

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

**CRA-D-562-DB-2004
Reserved on : 21.01.2020
Date of decision : 27.01.2020**

Prem Singh (deceased) and another

... Appellants

Versus

State of Haryana

... Respondent

***CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU***

Present: Mr.D.N.Ganeriwala, Advocate
for appellant Dara Singh.

Ms.Shubhra Singh, Addl.A.G. Haryana.

RAJIV SHARMA, J.

This appeal has been instituted against the judgment and order dated 08.05.2004 and 12.05.2004 rendered by the Sessions Judge, Sirsa, in Sessions Case no.19 of 2002/2003 whereby the appellants were charged with and tried for the offence punishable under Section 302/34 Indian Penal Code (in short 'IPC'). The appellants were convicted thereunder and sentenced to undergo life imprisonment and to pay a fine of Rs.10000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of one year. Appellant Prem Singh died during the pendency of appeal. Hence the appeal qua him stood abated.

2. The case of the prosecution in a nutshell is that deceased Dayal Singh was a father of PW-11 Malkiat Singh. Dayal Singh had gone to the fields of Tarlochan Singh for sinking a well on 30.06.2002. He came back to

his house at village Chak Sahiban at about 08.30 P.M. along with accused

Prem Singh. They were under the influence of liquor. The deceased picked up his bicycle and left the house along with accused Prem Singh informing that he would come back after some time. But he did not come back. On 01.07.2002 at about 08.30 A.M. PW Bhagwan Singh son of Balbir Singh informed PW Malkiat Singh that the dead body of the deceased was lying in the fields of Kuldeep Singh near a tubewell. PW Malkiat Singh accompanied by his younger brother Sukhvinder Singh and mother reached at the spot. They saw the dead body of the deceased lying in the fields. A brick was lying near the dead body. Police recorded his statement vide Ex.PF, on the basis of which formal FIR Ex.PF/2 was recorded. Police visited the spot. Blood stained brick Ex.P1 was picked up. Police also lifted blood stained earth and a piece of severed pocket of shirt. The body was sent for post-mortem. Post-mortem was conducted. The death of deceased had occurred due to the head injury and its complications. The injuries were ante mortem in nature. The investigation was completed. Challan was put up after completing all the codal formalities.

3. The prosecution examined a number of witnesses. Statements of the appellants were recorded under Section 313 Cr.P.C. They denied the case of prosecution. The appellants produced four witnesses in support of their case. The appellants were convicted and sentenced, as noticed hereinabove. Hence the appeal.

4. Learned counsel appearing on behalf of appellant Dara Singh has vehemently argued that the prosecution has failed to prove the case against the appellant.

5. Learned counsel appearing on behalf of the State has supported the prosecution case.

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

7. PW-2 Davinder Singh testified that on 30.06.2002 at about 11.00 P.M. he along with Kishore Kumar was present near Ottu for watching the shop of Kishore Kumar. At about 11.00/11.15 P.M. they had noticed Dayal Singh and Prem Singh coming on foot. They were having bicycles with them. Dayal Singh deceased had requested them to drop them to village Ottu. However, they expressed their inability. In his cross-examination, he deposed that he had told the police that deceased Dayal Singh and Prem Singh accused were seen coming on foot carrying a bicycle by Dayal Singh in his hands. He was confronted with his statement Ex.DA where there was no reference of carrying a bicycle by Dayal Singh in his hands.

8. PW-3 Dr. Ashok Kumar Gupta conducted the post-mortem examination. He noticed the following injuries on the body of the deceased:-

“1. A lacerated wound 7 cm x 2 cm in size transversely placed over the forehead 3 cms above the nasal bridge crossing the mid line but more over the left. On dissection, subcutaneous infiltration of blood, clotted blood was present inside the wound. Underlying bones fractured. On further dissection, there was extra dural hematoma present. Dural surface intact.

2. Contusion of size 8 cm x 6 cm over the left parieto occipital prominence. On dissection, subcutaneous infiltration of blood was seen. Underlying depressed fractures were present. On further dissection, small extra-dural haematoma present.

3. Contusion of size 4 cm x 3 cm over the right side of face just below the right angle of mouth. On dissection, subcutaneous infiltration of blood present

with underlying fracture mandible seen.”

