

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRA-D- NO.970-DB OF 2004 (O&M)
DATE OF DECISION : 13th MARCH, 2015**

Jasbir Singh @ Raju & another

.... Appellants

Versus

State of Punjab

.... Respondent

**CORAM : HON'BLE MR. JUSTICE S. S. SARON
HON'BLE MR. JUSTICE SURINDER GUPTA**

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Present : Mr. S. S. Rana, Advocate for the appellants.
Mr. Arshvinder Singh, Additional Advocate General.

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SURINDER GUPTA, J.

Brief facts:

The case bearing FIR No.41 dated 07.07.2003 for offence punishable under Section 302 read with Section 34 IPC was registered at Police Station Bhadson, District Patiala on the statement of Avtar Singh PW5/A. As per the complainant, they were agriculturist and had 30 bigha of land. Another chunk of 50 bigha land was taken on lease from Nirmal Singh and Amar Singh of Village Dandrala Kharaur and paddy crop was sown in the entire land. On 24.06.2003 at about 10.00pm, the complainant had dropped his father Joginder Singh (deceased) at the motor (tubewell) near the Sukhi Wala Khu. On the next day when he had gone to have a round of the field, he found his father lying in the paddy crop field near the tube well with his face downwards. Blood was oozing from his right ear. He lifted his father and found that his trouser string was open, which had been downed up to knee level. Tarlochan Singh son

of Shamsheer Singh resident of Village Dhey also came there. Both lifted the deceased and put him on cot. The face and cloth of deceased were smeared with mud. The matter was reported to the police whereupon DDR No.8 dated 25.06.2003 was registered at 10.15 am. SI Sewa Singh (PW-11) reached the spot, took the photographs of the dead body and prepared inquest report Ex. P-C. He took into possession one *parna* (scarf), one pair of *chappal* (slippers), having colour blue at the bottom and cream at the top and one pair of black shoe lying near the body of Joginder Singh. Complainant identified the pair of black shoes as pertaining to his father Joginder Singh. Dead body was identified by Avtar Singh and Darshan Singh and thereafter sent through Constable Jaspal Singh for post mortem examination, which was conducted by Dr. Pardeep Chawla of Civil Hospital, Nabha and he found following injuries on the person of the deceased:

- “(i) Multiple superficial bruises on forehead and face of varying size and shape, sub cutaneous tissue underlying normal.
- (ii) Blood had oozed out and caked in external ear pinna. On dissection ear drum normal. Bruise on pinna was superficial.
- (iii) 12 cm x 5 cm superficial abrasion on the right side of back below tip of shoulder on its medial end was a lacerated wound 3 cms x sub cutaneous tissue deep. On dissection underlying muscles healthy.

(iv) Superficial abrasion on the right hand on web between thumb and index finger, size 3 cm x 1 cm.

Pleura was congested but healthy. Larynx and trachea as well as both lungs had congestion and sand particles in them.

Scalp, skull and vertebrae were healthy.

Stomach had about 20 cc of semi digested matter. Sent for chemical examination. Small intestine had about 100 cc of semi digested food matter, part of it sent for chemical examination. Liver spleen and kidney were congested and part of each sent for chemical examination. Bladder healthy and empty”

2. On receipt of report (Ex.PD) of the chemical examiner the cause of death was declared as asphyxia as a result of drowning which was ante mortem in nature and sufficient to cause death in normal course of nature. He prepared the post-mortem report (Ex.PB).

3. On 10.07.2003 SI Sewa Singh along with his police party, was present at bus Stand Ditupur where appellant Jasbir Singh and his co-accused Amar Singh (since deceased), were produced by Amarjit Singh son of Sucha Singh (PW-4) and were arrested.

4. *Parna* recovered from the spot was identified by Amar Singh as his own and memo to this effect Ex.PW-8/D was prepared. The pair of *chappal* (slippers) recovered at the spot was mixed with other pair of *chappal*. Appellant-Jasbir Singh identified his pair of *chappal* which

were the same that were recovered from the spot and the memo to this effect Ex.PW-11/4 was prepared.

5. After the completion of investigation, challan was presented in the Court. The case was committed by the Sub-Divisional Judicial Magistrate, Nabha to the Court of Sessions for trial vide order dated 10.10.2003. The appellants were chargesheeted for offence punishable under Section 302 read with Section 34 IPC to which they pleaded not guilty and claimed trial.

