

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D No. 733-DB of 2011 (O&M)

Reserved on : 24.1.2019

Date of decision : 29.1.2019

Jagjit Singh and another
State of Punjab

.... Appellants

versus

... Respondent

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

Present Ms. Isha Goyal, Advocate, for the appellants.
Mr. S. P. S. Tinna, Additional Advocate General, Punjab.

Rajiv Sharma, J.

1. This appeal is instituted against the judgment and order dated 20.7.2011, rendered by Sessions Judge, Amritsar, in Sessions Trial No. 69 of 2009, vide which appellants Jagjit Singh and Sukhjit Kaur, who were charged with and tried for the offence punishable under Sections 302, 201/34 IPC, were convicted and sentenced as hereunder:-

<i>Name of the convict</i>	<i>Under Section</i>	<i>Sentence</i>
Jagjit Singh	302 IPC	Imprisonment for life and to pay a fine of ₹ 25,000/-. In default of payment of fine, to undergo further RI for two years.
	201 IPC	To undergo rigorous imprisonment for a period of seven years and to pay a fine of ₹ 10,000/-. In default of payment of fine, to undergo further rigorous imprisonment for one year.
Sukhjit Kaur	302 IPC	Imprisonment for life and to pay a fine of ₹ 25,000/-. In default of payment of fine, to undergo further RI for two years.
	201 IPC	To undergo rigorous imprisonment for a period of seven years and to pay a fine of ₹ 10,000/-. In default of payment of fine, to undergo further rigorous imprisonment for one year.

Both the sentences were ordered to run concurrently.

2. The case of the prosecution in a nutshell is that on 23.2.2009, PW3 Sardool Singh recorded his statement, Ex.PB, to the effect that after retirement from B.S.F., he has been doing agriculture work in the village. His son Jagtar Singh was having truck trailer in Dubai. His two grandchildren, namely, Dilpreet Kaur and Gurpartap Singh, along with their mother Sukhvir Kaur were living with him in village Wazir Bhullar. His grand-son Gurpartap Singh had disappeared suddenly on 19.2.2009 at about 9.30 A.M., when he had come out of the door of the house to play. He lodged the complaint with Police Station, Beas, on 19.2.2009. He went in search of his grandson along with respectables from the village. He also informed his son Jagtar Singh in Dubai on telephone. On 23.2.2009, all the family members were discussing regarding missing of Gurpartap Singh, when his daughter-in-law Sukhvir Kaur and wife Kulbir Kaur told that on 19.2.2009, they had given bath to Gurpartap Singh and dressed him properly and were dressing Dilpreet Kaur, then Gurpartap Singh started insisting to go out. The complainant while going out to fetch fodder had bolted the door from outside. Sukhjit Kaur (accused) widow of Ranjit Singh had crossed in front of door of their house. Gurpartap Singh asked her to open the door. However, despite their request not to do so, Sukhjit Kaur opened the door. Gurpartap Singh went outside the house and thereafter he did not return. The reputation of Sukhjit Kaur and her brother-in-law Jagjit Singh (accused) in the village was not good. They found dead-body of Gurpartap Singh lying against the wall in the *haveli* (cattle shed) of Sukhjit Kaur. The motive behind the murder was that elder brother of accused Jagjit Singh, namely, Sukhjinder Singh, who was residing in Dubai along with his family, was running business of transport. Son of the complainant had attached his

trailer with that transport. Sukhjinder Singh had also given employment to many persons of the village. He used to send money to families of those persons through his father Jagir Singh. Since Jagir Singh used to remain ill and was unable to move about, as such he used to give money to his son Jagjit Singh and daughter-in-law Sukhjit Kaur for making payment to the concerned persons. Instead of giving money to the concerned persons, they misappropriated the money. Due to this, Jagir Singh stopped giving money to them. On 1.2.2009, Jagir Singh handed over a sum of ₹ 1,40,000/- sent by his son Sukhjinder Singh from Dubai to the complainant for making payment to the concerned persons. Out of that amount, complainant kept ₹ 10,000/- with him to make payment of driver Pappi and the remaining amount was deposited by him in his account. Due to this reason, the accused were annoyed. The inquest report was prepared. The body was sent for post-mortem examination. The post-mortem was conducted on 24.2.2009 by Dr. Kirpal Singh. The cause of death, in his opinion, was asphyxia as a result of smothering. It was sufficient to cause death in ordinary course of nature. The appellants were arrested on 24.2.2009. They made extra-judicial confession. Accused Sukhjit Kaur got recovered *khurpa* (an agricultural implement used for scrapping grass) and accused Jagjit Singh got recovered wooden log. Investigation was completed and challan was put up after completion of all the codal formalities.

