

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

1.

CRA-S-3330-SB-2017

Reserved on : 15.11.2018

Date of decision : 29.11.2018

Harbans Singh alias Kala

... Appellant

Versus

State of Punjab

... Respondent

2.

CRA-D-1-DB-2018

Sandeep Singh

... Appellant

Versus

State of Punjab

... Respondent

***CORAM: HON'BLE MR. JUSTICE RAJEEV SHARMA
HON'BLE MR.JUSTICE HARINDER SINGH SIDHU***

Present: Mr.Ishan Gupta, Advocate in CRA-S-3330-SB-2017 &
Mr.Ranjit Singh Sidhu, Advocate in CRA-D-1-DB-2018
for the appellants.

Mr.Ajay Pal Singh Gilll, DAG, Punjab.

RAJEEV SHARMA, J.

Since common questions of law and facts are involved in the aforesaid appeals, therefore these are taken up together and disposed off by a common judgment.

2. These two appeals are directed against the judgment and order dated 30.08.2017 rendered by the Additional Sessions Judge, Sangrur in

Sessions case no.28 of 2016 whereby the appellants were charged with and

tried for offence under Section 302/201 read with Section 34 of the Indian Penal Code (in short 'IPC').

3. The appellant Sandeep Singh was convicted and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.75,000/- and in default payment of fine, to further undergo rigorous imprisonment for a period of one year for offence under Section 302 IPC. He was also convicted and sentenced for offence under Section 201 IPC to undergo for rigorous imprisonment for a period of 4 years and to pay a fine of Rs.10,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of six months. Appellant Harbans Singh was convicted for offence under Section 201 IPC read with Section 34 IPC and sentenced to undergo rigorous imprisonment for a period of four years and to pay a fine of Rs.10,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of six months.

4. The case of the prosecution in a nutshell is that on the basis of statement of Sarabjit Kaur, PW-1 wife of Sandeep Singh, the FIR was registered. According to the contents of the FIR, her brother-in-law (Kuldeep Singh) was also married. Her sister-in-law (*jethani*) was having matrimonial dispute with her husband Kuldeep Singh. On 18.06.2016, she, her husband Sandeep Singh and nephew Sahilpreet Singh were sleeping in the courtyard. Her brother-in-law Kuldeep Singh came to house in intoxicated condition at about 9/9.30 p.m. He started abusing her. Sandeep Singh persuaded him not to abuse. They started quarreling with each other and went away towards the cattle shed. Thereafter, her husband took out one *danda* and inflicted *danda* blow on head of Kuldeep Singh. Kuldeep Singh fell down on the ground. She along with Sahilpreet Singh went inside the

room. Kuldeep Singh was dead. Thereafter her husband removed the body of Kuldeep Singh to a room where wheat chaff was stored. The accused was arrested on 27.05.2016 and Harbans Singh was also arraigned as accused. The body of Kuldeep Singh was got exhumed. The post-mortem was conducted. The investigation was completed and the challan was put up after completing all the codal formalities.

5. The prosecution has examined number of witnesses. Statements of accused were also recorded under Section 313 Cr.P.C. According to them they were falsely implicated.

6. Learned counsel appearing on behalf of the appellants have vehemently argued that the prosecution has failed to prove the case against the appellants.

7. Learned counsel appearing on behalf of the State has supported the prosecution case.

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

9. PW-1 Sarabjit Kaur did not support the case of the prosecution. According to her, she and Sandeep Singh were residing in the field. The name of her brother-in-law was Kuldeep Singh. Her *Jethani's* name was Sarbjit Kaur. She belongs to village Manipur. She had gone to village in the year 2016. She has not seen her *Jeth* Kuldeep Singh. She did not know where was he now. She was declared hostile and cross-examined by the Additional Public Prosecutor. She admitted her signatures on statement Ex.P2 recorded under Section 164 Cr.P.C. She denied the statement made before the police in the manner the incident had happened including picking up of *danda* by her husband.

10. PW-2 Piara Singh deposed that he was farmer. Kuldeep Singh was son of his brother Gurmail Singh. Gurmail Singh had given a report that Kuldeep Singh was not traceable. Police arrested Sandeep Singh. Sandeep Singh showed ignorance about the dead body. Harbans Singh was also sitting in the police vehicle. He told that dead body was concealed in courtyard. At his instance the dead body was exhumed. In his cross examination he deposed that he never stated to the police that Sandeep Singh pointed out the place of concealment of dead body.

