

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

CRA-D No. 296-DB of 2003 (O&M)

Reserved on : 9.1.2019

Date of decision : **16.1.2019**

Sanjiv Kumar @ Sanju

.... Appellant

versus

State of Haryana

... Respondent

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

Present Mr. R. S. Cheema, Senior Advocate with
Mr. Satish Sharma, Advocate, for the appellant.
Ms. Shubhra Singh, Additional Advocate General, Haryana.
Mr. Sudhir Sharma, Advocate, for the complainant.

Rajiv Sharma, J.

1. This appeal is instituted against the judgment dated 24.1.2003 and order dated 25.1.2003, rendered by learned Sessions Judge, Yamuna Nagar at Jagadhri, in Sessions Case No. 42 of 1999/2002, vide which accused Sanjiv Kumar alias Sanju was charged with and tried for the offence punishable under Section 302 of the Indian Penal Code. He was convicted and sentenced under Section 302 IPC to undergo life imprisonment.

2. The case of the prosecution in a nutshell is that PW6 Raj Kumar had lodged a complaint to the effect that on the intervening night of 19/20.12.1998, his son Parvesh Kumar (deceased) took his meals as usual. On the following day i.e. in the morning of 20.12.1998, Parvesh Kumar was

found missing. Efforts were made to trace him out. On 31.12.1998, Sanjiv Kumar @ Sanju son of Suresh Kumar disclosed to Raj Kumar that when he went in to the sugarcane field of Jai Ram to ease himself, he saw a dead body and when he went near, he found the dead-body of Parvesh Kumar lying there. On this information, he along with Prem Singh, Suresh Kumar and other persons went to the spot. Neck was tied with shirt. PW Raj Kumar left for police station for lodging the report. He lodged the report. Site plan was prepared. The dead-body was sent for post-mortem examination. The matter was investigated and challan was put up after completion of all the codal formalities.

3. The case of the prosecution further is that the accused had made a disclosure statement before PW7 Mohinder Singh that he had killed Parvesh Kumar.

4. The prosecution examined a number of witnesses in support of the case. The statement of the accused was also recorded under Section 313 Cr.P.C. He denied the case of the prosecution. He was convicted and sentenced, as noticed above. Hence, the present appeal.

5. 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 and the complainant 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. PW5 Dr. B. S. Deswal along with Dr. Ashwani Bhatnagar and Dr. Deepan Jain had conducted the post-mortem examination on 1.2.1999.

They had noticed the following injuries on the body of the deceased:-

1. White coloured shirt was tied around the neck. Knot was present on right side of the neck. Shirt was cut from posterior side of neck with knot intact. The knot was single. There were ligature marks on neck horizontally placed all around the neck. The width of the ligature marks was 4 cm in the knot area and 3 cm in the rest of the ligature marks. Skin was lacerated. Haemorrhage was present in subcutaneous tissue under ligature mark. Hyoid cartilage was broken.
2. There was 4 cm x 3 cm wound in left temporal region. Temporal bone was visible. Haemorrhage of wound was present. On dissection skull bone was normal. Brain matter was congested. No internal haemorrhage was seen.
3. Right eye ball was missing. Both lids were normal.
4. Right ear gnawed.”

8. As per opinion of the doctors, the cause of death was asphyxia due to strangulation. All the injuries were ante mortem in nature and sufficient to cause death in natural course of events. The duration between injuries and death was within few minutes and the duration between death and post-mortem was 36 hours to one week. He also proved inquest report, Ex.PD. The police again on 8.3.1999, moved an application, Ex.PG, and sought opinion regarding strangulation with *chunni*. Their opinion is Ex.PG/1. *Chunni* is Ex.P11. They opined that the possibility of *chunni* (Ex.P11) being the ligature for causing the death could not be ruled out. In his cross-examination, he admitted that if forcible strangulation is done then in normal course the presence of injury on the mouth, face and the areas around the neck could not be ruled out. No such injury was found on the

dead-body of Parvesh Kumar. Injuries no. 3 and 4 were post-mortem injuries. He also admitted that the death could have been taken place between 25.12.1998 and 30.12.1998. He further deposed that the dead-body was likely to develop maggots after 36 hours of the death. The learned Court had also put a question to which he explained that injuries no. 3 and 4 were by mistake mentioned as ante-mortem but actually these were post-mortem injuries. He also explained that difference between an ante-mortem injury and post-mortem injury is that in case of ante-mortem injury, the blood would be found underneath the injury in the subcutaneous tissue. He admitted that no blood was found under the injuries no. 3 and 4.

