

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRA-D-285-DB-2005
Reserved on : 13.02.2020
Date of decision : 17.02.2020

Lakhwinder Singh and another

... Appellants

Versus

State of Punjab

... Respondent

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

Present: Mr.A.P.S. Deol (Amicus Curiae) Senior Advocate with
Mr.Vishal R.Lamba, Advocate
for the appellants.

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

RAJIV SHARMA, J.

This appeal has been instituted against the judgment and order dated 08.01.2005 rendered by the Additional Sessions Judge, Amritsar, in Sessions Trial no.42, dated 22.08.2003 whereby, the appellants were charged with and tried for the offences punishable under Section 302 read with Section 34 of the Indian Penal Code (in short 'IPC'). The appellants were convicted thereunder and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.3,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of six months each.

2. The case of the prosecution in a nutshell is that Mohinder Singh had lodged a report with the police to the effect that his son Davinder Singh was married with Jasbir Kaur. One daughter was born. He

was living separately from joint family. Davinder Singh was working as a Welder in Putlighar, Amritsar. On 20.03.2003 his son left the house at 4.00 A.M. In the evening his dead body was found lying near the Chali Khuh park. His statement was recorded vide Ex.PK, on the basis of which FIR Ex.PK/3 was registered. The dead body was sent for post-mortem examination. 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 examined two witnesses in their defence. The appellants were convicted and sentenced, as noticed hereinabove. Hence, this appeal.

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

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-1 Dr.Manpreet Kaul conducted the post-mortem examination. She noticed the following injuries on the person of the deceased:-

“1. 8.2 x 2.3 cms incised wound was present on the back of head in mid line. 7 cms above posterior hair line and was 8 cm posterior to left ear pinna. It was horizontally placed. On hand lens examination,

margins were found clean cut. Hair follicle were found cut and underlying tissues were found clean cut. Linear fracture of oxipital bone showed infiltration and clotted blood was present in the wound.

2. *16.1 x 3 cms reddish bruise was present on back of neck just below posterior hair line and was horizontally placed, underlying muscle showed contusion.*

3. *15 x 5 cms reddish bruise was present on the back of chest left side. 5.2 cms below posterior hair line. It was horizontally placed and intervening area was found spare.*

4. *10 x 10 cms abraided reddish bruise was present on the left side of neck, extending from left mastoid vertically downward. On dissection, underlying muscles showed contusion.*

5. *21 x 3 cms reddish brown abrasion was present on the left side of back of chest 6.5 cms posterior to posterior axillary ford. Vertically placed.*

6. *1.2 x 1 cm incised wound was present on the left side of forehead. 1.8 cm above middle of right eye brow. Obliquely placed.*

7. *2.5 x 1.2 cms reddish bruise present on mucosal surface of upper lip.*

8. *1.2 x 0.8 cms reddish bruise present on the*

anterior aspect of left arm 1.3 cms lateral to anterior axillary fold.”

The cause of death in her opinion was compression of brain due to injury no.1 which was sufficient to cause death in an ordinary course of nature. The time elapsed between injury and death was within about few minutes. Time elapsed between death and post mortem examination was within about 12 hours.

8. PW-2 ASI Harbhajan Singh deposed that he was posted in Police Station Vijay Nagar. He was present with SI Joginder Singh. Mohinder Singh met SI Joginder Singh. Police party went to the place of occurrence. Blood stained earth was taken into possession. On 26.03.2003 SI Swaran Singh arrested the accused. Accused Lakhwinder Singh made disclosure statement vide Ex.PF. He led the police party to the disclosed place and got recovered *datar*. It was taken into possession. The *datar* was Ex.P1. In his cross-examination he deposed that Mohinder Singh did not come to the police station but he met the police party near Jaura Phatak. On 26.03.2003 Mohinder Singh did not join the police party.

