

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

(I) CRA-D-No.607-DB-of 2013 (O&M)
DATE OF DECISION : 1st JUNE, 2018

Surinder Singh @ Golu

.... Appellant

Versus

State of Punjab

.... Respondent

(II) CRA-D-No.664-DB of 2013 (O&M)

Nirbhai Singh @ Lovely

.... Appellant

Versus

State of Punjab

.... Respondent

**CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI
HON'BLE MR. JUSTICE B. S. WALIA**

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Present : Mr. Vishvadeep Singh Rana, Advocate
for the applicant-appellants.

Mr. H. S. Grewal, Additional Advocate General, Punjab.

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A. B. CHAUDHARI, J.

1. Being aggrieved by the judgment and order passed by the learned Sessions Judge, Patiala in Sessions Case No.22 dated 13.05.2011 decided on 29.04.2013 by which the appellants Nirbhai Singh @ Lovely and Surinder Singh @ Golu were convicted for the offences under Sections 302, 460 IPC and were sentenced to undergo rigorous imprisonment for life and fine in the sum of ₹5,000/- each, these appeals were filed by them in this Court.

Facts:

2. The deceased Bharpur Singh Bassi aged about 85 years was residing at house No.61, Royal Enclave, Patiala. On 25.12.2010 he was

alone at his house as his son Kulwant Singh was serving in Indian Army. His wife Smt. Harbans Kaur had gone to Rajpura in the house of her daughter. On 26.12.2010 about 1.30pm the neighbours of the deceased informed the complainant-Amarjit Singh son-in-law of the deceased, that the deceased was not seen out of the house. Therefore, the complainant along with his son Kanwar Jaseep Singh reached the house of the deceased and found that the rear main door of the house was lying open and Sh. Bharpur Singh was brutally murdered and his dead body was lying in the room on the bed. There was ransacking of household articles. He noticed that mobile phone number 78371-44742 of the deceased Bharpur Singh along with camera of Sony make were missing but the box of the camera was lying empty. He then found that some articles were also missing but then he thought it better to inform the police. The statement Exhibit PA was recorded and completed at about 4.00 pm. In his statement Exhibit PA he stated that some articles were missing and would disclose the details thereof later. The copy of the FIR was sent to the area Magistrate at 8.30pm on 26.12.2010. Thereafter, the inquest report was prepared. In post-mortem examination it was found that there were 32 stab wounds on the body. Blood stained earth was taken. The place of occurrence was photographed. The dead body was handed over to the relatives. The investigation was undertaken. On 28.12.2010 Amarjit Singh gave supplementary statement and he told that his father-in-law was using gold bracelet of about 30 grams, which was manufactured in his presence and the name "B.S. Bassi" was inscribed on the bracelet and that was taken away by the assailants. On 29.12.2010

the appellants Nirbhai Singh alias Lovely, Gurjant Singh alias Mintu (since deceased) approached PW-5-Jagdish Singh Ex-Sarpanch of village Their and they made extra-judicial-confession stating that along with Surinder Singh @ Golu in order to commit robbery they have murdered Bharpur Singh in the fateful night. They stated that they have robbed one Sony make camera, one mobile and gold bracelet (*kara*) etc. They promised that they would return at about 6.30 pm along with stolen articles provided Jagdish Singh should produce them before police. But they did not turn up. Therefore, he immediately reported the matter to police on 29.12.2010 itself. On 01.01.2011 one Mangat Singh lodged a report with the Police Station Centuary Enclave that his son Gurjant Singh and his friend Nirbhai Singh alias Lovely consumed some poisonous substance and they were admitted in hospital. Gurjant Singh died but Nirbhai Singh-appellant survived. On 06.01.2011 accused-Surinder Singh alias Golu approached PW-5- Jagdish Singh and accordingly he was produced before the Inspector Karan Sher Singh. Accused Nirbhai Singh was also arrested at later point of time on the same day i.e. 06.01.2011. During investigation the disclosure statements were recorded and recovery was affected. The report from the Forensic Science Laboratory was received and thereafter the challan was filed before the trial Court. The prosecution examined in all 16 witnesses and closed its case. The accused persons had taken defence of denial and they also examined DW-1 HC Gurmeet Singh and DW-2 Dr. Inderjit Singh, Handwriting and Fingerprints Expert. Learned trial Court

thereafter recorded finding on evidence that the appellants were guilty of the offences for which they were charged. Hence, these appeals.