11. PW-3 Dr. Ajay Kumar testified that on 26.07.2016 he was posted as Medical Officer, Civil Hospital, Sunam. The Board of doctors formed the opinion that the dead body should be sent to the department of Forensic Medicine, Government Medical College, Patiala for post-mortem examination.

12. PW-4 Hamir Singh deposed that he was posted as Naib Tehsildar at Sub Tehsil Cheema. The SDM, Sunam deputed him as Duty Magistrate. He reached at the spot. Dr. Ajay Kumar was also with him. Accused Sandeep Singh got recovered the dead body as was disclosed by him in his disclosure statement. He was recalled. In his cross-examination he deposed that Sandeep Singh had not made any disclosure statement in his presence. He was witness of recovery only.

13. PW-5 Dr. Nakhil Mehta deposed that they conducted the post-mortem examination on the dead body of Kuldeep Singh. The dead body was identified by Karnail Singh. The cause of death was head injury which was ante mortem in nature. It was sufficient to cause death in the ordinary course of nature. The probable time elapsed between the death and post-mortem examination was about 1 to 1½ months. He proved the post-

mortem examination report Ex.P6.

14. PW-6 Raj Singh deposed that he was respectable person of the village. He did not know accused Sandeep Singh. He never came to him nor he ever confessed anything. He was declared hostile and cross-examined.

15. PW-7 Dalip Singh also deposed that Sandeep Singh has not made any disclosure statement before him. He was declared hostile and cross-examined by learned Public Prosecutor.

16. PW-9 Inspector Vijay Kumar testified that he was posted as SHO, Police Station Chhajli. He along with ASI Karamjit Singh Incharge PP Mehlan and other police officials reached near HDFC Bank Branch Khadial in connection with checking of crimes in private car. Complainant Sarabjit Kaur met the police party and recorded her statement Ex.PA. The spot was visited. He prepared the site plan. The accused were arrested. During interrogation accused Sandeep Singh and Harbans Singh made separate disclosure statements Ex.PR and Ex.PS about the concealment of weapon of offence.

17. The case of the prosecution in a nutshell is that PW-1 Sarabjit Kaur has made statement on the basis of which FIR was registered. According to her, her husband Sandeep Singh had hit his brother-in-law Kuldeep Singh with a *danda* on his head. He died. His dead body was concealed. PW-1 Sarabjit Kaur has not supported the case of prosecution at all. She was declared hostile. She admitted her signatures on Ex.P1 but had denied contents. The statement recorded under Section 164 Cr.P.C. is not substantive piece of evidence. Similarly PW-6 Raj Singh has not supported the case of prosecution. According to him, Sandeep Singh had not made any disclosure statement before him. He was also declared hostile. PW-7 has

also testified that Sandeep Singh had not made any confession before him. He was also declared hostile. The dead body was recovered in a decomposed condition.

18. The main eye witness, i.e. PW-1 has not supported the case of the prosecution. According to the prosecution, the appellants had made extra judicial confessions. It is a weak piece of evidence. The extra-judicial confession has not been made to a person in authority. The cause of death was a head injury which was ante-mortem in nature as per the post-mortem examination report Ex.P6.

19. Learned counsel appearing on behalf of the State has vehemently argued that PW-1 has admitted her signatures on Ex.P1 and the fact of the matter is that she has resiled from her statement while deposing in the Court. Moreover it is reiterated that her statement under Section 164 Cr.P.C. is not a substantive piece of evidence.

20. Their Lordships of Hon'ble Supreme Court in ***State of Delhi vs. Shri Ram Lohia, AIR 1960 SC 490*** have held that statement recorded under Section 164 Cr.P.C. is not substantive piece of evidence in a case and cannot be made use of except to corroborate or contradict the witness. Their Lordships have held as under:-

“13. The Additional Sessions Judge observed in his judgment with reference to Aggarwal as follows:

"He no doubt in his further cross-examination made certain damaging statements which would throw doubt on his previous statement but as the statement was made long after the first statement and at a time when Tara Chand accused had been discharged it seems to me that this witness was won over & he has intentionally

prevaricated under the influence of the accused whose ex-employee he was. This inference finds support from the fact that in his statement under S. 164. Criminal Procedure Code made on 20th October, 1951, he stated that he was still in the employment of Messrs. Iron and Hardward (India) Company, while has now asserted in Court that he had been already dismissed by Sri Ram accused because of Sri Ram's differences with Tara Chand accused".