9. PW-6 Ravinder Kumar testified that he was President of Neta Ji Subash, General Mazdoor Union, Amritsar. On 20.03.2003 at 5.30 A.M. he came out of the house to have a walk. When he was coming back to the house and reached near Jaura Phatak, Lakhwinder Singh and Jasbir Kaur had blood stains on their clothes. Lakhwinder Singh was carrying a *datar* in his hand. Jasbir Kaur was empty handed. He enquired why their clothes were blood stained. They stated that Davinder Singh was an obstacle in their relation and they had killed him. They threatened to kill him if he disclosed this fact to anyone. He went to his house. His statement was

recorded. In his cross-examination, he admitted that his Union was not registered. Mohinder Singh was the General Secretary of the Union. He did not go to the police station to report the matter since he was threatened by the accused. He met the police on the next day. His statement was recorded on 20.03.2003. He did not go to the house of accused or Mohinder Singh.

10. PW-7 Mohinder Singh deposed that he had two sons Lakhwinder Singh and Davinder Singh. Davinder Singh was married with accused Jasbir Kaur. One daughter was born from their wedlock. Davinder Singh was residing separately from his family. He was working as a Welder. He identified the dead body of his son Davinder Singh. He got recorded his statement vide Ex.PK. In his cross-examination, he deposed that Davinder Singh was residing separately from his family for the last 6/7 months. He had been occasionally visiting their house. He did not know how his son Davinder Singh died. He did not express his doubt before the police. He was not joined in further investigation of this case.

11. PW-8 SI Joginder Singh deposed that he was on patrolling duty on 20.03.2003. Mohinder Singh met them. He recorded his statement Ex.PK on the basis of which FIR Ex.PK/3 was registered. He along with Mohinder Singh went to 40 no. khuh and near khuh no.22/23, where dead body of Davinder Singh was lying. Mohinder Singh and accused Jasbir Kaur identified the dead body. He prepared inquest report Ex.PL. Post-mortem was got conducted. Site plan was prepared. Blood stained earth was lifted. In his cross-examination, he deposed that he recorded the statement of Ravinder Kumar in the police station at about 4.00/5.00 P.M. He did not record the statement of Jasbir Kaur accused.

12. PW-12 SI Swaran Singh deposed that he recorded the

statement of Satwinder Singh on 26.03.2003. He received a secret information that both the accused were coming from the bus stand towards Golden Avenue and naka was proposed at Jaura Phatak. Accused were arrested. Accused Lakhwinder Singh was interrogated. He made disclosure statement that *datar* with which they killed was concealed by him in a bagh near Sun City about which only he knew. The disclosure statement was Ex.PF. Accused led the police party to the nominated place. The *datar* was recovered. It was stained with blood. It was taken into possession.

13. PW-13 Satwinder Singh deposed that about one and half years or two years back, accused had come to his house. Accused Lakhwinder Singh told him that he had love affair with Jasbir Kaur. He did not remember the name of the husband of Jasbir Kaur. They had a dispute with husband of Jasbir Kaur and brother of Lakhwinder Singh. One day prior to that day, they had taken him to 40 no. khuh and had caused injuries. Similar statement was made by Jasbir Kaur. They requested him to produce them before the police. He asked them to come on next day. However, they did not come on the next day. His statement was recorded by the police. In his cross-examination, he admitted that he was not related to the accused family. He was not on visiting terms with them. He was never a member of panchayat, Sarpanch, Nambardar or a councilor. He resided in Dashmesh Nagar for 8 years. When he was going to bus stand, he met SI Swaran Singh, before whom he made the statement.

14. DW-1 Davinder Singh deposed that he knew the family members of Mohinder Singh. He had two sons. Davinder Singh deceased was married. Lakhwinder Singh was unmarried. Davinder Singh was residing separately from his family. Lakhwinder Singh was residing with

his father. He had no knowledge who killed Davinder singh.

15. DW-2 Baldev Singh deposed that his house was at a distance of about 10 karam from the house of Mohinder Singh. Davinder Singh was married. Lakhwinder Singh was unmarried. Davinder Singh was residing separately from his family. Lakhwinder Singh was residing with his parents. He had not heard about the illicit relation of Jasbir Kaur with Lakhwinder Singh.