3. 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 denied the case of the prosecution. They examined seven witnesses in defence. The accused were convicted and sentenced, as noticed above. Hence, the present appeal.

4. 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 and order of the learned Court below.

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

6. PW1 Pawan Kumar testified that he was running a studio, in the name and style of Pawan Studio. On 23.2.2009 at about 5.30 P.M., he was called by the police of Police Station, Beas and taken to village Wazir Bhullar. He had taken three photographs, Ex.P1 to Ex.P3.

7. PW2 Ashok Wadhwa deposed that he was working as Branch Manager in Central bank of India, Beas. A sum of ₹ 1,30,000/- was deposited by Sardool Singh on 10.2.2009, in his account, which was joint account in the name of Sardool Singh and Smt. Kulbir Kaur.

8. PW3 Sardool Singh is the material witness. According to him, on 19.2.2009 at about 9.30 A.M., he left Gurpartap Singh son of his son Jagtar Singh at home. He left for fetching fodder. When he came back, he came to know that his grandson Gurpartap Singh went missing. He searched for him in various locations and ultimately lodged the report on 19.2.2009 with Police Station, Beas. Thereafter, they had been searching Gurpartap Singh at various places with the help of the police. He informed his son Jagtar Singh in Dubai. All the family members sat together and discussed about sudden missing of Gurpartap Singh. In the meanwhile, Sukhbir Kaur wife of his son and his wife Kulbir Kaur disclosed to them that after getting bath and dressing him, Gurpartap Singh started insisting to go out side for

playing. At that time, accused Sukhjit Kaur widow of Ranjit Singh came there. Gurpartap Singh requested her to open the door, which was bolted by him from outside. She opened the door in the presence of Sukhbir Kaur. He went outside the door. They went towards the *haveli* of accused Sukhjit Kaur. The dead-body was found lying by the side of wall. There were injuries on left side of his head, left ear and other parts of the body. The motive behind murder of Gurpartap Singh was that Sukhjinder Singh sent money to Jagir Singh. Jagir Singh used to give money to the accused. However, the accused used to misappropriate the money. Jagir Singh had handed over ₹ 1,30,000/- to PW2 Sardool Singh. In his cross-examination, he has admitted that when he came back after bringing fodder, he did not open the outer door of his house. His wife met him at that time in the street but she did not disclose as to who opened the outer door of his house facilitating his grandson to go outside. Prior to 19.2.2009, when he lodged the report with the police regarding missing of his grandson, he did not come to know as to who had unbolted the outer door of his house. On 21.2.2009, police did not come to his house, however, they met him in the street. On 21.2.2009, during the night all the family members sat together to condole the missing of Gurpartap Singh. At that time neither his wife Kulbir Kaur nor daughter-in-law Sukbir Kaur disclosed the aforesaid facts to them. On 23.2.2009 for the first time, his daughter-in-law Sukhbir Kaur disclosed him that accused Sukhjit Kaur unbolted the outer door of their house. On 19.2.2009 and 20.2.2009, when both the accused and Jagir Singh visited their house, Sukhbir Kaur and Kulbir Kaur were also present in his house. At that time, in his presence, Sukhbir Kaur did not ask accused Sukhjit Kaur that it was she, who unbolted the outer door of his house. When in search of

his grandson, they crossed the *haveli* on 23.2.2009, there was no foul smell emitting from that *haveli*.

9. PW4 Jagtar Singh is the father of deceased Gurpartap Singh. He was not in India, when Gurpartap Singh went missing. He came in India on 20.2.2009.