It is clear therefore that the learned Judge relied on some statement of Aggarwal recorded under S. 164 of Criminal Procedure Code. The Statement under S. 164 referred to was not specifically put to Aggarwal even to contradict him. Statements recorded under S. 164 of the Code are not substantive evidence in a case and cannot be made use of except to corroborate or contradict the witness. An admission by a witness that a statement of his was recorded under S. 164 of the Code and that what he had stated there was true would not make the entire statement admissible much less that any part of it could be used as substantive evidence in the case. The Additional Sessions Judge therefore erred in law in using the statement of Aggarwal under S. 164 to come to the conclusion that he had been won over. If that statement is excluded from consideration it is a matter of pure guess that Aggarwal had been won over after his examination-in-chief was over.

21. Their Lordships of Hon'ble Supreme Court in ***Ram Charan vs. State of U.P., AIR 1968 SC 1270*** have explained the evidentiary value of statement under Section 164 Cr.P.C. as under:-

"10. These observations were dissented from by the Andhra Pradesh High Court in *In re Gopisetti Chinna Venkata Subbiah*. ILR (1955) Andhra 633 at p. 638 = (AIR 1955 Andhra 161 at pp. 163-164) and Subba Rao, C. J., preferred the following

observations of the Nagpur High Court in *Parmanand v. Emperor*. AIR 1940 Nag 340. "

"We are of the opinion that if a statement of a witness is previously recorded under Section 164, Criminal Procedure Code, it leads to an inference that there was a time when the police thought the witness may change but if the witness sticks to the statement made by him throughout, the mere fact that his statement was previously recorded under Section 164 will not be sufficient to discard it. The Court, however, ought to receive it with caution and if there are other circumstances on record which lend support to the truth of the evidence of such witness, it can be acted upon."

11. We agree with Subba Rao, C. J., that the observations of the learned Judges of the Nagpur High Court lay down the law correctly."

22. Their Lordships of Hon'ble Supreme Court in ***Ram Kishan vs. Harmit Kaur***, AIR 1972 SC 468 have held that a statement under Section 164 Cr.P.C. is not a substantive evidence. It can be used only to corroborate the statement of the witness or to contradict him. Their Lordships have held as under:-

"8. A statement under Section 164 of the Code of Criminal Procedure is not substantive evidence. It can be used to corroborate the statement of a witness. It can be used to contradict a witness. The first information report was considered by the Sessions Judge. Any special consideration of the statement of Hazura Singh under Section 164 of the Code of Criminal Procedure could not have produced a different result by reason of the conclusions of the Sessions Judge as to rejecting the oral evidence of Nihal Kaur, Harmit Kaur and Hazura Singh as unreliable, untruthful and unworthy of credence.

9. It is true that the High Court as an appellate Court can set

aside an order of acquittal. In doing so, the High Court has to review the evidence upon which the order of acquittal is founded. The High Court is to consider the views of the trial Judge as to credibility of the witnesses. The High Court is also to keep in view the presumption of innocence in favour of the accused and the right of the accused to the benefit of doubt. Finally the High Court is to give reasons that the acquittal was not justified. The acquittal by the Sessions Judge cannot be said to be against the evidence or in disregard of evidence. Nor can the acquittal be said to be in violation of the principles of criminal jurisdiction.

10. The High Court in setting aside the acquittal said that the result would have been different if the Sessions Judge had taken into consideration the statement of Hazura Singh Exhibit P.4 with which Hazura Singh had been confronted. In cross-examination Hazura Singh said that the statement before the Magistrate Exhibit P.4 was made under threat and was a wrong statement. The Sessions Judge found that Hazura Singh made the same statement disowning the first information report. Hazura Singh was torn in his conscience between emotion for his son the appellant on the one hand and his wife Nihal Kaur and the deceased son Bharpur Singh on the other.”

