

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

**CRA-D-678-DB of 2015(O&M)
Date of decision :14.1.2016**

Krishana

.....Appellant

Versus

State of Haryana and ors.

.....Respondents

**CORAM : HON'BLE MR.JUSTICE S.S. SARON
HON'BLE MR.JUSTICE GURMIT RAM**

1. To be referred to the Reporters or not? Yes / No
2. Whether the judgment should be reported in the Digest? Yes / No

Present :- Mr.Kirpal Singh Thakur, Advocate and
Mr. Rahul Bhargava, Advocate
for the appellant.

GURMIT RAM, J.

CRM-14559 of 2015

Heard. Sufficient cause has been shown for condonation of delay in filing of the appeal. The application is, therefore, accepted and the delay of 21 days in filing of the appeal is condoned.

CRA-D-678-DB of 2015

1. This appeal is preferred by above-said appellant Krishana (widow of deceased Narender Kumar) assailing the judgment dated 3.12.2014 passed by the learned Additional Sessions Judge, Kurukshetra in criminal case bearing No.101 of 2014, FIR No.119 dated 17.4.2014 u/S 302 read with Section 34, IPC, Police Station Shahabad, District Kurukshetra vide which accused (now respondents No.2 and 3) were acquitted of the

charge u/S 302 read with Section 34, IPC, by giving them benefit of doubt.

2. The prosecution version, in brief, as put forth before the learned trial Court was that on 17.4.2014, an information was received on telephone in the police station regarding the murder of salesman employed at liquor vend, Kharindwa during night time committed by some unknown person. Upon this, Inspector/SHO – Manoj Kumar along with P/SI Tarsem Chand and other police officials reached at the spot. Complainant Mohan Singh son of Badhe Singh, resident of Aashutala, Police Station Jalikhana, District Almora (Uttarakhand), Sh.Arun Mehta, Liquor Contractor, resident of Shahbad and many other people were found present at the spot. Said Mohan Singh made his statement (Ex.P35) before him, the gist of which was as under:

“That he is working as a salesman for the last two years on the liquor vend owned by Shri Arun Mehta, Liquor Contractor resident of Shahbad. Now, he is working as such on sub-liquor vend in village Naraingarh Majra, Police Station Babain. He used to prepare the sheet with regard to entire accounts of this liquor vend and delivered the same to Narender Kumar salesman of Kharindwa liquor vend daily in the morning at 7:30 A.M. Today when he reached at liquor vend, Kharindwa to deliver the account sheet at about 7:30 A.M., then he found the front net of this liquor vend closed. Above-said Narender Kumar salesman was found lying therein with his face downwards. Blood in heavy quantity was found scattered near him and no movement of any kind in his body was found. Then he became frightened and called the person who was running tyre puncture shop near the liquor vend. On making assessment at the spot, they found that Narender Kumar salesman has been murdered by some unknown persons by causing injuries to him during night time. He gave information

in this regard to Kuldeep Singh, Cashier of his office on mobile phone. Upon this Sh.Arun Mehta, Liquor Contractor along with other employees reached at the spot.”

After recording above-said statement of complainant, it was read over to him who had signed the same in Hindi after admitting it to be correct. Then ruqqa was sent to the police station, on the basis of which instant case was registered. Inquest report with regard to the dead body of deceased was prepared. Site-plan of the place of occurrence was also prepared after inspecting the same. Post-mortem on the dead body of deceased was got conducted. Dogs squad, Finger prints & Scene of Crime Team and Incharge Cyber Cell, Kurukshetra were also called at the spot, who inspected the same.

