

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

CRA-D-159-DB of 2005

Reserved on : 07.02.2020

Date of decision : 12.02.2020

Gurinder Singh

.... Appellant

Versus

State of Punjab

..... Respondent

CORAM :- HON'BLE MR. JUSTICE RAJIV SHARMA

HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. P.S. Ahluwalia, Advocate,
for the appellant.

Mr. H.S. Grewal, Addl. A.G., Punjab.

* * *

RAJIV SHARMA, J.

1. This appeal is instituted against the judgment dated 11.01.2005 and order dated 14.01.2005, rendered by learned Sessions Judge, Kapurthala, in Sessions Case No. 11 dated 03.06.2004, whereby appellant Gurinder Singh, who was charged with and tried for the offence punishable under Section 302 IPC, was convicted and sentenced thereunder to undergo imprisonment for life and to pay a fine of ₹ 2,000/-, and in default of payment of fine to undergo further rigorous imprisonment for a period of one month.

2. The case of the prosecution, in a nutshell, is that Sarup Singh

son of Jit Kaur, driver by profession, was married to Rano daughter of Makhan Singh, resident of village Dhotian, Police Station Tarn Taran, about 14 years prior to 19.02.2004. A female child was born from the wed-lock. Rano died in an accident. After her death, her parents and Gurinder Singh alias Sonu accused took away her dowry articles from the house of Sarup Singh. He was again married to Jasbir Kaur, resident of Hardaspur, Police Station Sadar Phagwara, about eight years ago. A son was born to Jasbir Kaur. He was six years of age on 19.02.2004. On 19.02.2004 at about 1.00 PM, Jit Kaur went to her fields for fetching green leafy vegetables (Saag). Jasbir Kaur, her daughter-in-law, was all alone in the house. At about 2.00 PM, when Jit Kaur came back and reached near her house, she heard the shrieks of Jasbir Kaur. When she opened the door of the residential room of her house, she found Gurinder Singh alias Sonu son of Avtar Singh resident of village Lakhan Ke Padde causing injuries with a bat on the head of Jasbir Kaur. Jit Kaur raised alarm. Gurinder Singh alias Sonu accused, after pushing aside Jit Kaur, decamped from the spot with the bat. On hearing the alarm of Jit Kaur, Mohinder Kaur, living in her neighbourhood, was attracted to the spot. Both of them entered the residential room of the house. They found Jasbir Kaur dead. It is the further case of the prosecution that Gurinder Singh was a mediator in arranging the first marriage of Sarup Singh with Rano. When Rano died in an accident, Sarup Singh was married again. Since a child was born to Jasbir Kaur, the second wife of Sarup Singh, Gurinder Singh had a grudge that in case, Sarup Singh had not contracted the second marriage, and a son had not born to him from the said marriage, his estate would have been inherited only by the daughter of

Rano. On account of this reason, he committed murder of Jasbir Kaur. Jit Kaur, after leaving Mohinder Kaur to guard the dead body of Jasbir Kaur, went to the police station along with Sharanjit Singh, Ex-Sarpanch of the village. Her statement was recorded vide Ex.PH, which led to registration of the FIR vide Ex.PH/2. The police reached the spot. Photographer was summoned. The inquest report Ex.PJ was prepared. Body was sent for post-mortem examination. Broken pieces of bangles were lying at the spot. These were taken into possession vide recovery memo Ex.PK. The investigation was completed and challan was put up after completing all the codal formalities.

3. The prosecution examined a number of witnesses in support of its case. The accused was also examined under Section 313 Cr.P.C. He denied the case of the prosecution. According to him, he was falsely implicated. The accused was convicted and sentenced, as noticed here-in-above. Hence, this appeal.

4. Learned counsel appearing on behalf of the appellant has vehemently argued that the prosecution has failed to prove its case against his client. Learned counsel appearing for the State has supported the judgment and order of the learned Court below.

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

6. PW.1 Dr. S.P. Singh conducted the post-mortem examination on the body of Jasbir Kaur on 20.02.2004. He noticed the following injuries on the body of the deceased :-

“1) Gaping wound lacerated starting from right side of the forehead from AHL extending upto upper middle part of

the nasal septum. On dissection, underlying muscles, tendon, blood vessels and bones were crushed. Eye right side was crushed.

