

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

CRA-D-No.128-DB OF 2003 (O&M)
DATE OF DECISION : 17th JANUARY, 2018

Jalkaran & another

.... Appellants

Versus

State of Haryana

.... Respondent

CRA-D-No.494-DBA OF 2003 (O&M)

State of Haryana

.... Appellant

Versus

Partap & others

.... Respondents

**CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI
HON'BLE MR. JUSTICE INDERJIT SINGH**

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Present : Mr. Baljit K. Mann, Advocate
for the appellants in CRA-D-128-DB-2003.

Mr. Vivek Saini, Deputy Advocate General, Haryana
for respondent in CRA-D-128-DB-2003
for the appellant in CRA-D-494-DBA-2003

Mr. Bhuwnesh Lakhera, Advocate for
Mr. Sanjay Mittal, Advocate for the complainant.

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A. B. CHAUDHARI, J. (ORAL)

1. The appellants-Jalkaran and Rajesh Kumar have filed appeal bearing CRA-D-No.128-DB-2003, being aggrieved by judgment and order dated 17.01.2003 passed by Additional District & Sessions, Judge (Adhoc), Jhajjar in Sessions Case No.10/02.08.1999/12.12.2002, in case FIR No.89 dated 06.03.1999 registered under Sections 302 read with Sections 34 & 120B Indian Penal Code (IPC) and Section 25(1-B) of Arms Act, by which the appellants Jalkaran and Rajesh Kumar were

convicted for the offence punishable under Sections 302 read with Section 34 IPC and Section 25 of Arms Act.

2. The State of Haryana has filed criminal appeal bearing number CRA-D-No.494-DBA-2003 against Partap, Priyavart @ Chikku and Sanjay against judgment and order dated 17.01.2003 in aforesaid Sessions case by which the respondents Partap, Priyavart @ Chikku and Sanjay were acquitted by the Additional District & Sessions, Judge (Adhoc), Jhajjar.

Facts:

3. In brief the prosecution case is that Satyawar-the complainant son of Pehlad Singh resident of Village Bamraula, District Jhajjar, lodged a report with the police station that his younger brother Shiv Kumar had purchased land measuring 2 Killas from one Ramphal s/o Chandgi Ram, resident of Village Kukrola about a year back. After purchasing the said land he got installed a tube-well in the land and also got constructed a tube-well *kotha*. All the accused persons were in possession of the same land before its sale to him. The water of the tube-well was not saline and therefore the brick kiln owners used to take water from the tube-well. On 05.03.1999 at about 7.30 pm, Kalu Ram son of Nanha Ram resident of Rajasthan, working in the brick kiln, came towards the tube-well and saw a dead body lying on the *dol* of wheat crop field on the road side. He told about it to Ramesh, the servant of Shiv Kumar and Chander Bhan friend of Shiv Kumar resident of Village Dighal, who were present at the tube-well. Both, Ramesh and Chander Bhan, went to that place and saw the dead body lying. They identified

the body as that of Shiv Kumar. They came to the complainant Satyawan and informed him. The complainant accompanied by his elder brother Mahender Singh went to the spot and saw the dead body with bullet injuries. He suspected the accused persons as there was enmity between them with regard to the civil suit regarding the land against the accused persons pending before the learned Sessions Court, Jhajjar. He then went to the police station and reported the matter. The police party arrived at the spot and registered the FIR thereafter. The proceedings under Section 174 Cr. P. C. was conducted over the dead body and blood stained earth was collected, sealed and one tiffin lying there was also taken in to possession. Some other articles were also seized from the spot. The site plan was prepared. The post-mortem examination was got conducted. Investigation was undertaken by Om Parkash, Inspector and inquiries were made about the accused persons in the village Kukrola. During investigation Kashmiri Lal son of Hazari resident of Bamraula got his statement recorded under Section 161 Cr.P.C. The police received a secret information about the accused persons who had come in contact with Zile Singh of village Davala. Zile Singh then appeared before the Police officer along with accused Jalkaran and he was arrested. The other accused persons were also arrested on 16.03.1999. Jalkaran Singh was interrogated and he made his disclosure statement Exhibit-PT that he has concealed the pistol and three cartridges in the *kotha* of his house. The same was got recovered. Thereafter, Rajesh made disclosure statement on 04.04.1999 Exhibit-PL that he kept concealed a pistol in the area of village Kukrola. He also got it discovered vide Exhibit-P5.

