

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

CRA-D No. 579-DB of 2016 (O&M)

Reserved on : 27.11.2018

Date of decision : 21.12.2018

Jeetu @ Ghugga and others Appellants
versus
State of Punjab ... Respondent

**Coram: Hon'ble Mr. Justice Rajiv Sharma
Hon'ble Mr. Justice Harinder Singh Sidhu**

Present Mr. G. S. Sandhu, Advocate, for the appellants.
Mr. Harbir Sandhu, Assistant Advocate General, Punjab.

Rajiv Sharma, J.

1. Though CRM No. 21377 of 2017 filed by appellant no. 2 – Mangal Kumar @ Laddu for suspension of his sentence has been listed, however, learned counsel for the appellants requested that the main appeal itself be heard on merits. With the consent of the parties, arguments in the main appeal were heard.

2. The present appeal is instituted against the judgment and order dated 29.1.2016, rendered by Additional Sessions Judge, Ludhiana, in Sessions case No. 11 dated 12.2.2013, whereby appellants Jeetu @ Ghugga, Mangal Kumar @ Laddu and Deepak Kumar were charged with and tried for the offences punishable under Sections 302/201/34 IPC. They were convicted and sentenced under Section 302 IPC to undergo rigorous imprisonment for life and to pay fine of ₹ 10,000/- and in default of payment of fine to further undergo rigorous imprisonment for one year. They were acquitted of the offence under Section 201 IPC.

3. The case of the prosecution in a nutshell is that on 2.6.2012, Inspector Manjit Singh along with SI Rajinder Singh and other police officials was present in front of gate of First Class Railway Station, Ludhiana, for checking of suspected persons. At about 7.00 AM, he received secret information that on 31.5.2012 at about 7.00 PM, one Vinod Bihari was injured by Jeetu after inflicting injuries on his forehead, chin and head with sharp edged weapon and one Deepak caused injuries on his back with bricks and Laddu caused injuries on his head and body with a blow of danda. He was lying injured near railway station, Civil Line side, Ludhiana. He succumbed to his injuries. All of them threw dead-body in the *ganda nala* in front of railway colony no.1. He visited the spot and one dead-body was lying on the spot with injury marks. *Ruqa* was prepared. It was sent to the police station on the basis of which FIR was registered. The body of the deceased was personally searched. It was taken into possession. Site plan was prepared. During investigation on 10.6.2012, accused made a disclosure statement, on the basis of which the recoveries were made. Dagger was also taken into possession. Sample was also sent for FSL examination. Investigation was completed and challan was put up after completion of all the codal formalities.

4. The prosecution examined a number of witnesses in support of the case. The statements of the accused were also recorded under Section 313 Cr.P.C. They have denied the case of the prosecution. They were convicted and sentenced, as noticed above. Hence, this appeal.

5. Learned counsel appearing on behalf of the appellants vehemently argued that the prosecution has failed to prove its case. Learned counsel appearing for the State vehemently argued that the prosecution has

proved its case beyond reasonable doubt and supported the judgment of the learned Court below.

6. We have heard learned counsel for the parties and gone through the judgment and record very carefully.

7. PW1 ASI Rattan Lal deposed that on 2.6.2012, he was posted at Police Station, GRP, Ludhiana. He was looking for suspected persons. Inspector Manjit Singh received secret information that on 31.5.2012 at about 7.00 PM, one Vinod Bihari had been murdered by Jeetu by inflicting injuries on his forehead, chin, head with sharp *churi*. Deepak inflicted injuries with bricks on his back and Laddo inflicted injuries on his body with *danda*. The secret informer further informed that all the three persons had thrown the dead-body in the *ganda nala*. The body was still lying there. He visited the spot along with other police officials. They gathered information that Vinod Bihari was a criminal type person. He used to force Jeetu, Deepak and Laddo to commit thefts and other crimes. They reached the spot. The dead-body was taken into possession. The dead-body was sent for post-mortem examination. On 10.6.2012, the Investigating Officer received the secret information that all the accused, who had killed Vinod Bihari, were sitting under Jagraon bridge. One Amar Dev also accompanied the police party. They were apprehended. They were interrogated. Their personal search was carried out. They confessed during the course of interrogation that they have killed Vinod Bihari. Investigating officer had also prepared rough site plan of the place of occurrence. Deepak Kumar got recovered half brick from the place of occurrence with which he inflicted injuries to Vinod Bihari. The brick was taken into possession. The blood stained earth was also taken into possession. He was recalled for cross-

