

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

CRA-D-777-DBA-2002
Reserved on: 15.11.2022
Date of decision: 21.11.2022

STATE OF HARYANA

...Appellant

Versus

AJAY KUMAR AND ANOTHER

...Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present: Mr. Anmol Malik, Deputy A.G., Haryana
for the appellant.

Mr. Gaurav Singla, Advocate (Legal Aid Counsel)
for the respondents.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the verdict drawn on 06.03.2002, upon Sessions Case No.33, by the learned Additional Sessions Judge, Jhajjar, wherethrough in respect of charges drawn for offences punishable under Sections 302/201/34 of IPC, he made a verdict of acquittal qua the accused. The State of Haryana becomes aggrieved from the above drawn verdict, and, is led to institute thereagainst the instant appeal before this Court.

FACTUAL BACKGROUND

2. The facts relevant for a decision being made, upon the instant appeal are carried in FIR to which Ex.PB/2 is assigned. The FIR (supra) details the factum that on 11.6.1999 ASI Kaptan Singh along with other police officials was present at Bhagalpuri Chowk, Beri in connection with investigation of a case, where Manke Ram, complainant came and got recorded his statement to the effect that his elder brother Krishan used to live with him but his whereabouts

is not known for the last 4-5 days. He also told that there is a rumour in the village that a well is giving foul smell and a GATHRI is floating on the water of the well. He further told that he accompanied by Mansa Ram, Lamberdar, his uncle Raj Singh and Krishan Kumar, watchman went to the well, where a dead body wrapped in a GATHRI was found floating on the water. The dead body was identified to be of his brother Krishan having some injuries on his body. On the basis of his above statement, the present case was registered.

INVESTIGATION

3. During investigation, Kaptan Singh, ASI took into possession the dead body, clothes, mattress pillow cover, etc. Post mortem examination on the dead body was conducted. Accused were arrested on the basis of confessional statement Ex.PD made by accused, and during interrogation, they made disclosure statement and in pursuance of their disclosure statement, kush was recovered vide recovery memo Ex.PK, from the relevant site. Site plans of the place of occurrence and place of recovery were prepared. Rough sketch of the Kush was prepared. Statements of witnesses were recorded under Section 161 Cr.P.C. After completion of necessary investigation, challan was presented in the trial Court.

COMMITTAL PROCEEDINGS

4. Since the afore offences were exclusively triable by the Court of Session, thus vide committal order dated 16.09.1999, the learned Judicial Magistrate Ist Class, Jhajjar, committed the accused to face trial before the Court of Session.

TRIAL PROCEEDINGS

5. The prosecution examined as many as 13 witnesses and, subsequently, the public prosecutor closed prosecution evidence. After the

Section 313 Cr.P.C., wherein, the accused pleaded innocence, and, claimed false implication. In defence, the learned defence counsel examined 3 defence witnesses.

SUBMISSIONS OF LEARNED COUNSEL FOR THE APPELLANT

6. The learned counsel for the appellant-State has made a vehement submission before this Court that the reasons assigned by the learned trial Judge concerned, for making an order of acquittal, upon the accused are extremely frail, besides are not based upon a sound appreciation of the evidence on record. Therefore, he contends that the impugned verdict of acquittal be quashed, and, set aside.

SUBMISSIONS OF LEARNED COUNSEL FOR THE RESPONDENTS

7. On the other hand, the learned counsel for the respondents submits, that the verdict of acquittal as has been challenged before this Court is well merited, thus it does not require any interference being made by this Court.

