

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: 08.07.2015

CRA No.1127-DB of 2009

Ajay Kumar & another

...Appellants

Versus

State of Punjab

...Respondent

CRA No.1128-DB of 2009

Rajinder Singh

...Appellant

Versus

State of Punjab

...Respondent

Present: Mr. Rahul Sharma, Advocate, for the appellants.

Mrs. Manjari Nehru Kaul, Addl. AG, Punjab, for the respondent.

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE LISA GILL**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

HEMANT GUPTA, J.

This order shall dispose of aforementioned two appeals i.e. CRA No.1127-DB of 2009 preferred by Ajay Kumar and Gurjit Kaur as well as CRA No.1128-DB of 2009 preferred by Rajinder Singh against the judgment of conviction and order of sentence dated 29.10.2009 passed by the Additional Sessions Judge, Kapurthala, whereby appellants namely Ajay Kumar and Rajinder Singh were convicted for an offence punishable under Section 302 IPC, whereas appellant Gurjit Kaur was convicted for an offence punishable under Section 302 read with Sections 120-B and 109 IPC and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.10,000/- each. In default of payment

**CRA No.1127-DB of 2009 &
CRA No.1128-DB of 2009**

of fine, the defaulter was directed to undergo simple imprisonment for a period of two months.

The prosecution case was set in motion on the statement (Ex.PK) of Hardeep Singh son of Bahadur Singh, brother of the deceased Mohinder Singh, made to Inspector Nirmal Singh, P.S.City, Kapurthala on 07.06.2006. In his statement, Hardeep Singh stated that he has two brothers namely Mohinder Singh and Gurnam Singh. Gurnam Singh died about 11/12 years ago, whereas Mohinder Singh, who after retirement as Deputy Commandant from Border Security Force, was residing in his house at Mohalla Preet Nagar, Markfed Chowk, Kapurthala for the last six years. His brother Mohinder Singh has two sons namely Ranjit Singh and Apar Singh. He stated that Ranjit Singh died about six years ago and Apar Singh, who is residing in America, was married to Gurjit Kaur daughter of Sewa Singh and has two sons namely Harmanveer Singh, aged about 12 years and Harkeerat Singh, aged about 10 years. He further stated that Gurjit Kaur alongwith his sons was residing with his brother Mohinder Singh and sister-in-law Daljit Kaur (since deceased) at Preet Nagar. On 05.06.2006, his brother Mohinder Singh, aged about 62 years and sister-in-law Daljit Kaur, aged about 56 years, left the children in Village Rani, District Hoshiarpur on car, as there were holidays in the school. He stated that today i.e. 07.06.2006 at about 1.00 PM, his brother's friend namely Surinder Singh Ghuman informed him telephonically that his brother Mohinder Singh and sister-in-law Daljit Kaur have died. On receipt of such information, he alongwith his son Shamsher Singh reached at the house of his brother. His brother's daughter-in-law namely Gurjit Kaur already reached there. He saw that blood stained dead bodies of his brother Mohinder Singh and sister-in-law Daljit Kaur were lying on the bed. Apart from noticing sign of injuries, he also noticed that two empty cartridges of gun were lying under the bed and .12

**CRA No.1127-DB of 2009 &
CRA No.1128-DB of 2009**

bore double barrel rifle of his brother was lying alongwith the side of the bed. After checking, daughter-in-law of his brother Gurjit Kaur told him that Rs.20/25 thousands; two golden bangles and one golden chain, which were lying in the Almirah, were also missing. He further stated that it appears that on the mid-night of 6/7.06.2006, some unknown persons had entered his brother's house after cutting the jali of the door near the stair-case and after murdering Mohinder Singh and Daljit Kaur have stolen the golden ornaments and cash. On the basis of such statement, ruqa Ex.PW22/A was sent to the Police Station for lodging of an FIR. On receipt of such ruqa, FIR Ex.PW22/B was registered.