examination. He deposed that secret informer came on foot. He was Hindu gentlemen. They reached at the place from where the dead-body was recovered at about 7.15 AM. He could not say that the informer saw the occurrence personally. Some part of the dead-body was visible from the outside. On 10.6.2012, the secret informer came on foot. He was also Hindu gentlemen. They reached the place of occurrence on 10.6.2012 at about 10.00 AM and remained there till 3.00 PM.

8. PW2 Rajinder Singh deposed that on 2.6.2012 he along with ASI Rattan Lal and other police officials was on duty at Railway Station, Ludhiana, opposite first class deodi. At about 7.00 AM, Inspector Manjit Singh received secret information that on 31.5.2012 at about 7.00 PM, Vinod Bihari was murdered by the accused. They had dumped the dead-body. They visited the spot along with Inspector Manjit Singh. The dead-body was lying there. It was taken into possession. The Investigating Officer sent *ruqa*, Ex.PA, to the police station, on the basis of which FIR, Ex.PB, was registered. Inquest report, Ex.PC, was prepared. In his cross-examination, he deposed that the place of recovery was not a thoroughfare. The residential area was at a distance of 35/36 steps.

9. PW5 Amar Dev was the President of the Rickshaw union at Railway Station, Ludhiana. On 8.6.2012, he was working as security supervisor at Vimpy Fast Food at Railway Station, Ludhiana. Jeeu along with Deepak Kumar and Mangal Kumar @ Laddu approached him. They made extra-judicial confession before him that they had committed murder of Vinod Bihari in Rakh Bagh, Ludhiana. There was some money dispute. They have thrown the dead-body in *ganda nala*. The police was looking for them. They requested him to produce them before the police. He informed

the police. The police recorded his statement. He was present in the police party on 10.6.2012. They were present at Jagraon bridge from where Jeetu, Laddu and Deepak were arrested at his identification. Accused Deepak Kumar produced blood stained brick, used by him for murder of Vinod Bihari. The brick was taken into possession. In his cross-examination, he deposed that his first statement was recorded on 8.6.2012. He admitted that he was a rickshaw puller. He saw the accused for the first time on 31.5.2012. The accused had visited him on 31.5.2012. They remained with him for whole night on 31.5.2012. The police had not joined independent witness when the accused were arrested. He had not visited the *ganda nala* to see the dead-body. The house of the Inspector of GRP was situated at a distance of 50 yards from *ganda nala*. The police had not obtained his signatures on any blank paper.

10. PW6 HC Parshotam Kumar tendered his evidence by filing affidavit, Ex.PW6/A. In his cross-examination, one *churi*, blood stained earth, one chappal of left foot, clothes of deceased Vinod Bihari and one pant blood stained were sent to FSL on 14.6.2012.

11. PW7 ASI Sukhdev Singh deposed that the accused were taken out from the lockup. They were interrogated. They confessed that after murdering Vinod Bihari, the dead-body was thrown in the *ganda nala* and thereafter they came to Rakh Bagh and slept there. Inspector Manjit Singh had recorded the statement of accused Deepak Kumar vide Ex.PW7/A. He also recorded disclosure statement, Ex.PW7/B of accused Mangal @ Laddu.

12. Post-mortem examination of the dead-body of Vinod Bihari was conducted by PW8 Dr. Harpreet Singh. The cause of death was due to haemorrhage and shock as a result of head injury and injury to vital organs

i.e. brain and spleen. The injuries were ante-mortem in nature and sufficient to cause death in ordinary course of nature.

13. The Investigating officer of the case was not examined. It is a serious lapse on the part of the prosecution. He was the person, who could prove the disclosure statements and the recoveries made on the basis thereof.

14. The instant case is based on circumstantial evidence. In order to prove the case based on circumstantial evidence, the chain must be complete. In the present case, the chain is not complete.

