

In the High Court of Punjab and Haryana at Chandigarh

1. Crl. Appeal No. S-703-SB of 1997
Date of Decision: 19.2.2015

Gurpreet SinghAppellant

Versus

State of PunjabRespondent

2. Crl. Appeal No. S-654-SB of 1997

Lakhwinder SinghAppellant

Versus

State of PunjabRespondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. J.S.Bedi, Senior Advocate with
Ms. Diya Sodhi, Advocate
for the appellant.
(In CRA-S-703-SB of 1997)

Mr. T.S.Sangha, Senior Advocate with
Mr. H.S.Sangha, Advocate
for the appellant.
(In CRA-S-654-SB of 2007)

Mr. K.S.Aulakh, AAG, Punjab.

Mr. Ashok Aggarwal, Advocate
for the CBI.

SABINA, J.

Vide this order, above mentioned two appeals would be
disposed of as the appellants have challenged their conviction and
sentence under Section 363, 366-A, 342/34 of the Indian Penal

Code, 1860 ('IPC' for short) as ordered by the Trial Court vide judgment/order dated 30.7.1997.

Prosecution story, in brief, is that Charanjit Kaur granddaughter of Ujagar Singh and Kamaljit Kaur daughter of Nirmal Singh, were students of 10th class in Government High School, Smashpur. On 19.1.1995, both the girls had gone to school as usual. At about 2.00 P.M., it transpired in the school that the girls had gone missing. Headmaster of the school informed the families of the girls that they were missing. On enquiry, it transpired that the girls had been taken by a boy on his scooter. The matter was informed to the police. Ujagar Singh and Nirmal Singh thumb marked certain papers and they were under the impression that report had been recorded and case had been registered. On 20.9.1995, Ujagar Singh and Nirmal Singh again visited the school to ask the classmates of the girls about their whereabouts. Ujagar Singh and Nirmal Singh found out that the girls had been taken by a boy on a scooter. Devi, daughter of Raghbir Singh alias Rana and Jeeti son of Gulzar Singh were interrogated and it transpired that the girls had been kidnapped by Gurpreet Singh. Appellant Gurpreet Singh was arrested and during interrogation, it transpired that he had taken both the girls to Bajwa Gun House, Patiala and had handed over the girls to the owner of the gun house. Since no action was taken by the police against the accused, Ujagar Singh and Nirmal Singh filed CRWP No. 286 of 1995 in this Court and following order dated 11.7.1995 was passed by this Court while disposing of the said writ petition :-

*“Ujagar Singh resident of village Ladpur and Nirmal Singh
a resident of village Kaulgarh, District Fatehgarh Sahib,*

have moved the present petition under Articles 226/227 of the Constitution of India for issuance of a writ and direction that the investigation regarding two missing school-going girls, should be entrusted to the Central Bureau of Investigation because neither the young girls have been recovered nor any tangible efforts have been made for locating them though a period of about six months has passed.

Charanjit Kaur is a grand-daughter of Ujagar Singh petitioner No. 1 and Kamaljit Kaur is a daughter of Nirmal Singh petitioner No. 2. Both are studying in 10th Class in Government High School, Sameshpur and they went to the aforesaid school on the morning of 19.1.1995. However, at about 2.00 P.M. the teachers noticed that the aforesaid students were missing and they ascertained from the close relations and parents of the aforesaid two students that missing students have also not reached home. The petitioners came to know that during the recess the aforesaid two students taken away by a boy on a scooter. The two petitioners took assistance from Harbans Lal, Tara Singh, Jit Singh Panch and several others but of no avail. They ultimately reached Police Station Amloh and reported the matter. On 20.1.1995 the parents of the two girls including the petitioners met the Headmaster of the school and he collected four or five class fellows of the missing girls and they themselves could not tell the particulars of the boy who had

kidnapped the girls but they were able to help to a limited extent that Jeeti son of Gulzar Singh an expelled student was very close to the boy who had kidnapped the two girls. It appears that the police has interrogated Jeeti, Devi etc. but of no avail.

A report prepared by Shri Bharpur Singh Sub Inspector shows that Gurpreet met the aforesaid two girl-students during the recess time in the school and brought them to Patiala. The learned counsel for the petitioner has pointed out that it is a case where two grown-up and young girls of 10th Class studying in a Government School have been kidnapped from there and may be that the accused is influential and the local police could not succeed in achieving the success. The learned Deputy Advocate General tells that considerable efforts have been made by the local police but certainly the girls could neither be located nor recovered so far. It shall not be appropriate to discuss the facts and circumstances contained in some of the affidavits of respondents which are alleged to be incomplete on important issues at this stage.