REASONS ASSIGNED BY THE LEARNED TRIAL JUDGE FOR MAKING A VERDICT OF ACQUITTAL QUA THE ACCUSED

8. Though, both the accused made an extra judicial confession before PW-3 (Om Parkash). Moreover, though the above extra judicial confession was made in the presence of Devender Singh, who made his signatures thereon as a marginal witness thereto. The above extra judicial confession, as made by the accused before PW-3 is assigned Ex.PD. Therein occurs the confession of guilt by the accused, as also therein becomes echoed the factum of the accused after tying the dead body of deceased Krishan, in a gunny bag and guilt, rather theirs dropping the same in the Sudali well. Moreover, though PW-3 wherebefore whom the accused had made an extra judicial confession, stepped into the witness box as PW-3, and, proved the drawings of Ex.PD, but the learned trial Judge concerned, did not assign any credence thereto. The primary reason as

becomes assigned by the learned trial Judge concerned, to discard the evidentiary worth of Ex.PD, becomes comprised in the factum though *qua* the said exhibit becoming scribed by Devender Singh yet the said scribe of Ex.PD, rather not being examined, though he was a material witnesses to prove the makings of Ex.PD.

REASONS FOR REJECTING THE ABOVE DRAWN CONCLUSION BY THE LEARNED TRIAL JUDGE

9. Since PW-3 had proved Ex.PD, and, when he is also the scribe thereof, whereas Devender Singh rather is a marginal witness to Ex.PD. Therefore, the learned trial Judge concerned, made an inapt conclusion that Ex.PD was scribed by Devender Singh, and, that for want of his proving the factum of his drawing the same, no evidentiary worth can be assigned to it. Predominantly so, since PW-3 had proven Ex.PD, besides when thereons exist the signatures of both the accused. Thus, unless both had ably denied the existence of their respective signatures thereon, besides had efficaciously proven the said denial, thereupon the factum of Devender Singh, not stepping into the witness box to prove *qua* his, as a marginal witness subscribing his signatures thereon, rather was not at all required. Resultantly, the above meted reason for not assigning evidentiary worth to Ex.PD is extremely frail.

10. The further reason as becomes assigned by the learned trial Judge concerned, to not assign credit to Ex.PD, is comprised in the factum, that despite PW-3 being related to the deceased yet his hiding the above relation. Resultantly, it was concluded by the learned trial Judge concerned, that when rather there was to be an evident relationship of trust, and, confidence *inter-se* the accused and PW-3, than any relationship of PW-3 with the deceased, thereupon with PW-3 hiding his relationship with the deceased, rather gaining a conclusion *qua* Ex.PD not enjoying any evidentiary vigor, as the same could not

be assuredly concluded to be validly made to a person, who given his being related to the deceased, was obviously not the confidante of the accused, wherebefore whom the accused could make a valid confession of their guilt.

11. However, the above assigned reason is also extremely frail, as a reading of the cross-examination of PW-3 (Om Parkash) reveals, that he had therein only admitted that the deceased was his village nephew, but yet spoke that beyond that, he did not hold any relationship with the deceased. Consequently, there was no hiding by PW-3 of his being very remotely related to the deceased. Thus, it was grossly inapt for the learned trial Judge concerned, to conclude that PW-3 had hidden his relationship with the deceased, and, also he inaptly concluded that when he had no relationship with the accused, as such, they would relent from reposing any trust and confidence in him, hence to make before him an extra judicial confession.

12. In addition, the confession of guilt, as made by the accused before him also becomes enclosed in a scribed document which is signed by PW-3, and, also thereons exist the signatures of the accused, both of whom did not deny the existence thereon of their valid signatures nor they proved the said denial. In sequel, credence has to be assigned to Ex.PD. Moreover, the rule which restrains Courts of law to assign probative credit to any extra judicial confession, as made by the accused rather before a person, who is not related to them nor holds his/her trust and confidence, and who rather is related to the deceased, however, is limited in its application, to an extra judicial confession disclosed, to a person who subsequently makes an unsigned statement under Section 161 of Cr.P.C., before the police officer concerned. If so, the said rule may not *stricto-sensu* apply to a disclosure statement rather uncontrovertedly

signed by the accused. Therefore, on the above ground also the above meted reason by the learned trial Judge concerned, does not enjoy any sanctity in law.

