

**IN THE HIGH COURT FOR THE STATES OF PUNJAB &
HARYANA, AT CHANDIGARH**

Criminal Appeal-D -268-DB of 2003

Date of Decision: June 29, 2015

Krishan son of Subh Ram

--- Appellant

Versus

State of Haryana

---Respondent

CORAM: **HON'BLE MR. JUSTICE T.P.S. MANN**

HON'BLE MR. JUSTICE MAHAVIR S. CHAUHAN

Present: M/s. S.K. Jain and Akshay Jain, Advocates for the appellant.

Mr. Munish Sharma, Assistant Advocate General, Haryana, for
the respondent-State.

1. *Whether Reporters of local papers may be allowed to see the Judgment?
Yes/No*
2. *To be referred to the Reporter or not? Yes/No*
3. *Whether the judgment should be reported in the Digest? Yes/No*

MAHAVIR S. CHAUHAN, J.

Court of learned Sessions Judge, Bhiwani, vide judgment dated March 03, 2003/order dated March 06, 2003, having convicted and sentenced him to imprisonment for life and a fine amounting to Rs. 2000/- and in default of payment of fine to further rigorous imprisonment for six months under Section 302 of the Indian Penal Code, 1860 (here-in-after referred to as 'IPC') for having committed murder of his wife, Guddi, aged about 25 years, convict Krishan (here-in-after referred to as 'the appellant') has brought this appeal to challenge the impugned judgment/order and to claim his acquittal.

02. Put as concisely as one may, prosecution story suggests that Jagan Singh (PW6) (here-in-after referred to as 'the complainant') had two daughters. His elder daughter, namely Guddi (the deceased), was married to the appellant somewhere in the year 1994, and the younger, namely Suman, was married to Vijender aka Situ, appellant's younger brother. Vijender aka Situ unfortunately died approximately two years before the occurrence and the complainant settled her marriage with Rajesh of Dhani Bhalot. December 22, 1999 was fixed the date for her marriage. Appellant proclaimed that he would not allow this marriage to take place and, instead, would take Suman along. Complainant, however, did not agree.

03. At or around 10/10.30 a.m. on December 13, 1999, when the complainant was away to Bhandwa, appellant came to complainant's house and told his mother Ved Kaur (PW9) that he had killed the deceased before coming to their house. Complainant's sisters-in-law, namely Murti Devi and Bimla questioned the appellant (about killing of the deceased) whereupon appellant attacked them with a knife. He, however, was overpowered and handed over to the police of Police Station, Badhra by Shish Ram (PW7). On complainant's return at or around 03.00 p.m. Ved Kaur (PW9) narrated the entire story before him and Shish Ram (PW7) revealed that when taken to Police Station, Badhra appellant was carrying a small box containing Celphos tablets and a knife-like sharp edged weapon which were recovered by the police. After admitting Murti Devi in Gopi Hospital, complainant, accompanied by a few others, went to village Jhojhu Khurd (matrimonial home of the deceased) and thence to Police Station, Dadri and narrated the whole sequence of events before Sub Inspector Mahender Singh (here-in-after referred to as 'the Investigating Officer') which recorded as First

Information Report (for short, 'FIR') (*Exhibit PB*).

04. Investigating Officer reached the scene of occurrence; drew a visual site plan (*Exhibit PJ*) of the place of occurrence, prepared inquest report (*Exhibit PF*) and arrested the appellant. When interrogated, appellant made a disclosure statement (*Exhibit PK*) and pursuant thereto got recovered, vide memorandum, *Exhibit PK/1*, a small box containing three Celphos tablets.

05. Dr. U.S. Disodia (PW4) conducted autopsy on the dead body of the deceased vide *Post Mortem Report, Exhibit PD*. Forensic examination of viscera of the deceased and the recovered pills confirmed presence of Aluminium Phosphide (Celphos) in stomach and its contents, and parts of large and small intestines and their contents, portion of liver, spleen and kidneys as also the grey tablets sent to Forensic Science Laboratory. A report, *Exhibit PG*, was received in this regard.

