

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

CRA-D No. 633-DB of 2018 (O&M)

Reserved on : 21.11.2018

Date of decision : 29.11.2018

Joginder Verma @ Kalia

.... Appellant

versus

State of Punjab and another

... Respondents

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

Present Mr. Raju Arora, Advocate, for the appellant.

Mr. Ajay Pal Singh Gill, Deputy Advocate General, Punjab.

Rajiv Sharma, J.

1. This appeal is instituted against the judgment rendered by Additional Sessions Judge, Ludhiana, in Session case No. 35443-2013, dated 28.3.2018, whereby appellant Joginder Verma @ Kalia was charged and tried for the offence under Sections 302, 404 read with Section 34 IPC.

2. Appellant was convicted and sentenced under Section 302 IPC to undergo rigorous imprisonment for life and to pay fine of ₹ 5,000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of three months. He was also convicted and sentenced under Section 404/34 for a period of three years and to pay fine of ₹ 2,000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of one month. Appellant Joginder Verma was also ordered to compensate the complainant to the tune of ₹ 2 lacs under Section 357 Cr.P.C. The amount of compensation was directed to be paid to the heirs of deceased in equal shares.

3. The case of the prosecution in a nutshell is that FIR, Ex.PA/2, was registered on the basis of complaint made by complainant Yashpal to the effect that on 26.11.2005 at about 7.30 p.m. in routine, he went to his house. His father was present in the guest house. In the morning at about 6.30 a.m., a telephone was received that blood was lying in the room of his father. He along with his brother Vikram Kumar went to Guest Room of the factory where they saw dead-body of his father stained with blood lying on the bed. His father was murdered by some unidentified persons with sharp edged weapons. Spot was inspected. Rough site plan was prepared. Dead-body was identified by Vikram Kumar and Hari Krishan. Dead-body was sent for post-mortem examination. Blood stained soil and blood stained bed sheet were taken into possession. The same were sent to Forensic Science Laboratory, Punjab, Chandigarh, for examination. Inspector Gursewak Singh recorded the statement of Gurcharan Singh vide Ex. DX/1, to the effect that he was doing the work of hosiery on commission basis. He oftently used to visit factory for this purpose. Hosiery workers and nearby labourers were known to him. He was present in his house. Joginder Singh @ Kalia worker of Mefa Needles factory and Niku servant of Achar Factory came. They were nervous. They made extra-judicial confession before him that they had murdered Prem Nath owner of the factory. Gurcharan Singh produced both the accused before the police. They were arrested. Golden Ring was recovered. Poker (*sua*) was also recovered. The investigation was completed and the challan was put up after completion of all the codal formalities.

4. The prosecution examined a number of witnesses in support of its case. The statement of the appellant was recorded under Section 313

Cr.P.C. He has denied the case of the prosecution. He has also examined witnesses in defence. The appellant was convicted and sentenced, as noticed above. Hence, this appeal.

5. Learned counsel appearing on behalf of the appellant has vehemently argued that the prosecution has failed to prove its case against his client. Learned counsel appearing for the State has supported the judgment and order dated 28.3.2018 of the learned trial Court.

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

7. PW1 Yashpal testified that he was owner of factory called Mefa Needles at G. T. Road near Military Camp Dholewal, Ludhiana. One guest house was constructed at the back side of the factory. His father Prem Nath used to reside in the guest house occasionally. He received a telephonic call from the factory at about 6.30 a.m. on 27.11.2005 that blood was noticed in the room of Prem Nath. He informed his brother Vikram Kumar. They went towards factory. They saw that their father Prem Nath was lying on the other bed drenched in blood. He left his brother Vikram Kumar with dead-body. He went to the police station. FIR was registered. He identified signatures on statement, Ex. PA. Police officials visited the spot. Dog squad was called. Finger Print Experts were also called. Police took blood stained soil from the place of occurrence. Police also took into possession one blood stained *dabidar* bed sheet. One golden ring of his father was missing from his finger. Golden ring was engraved with description PN.