Thereafter, Inspector Nirmal Singh prepared inquest reports and sent the dead bodies of Mohinder Singh and Daljit Kaur for post-mortem examinations. In the meantime, Senior Superintendent of Police; Deputy Superintendent of Police; Finger Print Expert SI Anoop Gautam; Dog Squad Incharge Kuldeep Rai & photographer also reached at the place of occurrence. SI Anoop Gautam checked the spot and found three steel glasses and one empty bottle of Limca, which were lying near the bed. After taking finger prints from the glasses and bottle, he handed over the same to Inspector Nirmal Singh, who converted the same into separate parcels and taken into possession vide memo Exs.PH & PJ. From the spot, Inspector Nirmal Singh also recovered two empty cartridges of .32 bore; one double barrel gun of .12 bore alongwith ten live cartridges and blood stained bed-sheet. After converting into separate sealed parcels, all the articles were taken into possession vide different recovery memos. He also prepared rough site plan Ex.PW22/D and recorded the statements of the witnesses.

It was on 08.06.2006, Inspector Nirmal Singh went to the Civil Hospital, Kapurthala, where ASI Rattan Singh and HC Avtar Singh handed over

**CRA No.1127-DB of 2009 &
CRA No.1128-DB of 2009**

him the clothes of deceased Mohinder Singh and Daljit Kaur as well as one pallet, which was recovered from the dead body of Mohinder Singh. All the articles were taken into possession vide recovery memo Ex.PW22/E. On the same day, during investigation, Inspector Nirmal Singh recorded the statements of the witnesses from where it transpires that Gurjit Kaur alongwith her companions namely Ajay Kumar and Rajinder Singh have got murdered her father-in-law and mother-in-law as a result of which Sections 302, 109 & 120-B IPC were added in the FIR.

It was on 09.06.2006, Inspector Nirmal Singh arrested accused Ajay Kumar and Rajinder Singh by holding a nakabandi at T-point Shjeikhupur, G.T.Road, Kapurthala vide arrest memo Exs.PW22/K and PW22/L respectively. Their personal belongings; mobile phones as well as scooter No.PB-09-3935 on which they were seen coming were also taken into possession. On the same day, Ajay Kumar suffered a disclosure statement Ex.PW22/M during interrogation to the effect that he has kept concealed one pistol of .32 bore, two live cartridges, one empty cartridge and one spare magazine in an Almirah in the workshop of his house. Pursuant to such statement, he got recovered one pistol, one empty cartridge, two live cartridges and two magazines, which were taken into possession vide recovery memo Ex.PW22/P. Accused Gurjit Kaur was also arrested on the same day from the house of Mohinder Singh.

During investigation on 11.06.2006, accused Rajinder Singh suffered a disclosure statement Ex.PM to the effect that he had kept concealed one hammer, one cutter and one knife in a trunk lying in his room. Pursuant to such statement, he also got recovered the articles from the disclosed place. All the articles were taken into possession vide recovery memo Ex.PQ. On completion of necessary

**CRA No.1127-DB of 2009 &
CRA No.1128-DB of 2009**

formalities, report under Section 173 Cr.P.C. was filed against the present appellants.

To prove its case, the prosecution examined PW-1 Dr. Gur Iqbal Singh, a member of the “Board of Doctors”, who conducted the post-mortem examination on the dead bodies of Mohinder Singh and Daljit Kaur. Apart from describing the injuries found on the person of Mohinder Singh and Daljit Kaur, he deposed that all the injuries were antemortem in nature. He deposed that after the post-mortem examination, extracted yellow metallic piece sealed in glass vial bearing one seal was handed over to the police. The cause of death in respect of Mohinder Singh was laceration of brain (vital organ) due to injury No.1, which was due to fire-arm weapon and was sufficient to cause death in the ordinary course of nature, whereas the cause of death in respect of Daljit Kaur was haemorrhage and shock associated with head injury due to injuries, which were sufficient to cause death in ordinary course of nature. He also deposed that after the post-mortem examination of Daljit Kaur, a sealed box bearing 10 seals intact addressed to Chemical Examiner, Government of Punjab, Patiala, containing four vials bearing one seal intact and containing vaginal swabs and pubic hair for semen examination was handed over to the police. He also proved the post-mortem reports of Mohinder Singh and Daljit Kaur as Exs.PB and PC respectively.