REASON NO.2

13. The incriminatory weapon of offence, is an iron kush, to which Ex.P1 is assigned. The same was taken into possession through recovery memo Ex.PK. However, the learned trial Judge concluded that the prosecution has not been able to prove the trite factum of its being the relevant incriminatory weapon. The reason as became assigned by the learned trial Judge concerned, to draw the above inference, became grooved in the factum, that though the above purported weapon of offence, was produced in Court, at the time of the recording of the deposition of PW-5 (Chand Ram), but since the learned public prosecutor then pointed, that the said produced weapon, does not relate to the extant FIR. Thus the learned trial Judge concerned, concluded that the recovery of the incriminatory weapon of offence, as made through Ex.PK, rather was not validly effected, especially when the same did not also come to be shown to any other prosecution witness. In other words, the learned trial Judge concerned, concluded that for want of production of the recovered weapon of offence, the factum of its purported user by the accused hence becoming belied. Therefore, it concluded that the recovery thereof, as made through memo Ex.PK rather remaining unestablished.

REASON FOR REJECTING THE ABOVE DRAWN INFERENCE

14. However, the above drawn reason is also extremely unmeritworthy. In making the above conclusion, this Court deems it fit to allude to Ex.PD whereto immense evidentiary vigor has been assigned. Moreover, this Court also deems it fit to allude to the respectively signed disclosure statements, as

made by the accused, to which Ex.PE, and Ex.PF are assigned. The contents of Ex.PE and Ex.PF are extracted hereinafter.

“Disclosure statement of accused Savitri

In the presence of the following witnesses accused Savitri w/o Balbeer Singh, Jat, r/o Majra (D) P.S. Beri (in custody) in the present case, without any fear and greed, during interrogation, suffered her disclosure statement to the effect that I have hidden Rs.10,000/- in the box at my residential home. No one except me knows about where Krishan s/o Ram Chander, Jat, r/o Majra (D) was murdered and dead body was thrown. I can get demarcated the said place and can get recovered the money having demarcated. Disclosure statement of accused was prepared.

*1. Om Parkash Ex. Sarpanch
S/o Giani Ram Jat r/o Majra (D)
Sd/- (In English)*

*Thumb Impression of
Savitri*

*2. Devender s/o Bhagwan Singh
caste Jat r/o Majra (D)
Sd/- (In English)*

*Sd/- (In English)
Rohtas Singh Insp./CIA
Bahadurgarh Dt. 24.6.99*

Disclosure statement of accused Ajay Kumar

In the presence of the following witnesses accused Ajay Kumar s/o Balbeer Singh, caste Jat, r/o Majra (D) P.S. Beri (in custody) in the present case, without any coercion and lure, on interrogation suffered his disclosure statement that I have kept concealed an iron 'kush' (Instrument like as ploughshare) by containing in a bag, in our field, which is unknown to every body except me. I can demarcate both the places where Krishan s/o Ram Chander, Jat, r/o Majra (D) was murdered and where the dead body was thrown and can get recovered iron 'kush' (instrument like as ploughshare) by telling the place in the field. The disclosure statement of accused was prepared.

