

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

Reserved on : 31.1.2019

Date of decision : 8.2.2019

1. CRA-D No. 1693-DB of 2014 (O&M)

Rakesh @ Tinku

.... Appellant

versus

State of U. T. Chandigarh

... Respondent

2. CRA-D No. 1905-DB of 2014 (O&M)

Jagpal

.... Appellant

versus

U. T. Chandigarh

... Respondent

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

Present Mr. Jasdev Singh Mehndiratta, Advocate, for the appellant
in CRA-D No. 1693-DB of 2014 and
Mr. H. S. Jaswal, Advocate, for the appellant
in CRA-D No. 1905-DB of 2014.

Mr. Anil Kumar Lamdharia, Additional Public Prosecutor,
U. T. Chandigarh.

Rajiv Sharma, J.

1. Since common questions of law and facts are involved in these appeals bearing CRA-D No. 1693-DB and CRA-D No. 1905-DB of 2014, the same are being disposed of by a common judgment.

2. The present appeals are instituted against the judgment dated 9.9.2014 and order dated 11.9.2014, rendered by Sessions Judge, Chandigarh, in Sessions Case No. 444 of 21.11.2013, vide which accused

Rakesh @ Tinku and Jagpal, who were charged with and tried for the offence punishable under Sections 302/34 IPC, were convicted and sentenced as hereunder:-

<i>Name of the convict</i>	<i>Under Section</i>	<i>Sentence</i>
Rakesh @ Tinku	302/ 34 IPC	Imprisonment for life and to pay fine of ₹ 20,000/-. In default of payment of fine, to undergo further RI for two years.
Jagpal	302/ 34 IPC	Imprisonment for life and to pay fine of ₹ 20,000/-. In default of payment of fine, to undergo further RI for two years.

3. The case of the prosecution in a nutshell is that on 14.8.2013 a wireless message was received by Inspector Anokh Singh, SHO, Police Station, Sector-26, Chandigarh, that a dead-body was found in the jungle area near Kishangarh, U.T. Chandigarh. Inspector Anokh Singh along with his Gunman Constable Arun Kumar, reached the spot in Government vehicle. Kaka Singh, Chowkidar, Forest Department, got his statement recorded, to the effect that he was working in the Forest Department. He was on duty at 8.00 A.M. and was going to Bapu Dham Colony from Kishangarh in the jungle area. When he reached near Katchi lake, he noticed that one young boy was lying and lot of blood had scattered around him. The skull of the said person was badly damaged by someone. His statement is Ex.P2. CFSL Team was called at the spot. Spot was photographed. Formal FIR, Ex.P63, was registered. From the spot, one blood stained big stone, blue colour button, disposable syringe, empty bottle of Limca cold drink, blood stained silver colour chain and blood stained bush leaves were taken into possession by the police. Dead-body was sent for post-mortem examination. News was flashed in newspapers and Doordarshan TV Channel. Dead-body was sent to the mortuary of Government Multi Specialty Hospital, Sector-16, Chandigarh. On 16.8.2013, the dead-body

was identified as that of Deepak @ Deepu. On the same day, PW2 Shiv Kumar disclosed that extra-judicial confession had been made before him by accused Jagpal @ Jaggi. On the basis of disclosure statement, accused Jagpal @ Jaggi was arrested vide memo, Ex.P54. On 17.8.2013, accused Rakesh @ Tinku was also arrested vide memo, Ex.P55. They made disclosure statements, Ex.P56 and Ex.P57. The accused led the police party to the place where the murder was committed by them, from where blood stained stone was recovered. It was taken into possession after making separate parcels. Both the accused got recovered their clothes and the same were sent to Central Forensic Science Laboratory, Sector 36, Chandigarh. 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 denied the case of the prosecution. The accused were convicted and sentenced, as noticed above. Separate appeals have been filed by the appellants against the judgment and order of the learned trial Court.

