

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

CRA-D-No.250-DB OF 2003 (O&M)
DATE OF DECISION : 29th JANUARY, 2018

Mani Ram

.... Appellant

Versus

State of Haryana

.... Respondent

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

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Present : Mr. Prem Chand Chaudhary, Advocate for the appellant.

Mr. Vivek Saini, Deputy Advocate General, Haryana.

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A. B. CHAUDHARI, J. (ORAL)

1. The appellant-Mani Ram filed this appeal, being aggrieved by judgment and order dated 06.02.2003 passed by learned Additional Sessions Judge, Kurukshetra by which the learned trial judge convicted the appellant for the offence punishable under Sections 302, 457 and 380 Indian Penal Code (IPC) and sentenced him to undergo rigorous imprisonment for life and to pay ₹1,000/- along with other sentences.

2. Custody certificate filed by the State is taken on record.

Facts:

3. In brief, the prosecution case is that on 14.02.1999 SI/SHO Ram Chand and others were present near Churani Jattan railway crossing when Balbir Singh resident of village Katlehri met them. He reported them that he owns a mare which is kept in separate room in the cattle shed in his agricultural land. His servant Kareshan used to sleep in the

cattle shed and on that day at about 10.30pm he was sleeping in the cattle shed after closure of the shutter. On the next day at about 6.30 am when his wife Naib Kaur went to the cattle shed for milking buffalo, she saw that the shutter of the said shed was lying open and Kareshan was lying dead in the pool of blood along with his quilt and the mare was also missing and there was a hole in the boundary wall. She reported the entire matter to him. He also went to the cattle shed to find that his servant Kareshan was hit by brick or some other article and the mare was stolen. On the basis of the information the offence under Section 460 IPC was got registered. The dog squad was called. Proceedings under Section 174 Cr. P.C. were also carried out. A towel soaked in blood, one brick with mark C.C12, blood stained earth were taken into custody and were sealed. During investigation Rajpal son of Kareshan-the deceased, resident of village Katlehri expressed his doubt upon Mani Ram son of Ram Rakha. On 15.09.1999 the search of the accused was launched. During investigation Satpal Singh resident of Gaganpur told that Mani Ram had made extra-judicial-confession to him with regard to the theft of mare and murder of Kareshan. On 16.12.1999 the police party arrested Mani Ram who joined the investigation and in the police custody he made disclosure statement that on the intervening night of 13/14.02.1999 he entered the cattle shed of Balbir Singh and assaulted the deceased Kareshan on head and forehead with brick due to which he became unconscious and thereafter he took mare from the cattle shed. He also stated that he left his towel there and had concealed the mare that was stolen by him with his relative Soma resident of village Gola and he can

get the same recovered. His disclosure statement was recorded. The police party along with the accused went to the village Gola and recovered the mare. That was identified by the complainant. Thereafter, the other formalities were completed and final report under Section 173 Cr. P.C. was presented. The accused was chargesheeted as above stated. The prosecution examined twelve witnesses and also relied upon documentary evidence namely Forensic Science Laboratory (FSL) Exhibit PU and Ex.PU/1. The prosecution tendered its evidence and finally learned trial Judge convicted the appellant as stated above. Hence this appeal.

Arguments:

4. In support of the appeal the learned counsel for the appellant submitted that the case is based on circumstantial evidence allegedly projected by the prosecution and there is no direct evidence in the present case. He then submitted that the evidence in the form of extra-judicial-confession is the only evidence relied on by the prosecution through PW-5 Sat Pal, which is a weak piece of evidence as is the settled law. He then submitted that the motive alleged by the prosecution is about theft of mare by the appellant and recovery thereof from the house of the relative of the appellant. However, the prosecution did not cite the person from whom the recovery of mare was made nor the said witness was examined before the Court to prove that mare was really kept by the appellant in the house of his relative. On the contrary, the evidence is that the mare was moving here and there and ultimately came to her place of abode. The counsel for the appellant then submitted that the prosecution does not

have any evidence about the human blood being detected on any of the articles and therefore even scientific evidence does not support the prosecution case. The trial Court committed an error in relying on the evidence in the form of extra-judicial-confession only through PW-5 Sat Pal. The evidence of PW-5 is also liable to be rejected. He therefore, prayed for acquittal of the appellant.