23. Their Lordships of Hon’ble Supreme Court in ***Dhanabai vs. State of Tamil Nadu, AIR 1980 SC 628*** have held that if the witness resiles from the statement given by him under Section 164 Cr.P.C. in the committal court, the witness can be cross-examined on his earlier statement. But, if he sticks to the statement given by him under Section 164 Cr.P.C. before committal enquiry and resiles from it in the Sessions Court, the procedure prescribed under Section 288 Cr.P.C. will have to be observed. It is for the court to consider taking into account all the circumstances including the fact that the witness had resiled, in coming to the conclusion as to whether the witness should be believed or not. The statement of witnesses under Section

164 Cr.P.C. can be relied upon as corroborating their subsequent evidence before the committal court. Their Lordships have held as under:-

“13. The second legal contention raised by the learned counsel was that the High court was in error in taking into account the statements recorded from the witnesses under S. 164 of the Criminal P. C. in coming to the conclusion that the evidence given by them in the Committal Court could be relied upon. The High Court stated "we are satisfied having regard to 164 statements of P. Ws. 1 to 3 and 5 that the statements given by those witnesses before the Committing Court are true and could be relied on" and proceeded to observe that "as there are more statements admitted in evidence under S. 288 of the Criminal P. C. than one, the evidence of one witness before the Committing Court is corroborated by that given by others", Mr. Mulla, learned counsel, submitted that a statement recorded under S. 164 of the Criminal P. C. indicates that the Police thought that the witness could not be relied on as he was likely to change and therefore, resorted to securing a statement under S. 164 of the Criminal P. C. The statement thus recorded, cannot be used to corroborate a statement made by witness in the Committal Court. In support of this contention the learned counsel relied on certain observations of this Court in *Ram Charan v. State of U. P.*, (1966) 3 SCR 354. In that case in a statement recorded from the witness under S. 164 of the Criminal P. C. the Magistrate appended a certificate in the following terms:-

"Certified that the statement has been made voluntarily. The deponent was warned that he is making the statement before the 1st Class Magistrate and can be used against him. Recorded in my presence. There is no Police here. The witness did not go out until all the witnesses had given the statement'.

The Court observed that the endorsement made is not proper but declined to infer from the endorsement that any threat was given to the witnesses or that it

necessarily makes the evidence given by the witnesses in Court suspect or less believable. The view of the Patna High Court in *Emperor v. Menu Chik*, AIR 1938 Pat 290-295, where the observations made by the Calcutta High Court in *Queen Empress v. Judub Das*, (1900) ILR 27 Cal 295, that statements of the witnesses obtained under this Section always raises a suspicion that it has not been voluntarily made was referred to, was relied on by the learned counsel. This Court did not agree with the view expressed in the Patna case but agreed with the view of Subba Rao, J. (as he then was) in *In re Gopisetti Chinna Venkata Subbiah*, ILR (1955) Andhra 633, where he preferred the view expressed by Nagpur High Court in *Parmanand v. Emperor*, AIR 1940 Nag 340. It was observed that the mere fact that the witness's statement was previously recorded under S. 164 will not be sufficient to discard it. It was observed that the Court ought to receive it with caution and if there are other circumstances on record which lend support to the truth of the evidence of such witnesses. It can be acted upon. During the investigation the Police Officer, sometimes feels it expedient to have the statement of a witness recorded under S. 164, Cr. P. C. This happens when the witnesses to a crime are closely connected with the accused or where the accused are very influential which may, result in the witnesses being gained over. The 164 statement that is recorded has the endorsement of the Magistrate that the statement had been made by the witness. The mere fact that the police had reasons to suspect that the witnesses might be gained over and that it was expedient to have their statements recorded by the Magistrate, would not make the statements of the witnesses thus recorded, tainted. If the witness sticks to the statement given by him to the Magistrate under S. 164, Cr. P. C. no problem arises. If the witness resiles

from the statement given by him under S. 164 in the Committal Court, the witness can be cross-examined on his earlier statement. But if he sticks to the statement given by him under S. 164 before committal enquiry and resiles from it in the Sessions Court, the procedure prescribed under S. 288, Cr. P. C., will have to be observed. It is for the Court to consider taking into account all the circumstances including the fact that the witness had resiled in coming to the conclusion as to whether the witness should be believed or not. The fact that the police had S. 164 statement recorded by the Magistrate, would not by itself make his evidence suspect.

