

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

CRA-D No. 1557-DB of 2015 (O&M)

Reserved on : 14.3.2019

Date of decision : 19.3.2019

Harjinder Singh @ Kala	 Appellant
State of Punjab	... Respondent

versus

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

Present Mr. G. S. Punia, Senior Advocate with
Ms. Harveen Kaur, Advocate, for the appellant.
Mr. S. P. S. Tinna, Additional Advocate General, Punjab.

Rajiv Sharma, J.

1. The present appeal is instituted against the judgment and order dated 17.9.2015, rendered by learned Additional Sessions Judge, S. A. S. Nagar, Mohali, in Sessions Case No. 83 of 1.12.2014, by appellant Harjinder Singh @ Kala. He was charged with and tried for the offence punishable under Section 302 IPC. He was convicted thereunder and sentenced to undergo imprisonment for life and to pay fine of ₹ 5,000/- and in default of payment of fine, to undergo further rigorous imprisonment for a period of six months.

2. The case of the prosecution in a nutshell is that on the morning of 14.8.2014, it was transpired that somebody had killed Mahant Narain Dass. Nachhattar Singh (PW3) village Panch reported the matter to the police. Thereafter, FIR was registered. During investigation on 19.8.2014,

Harjinder Singh son of Santokh Singh made extra-judicial confession to village Sarpanch Balwinder Singh. After that accused Harjinder Singh surrendered before the police. The weapon of offence was recovered at his instance. The dead-body was sent for post-mortem examination, which was conducted by PW5 Dr. Parminderjit Singh. Post-mortem report is Ex.PW5/A. The investigation was completed and challan was put up after completion of all the codal formalities.

3. The prosecution examined 7 witnesses in support of the case. The statement of the accused was also recorded under Section 313 Cr.P.C. According to him, he was falsely implicated in the case. Four witnesses were examined in defence. He was convicted and sentenced, as noticed hereinabove. Hence, the present appeal.

4. Learned counsel appearing on behalf of the appellant 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 Ranjit Singh testified that he was member panchayat of the village. Narain Dass aged about 30-35 years, was residing in village Garagan on Chuni-Morinda Road. On 14.8.2014, he was murdered. He along with PW3 Nachhatar Singh Panch identified the dead-body of Narain Dass. His statement, Ex.PW1/A, was recorded.

7. PW2 ASI Sukhwinder Singh deposed that on 14.8.2014, he was posted at Police Station, Gharuan. He along with SI Bhagwant Singh and other police officials was present at Sotal Chowk at village Sotal. Nachhatar Singh got recorded his statement before SHO Bhagwant Singh. SHO Bhagwant Singh attested the same and made his endorsement on the same. He along with complainant and Balwinder Singh Sarpanch reached the spot. The dead-body of Narain Dass resident of village Garagan was lying on the spot. Deceased was wearing *kurta* and *chadra*. He was wearing turban on his head. SHO Bhagwant Singh prepared inquest report. He took blood soil and simple soil from the same place and put it in the two separate boxes. Parcels were made of the said boxes. On 19.8.2014, he along with SHO Bhagwant Singh and other police officials was present at Bus-Stand, Gharuan in connection with investigation of the case. Balwinder Singh Sarpanch of village Garagan produced accused Harjinder Singh @ Kala. Personal search of the accused was conducted. He made disclosure statement, Ex.PW2/D, on the basis of which knife near his shanty at village Garagan under the bushes along with blood stained *pajama* of the accused was recovered. Accused thumb marked on it. In his cross-examination, he deposed that they reached at the spot at about 9.15 A.M and remained there till about 2.30 P.M. No previous complaint against the accused was pending at the police station. No independent witness except Balwinder Singh joined at the time of recovery of knife and blood stained *pajama*.