6. The prosecution, in support of its case examined PW-1 Dr. Pardeep Chawla, who had conducted the post mortem examination of the deceased; PW-2 Karnail Singh, Patwari, who had prepared scaled site plan of the place of occurrence Ex. PF; PW-3 Nirmal Singh, before whom Jasbir Singh made extra-judicial confession on 07.07.2003 of the crime of murder of Joginder Singh, committed by him along with his co-convict Amar Singh; PW-4 Amarjit Singh, who had also stated that both the appellants came to him on 07.07.2003 and made extra-judicial confession that they have murdered Joginder Singh. He produced both the accused before the police on 07.07.2003; PW-5 Avtar Singh complainant; PW-6 Tarlochan Singh, who disclosed the plan of the accused to murder Joginder Singh, which he overheard while present at bus-stop to go to Hazur Sahib; PW-7 Satnam Singh to prove motive of appellant-Jasbir Singh for murdering Joginder Singh; PW-8 Nirmal Singh-to prove that he gave his land on lease to Avtar Singh for cultivation; PW-9 Jora Singh photographer, who had gone to the spot and taken the photographs of the deceased Ex.PW-9/A to PW9/D and had produced negatives Ex. PW-9/A-

1 to PW-9/A-4; PW-10 Constable Chamkaur Singh, PW-13 Constable Jaspal Singh and PW-14 MHC Lal Chand-formal witnesses; PW-11 SI Sewa Singh and PW-12 Inspector Sewa Singh, investigating officers; while Harbans Singh, Zora Singh Ex-Sarpanch, Constable Chamkaur Singh, Constable Shinder Singh, Kesar Singh, Dr. Inder Dayal Goel, Amin Chand, SI Kuldeep Singh and ASI Gulzar were given up as unnecessary.

7. On completion of prosecution evidence statement of appellants-Jasbir Singh and Amar Singh under Section 313 Cr.P.C. was recorded confronting them with the entire incriminating evidence appearing against them, which they denied and pleaded their false implication. They stated in their defence as follows:

“In fact deceased Joginder Singh was an alcoholic person and he was also habitual of taking all other intoxicants drugs, bhuki and poppy husk etc. and used to pick up quarrel with different persons. He also used to take liquor with Nirmal Singh PW who was commission agent. Due to his bad habits Joginder Singh has died but the complainant party by introducing close and related witnesses have implicated me along with my co-accused in this false case due to our inimical relations with complainant. We have never caused the alleged Murder. I am innocent.”

8. The appellant examined CII Amrik Singh in defence.

9. The trial Court vide judgment dated 13.09.2004 convicted both the appellants for offence punishable under Section 302 read with Section 34 IPC and sentenced them to undergo life imprisonment and to pay fine of ₹1,000/- each.

10. Against judgment of their conviction and sentence both the appellants have come up with instant appeal. Appellant No.2-Amar Singh has since died during the pendency of the appeal, accordingly the appeal qua appellant No.2-Amar Singh stood abated.

11. We have heard Mr. S. S. Rana, Advocate appointed as Amicus Curiae for the appellant No.1-Jasbir Singh and learned State counsel and have perused the lower court record with their assistance.

12. It was a case of blind murder and the prosecution has tried to prove its case by leading circumstantial evidence which comprised of :

- (i) Extra judicial confessions by the appellant Jasbir Singh before PW-3 Nirmal Singh and PW-4 Amarjit Singh.
- (ii) Recovery of pair of *chappal* at the spot which was allegedly identified by the accused as his *chappals*.
- (iii) Evidence of motive for the appellants to murder Joginder Singh.

Extra judicial confessions:

13. Extra judicial confession, is a weak type of evidence and the Court has to be very cautious and even reluctant, in the absence of chain of cogent circumstances, while relying solely upon this evidence for the purpose of recording conviction.

14. In the instant case, the prosecution has examined two witnesses of extra judicial confession. PW-3 Nirmal Singh, who is nephew of the deceased, has stated that appellant Jasbir Singh came to him on 07.07.2003 in the morning and confessed before him that he along with Amar Singh had murdered Joginder Singh by putting his face in the water of paddy crop. After the disclosure statement Jasbir Singh went away. He (Nirmal Singh) narrated the whole incident to Avtar Singh who then narrated the same to Police of Police Station Bhadson, resulting in registration of the FIR. **He has stated that the appellant-Jasbir Singh came to his house at about 9am and after confession of crime he went away.** FIR Ex.PW11/C was registered on 07.07.2003 on the statement of Avtar Singh PW-5. In his statement Avtar Singh has stated about the disclosure statement made by Jasbir Singh. **He further informed the police that the pair of *chappal* recovered at the spot belongs to Jasbir Singh @ Raju and the *Parna* to Amar Singh.**

15. Another witness of extra judicial confession is Amarjit Singh(PW-4), who is son of maternal aunt (mother's sister) of Avtar Singh-complainant. He has also stated that **on 07.07.2003 at about 7am** both the appellants i.e. Jasbir Singh and Amar Singh came to him and told him that they have committed murder of Joginder Singh. They confessed that the pair of *chappal* and *parna* recovered from the spot belonged to them and asked him to produce them before the police in the case registered against them. Amarjit Singh produced both of them before SI Sewa Singh, SHO, Police Station Bhadson, who arrested them.

