

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

CRA-D-707-DB of 2004

Reserved on : 22.01.2020

Date of decision : 27.01.2020

Hardev Singh and others

.... Appellants

Versus

State of Punjab and another

..... Respondents

CORAM :- HON'BLE MR. JUSTICE RAJIV SHARMA

HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Vinod Ghai, Senior Advocate, with
Ms. Kanika Ahuja, Advocate,
for the appellants.

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

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RAJIV SHARMA, J.

This appeal is instituted against the judgment and order dated 10.08.2004, rendered by learned Additional Sessions Judge (Adhoc), Patiala, in Sessions Case 40T/FTC/27.01.2003/11.03.2004.

2. Appellants Hardev Singh, Harbans Singh and Nirmal Singh along with co-accused Parvinder Singh, Jaspal Singh and Janak Singh were charged with and tried for the offence punishable under Section 302/120-B.

The appellants were convicted and sentenced as under :-

<i>Appellant</i>	<i>U/s</i>	<i>Imprisonment</i>	<i>Fine</i>	<i>In default</i>
Hardev Singh	302/120-B IPC	Life imprisonment	₹ 1,000/-	One year rigorous imprisonment
Harbans Singh	302/120-B IPC	Life imprisonment	₹ 1,000/-	One year rigorous imprisonment
Nirmal Singh	302/120-B IPC	Life imprisonment	₹ 1,000/-	One year rigorous imprisonment
Hardev Singh	120-B IPC	One year rigorous imprisonment	-	-
Harbans Singh	120-B IPC	One year rigorous imprisonment	-	-
Nirmal Singh	120-B IPC	One year rigorous imprisonment	-	-

The substantive sentences were ordered to run concurrently. Co-accused Parvinder Singh, Jaspal Singh and Janak Singh were acquitted of the charges framed against them.

2. Complainant Balbir Singh lodged FIR Ex.PA on 20.09.1999. According to the contents of the FIR, complainant came to know that the dead body of his brother Norang Singh was taken by Kirpal Singh to Rajindra Hospital, Patiala. He had suspicion that his brother was killed by Hardev Singh, Harbans Singh, Parvinder Singh, Nirmal Singh, Jaspal Singh and Janak Singh. The motive attributed to the accused by the complainant in his statement Ex.PC was that the deceased used to pursue the previous case, in which the complainant was accused. FIR under Sections 302/148/149 IPC was recorded at Police Station Sadar, Patiala. The matter was investigated by the police and the closure report was filed on 28.10.1999. Thereafter, private complaint Ex.PB was filed by complainant Balbir Singh on 24.03.2000. The motive attributed in the complaint was that the deceased

was pursuing the case regarding the murder of Isher Singh, real nephew of accused Janak Singh, in which complainant Balbir Singh was accused. All the accused bore grudge due to this reason against the brother of the complainant. It is further averred in the complaint that on 20.09.1999 at 8.00 PM, Garib Dass son of Bachna Ram had seen deceased Norang Singh, brother of the complainant, taking liquor with all the six accused in the revenue limits of village Jhil near the liquor vend. On the same day, at 9.15 PM, complainant came to know that the dead body of his brother Norang Singh was taken by Kirpal Singh and was dropped at Rajindra Hospital, Patiala. However, no action was taken by the police. The post mortem on the dead body of Norang Singh was conducted on 21.09.1999. The viscera was sent to the Chemical Examiner. According to the report of the Chemical Examiner, the viscera contained aluminium phosphide. Accused Hardev Singh, Harbans Singh and Parvinder Singh made disclosure statement on 02.10.1999 before Rajwinder Singh. Accused Nirmal Singh, Jaspal Singh and Janak Singh made extra-judicial confession before Ganga Singh on 02.10.1999. It is in these circumstances that the private complaint was filed. The accused were summoned and tried.

3. The complainant examined a number of witnesses in support of his case. The accused were examined under Section 313 Cr.P.C. They denied the case of the prosecution. They also examined four witnesses in their defence.

4. The appellants were convicted and sentenced, as noticed herein-above. Hence, this appeal.

5. Learned counsel appearing on behalf of the appellants has

vehemently argued that the complainant has failed to prove his case. Learned counsel appearing for the State has supported the judgment and order of the trial court.

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

7. PW.3 Dr. O.P. Aggarwal along with Dr. D.S. Bhullar conducted the post mortem examination on the body of Norang Singh on 21.09.1999. The cause of death, according to PW.3 Dr. O.P. Aggarwal, was administering of aluminium phosphide substance, which was sufficient to cause death in the ordinary course of nature.

