

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

CRA-D-47-DB-2010

Date of Decision : 23.09.2017

Joga Singh

....Appellant

Versus

State of Punjab

....Respondent

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR.JUSTICE RAJ SHEKHAR ATTRI

...

Present: Ms.Aditi Girdhar, Advocate
for the appellant.

Mr. Gaurav Garg Dhuriwala, Sr.DAG, Punjab.

...

MAHESH GROVER, J. (Oral)

This appeal by the accused is against the judgment/order of the learned trial Court dated 16.11.2009/17.11.2009 convicting him under Section 304 Part I of the Indian Penal Code and sentencing to undergo life imprisonment and to pay fine of Rs.1,000/-, in default to further undergo rigorous imprisonment for four months.

The incident resulting in death of deceased Sarabjit Singh alias Minto took place on 07.09.2008. According to the FIR, registered on 09.09.2008, under Section 304 IPC the complainant Jaspal Singh reported that he had been informed about the appellant/accused cutting wood from a fallen tree

belonging to the complainant. He went to his field to accost the accused and returned after reprimanding him. The accused in turn had replied to the complainant not to stop him from cutting the wood as it did not belong to him. Upon return his daughter asked him about the whereabouts of his son who had been sent to follow the complainant. A search ensued but the deceased could not be traced. Eventually, a Daily Diary Report was recorded on 08.09.2008 with the police about the missing person and on 09.09.2008 his body was discovered from the river 'Bein' adjacent to the fields of the complainant.

The very same day post-mortem was conducted on the dead body of deceased revealing the same in a putrefied state. The cause of death was opined 'due to drowning'. The Chemical Examiner's report Ex.PL reveals no traces of poison. The stomach showed semi-digested food with an opinion of its consumption about two hours back. Frothy fluids were noticed from the mouth and nostrils. The tongue was protruded and eye balls were coming out of the sockets. No mark of injury was noticed. It was opined that the death took place on 09.09.2008 at 9.45 a.m.

The complainant in the FIR and his subsequent testimony before the Court reiterated the version given out by him as noticed above i.e. of his confronting the accused to stop him from chopping the fallen tree and returning home when he

was informed about his son who had been sent to the fields with a similar information but did not return.

The case of the prosecution rests solely on the extra-judicial confession which was made before Jit Ram and Kulbir Singh and out of these two witnesses Kulbir Singh was given up. Jit Ram testified that the accused had confided in him that when the deceased obstructed the chopping of the tree he had grappled with him resulting in the deceased falling into the river resulting in his death.

Except for this extra-judicial confession there is absolutely no evidence to connect the accused with the commission of the offence. There is no other corroborative material to this piece of evidence.

An extra-judicial confession as the law would dictate is a weak kind of evidence and unless it is found to be inspiring should not be accepted. In this regard reliance can be placed on the judgment of Hon'ble Supreme Court reported in *Jagta v. State of Haryana*, **AIR 1974 Supreme Court 1545** and para 14 of the said judgment reads as under :-

“14. So far as the alleged extra judicial confession of the accused is concerned, the prosecution has relied upon the evidence of 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.”

While testing the veracity and credibility of an extra-judicial confession some of the factors which need consideration are of the person being in such a relationship or commanding such a position in the area where it would be natural for a person to reveal his heart. Jit Ram does not fit in either of these. Though he is from same village but nothing has been explained as to why accused would confide in him in the absence of any relation with him. Therefore, we would not accept this testimony to be credible enough to form a conclusion of the guilt of accused and sustain a conviction and sentence. There is absolutely no other evidence against the appellant and thus we are inclined to accept the appeal since the prosecution has failed to establish its case beyond reasonable doubt against him. Consequently, we acquit the appellant of the charges framed against him. He be set at liberty forthwith, if not required in any other case.

Appeal allowed.

(MAHESH GROVER)
JUDGE

23.09.2017
dss

(RAJ SHEKHAR ATTRI)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No