16. From the testimony of these two witnesses it appears that either of the two is not speaking truth. As per PW-4 Amarit Singh, appellants Jasbir Singh and Amar Singh came to him on 07.07.2003 at about 7am and after their extra judicial confession he took them to police and got them arrested at 10am on that day. The above narration of the factum of making of extra-judicial confession by the appellants before Amarjit Singh (PW-4) becomes doubtful in view of the fact that the FIR in this case had not been registered by 10am on 07.07.2003. Firstly, the FIR was registered on that day at 9.20pm. Secondly, if at 7am on 07.07.2003 Jasbir Singh and Amar Singh had made disclosure statement before Amarjit Singh (PW-4) and he had produced them before the police, it makes the testimony of Nirmal Singh PW-3 unreliable as he has stated that appellant came to him at 9am on 07.07.2003 and made extra-Judicial confession of the crime committed by them. Thirdly, it raises serious shadow of doubt about the entire prosecution version and the recording of FIR on the statement of Avtar Singh Ex.P-5/C based on the disclosure statement made by Jasbir Singh to Nirmal Singh. Jasbir Singh, as per statement of Amarjit Singh had already been handed over to police by Amarjit Singh and had no occasion to make extra-judicial confession before Nirmal Singh or going to him at 9am on 07.07.2003. Fourthly, this depicts that the appellants were already in custody of the police before the FIR was registered and this renders the prosecution version that they were arrested on 10.07.2003, doubtful.

17. Besides the reasons discussed above, the testimony of Nirmal Singh and Amarjit Singh, about the extra judicial confession made by the

appellants, is not reliable as they are related to complainant and not to the appellants. It is not believable that appellants will confide in them just to create evidence of murder of Joginder Singh against them. Amarjit Singh has categorically admitted that he had no relationship with the accused Jasbir Singh and Amar Singh. He has never worked as Panch, Sarpanch and Lambardar of his village. Even his father or nobody in their family have ever been Panch, Sarpanch and Lambardar of the village. None in his relation is in Punjab Police. A person may confide and suffer disclosure statement before a person from whom he expect some favour. It is doubtful that the appellants, who were not related to Nirmal Singh or Amarjit Singh, will suffer extra judicial confession before them, knowing fully well that both are related to the complainant party.

18. The appellants were arrested by the police on 10.07.2003. Nowhere in the statement of PW-4 Amarjit Singh it has been suggested that he has narrated date of the extra judicial confession made by appellants by mistake as 07.07.2003 instead of 10.07.2003. Not only in his examination-in-chief, he has reiterated this date in his cross-examination while stating that 'Jasbir Singh and Amar Singh came to him on 07.07.2003 at 7am'. After handing over the appellants to the police, Amarjit Singh informed Avtar Singh of the entire incident who was coming from the village at about 1pm on the same day. It is the statement on oath made in Court by a witness, if unshattered, get precedence after the police proceedings and the statement recorded under Section 161 Code of Criminal Procedure.

19. In view of the facts discussed above, the testimony of both the witnesses Nirmal Singh (PW-3) and Amarjit Singh (PW-4) that appellants Jasbir Singh and Avtar Singh made extra judicial confession before them are not worthy of reliance.

Recovery of pair of *chappal* at the spot:

20. Bereft of the evidence regarding extra judicial confession made by appellants Jasbir Singh and Amar Singh, reliance has been placed by the prosecution on the recovery of a *parna* and a pair of *chappal* from the place of occurrence.

21. In the FIR recorded on 07.07.2003 Avtar Singh-complainant had narrated that the pair of *chappal* recovered from the spot of occurrence belonged to appellant Jasbir Singh.

22. As Amar Singh had died it is not required to discuss about evidence relating to *parna* recovered from the spot.

23. In order to connect the pair of *chappal*, recovered from the spot with appellant Jasbir Singh, prosecution has relied on memo Ex. PW-11/H. As per this memo, on 10.07.2003 SHO Sewa Singh of Police Station Bhadson mixed the pair of *chappal* recovered from the place of occurrence with other pair of *chappals* and Jasbir Singh identified his pair of *chappal* from the mixed pair of *chappal*, which was same as was recovered from the spot. The question, which arises for our consideration, is as to whether the above evidence is admissible under law and sufficient to establish that the *chappals* recovered from the spot belonged to Jasbir Singh.

