

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

CRA-D No. 590-DB of 2003 (O&M)

Reserved on : 11.12.2018

Date of decision : 20.12.2018

Buta Singh and others Appellants
versus
State of Punjab ... Respondent

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

Present Mr. Sanjeev Sharma, Advocate, for the appellants.
Mr. Rajesh Bhardwaj, Sr. Deputy Advocate General, Punjab.

Rajiv Sharma, J.

1. The present appeal is instituted against the judgment and order dated 3.1.2003, rendered by Additional Sessions Judge (Adhoc), Fast Track Court, Patiala, in Sessions Case No. 4/18.1.2001, vide which accused Buta Singh, Sushma, Satya Wanti and Sanjiv Kumar alias Sonu, were charged with and tried for the offences punishable under Sections 302/109/34 IPC.

2. Accused Satya Wanti and Sanjiv Kumar alias Sonu were convicted and sentenced under Sections 302/34 IPC to undergo life imprisonment and to pay fine of ₹ 1,000/-, each. Accused Buta Singh and Sushma were convicted and sentenced under Section 109 IPC read with Section 302 IPC to undergo life imprisonment and to pay fine of ₹ 1,000/-, each. In default of payment of fine, each accused was directed to further undergo rigorous imprisonment for six months.

3. The case of the prosecution in a nutshell is that on 7.8.2000, Sub-Inspector William Jeji, SHO, Police Station, Rajpura, along with ASI Pawan Kumar and other police officials was present in Gagan Chowk, Rajpura. PW6 Gulshan Kumar lodged a complaint with him. According to

him, Raj Kishan son of Puran Chand Pandit resident of Chhitan Wala (Nabha) was the son of his wife Jagdish Rani's maternal uncle and was his brother-in-law. Ram Kishan was on visiting terms to the house of Khem Chand resident of Chhajju Majri. Sushma Rani daughter of Khem Chand was previously married at Ludhiana. She was divorced. Then they arranged marriage of Sushma with Ram Kishan, which was solemnized in the year 1995. The relations between Ram Kishan and Sushma were strained. Yesterday at about 8.00 P.M. Ram Kishan had come to him at his shop. He told him that he was going to the house of his mother-in-law to see his son. That day i.e. 7.8.2000 at about 7.00 A.M., he was going outside to ease himself when he heard ruckus in *mohalla* that a dead-body of a man was lying in the vacant plot adjoining to the house of Satya Devi. He reached at the spot. He found the dead-body of Ram Kishan. Ram Kishan was murdered by some unknown person. He informed Kewal Sharma and Sonu Sharma brothers of Ram Kishan. Statement is Ex.PG. Police took into possession the clothes of the deceased. Inquest report was prepared vide Ex.PD. Post-mortem was conducted on the dead-body of Ram Kishan. Photographs were also taken. 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, the present 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 Pawan Kumar testified that on 7.8.2000, they were present at Gagan Chowk, Rajpura, when a complaint was lodged by Gulshan Kumar with SI William Jeji, SHO, Police Station City Rajpura. Endorsement was made by Sub-Inspector. The spot was visited by the police. The clothes were taken into possession.

8. PW3 Dr. Manjit Singh had conducted the post-mortem examination. According to him, face was congested above the level of angles of mandible. No mark of ligature was present on the neck. No grass was present on the left hand but some amount of soil was present sticking to the palm and index finger of left hand. On dissection of neck infiltration of blood was present in the layers deeper to the facia, specially around the neuro vascular bundle at the level of thyroid cartilage on left side. Thyroid cartilage was cracked in the midline. Hyoid bone was fractured just to the left of the midline. He proved post-mortem report, Ex.PC. Time between death and post-mortem was 12 to 24 hours. The cause of death according to the doctor was due to strangulation leading to impairment of blood supply to the brain and causing asphyxia. No poison was detected in the viscera as per chemical analysis report. In his cross-examination, he admitted that no finger marks were found on the neck of the dead-body. There was no evidence of alcohol in the report of chemical analysis. Time between the injury and death could be of few minutes.

9. PW6 Gulshan Kumar testified that on 6.8.2000 Ram Kishan (deceased) had come to him and told that he was going to see his son at the residence of Sushma. On 7.8.2000 at about 6.00 A.M., when he went outside the house to ease himself, there was ruckus. He noticed that dead-body of Ram Kishan was lying in the vacant plot near the house of Satya Devi. Report was lodged. In his cross-examination, he admitted that Ram Kishan and Sushma had strained relations. In his examination-in-chief, he has stated that Sushma had filed divorce petition in the Court.