5. *Per contra*, the learned counsel for the State opposed the appeal and submitted that the evidence of PW-5 Sat Pal regarding extra-judicial-confession has been relied upon by the trial Court rightly and no fault can be found with the trial Court in accepting the said evidence as it did not suffer from any inconsistency. The reasons given by the trial Court are legal, correct and proper and there is no reason to interfere with the judgment of conviction made by the trial Court.

Consideration:

6. We have heard learned counsel at length. We have perused the entire evidence. We have also gone through the scientific evidence in the form of FSL report.

7. We find that the recovery made by the investigating officer (IO) in respect of alleged blood stained cloths and blood stained earth etc., leads us nowhere. The articles which were recovered, pursuant to the disclosure statement made by the accused-appellant, have been found to be without any human blood. Therefore the entire evidence relied upon by the prosecution about the disclosure/recovery of alleged evidence in the form of blood stained articles, cannot be said to be the incriminating evidence against the appellant. In other words, the said

evidence is of no use to the prosecution and can not form the legal evidence which can be utilized against the appellant. The trial Court has not given any importance to this aspect of the matter and simply relied upon the disclosure/recovery of various articles. It is well settled legal position that unless such recovery of the articles pursuant to the disclosure statements is incriminating against the accused, the said evidence of recovery is of no consequence and must be ignored, which we do.

8. The next evidence relied upon by the prosecution is about the disclosure statement and recovery of mare identified by the complainant. In this behalf what is most significant is that the mare was said to have been kept by the appellant at the house of his relative in a different village altogether and that the said mare was then recovered from that place. In our view, the person from whom the mare was recovered was the most important witness and the prosecution did not examine the said witness. It is strange that the IO did not produce the said witness Som son of Lachhman before the Court. The trial Court also relied upon the *Khunta* parade that was conducted when the mare went to the cattle shed belonging to the complainant Balbir Singh. We do not think that such evidence could be incriminating evidence against the appellant accused. The prosecution did not produce any evidence regarding identification marks for the identification of the mare or any documentary evidence describing the mare. The only piece of evidence that was led by the prosecution is the evidence of Sat Pal PW-5 before whom extra-judicial-confession is stated to have been made. The

evidence of PW-5 Sat Pal shows that he came across the appellant-Mani Ram eight and half months ago at bus stand Kalpi on Ambala-Jagadhri road when he has gone for some personal work. The appellant was standing by the road and requested him to stop when he was going on his motorcycle. The accused disclosed him that he entered the cattle shed of Balbir Singh where his servant was sleeping. He then killed him with the help of brick and took away the mare. He then stated that he was in possession of the mare and the police was after him. Then the accused proceeded towards Village Noni and Sat Pal went to his work. The witness states that after the disclosure by the appellant the appellant left for this place while the witness left for his place and the cross-examination shows that he met the police on Barar Road, Shahabad while in the chief he made statement at Shahabad. He then stated that he did not recollect the exact date when the accused-Mani Ram met him and further that Mani Ram did not disclose to him as to where the mare was concealed by him but he only told that he has taken away the mare. The law as to the extra-judicial-confession is trite. The said evidence is a weak piece of evidence. As stated above in order to corroborate the evidence of PW-5 the prosecution does not have any evidence at all. The incident took place at a lonely place in the cattle shed in the filed in the late hours in the night. There is no direct evidence against the appellant. The scientific evidence does not also corroborate evidence of PW-5 Sat Pal. The evidence regarding recovery of mare is too weak to order conviction of the appellant. In that view of the matter, we are of the considered opinion that merely on the basis of extra-judicial-confession

in the absence of any satisfactory evidence against the appellant, it would be dangerous to convict him. We, therefore, hold that the appeal must succeed. In the result we make the following order:

ORDER

- (i) The CRA-D-No.250-DB OF 2003 is allowed.
- (ii) The impugned judgment and order dated 06.02.2003 passed by learned Additional Sessions Judge, Kurukshetra, convicting the appellant, is set aside.
- (iii) The appellant is acquitted of the charges framed against him.
- (iv) Fine if any paid, be refunded to him.

29th 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>