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 and order 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 Rajnish Kumar testified that he was working as Electrician in Ambedkar Institute of Hotel Management, Sector-42,

Chandigarh. He, his elder brother Sushil Kumar along with his family, his mother and deceased Deepak @ Deepu were residing in the same house in Bapu Dham Colony. Deceased Deepak @ Deepu was working at a shop. Accused Jagpal @ Gaggi and Rakesh @ Tinku, were the friends of deceased Deepak @ Deepu. They were also residing in Bapu Dham Colony. When he was present in the house, accused Rakesh @ Tinku came and called Deepak @ Deepu. He took him outside, where accused Jagpal @ Gaggi was also standing. He saw the accused as well as his brother talking with each other and all three went away. Deepak @ Deepu did not come back on 13/14.8.2013. They did not enquire whereabouts of Deepak @ Deepu as earlier also he used to go with the accused for 2-3 days. On 14.8.2013, during the night, his mother was watching the television. She saw the news of death of one boy and observed that the clothes worn by the boy looked like the clothes worn by Deepak @ Deepu. His elder brother Sushil came to the house on 15.8.2013 and thereafter, his mother disclosed him about the news. Thereafter, they went to the Police Station, Sector-26, Chandigarh, to inform about missing of Deepak @ Deepu. He identified the dead-body of his brother. On 16.8.2013, the police conducted the inquest proceedings. His statement, Ex.P1, was recorded. He came to know that the accused had killed his brother in the forest area of Sector-26, Chandigarh. In his cross-examination, he categorically admitted that deceased Deepak @ Deepu was residing separately. He had made statement to the police on 16.8.2003 at about 11.30 A.M. in the police station. His statement was recorded only one time on 16.8.2013, which was signed by him. The purse shown to him by the police belonged to him, which was found from the dead-body, and not of his brother. No money or any item was kept by him in

the purse. He had given the said purse two days prior to the departure to his brother Deepak @ Deepu. He had identified the dead-body of his brother only on the basis of purse, which was shown to him. He did not know Shiv Kumar. He did not intimate anything to them rather he went to the police station to narrate the facts within his knowledge. He did not know when and where Shiv Kumar met the police and gave his statement. He did not attend the last rites including cremation of his deceased brother.

8. PW2 Shiv Kumar testified that on 15.8.2013 at about 8.00 P.M., he was present in the Transport Area, Chandigarh, when accused Jagpal @ Gaggi met him. They visited the wine shop in the Transport Area and took two bottles of beer. Accused Jagpal @ Gaggi told him that he had committed a wrong act. He further enquired from him what wrong act had been committed by him. Then accused Jagpal @ Gaggi confessed that accused Tinku, present in the Court, called Deepak @ Deepu from his residence and thereafter took him towards the jungle area in Sector-26, Chandigarh and Jagpal @ Gaggi also followed them. They went inside the jungle where scuffle took place between Deepak @ Deepu and Jagpal @ Gaggi. Accused Tinku gave a brick blow on the head of Deepak @ Deepu. They both killed Deepak @ Deepu. Thereafter, they changed their clothes and went to watch movie. In his cross-examination, he admitted that he gave statement to the police in the morning on 16.8.2013 in Bapu Dham Police Post, Sector-26, Chandigarh. He categorically admitted that he had not informed Sunny, the brother of deceased Deepak @ Deepu, regarding the murder of his brother by the accused. He also admitted that the statement, which was signed by him and recorded by the police, was neither signed by lady police officer nor by *munshi*. He had seen the entire judicial file, but

the statement, which was recorded by him, was not available in the same.

9. Kaka Singh, who had seen the dead-body first on 14.8.2013 at 8.00 A.M. in the forest area appeared as PW3. According to him, the blood was oozing from the injuries inflicted on the body. Someone had killed him. He made statement, Ex.P2.

10. PW4 Dr. Dasari Harish conducted the post-mortem examination on the body of deceased Deepak @ Deepu. According to him, the cause of death was as a result of combined effect of cranio cerebral damage and haemorrhage and shock as a result of blunt force impact to head vide injuries no. 1 and 2. Both the injuries were sufficient to cause death in ordinary course of nature. The probable time between injury and death was recent and the time between death and post-mortem examination was 3-4 days. The post-mortem report was proved as Ex.P6. In his cross-examination, PW4 Dr. Dasari Harish admitted that the weapon of offence was not shown to the team of the doctors to seek opinion as to whether the injuries found on the person of the deceased could be caused with the alleged weapon. This witness also deposed that there was a ligature mark present on the upper neck of the dimension 28 x 1 cm along with the injuries present on the body, which was described in the main report.

