

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Criminal Appeal No.D-636-DB of 2009
Date of Decision: 13th March, 2015

1. Sukhwinder Singh alias Sukha
2. Harjit Singh @ Baljit Singh

Appellants

versus

State of Punjab

Respondent

CORAM: HON'BLE MR.JUSTICE RAJIVE BHALLA
HON'BLE MR.JUSTICE AMOL RATTANSINGH

Present: Mr. Aditya Pal Singla, Advocate,
Legal Aid Counsel for the appellants.

Ms.Manjari Nehru Kaul, Addl.A.G., Punjab.

AMOL RATTANSINGH, J.

This appeal is directed against judgment dated 21.4.2009 and order dated 22.4.2009 convicting and sentencing the appellants in the following terms:-

U/s 302 IPC Both accused are sentenced to undergo life imprisonment and to pay a fine of Rs.2500/- each and in default of payment of fine, to further undergo rigorous imprisonment for two months.

U/s 201 IPC Both accused are sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.1000/-each and in default of payment of fine, to further undergo rigorous imprisonment for one month.

The appellants have been convicted and sentenced for the

homicidal death of one Balwinder Singh son of Gurmukh Singh.

The case in hand, commenced with Shiv Singh, Ex-Sarpanch, son of Lakha Singh, resident of village Saido Lehal, making a statement Ex.PH, dated 10.3.2007, before a police party headed by Paramveer Singh, SHO, Police Station Mattewal, that at about 10 A.M he received a telephone call from one Sawinder Singh son of Mohan Singh that a dead body is lying in the pits near his fields situated towards the pucca road. The dead person appears to have been strangled by using a yellow 'parna'. SHO Paramveer Singh forwarded the statement to Police Station Mattewal, vide endorsement Ex.PH/1 dated 10.3.2007, which led to registration of FIR No.55 dated 10.3.2007, Ex.PH/2.

The SHO along and the police party proceeded to the place, as informed and took possession of the dead body. Sukhwinder Singh, the owner of the field, also arrived. The SHO recorded statements of witnesses, prepared an inquest report, Ex.PO, and a rough site plan, Ex.PN. The dead body was forwarded through ASI Sarabjit Singh, vide request Ex.PQ, for post mortem. The post mortem was conducted by Dr. Asitesh Bajwa at Government Medical College, Amritsar on 11.3.2007. The cause of death was stated to be ante-mortem strangulation, leading to asphyxia which was sufficient in the ordinary course of nature, to cause death. After postmortem, clothes on the dead body were taken into possession, vide memo Ex.PR and converted them into a sealed parcel. The yellow 'parna', which was found around the neck, was converted into a sealed parcel Ex.P25, and taken into possession, by ASI Sarabjit Singh, vide memo Ex.PS.

On 13.3.2007, the police recorded statement Mark 'A' of one Sarwan Singh son of Jasmeet Singh that on 5.3.2007 at about 5.30 P.M, a tractor-trolley bearing no.PB02 AS 4697, being driven by Balwinder Singh, stopped outside the gurdwara. Balwinder Singh went inside the gurdwara for taking 'langar' along with Sukhwinder Singh @ Sukha and Harjit Singh @ Baljit Singh (appellants). Sarwan Singh over-heard Sukhwinder Singh and Harjit Singh's planning to murder Balwinder Singh and steal the tractor trolley. Sarwan Singh further stated that he was taking rest outside gurdwara, when he saw the deceased and the appellants coming out of the gurdwara and driving away towards Khilchian.

In the meanwhile, the father of the deceased had lodged a missing person's report at Police Post, Maqboolpura, Police Station, Division A, Rani kay Bagh, Amritsar and thereafter PW3 Kewal Singh, a brother of the deceased and PW2 Ranjit Singh, upon receiving information, that the police at Police Station, Mattewal, had conducted a post mortem examination and were in possession of clothes of an unknown person, visited the Police Station on 14.3.2007 and identified the clothes as the clothes of the deceased, vide memo Ex. PC. PW2 Ranjit Singh also made a statement that the accused had made an extra-judicial confession before him.