After hearing the learned counsel for the petitions and the learned Advocate General, Punjab, it is ordered that the Central Bureau of Investigation, Chandigarh shall enquire into this case which was registered vide FIR No. 7 of 29.1.1995 for the offence under Sections 363 and 366 of the Indian Penal Code at Police Station, Amloh and let best efforts be made for locating the two missing girl

students who were kidnapped from a Government education institution. The enquiry be conducted under the supervision of Superintendent of Police (Special Crime Branch), CBI, Chandigarh. The State Government and the District Police shall provide all possible help and assistance to the Central Bureau of Investigation in this regard and let the report be furnished within a period of four months.”

In pursuance to the said order, FIR No. RC-6(S)/95/SIU-XV/Chandigarh dated 7.8.1995 was registered by Central Bureau of Investigation ('CBI' for short). Thereafter, CBI investigated the case and after completion of investigation and necessary formalities, challan was presented against the appellants.

Charge was framed against the appellants under Section 363, 366-A, 342/34 IPC vide order dated 27.7.1996.

In order to prove its case, CBI examined 46 witnesses during trial.

Appellants when examined under Section 313 of the Code of Criminal Procedure, 1973, pleaded that they were innocent and had been falsely involved in this case. Appellant Gurpreet Singh further stated that he had been taken in custody by the police during investigation of some terrorist case and was tortured by the police. Thereafter, police had falsely involved him in this case. Complainants had filed the criminal writ petition just to save their own skin from the police.

Appellants examined one witness in their defence.

Learned senior counsel for the appellants have

submitted that no offence under Section 363, 366-A, 342/34 IPC could be said to have been committed by the appellants. Case of the CBI mainly rested on the statement of PW-13 Shamsheer Singh. The said witness had allegedly last seen the girls with appellant Gurpreet Singh. The statement of PW-13 was recorded after a long delay. PW-13 had been introduced as a witness at a later stage to falsely involve the appellants in this case. Even as per the said witness, the girls had gone with appellant Gurpreet Singh. Hence, it could not be said that the appellants had illegally confined the girls. No offence under Section 366-A IPC can be said to have been committed by the appellants as there was no evidence that the girls had been taken for commission of some sexual offence. No reliance could be placed on the alleged confessions made by the appellants before the police as they would be hit by Section 25 of the Indian Evidence Act, 1872 ('Act' for short) and Article 20 of the Constitution of India. As per the prosecution case, Lakhwinder Singh had made the girls to board a bus after paying them ₹ 50/-. At the most, it could be said to be a case of temporary stay of the girls with the appellants. In support of their arguments, learned senior counsel have placed reliance on '**Aloke Nath Dutta and others versus State of West Bengal, 2007(1) RCR (Criminal) 468**', wherein it was held as under:-

“102. The policy underlying behind Sections 25 and 26 is to make it a substantive rule of law that confessions whenever and wherever made to the police, or while in the custody of the police unless made in the immediate presence of a magistrate, shall be presumed to have been obtained under the circumstances mentioned in Section

24 and, therefore, inadmissible, except so far as is provided by Section 27 of the Act.”

Learned senior counsel have further placed reliance on '**S.Varadarajan versus State of Madras, AIR 1965 Supreme Court, 942**', wherein it was held as under:-

“9. It must, however, be borne in mind that there is a distinction between "taking" and allowing a minor to accompany a person. The two expressions are not synonymous though we would like to guard ourselves from laying down that in no conceivable circumstance can the two be regarded as meaning the same thing for the purposes of S. 361 of the Indian Penal Code. We would limit ourselves to a case like the present where the minor alleged to have been taken by the accused person left her father's protection knowing and having capacity to know the full import of what she was doing voluntarily joins the accused person. In such a case we do not think that the accused can be said to have taken her away from the keeping of her lawful guardian. Something more has to be shown in a case of this kind and that is some kind of inducement held out by the accused person or an active participation by him in the formation of the intention of the minor to leave the house of the guardian.

10. It would, however, be sufficient if the prosecution establishes that though immediately prior to the minor leaving the father's protection no active part was played by the accused, he had at some earlier stage solicited or

persuaded the minor to do so. In our, opinion if evidence to establish one of those things is lacking it would not be legitimate to infer that the accused is guilty of taking the minor out of the keeping of the lawful guardian merely because after she has actually left her guardian's house or a house where her guardian had kept her, joined the accused and the accused helped her in her design not to return to her guardian's house by taking her along with him from place to place. No doubt, the part played by the accused could be regarded as facilitating the fulfillment of the intention of the girl. That part, in our opinion, falls short of an inducement to the minor to slip out of the keeping of her lawful guardian and is, therefore, not tantamount to "taking".