14. Section 157 of the Evidence Act makes it clear that the statement recorded under S. 164 of the Cr. P. C. can be relied on for corroborating the statements made by the witnesses in the Committal Court. This Court has expressed its view that though the statements made under S. 164 of the Cr. P. C. is not evidence, it is corroborative of what has been stated earlier in the Committal Court vide (1971) 1 SCR 56. The High Court was right in relying on the statement of the witnesses under S. 164 as corroborating their subsequent evidence before the Committal Court. Equally unsustainable is the plea of the learned counsel that a statement recorded under S. 288 of the Cr. P. C. of one witness cannot corroborate the statement of another witness under S. 288. The statements are treated as substantive evidence in law and we do not see any flaw in treating the statement of one witness as corroborative of the other. The result is the questions of law raised by the learned counsel fail. The appeal of the first appellant is rejected and his conviction and sentence confirmed. The appeal of the second appellant is allowed and his conviction and sentence set aside. He is directed to be set at liberty forthwith.”

24. Their Lordships of Hon’ble Supreme Court in ***Ramprasad vs.***

State of Maharashtra, (1999) 5 SCC 30 have held that statement recorded by a Magistrate under Section 164 Cr.P.C. becomes usable to corroborate the witness as provided in Section 157 of the Evidence Act or to contradict him as provided in Section 155 thereof. Their Lordships have held as under:-

“15. Be that as it may, the question is whether the Court could treat it as an item of evidence for any purpose. Section 157 of the Evidence Act permits proof of any former statement made by a witness relating to the same fact before "any authority legally competent to investigate the fact" but its use is limited to corroboration of the testimony of such witness. Though a police officer is legally competent to investigate, any statement made to him during such investigation cannot be used to corroborate the testimony of a witness because of the clear interdict contained in Section 162 of the Code. But a statement made to a Magistrate is not affected by the prohibition contained in the said Section. A magistrate can record the statement of a person as provided in Section 164 of the Code and such statement would either be elevated to the status of Section 32 if the maker of the statement subsequently dies or it would remain within the realm of what it was originally. A statement recorded by a magistrate under Section 164 becomes usable to corroborate the witness as provided in Section 157 of the Evidence Act or to contradict him as provided in Section 155 thereof.”

25. In ***Phool Chand vs. State of U.P., 2004 Cr.L.J. 1904***, a Division Bench of Allahabad High Court have held that where witnesses themselves did not support their version, their statements earlier recorded under Section 164 Cr.P.C. could not be available to the prosecution for their corroboration. Their Lordships have held as under:-

“18. Learned Additional Public Prosecutor Sri Amarjeet Singh

has tried to emphasise that Karan (P. W. 1) and his wife Smt. Makkhan (P. W. 2) were produced before the Magistrate for recording their statements under Section 164 Cr. P. C. in which they fully supported the facts/circumstances leading to the commission of multiple murders in this case. The learned counsel has contended that these statements should be given due weight and should be considered for proving the offences with which the appellants were charged. On thoughtful consideration on this legal aspect of the matter, we find that the aforesaid submission has no substance in it. The statement of a witness under Section 164 Cr. P. C. is one where the accused have hardly any occasion to cross examine him and if it is to be treated as substantive piece of evidence, it should be duly tendered before trial Court and then a witness should be produced by the prosecution for his cross examination. In this context the learned Senior Advocate appearing for the appellants has cited the case law of Brij Bhushan Singh v. Emperor, AIR 1946 P C 38 (1946 (47) Cri LJ 336) and Ram Kishan Singh v. Harmit Kaur, 1972 Cri. LJ 267 : (AIR 1972 SC 468).

In these cases the Privy Council and the Hon'ble Supreme Court have categorically held that the statements recorded under Section 164 Cr. P. C. are not substantive evidence. It can be used only to corroborate the statements of the witness or to contradict them. In the present case, when the witnesses (P. W. 1 and P. W.2) have themselves did not support their version, their statements earlier recorded under Section 164 Cr. P. C. could not be available to the prosecution for their corroboration. It could, to the maximum, be used by the prosecution for their contradiction, but that too has not been done in the present case. It is obvious that it would be a fallacy of a legal approach to have reliance upon the statement of a witness recorded under Section 164 Cr. P. C. and thereby to record conviction of the accused persons on that basis.”