Thereafter, the final report was filed by the police and the trial was committed to the Court of Sessions. The Sessions Court thereafter conducted the trial. The prosecution examined number of witnesses and finally convicted two appellants as stated above and acquitted the remaining accused persons. Hence, these appeals by both the rival parties.

Arguments:

4. Learned Counsel for the appellants-Jalkaran and Rajesh Kumar vehemently argued that the trial Court itself rejected the evidence of PW-4 Randhir Singh, the alleged star witness of the prosecution i.e. the eye witness, for the reasons which are sound and no other view is possible than the one taken by the learned Trial Court. She then submitted that the said PW-4 was planted as eye witness by the police and he appears to be a chance witness and his testimony is not truthful. That is why the trial Court has rejected his testimony inspiring no confidence. It was then contended that the trial Court having thus rejected the evidence of star witness of the prosecution, has committed error in relying upon the evidence of Zile Singh on the alleged extra-judicial-confession. The evidence in the form of extra-judicial-confession is a weak piece of evidence and that is the settled legal position. Apart from that Zile Singh was related to the complainant and therefore, his evidence was required to be rejected, he being interested witness. That apart, Zile Singh was not a person of any high status that Jalkaran could have approached him for compromise and made extra-judicial-confession to him. At any rate, according to the counsel for the

appellants, it was only Jalkaran who was said to have made extra-judicial-confession and not Rajesh Kumar, the other appellant.

5. The learned counsel for the appellants then contended that the trial Court has relied on recovery of the weapons from Jalkaran and Rajesh Kumar, as incriminating evidence against them to support order of conviction. The conviction cannot be recorded merely on the evidence of recovery, though it is true that the Forensic Science Laboratory (FSL) report shows that the bullet was fired from pistol which was recovered by Jalkaran. At any rate, according to learned counsel for the appellants, the case is the one of no evidence. At least, the benefit of doubt ought to have been extended to the appellants. In support of her arguments learned counsel for the appellants-Jalkaran and Rajesh Kumar cited seven decisions of Apex Court namely in the cases of ***Chattar Singh & another Vs. State of Haryana, 2008(4) RCR (Criminal) 133; S. Arul Raja Vs. State of Tamil Nadu, 2010(3) RCR (Criminal) 918; Sunil Rai @ Paua & others Vs. Union Territory, Chandigarh, 2011(3) RCR (Criminal) 636; Munna Kumar Upadhyaya @ Munna Upadhyaya Vs. State of A.P. Tr. Pub. Prosecutor, 2012(2) RCR (Criminal) 962; Tejinder Singh @ Kaka Vs. State of Punjab, 2013(3) RCR (Criminal) 572 & State of Punjab Vs. Jagga Singh Etc. 2015(2) RCR (Criminal) 262*** and one judgment of Division Bench of this Court in the case of ***Baljit Kaur & another Vs. State of Punjab, 2017(2) Law Herald, 1738.***

6. In support of the appeal preferred by the State of Haryana i.e. CRA-D-No.494-DBA-2003, learned counsel for the State submitted that the trial Court committed an error in acquitting the remaining

accused persons namely Partap, Priyavart @ Chikku and Sanjay, though there was evidence on record against them as well. The evidence in the form of disclosure statement (*Nishan Dehi*), ought to have been believed for convicting respondents-acquitted persons. He, therefore, prayed for allowing of the appeal against acquittal bearing CRA-D-No.494-DBA-2003.

Consideration:

7. We have heard learned counsel for the rival parties at length. We have perused the entire evidence of the prosecution witnesses. We have also gone through the scientific evidence in the form of FSL report.