PW-6 Hardeep Singh, brother of the deceased Mohinder Singh and the author of FIR, apart from proving his statement Ex.PK, deposed that his brother Mohinder Singh came to him about two years ago and told him that his daughter-in-law Gurjit Kaur is not having good character and that he has seen his daughter-in-law in an objectionable position. His brother also told that accused Gurjit Kaur calls a boy Ajay Kumar on telephone and that she has developed illicit relations with that boy. His brother also asked his wife Daljit Kaur to make Gurjit

**CRA No.1127-DB of 2009 &
CRA No.1128-DB of 2009**

Kaur understand, but Gurjit Kaur did not change her behavior. He further deposed that one day when he had gone to his brother's house and were talking with each other, accused Ajay Kumar accompanied by another boy came to his brother's house for repairing the computer. His brother told him that this is the boy with whom Gurjit Kaur is having illicit relations.

PW-11 Amarjit Kaur, sister of deceased Mohinder Singh, deposed that in April, 2006, his brother and sister-in-law had gone to Hazoor Sahib and they returned after a week. During that period, she and Sampuran Kaur lived with Gurjit Kaur. She deposed that during that period accused Ajay Kumar came to the house of her brother Mohinder Singh in her presence. Thereafter, she and Sampuran Kaur asked Gurjit kaur about Ajay Kumar upon which Gurjit kaur told them that he had come to repair the computer. She deposed that she and Sampuran Kaur came inside the house and saw Ajay Kumar and Gurjit Kaur in an objectionable manner. She further deposed that Kamaljit Singh, brother of Gurjit Kaur also came to meet Gurjit Kaur and gave a mobile phone to her, as he came from Dubai. She deposed that when his brother and sister-in-law came back from Hazoor Sahib, she told them about the presentation of mobile phone to Gurjit Kaur by her brother Kamaljit Singh. She also told Mohinder Singh and his wife that Ajay Kumar had come to the house and that they saw both in an objectionable manner.

PW-12 Harmanveer Singh, son of accused Gurjit Kaur, deposed that on 23.04.2006, his maternal uncle came from Dubai and brought one mobile phone as a gift for his mother Gurjit kaur. His mother requested his maternal uncle for arranging a SIM card. Thereafter, he alongwith his maternal uncle Kamaljit Singh and his friend Balwinder Singh had gone to Bassu Telecom, Mall Road, Kapurthala, for getting the SIM card. He further deposed that since his maternal

**CRA No.1127-DB of 2009 &
CRA No.1128-DB of 2009**

uncle was not having ID proof at that time, then Balwinder Singh gave his driving license as an ID proof. On the basis of such proof, a SIM card bearing No.9815925263 was issued. He further deposed that accused Ajay Kumar used to visit their house for teaching them Computer and that he also used to rang up to his mother on her mobile phone from his Mobile No.9815391535.

Apart from examining the above witnesses; witnesses of formal nature as well as PW-22 Inspector Nirmal Singh, the Investigating Officer, who deposed with regard to the investigations carried out by him, the prosecution has also examined PW-2 Surinder Singh, who telephonically informed Hardeep Singh and Gurjit Kaur, brother and daughter-in-law respectively of the deceased Mohinder Singh; PW-5 Dalbir Singh before whom accused Gurjit Kaur suffered extra judicial confession; PW-13 Jaspreet Singh before whom accused Ajay Kumar and accused Rajinder Singh have suffered extra judicial confession.

The prosecution has also tendered into evidence, the record (Ex.PW25/B) pertaining to the conversation between Mobile Nos.9815925263 and 9815391535 as well as the report of the Forensic Science Laboratory, Punjab, Chandigarh (Ex.DA/2).

After conclusion of prosecution evidence, the statements of the accused were recorded under Section 313 Cr.P.C. They were put all the incriminating circumstances appearing against them in the prosecution evidence. They denied the prosecution case and pleaded false implication. In their defence, the accused examined DW-1 Jatinder Sharma, Record Clerk, Judicial Record Room, Kapurthala.