9. PW6 Raj Kumar is the father of the deceased Parvesh Kumar. According to him, on 19/20.12.1998, the deceased was sleeping in the *baithak* alone after taking meal as usual. On the following day at about 7.30 A.M., he found that Parvesh Kumar was not on the bed. They made efforts to trace him out but failed to locate him. On the same day at 5.30 P.M., he lodged the report with the police. They kept on searching him. On 31.12.1998 at about 8.00 P.M., Sanjiv Kumar @ Sanju came to his house. He identified Sanjiv Kumar @ Sanju in the Court. He told him that at about 11.30 A.M., he went to ease in the sugarcane crop of Jai Ram, where he saw one dead-body. When he closely looked on the dead-body, he found the same of Parvesh Kumar @ Sethi. PW6 Raj Kumar then accompanied with Prem Singh, Jai Ram, Suresh and the accused went to the spot. He identified the dead-body of his son Parvesh Kumar. In his cross-examination, he admitted that his daughter Sunita is married with Jaivir son of PW7 Mohinder Singh, resident of village Bhut Majra. He also admitted that village Bhut Majra is towards east of Ladwa-Indri Road. He denied the

suggestion that village Bhut Majra is situated 7 kilometers away from the main Ladwa-Indri Road. Volunteered said it is 3 kilometers. He admitted that village Bhut Majra is 7 kilometers away from Ladwa and Ladwa is at a distance of 30 kilometers away from his village. He was confronted with his previous statement (Ex.PA) to which he stated that he had not recorded in his statement before the police that his son was wearing *Khes*. He has also admitted that he had not stated before the police about the time accused Sanjiv Kumar had gone to ease himself in the sugarcane fields of Jai Ram.

10. PW7 Mohinder Singh is the material witness before whom the extra-judicial confession was made by the appellant on 20.1.1999. According to him, on 19.12.1998, he went to Gurkul Narson Haridwar to meet his son, who was studying there. He came back on the motorcycle. His motorcycle was punctured. Then he walked along with punctured motorcycle for few kilometers and then it was got repaired. At about 12.30 midnight, he reached Yamuna Nagar. Then he thought to stay overnight at the relative's house in village Sasoli. At about 1.00 A.M., he saw a boy going ahead of him. He blew horn. He recognised the boy as Sanjiv Kumar. He thought that he might be coming after seeing movie so he thought it proper not to accost him. On 20.1.1999, accused Sanjiv Kumar came to him and told that on 19.12.1998 at about 10.40 P.M., he took Parvesh Kumar, who used to sleep in his *baithak*, on the pretext of meeting with a girl with intention to kill him. He also disclosed that he killed Parvesh Kumar by strangulating him with *chunni*, which was with him, as he used to have an evil eye on his sister. In order to destroy evidence, he replaced the *chunni* from his neck and tied his neck with shirt of the accused. On 31.12.1998, he informed the factum of presence of dead-body of deceased Parvesh Kumar

to his father so that nobody have suspicion upon him. He took the accused to the police and in the way near I.T.I. Chowk, turning of Sasoli, police party met him. At that time, Naresh and Raj Kumar were talking with the police. In his cross-examination, he admitted that he could not give the exact number of motorcycle on which he was travelling on that day. However, he had given a vague version as 4586 or 4386. The initial number was given as HR07. He had received the motorcycle in the marriage of his son, which was solemnised on 1.1.1996. He got the motorcycle repaired at about 12.00 midnight from Kalanour.

11. PW8 Naresh Kumar deposed that on 20.1.1999, he was going along with his father for some personal work and were present near ITI Chowk. They met police party. They stopped near them and enquired about the progress of the case. PW7 Mohinder Singh came on motorcycle along with accused. His name was Sanjiv Kumar. He handed over Sanjiv Kumar to the police. Mohinder Singh made the statement before the police and thereafter left the spot. The accused in his presence made a disclosure statement that he had kept concealed one purse, one *chunni* and pair of V shape *chappal*. He offered to get the same to be recovered. Disclosure statement is Ex.PJ. On the same day, he again met the police near turning of Ranjit Garden in the area of village Sasauli. The accused was with the police at that time. The accused led the police party to the disclosed place i.e. fishery pond. After walking three steps, he got recovered the aforesaid articles. *Chunni* is Ex.P11. Purse is Ex.P15. It contained a driving licence of deceased Parvesh Kumar (Ex.P15/A.). He admitted that when his brother was missing, accused Sanjiv Kumar was student of matriculation in Khalsa School, Jagadhri Workshop. He also admitted that father of accused, his

uncle Prem Singh, Nasib Singh and accused himself helped them in tracing Parvesh Kumar deceased. Interrogation of accused was done while standing near the Jeep. No person from the general public gathered at the spot because the police had already given threat (*dabka*) to them. The police continued the paper work from 11.30 A.M. to 1.00 P.M. The police has not called any independent person to join the investigation.