Learned senior counsel for the appellants have next placed reliance on '***Iqbal versus State of Kerala, 2007(4) RCR (Criminal) 867***, wherein it was held as under:-

“9. The residual question is of applicability of Section 366A IPC. In order to attract Section 366A IPC, essential ingredients are (1) that the accused induced a girl; (2) that the person induced was a girl under the age of eighteen years; (3) that the accused has induced her with intent that she may be or knowing that it is likely that she will be forced or seduced to illicit intercourse; (4) such intercourse must be with a person other than the accused; (5) that the inducement caused the girl to go from any place or to do any act.

10. In the instant case, the admitted case of the prosecution is that girl had left in the company of the accused of her own will and that she was not forced to sexual intercourse with any person other than the accused. The admitted case is that she had sexual intercourse with the accused for which, considering her age, conviction under Section 376 IPC has been maintained. Since the essential ingredient that the intercourse must be with a person other than the accused has not been established, Section 366A has no application.”

Learned senior counsel have also placed reliance on '**Nandini Satpathy versus P.L.Dani and another, 1978 AIR (SC) 1025**', wherein it was held as under:-

“7. Counsel's submissions have zeroed in on some basic questions. Speaking broadly, there are two competing social interests a reconciliation of which gives the clue to a balance between the curtailed or expanded meaning for the sententious clause against self-incrimination in our Constitution. Section 161(2) Cr. P.C. is more concrete. We may read both before venturing a bhashyam on their text :

"Art. 20(3)-No person accused of any offence shall be compelled to be a witness against himself".

32. We will now answer the questions suggested at the beginning and advert to the decisions of our Court which set the tone and temper of the 'silence' clause and bind us

willy nilly. We have earlier explained why we regard Section 161 (2) as a sort of parliamentary commentary on Article 20(3). So, the first point to decide is whether the police have power under Sections 160 and 161 of the Code of Criminal Procedure to question a person who, then was or, in the future may incarnate as, an accused person. The Privy Council and this Court have held that the scope of section 161 does include actual accused and suspects and we deferentially agree without repeating the detailed reasons urged before us by counsel.”

Learned senior counsel have further placed reliance on '**Sannaila Subba Rao and others versus State of A.P., 2008(3) RCR (Criminal) 973**', wherein it was held as under:-

“38. So far as Section 366 A is concerned, in such an offence what is required to be proved by the prosecution is that there is cogent and reliable evidence to prove and establish that a minor girl under the age of 18 years was induced to come from one place to the other with the intention that such girl may be, forced to have illicit intercourse with another person. Therefore, in such an offence, the chief ingredient is that the girl is made to go from one place to other with the intention or knowledge that she may be forced to illicit intercourse. The evidence on record does not reveal any such intention. That the prosecutrix was subjected and forced to illicit intercourse came to be stated for the first time only during the trial which according to us is nothing but embellishment in

order to see that the accused persons are made and are subjected to major punishments.”

Learned senior counsel have next placed reliance on ***Devi Ram Patt Ram versus The State, AIR 1962 Punjab, 70*** wherein it was held as under:-

“6. Under section 25 a confession, which is made to a police officer, cannot be proved against the person who is accused of an offence. This section does not set out anything regarding the state of the person who is making the confession. It is not necessary that the confession should be made when he is in police custody, nor is it necessary that he must be an accused person. The section merely means that when an accused person is being tried, a confession, which he, on a previous occasion made to a police officer cannot be proved against him. It is not specified that the accused person must have been an accused person at the time of making the statement, nor need he have been in police custody. This meaning of section 25 has been accepted by Courts and there are rulings to the effect that section 25 applied to a case where a confessional statement is made by a person who was not an accused person at the time of making the statement but is being tried subsequently.”

Learned counsel for the CBI, on the other hand, has submitted that the case of the complainant party was that the Punjab Police had not properly investigated the case. Statement of PW-13 was not recorded by the Punjab Police and due to this reason, the matter was not interrogated by the police in its correct

perspective. It is only when the investigation was taken over by the CBI, the statements of PW-13 as well as other witnesses were recorded. The investigation conducted by the CBI reveals that the accused were guilty of offence qua which charges were framed against them. The girls were taken by appellant Gurpreet Singh and they were left with Lakhwinder Singh for enjoyment. This showed that offence under Section 366-A IPC was made out in the facts of the present case. Confessional statements had been made by the accused before number of villagers. Therefore, the confessional statements made by the accused were liable to be believed. The girls had not been traced so far.

In order to prove its case, CBI has examined witnesses to establish the confessions suffered by the appellants as well as the witnesses who had last seen the appellants with the girls.

CBI has examined PW-1 Satwant Kaur, PW-2 Maya Devi and PW-4 Shashi Bhushan to establish that the girls had come to the school on 19.1.1995.