Sukhwinder Singh was arrested on 15.3.2007, vide arrest memo Ex.PT. The memo of personal search also dated 15.3.2007, is Ex.PU. The memo records that nothing was recovered from the personal search of Sukhwinder Singh. The arrest memo of Harjit Singh is dated 18.3.2007, Ex.PV. The personal search memo of Harjit Singh, is dated 18.3.2007,

Ex.PW, and also records that nothing was recovered from the personal search of Harjit Singh. but it is recorded that upon further personal search, registration certificate of the tractor recovered from the left pocket of Harjit Singh's pant, was taken into possession.

Upon interrogation, the appellants suffered separate disclosure statements. Sukhwinder Singh made a disclosure statement, Ex.PD, that he had concealed tractor no.PB 02 AS 4697 and could get it recovered. Sukhwinder Singh thereafter led the police party to the place where he had concealed the tractor and got the tractor recovered vide memo Ex.PE. Harjit Singh suffered a disclosure statement, Ex.PA, which led to recovery of the trolley, Ex.PB. The police prepared a site plan of the place of recovery of tractor and the trolley, prepared requisite recovery memos, took into possession relevant photographs, prepared site plans of the places of recovery and upon completion of the investigation, filed a final report before the Magistrate, who forwarded it to the Court of Sessions as it disclosed the commission of an offence exclusively triable by the Court of Sessions. The trial was, thereafter, placed before the Additional Sessions Judge, Amritsar, who framed charges under Section 302 read with Section 201 of the Indian Penal Code and as the accused pleaded not guilty and claimed trial, the prosecution was directed to produce evidence.

The prosecution, in order to prove its case, has examined PW1 Sarwan Singh, who was produced to prove that deceased was last seen in the company of the appellants entering and leaving the gurdwara and had over-heard them planning to murder Balwinder Singh. However, Sarwan Singh did not support the prosecution and was declared hostile.

PW2 is Ranjit Singh, the owner of the tractor and trolley, who has deposed that Balwinder Singh was working with him as a tractor trolley driver and had gone to Amritsar on 5.3.2007 after loading the tractor with sand, but did not return. On 11.3.2007 he came to know that clothes of an unidentified body were lying in Police Station Mattewal. When he was proceeding to Police Station Mattewal, the appellants met him at Chowk Maqboolpura and made a confession that they had committed a mistake by committing the murder of Balwinder Singh, throwing his dead body near the side of the road in village Saido Lehal and stealing the tractor and trolley but were ready to return the tractor and the trolley if a compromise is effected. Ranjit Singh, thereafter, deposed that he went to the police station, where he found that Kewal Singh, brother of the deceased, was already present. They identified the clothes before the SHO etc. vide identification memo Ex.PC. After recovery of the tractor trolley, he took the tractor-trolley on supardari.

PW3 is Kewal Singh is a younger brother of Balwinder Singh (deceased), who has deposed in consonance with his statement made before the police, which primarily relates to the identification of clothes, other articles and identification of photographs of the dead body. PW4 Gursahib Singh proved purchase of the trolley by Ranjit Singh, vide receipt, Ex.P10, PW5 is ASI Tajinder Singh, who proved disclosure statement, Ex.PD, by Sukhwinder Singh as well as recovery of the tractor, vide memo Ex.PE. ASI Tajinder Singh also proved disclosure statement made by Harjit Singh, Ex.PA, recovery of the trolley vide recovery memo Ex.PB and also deposed that a further personal search of Harjit Singh led to recovery of a

registration certificate of the tractor no.PB-02-AS-4697, which was taken into possession, vide recovery memo Ex.PF. PW6 is Head Constable Pritpal Singh who produced Daily Diary Register and proved registration of a missing person report at Police Post Maqboolpura, Amritsar, by Gurmukh Singh, father of the deceased. PW8 Constable Himmat Singh, PW9 Constable Jagjit Singh tendered formal affidavits, Exhibits PJ and PK, respectively and PW13 Sukhdev Raj, Patwari, proved site plan, Ex.PN showing the place from where the dead body was recovered. PW7 Shiv Singh is the complainant, who reported discovery of the dead body to the police. PW10 is Dr. Asitesh Bajwa, who conducted postmortem, proved copy of the post mortem, Ex.PL and deposed about the cause of death. PW11 is Sawinder Kaur, Clerk, DTC Office, Amritsar, who proved that the tractor was registered in the name of Ranjit Singh son of Kulwinder Singh. PW12 is Kuldip Singh, photographer, who proved photographs relating to the dead body. PW14 is S.I. Paramveer Singh, the investigating officer of the case and has deposed in detail with respect to discovery of the dead body, the arrest of the appellants, their disclosure statements, recovery of the tractor trolley and all other relevant facts.