- 2) Incised wounds on left side of the cheek, 3 in number, 1 cm below left side eye, measuring 6 cm x 1 cm. On dissection, underlying bone fractured.
- 3) Lacerated wounds, two in number, on right side of the cheek, 1 cm x 0.5 cm in size, 6 cm away from the lower part of the pinna. On dissection, underlying bone fractured.
- 4) Lacerated wound on right upper lip, 2 cm x 1 cm, 1 cm away from angle of the mouth.
- 5) Incised wound below 1.5 cm below left lip, 2 cm x 1 cm in size. On dissection, underlying bone fractured.
- 6) Lacerated wound on left side of the upper part of chest, 1 cm below mid part of clavicle bone measuring 1 cm x 0.2 cm in size. On dissection, bone intact.
- 7) Lacerated wound on left upper part of the arm, 1.2 cm x .05 cm, 6 cm below tip of the shoulder. On dissection, the bone intact and NAD.
- 8) Brown abrasions on right hand, three in number, measuring 0.4 x 0.1 cm; 0.3 x 0.2 cm and 0.4 x 0.2 cm.”

The immediate cause of death was shock and haemorrhage from the above injuries on the body of the deceased. All the injuries were ante-mortem in nature and sufficient to cause death in an ordinary course of nature. He was re-examined. He proved the post mortem report Ex.PA. In his re-examination, he deposed that the probable time that elapsed between injuries and death could be immediate. The probable time that elapsed between death and post-mortem examination was 36 hours. In his cross-examination, he deposed that injuries No.2 and 5 on the person of the deceased were incised wounds caused by some sharp edged weapon. These

injuries could not be caused with blunt weapon i.e. bat Ex.P7.

7. PW.2 Dr. Neena Sharma deposed that as per her opinion, no rape was found to have been committed with Jasbir Kaur.

8. PW.5 Gian Chand prepared the scaled site plan of the place of occurrence vide Ex.PG.

9. PW.7 Jit Kaur testified that her husband died about eight years ago. She had two sons. Her son Sarup Singh was married with Rano about 14 years ago. A girl child was born from the wed-lock. Rano died in an accident. Gurinder Singh alias Sonu accused was mediator in arranging marriage between Sarup Singh and Rano (now deceased). Two years after the death of Rano, Sarup Singh was married to Jasbir Kaur. The daughter of Rano was residing with her maternal grand-mother. On 19.02.2004, at about 1.00 PM, she had gone to the fields to bring Saag. Jasbir Kaur, her daughter-in-law, was all alone in the house. She came back to the house at about 2.00 PM. As soon as, she entered the house, she heard the shrieks of Jasbir Kaur. Thereafter, she came to the varandah. She went inside the room. The door of the room was opened. Gurinder Singh alias Sonu gave a bat blow on the head of Jasbir Kaur. She raised alarm. He pushed her aside and decamped from the spot. She again raised alarm. Mohinder Kaur reached the spot. She told Mohinder Kaur to guard the body of Jasbir Kaur. She went to the house of Sharanjit Singh, Sarpanch of the village and narrated him the incident. She along with Sharanjit Singh went to police station. Her statement Ex.PH was recorded. She identified the dead body of Jasbir Kaur. In her cross-examination, she deposed that Gurinder Singh accused was residing in their village for the last 14 years i.e. since the date

of marriage of Rano with Sarup Singh. The son of Sarup Singh from the second marriage was studying. He had gone to the school on the day of occurrence. Rano deceased belonged to village Dhotian, Tehsil Tarn Taran. When Rano was married, Gurinder Singh accused was aged about 10 years. The accused was arrested by the police. Karam Singh told her regarding the arrest of the accused at 10.00/11.00 PM.

10. PW.8 Mohinder Kaur deposed that about 7 months ago, she was present in her house at about 1.00 PM. Gurinder Singh alias Sonu came to her house. He enquired about her welfare. Thereafter, he went back. At about 2.00 PM, on the same day, she heard a shriek of Jasbir Kaur from the house of Jit Kaur. She went to the house of Jit Kaur. Gurinder Singh alias Sonu accused came out from a room of the house of Jit Kaur. He was carrying a bat. She and Jit Kaur then entered that room. The dead body of Jasbir Kaur was lying in the room. The dead body was completely drenched with blood. Rano was the sister of the mother of Gurinder Singh accused. Gurinder Singh accused was mediator in arranging the marriage between Sarup Singh and Rano. A daughter was born to Rano. In her cross-examination, she also deposed that Gurinder Singh was about 10 years old at the time of marriage of Rano with Sarup Singh. The accused was arrested by the police at about 10.00/11.00 PM on that day.

