

In the High Court of Punjab and Haryana at Chandigarh

Criminal Appeal No.D-35-DBA of 2006 (O&M)
Date of Decision:-September 01, 2017

Som Parkash

.....Appellant

Versus

Ramphal and others

.....Respondents

CORAM: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Gurvinder Singh Gill

Present : Mr. G.S.Sandhu, Advocate for the appellant.

Mr. Samir Rathore, Advocate for
Mr. Sumeet Goel, Advocate, for respondents No. 1 to 7

Mr. Ankur Mittal, Additional Advocate General, Haryana with
Mr. Manoj Dhankhar, Assistant Advocate General, Haryana.

Gurvinder Singh Gill, J.

1. Som Parkash (son of complainant Risala Ram) has filed the present appeal challenging judgment dated 26.10.2004 passed by learned Additional Sessions Judge, Kaithal vide which all the accused/respondents namely Ramphal, Prem, Balbir, Beer Bhan, Ram Kumar, Phaggo Devi and Kamli have been acquitted of the charges framed against them in respect of offences under Section 302 of Indian Penal Code, 1860 (for short 'IPC') for allegedly having murdered daughter of the complainant Risala Ram.
2. The matter pertains to the death of Khazani Devi who died in her matrimonial

home due to stab injuries on the night intervening 13.01.2002 and 14.01.2002 regarding which FIR was lodged at the instance of Risala Ram (father of deceased) against the aforesaid accused/respondents. However, during investigation, the police found all the aforesaid accused to be innocent and instead found one Sham Lal to have murdered Khazani Devi and thus filed a challan against the said Sham Lal.

3. The complainant dis-satisfied with the investigation, submitted an application dated 06.03.2002 (Ex.PA) to Superintendent of Police, Kaithal for re-investigation of the case. Subsequently the complainant chose to file a complaint (Ex.PC) under Section 302 read with Section 120-B, IPC titled as Risala Ram Vs. Ramphal and others in the Court of Additional Chief Judicial Magistrate, Kaithal.
4. The complainant in his complaint (Ex.PC) stated that his daughter Khazani Devi was married to Ramphal about 18/20 years back who was blessed with a daughter and three sons. Accused nos. 2 to 5 namely Prem, Balbir, Beer Bhan and Ram Kumar are real brothers of Ramphal and accused nos. 6 and 7 namely Phaggo Devi wife of Prem and Kamli wife of Ram Kumar. It is alleged that Khazani Devi during her visit to parental home at village Habri used to tell her mother Sunehri Devi that her husband Ramphal was having illicit relations with his sisters-in-law namely Phaggo Devi and Kamli Devi. The complainant and his wife however, used to advice their daughter not to disclose the said fact to others lest it may bring a bad name to their family. The complainant alleged that the said illicit relations of Ramphal with Phaggo Devi and Kamli Devi were in the knowledge of his brothers i.e.

accused/respondents No.2 to 5. Whenever Khazani Devi objected to the said illicit relations, she used to be beaten by all the accused and his daughter used to disclose about the said beatings during her visits to her parental home. Even when Som Parkash used to visit Khazani Devi in her matrimonial home to inquire about her well being, he used to inform that Khazani Devi was being harassed and tortured by all the accused.

5. The complainant further stated in his complaint (Ex.PC) that on 14.01.2002 in the morning at about 8/9 AM accused Beer Bhan and one Raja Ram visited village Habri and informed the complainant and other members of family of Khazani Devi that she had expired on the night intervening 13.01.2002 and 14.01.2002. The complainant along with his son and other residents of the village Habri went to village Sisla at about 12 Noon and found the dead body of his daughter Khazani Devi lying in the courtyard bearing injuries with sharp edged weapons and a knife was pierced through her chest. The complainant found that the accused Ramphal with the help of other villagers was making preparations for cremating the dead body. The complainant informed Station House Officer, Police Station Sadar, Kaithal at 3.30 PM on 14.01.2002 itself and FIR under Section 302 came to be lodged on 14.01.2002. The police however, with an ulterior motive to save the real culprits who had political links, arrested one Sham Lal for murder of Khazani Devi.
6. The complainant further alleged in his complaint that on 14.02.2002 he came to know from the residents of village Sisla that on the night intervening 13.01.2002 and 14.01.2002 at about 12 PM - 1 AM Bheera Ram neighbour and his wife Guddi upon hearing some noises from the adjoining house of the