8. PW.1 Jasbir Singh proved FIR No. 536 Ex.PA.

9. PW.2 Balbir Singh deposed that he knew all the accused. They belong to one faction in the village. About four years back, Isher Singh was murdered. Isher Singh was son of Bant Singh of village Nandpur Kesho. He was falsely involved in the case. Norang Singh, his brother, was pursuing his case. He got him released on bail. The accused were keeping grudge in their mind on that account. On 20.09.1999, there was talk of compromise in respect of murder of Isher Singh. He was present in the gathering. His brother Norang Singh was also present. Compromise could not be arrived at. On 20.09.1999 at about 7.00 PM, Kirpal Singh told him that he had carried Norang Singh's dead body to Rajindra Hospital, Patiala. On the same day, Garib Dass told him at about 8.00 PM that on 20.09.1999, he had seen Norang Singh along with all the accused taking liquor at liquor vend of village Jhil. On 20.09.1999 at about 9.15 PM, Kirpal Singh told him that he had taken Norang Singh in dead condition to Rajindra Hospital, Patiala. He

made statement to the police in Police Station Sadar, Patiala. FIR No. 536 was registered. He signed his statement. The police officials did not take any action. He visited the Police Station number of times. After the receipt of Chemical Examiner's report, the accused were apprehended. However, they were let off. Thereafter, he filed complaint Ex.PB. In his further examination, he deposed that on 20.09.1999, he had informed Police Station Sadar Patiala regarding the murder of his brother Norang Singh. The motive attributed for the murder of Norang Singh was that the accused wanted to take revenge of the murder of Isher Singh. In his cross-examination, he deposed that he had given information about this case in Police Station Sadar Patiala. It was about 9.45 PM. There was conversation in respect of compromise in the case of murder of Isher Singh. He was present in the gathering and his brother Norang Singh was also present. However, the compromise could not be arrived at. He was confronted with copy of FIR Ex.PA, where it was not so recorded. He also admitted that in Isher Singh's murder case, accused Janak Singh and Nirmal Singh were the witnesses.

10. PW.4 Garib Dass deposed that on 20.09.1999 at about 7.30 PM, he saw Norang Singh, Hardev Singh and two three other persons. He asked them what they were doing. They told him that they were enjoying drinks. Then he went away. On the next day, he came to know that Norang Singh had died. In his cross-examination, he deposed that he was running a shop at village Rehona Newan at that time. He had told this fact to Balbir Singh on 21.09.1999 at about 11.00 AM. He had not told this fact to Balbir Singh on 20.09.1999.

11. PW.5 Rajwinder Singh deposed that he knew Balbir Singh and

Norang Singh. On 02.10.1999 in the morning time, Hardev Singh, Harbans Singh and Parvinder Singh came to his village. He knew them personally. All of them confessed their guilt about the murder of Norang Singh and made separate statements in his presence. They stated that they had administered sulphas to deceased Norang Singh by mixing in the liquor on 20.09.1999 at about 8.00/8.30 PM. They disclosed that Nirmal Singh and Jaspal Singh were also with them. The motive disclosed by them was that Balbir Singh was in jail in the murder case of Isher Singh, who was got released on bail by Norang Singh. The accused had come to him, because he had an acquaintance with Incharge/SI Gurcharan Singh of Police Station Sadar Patiala. He produced the accused before the police on 02.10.1999. In his cross-examination, he deposed that he did not had talk with Balbir Singh on the same day. His village was situated at a distance of 8/9 KMs from Nandpur Kesho. His village falls in the jurisdiction of Police Station Mullepur. He did not lodge any report in Police Station Mullepur about the arrival of the accused.

12. PW.6 Ganga Singh deposed that he knew the accused. In the year 1998, Isher Singh of his village was murdered. Balbir Singh, Jagjinder Singh @ Jaggi etc. were falsely involved in that murder case. On 02.10.1999, during evening hours, Nirmal Singh, Jaspal Singh and Janak Singh came to him in his house turn by turn within one hour. Nirmal Singh came to him first and disclosed him that on 20.09.1999 at about 8.00/8.30 PM, Norang Singh was administered sulphas tablets in liquor. They also confessed before him that they had done so in order to take revenge of their brother Isher Singh's murder. They also confessed that they had done so in

connivance with Hardev Singh, Harbans Singh and Parvinder Singh. In his cross-examination, he admitted that deceased Norang Singh was his real brother. He had not disclosed his brother Balbir Singh about the arrival of the accused and confession made before him.