PW-1 Satwant Kaur and PW-2 Maya Devi are the classmates of the girls. The said witnesses deposed that on 19.1.1995, Charanjit Kaur and Kamaljit Kaur had come to the school. The said witnesses were further examined to establish that during recess, the girls had left with appellant Gurpreet Singh. During trial, both the witnesses stated that the girls had come to school on 19.1.1995 but they did not support the prosecution case to the effect that the girls had left with appellant Gurpreet Singh.

PW-4 Shashi Bhushan deposed that she was working as a teacher in Government High School, Smashpur. On 19.1.1995, she had marked the attendance of Chararnjit Kaur and Kamaljit

Kaur in the morning but they absented during recess.

PW-6 Hakam Singh @ Hakam Rai deposed that he was the Headmaster of Government High School Smashpur and on 19.1.1995, at about 12.45. P.M., he had been informed by PW-4 that Kamaljit Kaur and Charanjit Kaur were missing after recess. He sent Baljit Singh to the house of Kamaljit Kaur and Shadi to the house of Charanjit Kaur to enquire about the whereabouts of the girls. Parents of the girls contacted him and informed that the girls had not reached home. They all searched for the girls. Station House Officer, Amloh visited the school on 2nd/3rd day of the disappearance of the girls. He proved the birth certificates of Charanjit Kaur and Kamaljit Kaur as Ex. PE and Ex. PF, respectively.

Baljit Singh appeared in the witness box as PW-7 and Shadi appeared in the witness box as PW-31 and corroborated the statement of PW-6 to the effect that they had visited the house of the girls.

Thus, from the statements of PW-1, PW-2, PW-4 and PW-6, it is evident that Charanjit Kaur and Kamaljit Kaur attended the school on 19.1.1995 and went missing during recess.

As per Ex. PE, date of birth of Charanjit Kaur was 6.4.1978 and as per Ex. PF, date of birth of Kamaljit Kaur was 23.8.1980. Thus, the girls were minor as on 19.1.1995.

PW-14 Ujagar Singh deposed that Charanjit Kaur was his grand daughter. On the day of occurrence, he had gone to Khanna. He returned home at 3.30 P.M. and came to know that Charanjit Kaur had taken away by somebody. His son Balwinder Singh came home on 20.1.1995 and he told him about the

disappearance of Charanjit Kaur.

PW-11 Balwinder Singh, father of Charanjit Kaur, deposed that on 20.1.1995, his father informed him that his daughter Charanjit Kaur was missing since 19.1.1995. His father also informed him that the matter had been reported to the police. He tried to locate his daughter but he had been unable to trace her till date. He approached the Chief Minister, Punjab. The said application was forwarded to Superintendent of Police ('S.P' for short) (Crime) Mr. Randhawa. He met S.P. (Crime) along with other persons. Lakhwinder Singh appellant was called and whereabouts of his daughter were enquired from him. He was informed by S.P. (Crime) Mr. Randhawa that his daughter was alright and would return home within a day or two. However, his daughter had not come home till date. His thumb impressions were taken on certain documents by the police without reading out the contents of the same. He was illiterate.

PW-12 Nirmal Singh deposed that his daughter Kamaljit Kaur had gone to school on the day of occurrence but had not returned home. Baljit Singh had visited his house and had informed him that his daughter had gone missing from the school. He was informed by the Headmaster of the school that his daughter Kamaljit Kaur and Charanjit Kaur had been taken away on a white scooter. Ujagar Singh along with some other persons also reached the Police Station, Amloh where he had lodged a report qua disappearance of his daughter. On the next day, they again went to the police station but the girls could not be located. He along with Ujagar Singh and other 100 persons of about seven different villages, approached Chief Minister, Punjab who directed S.P.

(Crime) Mr. Randhawa to investigate the matter. He was called by S.P. (Crime) to Division No. 4, Patiala. Appellant Gurpreet Singh was interrogated by the police and he disclosed that he had left both the girls Kamaljit Kaur and Charanjit Kaur with the proprietor of Bajwa Gun House, Patiala. Lakhwinder Singh was also called to the police station and was interrogated. S.P. Randhawa after interrogating appellant Lakhwinder Singh, assured him that the girls were alright and would return home. However, Kamaljit Kaur and Charanjit Kaur had not reached home till date.

PW-24 Gurmail Singh, PW-25 Swaran Singh, PW-28 Rajinder Singh and PW-35 Pritam Singh have corroborated the statements of PW-11 and PW-12 to the effect that S.P. (Crime) Mr. Randhawa had assured that the girls would return home in a day or two. The said witnesses had accompanied PW-11 and PW-12 to the police station.

Thus, from the statements of PW-11, PW-12 and PW-14, it is evident that the girls had gone to the school on 19.1.1995 and thereafter, went missing and had not been traced during trial. Further from the statements of PW-11, PW-12, PW-24, PW-25, PW-28 and PW-35, it is evident that S.P. Randhawa, who was instructed to investigate the matter by the Chief Minister, Punjab, had assured that the girls would return home in a day or two but the girls had failed to return home.

PW-15 Jeet Singh, PW-26 Harbans Lal, PW-29 Tara Singh, PW-32 Gurdeep Singh, PW-33 Darshan Singh, PW-34 Jarnail Singh and PW-36 Kaka Singh corroborated the statement of PW-12 Nirmal Singh to the effect that Gurpreet Singh appellant was interrogated in their presence and he had disclosed that he

had left the girls with the proprietor of Bajwa Gun House, Patiala. PW-29 Tara Singh and PW-32 Gurdeep Singh further corroborated the statements of PW-11 Balwinder Singh and PW-12 Nirmal Singh to the effect that Lakhwinder Singh appellant was also interrogated in their presence and after his interrogation, S.P. Randhawa had assured that the girls would return home within a day or two.

Section 25 of the Act reads as under:-

“Confession to police officer not to be proved. —No confession made to a police officer, shall be proved as against a person accused of any offence.

Section 26 of the Act reads as under:-

Confession by accused while in custody of police not to be proved against him- 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.

Section 27 of the Act reads as under:-

How much of information received from accused may be proved- Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

In '***Pulukuri Kottaya and others versus Emperor, AIR (34), 1947 Privy Council 67***, it has been held by the Privy Council as under:-

“10. Section 27, which is not artistically worded, provides

an exception to the prohibition imposed by the preceding section, and enables certain statements made by a person in police custody to be proved. The condition necessary to bring the section into operation is that the discovery of a fact in consequence of information received from a person accused of any offence in the custody of a Police officer must be deposed to, and thereupon so much of the information as relates distinctly to the fact thereby discovered may be proved. The section seems to be based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true, and accordingly can be safely allowed to be given in evidence; but clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. Normally the section is brought into operation when a person in police custody produces from some place of concealment some object, such as a dead body, a weapon, or ornaments, said to be connected with the crime of which the informant is accused. Mr. Megaw, for the Crown, has argued that in such a case the "fact discovered" is the physical object produced, and that any information which relates distinctly to that object can be proved. Upon this view information given by a person that the body produced is that of a person murdered by him, that the weapon produced is the one used by him in the

commission of a murder, or that the ornaments produced were stolen in a dacoity would all be admissible. If this be the effect of Section 27, little substance would remain in the ban imposed by the two preceding sections on confessions made to the police, or by persons in police custody. That ban was presumably inspired by the fear of the legislature that a person under police influence might be induced to confess by the exercise of undue pressure. But if all that is required to lift the ban be the inclusion in the confession of information relating to an object subsequently produced, it seems reasonable to suppose that the persuasive powers of the police will prove equal to the occasion, and that in practice the ban will lose its effect. On normal principles of construction their Lordships think that the proviso to Section 26, added by Section 27, should not be held to nullify the substance of the section. In their Lordships' view it is fallacious to treat the "fact discovered" within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that "I will produce a knife concealed in the roof of my house" does not lead to the discovery of a knife; knives

were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge; and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added "with which I stabbed A", these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant."

The Delhi High Court in '**Kamal Kishore versus State (Delhi Admn) 1997(2) Crimes, 169**', while considering Section 25, 26 and 27 of the Act, has held as under:-

"5. From a perusal of the above provisions of law, it can be seen that a fact discovered on information supplied by the accused in his disclosure statement, is a relevant fact and that is only admissible in evidence in something new is discovered or recovered from the accused which was not within the knowledge of the police before recording the disclosure statement of the accused.

x x x x x x"

Thus, any confession made by an accused before the police is not admissible in evidence. However, if a new fact is discovered on the basis of the statement made by the accused and the said fact comes to the knowledge of the police for the first time, then the same would be admissible in evidence.

In the present case, during investigation, it transpired that the girls had left with appellant Gurpreet Singh on a scooter. However, when appellant Gurpreet Singh was interrogated by the police in the presence of the fathers of the girls as well as other

villagers, for the first time it transpired from the statement suffered by appellant Gurpreet Singh that he had left the girls with appellant Lakhwinder Singh. The part of the statement of appellant Gurpreet Singh that he had left the girls with appellant Lakhwinder Singh, was, thus, admissible in evidence as the said fact was not earlier in the knowledge of the police or the witnesses and was disclosed by appellant Gurpreet Singh during his interrogation.

Parents of the girls were accompanied by number of villagers during investigation of the case. Seven witnesses apart from the father of Charanjit Kaur, have deposed that Gurpreet Singh appellant had stated that the girls had been left by him in Bajwa Gun House, Patiala. PW-15, PW-26, PW-29, PW-32, PW-33, PW-34 and PW-36 are independent witnesses and had no axe to grind against appellant Gurpreet Singh. Apparently, it was the concern of the entire village as the girls had not been traced. Hence, confession made by appellant Gurpreet Singh in the presence of the said witnesses, in the facts and circumstances of the present case, is a relevant piece of evidence.

So far as appellant Lakhwinder Singh is concerned, he was also interrogated and after his interrogation, S.P. Randhawa had assured that the girls would return home within a day or two.

Section 30 of the Act reads as under:-

“Consideration of proved confession affecting person making it and others jointly under trial for same offence.- *When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into*

consideration such confession as against such other person as well as against the person who makes such confession.”

While dealing with the above provision, the Apex court in **'Haricharan Kurmi versus State of Bihar, AIR 1964 Supreme Court 1184 (V 51 C 149)**, held as under:-

“ x x x x x x

It would be noticed that as a result of the provisions contained in S. 30, the confession has no doubt to be regarded as amounting to evidence in a general way, because whatever is considered by the Court is evidence; circumstances which are considered by the court as well as probabilities do amount to evidence in that generic sense. Thus, though confession may be regarded as evidence in that generic sense because of the provisions of S. 30, the fact remains that it is not evidence as defined by S. 3 of the Act. The result, therefore, is that in dealing with a case against an accused person, the court cannot start with the confession of a co-accused person; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence. That, briefly stated, is the effect of the provisions contained in S. 30.

x x x x x x

As we have already indicated, it has been a recognised principle of the administration of criminal law in this country for over half a century that the confession of a co-accused person cannot be treated as substantive evidence and can be pressed into service only when the court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of its conclusion deducible, from the said evidence. In criminal trials, there is no scope for applying the principle of moral conviction or grave suspicion. In criminal cases where the other evidence adduced against an accused person is wholly unsatisfactory and the prosecution seeks to rely on the confession of a co-accused person, the presumption of innocence which is the basis of criminal jurisprudence assists the accused person and compels the Court to render the verdict that the charge is not proved against him, and so, he is entitled to the benefit of doubt.

x x x x x x”

Although, confession of a co-accused cannot be treated as substantive evidence and the Court is required to seek corroboration from other evidence before relying upon the confession made by a co-accused but in the present case, the confession made by appellant Gurpreet Singh shows that he had left the girls with appellant Lakhwinder Singh. Thereafter, appellant Lakhwinder Singh was also interrogated and the fathers of the girls as well as the other co-villagers, who had appeared as witnesses, during trial,

were assured that the girls would return home within a day or two. Therefore, in the peculiar facts of the present case, the confession made by appellant Gurpreet Singh qua involvement of appellant Lakhwinder Singh, is a relevant piece of evidence.

Section 106 of the Act reads as under:-

Burden of proving fact especially within knowledge.- *When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.*

In '**State of Rajasthan versus Jaggu Ram, 2008(1)**

RCR (Criminal) 659', the Apex Court has held as under:-

“20. In our considered view, this was a fit case for invoking Section 106 of the Evidence Act, which lays down that when any fact is especially within the knowledge of the any person, the burden of proving that fact is upon him. In Ram Gulam Chaudhary vs. State of Bihar, 2001 (4) RCR (Crl.) 347: [2001(8) SCC 311] this Court considered the applicability of Section 106 of the Evidence Act in a case somewhat similar to the present one. This Court noted that the accused after brutally assaulting a boy carried him away and thereafter the boy was not seen alive nor his body was found. The accused, however, offered no explanation as to what they did after they took away the boy. It was held that for the absence of any explanation from the side of the accused about the boy, there was every justification for drawing an inference that they had murdered the boy. It was further observed that even though Section 106 of the Evidence

Act may not be intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but the section would apply to cases like the present, where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding death. The accused by virtue of their special knowledge must offer an explanation which might lead the court to draw a different inference.

21. In Trimukh Maroti Kirkan vs. State of Maharashtra [2006 (1) SCC 681], a two judge-bench of which one of us (G.P.Mathur, J.) was a member, considered the applicability of Section 106 of the Evidence Act and observed:

”The demand for dowry or money from the parents of the bride has shown a phenomenal increase in the last few years. Cases are frequently coming before the courts, where the husband or in-laws have gone to the extent of killing the bride if the demand is not met. These crimes are generally committed in complete secrecy inside the house and it becomes very difficult for the prosecution to lead evidence. No member of the family, even if he is a witness of the crime, would come forward to depose against another family member. The neighbours, whose evidence may be of some assistance, are generally reluctant to depose in court as they want to keep aloof and do not want to antagonise a neighbourhood family. The

parents or other family members of the bride being away from the scene of commission of crime are not in a position to give direct evidence which may inculcate the real accused except regarding the demand of money or dowry and harassment caused to the bride. But, it does not mean that a crime committed in secrecy or inside the houses should go unpunished.”