accused Ramphal, opened their main door and found accused/respondents No.2 to 7 standing in the street armed with deadly weapons and when Ramphal open the door of his house, the remaining accused entered the house of Ramphal. It is further stated therein that said Bheera Ram and his wife saw that at that time Sham Lal was also standing at the door of the house situated on the opposite side of the house of accused Ramphal. Bheera Ram and his wife upon finding nothing unusual closed their main door and went to sleep and it was on the morning of 14.01.2002 that they came to know that Khazani Devi had been killed with the help of sharp edged weapon. The complainant stated therein that Bheera Ram further told the complainant that on 14.01.2002, in the evening accused/respondents No.1 to 5 confessed before Jagga Ram and Mangat Ram and two other residents of village Sisle, in the courtyard of Bheera Ram, that Khazani Devi had been killed by them on account of her quarrelsome nature and for suspecting that her husband was having illicit relations with Phaggo Devi and Kamli Devi. The accused confessed that on 13.01.2002 they had assembled in the house of accused No.2 Prem and they decided to kill Khazani Devi and accordingly in furtherance of their conspiracy, on the night intervening 13.01.2002 and 14.01.2002 Ramphal opened the main door of his house when Phaggo Devi and Kamli Devi knocked at the same. At that time accused No.2 Prem was carrying a 'gandasa', accused No.3 Balbir, accused No.4 Beer Bhan and accused No.5 Ram Kumar were carrying 'gandas' and they all entered the house. Khazani Devi was sleeping on a cot in the 'veranda'. Phaggo Devi and Kamli Devi tried to catch hold of her by her shoulders and arms but Khazani Devi got up and ran out of her house and raised alarm. At that time she was caught hold of

by Phaggo Devi and Kamli Devi and accused Prem gave a '*gandasa*' blow on the left side of her face and she fell on the ground and while she was lying down, accused Ramphal brought a kitchen knife and inflicted injuries with the same on the dead body of Khazani Devi. All other accused also inflicted injuries with their respective weapons on the person of deceased while she was lying down and consequently Khazani Devi died without raising any alarm and murmuring any sound. The accused requested the persons before whom they confessed their guilt to help them and to save them as the complainant party had reached the village Sisle and the police had started investigation. Bheera Ram further told the complainant that he could not disclose the said incident to the complainant earlier because of fear of the accused party but now his conscience had pricked him and he had spoken the truth since the police has falsely implicated an innocent person namely Sham Lal (his nephew). The complainant thus alleged that all the accused, in furtherance of their criminal conspiracy had murdered Khazani Devi by inflicting injuries to her with dangerous weapons.

7. The complainant led preliminary evidence before the learned Additional Chief Judicial Magistrate, Kaithal, who upon appraisal of the same found sufficient grounds to proceed against the accused for offence under Section 302 read with Section 120-B IPC and accordingly, summoned the accused vide order dated 18.07.2002. Upon securing the presence of the accused, learned Additional Chief Judicial Magistrate, Kaithal on finding that the offence in question i.e. Section 302 IPC was exclusively triable by the Court of Sessions committed the case to the Court of Sessions vide order dated 13.09.2002.