*1. Om Parkash Ex. Sarpanch
S/o Giani Ram Jat r/o Majra (D)
Sd/- (In English)*

*Sd/- (In Hindi)
Ajay Kumar*

*2. Devender s/o Bhagwan Singh
caste Jat r/o Majra (D)
Sd/- (In English)*

*Sd/- (In English)
Rohtas Singh Insp./CIA
Bahadurgarh Dt. 24.6.99”*

15. Since the accused Ajay has neither ably denied the existence of his signatures thereon nor has proven the said denial. As such, immense evidentiary worth is to be assigned theretos. Moreover, when in pursuance to the drawings of Ex.PF, through memo Ex.PK, the incriminatory weapon of offence became recovered, at the instance of the convict from the place of its hiding(s), and, keeping(s). Therefore, Ex.PF does not become a bald simpliciter confession of guilt nor is hit by the bar encapsulated in Section 25 of the Indian Evidence Act. Contrarily when in pursuance thereof, the recovery of the incriminatory weapon of offence became effected by the convict, to the police officer, rather from the place of its hiding, and, keepings. Moreover, since the site of the apposite recovery has not been established, to *qua* prior to the relevant recovery being made therefrom, rather being known to the police officer nor when evidence has been adduced, that the incriminatory weapon of offence was earlier thereto planted at the relevant place, hence by the investigating officer concerned. Thus, immense evidentiary solemnity is to be assigned to the making of the apposite recovery through Ex.PK, at the instance of convict Ajay, to the investigating officer concerned.

16. Be that as it may, even a sketch of the recovered weapon of offence became prepared, and, to the relevant sketch Ex.PL is assigned. Even though, despite a valid recovery of Ex.P1 being made, yet given it being stated by the learned public prosecutor, at the time of its production, in Court, for it being then shown to PW-3, that the said produced weapon is not related to the extant FIR but to some other FIR, therefore the learned trial Judge concerned, rather concluded *qua* it not being the recovered weapon of offence, besides also concomitantly concluded *qua* the relevant recovery remaining unproven to become efficaciously made. More so, when it did not come to be purportedly

shown to any other prosecution witness, during the course of the trial becoming entered into the instant FIR.

17. However, the above reason is ridden with an entrenched vice of fallibility. The reason for drawing the above conclusion, is grounded, on a reading of the deposition of PW-10, who made an autopsy on the body of deceased Krishan, wherein speakings occur *qua* Ex.P1, rather becoming shown to him during the phase of his stepping into the witness box. If so, obviously and reiteratedly, the above drawn inference by the learned trial Judge concerned, for dispelling the makings of valid recovery of Ex.P1, through memo Ex.PK, does become completely weakened.

MEDICAL EVIDENCE (POST MORTEM REPORT)

18. Though PW-10 during the course of his examination-in-chief, did prove his drawing the post mortem report, to which Ex.PX is assigned. He also during the course of his examination-in-chief proved the existence of the hereinafter extracted injuries on the body of deceased-Krishan.

“1. There was stab wound of the size 3x2cms. placed transversely on the left side of neck, 6 cms, below the left angle of mandible and 3.5cms. away from the midline. It was spindle shaped and margins of which were clean cut and the underlying tissue were ecchymosed. The wound was directed medially and forward, thereby cutting the trachea, thyroid cartilage at its left upper end and the large vessels. The surrounding tissues were ecchymosed.

2. There was a stab wound of the size 3x1.5 cms. placed in a transverse plane on the left side of midline and 5 cms. from the medial margins of injury No.1. The wound was spindle shaped with clean cut margins and the underlying tissues were ecchymosed. The wound was directed medially and forward, thereby cutting the trachea on its anterior part and surrounding tissues were found to be ecchymosed.

3. There was a stab wound of size 3x1.5 cms. placed transversely on the right side of the neck. 5cm. away from the midline and 9cm. below the chin and 1cm. from the injury No. 2. The wound was of spindle shapes

with clean cut margins and underlying tissues were found to be ecchymosed. The wound was directed backward and thereby piercing the trachea through and through. The surrounding tissues were found to be ecchymosed.

4. There were stab wound of size 3x1.5 cms. placed on the right side of neck about .5 cm. from midline and 3 cms. above medial end of right clavicle and 3cms. below the injury No. 3. The wound was of spindle shape with clean cut margins and the underlying soft tissues were found to be ecchymosed. The wound was directed backward and medially, thereby cutting the lower border of C7 vertebrae and the large blood vessels. Surround structures were ecchymosed and the cut segments of the bone showed infiltration of blood.

5. There was stab wound of size 3.5x2 cms. placed obliquely on right side of the neck, 1 cm. away from midline. 1 cm. above the medial end of clavicle right side and 3 cms. from Injury No.4. It was spindle in shape with clean cut margins and the underlying tissues were ecchymosed. The wound was directed back and medially thereby cutting the blood vessels.