8. PW3 Nachhatar Singh testified that on 14.8.2014 he was present in his house. He came to know that Narain Dass, who was residing in their village from the last 30-35 years and had converted himself as

Amritdhari Sikh and residing in a *Khokha* at Bus-Stand Garagan, was not responding. He went to the spot. He found Narain Dass lying on the bed and was dead. There were injury marks of sharp weapon on right side of his face and abdomen. Narain Dass has constructed one room in the *shamlat* land of the village about 7 years back. The said room was given by Narain Dass to Santokh Singh son of Piara Lal of village Chonta, District Ludhiana. Santokh Singh was living in the said room along with his family. They found Narain Dass was murdered by some unknown person with sharp edged weapon. He reported the matter to the police, Ex.PW3/A. The dead-body was identified by him. In his cross-examination, he deposed that the deceased was residing in the village for the last 30-35 years. He admitted that for the past about 8 years, accused and his family had been providing food to Narain Singh.

9. PW4 Balwinder Singh was the Sarpanch of the village at the time of deposition. He deposed that on 19.8.2014, accused Harjinder Singh @ Kala came to him and disclosed that in the intervening night of 13/14.8.2014, he committed the murder of Narain Dass with knife. He was sleeping on the cot in front of his *khokha* at Bus-Stand, Garagan, Chunni-Morinda Road. He asked him why he had committed the murder of Narain Dass. He told that he along with his family were residing in the room, which was constructed by Narain Dass in the *shamlat* land of the village. They were taking care of Narain Dass in lieu of that and also gave meals to him. He further disclosed that about 4-5 days prior to the incident, the Gram Panchayat had issued notice to Narain Dass to vacate the said room. Narain Dass asked them to vacate the said room. He felt bad and due to this reason

he committed the murder of Narain Dass. He produced the accused before the police at Bus-Stand, Gharauan. Arrest memo, Ex.PW2/C, was prepared. He made disclosure statement, Ex.PW2/D, on the basis of which the knife was recovered along with blood stained *Pajama* of the accused. In his cross-examination, he admitted that for the post about 8 years, accused and his family had been providing food to Narain Dass.

10. PW7 SI Bhagwant Singh deposed that on 14.8.2014, he was posted as SHO, Police Station, Gharauan. On that day, he along with ASI Sukhwinder Singh and other police officials was present at Sotal Chowk of village Sotal. PW3 Nachhatar Singh along with Balwinder Singh Sarpanch reached there. PW3 Nachhatar Singh got recorded his statement, Ex.PW3/A. He made endorsement, Ex.PW7/A, on the basis of which formal FIR, Ex.PW7/B, was registered. They went to spot. Dead-body of Narain Dass was lying on the spot. He prepared inquest report. He took blood-stained soil and simple soil and put into two separate boxes. These were converted into parcels. One pillow and three blankets were put in one plastic bag. Parcel was made. On 19.8.2014, he along with ASI Sukhwinder Singh and other police officials was present at Bus-Stand Gharaun in connection with investigation of the case. Balwinder Singh Sarpanch produced accused Harjiner Singh @ Kala. He got recovered blood-stained knife and *pajama*. The same were duly sealed. In his cross-examination, he deposed that Sarpanch of the village was not an interested person in the land belonging to Panchayat, though after the death of Narain Dass, the land of his *Dera* may revert to the Gram Panchayat.

11. Sanjeev Kumar, Scientific Officer (Serology), Forensic Science Laboratory, was recalled for cross-examination. He deposed that as the weapon was not recovered by them, hence, they did not pick up the finger prints. He also deposed that no analysis was made to find whether the blood contained in the samples belonged to different persons or it belonged to only one person.

12. Post-mortem examination was conducted by PW5 Dr. Parminderjit Singh. He proved post-mortem report, Ex.PW5/A. He led his evidence by filing affidavit. He had noticed the following injuries on the dead-body:-

1. Incised wound 5 x 2 cm on the right angle of mouth.
2. Incised wound 2 x 1 cm on the upper 1/3rd of left arm medial aspect.
3. Stab wound 2 x 1 cm in left hypochondrium depth upto spleen.
4. Stab wound 2 x 1 cm left lateral side of chest upper 1/3rd depth upto left lung.
5. Stab wound 4 x 2 cm left lateral side of chest lower 1/3rd depth upto ribs.”