8. The case was assigned to the Court of Additional Sessions Judge, Kaithal who upon finding that the complaint and the documents prima facie disclosed commission of offence punishable under Section 302 read with Section 120-B IPC, framed charges against all the accused to which the accused pleaded not guilty and claimed trial.
9. The prosecution in order to establish its case examined as many as 7 witnesses. PW-1 HC Ram Kumar brought the summoned record and proved copy of complaint submitted by Risala Ram in the office of Superintendent of Police, Kaithal. PW-2 Suresh Kumar, Draftsman proved the site plan Ex.PB, prepared by him, upon instructions of Risala Ram (complainant). PW-3 Risala Ram stated in detail in tune with the allegations levelled his complaint(Ex.PC), which has already been referred to in detail in earlier part of this judgement. PW-4 Som Parkash son of the complainant stated in corroboration to the statement of the complainant i.e. PW-3 Risala Ram. PW-5 Jagga stated that the accused admitted before him and Bheera that they had murdered Khazani Devi. PW-6 Sardara deposed to the effect that Ramphal was having illicit relations with wives of his brothers namely Prem Kumar and Ram Kumar and that he along with 6-7 persons went to the house of Ramphal with regard to illicit relations of Ramphal with his sisters-in-law but Ramphal said that he would continue with the same and that Khazani Devi may be taken to her parental home. PW-7 Dr. S.K.Jain who had conducted the post mortem examination on the dead body of Khazani Devi stated in detail regarding the injuries found on the person of Khazani Devi and opined that the cause of death was due to the injuries on the neck resulting in cutting of

major vessels on the neck and trachea. He proved the post mortem report as Ex.PD.

10. After conclusion of the prosecution evidence, statements of the accused were recorded in terms of Section 313 Cr.P.C. wherein entire incriminating evidence against them was put to them to enable them to explain the same but the accused pleaded innocence and have taken a stand that they have been falsely implicated in the present case.
11. The accused, in their defence, examined three witnesses. DW-1 Santosh daughter of the deceased stated that on 13.01.2002 when she was sleeping in her room then Sham Lal entered her room and kissed her and also touched her breasts with bad intention and that her mother who was sleeping in the 'veranda' woke up upon hearing creaking noise from the cot and confronted Sham Lal. She deposed that her mother abused Sham Lal and threatened to defame him in the village and told him to go away. She has further deposed that Sham Lal went away but again came back at about 2.30 a.m. and stabbed her mother with the knife killing her. DW-2 Inspector Ram Chander, Investigating Officer in the parallel version i.e. in FIR No.22 dated 14.1.2002 under Section 302 of IPC, Police Station, Sadar, Kaithal stated as regards the disclosure statement (Ex.DB) made by Sham Lal in the State case and has also proved the recovery memo (Ex.DC) vide which the clothes recovered at the instance of Sham Lal were taken into possession. The accused also examined DW-3 Krishan Lal who deposed that on 18.01.2002 when he along with his brother were present in the house, then Sham Lal came there and confessed his guilt of having murdered Khazani Devi with a knife and that he then took

Sham Lal to the police.

- 12 The learned trial Court upon appraisal of the evidence on record held that the prosecution has been unable to substantiate the charges framed against the accused and consequently acquitted all the accused vide impugned judgment dated 26.10.2004. The complainant being aggrieved by the same has filed the present appeal challenging the acquittal of accused.
- 13 The learned counsel for appellant/complainant, while assailing the impugned judgement, has submitted that despite there being cogent and convincing evidence on record to establish the charges framed against accused, the trial court fell in error in discarding the same. The learned counsel for appellant/complainant has submitted that the accused had confessed their guilt before PW-5 Jagga who deposed that in his presence and in presence of Bheera the accused admitted that they had murdered Khazani Devi but the trial Court discarded the said clinching evidence on flimsy grounds.
- 14 The learned counsel for appellant has further submitted that PW-6 Sardara is a witness who establishes the case of prosecution as regards allegations of illicit relations of accused Ramphal inasmuch as he specifically deposed in witness box that Ramphal was having illicit relations with the wives of his brothers and that he along with 6-7 persons went to village of accused Ramphal alongwith Khazani Devi where the accused Ramphal and other co-villagers were made to sit together but Ramphal said that he would continue with his illicit relations and that Khazani Devi may be taken back to her parental home.
- 15 The learned counsel has submitted that the police gave twist to the entire case

by declaring the accused originally named in the FIR as innocent and by naming one Sham Lal as an accused. The learned counsel has submitted that in fact the daughter of deceased namely DW Santosh was tutored by her father and other members of the family to name Sham Lal so that her father and other members of the family may be saved from punishment.