06. On completion of investigation, a report in terms of sub-section (2) of Section 173 of the Code of Criminal Procedure, 1973 (for short, 'the Code') was prepared and presented before the learned Jurisdictional Magistrate. After committal of the case to the Court of Session, learned Sessions Judge perused the report and its annexures; heard the prosecutor and the defence; found a prima facie case punishable under Section 302, IPC, to be made out; and charged the appellant accordingly. Appellant pleaded not guilty to the charge and claimed to be tried.

07. During trial complainant, Jagan Singh (PW6), Shish Ram (PW7), and Ved Kaur (PW9) retold the prosecution story on oath, Dr. U.S. Disodia (PW4) proved *Post Mortem Report, Exhibit PD* and deposed to say that cause of death of the deceased was ingestion of poison (Aluminium

Phosphide) which was sufficient to cause death in the ordinary course of nature; Investigating Officer SI Mahender Singh (PW10), Draftsman Narender Singh Yadav (PW1), Constable Neki Ram (PW2), Head Constable Sheotaj Singh (PW3), Head Constable Attar Singh (PW5), and Head Constable Ved Pal (PW8) brought forth various facets and stages of investigation.

08. When examined under Section 313 of the Code, appellant denied all the inculpatory circumstances appearing in the prosecution evidence, reiterated plea of his innocence and false implication and came out with a plea that the deceased had committed suicide by ingesting Celphos tablets when he was away from his house.

09. Appellant examined in his defence Mahipal Singh (DW1) to bring on record that on the fateful day he was present at village Berla and was working as a mason to construct house of said Mahipal Singh; and Bhateri Devi (DW2) to say that Guddi had ingested Celphos as she apprehended that the appellant might marry her widowed sister Suman.

10. Learned Sessions Judge, on hearing the prosecutor and the defence and appraisal of the evidence available on record, reached a conclusion that the prosecution was able to prove appellant's guilt beyond reasonable doubt and, accordingly, convicted and sentenced the appellant as here-in-before stated.

11. We have heard learned counsel for the parties besides scanning the record of the case.

12. Learned counsel for the appellant contend that while Aluminium Phosphide's pungent odour makes its deceitful administration impossible, its forcible administration to the deceased is ruled out by the

fact that glass bangles worn by the deceased were found intact, no broken bangles are shown to have been recovered and no marks of injuries were found on the dead body of the deceased which rule out use of force. To support this contention learned counsel for the appellant refer to paragraph 22 of the inquest report, *Exhibit PF* and deposition of Dr. U.S. Disodia (PW4) to show that the deceased was wearing glass bangles on her wrists. It has also been pointed out on behalf of the appellant that none of the prosecution witnesses has ventured to say that he/she witnessed the appellant administering Aluminium Phosphide to the deceased. It is also argued on behalf of the appellant that the prosecution has failed to attribute any motive to the appellant which could impel killing of the deceased at his hands in so far as Suman, in whom the appellant was statedly interested, has been kept away from the witness stand and witnesses of the prosecution have stopped short of saying that the appellant wanted to marry Suman after her husband's demise. Learned counsel for the appellant have also argued that stated confession of the appellant before Ved Kaur (PW9), besides being highly improbable and unbelievable, cannot be made basis of conviction of the appellant in the absence of substantive evidence of commission of crime.

13. *Per Contra*, learned State counsel has argued that it has come in the evidence of Bhateri (DW2) that appellant wanted to marry Suman after death of her husband and the appellant himself voluntarily confessed before Ved Kaur (PW9) to have killed the deceased which is sufficient to sustain his conviction.