11. PW9 SI Inderpal deposed that on 14.8.2013, he was working as Incharge, Mobile Forensic Team, Chandigarh Police. On that day, they went to the spot. They collected one big blood stained stone, one blue colour button of shirt, disposal syringe, cover of commander gold cigarette packet, empty cold drink bottle of limca, purri jarda, handkerchief with one blood stained chain of silver colour, blood stained soil, blood stained leaf and bushes from near the dead-body.

12. PW10 SI Sukhdial Singh deposed that on 14.8.2013 he along with Inspector Anokh Singh visited the place of occurrence. Mobile Forensic Team of Chandigarh Police was also called for at the spot. From the spot, they collected one big blood stained stone, one blue colour button of shirt, disposal syringe, cover of commander gold cigarette packet, cold drink bottle limca empty, purri jarda, handkerchief with one blood stained chain of silver colour, blood stained soil, blood stained leaf and bushes from near the dead-body.

13. PW11 Sushil Kumar is the brother of deceased. He deposed that the accused were the friends of his brother. On 13.8.2013, he had gone to Himachal Pradesh in the morning and returned on 15.8.2013 at about 10.00 P.M. His brother Rajnish had told him that his brother Deepu (since deceased) did not come back since 13.8.2013 and had gone with accused Tinku and Gaggi. In his cross-examination, he admitted that Deepak did not leave the house in the company of any of the accused in his presence. He also admitted that whatever was told to him by his mother and brother, the same had been told by him in his examination-in-chief although he had no personal knowledge of the sequence of events narrated by him in his statement, Ex.D2 or in his examination-in-chief. Shiv Kumar was known to them as he was residing in the close vicinity of their house. His brother Rajnish had brought Shiv Kumar in the police post to get his statement recorded. He deposed that the accused had committed the murder of his brother Deepak @ Deepu as the accused were suspecting illicit relations of deceased Deepak @ Deepu with sister-in-law (*bhabhi*) of accused Jagpal @ Gaggi.

14. PW12 Raj Kumar @ Raju deposed that on 13.8.2013 at about 7.15 P.M., he was going towards Manimajra from Sector-26, Chandigarh. He was son of uncle of deceased Deepak @ Deepu. At that time, he had seen accused Jagpal @ Gaggi and Rakesh @ Toni, present in the Court, along with Deepak @ Deepu, going towards forest area behind Police Line, Sector-26, Chandigarh. On 15.8.2013, Rajnish Kumar, brother of deceased Deepak @ Deepu told that Deepak was missing since the night of 13.8.2013. Then he disclosed him that he had seen Deepak @ Deepu along with the accused going towards Forest Area, behind Sector-26, Chandigarh. In his cross-examination, he admitted that deceased was son of his real uncle. His statement was not recorded by the police at any point of time.

15. PW13 SI Varinder Singh deposed that on 16.8.2013, he was posted in Police Station, Sector-26, Chandigarh, and Inspector Anokh Singh, arrested accused Jagpal @ Gaggi. He made disclosure statement, Ex.P56. On 17.8.2013, Inspector Anokh Singh arrested accused Rakesh @ Tinku. He also suffered disclosure statement, Ex.P58.

16. PW15 Inspector Anokh Singh, SHO, Police Station, Sector-26, Chandigarh, reached the spot on 14.8.2013. PW3 Kaka Singh met him. He made endorsement on his statement, Ex.P62, on the basis of which FIR, Ex. P63, was recorded by SI Varinder Singh. With the help of team of Mobile Forensic Science, from the spot he took into possession one big blood stained stone, one blue colour button of shirt, disposal syringe, cover of commander gold cigarette packet, cold drink bottle limca empty, purri jarda, handkerchief with one blood stained chain of silver colour, blood stained soil, blood stained leaf and bushes from near the dead-body. Dead-body was sent for post-mortem examination. He conducted the inquest proceedings,

Ex.P5. He interrogated the accused. They made disclosure statements, Ex.P56 and Ex.P57. They got recovered small blood stained stone. Both the accused led the police party to the Dispensary, Manimajra, where from the bushes, they got recovered blood stained clothes, which were taken into possession. He had also seen the small stone, Ex.P75, which was taken into possession by him vide memo. Ex.P60. He admitted in his cross-examination that no independent witness was joined from the public at the time of recording of disclosure statements of the accused.