On 28.4.2014, Kuldeep Singh son of Surjit Singh (PW1) met Inspector/SHO Manoj Kumar and made his statement with his own consent and without any pressure to the effect that:

“That on 28.4.2014, he had gone to liquor vend Kharindwa to collect the cash in discharge of his duty. When he was at some distance from village Kharindwa, then he was intercepted by two boys and accordingly he stopped along with his motorcycle. On asking, the said both the boys told their names as Pardeep Kumar son of Balbir Singh and Ashok Kumar son of Ved Parkash, residents of village Kharindwa. They further told him that on 16.4.2014, they were in their cups and they wanted to take more liquor. Then both of them reached liquor vend Kharindwa and demanded liquor from the salesman who refused to deliver the same to them since they were having less money. There took place an altercation between them. They gave blows to salesman with 'danda' who fell down. Then they closed the front net of liquor vend, consumed the liquor and left therefrom. Now they came to know that said salesman had

died due to injuries caused to him by them. Now they are in a great fear and have no courage to appear before the police. They requested him to produce them before the police. Then both of them slipped away from there on the plea to ease themselves and he advised them to come to liquor vend. He waited for them for a sufficient long time, but they did not come there.”

Thereafter, search of both the accused was started. They were apprehended on 1.5.2014 in the evening from the school of Kharindwa on the basis of secret information. During interrogation, both of them suffered their respective disclosure statements which were reduced into writing separately. Accused Pardeep Kumar @ Kala disclosed that on 16.4.2014, he and his co-accused Ashok Kumar @ Pola purchased one liquor bottle from liquor vend Kharindwa and consumed the same at bus stand. They were intending to consume more liquor and then as such they went to the said liquor vend again and demanded liquor from salesman on credit basis since they were not having money. Salesman refused to give liquor to them. Then there took place a scuffle between them. He and his co-accused gave him kick and fist blows. Further he took the *danda* which was lying in the liquor vend and hit the same on the head of salesman, who fell down on the floor. Even further, he gave him *danda* blows on his head and legs. Blood started oozing out from his head. Then they consumed the liquor and threw the said *danda* in the liquor vend and left from there. The *chappal* worn by accused Ashok Kumar @ Pola was found smeared with blood which was cleaned. Thereafter, they went to the house of sister of accused Ashok Kumar @ Pola in Pundri town in order to escape themselves from the police arrest. Accused Ashok Kumar @ Pola threw his *chappal* on the roof of bathroom

of the house of his sister, after cleaning the same with water. They could get the same recovered by making demarcation. They also told the above-said entire matter to Kuldeep Singh, Cashier of the contractor. This disclosure statement of accused Pardeep Kumar @ Kala was reduced into writing which was signed by him and attested by the witnesses. Thereafter, accused Ashok Kumar @ Pola during interrogation also suffered his disclosure statement on the same line which was signed by him and attested by the witnesses.

Then both the accused led the police party to the house of sister of accused Ashok Kumar @ Pola in Pundri town as per their disclosure statement and got recovered a pair of *chappal* by making demarcation, which was taken into police possession vide a memo. Further they also led the police party to the spot of occurrence which was identified by them and memo in this regard was also prepared. Statements of witnesses were recorded. Parcels containing clothes of deceased and other incriminating articles recovered during investigation of the case including *danda* etc. were taken into police possession and were sent to the office of FSL, Madhuban for analysis. On completion of investigation, challan against the accused was presented in the Court of learned Illaqa Magistrate who after making compliance of the provisions of Section 207 Cr.P.C. committed this case to the Court of learned Sessions Judge, Kurukshetra for its trial.

3. Finding a prima facie case under Section 302 read with Section 34 of the IPC against both the accused, they were charge-sheeted accordingly, to which, they pleaded not guilty and claimed trial.

4. The prosecution in order to establish its case against the accused examined seventeen witnesses in total during trial of the case.

5. Then the accused were duly examined as required under Section 313 of Cr.P.C. Entire incriminating evidence and other circumstances as brought on the file during the trial of the case against them were put to them, which they denied entirely and pleaded their innocence and false implication in this case.

6. The learned trial Court after hearing the learned counsel for both parties and going through the record as well acquitted both the accused of charge under Section 302 read with Section 34, IPC, by giving them benefit of doubt vide the impugned judgment.

7. The appellant being not satisfied with the impugned judgment has come up in the instant appeal. Record of the learned trial Court was requisitioned.