After going through the evidence on record, the learned trial Court returned a finding that the prosecution has been able to prove the guilt of the

**CRA No.1127-DB of 2009 &
CRA No.1128-DB of 2009**

present appellants beyond any reasonable doubt and accordingly convicted and sentenced them, as mentioned above.

Before this Court, learned counsel for the appellants has vehemently argued that the primary evidence relied upon by the prosecution against appellant Gurjit Kaur is her extra judicial confession made to PW-5 Dalbir Singh. However, such extra judicial confession is not reliable and trustworthy for the reason that he was not lambardar or Sarpanch and does not hold any post of importance. He has been unable to show that he has good relations with the police, which could prompt Gurjit Kaur to make confession before him. The said witness is also related to the complainant Hardeep Singh. It is also argued that there are so many contradictions in the statements of the prosecution witnesses regarding extra judicial confession and arrest of appellant Gurjit Kaur such as PW-5 Dalbir Singh deposed that extra judicial confession was made by Gurjit Kaur after the cremation of the dead bodies on 08.06.2006 at about 9.00 AM, whereas as per the testimony of PW-4 Shamsher Singh, the police has arrested Gurjit Kaur after recording his statement on 07.06.2006. On the other hand, PW-12 Harmanveer Singh, son of Gurjit Kaur, deposed that his mother was taken into custody after the cremation of his grandfather i.e. on 08.06.2006. It is pointed out that PW-5 Dalbir Singh has deposed that police has already arrested Ajay Kumar and Rajinder Singh before he produced Gurjit Kaur before the police, but PW-13 Jaspreet Singh deposed that Ajay Kumar and his friend Rajinder Singh confessed before him in the evening on 08.06.2006, whereas as per PW-5 Dalbir Singh, Gurjit Kaur made extra judicial confession in the morning. It is pointed out that the post-mortem examination was conducted on 08.06.2006 at about 11.30 AM, thus, the cremation could have happened only in the afternoon. Therefore, the question of Gurjit Kaur making an

**CRA No.1127-DB of 2009 &
CRA No.1128-DB of 2009**

extra judicial confession before PW-5 Dalbir Singh after the cremation at about 9.00 AM does not arise.

We find that the argument raised is based upon hair splitting of time given in the statements. The initial version of Gurjit Kaur, as mentioned in the statement Ex.PK, is that of theft by the intruders in the house. There is no evidence of any theft. As per PW-22 Inspector Nirmal Singh, the Investigating Officer, all the accused were arrested on 09.06.2006. He while appearing in the witness-box deposed that after recording the statement of Jaspreet Singh on 09.06.2006, he arrested Ajay Kumar and Rajinder Singh from T-point Shjeikhpur, G.T. Road, Kapurthala, when they were seen coming on a scooter, whereas appellant Gurjit Kaur was arrested thereafter from the house of the deceased. He also recovered one Nokia mobile phone having SIM card No.9815925263 from Gurjit Kaur. Though a suggestion was put to PW-22 Inspector Nirmal Singh that all the accused were apprehended on 08.06.2006, but such suggestion is not an evidence. Such suggestion by itself is not sufficient to discard the statement of the Investigating Officer in respect of date of arrest of the accused. No doubt, in his cross-examination, PW-5 Dalbir Singh stated that Gurjit Kaur made extra judicial confession before him at about 9.00 AM on 8.6.2006, but he also stated that she made confession after the cremation. Thus, the said time is by approximation. The villagers such as PW-5 Dalbir Singh gave time by approximation. He only says about making of confession by Gurjit Kaur at about 9.00 AM but not that of arrest of Gurjit Kaur at 9.00 AM. While stepping into witness-box, PW-5 Dalbir Singh categorically deposed that Gurjit Kaur was arrested after the arrest of Ajay Kumar and Rajinder Singh that is the statement of PW-22 Inspector Nirmal Kumar, the Investigating Officer. Though in his cross-examination, PW-5 Dalbir Singh admitted that he was not a lambardar or sarpanch nor has any post of importance,

**CRA No.1127-DB of 2009 &
CRA No.1128-DB of 2009**

but in the next breath, he stated that he is a visitor of police station Bholath. Simply because that he cannot tell the name of SHO or other police officials to whom he had been visiting at police station, is not a reason to infer that he does not have any influence over police.