The cause of death was due to shock and haemorrhage due to the injuries. The injuries were ante-mortem in nature, which were sufficient to cause death in normal course of nature. The probable time between death and post-mortem was within 24 hours.

13. The appellant examined DW1 Avtar Singh @ Tari, DW2 Varinder Singh, DW3 Gurmit Kaur and DW4 Santokh Singh in his defence.

14. The prosecution case is that Narain Dass was residing in village Garagan from the last 30-35 years. He converted himself as *Amritdhari* Sikh. Narain Dass had constructed one room in the *shamlat* land of the village about 7 years back, which he had given to Santokh Singh of village Chonta, District Ludhiana. Santokh Singh was living in the said room along with his family. His family had been providing food to Narain Dass in lieu of that. At about 4-5 days prior to the incident, the Gram Panchayat had issued notice to Narain Dass for vacation of said room, who in turn asked them to vacate the said room. Accused Harjinder Singh @ Kala felt bad and due to this reason he committed the murder of Narain Dass.

15. Accused Harjinder Singh @ Kala had made extra-judicial confession on 19.8.2014 before PW4 Balwinder Singh. Balwinder Singh was the Sarpanch of the village. He had disclosed that in the intervening night of 13/14.8.2014, he committed the murder of Narain Dass with knife. When he asked why he had committed the murder, he told that he along with his family were residing in the room, which was constructed by Narain Dass in the *shamlat* land of the village. They were providing food to Narain Dass in lieu of that. Now the Gram Panchayat wanted to vacate the said room. Narain Dass had asked them to vacate the same, which resulted in murder of Narain Dass. Accused Harjinder Singh @ Kala made disclosure statement, Ex.PW2/D, on the basis of which knife along with his blood stained *Pajama* were recovered.

16. FSL report is Ex.PX. The exhibits containing in parcels 'A', 'B', 'D', 'E' and 'F' were stained with human blood. However, blood could not be detected on the exhibit contained in parcel 'C'.

17. The family of the appellant was given shelter by deceased Narain Dass. As per extra-judicial confession, notice was served upon Narian Dass to vacate the panchayat land. Narain Dass asked the family of the appellant to vacate the premises. Thus, the prosecution established the motive for the accused to commit the crime.

18. The appellant has also taken the plea of alibi after taking support from the statements DW2 Varinder Singh, DW3 Gurmit Kaur and DW4 Santokh Singh. According to them, accused Harjinder Singh @ Kala was on duty in a school. The fact of the matter is that though the accused and his parents were allegedly working in the school, but the name of the school has not been even disclosed by none of the DWs. The appellant has failed to prove the plea of alibi. The plea of alibi is a double edged weapon. In case the accused fails to prove the plea of alibi, his presence at the spot cannot be ruled out.

19. In order to prove plea of alibi, their Lordships of Hon'ble the Supreme Court in Binay Kumar Singh vs State of Bihar (1997) 1 SCC 283, have held that once the prosecution succeeds in discharging the burden, it is incumbent on the accused, who adopts the plea of alibi, to prove it with absolute certainty so as to exclude the possibility of his presence at the place of occurrence. Their Lordships have held as under :-

“22. We must bear in mind that an alibi is not an exception (special or general) envisaged in the Indian Penal Code or any other law. It is only a rule of evidence recognised in Section 11 of the Evidence Act that facts which are inconsistent with the fact in issue are relevant. Illustration (a) given under the provision is worth reproducing in this context:

"The question is whether A committed a crime at Calcutta on a certain date; the fact that on that date, A was at Lahore is relevant."