The cause of death in his opinion was due to head injury and its complications which were sufficient to cause death in normal course of events. The injuries were ante mortem in nature. He proved MLR Ex.PA.

9. PW-4 Dalbir Singh deposed that he had gone to his fields to irrigate the same on the intervening night of 30.06.2002 and 01.07.2002 at about 02.30 A.M. Prem Singh accused and Dara Singh accused happened to meet him at Ottu. He knew them previously. He had enquired from them as to from which side they were coming. They replied that they were coming from village Chak Sahiban. They went towards village Ottu. In his cross-examination, he admitted that he did not own any agricultural land. His brother also did not own any agricultural land. No lease deed was executed, authorising him to cultivate the land on lease. He could not give the description of the land. He did not know the names of the holders of the property abutting his field on all the sides. Dayal Singh deceased was not known to him. He had met the police on 02.07.2002. He had come to know about the death of Dayal Singh on the morning of 01.07.2002.

10. PW-8 Mohan Lal had prepared site plan Ex.PE.

11. PW-9 Harnam Singh deposed that on July 03, 2002 at about 1.00 P.M., he, Bhagwan Singh, Sarpanch of village Chak Sahiban were sitting in the house of Sarpanch at village Chak Sahiab. Prem Singh and Dara Singh accused appeared and confessed their guilt. Prem Singh confessed before them that he and Dayal Singh continued to take liquor at Ottu till 11.00 P.M. Dayal Singh deceased left for village Ottu on bicycle in highly inebriated state. He started following him on foot. Prem Singh reached his village and decided to have a bath in the nearby canal. As he

was passing near the house of Dara Singh, he saw Dayal Singh sleeping with his mother-in-law which caused immense anger in his mind and he went to his house. He armed himself with a *lathi* and came back to the spot. He directed a blow towards Dayal Singh. However, his mother-in-law intervened and requested him to show reason and restrain. He further informed them that he went to the roof top of the house where Dara Singh was sleeping. He narrated the incident to him. He and Dara Singh then took away Dayal Singh towards village Chak Sahiban and all of them decided to take water at the tubewell of Satnam Singh in the area of village Chakrian. Then they decided to teach Dayal Singh a proper lesson for playing with their honour. Prem Singh then picked up a brick and gave a forceful blow on the head of Dayal Singh who ran for his life but they both intercepted him and Prem Singh overpowered him whereas Dara Singh gave brick blow on the head of the victim. They left Dayal Singh unconscious at the spot and came back to village Ottu on the bicycle. Then they came to the canal. They cleaned their apparels stained with blood. On the next morning, they came to know that Dayal Singh was dead. Similarly, accused Dara Singh corroborated the entire version given by Prem Singh and informed them about the manner in which Prem Singh had woken up him and had told him about the manner in which he had seen his mother-in-law with Dayal Singh on the same bed and in the manner in which they had lured away the deceased to the area of village Chak Sahiban and had killed him. He had handed over the accused to the police at about 04.30/04.45 PM. In his cross-examination, he deposed that the dead body was recovered on 01.07.2002 and he had arrived at the scene of recovery at 08.30 A.M. He further deposed that accused persons were the original inhabitants of village

Kundla, Tehsil Rawla of District Ganga Nagar but they were living in village for the last 4/5 years on permanent basis. He was a public figure. He had contested elections upto Zila Prashid level. He had not seen the mother-in-law of accused Prem Singh.

12. PW-10 Bhagwan Singh deposed that he was Sarpanch of village Chak Sahiban. He and Harnam Singh were present at his residence on 03.07.2002. Accused approached them at about 01.00 P.M. Accused Prem Singh told them that he and Dayal Singh had consumed liquor on the night of June 30, 2002 at Ottu Head. After getting heavily drunk, Dayal Singh left for his village on his bicycle. He followed him on foot. They were extremely inebriated. On reaching the village, Prem Singh decided to have a bath at the canal. When he was passing in front of the house of his brother-in-law Dara Singh, he saw deceased Dayal Singh and his own mother-in-law in compromising position inside the room. Prem Singh lost his cool, came back to his house, armed himself with a *lathi* and came back to the house of his mother-in-law. His mother-in-law pleaded mercy. Prem Singh went on the roof top to inform his brother-in-law Dara Singh about the incident. Thereafter, they took Dayal Singh with them. Prem Singh gave a brick blow on the head of Dayal Singh. Prem Singh held the victim. Dara Singh gave brick blows on his head. After hearing the entire version from both the accused persons in identical words, he and Harnam Singh decided to hand over them to police. They started in a jeep. They met the police party at 04.30 P.M. In his cross-examination, he deposed that accused persons stayed with him for about 15 minutes only. The family of Dara Singh was original inhabitant of Rajasthan. Dara Singh had migrated to the village one year ago whereas Prem Singh had migrated to the village three