- 16 The learned counsel for appellant/complainant has submitted that the conduct of the accused in not informing the police when admittedly Khazani Devi had died in their house due to injuries caused with a sharp edged weapon leaves much to be explained on part of the accused. The learned counsel for appellant has thus prayed for setting aside of impugned judgement and for conviction of the accused for offence u/s 302 of IPC for having murdered Khazani Devi.
- 17 On the other hand the learned counsel for the respondents/accused have submitted that they have been falsely implicated in the present case and that there is no evidence worth credence to connect them with the alleged crime. The learned counsel has submitted that the entire case of prosecution is based on alleged extra-judicial confession made by accused before PW-5 Jagga who has in one line stated that the accused had confessed his their guilt before him and Bheera without divulging the details of the confession. The learned counsel has further submitted that the other person namely Bheera before whom he accused allegedly confessed their guilt has not been examined by the prosecution for reasons best known to it and which causes a serious dent in the case of prosecution.
- 18 The learned counsel for accused has, thus, submitted that in the absence of any

convincing evidence to connect them with the occurrence, they cannot be held guilty in any manner and has thus prayed for dismissal of the appeal.

- 19 We have heard learned counsel for the parties and considered their rival submissions and have also perused the evidence on record of the case.
20. As far as the factum of death of Khazani Devi and the cause of death is concerned, it is imperative to refer to the postmortem report. PW-7 Dr. S.K.Jain who had conducted the postmortem examination on the dead body of Khazani has described the injuries found on the dead body as follows:

- “1. There was incised wound size 9 cm x 1 cm over left cheek, extending from left angle of mouth. There was no fracture on exploration.
2. There was incised wound size 3 cm x .8 cm over upper part of neck on antero lateral aspect on right side, of neck. On exploration there were jugular vein and carotid artery completely cut.
3. Incised wound size 5 cm x 1 cm, 2 cm lower to injury no.2, which was obliquely placed, on deep exploration, muscles and blood vessels were cut.
4. Incised wound size 3 x 1 cm over mid of neck and the centre. On exploration, trachea was completely cut through and through.
5. There was incised wound 3 cm x 1 cm obliquely placed on left side of neck in the mid. On exploration, common carotid artery were completely cut.
6. In epigastric region knife was stabbed with wooden handle, which was seen outside the skin surface and rest part of knife was inside the body. Knife was extracted and handed over to police after seal. On exploration of this wound, which was incised and of size 1 x .2 cm in epigastric region. On deep

exploration, omentum was showing, penetrating wound corresponding to stab site, which was caused by extracted knife, but no fresh bleeding from the said wound and no other external organ injury and bleeding was present. Skin wound and internal injury corresponding to this wound were post mortem in nature.

7. Two incised wounds size variable from 0.8 cm x 0.2 cm and 0.6cm x 0.2 cm. on right side of injury no.6, just sub cutaneous deep in nature and margins shows, no redness or erythema in subcutaneous tissues, and these injury were post mortem in nature.”

21. PW-7 Dr. S.K.Jain has opined that the cause of death was shock and haemorrhage due to multiple wounds present over neck region causing cut in major vessels in the neck and trachea. He has further opined that the possibility of injuries no. 1 to 5 on the person of deceased having been caused by Gandasi, Kappa and knife can not be ruled out. As noticed above, injuries No.2 to 5 are all on the neck of the deceased and are incised wounds. As such the factum of death of Khazani Devi due to injuries caused with sharp-edged weapon stands duly established.