6. There was a stab wound of size 3x1.5 cms. placed obliquely on the right side of neck 4cms. away from the midline and 5 cms. from injury No.5. The wound was spindle shaped and the underlying soft tissues were ecchymosed. The wound was directed backward and medially thereby cutting underlying soft tissues and neurovascular structures.

7. There was a stab wound of size 2.5x1.5cms. placed obliquely on the right side of pinna of the neck, .5 cm. from injury No.6 and 4.5 cm, from the midline. The wound was spindle shaped and the margins were clean cut. Underlying tissues were ecchymosed. The wound was directed backward and medially thereby cutting the underlying structures and the surrounding tissues were found to be ecchymosed.

8. There was a stab wound of size 2.5x1 cms. placed transversely on the right side of neck, 5 cms. away from midline and .5 cm, from injury No. 7. The wound was spindle shaped and margins of which were clean cut with underlying ecchymosis. The wound was directed backward, medially and downward, thereby cutting the underlying structures which were found to be ecchymosed.

9. There was stab wound of size 2.5x1.5 cm. placed obliquely about .5 cm. from injury No.8 and 5cms. from the midline. The wound was spindle in shape and its margins were clean cut. Underlying tissues were

ecchymosed. The wound was directed medially, backward and downward, thus cutting the underlying soft tissues which were ecchymosed.

10. There was stab wound of size 2.5x1.5 cms. placed obliquely, about .5 cm. from injury No.9 and 4.5 cms. from the midline, with spindle shape with margins being clean cut. The wound was directed backward, medially and downwards and cutting the underlying soft tissues.”

19. However, despite Ex.P1 becoming shown to him, in Court, he opined that the above extracted injuries were not causable on the body of the deceased through users thereon of Ex.P1. The above speakings made by PW-10 in his examination-in-chief also led the learned trial Judge concerned, to conclude, that the prosecution has not been able to prove the user of Ex.P1, by the accused concerned, in the causings of fatal wounds on the body of the deceased. Therefore, obviously the learned trial Judge concerned, dispelled the evidentiary worth of the apt disclosure statements, and, also proceeded to dispel the creditworthiness of the apposite recovery memo.

REASONS FOR REJECTING THE ABOVE CONCLUSIONS, AS MADE BY THE LEARNED TRIAL JUDGE

20. This Court is of the considered view, that the above dispellings qua the worth of the cogent incriminatory evidence adduced against the convict, does require, an interference being made by this Court. The reason for drawing the above conclusion emanates from:

- i) The accused in the respectively made disclosure statements making speakings *qua*, after the deceased being murdered by the accused concerned, with user of Ex.P1 hence theirs enclosing his body in a gunny bag, and, thereafter dropping the same in a well.
- ii) Subsequent thereto, through proven memos Ex.PI and Ex.PJ, the accused leading the police officer, to the well whereintos they had confessed to drop the body of the deceased.

iii) Since the accused did not adduce evidence suggestive, that other than them or more specifically the investigating officer, had earlier thereto dropped the body of the deceased into the well. Thus, it has to be firmly concluded that only the accused after committing the murder of deceased Krishan, had after enclosing his body, in a gunny, had taken to drop the same into a well. If so, the well which is revealed in Ex.PO to be 30' in depth, thereupon the above extracted injuries, as pronounced in the post mortem report Ex.PP, to be not causable through user of Ex.P1, on the body of the deceased, rather can be concluded to be caused, as a sequel of the body of the deceased, gaining thereons, the apposite ante mortem injuries, rather during the course of its being dropped into the well. The further pre-eminent reason for drawing the above conclusion, ensues from the factum of the depth of the well being obviously narrow in size, given it being spelt in Ex.PO, to be 5'x5' in width. The narrowness of the well can well be concluded to result in the body of the deceased striking against the walls thereof, which can, but be concluded, to result in the entailments thereons of the above extracted ante mortem injuries.