23. The Latin word alibi means "elsewhere" and that word is used for convenience when an accused takes recourse to a defence line that when the occurrence took place he was so far away from the place of occurrence that it is extremely improbable that he would have participated in the crime. It is a basic law that in a criminal case, in which the accused is alleged to have inflicted physical injury to another person, the burden is on the prosecution to prove that the accused was present at the scene and has participated in the crime. The burden would not be lessened by the mere fact that the accused has adopted the defence of alibi. The plea of the accused in such cases need be considered only when the burden has been discharged by the prosecution satisfactorily. But once the prosecution succeeds in discharging the burden it is incumbent on the accused, who adopts the plea of alibi, to prove it with absolute certainty so as to exclude the possibility of his presence at the place of occurrence. When the presence of the accused at the scene of occurrence has been established satisfactorily by the prosecution through reliable evidence, normally the court would be slow to believe any counter-evidence to the effect that he was elsewhere when the occurrence happened. But if the evidence adduced by the accused is of such a quality and of such a standard that the court may entertain some reasonable doubt regarding his presence at the scene when the occurrence took place, the accused would, no doubt, be entitled to the benefit of that reasonable doubt. For that purpose, it would be a sound proposition to be laid down that, in such circumstances, the burden on the accused is rather heavy. It follows, therefore, that strict proof is required for establishing the plea of alibi. This Court has

observed so on earlier occasions (vide *Dudh Nath Pandey v. State of U.P.* 1981 (2) SCC 166; *State of Maharashtra v. Narsingrao Gangaram Pimple* AIR 1984 SC 63.”

20. The weapon of offence was recovered at the instance of the appellant. The cause of death was due to shock and haemorrhage due to the injuries. The injuries were ante-mortem in nature, which were sufficient to cause death in normal course of nature. The probable time between death and post-mortem was within 24 hours. The prosecution has proved the motive behind the murder, whereas the appellant has failed to prove the plea of alibi.

21. The argument of learned counsel for the appellant that the extra-judicial confession is a weak type of evidence is merely to be considered and rejected for the reason that in the present case, the motive is proved and the chain is complete. All the circumstances exclusively pin point towards the guilt of the appellant.

22. Their Lordships of Hon'ble the Supreme Court in *Chattar Singh vs State of Haryana* 2008 (4) RCR (Criminal) 133 have held that after subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, the extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility. Their Lordships have held as under:-

“17. Confessions may be divided into two classes i.e. judicial and extra-judicial. Judicial confessions are those which are made before a Magistrate or a court in the course of judicial proceedings. Extra-judicial confessions are those which are made by the party elsewhere than before a Magistrate or court. Extra-judicial confessions are generally those that are made by a party to or before a private

individual which includes even a judicial officer in his private capacity. It also includes a Magistrate who is not especially empowered to record confessions under Section 164 of the Code of Criminal Procedure, 1973 (for short the 'Code') or a Magistrate so empowered but receiving the confession at a stage when under Section 164 of the Code does not apply. As to extra-judicial confessions, two questions arise: (i) were they made voluntarily? and (ii) are they true? As the section enacts, a confession made by an accused person is irrelevant in criminal proceedings, if the making of the confession appears to the court to have been caused by any inducement, threat or promise, (1) having reference to the charge against the accused person, (2) proceeding from a person in authority, and (3) sufficient, in the opinion of the court to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him. It follows that a confession would be voluntary if it is made by the accused in a fit state of mind, and if it is not caused by any inducement, threat or promise which has reference to the charge against him, proceeding from a person in authority. It would not be involuntary, if the inducement, (a) does not have reference to the charge against the accused person; or (b) it does not proceed from a person in authority; or (c) it is not sufficient, in the opinion of the court to give the accused person grounds which would appear to him reasonable for supposing that, by making it, he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him. Whether or not the confession was voluntary would depend upon the facts and circumstances of each case, judged in the light of Section 24 of the Indian Evidence Act, 1872 (in short 'Evidence Act'). The law is clear that a confession cannot be