17. PW16 D. P. Gangwar deposed that on the basis of physical, microscopic and Ultra Violet examination of the button marked as Ex.QB/1, with the buttons of shirt, Ex.2A, marked as Ex.SB/1 to Ex.SB/7, the questioned button marked as QB/1 was similar with the buttons of the shirt marked as SB/1 to Ex.SB/7 in respect of their colour, design, thickness and UV fluorescence.

18. PW17 Ms. Sunita deposed that she had examined the parcels from 1.10.2013 to 15.10.2013, as mentioned in her report. After examination of the exhibits from 1.10.2013 to 15.10.2013, she was of the opinion that human blood of Group 'O' was detected from Bio 122/13 Ex.3, 4A, 4B, 4C, 5A, 5B and 6A, 6B. She proved the report, Ex.P73.

19. The case of the prosecution is that the accused visited the house of deceased Deepak @ Deepu. They took him along with them to the forest area of Sector-26, Chandigarh, where he was killed. PW1 Rajnish Kumar deposed that accused Rakesh @ Tinku had come to their house and had taken away Deepak @ Deepu with them. However, in his cross-examination, he admitted that deceased Deepak @ Deepu was residing separately.

20. PW11 Sushil Kumar, is the brother of deceased. According to him, on 13.8.2013 he had gone to Himachal Pradesh and returned on 15.8.2013 at about 10.00 P.M. In his cross-examination, he admitted that whatever was told to him by his mother and brother, the same had been told by him in his examination-in-chief. The motive behind the murder given by him was that Deepak @ Deepu had illicit relations with sister-in-law (*bhabhi*) of accused Jagpal @ Gaggi.

21. PW12 Raj Kumar @ Raju has been introduced as witness of '*last seen together*'. He deposed that on 13.8.2013, he had seen accused Jagpal @ Gaggi and Rakesh @ Toni, along with deceased Deepak @ Deepu, going towards forest area behind Police Line, Sector-26, Chandigarh. On 15.8.2013 he disclosed this fact to PW1 Rajnish Kumar, brother of deceased Deepak @ Deepu. In his cross-examination, he admitted that he had not disclosed to the brother of the deceased that he had seen the accused and the deceased going towards the jungle area nor he suggested him to search for him in the jungle area.

22. Accused Jagpal @ Gaggi allegedly made extra-judicial confession before PW2 Shiv Kumar on 15.8.2013. He stated that he and Rakesh @ Tinku committed the murder of Deepak @ Deepu. Thereafter, they changed their clothes and went to see movie. In his cross-examination, PW2 admitted that he went to the police in the morning on 16.8.2013. He further admitted that he had not informed Sunny brother of deceased Deepak @ Deepu. He also admitted that the statement signed by him was neither signed by the lady police officer nor by *munshi*. He had seen the entire judicial file, but the said statement was not available therein. In case extra-judicial confession was made before him, he should have immediately

told this fact to the family members of the deceased, since he was also living in the same locality i.e. Bapu Dham Colony. PW2 Shiv Kumar is not a man of authority before whom the extra-judicial confession was allegedly made by accused Jagpal @ Gaggi. It is settled law that extra-judicial confession should have been before a person of authority within a reasonable period. Extra-judicial confession is a weak piece of evidence and if the same is defective, there would be no difficulty in rejecting the same

23. Their Lordships of Hon'ble the 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 a person in authority and which is free from any suspicion as to its voluntary character and has also a ring of truth in it is admissible in evidence against the accused and deserves to be acted upon. But in the process of proof of a confession the Court must be satisfied that it is voluntary, it does not appear to be the result of inducement, threat or promise as contemplated by the section and the surrounding circumstances do not indicate that it is inspired by some improper or collateral consideration suggesting that it may not be true. The Court must scrutinize all the relevant factors, such as, the person to whom the confession was made, the time and place of making it, the circumstances in which it was made and finally the actual words. Their Lordships have held as under:

“9. The trial court was not favourably impressed by the testimony of Ganga (P.W. 4) though it felt convinced that on the day following the disappearance of the deceased he had knowledge both of the commission of the offence and of the place where the dead body was lying. That court did not rely on his testimony in regard to the extra-judicial confession because it was considered incredible. The High Court on appeal disagreed with the

trial court in its appreciation of the evidence of P.W. 4. According to the High Court the evidence of P.W. 4 was corroborated by the evidence of P.W. 13 and P.W. 25. The extra-judicial confession was, therefore, held to be admissible and trust Worthy. Before us it was contended, that the extrajudicial confession said to have "been made to P.W. 4 is inadmissible and in any event without corroboration in material particulars from independent source it is unsafe to act upon it. It was emphasised that P.W. 4 was at one stage of the investigation suspected of complicity in this murder and, therefore, he should be treated no better than an accomplice. In our opinion, this criticism is not justified. An unambiguous confession, if admissible in evidence, and free from suspicion suggesting its falsity, is a valuable piece of evidence which possesses a high probative force because it emanates directly from the person committing the offence. But in the process of proof of an alleged confession the court has to be satisfied that, it is voluntary, it does not appear to be the result of inducement, threat or promise as contemplated by s. 24, Indian Evidence Act and the surrounding circumstances do not indicate that it is inspired by some improperly or collateral consideration suggesting that it may not be true. For this purpose, the court must scrutinise all the relevant factors, such as, the person to whom the confession is made, the time and place of making it, the circumstances in which it is made and finally the actual words. In the case in hand it is quite clear that P.W. 4 is not a person in authority. There can thus be no question of any inducement, threat or promise rendering the confession irrelevant. Nor has any cogent reason' been suggested why the appellant should have made an untrue confession to P.W. 4 within 24 hours of the disappearance of the deceased. On the other hand, the

appellant appears to have been impelled by some inner urge to take the assistance of P.W. 4, his real nephew, to go to the place of occurrence to see as to what had happened to the dead body of his victim. Such behaviour cannot be considered unnatural. The confession appears to us to be free from any taint which would throw suspicion on its voluntary character and it has a ring of truth in it. The fact that during the investigation P.W. 4 was suspected of being involved in the murder would also not cast any doubt on the voluntary character of the confession or on its true nature because it is the knowledge of P.W. 4 derived from this very confession which perhaps invited suspicion on him. We do not consider this to be a cogent ground for holding that P.W. 4 had any motive to concoct the story of confession. This confession is, therefore, admissible in evidence and being true, deserves to be acted upon. The words used are quite clear and 'admit of no doubt of the appellant's guilt. And then though the evidence of P.W. 4 does not need any corroboration we find that corroboration in material particulars is forthcoming on the record. The existence of the dead body and all the other articles at the place where they were later found and the evidence of Basappa (P.W. 13) which proves the visit of the appellant and P.W. 4 to the spot on Saturday following the disappearance of the deceased furnish strong corroboration. The High Court was thus quite right in relying on the extra-judicial confession made to P.W. 4. The confessions said to have been made to P.W. 31 and to Abdul Rahman (P.W. 22) stand on a different footing. Both the courts below have not considered it safe to rely on these confessions and we do not find any sufficient reason for disagreeing with them.”

24. Their Lordships of Hon'ble the 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.”

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

“9. P.Ws. 2 and 3 are the witnesses who have testified about the extra-judicial confession said to have been made by the appellant before them. The evidence relating to extra-judicial confession, in the very nature of things, is a weak piece of evidence, as observed by the Supreme Court in the case of State of Punjab v. Bhajan Singh. The evidence of witnesses with regard to an extra-judicial confession must not lack plausibility and must inspire the confidence of the court before the same is accepted. A Division Bench of this Court consisting of one of us, in the case of Buti alias Gunasagar behera v. State of Orissa 53 Cut LT 130 : 1982 Cri L1 938 has held that the value of the evidence as to the extra-judicial confession like any other evidence depends upon the veracity of the witnesses to whom it is made and it is not an invariable rule that the court should not accept the evidence if not the actual words but the substance is given by the witnesses. Reliance had been placed on the principles laid down by the Supreme Court in the cases of Mulk Rai v. State of Uttar Pradesh AIR 1959 SC 902 : 1959 Cri LJ 1219 and Maghar Singh v. State of Punjab.”