21. The learned trial Judge concerned, has also concluded that, though the investigating officer concerned, deposed that there were blood stains on the recovered kush Ex.P1, but since in the FSL report to which Ex.PX is assigned, and, whereto Ex.P1 became sent for examination, yet not speaking about the said fact. Therefore, evidentiary worth was not assignable to the recovery of Ex.P1, as became made through Ex.PK. However, even if, at the time of receipt

of Ex.P1 in the laboratory concerned, it did not carry any stains of blood, but *per-se* on the above ground, it could not be concluded that its recovery, as was made through a validly drawn recovery memo, to which Ex.PK is assigned, was a fake or fictitious recovery, as no evidence to support the above exculpatory plea has surged forth. Importantly, when the said recovery was preceded by a validly recorded disclosure statement of the accused concerned, thereupon credit was to be assigned to the recovery of Ex.P1, as made through recovery memo Ex.PK. Importantly, irrespective of the fact qua no blood stains being carried thereons. Significantly, non-existences whereof thereons, is readily explicable from any blood stains as carried thereons, rather suffering natural removals therefrom, on account of the rubbing of the recovered weapon against the cloth parcel(s), wherein it was enclosed or blood stains becoming naturally erased, on account of the relevant cloth parcels rubbing against other cloth parcels, as, may be become kept in the may be heavily docketed police malkhana concerned.

SUMMARIZATION OF PRINCIPLES

- I. Though an extra judicial confession made by the accused before a distant relative of the deceased may not carry any evidentiary value, but the above rule is applicable to the recipient of the extra judicial confession hence making an unsigned statement under Section 161 of the Cr.P.C., to the investigating officer concerned. If the extra judicial confession is reduced into a document, whereons the uncontroverted signatures of the accused exist. Thus, even if the said extra judicial confession is made before a distant relative of the accused, it may not yet loose its evidentiary vigor, if it is supported by other proven incriminatory links in the

chain of circumstantial evidence, as, erected against the accused by the prosecution.

II.If the other potent cogently proven incriminatory link(s) in the chain of circumstances, as comprised in the proven confession of guilt as occurring in the validly drawn signed disclosure statement of the accused, thus also lead to consequent therewith valid recover(ies) becoming effected, thereupon the incriminatory link(s) (supra), do corroborate the extra judicial confession, as made by the accused.

III.If the medical evidence pronounces that the ante mortem injuries are not causable on the body of the deceased, through users of the recovered weapon of offence, yet the above medical evidence cannot *per-se* permit the discarding of the evidentiary worth of the validly proven disclosure statement nor can permit the discrediting of the evidentiary worth of consequent therewith recover(ies), as become effected by the convict, to the investigating officer concerned, but only if the site of recovery of the body of the deceased, is provenly established, to also render open a possible inference, that during the course of its being kept there, there was a possibility of the ante mortem injuries becoming acquired on the recovered body of the deceased concerned.

FINAL ORDER

22. In view of the above, this Court finds that all the above assigned reasons by the learned trial Judge concerned, to make a verdict of acquittal, are

not at all meritorious, rather suffer from a vice of gross mis-appreciation, and non-appreciation of the evidence on record.

23. Therefore, this Court is of the view that the instant appeal merits, it being allowed. Consequently after allowing the instant appeal filed by the State of Haryana, this Court quashes the impugned verdict of acquittal, as made on 06.03.2002, upon Sessions Case No.33, by the learned Additional Sessions Judge, Jhajjar. The accused are directed to be produced in custody before this Court on 23.11.2022 for theirs being heard on the quantum of sentence.

24. Case property, if any, be dealt with in accordance with law, but only after the expiry of the period of limitation for the filing of an appeal.

25. Records be sent down forthwith.

(SURESHWAR THAKUR)
JUDGE

21.11.2022

Ithlesh

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned:-	Yes/No
Whether reportable:	Yes/No