The statement of PW-4 Shamsheer Singh is only to the effect that after recording his statement, the police arrested Gurjit Kaur, but it does not mean that Gurjit Kaur was arrested on 07.06.2006 itself, as sought to be argued by learned counsel for the appellants. In his cross-examination on behalf of Gurjit Kaur – appellant, he denied the suggestion that accused Gurjit Kaur was taken into police custody on 07.06.2006. Similarly, the statement of PW-12 Harmanveer Singh, a child of 12 years, to the effect that his mother was taken into custody on 08.06.2006 i.e. after the cremation of his grand-father, is not a material contradiction as time and date of arrest can be given by mistake. His statement corroborates the prosecution story that she was arrested after cremation and that after the arrest of two other accused. However, such minor discrepancies, do not erode the credibility of the prosecution story. On the other hand, such like minor discrepancies, are bound to occur in the statements of truthful witnesses. A witness cannot be expected to make a parrot-like statement. After the lapse of time, the human memory fades, and, therefore, the dates and timings cannot be narrated correctly in minute details. These discrepancies or contradictions did not affect the fabric of the prosecution case. Therefore, we do not find that extra judicial confession made by Gurjit Kaur can be doubted only for the reason that PW-5 Dalbir Singh is related to the Hardeep Singh, brother of the deceased or his statement that Gurjit Kaur confessed before him at 9 AM. In fact, accused Gurjit Kaur is none else, but the daughter-in-law of the deceased. Therefore, it is not unusual that a confession is made to a near relation.

Similarly, the statement of PW-13 Jaspreet Singh to the effect that Ajay Kumar and Rajinder Singh were visiting him in the evening on 08.06.2006 cannot be doubted for the reason that PW-5 Dalbir Singh has deposed that Gurjit Kaur has confessed before him after the cremation on 08.06.2006. The fact is that Ajay Kumar and Rajinder Singh were arrested on 09.06.2006 after the accused made confessional statements and PW-13 Jaspreet Singh communicated such confessions to PW-22 Inspector Nirmal Singh, the Investigating Officer. Thus, we find that the manner of extra judicial confessions suffered by the accused before PW-5 Dalbir Singh and PW-13 Jaspreet Singh cannot be doubted.

It is also argued that the prosecution has failed to prove that appellant Ajay Kumar was arrested on 09.06.2006, as appellant Ajay Kumar has filed an application Ex.DW-1/A for his exemption from appearance in the Court of Chief Judicial Magistrate in a complaint case under Section 138 of the Negotiable Instrument Act on the ground that he had been taken away by the Police for interrogation in connection with the murder case. We do not find any merit in the argument raised. The application for exemption was not put to the Investigating Officer, when he appeared as PW-22. The application is not to the effect that he has been arrested, but to the effect that he has been taken away by the police. The Investigating Officer was the best person to be confronted with as to whether the appellant was in custody or was joined by the police for investigation at all on 08.06.2006 or not. It is self-serving statement made in an application and the Investigating Officer not being confronted with the same, we do not find that any conclusion can be drawn that the appellant Ajay Kumar was in police custody since 08.06.2006, when the Investigating Officer has categorically deposed that he arrested Ajay Kumar on 09.06.2006.

**CRA No.1127-DB of 2009 &
CRA No.1128-DB of 2009**

It is also argued that the statement of PW-3 Anoop Gautam cannot be believed to connect the appellants Ajay Kumar and Rajinder Singh with the scene of crime relying upon the report (Ex.CC). It is argued that lifting of chance prints from the glasses and limca bottle is highly improbable for the reason that no finger prints were seen at the door, latch of the door, any part of the bed, wall or tray. It is also argued that Hardeep Singh, author of FIR, has not deposed that he saw glasses and empty limca bottle, when he entered the room for the first time, where the dead bodies were lying.