8. We have seen the judgments cited by learned counsel for the appellants Jalkaran and Rajesh Kumar. There can be no dispute about the propositions stated in those judgments.

9. At the outset, we find that the trial Court rejected the evidence of PW-4 Randhir Singh son of Deep Chand by giving the to following reasons:

“xxx.... xxx.... xxx....But after the registration of the Fir on the statement of Satyawan, Randhir Singh cousin of the deceased came forward with the version that he saw the accused from a very close range and identified them when they were leaving the spot after killing the deceased. His statement was recorded by the police at 12.30 a.m. His version is, as already mentioned that he had gone to his field and then at about 6.00 p.m. he was going to the tubewell of Shiv Kumar his

cousin for taking bath and that when he was just 1 ½ killa away he heard gun shot and saw some persons grappling with each other. Then he sat down in the wheat crop and then heard four-five more gun shots and then all the accused escaped through the dol near the place of his hiding and so he saw them and heard them saying that the man has been killed. Then he silently came to his house and went up stairs and laid himself on a cot in the upper room. At 11.00 p.m. Ved Parkash came to him after his duty and told him that Shiv Kumar had been shot dead. Then he accompanied him to the spot. He has repeated that version in the witness box as PW4. But no part of his statement inspire any confidence. It is all against the human conduct and is a mere concoction. In case he had seen the occurrence, the FIR would have been got registered at his statement. He remained frightened and speechless for about six hours disclosing nothing to anybody even to his brothers in the village. He did not disclose what he saw even to his brother Ved Parkash when he came to him at 11.00 p.m. with the bad news. He accompanied him silently. Further he hide himself without ascertaining who were grappling and what was happening and even after the accused had left the spot he did not got to the spot for ascertaining what had happened and whether the

person shot of was dead or alive when he could easily guess that the person escaping were enemy of Shiv Kumar. It is unbelievable. His going towards the tubewell and the possession was in dispute and there was no question of his going to the tubewell for taking bath. There was no passage from his land to the land of Shiv Kumar and as alleged he was walking along the *dols*.”

10. Since the trial Court rejected the evidence of PW-4 Randhir Singh eye witness produced by the prosecution for above reasons, we have carefully gone through his evidence, including his cross-examination to find out whether he is a witness for the truth and whether his evidence can be acted upon or not? He has deposed as under in his evidence:

“On 5.3.1999 at about 6.00 p.m. I was going to my fields from my house. Our field is situated towards east of village Kukrola. I was proceeding to the land of my cousin Shiv Kumar via fields. When I reached 1 ½ killa away from the kothra of Shiv Kumar, I heard the sound of gun shot from the side of the road. I noticed four-five gun shots. I, thereafter noticed accused Jalkaran, Rajesh, Chikku @ Priyawart s/o Rohtas and Sanjay running along the Dol of the field where I was sitting. They were declaring that they had finished the man. I returned home and went in the Chobara

on the first floor of my house and lay on a cot. I was frightened. At about 11.00 p.m. my brother Ved Parkash returned from his job and he told that Shiv Kumar had been murdered. I then went to the spot alongwith Ved Parkash I saw the dead body of Shiv Kumar lying on the place, from where I had heard gun shots sound. In fact there was a dispute over land between the deceased and accused Jalkaran etc. Police recorded my statement.”

11. It is clear from his evidence that he is an eye witness who saw the incident and also saw Jalkaran and Rajesh Kumar running along the *dol* of the field after he heard the sound of gun shots, at a place ultimately where the dead body of deceased Shiv Kumar was found. It is true that he is the cousin of Shiv Kumar, the deceased and has a field nearby the field of the deceased Shiv Kumar. Merely because he is related to the deceased we would not reject his evidence since his evidence is most natural. His field is situated near the field of the deceased and therefore, his going to his field cannot be said to be without any reason. He identified the accused persons who were running away after committing the murder of Shiv Kumar. He has stated in his evidence that he was frightened. When number of accused persons known to him were seen by him committing murder with firearms, he being alone was bound to get frightened and silently go unnoticed. The reason given by the trial Court that he could not have gone upstairs to