Submissions:

3. Learned counsel for the appellants made the following submissions.

4. The prosecution case is based on no direct evidence but the prosecution claims to have had the circumstantial evidence and the trial Court has also recorded the order of conviction based on circumstantial evidence. It is settled legal position that no conviction can be based on circumstantial evidence unless the chain is completely proved by the prosecution and no other inference except that the accused persons are the only person who has committed the offence is possible. In the present case the prosecution failed to complete the chain of circumstances to prove the appellants guilty of the offences for which they were charged and therefore the trial Court ought to have extended the benefit of doubt to the appellants.

5. The reliance placed by the prosecution is mainly on the evidence of PW-5- Jagdish Singh, the Ex-Sarpanch of village Theri with whom the appellants do not have any concern as the appellants do not belong to village Theri. In the cross-examination PW-5 admitted that he does not know the education qualification of the appellants nor he knows the details about the relatives and friend of the appellants. According to the counsel for the appellants PW-5 is a witness planted by the police for proving the alleged extra-judicial-confession. In the cases of ***State of Haryana Versus Ved Parkash, 1994 AIR (SC) 468*** and ***Tarsem Kumar***

Versus Delhi Administration, 1994 AIR (SC) 2585 passed by Hon'ble the Supreme Court, it has been held that these were the circumstances which enacted that such an extra-judicial-confession cannot be taken into consideration for recording conviction. As such a confession before a person who casually knew or never knew the accused persons, cannot be believed as accused may never make confession before an unknown person. The counsel for the appellants, therefore, contended that evidence of PW-5 is liable to be rejected.

6. The learned counsel for the appellants then submitted that the prosecution has relied on the evidence of discovery/recovery of two knives allegedly blood stained from a *kotha* near open road accessible to anybody. The placement of the two knives in the *kotha* was hardly a four *karams* away. It is highly improbable that both the accused would keep the blood stained knives at a distance of 4 *karams* in some *kotha* and therefore, the said recovery/discovery is totally false and highly improbable.

7. At any rate, according to learned counsel for the appellants the discovery was made as late as on 06.01.2011 i.e. almost after 11 days after the date of occurrence. There is every likelihood of the police planting the recovery on the appellants. The counsel for the appellants then argued that the trial Court has heavily relied on the discovery/recovery of the gold bracelet, Sony camera and mobile phone allegedly belonging to the deceased, from the appellants. According to the learned counsel for the appellants the said alleged discovery is again highly improbable, suspicious and planted. The above said articles have

been recovered/discovered by the appellants again after 11 days from the date of evidence. The box containing camera was lying on the spot but then the box never find mention in the site plan or the *panchnama*, which shows that an after thought story has been cooked up. Similar is the case of a gold *kara* which was never mentioned in the FIR or inquest/*panchnama*, therefore, there is reason to believe that since only mentioning of mobile phone and camera was there in the FIR, the box as well as the gold *kara* were planted. The counsel for the appellants then submitted that the story of gold *kara* came into existence for the first time on 28.12.2010 when supplementary statement of the complainant was made and never before.

8. Continuing the arguments, the learned counsel for the appellants then submitted that the mobile phone instrument was allegedly found with PW-6-Ladwinder Singh @ Laddy and that he was using the SIM in the said phone. According to the prosecution the mobile phone was agreed to be sold by Nirbhai Singh @ Lovely to the accused for ₹800/- but then leaving the phone itself with them, they left away, which story is wholly improbable.

9. To corroborate the theory of gold *kara* the prosecution did not examine any jeweler from whom it was said that the *kara* was got prepared. No bills for camera and *kara* were also produced on record. The statement of PW-5-Jagdish Singh, about alleged surrender, was never recorded under Section 161 Cr.P.C. By taking recourse to Section 30 of the Evidence Act, appellant-Surinder Singh @ Golu was convicted. It is totally wrong and illegal.

10. The samples were though seized on 06.01.2011 were sent to FSL on 1801.2011. There appeared to have raised some objection. It was duty of the prosecution to reveal to the Court what was the objection and whether the same was removed. At any rate, there was delay in examination of samples and therefore benefit of doubt would go to the accused.

11. The documents of memo of arrest and disclosure etc. have all been fabricated by the police which is clear from the fact that Gurinder Singh Sidhu, the independent witness was never examined by the prosecution, who was said to have been won over. Gurinder Singh Sidhu was other son-in-law of the deceased Bharpur Singh and there is no reason why such stand could be taken by the prosecution. DW-2 Dr. Inderjit Singh, Handwriting and Fingerprints Expert was examined to show the tampering of the documents as aforesaid and that was duly established by the defence through his evidence. The trial Court has, however, ignored all these important aspects of the matter and has wrongly recorded the conviction against the appellants. Learned counsel for the appellants cited the following decisions:

- (i) Kuldip Singh versus State of Delhi, 2004(1) RCR (Criminal), 292.
- (ii) State of U.P. versus Ashok Kumar Srivastavas, 1992 (3) RCR (Criminal) 63.
- (iii) Tarsem Kumar versus Delhi Administration, 1994 (3) RCR (Criminal) 587.
- (iv) State of Haryana versus Ved Prakash, 1994 AIR (SC) 468.