months prior to this incident.

13. PW-11 Malkiat Singh was the son of the deceased. He deposed that on 01.07.2002 at about 8.30 A.M. Bhagwan Singh son of Balbir Singh informed him that the dead body of his father was lying in the fields of Kuldeep Singh near a tubewell. They rushed to the spot. They noticed the dead body of their father. The brick was lying beside the dead body. He lodged the report Ex.PF. He was re-called for the examination. He further deposed that on 12.08.2002 he along with Tarlochan Singh, Lambardar visited the Police Station Sadar Sirsa to know about the progress of the case. He was directed by Hawa Singh SI to identify the cycle of his father out of 70/80 bicycles lying in the police station. He identified the bicycle of his father Ex.P18. In his cross-examination, he could not depose from whom the bicycle was purchased. When he appeared as witness before the Court earlier, he was not asked about the bicycle and hence he did not depose about the same.

14. PW-12 Hawa Singh deposed that he was working as SI/SHO at Police Station Sadar Sirsa on 01.07.2002. Malkiat Singh made statement Ex.PF on the basis of which FIR Ex.PF/2 was recorded. He visited the spot. He picked up the blood stained brick, blood stained earth. He also picked up the shirt of deceased Ex.P2. He prepared three parcels recovered from the spot. He prepared inquest report Ex.PJ. On 03.07.2002 accused persons were produced before him at bus stand of village Bhamboor by PWs Bhagwan Singh, Sarpanch and Harnam Singh. He recorded their statements under Section 161 Cr.P.C. On 03.07.2002 accused Dara Singh got recovered bicycle Ex.P18 from his residential house. It was taken into possession. On 12.08.2002 PWs Malkiat Singh and Tarlochan Singh Lambardar came in the

police station. PW Malkiat Singh identified the bicycle Ex.P18 amongst the 70/80 bicycles lying in the police station. In his cross-examination, he deposed that he did not ask about the ownership proof of the bicycle which was identified by PW Malkiat Singh.

15. DW-1 Kulwant Singh deposed that Lakshmi Bai was mother of accused Dara Singh. She was residing at Rawla Mandi even at the time of recording of statement. She never came to Ottu village to reside at any point of time. The age of Lakshmi Bai was about 65/66 years.

16. DW-2 Ali Sher deposed that accused Prem Singh shifted to village Ottu from village Kundal about one year ago. The wife and daughters of accused Prem Singh were residing at village Kundal.

17. DW-3 Sultan Singh had brought the voters list of village Ottu, District Sirsa pertaining to the years 1995, 2000 and 2003. Prem Singh son of Jagar Singh, Rano wife of Dara Singh were not mentioned in the voter list as their names did not figure in the same.

18. The FSL report is Ex.PM. According to it, brick, pocket, kurta, pyjama and underwear were stained with human blood.

19. According to PW-2 Davinder Singh, he had seen Dayal Singh and Prem Singh at about 11.00/11.15 P.M. when he was standing near the shop of Kishore Kumar. In his cross-examination, he admitted that he had no relationship with village Ottu. He did not own any agricultural land. PW-4 Dalbir Singh had deposed that he had gone to irrigate his field at about 02.30 A.M. in village Chak Sahiban. Prem Singh accused and Dara Singh accused happened to meet him at Ottu on bicycles. However, in his cross-examination, he admitted that neither his brother nor he owned any agricultural land. No lease deed was ever executed. He did not know the