Upon conclusion of the prosecution evidence, incriminating circumstances were put to the appellants who denied their culpability and pleaded their innocence, but did not lead any evidence in defence.

The learned trial court has, after considering the entire evidence, convicted and sentenced the appellants for the murder of Balwinder Singh by relying upon the extra-judicial confession, the recovery of the tractor and trolley by and at the behest of the appellants and the

medical evidence.

Counsel for the appellants submits that the evidence adduced by the prosecution is circumstantial. The prosecution is, therefore, required to complete the chain of circumstances in their entirety, including motive. The prosecution has not led any evidence to prove motive for the appellants to murder the deceased. The primary evidence of last seen and over-hearing the appellants conspiring to murder the appellants, was sought to be proved by PW1 Sarwan Singh, who did not support the prosecution, thereby ruling this evidence out of consideration. The evidence of an extra-judicial confession before Ranjit Singh, is clearly manufactured as the appellants were not known to Ranjit Singh and had no reason to appear before him to make a confession. PW2 Ranjit Singh is not a person of any authority in the area and his deposition is devoid of any particulars of the confession. An extra-judicial confession is a weak piece of evidence and, therefore, should have been discarded by the trial court. Counsel for the appellants further submits that the disclosure statements and the recoveries are clearly coerced and foisted as there was no reason for Sukhwinder Singh to keep the tractor and Harjit Singh to keep the trolley. The disclosure statements and the recoveries should be rejected as the statements have been recorded and recoveries have been effected without associating any independent witnesses. A perusal of the personal search memos of the appellants reveals that no incriminating article was recovered, but subsequently, the police foisted a registration certificate of the tractor upon Harjit Singh, during a second personal search, thereby clearly proving that recoveries and disclosure statements are false and foisted.

Counsel for the respondents submits that in view of the evidence of last seen, an extra-judicial confession, recoveries of the tractor from Sukhwinder Singh and the trolley from Harjit Singh, read along with extra-judicial confession, the trial court has rightly convicted and sentenced the appellants. The appellants have not come-forth with any explanation as to how they were in possession of any tractor and the trolley.

We have heard counsel for the parties, perused the impugned judgment and order as well as the entire record.

The evidence against the appellants is entirely circumstantial and may, therefore, be accepted only if it is complete in all respects and points unerringly to the guilt of the appellants. The prosecution relies upon evidence of last seen, a witness of an extra-judicial confession, two disclosure statements, recoveries of the tractor and trolley, made separately from the appellants, recovery of a registration certificate from Harjit Singh and obviously medical evidence as its evidence to prove the guilt of the appellants. We need not record the medical evidence as there is no dispute that the deceased died of asphyxia by strangulation.

At the outset, we shall deal with the evidence of last seen. PW1 Sarwan Singh made a statement before the police, Mark 'A' that he had last seen the deceased with the appellants entering and exiting the Gurdwara on 5.3.2007 and over-heard the appellants conspiring to murder Balwinder Singh and steal his tractor trolley. However, when PW1 Sarwan Singh stepped into the witness box, he resiled from his statement to the police and deposed as follows:-

“ On 5.3.2007, I was coming on motor cycle from Anand Pur

Sahib after paying obeisance and at about 5.30 p.m. I reached near Gurudwara Sahib of village Mallian. I saw Balwinder Singh son of Gurmukh Singh resident of Hair Colony PS Raja Sansi on tractor which was loaded with sand but I do not remember the number of the tractor. Balwinder Singh parked his tractor near Gurudwara and went inside the Gurudwara. I do not know anything else about this case. Accused are not known to me nor I had seen them in the company of Balwinder Singh. Later on I came to know that Balwinder Singh was murdered by someone. (At this stage the learned Addl.PP requests that the witness is suppressing truth and resiling from earlier statement and requests that the witness be declared hostile and he be permitted to put him questions in the form of cross examination. Heard. Request allowed.)”