12. *Per contra*, learned for the respondents vehemently opposed the appeal and submitted that the trial Court has given a detailed judgment with the reasons based on evidence. There is no perversity in the matter of appreciation of evidence. The trial Court has considered the evidence with full circumspect. The prosecution has proved its case beyond any doubt, much less reasonable doubt. The recoveries and discoveries were made as soon as the arrest of the appellants were made. The appellants have never explained in statement under Section 313 Cr.P.C. as to why the appellants Nirbhai Singh and deceased Gurinder Singh had attempted to commit suicide immediately after they came to know that the police has swung into action. The evidence relied upon by the prosecution as well as discussed by the trial Court is very strong. The deceased had 32 stab wounds and the case is of brutal murder of a 85 years old person. The discovery of the articles belonging to the deceased from the possession of the appellants has not at all been explained by any of them and the burden shifts on them to disprove the same. That was never done. The evidence in the form of extra-judicial-confession has not come as a surprise as the statement of PW-5-Jagdish Singh was recorded on 29.12.2010 itself about the confession made to him. The submissions that the appellants were not known to PW-5 will have to be rejected as PW-5 did not have any enmity to depose against them in a serious case of robbery and murder in the first place and secondly his evidence has not at all been shattered in the cross-examination. The prosecution has fully proved its case beyond reasonable doubt. The appeals deserve to be dismissed.

Consideration:

13. We have heard learned counsel for the rival parties at length. We have perused the entire evidence as well as the documents with the assistance of the learned counsel for the rival parties. The deceased was a 85 years old person who was alone at his house at the relevant time. He was found dead after the neighbourers found that he had not come out of the house and then the complainant-Amarjit Singh was informed about it. The deceased had two sons-in-law, the complainant-Amarjit Singh and Gurinder Singh Sidhu. The first information of the offence was given by complainant-Amarjit Singh. We have carefully seen the information that was given to the police after he had visited the house of the deceased. We find that in the said information itself he made a statement that he would be able to tell about other missing articles from the house than those articles which he had named in the first information as the same would become clear only after proper inspection. It is in this background the submission that the FIR did not have any mention about the golden *kara* and Sony Camera, stands answered. The trial Court recorded the conviction, considering the number of circumstances by which the link was completed and the evidence tendered by the prosecution was pointed out to the guilt of the accused and nothing else.

14. We have carefully perused the evidence of PW-5 Jagdish Singh Sarpanch, an important prosecution witness, whose statement was recorded on 29.12.2010 itself. Therefore, there was no scope for him or

anybody to create any evidence. In his evidence he specifically stated as under:

“On 29.12.2010 I had gone to village Bahadurgarh in connection with some domestic affair and on that day, I was standing near the Milk Food Factory, Bahadurgarh and at that place Gurjant Singh @ Mintu son of Mangat Singh, resident of village Deelwal and Nirbhai Singh @ Lovely son of Sarabjit Singh of village Jhambo, who was earlier residing at village Deelwal, both the said persons had met me. Said Gurjant Singh and Nirbhai Singh was well known to me even prior to that date. Both the said persons namely Gurjant Singh and Nirbhai Singh had disclosed me at that time that on intervening night of 25-26/12.2010 at about 11.00 p.m., they (both) alongwith their co accused namely Surinder Singh @ Golu, had entered Kothi no.61, Royal Enclave, Patiala in order to commit robbery and dacoity and when they had tried to remove the gold Karra of Bharpur Singh, who was owner of said kothi no.61, Royal Enclave, Patiala, said Bharpur Singh woke up and accordingly they became perplexed and thereafter they had inflicted knife blows on the person of said Bharpur Singh and thereby they had committed murder of said Bharpur Singh and they had taken away the said gold Karra which they had removed alongwith mobile phone Nokia, Sony Camera and cash etc.

from said kothi no.61, Royal Enclave, Patiala. At that time, both said Gurjant Singh and Nirbhai Singh had also disclosed me that they have committed a big mistake by committing said occurrence and told me that I have got well acquaintance with the police and that they shall come to me at about 6.00 p.m. alongwith said articles of robbery alongwith their co-accused Surinder Singh @ Golu and both the said accused Gurjant Singh and Nirbhai Singh also told me that I should produce them alongwith their co accused and said articles before the police. On that day i.e. 29.12.2010, I had waited said Gurjant Singh and Nirbhai Singh in my house at about 6.30 p.m. but they did not turn up. On 29.12.2010 at about 7.00 p.m. I had gone to Rana Market near village Their and at that place Inspector Karan Sher Singh, SHO, Police Station Sadar, Patiala had met me alongwith police party and I narrated all the abovesaid facts and police recorded my statement.”