8. We have heard learned counsel for the appellant and also perused the record with their able assistance.

9. At the time of arguments, learned counsel for the appellant has mainly contended that in this case the weapon of offence i.e. *danda (binda)* which was used by the accused in the commission of crime was recovered from the spot during spot inspection. It is his further contention that as per the disclosure statements suffered by both the accused, they got recovered a pair of *chappal* which was allegedly worn by accused Ashok @ Pola on making demarcation. Then he has also contended that both the accused had also got demarcated the place of occurrence as per their disclosure statements and the memo in this regard was also duly prepared. Then he has also submitted that the above discussed evidence was sufficient to hold the accused guilty in this case for the commission of the alleged crime and to bring them to book. Further, he has prayed for the acceptance of this appeal,

to set aside the impugned judgment and to punish the accused (now respondents No.2 and 3) as per law.

10. The case in hand entirely rests upon the circumstantial evidence. The main plank of the prosecution case was extra judicial confession allegedly made by both the respondent Nos.2 and 3 (the accused) before one Kuldeep Singh, Cashier who appeared as PW1 during the trial of the case. His statement was to the effect that he was working as a salesman in liquor firm under the name and style of Shiv Shakti Sales and he used to collect the cash from liquor vend and further deposit the same with the office of this firm. On 28.4.2014, he was intercepted by two boys in between Deeg and Kharindwa villages while he was going to collect the cash on motorcycle. He disclosed his name as Kuldeep and then both the said boys disclosed their identity as Pardeep and Ashok. They revealed to him that on the night of 16.4.2014, they went to liquor vend at village Kharindwa while under the influence of liquor. They demanded liquor from salesman/karinda who denied to give the same to them since they were having less money. Then they gave him beating with a *danda* who fell down on the ground. They closed the shop and after taking liquor they went away from there. Now they had come to know that salesman Narender Kumar had died due to beating. Now they could not dare to appear before the police due to fear. They requested him to produce them before the police. They left the spot on the pretext of urination. He waited for them, but they did not come. Then he narrated the above entire story to the police and his consent memo Ex.P1 was recorded in this regard.

PW9 Dr.Narinder Pruthi along with Dr.Ramesh Sabharwal and Dr. Bimla Gauri conducted post-mortem examination on the dead body of

deceased Narender Kumar on 18.4.2014 on police request Ex.P19. He tendered his duly sworn affidavit Ex.P20 as a part of his statement. Further he proved the carbon copy of post-mortem report of the deceased as Ex.P21. As per the post-mortem report, six injuries were found on the person of deceased as described in it. In their opinion, the cause of death in this case was head injury which was ante-mortem in nature and sufficient to cause death in the ordinary course of nature. On opening a sealed parcel, he identified shirt (Ex.P22) and underwear (Ex.P23) of deceased, as the same which he handed over to the police after post-mortem of deceased.

PW15 Inspector/SHO Manoj Kumar was the Investigating Officer in this case. His statement was to the effect that on receipt of telephonic information with regard to murder of salesman of liquor vend at village Kharindwa, he along with other police officials reached at the spot. He recorded the statement of Mohan Singh Ex.P35 and sent ruqqa to the police station for registration of the case after making his endorsement Ex.P38. They found dead body and one *binda (danda)* (Ex.P29) lying in the liquor vend. Sketch Ex.P30 of this *binda* was prepared which was taken into police possession vide a memo Ex.P31 after preparing its parcel. Then he also lifted the blood spot from inside the said liquor vend and blood smeared soil from outside the shop, parcels of which were prepared and the same were taken into police possession vide memo Ex.P32. Then further he proved memo Ex.P35 vide which a sealed parcel along with sample seal was handed over to the police by doctor after conducting post-mortem of dead body. Then he had also stated about the statement suffered by one Kuldeep Singh (PW1) before whom both the accused allegedly made extra judicial confession. Accused were arrested. Then he had proved the

disclosure statement Ex.P36 suffered by accused Ashok Kumar and disclosure statement Ex.P37 suffered by accused Pardeep Kumar. In this connection, it was further in his statement that both the accused led the police party to place of concealment of pair of chappal i.e. house of Jaswinder Kaur at Pundri and got recovered the same which was taken into police possession vide memos Ex.P24 and Ex.P24/A. The said chappals were produced during the trial of the case as Ex.P27 and Ex.P28.