15. The case of the prosecution is that the accused have made extra-judicial confession before PW5 Amar Dev. He was not a man of authority. According to him, they came to him on 8.6.2012, and made extra-judicial confession before him that they had committed murder of Vinod Bihari in Rakh Bagh, Ludhiana. In his cross-examination, he admitted that he saw the accused for the first time on 31.5.2012. They remained with him for whole night on 31.5.2012. The accused were not known to him. He was merely a rickshaw puller. Why the accused would confess before him is beyond our apprehension. The Investigating officer, who had arrested them and had recorded their extra-judicial confession, was not examined. Non-examination of the Investigating officer is fatal in this case and this fact is overlooked by the learned trial court. The chain is not complete. The police has not joined independent witness when the accused were arrested. The motive attributed to the accused has not been proved. The extra-judicial confession is a weak evidence. There was no occasion for the accused to make extra-judicial confession before a rickshaw puller.

17. Their Lordships of Hon'ble the Supreme Court in the case of Sharad Birdhichand Sarda vs State of Maharashtra, AIR 1984 SC 1622 have held that the following conditions must be fulfilled before a case against an accused based on circumstantial evidence can be said to be fully established: -

"152. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not

to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

153. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence."

18. Their Lordships of Hon'ble the Supreme Court in Kishore Chand vs State of Himachal Pradesh, AIR 1990 SC 2140, have held that the Court has to look into the surrounding circumstances and to find whether the extra-judicial confession is not inspired by any improper or collateral consideration or circumvention of the law suggesting that it may not be true one. For this purpose, the Court must scrutinize all the relevant facts such as the person, to whom the confession is made, the time and place of making it, the circumstances in which it was made and finally, the actual words used by the accused. Their Lordships have further held that an extrajudicial confession made by the accused, while in police custody, could not be proved against the accused. Their Lordships have held as under:-

"7. The question that emerges, therefore, is whether the prosecution has established the three circumstantial evidences heavily banked upon by the prosecution in proof of the guilt of the appellant. The first circumstance is that the deceased and the appellant were last seen together by PW 7 and PW 8. From the evidence it is clear that there is no prior intimacy of the appellant and the deceased. They happened to meet perchance. Equally from the evidence it is clear that PW 7, the liquor shop owner and PW 8 who had liquor with the appellant and the deceased are also absolute strangers to the deceased and the appellant. Admittedly there is no identification

parade conducted by the prosecution to identify the appellant by PW 7 or PW 8. The appellant was stated to have pointed out to PW 7 as the one that sold the liquor and PW 8 consumed it with him and the deceased. Therefore it is not reasonably possible to accept the testimony of PW 7 and PW 8 when they professed that they have seen the appellant and the deceased together consuming the liquor. It is highly artificial and appears on its face a make believe story. The next piece of evidence is the alleged extra-judicial confession made by the appellant to PW 10. An unambiguous extra-judicial confession possesses high probative value force as it emanates from the person who committed the crime and is admissible in evidence provided it is free from suspicion and suggestion of its falsity. But in the process of the proof of the alleged confession the court has to be satisfied that it is a voluntary one and does not appear to be the result of inducement, threat or promise envisaged under Section 24 of the Evidence Act or was brought about in suspicious circumstances to circumvent Sections 25 and 26 of the Evidence Act. Therefore, the court has to look into the surrounding circumstances and to find whether the extra-judicial confession is not inspired by any improper or collateral consideration or circumvention of the law suggesting that it may not be true one. For this purpose the court must scrutinise all the relevant facts such as the person to whom the confession is made, the time and place of making it, the circumstances in which it was made and finally the actual words used by the accused. Extra-judicial confession if found to be voluntary, can be relied upon by the court along with other evidence on record. Therefore, even the extra-judicial confession will also have to be proved like any other fact. The value of the evidence as to the confession depends upon the veracity of the witness to

whom it is made and the circumstances in which it came to be made and the actual words used by the accused. Sometimes it may not be possible to the witness to reproduce the actual words in which the confession was made. For that reason the law insists on recording the statement by a Judicial Magistrate after administering all necessary warnings to the accused that it would be used as evidence against him.