15. Perusal of the above evidence clearly shows that Gurjant Singh, the deceased-accused and Nirbhai Singh very well knew that PW-5 Jagdish Singh had well acquaintance with the police and that is why they preferred to take the help of PW-5-Jagdish Singh for making surrender before the police. We therefore, find that the submission about making of extra-judicial-confession to a stranger will have to be rejected. The evidence that Gurjant Singh and Nirbhai Singh had told PW-5

Jagdish Singh that they came to him as they knew that he had well acquaintance with the police, has not been challenged in the cross-examination. The judgment of the Supreme Court in the case of ***State of Haryana Versus Ved Parkash (supra)*** cited on this point, therefore, has no application. In our opinion the evidence of PW-5 Jagdish Singh who was independent witness must be believed.

16. It is significant to note that after they left PW/5-Jagdish Singh, both Gurjant Singh and Nirbhai Singh had consumed poison and in the process due to poisoning Gurjant Singh @ Mintu died but somehow Nirbhai Singh @ Lovely survived. It was then for Nirbhai Singh to explain why he consumed poison immediately after he and Gurjant Singh left the company of PW/5-Jagdish Singh. Obviously the prosecution case that since they had committed a brutal murder of an old man and looted the articles from his house and that they were sure of being caught by the police, they took the step of consuming the poison, will have to be believed. This is a strong unexplained circumstance against the appellant Nirbhai Singh. We have carefully perused the cross-examination of PW-5 Jagdish Singh and we do not find that his evidence has at all been shaken.

17. The gold *kara* of the deceased having the mark “B S Bassi” was identified by complainant Amarjit singh in his evidence before the Court. So also the other articles which were recovered at the behest of the accused persons. It is significant to note that Amarjit Singh clearly stated in his evidence that gold *kara*, with the name of the deceased thereon, was prepared from the goldsmith by the deceased in his presence

and the same was identified by him before the Court. Again this evidence has gone unchallenged. The gold *kara* and other articles were discovered and recovered at the behest of the appellants-accused. The submission, that there was delay in making discovery/recovery and that the same was made after 11 days, is without any merit. The recovery and discovery were made after the arrest of the accused persons and it is thereafter the evidence was collected during investigation by the prosecution. The recovery of knife was also made by the accused persons. The trial Court has discussed the evidence in this connection in all details and insofar as the recovery of gold *kara* (bracelet), is concerned, it would be appropriate to quote paragraph 45 from the judgment of the trial Court in that connection, which reads thus:

“45. Accused Nirbhai Singh was arrested on 6.1.2011. he suffered disclosure statement Ex.PG/2 while in police custody, disclosing thereby that he has kept concealed one gold bracelet belonging to the accused which he has kept concealed in the iron trunk and which was in his exclusive possession and he can get the same recovered. In pursuance thereof, accused Nirbhai Singh got recovered the gold bracelet MO 2 and same was taken into possession vide memo Ex., PH/11. Nirbhai Singh has kept this gold bracelet in an iron trunk (box) in his house which was placed in the folding of the clothes and the key of the trunk was in his possession. He led the police party to the room of his house and he took out the key which he has

concealed under the trunk and opened the lock of the trunk. The police prepared site plan Ex.PH/12 of the place from where the gold bracelet was recovered. The recovery memo Ex.PH/11 has been attested by Gurinder Singh Sidhu and Kaur Singh ASI in the presence of Inspector Karan Sher Singh. Out of them ASI Kaur Singh and Inspector Karan Sher Singh have been examined. They have been cross-examined at length and their evidence inspires confidence. In the circumstances of the case, non examining of Gurinder Singh Sidhu is not fatal to the case of the prosecution.”