11. So far the statements of remaining prosecution witnesses are concerned, there is no need to discuss the same because most of them are either formal or of official witnesses who accompanied PW15 Inspector/SHO Manoj Kumar, the I.O., during the investigation of the case.

12. It is essential to evaluate the evidentiary value of the statement of PW1 in the eyes of law. The fate of the prosecution case depends upon the veracity of the statement of this witness while being weighed in the scale of justice. Examination-in-chief of this witness has already been discussed in para No.11 of this judgment. Now let us see what he had stated in his cross-examination, the relevant part of which is as under:

“He never remained Member Panchayat, Municipal Councillor, Sarpanch etc. The persons whose names are mentioned above (Pardeep Kumar and Ashok Kumar) were not known to him previously. They met him for the first time only on that date i.e. 28.4.2014. Even neither he could identify the accused persons who was Pardeep Kumar and who was Ashok Kumar nor he could tell about their parentage and residential address. No police official from P.S. Shahabad was known to him nor he could tell who was Inspector or SHO in that police station at that time.

X X X

The police officials met him in a zipsy, but he could not tell their names, designations and number thereof. He could not tell the names of salesmen of different liquor vends of different villages from whom he used to collect the cash.

X X X

He could not tell the name of owner of Shiv Shakti Sales with whom he was allegedly working nor he could tell the partner of this firm, if any. He has no proof to prove the fact that he remained as a salesman of said Shiv Shakti firm. He could not tell even the registration number of motorcycle which was used by him for collecting the cash nor he could tell about its make or owner.”

From the above discussed cross-examination of PW1, it is established that he was a layman without holding any kind of influence in police department at the time of this occurrence. Even the accused were also not known to him prior to 28.4.2014 when they allegedly suffered extra judicial confession before him. A person who commits any offence can suffer extra judicial confession before a person in whom he is reposing confidence and that person is having some kind of proximity/influence in the police department and further in the mind of culprit, he could render some kind of help to him by producing him before the police. In the case in hand as above discussed, Kuldeep Singh (PW1) was quite a stranger to both the accused nor he was having any kind of connection in the police department at the relevant time. So the story of prosecution that the accused had suffered the alleged extra judicial confession before him does not appeal to any reasoning nor the same can be found to be correct with any stretch of vision. If the statement of PW1 goes, then the entire case of prosecution becomes legless having no substance to prove the alleged complicity of

respondents No.2 and 3 (accused) in the case in hand.

13. So far the recovery of *chappal* is concerned, the same also does not help the appellant from any angle because as per the case of prosecution it was belonging to respondent Ashok Kumar and not to deceased.

14. Then so far the alleged recovery of *binda* Ex.P29 is concerned, the same was also made prior to the arrest of the accused from the spot. Then the place of occurrence was also already in the knowledge of the police prior to the arrest of the accused. So nothing new fact came on the record after the arrest of the accused from their interrogation except the above-said recovery of *chappal* which itself is also disbelieved.

15. It is the settled law that extra judicial confession is a weak type of evidence and the same is to be scrutinized by the Court very carefully and minutely. Such like evidence can only be relied upon, if there is some other strong evidence corroborating the prosecution version. Herein the principles as laid down by the Hon'ble Apex Court in **Baldev Singh Versus State of Punjab, 2010(5) R.C.R.(Criminal) 596** and **Dhan Raj @ Dhand Versus State of Haryana, 2014(3) R.C.R.(Criminal) 888** are followed.

The learned trial Court has rightly ignored the extra judicial confession allegedly made by both the respondents No.2 and 3 (accused) before Kuldeep Singh (PW1), when statement of this PW itself is not found to be trustworthy.

Then the manner in which alleged disclosure statements Ex.P36 and Ex.P37 was recorded, the same are found to be stereotyped as well as manufactured one.

16. In the light of the above discussion, this appeal being found to be meritless stands dismissed and disposed of accordingly.

14.1.2016
Brij

(S.S. SARON)
JUDGE

(GURMIT RAM)
JUDGE