description of adjoining fields. He had visited village Chakrian and had presented himself before the police on his own volition. The distance between village Chakrian and village Chak Sahiban was 10 km. According to PW-9 Harnam Singh, accused Prem Singh and Dara Singh have made confessional statements before him and PW-10 Bhagwan Singh. According to PW-9 Harnam Singh, confession was made by Prem Singh before them on 03.07.2002 at 01.00 P.M. and thereafter accused Dara Singh corroborated the entire tale given by Prem Singh and informed them the manner in which Prem Singh had woken him up and had told him about seeing his mother-in-law with Dayal Singh on the same bed and the manner in which they had lured away the deceased. Similarly PW-10 Bhagwan Singh had deposed that initially Prem Singh made confession. He further deposed that after hearing entire version from both the accused in identical words, he and Harnam Singh decided to hand over them to police. It is settled law that the words uttered in extra judicial confession are to be recorded in verbatim. However, in this case PW-9 Harnam Singh has only deposed that Dara Singh corroborated the version given by Prem Singh but has not told the words uttered by Prem Singh. PW-10 Bhagwan Singh also not stated the words uttered by accused Dara Singh except that after hearing the entire tale from both the accused in identical words, they produced them before the police. PW-9 Harnam Singh and PW-10 Bhagwan Singh belong to village Chak Sahiban. Accused belong to village Ottu, District Sirsa. The cause of death was due to head injury and its complications which were sufficient to cause death in normal course of events. The injuries were ante mortem in nature.

20. The case of the prosecution as discussed above is that Prem

Singh and Dayal Singh consumed liquor. They were heading towards their village. Dayal Singh was on bicycle. Prem Singh was following him on foot. He took bath. Prem Singh peeped in the house of Dara Singh and saw Dayal Singh was in compromising position with his mother-in-law namely Lakshmi Bai. He got angry. He came back armed with lathi. Lakshmi Bai protected Dayal Singh. Thereafter, he informed Dara Singh. Dara Singh came on the spot. They lured Dayal Singh away. Dayal Singh was given brick blow which resulted in his death. The prosecution has not examined Lakshmi Bai. She was the material witness. There was no occasion even for Prem Singh to peep into the house where Lakshmi Bai was allegedly residing. The prosecution has failed to prove the case against the appellants beyond reasonable doubt.

21. In *AIR 1966 Supreme Court 40 "Sahoo vs. State of Uttar Pradesh"* their Lordships of the Supreme Court have held that before accepting such evidence, it must be established by cogent evidence what were the exact words used by the accused. Even if so much was established, prudence and justice require that such evidence cannot be made the sole ground of conviction, but may be used only as a corroborative piece of evidence. Their Lordships have held as under:-

"6. But, there is a clear distinction between the admissibility of an evidence and the weight to be attached to it. A confessional soliloquy is a direct piece of evidence. It may be an expression of conflict of emotion; a conscious effort to stifle the pricked conscience; an argument to find excuse or justification for his act; or a penitent or remorseful act of

exaggeration of his part in the crime. The tone may be soft and low; the words may be confused; they may be capable of conflicting interpretations depending on witnesses, whether they are biased or honest, intelligent or ignorant, imaginative or prosaic, as the case may be. Generally they are mutterings of a confused mind. Before such evidence can be accepted, it must be established by cogent evidence what were the exact words used by the accused. Even if so much was established, prudence and justice demand that such evidence cannot be made the sole ground of conviction. It may be used only as a corroborative piece of evidence.”

22. In ***AIR 1975 Supreme Court 258 “The State of Punjab vs. Bhajan Singh and others”*** their Lordships of the Supreme Court have held that the evidence of extra judicial confession in the very nature of things is a weak piece of evidence. Their Lordships have held as under:-