26. Their Lordships of the Hon’ble Supreme Court in C.K. Raveendran vs State of Kerala, AIR 2000 SC 369 have held that when prosecution witness failed to reproduce extra-judicial confession made to

him in exact words or even in the words as nearly as possible and further his statement showing that he consumed liquor alongwith accused and thereafter accused disclosed the entire incident to him, statement by accused cannot be said to be voluntary and truthful one. Their Lordships have held as under:

“4. It is contended on behalf of appellant Raveendran that the circumstances relied upon by the High Court not only have not been established by the prosecution beyond reasonable doubt, but also even if all the circumstances can be said to have been established, all of them taken together do not complete the chain and they do not unequivocally point to the guilt of the accused and exclude any hypothesis consistence with his innocence. It is not necessary for us to discuss in detail the law relating to the circumstantial evidence, suffice it to say that prosecution must prove each of the circumstances, having a definite tendency pointing towards the guilt of the accused and though each of the circumstances by itself may not be conclusive but the cumulative effect of proved circumstances must be so complete that it would exclude every other hypothesis and unequivocally point to the guilt of the accused. When we examine the circumstances said to have been established in the light of the aforesaid principle, We find sufficient force in the contention of the learned counsel for the appellant that the circumstances thus proved, do not point but unerringly to the guilt of the accused; It is in this context, the most important question is the medical evidence. The dead body of Yeshoda was found on 30th of March, 1988 and the post-mortem was conducted on 1.4.1988. The doctor PW I9, who conducted the autopsy, while issuing the post-mortem certificate Exh. P10, categorically stated that the exact cause of death cannot be ascribed and

reserved his opinion, pending the result of chemical analysis. On getting the report of the Assistant Chemical Examiner Exh. P11, the said doctor PW19 gave a final report as per Exh. PI2, which indicated that the deceased sustained head injury, which if ante-mortem, could result in death and the injury, if ante-mortem, could be caused by hitting with stones like M.Os.11 or 12. The said report further revealed that nobody could say that there was violence on the neck of the deceased or not. When the doctor itself has not been able to give a definite opinion as to the injuries found on the dead body, whether could be ante-mortem or post-mortem and the dead body itself was found on 30th of March, 1988 and Yeshoda alleged to have been seen in the company of accused last on 3.3.88, it is difficult for us to sustain the conclusion of the High Court that the death of Yeshoda can only be homicidal. There is not an iota of material from which the High Court could have jumped to the aforesaid conclusion and we, therefore, have no hesitation to hold that the conclusion of the High Court that Yeshoda met a homicidal death is wholly erroneous. The extra-judicial confession as deposed by PW15 has not been relied upon by the learned Sessions Judge and High Court also came to the conclusion that it is difficult to rely upon the same, as the exact words or even the words as nearly as possible have not been reproduced by PW15. That apart, as has been stated earlier, even the evidence; of PW15 indicates that Raveendran and he went to arrack shop and consumed liquor, where-after Raveendran disclosed the entire incident and therefore, such statement cannot be said to be a voluntary and truthful one and on the other hand it is the outcome of the consumption of liquor, both by the witness as well as the accused, if at all he can be said to have made the statement. In this view of the matter, the so-called extra-judicial confession has to be

excluded from the purview of consideration for bringing home the charge. The most important circumstance which can be said to have been established by the evidence of PWs 7 and 8 is that they saw Raveendran with Yeshoda on 3rd of March, 1988 in a jeep and that jeep was found to be moving around on different places on the same day, While analysing the different witnesses who deposed about seeing the jeep on 3rd of March, 1988 at different places at different point of time, the High Court itself has noticed that the witnesses do not agree with each other. so far as the time factor is concerned. That apart, the so-called evidence of PWs 10 and 11 who had deposed that at 5 P.M. on the same day, some : people came in a jeep and took tea from the Grant Hotel, is of no consequence and cannot be held to be incriminating in nature, as they never knew accused Raveendran nor had there been any earlier test identification parade and, therefore, the said evidence cannot be utilised to bring home the charge against accused Raveendran. Necessarily, therefore, the only evidence of PWs 7 and 8 is to the effect that on 3rd of March, 1988 at 9.30 A.M., Yeshoda was seen with Raveendran in the jeep. So far as the motive is concerned, the prosecution case is rather hazy and the High Court itself has brushed aside the same on the ground that the motive is not an essential ingredient of an offence. It is no doubt true that through some witnesses, the prosecution wanted to establish that on an earlier occasion, Raveendran made an attempt to kill Yeshoda by hitting her with jeep but could not succeed and Yeshoda escaped, but that circumstance also is through the evidence of PW15, who had testified the so-called extra-judicial confession and has not been relied upon and it would be highly unsafe to rely upon the testimony, even for the alleged conduct of accused Raveendran.