Their Lordships of Hon'ble Supreme Court in ***Baij Nath Sah***

vs. State of Bihar, (2010) 6 SCC 736 have held that statement under Section 164 Cr.P.C. is not substantive evidence. Their Lordships have held as under:-

“6. We have heard the learned counsel for the parties and have gone through the record. We see from the judgments of the Courts below that the only material that has been used against the appellant is the statement under Sec.164 of the Cr.P.C. This Court in *Ram Kishan Singh vs. Harmit Kaur and Another* ((1972) 3 SCC 280) has held that a statement of 164 Cr.P.C. is not substantive evidence and can be utilized only to corroborate or contradict the witness vis-a-vis. statement made in Court. In other words, it can be only utilized only as a previous statement and nothing more.

7. We see from the record that Suman Kumari was not produced as a witness as she had since been married in Nepal and her husband had refused to let her return to India for the evidence. In this light her statement under Section 164 cannot be used against the appellant. Even otherwise, a look at her statement does not involve the appellant in any manner. The allegation against him is that after she had been kidnapped by the other accused she had been brought to their home, where the appellant was also present. In other words, when she had been brought to the appellant's home the kidnapping had already taken place. The appellant could therefore not be implicated in the offence under Sec.363 or 366-A of the IPC de hors other evidence to show his involvement in the events preceding the kidnapping.

8. We accordingly allow the appeal and set aside the judgment impugned. The appellant is acquitted.”

27. Their Lordships of Hon’ble Supreme Court in ***George vs. State of Kerala, (1998) 4 SCC 605*** have held that statement under Section 164 Cr.P.C. can be used only to contradict or corroborate the maker of the statement. Their Lordships have held as under:

36. We may now turn to the evidence of P. W. 50, detailed earlier. From the judgment of the trial Court we notice that the substantial parts of its comments, (quoted earlier) are based on his statement recorded under S. 164, Cr. P. C. and not his evidence in Court. The said statement was treated as substantive evidence; as would be evident from the following, amongst other observations made by the learned trial Court:

"If Ext. P. 42 (the statement recorded under S. 164, Cr. P. C.) is found to be a genuine statement it can be used as an important piece of evidence to connect the accused with the crime."

In making the above and similar comments the trial Court again ignored a fundamental rule of criminal jurisprudence that a statement of a witness recorded under S. 164, Cr. P. C. cannot be used as substantive evidence and can be used only for the purpose of contradicting or corroborating him. Instead of appreciating the evidence of P. W. 50 from that perspective the trial Court confined its attention mainly to his statement so recorded and discredited him. This legal infirmity apart, factually also the trial Court committed patent errors. As earlier noticed, one of the grounds for disbelieving him was that in the trip sheet the name of the person who performed the journey, namely, A1 was not shown. If the trial Court had cared to look into the other trip sheets which form part of Ext. P. 54 it would have found that in none of them the name of the person who hired the car is mentioned. The trial Court was, therefore, not at all justified in commenting upon such non-mentioning of the name of the hirer and concluding therefrom that the document was suspect. The comments of the trial Court that P. W. 50 made the statement before the Magistrate (Ext. P. 42) to oblige the police as his brother was arrested in connection with an excise case is also without any basis whatsoever. In drawing the above inference the trial Court was much influenced by the fact that the car in question, namely, KEK 3114 was seized by the police on May 31, 1990 and that it was released on June 28,

1990. According to the trial Court it was wrongfully detained by the police for such a long period to compel P. W. 50 to make a statement according to its dictate. Once a car is seized in connection with a case it can be returned pursuant to the order of a competent Court only and there is nothing on record to indicate that in spite of such an order the car was not returned so as to entitle the trial Court to comment that the long detention of the car was itself a suspicious circumstance. Having gone through the evidence of P. W. 50 we find that each of the reasons canvassed by the trial Court for disbelieving P. W. 50 is either legally unsustainable or factually incorrect.”

28. In the instant case, the Magistrate who had recorded the statement of PW-1, has not appeared as a witness.

29. Their Lordships of the Hon’ble 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 crossexamination 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 Court of H.P. 14 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.”

30. 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 upon 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."

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.”

32. 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 LJ 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* .”

33. 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.”

34. The prosecution has failed to prove the case against the accused beyond reasonable doubt. Accordingly the appeals are allowed. The judgment and order dated 30.08.2017 are set aside. The appellant Harbans Singh @ Kala is on bail. He need not to surrender. His bail bonds and surety bonds are discharged. The appellant Sandeep Singh is ordered to be released forthwith if he is not in custody in any other case. Registry is directed to prepare the release warrant of appellant Sandeep Singh.

(RAJEEV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

November 29, 2018.

Davinder Kumar

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No