“15. Coming to the evidence of extra judicial confessions, we find the same to be improbable and lacking in credence. According to Gurmej Singh and Jabarjang Singh PWs, the confessing accused came to them and blurted out confessions. They also requested these two witnesses to produce them before the police. The resume of facts given above would go to show that according to the prosecution case,, the murders of the three deceased persons were committed in a most heinous manner and under a veil of secrecy. Persons

who commit such murders after taking precautions of secrecy are not normally likely to become garrulous after the commission of the offence and acquire a sudden proneness to blurt out what they were at pains to conceal. In any case it seems rather odd that all the three accused who had not been arrested till the morning of May 9, 1972 should be seized almost at the same time by a mood to make confession. It is significant that Surjit Singh, Charan Kaur and Jito accused had no particular relationship or connection with Gurmej Singh and Jabarjang Singh PWs. These two witnesses were also not in such a position that the above mentioned three accused would be willing to repose their confidence in them. If Surjit Singh, Charan Kaur and Jito wanted to surrender themselves before the police, we fail to understand as to why they should not themselves surrender before the police and go instead to Gurmej Singh and Jabarjang Singh and blurt out confessions before them. The evidence of extra judicial confession in the very nature of things is a weak piece of evidence. The evidence adduced in this respect in the present case lacks plausibility and, as observed by the High Court, it does not inspire confidence.”

23. In **(2011) 11 Supreme Court Cases 754 “SK. Yusuf vs. State of West Bengal**, their Lordships of the Supreme Court have held that the extra judicial confession must be established to be true and made voluntarily

and in a fit state of mind. Words of witness must be clear, unambiguous and clearly convey that accused is the perpetrator of crime. Their Lordships have held as under:-

“28. Both, Nurul Islam (PW.11) and Ali Hossain (PW.13) are chance witnesses as they alleged to be in Shyamsundar Bazar on that date for marketing and none of them had regular business in that bazar. The Court while dealing with a circumstance of extra-judicial confession must keep in mind that it is a very weak type of evidence and require appreciation with great caution. Extra-judicial confession must be established to be true and made voluntarily and in a fit state of mind. The words of the witness must be clear, unambiguous and clearly convey that accused is the perpetrator of the crime. The "extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility". (See: [State of Rajasthan v. Raja Ram](#), (2003) 8 SCC 180; and [Kulvinder Singh & Anr. v. State of Haryana](#), (2011) 5 SCC 258).”

24. In (2006) 12 Supreme Court Cases 254 **“State of Rajasthan vs. Kashi Ram”** their Lordships of the Supreme Court have held that extra judicial confession is a weak piece of evidence and must be proved like any other act. In this case, accused allegedly made confession before a person known to the deceased's brother but he was neither Sarpanch nor a ward member of the village and also before another person who admitted that he was not even acquainted with the accused. Their Lordships of the Supreme

Court have further held that the High Court was justified in rejecting prosecution case about accused having made any extra judicial confession.

Their Lordships have held as under:-

“14. On appeal, the High Court reversed the findings of fact recorded by the trial court and acquitted the respondent. Before adverting to the other incriminating circumstances we may at the threshold notice two of them namely - the circumstance that the respondent made an extra-judicial confession before PWs 3 and 4, and the circumstance that recoveries were made pursuant to his statement made in the course of investigation of the waist cord used for strangulating Kalawati (deceased) and the keys of the locks which were put on the two doors of his house. The High Court has disbelieved the evidence led by the prosecution to prove these circumstances and we find ourselves in agreement with the High Court. There was really no reason for the respondent to make a confessional statement before PWs 3 and 4. There was nothing to show that he had reasons to confide in them. The evidence appeared to be unnatural and unbelievable. The High Court observed that evidence of extra-judicial confession is a weak piece of evidence and though it is possible to base a conviction on the basis of an extra-judicial confession, the confessional evidence must be proved like any other fact and the value thereof

depended upon the veracity of the witnesses to whom it was made. The High Court found that PW 3 Dinesh Kumar was known to Mamraj, the brother of deceased Kalawati. PW 3 was neither a Sarpanch nor a ward member and, therefore, there was no reason for the respondent to repose faith in him to seek his protection. Similarly, PW 4 admitted that he was not even acquainted with the accused. Having regard to these facts and circumstances, we agree with the High Court that the case of the prosecution that the respondent had made an extra-judicial confession before PWs 3 and 4 must be rejected.”

25. Accordingly, the appeal is allowed. The judgment and order dated 08.05.2004 and 12.05.2004 are set aside. Appellant Dara Singh is acquitted of the charges framed against him by giving him benefit of doubt. Bail bonds and surety bonds are discharged.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

January 27, 2020.
Davinder Kumar

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No