8. Admittedly PW 10 and the appellant do not belong to the same village. From the narrative of the prosecution story it is clear that PW 27, and PW 10 came together and apprehended the appellant from his village and was taken to Jassur for identification. After he was identified by PW 7 and PW 8 it was stated that he was brought back to Gaggal village of PW 10 and was kept in his company and PW 27 left for further investigation. Section 25 of the Evidence Act provides that no confession made to a police officer shall be proved as against a person accused of any offence. Section 26 provides that no confession made by any person while he is under custody of the police officer, unless it be made in the immediate presence of a magistrate, shall be proved as against such person. Therefore, the confession made by an accused person to a police officer is irrelevant by operation of Section 25 and it shall (sic not) be proved against the appellant. Likewise the confession made by the appellant while he is in the custody of the police shall not be proved against the appellant unless it is made in the immediate presence of the magistrate, by operation of Section 26 thereof. Admittedly the appellant did not make any confession in the presence of the magistrate. The question, therefore, is whether the appellant made the extra-judicial confession while he was in the police custody. It is incredible to believe that the police officer,

PW 27, after having got identified the appellant by PW 7 and PW 8 as the one last seen in the company of the deceased would have left the appellant without taking him into custody. It is obvious, that with a view to avoid the rigour of Section 25 and 26, PW 27 created an artificial scenario of his leaving for further investigation and kept the appellant in the custody of PW 10, the Pradhan to make an extra-judicial confession. Nothing prevented PW 27 to take the appellant to a Judicial Magistrate and have his confession recorded as provided under Section 164 of the CrPC which possesses great probative value and affords an unerring assurance to the court. It is too incredulous to believe that for mere asking to tell the truth the appellant made voluntarily confession to PW 10 and that too sitting in a hotel. The other person in whose presence it was stated to have been made was not examined to provide any corroboration to the testimony of PW 10. Therefore, it would be legitimate to conclude that the appellant was taken into the police custody and while the accused was in the custody, the extra-judicial confession was obtained through PW 10 who accommodated the prosecution (sic appellant). Thereby we can safely reach an irresistible conclusion that the alleged extra-judicial confession statement was made while the appellant was in the police custody. It is well settled law that Sections 25 and 26 shall be construed strictly. Therefore, by operation of Section 26 of the Evidence Act, the confession made by the appellant to PW 10 while he was in the custody of the police officer (PW 27) shall not be proved against the appellant. In this view it is unnecessary to go into the voluntary nature of the confession etc."

19. Their Lordships of Hon'ble the Supreme Court in Kahim Beg and another vs State of U.P., 1972 (3) SCC 759, have held that extrajudicial

confession is a weak piece of evidence. Their Lordships have held as under:-

"18. We may now deal with the evidence regarding the extra-judicial confession of the two accused to Mohammad Nasim Khan (PW 4) and the recovery of ornaments belonging to the deceased from the two accused. It is primarily upon these two pieces of prosecution evidence that the conviction of the accused has been based. So far as the confession to Mohd. Nasim Khan is concerned, we find that, according to the said witness, the two accused came to him at his house in Sakunpur on August 4, 1969 and told him about their having raped and killed the daughter of Ramjas by strangulating her as well as regarding the removal of her ornaments. Mohammad Nasim Khan belongs to another village. There was no history of previous association between the witness and the two accused as may justify the inference that the accused could repose confidence in him. In the circumstances, it seems highly improbable that the two accused would go to Mohammad Nasim Khan and blurt out a confession. It is also not clear as to why the two accused should try to run away on seeing the police party coming with Mohammad Nasim Khan if Mohammad Nasim Khan had gone to the police at the request of the accused. According to Mohammad Nasim Khan, Gur Sewak PW was with the police Sub-Inspector when the Sub-Inspector came with Mohammad Nasim Khan to his house and apprehended the accused. The evidence of Ramjas PW, however, shows that Gur Sewak PW went with Ramjas to the mortuary on the night between 3 and 4 August, 1969 and that on August 4, 1969 Gur Sewak remained with Ramjas throughout the day at Rae Bareilly. It was on August 5, 1969 that, according to Ramjas, he and Gur Sewak returned to their