*22. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the courts. A judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties. (See *Stirland v. Director of Public Prosecutions* [1944 AC 315] quoted with approval by Arijit Pasayat, J. in *State of Punjab v. Karnail Singh*, 2004(1) RCR (Criminal) 156 : 2004(2) Apex Criminal 76 : [2003 (11) SCC 271]. The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of*

leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (b) appended to this section throws some light on the content and scope of this provision and it reads:

“(b) A is charged with travelling on a railway without ticket. The burden of proving that he had a ticket is on him.”

Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.”

The Apex Court in '**State of Rajasthan versus Kashi**

Ram (2006) 12 Supreme Court Cases, 254', has held as under:-

“23. It is not necessary to multiply with authorities. The principle is well settled. The provisions of Section 106 of the Evidence Act itself are unambiguous and categorical in laying down that when any fact is especially within the knowledge of a person, the burden of proving that fact is upon him. Thus, if a person is last seen with the deceased, he must offer an explanation as to how and when he parted company. He must furnish an explanation which appears to the Court to be probable and satisfactory. If he does so he must be held to have discharged his burden. If he fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by Section 106 of the Evidence Act. In a case resting on circumstantial evidence if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him. Section 106 does not shift the burden of proof in a criminal trial, which is always upon the prosecution. It lays down the rule that when the accused does not throw any light upon facts which are specially within his knowledge and which could not support any theory or hypothesis compatible with his innocence, the Court can consider his failure to adduce any explanation, as an additional link which completes the chain. The principle has been succinctly stated in

Naina Mohd. AIR 1960 Madras, 218.”

Thus, the girls were last of all with appellant Lakhwinder Singh and he had failed to furnish any explanation as to what happened to the girls after they were left with him by appellant Gurpreet Singh. The said fact is also a circumstance against appellant Lakhwinder Singh.

CBI had examined PW-17 Bipen, PW-18 Charan Singh and PW-20 Prem Kumar Khanna to establish that after the girls were brought to Bajwa Gun House by appellant Gurpreet Singh, they took tea with the appellants. However, the said witnesses did not support the prosecution case during trial.

In order to establish that appellant Lakhwinder Singh had made the girls board Lok Sewak Bus service from Patiala at 3.50 P.M., on 19.1.1995, CBI examined PW-3 Indermeet Kaur, PW-37 Malkiat Singh, driver of the bus No. PB-23-1415 and PW-38 Jaswinder Singh, conductor of the bus. However, all the said three witnesses did not support the prosecution case during trial and stated that they had no knowledge if the girls had boarded the bus in question at 3.50 P.M. on 19.1.1995 from Patiala.

CBI further examined PW-13 Shamsheer Singh to establish its case. Learned senior counsel for the appellants have submitted that the statement of the said witness had been recorded after a long delay and his statement was not corroborated by the Headmaster of the school but the same had been a creation of the CBI.

On the other hand, learned counsel for the CBI has submitted that the statement of PW-13 was relevant as it had not been recorded by the Punjab Police during investigation as the

Punjab Police had failed to conduct proper investigation of the case and due to this reason, the matter was handed over to CBI by this Court.

In the present case, complainant had approached this Court that the investigation of the case be handed over to CBI as the Punjab Police had failed to perform its duty and this Court vide order dated 11.7.1995 had directed the CBI to investigate the matter. In the facts and circumstances of the present case, the statement of PW-13 Shamsher Singh cannot be brushed aside merely on the ground of delay. Let us examine the statement of PW-13 Shamsher Singh as to whether it inspires confidence or not.

PW-13 Shamsher Singh deposed that on 19.1.1995, they were levelling the roads around the school of their village. He came to know that girls had disappeared from Government School, Smashpur during interval. He had seen two girls and a boy standing outside the school. Initially, he had thought of informing the school about the fact that the girls were standing with a boy but he did not do so as he thought that the boy may not be related to the girls and it may embarrass the girls. He recognized the boy as he was known to him. Later he saw that the boy took the girls on a scooter and he (witness) left to bring the doctor who had to inaugurate the function of their club. He informed the Headmaster of the school about the incident and the Headmaster told him that he was already aware of the incident. Since he was busy in the programme organized by his club, he was not aware about the investigation of the case. Later, he came to know that the girls had not returned home and the matter was being investigated by the police. He did not meet the police but went to the house of the boy.

He met the boy but he refused to give him any information qua the girls. He returned home and thought that he might have been under a wrong impression. Sukhdev Singh, elder brother of appellant Gurpreet Singh, visited his house and enquired from him as to why he had gone to his house. He told Sukhdev Singh that he apprehended that his brother had taken away two girls from Government High School Smashpur. Sukhdev Singh told him that Gurpreet Singh had admitted that he had taken two girls from the school but requested him (witness) not to inform the police. He (witness) advised Sukhdev Singh to send the girls to their respective homes. On the next day, Sukhdev Singh again told him that his brother had handed over the girls to somebody and they were trying to trace the girls. The witness identified appellant Gurpreet Singh in the Court.