8. PW2 Dr. U. S. Sooch has conducted the post mortem examination. He noticed the following injuries on the dead-body of deceased Prem Nath:-

- “1. Wedge shaped stab wound 1/2 inch x 1/4 inch. Very deep just medial to the left nipple with oozing of blood and clotted blood was also present.
 2. Wedge shaped stab wound 1/2 inch x 1/4 inch muscle deep mid lateral side of left arm.
 3. Wedge shaped stab wound 1/2 inch x 1/4 inch muscle deep on the right inter scapular area in its lower part.
 4. Wedge shaped stab wound 1/2 inch x 1/4 inch muscle deep on the front and upper part of left thigh
 5. Wedge shaped wound 3/4 inch x 1/2 inch subcutaneous deep on the medial side of left wrist.
 6. Wedge shaped wound 1/2 inch x 1/4 inch muscle deep on the left inter lateral side of hip.
 7. Wedge shaped wound 1/2 inch x 1/4 inch skin deep mid front of right thigh with vertical 4 inches linear abrasion at its lower end.
 8. Abrasion 1-1/2 inch x 1 inch on the left knee.”
9. The cause of death, according to PW2 Dr. U. S. Sooch, was due to haemorrhage and shock as a result of stab injury no.1. The heart was pierced, which was sufficient to cause death in the ordinary course of nature. All the injuries were ante-mortem in nature. The probable time between death and postmortem examination was about 12 hours.
10. PW3 Hari Krishan testified that he was technical director of Metal Fabrics Dholewal. Prem Nath was the owner of the company. He used to come to the office of the company. On 26.11.2005, he was called by Prem Nath in the evening. He stayed with Prem Nath for about half an hour. He was wearing a golden ring.

11. PW5 Varinderpal testified that on 5.12.2006, he was posted at Police Station Division No. 6, Ludhiana. Gurcharan Singh produced Joginder Verma and Nikku Singh before Inspector Gursewak Singh. Nikku Singh was arrested. His personal search was carried out. Currency notes of ₹ 55/- were recovered. Joginder Verma was also arrested. His personal search was carried out. Currency notes of ₹ 45/- were recovered from his possession. Accused Nikku was interrogated in his presence. He confessed that one golden ring was concealed by him in the rented accommodation vide disclosure statement, Ex.PW5/G. Similarly statement of Joginder Verma was also recorded (Ex.PW5/H), on the basis of which poker (*sua*) was got recovered from the bushes.

12. PW9 Inspector Balwinder Singh testified that he recorded the statement with regard to identification of dead-body. He took into possession blood stained earth. He also took into possession blood stained bed-sheet.

13. PW13 Inspector Gursewak Singh is the material witness. He testified that on 2.12.2006, he recorded statement of Gurcharan Singh son of Jangir Singh. On 5.12.2006, he along with police party was present at Cheema Chowk, where Gurcharan Singh along with accused Joginder Verma and Nikku Singh came on the spot. He arrested accused Joginder Verma and Nikku Singh vide arrest memo, Ex.PW5/A and Ex.PW5/D. They were interrogated. They made disclosure statements, on the basis of which golden ring and poker (*sua*) were got recovered.

14. PW14 Gurcharan Singh testified that he was doing the work of hosiery on commission basis. He was a social worker. On 1.12.2006, he was present in his house. Joginder Verma and Nikku came to his house. They

made extra-judicial confession that about one year back, they both along with other 3-4 persons hatched conspiracy in the last days of November to rob owner Prem Nath. They entered the guest house. Prem Nath woke up. They were scared. They attacked Prem Nath with poker (*sua*) and gave many blows of poker (*sua*) to him. They ran away from the spot. On 2.12.2006, he went to Police Station, Division No. 6, Ludhiana. He narrated the extra-judicial confession made by Joginder Verma and Nikku to the SHO. Thereafter, he took them to the police station.

15. The appellant examined DW1 Ms. Natasha, DW2 Dinesh Kumar and DW3 Satnam Singh, in his defence.

16. The case of the prosecution is that the appellant and Nikku have murdered Prem Nath on the intervening night of 26/27.11.2005. They killed Prem Nath in order to rob him. They ran away from the spot. They made extra-judicial confessions before PW14 Gurcharan Singh. Their disclosure statements were recorded vide Ex.PW5/G and Ex.PW5/H, respectively. The poker (*sua*) and golden ring were recovered.