village after throwing the dead body of Kesh Kali in Sain river. It would thus appear that Ramjas PW who, being the father of the deceased, had no particular reason to damage the prosecution case and to support the accused has contradicted Mohammad Nasim Khan on the point that Gur Sewak PW was with the police Sub-Inspector on August 4, 1969. The fact that Mohammad Nasim Khan has deposed regarding the presence of Gur Sewak with the police Sub-Inspector with a view to support the prosecution case even though, according to Ramjas PW, Gur Sewak was not with the police Sub-Inspector shows that Mohammad Nasim Khan has scant regard for truth. The evidence of extra-judicial confession is a weak piece of evidence. The evidence in this respect adduced by the prosecution in the present case is not only of a frail nature, it is lacking in probability and does not inspire confidence."

20. Their Lordships of Hon'ble the Supreme Court in Pakkirisamy vs State of T. N., 1997 (8) SCC 158, have held that it is a rule of caution that the Court would generally look for an independent reliable corroboration before placing any reliance upon an extra-judicial confession. Their Lordships have held as under:-

"8. Mr. Murlidhar, learned counsel then contended that it is well settled that the evidence of extra-judicial confession is a weak type of evidence and ordinarily the court would be slow to accept such type of evidence. He therefore, urged that Ex. P-8 be left out of consideration. We are unable to accept this broad proposition put forth on behalf of the appellant. It is well settled that it is a rule of caution where the court would generally look for an independent reliable corroboration before placing any reliance upon such extra-judicial

confession. It is no doubt true that extra-judicial confession by its very nature is rather a weak type of evidence and it is for this reason that a duty is cast upon the court to look for corroboration from other reliable evidence on record. Such evidence requires appreciation with a great deal of care and caution. If such an extra-judicial confession is surrounded by suspicious circumstances, needless to state that its credibility becomes doubtful and consequently it loses its importance. The same principle has been enunciated by this Court in *Balwinder Singh v. State of Punjab*. In the facts and circumstances of this case, we hold that the courts below committed no error in relying upon Ex. P-8 as the same is corroborated from several other proved circumstances."

21. Their Lordships of Hon'ble the Supreme Court in *State of Andhra Pradesh vs S. Swarnalatha and others*, 2009 (8) SCC 383, have held that extra-judicial confession is a weak piece of evidence, although in given situations reliance can be placed thereupon. Their Lordships have held as under: -

"16. PW 6 admitted that prior to the making of confession to him, Accused 1 never talked to him. Why she, instead of her husband, would confide in PW 6, is beyond all comprehension. In the aforementioned situation, the extra-judicial confession purported to have been made by Accused 1 to PW 6 becomes doubtful. Extra-judicial confession as is well known is a weak piece of evidence, although in given situations reliance thereupon can be placed. (See *State of U.P. v. M. K. Anthony*, SCC p. 517, para 15 and *State of Rajasthan v. Kashi Ram*, SCC p. 262, para 14.)"

22. Their Lordships of Hon'ble the Supreme Court in *Sahadevan*

and another vs State of Tamil Nadu, 2012 (6) SCC 403, have held that in a case of circumstantial evidence, onus lies upon prosecution to prove the complete chain of events which must undoubtedly point towards guilt of accused. When prosecution relies upon an extrajudicial confession, the Court has to examine the same with a greater degree of care and caution. Their Lordships have held as under: -

"13. There is no doubt that in the present case there is no eye- witness. It is a case based upon circumstantial evidence. In case of circumstantial evidence, the onus lies upon the prosecution to prove the complete chain of events which shall undoubtedly point towards the guilt of the accused. Furthermore, in case of circumstantial evidence, where the prosecution relies upon an extra-judicial confession, the court has to examine the same with a greater degree of care and caution."

23. The prosecution has failed to prove the case against the appellants beyond reasonable doubt. The appellants are acquitted of all the charges framed against them. Accordingly, the appeal is allowed and the judgment and order dated 29.1.2016, are set aside. The appellants be released forthwith. The Registry is directed to prepare the release warrants.

(Rajiv Sharma)
Judge

21.12.2018
vs

(Harinder Singh Sidhu)
Judge

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