22 Admittedly, there is no eyewitness to the occurrence and the prosecution seeks to establish its case on the basis of the alleged extra-judicial confession made by accused before PW-5 Jagga. It is however worth noticing that PW-5, during the course of cross-examination, has himself admitted that the complainant is his brother-in-law. In such a situation, PW-5 can hardly be said to be an independent witness. It is well settled that extra-judicial confession is a very weak type of evidence and extra care should be taken before accepting the same. An accused can be expected to confess his guilt before such a person who he believes would help him and save him from police interrogation and

punishment. Confessing before a closely related person of the deceased would mean that the accused is digging his own grave as a close relative of deceased is not expected to help the accused and rather would see to it that the accused is brought to book and are duly punished.

23. Further during cross-examination PW-5 Jagga has stated that he neither informed the police regarding the alleged confession made by the accused nor he narrated the fact to any respectable of the village including Nambardar or Sarpanch. Still further as per statement of PW-5 Jagga, the accused had confessed his guilt before him and Bheera but prosecution has chosen not to examine said Bheera as a witness. The brother-in-law of the complainant would be a very convenient witness to depose in favour of the complainant. His conduct in not informing the police or other respectable clearly shows that he has simply been introduced as a witness and that the accused had never made any confession before him. We further find that while the complainant PW-3 Risala Ram in his examination-in-chief has stated that after one and a half month of the occurrence, Bheera neighbour of accused had told him that Khazani Devi was murdered by accused and that on the night intervening 13/14.1.2002 he had seen the accused armed with deadly weapons standing in the street, in front of the house of Sham Lal and they had entered the house of Sham Lal, but his brother-in-law PW-5 Jagga in his examination-in-chief has stated that the accused had confessed their guilt before him and Bheera in morning on 14.01.2002 itself. If Bheera and PW-5 Jagga were together on 14.01.2002 and the accused had actually confessed their guilt before them, then it remains unexplained as to why the complainant never came to know

about confession before Bheera as Bheera was accompanied by Jagga who is brother-in-law of Risala Ram. It is well settled 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. A reference in this context may be made to judgments of Hon'ble Apex Court reported as Baldev Singh v. State of Punjab 2010(5) RCR 596 and Dhan Raj @ Dhand v. State of Haryana 2014(3) RCR 888. The present case when examined in the light of the aforesaid position of law leaves no manner of doubt that the extra-judicial confession in the present case is least reliable.

- 24 In view of aforesaid discussion, the extra-judicial confession allegedly made by accused before PW-5 is far from reliable and certainly cannot be made a basis of conviction. Other than the testimony of PW-5, the only evidence led by prosecution is in the shape of statement of PW-6 Sardara who has stated that he was comprised in the *Panchayat* convened in the village of the accused where efforts were made to reason out with accused Ramphal regarding his illicit relations with his sisters-in-law but he point-blank stated that he would continue with his illicit relations with Khazani Devi and that she may be taken back to her parental home. The aforesaid statement of PW-6 Sardara can at best be termed as a piece of circumstantial evidence. However the said statement is not sufficient to link the accused with the murder of Khazani Devi. Shorn of the extrajudicial confession, which has not been found to be trustworthy, there is no other evidence to connect the accused with the alleged occurrence. Though there is testimony of complainant PW-3 Risala Ram and

his son PW-4 Som Parkash but none of them is eye-witnesses to the occurrence and thus their depositions would not advance the case of prosecution

25. In view of our aforesaid discussions, we find that the prosecution has miserably failed to establish the charges framed against the accused. We do not find any infirmity in the impugned judgement and the same is upheld. There is no merit in this appeal and the same is hereby dismissed.

(Rajesh Bindal)
Judge

(Gurvinder Singh Gill)
Judge

September 01, 2017
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No