PW-3 SI Anoop Gautam, Finger Print Expert, reached at the place of occurrence on 07.06.2006 itself. He categorically deposed that on checking the finger prints on the wooden bed, wooden door, plastic tray of white colour, three steel glasses and one bottle of limca of two litres by applying suitable powder, some chance prints developed from two steel glasses and one limca bottle. Thereafter, separate parcels were prepared and preserved aforesaid articles from where the finger prints were developed. He handed over all the parcels to the Investigating Officer to send the same by special messenger to the Director, Fingers Print Bureau, Phillaur. Thus, the statement in cross-examination that he did not make statement under Section 161 Cr.P.C. does not make the witness unreliable or untrustworthy, as he has deposed in graphic detail about the time, he reached the place of occurrence; manner of taking sample and its dispatch for testing. As per report of the Finger Print Bureau, Phillaur (Ex.CC), some of the photograph impressions tally with the specimen finger prints.

Apart from the report of Finger Print Bureau, Phillaur (Ex.CC) in respect of matching of finger prints of Ajay Kumar and Rajinder Singh, the prosecution has proved the disclosure statements suffered by Ajay Kumar and Rajinder Singh. During interrogation, Ajay Kumar suffered a disclosure statement

Ex.PW22/M to the effect that he has kept concealed one pistol of .32 bore, two live cartridges, one empty cartridge and one spare magazine in an Almirah in the workshop of his house. Pursuant to such statement, he got recovered one pistol, one empty cartridge, two live cartridges and two magazines, which were taken into possession vide recovery memo Ex.PW22/P. Similarly, on 11.06.2006, accused Rajinder Singh suffered a disclosure statement Ex.PM to the effect that he had kept concealed one hammer, one cutter and one knife in a trunk lying in his room. Pursuant to such statement, he also got recovered the articles from the disclosed place. All the articles were taken into possession vide recovery memo Ex.PQ. As per the report of the Forensic Science Laboratory (Ex.DA/2), Parcel 'A' contained two 7.65 mm KF Cartridge cases marked C/1 to C/2; Parcel 'B' contained one 7.65 mm jacketed bullet marked CB/1; Parcel 'C' contained two 7.65 mm KF live cartridges marked L/1 to L/2 and one 7.65mm KF cartridge case marked C/3; Parcel 'D' contained one 7.65 mm country made pistol marked W/1 (two empty magazines of 7.65mm pistol, one attached and one spare) and Parcel 'E' contained five 7.65 mm test cartridges. The result of examination is as follows:

- “(1) Three 7.65 KF cartridge cases marked C/1, C/2 and C/3 contained in parcels 'A' and 'C' had been fired from 7.65mm countrymade pistol marked W/1 under reference.
- (2) No definite opinion can be given regarding firing of one 7.65mm jacketed bullet marked CB/1 from 7.65mm countrymade pistol marked W/1 due to lack of sufficient individual characteristic marks.
- (3) Two 7.65mm KF cartridges marked L/1 to L/2 contained in parcel 'C' are live cartridges.
- (4) The firing mechanism of 7.65mm countrymade pistol marked W/1 is in the working condition.
- (5) The caliber of one jacketed bullet marked CB/1 contained in parcel 'B' is 7.65mm.”

Similarly, as per another report of the Forensic Science Laboratory, Punjab, Chandigarh (Ex.AA) in respect of hammer and knife recovered pursuant to the disclosure statement of Rajinder, the same were alleged to be stained with human blood.