24. The above memo was prepared when the appellant Jasbir Singh was in police custody. If the testimony of Jasbir Singh, recorded in above memo, be taken as his confession of a fact, in that event a confession to police officer is not admissible under Section 25 of Evidence Act. Confession by accused, while in police custody, cannot be proved against him. The testimony of accused made during custody can be relied upon under Section 27 Evidence Act provided the following requirements are satisfied:

- (1) That consequent to the information given by the accused, it led to the discovery of some fact stated by him.
- (2) The fact discovered must be one which was not within the knowledge of the police and the knowledge of the fact was for the first time derived from the information given by the accused.
- (3) Information given by the accused must lead to the discovery of a fact which is the direct outcome of such information.
- (4) The discovery of the fact must be in relation to a material object and of course would then embrace within its fold the mental condition i.e., the knowledge of the accused of the place where the object was produced and the knowledge that it was there.
- (5) Only such portion of the information as is distinctly connected with the said discovery is admissible.
- (6) The discovery of the fact must relate to the commission of some offence.

25. In this case statement of appellant Jasbir Singh had not lead to disclosure of any fact, as such, has no relevance under Section 27 of the Evidence Act. The fact that chappals recovered from the spot belonged to Jasbir Singh-appellant, was already in the knowledge of the police and the statement of Jasbir Singh recorded vide memo Ex.PW-11/H has not lead to the discovery of a fact. In the case of ***Prabhu Vs. S***, reported as ***AIR 1963 Supreme Court, 1113*** it was observed by apex Court as follows:

The statement that the axe was one with which the murder had been committed was not a statement which led to any discovery within the meaning of S.27 of the Evidence Act. Nor was the alleged statement of the appellant that the blood stained shirt and dhoti belonged to him was a statement which led to any discovery within the meaning of S.27. Section 27 provides that when any fact is deposed to and 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 discovery may be proved. In *Pulukuri Kotayya v. Emperor*, 74 Ind App 65 (AIR 1947 PC 67), the Privy Council considered the true interpretation of S.27 and said :

“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."

26. In view of the fact and circumstances discussed above the statement of Jasbir Singh appellant recorded vide memo Ex.PW11/H is neither relevant nor material or can be used against appellant Jasbir Singh as incriminating evidence so as to connect him with the murder of Joginder Singh.

Evidence of motive for the appellants to murder Joginder Singh:

27. In the FIR Ex. PW-11/C Avtar Singh has narrated the motive for the murder of Joginder Singh as follows:

‘In the year 1999 Harvinder Singh father of Jasbir Singh had fallen in the canal after taking liquor with Satguru and Saundha Singh of village Dandrala Kharor. With the intervention of Joginder Singh a compromise was got effected between the parties under which Satguru Singh held prayer in the Gurudwara Sahib and donated ₹30,000/- there. Jasbir Singh was nursing a grudge against Joginder Singh for his intervening in the matter and favouring Satguru Singh and Saundha Singh. Due to this reason Jasbir Singh and Amar Singh murdered Joginder Singh.’

28. The police had taken into possession the affidavit of Jasbir Singh Mark B, containing the statement that he was satisfied that his father had fallen in the canal under the influence of liquor. The proceedings of the Panchayat in this regard were placed on record as Mark A. The Panchayat proceedings Mark A were signed by a number of

persons and there is no mention therein that Joginder Singh had got the compromise effected. That occurrence had taken place in the year 1999 and there is no evidence that on any account thereafter, strained relations between Jasbir Singh and the deceased persisted during the period of four years before the incident. The plea of motive as raised in this case appears to be very fragile and is not sufficient to be relied upon to reach conclusion that Jasbir Singh had murdered Joginder Singh on this account.

29. As a sequel of our above discussion, we find that the prosecution has utterly failed to prove any circumstance worth reliance what to talk of completing the chain of circumstances to bring home the charge for offence punishable under Section 302 read with Section 34 IPC against the appellant. The learned trial Court has convicted the appellants relying upon the evidence relating the recovery of chappal and placing reliance on the extra judicial confession and the motive factor. The conclusion drawn by the trial Court is perverse and not sustainable in the eyes of law.

30. The prosecution has utterly failed to prove its case to prove the offence punishable under Section 302 read with Section 34 IPC against appellant Jasbir Singh beyond any shadow of doubt. Giving the benefit of doubt, he is acquitted. The appellant, who is in custody, be released forthwith if not required in any other case.

(S. S. SARON)
JUDGE

(SURINDER GUPTA)
JUDGE

13th March, 2015
'raj'

Fit to Report : Yes