12. PW9 Narinder Singh testified that on 31.12.1998, he was present at T. Point Sasauli along with police officials when at about 11.00 P.M. PW6 Raj Kumar along with some other villagers came to him and made a statement, Ex.PA. It was read over to him and he signed the same. He made endorsement, Ex.PA/2, on it and sent the same to the police station for registration of the case. Thereafter, he accompanied Raj Kumar and others and reached the fields of Jai Ram. Dead-body of Parvesh Kumar @ Sethi was lying in the sugarcane fields of Jai Ram. Photographs were taken. The dead-body was sent for post-mortem examination. On 20.1.1999, he was present in front of ITI on main Jagadhri Workshop- Yamuna Nagar Road, where Mohinder Singh resident of Bhut Majra came and made statement before him. He also produced accused Sanjiv Kumar @ Sanju. At that time Naresh Kumar was also present. The disclosure statement, Ex. PJ, was recorded by him, which was signed by Naresh Kumar and HC Zile Singh as marginal witness. He thereafter produced the accused in the Court and moved application for police remand. The Court granted remand upto 25.1.1999. In his cross-examination, he stated that he did not remember the time when he left the police station for patrol duty on 31.12.1998.

13. The case of the prosecution hinges on the extra-judicial confession made by the appellant before PW7 Mohinder Singh. The

incident had taken place on the intervening night of 19/20.12.1998. The precise case of the prosecution as per the evidence discussed hereinabove is that Parvesh Kumar (deceased) went to sleep after taking his meals as usual in the *baithak*. The appellant persuaded him to go out to meet one girl, with an intention to kill him. The accused killed Parvesh Kumar by strangulating with *chunni*. *Chunni* is Ex.P11. Thereafter, he replaced the *chunni* with shirt of the accused. On 31.12.1998, the accused went to inform the father of the deceased PW6 Raj Kumar and told him that he had seen the dead-body of his son in the sugarcane fields of Jai Ram. Thereafter, he made extra-judicial confession before PW7 Mohinder Singh.

14. PW6 Raj Kumar has deposed that on 19/20.12.1998, his son Parvesh Kumar (deceased) had gone to sleep in the *baithak* after taking meals as usual. In the morning, Parvesh Kumar was not on the bed. They made efforts to trace him out but failed. On 31.12.1998 at about 8.00 P.M., Sanjiv Kumar @ Sanju came to him and told that at about 11.30 A.M., he had gone to ease in the sugarcane crop of Jai Ram, where he saw one dead-body. The dead-body was of Parvesh Kumar @ Sethi. However, in his cross-examination, he admitted that he had not stated in his statement, Ex.PA, before the police that as to at what time accused Sanjiv Kumar had gone to ease himself in the sugarcane fields of Jai Ram. He has also admitted in his cross-examination that village Bhut Majra is situated 7 kilometers away from the main Ladwa-Indri Road and Ladwa is 30 kilometers away from his village.

15. PW17 Mohinder Singh deposed that accused Sanjiv Kumar @ Sanju came to him on 20.1.1999. As per his statement, on 19.12.1998, he was coming back from Gurkul Narson Haridwar after meeting his son. He

came back on the motorcycle. On the way his motorcycle was punctured. Then he walked along with punctured motorcycle for some kilometers and then it was got repaired at Kalanour. At about 1.00 A.M., when he was going to stay night at the relative's house in village Sasoli, he saw a boy going ahead from him. He blew horn. He recognised the boy as Sanjiv Kumar. The Court can take judicial notice of the fact that generally workshops are closed at about 10.00 P.M. and PW Mohinder Singh got his motorcycle repaired at about 12.00 midnight from Kalanour at the border of Haryana and Uttar Pradesh. He was not a man of authority. There is no occasion for the accused to visit him on 20.1.1999 and make extra-judicial confession and tell the manner in which he had committed the murder of Parvesh Kumar by strangulating him first by *chunni* and thereafter replacing the same with the shirt of the deceased. There was no occasion for the accused to use *chunni* as ligature. The explanation of the prosecution was that the accused had killed Parvesh Kumar with *chunni* as he used to have an evil eye on his sister. This explanation cannot be accepted. The incident has happened on 19.12.1998. Dead-body was got recovered by the accused himself on 31.12.1998 but the extra-judicial confession was made on 20.1.1999.