10. PW5 Chanchal Singh deposed that PW3 Sardool Singh is his real brother. Grandson of Sardool Singh went missing on 19.2.2009. On 24.2.2009, accused Sukhjit Kaur and Jagjit Singh came to his house during night time. He was in his house. Accused Sukhjit Kaur disclosed that she murdered Gurpartap Singh by giving blow of spade on his left eye and later on accused Jagjit Singh disclosed that he also murdered Gurpartap Singh by giving him blow of log of bamboo on his left eye. They had concealed the dead-body of Gurpartap Singh under the heap of paddy straw in the cattle shed. Thereafter, they went to the house of Jaswant Singh Sarpanch. He accompanied them to the police.

11. PW7 Smt. Sukhbir Kaur is the mother of the deceased. She deposed that on 19.2.2009 at about 9.30 A.M., his son Gurpartap Singh, went missing. She informed her husband. Her father-in-law Sardool Singh had gone to fetch fodder after bolting the outer door from outside. Since his son Gurpartap Singh was insisting to go out to play, she asked Sukhjit Kaur not to open the door. Despite her asking, accused Sukhjit Kaur opened the door. Thereafter, she saw accused Sukhjit Kaur along with accused Jagjit Singh, going behind his son. On 23.2.2009, she, her mother-in-law, father-in-law and her husband were sitting in the house. Her father-in-law enquired as to who had opened the outer door of their house, thereupon, she told that accused Sukhjit Kaur had opened the door. Thereafter, they went towards

the cattle shed of accused Sukhjit Kaur and found the dead-body of her son by the side of a wall near the heap of paddy straw. In her cross-examination, she deposed that on 19.2.2009, her father-in-law Sardool Singh came back to the house after about half an hour. She did not disclose to her father-in-law that accused Sukhjit Kaur opened the outer door of their house to facilitate going of her son outside or that both the accused were following him. She also did not disclose to her husband on 20.2.2009 that the accused were following Gurpartap Singh. She even did not disclose about this fact to anyone on 21.2.2009 and 22.2.2009. House of accused Sukhjit Kaur was adjacent to their house. Accused Jagjit Singh also resided in the house of accused Sukhjit Kaur. She and her mother-in-law did not go in search of Gurpartap Singh.

12. The post-mortem was conducted by PW8 Dr. Kirpal Singh. The cause of death was asphyxia as a result of smothering, which was sufficient to cause death in ordinary course of nature. He proved post-mortem report, Ex.PG.

13. According to FSL report, Ex.PZ, the exhibits (hair) contained in parcels-B and C, were human hair and showed similar characteristics.

14. The accused also examined DW1 Gagandeep Sharma, DW2 Dinesh Nath, DW3 Deepak Raj Dev.

15. DW4 Kartar Singh deposed that police visited in the village from 19.2.2009 to 22.2.2009. The body was found out on 23.2.2009. Accused Sukhjit Kaur was taken away by the police from her house after two days.

16. The accused also examined DW5 ASI Revail Singh, DW6 SSP Ranbir Singh Khatra and DW7 HC Balwinder Kaur.

17. In the instant case on 19.2.2009, Gurpartap Singh, as per the prosecution story, was insisting to go out of the house to play. He requested accused Sukhjit Kaur, who was crossing in front of the door of his house, to open the door. Thereafter, the dead-body of Gurpartap Singh was found on 23.2.2009. The cause of death was asphyxia as a result of smothering. Post-mortem report is Ex.PG.

18. As per PW3 Sardool Singh, on 19.2.2009 he left his grandson Gurpartap Singh at home. When he came back, he came to know that his grandson Gurpartap Singh went missing. He lodged the report on 19.2.2009. In his cross-examination, he admitted that his wife did not disclose as to who opened the outer door of his house facilitating his grandson to go outside. For the first time on 23.2.2009, his daughter-in-law Sukhbir Kaur disclosed that accused Sukhjit Kaur unbolted the outer door of their house. Even on 19.2.2009 and 20.2.2009, when the accused and Jagir Singh visited their house, Sukhbir Kaur or Kulbir Kaur did not ask accused Sukhjit Kaur that when she unbolted the outer door of their house, where Gurpartap Singh had gone.