The next argument is that in fact PW-22 Inspector Nirmal Singh has deposed that the pistol recovered was made in USA, whereas the prosecution story is based upon recovery of country made pistol from Ajay Kumar. We find that the statement of PW-22 Inspector Nirmal Singh is being misread. In the recovery memo of the pistol (Ex.PW22/P), the pistol recovered is scribed with the words "Made in USA". In fact, PW-22 Inspector Nirmal Singh stated that the pistol recovered from Ajay Kumar shown to have been made in USA and not country made. The said witness is not deposing that the pistol recovered pursuant to the disclosure statement of Ajay Kumar was made in USA, but was one shown to have been made in USA. The inscription made in USA does not prove that in fact the pistol was made in USA. It is without any make or brand or any other identification number, which is usually found in the case of pistols made and marketed in USA.

Another incriminating circumstance brought on record is the call details of accused Gurjit Kaur with accused Ajay Kumar. The SIM card having No.9815391535 used by Ajay Kumar was issued in his name. PW-25 Shekhar Narayan, Manager, Bharti Tele-Ventures Limited, Ludhiana deposed that original record of mobile No.9815391535 is not traceable and scanned copy of the same is Mark A. However, the SIM card having No.9815925263 used by Gurjit Kaur was issued in the name of Balwinder Lal son of Basheer vide application form Ex.PW25/A. It is so deposed by PW-12 Harmanveer Singh, son of accused Gurjit Kaur that SIM card used by his mother was issued to Balwinder Lal. PW-25

**CRA No.1127-DB of 2009 &
CRA No.1128-DB of 2009**

Shekhar Narayan also proved the call details pertaining to the conversation between 9815925263 and 9815391535. Such call details (Ex.PW-25/B) are for the period from 01.05.2006 to 31.05.2006 and from 01.06.2006 to 08.06.2006.

The argument of learned counsel for the appellants is that there is no evidence that such record was produced by the computer during the period for which the same was regularly used and was maintained by a person having lawful control over the use of that computer. Such record must carry a certificate which identifies the electronic record; describe the manner; furnish the particulars of the device involved and must be signed by a person occupying a responsible official position in relation to the operation of the relevant device. Reliance is placed upon a judgment of Hon'ble Supreme Court reported as Anvar P.V. Vs. P.K.Basheer (2014) 10 SCC 473 to contend that call details produced by PW-25 Shekhar Narayan are not admissible in evidence.

PW-25 Shekhar Narayan, Manager deposed that record bearing pages No.110 to 159 is issued by the Bharti Tele-Ventures Limited, of which he is the Manager. Such record pertains to conversation between two mobile numbers i.e. 9815925263 and 9815391535. Such record is original one issued from IT Department and it is correct as per record. Such statement was objected to on the ground of mode of proof. In his cross-examination, he stated that he cannot say whether the person, who prepared this record by computer, has exclusive control of the computer or that he has been regularly using the same and that he has lawful control over the computer. He stated that he cannot say whether the computer from which this record has been prepared, remained in working condition or suffered any disorder.

In Anwar P.V. case (supra), the Hon'ble Supreme Court was

considering the proof of a speech made in election rally contained in a Compact

Disc (CD). The Court overruled only the findings recorded by the Delhi High Court in State Vs. Mohd. Afzal (2003) 107 Delhi Law Times 385, it being secondary evidence. In a case before Delhi High Court, the prosecution has examined the witness to prove the call details, as computer generated, pertain to respective period indicated in the print-outs. The Delhi Court held to the following effect:

“291. The law as it stands enacted in India does not have a provision analogous to Section 69 of the Police and Criminal Evidence Act, 1984 in England. The conditions, which require to be satisfied, are the ones set out in Sub-section (2) of Section 65B. The conditions, as noted above are:

- (a) The computer from which the record is generated was regularly used to store or process information in respect of activity regularly carried on by a person having lawful control over the period, and relates to the period over which the computer was regularly used;
- (b) Information was fed in the computer in the ordinary course of the activities of the person having lawful control over the computer;
- (c) The computer was operating properly, and if not, was not such as to affect the electronic record or its accuracy;
- (d) Information reproduced is such as is fed into the computer in the ordinary course of activity.