14. No other and further point has been urged on either side.

15. Death of the deceased by ingestion of Aluminium Phosphide

(Celphos), as stated by Dr. U.S. Disodia (PW4), is not in dispute. However, nobody has come forward to say that he/she witnessed poisoning of the deceased by the appellant. The only evidence in support of this aspect of the matter is the extra judicial confession stated to have been made by the appellant before grandmother of the deceased, namely Ved Kaur (PW9) and conveyed by her to the complainant, Jagan Singh (PW6). Learned Sessions Judge has found this confession to be voluntary and sufficient to sustain the finding of conviction. To support this conclusion learned Sessions Judge has stated that Ved Kaur (PW9) was an elderly lady aged about seventy years; the deceased reposed faith in her and had good relations with her. Another circumstance used by the learned Sessions Judge to fortify his reliance upon the extra judicial confession of the appellant is his statement dated February 28, 2001 made by him before learned Sub Divisional Judicial Magistrate, Charkhi Dadri in a criminal case arising out of FIR No. 167 dated December 13, 1999 recorded at Police Station, Badhra under Section 324, IPC, confessing to causing of injuries to Murti Devi on December 13, 1999 which resulted into judgment/order dated February 28, 2001, *Exhibit PM*. Yet another circumstance used by the learned Sessions Judge to support his view is recovery of three tablets of Aluminium Phosphide (Celphos) vide memorandum, *Exhibit PK/1* pursuant to disclosure statement, *Exhibit PK*, statedly made by the appellant.

16. It is trite that in view of the provisions contained in Section 30 of the Indian Evidence Act, 1872 (for short, 'the Evidence Act'), a 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. But though confession may be regarded as evidence in that generic sense because of the provisions of Section 30 of the Evidence Act', the fact remains that it is not evidence as defined by Section 3 of the Evidence Act'. (per Constitution Bench judgment of the Hon'ble Supreme Court in Haricharan Kurmi v. State of Bihar, AIR 1964 SC 1184.

17. In *Jagta v. State of Haryana*, AIR 1974 SC 1545, Hon'ble Supreme Court refused to rely upon extra judicial confession of the accused by holding that the evidence about an extra judicial confession in the nature of things is a weak piece of evidence and if the same is lacking in probability there would be no difficulty in rejecting the same and observed as under:

"14. So far as the alleged extra judicial confession of the accused is concerned, the prosecution has relied upon the evidence on Ram Singh (PW 4). After having been taken through the evidence of that witness, we find the same to be lacking in credence and devoid of any ring of truth. The police was admittedly present in the office of the co-operative society in village Farmana on the morning of January 15, 1972. We find no reason as to why the accused, instead of surrendering himself before the police, should go to the house of Ram Singh in village Farmana, blurt out a confession before him and ask him to produce the accused before the police. Nothing has been shown to us as to why the accused could not himself go and appear before the police. We have mentioned above that an attempt has been made in this case to introduce the story of the recovery of ornaments belonging to Phul Pati deceased from the accused. The attempt of the investigating agency to introduce a false story about the removal of the ornaments of the deceased and their recovery from the accused would in our opinion, also affect the credibility of the evidence regarding the extra judicial confession alleged to have been made to Ram Singh PW. The evidence about an extra judicial confession is in the nature of things a weak piece of evidence. If the same is lacking in probability as it is in the present case, there

would be no difficulty in rejecting the same. We are, therefore, not prepared to place any reliance upon the evidence regarding the extra judicial confession of the accused."

18. Dealing with the question of reliability of an extra judicial confession, in *Sahadevan v. State of Tamil Nadu*, 2012(2) R.C.R.(Criminal) 899, Hon'ble Supreme Court cautioned stating,

"21. Extra-judicial confession must be established to be true and made voluntarily and in a fit state of mind. The words of the witnesses must be clear, unambiguous and should clearly convey that the accused is the perpetrator of the crime. The extra-judicial confession can be accepted and can be the basis of conviction, if it passes the test of credibility. The extra-judicial confession should inspire confidence and the court should find out whether there are other cogent circumstances on record to support it. [Ref. Sk. Yusuf v. State of W.B., 2011(5) R.C.R.(Criminal) 762 : 2011(5) Recent Apex Judgments (R.A.J.) 308 : [(2011)11 SCC 754] and Pancho v. State of Haryana, 2011(4) R.C.R.(Criminal) 665 : 2011(5) Recent Apex Judgments 481 : [(2011) 10 SCC 165].