16. According to the FSL report, *datar* was stained with human blood. The cause of death as per PW-1 Dr.Manpreet Kaul, was compression of brain due to injury no.1 which was sufficient to cause death in an ordinary course of nature.

17. The case of the prosecution is that accused had extra marital affair with the wife of deceased which led to murder of Davinder Singh. According to the prosecution, the deceased went for morning walk at 4.00 A.M. He was killed by Lakhwinder Singh with *datar*. His dead body was recovered in the evening.

18. PW-7 Mohinder Singh in his cross-examination deposed that he did not express any doubt before the police. He was not joined in further investigation of the case. The prosecution has relied upon extra judicial confession made by the accused before PW-6 Ravinder Kumar. According to PW-6 Ravinder Kumar, on 20.03.2003 at about 5.30 A.M. he came out of the house to take a walk. When he was coming back to the house, he met Lakhwinder Singh and Jasbir Kaur. He noticed blood stains on their clothes and *datar* in the hand of Lakhwinder Singh. He enquired why their clothes were blood stained. They told him that they had killed Davinder Singh. However, the fact of the matter is that accused had made extra

judicial confession before him but he did not go to the police station. A very flimsy explanation has been given by him that he was scared by them. The normal conduct of PW-6 Ravinder Kumar was to inform the family members of the deceased or to go to the Police Station when he had seen accused Lakhwinder Singh with *datar* in the company of Jasbir Kaur. The other witness of extra judicial confession is PW-13 Satwinder Singh. According to him, Lakhwinder Singh told him that he had love affair with Jasbir Kaur co-accused. He did not know the name of the husband of Jasbir Kaur. They had dispute with husband of Jasbir Kaur and brother of Lakhwinder Singh. They caused injuries to him. Similar statement was made by Jasbir Kaur. In his cross-examination, he admitted that he was not a man of authority. He was never a member panchayat, Sarpanch, Nambardar or a councilor. There was no occasion for the accused to make extra judicial confession before the person who was not known to them. PW-13 Satwinder Singh admitted that he was not related to the accused family. He was not on visiting terms with them. In his examination-in-chief, he deposed that he asked the accused to come on next day at 9.00 A.M. to produce them before the police. In case, the extra judicial confession was made before him, he should have informed the police immediately. He met the police on the next day. Statements of PW-6 Ravinder Kumar and PW-13 Satwinder Singh do not inspire confidence. Though the prosecution case is that there was extra marital relation between accused Lakhwinder Singh and Jasbir Kaur but no evidence to this effect was led by the prosecution. DW-1 Davinder Singh and DW-2 Baldev Singh have categorically deposed that they had no knowledge that the wife of deceased Davinder Singh had illicit relations with Lakhwinder

Singh. Lakhwinder Singh and Davinder Singh were real brothers. PW-6 Ravinder Kumar in his cross-examination deposed that he met the police on the next day of occurrence and his statement was recorded in the police station at about 5.00 P.M. on 20.03.2003. The case is based on circumstantial evidence. In order to prove the case based on circumstantial evidence, chain must be complete. All the circumstances must point exclusively towards the guilt of accused. There are gaps in the prosecution version which have not been explained.

19. 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.”

20. Their Lordships of the Supreme Court in ***Jagta vs State of Harayna, AIR 1974 SC 1545*** have held that the evidence about an extrajudicial 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.”

21. 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 PW 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 extrajudicial

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 extrajudicial 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.”

22. 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.”

23. 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. (AIR 1975 SC 258); (1975 CrL.LJ 282). The evidence of witnesses with regard to an extrajudicial 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) .”

24. The prosecution has failed to prove the case against the appellants beyond reasonable doubt.

25. Accordingly, the appeal is allowed. The impugned judgment and order dated 08.01.2005 are set aside. The appellants are acquitted of the charges framed against them. The appellants are on bail. Their bail bonds and surety bonds are discharged.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

February 17, 2020.

Davinder Kumar

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No