19. PW7 Smt. Sukhbir Kaur is the mother of the deceased. In her cross-examination, she admitted that on 19.2.2009, she did not disclose to her father-in-law that accused Sukhjit Kaur opened the outer door of their house to facilitate going out of Gurpartap Singh or that both the accused were following him. She also admitted that she also did not disclose about accused Sukhjit Kaur to her husband on 20.2.2009. She categorically admitted that she even did not disclose about this fact on 21.2.2009 and 22.2.2009. Though accused visited her house, but she did not ask why she opened the outer door. The house of accused Sukhjit Kaur was adjacent to

their house. As per PW7 Smt. Sukhbir Kaur, she saw accused Sukhjot Kaur along with accused Jagjit Singh, going behind his son, however, she had not asked from them or told anyone of her family about this fact. This is an unusual behaviour. In case, she had seen the accused following his son, she should have first told his father-in-law, when she came to know about the missing of Gurpartap Singh or other family members. In her cross-examination, she admitted that she had not gone in search of her son. Thus, the last seen theory propounded by prosecution is false.

20. The prosecution has also relied upon extra-judicial confession made before PW5 Chanchal Singh by accused Sukhjot Kaur and Jagjit Singh. He is real brother of PW3 Sardool Singh. According to him, on 24.2.2009 accused Sukhjot Kaur and Jagjit Singh visited his house. Accused Sukhjot Kaur disclosed that she murdered Gurpartap Singh by giving blow of spade on his left eye. Accused Jagjit Singh disclosed that he also murdered Gurpartap Singh by giving blow of log of bamboo on his left eye. They concealed the dead-body of Gurpartap Singh under the heap of paddy straw in the cattle shed. The cause of death was asphyxia and not two injuries, as mentioned by PW5 Chanchal Singh in his statement. He is not a man of authority. Why the accused would go and make confession before him. Thus, it is not sustainable.

21. According to PW3 Sardool Singh, the motive behind the murder was that elder brother of accused Jagjit Singh, namely, Sukhjinder Singh used to send money to the families of those persons to whom he had provided employment, through his father Jagir Singh. Since the accused misappropriated the money, Jagir Singh stopped giving money to them and handed over a sum of ₹ 1,40,000/- sent by his son Sukhjinder Singh from

Dubai to the complainant. It is not believable why Jagir Singh would give money to PW3 Sardool Singh and not to his family members. Thus, the motive attributed to the appellants is not established. The chain is not complete.

22. Further the houses of the accused and the complainant were adjacent. It is not believable that when they were searching for Gurpartap Singh and crossed the *haveli*, the foul smell was not noticed by any family member.

23. According to PW19 HC Parmajit Singh, disclosure statements were made by accused Jagjit Singh and Sukhjit Kaur in his presence vide Ex. PU and PS. The disclosure statements are not voluntarily in nature since these were made during the course of interrogation while in police custody.

24. Hon'ble the Supreme Court in Criminal Appeal No. 1980 of 2008 - Ashish Jain vs Makrand Singh and others, decided on 14.1.2019, held qua nature of the disclosure statements made before the police officials, as under:-

“21. As regards the recovery of incriminating material at the instance of the accused, the Investigating Officer K.D. Sonakiya, PW35, has categorically deposed that all the confessions by the accused persons were made after interrogation, but the mode of this interrogation does not appear to be of normal character, inasmuch as he himself has deposed that the accused persons were further grilled and interrogated multiple times before extracting the confessions which lead to the recovery of the ornaments, cash, weapons and key. We find from the totality of facts and circumstances that the confessions that led to the recovery of the incriminating

material were not voluntary, but caused by inducement, pressure or coercion. Once a confessional statement of the accused on facts is found to be involuntary, it is hit by Article 20(3) of the Constitution, rendering such a confession inadmissible. There is an embargo on accepting self-incriminatory evidence, but if it leads to the recovery of material objects in relation to a crime, it is most often taken to hold evidentiary value as per the circumstances of each case. However, if such a statement is made under undue pressure and compulsion from the investigating officer, as in the present matter, the evidentiary value of such a statement leading to the recovery is nullified. It is noteworthy to reproduce the observations of this Court regarding the relationship between Section 27 of the Evidence Act and Article 20(3) of the Constitution in *Selvi v. State of Karnataka*, (2010) 7 SCC 263:

“102. As mentioned earlier “the right against self-incrimination” is now viewed as an essential safeguard in criminal procedure. Its underlying rationale broadly corresponds with two objectives — firstly, that of ensuring reliability of the statements made by an accused, and secondly, ensuring that such statements are made voluntarily. It is quite possible that a person suspected or accused of a crime may have been compelled to testify through methods involving coercion, threats or inducements during the investigative stage. When a person is compelled to testify on his/her own behalf, there is a higher likelihood of such testimony being false. False testimony is undesirable since it impedes the integrity of the trial and the subsequent verdict. Therefore, the purpose of the “rule against involuntary confessions” is to ensure that the testimony

considered during trial is reliable. The premise is that involuntary statements are more likely to mislead the Judge and the prosecutor, thereby resulting in a miscarriage of justice. Even during the investigative stage, false statements are likely to cause delays and obstructions in the investigation efforts.

103. The concerns about the “voluntariness” of statements allow a more comprehensive account of this right. If involuntary statements were readily given weightage during trial, the investigators would have a strong incentive to compel such statements— often through methods involving coercion, threats, inducement or deception. Even if such involuntary statements are proved to be true, the law should not incentivise the use of interrogation tactics that violate the dignity and bodily integrity of the person being examined. In this sense, “the right against self-incrimination” is a vital safeguard against torture and other “third-degree methods” that could be used to elicit information. It serves as a check on police behaviour during the course of investigation. The exclusion of compelled testimony is important otherwise the investigators will be more inclined to extract information through such compulsion as a matter of course. The frequent reliance on such “short cuts” will compromise the diligence required for conducting meaningful investigations. During the trial stage, the onus is on the prosecution to prove the charges levelled against the defendant and the “right against self-incrimination” is a vital protection to ensure that the prosecution discharges the said onus.

....

133. We have already referred to the language of Section 161 CrPC which protects the accused as well as suspects and witnesses who are examined during the course of investigation in a criminal case. It would also be useful to refer to Sections 162, 163 and 164 CrPC which lay down procedural safeguards in respect of statements made by persons during the course of investigation. However, Section 27 of the Evidence Act incorporates the “theory of confirmation by subsequent facts” i.e. statements made in custody are admissible to the extent that they can be proved by the subsequent discovery of facts. It is quite possible that the content of the custodial statements could directly lead to the subsequent discovery of relevant facts rather than their discovery through independent means. Hence such statements could also be described as those which “furnish a link in the chain of evidence” needed for a successful prosecution. This provision reads as follows:

“27. How much of information received from accused may be proved.—Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.”

134. This provision permits the derivative use of custodial statements in the ordinary course of events. In Indian law, there is no automatic presumption that the custodial statements have been extracted through compulsion. In short, there is no requirement of additional diligence akin to

the administration of Miranda [16 L Ed 2d 694 : 384 US 436 (1965)] warnings. However, in circumstances where it is shown that a person was indeed compelled to make statements while in custody, relying on such testimony as well as its derivative use will offend Article 20(3).

135. The relationship between Section 27 of the Evidence Act and Article 20(3) of the Constitution was clarified in Kathi Kalu Oghad [AIR 1961 SC 1808 : (1961) 2 Cri LJ 856 : (1962) 3 SCR 10]. It was observed in the majority opinion by Jagannadhadas, J., at SCR pp. 33-34: (AIR pp. 1815-16, para 13)

“13. ... The information given by an accused person to a police officer leading to the discovery of a fact which may or may not prove incriminatory has been made admissible in evidence by that section. If it is not incriminatory of the person giving the information, the question does not arise. It can arise only when it is of an incriminatory character so far as the giver of the information is concerned. If the self-incriminatory information has been given by an accused person without any threat, that will be admissible in evidence and that will not be hit by the provisions of clause (3) of Article 20 of the Constitution for the reason that there has been no compulsion. It must, therefore, be held that the provisions of Section 27 of the Evidence Act are not within the prohibition aforesaid, unless compulsion [has] been used in obtaining the information.”

(emphasis supplied)

22. We are of the opinion that the recovery of the stolen ornaments, etc. in the instant matter was made on the basis of involuntary statements, which effectively negates the incriminating circumstance based on such recovery, and severely undermines the prosecution case.”
25. 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 20.7.2011, are set aside. The appellants are acquitted of all the charges framed against them. The appellants be released forthwith.

(Rajiv Sharma)
Judge

29.1.2019
vs

(Harinder Singh Sidhu)
Judge

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