PW23 who was living in an adjacent house of Yeshoda at Kappad, in his evidence, made a statement that mother of Raveendran had once offered Raveendran that she would purchase a van for him, if he agrees to divorce Yeshoda but that by itself can hardly be said to be establishing a motive on the part of accused Rayeendran. In our opinion, therefore, on the materials on record, the prosecution has not been able to establish any motive on the part of the accused Raveendran for committing the crime. In this state of affair, the so-called recovery of the wrist watch of the deceased, on the basis of statement made by accused Raveendran can hardly be said to be a clinching circumstance for coming to the conclusion that the prosecution case has been proved beyond reasonable doubt. In view of our conclusion, as aforesaid, we have no hesitation to come to the conclusion that the prosecution case has not been proved beyond reasonable doubt as against accused Raveendran and, therefore, the conviction of Raveendran of the charge under Section 302 as well 201 IPC, cannot be sustained. We accordingly, set aside the conviction and sentence of accused Raveendran and acquit him of the charges levelled against him. He be set at liberty forthwith, unless required in any other case.”

27. The motive attributed to the accused is that deceased Deepak @ Deepu had illicit relations with sister-in-law (*bhabhi*) of accused Jagpal @ Gaggi. This fact has been brought for the first time in the statement of PW11 Sushil Kumar during trial. This fact has neither been mentioned in the statement made before the police nor in the FIR.

28. The case is based on circumstantial evidence. The prosecution has to prove the case based on circumstantial evidence and the chain must be complete. The motive also plays an important role in the case based on

circumstantial evidence. The motive given by the prosecution is that deceased Deepak @ Deepu had illicit relations with sister-in-law (*bhabhi*) of accused Jagpal @ Gaggi, which resulted in his murder. The motive attributed to the accused has not been proved.

29. PW12 Raj Kumar @ Raju deposed that he had seen the deceased in the company of the accused on 13.8.2013. According to him, he had told this fact to PW1 Rajnish Kumar, brother of deceased Deepak @ Deepu on 15.8.2013. However, in his statement, PW1 Rajnish Kumar has not stated that PW12 had told this fact to him.

30. The police has not joined any independent witness when disclosure statements were allegedly made by the accused. It has also come in the statement of PW3 Kaka Singh that only the stone was recovered by the police from the spot and nothing else was found and recovered by the police, yet the police has recovered from the spot, one blood stained big stone, blue colour button, disposable syringe, empty bottle of Limca cold drink, blood stained silver colour chain, blood stained bushes leaves, etc. but these were not sent for chemical examination.

31. PW17 Ms. Sunita proved CFSL report, Ex.P73. As per Ex.P73, human blood group 'O' was detected from Bio 122/13 item (s)# Ex-3, 4A, 4B, 4C, 5A, 5B, and Ex. 6A, 6B. Human blood was detected from Bio 122/13 item (s)# Ex-1, 2, and 4D. However, results of blood group were not detected on these exhibits. Blood was not detected from the Bio 122/13 item (s) # Ex- 5C and 6C.

32. In view of the aforesaid discussed evidence, the prosecution has failed to prove the case against the appellants beyond reasonable doubt. Accordingly, the appeals filed by them are allowed. The judgment dated

9.9.2014 and order dated 11.9.2014, are set aside. The appellants are acquitted of all the charges framed against them. They be released forthwith, if not required in any other case.

(Rajiv Sharma)
Judge

08.2.2019
vs

(Kuldip Singh)
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No