10. PW7 Jasbir Singh is the material witness. He deposed that he was selling *muniari* articles on cycle. On 20.8.2000 i.e. Sunday, he was coming from village Bhappal. He was taking tea on *Fauji Dhaba* in Gagan Chowk, Rajpura. Buta Singh and Sushma were taking meals in that *Dhaba* behind him. Buta Singh was under the influence of liquor. He was saying to Sushma that their plan had succeeded. They had liquidated Ram Kishan. Their love affair has won. Sushma said that now no finger would be raised on them. Thereafter, they went outside. He also deposed that few days prior to this, there was rumor that Ram Kishan was murdered. In his cross-examination, he admitted that he did not raise alarm when he heard the conversation between Buta Singh and Sushma about the murder. This information was given to the police on 28.8.2000.

11. PW8 Mela Singh is another material witness. He deposed that on 6.8.2000 at about 5.00 P.M. Ram Kishan had met him in his shop. He was married to Sushma. He asked Ram Kishan the purpose of his visit to Rajpura. He told that he had come to see his son. On 7.8.2000, he woke up at about 6.00/7.00 A.M. He heard the noise. He noticed that dead-body of Ram Kishan lying in a vacant plot adjoining to the house of Satya Devi. On

9.8.2000, Satya Devi came to his house in the evening. She told him that divorce case of Sushma Rani and Ram Kishan was pending. Sushma had developed illicit relations with Buta Singh. On 6.8.2000, Ram Kishan had come to their house at 9.00 P.M. Ram Kishan had also told Satya Devi that she and Sonu had spoiled his matrimonial life. He was taunting. Sonu pushed Ram Kishan on the ground. Sonu sat on his chest. Sonu and Satya Devi strangled Ram Kishan. She also pleaded before him that She be produced before the police. He told Satya Devi to come after some time. In his cross-examination, he admitted that he was neither Sarpanch nor Panch of the village. He has reported the matter to the police for the first time on 12.8.2000.

12. PW9 Sonu Sharma is the brother of the deceased. According to him, Sushma eloped with Buta Singh on 8.5.2000.

13. The prosecution has not examined the Investigating Officer. It was necessary for the prosecution to examine the Investigating Officer. The case is based on circumstantial evidence. In order to prove the case based on circumstantial evidence, the chain must be complete.

14. In the instant case, as per the version of PW6 Gulshan Kumar, the relations between Sushma and Ram Kishan were strained. Sushma had filed divorce petition against Ram Kishan. According to PW6 Gulshan Kumar, on 6.8.2000 Ram Kishan had told him that he was going to see his son at the residence of his mother-in-law. On 7.8.2000 at about 6.00 A.M., when he went to ease himself, there was ruckus. The dead-body of Ram Kishan was lying in the vacant plot near the house of Satya Devi. PW7 Jasbir Singh deposed that on 20.8.2000 when he was taking tea at *Fauji Dhaba* in Gagan Chowk, Rajpura, Buta Singh and Sushma were taking

meals in that *Dhaba* behind him. He overheard Buta Singh and Sushma, how the deceased was eliminated. He overheard accused Buta Singh and Sushma on 20.8.2000 but reported the matter to the police on 28.8.2000. In case he had overheard Buta Singh and Sushma about the murder of Ram Kishan, he should have immediately reported the matter to the police or raised alarm then and there.

15. The statement of the prosecution witness PW8 Mela Singh does not inspire confidence. He was neither Sarpanch nor Panch of the village. He was not a man of authority. There was no occasion for Sushma to visit him. On 9.8.2000, Satya Devi made an extra-judicial confession before him. He has admitted in his cross-examination that he informed the police only on 12.8.2000. In case Satya Devi had made extra-judicial confession about the murder of Ram Kishan on 9.8.2000 before him, he should have immediately reported the matter to the police instead of waiting till 12.8.2000. Extra-judicial confession is a weak evidence. It is required to be corroborated by other evidence.

16. The cause of death was due to strangulation leading to impairment of blood supply to the brain and causing asphyxia. No finger marks were found on the neck of the dead-body. As per PW3 Dr. Manjit Singh, no poison was detected in the viscera of the deceased.

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

18. 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 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."

19. 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 extra judicial 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."

20. 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 extra judicial 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."

21. 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."

22. 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.)"

23. 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 extra judicial 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."

24. The prosecution has failed to prove the case against the appellants beyond reasonable doubt. Accordingly, the appeal is allowed and the judgment and order dated 3.1.2003, are set aside. Their bail bonds are discharged.

(Rajiv Sharma)
Judge

20.12.2018
vs

(Harinder Singh Sidhu)
Judge

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