conceal himself and keep silent for some time defies all logic. The reason is perverse. To repeat, the trial Court reasoned that if he had seen the incident, he would have got his statement recorded and FIR registered. But he remained frightened and speechless for about six hours and disclosed nothing to anybody and even to his brother. We do not agree with such a reason. It was most natural that this witness frightened and became speechless for about six hours he having seen the murder by the accused persons who were having pistols in their possession. Since the accused persons were knowing this witness, there is nothing unnatural that this witness was dumbfounded for about six hours. At any rate, the delay in such circumstances of six hours in making a disclosure, cannot result in the rejection of his testimony. Further it is a fact that he had thereafter told about the incident to his brother at about 11.00pm when he had come to him. Thus the first person of his confidence was his brother Ved Parkash to whom he disclosed and accompanied him to the spot. He thus got one more person with him i.e. his brother and as such he became courageous to speak. We therefore do not agree with the reason that he did not speak for about 6 hours about the murder and therefore his testimony is to be rejected.

12. We then find that the trial Court has stated that he had gone to the tube-well though there was no question of going to tube-well for going to take bath. We really wonder how and in the absence of any cross-examination such an inference could be drawn. Whether he used to go for bath or not are matters of facts and not the imagination. The trial Court is not supposed to go by figment of imagination. We, therefore,

find that both the reasons given by the trial Court can not stand the test of judicial scrutiny and are perverse. We believe that PW-4 Randhir Singh is an eye witness who is trustworthy.

13. The trial Court has then relied on the evidence of Zile Singh PW-10. We have gone through the evidence of Zile Singh on the question of extra-judicial-confession. The evidence of Zile Singh will have to be understood along with evidence of recovery pursuant to the disclosure statements made by the appellants. The submission that Zile Singh was related to the complainant and that he was not a person of such a status that the accused Jalkaran would go to him for effecting compromise, does not appeal to us. The statement of Jalkaran at the relevant time cannot be doubted in the manner sought to be projected by the learned counsel for the appellant. On the contrary, we find that Zile Singh being known to him and Jalkaran having faith in him that he would help him in getting the compromise effected, approached him and made the extra-judicial-confession. As stated earlier he also made recovery pursuant to the disclosure statement. In that view of the matter, we do not think that the evidence of Zile Singh can be said to be of no use. It is true that the evidence in the form of extra-judicial-confession is a weak piece of evidence but then it is not the law that the same should always be rejected. In the present case, upon reading of the entire evidence, we find that Jalkaran made the extra-judicial-confession to him and accordingly he was arrested by the police after Jalkaran was produced by Zile Singh. His police statement was eventually recorded. In that view of the matter, we do not find anything wrong with the finding recorded

by the trial Court in relying on the evidence of Zile Singh. We quote the finding recorded by the trial Court in that behalf coupled with the finding regarding the recovery of weapons from Jalkaran and Rajesh Kumar together as under :

“xxx.... xxx.... xxx.... The next circumstance is that the accused remained absconding from their house. Jalkaran and Partap were arrested on 15.3.99 while the remaining accused were arrested on 4th April. The prosecution version is that Jalkaran approached Zile Singh and made extra-judicial confession before him that they committed the murder of Shiv Kumar and that he being his relative compromise be got effected and that he be produced before the police. It is correct that he was relative of the complainant party, was not having any approach with the police, had no relation with any police officer there nor he was frequent visitor to the police station, but still the accused could approach him for compromise being close relative of the complainant party. The accused had been named in the FIR and the police was after them. Their arrest was sure-so in the circumstances the accused could approach him. The accused Jalkaran and Rajesh also got recovered one pistol each on the basis of their