11. PW.9 Brij Lal ASI deposed that Jit Kaur and Sharanjit Singh came at bus stand Lakhan-ke-Padde, where the police party had laid naka. The statement of Jit Kaur was recorded by Amrik Singh SI. The police party reached the spot. Dead body of a female was lying. Photographer was summoned. Broken bangles were lying near the dead body. Blood was also

lying near the dead body. Broken bangles were lifted from the spot and were taken into possession vide memo Ex.PK. On 20.02.2004, he was a member of party headed by Amrik Singh Sub Inspector. Other police officials were also with the party. They were present at Wadala. Gurmit Singh produced Gurinder Singh accused before SI Amrik Singh. During interrogation, accused Gurinder Singh made disclosure statement vide Ex.PM, on the basis of which a bat was got recovered.

12. PW.11 Amrik Singh SI deposed that he went to the spot on 19.02.2004. He prepared inquest report Ex.PJ. The body was sent for post-mortem examination. Broken bangles along with blood stained earth were taken into possession. On 20.02.2004, the accused was searched. However, he was not found. On that day, clothes of the deceased were produced before him by Gurmail Singh HC in Civil Hospital, Kapurthala. On 21.02.2004, he was present in Police Post Nadala, when Gurmit Singh son of Sadhu Singh produced the accused before him. He was arrested and interrogated. He made disclosure statement Ex.PM, on the basis of which a bat was got recovered by him. The bat is Ex.P7. In his cross-examination, he admitted that he had not recorded the statement of Sharanjit Singh. He had recorded the statement of Mohinder Kaur vide Ex.DA. He recorded the statement of Gurmit Singh vide Ex.DB without any omission and addition. Gurmit Singh did not make any statement before him that the accused had made extra judicial confession before him at the time of production of accused.

13. PW.12 Gurmit Singh testified that on 19.02.2004, murder of Jasbir Kaur was committed. On 21.02.2004, Gurinder Singh accused came

to him in front of bus stand at Nadala. He told him that he had committed the murder of Jasbir Kaur. He further told him that the police was searching for him, and he should produce him before the police. He took the accused and went to Police Station Nadala, where Amrik Singh SI met. He produced the accused before him. The accused was arrested by him. He was interrogated. He made disclosure statement Ex.PM, on the basis of which a bat was got recovered. His statement was recorded. He had not stated in his statement before the police that he had gone to village Nadala on that day.

14. The motive attributed to the appellant is that he was mediator of the marriage between Sarup Singh and Rano. A female child was born out of the wed lock. Thereafter, Rano died in an accident. Sarup Singh contracted second marriage with Jasbir Kaur. A male child was born to Jasbir Kaur. The appellant wanted that the land should have been inherited by the daughter of Rano deceased. No evidence has been led by the prosecution that the appellant belonged to the village of PW.7 Jit Kaur. He was only 10 years of age at the time of marriage of Rano. PW.7 Jit Kaur and PW.8 Mohinder Kaur have categorically deposed that he was mediator of the marriage of Sarup Singh and Rano, and at that time, he was only 10 years of age. A ten years old boy cannot be mediator of a marriage.

15. According to PW.7 Jit Kaur, she had seen the appellant hitting Jasbir Kaur with a bat. As per the post mortem report Ex.PA, all the injuries were ante-mortem in nature. PW.1 Dr. S.P. Singh categorically deposed in his cross-examination that injuries No.2 and 5 were incised wounds caused by some sharp edged weapon and these could not be caused with blunt weapon i.e. bat Ex.P7. No sharp edged weapon was recovered by the police.

16. The prosecution has relied upon the extra judicial confession made by the appellant before PW.12 Gurmit Singh. PW.9 Brij Lal ASI has stated that the appellant was arrested on 21.02.2004 by PW.11 Amrik Singh SI. PW.11 Amrik Singh SI also deposed that the appellant was arrested on 21.02.2004, when he was produced by Gurmit Singh. However, the fact of the matter is that according to PW.7 Jit Kaur and PW.8 Mohinder Kaur, the appellant was arrested on the same night at about 10.00/11.00 PM. PW.11 Amrik Singh SI had recorded the statement of Gurmit Singh vide Ex.DB. We have gone through the contents of Ex.DB. PW.11 Amrik Singh SI categorically admitted in his cross-examination that Gurmit Singh did not make any statement before him that the appellant had made extra judicial confession before him at the time of production of the appellant. He further clarified that Gurmit Singh stated so when his statement was recorded after recovery. He recorded only one statement of Gurmit Singh at the time of recovery. He had also not mentioned in remand request that the appellant made an extra judicial confession before Gurmit Singh. The alleged extra judicial confession has been made before PW.12 Gurmit Singh, who was not holding any office. There was no occasion for the appellant to make extra judicial confession before PW.12 Gurmit Singh. The extra judicial confession is a weak piece of evidence.