22. Upon a proper analysis of the above-referred 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 precepts 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.

The Principles

(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."*

19. In *Chattar Singh and Another v. State of Haryana, 2008(4)*

Recent Criminal Cases 133, it was held as under:

"18. An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. The value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. It is not open to any court to start with a presumption that extra-judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession. Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it. After subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, the extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility."

20. The above said view received further amplification and elaboration in *Aftab Ahmad Ansari v. State of Uttaranchal, 2010 (1) Recent Criminal Reports 832* wherein Hon'ble Supreme Court held as under:-

"15...Though extra-judicial confession is considered to be a weak piece of evidence by the courts, this Court finds that there is neither any rule of law nor of prudence that the evidence furnishing extra-judicial confession cannot be relied upon unless corroborated by

some other credible evidence (emphasis supplied). The evidence relating to extra-judicial confession can be acted upon if the evidence about extra-judicial confession comes from the mouth of a witness who appears to be unbiased and in respect of whom even remotely nothing is brought out which may tend to indicate that he may have a motive for attributing an untruthful statement to the accused. In State of U.P. v. M.K. Anthony 1985(1) R.C.R.(Criminal) 87 : AIR 1985 Supreme Court 48, this Court, while explaining the law relating to extra-judicial confession, ruled that if the word spoken by the witness are clear, unambiguous and unmistakable one showing that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it, then after subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, the extra-judicial confession can be accepted and can be the basis of a conviction..."

21. It thus emerges that an extra judicial confession, though a weak type of evidence, can be relied upon and made the basis of conviction of an accused provided it is proved like any other fact in accordance with law and is found to be made voluntarily in a fit state of mind, is truthful, inspires confidence; does not suffer from any material discrepancies and inherent improbabilities; the witness before whom it is made passes the test of veracity; and the evidence about the confession comes from the mouth of a witness who appears to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he/she may have a motive of attributing an untruthful statement to the accused. Further, 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.

22. Ved Kaur (PW9), no doubt, has come forward to say that the appellant came to her house and revealed before her that he had killed the

deceased but it is an admitted fact that she is grandmother of the deceased and mother of complainant, Jagan Singh (PW6). Her affinity, therefore, was more towards the deceased and the complainant than the appellant. In such a situation she cannot be said to be an unbiased witness, not even remotely inimical to the accused, and having no motive of attributing an untruthful statement to him. Further, her relations with the appellant cannot be said to be so cordial or good as to impel the appellant not to make a revelation about killing his wife before his own parents or some respectable of his village or some close friend or the police of the jurisdictional Police Station but to traverse all the way from his village Jhojju Khurd to her place, i.e. village Badhra, to disclose before her that he had prematurely terminated life of her grand daughter, Guddi. Warmth of relationship between this witness and the appellant can be gauged from her admission in her cross examination that the appellant did not discuss anything with her when visited her house a day prior to the occurrence and, in fact, whenever he visited her house he would only pay regards to her and did not talk much about anything. Even credibility of this witness is not beyond doubt or say her testimony has failed the test of veracity as well. When informed by the appellant that he had done her grand daughter to death she did not think it necessary even to ask him the cause behind annihilation of the deceased. Her statement that the appellant used to visit her house frequently runs contrary to the statement of her son Jagan Singh (PW6) that the appellant was not a frequent visitor to his house. In view of these circumstances statement of Ved Kaur (PW9) that the appellant confessed before her that he had killed the deceased cannot be relied upon and as a consequence

statement of Jagan Singh (PW6) that Ved Kaur had so revealed before him also falls to the ground. It may be hastily added here that no other witness has stated that the appellant made such a confessional statement before him.