PW1 Sarwan Singh was subjected to a detailed cross-examination by the Public Prosecutor, but refused to support the prosecution insofar as it concerns his statement, Mark A, that he saw the appellants and the deceased entering and exiting the gurdwara together and heard the appellants conspiring to kill Balwinder Singh and steal the tractor-trolley. PW1 Sarwan Singh, however, did not deny that he was outside the gurdwara and saw Balwinder Singh on a tractor loaded with sand. The prosecution has, thus, failed in its endeavour to prove that the deceased was last seen with the appellants entering and leaving the gurdwara and that PW1 Sarwan Singh over-heard them conspiring to murder Balwinder Singh. A major link in the chain of circumstantial evidence having failed, it would be

appropriate to examine the veracity of the other evidence to ascertain whether it is sufficient to fasten culpability.

The next piece of evidence is an extra-judicial confession relied by the trial court as sufficient to fasten culpability. A perusal of the evidence on record reveals that the extra-judicial confession is said to have been made before PW2 Ranjit Singh, owner of the tractor-trolley and the employer of the deceased. PW2 Ranjit Singh has deposed as follows:-

“ The deceased Balwinder Singh was working with me as tractor driver. On 5.3.2007, he had gone to Amritsar on tractor trolley, after loading sand in the trolley for sale but he did not return back. On 11.3.2007 I came to know that police of Police Station Mattewal had got conducted postmortem examination of one unknown person and I came to Amritsar for going to police station Mattewal. I was present at Chowk Maqbool Pura, Amritsar, where both the accused present in the Court today met me, who were known to me earlier. The accused disclosed me that they had committed mistake by committing the murder of Balwinder Singh and throwing his dead body near road side in the area of village Saido Lail and they further disclosed me that they had taken away my tractor trolley after committing the murder of Balwinder Singh and showed their intention to return the tractor trolley after effecting compromise and then they went away and then I went to the Police Station Mattewal where Kewal Singh brother of the deceased Balwinder Singh was already present.....”

A perusal of the examination-in-chief of PW2 Ranjit Singh reveals that for going to Police Station Mattewal, he came to Amritsar and when he reached Chowk Maqboolpura, Amritsar, the appellants who were known to him, met him and admitted that they had committed a mistake by murdering Balwinder Singh and throwing his dead body near the road side in village Saido Lehal and also admitted that they had stolen the tractor trolley but requested for a compromise as they were ready to return the tractor trolley. The cross-examination of PW2 Ranjit Singh with respect to the extra-judicial confession reads as follows:-

“ I have no documentary proof with me that deceased Balwinder Singh was doing labour work with me. Village Killa Jiwan Singh is at a distance of 25 Kms from our village Hair. I do not know the other family members of Sukhwinder Singh and Harjit Singh accused present in the Court today. I never visited the house of the accused prior to 11.3.2007. I never joined any function with the accused earlier to 11.3.2007 or thereafter. I cannot tell the exact date when the accused met me earlier to 11.3.2007. Volunteered, they were seen by me in the area of Jahajgarh prior to 11.3.2007 on 2-3 occasions....”

The learned trial court has relied upon the extra-judicial confession while convicting the appellants. An extra-judicial confession is, by its nature, a weak evidence of culpability. A court faced with evidence of an extra-judicial confession must ensure that the evidence inspires confidence and is corroborated by other prosecution evidence. The Hon'ble Supreme Court considered the nature of extra-judicial confession in

Sahadevan versus State of Tamil Nadu, (2012) 6 SCC 403, and after referring to judgments in Balwinder Singh versus State of Punjab 1996 SCC (Cri.) 59, Pakkirisamy versus State of Tamil Nadu (1997)8 SCC 158, State of Rajasthan versus Raja Ram (2003) 8 SCC 180, Aloke Nath Dutta versus State of West Bengal,(2007)12 SCC 230, Sansar Chand versus State of Rajasthan, (2010)10 SCC 604 and Rameshbhai Chandubhai Rathod versus State of Gujarat, (2009) 5 SCC 262 held as follows:-

“ The Principles

16. Upon a proper analysis of the abovereferred judgments of this Court, it will be appropriate to state the principles which would make an extra-judicial confession an admissible piece of evidence capable of forming the basis of conviction of an accused. These percepts would guide the judicial mind while dealing with the veracity of cases where the prosecution heavily relies upon an extra-judicial confession alleged to have been made by the accused:

- (i) The extra-judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution.
- (ii) It should be made voluntarily and should be truthful.
- (iii) It should inspire confidence.
- (iv) An extra-judicial confession attains greater credibility and evidentiary value if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.

