. Shri. Khatri, by pointing out above facts, submitted that above referred facts and things were discovered to the investigating officer during course of investigation only on the basis of information provided by accused. The Learned A.P.P. Shri Khatri submitted that above referred portions which are intended to be brought on record are not relating to confessional statement of accused. Therefore, according to him, Section 27 of Evidence Act is attracted. Lastly he requested the Court to allow him to prove relevant above described facts mentioned in “Kurti Panchanama” through the evidence of P.W. 12.

3. Learned counsel of accused Shri. Chopade has submitted that no memorandum panchanama of accused Ganesh was recorded in presence of panchas regarding above mentioned discovery of facts and things. In the absence of recording memorandum panchanama of accused in presence of panchas, Section 27 of Evidence Act is not attracted. Therefore, facts and incriminating material allegedly shown in 'Kurti Panchanama' cannot be allowed to be brought on record through the evidence of P.W. 12. Therefore, he strongly opposed the request of Learned A.P.P. and requested not to allow to

prove the contents of 'Kurti panchanama' through the evidence of P.W. 12. Learned Counsel of accused has placed his reliance on following judgments-

A] **Aghnoo nagesha -Vs.- State of Bihar, 1966 Mh.L.J. 113.** In the said judgment, first information report of murder was lodged by accused to the police Station. Hon'ble Apex Court held that entire statement becomes inadmissible under Section 25 except to the extent the ban is lifted by Section 27.

B] **Pulukuri Kottaya -Vs.- King Emperor, decided by Hon'ble Bombay High Court on 19 the December 1946, para 8 is reproduced as under :**

The second question, which involves the construction of Section 27 of the Indian Evidence Act, will now be considered. That section and the two preceding sections, with which it must be read, are in these terms :-

25. No confession made to a Police officer shall be proved as against a person accused of any offence.

26. No confession made by any person whilst he is in the custody of a Police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

(On Judgment "B", Learned A.P.P. is also relied upon.)

4. I have heard Learned counsel of accused Shri. Chopade and Learned A.P.P. Shri. Khatri. I have also perused record.

5. Admittedly whatever facts have been mentioned in "Kurti Panchanama" and whatever incriminating material are alleged to be seized on the basis of information provided by accused to the

investigating officer, in that regard, memorandum panchanama of accused was not recorded. Therefore, argument of Learned counsel of accused Shri. Chopade may be correct that Section 27 of Evidence Act is not attracted. But in given set of facts and circumstances, Section 8 of Evidence Act is also important one. It reads as under :-

Section 8- Motive, preparation and previous or subsequent conduct.—Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact. **The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.** Explanation 1.—The word “conduct” in this section does not include statements, unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Act. Explanation 2.—When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant. Illustrations

(a) xxxx

(b) xxxx

(c) A is tried for the murder of B by poison. The fact that, before the death of B, A procured poison similar to that which was administered to B, is relevant.

(d) xxxx

(e) A is accused of a crime. The facts that, either before or at the time of, or after the alleged crime, A provided

evidence which would tend to give to the facts of the case an appearance favourable to himself, or that he destroyed or concealed evidence, or prevented the presence or procured the absence of persons who might have been witnesses, or suborned persons to give false evidence respecting it, are relevant.

(f) The question is, whether A robbed B. The facts that, after B was robbed, C said in A's presence—"the police are coming to look for the man who robbed B", and that immediately afterwards A ran away, are relevant.

(g) xxxx

(h) The question is, whether A committed a crime. The fact that A absconded after receiving a letter warning him that inquiry was being made for the criminal and the contents of the letter, are relevant.

(i) A is accused of a crime. The facts that, after the commission of the alleged crime, he absconded, or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant.

(j) xxxx

(k) xxxx

6. In the light of Section 8 of Evidence Act, if certain facts stated in "Kurti panchanama" and certain incriminating material and things such as bottle of liquor and of water, plastic glasses which were allegedly used by accused and deceased Pradip prior to committing alleged offence and subsequently those incriminating material were found on the spot at the instance of accused is also found to be relevant one. As per Section 8 of Evidence Act previous and subsequent conduct of the party to the transaction is also relevant for

being determined the controversy arise between the parties. Conduct of accused during course of an investigation is admissible under Section 8. Above-stated facts and things discovered during course of investigation at the instance of accused, relating to which “Kruti Panchnama” was prepared, is such that it has close nexus with a fact in issue or relevant fact. For proving subsequent and previous conduct of accused, there is no need to prepare memorandum panchanama of accused as required in Section 27 of Evidence Act. Merely memorandum statement of accused was not recorded by investigating officer, that cannot be sufficient ground for rejecting the submission of Learned A.P.P. The reason is being that having found incriminating material which were used by accused and deceased Pradip prior to committing offence on particular spot at the instance of accused to the investigating officer in presence of panchas, falls within the purview of Section 8 of Evidence Act. According to learned A.P.P. Shri Khatri, the conduct of accused, after the incident had taken place is natural and relevant one for proving guilt against accused. Above stated alleged conduct of accused, facts and things recovered at the instance of accused may throw light on the controversy.

7. For above-stated all reasons, according to me, permission needs to be granted to the Learned A.P.P. for being proved certain facts (except confessional facts) mentioned in “**Kurti Panchanama**” relating to collecting incriminating material things from this spot and other information supplied by accused in presence of panchas to the investigating officer, under Section 8 of Evidence Act. Certainly

confessional statement cannot be allowed to be proved, which is prohibited by Section 25 of Evidence Act. As such in view of above made discussion, I do not find any substance in the objection taken by Learned counsel of accused. Hence, I reject the same and Learned A.P.P. Shri. Khatri is permitted to bring the relevant facts (except confessional statement) on record through P.W. 12 and other relevant witnesses in this regard relating to the previous and subsequent conduct of accused being relevant and admissible for being proved the controversy arise in the matter. Case to proceed further. Parties to note it.

Date : 26.05.2022

(R.N.Mehare)
Addl.Sessions Judge,
Buldana