The statement of PW-13 Shamsheer Singh inspires confidence. The said witness had no ill will against appellant Gurpreet Singh to have falsely involved him in this case. Although, the statement of the said witness was recorded after delay but he has withstood the test of cross-examination. It appears that the statement of PW-13 was not recorded initially by the Punjab Police but his statement was recorded only after the matter was investigated by the CBI.

Sukhdev Singh, brother of appellant Gurpreet Singh, was examined as PW-9 to corroborate the statement of PW-13 but he did not support the prosecution case during trial.

PW-8 Amar Singh, owner of scooter No. PB-11C-0977, did not support the prosecution case to the effect that girls had been taken on his scooter by Gurpreet Singh.

In order to prove the investigation of the case, prosecution examined PW-42 H.R.Chopra, Deputy Superintendent of Police ('DSP' for short). The said witness deposed that FIR had been registered as per the orders of this Court in Criminal Writ Petition No. 286 of 1995. The case was entrusted to Inspector Jasbir Pal Singh for investigation and he had also joined the investigation. He recorded the statement of Prem Kumar and Kesar Singh without any addition or omission. He had interrogated appellant Gurpreet Singh and Lakhwinder Singh and Gurpreet Singh appellant had admitted that he had taken the girls to Bajwa Gun House, Patiala and had left them there. Lakhwinder Singh had admitted that the girls had come to his shop on the fateful day and had taken tea. The girls were last seen at Bajwa Gun House, Patiala on 19.1.1995 but had not been traced thereafter. Photographs and bio-data of the girls were sent to all Senior Superintendents of Police, Punjab. CBI had also declared an award of ₹ 1,00,000/- to know about the whereabouts of the girls. Photographs and bio-data of the girls were published in leading newspapers as well as they were displayed on television but no information could be received. During investigation, it could not be ascertained as to whether the girls were alive or dead.

PW-45 Sub Inspector Harbhajan Singh deposed that he had arrested appellant Gurpreet Singh and he further corroborated the statement of PW-42.

PW-46 DSP Jasbir Pal Singh deposed that FIR in this case was registered on the basis of the directions issued by this Court in Criminal Writ Petition No. 286 of 1995. He took in possession the police file and investigated the case and recorded

the statement of about 20/25 persons without any addition or omission. He arrested appellant Lakhwinder Singh Bajwa. Efforts were made to trace the girls but they could not be traced. After completion of investigation, he presented the challan.

Thus, from the evidence led by the CBI, it is evident that the minor girls namely Charanjit Kaur and Kamaljit Kaur had gone to the school on 19.1.1995 and went missing during recess. It has transpired during the course of arguments, that the girls have not been traced till date. From the statement of PW-13 as well as the confession made by appellant Gurpreet Singh before PW-12, PW-15, PW-26, PW-29, PW-32, PW-33, PW-34 and PW-36, it is evident that Gurpreet Singh had taken the girls on a scooter and had left the girls at Bajwa Gun House, Patiala. From the statements of PW-12, PW-29 and PW-32, it is also evident that Lakhwinder Singh appellant was interrogated and the witnesses had been assured by S.P. (Crime) Mr. Randhawa that the girls would reach home within a day or two. However, the girls have not returned home till date. Hence, the appellants were guilty of commission of offence punishable under Section 342/34, 363 IPC. Since the minor girls had been taken away by Gurpreet Singh and handed over to appellant Lakhwinder Singh at Bajwa Gun House, it is evident that the girls had been taken away with the knowledge that they might be forced to illicit intercourse. Thus, offence punishable under Section 366-A IPC had also been committed by the appellants. Hence, there is no force in the arguments raised by the learned senior counsel for the appellants.

I have gone through the judgments relied upon by the learned senior counsel for the appellants but the same fail to

advance the case of the appellants as they are based on different facts.

In the facts and circumstances of the present case, prosecution had been successful in establishing the guilt of the appellants qua the charges framed against them beyond the shadow of reasonable doubt. The Trial Court had, thus, rightly ordered the conviction and sentence of the appellants under Section 363, 366-A, 342/34 IPC vide impugned judgment/order dated 30.7.1997.

Learned senior counsel for the appellants have lastly submitted that sentence qua imprisonment of the appellants be reduced to the period already undergone by them.

Since in the present case, the girls have not been traced till date, no ground for reducing the sentence qua imprisonment of the appellants is made out and the said request is declined.

No ground for interference by this Court is made out.

Both the appeals are dismissed.

(SABINA)
JUDGE

February 19, 2015

Gurpreet