17. PW1 Yashpal testified that he received a telephonic call on 27.11.2005 at about 6.30 a.m. He has not disclosed identity of the person, who had provided information to him about the murder of his father Prem Nath. The case is based on circumstantial evidence. There is no eye witness. The prosecution is required to complete the entire chain. PW1 Yashpal should have disclosed the name of the person, who had called him at about 6.30 a.m. PW1 Yashpal deposed that his father used to reside with him and his younger brother Vikram Kumar and also in the guest house. The cause of death as per statement of Dr. U. S. Sooch is due to haemorrhage and shock as a result of stab injuries, which was sufficient to cause death in the

ordinary course of nature. The injuries were ante-mortem in nature.

18. PW5 Varinderpal stated the manner in which the appellant and Nikku Singh have made extra-judicial confession vide Ex.PW5/G and Ex.PW5/H, on the basis of which the golden ring and poker (*sua*) were recovered. The case of the prosecution is based entirely on the basis of extra-judicial confession made by appellant Joginder Verma and Nikku Singh before PW14 Gurcharan Singh. The incident had happened on the intervening night of 26/27.11.2005. According to PW14 Gurcharan Singh, the appellant and Nikku Singh came to his house on 1.12.2006 and had made confession about the murder of Prem Nath. Extra-judicial confession is a weak evidence. PW14 Gurcharan Singh is not a man of authority. The motive for murder is robbing Prem Nath. According to them, they robbed golden ring. The golden ring was got recovered only on 6.12.2006. In case they wanted to rob Prem Nath only, they would have disposed of the golden ring within a short span and not kept the same concealed for a period of one year. The poker (*sua*) was also recovered almost about after one year. We have gone through the sketch of poker (*sua*). It does not look like poker (*sua*). Confessional statements have been made by appellant Joginder Verma and Nikku Singh while they were in police custody.

19. The case of the prosecution is based on circumstantial evidence. In the instant case, the chain is not complete.

20. Their Lordships of Hon'ble the Supreme Court in Paramjeet Singh @ Pamma vs State of Uttrakhand, 2010 (10) SCC 439, have explained the nature of proof required in a criminal case which rests on circumstantial evidence alone. Their Lordships have held as under:-

“14. Though a conviction may be based solely on

circumstantial evidence, this is something that the court must bear in mind while deciding a case involving the commission of a serious offence in a gruesome manner. In *Sharad Birdhichand Sarda v. State of Maharashtra*, AIR 1984 Supreme Court 1622, this Court observed that it is well settled that the prosecution's case must stand or fall on its own legs and cannot derive any strength from the weakness of the defence put up by the accused. However, a false defence may be called into aid only to lend assurance to the court where various links in the chain of circumstantial evidence are in themselves complete. This Court also discussed the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone and held as under:

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

15. A similar view has been reiterated by this Court in *State of Uttar Pradesh v. Satish* 2005 (1) Apex Criminal 437 : (2005) 3 SCC 114; *Krishnan v. State* represented by

Inspector of Police, (2008) 15 SCC 430; Ramesh Bhai & Anr. v. State of Rajasthan, (2009) 12 SCC 603; Subramaniam v. State of Tamil Nadu & Anr., (2009) 14 SCC 415; and Babu v. State of Kerala, JT 2010 (8) SC 560, observing that the evidence produced by the prosecution should be of such a nature that it makes the conviction of the accused sustainable.”

21. Their Lordships of Hon’ble the Supreme Court in Lakhanpal vs The State of Madhya Pradesh, AIR 1979 SC 1620 have held that it was unsafe to rely on the evidence of extra-judicial confession made to a person, who has never told about this to any one else though he met number of persons on the date of occurrence. Their Lordships have held as under:

“4. So far as the first circumstance is concerned in the facts of this particular case it is not sufficient to prove conclusively that the appellant committed the murder of the deceased. According to Public Witness Bhagwandas, the father of the appellant, the sowing was stopped at 4 o'clock in the evening. In the circumstances, therefore, if the appellant would have attacked the deceased he being a young man of 17 years would have undoubtedly put up stiff resistance in order to protect himself and in all probability would have caused some injuries on the person of the appellant also. For these reasons, therefore) the mere fact that the appellant and the deceased were together in the field does not lead to the irresistible inference that the appellant must have murdered the deceased. As regards the extra-judicial confession made by the appellant before Sukhial, we are unable to believe the version given by the witness Sukhial. While being examined as a witness in the Sessions Court he had clearly stated that no confession was made before him. His attention was however drawn to his statement made by him before the committing Magistrate

where he had admitted that he saw the appellant running and on being questioned the appellant told him that he had committed a mistake and had killed his brother due to a quarrel. In cross-examination the witness admitted that he did not narrate this story of the murder to anybody. He made the disclosure for the first time when he was called to the police station. The witness met a number of persons on that day but he did not mention the factum of the confession to any one of them. Secondly the evidence shows that he was not known to the appellant and therefore we find it difficult to believe that the appellant would make a confession to a person who was not known to him at all. For these reasons, therefore, we find it wholly unsafe to accept the evidence of the extra-judicial confession of the appellant to Public Witness Sukhial. Another important circumstance which negatives the prosecution case is that no motive whatsoever for the appellant to kill his brother has been either alleged or proved. Further the deceased appears to have received as many as 12 incised wounds on various parts of the body and this could not have been done by the appellant alone unless he was accompanied by other friends. We are clearly of the view that the prosecution has not proved the case against the appellant beyond reasonable doubt. We, therefore, allow this appeal, set aside the judgment of the High court and acquit the appellant of the charges framed against him. The appellant may now be released forthwith.”

22. Their Lordships of the Hon'ble Supreme Court in Thimma vs The State of Mysore, AIR 1971 SC 1871 have held that an extra judicial confession made to one who is not a person in authority and which is free from any suspicion as to its voluntary character and has also a ring of truth in it is admissible in evidence against the accused and deserves to be acted upon. But in the process of proof of a confession the Court must be satisfied

that it is voluntary, it does not appear to be the result of inducement, threat or promise as contemplated by the section and the surrounding circumstances do not indicate that it is inspired by some improper or collateral consideration suggesting that it may not be true. The Court must scrutinize all the relevant factors, such as, the person to whom the confession was made, the time and place of making it, the circumstances in which it was made and finally the actual words. Their Lordships have held as under:

“9. The trial court was not favourably impressed by the testimony of Ganga (P.W. 4) though it felt convinced that on the day following the disappearance of the deceased he had knowledge both of the commission of the offence and of the place where the dead body was lying. That court did not rely on his testimony in regard to the extra-judicial confession because it was considered incredible. The High Court on appeal disagreed with the trial court in its appreciation of the evidence of P.W. 4. According to the High Court the evidence of P.W. 4 was corroborated by the evidence of P.W. 13 and P.W. 25. The extra-judicial confession was, therefore, held to be admissible and trust Worthy. Before us it was contended, that the extrajudicial confession said to have "been made to P.W. 4 is inadmissible and in any event without corroboration in material particulars from independent source it is unsafe to act upon it. It was emphasised that P.W. 4 was at one stage of the investigation suspected of complicity in this murder and, therefore, he should be treated no better than an accomplice. In our opinion, this criticism is not justified. An unambiguous confession, if admissible in evidence, and free from suspicion suggesting its falsity, is a valuable piece of evidence which possesses a high probative force because it emanates directly from the person committing

the offence. But in the process of proof of an alleged confession the court has to be satisfied that, it is voluntary, it does not appear to be the result of inducement, threat or promise as contemplated by s. 24, Indian Evidence Act and the surrounding circumstances do not indicate that it is inspired by some improperly or collateral consideration suggesting that it may not be true. For this purpose, the court must scrutinise all the relevant factors, such as, the person to whom the confession is made, the time and place of making it, the circumstances in which it is made and finally the actual words. In the case in hand it is quite clear that P.W. 4 is not a person in authority. There can thus be no question of any inducement, threat or promise rendering the confession irrelevant. Nor has any cogent reason been suggested why the appellant should have made an untrue confession to P.W. 4 within 24 hours of the disappearance of the deceased. On the other hand, the appellant appears to have been impelled by some inner urge to take the assistance of P.W. 4, his real nephew, to go to the place of occurrence to see as to what had happened to the dead body of his victim. Such behaviour cannot be considered unnatural. The confession appears to us to be free from any taint which would throw suspicion on its voluntary character and it has a ring of truth in it. The fact that during the investigation P.W. 4 was suspected of being involved in the murder would also not cast any doubt on the voluntary character of the confession or on its true nature because it is the knowledge of P.W. 4 derived from this very confession which perhaps invited suspicion on him. We do not consider this to be a cogent ground for holding that P.W. 4 had any motive to concoct the story of confession. This confession is, therefore, admissible in evidence and being true, deserves to be acted upon. The words used are quite clear and 'admit of no doubt of the appellant's guilt. And then though the evidence of P.W. 4 does not need any