18. It is thus seen from the record that blood stained knife was recovered with human blood thereon. It was Nirbhai Singh who had made a disclosure statement and had recovered the knife which was hidden. The relevant discussion made by the trial Court is in para 55, which we quote hereunder:

“55. The prosecution has well established that in pursuance of disclosure statement Ex.PG/2 accused also disclosed that he has kept concealed one blood stained knife and the said knife has been recovered from the exclusive possession of accused Nirbhai Singh. Its rough sketch Ex.PH/4 was prepared and same was taken into possession vide recovery memo Ex. PH/5. This knife was converted into a parcel and was sealed at the spot and lateron it was sent to the Forensic Science Laboratory. The

chemical examiner (seriologist) opined that it stained with human blood. Although the knife has not been shown to the doctor who conducted autopsy yet it was found to be stained with blood. It was recovered from the exclusive possession of the accused Nirbhai Singh who has not explained under what circumstances the knife Ex. MO-4 has came in his possession.”

19. We are fully satisfied that the prosecution conclusively proved its case against the accused Nirbhai Singh. Insofar as the other appellant Surinder Singh, is concerned, the prosecution case is that there is discovery and recovery of “Sony Camera”, at his behest on disclosure statement, so also the knife. It is true as contended by learned counsel for the appellant-Surinder Singh that PW-5 did not make any extra-judicial-confession much less to PW-5 Jagdish Singh. It is true that there is factual mistake on the part of the trial Court in saying so as PW-5 Jagdish Singh has stated about the extra-judicial-confession by Gurjant Singh and Nirbhai Singh and not by Surinder Singh. Even if the aspect of extra-judicial-confession is ignored, the fact of the matter is that crucial and clinching evidence has been brought by the prosecution inasmuch as the Camera Box was lying near the dead body and it was duly identified by PW-1 Amarjit Singh. He also identified the camera which was discovered by the appellant Suridner Singh. There is no explanation how he came in possession of the same camera. We quote paragraph 61 from

the trial Court judgment, relating to the discussion about the recovery of camera:

“61. The learned defence counsel has submitted that the number of the camera is not mentioned in the FIR and the camera is of general merchandise item; it is very much mentioned in Ex.PA that the robbers had left behind the empty box of the camera; surprisingly, the said box has not been taken into possession during the investigation for the reasons best known to the investigation and that said box might have details of the camera including its number. This court has critically examined the evidence on record and considered the contentions of the learned counsel for the accused. It is very much mentioned in Ex.PA that the assailants had fled away alongwith the camera of the deceased. PW 1 Amarjit Singh is the real son-in-law of the deceased. He had identified the camera Ex. MO-2. Although camera Ex. MO.2 is item of general merchandise and similar cameras are available in the market yet one fact is established that camera make Sony has been stolen from the house of the deceased; the same has been recovered in pursuance of disclosure statement of accused Surinder Singh.

Thus the recovery of camera Ex. MO.2 has been well established.”

20. Then there is recovery of knife from him, about which the discussion is in para 64 , which we quote hereunder:

“64. The knife has been recovered from the exclusive possession of Surinder Singh accused and it was stained with blood. The learned defence counsel contended that the mere recovery of the knife alone is not sufficient to record the conviction against this accused. This court has more cautiously considered this contention but it carries no weight. The knife has been recovered in pursuance to the disclosure statement of accused Suridner Singh Ex. PH/3 which was taken into possession vide recovery memo Ex.PH/7. Its sketch Ex. PH/6 was prepared. The site plan of the place of recovery of knife Ex.PH/8 was prepared at the spot. The knife was sent to the chemical examiner and it was opined that it was stained with human blood. Even the post mortem report has established that the deceased had suffered 32 injuries on his person. The learned defence counsel has submitted that the doctor has nowhere stated that these injuries have been caused from the knife. This court has considered this contention but it sans merit. The accused did not account for the recovery of the weapon. The deceased suffered 32 injuries out of which 7 are incised and the remaining are stab

wounds and possibility cannot be ruled out that the wounds have been caused with this knife. This court is of the considered opinion that the recovery of blood stained knife is a circumstance against the accused which proves his guilt.”

21. In our opinion, in a case of burglary with murder, the evidence collected by the prosecution cannot be direct evidence and if the prosecution collects clinching evidence the same has to be believed. In the present case the evidence against Surinder Singh about discovery/recovery of camera and against Nirbhai Singh about gold *kara* (bracelet) with the mark “B.S. Bassi” clearly proved to be very strong circumstances. No other inference except that the appellants were robbers and murderers, was possible.

22. The upshot of the above discussion is that the prosecution has proved its case beyond reasonable doubt and we find no merit in the present appeal. Hence, we make the following order:

ORDER

- (i) CRA-D-No.607-DB-of 2013 filed by Surinder Singh @ Golu and CRA-D-No. 664-DB- of 2013 Nirbhai Singh @ Lovely, both are dismissed.

(A. B. CHAUDHARI)
JUDGE

1ST JUNE, 2018
‘raj’

(B. S. WALIA)
JUDGE

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