used against an accused person unless the court is satisfied that it was voluntary and at that stage the question whether it is true or false does not arise. If the facts and circumstances surrounding the making of a confession appear to cast a doubt on the veracity or voluntariness of the confession, the court may refuse to act upon the confession, even if it is admissible in evidence. One important question, in regard to which the court has to be satisfied with is, whether when the accused made the confession, he was a free man or his movements were controlled by the police either by themselves or through some other agency employed by them for the purpose of securing such a confession. The question whether a confession is voluntary or not is always a question of fact. All the factors and all the circumstances of the case, including the important factors of the time given for reflection, scope of the accused getting a feeling of threat, inducement or promise, must be considered before deciding whether the court is satisfied that in its opinion the impression caused by the inducement, threat or promise, if any, has been fully removed. A free and voluntary confession is deserving of the highest credit, because it is presumed to flow from the highest sense of guilt. (See R. v. Warickshall) It is not to be conceived that a man would be induced to make a free and voluntary confession of guilt, so contrary to the feelings and principles of human nature, if the facts confessed were not true. Deliberate and voluntary confessions of guilt, if clearly proved, are among the most effectual proofs in law. An involuntary confession is one which is not the result of the free will of the maker of it. So where the statement is made as a result of harassment and continuous interrogation for several hours after the person is treated as an offender and accused, such statement must be regarded as involuntary. The inducement may take the form of a promise or of a threat, and often the inducement

involves both promise and threat, a promise of forgiveness if disclosure is made and threat of prosecution if it is not. (See Woodroffe's Evidence, 9th Edn., p. 284.) A promise is always attached to the confession alternative while a threat is always attached to the silence alternative; thus, in one case the prisoner is measuring the net advantage of the promise, minus the general undesirability of a false confession, as against the present unsatisfactory situation; while in the other case he is measuring the net advantages of the present satisfactory situation, minus the general undesirability of the confession against the threatened harm. It must be borne in mind that every inducement, threat or promise does not vitiate a confession. Since the object of the rule is to exclude only those confessions which are testimonially untrustworthy, the inducement, threat or promise must be such as is calculated to lead to an untrue confession. On the aforesaid analysis the court is to determine the absence or presence of an inducement, promise etc. or its sufficiency and how or in what measure it worked on the mind of the accused. If the inducement, promise or threat is sufficient in the opinion of the court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil, it is enough to exclude the confession. The words "appear to him" in the last part of the section refer to the mentality of the accused.

18. An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. The value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. 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. Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it. After subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, the extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility.”

23. Similarly their Lordships of Hon'ble the Supreme Court in Sansar Chand vs State of Rajashtan 2010 (4) RCR (Criminal) 825, have held that there is no absolute rule that an extra judicial confession can never be the basis of a conviction, although ordinarily an extra judicial confession should be corroborated by some other material. Their Lordships have held as under:-

“33. There is no absolute rule that an extra judicial confession can never be the basis of a conviction, although ordinarily an extra judicial confession should be corroborated by some other material vide *Thimma vs. The State of Mysore* - AIR 1971 SC 1871, *Mulk Raj vs The State of U.P.* - AIR 1959 SC 902, *Sivakumar vs. State by Inspector of Police* - AIR 206 SC 563 (para 41 & 42), *Shiva Karam Payaswami Tewar vs. State of Maharashtra*- AIR

2009 SC 1692, Mohd. Azad vs. State of West Bengal - AIR 2009 SC 1307. In the present case, the extra judicial confession by Balwan has been referred to in the judgments of the learned Magistrate and the Special Judge, and it has been corroborated by the other material on record. We are satisfied that the confession was voluntary and was not the result of inducement, threat or promise as contemplated by Section 24 of the Evidence Act.”

24. The prosecution has proved the case against the appellant beyond reasonable doubt. There is no occasion for us to interfere with the well reasoned judgment and order recorded by the learned trial Court. Accordingly, the appeal is dismissed.

(Rajiv Sharma)
Judge

19.3.2019
vs

(Kuldip Singh)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No