corroboration we find that corroboration in material particulars is forthcoming on the record. The existence of the dead body and all the other articles at the place where they were later found and the evidence of Basappa (P.W. 13) which proves the visit of the appellant and P.W. 4 to the spot on Saturday following the disappearance of the deceased furnish strong corroboration. The High Court was thus quite right in relying on the extra-judicial confession made to P.W. 4. The confessions said to have been made to P.W. 31 and to Abdul Rahman (P.W. 22) stand on a different footing. Both the courts below have not considered it safe to rely on these confessions and we do not find any sufficient reason for disagreeing with them.”

23. Their Lordships of the Hon’ble Supreme Court in Jagta vs State of Harayna, AIR 1974 SC 1545 have held that the evidence about an extra-judicial confession in the nature of things is a weak piece of evidence and if the same is lacking in probability there would be no difficulty in rejecting the same. Their Lordships have held as under:

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

24. Division Bench of Orissa High Court in Moti Gouduni vs State, 1982 Cri.L.J. 2342 has held that the evidence of witnesses with regard to an extra-judicial confession must not lack plausibility and must inspire the confidence of the court before the same is accepted. Division Bench has held as under:

“9. P.Ws. 2 and 3 are the witnesses who have testified about the extra-judicial confession said to have been made by the appellant before them. The evidence relating to extra-judicial confession, in the very nature of things, is a weak piece of evidence, as observed by the Supreme Court in the case of State of Punjab v. Bhajan Singh. The evidence of witnesses with regard to an extra-judicial confession must not lack plausibility and must inspire the confidence of the court before the same is accepted. A Division Bench of this Court consisting of one of us, in the case of Buti alias Gunasagar behera v. State of Orissa 53 Cut LT 130 : 1982 Cri L1 938 has held that the value of the evidence as to the extra-judicial confession like any other evidence depends upon the veracity of the witnesses to whom it is made and it is not an invariable rule that the

court should not accept the evidence if not the actual words but the substance is given by the witnesses. Reliance had been placed on the principles laid down by the Supreme Court in the cases of Mulk Rai v. State of Uttar Pradesh AIR 1959 SC 902 : 1959 Cri LJ 1219 and Maghar Singh v. State of Punjab .”

25. Their Lordships of the Hon’ble Supreme Court in Narayan Singh and others vs State of M.P. AIR 1985 SC 1678 have held that it would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession. Their Lordships have held as under:

“7. Apart from this there is the evidence of PWs 5 and 9 who state on oath that one of the accused admitted before them that he had murdered the deceased. The learned Sessions Judge has brushed aside their evidence by presuming that their statements constituting an extra-judicial confession is a very weak type of evidence. This is a wrong view of the law. It is not open to any Court to start with a presumption that extra judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession in the instant case, after perusing the evidence of PWs 5 and 9 we are unable to find anything which could lead to the conclusion that these independent witnesses were not telling the truth. The evidence of these two witnesses (PWs 5 and 9) which lends support to the evidence of PW 11 was sufficient to warrant the conviction of the accused. The Sessions Judge has committed a grave error of law in analysing and appreciating the evidence of PWs 5 and 9 and brushing them aside on untenable grounds.”

26. The prosecution has failed to complete the entire chain of events. There are gaps in the version of the prosecution.
27. The prosecution has failed to prove the case against the appellant beyond reasonable doubt. Accordingly, the appeal is allowed and the judgment dated 28.3.2008 is set aside. Registry is directed to prepare the release warrant forthwith.

(Rajiv Sharma)
Judge

29.11.2018
vs

(Harinder Singh Sidhu)
Judge

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