disclosure statements. Rajesh got recovered a pistol of bore 12 while Jalkaran recovered a pistol of .315 bore. Injuries of two dimensions are available on the body of the deceased as is evident from the post mortem report. Injury no.1 on the right side of face was having dimension of 6 cm x 4 cm and injury no.2 on the right side face was 7 cm x 4 cm and its exit wound was 8 cm x 3 cm. The remaining injuries are of the dimensions of 1x1 cm, 2.5cm x 1.5 cm, 1x1 cm and 1.5 x 1.5 cm. The next injury is also of the same dimension i.e. the entry wound is 1x1 cm. and exit wound is 1.5 x 1.5 cm. So it becomes evident that two persons atleast participated in the occurrence and used two different fire-arms. Both the pistols sent to the Laboratory were proved to have been fired through and were in working order. One bullet was also recovered from the body of the deceased and it was sent to the Laboratory along with the weapons and in Laboratory examination it was established that the bullet had been fired from the pistol of .315 bore got recovered by Jalkaran and from no other weapon even of the same bore, caliber or make. So it is a clinching evidence that Jalkaran fired shots at the deceased with the pistol

he got recovered. However, no other bullet could be recovered from the body as all other wounds were through and through and so no such evidence could be collected regarding the pistol of 12 bore. But it is evident that two weapons were used. So there remains no doubt regarding the participation of Jalkaran and Rajesh in the occurrence and having fired at the deceased n account of which he died at the spot.”

14. Insofar as the recovery of weapons is concerned, learned counsel for the appellants argued that there was no evidence against Rajesh Kumar in respect of FSL report. We find that insofar as Rajesh Kumar, is concerned, he made recovery pursuant to the disclosure statement and the trial Court has rightly found that the evidence regarding recovery pursuant to the disclosure statement made by Jalkaran and Rajesh Kumar, was liable to be believed and the same was accordingly believed. We agree with the reasons given by the trial Court above regarding extra-judicial-confession and the recovery made by both of them.

15. The prosecution has clearly proved the motive. The motive was that accused were in possession of land which the deceased Shiv Kumar purchased leading to accused getting fully enraged. The learned counsel for the appellants submitted that no record in respect of the civil suit etc. was produced by the prosecution. That may be so but then the fact about the possession of the land by the accused persons prior to its

purchase by Shiv Kumar, is an admitted fact as is clear from the record. The sole testimony of the complainant Satyawar and the other witnesses also shows that the land in question was purchased by Shiv Kumar and obviously then he wanted to have possession from accused. In answer to the last but one question in statement under Section 313 Cr. P. C., accused Jalkaran also admitted about the pendency of civil litigation between them. At any rate, the sole testimony of the witnesses about the Shiv Kumar purchasing the land and then the land dispute arising with the accused persons, has gone unchallenged in the cross-examination of the concerned witness. There is no reason why the said evidence of motive should not be believed. In the result we find that the prosecution also successfully proved the motive to the crime in question. We, therefore, find no merit in the appeal preferred by the appellants Jalkaran and Rajesh Kumar and therefore we dismiss the same.

16. The submissions made by learned State counsel in the appeal against acquittal CRA-D- No.494-DBA-2003, that the other accused persons should have been also convicted namely Partap, Priyavart @ Chikku and Sanjay, does not appeal to us. Insofar as these accused persons are concerned, there is no evidence at all regarding any recovery of weapons or as the case may be. The trial Court took the view regarding acquittal by recording the following reasons:

“However, as regards the remaining accused there is no evidence to how their complicity beyond reasonable doubt. The body had been recovered on the date of occurrence and any disclosure statement

regarding pointing out the place or even pointing out the place where the dead body was lying can be no evidence against the remaining accused. They got recovered nothing. Their disclosure statement and Nishandehi of the place of occurrence can not come within the ambit of Section 27 of the Evidence Act. Jalkaran did not name any other person when he made the extra-judicial-confession.”

17. We agree with the above reasons and hold that there is no merit in the appeal filed by the State of Haryana.

18. In the result, we make the following order:

ORDER

- (i) CRA-D-No.128-DB OF 2003 and CRA-D-No.494-DBA-2003 are dismissed.

17th January, 2018
'raj'

(A. B. CHAUDHARI)
JUDGE

(INDERJIT SINGH)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>