XX

XX

293. Thus, in the context of Section 65B(2)(c) the condition that throughout the material part off the period to which the computer operations related, the computer was operating properly has to be complied with. However, this compliance would be on the principle laid down in *R.V.Shepherd, 1993 A.C. 380* and as applied in *R Vs. Ana Marcolino 1999 Masons CLR 392* and *DPP Vs. Mc. Kewon (1997) 1 Criminal Appeal 155*. Thus, in our opinion, is the only practical way to deal with computer generated evidence unless the response is by way of a challenge to the accuracy of computer evidence on the ground of misuse of system or operating failure or interpolation. Such challenge has to be established by

the challenger. Generic and theoretical doubts by way of smokescreen have to be ignored. (...emphasis supplied)

294. The testimony of PW-35 and PW-36 establishes that the call details Ex.PW35/2 to Ex.PW35/8 and Ex.PW36/1 to Ex.PW36/5 were computer generated and pertained to the respective periods indicated in the printouts. Testimony establishes that they related to the services provided by the respective companies in respect of the different mobile phone numbers. It is true that neither witness made a positive statement that during the relevant period, the computers worked properly but reading the statement as a whole, the same is implicit. No suggestion was given to the witness that their computers were malfunctioning. We are satisfied that on the evidence on record, the prosecution has duly proved the electronic record Ex.PW35/2 to Ex.PW35/8 and Exs.PW36/1 to 36/5.”

The Court has considered that even in the absence of positive statement that the computers were working property, but reading of the statement as a whole, the same is implicit. Similar is the situation in the present case. The Delhi High Court observed that any error in the working of the computer is noticed by the system itself.

In the present case, PW-25 Shekhar Narayan has produced the record of the service provider. The record running into almost 50 pages can be generated only if the computer system was working properly. Any malfunctioning in the computer system will not allow results to be printed. The prosecution has examined the representative of the service provider to produce the call details, thus, it was for the accused to prove the misuse of the computer system or operating failure or interpolation, as held by the Delhi High Court (para 293). The challenge on the ground of misuse of the system or operating failure or interpolation has to be established by the challenger. Generic and theoretical doubts by way of smokescreen have to be ignored. Therefore, to assert simply that the records are not correct is not sufficient rebut the truthfulness of the record

Even otherwise, the call records produced by the prosecution are to corroborate the proximity between accused Ajay Kumar and Gurjit Kaur. Independent of the call records, the relationship is proved by PW-12 Harmanveer Singh, son of Gurjit Kaur; PW-6 Hardeep Singh and PW-11 Amarjit Kaur, brother and sister of the deceased Mohinder Singh.

Learned counsel for the appellants has further argued that the prosecution has failed to prove any motive, as the evidence in respect of motive is contradictory and incoherent. We do not find any merit in the said argument as well. Accused Gurjit Kaur had reached the place of occurrence from her parents' home before the brother of the deceased namely Hardeep Singh reached there. In the First Information Report, when the appellant Gurjit Kaur was the only one present at the place of occurrence, the report was with regard to the robbery by unknown assailants. It is, thus, appellant Gurjit Kaur, who tried to put the prosecution agency on a different track. The prosecution witnesses have deposed with regard to the relationship of the accused Gurjit Kaur with Ajay Kumar. Such relationship is even supported by the son of the appellant namely Harmanveer Singh, who appeared as PW-12. Apart from the extra marital relationship, the appellant could also be beneficiary of the estate of the deceased in the event her in-laws are eliminated, her husband being not in India. The motive is always secret. It is the circumstances, which lead to a conclusion about the motive. In the present case, the primary motive of the accused Gurjit Kaur was the resistance put by her in-laws to her extra marital relationship, but the secondary motive can be of inheriting the estate.

In view of the above discussion, we find that the judgment of conviction and order of sentence rendered by the Additional Sessions Judge are

**CRA No.1127-DB of 2009 &
CRA No.1128-DB of 2009**

based on the correct appreciation of evidence, as the prosecution has completed the chain of events, which point out to the guilt of the accused. Therefore, the appellants have been rightly convicted and sentenced by the learned trial Court.

Consequently, both the appeals are dismissed.

(HEMANT GUPTA)
JUDGE

08.07.2015
Vimal

(LISA GILL)
JUDGE