16. As per PW6 Raj Kumar, his daughter Sunita was married to Jaivir son of PW7 Mohinder Singh, resident of village Bhut Majra. The alleged extra-judicial confession was made by the accused before PW7 Mohinder Singh. PW6 Raj Kumar is closely related to PW7 Mohinder Singh. The distance between the village of the complainant Raj Kumar and PW7 Mohinder Singh was more than 35 kilometers. 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

17. 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.”

18. 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.”

19. 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 LJ 938 has held that the value of the evidence as to the extra-judicial confession like any other evidence depends upon the veracity of the witnesses to whom it is made and it is not an invariable rule that the court should not accept the evidence if not the actual words but the substance is given by the witnesses. Reliance had been placed on the principles laid down by the Supreme Court in the cases of *Mulk Rai v. State of Uttar Pradesh* AIR 1959 SC 902 : 1959 Cri LJ 1219 and *Maghar Singh v. State of Punjab*.”

20. 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.”

21. According to the deposition of PW5 Dr. B. S. Deswal, the cause of death was asphyxia due to strangulation. The post-mortem was conducted on 1.1.1999. According to the initial opinion of the doctors, all the injuries were ante mortem in nature and sufficient to cause death in natural course of events. The duration between injuries and death was within few minutes and the duration between death and post-mortem was 36 hours to one week. Thereafter, the police moved an application (Ex.PF), seeking opinion about the duration between death and post-mortem. The opinion given was that because of severe cold conditions prevailing in that period, the possibility of death being 12 days old on the day of post-mortem examination could not be ruled out. They made endorsement as Ex.PF/1. They were aware of the winter season when the initial opinion was given but they altered their own opinion vide Ex.PF/1. The police again moved an application on 8.3.1999, Ex.PG, seeking opinion whether strangulation was with *chunni*. They opined the possibility of strangulation with the help of

chunni (Ex.P11). The police has not removed fibers from the neck of the deceased to link it with ligature i.e. *chunni*.

22. We do not approve the conduct of the team of the doctors, who had conducted the post-mortem examination and gave different opinions on the different dates on the mere asking of the police. Initially the opinion given by the doctor was that all the injuries were ante mortem in nature and sufficient to cause death in natural course of events. The time between injuries and death was within few minutes and the time between death and post-mortem was 36 hours to one week. On 21.1.1999, police again moved an application, Ex.PF, and sought opinion about the duration between death and post-mortem. They opined that because of severe cold conditions prevailing in that period, the possibility of death being 12 days old on the day of post-mortem examination could not be ruled out. Endorsement to this effect is Ex.PF/1. Initially the doctor said that injury nos. 3 and 4 were ante mortem in nature, however, later on, when question was asked by the Court, it was opined that injuries no. 3 and 4 were by mistake mentioned as ante-mortem but actually these were post-mortem injuries.

23. The case is based on circumstantial evidence. The prosecution has to prove the entire chain of events. Motive plays an important role in the case based on circumstantial evidence. The motive given by the prosecution is that the deceased used to have an evil eye on the sister of the appellant. There is no evidence that the deceased was acquainted with the sister of the appellant, namely, Babita.

24. The further case of the prosecution is that on 20.1.1999 Raj Kumar and Naresh Kumar were present near I.T.I. Chowk, turning of Sasoli, to enquire about the progress of the case. The police also met them. As per

the prosecution, at the same time, PW7 Mohinder Singh brought the accused to the police. According to PW8 Naresh Kumar and PW9 SI Narinder Singh, the extra-judicial confession was made by the appellant before them that he had kept the *chunni* and purse containing driving licence of the deceased concealed, which he could get recovered. Recovery is hit by Section 26 of the Evidence Act. The confession made in the police custody is not admissible.

25. The alleged disclosure statement has been made at a public place, however, no independent witness, though available, was associated. PW Naresh Kumar has deposed that the police had threatened the people not to throng the spot. It further dents the case of the prosecution.

26. The prosecution has failed to prove the case against the appellant beyond reasonable doubt. Accordingly, the appeal is allowed and the judgment 24.1.2003 and order dated 25.1.2003, are set aside. The appellant is on bail. He need not to surrender. His bail bonds are discharged.

(Rajiv Sharma)
Judge

16.1.2019
vs

(Harinder Singh Sidhu)
Judge

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