13. DW.1 Sukhdev Singh deposed that he had a shop near Bus Stand Chil. On 20.09.1999, he was present in his shop at about 10.00 AM. Norang Singh started taking liquor in the scooter shop, adjacent to his shop. Norang Singh was known to him. At about 1.00/1.30 PM, Norang Singh started complaining that he was suffering pain in the chest. He stopped a three-wheeler and tried to remove Norang Singh to Rajindra Hospital, Patiala. In the meantime, one Kirpal Singh reached there and told that Norang Singh was his co-villager. Kirpal Singh took Norang Singh at about 1.30 PM to Rajindra Hospital, Patiala. At about 4.00 PM, Kirpal Singh came back and told that Norang Singh had expired on the way. In his cross-examination, he deposed that Kirpal Singh had died.

14. DW.2 HC Chand Singh had given the details of the criminal cases, in which Balbir Singh was convicted and acquitted.

15. DW.3 HC Walyaiti Ram deposed that FIR No. 314 dated 12.09.1998 under Sections 302/307/506/148/149 IPC and 25/54/59 of the Arms Act was registered against Balbir Singh. In his cross-examination, he deposed that Balbir Singh was acquitted in that case.

16. DW.4 ASI Baldev Singh deposed that he was posted at Police Station Sadar Patiala on 20.09.1999. Inquest report was prepared in his presence. During his investigation, it transpired from the statements of Kirpal Singh, Sukhdev Singh, Parveen Kumar etc. that Norang Singh

deceased was taking liquor at Bus Stand Chil. At about 1.30 PM, he felt pain in the chest. He was taken by Kirpal Singh to Rajindra Hospital, Patiala. He died on the way. During investigation, Balbir Singh could not produce any evidence regarding the murder of Norang Singh. The police moved application for cancellation of the FIR in the court of Addl. CJM, Patiala.

17. According to the Chemical Examiner report Ex.PD, aluminium phosphide was detected in the contents of exhibit No. I, and phosphine, a constituent of aluminium phosphide was detected in the contents of exhibits No. II and III. According to the post mortem report, the cause of death of Norang Singh was administering of aluminium phosphide substance.

18. The case of the prosecution is that Norang Singh was killed on 20.09.1999. The statement of his brother Balbir Singh was recorded on 20.09.1999 itself, wherein he suspected that the accused had killed his brother. FIR No. 536 was also registered on 20.09.1999 vide Ex.PA at 10.00 PM. The matter was investigated, but no challan was put up by the police, since cancellation report was filed. Thereafter, Balbir Singh filed complaint Ex.PB on 24.03.2000. According to the contents of complaint Ex.PB, on 20.09.1999 at about 8.00 PM, Garib Dass son of Bachna Ram had seen Norang Singh in the company of the accused. They told Garib Dass that they were talking regarding compromise with regard to murder case of Isher Singh. On 20.09.1999 at 9.15 PM, complainant Balbir Singh came to know that Kirpal Singh had taken the dead body of Norang Singh to Rajindra Hospital, Patiala. FIR was lodged. The police did not investigate the matter. After receipt of the Chemical Examiner's report, it transpired that Norang

Singh had died due to administering of poisonous substance. It is in these circumstances that the FIR was lodged. However, no action was taken by the police. Therefore, the complainant filed the complaint Ex.PB.

19. PW.2 Balbir Singh testified in his examination-in-chief that on 20.09.1999, there was talk of compromise in respect of murder of Isher Singh. He was also present in the gathering. His brother Norang Singh was also present. Compromise could not be arrived at. On 20.09.1999 at about 7.00 PM, Kirpal Singh told him that dead body of Norang Singh was taken by him to Rajindra Hospital, Patiala. Garib Dass told him at about 8.00 PM that on 20.09.1999, he had seen Norang Singh along with all the accused taking liquor at liquor vend of village Jhil. He further disclosed that matter regarding compromise in respect of murder case of Isher Singh was being discussed. However, PW.4 Garib Dass deposed in his cross-examination that he had told this fact to Balbir Singh on 21.09.1999 at about 11.00 AM. He had not narrated this fact to him on 20.09.1999. Thus, there is variance in the statements of PW.2 Balbir Singh and PW.4 Garib Dass. There is no whisper in ruqa Ex.PC dated 20.09.1999 as well as in the FIR Ex.PA dated 20.09.1999 about the meeting of Garib Dass with Balbir Singh. In case, Garib Dass had told Balbir Singh on 20.09.1999 that he had last seen the deceased in the company of the accused, Balbir Singh should have definitely got recorded this fact in ruqa Ex.PC as well as FIR Ex.PA.