17. Their Lordships of 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 not 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 section 24, Indian Evidence Act and the surrounding circumstances do not indicate that it is inspired by some improper 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 used. 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 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 cooperative 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. Their Lordships of the Supreme Court in **Lakhanpal vs The State of Madhya Pradesh, AIR 1979 SC 1620** have held that it is unsafe to rely on the evidence of extra-judicial confession made to a person, who has never told about this to any one else though he met number of persons on the date of occurrence. Their Lordships have held as under:

“4. So far as the first circumstance is concerned in the facts of this particular case it is not sufficient to prove conclusively that the appellant committed the murder of the deceased. According to Public Witness Bhagwandas, the father of the appellant, the sowing was stopped at 4 o'clock in the evening. In the circumstances, therefore, if the appellant would have attacked the deceased he being a young man of 17 years would have undoubtedly put up stiff resistance in order to protect himself and in all probability would have caused some injuries on the person of the appellant also. For these reasons, therefore the mere fact that the appellant and the deceased were together in the field does not lead to the irresistible inference that the appellant must have murdered the deceased. As regards the extra-judicial confession made by the appellant before Sukhial, we are unable to believe the version given by the witness Sukhial. While being

examined as a witness in the Sessions Court he had clearly stated that no confession was made before him. His attention was however drawn to his statement made by him before the committing Magistrate where he had admitted that he saw the appellant running and on being questioned the appellant told him that he had committed a mistake and had killed his brother due to a quarrel. In cross-examination the witness admitted that he did not narrate this story of the murder to anybody. He made the disclosure for the first time when he was called to the police station. The witness met a number of persons on that day but he did not mention the factum of the confession to any one of them. Secondly the evidence shows that he was not known to the appellant and therefore we find it difficult to believe that the appellant would make a confession to a person who was not known to him at all. For these reasons, therefore, we find it wholly unsafe to accept the evidence of the extra-judicial confession of the appellant to Public Witness Sukhial. Another important circumstance which negatives the prosecution case is that no motive whatsoever for the appellant to kill his brother has been either alleged or proved. Further the deceased appears to have received as many as 12 incised wounds on various parts of the body and this could not have been done by the appellant alone unless he was accompanied by other friends. We are clearly of the view that the prosecution has not proved the case against the appellant beyond reasonable doubt. We,

therefore, allow this appeal, set aside the judgment of the High court and acquit the appellant of the charges framed against him. The appellant may now be released forthwith.”

20. Their Lordships of the Supreme Court in **Narayan Singh and others vs State of M.P. AIR 1985 SC 1678** have held that whether extra judicial confession is weak type of evidence or not would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession. Their Lordships have held as under :-

“7. Apart from this there is the evidence of PWs 5 and 9 who state on oath that one of the accused admitted before them that he had murdered the deceased. The learned Sessions Judge has brushed aside their evidence by presuming that their statements constituting an extrajudicial confession is a very weak type of evidence. This is a wrong view of the law. It is not open to any Court to start with a presumption that extra judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession. In the instant case, after perusing the evidence of PWs 5 and 9 we are unable to find anything which could lead to the conclusion that these independent witnesses were not telling the truth. The evidence of these two witnesses (PWs 5 and 9) which lends support to the evidence of PW 11 was sufficient to warrant the conviction of the accused. The Sessions Judge has committed a

grave error of law in analysing and appreciating the evidence of PWs 5 and 9 and brushing them aside on untenable grounds.”

21. A Division Bench of the 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, AIR

1975 SC 1320 : (1975 Cri LJ 1102) .”

22. The prosecution has failed to prove its case against appellant beyond reasonable doubt.

23. Accordingly, the appeal is allowed. The impugned judgment dated 11.01.2005 and order dated 14.01.2005 rendered by the learned trial court are set aside. The appellant is acquitted of the charge framed against him. His sentence was suspended vide order dated 16.04.2009. His bail bond and surety bond are discharged.

**(RAJIV SHARMA)
JUDGE**

February 12, 2020
ndj

**(HARINDER SINGH SIDHU)
JUDGE**

Whether speaking/reasoned	Yes
Whether Reportable	Yes