23. Appellant's statement dated February 28, 2001 made by him before learned Sub Divisional Judicial Magistrate, Charkhi Dadri in a criminal case arising out of FIR No. 167 dated December 13, 1999 recorded at Police Station, Badhra under Section 324, IPC, confessing to causing of injuries to Murti Devi on December 13, 1999 which resulted into judgment/order dated February 28, 2001, *Exhibit PM*, at the most establishes his presence at Badhra on December 13, 1999 but can hardly be of any assistance to the case of the prosecution as regards stated extra judicial confession because neither in the statement of the appellant nor in the consequent judgment/order, *Exhibit PM*, there is a mention of any such confession.

24. As rightly pointed out by the learned counsel for the appellant, in view of its pungent odour Aluminium Phosphide cannot be administered deceitfully while its forcible administration by the appellant to the deceased is ruled out by the fact that in the inquest report, *Exhibit PF*, and *Post Mortem Report*, *Exhibit PD*, it is recorded that the deceased was wearing glass bangles and no marks of injuries were found on her body. No broken bangles are shown to have been recovered from the spot of occurrence. In the event of use of force the bangles were bound to break and at least wrists of the deceased would have been bruised. In such circumstances recovery of three tablets of Aluminium Phosphide (Celphos) vide memorandum, *Exhibit PK/1*, pursuant to disclosure statement, *Exhibit PK*, statedly made by the appellant, is rendered inconsequential. Even otherwise, tablets of

Aluminium Phosphide (Celphos) could be easily thrown away because these are not such precious and dear to the appellant that after committing the crime he would keep them concealed and thereby facilitate the investigating agency to recover and use them against him. Further, though it is claimed by the Investigating Officer, SI Mahender Singh (PW10) that these tablets were purchased by the appellant from a shop at Bus Stand of village Jhojhu Khurd but as admitted by him he did not join anyone connected with that shop in the investigation of the case. These circumstances bring out falsity of the story regarding recovery of three tablets of Aluminium Phosphide (Celphos) vide memorandum, *Exhibit PK/1*, pursuant to disclosure statement, *Exhibit PK*, statedly made by the appellant.

25. It also needs to be added here that according to Jagan Singh (PW6) stated threat against proposed marriage of Suman was given by the appellant a month prior to December 23, 1999 (say somewhere around November 23, 1999) and that he (the appellant) intended to take Suman along. However, it has come in the deposition of Jagan Singh (PW6) and Ved Kaur (PW9) that the deceased came to their house two days before the occurrence and, according to Ved Kaur (PW9) appellant also came to their place a day prior to the occurrence and the deceased was sent with appellant after giving them the customary gifts (Shagun) and both of them were in happy mood. This circumstance rules out attraction of the appellant towards Suman as also his abhorrence or apathy towards his wife, the deceased or any threat or danger to the life of the deceased at the hands of the appellant. PW9, Jagan Singh in his statement before the police and in his chief examination did not state a word to indicate that the deceased had any threat or danger from the appellant but during his cross examination he attempted

to bring in that the deceased had told him that she apprehended danger to her life at the hands of the appellant and that the appellant had been giving beatings to her but this part of his statement is liable to be ignored being an afterthought and an improvement over what was stated by him in the FIR.

26. No other evidence is available on record to show appellant's complicity in the crime.

27. In view of the above, appellant's appeal succeeds and is allowed; impugned judgment and order are hereby set aside; and the appellant is acquitted of the offence of which he has been charged and convicted. Amount of fine, if already deposited by the appellant, shall be refunded to him.

28. Bail bonds of the appellant are discharged.

[T.P.S.Mann]
Judge

[Mahavir S. Chauhan]
Judge

June 29, 2015
adhikari