(v) For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.

(vi) Such statement essentially has to be proved like any other fact and in accordance with law.”

An extra-judicial confession in order to inspire confidence and to be credible, must have been made voluntarily before a person either known to the accused or a person in authority in the area and then also the confession should be a truthful account of the particulars of the offence and not a general statement as to culpability. A perusal of the evidence on record reveals that PW2 Ranjit Singh, the owner of the tractor trolley and the appellants are residents of different villages on different sides of Amritsar. Ranjit Singh was not a person of any authority in the area and though he has stated that he knew the appellants, has admitted in his cross-examination that he had only “seen them” on 2/3 earlier occasions. The deposition by PW2 Ranjit Singh, in our considered opinion, does not inspire confidence. It is rather surprising that the appellants would suddenly meet Ranjit Singh at Maqbool Pura Chowk when he was proceeding towards the police station and made a confession of their guilt. The appellants had no reason to make an extra-judicial confession before Ranjit Singh. We are inclined to hold that story of the extra-judicial confession was manufactured by the police to pad its case and lend support to its suspicion that Balwinder Singh had been murdered by the appellants. The extra-judicial confession, therefore, does not inspire confidence.

After having ruled out the evidence of last seen and the extra-

judicial confessions, the only relevant facts that survive are the alleged disclosure statements and recoveries. At this stage, it would be appropriate to point out that the appellants were arrested pursuant to statement made to the police by PW1 Sarwan Singh that he had seen the appellants and the deceased entering the gurdwara and had over-heard them conspiring to murder Balwinder Singh. After their arrest by the police, the appellants suffered two separate disclosure statements, one by Sukhwinder Singh effecting recovery of a tractor and the other by Harjit Singh, effecting recovery of a trolley, which are indisputably owned by PW2 Ranjit Singh and were entrusted to the deceased as a driver. A significant fact that escaped the notice of the trial court and casts a serious doubt on the entire process of disclosure statements and the recoveries, is that, at the time of personal search, no incriminating article was found from either of the appellants, but surprisingly, pursuant to another personal search of Harjit Singh, for which no reason has been assigned, a registration certificate relating to the tractor, was found from the pocket of Harjit Singh. We are rather skeptical about this recovery and are inclined to hold that it was planted upon Harjit Singh so as to fortify the alleged recoveries. This apart, it is rather surprising, though not inconceivable, that one accused would retain the tractor and the other, the trolley. One may urge that the tractor and the trolley were separated to evade detection, but this argument, in our considered opinion, in view of the fact that we have already rejected the evidence of last seen and the evidence of an extra-judicial confession, does not enable us to accept the evidence of discoveries of the tractor and the trolley at the behest of the appellants as sufficient to fasten culpability. It would be necessary to

add that while effecting recovery, no independent witness was associated and though this alone may not be a circumstance to discard the discovery of a relevant fact but when read along with facts, referred to in the preceding paragraphs, is a circumstance that casts a serious doubt on the recovery of the tractor and the trolley.

A perusal of the judgment reveals that the matter was dealt with in a casual, pre-determined manner, without considering that the evidence on record does not point erringly to the guilt of the appellants, lead us to a singular conclusion that the appellants were arrested, tried, convicted and sentenced on mere suspicion and are, therefore, entitled to the benefit of doubt.

Consequently, we allow the appeal, set aside the judgment of conviction and order of sentence and direct that the appellants, if in custody, be set free forthwith. If sentence imposed upon the appellants has been suspended, their bail bonds and surety bonds shall stand cancelled.

(AMOL RATTAN SINGH)
JUDGE

(RAJIVE BHALLA)
JUDGE

13th March, 2015
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