20. The prosecution has relied upon the extra-judicial confession made by accused Hardev Singh, Harbans Singh and Parvinder Singh before PW.5 Rajwinder Singh on 02.10.1999 as well as extra-judicial confession made by accused Nirmal Singh, Jaspal Singh and Janak Singh before PW.6

Ganga Singh on 02.10.1999. Neither PW.5 Rajwinder Singh nor PW.6 Ganga Singh brought to the notice of the police or relations of the deceased about the extra-judicial confessions made by the accused on 02.10.1999. Their conduct is unusual. PW.5 Rajwinder Singh, in his cross-examination, admitted that he had not lodged any report in Police Station Mullepur that the accused had made extra-judicial confession before him. Moreover, his village was situated at a distance of 8/9 KMs from Nandpur Kesho. PW.6 Ganga Singh is the real brother of the deceased, but he has admitted in his cross-examination that the fact about the extra-judicial confession made by three accused before him was not disclosed by him to his brother Balbir Singh. An extra-judicial confession is ordinarily made before a person of authority. In this case, PW.6 Ganga Singh is the brother of the deceased. He was not holding any public office. Similarly, PW.5 Rajwinder Singh was also not holding any public office or authority. According to him, accused Hardev Singh, Harbans Singh and Parvinder Singh had come to him, because he had an acquaintance with Incharge/SI Gurcharan Singh of Police Station Sadar Patiala. He was confronted with his statement Ex.DA, where it is only mentioned that the witness was an influential person and had good relations with the police. The extra-judicial confession is a weak evidence. It is required to be corroborated. The exact words uttered by the accused in extra-judicial confession are required to be stated by the person, to whom the confession is made. Their Lordships of the Supreme Court in **Dwarkadas Gehanmal Vs. State of Gujarat, (1999) 1 Supreme Court Cases 57** have held that the conduct of witness, before whom alleged extra-judicial confession made, in not disclosing about such confessional

statement to the police or any body else for five days, is inconsistent with the conduct of an ordinary human being. In view of this, the extra-judicial confession was not proved. Their Lordships have held as under :-

“14. The witness then stated that the very same evening he had gone to his father-in-law’s place to attend the marriage and returned to Veraval after a week. He further admitted that for the first time he told about the extra-judicial confession made by the appellant to the investigating officer on 16.2.1988. He admitted during the cross-examination that he did not disclose about the confessional statement to his wife as well as to his relatives and the relatives of Noorbhai. The witness further admitted that the way leading to the bus-stand passes by the police station which is at a distance of a few yards from Allana Mill. The conduct of this witness, in our opinion, is inconsistent with the conduct of an ordinary human being. Moreover, the witness who was suspecting that his wife was having illicit relations with the appellant and since he had disclosed this to Noorbhai, it would be highly improbable that the appellant would take this witness into confidence to disclose about such a heinous crime if committed by him. In addition to this, Deva Rama (PW.4) would not have waited for five days to disclose the alleged confession made by the appellant to him but on the contrary, he would have either on the same evening gone to the police station to lodge a complaint on the basis of the confessional statement of the appellant and/or would have gone to the house of Noorbhai to inform the family members about the

confessional statement of the appellant. The entire evidence of Deva Rama (PW.4) appears to us totally artificial. The trial court and the High Court have totally ignored these inherent improbabilities in the evidence of Deva Rama (PW.4) and have erroneously accepted his evidence as a credible one. It is because of this erroneous approach the courts below have held that the prosecution has proved the alleged extra-judicial confession made by the appellant to Deva Rama (PW.4). In view of these circumstances, we are unable to agree with the finding of the courts below that the appellant had made any confessional statement before Deva Rama (PW.4).”

21. DW.4 ASI Baldev Singh has deposed that FIR No. 536 dated 20.09.1999 was investigated, but no evidence was found against the accused. Therefore, the cancellation report was filed. It has also come in the evidence that accused Janak Singh and Nirmal Singh were the witnesses in Isher Singh's murder case. DW.1 Sukhdev Singh deposed that deceased Norang Singh was drinking at the scooter shop near Bus Stand Chil. At about 1.00/1.30 PM, Norang Singh complained of pain in chest. He was taken to Rajindra Hospital, Patiala by Kirpal Singh. He died on the way to hospital.

22. Accordingly, the complainant has failed to prove his case against the appellants beyond reasonable doubt. The appeal is allowed. The judgment and order dated 10.08.2004 are set aside. Appellants Hardev Singh, Harbans Singh and Nirmal Singh are acquitted of the charges framed

against them. They are already on bail. Their bail bonds and surety bonds are discharged.

(RAJIV SHARMA)
JUDGE

January 27, 2020
ndj

(HARINDER SINGH SIDHU)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes